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On the subject of

Attempts to Combat Money Laundering by Sale of Oil in Libya. The Relevance of the United Kingdom Approach.

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Contents

Table of Abbreviations

ML	Money Laundering
AML	Anti – Money Laundering
CMLA	Combat Money Laundering Act (2005)
FATF	Financial Action Task Force
MLR2007	Money Laundering Regulations – 2007
FIU	Financial Information Unit
UN	United Nations
UK	United Kingdom
POCA	Proceeds of Crime Act (2002)
ARA	Asset Recovery Agency
KYC	Know Your Customer
CDD	Customer Due Diligence
PEP	Politically Exposed Person.

Abstract

This thesis is an analytic study that aims to examine the intricacies of Libya's AML framework, focusing largely on the Combat Money Laundering Act (2005) and the mechanisms used in Libya to curb money laundering operations specifically the illegal selling of oil. The United Kingdom was selected as a model on which this study was based; because of the United Kingdom UK's importance as a financial centre.

This thesis presents and clarifies the concept of money laundering as a way to legitimise illegal proceeds; it also explores what steps the government of Libya is taking to control money laundering in Libya through the Combat Money Laundering Act (2005) and to find out whether these steps are successful or not.

The analysis highlights the differences in money laundering regulations in the UK and Libya, and point out the more efficient and effective results in various regions, providing unique details that can serve as a basis for ongoing research and development. Some of the important literature relating to anti- money laundering efforts, both nationally and internationally will be reviewed to reveal key theories and concepts. Research questions and research aims and objectives will be addressed and an overview of the research methods used in studies of UK anti-money laundering will be examined.

In modern times, money laundering has been using increasingly sophisticated means and technology, and is a global problem. Anti-laundering efforts have been initiated as an attempt to combat this crime, but have been largely unsuccessful, even acting as a deterrent to some legitimate transactions in some cases. So, this study will attempt to analyse and explain central aspects of the UK regulations related to money laundering, and the provisions contained in Libyan domestic statutes to find out if these is any gap need to be filled.

Chapter One Introduction

1.1- General Introduction:

Since the early 1950s, Libya has attempted to prevent money laundering (ML) crimes by issuing many different regulations related to financial crimes. However, due to rapid global developments in technology, these regulations against financial crimes were becoming powerless to prevent ML crimes. Thus, in line with international attempts to curb ML offences, Libya issued the Combat Money Laundering Act (CMLA)in 2005. With one of the world's largest oil reserves, Libya is the third largest oil producer in Africa, after Angola and Nigeria[1]; and, like many other oil-producing countries is potentially very prosperous. However, according to Taguri and Nasef, Libya has a weak infrastructure in health care and was ranked 87th from 191 countries by the World Health Organisation in 2000[2]. The author believe that this was due to corruption, ML and civil war over recent years.

1.2-Rationale

ML has become a concrete phenomenon that threatens most countries' economies alike, especially the major industrialized countries. The ML crime plays a basic role in benefiting drug traffickers, corrupt individuals, financial criminals, and others who wish to hide wealth gained from illegal activities. Despite national and international efforts to combat ML, this type of crime has grown to become a global phenomenon; according to Sariguit is estimated to be approximately two to five percent of World GDP[3].

Squalli has noted that Libya is a major producer of petroleum, with oil extracted and refined in Libya; and that the country's economy depends largely on the sale of this oil[4]. Libya's oil revenues, for example, constitute 95% of the nation's exports. In this context, crime manifests itself in many different ways; one of which appears in the form of oil smuggling, which is one of ML means. ML clearly is a crime that poses a threat to the stability of the international financial and economic system.

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[1] Hagger, N. (2009) *The Libyan Revolution: Its Origins and Legacy : a Memoir and Assessment John Hunt*UK (p.136).

[2] Taguri,A and Nasef,A. (2008) The French Health Care System; what can We Learn? Libyan Journal of Medicine Vol.3, No 4 pp 186–191 (p.186).

[3]Sarigul,H. (2013) Money laundering and Abuse of the Financial System.International Journal of Business and Management Studies 1 Vol.2, No 1 pp 287–301.

[4] Squalli,J. (2007) Electricity consumption and economic growth: Bounds and causality analyses of OPEC members Energy Economics Vol.29, No 6 pp 1192–1205. (p.1195).

This has led to the holding of seminars and conferences in most countries across the world including Libya to discuss how to limit the effects of these operations, such as the meeting of the IMF in consultation with Libya[5] and the issuance of the CMLA in 2005.Libya was governed with the absence of a constitution, during the Gaddafi's regime. This regime was characterised by the non-existence of democratic institutions and the absence of the rule of law provisions. However, the revolution in 2011 changed to armed conflict, which continued for approximately eight months, and resulted in the fall of Gaddafi's regime[6]. This also led to the collapse of both state institutions and the rule of law. Although there has been an attempt to change the Libyan regime to a democratic one, the result has been violence; and many difficulties face the elected institutions when they try to instigate reforms. All this has contributed to an increase in oil smuggling, and associated ML crime[7].

This crime has also begun to be something concrete in the Libyan economy in the past few decades. The smuggling of oil from Libya's militia-controlled oil facilities is one form of ML, and it is still occurring; for example, smuggling oil derivatives, through the borders with neighbouring countries has increased, as this study will explain. Thus, Libya has participated in establishing procedures and precautions to avoid ML and its consequences, but, as this study will argue, there is more to do. This crime has resulted in the negative effects of ML crime for the Libyan people and the disastrous costs of this kind of offending for Libyan financial institutions. Libya has more crude oil reserves than any other country in Africa and should have one of the strongest economies; however, in 2016 Libya's budget revenues were estimated at $5.8bn, with expenditures of $13.7bn[8]. Oil smuggling in Libya has thus cost the state coffers more than half a billion dinars that is approximately $360m[9]. The smugglers use small boats and tankers containing up to

[5]See Staff Report for the 2005 Article IV Consultation, Prepared by representatives of IMF a consultation 2005 with Libya. Available at: file:///C:/Users/Owner/Downloads/cr06136a%20(1).pdf Accessed in 20/6/2017.
[6] Vira, V, *et al.* (2011) The Libyan Uprising: An Uncertain Trajectory: Centre for Strategic and International Studies (2011p.62). Available at: https://csisprod.s3.amazonaws.com/s3fspublic/legacy_files/files/publication/110620_libya.pdf [Accessed in 8 September 2017].
[7] See the Monthly Report Libyan Organization for Policies and Strategies. The economic case in Libya March (2017 p.10) Available at: http://loopsresearch.org/media/images/photo561znlw9va.pdf (Accessed in 15/6/2017).
[8] Mannocchi, F. How Libya's oil smugglers are bleeding country of cash 2017 Available at: http://www.middleeasteye.net/news/how-libyas-oil-smugglers-are-bleeding-country-cash-592024472 (Accessed in 15/06/2017).
[9] Ibid.

40,000 litres of oil derivatives and carry them to Malta, and also Sicily, where it is sold before reaching Italy[10]. As a result of these illegal actions, the Libyan economy is exposed to the risk of collapse; the Libyan dinar exchange rate fell against foreign currencies, leading to continued shortages of basic commodities, higher prices and high Libyan inflation rates; and the banks are unable to meet their obligations to customers due to lack of liquidity.[11]The link between ML and corruption is very strong and both often happen together; thus money-laundering is not a single act, but a complex process achieved in a variety of ways and involving a variety of financial institutions[12]. Sources of dirty funds widely attributed drug trade and smuggling, and in Libya's case it is oil smuggling. ML is used by those engaged in oil smuggling as a way to hide the origins of their illegal proceeds; it allows criminals to enjoy their corrupt earnings without fear of revealing the original source of the funds. These smugglers launder their illegal earnings by buying property or setting up fake companies.

Even though Anti – Money Laundering (AML) legislation was enacted in Libya in 2005, the crime of ML has been increasing. For example, according to the Libya Oil Almanac, during Gaddafi's regime, his loyalists often sought to extract millions of dollars from contracts with international companies operating in the Libyan market[13].Additionally, the collapse of state institutions and armed militia on the sources of the Libyan oil and the weakness of observation on the borders points has assisted in increasing this crime; as this study, will go on to argue.

1.2.1-Definition of Money Laundering

Alldridge considered that ML is an old crime, but the world has focused on it particularly after the events of 9/11[14]. ML may be defined in a number of ways. Seymour stated that it "is a process conducted through the use of financial transactions to disguise the origins of large sums of money"[15]. According to Ryder "ML is the illegal process or act by which

[10]Ibid.

[11]See the Monthly Report Libyan Organization for Policies and Strategies. the economic case in Libya March (2017 p.10). Available at: http://loopsresearch.org/media/images/photo561znlw9va.pdf (Accessed in 15/6/2017).

[12]Chaikin, D ibid. (2008 p.274).

[13] Libya Oil Almanac an Open Oil Reference Guide (2012 p.27). Available at: http://openoil.net/wp/wp-content/uploads/2012/08/Libya-PDF-v-2.0.pdf (Accessed in 15/2/2014).

[14] Alldridge, P. (2003) *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime*, Oxford, Hart, UK (p.87).

[15] Seymour, B. (2008) Global Money Laundering Journal of Applied Security Research UK, Vol.4, No 3 pp 373-387 (p.374).

individuals or groups attempt to disguise, hide or distance themselves from their illegal activities"[16]. Unger and Busuioc, added that ML is "the process of disguising the unlawful source of criminally derived proceeds to make them appear legal"[17]. Indeed, there are many definitions for ML, which have focused on the aspect of hiding or disguising the illegal source of proceeds. However, the majority of countries have applied the definition adopted by the UN Convention, which identifies "the conversion or transfer of property, knowing that such property is derived from any [drug trafficking] offence or offences or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions"[18]. The Vienna Convention definition has identified some characteristics which are definitive of the crime of ML; first is the conversion or moving of funds to a place where they are less likely to attract attention; second is the concealment or disguising of the true origin of property, the third is the acquisition, possession or use of property, knowing that the money came from illegal activity, further it is easy to note that this definition has also added an important point which is participation in committing this crime that involves attempting to commit, assisting, inciting, facilitating and counselling[19]. In fact, some criminal activities are based on cash, so many launderers use cash, smuggling across national borders, because they can hide their illegal proceeds, and it is difficult to be detected by law enforcement officials and banking[20]. As a result, most countries encourage businesses and the community to avoid using cash in their transactions in the financial system, especially when the transaction is related to paying for expensive items, like real estate, vehicles or luxury items. As a result, they will be deterred from repeating this offence at a later time. Indeed, ML is simply turning illegal money into legal money by hiding its illegitimate origin. This allows the criminal to enjoy this illegal money and use it in other crimes, such as drug trafficking and corruption, and may also be the beginning of further serious offences, such as financing terrorism or may

[16] Ryder, N. (2012) *Money Laundering-An Endless Cycle? USA and Canada:* Routledge World-check, USA and Canada (p.1).
[17]Unger, B and Busuioc, E. (2007) *The scale and impacts of money laundering. Indiana University* Edward Elgar (p.15).
[18] See Article 3.1.b. I of the United Nation Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.
[19] Ibid.
[20] See GOPAC, Anti-Money Laundering Action Guide for Parliamentarians (2012, p.5).

just insulate the criminal from the criminal underworld to enable him or her to appear as a wealthy and wholly legitimate individual. The definition of ML in the Vienna Convention is too limited, because it identifies ML in the context of the proceeds that come from drug trafficking. As a result, this definition does not include crimes, which are not related to the illegal drugs trade, such as corruption, tax evasion and fraud. However, Schott has suggested that the international community has decided to expand the definition to include other serious crimes[21]. As will be argued later, in 2000, the UN Convention against Transnational Organised Crime expanded the definition of ML and started to include the proceeds of all serious crimes, such as participation in organised criminal groups and corruption.

Generally, ML, according to the definitions above, is a crime without a direct victim, which has been emphasised by Alexander[22], because it is just the transfer of money, and nobody is directly affected by it. Moreover, ML can also be considered as beneficial to the national economy, because it helps bring money into the country and leads to increased profits for the financial sector, and also the greater availability of credit. In that case, why should it be combated? The reason is that it indirectly affects people, making many people rich at great cost to others; it also affects the national and international economy, as these illegal actions create social harms and divert money away from economies and legal business activities. ML is a serious crime that affects the growth of economy as a whole, as will be suggested later in this chapter. Also, note its links with organised crime which stifles due process, democracy and the rule of law.

1.2.2-The Definition of Money Laundering Crime by the Vienna Convention (1988),

Even though the term 'ML' was coined in the 1920s, the basis of the international criminalization of this crime was the Vienna Convention against Illicit Traffic in Narcotic and Psychotropic Drugs (1988). Most international and national regulations have adopted the approach of this Convention to combat the endemic nature of ML. The Vienna Convention defined ML as ''the conversion or transfer of property, knowing that such property is derived from specifically a drugs offence or offences or from an act of

[21] Schott, P. (2006) *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* the World Bank, Washington (p. I-3).

[22] Alexander, R. (2007). *Insider dealing and money laundering in the EU: law and regulation.* Aldershot: Ashgate. (p.2).

participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions"[23]. Additionally, Article 3 of the Vienna Convention has identified the relationship between ML and primary crime in that the source of ML is identified as crime related to the production, preparation, trade, export or the cultivation of narcotics such as the opium poppy. Furthermore, the definition of 'illegal gains' was expanded to include both direct and indirect proceeds through the commission of an offence[24]. The direct proceeds come from activities such as drug trafficking and the indirect proceeds refer to using illegal proceeds in other legal activities. Thus, transferring or changing the money to other assets or real estate will not makes them legal assets, and thus allows for the freezing and confiscation of such assets.

The term 'direct or indirect' raised some controversy during the preparation of the draft of the Vienna Convention between the participating countries which can be summarized as follows: Firstly, some countries (Austria, Barbados, Japan, Turkey, Canada and France) believed that 'the proceeds' referred to in the text should be limited to just those from direct drug proceeds as the term 'direct or indirect' in the context is unclear, thus it could be difficult for some countries to involve this term in internal regulation. Moreover, it could be difficult for judicial bodies to take action like issuing a judgment for confiscation of assets against the indirect illegal proceeds because of difficulties of proving links to the original drug offence[25]. Similarly, the OECD/The World Bank agreed that there was a difficulty in identifying illegal proceeds as well as for courts in different countries, which had to precisely determine what might constitute the 'fruits of licit activities financed by illicit proceeds'[26]. In such cases, it is important to know the World Bank's ideas about the draft international agreement related to anti-ML because of its important role in the interpretation or application of the Convention. Zapata has considered that ''the role of the Bank has not merely been that of a contributor among others, but rather that of the

[23] Article 3.1.b. of Vienna Convention, 1988.
[24]Article 3.1.b. of Vienna Convention, 1988.
[25] Tahar, M. (2004) *Legislative confrontation of the phenomena of laundering money that are the proceeds of drug crimes,* PhD thesis, Cairo, the University of Cairo, Egypt (p.105).
[26] OECD/The World Bank. *Identification and Quantification of the Proceeds of Bribery* (2012 p.18). Available at: https://www.oecd.org/corruption/anti-bribery/50057547.pdf [Accessed in 8 July 2015].

driving force behind the agreement''[27].Secondly, other countries (Colombia, Australia, Morocco, Kuwait, Jordan, the United Kingdom, the United States, Greece, Norway and Iran) supported the term 'direct or indirect' as they believed that keeping this term in the definition has some advantages. Those who wanted to keep this term believed that it strengthened the measures which restrict the drug trade and also controlled the transfer of all proceeds, including indirect proceeds[28].

It is argued here that the text should include the term 'direct or indirect' to ensure that the legislation covers all the proceeds that are derived from illegal actions, even if these proceeds came from investment of the proceeds of the drug trafficking, corruption or other crimes. This is to prevent criminals investing any illegal proceeds and also to deprive them of the benefits of its revenue. The term 'direct or indirect' was chosen by the member countries to be in the text of Article 3 of the Vienna Convention, which covers all illegal proceeds.

This kind of crime might be committed by a person who may well have had no involvement in the drug trafficking or other predicate offenses, but who is aware of the source of the money or property and who assists serious criminals to conceal or disguise the cash money or other proceeds derived from their crimes[29].

1.2.3-The Estimated Amount of Money Laundering,

The International Monetary Fund (IMF) estimated that the worldwide volume of ML over the period of 2000-2005 was somewhere between 2 and 5 percent of the world's Gross Domestic Product[30]. Unfortunately, the IMF's documents do not clarify the methodology which they used to arrive at these figures. However, if we believe that they are accurate, it then shows that ML varies between $590 billion to $ 1.5 trillion per year. The lower figure is nearly equal to the total yield of the Spanish economy.

In summary, ML is a crime based on other crimes, one of which is corruption. ML has a

[27] Zapata, R. (2006) Interpretation under the Vienna Convention on The Law of Treaties - 25 Years on London, at Lincoln's Inn (p. 10).
[28] Tahar, M ibid (2004 p.106).
[29] Booth, R. *et al*. (2011) *Money laundering law and regulation a practical guide*. Oxford University Press (P.20).
[30] United Nations. Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes. Research Report United Nations Office on Drugs and Crime, Vienna (2011) Available at: http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf [Accessed in 10 May 2014].

negative result on the people of the countries where these crimes have taken place; for example, through the increase in crime, poverty and political instability.

Khamissi noted that, as a result of corruption, the Libyan's economy is suffering from a lack of liquidity and the deficit in the state budget and balance of payments is unprecedented. There is also a high foreign exchange rate in the parallel market and inflation in the general level of prices, the smuggling of fuel and goods and breaks in the power supply (electricity and fuel) in addition to the deterioration of the health services. Libya's foreign exchange reserves fell to $35 billion in 2016, an average of 66%, compared to the year before. Similarly, there is a negative effect on the Libyan economy due to certain trading companies involved in corruption arranging trade deals which allowed them to obtain money for nothing[31]; by manipulating credit and the supply chains of subsidised products.

Also, the militia which controls the oil facilities were built up by corrupt money and the political standoff. Weak security conditions have taken a severe toll on the economy; and militia blockades of oil infrastructures and resulting decline in oil exports continue to constrain the supply side of the economy, which has shrunk, in addition to falling budget revenues from the hydrocarbon sector. All these events have had negative effects on the adequate public provision of health, education, sanitation services, water and electricity in the whole country[32].

In the USA, the criminal proceeds of drug trafficking and organised crimes amounted to 2.0% of global GDP, without tax evasion[33]. However, the United Kingdom authorities have estimated that the volume of money laundered was £25 billion each year in the UK[34]. However, Aluko and Bagheri have estimated the amount of funds exported per year to the US from Nigeria between mid-1980s and 1999, through the international financial systems, including the proceeds from drug trafficking and financial crimes to be $100 billion[35]. In fact, ML has been classified as the third largest business in the world after

[31] Khamissi, A. The involvement of 230 Libyan companies with corruption, Arab New 2017, Available at: https://www.alaraby.co.uk/economy/2017/1/26/ (Accessed in 9/2/2017).

[32] See the Monthly Report Libyan Organization for Policies and Strategies. The economic case in Libya, March. Ibid (2017 p.10).

[33]United Nations Ibid (p.20).

[34] See GOPAC Ibid (p.11).

[35]Aluko, A and Bagheri, M. (2012) The impact of money laundering on economic and financial stability and on political development in developing countries: The case of Nigeria**,** Journal of Money Laundering Control Vol. 15, No. 4, pp 442 – 457 (p.27).

foreign exchange and oil, with yearly proceeds ranging from $500 billion to $1 trillion[36], and the global money-laundering total of S 2.85 bn per year, is heavily concentrated in Europe and North America[37]. Whatever the size of the discrepancy between the previous figures, they reveal the extent of the crime, and the seriousness of cross-border crime, including ML, especially on a global level.

Apart from the social harms caused by drugs, there is a growing realization of the money being produced by it. Vanduyne*et al* have asserted that "sales [of drugs] amount to approximately $122 billion per year in the US and Europe, of which 50–70% or as much as $85 billion per year could be available for laundering and investment"[38]. In the 1980s, the globalisation of financial markets benefited both legal and illegal trade, so globalisation involves the international integration of capital, technology, and information in a manner resulting in a single global market and, to some degree, a global village. This integration enables individuals and corporations to reach around the world farther, faster, deeper, and more cheaply than ever before.

1.3- The link between illegal oil selling and ML

Thus, the link between illegal oil selling and ML is that the illegal proceeds that come from smuggling oil are used for individual gain, like buying luxury real estate, or the funds are smuggled overseas or used for terrorism[39]. As a result, dysfunctional infrastructures and health systems sit side by side with considerable oil wealth. ML is among the problems that beset the economies of countries, especially developing countries, the phenomenon is considered as a form of economic crime, and has been defined by Ryder as follows: as its illegal activity which is due to the illegal activities of money launderers[40].

1.3.1-The reason for choosing the UK,

In the light of the evident failure of Libya's AML legislation and policies, this research has been undertaken with the aim of evaluating the potential of the UK's AML legislation and approach to provide some guidance. Notwithstanding the very great differences between the social and political context of the two countries, the UK has been chosen for this study

[36]Wright, A. (2006) *Organised Crime. Cullumpton*: Willan Publishing UK (p.69).
[37]Walker, J. (1999) How Big is Global Money Laundering? Journal of Money Laundering Control Vol. 3 No. (1), 25-37. (p.25).
[38] Vanduyne, P. *et al*. (2005) Balancing financial threats and legal interests in money-laundering policy. Crime, Law & Social Change Vol 43, No 2–3, pp 117–147 (p.122).
[39]Viott, P. (2010) *American Foreign Policy*: Polity Press Gambirdge UK (p.146).
[40] Ryder, N. ibid (2012 p.1).

because it suffers from this type of crime as ''the size and complexity of the financial sector and free movement of capital within the European Union makes London a prime target for ML''[41]; and Costello notes that “Britain is still the money-laundering capital of the world”[42]. Another reason for using the UK as the country of study is that it operates fully in line with the standards created by international conventions such as the EU Directive and bodies such as the Financial Action Task Force(FATF), which are critical components of the global AML framework because they constitute a framework of rules, principles, procedures, norms and regulatory guidelines for states to adopt in their laws against ML and its predicate crimes, as this study will explain later. Additionally, this thesis posits that the regulatory regime in Libya is not effective in curbing this crime because regulations tend to be incompatible with the legislation that is used by developed countries such as the UK. Whereas, this study is not using a full-scale comparative, because of the profound differences between conditions in the UK and Libya. This is a partial comparison for the specific purpose of identifying best practice and investigating its relevance for Libya. The thematic focus of the thesis has thus been to explore the gaps in the current Libyan legislation and mechanisms and address the AML framework and its ability to prevent this crime; and to see how UK AML Acts could be adapted to fill these gaps.

The Libyan system, and the AML framework specifically, are based on obtaining the requisite information about suspected ML operations, and this depends on Libya’s capacity to generate and harness this information. Libya suffers from an inadequate capacity to provide and process the required information on ML operations; for example, it is difficult to transfer information about suspected ML operations, due to there being no obligation on competent financial institutions to provide the details on suspicious operations within a short time, as this study will explain later. The provision of this information is a prerequisite for the Financial Information Unit FIU to function effectively. However, the international AML principles, such as ‘Know Your Customer’ (KYC), are difficult to apply in Libya, given that implementing them depends on the availability of

[41]Leong, A. (2007) *The Disruption of international Organised Crime an Analysis of Legal and Non-Legal Strategies* Ashgate Hampshire, UK. (p.41).

[42] Costello, T. London is the ‘global capital of money-laundering’ comments 2012 Available at: The Bureau of Investigative Journalism website https://www.thebureauinvestigates.com/2012/08/09/london-is-the-global-capital-of-money-laundering/ (Accessed in 28/1/2016).

the requisite information on bank clients. This is often inadequate due to either deficiencies in centralized data registries to generate data about the magnitude or type of crime, or because the data generated is too patchy to inform and enable the adoption of normative policy choices.

ML is among the most significant problems that affect the economies of developed and developing countries alike, and is a form of economic crime that is rampant at the present time. It is also a crime related to the financial institutions, especially banks, as they provide the channels through which operations suspected of being money-laundering may be conducted. This study attempts to understand ML and its economic consequences, to address and contest the view of those who suggest that it may be beneficial to the economy and to show that it is one of the most serious problems to beset a country such as Libya.

In addition to understanding the reality of ML, this thesis examines control measures and the effects of the crime, and specifically aims to evaluate the extent of the effectiveness of the Libyan AML Act and mechanisms used in Libya to curb this increasing crime. The research has also focused on assessing the potential for UK AML legislation to be applied in Libya.

It is the contention of this study that oil smuggling and the laundering of its illegal proceeds weaken the national economy, not least by investing that money abroad. Furthermore, Libyan industrial projects are disrupted as they lack the funds to provide essential spare parts, resulting in the loss of much needed energy production. This weakening of national industries is compounded by the instability of the exchange rate for the local currency as compared to more stable foreign exchange rates, poor income distribution and the introduction of inferior goods into the domestic market. This leads to negative economic effects on the country as well these illegal funds being used to destabilize the country's political stability by supporting armed groups which commit crimes of kidnapping, murder and smuggling, as is happening in Libya now[43].

In the same way, according to Shaw and Mangan, many Libyan businessmen became rich after the revolution by smuggling subsidized Libyan oil through Libyan ports to Malta and

[43] See the Monthly Report Libyan Organization for Policies and Strategies Ibid (2017).

Europe[44]. Vira, Cordesman and Arleigh add that in Libya the revolution of 2011 changed to armed conflict, which continued for approximately eight months, and ended with the fall of Gaddafi'sregime[45]; and that this led to the collapse of state institutions and regulations, which contributed to increased oil smuggling. Recently, there have been attempts to smuggle oil from Libya's military-controlled oil facilities, which led the United Nations Security Council (UNSC) to issue a resolution allowing UNSC member states to inspect ships suspected of carrying illegal crude oil from Libya in international waters. Moreover, the UNSC has imposed sanctions against illegal crude exports.

These types of crimes need national and international cooperation to curb them. The underlying reason for such crimes apparently being weak regulations or the unsuccessful mechanisms used against ML.

1.4- Research Questions

This study will address the question: How can ML be reduced in Libya due to illegal sale of oil through looking at attempts to combat ML in the UK?

Before answering this question, other related questions need to be addressed in order to establish a framework for the research, namely:

1- How does ML take place internationally and in Libya, and how can it be prevented?

2-What is the impact of international law and agreements on anti-ML in Libya?

3- What are current Libyan regulations, relating to ML, and does a new mechanism need to be designed to stop ML that is taking place due to illegal sale of oil?

4-What legal mechanisms used in the United Kingdom are successful in stopping ML?

5- What role could the Libyan Financial Information Unit FIU and banks play in AML? and they need to change their structure and approach in line with related UK regulation?

1.5- Research Objectives

The aim of this research is to determine whether the Libyan legal regime is sufficient to combat ML, particularly in relation to illegal sales of oil. In addition, this work will explore

[44] Shaw, M. & Mangan, F. (2014) *Illicit trafficking and Libya's transition: profits and losses*. Washington, DC: United States Institute of Peace (p.27).
[45] Vira,V *et al*.. Ibid (2011, p.62).

whether anti-ML mechanisms used so far elsewhere, particularly in the UK, have been successful, and whether such mechanisms could be adopted in Libya. Furthermore, the study aims to:

1- Provide a good basis to understand weak control mechanisms, and show how the Financial Services Authorities and banking structures are struggling to cope with illegal money, in particular those related to the illegal selling of Libyan oil.

2- Assess which aspects of UK regulations may be adopted by the Libyan legal system.

3- Present recommendations to the new Libyan authorities concerning legal strategies and procedures that could be useful in AML.

1.6-Literature Review:

1.6.1-Background on ML.

In recent decades, hundreds of studies have been published describing and examining the impact of ML. To date, I have not found any studies dealing with AML in relation to the illegal sale of oil; also, there are no studies that deal specifically with a comparison of AML procedures in Libya with those of the West. In contrast, there are some general studies, which have been published, that address the definitions of ML, national and international rules for combating ML, and its relationship with terrorist financing and which describe and examine the impact of ML. This work will review some of these studies below.

These studies are largely descriptive and I have had problems finding sufficient academic sources that offer any kind of analysis; thus, my study aims to complete the gaps in knowledge on this specific topic as well as contributing to the literature which analyses Libyan procedures.

1.6.2-The relationship between ML and terrorist financing

The book "Dirty Dealing" by leading expert, Peter Lilley (2006) provides a background to ML, and mentions that its origins date back to the 1920s. Methods for laundering money have evolved constantly, and launderers increasingly use electronic means as the financial world moved into cyberspace, significantly amplifying and complicating the problem. Today, criminals use all manner of physical and virtual enterprises, and all types of financial transactions to process their money. Lilley (2000) defines ML, and its effect

on the national and international economy, estimating that it is as high as $2 trillion per year, based on United Nations (UN)and International Monetary Fund (IMF) statistics[46]. The book exposes the huge scale and scope of global ML, and its infiltration of the world's legitimate business structures.

Lilley (2000) describes the three basic stages of ML as well as its other sources, such as drugs, trafficking, and corruption; although he omits to include illegal oil sales. He also focuses on terrorist financing, devoting a full section to this point, and explains the relationship between ML and terrorist financing. He reveals how the money is obtained, and the process of ML. Importantly, he explains the system that can be used by organisations to stop ML, mentioning some AML rules from international conventions and the FATF.

Chatain *et al* (2009) also give a background to ML and terrorist financing and their impact on the national and international economy; and describe the measures against ML and terrorist financing. They raise the serious point about the relationship between terrorist financing and ML, saying that both impact the economy and may undermine banking institutions. The prevalence of this crime in a country leads businesses to take their business elsewhere in the world. The authors mention some sources of ML, like drug trafficking, arms smuggling and corruption. The book also elaborates another important point, devoting a chapter to risk management in combating ML and terrorist financing, and provides an overview of risk related to ML, terrorist financing and related compliance issues. The authors suggest that banks should focus on these factors to combat ML and understand the main types of criminal activity likely to create proceeds that could be the subject of ML. The work explores the data raised from the risk categories, and makes some conclusions about the role played by weak banking systems.

Schott (2006) explores definitions of ML, the ways used to launder money and makes recommendations on combating ML. He points out that the Vienna Convention definition limits ML to the proceeds of drug trafficking; however, the international community, through the FATF and other international instruments, has expanded the Vienna Convention definition to include other serious crimes. Currently, increasingly

[46] Lilley, P. (2000) *Dirty Dealing: The Untold Truth about Global Money Laundering,* London: Kogan Page (p.31).

sophisticated methods have been used worldwide to move illegal money through financial systems. Schott also considers the problems caused by the crime of ML; and concludes that countries have to cooperate in taking specific action against these offences according to international recommendations established by FATF, and the other international standard setters, where each element is essential to a comprehensive and effective regime. The role of international organisations, such as the World Bank and IMF, are explored in the process, as is the coordination of technical assistance available to countries in order to help them. In his investigation of the link between ML and terrorist financing, the author found they use the same techniques to conceal their sources of financing. In his study, however, Schott concentrates only on the role of the international anti-ML standard adopted before 2006, which means it doesn't include the current international standard; also, he does not consider elements relevant to Libya, such as illegal oil selling. This means that the study is limited when it comes to providing an analysis of how to control and detect suspicious operations in Libya in cases of oil smuggling, and thus offers no real critical analysis.

1.6.3-Financial Crimes and Globalization

Bjeloper and Finklea (2012) focus on the current means used to commit financial crimes which are related to technological development; and how these crimes have increased worldwide, and have been facilitated by globalization, which allows easy global movement of money. These means are exploited by criminals to launder illicit proceeds, and used in the stages of ML. In the United States, organised criminals have included technological means in the criminal process through use of the Internet. This study is however limited to organised crime and technological developments in the USA and more exploration is needed to see how technological issues relate to ML in Libya and the measures that need to be taken to combat it.

Vaithilingam and Nair (2007) present five factors that have had an impact on the pervasiveness of ML in developing countries; such as technology, the quality of human capital, efficient legal framework, behaviour and finally, innovation. Technology: This has become very important nowadays, and it plays an important role against ML crime. Vaithilingam and Nair (2007) suggest that the inadequacy of ICT infrastructure has resulted in pervasive ML in developing countries. However, on this point, the study can

argue that developed countries are still suffering from the crime, although they are already more advanced in ICT infrastructure; as the study, will explain later when comparing developed and developing countries.

The high quality of human capital appears to have a positive effect in curbing the pervasiveness of ML. That means the fight against ML is affected negatively in developing countries, such as Libya, by the low level of quality human capital, as this study will later explain. In the same way, Vaithilingam and Nair have added that an efficient legal framework and good ethical behaviour of companies have a significant effect on the pervasiveness of ML. Although the latter two points are arguably the case, the same cannot be said for the 'high quality of human capital' as it takes clever and skilled people to commit ML crimes as even countries where there is an effective legal framework still suffer from it.

This notwithstanding, it could be concluded that these are very significant factors in curbing ML, which could be used by some countries, like Libya, as a guide to fighting this crime. Libya arguably needs to develop its regulations and staff employed in the field and build its technological infrastructure.

In 'West Africa under Attack'[47] Philip de Andrés defines ML and its effect on the national and international economy; he also presents a theory on the new threats to the world security and focuses on drug trafficking and organized crime such as Illegal trade in ivory and rough diamonds and illicit arms trade in West and Central Africa, although he omits to include illegal oil sales. However, he mentions that there is no effective cross-border control, which makes it easier for illegal activities to occur; and concludes that this needs significant concentration. He adds that the political instability seen in Ghana in 1966 was the main reason for this bad situation. Philip de Andrés believes that collaboration by these gangs along the borders, and lack a control in this area contributed to the pervasiveness of this crime, and that the role of the international community in policing borders was crucial in combating ML as well as the need to strengthen the efficiency of the legal framework in the bordering countries.

[47]De Andrés A. P. (2008) West Africa under Attack: Drug, organized crime and Terrorism as the New Treats to Global Security: UNISCI Discussion Papers, Nº 16. Available at: https://www.ucm.es/data/cont/media/www/pag72513/UNISCI%20DP%2016%20-%20Andres.pdf. (Accessed in 25/6/2017).

In conclusion, this argument is convincing as this situation is similar to the Libyan case. Libya also needs to focus more on strengthening the efficiency of the legal framework in this area; and this includes regulating the observation of the movement of travellers and goods as well as the necessity for international cooperation against this crime.

In this case, however, in the fight against money laundering, an adjudicative jurisdiction problem that is related to state sovereignty has arisen. This is particularly so in applying the rules of the anti-money laundering such as the confiscation and of the criminalization of money laundering, which needs a global response due to the international nature of the money laundering phenomenon. For this reason, Stessens has considered that a state can never have enforcement jurisdiction if it does not have prescriptive jurisdiction regarding the facts at hand: prescriptive jurisdiction is a necessary but not sufficient requirement for enforcement jurisdiction[48].

1.7. Theoretical Framework

In this thesis, the transitional justice theory will be applied. Transitional justice, as defined by the UN is the "full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation"[49]. Moreover, the Guidance Note of the Secretary-General (2010) adds that transitional justice processes and mechanisms are a critical component of the UN framework for strengthening the rule of law[50]. Transitional justice depends on both judicial and non-judicial processes and mechanisms. It involves institutional reform, and includes civil rights, i.e. political, economic, social and cultural rights. According to Villalba, the system of transitional justice works to address violations, which occurred under the old regime using legitimate means[51]. This theory will mainly be applied to guarantee that Libyan regulations incorporate international human rights law, and that law reform takes place to bring them into conformity with Libya's

[48] Stessens, G. (2008) *Money Laundering – A New International Law Enforcement Model.* Cambridge (Cambridge University Press) (p.212).
[49]Andrieu, K. (2011) An Unfinished Business: Transitional Justice and Democratization in Post-Soviet Russia Oxford Journals Law & Social Sciences international of journal Transitional Justice Vol. 5, No. 2, pp 198-220 (p.201).
[50]Guidance Note of the Secretary- General: (2010) United Nations Approach to Transitional Justice (2010p.3). Available at: https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf [Accessed in 14 January 2016].
[51]Villalba, C. (2011) Transitional Justice: Key Concepts, Processes and Challenges, Institute for Democracy and Conflict Resolution – Briefing Paper (p.3). Available at: http://repository.essex.ac.uk/4482/1/07_11.pdf (Accessed in 15/7/2017).

obligations under international law, including the ML confiscation system[52]; through the adoption of the Constitution, law enforcement, and punishment of the criminals of the previous regime.

This means that solutions for the issues in the countries that moved from authoritarian regimes towards democracy should be identified, in two ways; firstly, institutional reform and secondly, a confiscation system. For example, Libya was under the Gaddafi regime for approximately 42 years[53]; it then witnessed a revolution, which changed to a war to move to a democratic regime. Under the authoritarian regime and during the war, there were violations of economic, social and cultural, as well as human rights. For example, the Libya Herald published on 4/5/2012 that it was estimated that in the 10 years before Gaddafi was overthrown, $150 billion of Libyan oil money went missing and still remains to be accounted for[54]. So, in this case, it is necessary to implement transitional justice and, as Nkansah considers, this involves ''compensating victims for their losses; punishing wrongdoers and forcing individuals to surrender property that was wrongfully acquired; and revealing the truth about past events''[55] This could be used to cement commitment to property rights, democratic institutions, and establishing constitutional precedents that may deter future leaders from repeating the abuses of the old regime. According to Posner and Vermeule, transitional justice provides “a method for the public to recapture lost traditions and institutions; depriving former officials of political and economic influence that they could use to frustrate reform; signalling a commitment to property rights, the market, and democratic institutions; and establishing constitutional precedents that may deter future leaders from repeating the abuses of the old regime”[56], to reform institutions and laws and also prevent organised crime, ML, corruption, and the illegal use of public office for private gain.

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[52] Human Rights Watch. (2014) PRIORITIES FOR LEGISLATIVE REFORM A Human Rights Roadmap for a New Libya: United States of America. Available at:https://www.hrw.org/report/2014/01/21/priorities-legislative-reform/human-rights-roadmap-new-libya [Accessed in 20 June 2015].

[53]El Fegiery, M. Truth and reconciliation? Transitional Justice in Egypt, Libya and Tunisia Policy Brief 1989-2667 (2014)

[54]Libya Herald, Gaddafi suspected of laundering money in Belgium Available at: http://www.libyaherald.com/2012/05/04/qaddafi-suspected-of-laundering-money-in-belgium/#axzz (Accessed in 15/02/2014).

[55]Nkansah, L. *Transitional Justice in Post conflict Contexts: The Case of Sierra Leone's Dual Accountability Mechanisms* (2008 p.38) Available at:https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=1014&context=hodgkinson [Accessed in 8 July 2015].

[56]Posner, E and Vermeule, A. (2003) *Transitional Justice as Ordinary Justice:* University of Chicago Law School (p.5).

The transitional justice perspective will mainly be applied to studying and analysing issues relating to international financial crimes committed during the Libyan revolution and the 2011 war. This is because the present political structure of the country is not very supportive of implementing a new legal framework. Indeed, the country is still in the post-civil war period, i.e. in the process of transition, where political powers are being handed over to an elected council that will design the new legal framework to pave the way for democratic national elections[57]. This research will help in designing the new ML confiscation framework, incorporating the existing mechanism, and leading to finding new concepts that include revolutionary principles. A detailed analysis of these elements gives an idea as to how the Financial Services Authorities need to move forward.

1.8-Methodology

A comparative study approach is applied to the issue of money laundering; this approach seeks to draw parallels and contrasts between two similar or competing systems of legal processes. According to Eberle ''The essence of comparison is then aligning similarities and differences between data points and using this exercise as a measure to obtain understanding of the content and range of the data points''[58]. In addition, analysing and comparing between these data points to discover the similarities reveals what needs to be done[59]. The comparative study helps in understanding the new ideas and concepts of international legal studies, and to understand different successful paradigms of legal action adopted in the fight against money laundering, in this instance anti-money laundering in the UK and Libya.

This study will attempt to analyse and explain matters arising in the UK regulations related to money laundering, compared to the provisions contained in Libyan domestic statutes. Mills, Bunt and Bruijn have considered that a comparative approach uses both quantitative and qualitative comparisons to analyse similarities and differences and focuses on context and difference in order to comprehend specificities[60]. In the later part

[57] See Human Rights Watch report, 2014 Ibid.
[58] Eberle, E. (2009) The Method and Role of Comparative Law. Washington University Global Studies Law Review Vol 8 No3 pp 451-186 (p.452).
[59] Eberle, E. ibid (2009 p.452).
[60]Mills, M. *et at.* (2006) Comparative Research Persistent Problems and Promising Solutions: International Sociology. Vol. 21 No.5 pp 451-186 pp 619-631. (p.621).

of this work, the researcher will attempt to assess which parts of the principles of the UK regulations could be adopted by the Libyan legal system. However, this study is not using a full-scale comparative, because of the profound differences between conditions in the UK and Libya. This is a partial comparison for the specific purpose of identifying best practice and investigating its relevance for Libya.

The research methodology will be based on a mixed approach - a qualitative data collection and analysis approach which will consider the gathering of information personally by the researcher including semi-structured interviews with appropriate respondents. This study attempts to analyse, assess and explain matters arising in the UK regulations related to ML which could be adopted by the Libyan legal system. However, this will be limited to a number of carefully chosen issues, due to the existence of the many regulations adopted in the UK to address this crime and there being not enough time for study all them in this research. Only those which specifically relate to the aims of the study are selected; after which, possible gaps or non-conformity in Libyan criminal law will be explained and analysed so as to understand the links and the divergences between these statutes in Libya and those of the UK. The basic requirement is the availability of relevant data; and for this purpose, an inductive research method can prove very effective.

The inductive approach is a systematic procedure for analysing qualitative data in which the analysis is likely to be guided by specific evaluation objectives. According to Thomas there are certain reasons behind using this particular methodology[61]; notably, that the inductive research method is easy to use, and is different from the systemic framework of deductive and other research methods[62]. The inductive approach is helpful, because it enables the researcher to understand the context of the research. In light of that context, it is easy to construct the argument and find a solution to the problem. This method also helps analyse research questions. Flexibility is a major norm of this research method. As has been discussed, the inductive approach is very different to the deductive. Indeed, it is better to analyse its working framework to clarify its use for research purposes. Thomas believes the inductive method is unique, because its starting point is observations that

[61]Thomas, D. A. (2006) General Inductive Approach for Analyzing Qualitative Evaluation Data: University of Auckland American Journal of Evaluation Vol.27, No 2 pp 237- 246 (p.237).
[62]Thomas (Ibid. 2006 p.246).

are helpful for a researcher to obtain a more-focused and first-hand knowledge of the issue[63].

1.8.1-The Interviews

The interview in qualitative research seeks to understand the experiences of others through an analysis of the meaning of what they have said during the interview. The interview is defined by Aali *et al* as: "a conversation between two or more people where questions are asked to obtain information from the interviewee"[64]. The interview can be seen as a social relationship in which questions are asked to understand the individual's unique and changing perspective[65].Thus, interviews play an important role during data collection to explore participants' perspectives, be they employees or others, on a particular idea by asking them some questions[66] as Boyce and Neale have considered. It is my aim to contact some professional participants, in Libya, as will be explained later. This research topic is extensive, but extremely significant, because it involves investigation in Libya. For this reason, the research aims to gather as much data as possible through field research, as well as by consulting academic theories. The major part of the field research will depend on face-to-face interviews in Libya.

1.8.2-Preparatory Stage

According to Lambea, a mixture of closed and open questions can be used in interviews while recording all answers[67]. In this study, the questions are to be sent to participants before the interview to give them an opportunity to know in advance about the topic and to prepare answers. The questions that will be asked in the interviews are generally open-ended questions in order to encourage interviewees to expand their answers and freely give their perceptions, as well as avoiding 'yes' or 'no' answers. The questions will be phrased carefully, in a way that includes the full range of views and represents views accurately and without bias. Moreover, they will not be too personal or intrusive, and the purpose of the research will be for the common good and to further knowledge, rather

[63] Ibid.
[64] Aali, M and Yousif. S. (2013) *Computer Jobs & Certifications Choose & Improve Your IT Career Lulu*, United States (p.5).
[65] Seale, C *et al*. (2006) *Qualitative Research Practice: Concise Paperback Edition* SAGE, London (p35).
[66] Boyce,C and Neale, P. (2006) conducting In-Depth Interviews A Guide for Designing and Conducting In-Depth Interviews for Evaluation Input Pathfinder International Watertown United States (p,3).
[67]Lambe, J. (2005) Conducting Successful SME Interviews. STC UUX Community Newsletter Vol.11, No 4.

than for any other aim, and will adhere to ethical principles of research[68]. According to Hancock and Windridge, "Qualitative research attempts to broaden and/or deepen our understanding of how things came to be the way they are in our social world."[69].The interviews therefore aim to explore this sensitive topic more fully as it will be possible to make a note of the problems that emerge due to ML from the illegal sale of oil.

These interviews are conducted in order to shed more light on the subject of the crime of money-laundering and its prevention; thus, they are designed to allow further exploration of subjects as they arise during the interview as well as allowing for the opportunity to explore themes that might not have been hitherto considered. The interviews are to begin with general questions designed to establish rapport and trust; and ensure that the interviewee was relaxed and fully understood the topics that were to be covered. During the interviews, questions arising from the interview schedule and previously determined areas of legal themes will be put, and then the interviewees have the freedom to expand on the subject, as the research interest lies in the interviewees' viewpoints and perceptions. This semi-structured interview form is used in this study as it is considered the best means of determining whether the Libyan legal regime is sufficient to combat ML, particularly in relation to illegal sales of oil. In addition, these interviews explore whether AML mechanisms used so far elsewhere, particularly in the UK, have been successful, and whether such mechanisms could be adopted in Libya. Finally, they are designed to find out how ML might be reduced in Libya.

1.8.3-How the interview data is used in the thesis

The data obtained from the interviews is used to clarify points about how Libya struggles with the ML crime and the interviews are also focused on whether the Libyan legal regime is effective in combating ML, particularly in relation to illegal sales of oil. Quotations are extracted from the interview transcripts to illustrate specific points, such as identifying the problems with the enforcement of the ML Act against illegal sale of oil in Libya. The data is also used to construct a general impression of the culture that exists in the banks and the customers. For example, the interview data was used to illustrate how the culture

[68] Bergma, M and Coxon, A. (2005) The Quality in Qualitative Methods Forum Qualitative Sozialforschung / Forum: Qualitative Social Research Vol.6, No. 2, pp1-9.

[69] Hancock, B. *et al*. (2009) *An introduction to qualitative research. The National Institute for Health Research.* Research Design Service for the East Midlands / The NIHR RDS for Yorkshire and the Humber (p.4).

in Libya is one of 'following precedent' and as such how the culture has an effect on increasing ML.

As will be seen, the study found out that employees who can be aware of ML operations already have full knowledge of the AML legislations. The majority of the interviewees are totally aware that the CMLA 2005 has weaknesses, and believe it is not enough to curb this crime. That led the researcher to believe that there was an urgent need to change the CMLA 2005 and that this revised law would need to be applied and related staff also need to be trained to apply it.

The study is timely not only because the ML issue has been ignored in Libya, but mainly because some facts mentioned above raise questions about whether new mechanisms can be designed to stop ML that is taking place due to illegal oil selling as well as other commercial activities. It is important to find out to what extent the FIU in Libya has been successful until now, and to what extent there is a need to bring structural changes into the FIU in Libya. This research will help to design a new ML confiscation framework while incorporating the existing ML mechanism. A detailed study of the Customer Due Diligence (CDD), Politically Exposed Persons (PEPs) and identifying clients and record-keeping would help to highlight weaknesses in the existing FIU in the Libyan framework and bring in the revolutionary idea of introducing a new ML confiscation system in Libya. A detailed analysis of these elements can give an idea about which direction the FIU in Libya needs to take in order to move forward. As far as I know, no one has worked in Libya on the points I have raised. It will definitely be very interesting for the legislative council in Libya to study the data collected by this study and the facts and figures related to the Libyan and UK ML confiscation systems.

1.8.4- Piloting the interview

Before designing my draft interview schedule, I decided to develop my skills in using this qualitative instrument by attending workshops on Qualitative Research and Interview Skills at the Law, Politics and Sociology School at Sussex University. A draft semi-structured interview schedule was then designed in line with the research questions and piloted with official employees in Libya. These pilot studies were conducted with three Libyan officials - a lawyer, an official employee at the Ministry of Finance and the head of the Analysis Department. I approached each pilot participant, explained my purpose and

gave assurances of anonymity and confidentiality. I conducted the pilot interview and, at each stage asked the participant for feedback about the questions.

The pilot interview with a lawyer in Libya was particularly useful. This interview provided me with the information I needed about AML rules and what issues might arise when conducting the interviews in Libya. For example, who to question about the role of legal advisers and banks in AML operations, also how ML could be detected, given there is no police department dedicated to combating ML. Discussing this at the pilot stage, led me to the decision that questions on this issue needed to be re-directed to the Analysis Department of the FIU of the Libyan Central Bank, as this was where I could obtain the information I needed and which was relevant to the thesis.

Another issue which arose was that the officials who were to be interviewed might not know much about the illegal selling of oil in Libya. For this reason, I decided to interview an official from the Libyan National Oil Company in order to collect specific data on this topic. From conducting the pilot study, I realised that carrying out interviews in Libya was going to be a very big challenge. At present, there are security issues in Libya and it is difficult to move around the city of Tripoli and gain access to the places I need to go. However, the pilot interviews provided me with the opportunity to clarify the interview questions and think about alternative ways to phrase them in order to be able to prompt the interviewees without leading them.

1.8.5-Audio recording

Audio recording is regarded as a powerful method of data collection and it has become a staple of qualitative research. One of its main advantages is that allows the researcher to focus on the answers of the interviewees rather than writing down the comments; another is that the tape allows an exact transcript of what was actually said to be made and eliminates any possible distortion involved in using the interviewer's notes.

Through previously working as an official employee of Organisation Libya, I know that in Libya, people are not greatly interested in research and there is suspicion and resistance towards it. In order to succeed in data collection, therefore, I had to choose an appropriate way to convince informants to participate. Thus, in conducting the interviews I needed to get access and gain trust with the interviewees and using social ties and personal contacts was helpful. Furthermore, when conducting the interviews, I had to be

aware that participants might show a lack of confidence and refuse to be recorded or may agree to it but feel awkward about being taped or worry about the tape being heard by others; even if offered a promise of confidentiality and to be given the tape once it was finished with.

1.8.6-The Libyan Interviews

The field work for this study involves conducting interviews in Tripoli in Libya with ten Official Employees were selected for the Libyan part of this study, the interviewees were assured at the beginning of the interview that no one would listen to the recording other than me or my supervisor. Those that refused to be recorded allowed me to write the conversation down and note their opinions. Some participants regarded me as a more experienced person; nevertheless, as a result of the interviews, I made many friendships with the participants, due to the rapport built between us. I also gained a deeper understanding of the work of the banking sector in Libya, so this was an effective and enjoyable way of learning for me. However, as more than two months were spent on the fieldwork at the Libyan Central Bank this was enough time to build trust with the Central Bank official employees. Being there helped me to gain an understanding of the different issues that my interviewees had to deal with on a daily basis. Moreover, it allowed me to further understand AML rules and to see more clearly what the weak areas were, and thus to more easily gauge how accurate interviewees' responses were. The data was collected through documents, statistics, studies and the interviews; and these different tools were used to construe the situation from different sources, which could then be triangulated in the analysis stage.

At the first interview, I thought I would be able to easily and instantly translate the questions into Arabic for the interviewees; any possible problem with this was not picked up during the pilot interviews. This interview, however, showed how difficult it was to do this in an interview context, as it was not easy to follow the conversation and at the same time think about an accurate translation. Thus, it was necessary to translate all the questions into Arabic for interviewees at the Libyan bank and the other related departments which were a target of the interviews; and this helped to ensure that all the interviewees received exactly the same information. Another practical difficulty that affected the interviews was the power blackouts in Tripoli. These proved to be a real

challenge as interviews were frequently interrupted by the blackouts which meant that it was impossible to continue with the interview and a new appointment had to be made.

Each type of participant brings the advantage of a different perspective, which could increase the value and reliability of the data. Moreover, analysis of data from all the different types of participant together could fill a gap in the available information regarding legal issues. Additionally, this combination could reveal in-depth information, as each type of participant may have a different level of knowledge regarding these issues. The limited number of professional employees selected to participate was due to time limitations, the type of information required, and the methodology applied in the study. Therefore, the researcher has assumed that the selection of a limited quantity of the different types of interviewee may be more beneficial for the current research, in order to accomplish the study on time, and to gather more detailed information from participants.

1.8.7-The UK Interviews

At first, I planned to use the interviews with a similar range of participants as those from Libya, with the aim of gaining a practical understanding of the control mechanisms and show how the Financial Services Authorities and banking structures are struggling to cope with illegal money. The ethical review panel gave approval for the Libyan interviews. Although the Libyan interviews were conducted, it was unfortunately not possible to generate a comparative analysis between the UK and Libya, even though the aim of my study was to use the comparative approach and had I applied for permission to conduct both sets of interviews in plenty of time. However, owing to the sensitivity of the area of research, I failed to get approval from the UK participants to conduct interviews and their refusal led to me to use an analysis of primary and secondary data resources in the UK after consultation with my supervisor.

1.8.8-Analysis and Interpretation of Data

The stage following interview data collection in a research project is the data analysis. The 'meaning condensation' methods have been used to analyses the interviews, as clarified by Kvale and Brinkmann, who defines the technique thus: "meaning condensation normally builds and entails an abridgement of the expressed by the interview into short formulations. Long statements are compressed into briefer

statement in which the main sense of what is said is released in a few words."[70] Based on this definition, Kvale and Brinkmann, highlight the following five steps in utilising this approach: firstly, the whole of interview transcript should be read once to establish the main ideas; secondly, the exact words of the subjects are identified by the researcher; thirdly, a main theme is assigned to each response by the researcher without bias; fourthly, meaning units should be related to the purpose of the study, which can be done by reminding oneself of its main questions; fifthly; the researcher gives a relevant description to each theme.

Thus, I began by reading the interview transcripts; identifying the main ideas and linking these to the aims of the study and referring back to the main research questions. Finally, a description of the main ideas relevant to each theme was given. Before commencing the process of analysis, I had to write the whole of the conversation on paper and then type it up for each of the interviewees in Libya who refused to be recorded. Analysing the given data out of the interview transcriptions was also supportive for reaffirming the research claims; and using the 'meaning condensation' helped to achieve the aim of this research, which was to understand how participants make sense of and interpret the spread of ML. Collecting the data took about three months, as I needed to conduct the interviews and transcribe them and think about possible ideas and themes; so, starting the data analysis was exciting. When I highlighted the themes, and started to give them codes I felt aware of my personal intervention, as I gave these themes names, based on my own understanding, beliefs and comments.

A significant challenge that was faced regarding the interviews was the translation of interviewees' views from Arabic to English, and it was very important in this study to focus on several methodological issues encountered when translating the interviewees' interviews. Culturally and linguistically, English and Arabic are two different languages; however, as the researcher who developed the theoretical framework for this enquiry in English and also as an Arabic speaker, I was able to translate the interviewees' interviews from Arabic onto English. It must be acknowledged that I had to check with another

[70] Kvale, S and Brinkmann, S. (2015) *Interviews Learning the craft of qualitative research Interviewing* Third Edition, Sage Publications, Thousand Oaks CA, SAGE (p.233).

English speaker about my translation of specific concepts that I had in the interviewees' data to validate the accuracy of the translation.

1.8.9--How was data security maintained?

- The storing and movement of the data was conducted in accordance with data protection acts and regulations.

- Data was stored electronically and appropriate technical and organizational measures were taken to protect and secure the data

- Data must not be kept for longer than necessary, thus it will only remain with the researcher until analysis is completed and for a minimum time after the writing up and examination process is completed.

How to ensure the confidentiality of data?

- Data was processed fairly and lawfully in accordance with the Data Protection Act 1998 in line with the guidance offered by the University Ethical Code.

- Data will be processed strictly for the purpose of this research project and not for any other purpose.

- Appropriate technical and organizational measures have been taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. This includes:

- Efforts to ensure that the computer firewall was on and that virus-checking and anti-spyware software is efficient and up-to-date.

- Encrypting electronic data so as to avoid damage or distress in the event of information being lost or stolen.

- The researcher has not quoted any statement made by interviewees unless he received permissions from them to do so.

This research was carried out in accordance with all the measures and regulations for ethical research. According to Bryman and Bell, the researcher must protect the participants by using coding on the data file and not using names and personal information. Researchers must conduct their studies without any sort of deception and

protect their participants' data[71]. Additionally, the researcher made use of the research ethics checklist provided by the University to help anticipate and deal with ethical issues. In particular, according to Bryman and Bell the researcher must deal with the ethical issues through the following measures:

- I explained to the participants that they had the right to agree or disagree to be interviewed or to withdraw from the interview at any time.

- To avoid deception, I explained to participants what I was exploring in this research, the research purposes and what data I wanted from them.

- I ensured that consent has been gained from participants.

- I ensured that I would not use the information of this interview in a way which could identify participants and informed them of this.

- I made sure that these interviews would not cause any harm to participants, as no confidential data or personal and work-related information was required in the interview.

The privacy of participants' information was maintained at all times, so that nobody else could recognise participants or data sources[72]. Due to the sensitivity of the subject and the risk that interviewees might be in jeopardy from the money launderers, I avoided any questions that posed a risk to the participants to ensure their safety and my safety as well. Thus, I avoided direct questions on current cases, but I focused on completed cases and the weaknesses of the current law.

1.9-Proposed Thesis Structure

After a general introduction, the second chapter explores the theory of transitional justice. This chapter concerns the package of transitional justice measures to be taken by a Libya that has emerged from conflict and revolution and suffered from serious violations of human rights. The concept of transitional justice, the challenges and importance of applying elements of this are explored, to show how the complex problems involved in applying, transitional justice cannot be resolved by a single procedure without

[71] Bryman, A, & Bell, E. (2007) *Business Research Methods, 2nd edition*. Oxford University Press (p.140).
[72] Ibid (2007 p.137).

any effort to uncover the truth or award compensation. For example, how it may be considered necessary to punish a few minor perpetrators as a form of political revenge, and uncover the truth in isolation from efforts to punish the main perpetrators. The experience of transitional justice in some other countries and the challenges involved in its implementation such as the conflict between achieving justice or peace, identifying the victims and whether there are sufficient resources available to cover mechanisms like compensation, trials or institutional reform are also examined.

Chapter Three attempts to give a comprehensive understanding of ML, and explores the role of globalisation in opening up new avenues for criminal groups to launder money earned through criminal activities. Furthermore, it sheds light on whether the development of technology is a reason behind the growth of the ML crime. In addition, the chapter focuses on the economic, social and political impacts of ML including the argument about whether ML benefits the domestic economy or not. Chapter Four aims to explore the international criminalization of ML, the measures considered to be necessary weapons in the fight against ML and the offences that are predicated on it. The purpose of this chapter is thus to understand the development of the criminalization of ML by discussing important issues that will clarify the development of international efforts to combat ML through the conventions that started with the Vienna Convention (1988), which is considered as the basis for the subsequent conventions and changes to the domestic regulations in some countries to prevent this crime. This chapter will also discuss the functions of international organizations that seek to curb ML crime.

Chapter Five aims to investigate the AML system in the UK; the reasons that have led the country to focus on developing AML regulations; and the development of AML strategies that have been taken to prevent financial crime in the UK. The aim of this chapter is to analyses specific UK legal provisions relating to ML; such as the Proceeds of Crime Act (POCA) (2002) and the effect of EU directives on the POCA, in order to find out how this law is protecting public money through improving the effectiveness of measures taken against those who profit from crime. It will also explore the extent of the effectiveness of this approach against this crime, and whether it impedes financial and commercial activity. Additionally, this chapter argues whether the UK approach to AML has complied with the international principles against this crime and evaluates the advantages and

disadvantages of the UK AML legislation in order to find out what lessons and the successful AML strategy, can be learned when addressing gaps in the Libyan AML regulations rather than suggesting that a foreign AML system can be imported wholesale, and assess if it could be used in Libya to address the illegal sale of oil.

Chapter Six looks at the development of AML laws in Libya; and examines how these laws have attempted to prevent the primary crimes associated with ML, such as corruption. So, the aim of this chapter is to establish why Libya, in an attempt to curb money-laundering, has issued so many different regulations since the early 1950s related to financial crimes. The focus will be especially on the CMLA (2005), issued in Libya in line with the rules of international conventions on AML. The international criminalization of ML, the measures considered necessary weapons in the fight against ML and the offences that are predicated on it are explored in this chapter. It is crucial to understand international attempts to curb ML crime which was, but is no longer endemic, and just how rapidly these measures have developed. The following chapter, Seven, presents the data analysis on the comments of participants interviewed for this study under the mechanisms that were adopted by the CMLA 2005, and whether the mechanisms that are used against it are successful or not. The body of this chapter is organised so as to reflect the four research questions. The aim is to find out how ML related to the illegal sale of oil can be reduced in Libya through looking at attempts to combat ML in the UK. The chapter considers whether the Act has been enough to prevent ML crime or not and concludes that not only has this legislation failed to curb ML crime, but this crime has been increasing.

Chapter Eight focuses on the vulnerability of Libyan AML legislation and what principles and rules could be taken from approaches that are used in the UK to address this weakness. Finally, Chapter Nine covers conclusions and recommendations.

Chapter Two: The Theories

2.1- Introduction

In this thesis, the transitional justice theory is applied. This research will make use of some of the most relevant elements of the theory of transitional justice, because Libya went through undemocratic rule and civil war, thus, I would argue that this is the most appropriate theory to apply in this case.

2.2-Transitional Justice Theory

The term ''Transitional Justice'' has emerged in recent years to identify political practice concerned with the aftermath of conflict. It focuses on the best method to address past wrongs and move towards creating a decent civil order. States which move from authoritarianism to democracy have started by using transitional justice. Thoms has confirmed that transitional justice has proliferated in areas of conflict and societies which were under authoritarian rule[73]. The concept mainly formed in response to political changes in Latin America and Eastern Europe and to demands by human rights activists in these regions for justice through the systematic address of abuses, which were committed by the old regimes during their time in power.

2.2.1-The Concept of Transitional Justice

Transitional justice, as defined by the UN is the "full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation"[74]. Moreover, the transitional justice processes and mechanisms are a critical component of the UN framework for strengthening the rule of law. Transitional justice depends on both judicial and non-judicial processes and mechanisms. It involves institutional reform, and includes civil rights, i.e. political, economic, social and cultural rights[75].

The main aim of transitional justice is to curb the practice of those in power behaving with impunity and establish the rule of law; also, to protect human rights and to oblige countries undergoing transitions to implement their legal obligations with regards to

[73] Thoms, O.*et al*. (2008) *The Effects of Transitional Justice Mechanisms. A Summary of Empirical Research Findings and Implications for Analysts and Practitioners* Working paper. Centre for International Policy Studies, University of Ottawa (p.4).

[74]United Nations, the rule of law and transitional justice in conflict and post-conflict societies Report of the Secretary-General (2004 p.4).

[75] Guidance Note of the Secretary- General: ibid (2010).

human rights violations[76]. In this context, this includes: ''halting ongoing human rights abuses, investigating past crimes, identifying those responsible for human rights violations, imposing sanctions on those responsible, providing reparations to victims, preventing future abuses, security sector reform, preserving and enhancing peace and fostering individual and national reconciliation''[77]. So, in general, seeking the truth, identifying crimes and holding perpetrators accountable by strengthening the rule of law and effectuating institutional reform, providing victims and promoting reconciliation are the final aims of the primary objective of a transitional justice policy.

Money laundering mostly goes hand in hand with human rights abuses in authoritarian countries; and those two are linked with each other as corrupt funds are used by dictators to maintain power. In Libya, illegal oil proceeds are used to perpetuate the war and stir up unrest, and it is also used as a means of rewarding those who carried out or covered up regime crimes[78]. In this way, this laundered money has participated in creating the acute economic crisis in Libya, as this study has explained above.

The mechanisms of transitional justice have thus not adequately dealt with the legacy of authoritarian corruption nor remedied its far-reaching socio-economic effects. Additionally, the policy makers of transitional justice are failing to clarify the relationship between corruption and human rights abuses. The damage done to the people by the corrupt money is on a large-scale and outnumbers the victims of physical atrocities; and through stalling or obstructing meaningful reforms, damage is done to the national economy[79]. Libya is the best example of this process.

[76] Bashir, H and Abraham, A. (2011) Money Laundering Between Theory and *Practice*. Caro, Alkoumy Central of Law Issues (p.3).
[77] Kur, J. *et al*. (2013) Mass Media and the Search for Transitional Justice in Nigeria. Arabian Journal of Business and Management Review (OMAN Chapter) Vol.3, No. 5, pp 62-77 (p.66) 62-77.

[78] Carranza, R. Plunder and Pain: (2008) Should Transitional Justice Engage with Corruption and Economic Crimes? The International Journal of Transitional Justice, Vol, 2. pp 310–330 (p.312).
[79] See Freedom House Transitional Justice Should Take on Corruption 2013 Available at: https://freedomhouse.org/blog/transitional-justice-should-take-corruption (Accessed in 21/8/2017).

2.3- Legal transplants

The term 'legal transplants' means borrowing legal rules from abroad;[80] the target of this is to develop the framework of domestic law to face certain situations and to use the legal transplants as tools for promoting legal change[81].

This section deals with several aspects of legal transplants: Firstly, the significance of and justification for legal transplants and their importance as mechanisms of achieving one of the targets of transitional justice, which is the reform of law in Libya. Secondly, transplant assessment, and a discussion of the effect of transplants on identity and the culture, due to these rules being imported from elsewhere[82].

2.3.1-The significance of legal transplants

In the framework of the application of transitional justice, reforming the law is an important step in ensuring that there is no return to the abuses of the past. This happens in countries where wars occur or there are fundamental changes during the transition from dictatorship to democracy, usually if the legislation was taken from elsewhere at low cost and has been implemented[83], These laws often were applied in societies and in places very different from those they were transplanted from. Historically, there was a large amount of legislation throughout the world which was borrowed from other legal jurisdictions; which is evidence that legal transplantation has a role in the development of legal areas quickly and effectively. For example, Italy made some changes to its criminal codes in 1808 and 1848, which clearly demonstrate legal transplant, as were codes in Holland in 1867[84], Prussia in 1851 and Russia in 1864[85].

The Napoleonic *Code d'Instruction Criminelle* of 1808 had a clear effect on both France and Spain, specifically their criminal justice systems[86]. Furthermore, the reforms to the criminal procedures in some Muslim countries were affected by Japan in the 19th and

[80] John W. Cairns. (2013) Watson, Walton, and the History of Legal Transplants, 41 GA. J. INT'L & COMP. L.637 (p. 640).
[81] Xanthaki, H. (2008) Legal Transplants in Legislation: Defusing the Trap. The International and Comparative Law Quarterly Vol.57, No 3 pp 659-673 (p.659).
[82]Damaska, M. (1997) The Uncertain Fate of Evidentiary Transplants: Anglo-American and Continental Experiments American Journal of Comparative Law, Vol, 45. pp 839-852 (p.839).
[83]Kanda H. and Milhaupt, C.J. (2003) Re-examining Legal Transplants: The Director's Fiduciary Duty in Japanese Corporate Law American Journal of Comparative Law Vol. 51 pp 887-902 (p.889)
[84]Vogler, R. (2005) *A World View of Criminal Justice*, Ashgate Publishing Company (p.58).
[85] Ibid (p.59).
[86]Vogler, R. (2005) Reform Trends in Criminal Justice: Spain, France and England & Wales Centennial Universal Congress of Lawyers Conference, Lawyers & Jurists in the 21st Century Washington University Global Studies Law Review Vol.4, No 3 pp 631-637 (p.631).

20th centuries. According to Vogler, the reforms that took place in the Ottoman Empire between 1839 and 1879 represented important changes to criminal justice procedure, and they had clear effects on western European powers[87] For example, Great Britain tried to protect its citizens, who were trading in the Ottoman Empire, through bilateral agreements whereby all cases involving their citizens were dealt with by special consular courts[88]

In Sudan, however, the influence of the Ottoman Empire was counterbalanced by provisions of Islamic law which remained in place until 1899 when the first Sudanese Criminal Procedure and Penal Code and derived from the Indian Penal Code was introduced under the aegis of an Anglo-Egyptian co-dominion with *Shari'ah* being reserved only for family law in 1902[89].

Although Libya has been under Islamic law, it was under the influence of the Ottoman Empire; and its legislative status remained under its influence until the Italian Occupation, when the Italian Penal Code was applied[90], and the formation of the Libyan Penal Code in 1947.Libya issued a lot of legislation in the 1970s, in compliance with the Islamic law, as this study has discussed (See Chapter 6 section 3).

In the same way, the laws of a large number of the Latin American countries, such as Chile and Argentina, have been affected; specifically, those involving criminal procedure reforms that replaced their inquisitorial systems with adversarial ones. They developed new, hybrid forms of criminal procedure by international criminal tribunals[91]. Thus, the prevalence of legal transplants confirms their significance as tools for promoting legal development and the professional inclination to rely on them when creating new laws.

On the other hand, Legrand has argued that the Law of one country cannot be simply transplanted to another because legal rules are related directly to their culture context.

[87]Vogler, R. ibid (2005 p.116).
[88] Ibid (p.115).
[89] Ibid (p.118).
[90] Barak, A. Punitive toward a unified law and modern Arab Countries 2015 available at http://www.ahmadbarak.com/Category/studydetails/1063. (Accessed in 18/02/2017).
[91]Jacqueline E. *et al* (2016) Comparative Criminal Procedure Edward Elgar Publishing, Cheltenham UK (p.12).

He also added that legal transplantation is 'impossible' to be accepted, since the relationship between the legal rules and society is so interdependent[92].

In this he is echoing the well-known views of Montesquieu who declared that: 'the political civil laws of each nation should be so closely tailored to the people for whom they are made, that it would be pure chance ['*un grandhazard'*] if the laws of one nation could meet the needs of another…'[93]

Many theoreticians have adopted Montesquieu's approach, particularly those who assert that legal systems are divided into distinct and opposed'' families''[94] as Renee David has considered. These theoreticians contend that law corresponds with societal features or is an expression of social interests or needs[95], and its development is based on a number of physical, cultural and political ingredients unique to the particular society it serves[96].The Law is created through a mixture of sociological, cultural and economic forces that it can rarely have validity in any other environment. This makes the adoption of foreign law problematic, transferring law to another environment requires stimuli relating to society, culture and the economy that are more relevant than legal transplants alone for motivating and shaping legal change[97].However, it is argued here that these views are increasingly untenable in a global society where many communities face the same threats from international crime and require concerted solutions which draw from the experience of different nations.

2.3.2- Motivations for Transplanting Law.

The foreign law transplant may be related to the importance and the prestige of that law;[98]furthermore, such laws have been previously tested, found to be successful and able to be enforced. Recently globalisation has a substantial effect on legal transplants, and Miller has considered that the legal transplant process has increased in developing countries and some of their laws are transplanted from foreign Acts,[99] which mean that

[92] Legrand, P. (2001) What Legal Transplants? in Nelken, D. and Feest, J, (eds) Adapting Adapting Legal Cultures, Hart Publishing, 55-70 (p. 57).
[93] Charles de Second at Montesquieu. De L'Esprit des Lois (1748), Book 1, Ch. 3, Des Lois Positives.
[94] Rene David, English Law and French Law: A Comparison in Substance (London Stevens and Sons Eastern Law House 1980).
[95] Watson, A. (1996) *Society and Legal Change, Edinburgh*, Scottish Academic Press (1977) 3-4.
[96]Friedman, L.M. *A History of American Law,* 2nd ed. New York: Simon and Schuster (1975).
[97] Ibid.
[98]Watson, A. (1996) Aspects of Reception of Law, American Journal of Comparative Law Vol.44,335-352(p.335).
[99]Miller, J.M. (2003) A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process, American Journal of Comparative Law Vol.51, No.4 pp 839-886. (p.839).

their legal system is influenced by legal transplants. The other reason for legal transplants is modernisation[100], specifically in developing countries, who wish to comply with the standards of more economically powerful countries. For example, some criminal justice laws in several Muslim countries, between 1839 and 1970, were impacted by European legislation from countries such as France and Great Britain[101].

Although transplants have been taken place in both the ancient and the modern world, the law was considered to be closely related to the identity of a nation or people[102].Legal transplants have assisted in developing domestic law, additionally, legal transplant and globalisation, may also influence the culture of the receiving country[103]as Teubner, has remarked, thus, countries should transplant laws carefully, to retain their cultural identity.

I would suggest that the peoples' cultures are related to livelihood, achievements and creativity, and are an expression of their right of self-determination and their spiritual and material relationship with their lands, territories and resources, that is reflected in their language, spirituality, sense of belonging, behaviour and laws; and that due to this, legal transplants are, in effect, the borrowing of ideas between legal cultures and/or systems[104]. Thus, it is important for individual countries to decide what rules they could choose from another country which would preserve their identity.

The process of improving access to justice in the medium to long term, requires a comprehensive reform of the objectives of the current system, and includes the legislative, institutional and practical measures to promote access to justice in line with international standards and best practices. Efforts to redress the collective abuse widespread in the context of the so-called initiatives of transitional justice is important but it is working to establish important principles that can provide the means for the introduction of a methodology for changes to strengthen access to justice.

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[100] Beckstrom, J.H. (1973) Transplantation of Legal Systems: An Early Report on the Reception of Western Laws in Ethiopia. American Journal of Comparative Law. Vol.21, No 3 pp 557-583. (p.583).
[101] Vogler,R. ibid (2005 p.126).
[102]John, W. ibid. (2013)
[103] Teubner, G., (1998) Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences Modern Law Review Vol.61, No 1 pp 11-32 (p.16).
[104] John, W. ibid (2013 p. 273).

So, in Libya the reform process should include constitutional reform in conjunction with institutional reform. Agreement on the 'objective' criteria of the new constitution is not enough to ensure the effective protection of civil and political rights. Thus, the debate on the constitution must go boldly beyond just the constitutional text itself and find ways and means to defend those 'constitutional' and 'effective' principles through establishing institutional mechanisms for the effective protection of human rights and the rule of law. However, if these mechanisms do not exist on the ground, any such 'constitutional protection' will remain 'a dead letter', without any strength or support. In order for any process of constitutional reform to be effective and meaningful, there is a need for institutional reform in important sectors such as the police, national intelligence and security. This requires measures to give the authorities power to arrest and detain suspects irrespective of position as well as parliamentary and judicial accountability and effective control. In Libya, the Penal Law (1956) reflects the reality of Libyan society, whether political or social, cultural, on the other hand, the national criminal policy should be developed to be in compliance with international standards; that requires a comprehensive review of all penal law in Libya to keep pace with the times, whilst taking into account the principles of Islamic *Shari'ah,* and Libyan culture and society when making the changes recommended by this study.

A transitional justice policy has various mechanisms used to achieve these aims; for example, trials, which are the means used to make the criminals who committed the crimes in the old regime accountable for their actions[105]. These include judicial investigations with those responsible for committing human rights violations in which the prosecutors often focus on those who believe they bear the greatest responsibility for serious or systematic violations. It could be argued that the first realization of this mechanism was with the Nuremberg trials of the Nazis in Germany after the Second World War[106]. The trials may be at the regional or international level, or through some

[105] Olsen, T. D. *et al.* (2010) Transitional justice in the world, 1970-2007: Insights from a new dataset Journal of Peace Research Vol.47, No.6 pp 803-809 (p.805).
[106] Arthur, P. (2011) *Identities in Transition: Challenges for Transitional Justice in Divided* Societies Cambridge University Press, (p.125).

other institution, such as the Special Court for Sierra Leone[107], which also included financial crimes in its proceedings.

Another means of achieving transitional justice is the establishment of truth commissions, which were created to investigate and report on the offences and the criminals who committed these crimes during the old regimes. Truth commissions investigate the cause behind systematic patterns of abuse and the reasons for the serious human rights violations that were committed[108]. These commissions have basic aims, which are to contribute to justice and accountability through facilitating public acknowledgement of wrongdoing, to respond to the needs of victims, and also to recommend reforms and help settle conflict [109].

Reparations, which are initiatives that take material forms such as cash payments or health services, aim to address the harm suffered by the victims. Additionally, these means include the reform of state institutions such as the armed forces, the police and the courts, which were abusive during the old regime. To ensure that serious human rights violations will not recur, reparations can also involve the creation of museums and memorials to memorialize the memory of the victims[110].

One important aspect of a country's process of transitional justice is the offer of an amnesty for past crimes. Villalba notes that possibly this can act as an obstacle to peace[111].Amnesty was used by French President Charles de Gaulle in the process of reconciliation for the crimes committed under occupation during the Algerian war[112]. Mandela also used this tactic in South Africa, because he saw the principle of a general amnesty as the way to negotiate a resolution after the end of a regime of apartheid[113]. Sometimes issuing an amnesty has been seen as a setback to the implementation of the rule of law and justice during the transitional phase. One such example is in Argentina

[107] Oosterveld, V. Osterveld, V. (2012) Gender and the Charles Taylor Case at the Special Court for Sierra Leone William & Mary journal of women and the law Vol.19, No 1 pp 7-33 (p.7).
[108]Olsen, T.D.*et al*. ibid. (2010 p.805).
[109] Winter, S. (2013) Towards a Unified Theory of Transitional Justice International, Journal of Transitional Justice, Vol.7, No 2 pp 224-244 (p.239).
[110] Olsen, T.D.*et al* ibid (2010 p.805).
[111] Villalba, C. Ibid (2011 p.4).
[112] Ziaden,R. Transitional Justice and National Reconciliation Syria Supplemental Features (2014.p.106) Available at:http://cco.ndu.edu/Portals/96/Documents/prism/prism_4syria/Transinational_Justice_and_National_Reconciliatin.pdf (Accessed in 9/2/2016).
[113]Heffernan W.C. (2014) *Dimensions of Justice* Jones & Bartlett Publishers, US (p.170).

when it was introduced after the trials of the perpetrators of crimes from the former repressive regime had started[114].2013 saw Tunisia adopting the Transitional Justice Act which includes clauses about establishing a new governing body to negotiate with businesses to gain amnesty in return for repaying stolen money. Although this will be of financial benefit to Tunisia, and attract new investment[115]; Williamson points out that many civil organisations have opposed this law on the grounds that undermines the principles of transitional justice[116].

Although amnesty can result in the stabilization of a country, as supporters of the old regime are unlikely to create destabilization, any restructuring of state institutions that respect human rights and maintain rule of law must be subject to a system of accountability. The foundations of the regime that perpetrated or allowed human rights violations must be disabled by a process that ensures a minimum standard of professional standards and impartiality among judges and prosecutors. There must be guarantees of accountability, transparency and independence either through reforming existing legal frameworks, ensuring the recovery of looted funds, or creating new frameworks such as the adoption of a constitution or ratifying international human rights treaties. As discussed above, the aim of transitional justice is an investigation which will give access to the truth, justice, forgiveness, and healing; which will achieve the reconciliation necessary to allow people to live alongside former enemies. In other words, the past must be addressed in order to achieve peace in the future. I believe that an effective way to achieve all these aims is through the transitional justice elements mentioned above; and that these also will ensure lasting peace. Democracy will be enhanced because the truth has been revealed, rights have been ensured and the harm that was suffered by victims has been addressed, all of which will lead to a result that is worth the effort.

Under international law, transitional justice has gained an important foundation in the decision of the Inter-American Court of Human Rights in 1988 in the case of *Velásquez Rodríguez v. Honduras,* (a case heard by the Inter-American Court of Human Rights (IACHR) and also known as Manfredo Velásquez v. Honduras). In this case the Court

[114] Laplante, J. (2009 Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes, Virginia Journal of International Law Vol.49, No. 4, pp 916- 984 (p.923).
[115] Williamson, S. Transitional Justice Falters in Tunisia 2015. Available at: http://carnegieendowment.org/sada/?fa=61366&lang=ar (Accessed in 26/1/2016).
[116] Williamson, ibid (2015).

ordered the government of Honduras to comply with certain points, which related to human rights violations[117]. The court decided that all countries are obligated by four fundamental obligations in the area of human rights, which are: to take reasonable steps to prevent human rights violations, to conduct a serious investigation of violations when they occur to impose suitable sanctions on those responsible for the violations; and to ensure justice for the victims of the violations[118].

2.4-The experiences of some countries to implement the transitional justice

There are various countries around the world which have been able to achieve transitional justice, such as South Africa, Argentina and Morocco.

2.4.1-The experience of transitional justice in South Africa

The South African experience began in the early nineties, after the release of Nelson Mandela. This example of transitional justice addressed the elimination in a system where apartheid had prevailed. Negotiations were conducted between the government and the African National Congress; and an experiment began in the conducting of popular trials called 'truth and reconciliation', to reveal the abuses that had occurred during the apartheid regime. However, the perpetrators did not submit to a trial as demonstrated by the truth and reconciliation commission's slogan 'amnesty in exchange for the truth', which exposed the South African experience to widespread criticism[119]. Victims complained that they had not been given any compensation and that the perpetrators of crimes had not been brought to justice by means of a proper trial. The inadequacy of the South African experience is clearly highlighted by the fact that it did not address corruption due to its claim that corruption fell outside its mandate, which should be a lesson for other countries, especially those seeking to emulate this experience[120].

2.4.2-The experience of transitional justice in Argentina

After the end of the dictatorship that lasted between 1976 and 1983, Argentina saw dramatic changes in the investigation and prosecution of human rights violations that

[117] Hasselbach, L. (2010) State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection North-western Journal of International Human Rights Vol. 8, No. 2, pp 190-215 (p.193).
[118] Okello, M. (2012) *Where Law Meets Reality: Forging African Transitional Justice* Fahamu / Pambazuka, UK (p.125).
[119] Rose, C and Ssekandi, F. (2007) The Pursuit of Transitional Justice and African Traditional Values: A Clash of Civilizations - The Case of Uganda. SUR International Journal on Human Rights Vol.4, No 7 pp 101-121. (2007 p.113).
[120] Carranza, R. ibid (2008 p.313).

occurred when the country was under the dictatorial rule and which led to the forcible disappearance of about 30,000 people. After the restoration of civilian rule, the government developed a set of search-related initiatives, trials and compensation[121].

Alfonsín, the first democratically elected president after the end of authoritarian military rule, established an amnesty law. It identified a deadline of sixty days which began after the new trials, and granted immunity to military personnel from the rank of colonel and below, since they simply carried out orders. Some key military leaders appeared in the dock in two large trials only 18 months after the fall of the military government. Legislation compensating the victims was subsequently passed and a compensation programme based on records available was also carried out[122].

2.4.3-Morocco's successful experience of transitional justice

Efforts in transitional justice have been made since the early 1990s to address violations of human rights committed at the start of the 1960 when dozens of people disappeared and hundreds of political prisoners were taken[123]. By the end of the 1990s both legal and institutional reforms had been made and some financial compensation was made available for several human right victims and their families. There have been adverse reactions to this as many victims, and their families, preferred mental and physical healthcare, death certificates or an apology from the state[124]. All these protests resulted in the creation of an Equity and Reconciliation Commission[125].This Commission worked to investigate the disappearance and death of the hundreds of people who were arbitrarily arrested and detained and then subsequently disappeared or died during past events and social uprisings[126] However, this process has only been partially successful, and Moroccan victim's families are still waiting to know what happened to their loved ones and who were responsible for their fate[127].

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[121] Crenzel, E. (2008) Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice, The International Journal of Transitional Justice, Vol, 27. No. 2, pp 173-191(p.175).

[122]Garibian, S. (2015) Truth versus impunity: Post-transitional justice in Argentina and the 'human rights turn. African Yearbook of Rhetoric. Vol. 6, no. 1, p. 63-73 (p.65).

[123] Loudi, F. (2014) *Transitional Justice and Human Rights in Morocco: Negotiating the Years of Lead.* New York, Routledge (p.95).

[124] Linn, R, (2011) Change within continuity: the equity and reconciliation commission and political reform in Morocco, The Journal of North African Studies, Vol.16, No.1 pp1-17 (p.7).

[125] Opgenhaffen, V & Freeman, M. (2005) Transitional Justice in Morocco: A Progress Report International; Centre for International Justice pp 2-33 (p.12).

[126] Linn ibid (2011 p.7).

[127] Ibid (p.9).

Morocco's experience is one of the most important among Arab states and internationally in open files regarding enforced disappearances and torture. Morocco created the Equity and Reconciliation Organization, commissioned by the King of Morocco to address reparations and reconciliation, compensated the victims, and also worked to reform and rehabilitate a large number of institutions. Knowing the truth about incidents required the implementation of transitional justice; most notably for investigations on the subject of serious violations, where it was necessary to know the precise details and enormity of the crimes in order to make reparation and to take measures to ensure the rule of law such that these crimes could not be repeated. Political and institutional reforms were also taken to curb authoritarian tendencies[128].

It is clear that in most of these experiences, the use of transplants in transitional justice was aimed at addressing the human rights violations that occurred in the past, and did not concentrate on financial crimes. In the implementation of transitional justice, human rights violations should be linked to corruption by the collection of the evidence about illegal activities by members of the old regime, forwarding them to domestic and international prosecutions and including economic crimes[129]. This is what happened in Kenya with prosecutions for the economic crimes of illicit land grabs and illegal acquisition of other property[130]. This trial included interrogation of Charles, the president of Liberia, about his trading in so-called 'blood diamonds' that assisted in fuelling the conflict[131]. In the same way, according to Sorensen, Zine el-Abidine Ben Ali, the previous president of Tunisia and his wife were sentenced to prison *in absentia* due to their embezzlement and misuse of state funds[132]. During the application of transitional justice, the collective or individual reparations on the rights abuses could be funded by any recovered assets. Additionally, the institution of reform could also apply socio-economic reforms and remove corrupt officials; this would improve the quality of the civil service[133].

[128]Opgenhaffen, V& Freeman, M. Ibid (2005 p.22).
[129] See Freedom House Ibid (2013).
[130] Transitional Justice in Kenya: A Toolkit for Training and Engagement (2010 p.52) Available at: http://www.khrc.or.ke/publications/36-transitional-justice-in-kenya-a-toolkit-for-training-and-engagement/file.html (Accessed in 18/7/2017).
[131] Howard, A. Blood Diamonds: (2015) The Successes and Failures of the Kimberley Process Certification Scheme in Angola, Sierra Leone and Zimbabwe national pressures led Washington University Global Studies Law Review Vol. 15, No. 1, pp 137- 159 (p.142).
[132] Sorensen, J. (2012) Ideals without Illusions: Corruption and the Future of a Democratic North Africa North-western Journal of International Human Rights Vol.10, No 4 pp 202-211(p.205).
[133] Freedom House. Ibid (2013).

The law may fall short of sufficiently criminalizing activities of ML, such as in Angola, which has allowed them to be committed with impunity which has resulted in a weakening of efforts to establish the rule of the law[134]. In the same way, Bosnian law has not focused on corruption and money laundering, and has not developed mechanisms, such as confiscation, to keep these activities under control[135].

2.5-The Challenges of Transitional Justice

The implementation of transitional justice faces some contradictions because it seeks to achieve various aims. For example, creating a record of past human rights abuses is very important both as a means of establishing the truth and to be able to refuse spurious claims. Such records make it impossible for the perpetrators of crimes in an oppressive regime to deny responsibility and involvement in past crimes[136]. Moreover, transitional justice needs to result in citizens trusting their government to efficiently serve the needs of the people; cement the rule of law and provide basic services reliably. Transitional justice can thus change attitudes that were formed during the previous regime and underline the notion that the job of the government is to serve the population rather than oppress them[137]. It should also serve to reduce violence and consolidate stability. However, the implementation of these important aims may itself threaten political stability by stirring up conflict again, especially when trials are used as the primary mechanism of transitional justice [138].

There are various challenges that have faced transitional justice since it started, such as identifying the victims and deciding whether the superiors and their aides should be punished or not, which can result in a 'victors' justice'. Other challenges include whether there are sufficient resources available to cover mechanisms like compensation, trials, or institutional reforms; and the transitional time may also only lead to a limited peace or fragile democracy.

[134]Jupp, J. (2014) Legal Transplants as Tools for Post-Conflict Criminal Law Reform: Justification and Evaluation, Cambridge Journal of International and Comparative Law. Vol. 3, No. 1, pp 382.404 (P. 382).
[135] Jupp, J ibid (391).
[136] Waldron, J. (1992) Superseding Historical Injustice. Ethics the University of Chicago Press Vol.105, No 1 pp 4-28 (p.5).
[137] Horne, C & Nedelsky, N. (2011) Encyclopaedia of Transitional Justice New York: Cambridge University Press, (p.6).
[138] Björkdahl, A & Aggestam, K. (2012) *Rethinking Peacebuilding*. The Quest for Just Peace in the Middle East and the Western Balkans. London. Routledge (p.49).

Transitional justice (TJ) involves judicial proceedings against individuals alleged to have committed gross violations of human rights and forms truth commissions to record the wrongdoing which happened during the old regime. Another role of TJ is to identify what reparations and law enforcement is to be made[139]. However, discussion about the effectiveness of TJ as a means to ensure the consolidation of peace and the promotion of human rights and democracy, have led some to confirm that it is indeed useful after war time and it will help societies to move from war or authoritarianism to peace and democracy. On the other hand, others believe that applying TJ will undermine the prospect for peace and it may well be the reason for failure to negotiate peace. Smith has confirmed that reconciliation in the post conflict period can usefully address issues in a way that contributes to positive political development, socio-economic assistance and security[140]. Thus, reconciliation is an important way to get lasting peace and there will be no return to violence as soon as political settlement has been reached. This being the case, reconciliation as a principle of TJ will result in peace and stability and support socio-political stability. In the case of the recovery of smuggled funds it will assist in economic development.

Other challenges face the implement of transitional justice. Transitional justice activities are normally managed through cooperation between the post-conflict state and international bodies like the UN, but it may be difficult for these bodies to use the international tribunals because the countries involved may consider that this is a derogation of their sovereignty, which results in tension. Furthermore, the immunities given to some individuals may be a barrier to holding an effective trial of the criminals and any universal jurisdiction will be difficult to apply. Yet another challenge is related to mutual legal assistance (MLA), which is "a method of cooperation between states for obtaining assistance in the investigation or prosecution of criminal offences"[141]. MLA is not used in some cases because the countries involved refuse to apply this principle[142].

[139] Thoms, O.*et al*. ibid (2008 p.406).
[140] Smith, D. (2004) *Towards a Strategic Framework for Peacebuilding: Getting Their Act Together*. Overview Report of the Joint UT stein Study of Peacebuilding. Oslo: Ministry of Foreign Affairs (p. 10).
[141] See Gov.UK. the Mutual legal assistance requests. Available at: www.gov.uk/guidance/mutual-legal-assistance-mla-requests (Accessed in 14/01/2016).
[142] Schabas, W ibid (2011 p.30)

According to Parlevliet, another significant challenge against transitional justice is the conflict between the aims of achieving peace and administering justice, which results in tension between them. In such a case, the argument for justice is that it should take place to ensure a transition from conflict to peace. All perpetrators of human rights crimes must be put on trial for the offences that were committed and there must not be immunity for these crimes. However, some argue that the only means to end violence and achieve peace is by granting amnesties and entering into negotiations to persuade criminals to lay down their arms[143]**.** Thoms *et al* add that others have argued that the implementation of the principles of fundamental justice is a form 'digging up the past' because identifying criminals will lead to renewed conflict, societal division and also reduce the chances of negotiating peace, thus all attempts to establish peace will fail[144].The creation of the International Criminal Court (ICC) has resulted in another issue as the relationship between the Court and transitional justice mechanisms is not clear at the national level. The reason for that is that it is difficult to achieve consensus on the mechanisms which would allow the Court to intervene in national transitional justice processes that were negotiated during times of delicate peace and post-conflict[145].

This researcher takes the view that the importance of transitional justice lies in identifying the perpetrators of the crimes and that knowing the truth promotes civic trust and strengthens the democratic rule of law, as does making reparations after a time of conflict or state repression in the interests of justice.

2.6-The jurisdiction of the ICC on the ML crime

ML can be one of the most serious crimes because it has effects far greater than simply financing terrorism. It affects the stability and integrity of international financial institutions, which can result in the destabilization of a country's economy and political system. So, Anderson has suggested that the International Criminal Court (ICC) adopts a money-laundering statute, as it is the appropriate international body for investigating and prosecuting organized crime because of its far-reaching jurisdiction. Furthermore, taking

[143]Parlevliet, M. (2002) Bridging the Divide. Exploring the Relationship between Human rights and Conflict Management. Track Two. Vol. 11, No. 1 pp 8- 43 (p.3).
[144]Thoms, O.*et al*. ibid (2008 p.9)
[145] Schabas, W. ibid (2011 p.5)

this action will also support the global effort in combating ML[146]. However, Libya has not ratified this statute.

However, the question arises whether the ICC can address crime, corruption committed over the past three decades, which can be attributed to some officials in Libya? The International Criminal Court will exercise jurisdiction over "persons for the most serious crimes of international concern", and has jurisdiction over the four international crimes, namely genocide, crimes against humanity, war crimes, and the crime of aggression. Thus, public funds must be found to deal with crimes of corruption, which include wasting public money (See El-Ahram newspaper 20/0/2017)[147].

2.7-Why the theory of Transitional Justice; and why there is no other appropriate theory?

The Transitional Justice (TJ) theory is the best suited to apply in this research as TJ aims to implement forms of institution that have been part of a despotic regime and existed in times of civil war, which is the case in Libya. According to Villalba, the system of transitional justice works to address violations, which occurred under the old regime using legitimate means[148]. Elements of this theory will mainly be applied to guarantee that Libyan regulations incorporate international human rights law, and that certain law reforms take place to bring them into conformity with Libya's obligations under international law, including the ML confiscation system[149].

Libya was governed by a tyrannical regime for more than 42 years with the absence of a constitution, a lack of democratic institutions and the absence of the rule of law provisions. The revolution started in 2011, changed to armed conflict and resulted in the collapse of both state institutions and the rule of law and spread chaos. All this has contributed to an increase in oil smuggling, and associated ML, as this study has explained above.

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[146] Anderson, M. (2013) International Money Laundering: The Need for ICC Investigative and Adjudicative Jurisdiction, Virginia Journal of International Law Association. Vol. 53, No. 3, PP 764-786 (p.765).

[147] Al Zaidi, M. Limits of internal and international prosecution for crimes: The International Criminal Court and the Egyptian revolution El-Ahram newspaper (2017). Available at: http://www.siyassa.org.eg/NewsQ/1581.aspx. (Accessed in 20/2/2017).

[148] Villalba, C. Ibid (2011 p.3).

[149] Human Rights Watch, report Ibid (2014).

With regard to the achievement of national reconciliation, which is the basis of transitional justice, in the case of Libya there are various challenges including the issue of accountability and justice, the issue of violence and terrorism, assassination and the proliferation of arms, the existence of an armed militia and party-political conflicts. These all contribute to making it difficult to apply the principles of justice, make reparations and achieve reconciliation. It is necessary to move to the stage where the wounds have healed and justice can be realized; when all violations files are opened and serious steps for redress and punishment can be taken[150].

The element of fighting corruption needs to be included in the transitional justice project as it is important in achieving a transition to democracy, stability and the prevention of tyranny. The uncovering of the truth is pivotal to the success in the struggle against corruption[151]. Alongside of this, institutions and certain laws must be comprehensively reformed if the sources of corruption are to atrophy; decision-making must be de-centralized and transparency in administrative procedures is essential[152]. In order to achieve this, an independent body that will develop and restructure institutions should be created; as should a time frame for implementation. There also needs to be an investigation into financial and administrative corruption so as to determine the necessary procedures for dealing with them[153]. These procedures should include administrative discipline or referral to the public prosecution. The independent body should also have the authority to propose the draft laws necessary to the successful achievement of its objectives.

In regards to financial crimes committed during the old regime, a general rule of attributing criminal accountability by bringing the accused before the public prosecutor should be implemented. This procedure of giving perpetrators a fair hearing could be accompanied by a process of reconciliation. This principle of transitional Justice allows movement from the stage of corruption and chaos to stability and improved conditions.

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[150] Sheikh,M. *The challenges of national reconciliation In Libya* after Arab future (2011 p.106).. Available at https://caus.org.lb/ar/2011 [Accessed in 25 May 2016]. (p.106).

[151] Mutua, M. *What Is the Future of Transitional Justice?* International Journal of Transitional Justice, Volume 9, Issue 1, March 2015, Pages 1–9 (2015 p.7)1.9

[152] See the guide for practitioners in post-conflict States Developed jointly with the United States Institute of Peace (2011 p.1) Available at: https://www.unodc.org/documents/justice-and-prison-reform/1183015_Ebook.pdfAccessed in 9/2/2016.

[153] Ibid. (2011 p.64).

Restoration of looted money will also help those countries suffering from institutional, economic and political turmoil to work more efficiently on this situation through the adoption of transitional justice.

This is precisely the case in post-revolution Libya where protests about people who worked in the old regime having public functions led to the passing of the Political Isolation Law (PIL) in 2013[154]; though this was later repealed by the Libyan parliament[155]. It was an attempt to bring those involved in crimes or financial corruption and administrative staff who worked in the Gaddafi regime before the judiciary. If the transitional government does not invariably use the principles of transitional justice to conduct the affairs of state, then it requires the people to be free of the desire for revenge through a process of national reconciliation if there is to be a transition from totalitarianism to a new democratic political system which is capable of achieving national aspiration This will not preclude from a fair trial those who committed crimes or fixed evidence, especially financial crimes, in order to recover money looted or smuggled abroad, when this cannot be restored without a court ruling.

2.8-Conclusion

In summary, this study notes that transitional justice can be used to establish the rule of law, to protect human rights and obligate countries that are undergoing transitions to implement their legal obligations against human rights violations; thus, it is a suitable theory which can be applied in this study,

Transitional justice involves a package of measures to be taken by a state that has emerged from conflict or revolution and suffered from serious violations of human rights. The main obstacle to its application is often the unwillingness of the government to undertake these measures. Often, past problems are very complex and cannot be resolved by a single procedure without any effort to uncover the truth or award compensation. For example, it may be considered necessary to punish a few perpetrators as a form of political revenge, and uncover the truth in isolation from efforts to punish the perpetrators. Furthermore, institutional reform can be considered without any real

[154] See the Full Text: Libya's Political Isolation Law 2013 Available at http://muftah.org/full-text-libyas-political-isolation-law/#.VrnBd_mLTIU (Accessed in 9/2/2016).
[155] See BBC News 2February 2015.Libya revokes bill which banned Gaddafi-era officials from office Available at: http://www.bbc.co.uk/news/world-latin-america-31104099. (Accessed in 9/2/2016).

intention of action by the state, which renders their words worthless. What could be regarded as compensation may be done without regard to judicial trials or truth-seeking and may be seen as an attempt to buy the silence of the victims.

Transitional justice faces some challenges in the implementation of its elements, such as the conflict between achieving justice or peace, identifying the victims and whether there are sufficient resources available to cover mechanisms like compensation, trials or institutional reform. In spite of these difficulties, using the elements of transitional justice is an appropriate approach to apply to studying and analysing issues relating to international financial crimes committed in Libya during the war and the transitional period. In addition, Transitional justice includes law reform to establish procedures to deter future offenses, address the violations anterior and punishing the corruptors.

Chapter Three: The Global Problem of Money Laundering.

3.1-Introduction

ML continues its dramatic growth as a global crime despite national and international efforts to counter it. According to Interpol, cooperation between the World Customs Organisation (WCO) and the US Immigration and Customs Enforcement (ICE) resulted in the seizure of approximately USD 3.5 million in 2009 (see Interpol report, 2014). Then, why is this crime seemingly so difficult to prevent? Therefore, this chapter attempts to give a comprehensive account of ML, and also examines the role of globalisation in opening up new avenues for criminal groups to launder money earned through criminal activities specifically in illegal oil selling. Furthermore, it will highlight whether the development of technology is a reason behind the growth of the ML crime in addition, the chapter focuses on the economic, social and political impacts of ML including the argument as to whether ML has a benefit to the domestic economy or not.

3.2-Objectives of Money Laundering

The first reason for laundering money is to hide the link between illegal proceeds and their illegal origin, such as gambling, prostitution, narcotics, etc. The other reason for laundering money is that the launderer after earning huge funds from drug trafficking or other offending, needs to invest the illegal proceeds through the financial markets, and also erase their connection with the underworld, creating a strong link with the business and financial world, and finally to integrate into the market economy. As a result, Taher has argued that they will not only access the financial system and place their money in the financial markets, but will also gain prestige and high position in the social and political world[156]. Similarly, Dhillon, *et al* suggested that criminals seek to launder the proceeds gained from organised crime to protect this illegal money from confiscation, and make it difficult for law enforcement agencies to prove that certain funds are the product of criminal acts[157]. According to Barry Rider the most serious crimes are motivated by greed and the prospect of acquisition of money and control over it[158]. He added that economic

[156]Taher, M. (2004) *Legislative confrontation of the phenomena of laundering money that are the proceeds of drug crimes*, PhD thesis, Cairo, University of Cairo, Egypt (2004).

[157] Dhillon, G *et al*. (2013) The viability of enforcement mechanisms under money laundering and anti-terrorism offences in Malaysia: An overview Journal of Money Laundering Control Vol, 16. No. 2, pp 171-192 (p.173).

[158] Rider, B.A.K. (2007) Recovering the proceeds of corruption, Journal of Money Laundering Control.Vol.10, No 1 pp 5 – 32 (p.9).

crimes are committed for the purpose of obtaining profits through illegal activities, from murder to drugs trafficking to fraud; these crimes have made many people rich at great cost to others. ML is a serious crime that effects the growth of economy as a whole; it hampers the social, political and cultural development of societies worldwide[159]. In the same way, Gilmore, believes that ML is a worldwide problem based, on two main factors. Firstly, due to the speed with which money or any other asset or economic value can travel around the economy of the countries or territories, the proceeds of crime change form so that they appear to have originated from legitimate sources[160].

Secondly, any discrepancy between national measures to fight ML can be potentially used by launderers, who might be motivated to find and to take advantage of the weakest link in the preventive/regulatory and punitive anti-MI. norms of a particular country by shifting flows of dirty assets to that country[161]. Given that ML. is a global problem, it requires an international, coordinated and harmonized response[162].

3.3-The Origin of Money Laundering,

According to Schneider the term 'ML' originated in the US in the 1920s or even earlier, when the US-based Mafia started using high cash turnover businesses, such as launderettes and carwashes, to hide the origin of their illicit money,[163]. Ering noted that one of the founding fathers of ML was Myer Lansky, who took advantage of the Swiss Banking Act of 1934 that created Swiss banking secrecy. Recently, new technological developments have offered money launderers worldwide the opportunity to launder their criminal funds[164]. Nowadays, according to Abel Souto there are many different types of sophisticated techniques to help them easily launder illegal proceeds, such as new payment methods for ML, specifically prepaid cards, and payment services on the Internet[165].

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[159] Rider, B.A.K. (ibid).

[160]Gilmore, W. (2003) *Dirty money: the evolution of international measures to counter money laundering and the financial of terrorism (Council of Europe* (p.11).

[161] Ibid (p.31).

[162] Ibid (p51.53).

[163]Schneider, F. (2010) Money Laundering and Financial Means of Organized Crime: Some Preliminary Empirical Finding**s**". Economics of Security Working Paper, Berlin: Economics of Security Vol 26 (p.2).

[164]Ering, S. (2011) Trans-border Crime and Its Socio-economic Impact on Developing Economies. J Sociology SocAnth Vol 2 pp 73-80. (p.75).

[165]Abel Souto, M. (2013) Money laundering, new technologies, FATF and Spanish penal reform. Journal of Money Laundering Control. Vol 16. No. 3. pp,266 – 284 (p.268).

Demetis has confirmed that money laundering complexity is the basis of the crime, as it is a generated prerequisite for concealing transactions and blurring the money trail. Thus, in ML there are different types of complexity that are propelling and exploiting the intrinsic patterns of systemic complexity. In this case, complexity becomes an absolutely critical mode of functioning for the money laundering system itself, rather than just a setting for something to be prevented or curbed. So, criminals intentionally force types of complexity on AML; such as the fast changes and the unpredictable ML strategy generated[166].

3.4-The Stages of Money Laundering

Cash smuggling and trade-based ML have become very popular with money launderers.[167] At the same time, banks normally focus on transactions, such as cash deposits and act as a control on ML trade. However, recent developments in banking technology, such as the introduction of mechanisation and computerisation in the banks and credit and debit cards, threaten bank transactions and lead to fraud through Internet banking; thus, risks have significantly increased. This section will describe the old process of ML, involving three stages, and include the electronic techniques that are used in these stages:

3.4.1 -Placement

Placement is the first stage of the ML process; this part is the process during which illicitly derived money is introduced into the financial markets. This is a critical stage in disposing of large cash sums by introducing them into the legitimate financial system. It is also the stage at which ML activities are most vulnerable to detection. There is no single route for ML in the placement stage, but a number of techniques are used, such as smuggling money into a country, and introducing large amounts of money into a bank account or entering into some commercial transactions[168]. Schneider considers that the placement stage could take place by secondary deposit through transferring money to a legal depositor, and thus criminal proceeds are converted into other assets via front men, who

[166] Demetis, D. (2010) *Technology and Anti-Money Laundering a systems theory and risk-based approach*. Edward Elgar (P.51).
[167] FATF Report. (2015) Money Laundering Through the Physical Transportation of Cash (p.3) available at http://www.fatf-gafi.org/media/fatf/documents/reports/money-laundering-through-transportation-cash.pdf accessed in 21 March 2018.
[168] Unger, B and Busuioc, E Ibid (2007, p.4).

trade with the account of a third party[169]. There are other ways to use secondary deposits, which is by forwarding the displacement of ML into life insurance companies or by means of pretend turnovers[170]. Further, money launderers use 'smurfing', where cash is divided into small deposits of money used to avoid AML reporting requirements and suspicion of ML crime[171]. The other method involves purchases of real estate with illegal proceeds, and then selling the property lower than its real value; the objective being to launder the money.

3.4.2- Layering

Layering is the second stage of the ML process where the launderer engages in one or a series of transactions to separate the money from its criminal origin[172]. In the layering stage, the first attempt is made to hide the actual source of ownership of the money through complex transactions between accounts, across states and international borders, purchases and resale of assets. The purpose of organizing these transactions is to hide the audit trail, and also disguise the origin of the proceeds. This is why perpetrators of this kind of crime look for a suitable environment, where there is a weak enforcement mechanism against ML, they use many different methods to achieve this, like offshore banks, shell companies, or tax havens in conjunction with offshore jurisdictions to make it virtually untraceable[173].

3.4.3 Integration

Integration is the third stage of the ML process. In this stage, the illicitly derived proceeds are integrated into the legitimate financial system, and made available for use without any suspicion[174].This stage complements the previous stages of hiding the illegal money by transferring it several times. This stage is the safest and the least risky due to it being difficult to detect the real source of the money that was laundered specifically, after the long-time period required for the earlier stages of the laundering, which could reach to several years. In this stage, the launderers of money could take the advantage of this illegal wealth and re-introduce this money into the national or international economy[175].

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[169]Schneider, F Ibid (2010, p.17).
[170] Ibid.
[171] Hunt, J. (2011) *The New Frontier of Money Laundering:* How Terrorist Organizations use Cyber information & Communication Technology Law.
[172]Madinger, J (2011). *Money Laundering: A Guide for Criminal Investigators*: Boca Raton, FL: CRC Press, Taylor & Francis Group (p.259).
[173]Ibid.
[174] Ibid (p.260).
[175]Seymour, ibid (2008 p375).

The launderers might reach a pinnacle of success at this stage through achieving integration into the legitimate economy, which means that the ML process has been successful in transforming the money and dividing it from the criminal activities which were the original cause of its existence; and thus, a reasonable justification has been obtained for ownership. This stage is the most open of the three stages.

This legitimisation of dirty money is the most dangerous to the national economy, due to the fact that it is very difficult for the security authorities to discover the steps of this crime; and by the fact that dirty money has been subjected to several levels of recycling which have obliterated its origins and any suspicious characteristics[176].The process of ML through these three stages shows that whenever headway is made in completing them, it becomes difficult to identify the real source of the illegal money that has been laundered.

There are many different ways to achieve this purpose: Most banks around the world use electronic means because of modern technological developments in providing financial and banking services. This has helped money launderers take advantage of these technologies and develop new methods of ML, such as credit and debit cards, and they have abandoned conventional methods, such as cash smuggling across national borders, as much as possible to avoid banking supervision and to make it almost impossible to trace sources of illicit money. This is because a series of complicated transactions can separate the money from its illegal origin[177]. For example, cellular telephones and sophisticated electronic systems, which have appeared recently, facilitate and accelerate transactions.

3.4.3.1-Credit and Debit Cards

In recent years, the use of credit and debit cards has grown, and become one of the most important ways for money launderers to integrate illegal money into the financial system. In this way, the launderer transfers the proceeds of crime into an international bank account using credit cards, and can also use credit and debit cards to make payments and transactions all over the world; such crimes are thus also related to technological

[176] Dhillon, G., *et al.* Ibid (2013 p. 147)

[177]Mustafa, K. (2008) *Money Laundering Offence Comparative Study*: Almarefe Organization Alexandria (p.157).

developments that have increased recently by using electronic banks to cover a range of transactions and activities, such as account processing, online banking, bill payment, point of sale card transactions and electronic money which allow for the easy global movement of money[178]. A huge increase in the number of cross border money transactions, together with the emergence of electronic banking, have provided new prospects for legal business activities that criminals exploit to launder their illicit proceeds[179].

3.4.3.2-Electronic Money

Electronic money is a new system, including the use of computer networks, the Internet and digital stored value systems. These include electronic money used for bank deposits, electronic funds transfer, payment processors, and digital currencies. Electronic money offers a number of advantages as a payment instrument; for example, according to Merlonghi, the conversion into conventional money or the transfer to another subject in the form of electronic value does not necessarily require the intervention of a banking or financial intermediary. Recently, electronic money has come to play an important role in the development of national and international trade, in particular electronic trading. It enables dealers to conduct their transactions and settle payments from anywhere, such as the home or office. Moreover, like traditional money, it is used for procuring products or services, and payment of expenses, such as bills and employee salaries[180]. However, electronic money has been turned from an effective means of trade development to an instrument used to commit crime, including fraud and ML. It is assumed that for the less advantaged, the development of electronic money and digital financial transactions represents a positive step on the road to economic progress that needs be taken into account[181].

Furthermore, electronic money, as a new payment tool, brings the advantages that it is easy and fast to move[182]. However, money launderers have not allowed electronic money

[178]Simser, J. (2012) Money laundering: emerging threats and trends. Journal of Money Laundering Control. Vol.16, No 1 (p. 46).
[179]Buchanan, B. (2004) Money laundering-a global obstacle Original. International Business and Finance. Vol.18, No 1(p.119).
[180]Merlonghi, G. (2010) Fighting financial crime in the age of electronic money: opportunities and limitations. Journal of Money Laundering Control Vol.13, No 3 (p.206).
[181]Bashir, H and Abraham, A. ibid (2011 p.27).
[182] Ibid (p.25).

to achieve its stated purpose. Rather, as it developed, they subverted its purpose and abused its advantages, for laundering purposes. According to the Working Group on Typologies Report, electronic money is used extensively for the purposes of ML as it is faster than using cash, which means that customers can use it remotely, and avoid being questioned by the customs authorities. Also, in this new way, money could be laundered. As such, this new electronic system of payments and funds transfers provide an opportunity for money launderers and tax evaders to conceal their illegal funds, which might be proceeds of smuggling oil. Thus, electronic money may be considered to have provided an important new tool for ML[183].

3.5-The effect of Money Laundering

ML as a global problem not only impacts on the growth of economy as a whole, but also the society and politics as suggested below:

3.5.1-The Effect of Money Laundering on the Economy

The most serious crimes are motivated by greed, and the prospect of acquisition of money and control over it. Economic crimes are committed for the purpose of obtaining profits through illegal activities which generated from the lack of reform of the accompanying economic departments and authoritarian rule in countries such as Libya[184]. ML and related behaviour threaten the soundness of an economy, and is a severe impediment to growth, which in turn could cause severe disruption to the national economy, with significant adverse consequences for development in a country. In all likelihood, this criminal activity will impact on foreign investment in a country, as companies decide to limit their business there[185].

The most important economic effects are the loss of public money and damage to the national economy. The huge increase in the volume of cross border money transactions represents new opportunities for money launderers to take advantage of legal business activities. According to Simson (2005), these represent risks to the soundness and stability of financial institutions and systems, with greater volatility of international capital flows, and a dampening effect on foreign investment at large. However, McDowell and Novis

[183] Working Group on typologies Risks of Electronic Money Misuse for Money Laundering and Terrorism Financing Moscow, Russia (2010, p.11)

[184] Leenders, R. Sfakianakis, J. Middle East and North Africa4 Global Corruption (2003, p.205) Available at: http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN008450.pdf [Accessed in 25 January 2015].

[185]Khrawish, H. The Impact of Anti-Money Laundering on Investment Funding: Evidence from Jordanian Financial Institutions 6 International Journal of Economics and Finance, Vol 6 No. 3 pp 227-238 (p236).

have argued that there has been an increase in the number of these illegal processes, which affect the international and national economy[186]. In the same way, Alhaty has argued that ML helps increase domestic production due to the flow of money into the local economy[187]. This means that Anti- ML efforts can have a damaging effect on commerce, especially in developing nations, in preventing money flowing into the national economy. Similarly, Aluko added that ML could lead to a sharp surge in financial activities. In other words, cash transfers can still be a useful way for investment in developing countries[188]. For example, illegal funds laundered by PEPs can be used to purchase products, e.g. agricultural products, which can be sold officially in agricultural markets, thereby accumulating official wealth.

On the other hand, Gilmore disagrees with this idea and considers that ML should be prohibited since it contains a negative influence on the financial sector, and, in general, even more on the socio-economic system. He adds that a second reason for taking legal actions against ML at the international level is that the proceeds of crime allows criminals to consolidate their economic power in the legitimate economy[189].

Crime must be tackled, however, not only because it is "wrong", "deviant", and "Injurious"[190], but because the proceeds it creates typically benefit the individual less than they damage society; estimates from the US place the net cost of crime in the region of $1trillion per annum[191]. ''Research suggests that as much as 80% of criminal proceeds are laundered[192]and hence without money laundering, crime would be dramatically less profitable, and the supply of crime would suffer an adverse shock''[193].

However, the negative effects of ML far outweigh any benefits derived from these illegal practices, even in the developing countries. For example, illicit money has a negative impact on the credibility of a state's economy, as it involves the overall economic

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[186] McDowell, J and Novis, G. (2001) The Consequences of Money Laundering and Financial Crime. Economic Perspectives. An Electronic Journal of the U.S. Vol. 6 No.2 (p.6).

[187]Alhaty, A. (2010) The Phenomenon of the Hidden Economy and Money Laundering, the Sources and the Effects - a study in a group of selected countries for (2008 - 1989) Journal of Economics and Management. Vol 81 (p.82).

[188] Aluko, A. (2011) *The Impact of Money Laundering on Economic, and Financial Stability and on Political Development of Developing Countries:* London, Institute of Advanced Legal Studies (p.13).

[189]Gilmore, W ibid (2003 p. 21).

[190] Ormerod, D. (2005) Smith & Hogan Criminal Law. Oxford: Oxford University Press.

[191] Reuter, P. Truman, E. (2004) *Chasing dirty money – The fight against money laundering.* Discussion paper, Institute for International Economics, Washington, DC

[192] Unger, B Ibid (2007).

[193] Killian J. et al (2015) Modeling the money launderer: Microtheoretical arguments on anti-money laundering policy International Review of Law and Economics 43.148–155

environment in which it is invested. Indeed, launderers ignore the economic viability of an investment, as their target is to engage the illicit money and recycle it through a legitimate enterprise, even though doing so may be contrary to existing economic rules and laws. Furthermore, ML leads to unequal competition between national and international investments, and impacts the domestic and international economy due to the negative effect on profitability[194]; thus, ML affects interest and exchange rates, as well as the movement of capital.

As a result, ML has a negative impact on the credibility of economic policy, and the stability of international financial markets. In addition, the presence or suspicion of laundered money results in reduced confidence in a domestic market. As such, businesses may decide to relocate abroad to a safer jurisdiction not affected by ML. This can lead to a decline in domestic production, and a rise in unemployment due to less employment opportunities in a shrinking job market[195]. In addition, according to a UN Report, the proceeds of drug trafficking amount to four times the size of the proceeds of legitimate trade[196]. Similarly, in countries such as, Bolivia and Colombia, according to some estimates, this amounts to the equivalent of the volume of legitimate exports; with an estimated $1 billion USD of criminal profits exchanged in the world's financial markets every day[197] and more than $1trillion transferred across the world daily; as the proceeds of drug trafficking can move very quickly between the countries indicated[198].

Although it can be easy to understand the effect of ML on the direct victims, those who lost funds as a result of the predicate crime, there can also be an even deeper impact on society as a whole[199]. As an example, money launderers seek to channel their illegal proceeds through front companies to hide the illegal source of such funds. Essentially, the

[194] Chatain, P. *et al*. (2009) *Preventing Money Laundering and Terrorism Financing: A Practical Guide for Bank Supervisors,* Washington (the World Bank) (p.171).
[195] Okunlola, O. (2014) Money Laundering: A Threat to Sustainable Democracy in Nigeria Journal of Economics and Sustainable Development Nigeria Vol.5, No 2 pp 85-98 (p.91).
[196]United Nations World Drug Report (2011, P.85) Available at: https://www.unodc.org/documents/data-and-analysis/WDR2011/WDR2011-web.pdf (Accessed in 17/02/2017).
[197]Francisco, F. (2005) The Numbers Game: Let's All Guess the Size of the Illegal Drug Industry**!** The Journal of Drug Issues No. 22, pp 185 -200 (p.188),
[198]Lilley, P. ibid (p.54)
[199]Schott, P. Ibid (2006, p.5).

operations of these kinds of companies are subsidised, and can afford to sell their products at less than cost, which will impact on the entire economy[200].

Finally, as a result, these illegal actions divert money away from the national economy and legal business activities, which will significantly harm the international economy.

3.5.2-The Effect of Money Laundering on Society

ML impacts on society as it may lead to unemployment. Money launderers introduce their illegal money into the financial market system in the form of investments in particular markets. Their objective is to complete a certain stage of ML. Once this is accomplished, the launderer suddenly moves to the next stage, i.e. transferring the money out of, or away from the financial markets, which in the case of large volume funds may lead to a collapse of the particular financial market[201]. Therefore, this creates mistrust in the markets, and introduces distortions in the economy; for example, launderers may buy marketable securities on international markets, but suddenly sell them. This activity leads to an inflation of investment and the escape of private capital out of the local economy to a foreign economy. Indeed, laundered money always escapes from its original jurisdiction or source, especially where an economic offence was committed. This leads to damage to the structure of the national economy, and causes investment instability, while reducing government tax revenue. This is therefore reflected directly on social conditions, and contributes to growing poverty rates. Moreover, the huge economic power arising from ML crimes and the huge surplus of funds accruing to criminals from ML has a corrupting effect on all elements of society, which can lead to the virtual take-over of legitimate government[202].

ML also has the most serious effect on violence as well as corruption and waste of money, which leads to serious damage to the economy and inefficiencies in the allocation of available economic resources in the country in both local and foreign jurisdictions. Therefore, the inequitable distribution of income and increased corruption may lead to lower social and economic welfare through higher prices and the diversion of resources

[200] Ibid (2006, p.6).
[201] Aluko, A and Bagheri, M. Ibid (2012, p.33).
[202] Ibid (2012, p.52).

to non-priority projects, unrelated to the real needs of individuals. This promotes distrust towards governing regimes and rising public discontent. As a result, the ruling system will be rejected by some people, and it is natural that in turn, leads to the emergence of groups that reject and may resort to violence and terrorism as a way of reform and in order to claim their rights[203]; as has happened recently in some Arab countries.

The other effect of ML on society is related to poverty, due to the unfair distribution of national income, and also increased corruption that makes many people rich at great cost to others, greatly increasing the crime rates in society, in relation to corruption, fraud, terrorism, and violence. However, it could be said that the proceeds of the crime, which are laundered and subsequent enjoyment of these funds by criminals, further fuel the crime cycle. Consequently, ML motivates other, different kinds of crimes and opens different ways to commit other crimes. Therefore, the growing crime rate affects social values, such as the values of work and production, due to money launderers not necessarily pursuing long term but rather short-term investments[204].Investments that simply allow the recycling of their illicit proceeds even if they entail taking a low rate of return, such as speculation in 'real estate' before leaving the project to collapse at the completion of the ML purpose, which finally leads serious damage to the national economic system.

3.5.3-The Effect of Money Laundering on Politics

The effects of ML crime are not only on the economy and society, but include the political arena. The cumulative effects of ML indicated above may lead to unrest with political consequences. ML may undermine security and disrupt the stability of society due to ML operations orchestrated by organised criminal gangs with the objective of causing coups and political unrest at times. In consequence, security spending will have to be increased to protect the political regime. Moreover, the process of ML often involves distortion of the democratic processes in the community, because this crime will lead to the election of illegal earners to seats in Parliament, councils, trade unions, and industry bodies. Similarly, they will continue to encourage all of the above to support their presence to continue in the process of ML, and continue to engage in criminal activities, including

[203]Mustafa, K Ibid (2008, p.59).
[204] Ibid (2008, p.58).

benefits and the resulting financial rewards[205].

The migration of workers has been increasing nowadays more than ever before, as this crime is related to globalisation. Fischer noted that migration is due to greater opportunities for work, particularly in the developing countries, and helps to increase the movement of money between countries[206]. It should be noted that Libya has become one of the main transit points for trafficked workers and migrant workers into Europe, resulting in huge loss of life[207].Moreover, the numbers of people living in regions with some of the worst forms of poverty, including Sub-Saharan Africa and the Middle East, have increased since the World Trade Organisation was established. Similarly, the gap between the rich and poor has widened worldwide during the World Trade Organisation decades, instead of generating income convergence between rich and poor nations[208].In addition, according to Bashir and Abraham, there are no limits to the effects of ML, which are universal and include causing breakdown in government structures where launderers turnover large illegal proceeds, and use the illegal money to penetrate and undermine government structures.

3.6-The relation between Money Laundering and the oil industry

Oil is one of the main and vital resources in many industries; and represents the world's largest industry in terms of dollar value[209]. Oil industries involve different types of processes, such as exploration, extraction, refining, transporting and marketing. So, what is the relation between the petroleum industry and ML? How does it take place? This study has so far presented ML based on crimes seemingly unrelated to oil. Some countries that produce petroleum are rich, but the populations are poor. How can this happen? Indeed, corruption has taken place, often in collusion with the companies, which has prevented the investment of the proceeds of petroleum into infrastructure of the country they transfer them into individuals' accounts, related to the governments[210].Corruption

[205] See Financial Intelligence Unit, Money Laundering United Republic of Tanzania Ministry of Finance 2014.
[206]Fischer, S. (2003). Globalization and its Challenges. American Economic Association in its American Economic Review Vol 93 No. *2* (p.31).
[207]Hamood, S. (2006). African *Transit Migration Through Libya to Europe: The Human Cost.* Forced Migration and Refugee Studies, Cairo, the American University of Cairo, Egypt. (p.5).
[208]Birdsall,H. *et al*. (2005).How to Help Poor Countries, foreign affairs. Vol 84, No. 4 (p.141).
[209]Obioma, K. (2012). Corruption Reduction in the Petroleum Sector in Nigeria: Challenges and Prospects Mediterranean Journal of Social Sciences. Vol, 3 No. 15 (p.100).
[210]McFerson, H. (2009). Governance and Hyper-corruption in Resource-rich African Countries. Third World Quarterly. Vol 30, No. 8 (p.1530).

in these countries is associated with lack of transparency and accountability about the oil proceeds by some governments, where these operations are processed under an official government umbrella. Despite international efforts against corruption, these attempts have arguably failed[211]. The process for this illegal action could take place in one of two ways: firstly, the illegal sale of oil; and secondly through corruption in the petroleum industry. The first is accomplished through bribery by companies of government officials to facilitate the entry of these companies into the country's oil sector. Obioma observed that the reason behind the corruption in this industry included "greed among the workers, management and stakeholders in the industry, the inordinate ambition to get rich quick, enjoy financial security, and improve one's welfare, with extremely low risk of sanctions. The exogenous corruption comes from the government officials in selecting contractors to build the sector infrastructure, through the process of selecting a less competent contractor because of the desire to make personal gain by government officials[212]. For example, the American business consultant James Giffen was indicted by US prosecutors on federal bribery charges for channelling over US$78m in payments from some western oil companies to senior government officials in Kazakhstan, in order to allow these companies to work in the Kazakh oil industries[213].

The second way is theft of oil; for example, Katsouris and Sayne suggested that an average of 100,000 barrels per day in oil were stolen in the first quarter of 2013 in Nigeria[214]. This figure does not include what may happen at export terminals, or theft direct from the wellheads. In the same way, several Libyan people have become rich through smuggling oil through ports to some neighbouring countries[215]. There was also severe damage to institutional structures and the regulations, after the Libyan revolution 2011 which helped increase oil smuggling, and therefore ML, as this study has described in Chapter 1. Recently, in Libya, attempts were made to smuggle oil from Libya's militant-controlled oil facilities, as a result the UNSC adopted a resolution allowing the Security Council's member states to inspect ships suspected of carrying illegal crude oil from Libya in

[211] Lewis, J. (2007) The Resource Curse: Examining Corruption in the Extractive Industries perspectives on Global New York University Vol.2, No. 1, pp 2-11 (p.6).
[212]Obioma, K. Ibid (2012, p.101).
[213]Al-Kasim, F.*et al*. (2008). Grand corruption in the regulation of oil Anti-Corruption Resource Centre Vol. 4 No.2 (p.9).
[214] Katsouris, C and Sayne, A. (2013) Nigeria's Criminal Crude: International Options to Combat the Export of Stolen Oil London Chatham House (p.4).
[215]Shaw, M and Mangan, F. Ibid (2014, p.27).

international waters. Furthermore, the UNSC adopted sanctions against illegal crude exports. Thus, these kinds of crimes need national and international cooperation to curb them.

3.6.1-The role of corruption in facilitating the activities that associated with money laundering and the sale of oil.

Even though this study has presented ML as a phenomenon linked to financial or economic crime, it has also been described as a tool for organised crime, especially since it is related to other crimes, such as drug trafficking, terrorism and corruption. In relation to corruption, Aguilera and Vadera have defined "organisational corruption" as a "crime that is committed by the use of authority within organisations for personal gain"[216]. Hence, while corruption typically involves persons, who are in high public office, it may also involve any public or indeed private sector employee, who misuses his authority to achieve personal gain.

Corruption has severe effects on the national and international economy. Indeed, corruption poses a significant danger to the stability of social and political institutions[217]. Nevertheless, financial institutions should increase the level of (CDD) for those customers identified as (PEPs) because they could pose higher risk than others. PEPs are defined as important people in a country, including any person who is working, or has worked in government. According to Johnson, these are typically presidents or heads of state, members of executive branches of government, members of parliament, or any senior political person. Hence, their bank accounts should be monitored to ensure no ML occurs[218].For example, the government of Brazil requested that the account belonging to Paulo Maluf, a deputy member of the Sao Paulo State, be frozen, claiming that he looted money from Brazil, as described by World-Check[219]. Additionally; they must have the means to detect the crime using available information, and also disclose if there is any

[216]Aguilera, R.V., Vadera, A.K. (2008) The dark side of authority: antecedents, mechanisms, and outcomes of organizational corruption Journal of Business Ethics, Vol. 77, No. 4, pp, 431-49 (p.433).
[217]Dion, M. Dion, M. (2010) What is corruption corrupting? A philosophical viewpoint Journal of Money Laundering Control Vol. 13, No. 1, pp 45 – 54 (p.45)
[218]Johnson, J. (2008) Third round FATF mutual evaluations indicate declining compliance, Journal of Money Laundering Control Vol. 11, No. 1, pp 47 – 66 (p.51).
[219]World-check. Refining the PEP definition: Global Objectives Limited Edition II (2008, p.12). Available at http://www.worldcheck.com/media/d/content_whitepaper_reference/Refining_the_PEP_Definition_-_EditionII.pdf [Accessed in 5 Nov 2016].

suspicion related to ML[220].

However, the UK and USA have different definitions for PEPs. The UK has a specific definition for a PEP, which includes any person who has been working in a prominent public function in the last year, such as head of state, member of government or Member of Parliament; and may not necessarily be an entity, as noted by HM Revenue & Customs (2010). In contrast, the USA has a wider definition of a PEP, which includes any present or former senior foreign government official or senior foreign political party member, or senior executive in a foreign organisation or foreign government-owned commercial enterprise[221].

Corruption is a worldwide crime; it is not limited to some countries but afflicts all nations as it is related to valuable natural resources. Wherever government officials 'primary aims are to achieve personal financial gain, and there are weak political institutions and rule of law, there is a prevalence of different types of corruption. According to the Corruption Perceptions Index, Nigeria and Angola were ranked as having high levels of corruption in 2007 as well as being oil rich countries[222].Corruption has also prevailed in many other African and Asian countries; and illegal oil sales in countries such as Saudi Arabia, Russia, Nigeria and Angola have been valued at some $8 billion each year which ended up as laundered money[223]. Russia also suffered corruption at the end of 1980s and beginning of 1990s; and Russian exporters often received generous kickbacks in offshore bank accounts from European clients for selling oil, gas, gold, diamonds, aluminium, pulp and timber at low prices[224].

Corruption has also taken place in Iraq, and it increased in 1990s, due to the war. Between1991 and 2003 approximately 900 million barrels were smuggled from Iraq[225].

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[220]Global compliance, AML/CDD/CFT POLICY for Prevention of Money Laundering /Terrorist Financing: (2011) Available at: http://www.hbl.com/downloads/pdf/regulatory-compliance/aml-cdd-cft-policy.pdf [Accessed in 30 April 2014].

[221]Okpaga, A and Chijioke, U. 8 (2012) EFCC and Politically Exposed Politicians in Post 2011 Elections: An Analysis of Governors who lost Elections 1 Journal of Business and Management Review Vol.1, No 8 pp 74-98 (p.80).

[222]Transparency International Corruption Perceptions Index 2011 Available at http://www.ethicsworld.org/publicsectorgovernance/ticpi.php (Accessed in 4/11/2014).

[223]Baker, R. (2005) Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System. John Wiley and Sons, Inc. (p.167).

[224] Baker, R ibid (2005 p.34)

[225] Volcker, *et al*. (2005). Management of the Oil-for-Food Programme. Independent Inquiry: Committee into the United Nations Oil-for-Food Programme, Report of the Commission Vol.1, pp 1- 103. (p.34).

Additionally, Iraq gained illegal proceeds of more than $8 billion between 1997 and 2003[226].

The prevalence of this crime meant that the Transparency International's Corruption Perception Index 2004, classified rich countries which produced oil, namely: Angola, Azerbaijan, Chad, Ecuador, Indonesia, Iran, Iraq, Kazakhstan, Libya, Nigeria, Russia, Sudan, Venezuela and Yemen as among the most corrupt countries. The head of Transparency International added that these countries lose their wealth through corruption by paying bribes at home and abroad, including to the local officials and the oil executives[227].The World Bank has estimated that approximately $1 trillion is paid annually in bribes[228].Thus, many countries that produce petroleum are rich, but their populations face abject poverty[229]. Peeran *et al* confirm that Libya is one of the world's major producers of petroleum; nevertheless, the majority of the population live in considerable poverty[230].

Corruption in these countries is associated with a lack of transparency and accountability about oil proceeds by some governments, where these operations are processed under a government official's umbrella. This happens despite international efforts against corruption. For example, referring to events in Congo's Brazzaville, McFerson stated that: ''In 2005, dealing with a private company, Africa Oil & Gas, run by Denis AM Gokana, the head of Congo's national oil company and special adviser to President Sassou-Nguesso, arranged for an oil shipment to the United States for $53 million. The Congo government received $48.8 million, and Africa Oil & Gas pocketed $4.2 million''[231]. A French court convicted Abacha's oil Minister, Dan Etete of ML for using 15 million Euros in funds obtained fraudulently to buy properties in 1999 and 2000; this included a chateau in northwest France, a Paris apartment and a luxury villa in the chic Paris suburb of Neuilly[232].

Corruption has severe effects on the national and international economy. Indeed, this

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[226] Volcker, *et al* (ibid p.40).

[227] Transparency International Corruption Perceptions Index 2004 Available at: http://www.transparency.org/research/cpi/cpi_2004 (Accessed in 4/11/2014).

[228] See the World Bank: Fraud and Corruption Available at: http://live.worldbank.org/fraud-and-corruption Accessed 5/11/2014.

[229] McFerson, H. (2009) Governance and Hyper-corruption in Resource-rich African Countries. Third World Quarterly. Vol 30 No. 8 pp 1529-1547 (p.1529).

[230] Peeran, SW. *et al*. (2014) Oral health in Libya: addressing the future challenges Libyan Journal of Medicine Vol 9 pp 1-7 (p.1).

[231] McFerson, H. ibid (2009 p.1355).

[232] See the Nation. French govt pardons former Petroleum Minister Etete By Adebisi Onanuga 2014, Available at: http://thenationonlineng.net/french-govt-pardons-former-petroleum-minister-etete/(Accessed in 29/7/2017).

crime has made many people rich at great cost to others. The outcomes of these illegal actions are social harm and money diverted from economies and legal business activities. Indeed, corruption poses a significant danger to the stability of social and political institutions, and there is evidence that corruption is the main reason behind the political changes that happened in some countries[233]. In North Africa for example, large funds were smuggled from countries such as Libya. These funds were later frozen by UN decisions. Although there is an attempt to change the Libyan regime to a democratic one, the result has been violence and many difficulties facing the elected institutions when they try to instigate reforms. Therefore, this paper will explore why corruption still exists in Libya even though there were regulations issued against corruption. It will also focus on the role of corruption and ML in limiting growth and improvements in the standard of living in these oil-producing countries.

In this way, corruption and money laundering have a mutual effect (which mean each one has an effect on the other); and Gallant considers that the enormity of illegal proceeds could have a negative effect by diminishing the deterrent capacity of traditional criminal sanctions, whereby a loss of liberty through a term in prison becomes an acceptable cost given the financial gains to be obtained upon release. Thus, criminal sanctions become a cost of doing business, an expense that is easily absorbed by the revenues[234]. He adds that illegal proceeds could be contributing to causing corruption, through using resources furnished by the holder to infiltrate and pervert law enforcement agencies and political and judicial institutions[235]. Regarding the nexus between corruption and money laundering, Liew argues that money laundering does not necessarily precede corruption, which in essence means that there would still be corruption without money laundering[236]. In Libya Oil and oil derivative smuggling constitutes one of the means of ML crime in Libya. Oil was smuggled through Zuwara to Malta and Tunisia, because the oil derivatives were being subsidised by the government[237]. There are also practices which involve transferring billions of dollars to safe areas across the world - sums which were later

[233] Rosenstein,J. Oil, (2005) *Corruption and Conflict in West Africa The Failure of Governance and Corporate Social* Responsibility Kofi Annan International Peacekeeping Centre Accra Ghana (p.19).
[234] Gallant, M. (2005) *Money Laundering and the Proceeds of Crime – Economic Crime and Civil Remedies* Edwards Elgar (P.4).
[235] Ibid (2005 P.5).
[236] Liew, ibid (2002).
[237] Shaw, M and Mangan, F. Ibid. (2014 p.27).

frozen by the Security Council resolution 1973 (2011)[238]. For example, in 2011 £2 billion were frozen in the UK, and $60 billion elsewhere, as this study has stated above. There is corruption in the drawing up of contracts for exploring petroleum, with companies that want to penetrate the Libyan markets[239]. The investment of huge capital sums overseas without control and the smuggling of oil, such as the attempt that was made to smuggle oil from Libya's militia-controlled oil facilities on March 8th, 2014, have been well-documented.

According to Reuters (2011), approximately five million barrels of oil with a value of nearly half a billion dollars, disappeared in 2008. In 2011 £2 billion contained in 26 Libyan accounts were frozen by the UK, as was $60 billion of the Libyan Investment Company's money held worldwide by the British bank HSBC[240]. Furthermore, Alfahlah reports on a case where an Egyptian bank received a transfer of $1,650,000 to the account of a navigation services company from one of its European counterparts. Although the bank requested information about the client who had ordered these funds to be transferred, no such information was ever received[241]. This transfer was for the customer of a Libyan bank. However, as the money was never transferred the case was not brought before the judiciary, and as there was no judgement issued it was not possible to know the Libyan judiciary's perspective[242]. Moreover, a lot of money was smuggled both before and during the 2011 revolution and this clearly constitutes the crime of ML[243]. Oil smuggling or artificially lowering oil prices constitutes corruption and the Law of Libya website reports that during the Gaddafi's regime, oil was re-priced at less than its real price and sold on[244]. The purpose of selling the smuggled oil derivatives for less than the real price was to encourage the smugglers to participate in this risky situation; furthermore, its

[238] See the Resolution of the Security Council No.1973 (2011) that Adopted by the Security Council at its 6498 the meeting, on 17 March 2011 Available at: http://www.nato.int/nato_static/assets/pdf/pdf_2011_03/20110927_110311-UNSCR-1973.pdf (Accessed in 12/2/2016).

[239] Obioma, K. (2012) Corruption Reduction in the Petroleum Sector in Nigeria: Challenges and Prospects Mediterranean Journal of Social Sciences. Vol.3, No 15 pp 98-107 (p.101).

[240]Diab, O. (2013) Is reclaimed looted money assets of contraband from Egypt? Reconciliation and institutional provisions of innocence and corruption deals: Economic and Social Justice Unit Cairo (p.16).

[241]Alfleah, M. Alfleah, M. (2012) *Phenomenon of Money Laundering Between the Spreading and the Confrontation*: Bengasi Dar Al-kotob Alwatnea Libya (p.133).

[242] Ibid (2012 p.141).

[243] Ibid.

[244] Law of Libya. The previous contracts in the National Oil Corporation, the state-owned Libyan Available at: http://www.lawoflibya.com/forum/showthread.php?t=21353.(Accessed in 4/11/2012).

price in Libya was also too low. At nightfall, there are many smugglers who fill ships with fuel in western Libya and smuggle these oil materials to Italy[245].Here 27 fuel stations were closed in 2017 due to their participation in the smuggling of oil derivatives, which were an estimated 27.31 million litres[246].Evidence of this is supported by the UN decision concerning freezing the Libyan smuggled funds, issued in Resolution No. S/RES/1970 (2011)[247].

All this is evidence shows that ML was taking place by means of smuggling. However, the interviews also revealed how oil smuggling has taken place in Libya, the legal adviser at National Oil argued that the smuggling oil from the oil ports could not possibly be a means of ML, because the exportation of oil was limited to certain institutions, which had all signed contracts before the exportation. Furthermore, they had also designed their factories to work with this kind of oil and he thus considered that: ''*the selling of oil is by international institutions to organisations that have been identified in advance, so illegal oil operations are impossible because of the difficulty in selling it (illegally acquired oil)*''[248].

However, there is strong evidence[249] to suggest that oil smuggling has been used as a means of ML, and that rather than abating after the end of the Gaddafi's regime, ML continued under many different guises, such as oil smuggling, as mentioned above. Sea routes have been used to smuggle subsidized goods including oil, and people have exploited smuggling as an illegal business to improve their standard of living. The transparency team for Libya (2010) confirmed that the weakness of Libyan employees 'salaries and disparity in income distribution are clearly some of the reasons for the prevalence of corruption was because people were seeking to raise their standard of living. The law relating to Libyan employees' salaries that was issued in 1981 was a reason behind the low salaries which were inadequate to meet the basic needs of staff. This caused them to invent different ways to improve their incomes which included illegal

[245] Mannocchi, F. Ibid (2017).
[246]See the Monthly Report Libyan Organization for Policies and Strategies. Ibid.
[247]See Security Council Resolution No 1970 (2011) Available at: https://www.icc-cpi.int/NR/rdonlyres/081A9013-B03D-4859-9D61-5D0B0F2F5EFA/0/1970Eng.pdf (Accessed in 21/01/2016).
[248](Official National Oil Corporation employee interviewed 18 August 2015).
[249] Diab, O. Ibid (2013 p.16).

means such as bribery and other forms of corruption,[250]as this study has discussed in Chapter 7.

Idrissi, the former head of the FIU in the Libyan Central Bank has stated that no ML operations were recorded in Libya, as the former regime wanted to demonstrate that Libya has complied with international standards[251]. However, the law relating to ML falls short of international standards and knowledge of the law is limited[252].

Evidence of crime and to know the size of this crime is in the answer to the relevant interviews questions from Official Financial employee 2 who confirmed that there were large amounts of funds which were smuggled and then frozen when he stated: *"About the money that was smuggled and then frozen – well, its volume was estimated at approximately seven billion DLY"*[253]. This statement is confirmation that the smuggling of funds has taken place as a way of laundering money in Libya.

The type of ML in Libya related to the smuggling of oil derivatives to neighbouring countries is a crime concentrated in the border areas. In an attempt to mitigate high prices and help the poorer class of society, the Libyan government subsidised essential consumer goods by an estimated 12,400 million DLY, estimated as approximately $15,500 million, in 2013. Fuel subsidies formed part of this initiative. During the interviews, some of reasons behind this crime were clarified, the Official National Oil Corporation Employee remarked ''*so the provision of subsidy for oil derivatives has encouraged some people in Libya to smuggle it in order to earn the difference between the international price of the oil and the local, subsidized price*.''[254] At the same time, the poverty in neighbouring countries has meant that there has been a demand by the people there for these cheaper oil derivatives. The National Oil Corporation Employee added that: ''*the illegal selling of oil derivatives is taking place through distribution stations to the neighbouring countries''*[255]. Therefore, this facility is helping to smuggle oil derivatives; and I also believe that another reason for this type of smuggling is that some

[250] Transparency team to Libya: "Managerial revolution" based on "administrative corruption" in Libya 2010 Available at: file:///C:/Users/Owner/Downloads/1262.pdf. (Accessed in 3/11/2014).
[251] Idrissi, K. (2012) There is no crime called money laundering offence without a predicate offence: Banks Journal issued from Public Information Office of the Central Bank of Libya. Vol. 6, No. 2, pp 1-8. (p.3).
[252] Idrissi, K. Ibid.
[253] (Official Financial Employee No.2 interviewed 12 August 2015).
[254] (Official National Oil Corporation Employee interviewed 18 August 2015).
[255] ibid.

Libyan people are looking to improve their the incomes in this way due to the law on Libyan employee's salaries issued in 1981. Therefore, oil smuggling has been used in order to earn the difference between the international and local price, which has had a negative effect on the local economy and maintaining a standard of living has become difficult due to lack of provision of the fuel[256]. Additionally, oil smuggling crime has made some people rich at the great cost to others, which has had a negative effect on the social situation as well[257].

The other problem that has been identified is that there is no control on the selling of oil; and the smuggling of oil derivatives is taking place without being observed by the competent institutions like security and customs. As the Official National Oil Corporation employee remarked: "*Security is obtained through observation of the border and through the link between the Customs Department and the border ports''*[258].

Furthermore, Official Financial Employee1's answers revealed that there were not many cases of ML crime through the illegal selling of oil that had been registered: *''...oil smuggling did take place one time through a vessel that shipped oil from the port of Zuwara and headed to Malta, where it sold the shipment to another vessel in 2015''*[259]. Also, there were unsuccessful attempts made to smuggle oil, as Official Financial Employe3, remarked: *''...there was an attempt to smuggle oil through the gateway that was stopped in international seas in 2014*,''[260].

Additionally, the policies used to manage the country that were adopted by the 'Popular Revolution' that started in 1973, involved radical changes to Libya's system of governance. Corruption did not stop in Libya, and continued after the Libyan revolution. The end of Gaddafi's regime also did not mark an end to corruption, and it still exists in many forms, for example the smuggling of oil to the neighbouring countries. The attempts to develop and adopt legislation that works against this crime will be discussed in the following sections.

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[256]Libya Almostakbal. Libya banks raise commissions. Available at: http://www.libya-al-mostakbal.org/10/12661 (Accessed in 14/6/ 2017).

[257]See the Monthly Report Libyan Organization for Policies and Strategies Ibid.

[258] (Official National Oil Corporation Employee interviewed 18 August 2015).

[259] (Official Financial Employee No.1, interviewed 12 August 2015).

[260] (Official Financial Employee No.3, interviewed 12 August 2015).

Although Libya enacted the CMLA (2005), this has not been effective in preventing ML crime, as this crime has increased, according to reports which confirmed that the smuggled oil reached a value of 21.895 million DLY, in March 2017.[261]The smuggling of fuel from Libya is enough for approximately 40% of the needs of the Tunisian market[262]. As the Official National Oil Corporation Employee remarked: ''*...so the provision of subsidy for oil derivatives has encouraged some people in Libya to smuggle it in order to earn the difference between the international price of the oil and the local, subsidized price*.''[263]The Official National Oil Corporation Employee confirmed that: "*the illegal selling of oil derivatives is happening through distribution stations to neighbouring countries*"[264]. Similarly, Judge 7.1, added: "*There is no security in the country and the spread of chaos helped to allow and increase the crime; and the illegal proceeds could be hidden by buying real estate and transferring ownership abroad"*[265]. Similarly, Official Financial Employee 8 added: "*The sale of illegal oil derivatives is happening through smuggling to neighbouring countries. The cause is the poverty in these counties and the low price of the oil derivatives in Libya compared to the price in these neighbouring counties"*[266].

These answers reveal how ML has taken place, and how it has given rise to significant losses in the proceeds of Libyan oil, due to the lack of any proper monitoring of the system of oil selling. In the following section, the aim is to identify gaps in the application of the law relating to ML which need to be filled in order to criminalise all the means of ML. The absence and insufficiency of these regulations will be explored next, and these regulations will be shown not to have covered all ML operations.

As previously stated, the illegal oil selling of Libyan oil perpetrated by official employees is commonplace in Libya, thus making ML a global problem. The oil regions and the oil export ports in Libya are under control of armed factions and have seen major bouts of violence and a high degree of tension, as these ports continue to close over the last few years. That led to most people in this region living in abject poverty, despite residing in a region that has the largest oil output. The armed factions conditionally open oil exporting

[261]See the Monthly Report Libyan Organization for Policies and Strategies Ibid (2017 p.10).
[262] Ibid.
[263](Official National Oil Corporation employee interviewed 18 August 2015).
[264] Ibid.
[265] (Judge No.7.1 interviewed 27 August 2015).
[266] (Official Financial Employee No.8, interviewed 13 August 2015).

ports to allow oil to be exported, and for this they obtain a substantial amount of money and smuggle this illegal money overseas.

The head of National Oil argued has confirmed that a strategy has been used by armed factions to obtain a million DYL daily by claiming that they guard the oil institutions with 22,800 personnel, while the real number is only a thousand. He confirmed that they had smuggled 40 thousand litres of oil derivatives and added that another smuggling operation of oil derivatives was being carried out by armed factions from the Zawiya Oil Refinery[267]. Further in 2013, approximately 4 million was given by the Prime Minister as a bribe to the head of the armed factions, Ibrahim Jadhran as an inducement leave the oil institutions[268].

In the UK ML crime has taken many forms, including corruption. For example, there is corruption in the drawing up of some contracts.[269] This could be by use of third-party intermediaries such as agents or consultants or by giving gifts or providing meals, entertainment or travel to government employees, which violate the UK Bribery Act[270]. The UK has therefore requested the companies working in oil, gas, mining and forestry who are registered and EU-listed to report their payments annually to their governments worldwide, starting from early 2015, country by country and project by project[271]. The UK is used by some corrupt foreign politicians as a safe haven for their illegal proceeds; they view London as a channel for laundered funds because there's a lot of property to be bought. The money enters London via legal companies offshore, which is the weak point in this system due to the ease of creating a UK company via the Internet and even concealing the property[272]. London is a major trading centre for oil from West Africa; and it is estimated that London has been used for laundering around $470 million as proceeds from Congo's oil. In this instance, the Congolese government had been able to hide its corruption through a series of companies. One of these was registered in the UK, the National Oil Company of Congo, which sold oil at very low prices to a series of 'shell'

[267] AL MARSD. SUNALLAH. Ibrahim Jadhran fraudulent and inflate the number of fighters to get one million dinars a day after all the disasters that caused them. Available at: https://almarsad.co/2016/09/03 (Accessed in 18/7/2017).
[268] See Exclusive and documented reality of bribery, Ali Zidan + Naji Mukhtar + Salem Jdharan Available at: http://aljamahir.amuntada.com/t13468-topic (Accessed in 18/7/2017).
[269] Talani, L. (2011) *Globalization, Hegemony and the Future of the City of London* Springer, (p.188).
[270] See EY. Managing bribery and corruption risks in the oil and gas industry EYGM Limited (2014 p.14).
[271] Ibid (p.4).
[272]Talani, L. (2011 p.187).

companies[273]. At the same time, the Realistic estimates put the value of money laundering through the UK at up to hundreds of billions of pounds sterling annually[274]; and in 2017 the Annual Fraud Indicator estimated that fraud cost the economy £190 billion per year and there were 3.4m fraud offences in 2016–176 – almost a third of all crime[275].

There is another case related to the UK's 'shell' companies, an estimated $1 billion dollars was laundered through a network of companies; some of them had not officially completed their registration in the UK and some being registered elsewhere[276]. More than $1.3 billion was stolen and laundered by former Nigerian dictator, General Sani Abacha; this illegal operation was done moreover through 23 London- based banks, which processed money suspected of being looted from the Nigerian treasury, Barclays alone having handled more than $170 million of these funds[277]. Walker adds that the flow of money generated and laundered in the same region of the world may actually involve international transfers (e.g. a flow from the UK to Switzerland would be included in the internal figure of $985bn for money generated and laundered in Europe)[278].

ML could be one of the most serious impairments to the UK economy and its reputation, due to hundreds of billions of pounds being laundered through the UK banks and their subsidiaries annually. These large illegal proceeds which might be from oil sector are obtained through organised crime and corrupt PEPs[279]. Thus, according to the National Crime Agency (NCA), ML takes place in two ways: Firstly, by moving money through the UK banks, using an agency to transfer the money in smaller amounts to avoid detection. Secondly, there is high-end ML, which uses the bank system to launder money in operations that involve the largest values[280].

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[273] Ibid.
[274] See National Crime Agency Annual Report and Accounts 2017–18 available at http://nationalcrimeagency.gov.uk/publications/915-nca-annual-report-account-2017-18/file accessed in 26/11/2018. (P.10).
[275] ibid. (P.11).
[276] Ibid (p.188)
[277] Ibid.
[278]Walker, J. Ibid (1999 p.33).
[279] NCA. Money Laundering Available at: http://www.nationalcrimeagency.gov.uk/crime-threats/money-laundering (Accessed in 24/2/2016).
[280] NCA. National Strategic Assessment of Serious and Organised Crime (2015 p.21) Available at: http://www.nationalcrimeagency.gov.uk/publications/560-national-strategic-assessment-of-serious-and-organised-crime-2015/file Accessed in 24/2/2016.

Some money launderers have obtained their illegal funds by the most common means of transferring money, which is drug trafficking, because this activity does not leave any documentary trace. At the same time, according to Ryder, the "total quantified organised crime market in the UK is worth about £15 billion per year as follows: drugs (50 per cent); excise fraud (25 per cent); fraud (12 per cent); counterfeiting (7 per cent); organised immigration crime (6 per cent)"[281]. Other ways of ML that have taken place in the UK are to do with levels of corruption, some of which relate to the immigration service[282]. The EU observer has remarked that in Europe, corruption results in losses of approximately €120 billion annually[283]. Specifically, defence contracts are an opportunity for corruption; and it is estimated that $20 billion dollars are lost per annum due to corruption related to these contracts[284]. Additionally, ML in the UK could take other forms "these range from complex financial vehicles and tax havens through to property investments in London, to easily transportable and high value jewellery"[285]

Tax evasion is defined by Barne-Aldred, C.W.*et al* as ''i.e., not reporting sales revenue to tax authorities''[286]; and it is an illegal practice in all countries. It has a negative impact on local economies because it reduces the effectiveness of the financial policies pursued by governments for the purpose of raising the growth rate and improving the distribution of income. Although, the UK attempts to prevent ML in whatever form, even tax evasion; according to the NCA the UK loses approximately £5.4 billion of UK tax *revenues per annum* to organised crime [287].

The laundering of global money in the UK can be conducted through the luxury housing sector; as it is possible to launder a large amount of money in one go by investing in this sector. According to information reported by the *Financial Times*, the volume of 'suspicious' transactions in home buying, through external companies since 2004 has amounted to £180m of UK property; and been subject to criminal investigation as the

[281]Ryder, N. (2011) The fight against illicit finance: A critical review of the Labour government's policy, Journal of Banking Regulation. Vol.12, No 3 pp 252-275 (p.254).
[282] Rider (p.11).
[283] See the EUobserver€120 billion lost to corruption in EU each year By NIKOLAJ NIELSEN Available at: https://euobserver.com/justice/119300 Accessed in 10/12/2016.
[284]Transparency International Defence and Security (2010) Available at: http://www.transparency.org/topic/detail/defence_security (Accessed in 24/2/2016).
[285]See Proceeds of Crime Fifth Report. ibid (p.36).
[286] Barne-Aldred, C.W.*et al*. (2013) National culture and firm-level tax evasion, Journal of Business Research. Vol. 66, No. 3, pp 390–396. (p.391)
[287] See the National Strategic Assessment of Serious and Organised Crime ibid (2015 p 23).

suspected proceeds of corruption.[288] These deals have been transacted through buying housing that has cross-links with foreign firms and political persons[289]. In the same way, it has been confirmed that some luxury housing has been bought by Russian money launderers who have directed their money into the UK through 'front companies', which have been created to receive these dirty monies[290]. The UK has also emphasised the need to control arms exports, to ensure that licences are free from bribery[291]. This also extends to the buying of oil; for example, there is the oil deal, which William Hague was faced with questions about, i.e. transactions with the Libyan Obtained Heritage Oil Company of approximately £12.23 million (see below).

Organised crime generates other crimes, and has a major influential role in the prevalence of ML crime; a negative impact on the economy and has links with terrorism. Organised crime costs the UK approximately £40bn annually[292]. Some success has been had with anti-organised crime strategy in the UK such as freezing funds belonging to certain suspect groups, but in 2006, the UK was only able to recover £9,318[293]. Nevertheless, in 2015 there was some improvement in the implementation of confiscation orders due to better multi-agency co-operation and the identification of weaknesses in the enforcement of orders, particularly on priority cases. Additionally, some improvements were made on the ability to use published financial statements to hold individual bodies to account, which resulted in the collection of £155 million in 2014-15, that is the highest amount collected to date[294].

The oil sector constitutes a fertile ground for corruption; Watt and Mason have pointed out that William Hague, the then British Foreign Minister, faced questions about his role

[288]Transparency International fighting corruption Worldwide, Corruption on Your Doorstep How Corrupt Capital is used to Buy Property in the UK published (2015 p.12) Available at: file:///C:/Users/Owner/Downloads/2016CorruptionOnYourDoorstepWebFinal.pdf (Accessed in 6/12/2016).
[289]Financial Times. How laundered money shapes London's property market Judith Evans Property 2016, Available at: http://www.fullertreacymoney.com/system/data/files/PDFs/2016/April/6th/FT_HowLaunderedMoneyShapesLondonPropertyMarketApril6_2016.pdf Accessed in 06/12/2016
[290]Transparency International fighting corruption Worldwide ibid (p.7).
[291] Parliament, Strategic Export Controls. Available at: http://www.publications.parliament.uk/pa/cm201011/cmselect/cmquad/writev/arms/m4.htmAccessed in 24/2/2016
[292]See Home Office Report (2004 p.45) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251072/6208.pdf (Accessed in 10/12/2016).
[293] Rider, B. ibid (p.8).
[294] See National Audit Office report. Criminal Justice System Confiscation orders: progress review 9 March 2016, p.10 Available at: https://www.nao.org.uk/wp-content/uploads/2016/03/Confiscation-orders-progress-review.pdf (Accessed in 11/05/2017).

in a controversial £12.23 million oil transaction with the Libya Obtained Heritage Oil Company. It was alleged that Hague had a private meeting with Tony Buckingham, the chief executive of Heritage Oil and a former mercenary who has given the Conservative party almost £60,000[295]. Thus, there is evidence that oil smuggling is still a significant problem; and this illegal action has allowed those who committed this crime to achieve large profits. Haigner *et al* suggest that the illegal arms business in Libya, which has provided weapons which have recently been used to undermine stability in Libya, is substantially funded by oil smuggling and ML[296].

In the same way, Faull *et al* have highlighted that the procedures of AML are under serious scrutiny, specifically the high-end ML through the City of London. For example, there is an $800m bank transfer that has a high risk of being related to corruption and suspicious operations in the oil industry[297] A further factor is that low-paid officials can demand bribes to carry out bureaucratic procedures[298].These characteristics thus constitute the main reasons for the prevalence of bribery, which is an aspect of corruption and a means by which money is laundered. So, the UK has adopted the Bribery Act (2010) that has addressed the problem of ML by creating a new crime to prevent persons associated with commercial organisations committing bribery on behalf of these organisations[299].

The Suspicious Activity Reports (SARs) Annual Report 2015[300] noted that the UK had made progress under the FATF recommendations in fighting ML operations through addressing significant deficiencies in its legislation and responding to ML across a number of core functions and responsibilities by adopting the POCA (2002). Also by strategies such as the reports procedures which seeks the consent of the NCA before undertaking an activity which the reporter suspects may constitute ML; adopting the FATF recommendation and importing the EU's Fourth ML Directive and entering it ''into UK law in the form of the Money Laundering Regulations (MLR

[295] See Telegraph, Hague facing questions over Libya deal 11/11/2011 Available at: http://www.telegraph.co.uk/news/politics/8882816/Hague-facing-questions-over-Libya-deal.html (Accessed in 4/11/2014).
[296] Haigner, S.D. *et al*. (2012) Combating money laundering and the financing of terrorism: A survey. Economics of Security Working Paper, Berlin: Economics of Security Vol. 65, No. ISSN: 1868-0488 pp 1-106. (p.20).
[297] The Guardian. The Observer The oil deal, the disgraced former minister, and $800m paid via a UK bank by Faull, L and *et al* 2017 Available at: https://www.theguardian.com/business/2017/mar/05/the-oil-deal-the-disgraced-minister-and-800m-paid-via-a-uk-bank Accessed in 18/7/2017.
[298] See EY. Managing bribery and corruption risks in the oil and gas industry EYGM Limited (2014 p.5).
[299]See the Bribery Act (2010) Section (7).
[300] See Suspicious Activity Reports (SARs) Annual Report 2015 Available at: http://www.nationalcrimeagency.gov.uk/publications/677-sars-annual-report-2015/file (Accessed 4/7/2016(.

2017); and this has removed the UK from the FATF's 'regular follow-up process'' which resulted in improving the UK's regulations, which have adopted sound principles[301].

3.7-Conclusion

In summary, ML is a crime based on other crimes, such as drug trafficking or theft of oil, oil derivatives or corruption in the oil industry. The definition of the crime was expanded to include other serious crimes, such as corruption, tax evasion and fraud. Although, the majority of crimes have a clear impact, for example murder, in the case of ML it is unclear who the actual victim is. Thus, most countries worldwide are fighting an activity which is basically invisible and without a clear victim. Although some authors have argued that the ML has benefits that reflect on the domestic economy, in contrast, others considered that ML has a negative impact on the national and international economy. I have argued that ML presents more disadvantages than advantages. It reflects negatively on the economy, so will have negative results on the people of the countries where these crimes have taken place; for example, through the increase in crime and poverty.

Despite international efforts to combat ML, this crime has increased. This process has been facilitated by technological developments that have occurred during the era of globalisation. Furthermore, some ML transactions involve government officials. Moreover, money launderers have benefited from globalisation, yet another advantage of globalisation, in this case, is the international co-operation between law enforcement agencies. This represents one of the ways to curb this crime.

[301] Talani, L. ibid, (2011 p.195).

Chapter Four: The International Campaign against Money Laundering.

4.1- Introduction.

This chapter explores the international criminalization of money laundering[302], the measures considered to be necessary weapons in the fight against ML and the offences that are predicated on it. It is crucial to understand international attempts to curb ML crime, and just how rapidly these measures have developed. This study will discuss the process of criminalization and the extent to which the international campaign against ML has struggled to curb this crime.

The purpose of this chapter is thus to understand the development of the criminalization of ML by discussing important issues that will clarify the development of international efforts to combat ML through the conventions that started with the Vienna Convention (1988), which is considered as the basis for the subsequent conventions and changes to the domestic regulations in some countries to prevent this crime. This chapter will also discuss the functions of international organizations that seek to curb ML crime. Accordingly, this chapter will deal with the criminalization of ML and move on to consider the Vienna Convention (1988). It will then address European measures against ML; the Basel Committee Statement of Principles (December 1988), the FATF Recommendations, the 2000 Palermo Convention; the *International Criminal Police (Interpol)*, the role of the International Monetary Fund in AML efforts and finally the Islamic regulation of ML.

Thus, the importance of discussing international law in this thesis lies in assessing the potential for Libya to benefit from the UN, AML treaties and FATF recommendations. This kind of crime crosses borders; and it therefore requires cooperation between countries to combat it effectively. This involves applying international principles to national regulations and applying these rules to deal effectively with international financial services. So, this chapter will explore the principles that should be applied to the national laws of the Libya to fill the gap in the current global AML, as one of the aims of this

[302]Money is any asset that is generally accepted to pay for goods and any services or to repay debt. See Bishop, T. *Money, Banking and Monetary Policy Lulu.com*, 2012 p.18 Available at: https://books.google.co.uk/books?isbn=1105502627 (Accessed in 08/05/2015).

research is to discover, through the interviews conducted, the impact of international law on local regulations.

4.2 -The Criminalization of Money Laundering by the Vienna Convention against Illicit Traffic in Narcotic and Psychotropic Drugs 1988,

The Vienna Convention sought to criminalize ML in Article 3[303], which also obliges the member states to take necessary measures, such as establishing a comprehensive list with a punishment for all illegal activities related to drugs-trafficking; and to criminalize any activity if it involved any of the following: Firstly, the conversion or moving of money to a place less likely to attract attention; or from an act of participation in such offense. Secondly, the disguising or concealment of the true origin of the proceeds, its source, location and the rights that related to the ownership of proceeds, at the same time knowing that the sources of these properties were illegal or from an act of participation in such offenses; thirdly, the acquisition, possession or use of property when knowing that the money came from illegal activity or from an act of participation in such an offense.

Thus, this Convention has added an important point, which is the criminalization of 'participation' in committing these crimes. Participation is when the crime is committed by more than one person, it could be through incitement to commit the crime, by helping to prepare for the offence or just by hiding the evidence of the crime. However, some countries, like Libya, had already criminalized aiding the commission of these crimes in their penal law. The drafters of the Vienna Convention were keen to involve the different types of criminal participation in ML crimes and obliged the member countries, which numbered 170 in 2005[304], to criminalize participation in the commission of these crimes, be it actually committing the crime or assisting, inciting or facilitating it[305]. The question, however, is whether this criminalization is sufficient to limit money laundering in Libya, and this will be considered in more detail later. Even Islamic law criminalizes earning

[303]Article 3 of Vienna Convention, 1988.

[304] Monthly Status of Treaty Adherence. United Nations Office on Drugs and Crime. 2005 Available at: http://web.archive.org/web/20071107135518/http://www.unodc.org/unodc/en/treaty_adherence.html. (Accessed in 07/05/2015).

[305]Amrani, H. (2012) *The Development of Anti-Money Laundering Regime: Challenging issues to sovereignty, jurisdiction, law enforcement, and their implications on the effectiveness in countering money laundering*: Erasmus School of Law (ESL) (p.84).

money by illegal means such as theft, embezzlement, bribery, corruption, etc.., which are the primary crimes of the money laundering, as will be explained later. As far as Libya is concerned, anti-corruption principles are contained in Islamic Law; and, as an Islamic country, Libya needs to establish clear regulations relevant to the local culture in this case. This could usefully act as the link between international law and Libyan anti-money laundering regulations. States such as Libya could be encouraged to change their anti-money laundering regulations, in ways which do not contradict their underlying principles but rather support the anti-financial crime principles contained in Islamic rules.

This Convention did not create a dispute settlement body; but, in paragraphs 2 or 3 of Article 32, it allowed member states to settle disputes by negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means agreed on by them. If it is impossible to settle a dispute, it can be referred to the International Court of Justice for a decision[306].Thus, in the case of a dispute between member states related to the interpretation or application of this Convention, the parties could seek to settle disputes through negotiation or any other peaceful means of their choice. If there is a dispute, and the parties have failed to achieve a settlement through negotiation or peaceful means such as conciliation, arbitration, according to paragraphs 2 or 3 of the aforementioned Article the dispute can be referred, at the request of any one of the parties, to the International Court of Justice for a decision. However, some member counties, for example Algeria, France and China, have reservations on this point and consider themselves not bound by the provisions of Article 32, paragraph 2. These countries feel that all parties in the dispute should agree to its being referred to the International Court of Justice for a decision. The most prominent feature of this Convention was that it addressed the issue of international cooperation and required the member countries to make their domestic regulations reflect the executive measures[307]that included international cooperation on issues such as confiscation, extradition and mutual legal assistance. Bashir and Abrahim, added that this convention was also important in the way it combated the drug trafficking element of ML and addressed recently developed means of curbing drug trafficking and ML such as

[306] The Vienna Convention against Illicit Traffic in Narcotic and Psychotropic Drugs 1988 paragraphs 2 or 3 of Article32.
[307]Article 6 to 9 of the Vienna Convention, 1988.

international cooperation on observing commercial transport and cooperation on the high seas[308]. These behaviours, which have been criminalized, will be later examined through the interviews in relation to whether they are addressed in the Libyan anti-money laundering law or not. The Vienna Convention has addressed international cooperation through mutual legal assistance, extradition and forfeiture in this context as follows:

4.2.1- Mutual Legal Assistance in the Vienna Convention.

Each of the member countries had to provide, on request by another member country, the widest measure of mutual legal assistance that included the procedures of confiscation and all the judicial proceedings which related to the activities that were criminalized by this convention, including limiting or freezing the illegal proceeds until the judgment was issued, in order to prevent the movement of this money[309]. Similarly, this convention went further in obliging the member countries to enforce other member countries' judgments of forfeiture upon request. They had to hear witnesses, report the judicial documents, carry out an investigation and receive the information and evidence. Additionally, the Vienna Convention allows member countries to ignore banking secrecy in Article 5(3)[310]. This means that banks can pass on a customer's data, which is normally protected by law, to others who are authorized, as privacy is not implemented for crimes related to the subject of this convention.

4.2.2- Extradition in the Vienna Convention.

Extradition is based on the requisition from a state to another country to extradite a criminal existing in its territory. The Vienna Convention addressed the legal obstructions to extradition procedures that relate to ML crime involving the illegal drug trade. This Convention allows any party to extradite if the case is related to ML crime or any crimes that are the subject of the Convention[311]. On the other hand, in Article 6(6), the Convention also allows a state to refuse extradition if there are any reasons that could facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions by the party who requested the extradition[312]. Article

[308]Bashir, H and Abraham, A. ibid (2011 p.84).
[309]Article 5(4) (a) (I) of the Vienna Convention, 1988.
[310]Article 5(3) of the Vienna Convention, 1988
[311]The Vienna Convention against Illicit Traffic in Narcotic and Psychotropic Drugs 1988 paragraphs 3,4 of Article 6
[312]The Vienna Convention against Illicit Traffic in Narcotic and Psychotropic Drugs 1988 paragraphs 6 of Article 6.

6(10) gives a state who refuses to extradite someone, the authority to implement a punishment against the offender if he/she is a citizen of the state; on condition that the punishment is in accordance with the laws of the state requesting extradition'[313].In order to enhance effective international cooperation, the Vienna Convention provides the legal basis of an extradition when related to ML crime or any crimes in Article 6. When there are no other extradition treaties between the countries, the member states are obliged by this Convention to provide mutual legal assistance, upon request, for the purposes of searches and seizures.

To protect the accused, this Article allows to any party to refuse to implement the extradition requested if they believe that this person will not get a fair trial because of racism or any other reasons (e.g. the justice system is corrupt, or there is no due process... etc.). The party then has the authority to implement a punishment if the offender is its citizen and the punishment is in accordance with the laws of the state requesting extradition.

4.2.3-Forfeiture in the Vienna Convention

This Convention, in the spirit of international cooperation, obliges their parties to enforce forfeiture judgments that order confiscation of the proceeds of illegal drug trade or ML. This applies when these proceeds exist in the territory of another country which is not where the crime took place (Article 5, Vienna Convention, 1988). This means that any member state can request that illegal proceeds from crimes stipulated by the Convention be confiscated by the state where these proceeds have been found. Furthermore, the member countries can also inaugurate earlier procedures of confiscation, like measures relating to the limitation of funds and proceeds and tracking them and freezing them to allow forfeiture[314]. Tahar adds that the requested state has to allow the courts and their authorities such as banks and financial institutions to make the commercial and bank records available as banking secrecy no longer applies in such cases[315].

Liew considers that revoking confiscation procedures contributes to money laundering and has increased over time. It converts the illegitimacy of money into legitimacy, and

[313]The Vienna Convention against Illicit Traffic in Narcotic and Psychotropic Drugs 1988 paragraphs 10 of Article 6.
[314]Young, S. M. N. (2009) *Civil Forfeiture of Criminal Property: Legal Measures for Targeting the Proceeds of Crime* Edward Elgar UK (p.279).
[315] Tahar, M ibid (2004 p.499).

thus has had negative effects. It facilitates and strengthens criminals and badly affects the functionality of the financial institutions. The volume and the size of this crime is unknown, which hinders implementing corrective strategies[316].

4.3 -European Measures against Money Laundering,

4.3.1-The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg 1990,

This Convention, which was issued in 1990, is also called the Council of Europe Convention and is related to the inspection, control and confiscation procedures of funds that are the proceeds of ML in the member states of the Council of Europe[317]and the other state signatories. The target of the Convention was to unify criminal policy at the regional level to protect society from these crimes. This Convention has also succeeded in unifying international efforts against all primary crimes associated with ML as these were not limited to drug crimes by this Convention, but expanded to include other financial crimes, such as the illegal use of cheques, movable funds and real estate. Thus, in Article 6, the Convention focused on obliging member states to amend their national laws so that European countries would regard the following crimes: Illegal transfers or disguising funds, concealment or disguising the true origin of funds and participation in the above crimes.

Finally, this Convention had as its goal that member states would be able to use their domestic law to criminalize the actions of any person discovered to have funds in their possession which they knew to be of illegal origin. This was in order to take the necessary action to fight money-laundering crime[318].

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[316]Liew, M. (2002) Money Laundering and Its Regulation the ANNALS of the American Academy of Political and Social Science 582(1), 181-194 (p. 183).

[317] Member States: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom(See UNHCR the UN Refugee agency, Council of Europe http://www.unhcr.org/pages/4a2cffc86.html).

[318] Aziz, M. (2012) *The criminal policy to confrontation money laundering: comparative Analysis study* Menoufia University Egypt PhD (p.398).

Thus, this Convention is one of the strongest international documents against ML crime, because it obliges the member countries to criminalize ML and involve their domestic regulations in the procedures of the confiscation of illegal proceeds and the profits that comes from illegal activities, that include, as well as drug crime, crimes such as terrorism and the weapons trade etc.[319]. Moreover, this convention considered ML crime as a separate offence not just the result of other crimes[320]. Furthermore, due to this Convention, member countries issued a series of AML regulations; and it was the reason behind the European Union's adoption of the First Directive in 1991 which will be discussed later.

As a result of this Convention there was a new development in international cooperation. The concept of 'spontaneous information' meant that member countries could transfer any information about illegal proceeds to other member countries without prior requisition if it considered that this information was important for investigations[321].

4.3.2-The EU Anti- Money Laundering Directives

The fight against ML has been a top political priority of the European Union[322]. It is based on the need to protect the financial system from misuse. ML is the hub of organized crime, it should be eradicated wherever it occurs and solid measures must be taken in order to trace, seize, freeze and confiscate the proceeds of crime. Coordinated measures at community level are necessary to prevent money launderers from abusing the European Community's borderless internal market for their criminal activities. Thus, the 1989 Directive has led some EU Member States to criminalise the phenomenon and prohibit insider dealing [323].

4.3.2.1- The First Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering (91/308/EEC),

As will be noted from the title of this Directive, the European Union focused on credit and financial institutions which could be used to launder the proceeds of criminal activities. Thus, the target of this directive was directly to prevent the banks' financial systems being

[319] The Convention Strasbourg 1990 Article (1.b).
[320] The Convention Strasbourg 1990 Article (6).
[321] Amrani, H. ibid (2012 p.86).
[322] Carrapico, H. (2013) The External Dimension of the EU's Fight against Organized Crime: The Search for Coherence between Rhetoric and Practice Journal of Contemporary European Research Vol,9. No. 3, pp 461-476(p.470).
[323] Alexander, R ibid (2007).

used for ML operations; and member states were required to prevent the use of their financial systems for ML by criminalizing it and taking measures to identify laundered proceeds with a view to confiscation. The Directive was largely aimed at tackling drug trafficking offences; and the important recommendations were to prevent ML and induce the member states to involve their regulations in criminalization of the activity; that personal verification of customers should be required during the conclusion of business deals and that all documents and records relating to financial operations and customer identification be kept for five years. Also, that he privacy of banking systems should be limited in relation to the disclosure of operations suspected to be ML to allow reporting of any suspect operations of ML to the competent authorities and that there should beco-operation between authorities - which are the judiciary authority, financial institutions and the law enforcement authority[324].

Gilmore has remarked that the content of this Directive was significantly affected by the measures of the FATF and especially by the 1990 recommendations. Furthermore, the intent of this directive was to have an effect beyond the internal borders, and it allowed member countries to determine the exact way to achieve the aims of the Directive[325]. As this study, has suggested, the aim of this Directive was to tighten controls in the financial sector which had been allowing criminals to misuse non-financial activities and professions and to hide the origins of their illegal proceeds. The vagueness of the scope of the underlying offences, to which the ML offences applied, caused problems for financial institutions wishing to apply it in the context of this Directive; for example, whether it should include any advice given about capital structure undertakings, changing money or offering money transmission services. The Directive needed to define this more clearly[326]. As a result, the European Parliament and the Council adopted another Directive to deal with these difficulties.

4.3.2.2-Second Directive: The Broader Perspective of the Second Directive

As this study, has argued, the First Directive failed due to developments in the means of ML such that this Directive was not able to adequately prevent it. Thus, the European

[324] Council Directive 91 (308) EEC 10 June 1991.
[325] Gilmore, W. (2011 p.223).
[326] Welch, J. *et al* (2006) *Comparative Implementation of EU Directives (ii) – money laundering*. City of London City Research Series Number Ten (p.9).

Council felt it was a necessary step to issue the Second Directive in December 2001. Through amending and updating the First Directive to curb the use of financial systems for the purpose of ML, the Second Directive was a re-working of the existing provisions established by the First Directive in two main areas. Firstly, it widened the definition of criminal activity and included all serious crimes including offences related to terrorism. Secondly, it extended the scope of the regulated sector to a number of additional professions such as lawyers, accountants, estate agents and casinos[327].

4.3.2.3- The Third Directive as a Comprehensive Authoritative Approach

The Third Directive was adopted under the UK's presidency of the EU, and shows the European commitment to fight against ML and terrorist financing after the 9/11 terrorist attacks. According to Gilmore and Mitsileg as, the Directive is to some extent a replica of the second Directive; however, it is more detailed and increases the scope of the regulated sector. This Directive, unlike the first two, specifically deals with terrorist financing [328]. The main changes from the Second Directive are in the explicit coverage of measures to counter the financing of terrorism (CFT), the introduction of some new definitions such as PEPs and anyone having interests in, benefits from or business activity related to ML crime. It has detailed codification of CDD requirements with an explanation of when enhanced and simple due diligence should be undertaken. The 3rd Directive introduces a 'risk-based approach' to all of its CDD requirements[329]. CDD means that the banks have to get enough information about the customers, assess the risk that may be involved in that customer's process and they have also to know the right CDD requirements for each customer, including the implementation of a standard level of CDD. However, Greenberg *et al*. have considered that there should be an increase in the level of CDD with customers because some PEPs could have a higher risk than other customers. PEPs are the important people in a country, such as any person who is working

327 Directive 2001/97/EC

328 For the purposes of this Directive, 'terrorist financing' means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (Directive 2005/60/EC OF The European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. Available at:http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex:32005L0060 (Accessed Feb13 2015).

329 Gilmore, W and Mitsilegas, V. (2007) The EU Legislative Framework against Money Laundering and Terrorist Finance: A Critical Analysis in the Light of Evolving Global Standards' International and Comparative Law Quarterly, No. 56, pp 120-140. (p.12).

or has been working in a foreign government; like a president, head of government, member of an executive council of government; Member of Parliament or any senior foreign political person[330]. Being in such positions might mean that some of these people could be involved in bribery and corruption and they could use their authority and power for that; therefore, they are marked as high risk. As a result, their bank accounts should be monitored to identify any possible ML. For example, Paulo Maluf, who is a major political figure in Brazil, is claimed to have looted money from Brazil[331]. I believe that this procedure is a way of applying *CDD* through monitoring the bank accounts of the PEPs mentioned above.

4.3.2.4- The Fourth Directive (2014)

The persistence of ML operations has pushed the European countries to make changes in the Third Directive and aim to achieve a more risk-based approach, with greater consistency of rules across the EU, simplifying cross-border trade and implementing the recommendations of FATF. According to the Financial Conduct Authority report, the proposals of the Fourth Directive on ML is to implement the changes in the FATF recommendations through increasing the levels of harmonization between the AML and counter terrorism-financing measures employed by member states. This involves a national risk assessment and may also include supra-national risk assessments[332]. Draghi suggests that the changes in this Directive include extending the scope of Third and Fourth ML Directives, through reducing the threshold for cash payments for traders in high value goods from EUR 15,000 to EUR7, 500. Also, the new proposal requires banks to implement *CDD* in operations of at least EUR 7,500. The scope of the Directive involves and strengthens the cooperation between financial intelligence units of the member countries, exchanges information and further extends and strengthens cooperation. In order to control the procedures of the transfer money for trade purposes through *CDD*, there is a new proposal about tightening measures against money transfers being used

[330] Greenberg, T. *et al* (2009) *Stolen Asset Recovery Politically Exposed Persons A Policy Paper on Strengthening Preventive Measures,* Washington. The World Bank (p.16).
[331]Hinton, M. (2005) A distant reality: Democratic policing in Argentina and Brazil, Criminal Justice Vol. 1, No. 5, pp 75-100. (p.94).
[332]Financial Conduct Authority. Anti-money Laundering Annual Report (2014 p.5) Available at: http://www.fca.org.uk/static/documents/corporate/anti-money-laundering-annual-report-13-14.pdf (Accessed in 18/11/2014).

by these traders to launder money across the EU. These measures will apply to transactions of EUR 7 500, a reduction from the previous threshold of EUR 15 000[333].

The aim of adopting the Fourth Money Laundering Directive (2015) and implementing it in 2017 was to improve the levels of AML and counter-terrorist financing regulations in the EU. Additionally, a new set of recommendations were issued by the Financial Action Task Force (FATF)[334].

4.3.2.5-The Fifth Money Laundering Directive

The fifth AML directive was passed in June 2018. The AMLD5 modifies the fourth Anti-Money Laundering Directive (AMLD4) released only in 2015. The EU Commission proposed the revised AMLD in July 2016 as part of its Action Plan against terrorism announced in February 2016, after the attacks in Paris and Brussels[335].

This Directive established a new legal framework for European financial regulators to regulate digital currencies in order to protect against money laundering and terrorist financing. The new rules have added the most stringent transparency conditions directed toward the use of anonymous payments through pre-paid cards and virtual exchange platforms for money-laundering or terrorist financing[336] and obliges the member states to create a list of national public offices and functions that qualify as politically exposed (PEP). This directive introduces strict and enhanced due diligence measures for financial flows from high-risk third countries; it also makes information on real estate holders centrally available to public authorities. The scope of the Directive involves lowers thresholds for identifying purchasers of prepaid cards; and, for the use of e-money, the threshold for identifying holders of prepaid cards will be further lowered from EUR 250 to EUR 150. The Directive further enhances the powers of the FIUs and facilitates

[333] Draghi, M. (2013) Opinion of the European Central Bank on a proposal for a directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and on a proposal for a regulation on information: Official Journal of the European Union PP 1-5 (p.4).
[334] Herlin-Karnell, E. and Ryder, N. (2017) The robustness of EU financial crimes legislation: a critical review of the EU and UK anti-fraud and money laundering scheme. European Business Law Review. Vol. 28, No. 4, pp 427-446 (p.18).
[335] See the Statement by First Vice-President Timmermans, Vice-President Dombrovskis and Commissioner Jourovà on the adoption by the European Parliament of the 5th Anti-Money Laundering Directive available at file:///C:/Users/Owner/Downloads/STATEMENT-18-3429_EN.pdf (accessed in 18/11/2018).
[336]Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directives 2009/138/EC and 2013/36/EU.

cooperation and information exchange among authorities, which includes facilitating the exchange of information among FIUs and other relevant institutions[337].

4.4- The Basel Committee Statement of Principles- December 1988

The Basel Committee Statement of Principles was issued by the Basel Committee, and concerns the banks' systems and supervisory practices.

4.4.1-The Objective of the Statement of Principles

The target of the Statement of Principles is to protect the banking system by preventing criminal use of that system for the laundering of money; moreover, to strengthen the safety of the banking activity. Thus, the target of the Basel Committee Statement of Principles is to create an international agreement that allows financial institutions to play an important role against any operations of ML and to help the national authorities to fight against this crime[338].

4.4.2-The Principles of the Basel Committee

The Basel Committee Principles target financial institutions to ensure their banking management prevents any ML operations through their banking system. According to Hopton, there are essentially four principles contained in the Statement on Prevention which are: the banks should make efforts to determine the true identity of the customers who request their services; the banks should respect the laws and regulations of the financial transactions in conformity with high ethical standards and local regulations; the banks should provide training in matters that relate to ML operations and they should make full efforts to co-operate with national law enforcement authorities to detect suspicious operations and take necessary measures to prevent any support or assistance to customers seeking to deceive law enforcement authorities in order to launder money[339].

The Basel Committee Statement of Principles creates an international agreement to a Statement of Principles that allows financial institutions to play a highly effective preventive role against any operations of ML. These institutions are potentially those most able to help the judicial authorities and the police fight ML. However, the negative

[337] ibid
[338] Schott, P. Ibid (2006 p.13).
[339] Hopton, D. (2009) *Money Laundering: A Concise Guide for All Business:* London Gower Surrey (p.11).

aspect of the principles of Basel Committee Statement is that it does not enforce adherence, and also there are no clear sanctions about the violation of these Principles[340].

The Principles of the Basel Committee did not oblige banks to report suspicious transactions that may relate to ML activities, the banks need only stop dealing, not provide services, sever relations with the customer in question and close or freeze accounts when they suspect that funds stem from a criminal activity. This demonstrates the bank secrecy rule was observed at that time[341]. However, the Basel Committee issued its 'Core Principles Methodology' which outlined CDD rules for banks in order to cover deficiencies I the 'KYC' rule and also to support application of the FATF recommendations, in particular those relating to banking rules[342].

4.5- The FATF Recommendations

The FATF, an international governmental body, was established in 1989 by seven major industrial nations, which are Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. The function of this organization is to track the proceeds of illegal activities, particularly those of the drug trade. Natarajan notes that this body has developed a series of recommendations that became the general framework of international anti-ML efforts[343]. The FATF seeks to develop and improve banking systems to curb the prevalence of ML[344].The FATF 40 recommendations, issued in 1990, addressed most of the ML areas covered by the Vienna Convention (1988); such as Recommendation 38 which states that member countries should consider improving their domestic laws to include the effective confiscation and freezing of illegal proceeds. Also, that ML criminalization should be not limited to just the proceeds of drug trafficking, but should involve the proceeds of other crimes as stated in Recommendation 1,4[345].In

[340] Mustafa ibid (2008 p.452).
[341] Ping, H. (2005) The suspicious transactions reporting system Journal of Money Laundering Control Vol.8, No 3 pp 252 – 259 (p.252).
[342]Schott, P. ibid (2006 p.16).
[343] Natarajan, K. (1997) Combating India's Heroin Trade through Anti-Money Laundering Legislation Fordham International Law Journal Vol 21, No.5 pp 2014- 2082. (p.2024).
[344] FATF 40 Recommendations October (2003 p.6) Available at: http://www.fatf-gafi.org/media/fatf/documents/FATF%20Standards%20-%2040%20Recommendations%20rc.pdf (Accessed in 5/5/2015).
[345] FATF 40 Recommendations 1&4.

order to reinforce financial systems to combat ML, the FATF has focused on the following rules:

According to the FATF recommendations 10 -12, banking institutions should collect all the details about customers which will allow them to know the ultimate beneficiary of the deals. Banks should not open accounts in fictitious names and should keep necessary records on national and international transactions for at least five years after the business relationship is ended. Recommendation 19 states that member[346]countries should oblige their financial institutions to submit reports on suspect operations to the domestic authorities[347].

Recommendations 26 to 29 state that countries should create a FIU that has the authority to detect suspicious operations of ML and ensures a suitable system to control financial institutions[348].Recommendations 32 to 40 state that countries should establish a domestic system to prevent MLand make an agreement with other countries to take expeditious action in response to requests by foreign countries to cooperate against ML[349].

The FATF also issued 8 recommendations in 2001 to combat the financing of terrorism. These eight recommendations were developed in addition to the existing forty recommendations to curb terrorist financing and induce countries to criminalize terrorist financing and freeze and confiscate terrorist assets; additionally, to induce countries to report suspicious operations related to terrorism and take immediate steps to cooperate with other countries against ML[350]. These recommendations are very important against ML and terrorism financing because they became a standard[351], considered by the FATF to assess the extent of countries' obligations in AML measures. Thus, the FATF has developed standards which focus on the gaps in the regulations, such as obstacles to

[346]Member countries of the FATF are Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, European Commission, Finland, France, Germany, Greece, Gulf Co-operation Council, Hong Kong, China, Iceland, India, Ireland, Italy, Japan, Republic of Korea, Luxembourg, Mexico, Netherlands, and Kingdom of, New Zealand, Norway, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States. See FATF Member countries of the FATF Available at http://www.fatf-gafi.org/pages/aboutus/membersandobservers/ (Accessed in 21/02/2015).
[347]FATF 40 Recommendations, 19.
[348]FATF 40 Recommendations, 26 to 29.
[349]FATF 40 Recommendations, 32 to 40.
[350]FATF Annual Report, (2001- 2002 p.4) Available at: http://www.fatf-gafi.org/media/fatf/documents/reports/2001%202002%20ENG.pd Accessed in 11/02/2015.
[351] FATF ibid (2001-2002 p.3).

international cooperation and the lack of human resources to combat ML operations. Although these recommendations are very important in the fight against ML, they do not oblige countries to follow them. However, they stand as a political pledge by the FATF members to struggle against the crime of ML[352].

In this case, the FATF made use of naming and shaming through the publication of blacklists. Blacklists can be seen as instruments that reduce the risk of developing the means of laundering money. In these blacklists, the FATF evaluated countries' compliance with their Recommendations against money laundering and criminal.[353] Verhage has shown that financial institutions assume that it is best to apply the compliance benchmark to the recommendations of the AML[354]. The blacklist is a severe warning about money-laundering and is used to encourage countries to revise their anti-money laundering procedures to conform with those adopted by FATF[355]. In this context, Bennett has considered that the blacklists should include useful databases which are helpful in providing some sort of negative clearance of customers. However, he also confirmed that the '' security concerns at government level and data protection concerns at the private level mean that practitioners and professionals are all but on their own when it comes to identifying potential AML-CFT offenders''[356].

4.6- The 2000 Palermo Convention

Palermo 2000 was the UN Convention against Transnational Organized Crime (UNTOC); and is a UN-sponsored multi-lateral treaty. This Convention was adopted by Resolution 55/25 of the UN General Assembly on 15 November 2000. The Convention came into force on 29 September 2003 and involved three protocols which focused on organized crime which are: To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Against the Smuggling of Migrants by Land, Sea and Air; and Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts, Components and Ammunition[357].

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[352] Bashir, H and Abraham, A. ibid (2011 p.55).
[353] Sharman, J. C. (2009) The Bark Is the Bite: International Organizations and Blacklisting, Review of International Political Economy. Vol.16 No. (4) 573-596 (P.574)
[354] Verhage, A. (2011) *The Anti-Money Laundering Complex and the Compliance Industry.* (diss. Gent), London: Routledge Taylor and Francis Group, Routledge. (P.1).
[355] Alexander, R ibid (2007 p.33).
[356] Bennett, T. (2015) *Money Laundering Compliance* (Blooms berry Professional: (p.70).
[357] Lee, M. (2010) *Trafficking and Global Crime Control* SAGE Publications Ltd, London (p.8).

The aim of the first Protocol is “to protect and assist the victims of trafficking in persons with full respect for their human rights.'' In addition, the aim of second protocol as well as promoting cooperation among state parties and against the smuggling of migrants was to ''protect the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterize the smuggling process''. The target of the third Protocol was to curb illicit manufacturing and trafficking of firearms and ammunition[358]. So, this Convention is an important step in the battle against transnational organized crime. Due to the seriousness of the problems featured in it, it seeks to enhance international cooperation among states ratifying the agreement in taking measures against transnational organized crime.

The Palermo Convention also has provided a wide definition of ML, enlarging its underlying crimes; further, it was the focus of deterrence activities and international cooperation[359]. In contrast, Hyland argued that the Palermo Convention involved some weaknesses in its protocols, specifically that their implementation had weak provision through using volitional language such as ‘to the extent possible’ or ‘shall endeavour to’ which meant that there was no obligation to abide by them[360]. Moreover, Bashir & Abrahim noted that, although the target of the Palermo Convention was to prevent banking institutions supporting any criminal activities, and to protect and control the banks’ operations, this Convention did not oblige the signatories to design specific criminal policies against financial crimes[361].

However, this Convention provided some basis for urging banking institutions to protect their financial systems which the member countries could adopt as a source of interior regulations. This included: identifying customers, respecting the laws and regulations of financial transactions and an obligation to not provide incorrect information which hinders the activities of public authorities[362]. These procedures are important to follow when curbing ML operations because recording and keeping the information on the

[358] Cox III, Raymond, W. (2009) *Ethics and Integrity in Public Administration: Concepts and Cases*; M.E. Sharpe, New York (p. 158).
[359] Kruger,B and Oosthuizen, H. (2011) Looking behind the mask of confusion: towards a better understanding of human trafficking. Child Abuse Research: A South African Journal. Vol.12, No. 2, pp 46-66. (p.47)
[360] Hyland,K. (2012) The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Human Rights Brief Vol. 8, No. 2, pp 30-31 38 (p.31).
[361]Bashir, H and Abraham, A. ibid (2011 p.93).
[362] Ibid.

customer under the CDD process is kept up to-date, allows banks to know their customers and form part of the international cooperation needed to detect ML operations.

4.7- The International Criminal Police (Interpol)

The International Criminal Police Organization is the largest international organization competent in researching, investigating and providing advice in general about offences, especially ML crime. It was created in 1923 in France, and is known as Interpol.

The target of the Interpol is to ensure international cooperation and exchange between the police criminal authorities with different domestic regulations in different countries, as stipulated in international human rights agreements and to create and develop the organizations that participate in crime prevention[363]. Additionally, Interpol has adopted programmes against some significant crimes such as ML. These programmes involve training on the techniques of analysis and investigation into the information that was collected and exchanging information in areas of organized crime[364].

Through the application of Interpol's methods, Argentina successful arrested a convicted fugitive who was wanted by the US for drug trafficking and ML. This clearly demonstrates how the police have benefited from Interpol in tracking criminal fugitives anywhere across the world and arresting them. Interpol's methods include the notices system and the secure communications system which operate well beyond national boundaries, making it difficult for a criminal to flee to another country[365]. In spite of this, Tyler & Gottlieb have pointed out there is a problem facing Interpol in the extradition of criminals due to some countries, like the UK, not accepting the red notices which are issued by Interpol as a basis for arrest[366].

[363]Bashir, H and Abraham, A. ibid (2011 p.64).
[364] Andriani, R. (2007) Interpol: The Front Lines of Global Cooperation Crime & Justice Worldwide News and Trends Vol. 23, No. 98, pp 2-47. (p.9).
[365]Interpol. Argentina arrest of fugitive wanted by US for drug trafficking and money laundering shows value of INTERPOL tools. Available at: http://www.interpol.int/News-and-media/News/2009/N20090625 (Accessed Nov 201 2014).
[366] Tyler, T and Gottlieb, Y. Policing Interpol: Chatham House International Law Roundtable Summary (2012 p.4) Available at: https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/051212summary.pdf (Accessed in 3 November 2015).

4.8- The Role of the International Monetary Fund (IMF) in Anti-Money Laundering Efforts

In 2000, in response to public opinion the IMF expanded its activities in the area of AML to include combating the financing of terrorism. Due to the threat that ML operations pose to economic and financial stability, the International Monetary Fund has made addressing this crime a priority. The efforts of the IMF have helped national and international AML activity and combating the financing of terrorism; as it has broad experience in exercising financial sector assessment and surveillance over members' economic systems through a single comprehensive assessment methodology[367]. Additionally, the IMF started supporting a trust fund which complements existing accounts financing the fight against ML and the financing of terrorism in its member countries[368]. In March 2001, the Executive Board of the IMF reviewed the Fund's AML/CFT strategies, which are: the increased inclusion of AML/CFT issues in surveillance and in fund-supported programmes; assessments under the revised methodology and strengthened staff participation.

Thus, as Blair and Brent have considered, states have to ensure their financial institutions implement the sanction rules which have been adopted by the UN General Assembly, such as the sanctions against the Taliban regime in Afghanistan for activities related providing sanctuary and training to international terrorists[369].

4.9- The Islamic Regulation of Money Laundering

Islamic regulations did not address ML directly, but focused on the sources of illegal money. Thus, in this context, this study will suggest that the definition of ML in Islamic regulations relates to how Islamic rules addressed the means of ML and its criminalization of this phenomenon.

4.9.1- The Definition of Money Laundering in Islamic Regulations

Islamic rules have addressed ML crime through the identification of what constitutes legal and illegal funds. On this basis, Irresha has defined ML as all the actions whose aim is to

[367]Schott, P. ibid (2006 p.12).
[368]International Monetary Fund. Review of the Fund's Strategy on Anti-Money Laundering and Combating the Financing of Terrorism: IMF policy paper. Available at: http://www.imf.org/external/np/pp/eng/2014/022014a.pdf (Accessed in 24/10/20142).
[369]Blair, W and Brent, R. (2008) *Banks and Financial Crime the International Law of Tainted Money.* Oxford (Oxford University Press).

legitimize illegal gains by mixing them with legal proceeds or by transferring their value to an ultimately legal entity[370].

4.9.2-The Means of Money Laundering in the Islamic Regulation Perspective

As this study, has suggested, Islamic regulations do not use the term 'ML operation' directly, but address this phenomenon by criminalizing the means for this crime which are the primary crimes of ML like theft, the trafficking of human organs, drugs or women and children; the weapons trade; counterfeiting money, corruption, or *riba* (An Islamic term which means 'benefits or interest accrued through delaying the repayment of a debt' which is prohibited). Thus, we can say that Islamic regulations do have a focus on the criminalization of the means of the ML. Furthermore, ML operations in the perspective of Islamic regulations, includes any action involving an intention to disguise illegal proceeds[371]. Examples of this might be hiding illegal gains through the creation of fake companies or making bank transfer operations with stolen money. As a result, in the Islamic perspective, the money will not become legal after it was laundered in any way, because it was acquired by means which are criminalized in Islamic law.

4.9.3- The Criminalization of Money Laundering in Islamic Regulations

Islamic moral values call for all earnings to be legitimate; thus, seeking to make illegal gains appear legitimate, as in ML, is not allowed by Islamic law. Under Islamic regulations, ML is incompatible with the principles of Islam; thus, Islamic regulations criminalize all illegal activity, including the intention to disguise the origins of illegal proceeds, counterfeiting money or corruption. The proceeds from any action not allowed by Islamic rule cannot be regarded as legal gains[372]. Thus, Islamic regulations have criminalized the means of MLas ML as mentioned in Appendix C:

4.10- Conclusion

As launderers, have developed the means of ML; which has become endemic almost throughout the world, there has been a parallel global development in the means of curbing this crime by international conventions. The global battle against ML crime started in the 1980s, and these conventions addressed this phenomenon by criminalizing

[370] Irresha, A. (2004) *The money laundering offences in the light of Shari'ah and the law*. Nayef University of the security science, Riyadh (p.20).
[371] Tofangsaz, H (2012) A new approach to the criminalization of terrorist financing and its compatibility with *Shari'ah* law. Journal of Money Laundering Control. Vol.15, No 4 (p.403).
[372]Irresha, A. ibid (2004 p.130).

the means for it. For example, the Vienna Convention has focused on the proceeds of drug trafficking and the following conventions expanded this to include other means relating to this crime such as corruption and using financial institutions and the banking systems.

These conventions induced the member countries to involve their domestic regulations as the necessary measures to ensure the curbing of this crime. For instance, the member countries were obliged to prevent ML by criminalizing the actions of concealing or disguising the illicit origin of gains or property. To assist this, the member countries were supposed to include in their domestic regulations the necessary measures for international cooperation to fight this crime such as extradition. Thus, international and domestic laws have focused on criminalizing the means of ML. However, long before this, Islamic regulations addressed the primary crimes involved in ML crime through directly criminalizing activities such as the drugs trade, the trafficking of human organs and women and children, the weapons trade, counterfeiting money, corruption or *riba* operations. Furthermore, Islamic regulations included curbing the development of means that are used during ML crime, such as hiding illegal gains through the creation of fake companies

Chapter Five: The Anti- Money Laundering (AML) legislation in the UK.

5.1-Introduction

London is an important international financial centre for cross-border bank lending and there are many foreign banks in London[373]. A large number of the firms that are working in oil and mining are listed or registered the UK, which is responsible for 25% of the international trade in the field of the oil and commodities trade.

The collapse of the BCCI bank in 1992 might be one of the reasons that pushed the UK to develop their AML regulations; as this bank, had committed a huge fraudulent operation that had laundered a large amount of money. The bank was eventually closed due to the regulations against ML[374]. The other reason for the BCCI bank's collapse was globalisation and the principles of the global trade which permitted the transfer of capital between the states by deregulation and a loosening of banking controls in order to facilitate a smoother flow of capital at a global level[375].

Despite the UK taking some procedures against the corruption in the extractive related to its application of procedures against corruption. This chapter will address the development of AML strategies that have been taken to prevent financial crime in the UK. The aim is to analyse specific UK legal provisions relating to ML; notably, the Proceeds of Crime Act (2002) and the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017 (MLR 2017), in order to, find out how it is protecting public money. It will also explore of the extent of the effectiveness of this approach against this crime, and whether it impedes financial and commercial activity. Additionally, this chapter discusses and evaluates also the advantages and disadvantages of the UK AML legislation in order to find out what lessons, can be learned when addressing gaps in the Libyan AML regulations, rather than suggesting that a foreign AML system can be imported wholesale, and assesses if it could be used in Libya to address the illegal sale of oil as follows:

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[373]Pieth, M and Aiolfi,G. A. (2004) *Comparative Guide to Anti-Money Laundering: A Critical Analysis of Systems in Singapore, Switzerland, the UK and the US.* Edward Elgar UK, (p.265).

[374] Alldridge Ibid (2003 p.38)

[375]Schroeder, W.R. (2001) Money Laundering: A Global Threat and the International Community's Response. FBI Law Enforcement Bulletin. Vol.70, No 3 pp 1-9. (p.7).

5.2 -The criminalization of Money Laundering in the UK,

5.2.1-The Proceeds of the Crime Act (2002),

This Act, which received Royal Assent in 2002, came in to force in 2003. It substantially changed all the principles that relate to ML crime. ML is defined according to Article 327 In Section Seven, which stipulates that: '' (1) A person commits an offence if he (a) Conceals criminal property; (b) Disguises criminal property; (c) Converts criminal property; (d) Transfers criminal property; (e) Removes criminal property from England and Wales or from Scotland or from Northern Ireland'' (See the National Archives).

The UK had previously created a forfeiture system through the Drug Trafficking Offences Act (1986) to deprive drug traffickers of the fruits of their criminal activities. However, this system was limited because it was restricted to the proceeds of drug trafficking alone[376]. Thus, the POCA (2002), in the Article described above, adopted a wide definition for the identification of illegal money proceeds, which was also further clarified by two points: Firstly, the title of this Act clearly indicates that this Act is related to the proceeds of crime in general, rather than to a specific crime. Secondly, Section Seven of this law gives a wide definition of ML to include all illegal proceeds such as illegal transfer, disguising and hiding illegal property; and the law did not identify any specific crime that had generated the illegal money proceeds[377]. This was also confirmed by Fossat *et al*[378].

I believe that it is clear that the UK has made significant steps in fighting ML by adopting a wide definition of this crime in the POCA (2002). This Act attempted to include most of the means of this crime as a way of preventing it, in line with the global trend in curbing this offence and to implement to the European Second Directive[379](see Chapter 4). Moreover, this Act went further and adopted the recommendations about ML activities connected to the financing of terrorism that was to be contained in the European Third Directive, which was issued later in 2005.

[376]Bell, R. (2003) Abolishing the Concept of Predicate Offence, Journal of Money Laundering Control. Vol. 6, Iss.2 (p.138)
[377] Part 7 of the POCA
[378] Fossat,P. *et al*. (2012) The effectiveness of international cooperation in the fight against money laundering, Themis competition International cooperation in criminal matters pp 1-21. (p.6)
[379] Directive 2001/97/E

The POCA (2002) has defined 'criminal property' as any benefit obtained by any person through criminal conduct, or any property representing the same (in whole or part and whether directly or indirectly)[380]. It is unimportant if the crime was committed in the UK or abroad, on condition that if this action is not criminalised by any Act of the country where the crime happened, it must be treated as if it had been committed in the UK and is punished by the relevant Act in the UK by more than one year in prison. The AML regime in the UK has affected companies that are working abroad; and specifically, when they use a 'facilitation payment' in the form of bribes or corrupt payment. Furthermore, any company getting involved in such tainted deals and receiving such payments can be tracked in line with UK ML legislation.

The question has arisen about whether the AML system seriously impedes financial and commercial activity in the UK. However, the protection of commercial activity from corrupt money is very important, as London is a financial commercial centre. Therefore, criminalizing commercial bribery ensures the continued growth of the national economy, protection of corporate assets, shareholders' interests and property interests as well as penalising violations of civil law duties and curbing unfair competition in the UK[381].

Illegal ML through banks and other financial institutions is an impediment to the implementation of policies aimed to liberalize financial markets and strengthen international and national transparency in financial markets. It also threatens London as a financial centre; assists the spread of corruption in the market; creates an environment conducive to the existence of bad market reputation and destroys credibility and thus distorts the general shape of the financial markets in London. Furthermore, ML undermines competition within the financial sector and artificially hinders the activity of some weaker financial institutions, which are thus influenced by the temptations of the launderers. This crime is characterised by new investors and financial institutions with great capital and investment capabilities and the courage to enter risky investment fields, which has a negative impact on honest businessmen and investors, distorts honest competition and results in low economic growth[382].

[380] Subsection (3)(a) of the POCA.
[381] Chaikin, D. (2008) Commercial corruption and money laundering: a preliminary analysis, Journal of Financial Crime. Vol 15, Iss,3. 269-281 (p.273).
[382] Chaikin, D. ibid.

In spite of AML legislation, a relatively easy way of ML in London is through the professional services of its markets and institutions. Moreover, there is a high level of opposition to AML strategies in the City of London[383] due to the belief that AML efforts can have a damaging effect on commerce by preventing money flowing into the national economy. Consequently, there exists very strong, principled opposition from certain lawyers about the reporting of suspicious operations, as they consider that the relationship between them and their clients should be sacrosanct[384]. Additionally, AML is said to have negative effects on economic growth by applying the Basel Committee proposals, whose restrictions place obligations on financial institutions which are difficult for some banks to accept[385]. Another negative effective is seen as being the ''decreased attractiveness of the City's services and institutions''[386].

The UK has taken action to address ML crime and applied the international principles against this crime, although some of these procedures are seen as inconsistent with some human rights; for instance, the implementation of KYC procedures, which requires customers to provide their personal details to the financial institution as well as the source of their wealth. There also criticisms of the freezing of suspicious funds as a threat to property and financial rights; for example, in this case of a customer making transactions which do not fit the usual pattern that results in the denial of access to financial services due to the regulations of AML. The question arises about the amount of disclosures and evidence required from the customers about their wealth sources sufficient to prove their innocence. Such AML procedures could be acceptable if there was always a reason behind these obligations on the customer, however, there are not[387]. In spite of these objections, the NCA's report for the year 2014/2015 discloses that the SARs received led to 22 arrests and denial of £46,375,449 to criminals[388]; thus, I believe that these procedures are a very important means of fighting this crime; whereas authors

[383] Talani, L. ibid, (2011, p.201).
[384] Ibid (p.200).
[385] Ibid (p.138).
[386] Ibid.
[387] Legal cheek. Anti-money laundering framework: Does it stain our rights? By Marta Bokiej 2016 Available at: https://www.legalcheek.com/lc-journal-posts/anti-money-laundering-framework-does-it-stain-our-rights/ Accessed in 7/06/2017.
[388] See the NCA's report Suspicious Activity Reports (SARs) Annual Report 2015 Available at: http://www.nationalcrimeagency.gov.uk/publications/677-sars-annual-report-2015/file (Accessed in 7/06/2017).

such as Marta Bokiej has considered that these procedures need to be scrutinised and revised in line with human rights[389].

The POCA has criminalised actions which assist ML operations. Article 328 (1) considers that ML activities include any arrangement regarding criminal property; and stipulates that "A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person"[390]. With this in mind, the Article has included counselling, aiding or abetting or procuring and has identified that any attempt, conspiracy, incitement of crime, abetting, facilitating and counselling through any of the activities mentioned above which is confirmed by term 'facilitates (by whatever means) as mentioned in the above text.

However, it should be noted that the person under consideration is not indicted in this crime under certain circumstances; as Article 327 (2) stipulates that "a person does not commit such an offence if- (a) He makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1) he has the appropriate consent; (b) He intended to make such a disclosure but had a reasonable excuse for not doing so; (c) He acquired or used or had possession of the property for adequate consideration; (d) The act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct"[391].

Additionally, the part (7) Article (329) of the POCA stipulates that the crime committed if anyone acquires, uses or has possession of property that he suspects or knows represents the proceeds of crime; and states that ''a person commits an offence if he: (a) Acquires criminal property. (b) Uses criminal property. (c) Has possession of criminal property ''[392]. Additionally, this Act has also criminalised acquiring 'criminal property' which is possessed, acquired or used while in the knowledge or suspicion of its criminal

[389] Legal cheek ibid.
[390] Part 7 328 (1) of the POCA
[391] Ibid.
[392] Part 7 329 of the POCA

source[393].Additionally, this Act has also criminalised acquiring 'criminal property' which is possessed, acquired or used while in the knowledge or suspicion of its criminal source.

Thus, the POCA was made to reform and update the previous UK laws that related to ML crime and the illegal origins of the property. It addresses all the forms of ML and criminalises the failure to report suspicions of ML operations. This law involves all criminal property, when it is suspected or known that the property constitutes or represents benefits from criminal conduct; and includes money, (all real, personal, heritable or 'moveable property', intangible and incorporeal property, property obtained by a person who has an interest in it, and other intangible or incorporeal property)[394].

The UK has adopted the Criminal Finances Act (2017), which is one of the most important pieces of anti-fraud and anti-corruption legislation to be passed in the UK. It aims to improve the rules to prevent the money laundering through the reform of the Suspicious Activity Reports (SARs) and focuses on some guiding principles such as implementing procedures for risks identified in the risk assessment and performing due diligence of staff and clients in proportion to the risks. This Act amends the Proceeds of Crime Act (2002) and introduces two new corporate offences of failing to prevent the facilitation of tax evasion. [395]. Regarding this, the Criminal Finances Act (2017) has added two new corporate offences for failure of corporates to prevent the facilitation of tax evasion based on Section 7 of the Bribery Act (2010). These two offenses are failure to prevent the facilitation of UK tax evasion offenses and failure to prevent the facilitation of foreign tax evasion offenses. These two crimes cannot be committed by individuals; whereas they can be committed by a person acting for or on behalf of a body, acting in that capacity on behalf of that legal person[396].

5.2.1.1-The Procedure of Anti- Money Laundering under the Proceeds of Crime Act (2002)

In its attempt to combat ML crime this Act also created the Asset Recovery Agency (ARA). The function of the Agency is to follow and recover the proceeds that were made from illegal operations whether there is a criminal conviction against any person or not. The

[393] Bell, R. Ibid (2003 p.139)
[394] Dickson, D. (2009) Towards More Effective Asset Recovery in Member States the UK example, ERA Forum. Vol. 10, Iss.3 (p.445).
[395] Chapter 2 of the Criminal Finances Act 2017.
[396] Part 1 of the Criminal Finances Act 2017

aim of this confiscation is to return the proceeds which were generated from a crime[397]. The important focus of this text is not the defendant but the proceeds that came from the criminal conduct whether or not the person who made this action is guilty of criminal conduct[398].

The Agency was originally established to trace and investigate the ownership of property that had derived from criminal activity, and was requested to obtain its costs from money which it confiscated[399], and to deprive the defendants from enjoying the benefits of the illegal proceeds in compliance with FATF Recommendations 10 and 22,about keeping adequate and accurate information can be obtained or accessed in a timely fashion by competent authorities. The ARA was to combat this crime by using its authority for criminal confiscation, taxation or, uniquely, civil recovery; and employing financial investigation to recover assets anywhere. The Agency trains its financial investigators and the police and monitors their performance[400].

Although, this Agency has achieved its aims in reducing criminality and training financial investigators; there are, however, difficulties in achieving its aim of recovering assets because of the poor quality of referrals. This was particularly the case in the early days of the Agency and because of weaknesses in the Agency's internal processes, such as no using of identifiable targets and deadlines, with the result that there was little progress with cases. Additionally, almost a quarter of the Agency's staff left in 2006 resulting in a high turnover of staff, which led to a lack of job stability at the Agency. An additional difficulty is that there is no main database which includes all the information related to the work of the Agency, which it could refer to if necessary[401].

The POCA gives the Director of the Agency the authority to exercise the functions of the Inland Revenue if there are reasonable grounds to suspect that proceeds were acquired by illegal actions. This does not just apply to individuals but it also can be applied to

[397] Part (1) of the POCA,
[398]Shazeeda, A. (2014) The civil law: a potent crime-fighting device, Journal of Money Laundering Control. Vol. 17, Iss.1 (p.5).
[399] Raphael, M. (2011) Tracing and confiscating illicit proceeds: the perspective of the defence, ERA Forum. Vol. 11, Iss.4 (p,551).
[400] Part (1) of the POCA.
[401] The National Audit Office. The Assets Recovery Agency, report by the Comptroller and Auditor General Ordered by the House of Commons (2007 p.5) Available at: http://www.nao.org.uk/wpcontent/uploads/2007/02/0607253es.pdf. (Accessed in 22/4/2015).

companies or partnerships. Additionally, the Director of the Agency can assess any income or capital gains in this way[402].

However, the Criminal Finances Act (2017) has made some changes related to recovering illegal assets in part 1 of this Act: Under the Unexplained Wealth Orders (UWO). The person who is suspected of involvement in or association with serious criminality is required to explain the origin of assets that appear to be disproportionate to their known income. In this case, the deposits of a suspicious person should be Identical to their regular income. A failure to provide a response would give rise to a presumption that the wealth was illegal and recoverable, in order to assist any subsequent civil recovery action[403]. The requirement for the making of an unexplained wealth order is that the value of the property is greater than £50,000[404]. In this case, the Proceeds of Crime Act (2002) was amended through granting civil recovery powers to the Financial Conduct Authority, to recover the illegal property without the need for the owner of the property to be convicted of a criminal offence[405]. Additionally, the Criminal Finances Act (2017) has made some changes related to the disclosure orders, which has given a power to the law enforcement officer to require anyone that they believe has relevant information to an investigation, to answer questions, provide information or to produce documents[406].

5.2.1.1.1- Criticisms of the Proceeds of Crime Act (2002)

Despite the UK's significant efforts to respond to the obligations laid down by international conventions in fighting ML phenomena demonstrated by its issuance of AML regulations; criticisms have been directed at the POCA (2002). For example, Davies argues that this Act was created without full knowledge of the volume of 'dirty money' that existed. Davies also believes that there is a hidden reason behind the issuance of the POCA; namely, to make full use of the existing taxation powers[407]. He added that this Act was a "very dangerous and draconian legislation to be introduced"[408]. On the other hand, the UK's Financial Services Authority (FSA), using the same methodology as the IMF to estimate ML, found that the amount of money involved worldwide in laundering offences

[402] Part 6 of the POCA.
[403] See part 1 of the Criminal Finances Act 2017.
[404] Ibid.
[405] See chapter 4f the Criminal Finances Act 2017.
[406] Ibid See part 1 Clause 7
[407] Davies, R. (2007) Money Laundering – Chapter Four, Journal of Money Laundering Control. Vol. 10, Iss.1(p.68).
[408] Davies, R. ibid (2007 p.85).

was £23-57 billion in 2000 and fell to around £19-48 billion by 2005, and was equal to 2-5% of global GDP[409].

It is probable that the UK already knew the volume of money involved and the level of risk in addressing ML before it issued the Act. The evidence for this is that an estimate of this crime had already been made by the IMF, which put the level at 2-5% of global GDP, (see Chapter 3). The UK achieved a reduction rate in ML of 58.15 percent in 2007; this suggests that the AML regime under the POCA (2002) is potent enough to secure convictions, whilst not being overly severe or onerous[410]. This goes a long way in demonstrating that criticisms against it do not have much credence.

5.2.1.1.2- Reporting Obligations under the POCA (2002).

The POCA require anyone in the UK who has had financial dealings with a person or business, which involves a ML offence to report it. They are obligated to submit a Serious Activity Report (SAR) to the National Crime Agency (NCA) if they know or suspect or have information about any individual related to ML operations during the course of their work in the regulated sector. They have to be aware that Section 333 of the POCA criminalises the making of a report, which could affect the tracking of ML in an investigation, which is being undertaken by law enforcement authorities. Section 333 stipulates that: "A person commits an offence if; (a) He knows or suspects that a disclosure falling within section 337 or 338 has been made, and (b) He makes a disclosure which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a)"[411].

5.2.1.1.3- The Obligations of the Regulated Sector against Money Laundering

Under the POCA, the regulated sector has to take some necessary actions against ML, which include: Implementing training programmes for staff; implementing the principles of CDD that includes identifying and knowing the customer; devising a programme to fight against ML, which should include a system of the internal reporting of suspicions or knowledge of ML operations; record keeping and identifying an employee as the

[409] Financial Services Authority. Frequently asked questions, Available at: http://www.fsa.gov.uk/about/what/financial_crime/money_laundering/faqs#faq5 Accessed in 18/03/2015
[410] Alkaabi, A.*et al.* (2010). A Comparative Analysis of the Extent of Money Laundering in Australia, UAE, UK and the USA, *Finance and Corporate Governance Conference* (p.88).
[411] Section (333) of the POCA.

'nominated officer' to supervise the making of appropriate submissions of SARs to the NCA and the implementation of the MLRs. Companies have to have a system for reporting suspicious operations to the nominated officer who has to ascertain that the report which has been made will give rise to suspicions. If there are, they should make a prompt report to the SOCA[412]. If there are no strong grounds for suspicion and the evidence is not sufficient to make a suspicious transaction report, they should make file note of this case which can then be used as the basis of a later report if there are sufficient grounds for it. Similarly, the company should continue with the deal that is the subject of the report to facilitate the observation of this transaction. This is because refusal to continue with this deal it may be 'tipping off' the customer, who may realise that the deal is being regarded as suspicious[413]. Regarding this, Harvey has stated that the obligation is geared towards enabling members of the regulated sector to spot transactions which are out of the ordinary and thereby places them in a position where they have a duty to report[414].

5.2.2- The UK's Money Regulations (MLR 2017).

The issuing of these ML regulations was as a response to the Prevention of the Use of the Financial System for ML and Terrorist Financing; that was decided by the fourth Directive of the European Parliament and of the Council; and they replace the Money Laundering Regulations (MLR 2007). The aim was to introduce a new and improved Act into the UK, through the reform of the Suspicious Activity Reports (SARs) and focus on some guiding principles such as implementing procedures for risks identified in the risk assessment, and the performing due diligence of staff and clients in proportion to the risks[415]. Its aim was also to introduce a new and improved Act into the UK, which was entirely appropriate for curbing ML crime[416].

Additionally, the MLR 2017 has addressed 'due diligence measures' in part 3, which requires the identification of the customer through personal documents, data or

[412] Haynes, A (ibid p.314)
[413] Ibid (p.315).
[414]Harvey, J. (2005) An Evaluation of Money Laundering Policies. Journal of Money Laundering Control; London Vol. 8, Iss.4, pp 339-345 (P.341).
[415] Chapter 2 of the Criminal Finances Act 2017.
[416]Davies, R. (2007) Money Laundering – Chapter Four, Journal of Money Laundering Control. Vol. 10, Iss.1(p.85)

information; ascertaining the nature and purpose of the business on the basis of related documents and the identification of any beneficiaries. This must be undertaken if the 'relevant person' happens to fulfil one of the tasks under this regulation which stipulates that " (i) enable the relevant person to obtain from the third party immediately on request (or at the latest within two working days) copies of any identification and verification data and any other relevant documentation on the identity of the customer or its beneficial owner''[417].

It may be very difficult for small or medium sized firms to meet the requirement to determine the identity of every client they deal with; and they may face problems, especially when dealing with foreign customers. For example, there may be difficulties in ascertaining certain details, such as clients' real surnames[418]. Haynes added that there may be problems with the requirement to determine who the 'beneficial owner' of the funds is. There will be no credibility of client information because those who are acting illegally simply will not submit this information. Thus, requesting this information will yield no benefit if the customer does not provide it.[419]

The 2017 Regulations extend the principle that companies have obligations, which are to implement the rules on CDD measures and ongoing monitoring, make identity checks on potential clients, keep records of their operations and train their staff on how to identify potential ML operations and when they have to report suspicious activity[420]. The regulations make directors and senior management subject to imprisonment sanctions and fines if the companies which are managed by them fail to respond to the requirements of the 2017 Regulations[421].

However, although the Regulations (2017) kept the principal requirement that you must perform client due diligence (CDD) before establishing a business relationship and when you identify any factors relevant to your risk assessment of the (CDD), they had expanded to become more prescriptive than the previous regulations in 2007 when suspicious

[417] See part 4 (38)(1) (i) the Money Laundering Regulations (2017).
[418] Haynes, A (ibid p.317).
[419] Ibid.
[420] See part ,2 and 4 of the Money Laundering Regulations (2017).
[421] See part 3and (83) (1) and (2) of the Money Laundering Regulations (2017).

operation meant carrying out CDD checks on corporate bodies[422]. If the client is a corporate body, its name, company number or other registration and the address of its registered office had to be obtained and verified, and, if different its principal place of business. In addition, unless the corporate body was a company listed on a regulated market, reasonable measures had to be taken additionally to determine the law to which it was subject and its constitution or other governing documents and the names of the board of directors[423]. The trustees were obligated to keep up-to-date records of all the beneficial owners of the trust, involving all the details referred to in part 44(2)[424].

For these purposes, the status of the person engaged in the aforementioned conduct is irrelevant. However, both the individual and the corporate body are the subject of the POCA (2002) regardless of the nature of their business; and fines can be imposed on anyone who breaches regulations whether they are corporate entities or individual directors, managers and officers and individuals. However, if the ML is for terrorist purposes, severe punishments can be imposed on those who commit a serious ML offence, for example, imprisonment for up to 14 years under Article 18 of the Terrorism Act 2000[425].

5.2.3- The Sanctions and Anti-Money Laundering Act (2018)

The aim of adopting this law was to use it as primary legislation after Brexit; and involves implementing the UN sanctions against ML crime, thus ensuring the existence of full powers against money laundering and terrorist financing threats. Thus, this Act makes additions to sanctions regulation, the detection, investigation, and prevention of money laundering and terrorist financing, as this study will explain later.

So, this law protects the UK from the risk of breaching its international obligations following withdrawal from the EU; and to maintain EU law as it was at the date of withdrawal from the EU by transposing it into national law. This law gave the government new powers to operate its own sanctions regime, through the powers it gave to the Secretary of State and the Treasury to impose sanctions regulations for the purposes of

[422] See The Law Society, the Quick guide to the Money Laundering Regulations (2017) available at https://www.lawsociety.org.uk/support-services/advice/articles/quick-guide-to-the-money-laundering-regulations-2017/ (accessed in 21/11/2018).
[423] See part 43(1) of The Money Laundering Regulations 2017.
[424] Ibid.
[425] Section 22 of the Terrorism Act (2000).

compliance with UN obligations:[426] It continue to implement the UN sanctions regimes in order to meet national security and foreign policy objectives; and to keep anti-money laundering and counter-terrorist financing measures up to date, helping to enhance the UK's domestic security and comply with international standards[427].

By this law the government expanded financial sanctions reporting requirements to include: firstly, that persons of a prescribed description inform the authority of prescribed matters and to retain certain records; secondly, authorising an authority to require persons of a prescribed description to provide information; and finally, for powers to inspect and copy prescribed information and related powers of entry[428]. Furthermore, this law obliges Ministers to report to Parliament to assess the progress of a register of beneficial owners of overseas entities[429].

This law has been criticised for giving the minister powers to amend the regulations to impose new sanctions under Section 41 in addition to those already specified in Sections 3-8.[430] So that means this law has given the Executive power to change primary legislation by issuing secondary legislation, which will be a risk to Parliamentary Sovereignty.[431]Additionally, under Section 12, the law has also given the government power to designate persons not only by name but also by description.

These powers are wide to be able to issue regulations relating to money laundering and terrorist financing offenses and activate the reporting regime. In some cases, this power involves flexibility in dealing with emerging issues in this area. However, it also reduces parliament's role in overseeing regulation. it might be could to public and engagement in the development of these changes.

[426] See Section 1 of the Sanctions and Anti-Money Laundering Act 2018.
[427] Ibid
[428] See the Sanctions and Anti-Money Laundering Act 2018: New Challenges in Sanctions Compliance? Available at https://www.jdsupra.com/legalnews/the-sanctions-and-anti-money-laundering-42696/ (Accessed in 20/11/2018).
[429] See part 2 of the Sanctions and Anti-Money Laundering Act 2018.
[430] Rickard.J. et al. UK: The Sanctions and Anti-Money Laundering Act 2018: New Challenges In Sanctions Compliance? available at http://www.mondaq.com/uk/x/707562/Export+controls+Trade+Investment+Sanctions/The+Sanctions+And+AntiMoney+Laundering+Act+2018+New+Challenges+In+Sanctions+Compliance (Accessed in 23/10/2018).
[431] Ibid.

5.3- Bodies Established against Money Laundering crime in the UK

5.3.1- The Financial Service Authority

The (FSA) was created by the Financial Service and Markets Act (2000)[432]. It is a non-governmental body and made its first appearance in 1985 under the name of The Securities and Investments Board Ltd. This name was changed to the Financial Intermediaries, Managers and Brokers Regulatory Association in 1997. It started to exercise statutory powers, which were given by the new Financial Services and Markets Act (2000)[433]. Further, the FSA assumed the role of the Securities and Futures Authority (SFA) that was supervising the trading in shares and futures in the UK. The FSA is controlled by parliamentary committees; thus, it has public, political and also legal accountability, and has to report on how well it has achieved its objectives[434].The Financial Service Authority works independently of the government, even though its board is appointed by the Treasury. It has a statutory target to curb the extent of operations which are used for any purpose connected with financial offences that involve money-laundering. Additionally, the FSA also has the authority to supervise the compliance of most credit and financial institutions under the ML Regulations. These institutions are obligated to comply with the measures and requirements set by the FSA; and this authority is able to take action against them if they fail to response to the required standards[435].

5.3.2.1-The objectives of the Authority and the Financial Services and Markets Law (2000).

The legal aims of the FSA could be described as follows: achieving market confidence, which means maintaining public confidence in the financial system; raising public awareness and promoting public understanding of the financial system; securing an appropriate degree of protection for consumers and reducing financial crime, which means reducing the use of business practices for criminal purposes or activities[436].

[432] Part (1) of the Financial Service and Markets Act (2000).
[433] Lomnicka, E. (2002) Capital Markets Regulation in Nigeria and the UK: The Role of the Courts Journal of African Law. Vol.46, No.2 pp 155-166 (P.155).
[434] Financial Service and Markets Act (2000) (ibid).
[435] Part (1) of the Financial Service and Markets Act (2000).
[436] Ibid.

In the UK, the authorities of the Bank of England, Financial Services Authority (FSA) and the Treasury were all responsible for maintaining financial stability. As a result of that, this system failed to achieve the objectives because they failed to be fully aware of the basic problems that were building up in financial system. Furthermore, they could not take advance actions to avoid the instability of financial markets and also failed to deal with the financial crisis when it had just started[437]. Additionally, this failure may have been due to, there being no institution that had the responsibility and authority in the UK to control all systems of AML and to identify the weak areas. Lord Turner, the chairman of the FSA, and Paul Tucker, Deputy Governor of the Bank of England described this as potentially destabilising for financial stability, referring to this problem as 'underlap': "a phenomenon whereby macro-prudential risk analysis and mitigation fell between the gaps in the UK regulatory system''[438]. As a result of these shortcomings that arose during the government's programme of reform to renew the UK's system of financial regulation, the Financial Services Authority failed to curb the effects of the financial crisis, thus failing to protect the UK's economy during the financial crisis. That is why it was abolished on 1 April 2013 and its responsibilities divided between two new agencies -the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) and the Bank of England[439].

5.3.2- The Prudential Regulation Authority and the Financial Conduct Authority in the UK

The Prudential Regulation Authority (PRA) was created by the Financial Services Act (2012) to protect the UK's financial system. Its objective is to accomplish this by ensuring the safety of the companies that aim to curb negative effects on financial stability[440]. The PRA is a part of the Bank of England, and its responsibility is the ''prudential regulation of banks, building societies and credit unions[441].

[437] Her Majesty A new approach to financial regulation: judgement, focus and stability Printed in the UK by the Stationery Office Limited (2010 p.3) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/81389/consult_financial_regulation_condoc.pdf (Accessed in 02/04/2015.

[438] Ibid (2010 p.3)

[439] Andrew, B. *et al*. (2012) The Prudential Regulation Authority, 4th Quarter, Bank of England. Quarterly Bulletin Vol. 52 No.4 (p.365).

[440] Part (2) of the Financial Services Act 2012.

[441]Andrew, B.*et al*. (ibid. p.354).

5.3.2.1-The Role of the Financial Conduct Authority (FCA).

The Financial Conduct Authority is responsible for ensuring that relevant markets function well, and to regulate all financial services firms[442]. Its role includes protecting consumers, keeping the industry stable, and promoting healthy competition between financial service providers. This body is a non-governmental authority, financed by charging fees to members of the financial services industry and governs all financial companies which submit services to consumers in order to maintain the integrity of the UK's financial markets[443]. The PRA does not look to operate a zero-failure regime, as it allows the banks to fail in ways that ensures no significant disruption to the supply of critical financial services. As Bailey[444] has stated: "This will not be a zero-failure regime, but one where firms can fail in an orderly way without major detriment to the wider system"[445]. The Financial Conduct Authority has created the Office for Professional Body Anti-ML Supervision, which will be running by the early of 2018 and will work to improve the workings of the different bodies and sectors which related to AML[446].

So, all firms authorised under FSMA (2000) have to take steps to reduce financial crimes as well as ML. This ACT obliges anyone seeking to conduct regulated activity in the UK to apply to the FSA for permission under Part 4 of the Financial Services and Markets Act (2000). In this case, section 206(1) of the FSMA 2000 has given extensive enforcement powers to apply the disciplinary measures (such as suspending permission to carry on regulated activities) if an authorised person has contravened a relevant requirement imposed under this law.[447] Although, the FSMA 2000 is related to market abuse, it could be applied to criminal offenses that, in certain agreement with the responsibilities of the FCA, would have criminal prosecution powers.

Thus, in the cases of market misconduct which might involved a violation of the criminal law and the market abuse at the same time; the FCA has the power to decide whether to proceed to criminal procedures or to impose a sanction under the category of market

[442] Part (2) of the Financial Services Act 2012.
[443]Andrew, B.*et al* (ibid. p.354).
[444]Who is the Managing Director of the Prudential Business Unit and Executive Director of the Bank of England?
[445] The Telegraph. Banking will not be 'zero failure' says top regulator (22/10/2012) Available at: https://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9626305/Banking-will-not-be-zero-failure-says-top-regulator.html [Accessed in 27 March 2019].
[446] FCA Finalised guidance (2018) FG18/1: Sourcebook for professional body anti-money laundering supervisors Available at https://www.fca.org.uk/publication/finalised-guidance/fg18-01.pdf (Accessed in 18 March 2018).
[447] See section 206(1) of the Financial Services and Markets Act 2000.

abuse, in accordance with Section 402 of the FSMA 2000[448]. At the same time, Section 402 of the FSMA 2000 has also given power to the FCA to take proceedings against insider dealing by applying Part 5 of the CJA (1993)[449]. A statutory obligation has been placed on the FCA to issue a statement of detailed policy in the Enforcement Manual 168. This policy comprises several factors which are to be regarded as guidance for the FCA on whether to prosecute rather than take a civil action. Amongst these factors, the FCA's Handbook stipulates that the seriousness of misconduct will be judged by whether criminal prosecution is likely to lead to a significant sentence[450].

Moreover, in case if there are loss-suffering victims due to wrongful action by the insider dealer, the criminal law will be applied. It is therefore noticeable that protecting the victims and one of the aims of the FCA granted by the FSMA 2000 are compatible, also that the FCA will consider the impact of the behaviour on the market, i.e. whether the misconduct has led to a detrimental effect on the market or has seriously damaged market confidence[451].

The important regulatory tools that are available to the FCA to use against ML are financial penalties, suspensions, restrictions, conditions, limitations, disciplinary prohibitions, and public censures. However, the FCA has some other tools it can deploy if it considers it appropriate to address the issue without the use of formal disciplinary sanctions. The aims of the FCA in imposing the sanctions is to uphold regulatory standards, maintain market confidence and deter financial crime[452]. Thus, the FCA has the following powers to impose sanctions, ''(1) It may publish a statement: (a) against an approved person or conduct rules staff under section 66 of the Act;(b) against an issuer under section 87M of the Act;(c) against a sponsor under section 88A of the Act….;''[453]The FCA also has protective measures or remedial action could be taken such as '' (a) varying and/or cancelling of permission and the withdrawal of a firm's authorisation and (b) the

[448] Zheng, W. (2017) An examination of legal regulations for insider dealing in the UK and the lessons for China [J] Front. Law China. Vol. 12 Issue (4). 524-560 (P.550).
[449] See section 402(1) of the Financial Services and Markets Act 2000.
[450]ZHENG, W. ibid (2017 P.550).
[451] Ibid (p.551).
[452] Enforcement Guide, Chapter 7 Financial penalties and disciplinary sanctions (2018 p.1).
[453] See part 2 (74) (1) of the Money Laundering Regulations 2017.

withdrawal of an individual's status as an approved person and/or the prohibition of an individual from performing a specified function in relation to a regulated activity''[454].

According to the National Risk Assessment (2017), the procedures of anti-money laundering have been improved through creating a new supervisory function within the FCA called the Office for Professional Body AML Supervision (OPBAS), which has been given the power to oversee the adequacy of the AML/CTF supervisory arrangements of professional body supervisors in the UK. This includes strengthening the overseeing of the AML/CTF supervisory regime to ensure that all AML supervisors provide effective supervision, as required by the 4MLD[455]. Due to the significant emerging risk of money being laundered through capital markets, the FCA and UK law enforcement agencies continue working together. For example, in 2017 the FCA imposed a fine of around £163 million against the Deutsche Bank, which is its largest ever fine for AML/CTF[456]. The FCA thus has a key role in preventing misuse of the financial system through creating a hostile environment for criminal money and it is working to ensuring financial services firms have adequate safeguards to protect themselves from money laundering. The majority of UK banks know the importance of the AML/CTF controls, and spend £5 billion annually on compliance with the AML principles[457].

5.3.3-The Bank of England

The Bank of England has a responsibility to maintain financial stability by protecting the financial system. The Bank of England, the PRA and FCA co-operate to reduce the main risks to their own objectives which are; - ''To promote the safety and soundness of banks, building societies, credit unions, insurers and investment firms; and to secure protection for policyholders''[458].

5.3.4- The Financial Policy Committee in the UK

To strengthen the fight against ML, and in support of the objectives listed above, the Financial Policy Committee (FPC) was established within the Bank in 2012. The FPC was charged with identifying, monitoring and taking action to remove or reduce systemic

[454] Enforcement Guide, Chapter 7 Financial penalties and disciplinary sanctions (2018 p.4).
[455] National risk assessment of money laundering and terrorist financing (2017 p.16).
[456] Ibid (2017 p.31).
[457] Ibid (p.35).
[458] FCA. The Prudential Regulation Authority, Available at: https://www.fca.org.uk/about/history/the-pra Accessed in 25/32015.

risks. The FPC, which already exists in interim form, will be able to make recommendations and give directions to the PRA and the FCA on specific actions that should be taken in order to contribute to the achievement of the Bank of England's Financial Stability Objective[459].

5.3.5- The Serious Organised Crime Agency in the UK

SOCA was established by Section 1 of the Serious Organised Crime and Police Act (2005). As part of its functions, it was to submit a Suspicious Activity Report (SAR) about any suspicious activity that might arise. It was in operation in the UK between 2006 and 2013, and collaborated with many foreign law enforcement and intelligence agencies. The Agency included the National Crime Squad, the National Criminal Intelligence Service, the National Hi-Tech Crime Unit, the investigative and intelligence sections of HM Revenue & Customs on serious drug trafficking, and the Immigration Service's responsibilities for organised immigration crime[460].

SOCA derived its power from the bodies that it replaced. In the case of the National Criminal Intelligence Service (NCIS), it took on the responsibility "for the regime's Financial Intelligence Unit and its database of the Serious Activity Reports SARs". That meant the SOCA, had the same investigative powers[461]. The work of SOCA is an important and indispensable contribution to AML through the collection, collation and analysis of information and making it available for use in investigations by other law enforcement agencies such as customs officers, police officers and the ARA. Analysis of this data that leads to the discovery of the end-users of suspicious operations; and all SARs related to this intelligence are stored in a unified-wide database[462] that can be referred to by the competent investigation authorities mentioned above.

5.3.6- The National Crime Agency

In 2013, a new strategy to confront ML was launched by the National Crime Agency (NCA) by the Crime and Court Act (2013), replacing SOCA. The function of this Agency is to receive all the reports of suspicions operations related to ML and to analyse suspicious

[459] Part (1A) of the Financial Services Act (2012).
[460] Part (1) of the Serious Organised Crime and Police Act (2005).
[461] Lander, S. Review of the Suspicious Activity Reports Regime (The SARs Review) (2006 p.1) Available at: www.soca.gov.uk/downloads/SOCAtheSARsReview_FINAL_Web.pdf (Accessed in 30/04 /2015)
[462] Lander, S (ibid p.14).

activity reports (SARs)[463]. The aim of the National Crime Agency (NCA) is to reduce organised crime and gather, analyse and disseminate criminal intelligence and enable the prosecution of those responsible[464]. The (NCA) is working achieve these objectives through its intelligence centre[465], and also by supporting and coordinating resources to combat economic crime in the UK – including law enforcement efforts on ML, bribery and corruption, asset recovery and asset denial, using the intelligence and evidence-gathering, cash seizure and forfeiture, restraint and confiscation and civil recovery and taxation[466].

Through use of these strategies, the National Crime Agency report 2014/2015 shows an increase in cash seized in 2014 not just in respect of ML "totalling £13m, a 32% increase on 2013 (£9.8m) and a 91% increase on 2012 (£6.8m)."[467] In the same way, the HM report added that through the activity of the NCA over £16 million in cash was seized and around 150 related arrests were made since the NCA was created in 2013[468]. Theresa May, the then Home Secretary, stated that this new body was created and "merges several specialist crimes-fighting forces with it, because of a perceived lack of joined-up thinking and cooperation. It is commissioned to hunt down underworld crime lords and confront the growing menace of foreign gangs and cyber warfare in a coordinated way"[469]. However, criticism has been directed at the function of this new authority by some experts who believe that this function would undermine the importance of local policing in fighting terrorism[470].

[463] Part (1) of the Crime and Courts Act (2013).
[464] See part (1) (4) of the Crime and Courts Act 2013.
[465] See part (1) (5) of the Crime and Courts Act 2013.
[466] See HM Treasury. UK national risk assessment of money laundering and terrorist financing 2015 (P.24) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf (Accessed in 8/07/2016).
[467] See the National Crime Agency Annual Report and Accounts 2014–15 (p. 18) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444184/NCA_Annual_Report_2014-15__web_.pdf (Accessed in 8/07/2016).
[468] See HM Treasury ibid (2015 p.24).
[469] The Telegraph. The National Crime Agency: Does Britain need an FBI? Philip Johnston 07 Oct 2013. Available at: http://www.telegraph.co.uk/news/uknews/law-and-order/10361009/The-National-Crime-Agency-Does-Britain-need-an-FBI.html (Accessed in 30/04/2015).
[470] The Telegraph (ibid).

5.4- The role of the UK against this crime in the global money markets, and the extent of effectiveness of its regulations

Finally, the question arises about the effectiveness of the UK taken in the oil markets against this crime, as the UK is an oil-producing nation and has very strong interests in the oil marketplace. Therefore, I would suggest that the UK government undoubtedly considers attempting to combat ML to be a serious issue. It has addressed this crime by issuing all these regulations backed up by strong punishments and created all the bodies, which are working together to achieve one objective- that of carrying out effective investigations to detect and deal with suspicious ML operations. The UK has made significant efforts to respond to the obligations laid down by international conventions in this area, such as the implementation of a risk-based approach and due diligence etc.

Furthermore, in order to strengthen their position in global markets, it has taken specific action against corruption in the oil industry. In view of the UK's special position at the hub of the global money markets with very strong interests in the oil marketplace, the ML issue is highly significant for the UK and for its links with the oil- producing countries, includes Libya. The UK initiated the Extractive Industries Transparency Initiative (EITI)in 2002; and in 2014, obtained candidacy status and officially became an implementing country[471]. The target of the Initiative is to assist oil-producing countries, specifically the African countries, who could achieve benefit from their oil wealth, by addressing the general failure to transform resource wealth into sustainable development. The EITI was extended to become global, and over 20 countries have committed to its principles and criteria. The EITI works on strengthening revenue transparency in the oil and gas sectors, by intervening in the value chain at the collection of taxes and royalties stage[472] such that oil and gas proceeds from these countries are more transparent. However, the limited success of the EITI stems from challenges that need to be addressed, such as not all the countries obligated to the EITI, not having completely complied with it, so the effectiveness of the EITI is limited[473]. According to the second UK EITI report in 2015, the

[471] See the United Kingdom Extractive Industries Transparency Initiative (UK EITI) UK EITI Report for (2015 p.5) Available at: https://eiti.org/sites/default/files/documents/uk-eiti-report-2015.pdf Accessed in 8/9/2017.
[472] See the Oil and Gas in Africa, Joint Study by the African Development Bank and the African Union by Oxford University (2009 p.114). Available at: https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Oil%20and%20Gas%20in%20Africa.pdf (Accessed in 8/9/2017).
[473] Ibid.

EITI has achieved successes by increasing the number of the companies participating; and 42 oil and gas companies and 18 mining and quarrying companies participated in compiling the report. This report also stated that the UK has received £904 million in revenue from extractive companies for a range of payments included within the scope of EITI, in 2015[474]. On the other hand, although, there are 48 member countries within EITI, only 31 had achieved enough transparency to be compliant with its standards[475]. This reflects how crucial the ML issue is for the UK and how, by fighting against corruption in the oil industry in developing countries, the UK is working to strengthen its position at the hub of the global money markets, the UK is also an oil-producing nation and has very strong interests in the oil marketplace.

Although Libya is one of the African oil-producing countries, it is not a member of the EITI, although it was invited to join in 2011. Libya has no commitment to the EITI, and there is evidence for a high level of corruption, as noted in 2016 by the Transparency International Corruption Perceptions Index, and the increasing oil smuggling means that there are hundreds of millions of dollars of state funds in secret accounts from oil revenues[476],as this study, has noted.

When considering the UK's AML legislation, the Managing Bribery report pointed out that there are some vulnerabilities and that "most intermediaries in our sample did not yet adequately manage the risk that they might become involved in bribery or corruption"[477]. Nevertheless, this report added that the majority of brokers working in this area were successfully managing the bribery and corruption risk. However, some of the risk ratings were determined solely from the risk of the jurisdiction concerned, and failed to identify the cost and how intermediary was remunerated or to use risk assessments to ensure their systems and controls were adjusted to, and commensurate with, the risk identified[478].Additionally, a HM Treasury report confirmed that points of weakness, mentioned in the FSA's 2010 thematic review, were persisting in the sector. These were:

[474] See the United Kingdom Extractive Industries Transparency Initiative (UK EITI) UK EITI Report. Ibid.
[475] Wenar, L. (2015). Blood Oil: Tyrants, Violence, and the Rules that Run the World Oxford University Press (p.317).
[476] Ibid.
[477]FCA. Managing bribery and corruption risk in commercial insurance broking: update',2014 Available at: https://www.fca.org.uk/news/tr14-17-managing-bribery-and-corruption-/risk-in-commercial-insurance-broking (Accessed in 11/07/2016).
[478] See the Managing bribery and corruption risk in commercial insurance broking: update', FCA, November (2014 p.8) Available at: https://www.fca.org.uk/news/tr14-17-managing-bribery-and-corruption-/risk-in-commercial-insurance-broking (Accessed in 11/07/2016).

poor governance, weak and limited vetting of respective employees and that the details, relevant to ML operations that should be going to senior members of the board on AML, were insufficient[479].

Thus, there seems to be a problem in the UK's AML approach, which is linked - as this study pointed above - to the multitude of annual SARs that generated low-quality reports. Indeed, Mugarura adds that there is a challenge facing the implementation of anti-ML legislation that has rendered these laws hamstrung in practice. This is the continued lack of resources available for dealing with ML, resulting in a failure to address suspicious activities. In addition, the police have given a low priority to ML prosecutions[480]. Thus, the UK AML Acts are not effective due to inability of this Act to prevent ML by dint of property being bought, through false companies. The UK Acts are insufficient to establish effective tracking of the real owners of the money used to buy these properties and to identify the origins of the proceeds. This was confirmed by Liew and Reuter who refer to a British report that noted that in 2002, "purchasing property in the UK was the most popular method identified[481]. The same problem exists in Libya, in that the procedures for reporting are quite weak and have allowed ML, which has resulted in economic instability[482].

Furthermore, this deficiency in the UK Acts is relevant to the problems of Libya as London is considered by some Libyans as a safe haven to laundering their illegal money through buying expensive real estate. This has been confirmed by the LIBYAN AHBEARE, which added that there are some members of Libya's previous regime living in London and benefitting from their illegal proceeds[483]without any legal actions being taken against them by the UK authorities[484].

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[479] See HM Treasury ibid (2015 p.65).
[480] Mugarura, N. (2010) The effect of corruption factor in harnessing global anti-money laundering regimes, Journal of Money Laundering Control, Vol. 13, No. 3 (p.277).
[481] Liew, M and Reuter, P. (2006) Money Laundering' Crime and Justice Vol. 34, No. 1, 289-375 (p 319).
[482] Asharq Alawsat . Experts: Realtors speculations behind Tunisia's high property 30% Available at: http://ww.asharqalawsat.com/details.asp?section=47&article=770673&issueno=12941#.WWfP-ITyvIU (Accessed in 12/7/2017).
[483] See the Guardian, Libya acts to seize £10m Gaddafi house in London 2012 Available at: https://www.theguardian.com/world/2012/mar/02/libya-acts-seize-gaddafi-house-london (Accessed in 8/7/2017).
[484] LIBYAN AHBEARE [News] Three of Qadhafi's men live a lavish life in London 2016 Available at: http://www.libyaakhbar.com/libya-news/146719.html (Accessed in 9/7/2017).

Additionally, the money is being used to fund terrorist groups.[485] By means of buying cars and sending them to Africa money can be moved; furthermore, agencies are used to transfer the money in smaller amounts to avoid detection (see section 2). This has a negative effect on the political situation and the civil war in Libya funding the armed militia, as reported by Arab News on 14/11/2015[486].

Thus, the UK has taken positive steps towards eradicating corruption in the extractive industries field through its commitment to the Transparency Initiative. It is clear that the UK has had an important role in setting up the Extractive Industries Transparency Initiative, which has obliged companies registered in the UK and working in this field, to be clear about payments made to governments in other countries related to oil, gas and mineral commodities trading included in the EITI mandatory reporting requirements. The aim of this initiative is to root out corruption, including that in companies working in countries such as Nigeria, Angola and Libya. In spite of this, the UK has been criticised for often failing to take action against corruption. Moreover, it has been suggested that the UK is a facilitator of international corruption; as there are very significant financial flows that go through the City of London. Finally, the UK has adopted quite clear rules about political exposed persons and requirements of CDD[487].

5.5- Reporting Procedure for Suspicious Transactions

POCA (2002) requires any person in the regulated sector who knows, or suspects or has reasonable grounds for knowing or suspecting, that there is attempt of ML to take action[488]. These procedures were an attempt to respond to the 40 FATF recommendations that clearly detail the reporting procedures for suspicious transactions, and that involve the member countries having to take action to report suspicious transactions and regulate this procedure through their domestic regulations. Recommendation 19 states that member countries should oblige their financial

[485] See Minister of Oil in the Government of Tripoli for RT: Silence of the international community led to an increase "ISIS" in Libya. 2015 Available at: https://arabic.rt.com/news/793846 (Accessed in 1/06/2017).
[486] See the Arab News. Money laundering puts London in the trap of terrorism Issue 10107 (2015, p.5) Available at: https://alarab.co.uk/%D8%BA%D8%B3%D9%8A%D9%84 (Accessed in 8/7/2017).
[487] See House of Commons International Development Committee. Tackling corruption overseas Fourth Report of Session (2016, p. 13).
[488]Part 7 of the Proceeds of Crime Act 2002 (POCA)

institutions to submit reports on suspect operations to the domestic authorities [489](See Chapter Four).

There is however some criticism about the use of bank employees to report on suspicious operations. From 1993, the banks could make these reports without incurring liability to their clients or being bound by secrecy; however, the bodies created to deal with reports relating to ML operations have not responded effectively to the unexpectedly large amount of information received[490].

Stokes and Arora argue that professionally regulated sectors have become the 'policemen' in the way of struggling ML. In practice, banks are placed in a unique position with regard to ML, as the banks have given their employees powers to observe and report on suspicious ML operations. Simply, cashiers and frontline staff are right there when dirty money is initially placed into banking system; and the first stage of the ML process is when money is first introduced into the banking system[491].

Nevertheless, is argued here that using the banks in this way is effective and that the participation of the banks in reporting suspicious operations is important, as it could contribute to curbing ML crime. The evidence for that is the large volume of reports made about suspicious operations of ML, which has reached the bodies established for this purpose. The number of Suspicious Activity Reports (SARs) received by the National Criminal Intelligence Service (NCIS) are increasing, and, according to the SAR annual report, there were 381,882 in 2014/15[492]. This is due to the employees involved reporting any suspicious financial transaction, in cases where there is the slightest suspicion. The reports thus made are based on the quantity and not the quality of the transactions. However, Goldby has suggested that a method should be found to determine the number of SARs that are weeded out as "noise" or identified as defensive reporting, and details of the findings should be reported in the SAR annual reports[493].

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[489] See the FATF 40 recommendations Recommendation 19.

[490] Hall, M.R. (1995) An Emerging Duty to Report Criminal Conduct: Banks, Money Laundering, and the Suspicious Activity Report Peer Reviewed Journal Vol. 84 pp 643-684. (p.676)

[491] Stokes RArora, A. (2004) The Duty to Report under the Money Laundering Legislation within the United Kingdom the Journal of Business Law, May, pp.332-356.

[492]See Suspicious Activity Reports (SARs) Annual Report 2015 Available at: http://www.nationalcrimeagency.gov.uk/publications/677-sars-annual-report-2015/file (Accessed 4/7/2016).

[493] Goldby, M. (2013) Anti-money laundering reporting requirements imposed by English law: measuring effectiveness and gauging the need for reform. Journal of Business Law367 at 382 (p.28).

Thus, there seems to be a problem in the UK approach to combating ML which is linked to the multitude of unnecessary annual SARs that are generated. The reason for employee caution is that UK legislation has criminalized failure to report suspicious ML operations, which has resulted in staff submitting reports immediately when there is the slightest suspicion, in order to avoid criminal prosecution. Regarding this, Campbell argues that the danger inherent in criminal sanctions in this context is over-reporting, meaning those in the regime are "drowned in data", with questionable benefit[494].That led to an over-proliferation of reports all of which as yet they are not able to respond to. The large number of SARs about suspicious persons and transactions are arguably a condemnation of the system, as these will cost a large amount to process and also negatively affects the efficiency and effectiveness of the UK's approach against ML[495].

However, SARs will be developed to be more efficient in reporting on the risk and compliance activities by improving its AML supervision teams; and the pilot scheme started in 2016[496], In co-operation with HM Revenue and Customs (HMRC) employees have been taken on in the UK's FIU to work with the NCA to improve sensitive SAR intelligence, and the number of embedded officers increased in 2015/16 in HMRC, their target to identify undeclared assets and income hidden abroad[497].

In 2018 The National Crime Agency received a number of reports which flagged up potential money laundering, terrorist financing and other suspicious activity, and it has reported receiving 463,938 so-called suspicious activity reports, or SARs, nearly 10 percent more than for the preceding year[498].

Through compliance with AML laws the banks are an effective means of preventing money launderers from using banks; however, although this compliance will protect the banks' reputation and integrity, it also brings significant compliance problems for banks

[494]Campbell, L. (2018) cash (money talks): 4AMLD and the Money Laundering Regulations 2017' Criminal Law Review, 2, 102-122(P.5).
[495] Preller, S. (2008) Comparing AML legislation of the UK, Switzerland and Germany. Journal of Money Laundering Control. Vol 11 No. 3 (p.243).
[496] See Suspicious Activity Reports (SARs) Annual Report (2015 p.25).
[497] Ibid.
[498] Techregister, UK money laundering reports hit record level in 2018 available athttps://www.techregister.co.uk/uk-money-laundering-reports-hit-record-level-in-2018/ (accessed on 27/2/2019).

as well as having the potential to adversely affect their operations[499]. Thus, the banks ideally have to achieve a balance between compliance with AML laws and reasonable protection of customer confidentiality; however, it appears that compliance with AML takes precedence[500].

In order to make AML regulations more effective, the UK has sought to identify significant intelligence gaps specifically in the 'high-end' ML through strengthening, the intelligence picture and intervening to disrupt the threat. This effort is supported by appropriate legal powers, by stronger co-operation to increase their knowledge of high-end ML techniques and instruments, and by building effective strategies to disrupt threats in this area. Additionally, in 2014 HM Treasury sought to collect information on using digital currencies and to identify the risks associated with it and how it provided opportunities for illicit use. HM Treasury has noted that the illicit activity in digital networks meant that it had become an inadequate form of currency.

MLR (2017) in part 2 .19 (1), explains that ''A relevant person must (a) establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in any risk assessment undertaken by the relevant person under regulation....''[501]

Accordingly, the report should be prepared by the employee who suspects the transaction or activity for the 'nominated officer', appointed to deal with any suspicious action that may be related to ML operation. In this case, the nominated officer has to suspend the deal suspected of ML and provide a report to the NCA. However, if the employee wishes to proceed with the business which has been reported he or she must get the consent of the NCA. This means that in relation to the activity, which is suspected of being criminal under the POCA (2002),[502] any further business or consultation is conditional on obtaining consent from the National Crime Agency (NCA).

The reasons for considering a transaction or activity suspicious are that the business activity is unusual; or that the customer has tried to make exceptionally large cash

[499] Aspalella, A. (2013) The impact of reporting suspicious transactions regime on banks: Malaysian experience. Journal of Money Laundering Control. Vol 16 No. 2 pp 159-170 (p.160).
[500] Aspalella, A. ibid, (2013, p.162).
[501] See part 2 of the of the Money Laundering Regulations 2017.
[502] Proceeds of Crime Act (POCA) 2002 part (7)

payments; or the behaviour of the client is strange or maybe that the activity does not make sense commercially. Thus, all uncommon activity should be checked carefully to detect any anything suspicious.[503]

There seems to be problem about assessing whether a financial operation is suspicious or not; and this appears to be because the employee working on a transaction has to decide whether the available information is enough to determine whether the operation is unusual and if it gives rise to a reasonable suspicion. Thus, it is extremely important to concentrate on the term of 'suspicion', as it has a significant bearing on the stages of the AML strategy, specifically on providing reports.

The Joint ML Steering Group has pointed out that suspicion is based on "(a) degree of satisfaction and not necessarily amounting to belief but at least extending beyond speculation as to whether an event has occurred or not"[504] and "Although the creation of suspicion requires a lesser factual basis than the creation of a belief, it must nonetheless be built upon some foundation"[505]. Similarly, in the Court of Appeal in *K v Westminster Bank,* stated that the idea of 'suspicion' used in reporting ML operations is more than just 'fanciful', but is related to information about this operation. It considers that the interpretation of suspicion is the same in civil law as it is in criminal law[506]. However, suspicion does not necessarily have to ''be 'clear' or 'firmly grounded and targeted on specific facts' or based upon 'reasonable grounds''[507] as the POCA seemed to imply.

The POCA states that non-compliance with making a report to the NCA, as soon as practicable after the information is received, is an offence, and specifically the failure to report any suspicious ML movement by the regulated sector is considered an offence[508]. In other words, if the nominated officer fails to submit a report on suspicious activity he/she will be prosecuted and, if convicted, the punishment sanctioned under the POCA

[503]HM Revenue & Customs, Money Laundering Regulations: report suspicious activities published:23 October 2014. Available at: https://www.gov.uk/guidance/money-laundering-regulations-report-suspicious-activities (Accessed in 16/2/2016).
[504] Prevention of Money Laundering/Combating Terrorist Financing Guidance for the UK Financial Sector part 1 London: Joint Money Laundering Steering Group, Guidance (2007) 6.9
[505] Ibid.
[506] [2006] EWCA Civ. 1039
[507]Hopton, D. (2012) *Money Laundering: A Concise Guide for All Business.* London Gower Surrey (p.118).
[508] Part 330 of the POCA 2002

is a prison term of up to five years and/or a fine[509]. The POCA also criminalizes the act of making disclosures[510], which have possibly had a negative effect on the ML investigation[511].

In 2003 the UK attempted to address legislation for AML by reviewing laws[512], issued since adopting the POCA (2002). This law covered more related serious crimes, and clarified the rules for reporting suspicious operations, which included punishments for failing to report. Management controls are very important in fighting ML and preventing it; and businesses are obliged to issue management controls to show that employees who may come into contact with businesses that launder money, are given the opportunity to take appropriate procedures to stop this illegal action or quickly report it[513]. This implies there needs to be an active internal control system to identify the suspicious activities and report them to the aforementioned nominated officer.

5.6- The Preventive Measures

The UK has taken further steps in AML by establishing some preventive measures to curb ML operations at their financial institutions. These measures relate to the procedures that relevant institutions should take, which are the CDD principles as follows:

5.6.1-Record Keeping

The importance of the banks' record keeping procedures, as required by section (12) paragraph (1) of the ML Regulations (1993)[514],is that it ensures that there is an audit trail which provides customer and transactions details that could assist in any financial investigation at any time by a law enforcement institution. Thus, as part 4 of (MLR 2017) requires, customer records must be kept up to date and be available on the demand of the competent authorities. These records should include information about the client's identity, the firm's business relationships and data about the transactions and kept for a period of not less than five years[515].

[509]Part 7 section 334 of POCA 2000
[510] Part 7.333 (1) of the POCA 2002
[511]Preller, S. ibid (p.236)
[512]Edmonds, T. (2017) Money Laundering Law Library Briefing, Paper House of Commons 2592 (p.8)
[513] See HM, revenue and customer. Anti-money laundering guidance for trust or company service providers (2010 p.7) Available at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372271/mlr8_tcsp.pdf Accessed in 24/04/2016
[514] See section (12) paragraph (1) of the Money Laundering Regulations (1993)
[515]See part 4 (39) of the of the Money Laundering Regulations 2017.

The UK's ML Regulations (1993) were adopted prior to the Third EU ML Directive on keeping records related to financial operations to prevent using the banking system to launder money. The UK regulations regarding record-keeping were revised and enlarged in the 2017 Regulations[516].

Hopton considers record-keeping an essential part of all AML systems, due to its constituting the evidence of ML actions.[517] While the manner of keeping records and their location of the records are not identified, access to the details should be available when needed[518], and must be provided to certain authorities as soon as they are required. The records must also be kept in a safe way and should be protected against any security breach. Failure to do so can also lead to prosecution and/or regulatory sanctions[519]; although this does not necessarily entail the retention of original documents.[520]

Financial institutions are required to keep the necessary records related to any national and international financial operations conducted, as stated in the FATF recommendations 10 -12[521] (see Chapter Four). Thus, it is that the UK has complied with international obligations by including this recommendation within their regulations. Encouraging institutions to monitor transactions and keeping detailed records of transactions has specific importance for each of the processes of monitoring and record-keeping by the providers of financial services to customers. Their vigilance in these matters has a major impact on the detection of suspicious transactions[522].

5.6.2-Politically Exposed Persons (PEPs)

There is absence of public registries that should be involved in providing information about the beneficiary owners, including PEPs and their family members and associates who may need to have their data verified[523]. As Simonova has remarked, the FATF has induced member states to address this problem and defined the PEP as "an individual who is or has been entrusted with a prominent public function. Due to their position and

[516] See part (4) of the of the Money Laundering Regulations 2017.
[517]Hopton, D Ibid (2012, p. 97).
[518] Ibid.
[519] Ibid.
[520] Ibid (p.98).
[521]FATF 40 Recommendations 10, 12 &19
[522] Hopton, D ibid (2012, p. 97).
[523] Simonova, A. (p.353) The risk-based approach to anti-money laundering: problems and solutions. Journal of Money Laundering Control. Vol 14 No. 4 (p.353).

influence, it is recognised that many PEPs are in positions that potentially can be abused for the purpose of committing ML offences and related predicate offences, including corruption and bribery, as well as conducting activity related to financing terrorism"[524].However, the UK has a specific definition for the PEP, i.e. that any "politically exposed person" or "PEP" is an individual who is entrusted with prominent public functions, other than as a middle-ranking or more junior official; the "family member" of a politically exposed person includes— (A) a spouse or partner of that person; (B) children of that person and their spouses or partners; (C) parents of that person''[525]. The existence of customers who are PEPs in financial operations poses an elevated risk; which necessitates taking certain procedures as stipulated in the (MLR 2017) as follows: ''A relevant person who proposes to have, or to continue, a business relationship with a PEP, or a family member or a known close associate of a PEP, must— (a) have approval from senior management for establishing or continuing the business relationship with that person; (b) take adequate measures to establish the source of wealth and source of funds which are involved in the proposed business relationship or transaction with that person; and (c) where the business relationship is entered into, conduct enhanced ongoing monitoring of the business relationship with that person"[526].

Certain banks however have weaknesses in their systems of AML controls. This is confirmed by evidence that 15 banks ignored applying the requirements of the AML regime, which led the UK to take steps to assist in attempting to recover money that was transferred out of the country by former Nigerian President General Sani Abacha[527].Financial institutions are obligated under the MLR (2017) legislation to apply a risk-based approach to due diligence procedures with the PEPs through taking the aforementioned action to determine whether a PEP is the real beneficiary of financial dealings[528].

[524]FATF Guidance politically exposed persons (recommendations 12 and 22) (June 2013 p. 3). Available at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf (Accessed in 17/03/2016).
[525] See part 35(12) of the of the Money Laundering Regulations 2017.
[526]See part 35(5) of the of the Money Laundering Regulations 2017.
[527]Dayanath, J. (2009) Anti-money laundering efforts, stock market operations and good governance. Emerald Group Publishing, Limited VOL 1 No.1 pp 46-58 (p.55)
[528] See part (6) of the Money Laundering Regulations 2017.

However, in practice, a problem has arisen in applying a risk-based approach to the PEPs, there was disproportionate application of these rules to medium-ranking and junior officials. To address this issue, the UK has adopted a proportional, risk-based and differentiated approach to different categories of PEPs under section 30 of the Bank of England and Financial Services Act (2016), which has given power to the Secretary of State to clarify that the definition of a PEP does not include middle-ranking or more junior officials. Thus, there is a very important balance in exercising this principle, as not all PEPs pose the same risk of ML, and a risk-based approach can differentiate between lower and higher risk PEPs. This must be clarified to provide firms with a good understanding about undertaking less rigorous checks on low risk PEPs.

A Guidance Consultation from the Financial Conduct Authority (FCA), has identified some indicators that pose a higher risk by the PEPs. These include if PEPs are linked to a country characterised by the spread of corruption, political instability, weak state institutions, a weak AML system, armed conflict or non-democratic governing regime[529]. However, it is suggested that there is evidence that the UK is not in full compliance with the international AML principles of this AML strategy. This study has pointed out that some PEPs had been able to launder illegal money acquired by former Nigerian President General Sani Abacha. Also, some members of the previous Libyan regime had laundered money by using it to buy property in London.[530]No action was taken against these PEPs through AML strategies; and their actions resulted in negative effect on their national economies and increasing oil smuggling in Libya and other countries.

In spite of the significant procedures created to protect the bank's system when transferring or depositing funds from possible criminal origins, including that from illegal oil selling, the FSA reports that a large bank in the UK failed to identify sources of a client's wealth even though he came from an oil-producing country associated with very high levels of corruption. Thus, procedures that were used by this bank to disclose suspicious

[529] FCA's Guidance consultation (2017) Available at: https://www.fca.org.uk/publication/guidance-consultation/gc17-02.pdf (Accessed in 08/08/2017).
[530] See the Guardian, Libya acts to seize £10m Gaddafi house in London 2012 Available at: https://www.theguardian.com/world/2012/mar/02/libya-acts-seize-gaddafi-house-london (Accessed in 8/7/2017).

operations were not effective and the PEP database checks of the bank were unable to clarify the customer was a PEP[531].

Similarly, the FSA has confirmed that a PEP customer from a high-risk country had been receiving suspicious money in the UK, the real source of his funds was illegal oil. This customer was operating through two close relatives who held high office in their country and one had been suspected of serious corruption[532].

Additionally, a government inquiry was requested by Global Witness for 'failures' of the UK anti-money laundering rules that had allowed some banks such as HSBC, RBS, Lloyds, Barclays and Coutts to handle over $700 million of laundered Russian money, as Worthy reported; adding that ''the profits UK banks can make from handling dirty money far outweigh the sanctions they currently face for getting caught''[533].

5.6.3– Money Transfer Services

FATF recommends that financial institutions be obligated to audit money transfers by collecting all the important data about such deals, such as the sources of the financial transaction involved and they must complete details about such along with addresses and account numbers (see also Chapter four). Thus, in accordance with this FATF recommendation, the UK has already taken measures that can be used to limit the physical movement of currencies and help in detecting any money which people are attempting to move across borders.

The UK has therefore establishing legislation that requires financial institutions to control the movement of money. Specifically, it has amended the POCA (2002), the Terrorism Act (2000) and the ML Regulations (2003 and 2017) to establish a minimum limit of Euro 15,000[534] (approx. £10,000), over which a business needs to disclose the source of the money. This applies whether a deal is concluded in a single activity or has been taken through several operations that seem to be linked. The UK has also expanded the

[531] See FSA report. Banks' management of high money-laundering risk situations How banks deal with high-risk customers (including politically exposed persons), correspondent banking relationships and wire transfer (2011 p.23) Available at: https://www.fca.org.uk/publication/corporate/fsa-aml-final-report.pdf (Accessed in 26/7/2017).
[532] Ibid (2011 p.83).
[533] Global witness Call for Urgent Inquiry into UK Money laundering 'Failures' Over Global Laundromat Scandal by Worthy, M 2017 Available at: https://www.globalwitness.org/en/press-releases/call-urgent-inquiry-uk-money-laundering-failures-over-global-laundromat-scandal/ (Accessed in 26/7/2017).
[534] The Money Laundering Regulations 2003 (part 2).

regulation of the financial sector to include some other activities such as those of casinos, accountants, lawyers and estate agents[535]. As a result, there is confirmation that more than £2.5 billion worth of illegal assets have been frozen and £93 million returned to the original owners after 2010[536].

5.6.4-Training

The UK has focused on training all staff who may encounter ML operations, as part 2 of the MLR (2017) stipulates that members of staff are "regularly given training in how to recognise and deal with transactions and other activities which may be related to ML or terrorist financing"[537]. A high standard of training enabling official employees to become expert enough to detect criminal activity is a vital part of ensuring that these employees have enough knowledge to identify suspicious small businesses[538].

Qatar's Attorney General who is Chair of International Association of Anti-Corruption; considers training essential to improve knowledge and experience and to qualify staff to work effectively against this kind of this crime. He added that "the UN is providing technical assistance to help the countries to fight against the corruption, especially helping to train the judges, prosecutors and others"[539].Similarly, the International Monetary Fund has noted that the FIU set up an ongoing training programme for police investigating the financial sector; and included modular training provided by the ARA[540].

5.7- Freezing and the Confiscation in the UK regulations

The other way to retain criminal assets is by freezing them. The (ARA) is the authority that has the power to freeze offenders' assets, and it can issue a restraining order freezing any dealings with assets owned by persons convicted of corruption.

According to Rider, the UK, through the activities of the ARA, has frozen wealth of £100 million, and there are also orders for freezing a sum of around twice that[541]. However,

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[535]See part (2) of the Money Laundering Regulations 2017.
[536] Umar, A. UK Court Seizes £27,000 Found on Diezani 2015. Available at: http://leadership.ng/news/465277/uk-court-seizes-27000-found-on-diezani (Accessed in 3/3/2016).
[537] See part 3 (24).1 of the Money Laundering Regulations 2017.
[538]Scanlan, G. (2006) The enterprise of crime and terror – the implication for good business. Journal of Financial Crime, Vol 13 No. 2 (p.167).
[539] See the BELLA HADID Program on the Al Jazeera channel Program on the Al Jazeera channel 19/3/2016 Available at: http://www.aljazeera.net/programs/withoutbounds/2016/3/19 (Accessed in 29/3/2016).
[540]See the International Monetary Fund. Bermuda: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism International Monetary Fund Washington (2014 p.58).
[541] Rider (Ibid p.25).

there is a problem with converting the temporary freezing orders into final orders for confiscation. The reason for that is that the costs linked with such enforcement are not inconsiderable, as well as the long and complicated procedures of investigation in financial crimes that require a high level of experience[542]. Furthermore, the UK has frozen no more than 0.75 percent of corrupt global financial flows *per annum* for the period covering 2010-2012. This amount is relatively low compared with what has been requested from London as a financial centre.[543]

It is the opinion of this researcher that the UK is working intensively against financial crimes, and has adopted various procedures to prevent this crime by regular modification of legislation, due to the developments in these types of crime and in line with international conventions. The procedures of UK anti money laundering need to further develop specialised competences and build legal expertise in this area, specifically in the areas of investigation, prosecution and law enforcement. The SARs Report has confirmed that the UK's FIU has embarked on restructuring early in 2017, the target of which is to improve the time taken to respond to requests for details, and provide the flexibility needed to increase resources in response to priority areas if necessary. Further, it aims to provide more trained staff to deal with SARs, and exchanges with foreign FIUs and to improve the processing of searches and analysis through providing an expert cadre skilled in the daily use of available systems[544].

The tracing and recovery of illegal proceeds is still difficult, even though, the development of the Confiscation Act has been taken a long way, especially by enactment of the POCA (2002), and the Serious Crime Act (SCA) (2007). The minimum amount which can be seized is £1,000. Section 303[545] of the POCA (2002) allows the Secretary of State to set the minimum amount by order, after consulting with Scottish Ministers. Collins Martin and King Colin have confirmed that there are difficulties in recognising the economic cost and market size of criminal activity. On their own, monetary figures as to the amount

[542] Ibid (p.25).
[543]Edmonds, T. ibid (2016 p.26).
[544] See the NCA. SARs Reporter Booklet 2017 Available at: http://www.nationalcrimeagency.gov.uk/publications/694-suspicious-activity-reports-reporter-booklet-may-2016/file (Accessed in 8/7/2017).
[545] Part 7, 303 of the POCA.

realised under the POCA tell us very little as to the effectiveness of asset recovery in the fight against crime, these figures fail to provide an adequate performance[546].

The target of the confiscation is to strip the criminal of illegal proceeds; and was introduced in England and Wales in 1986 by the Drug Trafficking Offences Act. This was because of the failure to recover the drug trafficking proceeds in the 1970s in the 'Operation Julie' case[547]. Thus, the POCA (2002) includes a confiscation system in Parts 2 and 4 which identify procedures to implement confiscation. For example, procedures for the application of Confiscation Orders included consideration of a suspect's lifestyle and whether he /she has benefited from general criminal conduct[548]. However, there are some difficulties involved in confiscation. Firstly, the provisory measures to curb the movement of the assets may lead to confiscation before a suspect has been found guilty and sentenced by a judicial decision. Secondly, a high level of proof was required for the forfeiture, resulting in the low numbers of confiscations that were made. In an attempt to overcome this difficulty, the POCA (2002) has allowed the ARA to recover assets by suing to confiscate the proceeds of crime through the High Court, during which an interim Order to freeze suspect's assets can be obtained. However, in such cases the burden of proof lies with the Director of the ARA. Furthermore, because the burden of proof is on the government, if a dispute arises, the government may well decide to choose the easier route by getting an economic punishment in a civil court, if there are difficulties in establishing a criminal charge. It is during criminal asset recovery that all the funds of the criminal will be considered derived from offence unless the contrary can be proved by him[549]. Regarding this, Callant suggests that civil confiscations are being expanded and he is critical of this "tendency to cast a broad net over the assets of offenders rather than just illicit assets''[550].

The government's aim in issuing this Act was to make forfeiture easier and make provision for civil recovery when there is insufficient evidence to bring charges beyond reasonable

[546] Collins M and King, C (2013) The disruption of crime in Scotland through non-conviction-based asset forfeiture. Journal of Money Laundering Control 16(4): 379,388 (p,383).
[547]Walker, C and King, C. (2014) *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist* Assets, Ashgate. England (p.51).
[548] Part 2&4 of the Proceeds of Crime Act 2002.
[549]Peith, M and Aiolfi, G. Ibid (2004 p.430).
[550]Gallant, M. Ibid (2005 P.19).

doubt. Civil recovery focuses on the origins of the property not on the guilt of individuals and does not result in a conviction and imprisonment[551]. Article 317 (1) & (2) of the POCA 2002 stipulates that ''for the purposes of this section the qualifying condition is that the Director has reasonable grounds to suspect that: - (a)income arising or a gain accruing to a person in respect of a chargeable period is chargeable to income tax or is a chargeable gain (as the case may be) and arises or accrues as a result of the person's or another's criminal conduct (whether wholly or partly and whether directly or indirectly), or….''[552].

The Parts 1 and 2 of the Act have given the ARA the authority to confiscate gains obtained from illegal proceeds; moreover, the Director of this Agency has other powers set up by this Act such as the authority to appeal against a decision made by the Crown Court in order to ensure there is no wrong in law or fact[553]. The procedure of the forfeiture in this case I think will put the rights of people at risk, even if they are accused, as some of the forfeiture provisions, consequent upon conviction, further impact on the family of the person who was taken to court and affects third-party rights. Additionally, the forfeiture will affect human rights, specifically the right to quiet use of property[554]. Thus, the best procedure in this case is to freeze assets rather than use confiscation until the ARA has collected sufficient evidence to charge the suspect and judgment can be issued from the appropriate court.

The UK's mechanisms for confiscating the assets of crime are advanced compared to means that were previously used, such as criminal fines and criminal forfeiture[555]. Unlike criminal forfeiture, which is limited by an inability to confiscate criminal revenues if they are transformed from cash into other types of assets, confiscation is applied to all unlawful proceeds gleaned from crime, whether in cash or not[556]. To avoid the problems that have faced the enforcement of confiscation orders, some amendments have been suggested by the Home Office Working Group[557]; namely, to standardise the calculations

[551] Peith, M and Aiolfi, G. Ibid (2004 P.293).
[552] Part 6 (317) of the POCA.
[553]Peith, M and Aiolfi, G. Ibid (2004 p.298).
[554]Alldridge, P. (2001) The Moral Limits of the Crime of Money Laundering Buffalo Criminal Law Review Vol. 5, No. 1, pp279-319 pp. 279-319 (p.285).
[555]Gallant, M. (1999) Money Laundering, Criminal Assets and the 1998 Proposed Reforms. Journal of Financial Crime Vol. 6, No. 4 (p.324).
[556]Gallant, M. ibid (1999 p.324).
[557] The Home Office Working Group on Confiscation.

made in the confiscation orders; to put time limits on payments and to reconsider the period of imprisonment in cases of default by increasing it. The rules that relate to the interest payable on outstanding orders should also be clarified as well as stipulating which parties are responsible for execution[558]. Because of the importance of seizing illegal proceeds, the international conventions have obliged some countries to include in their legislation a section which enables their authorities to detain confiscated property which represents the proceeds of that crime[559].Article 31 of the UN Convention on Corruption states that members "shall take, to the greatest extent possible within their domestic legal system, such measures as may be necessary to enable confiscation of the proceeds of crime derived from offences established in accordance with this Convention"[560].This demonstrates the Convention's view of the importance of tracking the proceeds of illegal activity, as this provides a mechanism to deprive the criminals of their illegal assets. Furthermore, these provisions are recommended for transnational action to assist in the freezing and control of criminal proceeds and furthering the aim of AML legislation.

Harvey has considered that ''Despite its particularly assiduous application of anti-money laundering systems and procedures, the UK still appears on the list of countries in which money laundering is taking place,''[561] The cost of implementing these controls has a role in that. Thus, ''There is a need to have a clear idea of the objectives of legislation - with no clear measure of the amount of money laundering activity taking place it could be that demonstration of compliance rather than prevention of crime becomes an end in itself''[562].

Although, the aim of the UN Convention on Corruption (2004) is to curb the proceeds of crime and to recover assets, achieving this requires national legislation against these illegal actions, and further promoting important principles against benefitting from illegal proceeds, such as tracking illegal wealth[563].In the UK from 2010 to 2014 more than £2.5 billion worth of illegal assets have been frozen and £93 million have been returned to the

[558] Gallant ibid (1999 p.324).
[559]Rider (Ibid p.21)
[560] See Article 31 of the United Nations Convention on Corruption (2004).
[561] Harvey, J. ibid (2005.P.344).
[562] Ibid.
[563] Rider (Ibid p.13).

original owners[564]. The seizing and freezing enforcement is outlined under Section 295 of the POCA (2002). This demonstrates the significant efforts by the UK that resulted in recovering all these illegal proceeds.

Although, criticisms have been directed against this system of confiscation it has distinct advantages, as this study has highlighted; and improvements have been made through compliance with international principles which have resulted in denying many criminals the benefit of assets illegally seized.

Despite the UK regulations being very important steps in the fight against ML crime; there are still problems in the regulation of London as a financial centre.[565] Moreover, these laws concentrate on the national market rather than also focussing on the international market, which it must do if they are to successfully curb this cross-border crime. This Act also made confiscation more effective. The rules of KYC allowed banks to obtain sufficient details about their clients, specifically the beneficiaries of financial transactions, in order to prevent the misuse of the banks' facilities for ML purposes[566].

The UK has thus adopted a series of AML legislations and it has developed these by introducing some amendments to the regulations taken from the international conventions such as the EU directives and The UK has been eager to adopt its anti-ML regulations in conformity with the FATF recommendations, and has changed most of it relevant legislation as the international conventions and the FATF have requested. Therefore, the POCA (2002), the Criminal Justice Act (1991), the Drug Trafficking Act (1994) and the ML Regulations (1993) and (2003) were adopted under the EU directives. Nevertheless, The UK AML regulations have been in line with the FATF recommendations, for example, the UK has created the FIU, included the principles of CDD, taken up the procedure for reporting suspicious operations and other procedures that control suspicious money, like freezing and confiscation, despite this, there remains criticism directed at the UK AML regime, which concentrates on the lack of effective application of the UK's laws[567]. This is an important criticism which highlights limitations on the

[564]Umar, A. UK Court Seizes £27,000 Found on Diezani2015 Available at: http://leadership.ng/news/465277/uk-court-seizes-27000-found-on-diezani (Accessed in 3/3/2016).
[565]Pieth, M and Aiolfi, G ibid (2004).
[566] ibid.
[567] Ibid (p.265).

benefits that should be the result of all the hard work in creating these regulations. These limitations concern the failure to address the large number of reports submitted about suspicious financial transactions and the low implementation of the confiscation rules. It is issues such as these that make it imperative to ensure that reporting and confiscation are effective. 'Smurfing' is one of the means used by money launderers when they deposite cash at the banks or transferring the money abroad; and to avoid detection, they divide a large amount of money into several smaller amounts[568]. and this also needs to be addressed.

5.8- Conclusion.

Many different AML regulations have been issued in the UK since early on, in line with the rules of the international conventions, such as the European Directives on AML. This has involved the criminalisation of ML in a wide form in the POCA (2002) as well as many other regulations and the bodies created to fight ML have been given wide powers. Additionally, the UK has enforced the basic rules of an AML regime, such as procedures for reporting suspicious transactions, that is reflected in the significant number of reports on suspicious transactions to the FIU. However, even though there have been a high number of reports, the investigations based on these notifications have been exceedingly low[569].

Despite strenuous national efforts to combat ML in the UK, there are some arguably minor criticisms of certain procedures. For example, the UK needs to ensure that AML measures are cost-effective to make firms able to meet their obligations by using a risk-based approach and adopting the international obligations.[570] The UK has failed to identify these costs and how intermediary is remunerated; and failed to use risk assessments. Additionally, there has been considerable apathy in the UK with regards to developing optimally effective AML and bribery policies.

Despite criticisms directed against the UK's AML Act, this study has shown that the UK has attempted to adopt effective procedures against ML crime. Legislation on the

[568]HM Treasury. Anti-money Laundering Strategy London, UK: HM Treasury (2004 p. 12) Available at: http://webarchive.nationalarchives.gov.uk/+/http:/www.hm-treasury.gov.uk/media/D57/97/D579755E-BCDC-D4B3-19632628BD485787.pdf (Accessed in 8/03/2016).
[569]See Suspicious Activity Reports (SARs) Annual Report 2015 ibid.
[570]Ryder, N. (2011) The fight against illicit finance: A critical review of the Labour government's policy, Journal of Banking Regulation. Vol.12, No 3 pp 252-275 (p.254).

criminalisation of ML was updated in 2002 and 2003, where the offenses addressed by the legislation, are the concealing, disguising or converting of criminal property. Additionally, the UK created the bodies that work against this crime and attempted to address the problem that happened in the 1980s, through the era of financial deregulation that resulted in the attraction of large numbers of 'foreign criminals in London[571].

In this case, the relevance of this information above that Libya should be learned from these lessons by filling the gaps mentioned above, which require changes in legislation and the support of financial institutions by the financial experts and training programmes, and legal transplants such as the procedures of reporting suspicious transactions, that is reflected in the significant number of reports on suspicious transactions to the FIU.

[571] ibid (2011p.258),

Chapter Six: Money Laundering by the Sale of Oil in Libya and the Legislative Response.

6.1- Introduction.

This chapter will consider the political effects of the efforts in AML in Libya and the history and development of legislation against ML, that has been adopted since that country became independent. Libya has issued so many different regulations since the early 1950s, and the changes that have happened from then up to the present day will be traced and their impact assessed. It will be argued that Libya is aware of issues of AML in that it has ratified a number of treaties. However, in practice there is still a long way to go before international principles of AML are reflected in both legislation and actual practice, specifically in the illegal selling of oil.

6.2- The political effects of the efforts in Anti- Money Laundering

Libya is a major producer of petroleum; oil is extracted and refined in Libya, and the country's economy depends largely on the sale of this oil. The U.S. Energy Information Administration (EIA) has noted that Libya's economy is heavily dependent on hydrocarbons which constitute 96% of the nation's exports and which made up around $4 billion per month of net revenues in 2012. However, according to Taguri and Nasef, Libya has a weak infrastructure in health care and was ranked 87th from 191 countries by the World Health Organisation in 2000[572]. They believe that this was due to corruption.

A pattern of authoritarianism has formed a part of Libya's recent history, including the recent civil war; and this has allowed a high degree of corruption in spite of the national law criminalising it, and Libya's subscribing to the rules of international conventions on corruption. This, and the regulations issued during Gaddfi's regime, may in part explain why Libya was ranked 168th out of 182 on the Transparency International 2011 Corruption Perceptions Index[573]. The chaos, the proliferation of weapons, the civil war and the armed factions required oil production sources and led to an increase in corruption; and in 2016 Libya was ranked 170[574].

[572]Taguri,A and Nasef, A. Ibid (2008 p.186).
[573]Transparency International Corruption Perceptions Index 2011.
[574] Ibid (2016).

Libya does not have a constitution, and the legal framework of the country rests on a series of declarations and laws such as the Declaration of the Authority of the People (1977) and the Great Green Charter of Human Rights in the Age of the Masses (1988)[575]. In spite of many laws which have been issued since the early 1950s, offences of corruption have increased. The spread of corruption in Libya is due to many factors. One such is the 'Popular Revolution' which began after Muammar Gaddafi's landmark speech in April 1973 at Zuwara[576].The new system of administration that dates from this time involved selecting people for office by popular choice, suspending laws and replacing some government institutions with the Popular Administration. Hagger believes that the changes made by Gaddafi's revolution resulted in many experienced and qualified people losing their positions.[577] However, the Libyan oil and banks, during the king's regime were also controlled by corrupt management[578]. Many leaders were thus replaced by under-qualified people who were unable to prevent the corruption that spread through the majority of administration departments.

The spread of corruption might also be explained by the absence of a constitution which Gaddafi suspended after coming to power in Libya at the end of the 1960s. His regime was characterised by a lack of democratic institutions and the rule of law giving the President absolute power. Other reasons include the old regime's practice of ignoring these crimes, as already described by Idrissi, and the 1981 law on employees' salaries. The latter needs amendment to ensure that Libyan employees do not use illegal means to augment their incomes to meet their basic needs[579]. In addition, oil smuggling must be curbed by bringing Libyan fuel prices in line with those of neighbouring counties.

The end of Gaddafi's regime did not mark an end to corruption and it still exists in many forms, for example the smuggling of oil to Malta and Tunisia through Zuwara[580]. Shaw and Mangan believe that smuggling oil through Libyan ports into Malta and Europe has

[575]Zoubir, Y and Aït-Hamadouche, L. (2013) Global Security Watch—The Maghreb: Algeria, Libya, Morocco, and Tunisia American Bibliographic Company United States (p189).

[576] Bell, A and Witter, D. (2011) *The Libyan Revolution Roots of Rebellion*: Washington. The Institute for the Study of War United States (p.20).

[577] Hagger, N. Ibid (2009 p.101).

[578] Dreyfuss, R. (1982) Economic warfare: the true story of the 1970s Great Oil Hoax. Executive Intelligence Review Vol 9 No. 14 pp 20-23 (P. 20).

[579]Transparency Libya Team Paper 2010

[580] Shaw, M and Mangan, F. ibid (2014 p.27).

brought riches to a number of Libyan individuals[581]. Libyans have been able to use smuggling oil and other subsidised goods as a way of raising their standard of living. Smuggling oil from Libya's militia-controlled oil facilities is still occurring and a ship containing illicit crude oil tried to sail from the rebel-held port of Sidra on March 8th 2014. This was without permission of the Libyan government, which, together with Cyprus requested that the oil be seized by US navy SEALS as the ship was near Cyprus in international waters. The United Nations Security Council Resolution 2146 (2014) allows member states of the Security Council to inspect vessels that are suspected of having illegal crude oil from Libya as cargo and the UNSC has adopted sanctions against the illegal export of crude oil. It is imperative that there is national and international co-operation to curb these kinds of crimes; and that the regulations that have been issued be upheld and the laws against corrupt operations enforced.

Nowadays, ML in Libya has had a significant impact on weakening national income through the depletion of capital. Capital has been smuggled abroad, leading to an imbalance between savings and consumption currency, according to the Audit Bureau's report, the Central Bank of Libya contributed to ML, which led to a reduction of reserves abroad, worth 72 billion dinars by the end of 2016. This was done through external transfers made by the Central Bank to foreign banks also the Audit Bureau's report stated that in 2015 there were a number of companies' and individuals' accounts that were frozen, as they proved to be involved in the smuggling of large sums of money abroad through the supply of fake and manipulated documents, which affected the supply of real goods or services benefiting the State[582].

ML has had a major impact on monetary instability, wealth became owned by just a few people, which has impacted negatively affected society, and caused the depletion of the national economy. Money-laundering has contributed to the spread corruption, social crimes, administrative corruption and bribery[583]. The standard of living dropped due to

[581] Ibid.

[582] See the Audit Bureau of Tripoli on Thursday the annual version of 2016 published by Al Marsad Journal 28/4/2017 Available at: https://almarsad.co/2017/04/28 (Accessed in 14/6/2017).

[583]See the Monthly Report Libyan Organization for Policies and Strategies Ibid (2017 p.9).

the provision of counterfeit goods and services; and there was a poorer level of banking services due to lack of liquidity[584].

The Libyan legislator being aware of the seriousness of the smuggling crime and the need to address, it concluded that the first step in this area was to fill the legislative vacuum by adopting a law specific to this crime. This was Law No. 97(1976) against smuggling commodities through customs. This law criminalises the smuggling of goods, and punishes anyone who commits the smuggling action by detention for a minimum of two years and a fine equalling double the value of the goods involved or one thousand LYD, whichever is greater[585].

On the other hand, the crime of smuggling goods was also within the scope of the crime that was criminalised by the Customs Act No 10 (2010), also called 'Concerning Customs', which also includes any smuggling that violates the laws of import and export. Since the oil and its derivative materials are imported and exported only by the government, any export that has been made by non-government bodies or without the knowledge of customs staff is contrary to the rules of import and export, and considered a smuggling crime by Article 45 of Law No. 10 (2010) (Concerning Customs)[586], so controlling the smuggling of goods is the responsibility of customs officials.

Although this law represents an important step in the fight against goods smuggling, this first step has stumbled as it is noted that up to now there is no independent law that criminalizes the smuggling of oil and its derivatives, and all that is there is the crime of goods smuggling which does not clearly include smuggling oil derivatives.

6.3- Islamic Principles and Effective Changes to the Libyan Anti-Money Laundering Legislations

Libya, as an Islamic country, has codified its legislation since 1971, when it adopted a decision by the Revolutionary Command Council (Article 1) "The Libyan Arab Republic emphasizes spiritual values and takes Islamic law as the main source of

[584] Libya Almostakbal. Libya banks raise commissions. Available at: http://www.libya-al-mostakbal.org/10/12661 (Accessed in 14/6/ 2017).
[585] Ibid Article (2).
[586]Law No. 10 of 2010 Concerning Customs Available at: http://security legislation.ly/sites/default/files/files/lois/107-Law%20No.%20(10) %20of%202010-ORG.pdf (Accessed in 13/06/2017).

legislation"[587].That means that Libya must take into account commitment to basic principles of Islamic law in every legal issue. Based on this decision, legislation has been adopted that applies the principles of Islamic *Shari'ah.*

Libya is an adherent of the '*Maliki madhhab*'[588] (a school of thought) which is one of the four main approaches of *Fiqh* (Islamic jurisprudence) in Islamic *Shari'ah*[589]. The regulations it has adopted take the simplest of the *madhhabs* in Islamic *Shari'ah*[590]. Thus, Libya has adopted Law No. 89/1971 on *Zakat*[591] (the obligatory charity tithe for Muslims), and the law of the moratorium No. 124/1972[592] etc.

However, after the abolition of the Revolutionary Command Council, the People's Congress system replaced it, as stated in a legal document, issued in 1977, which is known as the Declaration of the Power of the People (1977).[593] In it, Libya considered Islamic *Shari'ah* as a code for the whole law of the country and prohibited any conflict with it.

So, Libya is unique, not only in comparison with other Islamic countries, as Article 2 of this document states that "The *Qur'an* is the law of society in the Socialist People's Libyan Arab *Jamahiriya*."[594]This principle was also affirmed in Article 2 of the Great Green Charter of Human Rights (1988), issued by the People's Congress. As this study, has stated in Chapter 7, with regard to criminal law, there is a generally accepted principle in (Article 1) "There is no crime and no punishment except by text" which prevents any direct returning to the texts of the *Qur'an* and *Sunnah* by the judge, because the point here is that the legislative text is the statutory text.

Although, the Declaration of the Power of the People (1977) considered that *Shari'ah* is the source of the legal system, this Declaration provides guidelines for taking *Shari'ah* as

[587]See the decision of the Revolutionary Command Council Available at: http://site.eastlaws.com/GeneralSearch/Home/ArticlesTDetails?MasterID=1252652 Accessed in 18/8/2016.
[588]Schnelzer, N, (2015) *Libya in the Arab Spring: The Constitutional Discourse since the Fall of Gaddafi*. Germany. Springer Fachmedien Wiesbaden (p. 47).
[589]Hisham, M. (2006) *Understanding Islamic Law: From Classical to Contemporary*, Oxford UK Rowman Altamira, ISBN 978-0759109919 (p.7).
[590] See Article 5 Law No. 52 of 1394. 1974 regarding the establishment of defamation
[591] See the law of Zakat Available at: http://itcadel.gov.ly/wp-content/uploads/2015/12/law89-year1971.pdf (Accessed in 18/8/2016).
[592] See the law of the moratorium Available at: http://itcadel.gov.ly/wp-content/uploads/2015/12/law124-year1972.pdf (Accessed in 18/8/2016).
[593] The highest legal document
[594] See the Declaration of the Power of the People. Available at: https://libyadiary.wordpress.com/2011/03/01/declaration-of-the-authority-of-the-people/ (Accessed in 18/8/2016).

a method or sources of Libyan legislation, these guidelines are not up to the level of the Constitution, thus is not obligated to the courts. As a result, it is clear that the Libyan Legislator has failed to endorse *Shari'ah* as a source of the law as there is no law for implementing these guidelines. This confirmed by the Principle of the Supreme Court number 197/ق, 3.11. (1997)[595], which was not implemented because the legislative authority in Libya, namely the People's Congresses did not change laws issued before the Declaration of the Power of the People in order to remain compatible with *Shari'ah* principles. This inaction reflects a lack of seriousness in considering *Shari'ah* as a source of the Libyan law.

Therefore, the legal system in Libya falls far short of both *Shari'ah* principles and international AML regulations, and measures should be taken to rectify this. There are certain AML principles that should be involved in the CMLA 2005 such as measures for CDD to enable the banks to know who their clients are, so they can be monitored as far as ML is concerned, as this research will discuss.

Many Muslim people consider that *Shari'ah* is God's law and thus that there is no need for any codification; furthermore, there are ideas to be found in Muslim cultures that any importing of rules or laws from other cultures would be in contravention of Islamic *Shari'ah.* However, in this case, this study has shown the reverse of that, and it has confirmed that adopting some of the procedures contained in the UK AML regulations would be not inconsistent with Muslim ideas on AML principles. Adoption and codification would enhance the principles of AML encapsulated in *Shari'ah* and make them more acceptable and easier to implement. This research has argued that several *Shari'ah* principles address the primary crimes involved in ML crime and endorse the criminalizing of activities related to ML (See Chapter 4 section 9).

As this study, has argued above, Islamic regulations consider the means of actions, which in this case is ML. *Shari'ah* criminalizes the means of ML in two ways. Firstly, *Shari'ah* focuses of the result of the action; thus, if the action involved illegal proceeds- even if the action was legal- these proceeds are *haram* (unlawful) in the Islamic perspective. The

[595]See the guideline of the Supreme Court number (197/3.11.1997).

Islamic principle in this context, is to prevent to access to anything causing corruption[596]. So, any means leading to illegal gains are *haram* and are also illegal (*haram*) even if these means were originally legal. Secondly, *Shari'ah* criminalizes actions such as the creation of fake companies or making bank transfer operation of illegal gains, whether the target of the action was ML or not, as these actions are a kind of cheating which is not allowed.

Consequently, all ML operations, Libya including operations through illegal oil selling, are prohibited under *Shari'ah* rules, as a result, all the illegal proceeds are *haram* (unlawful) and these illegal sums of money must be returned, this includes anything bought by this money. In the holy Qur'an, Allah says 'And eat not up your property among yourselves in vanity'[597]. 'Eating property in vanity' can be interpreted to include all illegal actions to get gains. Similarly, Prophet Mohammad said "any activities build from *soht* (unlawful trade) will be cast into fire"[598]as this study has explained in Chapter four.

6.4-The legal framework for Money Laundering crime

Libya's legal framework is based on a series of laws and declarations, which include the 1977 Declaration of the Power of the People and the 1988 Great Green Charter of Human Rights in the Age of the Masses, the Penal Law of Libya; the Law of Economic Offenses in Libya No. 2(1979); the law of 'Where did you get this?' No. 3 (1986); the Lustration Law No. 10(1994); the Law of Drugs No. 7(1990) and the CMLA (2005) and its implementing regulations (2008).

6.4.1- The impact of international law and agreements on Anti- Money Laundering in Libya

Libya is obliged to include and follow international standards if it wants to deal with international institutions and banks. Liew and Reuter have noted that there are financial pressures by the US on the countries that do not play their part, by slowing down their international transactions and making it almost impossible for their banks to clear funds through other countries[599]. Abiding by international standards thus allows the Libyan Central Bank to conduct financial operations with those international financial

[596]Aseakr, A. (2009) *Money Laundering in the Light of the Islamic Regulation, Comparative Study:* Benghazi Dar Al-Kotob Al Watania (p.141).
[597] Holy *Qur'an Surah Baqarah* 188
[598] Tofangsaz, H ibid (2012 p.402).
[599]Liew, M and Reuter, P. Ibid (2006 p 291).

institutions who have requested this and ensures that the money which is transferred is legal, that there is information about its origin and that it is not involved in any suspicious operation. International standards are therefore adhered to in the Libyan regulations, and Official Financial Employee2, confirmed that: ''*the state of Libya is obligated to involve and follow the international standards of ML regulations to be able to deal with the International Institution Banks*''[600].

However, the interviews also revealed the impact of international law on anti-money

laundering in Libya such that, although Libyan AML regulations have included some of the international rules, through adopting the international Conventions mentioned above; Libya has a weak commitment to the Task Force on Financial Action standards. According to Official Financial Employee2: ‘‘*the proportion of Libya's commitment to the recommendations of the task force financial action is quite low*’’[601]. These shortcomings in the implementation of certain strategies in the fight against ML means there is a gap in the Libyan AML Act, as this study will be explaining later.

6.5- Attempts to curb Money Laundering in illegal oil selling in Libya

This section will discuss the effectiveness of Libyan penal law and other special regulations in preventing ML crime since the 1950s.

6.5.1- Libyan Penal Law

Such laws stipulate that anyone who receives or conceals goods stolen or obtained in any way by a felony or misdemeanour or enables others to obtain goods illegally is committing a financial crime and incurs a penalty. In this context, this study will discuss Libyan penal law from two perspectives – firstly, how it deals with the concealment of goods stolen or obtained from crime and secondly, the extent to which Libyan penal law criminalizes activities contributing to ML in order to find out why Libyan penal law is not adequate in curbing ML and third Criminalizing the Aiding of ML.

6.5.2-How it deals with the concealment of goods stolen or obtained from crime

Anti-corruption, which is the primary crime of the ML were first introduced in Libya as early as 1956. Libyan penal law deals with ML in two articles: firstly, Article 465 (repeated

[600] (Official Financial Employee No.2, interviewed 12 August 2015).
[601] Ibid.

A) stipulates that a penalty of not more than two years should be given for knowingly receiving or concealing goods stolen or obtained in any way by a felony or misdemeanour or for enabling others to obtain goods illegally[602]. These regulations have considered some types of behaviour as crimes; such as the concealing of stolen goods, the fraudulent use of a false name and criminal 'participation' - for example, helping to prepare for the offence or just by hiding the evidence of the crime. These Acts are an important contribution against crimes of corruption as they criminalize earning illegally by any means, which is the primary crime of ML, as well as hiding these proceeds, which is also a form of ML.

6.5.3- The extent to which Libyan penal law criminalizes activities contributing to Money Laundering

Although this Act was an early attempt to indirectly curb ML, these regulations do not cover ML operations such as transferring money via the Internet and other modern means which were not established when they were issued. This point was confirmed by Judge7.2, who agreed that the criminal laws were not enough to stem the crime of ML, and that: ''*the Act is not enough because it is not line with the development of the means of ML, which are currently through using new technology* ''[603].

Such answers demonstrate that despite national efforts to combat ML in Libya, and the adoption of these Acts; regulations have not been adequate to curb ML and the national laws have not come into line with the development of the technology. However, the effects of international laws and agreements on AML also need to be considered.

Although the aim of Article 465 is not to prevent ML directly, it contributes to anti-ML because it applies to a number of cases which may include the crime of ML. This is clear through the widening of the concept of the material element as a component of the concealment offence that not only involves concealment but is enlarged to include the receiving of things stolen or obtained from crime when knowing their source. It also includes enabling others to obtain advantage from the things that were stolen, which means that it includes electronic money transfers and smuggling. Moreover, the concept of the concealment is extended to include some of ML activities such as hiding and

[602] See the Penal Law (1956) Article 465 (repeated A).
[603] (Judge No.7.2, interviewed 27 August 2015).

possession which means that things can be considered 'hidden' if the individual has an authority over these things, even if they were not in his tenure. Additionally, the concealment may not be the crucial factor but it could be their value[604]; for example, the financial proceeds from things that were stolen, as confirmed by Article 465 above. However, this article did not include the banks that received a deposit of funds even if they knew that its sources were illegal; thus, it was not fully effective in controlling ML crime. Because of this deficiency, it was followed by the Economic Offences Act (1979).

Article 460 of the Penal Law of Libya has identified that the crime of fraud occurs when ''each person get illegal benefit for himself or others through using fraudulent means or by disposal of fixed or movable funds which are not his property and he has no right to dispose it or uses a fake name or representative. Fraud will be punished by a fine of not more than fifty Dinars or punishment will be confined to not more than five years if the harm is to the state or to its institutions''[605]. Simser considers ML that is achieved by establishing companies such as investment/trust companies; import/export firms; money service businesses and then mixing the illegal money with legal sums to hide their illegal origin to be fraudulent. [606]According to Bolton & Hand the definition of fraud is ''criminal deception; the use of false representations to gain an unjust advantage''[607]. Bara comments that the Libyan legislature considers that the offence of fraud only requires the offender to make the request, even if he did not get the funds[608].Additionally, this law has addressed economic crimes such as bribery, misappropriation of public funds and the extortion of money among others. The legislator has stipulated the punishment of imprisonment against any public official who has committed this illegal action.

Thus, ML operations by illegal oil selling are included in these criminalized behaviours, and this legislation should have contributed to preventing this crime; however, this crime has increased, as this study has explained above. Although this Act was an early attempt at curbing ML indirectly, these Articles did not stipulate what should happen if banks

[604]Tahar ibid (2008 p.90).
[605] See the Penal Law (1956) Article 460.
[606]Simser, J. Ibid (2013 p .42).
[607]Bolton, R and Hand, D. (2002) Statistical Fraud Detection; A Review. Statistical Science Vol,17. No. 3, pp 235-255 (p.215).
[608]Bara, M. (1993) *Libyan Penal Code section molesters funds*: V 2 Misrata: Aldar Al Jamahiriya distribution and advertising (p.165).

received a deposit of funds even when they knew that its sources were illegal and their role in disclosing this crime. Thus, this legislation was ineffective in controlling ML crime; and, because of this deficiency, it was followed by the Economic Offences Act (1979).

6.5.4- The Extent to which Libyan Penal Law Criminalizes the Act of Aiding Money Laundering

ML crime may be committed by one person who takes full responsibility for it, or it could be committed by more than one person, each one aiding by a certain amount. Aiding ML has different forms; it could be through incitement to commit the crime, by helping to prepare for the offence or just by hiding the evidence of the crime. All of these are called 'participation', and actions contributing to the offence are considered in two sections.

'Actions' can refer to the components of the crime that was committed, where the perpetrator participates directly in the crime or with others- if there are multiple offenders. Other 'actions' are those which are not primary components of the crime, such as abetting the commission of the crime, facilitating the offence or a later action, such as hiding the evidence[609].

Penal law has defined a 'partner in crime' in Article 100 as: ''firstly, anyone who incites to commit a component of the act of a crime if the act has taken place based on this incitement. Secondly, anyone who knowingly gives the actor or actors weapons or equipment or anything else, which was used in the commission of a crime with knowledge, helping them in any other way in the process or facilitating or being complementary to the commission of the crime. Thirdly, those agreeing with others to commit the crime which was committed based on this agreement''[610].

By this definition, participation involves three kinds of activity- incitement, helping and agreement. The important activity related to ML is helping- which means helping the criminal in any way in the process or facilitating or being complementary to the commission of the crime. In this context, there is a controversy about the extent to which these participation activities apply to ML. According to Mustafa, the ML operation can involve participatory activity by others; for example, the bank which receives deposits in fake accounts with the knowledge that the origin of these proceeds were illegal, and

[609]Pacholska, M. (2014) State Accomplice Liability under International Law – A Comparative Approach the University of Warsaw Journal of Comparative Law Vol.1, No 1 pp 71-89 (p.81)

[610] See the Penal Law (1956) Article 100.

transfers this money to help the criminals to hide the illegal proceeds, this bank would then be accountable for this operation[611].

Conversely, according to Tahar, the ML operation cannot be a participatory activity because it took place after a crime like theft or corruption, so the helping activities that happened after the end of the original offence cannot be seen as assisting in this crime, but it could be considered a separate crime like the crime of concealment[612]. In the same way, the causal relationship between the original crime and the partner's action must be considered; if there is no link between them there is no participatory activity. Thus, in the case of ML, the action of laundering comes later than the original crime, which means there is no causal relationship between the two crimes; as a result, there is no participation[613]. Libyan law has however adopted the view that ML operations can involve participatory activity by others, which including different forms of assistance in committing the crime, as in Article 100 mentioned above (100)[614]. In this case, the offence of ML is linked to concealing goods stolen or obtained from misdemeanour or contravention because of the material element – i.e. the money. Laundering offences go hand in hand with concealment in cases when the offender hides funds that were obtained illegally. In this context, the crime of concealment is also ML; thus, Libya's Penal Law has addressed financial crimes through criminalizing concealment.

It is arguable that the crime of concealment should be both linked to ML crime and not treated as separate, as the criminal is concealing 'the material element', concealment is therefore a central element of ML crime; which covers several different actives involved in the laundering of money. The other elements of this offence such as the act of camouflage, and also involves different forms of aiding and abetting as will be discussed in the section on the Libyan CMLA 2005.

Although, by imposing these rules, the legislator wanted to protect public money, this legislation does not expand on what constitutes all the economic crimes affecting the national economy, and oil smuggling is not included. While it is sufficient to punish all those in the Libyan administration who are guilty,this law has not kept abreast of the huge developments in the field of economic crimes, which has entered an era of electronic

[611] Mustafa, ibid (2008 p.95).
[612]Tahar ibid (2008 p.193).
[613] Ibid (p.194).
[614] See the Penal Law (1956) Article 100.

means of fraud and embezzlement, or the use of multinational companies and international banks in countries with banking secrecy; as well as the Libyan legislature also lacking the means of economic control[615].

Libya has nevertheless attempted to address the deficiency in the relevant previous legislation, by adopting the Economic Offences Act No 2 in 1979. This law criminalized any intentional destruction of oil installations or any public establishment, and it focused on the smuggling of goods, which were identified by Article 5 of this Act, namely: coins, valuables such as paintings or objects in precious metals, alloys, gold jewellery or precious stones[616]. Although this law is important to preserve the national economy by criminalizing these dangerous acts because they often produce large illegal proceeds; usually the criminals resort to laundering in order to enter these proceeds in to the legitimate financial system and this, in itself is an important original crime[617]. However, through studying this law, it is noted that up to now there are no independent and clear law texts that criminalize the smuggling of oil and its derivatives; all that exists is the crime of goods smuggling and damaging oil installations. Thus, this law is very weak in fighting this specific ML operation. This law has imposed punishment on this action without identifying the mechanism that could be followed to disclose it; so, it does not contribute to curbing ML crime. In order to comply with pressure from international financial institutions and related organizations, Libya has attempted to address this deficiency, by adopting the CML Act (2005), as this study will discuss below.

6.6- Confronting Money Laundering through Special Regulations

Libya has attempted to prevent corruption and ML crimes by issuing some special legislation against financial crime; this section will explore whether these special regulations issued to prevent financial crime are adequate or not.

6.6.1-The law of "Where did you get this?" No. (3) (1986)

Libya issued Act No (3) in 1986 in an effort to combat corruption. Article 1 is important and states: ''no person may acquire money, benefit or material advantage illegally, and

[615] Shell Of, H. The responsibility of the Libyan regime for the spread of economic crimes Libya Almostakbal 2005 Available at: http://archive.libya-al-mostakbal.org/MinbarAlkottab/december2005/drHadiShalluf021205.htm (Accessed in 13/6/2017).

[616] See the Economic Offences Act No. (2) in 1979 Available at: http://aladel.gov.ly/home/?p=1405 (Accessed in 16/6/2017).

[617] Abayuki, A. Economic Crime. Available at: www.policemc.gov.bh/reports/2011/.../634372734179936644.doc (Accessed in 16/6/2017).

earning is unlawful if it arises from favouritism, threats, violation of the law, abuse of occupational or professional status or influence or if the source of someone's income is unclear or unaccountably exceeds his normal income''[618]. This law applies to every official, whether permanent or temporary, working for the government or the local community and prohibits any person commissioned with a public service or entrusted with the task of implementing the law to disrupt the principle of equality and receive any advantage for himself or for any relatives or friends. Also, it prohibits any official to use his position or influence to intimidate others and to obtain any benefit by compelling the officials of law enforcement to act contrary to the law.

Thus, this Act is not limited to corruption by public employees, but also includes others by using the term ''no person'' in Article (1). This Act attempts to prevent corruption in general and has widened the criminalized behaviours to include any illegal means such as deception, fraud, threats…etc. It is also clear that the law targets official employees, who are required to disclose the source of their property and gives the legal authorities power, to follow them and to ascertain that these amounts in their possession are legal; and if they cannot prove the legality of the proceeds, power to confiscate them.

This Act did not only contribute to preventing corruption, but went further and addressed ML operations by criminalizing hiding illegal proceeds, which is also a form of ML. This law, under Article 5, punishes any person who conceals money illegally with imprisonment and a fine not exceeding one thousand dinars[619]. However, this Act does not specify the criteria to be followed by the concerned authorities to detect suspicious ML operations, as this study has explained when discussing international AML principles. Furthermore, this Act does not cover ML operations such as transferring money via the Internet and other modern, means which were not established when it was issued.

6.6.2- The Lustration Law No. (10) (1994)

In order to protect public funds, Libya issued the Lustration Law No (10) in 1994. In Article 6, theft and illegal earnings were criminalized as follows: ''theft and illegal earnings are considered to be all money or commission obtained by any person (subject to the provisions of this law) for himself or for others by taking advantage of his status or abusing

[618] Libyan Official Gazette V, 13 Issue 24, 1986 (p.438).
[619] Libyan Official Gazette ibid (p.438).

his professional authority ……''[620]. This text demonstrates that the aim of issuing this law was to curb corruption by criminalizing the means of corruption, such as theft or using illegal ways to obtain money. This Article also covers offences by a public official who obtains for himself or for another person a profit or benefit from the job in which he works, and criminalizes any such gain or benefit, whether the beneficiary is the employee or third parties. For example, if the accused took advantage of his position to hide the origin of illegally obtained proceeds, this action is illegal, and constitutes an important original crime of ML. This is because criminals often seek to launder large illegal proceeds within the financial system. Therefore, according to Kalid, the target of this regulation is the primary crime of ML[621].

6.7- Measure No. (1) (2002) of the Libyan Central Bank against Money Laundering

Libya has attempted to adopt mechanisms against ML through the procedures of the Central Bank, which issued measure No (1)[622]in 2002, which involves AML procedures for all commercial and private banks, the Libyan Foreign Bank and all financial institutions. According to Decision No.1 of the National Committee on AML (2008), Article 1 stipulates that ''this Unit operates under the National Committee for Combating ML, it is managed by a Director, assisted by a Deputy and a number of specialists and expert staff in this area."[623] Article 2 adds that this Unit operates through three departments, which are the Department of Administrative and Financial Affairs, the Department of Inspection and Follow-up Investigation and the Department of Analysis of Reports and International Cooperation[624].

It has also included a definition of money-laundering operations, and identified guidelines that should be taken when opening accounts; for example, whereby banks are prohibited to open accounts that use a fake name or representative, and must always adopt the

[620] Libyan Official Gazette V 5 Issue 32 1992 (p.125).
[621] Kalid, M. (2011) *Anti-Money Laundering Criminal Policy in The Penal Law of Libya* Comparative Study. Law School University of Alexandria PhD (p.60).
[622] Published by Libyan Central Bank No.1 in 2002, countering money laundering measures Available at: http://72.167.40.209/arablawsbanking/LawsArticlesResult.aspx?SC=150120035384966&PageNum=1 (Accessed in 15/07/2016).
[623]National Committee for Combating Money Laundering. Main Financial Information Unit for Combating Money Laundering, Available at: http://fiu-ly.com/pdf/pdf/decision22008.pdf (Accessed in 7/2/2015).
[624] See the Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article (2).

account holder's name, as it is written in the passport or business license in the case of ordinary persons.

Furthermore, the banks are obligated to establish an FIU to counter illegal ML, However, the vulnerability of Measure No 1 is that this publication, although it included all these important procedures, did not live up to the law. Thus, this led to Libya adopting Law No. 2. (2005) on Combating ML.[625] As a result of this pressure, the law was hurriedly enacted, which may explain why neither of the regulations properly involved some important and sensitive principles such as regulations on how to deal with PEPs etc, as will be discussed in this section, and why these regulations are ineffective and thus in practice almost non-existent.

6.8- Libyan Combat Money Laundering Act No.2 (2005) and its Executive Rules

As this study, has argued, even though Libya issued several regulations against financial crimes, rapid global developments in technology meant the regulations were becoming powerless to prevent corruption and ML crimes. Thus, Official Financial Employee2 answered questions on the criminalisation of ML saying: *"In order to be able to deal with international financial institutions, Libya should be obligated to include the international standards relating to ML in their regulations''*[626].Also, Official Financial Employee4 asserted that: *"the deal with the international institution banks is conditioned by an obligation to follow the international standards relating to ML''*[627]. Thus, in line with international attempts to curb ML offences, Libya issued the CMLA (2005).

The important focus in this context is Article 1, which defines illegal funds as '' illegal property obtained directly or indirectly from a crime''[628]. The first paragraph of Article 2 defines those guilty of an ML offence as follows:

''anyone who perpetrates any of the following acts shall be considered to have committed the crime of ML: Possessing, owning, using, exploiting, disposing of in any manner, transferring, transporting, depositing, or concealing illegal property in order to disguise its unlawful source. Disguising the true nature of illegal property, concealing its location,

[625] See the Law No. 2. (2005) on Combating Money Laundering
[626] (Official Financial Employee No.2 interviewed 12 August 2015).
[627] (Official Financial Employee No.4 interviewed 12 August 2015).
[628]Alfleah, M. Ibid (2012 p.150).

method of disposal or movement, rights related to it, or its ownership or possession. Participating in the above acts in any manner whatsoever''[629].Article 2 para. 2 defines when the funds become illegal: ''property shall be considered illegal if it was obtained from a crime ... ''[630].

However, some criticism has been directed towards Article 1 of the CMLA 2005, Official Financial Employee2 concluded that this Article's criminalization has not criminalized all behaviours that form ML[631], additionally, that this law is not line with the Palermo Convention (2000), and that it did not include all behaviour that was criminalised by this Convention; such as the smuggling of migrants by land, sea and air; or the illicit manufacturing of and trafficking in firearms and their parts. Official Financial Employee4 stated that: *''the law (CMLA2005) does not mention the text of the 'objective factual circumstances''[632].* This is considered by the Convention as the element of criminal intent in the offences stipulated in Article 5, paragraph 2. To infer the existence of intent, the Convention stipulates that ''the knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances''[633], which means that the objective factual circumstances could be used as a proof to show that the criminal has the 'knowledge and intent' to commit a ML crime[634]. On the other, hand, Orabi, who is a legal Member of the FIU has stated that ML should be criminalized by adopting a wide definition of ML crime which includes all behaviours mentioned in international conventions in this area[635].

However, this claim also is not accurate, the reason for that being the definition of the term 'institution' in the Article above is quite wide and includes different kinds of financial institution; i.e. any bank, finance company, financial market, money changing shop, broker, or any other establishment authorized to carry out its activity by the Central Bank. Furthermore, other financial and commercial establishments authorized to carry out their activities by economic entities other than the Central Bank, such as insurance companies,

[629]See Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article 2(1).
[630] See Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article 2(2).
[631](Official Financial Employee No.2 interviewed 12 August 2015).
[632] (Official Financial Employee No.4 interviewed 12 August 2015).
[633] See United Nations Convention against Transnational Organized Crime (Article 5 paragraph 2).
[634]Amrani, H. Ibid (2012 p.96).
[635] See Al Masaref Journal issued 16 (2013 p.7) Available at:
https://cbl.gov.ly/wpcontent/uploads/2016/03/Masaref16.pdf (Accessed in 20/6/2017).

service bureaus and so on, are included.''[636]. Thus, the definition is wide as it includes all financial institutions whether or not they are authorized by the Central Bank of Libya. [637]

Finally, although, Libya has attempt to prevent ML crime by adopting the laws that work against the primary crime of ML; these laws arguably have weaknesses, as this study has explained above. Libya is aware of AML issues in that it has ratified a number of treaties and adopted the CMLA (2005), however, there is still a long way to go to curb the ML operations in illegal oil selling. Although the economy of Libya is dependant largely on the sale of oil and oil smuggling has taken place, Libya has not adopted any special rules against the phenomenon oil smuggling. This was mentioned by Official Financial Employee3 who stated: ''*there are no special rules and mechanisms to combat ML through the selling of oil, whereas all proceeds of oil sales made through the Organization of the Petroleum Exporting Countries (OPEC) are given to the Central Bank from the Libyan bank Arabs Abroad*''[638].

Oil smuggling is increasing and is taking place by modifying of fuel tanks in the vehicle carrying this fuel, making additional fuel tanks or carrying the fuel in special tanks that have been made for this purpose. This is confirmed by answers of the interviewees, as they suggested that this is due to the lack of monitoring of the borders by Customs and the lack of training. So, the aim is to identify gaps in the application of the AML Law which need to be filled in order to strengthen the application of AML measures in Libya in line with international standards, and specifically in comparison to the UK's ML law, which does not have any specific legislative provisions on ML for oil. Finally, this chapter found out that a major reason behind the increase in ML crime are deficiencies in the CMLA, and the implementation of the laws in practice. Libya has attempted to be effective against ML crime, but, unfortunately, due to developments in the means of committing and these deficiencies in the legislation and its implementation, ML continues to rise. Specifically, the legislation is not in line with the international principles adopted against this crime and there is a lack of training programmes for the staff of the relevant institutions such as the FIU, banks and the Customs Authority, which need to be

[636]Law No. 2 in 2005 on Combating Money Laundering Article 1.
[637] Ibid.
[638] (Official Financial Employee No.3, interviewed 12 August 2015).

addressed as this study will be explained later. This has allowed criminals to increase their smuggling of oil, because they understand there is an opportunity to conceal illegal proceeds. In addition, the weakness of the religious deterrent,[639] and the spread of a culture of looting the state's funds are contributory factors, as are political instability, the existence of armed gangs and party political conflicts after 2011; as confirmed by the Amnesty International Report (2016/17). [640] Oil smuggling was estimated in 2015 by the Minister of Oil to cost in the region of 200 to 400 million DLY monthly[641]. Therefore, it is suggested that the costs of oil smuggling seriously weaken the national economy, through attrition, taking looted money from banks and converting them to foreign investments. In addition, national industrial projects are disrupted, due to the inability of providing essential parts, and the country loses its energy production. There is also the instability of the exchange rate for local currency compared with the stability of the foreign exchange rate, poor income distribution and the introduction the inferior goods to the domestic market, all of which results (in addition to the foregoing mentioned) in a weakening of national industries. These issues have negative economic effects on the country[642]and there are also severe political consequences as these illegal funds are used to undermine the country's political stability, support armed groups which commit crimes of kidnapping and murder and this has also led to an increase of the presence of ISIS in Libya[643].The laundering of money might be by purchase of houses, palaces, and luxury property [644].
The absence and insufficiency of the Libyan regulations will be explored next.

6.9- Conclusion

In an attempt to curb the problem of ML in Libya, many different regulations have been issued in Libya since early 1950s related to financial crimes. The various laws culminating in the ML legislation of 2005 have been described above. This chapter has demonstrated how the ideals of Islam have not been adhered to in practice, and the Islamic financial

[639]Nada, A. Why does corruption flourish in Arab societies? AlNaba Informatics Network 2016 Available at: http://m.annabaa.org/arabic/anticorruption/5106 (Accessed in 01/06/2017).
[640] See the Amnesty International Report 2016/17 (p.49). The State of the World's Human Rights, Available at: file:///C:/Users/Owner/Downloads/POL1048002017ENGLISH.PDF (Accessed in 01/06/2017).
[641] See Minister of Oil in the Government of Tripoli for RT: Silence of the international community led to an increase "ISIS" in Libya. 2015 Available at: https://arabic.rt.com/news/793846 (Accessed in 1/06/2017).
[642] Mannocchi, F Ibid (2017).
[643] See Minister of Oil in the Government of Tripoli Ibid.
[644] See Global Witness. £10m House In Expensive London Suburb Recovered By Libya Available at: https://www.globalwitness.org/en/archive/10m-house-expensive-london-suburb-recovered-libya/(Accessed in 1/6/2017).

transactions rules have not been developed in the Libyan legislation. Despite national efforts to combat ML in Libya attempted primarily through the ML Law (2005) which tried to respond the rules of the international conventions about AML and which involved criminalizing the behaviors of ML and establishing the FIU, as will be discussed in the next chapter, the crime of ML has increased. This process has been facilitated by ignoring the government's tracking of corrupt operations through its institutions such as the banks, FIU and authorities such as Customs; as some ML transactions involve government officials. The regulations have not been adequate to curb this practice, and there is a need, above all, to establish a constitution for this country to ensure citizens' rights and to amend the national law or policy in line with international conventions. The lack of customs observers on the borders with neighboring countries to limit oil smuggling operations and weak implementation of the procedures in the banks and the border ports against smuggling money which might be earned from illegal oil selling must be addressed and these institutions obligated to report on any suspicious operations to FIU. These amendments would include clarification of the ML law, effective law enforcement in every area to prevent corruption and the exposure of all the irregularities of the judiciary.

Chapter Seven: The Procedure of Anti-Money Laundering in Libya.

7.1-Introduction

This chapter will explore AML procedures in theory and practice under the mechanisms that were adopted by the CMLA (2005) and assess these mechanisms in practice. It will evaluate the extent of compliance with international principles in this area to curb ML operations in illegal oil deals, through analysis of evidence from interviews with the Official Financial Libyan Employees, about how this Act and its mechanisms are enforced in practice. This includes exploring what role the Libyan FIU and banks could play in anti-ML, and whether the Libyan FIU has been successful to date. This chapter will start by describing the current situation in the illegal selling of oil in Libya, and whether a new mechanism needs to be designed to stop the ML that is taking place due to this illegal sale of oil.

7.2-The Mechanisms of Anti- Money Laundering in Libya

Law No. 2 on Combating ML was passed in 2005, and its regulations identify the rules that should be followed by the financial institutions for the detection of suspicious operations through some bodies created to work against ML. These mechanisms will be discussed in the following sections:

7.2.1- The Creation of the FIU at the Libyan Central Bank

The FIU was established under Article 9 of CMLA (2005) which stipulates that: ''the Central Bank shall establish a unit called the FIU to combat money-laundering activities. Reports on suspicious transactions shall be sent to the Unit from all concerned financial, commercial, and economic establishments, and information on these transactions may be submitted by any person or entity''[645]. This Unit is the institution established by domestic laws in most countries that have adopted the approach of the international conventions and responded to international norms and standards to combat the endemic nature of ML. According to Otman and Karlberg, the creation of the FIU is an important step in fighting ML crime and reflects the determination of country authorities to curb ML[646]. The International Monetary Fund has stipulated that cooperation with other

[645] See the Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article (9).
[646] Otman, W and Karlberg, E. (2007) *The Libyan Economy: Economic Diversification and International Repositioning*, New York, Springer Science &Business Media (p.298).

countries should be included in its functions[647]. It was intended that because this Unit will be exercising its functions under the supervision of the Central Bank, it will be able to follow suspicious operations, collect the reports and adopt the appropriate action.

The FIU is obliged to transfer its investigations' papers to the Governor of the Central Bank, if the result of the investigations has led to the identification of a ML offence. Article 10 (1) of the ML law stipulates ''the Unit described in paragraph 1 of the preceding article, after reviewing the case referred to or reported to it, shall inform the Governor concerning the information and reports in its possession, so that the necessary measures may be taken''[648]. This is also confirmed by Article 11 of the Executive Rules[649].

Although, Libya complies with the FATF recommendation by creating this unit by means of the CMLA (2005), the FIU has faced some general challenges beyond the scope of its direct work, including the accusation that there is not sufficient knowledge about reporting on financial institutions, businesses and non-financial professions. Specifically, the FIU is not sufficiently aware of the obligations these organisations have in combating ML, such as cooperating with the FIU and developing training programmes to deal more effectively with the different types of risks associated with ML, as this study will discuss later.

7.2.2- The Subsidiary FIU at Bank Branches

Libyan legislature did not stop at the creation of the main FIU at the Central Bank, but went further by obliging financial institutions to establish subsidiary FIUs at bank branches. The function of this Subsidiary Unit is to monitor the activities of customers of the subsidiary banks and other financial institutions under Article 9 (2), which stipulates that ''all banks operating in Libya shall establish a subsidiary unit called the Subsidiary Unit for Information on Combating ML[650]. The FIUs are responsible for monitoring all activities and transactions carried out by the bank or financial institution or by those who deal with them, when such activities or transactions are suspected (such as large exceptional cash payments that are not in line with their business) and it being linked to money-laundering

[647] International Monetary Fund. Financial intelligence units: an overview -- Washington, D.C.: International Monetary Fund, Legal Department, Monetary and Financial Systems Department: World Bank, Financial Market Integrity Div (2004 p.5).

[648]Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article 10 (1).

[649]Executive Rules of the Money Laundering Law Article (11).

[650] See Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article 9(2).

activities or activities involving the deposit or transfer of funds whose source is unknown[651].

The mandatory creation of subsidiary FIUs also includes other financial institutions licensed by institutions other than the Central Bank; and Article 6 of the Executive Rules states that ‘‘each financial institution, whether licensed to practice activity by the Central Bank, or by another party is committed to establish a Subsidiary Financial Information Unit ...''[652].

These FIUs are the link between financial institutions and the main FIU in the investigation of ML, and are responsible for monitoring all activities and transactions suspected of being linked to ML activities involved in deposits or transfers of money of unknown source and to report to the main FIU. Article 21 of the Executive Rules enables the application of this as financial institutions are obliged to appoint an official who has both knowledge and experience to take responsibility for receiving reports on suspicious operations and reviewing records in order to carry out the functions of the Unit[653]

7.2.3- The competences of the FIU

This section will discuss the procedures of the FIU which are directed against ML to find out if these obligations are being performed line with international standards and also to find out whether these procedures need to be improved or not in the following areas:

7.2.4-The Functions of the Main FIU

7.2.4.1-Receiving reports on suspicious transactions.

According to Article 9 of the ML law above, the competences of the FIU are: to receive reports on suspicious transactions, which may be laundering money; create a data base for recording information and investigate operations; exchange reports and information on suspicious transactions linked with ML operations with its counterparts in other countries and the disposition of papers concerning ML operations.

So, under this Article, the FIU has the authority to be able to request and obtain all documents needed; to access database information that involves any details of ML operations, in whatever form this is; to analyse information and report on any ML operations and carry out the necessary investigations. It can also prepare reports on any

[651] Otman, W and Karlberg. E. ibid (2007 p.298).
[652] Regulations, Executive rules of money laundering law rules No. 3 /2007 Article No (6)
[653] Regulations, Executive rules of money laundering law rules No. 3 /2007 Article No (21)

ML discovered and submit them to the Governor of the Central Bank. It is the obligation of the FIU at the Central Bank to receive reports on suspicious transactions from all financial and commercial establishments. This competence is not limited to collecting the reports from the financial and commercial establishments, as the Unit was further tasked to receive these from whistle-blowers[654]. This unit has to report on suspicious transactions to the Governor of the Central Bank, so that the necessary measures may be taken, according to Article 10 of this law[655].

In this context, a question arises as to whether reports on suspicious transactions should be submitted to the public prosecutor rather than to the main FIU; and whether the public prosecution can start a criminal trial based on this report or whether it is necessary to submit this report to the main FIU beforehand. The main FIU involves a number of specialists and experts in the field of AML, so it is the best department to investigate and collect evidence of suspicious transactions[656]. However, Article 10 of the ML law allows indirectly for the report to be submitted to the public prosecution by stipulating: '' if the Office of the Public Prosecutor receives a direct report concerning cases of ML, it shall take the necessary measures and shall inform the FIU of the Central Bank of Libya concerning the contents of the report''[657]. Thus, this article obliges the public prosecution to report to the main FIU, in cases where it receives reports on ML operations. However, in such cases, the authority of the public prosecution is not limited, and it can start a criminal trial as the aim of the report to the Unit, in this case, is to get the information on suspicious transactions and record it on the data base.

7.2.4.2-Creating a database for recording information

Article No 4 (5) of the executive rules of the ML law obliges the main FIU to create a database and provide relevant information to those bodies concerned. Available information on ML operations involves the national and international AML efforts; and the Unit has to update the database regularly and transfer this data to the judicial

[654] Kalid, ibid (2011 p.215).
[655] Ibid (p.158).
[656] Ibid (p.217).
[657] Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article 10.

authority and other competent authorities whilst preserving the confidential nature of the data and the information involved[658].

Libya should implement a system that requires financial and non-financial institutions to report all cash transactions exceeding a certain limit to a national central authority and to have an electronic database; and international conventions of which Libya is a member, require this. In the same way, paragraph 5 of Article 4 of the implementing regulations in the 2005 Act requires the agency to: ‘‘create a database, all reports and the information that is available to the Unit should be in the database.... ''[659], this article thus imposes an obligation on the FIU to create a database that includes all information about suspicious financial operations; i.e. the notifications received about the operation and the details of any persons suspected of being beneficiaries and the type and size of the activity. This is extremely important information for the public prosecution and allows coordination with the local officials and with the competent authorities in foreign countries.

Libyan legislators intended paragraph 5 of Article 4 to be sufficiently explicit about the functions of the FIU, in that it should receive information about suspicious ML operations and record it onto the database that should have been created for the purpose. Thus, it is clear that the Libyan legislature has attempted at least to follow the requirements of clearly international rule in this case; but the problem here is that the FIU has not established the database. The interview answers have revealed that there is no database that involves all the details of suspicious ML operations specifically at the FIU at the Central Bank, as the Official Financial Employee3 confirmed: “*no database has been created since the Unit was established”*[660]*.*

Thus, the FIU has failed to comply with the stipulations of paragraph 5 of Article 4 of the implementing regulations for the 2005 Act to create a database. One of the biggest problems this presents is the inability to provide evidence to the Public Prosecution which will be required during the investigation stage; and this means there is a weakness in the enforcement of the AML rule, which reflects the weakness of the FIU related to customer

[658] Regulations, Executive rules of money laundering law rules No. 3 /2007 Article No 4 (5).
[659] Regulations, Executive rules of money laundering law No. 3 /2007 Article No 4 (5)
[660] (Official Financial Employee No.3, interviewed 12 August 2015).

data collection that will have negative effects on exchanging information on transactions linked with ML operations, as a result, the unit will fail to follow the suspicious operations.

7.2.4.3-To carry out investigative operations

In compliance with international standards, Article No 4 (4) of the executive rules of ML law No. 3 /2007 obliges the main FIU to investigate suspicious transactions of ML. Any report that is received by this unit from the financial institutions or in any other way about a suspicion of ML allows this Unit to start an investigation. The Unit can work with finance controllers and other competent authorities to investigate operations suspected of being ML and transfer the money to the Governor of the Central Bank[661]. In the same way, Article 10 of the executive rules has identified authority to investigate transactions suspected of being ML, to request further information about the suspicious operation and any necessary data on the client or the beneficiaries, and to view all records and financial institutions' documents related to financial operations, additionally, any other information about the clients; and also to work with financial controllers and other competent authorities to investigate any operations suspected of being ML[662].This means that the Unit had investigative powers under the CMLA (2005)and its executive rule No. 3 /2007. The work of the Unit is an important and indispensable contribution to AML through the collection, collation and analysis of information and making it available for use in investigations by itself.

To ensure the confidentiality of investigative procedures, Article 5(2) has criminalized divulging secrets about operations under investigation; and breaches are punishable by imprisonment and/or a fine. The article stipulates that ''anyone who informs a person that his transactions are being monitored or investigated by the competent authorities because of suspicion that they are illegal shall be subject to imprisonment and/or a fine of not more than LD 10,000 and not less than LD 500''[663]. Criminal breaches of confidentiality also include informing others about the investigation of the transactions, the aim of this being to avoid possible tampering with evidence[664]. Finally, under Article

[661] Regulations, Executive rules of money laundering law rules No. 3 /2007 Article No 4 (4).
[662] Regulations, Executive rules of money laundering law rules No. 3 /2007 Article No (10).
[663]Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article No 5 (2).
[664] Kalid, M. ibid (2011 p.221)

32 of the executive rules, financial control institutions have to help the main FIU at the Central Bank[665].

In order to implement this, a specific body –the Analysis Department- was created as a part of the FIU when was established. The Analysis Department has the power to investigate in cases that are related to major crimes. The FIU is also responsible for identifying suspicious operations, tracking their development and initiating freezing procedures for any property subject to confiscation. It also has the power to use compulsory measures to procure records held by financial institutions and businesses as soon it wants by obliging the financial institutions to give out the information within a limited time as Article 13 of CMLA (2005) stipulates that: ''all entities responsible for licensing or authorizing financial, commercial, and economic establishments.... shall develop appropriate tools for ensuring their compliance with the rules and regulations related to combating ML, and shall inform the Financial Information Unit ....''[666]. The FIU also makes sure that the competent authorities have procedures to enable them to identify assets without giving prior notice to the owners. However, a problem was identified the Official Financial Employee3, namely that it has never been shown "*that the Unit has requested any information from non-banking entities for analysis*"[667].

This statement reveals a dereliction of duty by the FIU in its failure to request information from the non-banking entities in order to analyse them and properly continue the procedures of the investigation. This dereliction has resulted in a weak level of analysis of reports of suspicious operations. According to regulations, it is implicitly understood that the FIU is the only body that is deemed competent to have a supervisory role in the field of combating ML. However, as this study has argued earlier, the terms of reference of the FIU do not explicitly include the possibility of carrying out a field inspection for this purpose. This problem notwithstanding, there is a positive aspect to the functions of the FIU, which is that the AML Law and Executive Regulations have provided for sanctions on any unit or regulatory entity of other financial institutions if they breach their obligations as contained in the law.

[665] Regulations, Executive rules of money laundering law rules No. 3 /2007 Article No (32).
[666] Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article No 13.
[667] (Official Financial Employee No.3, interviewed 12 August 2015).

Unfortunately, the interviews also revealed that the reasons behind increasing this crime as pointed out by Official Financial Employee 3 *''there are no statistics issued by the Unit; no publication of information and no reports on ML operations have been issued by the FIU''*[668], which confirmed by Official Financial Employee 6[669]. Similarly, there is evidence of the weakness of the procedures resulting in a lack of relevant statistics being available for court cases. This point was confirmed by the Judges No.7.1 and No 2, who stated: '' *ML cases are very limited at the courts; the reason for that being that knowledge about this crime is limited''*[670].The FIU at the Central Bank does not have the power to investigate clients, only bank employees. The Unit simply sends the relevant documents on suspicious operations to prosecutors. Recently, a case of suspicious 'documentary credits 'involving leading importers of food and pharmaceutical goods where fake goods were imported, dollars traded at black market prices and the evasion of custom duties has taken place. Traders transfer money to import goods at a subsidized price, but they transfer the money and do not import the goods. This is an example of financial corruption which should be controlled through collecting the personal details of the client, sources and direction of the goods and also by knowing all the details of the operation, as is confirmed by Official Financial Employee5, who stated: ''*details of the documentary credits should be collected and transactions monitored to reveal fake companies.''*[671].This has highlighted a problem, which is that in investigations of this nature it is unclear how the roles of the prosecutors and that of the main Unit are differentiated. To illustrate this problem - Official Financial Employee3 stated: *''the exact roles of the Audit Bureau and the Unit in investigating suspicious ML operations are confusing''*[672].

7.2.4.4-Exchanging information on transactions linked with Money Laundering operations

The FIU has another function, which is the exchange of financial information related to ML with foreign authorities that have the same jurisdiction. Such exchanges do not however need a specific agreement, Article 9(1) of the CMLA (2005) stipulates: "This Unit

[668] Ibid.
[669] (Official Financial Employee No.6 interviewed 12 August 2015).
[670] (Judges No.7.2 interviewed 27 August 2015).
[671] (Official Financial Employee No.5 interviewed 12 August 2015).
[672] (Official Financial Employee No.3, interviewed 12 August 2015).

may exchange information and reports on cases suspected of being linked to money-laundering activities with its counterparts in other countries, in accordance with the international agreements to which Libya is a party or with the principle of reciprocity''[673].

Thus, the responsibility of the FIUs at all the branches of banks, is to monitor all activities and transactions suspected of being linked to ML activities and to exchange information about them with their counterparts in other countries[674]. Article 7(4) of the Executive Rules confirms that, with the condition that this information should be not used except against the targets named in the submission[675].

Even though Libya has complied with the international standard by giving power to the FIU to exchange information with its counterparts abroad, abroad, however, the interviews also revealed the weak level of the cooperation of Libyan authorities with their international counterparts, which have confirmed that the FIU does not have independent financial disclosure. This means that the Unit cannot act independently in exchanging information with its counterparts. Furthermore, as Official Financial Employee 3 pointed out: "*This Unit does not have fully independent operations; also, there are no mechanisms with which to exchange information with the other, counterpart Units*''[676]

It was confirmed that, in relation to this competence, the FIU has undertaken only limited cooperation through the exchange of information with some countries; as Official Financial Employee3 remarked *''there is also cooperation with some countries, such as the United Arab Emirates, to exchange information related to ML*''[677]. He added that the areas in which there was cooperation on exchanging information were: "*Gathering information on the bills of lading*"; and added: *''...there is local cooperation with Customs, licensing offices and others. There is also international cooperation through the exchange of information with counterpart units in the Navigational Bureau and International Chamber of Commerce*"[678].

[673] Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article9
[674]Alfleah, M. Ibid (2012 p.157).
[675] Regulations, Executive rules of money laundering law rules No. 3 /2007 Article No (32).
[676](Official Financial Employee No.3, interviewed 12 August 2015).
[677] Ibid.
[678] Ibid.

The interviewee also remarked that: "*the Unit is a member of the maritime navigational body that can collect information about the movements of ships and any information requested*" and he added that: "*Libya is seeking to be a member of the Egmont Group''*[679]and that it is: "*a member of the FATF for the Middle East and North Africa''*[680]. These statements suggest that Libya is seeking to find a solution to prevent ML by adopting some of the international conventions. There are, however, some problems with implementation, as this study will discuss later.

7.2.4.5-The National Committee for Combating Money Laundering at the Libyan Central Bank.

Article 11 of the CMLA (2005)established this body and states: ''...in accordance with this law, a committee shall be established called the National Committee for Combating ML, which shall be chaired by the Governor of the Central Bank of Libya or his deputy and shall include at least member from, the Central Bank, the Secretariat of the General People's Committee for Financial and Technical Supervision (Ministry of Auditing), the Secretariat of the General People's Committee for Justice (Ministry of Justice), the Secretariat of the General People's Committee for Public Security (Home Office), the Secretariat of the General People's Committee for Finance (Ministry of Finance), the Secretariat of the General People's Committee for Economy and Trade (Ministry of the Economy), the Secretariat of the General People's Committee for Foreign Liaison and International Cooperation (Ministry of Foreign Affairs), the Customs Authority and the Tax Authority.

The delegates shall be nominated by their respective entities after consultation with the Chairman of the Committee. The board of directors of the Central Bank of Libya shall issue a decree establishing the composition of the Committee and the remuneration of its members''[681]. Article 12 considers the function of the National Committee for Combating is to: ''recommend the regulations and procedures necessary for combating ML and facilitate the exchange of information among the entities represented in the Committee

[679] The Egmont Group is an informal network was established by the Financial Intelligence Units (FIUs) for the stimulation of international co-operation and it provides a forum for FIUs around the world to enhance support to their respective governments in the fight against money laundering, financing of terrorism and other financial crimes. (See http://www.egmontgroup.org/about/list-of-members).

[680] Ibid.

[681] See Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article (11).

and coordinate their activities."[682]

Additionally, Article 13 of the Executive Rules considers other functions such as the design of rules used to identify customers and the beneficiaries and their legal positions. The National Committee also has to organize rules about disclosures of the origins of any money entering the state, including all passenger data. In relation to this, Decision No 3 (2008) identified the amounts which require passenger disclosure on entry into Libya. This decision has limited the amount in cash with which people can Libya without disclosure as a maximum of $15,000,000 (Decision of the National Committee No. 3 in 2008). Under Article 15, the Customs Department is expected to receive reports of the aforementioned disclosures[683].In this case, the disclosure means that passengers themselves have to report the competent authorities at the border ports, about any money they are carrying. If they do not disclose it, or provide incorrect data about its sources and the purposes for which it will be used, the customs authority shall take the necessary measures to control the money or securities, as this might be suspected ML, which should be reported to the FIU.

It should also be noted that if a passenger does not disclose amounts in his possession on entry into Libya and the amounts were over the limit, the punishment in accordance with Article 5 (3) is a fine of not more than ten thousand dinars and not less than five hundred dinars. Also, the frozen money is the subject of a misdemeanour and will be released by the Public Prosecutor if it is not related to any other crime[684].

Thus, carrying money across borders to launder it is considered a crime when it has been obtained from an ML offense according to the Article above, constitutes a crime. Perpetrators are subject to the penalties provided for in the law; in the case of non-disclosure of cash exceeding the limit and its discovery by customs, the customs officer responsible shall transfer the amount to the Attorney General to take legal action against the person concerned; the customs officer must also report it to the FIU. In such cases, the money is frozen if linked to ML operations, or released, if not related to any crime, according to Article 5, as noted above.

[682] See Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article (12).
[683] Regulations, Executive rules of money laundering law rules No. 3 /2007 Article No (13)
[684]Law No. 2 in 2005 on Combating Money Laundering Article 5 (3).

Article 15 has been criticized on two points: Firstly, a passenger is obliged to disclose amounts over the prescribed limit in his possession only during entry into Libya; there is no obligation to disclose what is in his possession if he departs the country. Secondly, the passenger is obliged to disclose only cash amounts in his possession but there is no obligation with regard to cheques. It has been suggested that this is an insufficiency in the regulations of Libya which needs to be addressed in order to fully control the movement of money and curb ML transactions in the smuggling of oil by disclosing the illegal proceeds earned in this way.

7.2.5- The Preventive Measures

The Financial Institutions should take preventive measures against ML Crime; and according to Article 1 of the ML Law, financial institutions are of two types: The first includes financial institutions licensed by the Central Bank such as the banks, finance companies, financial markets, money changing agencies and any other department that need to obtain a license from the Central Bank to conduct their business. The second includes businesses and financial institutions that need to obtain a license from a department and other than the Central Bank to conduct their business such as service agencies and insurance companies, all need take the following measures:

7.2.5.1- Customer Due Diligence

The financial institutions are required to implement CDD; which are measures that should be taken to protect the institutions from harbouring laundered money. In practice, this means that the banks should take measures such as risk assessment of financial operations, applying the principle of Know Your Customer (KYC) and also should not keep any unknown accounts or those with false names. These measures are discussed below:

7.2.5.2- Identification Procedures

In response to FATF recommendations to induce financial institutions to avoid allowing customer accounts with fake names and to establish identification procedures for their customers in accordance with the Basel Committee Statement, Article 17 obliges all the financial institutions to create a system for the identification of customers. Moreover, Article 19 of the Executive Rules has stipulated that all financial institutions implement the KYC rule (See section below on record keeping)[685].

[685] Regulations, Executive rules of money laundering law rules No. 3 /2007 Article No (19)

In the fight against ML, client data should be regularly taken, reviewed and updated to ensure that all the changes in their financial and personal details are recorded including their financial activities. These customer details help to detect both the criminals and collaborators who are facilitating the commission of these crimes. This data collection allows a tighter control of behaviour, as the examination and auditing of bank accounts may ultimately prevent the carrying out of any acts that are the subject of suspicion.

Moreover, these details facilitate the coordination between the Central Bank and the relevant international institutions with regards to accessing the names of persons and institutions that are suspected of committing ML crimes. Enquiries conducted on suspected persons and organizations further knowledge of modern methods and techniques used in ML operations and help identify any new sources of 'dirty' money.

Collecting client data has also facilitated the supervision of financial operations. In order to make sure that the principle of KYC is implemented, no anonymous transactions should be carried out; and false or fictitious names or secret numbers should never be used, whether to open accounts, collect deposits or accept, convert or handle money in any suspicious way. This is in compliance with the international conventions and the FATF recommendations about commitment by identification procedures. Libya has organized its procedures of Identification through Article 17 of the implementing regulations which stipulates that: "all financial institutions must establish a special system to know the identity of customers and beneficiaries...."[686].

Although there is no separate text specifying a punishment for breach of these obligations, the legislation has addressed this point in Article 5 (1) of the ML Law, which gives a general punishment for crimes related to ML, stating: ''any official or employee of a financial, commercial, or economic establishment who learns of an act in his establishment related to a crime of ML and fails to report it to the competent authority shall be subject to imprisonment and/or a fine of not more than LD 10,000 and not less than LD 1,000[687].

Nevertheless, in this case, Libya is not fully compliant with the FATF recommendation, as it seems that there is vagueness in Article 17, as it does not include clear and specific

[686] The implementing regulations of money laundering No. 3 /2007 Article No (17).
[687] Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article 5 (1).

details about precisely which information should be collected; although Article 29 of the implementing regulations does attempt to clarify the details that should be known. In practice, however, the procedures of identification and CDD are limited to identifying the customer through official documents and knowing the nature of the client's activities without taking into account the volume of activity or recording any details. It is suggested here that this is an important weakness of the AML Act; and that this defect in should be addressed by requiring identification and recording of the size of an activity, its details and the nature and the purpose of the relationship between the financial institution and the client.

The interview data revealed another serious problem, the weak the mechanisms used against money laundering, in that some financial institutions are not diligent in their application of the principle of KYC; as some bank employees who work on financial transaction procedures accept copies of personal documents, which opens the door to forgery, in this case, the Official Financial Employee4 commented: "*copies of identification documents from the customer are accepted by some of bank staff without having seen the originals of thee documents*"[688]; and he added: ''*there are also practices of recording the personal details from some clients who submit their names in different ways like hiding their surnames, for example, or their middle names*"[689].

Accepting a mere copy of identification documents provided by the customer by the staff of banks who are working on the financial transactions procedures rather than insisting on the original of the documents could encourage forgery. This needs to be addressed through enforcement of the law. Financial institutions should be obliged to keep records that include all the details of customer identification and list which actual official documents such as passports, ID cards or driving licences were provided. In addition, all account files and correspondence should be kept.

These disadvantages have a negative effect because absence of clients' details makes tracking the deals difficult. Tracking should be done to ensure that the operations do not include money suspected of being illegal, thus, this deficiency has allowed launderers to hide illegal proceeds including those derived from smuggling oil.

[688] (Official Financial Employee No.4 interviewed 12 August 2015).
[689] ibid.

7.2.5.3- Record Keeping

According to the FATF recommendations, financial institutions are obliged to keep records of their customers' data, such as copies or records of official identification documents like passports, identity cards or driving licences. In line with these recommendations, Article 20 of the Executive Rules oblige financial institutions to keep records such as copies of official identification documents for not less than five years and stipulates: '' every financial institution should keep records and documents for the financial operations that are conducted, whether local or international….''[690].

These records are kept as a reference source of basic information about clients and also to prevent these clients from using the banks and financial institutions for ML purposes. Although there is no separate text specifying a punishment for breach of these obligations, the legislation has addressed this point in Article 5 (1) of the ML Law, which gives a general punishment for crimes related to ML, stating: ''any official or employee of a financial, commercial, or economic establishment who learns of an act in his establishment related to a crime of ML and fails to report it to the competent authority shall be subject to imprisonment and/or a fine of not more than LD 10,000 and not less than LD 1,000[691].

Financial institutions should keep all such records received by implementing the principle of CDD and have on file all copies of identification documents, accounts files and trade letters as discussed earlier. Also, the records should be available to the official authorities concerned with the ML processes as soon as they are requested. Employees of financial institutions who do not abide by this regulation are punishable under Article 5, as described in the section above. Moreover, these records should be available to the relevant authorities if they are necessary to facilitate the indictment and prosecution of criminals.

Nevertheless, in this case, Libya also is not fully compliant with the FATF recommendation, in the procedures of keeping a recording of their customers' data, the interview data revealed that apparently, a problem had arisen in the implementation of this rule, which is that the records that should be kept are not identified by the Act (2005). Even though Article 20 of the implementing regulations mentions records, it does not

[690] Regulations, Executive rules of money laundering law rules No. 3 /2007 Article No (20).
[691] Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article 5 (1).

actually identify which documents should be kept by the financial institutions. In other words, there is no regulation that stipulates which documents are required by law to be kept by financial institutions, and this vagueness is an imperfection in the law as potentially it makes it difficult to detect suspect operations due to fewer details being available to the relevant authorities.

This was confirmed by Official Financial Employee3 who pointed out: "*there are no guidelines on record-keeping and which documents relating to the financial activity account holders are required''*[692] Moreover, there is another weakness in Article 18 of the implementing regulations, as it does not require financial institutions to provide records to the FIU within a limited time, only stipulating that: ".... each financial institution is obliged to notify the main unit of the operations, which are suspected to involve ML.....''[693]. This problem is highlighted by Official Financial Employee3, who stated: ''*there is no obligation on the financial institution to provide the records and the information of the financial operation to the competent local authority within a specified time limit''*[694].

Having accurate records about the people who may be associated with ML transactions is very important and the most effective way to detect illegal operations, as this study has mentioned earlier. The result of any lack in these details will allow suspicious persons to escape from investigation procedures, and make it easier for them to commit fraud or give them the time and opportunity to smuggle out the illegal oil proceeds. Thus, the absence of these procedures has left a gap in the CMLA (2005) that need to be filled if they are to assist effectively in disclosing suspicious deals that might involve the proceeds of smuggling oil.

7.2.5.4-Risk assessment

The methodology of risk assessment involves collecting all the necessary information that clearly identifies the nature of the activity, the reputation and the controls governing the corresponding banks. The mechanisms for detecting ML operations should be based on this risk assessment, using observation of transactions to determine the size of the

[692] (Official Financial Employee No.3, interviewed 12 August 2015).
[693] The implementing regulations of money laundering No. 3 /2007 Article No (18).
[694] (Official Financial Employee No.3, interviewed 12 August 2015).

operation and to ensure that it complies with the legal measures which regulate such transactions. Financial institutions should also employ the principle of KYC.

However, the CMLA (2005) does not include any guidelines on the necessary measures to implement CDD, although Article 19 of the implementing regulations clearly obliges financial institutions to apply the rules of CDD. The problem here is that these rules are not sufficiently explicit about which information should be collected. For example, they do not include guidelines for an appropriate risk management system to determine whether a potential customer or the actual owner of the assets is a political person at risk (PEPs will be discussed in more detail later). Also, there are no rules requiring financial institutions to identify the actual owners, they focus on knowing the named customer without identifying the real owner; and there is nothing requiring financial institutions to obtain information on the purpose or nature of this relationship. Moreover, the law does not even identify the concept of the real beneficiary and there is an absence of a legal requirement for financial institutions to make intensive CDD on the categories of customers and business relationships that are high-risk. As Official Financial Employee3 pointed out: "*There are many commitments and necessary measures for the implementation of CDD that have been missed throughout the CMLA of 2005.*"[695] Thus, the Act is not in line with international standards and these deficiencies have left a gap in the CMLA (2005).

7.2.6-Politically Exposed Persons

CDD measures should also include an appropriate system regarding PEPs, in which the financial institution should carry out a risk assessment and determine whether the client is a PEP or not and take the appropriate steps to determine the origin of the customer's funds so as to allow continuous control over the relationship with the customer's transactions, as the FATF has recommended.[696](See also Chapter Four).

However, the Libyan CMLA (2005) does not regulate how to deal with PEPs. Regulations should oblige any financial institution arranging a deal with a customer to request information which would allow the creation of an appropriate risk assessment to determine whether this potential customer, (whether as customer or beneficial owner),

[695] (Official Financial Employee No.3, interviewed 12 August 2015).
[696] The FATF recommendation 12 (2012)

is a PEP or not; including obtaining details of their family and related persons. However, there is no obligation to obtain the approval of senior management to deal with such customers; to take reasonable measures to determine the source of their wealth and funds or to monitor the working relationship with them on an intense ongoing basis.

This was confirmed by the Official Financial Employee2 who stated: "*the Law does not include the core obligations of the process of CDD such as risk assessment and the classification of all clients according to the degree of risk and knowledge of the client, details of financial activity and its size. Nor to identify the beneficial owners and also to verify the person who acts on behalf of that client, including any* PEPs"[697]. In the same way, Judge7.1 added: "*even though the law includes some rules against ML crime; the enforcement of these rules is difficult, because this crime is sometimes committed by political officials, and the law does not include them''*[698]. Thus, this very important gap has been revealed by the interview data, and reflects the lack of compliance with the international AML rules and the inefficiency of the CMLA (2005) in ignoring the very important category of people who are political officials who have a large role in carrying out ML.

7.2.7- Reporting Procedures for Suspicious Transactions

In accordance with the FATF recommendations that financial institutions should be required to report suspicious transactions or activity and to utilize financial information to CMLA 2005, Article 18 was enacted to oblige financial institutions to report suspicious transactions related to ML and stipulates: ''.... each financial institution has to notify the main unit about suspect operations, which are likely to involve ML.... ''[699]. There are fines (see above) for financial institution employees who fail to do this[700]. The Libyan legislature has also confirmed that banks' information must be kept secret; and Article 14 stipulates that: ''all entities that obtain information and data in accordance with the provisions of this law shall maintain its confidentiality and shall reveal only the information required for use in investigations and legal proceedings against crimes of ML or other crimes described in this law''[701]. Thus, financial institutions are prevented from acquiring customers'

[697] (Official Financial Employee No. 2 interviewed 12 August 2015).
[698](Judge No.7.1 interviewed 27 August 2015).
[699]Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article 18.
[700] Regulations, Executive rules of money laundering law rules No. 3 /2007 Article No (18),
[701]Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article (14).

information and data because of the principle of banking secrecy, except in situations where this information is related to ML operations. In such cases, information may be revealed by the bank for legal purposes. However, the Libyan legislature has also decided to establish a punishment for anyone who reports to the competent authorities in bad faith i.e. in order to harm another party. Article 5 (4) stipulates that: ‘‘anyone who reports a crime of ML to the competent authorities, in bad faith and in order to harm another party, so that legal action may be taken to discover the truth, even if the report is with an unknown signature or using a false name, shall be subject to imprisonment for a period of not less than one year’’[702].

In this case, Libya has adopted the international standard in reporting of suspicious transactions, which obliges financial institutions if they suspect that the sources of the money are from a criminal activity to submit a report immediately. The financial institutions are obligated to report in this way in cases where they suspected that the money has come from illegal sources, which mean that this amount does not need to reach certain threshold value to make a report.

However, there is no instruction manual for the FIUs on how to deal with situations in accordance with this law or for individuals to identify by a simple means how to comply with it and how to report on suspect operations. Furthermore, Article 5 is not clear because it stipulates a punishment for anyone who reports to the competent authorities in ‘bad faith’[703]. Thus, Idrissi, who is the head of the FIU at the Libyan Central Bank, was able to confirm that no ML operations had been reported in Libya, as the aim of the former regime was to show that Libya has complied with the international standards of anti- ML procedures. In addition, that the ML Law falls short of international standards levels, which were not well understood when this law was prepared in 2005[704]. As a result, this law alone is not enough to prevent ML, and needs to be supported through the publications of guidelines facilitating citizens to report suspicious transactions without exposure to sanctions. This can be achieved by clarifying Article 5 of this law imposes sanctions on the citizens who reported suspicious transactions in bad faith; for example,

[702]Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article 5 (4).
[703]Libya Almostakbal. Notes on the law of 'anti-money laundering' and the current situation in Libya. Available at: http://www.libya-almostakbal.org/news/clicked/54676 (Accessed in 31/10/ 2014).
[704]Idrissi, K. ibid (p.3).

when investigations reveal that there was clearly nothing suspicious about the transactions in question. There also needs to be special training provided in the banking sectors and for financial department staff in commercial and government institutions.

Measures against ML are encouraged as even though this law has imposed a punishment on those financial institution employees who are reluctant to make reports, it does not include any punishment against a person who provided a report if investigation reveals that no crime was committed. As Official Financial Employee6 remarked, "*There are no restrictions on the reporting procedures for suspicious money and transactions. The evidence of that is that there is no punishment against anyone who submits a report, if the result of the investigation is that there is no crime*"[705]. However, it seems that the mechanisms of reporting are unclear, as there is no manual on how to submit the report or about the collection of data about the suspicious operation, which result in confusion about the procedures of reporting, as Official Financial Employee3 stated: "*there is no publications of guidelines facilitating citizens and institutions to report suspicious transactions''*[706]. Another financial interviewee confirmed that: "there has been *no clarification on how to prepare and submit reports on suspicious operations*"[707]. In the other words, in practice, the FIU has not yet prepared report formats or rules on reporting procedures. Furthermore, there is confusion about how the Unit and other institutions can work in cooperation. This is confirmed by Official Financial Employee1 who said: "*the weakness in the AML mechanism was in the reporting, because reports are submitted only from the bank sector and not from other sectors, such as precious metal traders and lawyers*''[708].

With respect to necessity of reporting, Article 5 of the CMLA (2005)has identified the punishments for official employees if they ignore the requirement to report, and stipulates: "any official or employee of a financial, commercial, or economic establishment who learns of an act in his establishment related to a crime of ML and fails to report it to the competent authority shall be subject to imprisonment and/or a fine of not more than DLY 10,000, and not less than DLY 1,000''[709]. The law thus obliges financial

[705] (Official Financial Employee No.6, interviewed 12 August 2015).
[706] (Official Financial Employee No.3, interviewed 12 August 2015).
[707] Ibid.
[708] (Official Financial Employee No.1 interviewed 12 August 2015).
[709] Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article

institutions to report all operations suspected of being linked to ML, which is a requirement that is difficult for financial institutions to implement if the law and the executive regulations do not clarify how these Institutions are to identify the suspicious operations. In other words, the regulations do not give a definition of what might constitute 'suspicious operations'.

Furthermore, financial institutions themselves are obliged to provide the FIU with information, by Article 25 of the regulations that stipulates that: "the responsible director is obligated to provide all information that is required by the main Unit and ...."[710]. This article ensures that Libya has complied with the international standard; but, the problem is that the financial institutions are not given any time limit. The result of this omission is that the Unit may not be able to start any investigation in relation to a suspicious ML operation, which was confirmed by Official Financial Employee2 since: "*there is no obligation on financial institutions to provide records and customer information within a limited time to the competent local authorities*"[711].

So, these answers reveal a weakness in the AML mechanism and specifically the procedures for furnishing the main Unit with relevant data. The interview answers have revealed that expecting the financial institutions to provide the FIU with information without identifying a limit time leaves the door wide open for criminals to escape investigation.

7.2.8 - Money Transfer Services

Countries should make sure that they have taken measures to ensure that institutions or the people who are working on transferring money are registered and have got the required license to provide this service, as the FATF has recommended.[712] Based on this recommendation, financial institutions are required to obtain accurate information on the originator of any transfer operation and they have to supervise and monitor the funds of suspicious transfer deals, which include any which do not contain complete originator information such as the name, address and account details.

[710] Regulations, Executive rules of money laundering law No. 3 /2007 Article No (25)
[711] (Official Financial Employee No 2 interviewed 12 August 2015).
[712] The FATF recommendation 14 (2012)

Libya should have measures that can be used to limit the physical movement of currencies and help detecting the money which people are attempting to move across borders. Countries should also be sure that the competent authorities have the legal authority to stop the movement of any money suspected of being linked to ML. However, in Libya, there is no legal provision which obliges people who carrying currency across borders to disclose that money, even though Article 8 of the 2005 Act does require the Central Bank to identify the maximum amount money that may be brought into the country and stipulates: "The Central Bank shall determine the maximum amount of funds that may be brought into the country in cash without having to declare it or disclose its source."[713]

As a result, multiple money transfers that may have been made without any control are helping to facilitate ML crime. As Official Financial Employee4 reflected: "*There is no limit on the movement of money, because in 2010 the government allowed people to transfer a hundred thousand DLY without reference to the Libyan Central Bank*"[714]. This encourages the smuggling of funds and is a primary crime of ML. This was confirmed by Official Financial Employee2, who stated: ''*the weak area is that people are allowed to transfer money to any value, no matter how high, because the prevailing culture in the community is to deal with money as 'cash'*[715].

The interviews have demonstrated that there is no proper control on the movement of money and that this potentially facilitates an increase in ML. The solution to the problems that have been discussed here should be addressed by activating the role of the Customs Department and amending the regulations so as to require that customs declarations in the ports include disclosure of the movement of currency at departure as well as at arrival. Further, the Combating ML Act (2005) needs to be amended to limit the amount of money that can be transferred.

Another problem has been uncovered by the Official Financial Employee2, which is that of using liquid cash. There has been widespread use of liquid cash as a means of ML in cash operations, as they involve a higher risk, and work to reduce dependence on liquid

[713] Law No. 2 of 1373 DP / 2005 on Combating Money Laundering Article 8
[714] (Official Financial Employee No.4 interviewed 12 August 2015).
[715] (Official Financial Employee No.2, interviewed 12 August 2015).

cash so as to reduce the risk of dealing with it[716]. An initiative such as this could be implemented by providing mechanisms that encourage people to deal financially in other ways, such as using cheques and to increase the public awareness in this direction. However, in practice, the Libyan people have a cultural preference for using liquid cash, and this needs to be addressed by the mechanisms of AML in Libya. During the interviews, ideas about this were expressed. Official Financial Employee5 suggested that "*dealing in money in the form of cash should be limited*''[717]. It was also suggested that: "*sellers should be obliged to use cheques rather than cash, and regulations need to be issued to achieve that*''[718]. Also, Official Financial Employee2 added that based on his observations: "*the movement of money should be limited by imposing a maximum amount*''[719].

Therefore, these problems seem to have contributed to increasing ML. Indeed, the widespread use of cash and its concomitant problems were discussed. However, because the Libyan people prefer to use cash, additional denominations of coins and notes were issued, and the output of cash was increased in 2014. This is confirmed by a comparison with the Libyan budget in 2011; and it is clear that the issue of coins and notes increased from 15 billion in 2011 to 18 billion in 2014[720]. Which confirmed by Official Financial Employee 8[721]. Official Financial Employee5 suggested a solution to this problem and stated that: ''*the monitoring of suspicious money and transactions should be improved through the creation of a new mechanism to observe deposits, and comparing these to their regular income*''[722]. Another way of creating a new mechanism to observe the income of sellers and those of traders, lawyers and businessmen to detect the suspicious operations was suggested during the interviews. Official Financial Employee1 stated: ''*tax should be linked to the income of the sellers and certain professionals; and that will help to know their real incomes*''[723].

[716](Official Financial Employee No.2, interviewed 12 August 2015).
[717](Official Financial Employee No.5, interviewed 12 August 2015).
[718] Ibid.
[719](Official Financial Employee No.2, interviewed 12 August 2015).
[720] See the Economic Bulletin. Research and Statistics Department at the Central Bank of Libya Vol. No 55 First Quarter (2015. p.10 Table No 4).
[721](Official Financial Employee No.8, interviewed 13 August 2015).
[722](Official Financial Employee No.5, interviewed 12 August 2015).
[723] (Official Financial Employee No.1, interviewed 12 August 2015).

It was also suggested that the detection of suspicious operations could be improved by monitoring any substantial increases in the amounts of money in clients' bank accounts. Official Financial Employee6 commented: "*there is a specific step that can be used to detect suspicious operations, which is to observe sudden increases in a client's bank accounts, whether in their personal or business account which does not match with their normal income. So, if there are such abnormal changes, this could be suspicious and indicate that ML is taking place*"[724]. Which confirmed also by Official Financial Employee 6[725].Alongside this strategy, there are other ways to detect whether an account is linked to ML operations; such as clients deliberately trying to reduce deposits with the intention to evade the suspicion of ML[726]. In other words, the client could fragment a large sum of money so as not to expose himself to a charge of ML. Fragmenting large sums might be a way of avoiding a bank reporting the client to the relevant authorities because the amount is unusually large and the source of the money is not clear. Libya is not in line with the FATF Recommendation 32, which required from the countries to ensure that there is adequate coordination to detect the physical cross-border transportation of currency among customs, immigration and other related authorities.

The Libyan Customs Department is required to coordinate with all relevant parties in order to unify efforts to combat ML. The Customs Department is an original member of the National Committee on AML, and the customs authority is one the bodies that are mandated to combat ML. The funds concerned may differ in kind and might be money or consumer goods, which includes the oil derivatives, in both cases smuggling is causing serious damage to the national economy and is the primary crime of ML, and it is the duty of customs to prevent these crimes[727]. However, the customs authority does not actually widely coordinate with the full range of other authorities in the area, as required by the FATF Recommendation 32. Arguably then, the role and functions of the Customs Department, as is the case with other agencies, do not effectively contribute to frustrate smuggling operations such as smuggling oil, which is closely associated with the

[724] (Official Financial Employee No.6, interviewed 12 August 2015).
[725](Official Financial Employee No.8, interviewed 13 August 2015).
[726] Kern, J and Aberg, S. The Bank Secrecy Act: A Trap for the Unwary Businessman, The Metropolitan Corporate Counsel (2014 p.34). Available at: http://www.metrocorpcounsel.com/articles/29357/bank-secrecy-act-trap-unwary-businessman (Accessed in 12/12/2015).
[727]See Al Masaref Journal issued 16 (2013 P.7) Available at: https://cbl.gov.ly/wpcontent/uploads/2016/03/Masaref16.pdf (Accessed in 20/6/2017).

laundering of money. The Customs Department is also quite weak in enforcing the law, and does not provide sufficient information to the FIU. Thus, it does not effectively contribute to intercepting suspicious transportation of cash, which if the proceeds of illegal oil selling are legitimized through their transfer to real estate or smuggled through the banks out of Libya or used to create political instability, the proliferation of arms and support for wars within the country[728] .Under the FATF Recommendation 2, countries should have national AML and they should designate law enforcement authorities, supervisors, and other relevant competent authorities to disclose ML operations and coordinate with each other.

However, an important problem that was identified during the interviews was that the Libyan AML system suffers from an absence of police inspectors who have been specifically allocated to combat this crime. As Official Financial Employee 6 noted: "*there is no police department dedicated to combating ML*"[729]

The police have an important role in the criminal justice system, which is supposed to have responsibility for AML activity, due to this crime not just being related to commercial operations and bank transactions, but the extension of preceding crimes. These crimes need to be investigated, and information collected about how ML crime occurs. All illegal activities and practices which sources for the ML process are needing to be followed up to discover what businesses and activities are fuelling this crime. The problem that needs to be addressed is that although FATF recommendations expect countries to have effective mechanisms to implement AML policy, such as "the financial intelligence unit, law enforcement authorities, supervisors and other relevant competent authorities …" (Recommendation 2), and Libya has complied with this recommendation by establishing the FIU; there has been no establishment of police inspectors who are specially trained and dedicated to fighting this crime. This makes it difficult to effectively combat ML and the crimes that precede it. Similarly, in the procedures for the investigation and collection of information about ML operations, there are no testing devices which facilitate the detection of this crime. The absence of such facilities has resulted in some suspicious operations escaping detection. For example, there was a case of oil smuggling where the

[728] Liang, C. (2016) The Criminal-Jihadist: Insights into Modern Terrorist Financing. Geneva Centre for Security Policy - GCSP No.10 (p.10).

[729] (Official Financial Employee No.6, interviewed 12 August 2015).

perpetrators were seized and the investigation procedure started; but the decision was made by the public prosecutor to stop the investigation. This was confirmed by Judge7.2, who added that the reason behind this decision being taken was a "*lack of facilities for testing the material which was suspected of being smuggled. In this case, it was decided to stop the investigation in spite of the claim that it was smuggled oil*''[730]. Testing the material was impossible because there was no laboratory; hence the decision of the public prosecutor not to continue in this case of attempted oil smuggling.

7.2.9-Training

The means of ML have developed alongside the development of modern technology. International conventions have therefore tried to induce member countries to require their financial institutions to adopt training programmes for their staff. Through Article 13 (10) of the implementing regulations on ML, Libya requires the AML bodies to provide training programmes for the financial institutions employees and stipulate that they must provide: "training programmes for employees in the main unit, and sub-units ...''[731]. However, according to Article 13, training is limited to employees of the FIU while it ignores employees of the Public Prosecutor who are less knowledgeable about the rules and mechanisms of AML. As a result, there can be misunderstandings about the implementation of ML regulations, as confirmed by a Judge7. 1: "*there is no training programme on ML to clarify matters for the staff of the Public Prosecutor or for judges to understand the rules of AML*''[732].

This problem was also highlighted by Official Financial Employee3, who said: "*The Public Prosecutor's employees do not have sufficient knowledge to make distinctions between ML and smuggling, and were confused as to how their role and that of the Unit differed*''[733]. And the Official Financial Employee1 added: ''*there is no training programme for employees who work in the field of controlling anti-crime operations and who are also working against ML*"[734].

[730] (Judge No.7.2 interviewed 27 August 2015).
[731] The implementing regulations of money laundering law No. 3 /2007 Article No (13)
[732] (Judge No.7.1 interviewed 27 August 2015).
[733] (Official Financial Employee No.3, interviewed 12 August 2015).
[734] (Official Financial Employee No.1, interviewed 12 August 2015).

These answers reveal that training programmes for AML employees are weak in these institutions, or even completely absent, particularly in non-banking institutions. All employees who work in the field of controlling anti-crime operations, including the employees of the courts, were found to have less knowledge than the staff in financial institutions working against ML crime. As a result, there is confusion in the FIU about how to deal with the Public Prosecutor. The interviews tend to suggest that there is a problem with a lack of clarity about the mechanism of submitting information to the Public Prosecutor, due in part to lack of knowledge by non-financial staff working against ML crime at all the related institutions. There was also evidence that there is no judicial precedent at the courts, as Judge7.1 reported: "*there is no judicial precedent at the courts to help the judges to understand this crime"*[735].

7.2.10-International cooperation

International cooperation to combat ML crime is dealt with by Article 15 of the CMLA (2005), in line with Recommendation 38 of the Committee on International FATF. As this study, has discussed in Chapter Four, Libya has ratified a number of conventions with AML provisions such as the Vienna Convention against Illicit Traffic in Narcotic and Psychotropic Drugs (1988), the Strasbourg Convention (1990) and the Palermo Convention (2000). In compliance with these conventions' requirements, Libya has prepared the basis for the provision of the widest possible, rapid mutual legal assistance with respect to investigations, effective prosecution and procedures related to offences predicated on ML. These are discussed in the following sections, with regard to requests received from the relevant foreign authorities about legal assistance methods and tracking funds obtained from crimes, as required by the Conventions.

7.2.10.1- Mutual legal assistance

Libya has allowed for judicial cooperation in the field of mutual legal assistance through authorizing the competent judicial authorities to track or to freeze suspect funds or proceeds. Article 15 of the CMLA (2005)gives power to the Prosecutor General to track ML operations when requested by other countries, and stipulates that: "the Prosecutor General may, at the request of a judicial entity in another country, order to pursue the property obtained from a crime of ML or the means used in such crime to be tracked or

[735] (Judge No.7.1 interviewed 27 August 2015).

frozen…''[736]. However, there is a condition imposed by this Article, which is that, the country that requested the cooperation: "… has ratified an agreement with Libya for judicial cooperation or based on the principle of reciprocity''[737], as this study will discuss in the following section.

The interview answers revealed that, even though Libya is a signatory to the Conventions mentioned above, its national legislation on AML has not adopted the principles of legal assistance; thus, there still seem to be some problems in this area. Article 15 of the Executive Rules (2007) has identified these measures as being limited. In other words, the CMLA (2005) does not include legal assistance rules on areas such as the investigation, the establishment of the case and the judicial proceedings which relate to these illegal activities. Official Financial Employee2 commented: "*there is no legal basis that gives enough authority for mutual legal assistance in the procedures that relate to the investigation of ML cases and the establishment of a lawsuit."*[738] The result of this is that the measures of international legal assistance are limited due to not all the procedures that could help in international cooperation being mentioned.

The other problem that arises is that there are no rules in the AML law which require the local authority to comply with or respond to another country's request for legal assistance within a specified period. This means the Act does not identify a time limit for responding to requests for legal assistance, which can end in time being wasted while waiting for the reply. As one financial employee remarked: "*there is no mechanism that helps to avoid the long time that is often spent in responding to the request of another country about activities that relate to legal assistance''*[739]. This is another weakness of the AML law, as omitting this important rule will help criminals to escape the law and successfully hide their illegal proceeds of smuggling oil derivatives across the borders of neighbouring countries.

[736] Law No. 2 of 1373 DP / 2005 on Combating Money Laundering (15).
[737] ibid.
[738] (Official Financial Employee No.2, interviewed 19 August 2015).
[739] Ibid.

7.2.11- Confiscation and provisional measures

7.2.11.1-Freezing

Freezing the funds of the illegal proceeds is an important procedure in the methods of AML. The second paragraph of Article 5 in the Vienna Convention against Illicit Traffic in Narcotic and Psychotropic Drugs (1988) stipulates that: "each party shall also adopt such measures as may be necessary to enable its competent authorities to identify, trace, and freeze or seize proceeds..."[740]. Additionally, Recommendation 38 of the FATF Recommendations stipulates that: "the countries should ensure that they have the authority to take expeditious action in response to requests by foreign countries to identify, freeze..."[741]. Libya has complied with these international rules and it includes power to be the freeze illegal funds in the CMLA (2005). It has also given power to the Libyan Central Bank to freeze illegal proceeds that related to ML operations through Article 7, which stipulates that: "the Governor of the Central Bank of Libya may freeze funds in accounts that are suspected of being linked to the crime of ML, for a period not to exceed one month"[742]. However, as the article imposes the condition that proceeds can only be frozen for one month, this produces a weakness in this mechanism of AML, due to time possibly running out before the case appears in court. As the Official Financial Employee 4 noted: *"...the FIU should be given powers to keep this money frozen long enough for the relevant documents to be transferred to the Public Prosecutor; and the Public Prosecutor should also have the power to freeze the proceeds long enough to transfer the case to the court and avoid having to transfer the money back to the customer prematurely"*[743].

There is also legislative weakness in the freezing procedures specifically related to laundered property. This is because there is no law that organizes the freezing procedures in cases such as these and allows a specified body to track the suspicious proceeds that have attracted a request that they be frozen. Official Financial Employee2 remarked: "*there is no legal text about implementing freezing procedures for laundered property taken from other countries and neither is there one that gives powers to a specific*

[740]Article 5 of Vienna Convention, 1988.
[741] The FATF recommendation 38 (2012)
[742] Law No. 2 of 1373 DP / 2005 on Combating Money Laundering (7).
[743] (Official Financial Employee No. 4 interviewed 12 August 2015).

institution to implement the international rules of the freezing that relate to terrorism''[744]. So, the interviews reveal that the procedures for freezing are not sufficient to retain money suspected of being illegal proceeds.

Specifically, some answers given in the interviews reveal defects in the AML legislation in this respect; notably, the limited time available to those institutions that are fighting to curb ML operations to freeze illegal proceeds. This defect gives an opportunity to criminals to retain money that should be frozen, if the time limit expires during the investigations. As the Official Financial Employee 4 noted: *"...the FIU should be given powers to keep this money frozen long enough for the relevant documents to be transferred to the Public Prosecutor; and the Public Prosecutor should also have the power to freeze the proceeds long enough to transfer the case to the court and avoid having to transfer the money back to the customer prematurely"*[745]. However, although Article 7 of the CMLA (2005) restricts the freezing of funds by the Governor of the Central Bank to one month, the second paragraph adds: *''the chief public prosecutor may issue an order to impound accounts, funds, or instruments suspected of being linked to a crime of ML, for a period not to exceed three months*''[746]. Thus, the limitations on freezing suspect proceeds in the legislation are slightly mitigated by the granting of powers of confiscation.

7.2.11.2- Confiscation

The international conventions require their member countries to include in their regulations rules of confiscation that should apply to any money which is suspected of constituting illegal proceeds. Article 5 of the Vienna Convention against Illicit Traffic in Narcotic and Psychotropic Drugs (1988) stipulates that: "each party shall adopt such measures as may be necessary to enable confiscation ...''[747]. Additionally, Recommendation 38 of the FATF Recommendations stipulates that: "the countries should ensure that they have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered... ''[748],

[744] (Official Financial Employee No.2, interviewed 12 August 2015).
[745] (Official Financial Employee No. 4 interviewed 12 August 2015).
[746] Law No. 2 of 1373 DP / 2005 on Combating Money Laundering.
[747]Article 5, of the Vienna Convention, 1988.
[748] The FATF recommendation 38 (2012)

The Libyan AML regulations thus include confiscation procedures for any money that has an illegal origin. The second paragraph of Article 15 of the CMLA 2005 stipulates that: "the validity of a judicial order issued in another country by the competent court or judicial authority calling for the seizure of property, proceeds, or means linked to a crime of ML or a related crime shall be recognized….''[749]. However, the rules on confiscation contained in this Act are limited; and this has had negative effects on the recovery of funds that fall under the rules of confiscation.

This weakness is due to the confiscation rules in the Act being limited. For example, they do not identify who has the power to collect the details about any money due to be confiscated; nor do these rules make money or property that has ideal value or which is derived indirectly from the proceeds of crime the subject of confiscation. Moreover, the Act does not create a body that has the authority to manage the confiscated assets or the frozen money and to track any money which is a subject of confiscation and freezing. Nor is any institution identified that is to collect and keep all relevant information, which was confirmed by Official Financial Employee3: who claimed that *"there is no legislation that gives enough authority to competent institutions to track proceeds that should be confiscated''*[750].

The interview answers have revealed that the procedures for confiscation and freezing are not clearly outlined in the CMLA (2005); in other words, there is a gap in this law in the form of a vacancy for a competent body which will be given the power to track funds, manage funds which are under confiscation orders and to freeze illegal proceeds that are to be confiscated. The procedures for carrying this out should also clearer, as this section has explained above. Any weaknesses in procedures generally negatively affect the competent authorities in their recovery of funds that under a confiscation order. This weakness in AML legislation is a powerful explanation of the continuation of the crime of ML in Libya.

[749] Law No. 2 of 1373 DP / 2005 on Combating Money Laundering.
[750] (Official Financial Employee No.3, interviewed 12 August 2015)

7.3-The Role of Regulatory Institutions in Controlling Money Laundering Crime

The regulatory institutions monitor the application of the ML Law and have authority to give financial institutions a license to conduct of their business. For example, the Central Bank monitors commercial banks and banks specializing in finance and credit. These entities have two functions as follows; Firstly, the controlling role of the regulatory institutions is linked to that of the National Committee against ML Crime**,** as Article 27 obliges these entities to investigate the extent to which financial institutions enforce the law and implement procedures against ML operations including identification procedures, and the KYC rule. They also have to make annual reports about the activities of the National Committee against ML Crime. Secondly, the role of the regulatory institutions is linked with the FIU in combating ML crime. Under Article 32, the Libyan legislature has obliged these entities to help it in the investigation of reports of suspicious operations related to ML. Furthermore, they must conduct the necessary procedures about the exchange of information and create databases about ML. Article 31 states: ''regulatory authorities should take all the necessary measures and means for the exchange of information and coordination with the main unit, about AML, including the establishment of a database of information available in this area''[751].

7.4-Conclusion

This chapter has demonstrated how the ideals of Islam have not been adhered to in practice, and the initial anti-financial crimes principles decided by Islam have not been developed in the domestic legislations such as Libya criminal law and the AML Act (2005). It is still a work in progress. As a result, Libya has taken important steps in the fight against ML; and there are a number of regulations and rules that have been adopted in an attempt to curb it, including those relating to illegal oil selling. This legislation has criminalized ML activities and provides for confiscation and freezing the proceeds of crime.

Libya has failed to reach the standards of AML practices as set out in this area. However, it has made an effort to participate in international efforts against this crime by ratifying some Conventions. However, subsequent failure to comply with the international

[751] Regulations, Executive rules of money laundering law rules No. 3 /2007 Articles No (27, 31, 32)

standards may well be explained in terms of the actual practices of the bodies, which were created to work against ML crime. The problem is that the law is not always clear; furthermore, it is not being carried out properly, as this chapter clearly discussed. Introducing proper regulations which would fill gaps in the AML system would go a long way to avoid all this inefficiency. However, this chapter has also shown that this AML legislation and its mechanisms have some shortcomings and they are still not in line with the international standards of AML. There still needs to be more discussion and comparisons made between the Libyan approach and that of other countries such as the UK, which may help to fill gaps and rectify weaknesses. Regulations have to require both financial and non-financial institutions to be observant of financial operations; define in detail the functions of competent authorities and give them more power to track the activities of money launderers. Regulations should further facilitate international co-operation and ensure that the competent authorities have effective powers to apply all the mechanisms adopted to combat ML operations. Finally, the absence of training for people who work in these institutions needs to be rectified so that they can effectively apply detection strategies in order to prevent ML. These detection strategies need to be monitored in accordance with the regulations relating to the fight against ML crime, not least as all these insufficiencies give criminals opportunity to hide proceeds obtained by illegal oil selling.

Chapter Eight: The Relevance of the UK Approaches to Money Laundering for Libyan Legislation.

8.1- Introduction

This thesis has examined the AML Acts in both Libya and the UK, and highlighted the efforts to adopt effective law against the crime in both Libya and the UK, have both attempted, with varying degrees of commitment, to comply with international AML standards. It has also explored weaknesses in Libyan AML which has allowed an increase in ML in the illegal selling of oil. This chapter will go on to consider the lessons that could be learnt to benefit the fight against this crime, by filling the gaps in the Libyan CMLA (2005) and the legal transplants.

8.2- Anti- Money Laundering Lessons from the UK

The AML laws of UK have evolved over a relatively short period. This thesis has shown how the UK formalized its law, by applying international AML standards in view of its role as financial centre, and as an oil-producing country. Efforts related to the legal framework and improving the mechanisms of AML have been unique in the UK because of the reduced threat of corruption and lack of organizational and resource complications that are evident in Libya, the political instability, existence of armed gangs and the weakness of the mechanisms the using against this crime. As this study, has suggested, the UK has made many significant changes on its AML policies over the last two decades[752]. The target of these changes has been to minimise the threats the UK faces as a one of the significant financial centre by improving the response to ML crime through creating new capabilities in the law enforcement bodies and establishing new legal power to curb this crime. Further, the UK has taken steps to support the observation system, to improve its effectiveness against this crime and to implement an effective international exchange of information necessary to address ML.

This thesis has argued that in the UK, implementation of the law seeks to be compatible with the international AML principles. In spite of the UK adopting the ML Regulations (1993), the POCA(2002), the MLR (2017)and the Bribery Act (2010), there remain criticisms directed against the UK, and there are still some gaps in AML, such as the

[752]Action Plan for anti-money laundering and counter-terrorist finance (2016) Available at: https://www.gov.uk/government/publications (Accessed in 15/7/2017).

difficulty of detecting suspicious operation when available details are insufficient which can make it almost impossible to identify whether the origins of the proceeds are legal or not. The Bribery Act (2010) replaced all the UK's previous anti-corruption laws[753],and acts as a deterrent to financial rewards being offered as bribes, which is the intersection between corruption and ML. However, the regulations oblige financial institutions to train relevant official employees to know what the procedures are and what to do in relation to suspected ML transactions. Programmes organised by the MLR (2017) demonstrate the enthusiasm of the UK to improve the experience and the qualification levels of staff. Regardless of the criticisms that have been raised e.g. the confusing large number of SARs and some defects in its operation (see Chapter 5), it is clear that the UK generally implements AML procedures and monitors and controls financial operations.

The MLR (2017) has established the Preventive Measures that are positive procedures related to the principle of 'Know Your Client' (KYC) and determine whether PEPs are the real beneficiaries. Taking this action is a major way to prevent this kind of crime or curb it. The money or value transfer services and cash couriers should also be under these measures to ensure that they will not be used to launder money. As the FATF has recommended, money movement in the UK has been controlled by adopting the ML Regulations (2003), which obliged financial institutions to request their customers to disclose the sources of their financial operations for amounts over £10,000, (as this study has discussed in Chapter 5, Section 5.5.3).

On the same way, the UK AML is clear about collecting client details, its regulations ensured the existence of an effective system for collation of data and record keeping by creating a special body: The Serious Organized Crime Agency (SOCA), which has played a vital role in applying procedures such as keeping a data base, investigating operations related to ML and making them available for further investigation. The UK is clear about the information that should be collected about their clients and their businesses; it has stipulated the details about the customer's identity, the firm's business relationships and data about the deals which should be available as source of information for investigation by the competent authorities (See Chapter 5, Section 5.2).

[753]Aaronberg, D & Higgins, N. (2010) All Bark and No Bite…? Archbold Review Sweet and Maxwell Vol.5, No.7 (p.7).

This study has examined how the UK adopted a wide legal framework for the concept of ML, which led it to identify the procedures that should be followed in reporting operations suspected of ML. This has resulted in an increase in the numbers of annual SARs received by the concerned body. However, the large number of SARs about suspicious persons and transactions can be seen as a condemnation of the system, as these will cost a large amount to process and negatively affects the efficiency and effectiveness of the UK's approach against ML[754] (See Chapter 5).Additionally, financial institutions are required to satisfy themselves as to the identity of their customers; and there are several procedures related to risk assessment in financial operations which have been established. Activities which are probably linked with ML transactions involve record keeping and identification; and the records are identified by the MLR (2017). In contrast, the UK has a condition that the reporter must have reasonable grounds to believe that the transaction is suspicious. Article 331 (2) (b) of the POCA (2002) stipulates that ''... (b) has reasonable grounds for knowing or suspecting...''[755], additionally, in the UK a mechanism has been adopted which is a strong step for reporting any suspicious ML operations, attempting to the curb this crime, and penalising anyone who failed to report the suspicious financial operation, as this study has clarified above.

In practice, however, the situation is different; and this research has discovered that the UK has weak procedures for discovering the origins of the proceeds of illegal oil selling in Libya. Further, it has been demonstrated that the UK has failed to track the money that was hidden by the members of the Libyan regime, as this study has explained in Chapter5.

8.3- The anti-money laundering procedures in Libya

In this context, the FATF, issued AML/CFT recommendations, and adopted a wide definition of ML, which reflected the reinforcements made by the provisions of the Vienna Convention in this area. It has taken rapid tough action, and requested the member countries to establish practical measures against this crime. The World Bank and the IMF have also required several countries to implement the recommendations mentioned above to demonstrate their preparedness to work against this phenomenon and its related threats. This study has highlighted that at first, global obligations against

[754] Preller, S. Ibid (p.243).
[755] Part 7 (331) (2) (b) of the POCA

ML focused on anti- drug trafficking and the creation of a front to enhance the war on drugs represented in the rules which were within the Vienna Convention (1988). This rapidly changed to a fight against ML, outlined in the Basel Statement of Principles and the FATF recommendations for increasing awareness of the problem of ML. In spite of adopting several regulations against financial crimes culminating in the CMLA (2005) and its Regulations, in practice, Libya neither lives up to international standards nor has made reforms which are sufficient to ensure the curbing of ML crime. Libya's CMLA (2005) has been criticized by IMF; as, although Libya has pledged to enter some changes into this Act[756], as the IMF has requested, it remains unchanged.

Although Libya is an Islamic country and claims Islamic principles is as the source of its legislations, its law is not enough to curb the ML crime, specifically in the illegal selling of oil, which has negative effects on the national economy and the lives of its citizens. The CMLA (2005) does not appear compatible with international AML principles, and this thesis has also pointed out that laws and practices of Libyan AML don't fully implement the principles of Islamic rule either, in the same way as the AML procedures in Libya are not in line with global principles, as will be outlined below:

8.4-The power of Anti- Money Laundering bodies

Although Libya has attempted to comply with global AML standards by establishing the FIU, there also appears to be a very low level of enforcement of the existing regulations. The findings of this study and the views of its participants confirm that although Libyan law has given the FIU authorities power to review records and financial institutions' documents related to financial operations, in practice the FIU has limited power. This is due to the terms of reference of the FIU not explicitly including the possibility of carrying out a field inspection for this purpose. In other words, the unit is unable to visit and inspect financial operations or adequately review financial documents in order to detect ML transactions, which has resulted in a weak level of analysis of reports of suspicious operations (See Chapter 7, Section 7.2.4.3). Additionally, this research has discovered another weak point in the system used by the FIU against this crime, which is that the CMLA (2005) does not identify a time limit for responding to requests for legal assistance.

[756] See Staff Report for the 2005 Article IV Consultation, Prepared by representatives of IMF a consultation 2005 with Libya. Available at: file:///C:/Users/Owner/Downloads/cr06136a%20(1).pdf (Accessed in 20/6/2017).

It is important for responses to be prompt, as a quick reply will assist in providing the documents of any suspicious operation for investigation procedures to use them as needed as evidence of illegal transaction. This weakness in the AML law must be addressed, as the absence of this important rule from AML law helps criminals to escape the law and hide their illegal proceeds (see Chapter 7, Section 7.2.7).

Additionally, the participants of this study considered that there is another weakness in the mechanism used by the banks to curb ML. They point out that the door was left wide open for forgery by allowing copies of identification documents to be provided by the customer when important client details relevant to financial operations were required, rather than taking the information directly from the original documents (See Chapter 7, Section 7.2.5.2). This means that official employees in the bank accept a copy of the identification document without comparing it to the original that could be a forgery, and that it is much more difficult to detect forgery on photocopied document. This practice needs to be addressed, as it could be helping money launderers to escape justice.

8.4.1- Exchanging information

Although, the law that established the FIU in Libya has given it the power to exchange information with its counterparts in other countries, in practice, as the study has discovered through its participants, the FIU has limited co-operation. This is due to the FIU not having powers of full independent financial disclosure, so it cannot act independently in exchanging information with its counterparts. This weakness can result in inadequate co-operation which makes it more difficult to effectively track money that has been laundered (See Chapter 7, Section 7.2.4.4).

These weaknesses could be rectified and the regulations against ML made more complete by adopting certain rules, identified in the chapter above, that are being used in the UK to prevent ML. There also needs to be reform of the regulations which were issued against financial offences. These regulations should be consistent with international law so as to prevent corruption. The rule of law must be implemented to all persons equally and irregularities in the judiciary have to be exposed. It is also necessary to reform the ML law to issue guidance instructions and provide training, according to the requirements of international law. At the same time, ML crime is a co-operative criminal activity, committed by several criminals who are familiar with the different

means of committing this crime. Crimes such as ML require the perpetrators to be knowledgeable about the system; and require intensive action, and often co-operation beyond geographical boundaries. For these reasons, it is also not an easy crime to control without information and international co-operation and effort to achieve a comprehensive effectiveness against these illegal activities. Banks need in-depth comprehensive knowledge about the mechanisms and strategies that ML operations use and realize that these are complex and changing; and that fraudulent ideas or crimes may be generated by in-depth knowledge of a bank's workings.

The compliance of states with international law is the basis for effective AML; and countries should be internalizing the global rules in this field within their domestic laws. Countries should participate in international AML initiatives and, in their own national interest, should take all necessary actions to curb this crime. Countries should also co-operate in creating a network for the exchange of resources such as any intelligence information related to the fight against financial crimes, which might be committed nationally or through cross-border financial institutions. In doing this the research has highlighted the precarious regulatory environment in Libya, which has led some citizens to deprive their country of valuable assets. Further, there are some laws that need to be changed, such as the Salary Act, the salaries of staff need to be increased ensure that they can meet their obligations. Changes also need to be madein how transactions are conducted with the banks; for instance, dealing with cash needs to be curbed. Adopting international rules needs to be fostered through the adoption of UN model treaties and soft law instruments, such as the Basel Committee's guidelines on banking supervision and the FATF recommendations. This study has identified that the international AML framework in the context of the FATF and the bank for international settlement in Basel, Switzerland (See Chapter 4, Section 4.4.5) have made useful rules which could be included within the domestic regulation to foster international co-operation, as this action has positive effects on AML strategy.

8.4.2- Reporting

Like the UK, Libya's regulated sector is obliged by the CMLA (2005) to report suspicious activity. This is in line with the FATF 40 recommendations, which include their AML regulations whereby clear rules oblige their financial institutions to report on any

suspicious financial dealings, as well as establishing punishments against those who transgress these rules. Libya has nevertheless taken a positive step in obliging financial institutions to report on any suspicious financial transactions, under Article 18 of the regulations' executive rules of ML, as this study has clarified in Chapter 7. For example, it has decided to establish a punishment for any an official who fails to reports operations involving suspected ML to the competent authorities. Article 5 (1) stipulates that: ''Any official or employee of a financial, commercial, or economic establishment who learns of an act in his establishment related to a crime of ML and fails to report it to the competent authority shall be subject to imprisonment and/or a fine of not more than LD 10,000 and not less than LD 1,000''. (See Chapter 7 section 7.2.5.2).

Regarding this point, several problems stand out, not least that the banks will be outside their original list of duties by having to assess the extent that financial operations involve ML or not. Thus, in this situation the question has arisen about how a bank could know the provenance of money it receives from its clients. This requirement also produces a need to increase the number of transactions which might be regarded as suspicious; and this is exhausting work for the FIU that has to receive and process these reports, as this study has explained above.

Moreover, an analysis of a suspicious operation may reveal that it is not linked with any crime; and this may mean that the information received from the banks was uncertain. It is here, that, after in-depth analysis, the researcher believes problems can arise. Any reporting based solely on the suspicion of a competent employee and without specifying what constitutes 'suspicious', and without appropriate indicators which can be referred to when needed, may give rise to ambiguity and could lead to prejudicing the rights and freedoms of individuals, as such a report opens doors for an investigation based on the suspicion. That is why reports should not be based on an employee's opinion and clear rules need to be made and adhered to in this area. Therefore, it is also very important to ensure that the staff members are given sufficient training to improve their skills in countering ML and assessing the potential risks related to financial transaction in order to protect the banks from ML[757]. Training has to be aimed at all relevant staff and make them able to effectively identify suspicious transactions, be aware of potential oversights

[757]Aspalella, A. ibid, (2013).

and have a good knowledge of the requirements and rules relating to the identification and reporting of possible ML and all relevant laws.

In addition, the legislation does not stipulate any indicators, as a guide to determine what could be the basis for making a report. Furthermore, the Libyan legislation has also decided to establish a punishment for anyone who reports to the competent authorities in bad faith i.e. in order to harm another party (see Chapter 7, Section 7.2.7).

Regarding this point, the problem that stands out is how to identify 'bad faith'. The threat of this punishment has made certain employees ignore their suspicions and omit making reports to avoid legal accountability; and this has a negative effect on AML strategy. However, there are also other weaknesses in the steps related to the reporting of the suspicious operations, such as the absence of a manual designed to clarify how to submit the report on the suspicious operations of ML, as the Act has stipulated above (See Chapter 7, Section 7.2.7).

In order to fight ML effectively, it is important to design a code that aims to provide guidance and instructions to the financial institutions to know and understand the requirements for reporting transactions they suspect may relate to the activities of ML. Such a code will contribute to satisfying the national legal obligations which doubtless correspond with the relevant international standards such as the FATF recommendations. A manual that can generate important reports on suspicious transactions also plays an important role in the fight against ML and assists the FIU as it ensures that those responsible will produce high quality effective reports.

The other weak point is that there is no clear time limit on obliging financial institutions to provide the information to the FIU, as this study has discussed earlier. The result of this omission is that the Unit may not be able to start any investigation on a suspicious ML operation as it relies on evidence being provided in time for the investigation to be made effectively. Furthermore, there is a weakness in the flow of details about suspicious operations and this lends a kind of privacy to the crime of money laundering which is related to the difficulties competent authorities have in gathering information about the original crime on which the ML is predicated. In order to be effective, any authority needs efficient tracking and collection of the information necessary to combat this scourge and

hold the perpetrators accountable. In reality, there are difficulties with the ease of flow of internal information between institutions and agencies, whenever they are requested to give the relevant information as part of their duties. For example, it could take several days for the Unit to acquire financial information from an institution despite the importance and necessity of this information.

Thus, the weakness in the AML mechanism, specifically the procedures for furnishing the main Unit with relevant data, needs to be addressed to avoid any obstruction or delay in the procedures of investigation. Thus, the Libyan Act (2005) needs to be revised to include a specific limit time in which to provide the information to the FIU immediately it is required, to ensure timely provision of evidence and that the criminals will not have time to hide the suspicious proceeds.

In Libya, in practice, the investigative powers of the FIU into suspicious operations are limited; and the FIU is only able to investigate bank employees, who may have committed misdemeanours related to ML crime. However, it cannot go further than that and include others who are related to suspicious operation, such as investigating the individuals or clients or the third party in the transaction – the brokers. In this case, the relationship between the FIU and the General Prosecutor's Office is a complementary relationship that should be built on the principles that are defined by ML law. These bodies need to work together in terms of the investigation, collection of all relevant information and the completion of the files, followed by the public prosecution, which in turn takes upon itself the powers of investigative and legal procedures to condemn or exonerate the accused before the case is transferred to the competent court. The importance of this interdependence is thus in the exchange of information, and in providing assistance in the investigation that will establish the lawsuit. However, in this case, the powers of the Libyan FIU are limited, as this study has argued above.

It is therefore essential that those involved in the investigation can obtain any evidence against anyone guilty of perpetrating ML and related offences. They should have the power to seize related documents that might be of benefit to the ongoing investigation. Such documents can reveal many of the circumstances surrounding ML crime and enable the tracking of any suspicious person who might be involved in a ML transaction. The FATF recommendations have provided member countries with strong procedures and

the framework for AML; and encouraged member countries to improve their legal system to combat ML and protect their banking system from this crime. In the Basel Statement of Principles, member countries are urged to avoid the risk of discrepancy in domestic regulations in this field.

8.4.3-The Preventive Measures

8.4.3.1-Money Transfer Services

Libya has left the door open for transferring money, and the internal regulations have not adopted a threshold for the movement of cash, cheques or deposits into an account; on the contrary, Libya allows the transfer of more than a hundred thousand DYL in a single transaction and there is no limit on transferring money or deposits. Furthermore, there are no controls or limitations on the movement of money, whatever the amount (See Chapter 7, Section 7.2.8). This is one of the means of ML and it results in risk of political and social damage and a drain on the domestic economy; so, to curb these risks, the FATF recommendation must be implemented, as has been done in the UK.

8.4.3.2-Confiscation and provisional measures

Libya has taken steps to allow the monitoring of activities suspected of being ML. These procedures have been adopted to comply with the relevant international conventions; (See Chapter 7, Section 7.2.11) and include the power to freeze illegal proceeds. However, the Libyan Central Bank has only been granted powers to freeze suspicious funds for one month. This time limit is a weak point in this AML strategy that can result in time possibly running out before the case is forwarded in court. Although, the 2005 Act tries to conform with the conventions' requirements about confiscation rules, the rules of the confiscation under this Act are also weak due to their not identifying who has the power to collect details about any money due to be confiscated as this study has argued above.

The importance of freezing assets is that it is always the first step in any action taken, and the amount frozen in general is usually the only amount that will eventually be recovered by the relevant authorities. Thus, the orders to freeze should be kept in effect for a long time if necessary, until a final order is issued to confiscate these assets. Both freezing and

confiscation are very important mechanisms that could rapidly help to ensure the success of the recovery of assets in the early stages of an investigation.

8.4.4-Training

This thesis has shown that most judges, FIU members and financial institution employees in Libya have not been trained in the AML proceedings, (as some participants identified in Chapter 7, Section 7.2.9); regulations for this are absent; and the FIU is also not sufficiently aware of the obligations that financial organisations have in combating ML, such as cooperating with the FIU. Furthermore, it has insufficient knowledge about the development of training programmes, which aim to help staff deal more effectively with the different types of risks associated with ML. Thus, both the research participants and the relevant literature concurred that the inadequacy of provision of training programmes for employees who might come across ML, whether in the FIU or in the office of the Public Prosecutor or anywhere else that experiences ML transactions (as clarified in Chapter 7, Section 7.2.9) reflects the failure of the Libyan AML mechanisms; and has resulted in confusion and misunderstanding about how to detect suspicious operations.

This highlights the importance of training and awareness for all employees who deal directly with customers and oversee financial transactions or for those who provide guidance. The training should include all relevant staff, including new workers, who deal with clients and include how to detect suspicious operations and prepare reports about it. Training should be systematic and ongoing; and the programmes should also include how to deal with the clients after reporting their suspect transactions; and deal in particular with personal responsibilities as defined by the law. The training on the procedures of investigation for the staff of the FIU and the Public Prosecutor must include ways to improve their knowledge about the rules and mechanisms of AML, as is supposed to be included in the training on the procedures followed by banks to help prevent and deter ML.

Furthermore, in Libya there are no police inspectors assigned specifically to combat this crime, nor are there mechanisms which assist the investigation and collection of information about ML operations that also need to be supported by the provision of testing to facilitate the detection of this crime (See Section 7.2.8 of Chapter 7). Although

the CMLA (2005) has addressed international cooperation, it has not included specific legal assistance rules on areas such as the investigation, the establishment of the lawsuit and the judicial proceedings which relate to activities that are criminalized by the Conventions (See Section 7.2.10.1 of Chapter 7).

Finally, although, the Central Bank of Libya has directed all the banks and other financial institutions to use procedures for collecting their customers' details by applying and pursuing the principle of Know Your Client (KYC), the CMLA (2005) is not clear about what details should be collected from customers. It has also ignored the issue of PEPs and it does not regulate how to deal with them and how to assess risk to determine whether this potential customer (whether as a customer or beneficial owner) is a PEP or not, (see Chapter 7, Section 7.2.6).

Libya also has a weak commitment to the FATF recommendations[758], and consequently the Libyan standards are inadequate (see Chapter 7, Section 7.2.8). Furthermore, there are problems with the government's tracking of corrupt operations as some of these involve government officials. A review of the literature and contributions by some of the study's participants confirm that, although resolutions have been issued and applied, there are still concerns about the effectiveness of the regulations. Also, the low salaries of the Libyan official employees have led some of them to find other ways of supplementing their incomes which can involve corruption[759]. Finally, with regard to the illegal selling of oil, fuel subsidies have encouraged some people in Libya to smuggle oil in order to earn the difference between the international and local price which has had a negative effect on the fight against ML (See also Chapter 3, Section 6.1). Additionally, the pervasive corruption in Libya is also due to the legacy of the Gaddafi regime that has meant an absence of democratic institutions in Libya and a routine ignoring of these crimes by the old regime, (as considered in Chapter 3 Section 6.1). This has been confirmed by Transparency International, which ranked Libya 170th (See the Table of Results of the Corruption Perceptions Index 2016)[760]. In conjunction with this, fuel prices

[758]See Staff Report for the 2005 Article IV Consultation. Ibid.
[759]Transparency team to Libya: "Managerial revolution" based on "administrative corruption" in Libya 2010 Available at: file:///C:/Users/Owner/Downloads/1262.pdf (Accessed in 3/11/2014).
[760] Transparency International Corruption Perceptions Index 2016.

in Libya need reforming to be in line with that of neighbouring counties in order to stop oil smuggling.

There is another issue regarding Libyan AML procedures, as in Libyan culture people prefer to use cash rather than the cheques, as this study has explained, and this is a problem for procedures of the monitoring of money movement at border points used by criminals to carry their illegal oil proceeds to Tunisia. Similarly, smugglers have availed themselves of weakness in monitoring procedures on all Libyan borders to smuggle oil to the neighbouring countries, and several Libyans have bought property in Tunisia as a way of laundering their illegal proceeds[761]; or have created fake companies and pumped money into them[762].Moreover, the low standard of living of the individual is reflected in the low average per capita income[763]; which may act as further motivation for ML.

8.5-Conclusion

It is clear that in the face of increased ML crime, the UK has developed as one of the significant global financial centres. The United Kingdom seeks to protect its financial system as one of the most important and the largest financial centres in the world; and this has been through its support of international conventions such as the 2000 Palermo Convention and the Basel Committee Statement of Principles (1988), as well as through the regular modification of its laws in line with the international conventions' requirements with robust AML measures such as CDD. Arguably, global AML cannot be successful, unless it is enforced through robust local and global institutions[764]. The picture portrayed by the Libyan AML regime is that it is inefficient and inaccessible due to a culture of corruption and insufficiency in its local application, and needs a legal transplant of some of the rules that mentioned above which will reform the relevant laws in Libya.

Amendments would thus include clarification of the ML mechanism, such as the application of the CDD principles and the procedures for reporting suspicious

[761] See ALQUDS AL Arabi. Enabling Libyans to own real estates in Tunisia, a waste of national sovereignty or an attempt to revive the economy? 2016 Available at: http://www.alquds.co.uk/?p=625611 (Accessed in 18/7/2017).
[762] See Al-Shorouq. Is the only one to publish the most serious money laundering operations in Tunisia: billions ... and Libyan and Tunisian businessmen are involved 2016 Available at: http://www.alchourouk.com/171288/662/1 (Accessed in 18/7/2017).
[763] See Libya Almostakbal. The Libyan economy and five years lean by Ghoul, H 2017 Available at: http://www.libya-al-mostakbal.org/95/13766 (Accessed in 18/7/2017).
[764]Mugarura, N. (2013) An appraisal of United Nations and other money laundering and financing of terrorism counter-measures. Journal of Money Laundering Control Vol 16 No.3 pp 249-265 (p.255).

transactions, which could thus address the areas of weakness. In particular, members of staff need to be monitored and trained to give them the opportunity to understand and deal with activities that are linked to ML operations. Libya should review and adopt laws that are suited its local context, Thus, Libya needs to apply the legal transplant model in a transitional phase of Libya's development through benefit from the positive procedures related to the principle of 'Know Your Client' (KYC) and determine whether PEPs are the real beneficiaries, any changes the legislation requires that conform to the rules and mechanisms used by the UK in these areas, must not be inconsistent with the principles contained in *Shari'ah*, as discussed in Chapter 4.

Measures to fill the gaps and address the inadequacies will be recommended in the following chapter. Thus, Libya needs to apply the legal transplant model in a transitional phase of Libya's development through benefit from the positive procedures related to the principle of 'Know Your Client' (KYC) and determine whether PEPs are the real beneficiaries.

Chapter Nine: Conclusion and Recommendations

9.1- Introduction

This thesis has demonstrated the weakness of AML legislation in Libya and sought to identify the most viable and effective ways to improve the Libyan Act in these areas. The answers to the research questions were found and form the basis of the recommendations that have been listed below and throughout the discussion in this chapter. The literature and the experts who have participated have provided clues, which have demonstrated the extent of corruption, problems in knowledge acquisition and awareness of the issues, disorganisation, resistance to change, and a lack of available resources. All these needs to be addressed by changes in AML legislation, and it is obvious that Libya needs assistance from other governments and international bodies to overcome its corruption and infrastructure challenges. This knowledge was found to be less common in the government and the financial institutions; and this study has added evidence that a combination of disorganisation, resource issues, and corruption in successive Libyan governments have impeded progress in the struggle against ML.

Similarly, this study has demonstrated that the understanding of ML is very weak, at both official and public levels; and the people are using means that assist in committing this crime, for example, they prefer to use cash rather than cheques (See Chapter 7, Section 7.2.8).

Most of the Libyan oil proceeds are in foreign banks, while the majority of the population live below the designated poverty threshold of $1 per day. There have been high profile cases involving senior Libyan who have smuggled public funds to foreign jurisdictions; therefore, it did not come as a surprise when Transparency International ranked Libya 170th out of 176 countries in its Global Perception Index in 2016. In the previous year, Libya was ranked 161th out of a possible 167. This demonstrates that there has been no marked improvement in the corruption score, and weak mechanisms of anti-ML in Libya, means there are still illegal actions taking place and generating illicit money which will ultimately need laundering.

9.2-The evaluation of Anti- Money Laundering regimes

There are arguments that the Libyan CMLA (2005) may not be effective because it addresses the wrong area by not targeting the feeder activities to ML. However, the researcher begs to differ because there is sufficient legislation to criminalize ML predicated offenses; and this study has confirmed that the CMLA (2005) has criminalized all the behaviours stated in international conventions such as the Vienna Convention against Illicit Traffic in Narcotic and Psychotropic Drugs (1988), and the UN Convention on Transnational Organised Crimes in Palermo (2000) (As discussed in Chapter 4). Libya took the steps towards complying with the FATF recommendations, thus, the criminalization of ML under the Libya CMLA (2005). There has been international criminalisation of the crime of corruption, which this study has identified as the main predicate offense to the crime of ML in Libya. Libya has availed itself the recommendations of FATF, through creating the FIU, which has authority over this, however, Libya has not met full international AML principles. Although, Libya seems to be concentrating its fight against this crime through the financial sector by obliging the banks to collect their customers' details and reporting on any suspicious transactions, this study has found a weakness in this area, which is a lack of clarity about the information that should be collected and kept by the banks about their customers and to which they should be able to refer when needed, as this study has clarified (see Chapter 7, Section 7.2.5.4).

Additionally, this study has suggested that the mechanisms for international co-operation are very weak. In spite of international co-operation being a very important way of recovering the illegal money, as this study has explained, in the case of Libya, the money launderers of money have frequently used smuggling oil or illegal selling overseas to facilitate the process of placing tainted money into the mainstream financial system and to get it sent out of the country as legitimate. In some cases, this led to the freezing of millions of the plundered money in the foreign banks. Thus, to curb the crime the International community is enjoined to work together in formulating a framework to facilitate the repatriation of plundered wealth and thus reverse some of the damage inflicted on societies by corrupt politicians or officials.

This research has also suggested that Mutual Legal Assistance is critical for prosecution and deterrence to the corrupt practices involved in smuggling oil, and a variety of instruments need to be developed to be able to prosecute perpetrators and deter corrupt practices. Libya will benefit from co-operation and mutual legal assistance in tracing the trail of looted funds, the recovery its assets and the repatriation of stolen funds. Libya needs effective co-operation with the countries involved and must reform the CMLA (2005) to give the FIU powers to exchange the information with its counterparts.

Due to ignoring some important principles, the FIU has neither complied fully with the procedures of reporting nor with the procedures of CDD. Additionally, this Unit has not had the power to deal with counterparts in other countries in operations related to ML. These aspects are included in the international conventions and the FATF recommendations, such as the CDD rules. There is also a lack of any proper monitoring of the system specifically in the selling of oil, (See Chapter 7, Section 7.2.5.4); additionally, there is no specific law to prevent exit and entry of vehicles that have additional fuel tanks or carry the illicit fuel in tanks specific to that purpose. Also, the FIU has not complied with paragraph 5 of Article 4 of the implementing regulations of the 2005 Act, by failing to create a database about the details of suspicious operations (See Chapter 7, Section 7.2.4.2). Additionally, the Libyan legislator has not properly regulated the transfers of funds; for example, there is no limitation on the maximum amount of funds that may be brought into Libya; moreover, anyone can transfer more than a hundred thousand DYL in a single transaction. Thus, multiple money transfers that may have been made without any control are helping to facilitate ML crime (See Chapter 7, Section 7.2.8).

The other weak point in AML is that the Libyan Central Bank has only been granted powers to freeze suspicious funds for one month (See Chapter 7, Section 7.2.11). This time limit is a weak point in AML strategy that can result in time possibly running out before the case is forwarded to court. A further weak point is related to the investigative powers of the FIU in suspicious operation, as (Chapter 7, Section 7.2.4.3) has identified. This negatively affects investigations where related bodies detect the suspect operations.

Electronic technology has been not sufficiently developed; and this technology is required to assist the country in developing the infrastructure of its financial system and to foster the banks' ability to track financial operations, as it helps to detect suspicious

transactions and protect the financial system from misuse. The results of this study suggest that the Libyan legislation relating to financial offences needs to be reformed and areas of weakness need to be addressed. In particular, some of the banks have failed to apply CDD principles, because they allow copies of identification documents to be provided by the customer when important client details relevant to financial operations were required, rather than taking the information directly from the original documents (See Chapter 7, Section 7.2.5.2).

Furthermore, the Libyan government encouraged the public to use cash by producing denominations of coins and notes, which were issued and the output of cash increased. At the same time, the financial institutions did not create a system to control the movement of money and observe the deposits by clients into the banks (See Chapter 7, Section 7.2.8). The other point that reflects the inadequate knowledge of the authorities that work against the ML crime is their ignorance of the provision of testing devices which facilitate the detection of this crime and the procedures for the investigation and collection of information about ML operations by banks (See Chapter 7, Section 7.2.9).

Thus, the procedures for AML in Libya adopted by the CMLA 2005 are very weak, whereas, the mechanisms which are used in the UK could be adequate to curb this crime. Thus, in this case, measures can be taken to fill the gaps and address the inadequacies, as the recommendations below suggest. The study has noted, that the most viable and effective ways for the UK to improve the mechanisms used against ML are to remain aware, track the evolving threats, practices, and technology used for ML, while Libyan institutions seem to most need to adopting these policies to deal with the strong challenges of corruption.

Additionally, the procedures of AML in Libya adopted by the CMLA 2005 are very weak regarding the mechanisms of reporting on ML operations. There is a need to improve the rules that prevent money laundering through reforming the Suspicious Activity Reports (SARs) and focusing on some guiding principles such as implementing procedures for risks that have been identified in the risk assessment, and criminalising the failure to report on suspicious ML operations; also to include the Criminal Finances Act (2017) that introduces criminalising the failure to prevent the facilitation of tax evasion; and to fill the gaps and address the inadequacies (as this study has clarified in Chapter 5 section 2.1).

The (KYC) Know Your Client directive is a principle that should be adopted by all Libyan financial institutions; as it requires keeping details of customers; calls for identifying clients and ascertaining relevant information about the client pertinent to their dealing with the financial institutions, including names, contacts and address details, proof of address, source of income and a lot more; as stipulated by the Criminal Finances Act (2017). (CDD) Customer Due Diligence is one of the principles to be adhered to by financial institutions; and it requires them to go beyond the details of the KYC to investigate their client or customers to ascertain the veracity of the details of clients in their dealings with banks; and includes a continuous monitoring of the customers' contact with the institution.

The (PEP) Politically Exposed Persons principle enables financial institutions to follow closely the dealings of political figures from other countries with the banks. This process allows the financial institutions to track former political figures who have recently been in government in an Executive, Judiciary or Legislative position or served as an executive within the Departments etc; as these political figures pose a potential risk to regulated institutions. This has been stipulated in the Criminal Finances Act (2017).

Additionally, the Preventive Measures that have been taken by the UK against this crime such as controlling money movement in the UK by adopting the ML Regulations (2003), which obliged financial institutions to request their customers to disclose the sources of their financial operations and the procedures that should be followed in reporting operations suspected of ML (as this study has identified in Chapter 5, section 7). So, all these procedures would be useful if adopted by Libyan financial institutions to improve the mechanisms used against ML to fill the gaps and address the inadequacies.

The study's questions and objectives raised in the introduction of this study find their answers within the context of the research findings such that the analysis thereof provides a logical background to the evaluation of ML in Libya. In the final analysis, the aim of this study is to evaluate ML Regulations in Libya, to discover whether ML legislation is a sufficient or not. This study has analysed the UK's ML legislation and the international rules relating to ML, and suggests that the importance of the global AML framework in the fight against ML and its predicate crimes cannot be underestimated. This view is inspired by the previous lack of a methodical knowledge of contemporary Libyan ML and

its countermeasures that are now offered in this thesis through an examination of Libya's special circumstances and the legislation which followed the implementation of AML. This study has found that the Libyan CMLA (2005) adopted by Libya is insufficient to prevent this crime and needs to be changed, as this study has discovered and explained.

This study has noted that Libya is a member of the FATF for the Middle East and North Africa. There is the need to provide specific knowledge for the staff who work to curb this crime, furthermore, it is necessary for the public to know generally what this ML crime is, how it happens, its effect on their lives, its menace and how to curb or eliminate this crime.

9.3-Contribution

Additionally, this study clarifies the international standards and principles and controls to prevent ML crime, which has recently increased, and explains how Libya is not fully compliant with them. The research has revealed how Libya's use of weak mechanisms against this crime has led to an increase in the phenomenon, particularly in relation to illegal sales of oil. Additionally, this study has also clarified the importance of training, which will assist in developing and improving the efficiency of staff who work against ML crime. Therefore, this research contributes to knowledge by clearly identifying the weak areas in AML, thus providing the competent authorities in Libya with an understanding of the adjustments required for the CMLA (2005) to be enough to prevent this crime (see Chapter 7); in addition to the recommendations that will be in this chapter.

This study has also contributed through revealing how Libyan legislation relating to financial offences needs to be reformed, to deprive criminals of these illegal proceeds, and return the money that was stolen to the Libyan people. This study has provided the competent authorities in Libya with an understanding of the adjustments required for the CMLA (2005). These amendments would include clarification of the AML mechanism, such as the application of the CDD principles and the procedures for reporting suspicious transactions, and thus address the areas of weakness. Employees need to be monitored and trained to give them the opportunity to understand and deal with activities that are linked to ML operations. Libya should review and adopt laws that are suited its local context, and any changes the legislation requires that conform to the rules and

mechanisms used by the UK in these areas, which will be not inconsistent with the principles contained in *Shari'ah*, as discussed in this thesis.

9.4- Conclusion.

Countries should co-operate by participating in international AML initiatives, rather than acting alone on important issues to achieve national interests. They need to do more than just adopt regulatory regimes but go further in adapting their regulatory environment to accept international AML measures, as this study will recommend later. This could be achieved through the adoption of UN model treaties, because they have established a wide range of useful principles, codes of conduct and transactional practice rules. The FATF recommendations need to be adopted as they form the various dimensions of global AML and provide the general framework. The transposing of this range of rules into the national legal system needs to be done with some urgency. While Libya has ratified international treaties, such as the Vienna Convention against Illicit Traffic in Narcotic and Psychotropic Drugs (1988), and the UN Convention on Transnational Organised Crimes in Palermo (2000), it's clear that Libya has failed to adopt the FATF recommendations. However, the international measures of AML are difficult to implement across the board, unless they are enforced through robust local institutions, and, at the same time, co-operation with global counterparts must be in existence and active. Thus, in the case of Libya, this study has outlined that the prevailing precarious political, economic and social climate in that country today should be not overlooked. Important steps such as the adoption of a constitution, reform of institutions and development of the authorities' jurisdictions to ensure the rule of law must be in place order to finally fill the gaps and address the weaknesses inherent in the current AML framework, as this study will be recommending in the next section. Thus, addressing these problems to the extent demanded to create viable solutions could be achieved by filling the gaps mentioned in last chapters by the legal transplants; and this would demand that challenges be continually pursued, which will almost certainly require changes in legislation and the support of financial institutions by the financial experts and training programmes.

9.5-Recommendations

It is equally apparent that the existing regulations have problems with enforcement and in dealing with the institutions that fight this serious crime, such as the foreign FIUs. This study therefore makes several recommendations that it would be of great help and contribute to Libya having sufficient regulations with which to affect a reduction of this crime:

9.5.1- First Recommendation

Important procedures need to be taken to change the CMLA (2005) by taking anti-money laundering rules, which have been adopted in the UK using the legal transplants as follows:

5.1.1- The relevant legislation should be changed to be included positive procedures related to the principle of 'Know Your Client' (KYC) and risk assessment that are applying the UK by using the legal transplants.

5.1.2- The power to request full independent financial disclosure should be given to the Libyan FIU - as it is using in the UK- So that it is able to work independently in exchanging information with its counterparts, which can result in adequate co-operation and thus effective tracking of money that has been laundered.

5.1.3- the CMLA (2005) has not fully included the guidelines on the necessary measures to implement CDD, and thus not clearly identified the information that should be collected about customers or ensured the existence of an effective system for collation of data and record keeping (as this study has clarified in Chapter 7). This must be rectified.

5.1.4- Training programmes should be provided according to the requirements of international AML. Training programmes should be developed to give staff the skills to deal more effectively with the different types of risks associated with ML. The result will be to build staff expertise; and it is important that given this revised Act, employees are able to carry out effective operation of AML.

5.1.5- An Assets Recovery Agency for recovering the proceeds related to ML transactions should be created in Libya to control these illegal proceeds.

5.1.6- The Libyan CMLA (2005) should be amended to clarify on how to deal with PEPs and identify them and how to assess risk to determine whether this potential customer (whether as a customer or beneficial owner) is a PEP or not, according to the Money Laundering Regulations 2017 (as this study has clarified in Chapter 5 section 7.2). Furthermore, the Libyan Act (2005) needs to be revised to include a specific limit time in which to provide the information to the FIU when it is required, to ensure timely provision of evidence and so that criminals will not have time to hide suspicious proceeds, as this study has discovered in Chapter 7.

5.1.7- The Libyan CMLA (2005) should be amended to clarify information that should be collected on banks' clients and their businesses; stipulating the details about the customer's identity, the firm's business relationships and data about the deals which should be recorded and available as source of information for investigation by the competent authorities if required.

9.5.2- The Second Recommendation

Libya needs to take important measures that could be helped to curb ML crime as follows:

5.2.1- There is a need to establish effective control over the sale of fuel, especially in border areas.

5.2.2- Exports of crude from the oil ports should be monitored to control the quantities of oil leaving the country.

5.2.3- Modification or increases in fuel prices should be made to match the fuel prices in the neighbouring counties in order to remove incentives for oil smuggling.

5.2.4- Borders with the neighbouring countries should be monitored for the purpose of preventing the smuggling of oil and fuel.

5.2.5- The law on Libyan employees' salaries that has been operating since 1981 adopts the principle of equal salaries for equal work for all Libyan workers. Since its inception this law has remained the same and needs to be updated if it is to be appropriate to ensure that it enables workers to meet their basic needs. These measures could help in the prevention of ML.

5.2.6- Libyan foreign investment involves huge capital sums without overseas control; thus, this important investment should be monitored in order to control its revenues.

5.2.7- Statistics about the information and reports on ML operation should be compiled and published. This will assist in raising awareness about ML crime.

5.2.8- Libya should adopt necessary measures, including legislative ones to enable their competent authorities to confiscate laundered property, proceeds from or instrumentalities used in or intended for use in the commission of any ML offence. Such measures should include carrying out provisional measures, such as freezing and seizing assets, to prevent any dealing, transfer or disposal of such property for a long enough time to ensure the suspicious proceeds are not smuggled out, and to take any appropriate investigative measures.

5.2.9- Financial institutions should take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted; if there are any doubts as to whether these clients or customers are acting on their own behalf.

5.2.10- It is also necessary that the competent authorities ensure the effective application of the all systems used against ML operations.

5.2.11- There needs to be a campaign to raise public awareness of ML in terms of what it means for their lives and for the country, and how it can be curbed or eliminated.

5.2.12- To increase collaboration with counterparts in other countries; to expand operations on the borders of the country and to arrest and prosecute criminals, thus also serving as a deterrent to others.

5.2.13-During implementing the transitional justice, Libya as a country are undergoing transitions and they should use legal transplants against the economic crimes and address the violations anterior, punish the corruptors and develop measures to deter future violations.

9.6-Further Research

Given that good research should open doors for future research, this study may serve as a springboard for other research related to ML.

Generally, the study has discovered that Libya is susceptible to an intensified form of ML due to existing regulations, and there is a need for their amendment and proper enforcement. The CMLA 2005 is a sound basis for AML in Libya and when fully amended and implemented will serve a very good purpose.

Given these features of the CMLA (2005) and the role of FATF in conducting periodic compliance assessment of member nations, it would be prudent that a further study is conducted into the extent of Libya's compliance with AML policy, to evaluate it in the light of the FATF recommendations. This should be carried out particularly in the areas of reporting, data collation and investigation as part of a global effort to combat ML worldwide, the financing of terrorism and the control of monetary transfers in the financial sectors.

It is clear that more research and development are desired in these areas, and that Libya's financial and legal organisations may need an especially unique approach to optimise AML and implement account-freezing policies to fight corruption and related crimes.

9.8- The implications of this research

The main implications of this research are that it adds to the stock of knowledge on organisational practice by giving a perspective and understanding of the concept of ML, specifically on the negative implications of its prevalence, such as its destabilizing effect on the economic system and negative impact on social, political and legal aspects of life, such as corruption. The research has discovered that the CMLA (2005) adopted in Libya is sufficient to prevent this crime if properly amended. Such amendments could be taken from UK AML legislation and these changes need not be inconsistent with the principles contained in *Shari'ah*. These legal reforms should take place to bring regulations into conformity with Libya's obligations under international law. This study has highlighted that this needs to be implemented under transitional justice.

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Appendix A: The Historical Development of Anti- Money Laundering legislations in UK

In its ML legislation, the UK attempted to address ML early on - even before the international community started to express concern about this issue. The UK had issued the Misuse of Drugs Act in 1971, but this law could not effectively address the development of ML means.

Before the Banking Act was issued in 1979, there were no regulations applied to the financial sector in the UK; and only the Bank of England had legal power, which it never used, to regulate the banking sector.[765]At the same time, the London Stock Exchange, Lloyd's of London and the commodities exchanges were based on the consent of market participants to perform their transactions, while some financial services sectors were working under legal provisions such as the securities dealers who were not members of the stock exchange, insurance companies and friendly societies.[766]Thus, based on the recommendation of the Hodgson[767] Committee, the UK passed the Drug Trafficking Offence Act in 1986, which stipulated measures for the confiscation of illegal gains and criminalised ML[768]. This was followed by the drug-related AML provisions linked with the Vienna Convention against Illicit Traffic (1988).

The UK had begun to deal with the crime of ML during the 1980s; but did not recognise ML as an independent crime, as it was linked to other crimes and addressed under the Theft Act of 1968[769] Mugarura notes: ''The concept of ML in the UK can also be traced back to the House Lords' decision in R v. Cuthbertson (1980). This decision revealed the failure of forfeiture laws to deprive the offender of the proceeds of crime''[770]; and he added that the reason for the failure of the forfeiture laws is that the powers of the court limited forfeiture of assets to tangible property and they could not be applied in the case of cheques or other intangibles.[771] This situation arose in cases of defendants who

[765] Pieth and Aiolfi ibid (p. 266).
[766] Ibid.
[767] Who was commissioned by the Conservative government 1986 as to how it could tackle the problems associated with confiscating the proceeds of crime.
[768]Dorn,N. *et al*. *Dug Market and Law Enforcemen*t Routledge, London (2002, p.176).
[769]Mugarura,N . (2016) *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* Routledge, New York USA (p.2).
[770] Mugarura,N Ibid (2016 p.2).
[771] Ibid.

confessed to charges of crimes of laundering over £750,000 some of which was transferred to overseas banks, when the court ordered forfeiture of assets.[772]This led to the adoption of the Drug Control Act (1986), which includes provisions for expanding the forfeiture procedures for illegal proceeds.

The UK Attempted to address the ML crime by adopting the Criminal Justice Act (1988), criminalizing some of the patterns of behaviour considered as financial crimes by Article 93 A which stipulates: "Assisting another to retain the benefit of criminal conduct" adding in 94 B: "Acquisition, possession or use of proceeds of criminal conduct" and 93 C: "Concealing or transferring proceeds of criminal conduct."[773]Thus, this Act adopted rules against ML crime which coincided with the Vienna Convention against Illicit Drug Trafficking (1988) and it was issued earlier than the first EU directive of AML. It is argued here that this Act involves effective rules to curb key behaviour in ML; and as Brindle points out, this Act includes the proceeds of any crimes, which were criminalised by the Theft Acts (1968 and 1978), i.e. crimes of conspiracy, forgery or counterfeiting including the proceeds of non-financial crime[774]. The UK also issued specific ML Regulations in 1993[775]. These regulations included principles that mandate banking procedures to assist in detecting financial crimes; and were improved in 1997 by created the Financial Services and Markets Act (FSMA) (2000), due to the development of the financial markets.

Thus, the UK attempted to address this crime in 2010, by adopting the Bribery Act which repealed all previous UK corruption regulations which were inconsistent, anachronistic, and inadequate. The Bribery Act (2010) includes the criminalisation of the bribery of foreign public officials; and a person is guilty of an offence if their intention is to influence someone in order to obtain or retain business, or gain an advantage in the conduct of business...[776]

Prior to this, the US had criminalized bribery by adopted the Foreign Corrupt Practices Act of 1977; this law considered the behaviour of the persons and entities in making payments to foreign government officials to assist in obtaining or retaining business. The

[772] Ibid (2016 p.3).
[773]Sections 93A, 93B, 93C of the Criminal Justice Act 1988
[774] Ibid (1999 p.5).
[775]Money Laundering Regulations (1993) Available at: http://www.legislation.gov.uk/uksi/1993/1933/contents/made (Accessed in 17/04/2015).
[776]Section 1 UK Bribery Act 2010.

target of this law was to limit international corruption and to create a level playing field for ethical businesses. The US Foreign Corrupt Practices Act (FCPA) was the predominant force in setting compliance standards for international businesses[777]

So, according to this section, the Act seems to have a near-global jurisdiction as it enables prosecution of any person who commits any illegal action mentioned, wherever the offence was committed if it is linked to the UK. Furthermore, this Act is targeted against those taking advantage of the financial rewards of corruption, which may be laundered to disguise the origin; so, the Bribery Act might be had the same target of the AML legislations. In 1997, the UK government found that, as a result of the development of the financial markets, the regulatory framework was unclear and had become increasingly outdated with reference to the business activity of different financial institutions and thus needed reform to enhance confidence and protect the financial institutions from misuse. This led to the establishment of the Financial Services Authority (FSA), in 2000 by the Financial Services and Markets Act (2000) (FSMA)[778]. Whilst all these regulations were being issued by the UK in an attempt to prevent ML, the POCA was enacted in 2002. This updated and expanded all earlier AML legislation as this study will discuss below.

The (FATF) has obliged member countries to adopt within their AML regulations principles to criminalize this activity and to adopt countermeasures of financial punishment against those that do not take any steps to establish AML policies[779]. As this study, has already stated, the UK is allowed to investigate suspicions of ML, thus issues of bank secrecy do not impede this. However, the international law office[780] reported that in the UK, the banks should report any process that involves ML crime, so the banks should have reasonable suspicions of this before making any report and should not make a report unless they suspect the activity is related to crime. This will assist law

[777] Dávid-Barrett, Elizabeth Business unusual: collective action against bribery in international business. Crime, Law and Social Change. ISSN 0925-4994 (2017) available at http://sro.sussex.ac.uk/70211/5/Business%20Unusual.pdfAccessed in 17/02/2017.
[778]See Pieth, M and Aiolfi, G ibid (2004 p.267).
[779] The FATF recommendations 21& 22 (2012).
[780]International law office, (2008) US and UK Anti-money laundering requirements compared Available at http://www.internationallawoffice.com/newsletters/detail.aspx?g=5e143642-6dd9-4b32-8d4e-cab33d724eea (Accessed in 20/07/2013).

enforcement access to information on the suspicious operations, which in turn makes it easier for them to assess the need to interfere with or stop the operations.

The UK has been claimed to gain profits from 'black money'[781]through its protectorates such as the Isle of Man. This island is a self-governing British Crown Dependency with its own parliament and it is a financial centre, where, due to its relatively low levels of income taxation was claimed as a 'tax haven' and was the favoured location for thousands of 'shell' companies set up by Mossack Fonseca''[782]; as the control of ML there is weak[783].

The Isle of Man applies international standards to the highest level and it has no bank secrecy laws[784] ; in spite of this: "the U.K. is an important enabler of corruption: It has stood by as its offshore jurisdictions and protectorates operate as safe havens for illicit wealth, which the Panama Papers make clear. The British Virgin Islands, for example, were the favoured location for thousands of shell companies set up by Mossack Fonseca''[785], as here too the control of ML is weak[786]. Furthermore, Talani and *et al* have confirmed that the Bailiwick of Guernsey and Jersey also benefit from the political stability that the UK provides to them as dependencies of the British Crown, as they are all autonomous with regard to taxation and other domestic issues and also the are part of the European Union customs territory, but not subject to other EU rules[787].

The UK is looking to work closely with two British Crown Protectorates - the Isle of Man and Jersey that serve as tax havens- on previously undeclared UK tax liability for accounts the Isle of Man may have and to make a Foreign Account Tax Compliance agreement with Jersey. Similarly, most British colonies are involved in ML by the legitimization of cash

[781] Garside, J. *et al*. Mossack Fonseca: inside the firm that helps the super-rich hide their money 2016 Available at https://www.theguardian.com/news/2016/apr/08/mossack-fonseca-law-firm-hide-money-panama-papers (Accessed in 23/05/2017).
[782] Grimwood, G. (2016) After the international anti-corruption summit in May 2016: what next? the House of Commons Library Briefing Paper Number 7580, (p.38).
[783] See the report of the National Audit Office study team. Managing risk in the Overseas Territories Foreign and Commonwealth Office (2007 p20) Available at: www.nao.org.uk/publications/nao_reports/07-08/07084.pdf (Accessed in 23/05/2017).
[784] See the Memorandum from Isle of Man Government January (2009 p.3) Available at: https://www.gov.im/media/623363/treasurycommitteeiomwrittenevidencej.pdf (Accessed in 23/05/2017).
[785] Kaufmann, D and Gillies, A. From Panama to London: Legal and illegal corruption require action at the UK anti-corruption summit, 9 May 2016. https://www.brookings.edu/blog/future-development/2016/05/09/ (Accessed in 11/7/2017).
[786] See the report of the National Audit Office study team. ibid
[787] Talani, A. *et al*. (2013) *Dirty Cities: Towards a Political Economy of the Underground in Global Cities* Springer.

generated from smuggled illegitimate goods[788] . Thus, the UK is one of the countries that act as a passageway for a large amount of laundered money; and further that the ‘‘United Kingdom has failed to provide a satisfactory answer to why there are not stringent measures on its protectorates’’[789].

In Libya, tax evasion has spread due to the weakness of the Libyan Tax Legislation. The State of Libya was unable to fight the crime of tax evasion and prevent their risks, in the absence of policies and the clear strategies to resist it. which generated other crimes that have precipitated the serious economic crises that have threatened political stability[790].

The UK has suffered from ML crime, which has affected the political economic and social aspects of the country; and the cost of this crime was estimated at approximately £24 billion in 2013[791]. This increased in 2015 according to the NCA which assesses that many hundreds of billions of pounds of international criminal money is laundered through UK banks, including their subsidiaries, each year[792]. Thus, compliance with the international convention's standards through the monitoring and prevention of suspicious banking operations as well as controlling the smuggling, illegal traders and the confiscation of their illicit proceeds, deprive criminals of such these proceeds. The spread of this crime may thus be limited through adopting and effectively implementing AML legislation.

The UK International cooperation again the money laundering.

Mutual legal assistance means that the nation is able to provide assistance to other countries in collecting information; and can transfer evidence from a judicial authority at the request of another country. Mutual assistance in criminal matters is one the principles of international judicial cooperation; and was involved in some international conventions, such as the Convention on Mutual Assistance in Criminal Matters that was adopted by the EU Council of Ministers in 2000. This convention was ratified by the UK,

[788] Durden, T. HSBC Bank: Secret Origins to Laundering the World's Drug Money (2015) Available at: http://www.zerohedge.com/news/2015-02-16/hsbc-bank-secret-origins-laundering-worlds-drug-money accessed in 23/05/2017 (Accessed in 23/5/2017)

[789] Demotism, D. (2010) Technology and Anti-Money Laundering: A Systems Theory and Risk-based Approach Edward Elgar Publishing, Cheltenham UK (p.20).

[790]Hamed, M. The problem of tax evasion, Study in the light of the provisions of Libyan tax legislation, Journal of Law Research Journal of scientific jurisprudence issued by the Faculty of Law University of Maserati 134 (2013).

[791] HM Government. Serious and Organised Crime Strategy. October (2013 p.7)

[792]See HM Treasury. UK national risk assessment of money laundering and terrorist financing 2015 (P.32) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf (Accessed in 8/07/2016).

who has also adopted the UN Convention against Corruption (2003) and the Commonwealth Scheme Relating to Mutual Assistance in Criminal Matters[793].

In line with this principle, the POCA allows the public prosecution to exchange reports, information and transfer evidence on suspicious transactions linked with ML operations with its counterparts in other countries. Paragraph (1) of Article (74) of the POCA (2002) 'Enforcement Abroad', stipulates that: "(1) this section applies if: .... (b)the prosecutor or the Director believes that realisable property is situated in a country or territory outside the United Kingdom (the receiving country), and (c)the prosecutor or the Director (as the case may be) sends a request for assistance to the Secretary of State with a view to it being forwarded under this section.[794] So in this context, the UK is allowed to provide legal assistance in criminal matters whether this is bilateral or not, i.e. whether international conventions were concluded with the other countries involved. However, it must implement assistance in the restraint and confiscation of proceeds of crime if a bilateral agreement or other international agreement exists and in which this kind of assistance is stipulated[795].

In 2006, the UK issued the fourth edition of the Mutual Legal Assistance Guidelines which was published by the UK central authority, the Home Office. These guidelines outline details of the assistance that can be provided, the procedures to follow when requesting assistance and the explanation of the role of the central authorities in applying these requests[796]. Although HM Treasury has considered that Mutual Legal Assistance constitutes a difficult system; it has accepted that it is an important mechanism for the recovery of UK criminal funds laundered in other countries and the implementation the confiscation orders. Mutual Legal Assistance by prosecutors and investigators in the relevant legal systems to recover criminal proceeds is difficult, because orders can be issued by different agencies[797].The aim of Mutual Legal Assistance is to collect data, evidence and documents which are relevant to the crime and that assist the investigation

[793]Raphael, M. ibid (2011 p.568).
[794] Article 74 of Part 6(317) of the POCA
[795]Raphael, M Ibid (p.568).
[796] Ibid (p.567).
[797]HM Treasury. Ibid (2015 p.87),

and prosecution of criminal cases, which usually takes the form of measures such as the ability to summon witnesses and issue search warrants[798].

Globalisation has provided, to some extent, a safe environment for this kind of crime due to its often-taking place across borders (see Chapter 3). This has resulted in countries addressing this problem through obtaining power of effective prosecution by facilitating international cooperation in this area. However, it seems a problem has arisen with this strategy, which is that the principle of sovereignty has impeded the operation of this cooperation and the consequent power to issue search warrants, enforce them, collect the data and summon witnesses[799].

Furthermore, there is no obligation on the state requested to provide the information; however, the 'requesting state' needs the power to enforce its demands; and on the part of the 'requested state' the action under investigation needs to have been criminalised. Administrative assistance also includes actions such as obtaining public records from the land registry or documents relating to the registration of companies, as well as contacting potential witnesses to know whether they agree to be witnesses in compliance with the demands of the requesting state[800]. Thus, international cooperation in the area of AML could be viewed as an important option in fighting this crime in countries which have not built the legal foundations against financial crimes within their legislations framework or that have weak legislation for tracking illegal proceeds smuggled across their borders for the purpose of laundering.

The other problem is that some countries are not authorised to cooperate in all the aspect of criminal investigation. For instance, the UK will not co-operate in the case of asset recovery, unless there is evidence confirming that the illegal assets "are located in the country"[801].Thus the implementation of requests for legal assistance could be faced with complex procedural steps, which make it too difficult to apply. One such is non-co-operation based on the 'principle of reciprocity' or the precondition to use this information only for the purpose for which it was requested. This can also occur where

[798] Chene, M. Mutual legal assistance treaties and money laundering U4 Helpdesk Transparency International (2008 p.2) Available at file:///C:/Users/Owner/Downloads/expert-helpdesk-173%20(3).pdf (Accessed in 31/3/2016).
[799]Chene, ibid (2008 p.2).
[800] Ibid.
[801] The Mutual Legal Assistance Manua Council ibid (2008 p.3).

there is no specific authority that has responsibility to apply the ML law[802]. Another factor that could be the cause of delay in implementing a request for legal assistance is that some countries allow the individual concened to appeal against the exchange of personal details with the requesting country. Political factors thus have a significant effect on those who deal with cases of international cooperation in the area of sharing details of ML operations. The significance of international cooperation was confirmed by Qatar's Attorney General; he added that currently there is no co-operation from the Arabic Spring countries with regards to countries working together to recover looted money[803], which has made the tracking of the illegal proceeds of Libyan oil that hidden in different locations across the world, including the UK, more difficult and time-consuming to recover.

However, the UK does not require a bilateral agreement to respond to a request for legal assistance; as it can provide other countries with the information and evidence needed to track an offence initiated overseas, whereas bilateral or international agreements are needed if the request is related to restraint and the confiscation of illegal proceeds[804].

[802] Ibid.
[803] See the BELLA HADOD Program on the Al Jazeera channel 19/3/2016 Available at: http://www.aljazeera.net/programs/withoutbounds/2016/3/19 (Accessed in 29/3/2016).
[804] Pieth, M and Aiolfi, G. Ibid (2004 p. 306).

Appendix B: The interview transcripts and the contribution of the Participant.

First: Decision Makers at the Central Bank of Libya:

This interview is to contribute by determining whether the Libyan legal regime is effective in combatting money laundering, particularly in relation to illegal sales of oil. And the scale of money laundering crime from the illegal sale of oil in Libya. The proposed questions:

1. What is your opinion on the current effectiveness of the Money Laundering Act 2005 particularly regard to in illegal sales of oil?

The answer was "there has been no clarification on how to prepare and submit reports on suspicious operations". And *"the weakness in the AML mechanism was in the reporting, because reports are submitted only from the bank sector and not from other sectors, such as precious metal traders and lawyers''.*

2. Do you think it would benefit from reform? Do you have any suggestions?

The answer was *''tax should be linked to the income of the sellers and certain professionals; and that will help to know their real incomes''.*

3- In your opinion what is the scale of money laundering crime from the illegal sale of oil in Libya? What are the reasons behind this phenomenon?

The answer was there were not many cases of ML crime through the illegal selling of oil that had been registered: ''*...oil smuggling did take place one time through a vessel that shipped oil from the port of Zuwara and headed to Malta, where it sold the shipment to another vessel in 2015''.*

Second: Decision Makers at the National Committee for Combating Money Laundering at the Libyan Central Bank,

This interview is to contribute by determine whether the Libyan legal regime is sufficient to combat money laundering, particularly in relation to illegal sales of oil. And the impact of international law and agreements on anti-money laundering in Libya in illegal sale of oil in Libya. The proposed questions:

1. Are there any problems with the enforcement of the Money Laundering Act against the illegal sale of oil in Libya? (If yes) What, in your opinion, are these problems? How might they be addressed?

The answer was even though Libya issued several regulations against financial crimes, rapid global developments in technology meant the regulations were becoming powerless to prevent corruption and ML crimes. Thus, answered questions on the criminalisation of ML saying: "In order to be able to deal with international financial institutions, Libya should be obligated to include the international standards relating to ML in their regulations''.

The problem is that of using liquid cash. *''There has been widespread use of liquid cash as a means of ML in cash operations, as they involve a higher risk, and work to reduce dependence on liquid cash so as to reduce the risk of dealing with it''.* And could be addressed by "the movement of money should be limited by imposing a maximum amount''.

2. And what is the impact of international law and agreements on anti-money laundering in Libya in illegal sale of oil in Libya?

The answer was although Libyan AML regulations have included some of the international rules, through adopting the international Conventions mentioned above; Libya has a weak commitment to the Task Force on Financial Action standards. *''the proportion of Libya's commitment to the recommendations of the task force financial action is quite low''.*

3. In your opinion, do you think the system that is used to control the banking institutions have been successful in detecting suspicious operations and the movement of money? (If No) What is the weak area?

The answer was that the multiple money transfers that may have been made without any control are helping to facilitate ML crime. This encourages the smuggling of funds and is a primary crime of ML, *''the weak area is that people are allowed to transfer money to any value, no matter how high, because the prevailing culture in the community is to deal with money as 'cash'.*

And the problem is that of using liquid cash. There has been widespread use of liquid cash as a means of ML in cash operations, as they involve a higher risk, and work to reduce dependence on liquid cash so as to reduce the risk of dealing with it.

Third: Financial Information Unit at the Central Libyan Bank:

This interview is to contribute by determine the scale of the problem and the FIU's initiatives in combating this phenomenon. They will also help understand the cooperation level of Libyan authorities with their international counterparts, especially the United Kingdom Financial Services Authority. The purpose of this interview is to understand the structure and paradigms of money laundering prevention measures. The proposed questions:

1. What is your opinion on the current effectiveness of the Money Laundering Act 2005 particularly regard to in illegal sales of oil?

The Money Laundering Act 2005 is not enough due to there "no database has been created since the Unit was established".

2. What are the mechanisms used against money laundering particularly from the

illegal sale of oil in Libya?

The answer was "that the Unit has requested any information from non-banking entities for analysis". And there is "*no database has been created since the Unit was established".*

Although, Libya has attempt to prevent ML crime by adopting the laws that work against the primary crime of ML; these laws arguably have weaknesses, ''*there are no special rules and mechanisms to combat ML through the selling of oil, whereas all proceeds of oil sales made through the Organization of the Petroleum Exporting Countries (OPEC) are given to the Central Bank from the Libyan bank Arabs Abroad''*.

3. Are there any problems with the enforcement of the Money Laundering Act against the illegal sale of oil in Libya? (If yes) What, in your opinion, are these problems? How might they be addressed?

The answer was that *"The Public Prosecutor's employees do not have sufficient knowledge to make distinctions between ML and smuggling, and were confused as to how their role and that of the Unit differed''.*

4. In your opinion what is the scale of money laundering crime from the illegal sale of oil in Libya? What are the reasons behind this phenomenon?

The answer was *''there are no statistics issued by the Unit; no publication of information and no reports on ML operations have been issued by the FIU. Similarly, there is evidence of the weakness of the procedures resulting in a lack of relevant statistics being available for court cases''.* And *''...there was an attempt to smuggle oil through the gateway that was stopped in international seas in 2014,''.*

5- Is there any regional or international co-operation in the enforcement of the money laundering Act? If yes, what kind of co-operation and what does it involve?

The answer was "This Unit does not have fully independent operations; also, there are no mechanisms with which to exchange information with the other, counterpart Units''

Fourth: The Manager of Legal Affairs at the Central Bank:

The interview contribute of this interview is to help understand the legal framework and accompanying restrictions that have been designed to stop money laundering, especially funds generated by illegal oil selling. Further, to explore the legal system of confiscation for keeping the money in the country to be used for the right purposes. In addition, to determine whether the Libyan legal regime is sufficient to combat money laundering, particularly in relation to illegal sales of oil. The proposed questions:

1- What is the impact of international law and agreements on anti-money laundering in Libya?

The answer was *"the deal with the international institution banks is conditioned by an obligation to follow the international standards relating to ML''.*

2. What is your opinion on the current state of the anti-money laundering Act and the mechanisms used against money laundering especially from the illegal sale of oil in Libya? Is the Act clear and consistent? (If no).

The answer was the weak the mechanisms used against money laundering, *"copies of identification documents from the customer are accepted by some of the bank staff without having seen the originals of thee documents'' ; and he added: ''there are also*

practices of recording the personal details from some clients who submit their names in different ways like hiding their surnames, for example, or their middle names''.

3. In your opinion, do you think the system that is used to control the banking institutions has been successful in detecting suspicious operations and the movement of money? (If No) What is the weak area?

The answer was the multiple money transfers that may have been made without any control are helping to facilitate ML crime: *"There is no limit on the movement of money because in 2010 the government allowed people to transfer a hundred thousand DLY without reference to the Libyan Central Bank''.*

Fifth: The Manager of Auditing of the Central Bank of Libya:

The contribute is to help understand the legal framework and accompanying restrictions that have been designed to stop money laundering, especially funds generated by illegal oil selling. Further, to know the limits or restrictions on the movement of funds. The proposed questions:

1- What is your opinion on the current state of the anti-money laundering Act and the mechanisms used against money laundering especially from the illegal sale of oil in Libya? Is the Act clear and consistent? (If no).

The answer was by providing mechanisms that encourage people to deal financially in other ways, such as *"dealing in money in the form of cash should be limited''.*

2. What is the procedure for detecting suspicious operations in money laundering from the illegal sale of oil in Libya?

The answer was ''the monitoring of suspicious money and transactions should be improved through the creation of a new mechanism to observe deposits, and comparing these to their regular income''. Another way of creating a new mechanism to observe the income of sellers and those of traders, lawyers and businessmen to detect the suspicious operations was suggested during the interviews.

3. Do you think this procedure is successful? (If no) How might the procedure be

improved? Are there any means used by launderers that have been detected by this department?

The answer was recently, a case of suspicious ‘documentary credits ‘involving leading importers of food and pharmaceutical goods where fake goods were imported, dollars traded at black market prices and the evasion of custom duties has taken place. Traders transfer money to import goods at a subsidized price, but they transfer the money and do not import the goods. This is an example of financial corruption which should be controlled through collecting the personal details of the client, sources and direction of the goods and also by knowing all the details of the operation, ‘’*details of the documentary credits should be collected and transactions monitored to reveal fake companies.’’.*

Sixth: The legal adviser at the Libyan FIU:

The contribute the of this interview is to obtain accurate information that can be used to give a specific perspective on money laundering issues related to the illegal operations of oil and to find out the real facts and if there any figures. The proposed questions:

1. What is the procedure for detecting suspicious operations in money laundering

from the illegal sale of oil in Libya?

The answer was *“there is a specific step that can be used to detect suspicious operations, which is to observe sudden increases in a client's bank accounts, whether in their personal or business account which does not match with their normal income. So, if there are such abnormal changes, this could be suspicious and indicate that ML is taking place”.*

2- In your experience, are there any restrictions on the reporting procedures for suspicious money and transactions that are related to the illegal sale of oil in Libya? If there are, how might procedures be reformed?

The answer was *“There are no restrictions on the reporting procedures for suspicious money and transactions. The evidence of that is that there is no punishment against anyone who submits a report, if the result of the investigation is that there is no crime”*

3-Are there any problems with the enforcement of the Money Laundering Act against the illegal sale of oil in Libya? (If yes) What, in your opinion, are these problems? How might they be addressed?

The answer was an important problem that was identified during the interviews was that

the Libyan AML system suffers from an absence of police inspectors who have been specifically allocated to combat this crime: *"there is no police department dedicated to combating ML".*

Seventh: Two Former Court Judges: (contact with four retired judges of the Supreme Court of Libya):

The contribute of this interview is to understand the context of the problem, and the convictions of people who have been involved in illegal oil selling and money laundering. This will help analyse the working nature of the legal authorities of Libya. The proposed questions:

1. What is your opinion on the current state of the anti-money laundering Act and the mechanisms used against money laundering especially from the illegal sale of oil in Libya? Is the Act clear and consistent? (If no).

The answer is the Law is not enough to curb ML crime due to that *"even though the law includes some rules against ML crime; the enforcement of these rules is difficult, because this crime is sometimes committed by political officials, and the law does not include them".*

2. What is your opinion on the current effectiveness of the Money Laundering Act 2005 particularly regard to in illegal sales of oil?

The answer is *"there is no training programme on ML to clarify matters for the staff of the Public Prosecutor or for judges to understand the rules of AML"*. He added that *"the Act is not enough because it is not line with the development of the means of ML, which are currently through using new technology ".*

3. In your opinion what is the magnitude of money laundering crime in Libya by illegal sale of oil in Libya? What are the reasons behind this phenomenon?

The answer *"the reasons behind increasing this crime that ''there are no statistics issued by the Unit; no publication of information and no reports on ML operations have been issued by the FIU''.*

4. What convictions have been recorded against people who have been involved in illegal oil selling and money laundering?

The answer *'' ML cases are very limited at the courts; the reason for that being that knowledge about this crime is limited''*. And he added *"lack of facilities for testing the material which was suspected of being smuggled. In this case, it was decided to stop the investigation in spite of the claim that it was smuggled oil''.*

Eight: Former: (Legal adviser of the Libyan National Oil Company):

The aim of these interviews is to contribute providing fully understand the context of the problem, and how the oil smuggling has taken place in Libya, and the scale of money laundering crime from the illegal sale of oil in Libya. The proposed questions:

1. How does money laundering take place? Also: How can it be prevented?

The answer is *''the illegal selling of oil derivatives is taking place through distribution stations to the neighbouring countries''.* He added *"Security is obtained through observation of the border and through the link between the Customs Department and the border ports''.*

2. In your opinion what is the scale of money laundering crime from the illegal sale of oil in Libya?

The answer is *''the selling of oil is by international institutions to organisations that have been identified in advance, so illegal oil operations from the oil ports are impossible because of the difficulty in selling it (illegally acquired oil)''*

3. What are the reasons behind this phenomenon?

The answer is *''so the provision of subsidy for oil derivatives has encouraged some people in Libya to smuggle it in order to earn the difference between the international price of the oil and the local, subsidized price*.''

Nine: The Libyan Ministry of Finance:

The contribute of this interview is to discover facts which may be contained in documents that hint about the history of the problem and data on the losses of money. to determine the scale of the problem and the reasons behind this phenomenon

The proposed questions:

1. Is it possible to identify the extent of proceeds of money laundering from the sale of oil in Libya? What are the reasons behind this phenomenon?

The answer is ‘’there are no statistics issued by the Unit; no publication of information and no reports on ML operations have been issued by the FIU. Similarly, there is evidence of the weakness of the procedures resulting in a lack of relevant statistics being available for court cases’’.

And *using liquid cash. There has been widespread use of liquid cash as a means of ML in cash operations, as they involve a higher risk, and work to reduce dependence on liquid cash so as to reduce the risk of dealing with it. An initiative such as this could be implemented by providing mechanisms that encourage people to deal financially in other ways, such as using cheques and to increase the public awareness in this direction.*

The other reson “The sale of illegal oil derivatives is happening through smuggling to neighbouring countries. The cause is the poverty in these counties and the low price of the oil derivatives in Libya compared to the price in these neighbouring counties”.

2. What is the procedure for detecting suspicious operations in money laundering

from the illegal sale of oil in Libya?

The answer is *“there is a specific step that can be used to detect suspicious operations, which is to observe sudden increases in a client's bank accounts, whether in their personal or business account which does not match with their normal income. So, if there are such abnormal changes, this could be suspicious and indicate that ML is taking place”.*

Appendix C: Miscellaneous

1- The creation the Basel Committee.

The Basel Committee Statement of Principles was issued by the Basel Committee, and concerns the banks' systems and supervisory practices. The Basel Committee was created by ten industrial countries 1974 in Basel, Switzerland. This was partly due to the collapse of some banks, such as the Herstatt Bank in Germany, and there were also some new risks raised[805]. One such was the potential credit risk when a contractual party fails to meet its obligations in accordance with the agreed terms[806]. The ten industrial countries that established the Basel Committee were: Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom and the United States. In December 1988, the Basel Committee adopted regulations and systems on Banking and Supervisory Practices – i.e. a statement of principles concerning ML. This statement was not enforceable until the member states decided to enforce the principles in accordance with their national legal regulations.

The Bank for International Settlements added that the Committee continued to act against the risks - the mispricing of credit and liquidity risk and excess credit growth- during the following years until it published, in 1997, the basic principles of the supervisory system. At this point, capital adequacy- the ability of the components of capital to absorb losses- became the most important focus of the Committee's activities[807]. In 2012, a document was issued covering supervisory powers, the need for early intervention and timely supervisory actions; supervisory expectations of banks, and compliance with supervisory standards. The reason behind this was that the Bank for International Settlements considered that the development of the banking systems had recently eased the movement of money at global level[808].

[805] Pigman, G.A. (2005) Making Room at the Negotiating Table: The Growth of Diplomacy between Nation-State Governments and Non-State Economic Entities Diplomacy & Statecraft Vol.16, No 2 pp 385-401 (p.388).
[806]Brown, K and Moles P. (2012) *Credit Risk Management* Edinburgh Business School Heriot-Watt University Edinburgh UK (p.2).
[807]Bank for International Settlements, Basel Committee on Banking Supervision: A Brief History of the Basel Committee (2013 p.2) Available at: http://www.bis.org/bcbs/history.pdf (Accessed in 1 Oct 2014).
[808]Bank for International Settlements ibid (2014 p.2).

The target of the Statement of Principles is to protect the banking system by preventing its use for laundering money and to broadcast confidence in banking institutions through cooperation between financial institutions worldwide. Moreover, this Statement of Principles obliges internationally active banks to adopt the basic principles of the Basel Committee[809]. The Principles have the role of controlling the banking system to ensure financial stability and legal bank operations. In addition, they serve to combat ML by organised gangs that would generate huge proceeds, which in turn would finance new crimes[810].

2-Other money laundering means.

2.1 -Drug Trafficking.

In some countries, drug trafficking is the most lucrative criminal activity[811]. The United States became the main market for drugs that come from Mexico, as both countries share a long border. According to the UN Office on Drugs and Crimes (UNODC) World Drug Report, the estimated annual revenues from the illicit drugs export trade from Mexico, Myanmar, Colombia, Peru, Bolivia, and Afghanistan to the United States, Canada, Western Europe, Russia, and China, and the global estimated was US$88 billion[812].

The US decided to fight against drugs in 1970[813]and attempted to do this by following the trail of drugs to the US. However, criminal organisations have continued to traffic in drugs, and launder the money to make it difficult to identify its illegal origin. As a result, the international community adopted the recommendations of the FATF, which have impacted on the banking system, including the recommendations relating to reporting of suspicious transactions. These were aimed at tracking the sources of money, derived from organised crime and drug trafficking, as Tang and Ai have noted[814].

2.2- Human Smuggling and Trafficking.

As this study, has mentioned above, there are many different methods of ML; one of them involves international migration. Therefore, it is not limited to a particular state, but

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[809]Arner, D. (2007) *Financial Stability, Economic Growth, and the Role of Law: Cambridge University Press* (p.287).
[810] Bashir, H and Abraham, A. ibid (2011 p.86).
[811] Bagley, B. Drug Trafficking and Organized Crime in the Americas: Major Trends in the Twenty First Century. one Woodrow Wilson Plaza Washington (2012 p.5) Available at: https://www.wilsoncenter.org/sites/default/files/BB%20Final.pdf [Accessed in 14 Jun 2016].
[812]United Nations Report. World Drug Report 2010 - United Nations Office on Drugs and Crime (2010 p.53)
[813] Sacco, L. N. (2014) *Drug Enforcement in the United States: History*, Policy, and Trends. Congressional research service (p.1).
[814] Tang, J and Ai, L. (2013) The system integration of anti-money laundering data reporting and customer relationship management in commercial banks. Journal of Money Laundering Control. Vol.16, No 3 pp 31-56 (p.232).

includes many different countries. This crime has many variants, differing from one place to another, where one of these is human trafficking; for example, smuggling women and children for many purposes, such as prostitution, sexual exploitation, the sale of human organs, forced labour, etc. In many cases, it is related to the exploitation of domestic workers, and the sale of children for adoption, forced marriage, and sex tourism. The smuggling of children is also linked to involvement of children in armed conflict, sexual exploitation of minors, and begging. Human trafficking, as one of the activities of organised criminal gangs, and even where there are no elements of organised crime, is an activity that generates millions of dollars at the expense of degradation of human dignity, and psychological and physical harm[815].

Human trafficking represents an important source of profit for organised crime only slightly less lucrative than drug trafficking, and arms trading and it generates billions of dollars annually in illicit funds. As an example, Bjeloper & Finklea have estimated that in 2006, human trafficking in the US generates about $9.5 billion for organised crime each year[816]. In the same way, the NCA in 2017 has confirmed that drug trafficking to the UK costs an estimated £10.7 billion per year[817]. According to Salt, in this context, organised criminal gangs seek to promote their criminal activities by increasing their ability to penetrate legitimate business to cover the source of their proceeds, i.e. the phenomenon of ML. Globalisation has unintentionally benefited organised crime gangs, who took advantage of movement in international trade, and used the tools of maritime shipping for the illegal movement of human beings[818].

3- The Islamic Regulation of Money Laundering

As this study, has discussed in Chapter Six, Libya was governed by Gaddafi's regime for approximately 42 years without a constitution, but it has a Declaration of the Authority of the People issued in 1977 which transcends on all other legislation in Libya. This Declaration states that *Shari'ah* is the source of all the regulations issued in the country.

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[815] See Financial Action Task Force Report. Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants (2011, p.17).

[816] Bjeloper, J. and Finklea, K (2012) *Organized Crime: An Evolving Challenge for U.S. Law Enforcement* Congressional Research Service CRS Report for Congress DIANE Publishing. (p.6).

[817] See NCA, Suspicious Activity Reports (SARs) Annual Report (2017 p.33) available at http://www.nationalcrimeagency.gov.uk/publications/suspicious-activity-reports-sars/826-suspicious-activity-reports-annual-report-2017/file (accessed in 22/11/2018).

[818] Salt, J. (2000) Trafficking and Human Smuggling a European Perspective: International Migration Blackwell Publishers Ltd UK Vol.38, No 3 pp 31-56 (p.35).

The Libyan revolution in 2011 aimed to create a democratic country based on a constitution and Libyan institutions are still striving to achieve this. The constitution which is currently being prepared by a special committee will include Islamic *Shari'ah*, so this section this will discuss ML in Islamic law and how *Shari'ah* has addressed this crime.

As this study, has argued, the term 'ML' was first used in the 1920s; but, Islamic regulations addressed ML as an illegal action 1400 years ago, however, as this study discussed earlier, ML is a crime based on another, primary crime as some sources of money; and Islamic regulations did not address ML directly, but focused on the sources of illegal money. Thus, in this context, this study will suggest that the definition of ML in Islamic regulations relates to how Islamic rules addressed the means of ML and its criminalization of this phenomenon.

3.1- Criminal Liability in *Shari'ah*

Criminality in *Shari'ah* is constituted by three necessary elements. The legal element requires that an act needs to be explicitly prohibited by legal provision as an unlawful act (*Al-haram*). The material element requires the commission of an unlawful act by an offender; and the penal element of crime addresses the "maturity, capability and accountability" of an offender. The crime thus involves intention, whereby the offender has thought about the action and decided to take the action, which becomes a crime when the offender starts to act on the decision. In *Shari'ah* this action is a crime even if the offender is unable to complete the action[819].

3.2-The Criminalization of Theft and Corruption in Islam

In general, the provisions of *Shari'ah* law forbid any activities funded by money or assets derived from illegal sources. For instance, "any activities build from *Soht* (unlawful trade) will be cast into fire" as Prophet Mohammad said[820]. So, according to this text, all proceeds of illegal origin, including theft and the drug trade, are taboo. In the holy *Qur'an,* Allah says 'And eat not up your property among yourselves in vanity'[821]. 'Eating property in vanity' can be interpreted to include all illegal actions to get gains.

[819]Tofangsaz, H. ibid (2012 p.401)
[820] Ibid (p.402).
[821]Holy *Qur'an Surah Baqarah* 188.

3.4-Anti- Money Laundering in Islamic Regulations

As this study, has explained above *Shari'ah* has addressed the means of earning money, and stipulates that the earned money must be acquired the *Halal* way (a way that is lawful and permitted in Islam) and not come from illegal acts such as theft, theft, embezzlement, bribery, corruption, corrupt contracts or *riba*(which means unjustified increments earned above the amount of loan, as a condition imposed by the lender or voluntarily by the borrower. Unlike conventional banks, Islamic banks must follow Islamic religion, which prohibits *riba*). Thus, Islamic rules criminalize theft and corruption etc..., which are the primary crimes of ML; and under *Shari'ah,* criminals are requested to return any money that is described as illegitimate, as will be discussed later.

4- The controversies of the International Criminalization of Money Laundering

There are controversies about the criminalization of ML between supporters and opponents of the criminalization of this phenomenon. Tahar believes that opinions differ about ML criminalization because there are enough domestic regulations that cover ML cases, and thus some believe there is no need for a specific international legislation on ML. The criminalization of ML has restricted the movement of capital and investment activity, threatens bank privacy data and, as a result, investors will be reluctant to establish projects[822]. Additionally, it is difficult to prove that proceeds came from illegal activity, because a link needs to be demonstrated between illegal activities and the illegal proceeds gained by the accused. Moreover, this will lead to difficulty in punishing the criminal for one of the illegal actions, which is in violation of the legitimacy principle[823].In the other words, the element of intention should be provided in this crime, and criminal intent is very difficult to prove. The reason is that it is difficult to prove that the criminal knew that the source of the proceeds was illegal. Thus, in this case, to criminalize this action requires criminal intent to be ignored, that will lead to results contrary to the legitimacy principle. Furthermore, until evidence is provided that the crime has taken place, the Penal Act cannot be used enforced until litigation is finished. However, due to the importance of the role of ML in serious crime all over the world, I believe that separate legislation needs to be enacted to prevent this crime. It is essential to curb the

[822]Tahar, M. ibid (2004 p. 18).
[823]Kalid, M. Ibid (2011 p.99).

negative effects of this crime on the national and international economies and to achieve stability in the financial markets.

ML can be seen as a global threat because of the serious risks it poses to national and international economies. ML crime may corrode the banking system if fraud is endemic at a bank where crime is taking place and is even participated in by bank personnel. Such activities increase the possibility that the entire bank will become corrupt and follow criminal interests. It is thus essential to limit the potential for these kinds of offence which generate enormous amounts of illegal money[824]. The ML process has many complicated and sophisticated steps, different stages and the launderers have knowledge about the banks' operations. This situation clearly demonstrates the need to adopt legislation against ML that ensures it will be dealt with and obliges the banks to report any suspicious operations[825].

In response to the argument that it is difficult to prove that proceeds are related to illegal activity, Mostefa has replied that the difficulty of proof is not just in ML crime but could be the case in any crime; for example, in the case of forgery, the accused must be shown to have an intention to use the fake documents. Therefore, 'difficulty of proof' should be no reason to prevent issuing a specific ML legislation[826]. Similarly, Mostefa has countered the argument that AML law will negatively affect direct investment by pointing out that illegally obtained money is invested specifically to launder it; as soon as this aim is achieved, the launderer will transfer the money, causing severe losses to other parties. Thus, a specific AML Act should be issued to curb this crime[827].

[824] Amrani, H. Ibid (2012 p.82).
[825] Tahar, M. ibid (2004 p.24).
[826] Mustafa, K. ibid (2008 p.77).
[827] ibid.