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## WITNESS PROTECTION IN ANTI-MONEY LAUNDERING CASES: AN INTERNATIONAL PERSPECTIVE

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### ABSTRACT

In recent years money laundering has become a global phenomenon which plagues the economies of many states. The methods of laundering money have equally evolved alongside advanced technologies, the proliferation of migration and the realities of instant communications. The complexity of laundering money has often made the detection, investigation and prosecution of these crimes challenging and at times, impossible. To boot, the perpetrators of money laundering are usually powerful and dangerous persons who will do anything to avoid the loss of their illegally obtained wealth and to escape the justice system. Witnesses are often vital to investigating and prosecuting cases which involve money laundering. They are, however, at great risk of being harmed and even killed for giving evidence against the powerful perpetrators. There is thus a pressing need for witness in money laundering cases to be afforded protection by the state. The failure to afford effective protection to witnesses have major implications not only for the criminal justice system, but also for witnesses, their families and communities. This article argues that given these facts, there is a need for comprehensive and effective witness protection in cases involving money laundering. The article sketches the existing international legal framework aimed at protecting witnesses and analysis the relevant laws. It furthermore , places the spotlight on some of the main institutions which ought to afford protection to witnesses. It reaches findings and makes recommendations for the improved protection of witnesses in money laundering cases.

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## 1. INTRODUCTION

Over the years the crime of money laundering (ML) has become a global problem. Rapid increases in international trade, the proliferation of migration and technological developments which allow for instant communications across international borders have made the detection, investigation and prosecution of ML complex. Moreover, the involvement of powerful figures in ML has made the combatting of this crime extremely dangerous. This article therefore focuses on the necessity of implementing effective witness protection measures specifically in cases of money laundering. To this end, emphasis is placed solely on cases concerning money laundering. Furthermore, the efficiency of existing global witness protection systems is considered with a view to extrapolating some of the challenges as well as identifying what works concerning such programmes. First, however, the concept of ML is briefly explained.

## 2. MONEY LAUNDERING: A BRIEF EXPLANATION

The concept of ‘money laundering’ is used as a broad term to describe the process which criminals use to transform their illegally obtained money into legal funds. Their illegally obtained money, once laundered, thus seems to be legitimate, and its illegal origins are concealed.<sup>1</sup> ML regulations were initially introduced to combat the global illegal drug trade, particularly in the United States of America. In the past, laundering drug money involved straightforward methods like depositing and withdrawing large amounts of cash, which made them relatively easy to identify and report.<sup>2</sup> However, modern anti-money laundering (AML) regulations have expanded their scope to encompass international terrorism funding, illicit financial flows, and financial fraud. The evolving nature of financial crime has led to increasingly complex ML schemes, which require more resources and expertise to detect.<sup>3</sup>

Illegally obtained funds are typically introduced into the legitimate state systems through a three-step process which involves: (1) illicitly obtained funds which are introduced into a legal

1 Korejo M.S, Rajamanickam R and Helmi Md. Said M ‘The concept of money laundering: a quest for legal definition’ (2021) *Journal of Money Laundering Control*, 726.

2 Naheem M.A ‘Anti-money laundering/trade-based money laundering risk assessment strategies – action or re-action focused?’ (2019) *Journal of Money Laundering Control*, 723.

3 Naheem (2019) 723.

business; (2) the money is then moved through multiple transactions to hide its original source; and (3) the laundered funds are integrated into the legitimate financial system, and often in the form of banknotes, loans, letters of credit, or other recognisable financial instruments.<sup>4</sup> The most complex step in ML is what is called 'layering', which makes it impossible to trace the origin of the money.<sup>5</sup> Layering occurs with the use of multiple transfers and transactions. The intensity and speed of transactions are also heightened in the process of layering. Additionally, electronic payment systems, along with differences in jurisdictions and ineffective cooperation among law enforcement agencies, often make the layering processes of ML easier and more streamlined.<sup>6</sup> Sophisticated ML techniques demonstrate the perpetrators' skill in carrying out illegal activities, which enable them to navigate complex systems and conceal illicit funds effectively. These techniques also indicate the involvement of influential individuals with substantial resources and connections. They are also often the persons against whom witnesses need to be protected. Their ability to manipulate financial systems for personal gains highlights the magnitude and complexity of the ML underworld.

Individuals who engage in criminal activities and earn significant profits must find ways of concealing, managing, and legitimising the funds without drawing the attention of law enforcement. If they do not evade law enforcement, their illegal actions will become evident. For the funds to be legalised, criminal activity must be undetected, and links between the funds and their illegal actions must be removed.<sup>7</sup> The sole objective of money launderers is thus to convert unlawfully acquired funds into legitimate money. In doing this the original criminal activities are concealed, and the money can then be used for future illegal purposes.<sup>8</sup> A vicious cycle thus continues. The impact of integrating illicitly obtained funds into the legitimate economy is potentially irreversible.<sup>9</sup> A consequence of large amounts of money laundered, is that a country's monetary policy can be negatively impacted upon. The influx of

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4 McGuinn M 'Money laundering' (2006) *American Criminal Law Review*, 43(2 Annual Survey of White Collar Crime), 740.

5 Patel H & Thakkar B.S 'Money Laundering Among Globalized World' (2012), available at <https://www.intechopen.com/chapters/38372> (accessed 20 May 2023).

6 Schneider F & Windischbauer U 'Money laundering: some facts' (2008) *Eur J Law Econ*, 395– 396.

7 Patel & Thakkar (2021).

8 Patel & Thakkar (2012).

9 Urziceanu R 'Money Laundering' (2008) *AGORA International Journal of Juridical Sciences*, 307.

laundered money alters the demand for cash, resulting in high inflation rates and volatility in interest rates and exchange rates.<sup>10</sup>

Globalisation and technological advancements have greatly contributed to the global integration of economies in recent decades.<sup>11</sup> With the advent of technology and the merging of financial markets, countries have become more connected.<sup>12</sup> Increased international integration in the digital economy provides great benefits to countries and companies in terms of speed, flexibility, and innovation. However, it also poses new challenges regarding anonymity and security. As a result of these challenges, ML can remain undetected due to a lack of transparency and information imbalances.<sup>13</sup> Consequently, it is not only legal participants that have benefited from globalisation, but also illegal participants.<sup>14</sup> Increasing globalisation and sophistication have resulted in more ease and profitability for money launderers.<sup>15</sup> The goal of ML is to distribute illicit funds across the globe by evading national regulations, and the dirty money tend to gravitate to nations with lower controls.<sup>16</sup> Additionally, globalisation has enhanced money launderers' communication capabilities, allowing them to conduct transactions across multiple jurisdictions, which increases the risks of legal obstacles that can sabotage investigations.<sup>17</sup>

### **3. WITNESSES IN MONEY LAUNDERING: WHAT ARE SOME OF THE CONCERNS?**

It is important to recognise that witnesses are often hesitant to testify in cases of financial crimes, especially in the context of ML. The unwillingness to cooperate with the law enforcement and to testify in ML cases stems from the fear of the powerful figures involved in the commission of this crime. Witnesses fear for their own lives as well as for the safety of their family and/or close associates. Some witnesses may even face the risk of losing their livelihood or ending up in prison. Many witnesses are thus reluctant to testify. Unfortunately,

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- 10 Vaithilingam S, Nair M & Thiyagarajan T 'Managing Money Laundering in a Digital Economy' (2015) *Journal of Asia-Pacific Business*, 45.  
 11 Vaithilingam, Nair & Thiyagarajan (2015) 44.  
 12 Buchanan B 'Money laundering--a global obstacle' (2004) *Research in International Business and Finance, Elsevier* 115.  
 13 Vaithilingam, Nair & Thiyagarajan (2015) 45.  
 14 Buchanan (2004) 115.  
 15 Buchanan (2004) 115.  
 16 Buchanan (2004) 115.  
 17 Buchanan (2004) 115.

this unwillingness of the witness to testify in ML cases makes it difficult to effectively prosecute these cases, which in turn result in incredibly low conviction rates. Considering the nature of ML, multitudes of people are involved in the commission of the crime. People from different sectors, for example, legal professions, banking, law enforcement may be involved and some of these individuals may assist without knowledge of the illegal activities taking place. As a consequence, there is an increased likelihood of people becoming witnesses to these operations.<sup>18</sup> Essentially, all these individuals who are somehow involved may have valuable information which can be useful in uncovering these crimes and helping in the investigations and prosecuting the criminals. In this regard, witnesses become an important resource for the criminal justice to uncover and prosecute criminals.

ML was not considered to be a crime anywhere in the world prior to 1986, but at the time of writing, more than 170 states have enacted laws that criminalises it and have established specialised agencies to combat ML.<sup>19</sup> The international community has indeed collaborated efforts to address this issue. In the late 1980s, organisations like the United Nations and the Bank for International Settlements made initial strides in addressing the problem.<sup>20</sup> The establishment of the Financial Action Task Force (FATF) in 1989 further advanced the cause.<sup>21</sup> Regional groups like the European Union, the Council of Europe, and the Organisation of American States also played a role by setting anti-money laundering standards.<sup>22</sup> Despite the introduction of all these structures, the plight of witnesses in cases of ML has not enjoyed much attention. While in some jurisdictions witnesses are legally required to testify and may even be compelled to do so, few states or international bodies appear to recognise the serious risks which witnesses in ML cases face. It is therefore necessary to provide next an analysis of the laws which deal with ML in the global sphere.

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18 Makhubele E, An analysis of the challenges presented to witness protection in combating money laundering in South Africa (unpublished Master's UWC), (2022) 11.

19 Sharman J.C 'Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States' (2008) *International Studies Quarterly*, 635.

20 Khan M 'International Anti-Money Laundering Measures and Professional' (2021), available at <https://ijbmr.forexjournal.co.in/archive/volume-9/ijbmr-090309.html> (accessed 21 May 2023).

21 Khan (2021).

22 Khan (2021).

#### 4. EXPLORING THE ANTI-MONEY LAUNDERING LEGAL INSTRUMENTS IN THE GLOBAL SPHERE

In the 1970s, the US government and lawmakers took note of the pervasiveness of ML, especially with reference to drug trafficking where enormous proceeds were being camouflaged through financial institutions.<sup>23</sup> Acknowledging the looming risk posed by ML to the financial system, the US took the initiative to tackle this dilemma by promulgating the Bank Secrecy Act of 1970 (BSA). The purpose of the BSA was ‘to regulate and control money laundering activities’ in the United States of America. Despite this, it became apparent to the authorities that the BSA was not enough to stop criminals from laundering their proceeds of crime.<sup>24</sup> In terms of the BSA, financial institutions were required to keep records and submit reports of cash transactions to law enforcement authorities for the purpose of providing evidence of financial transactions.<sup>25</sup> To enhance the effectiveness of the BSA and to counter the laundering techniques, the Money Laundering Control Act of 1986 (the MLC Act) was thus introduced. In addition to supplementing the BSA, the MLC Act introduced new substantive criminal offences related to ML to prevent parts of the BSA from being bypassed by money launderers.<sup>26</sup> Therefore, one can argue that the MLC Act was groundbreaking as it was designed to supplement the BSA and to add new crimes to the existing list of crimes associated with ML.

After the introduction of anti-money laundering legislation in the USA, the Vienna Convention, also known as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), was introduced. This marked a significant milestone as the first international agreement that criminalised ML. However, it focused specifically on drug-related crimes such as the production, cultivation, purchase, exchange, possession, and management of illicit drugs or psychotropic substances.<sup>27</sup> In terms of this instrument, member states were compelled to prohibit ML and confiscate any assets

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23 Le Nguyen C ‘The International Anti-Money Laundering Regime and Its Adoption by Vietnam’ (2014) *Asian Journal of International Law*, 199.

24 Le Nguyen (2014) 199.

25 Plombeck C ‘Confidentiality and disclosure: the money laundering control act of 1986 and banking secrecy’ (1988) *International Lawyer (ABA)*, 70.

26 Plombeck (1988) 70.

27 Korejo (2021) 730.

obtained through illegal activities within their borders.<sup>28</sup> This instrument also encouraged member states to work together to stop the illegal drug trade. This objective will, however, only be achieved if the signatory states provide one another with technical and legal support to prevent ML related to drugs. Despite this, the Convention is an important part of current efforts to reduce ML and support terrorism.<sup>29</sup>

Article 7(18) of the Vienna Convention provides that individuals like witnesses, experts or any other person who agree to provide evidence or help with investigations or legal proceedings in the territory of the requesting country will not face legal actions, punishment, or restrictions on their freedom in that territory for acts, omissions or convictions committed before leaving the territory of the requested Party.<sup>30</sup> This part of the Vienna Convention seems to recognise the potential need for witnesses to help with investigations or legal proceedings in ML cases. However, it makes no provision for the protection of witnesses. There seems also not to be any recognition of the dangers which witnesses may face when they give evidence against powerful figures involved with ML. Perhaps this can be attributed to the fact that this was the initial attempt to address ML on an international level. Prosecuting money launderers was prioritised without regard to the real risks and dangers which witnesses may face for assisting the criminal justice system. The consequences of testifying could be dangerous and fatal to both witnesses and their relatives or close friends.

The United Nations General Assembly in November 2000 adopted the UN Convention against Transnational Organised Crime ('Palermo Convention'), along with its three protocols aimed at combating human trafficking, migrant smuggling, and firearms trafficking.<sup>31</sup> These agreements were adopted as a result of three years of diplomatic negotiations, and they contributed significantly to the development of international law in the sphere of transnational criminal law.<sup>32</sup> It deals with the prevention, investigation and prosecution of

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28 Olujobi O.J & Yebisi E.T 'Combating the crimes of money laundering and terrorism financing in Nigeria: a legal approach for combating the menace' (2021) *Journal of Money Laundering Control*, 272.

29 Olujobi & Yebisi (2021) 272.

30 United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances, 1988.

31 Rose C 'The Creation of a Review Mechanism for the UN Convention Against Transnational Organized Crime and Its Protocols' (2020) *American Journal of International Law*, 51.

32 Rose (2020) 51.

different crimes, including ML, which is associated with organised crime and is cross-border in nature.<sup>33</sup>

Article 24 of the Palermo Convention requires countries to take necessary actions to ensure that witnesses who testify in criminal cases related to the offences mentioned in the Convention are protected from potential retaliation or threats. This provision does not only cover witnesses, but goes as far as protecting the witnesses' family members and other persons connected to the witness.<sup>34</sup> Moreover, this provision also caters for a variety of protective measures, and these measures include the relocation of a witnesses, where applicable, keeping the identities and whereabouts of witnesses confidential, among other things, to allow them to give their testimony through video links and other acceptable means.<sup>35</sup> Consequently, a witness may testify without the need to be physically present at the same location as the accused. This eliminates the risk of intimidation which will in turn encourage free and truthful testimony.<sup>36</sup> The need to continuously be present in court can cause a witness to be despondent and emotionally distressed bearing in mind the potential risks to their safety, and witnesses are not always fully aware of the dangers they may face. The elimination of the requirement to be physically present in court is thus a protective measure for the physical, emotional and psychological health of witnesses, a consideration which is often overlooked and neglected.

Though the Palermo Convention affords protection to witnesses in terms of article 24, there may be many challenges to the enforcement of the protection. First, it must be considered that in some jurisdictions, the accused's right to confront and question the evidence of a witness must be balanced against the interest of a successful prosecution and conviction. Secondly, many states may not have the resources to afford effective protection to witnesses and their family members and/or close associates. Lastly, there is no guidance as to what constitutes effective protection, nor are there indications of the extent and

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33 Veng Mei Leong A 'Chasing dirty money: domestic and international measures against money laundering' (2007) *Journal of Money Laundering Control*, 146.

34 United Nations Convention against Transnational Organized Crime 2000, Article 24(1).

35 United Nations Convention against Transnational Organized Crime 2000, Article 24(2).

36 Makhubele (2022) 32.



limitations of the protection that a witness may have. The right to be protected can thus be regarded as somewhat vague in terms of the Palermo Convention.

In terms of Article 25 of the Palermo Convention, countries are required to support and protect the victims of crime.<sup>37</sup> States parties must take reasonable steps within their means to protect victims and establish processes to compensate and reimburse them for the offences covered by this Convention.<sup>38</sup> Additionally, states parties are required to ensure that victims express their views during criminal proceedings against offenders without compromising the rights of the defence, in line with their national laws.<sup>39</sup> While Article 25 pertains to victims, it may be equally important for witness protection as victims can also potentially act as witnesses.

Article 25 affords the necessary protection to persons who would otherwise be even more vulnerable and at risk of harm. Despite the protection provided, Articles 24 and 25 provide limited protection because States Parties must fulfil their duties ‘within its means’ and reservation in favour of domestic law ‘subject to its domestic law’. These limitations are brought about by what may be regarded as an escape clause. According to Okoli and Arishe an escape clause is

. . . a provision inserted in a legal instrument to supplement or cure the defect in the main rule, especially where the main rule has little or no connection with the issue to be resolved before the court. Escape clauses honour the claim that no legal instrument is perfect and strive to improve the instrument by giving the court the discretion to locate the law of a country that is more or most closely connected with the subject-matter.

The escape clause exempts States Parties from the obligation to protect witnesses under the Convention. The words ‘within its means’ imply that states should take necessary measures to protect witnesses if they have the means to do so. This is problematic because states can escape liability by relying on the fact that they have limited or no resources available to protect victims and witnesses.<sup>40</sup> Some may correctly argue that having limited resources does not mean that a state is absolutely

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37 United Nations Convention against Transnational Organized Crime 2000, Article 25(1).

38 United Nations Convention against Transnational Organized Crime 2000, Article 25(2).

39 United Nations Convention against Transnational Organized Crime 2000, Article 25(3).

40 Makhubele (2022) 33.

excused from fulfilling its obligation.<sup>41</sup> In practice, however, this is how some states shirk their obligations.

On the other hand, reservations are defined as ‘statements that purport to modify a state’s obligations under a ratified treaty’.<sup>42</sup> They allow states to adjust particular obligations to suit their particular context. The Palermo Convention, by virtue of having an escape clause and a reservation, does not guarantee witness protection absolutely. Witnesses to serious crimes such as ML offences need absolute assurances that reasonable efforts will be employed to ensure their safety as the persons they have to testify against are almost always highly influential, powerful and ruthless characters. These limitations are major weaknesses to their protection. From the above, it may be evident that there are limited international law instruments which deal with the protection of witnesses in ML cases. Additionally, instruments which address witness protection, only do so in a vague and limited manner. For this reason, it is necessary to consider how international organisations and institutions have addressed the issue of witness protection in ML cases. Below a discussion on this issue follows.

## **5. THE GLOBAL COLLABORATION EFFORT TO COMBAT MONEY LAUNDERING: INTERNATIONAL ORGANIZATIONS AND INSTITUTION**

To combat ML, various efforts have been made, including the establishment of international organisations and institutions that are intended to fight and curb this crime. The work in this regard, of two of these organisations, namely, the Financial Action Task Force (FATF) and the United Nations Office on Drugs and Crime (UNODC) are worth closer scrutiny given that they are two of the main institutions to combat ML in the international sphere.

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41 Makhubele (2022) 33.

42 Makhubele (2022) 33.

## 5.1 The Financial Action Task Force (FATF)

In 1989, the Financial Task Force (FATF) was formed after a Paris summit attended by the G-7 member states (the USA, UK, France, Germany, Italy, Canada, and Japan).<sup>43</sup> It was established as a result of growing concerns about global financial system risks, especially banking risks. As a result of its formation, FATF was responsible for studying ML methods, examining national and international financial, legal, and law enforcement initiatives, assessing country-level compliance, and offering assistance when necessary.<sup>44</sup> It is the responsibility of the FATF to develop and oversee regulations to combat ML and terrorism financing (AML/CFT).<sup>45</sup> The FATF's effectiveness in setting standards and reviewing their implementation can be seen by the way its 40 Recommendations, along with explanations and guidance, have influenced laws at the national, and international levels.<sup>46</sup> To combat ML, the FATF continually assesses anti-money laundering measures implemented by countries and internationally, and further puts in place necessary steps to tackle these crimes.<sup>47</sup> Despite all the positive effects which the work of FATF signals, there is one essential task which seems missing from its slate of activities i.e. that as a driving force in combatting ML, FATF ought to have influenced the introduction of comprehensive and effective witness protection laws. Instead, similarly to the Vienna Convention and the Palermo Convention, the FATF does acknowledge that witnesses may be required to testify in ML, but it does not provide concrete protection for witnesses.<sup>48</sup> The obligation on witnesses to serve the criminal justice system in bringing offenders to justice is clear, however, witnesses' right to safety and importantly, their right to life and dignity, seems to be of less importance than their duty.

In terms of Recommendation 31 of the FATF, authorities should be able to access all necessary documents and information when investigating ML, related crimes, and terrorist

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43 Mekpor E.S & Aboagye A 'The determinants of anti-money laundering compliance among the Financial Action Task Force (FATF) member states' (2018) *Journal of Financial Regulation and Compliance*, 444.

44 Mekpor (2018) 444.

45 Pavlidis G 'Financial action task force and the fight against money laundering and the financing of terrorism' (2021) 765.

46 Pavlidis (2021) 765.

47 Hamin Z, Omar N & Kamaruddin S 'FATF and Lawyers obligations under the AML/AFT Regime in the Malaysia' (2015) *Procedia Economics and Finance*, 759.

48 Makhubele (2022) 34.

financing.<sup>49</sup> This includes the ability to compel financial institutions, businesses, and individuals to submit records, conduct searches, obtain witness statements, and gather evidence.<sup>50</sup> This essentially means that the individuals who work in the sectors from which the evidence may be obtained could be potential witnesses in ML investigations. Inevitably they may thus be compelled to provide testimony even if they are reluctant to or afraid to do so. However, it is very unfortunate that there is no acknowledgment of the dangers which witnesses may face or the need for their protection. For many, their job may pose a real risk to their life and safety and even to their family's safety. The lack of effective protection of witnesses in ML cases is a significant omission as the failure to protect witnesses may be fatal to prosecuting ML crimes.<sup>51</sup> This is a substantial limitation to the combatting of ML.<sup>52</sup> Moreover, the lack of protection of witnesses heightens the risk of serious and violent crimes such as murder and assault of innocent persons.

## **5.2 The United Nations Office on Drugs and Crime ('UNODC')**

The United Nations Office on Drugs and Crime (UNODC) was established with an aim to combat illicit drugs, international crime, terrorism, and corruption throughout the globe.<sup>53</sup> It was introduced in 1997 when the United Nations Centre for International Crime Prevention and the United Nations International Drug Control Programme were combined.<sup>54</sup> There is a great deal of complexity involved in financial crimes such as tax evasion, money laundering, bribery, and corruption, because they often violate more than one law simultaneously.<sup>55</sup> This makes it particularly difficult for any legal jurisdiction or international standard-setting body to effectively combat these crimes.<sup>56</sup> In 2018, the UNODC took the initiative to publish guidelines called 'Good Practices for the Protection of Witnesses in Criminal Cases Involving

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49 Recommendation 31 of the Financial Action Task Force.

50 Recommendation 31 of the Financial Action Task Force.

51 Makhubele (2022) 34.

52 Makhubele (2022) 34.

53 United Nations Office on Drugs and Crime (UNODC), available at <https://www.unodc.org/southernafrica/en/sa/about.html> (accessed 02 September 2023).

54 United Nations Office on Drugs and Crime (UNODC), available at <https://www.unodc.org/southernafrica/en/sa/about.html> (accessed 02 September 2023).

55 Jayasekara S.D 'How effective are the current global standards in combating money laundering and terrorist financing?' (2021) *Journal of Money Laundering Control*, 258.

56 Jayasekara (2021) 258.

Organized Crime.’ These guidelines stress the importance of ensuring that witnesses are not threatened or at risk of retaliation when providing testimony in a courtroom or providing assistance to law enforcement investigations which is crucial to the upholding of the rule of law.<sup>57</sup> It is further stated that a witness can be protected using a variety of methods for protecting witnesses, and these include assigning a police escort to accompany them to the courtroom, providing temporary housing in secure locations (safehouses), or testifying through modern communication methods such as videoconferencing.<sup>58</sup> It is positive that concrete measures of protection are introduced in terms of these guidelines.

With this publication, the UNODC intended to provide guidance and support to United Nations Member States in creating comprehensive programmes that safeguard the well-being and rights of victims and witnesses of criminal activity.<sup>59</sup> As outlined in the guidelines, good practices include: early identification of witnesses who are vulnerable and intimidated; police management of witnesses; protection of witness’ identity during court testimony; and, if necessary, relocation and re-identification of witnesses permanently.<sup>60</sup> Throughout the world, UNODC Good Practices on Witness Protection are available to policymakers, legislators, legal professionals, as well as senior law enforcement and justice officials.<sup>61</sup> As a part of its assistance to Member States, UNODC conducts legal and institutional assessments, provides legislative guidance, conducts awareness programmes for criminal justice personnel, provides guidance on creating standard operating procedures, establishing appropriate structures, and assists with staffing arrangements for the establishment of witness protection units.<sup>62</sup>

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57 United Nations Office on Drugs and Crime ‘Good practices for the protection of witnesses in criminal proceedings involving organized crime’ (2008), available at [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/Good\\_Practices\\_for\\_the\\_Protection\\_of\\_Witnesses\\_in\\_Criminal\\_Proceedings\\_Involving\\_Organized\\_Crime.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/Good_Practices_for_the_Protection_of_Witnesses_in_Criminal_Proceedings_Involving_Organized_Crime.pdf) (accessed 02 September 2023) 1.

58 United Nations Office on Drugs and Crime ‘Good practices for the protection of witnesses in criminal proceedings involving organized crime’ (2008).

59 United Nations Office on Drugs and Crime ‘UNODC Launches Witness Protection Manual’, accessed from <https://www.unodc.org/unodc/en/press/releases/2008-02-13-2.html> (accessed 02 September 2023).

60 United Nations Office on Drugs and Crime ‘UNODC Launches Witness Protection Manual’.

61 United Nations Office on Drugs and Crime ‘UNODC Launches Witness Protection Manual’.

62 United Nations Office on Drugs and Crime ‘Victim Assistance and Witness Protection’, available at

Despite the comprehensive guidelines which the UNODC provides, it is evident that little has improved regarding witness protection in ML cases. Although the UNODC supports the fight against ML and the concept of witness protection, many states still do not adequately adhere to witness protection guidelines, especially for ML and related crimes, and witnesses are therefore not willing to testify. There also appear to be limited or no data readily accessible on specific protection for witnesses.<sup>63</sup> What is more, is the fact that the UNODC's publication offer guidelines and it is not obligatory for any state to follow them. The discussion of the effectiveness of international witness protection laws is thus imperative and urgent.

## **6. CONCLUSION**

Based on the earlier discussion, it is evident that many international anti-money laundering efforts have not adequately addressed or acknowledged the need for witness protection. This is curious given that there is some recognition of the importance of witness' testimony to the investigation and prosecution of money laundering. In contrast, it is crucial to highlight that the UNODC places significant emphasis on witness protection in its initiatives and guidelines. Like UNODC, it is important that all international initiatives, including laws aimed at combating ML must explicitly recognise the importance of witness protection, implement measures that need to be enforced both at the national and international levels and monitor the effectiveness of these measures.

Currently, organisations such as FATF play an important role in coordinating global efforts to combat ML, terrorist financing, and the proliferation of financing. FATF Recommendations are rooted on the risk-based approach, which stresses the significance of identifying and understanding the risks related to money laundering and terrorist financing. To this end, they can allot their resources effectively to alleviate these risks, especially in areas where the risk levels are extremely high.

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*<https://www.unodc.org/unodc/en/organized-crime/witness-protection.html> (accessed 02 September 2023).*

63 Makhubele (2022) 37.

In the light of the complex nature of money laundering, it is important that all countries are mandated to regularly evaluate and, if the need arises, revise their witness protection laws to maintain vigorous and efficacious protection measures. Furthermore, both the international and domestic instruments should eliminate qualifying clauses that allow countries to take actions based on their available resources and require every state to allocate a part of their resources toward the protection of witnesses. This ensures a more consistent and proactive approach to witness protection on an international scale.

The intimidation of witnesses in money laundering cases is endemic. This problem erodes public trust in the government while also undermining the effectiveness of the justice system by denying law enforcement and prosecutors critical evidence to attain justice.<sup>64</sup> This article demonstrates that witnesses, particularly in money laundering cases, often hesitate to testify due to their awareness of the risks associated with testifying, including potential threats and intimidation. Threats or violence can be used to discourage a victim or witness from testifying in a specific case, or they can be used to instil fear or non-co-operation among members of a community where gangs or organized crime operate.<sup>65</sup> Consequently, the presence of strong and comprehensive witness protection laws is of utmost importance to address these challenges effectively.

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64 Makhubele (2022) 82.

65 Makhubele (2022) 82.