# Money Laundering and its Perspective in Latin America and the Caribbean, Legal Consideration

Loza Torres Andres Gustavo[1], Molina Diaz, Rolando Patricio[2], Sanandres Alvarez, Luis German[3], Ruiz Salgado, Myriam Valeria[4]

**Abstract**

*One of the main methods to hide assets obtained by organized crime worldwide is the practice known as money laundering, where money obtained through drug trafficking, human trafficking, illegal arms trafficking, among others, is laundered through legal commercial activities. so that the trace of how it was initially obtained is lost. This crime is very common in the countries of Latin America and the Caribbean, which is why the governments of each of them have sought for decades to detect the initial flow in order to capture both organized crime and illegal circulating. This article makes an exhaustive analysis, both at a legal and commercial level, of this practice, how it affects the economy of the countries involved, what repercussions it entails for those involved in said practice.*

**Keywords:** *Money laundering, Law, Dilemma, Ethics, Corruption.*

## 1 Introduction

As a phenomenon harmful to society, crime over time has sought to be perpetrated through different structures and mechanisms, increasingly ingenious and that seek not to be detected by the laws that govern the different world territories.(Arrias Añez et al., 2021)Therefore, criminal organizations have always sought to mask their illegal profits through legal commercial practices and regulated by law, disassociating themselves from legal and criminal consequences by eliminating physical evidence of their illegal actions.(Murillo Ortíz et al., 2021). That is, to search for criminals and their different organizations, legalize their illicit profits through the commercial and financial system of a country so that evidence that can be used against them can be eliminated and maintain a discreet profile within society.

It is known that one of the most frequent methods to legalize assets obtained through illegal methods and in several cases through criminal activities is the money laundering process, where large flows of money not tracked by the treasury are invested in legal economic exercises. in order to tax in the books of legalized companies and be considered as a product of the commercial activity of said companies(Orozco et al., 2020). This typical exercise of criminal organizations worldwide creates a serious problem for the different governments since it seeks to eliminate traces of a crime and present it as a

[1] Doctor in public management and governance, Chimborazo Higher Polytechnic School, andres.loza@espoch.edu.ec, orcid.org/0000-0001-9035-765X

[2] Magister in Accounting and Auditing, University of the Armed Forces ESPE, rpmolina@espe.edu.ec, orcid.org/0009-0004-8639-0157

[3] Accounting and Auditing, Chimborazo Higher Polytechnic School, luis.sanandres@espoch.edu.ec, orcid.org/0000-0001-5444-0958

[4] Engineer in Foreign Trade, Integration and Customs, Chimborazo Higher Polytechnic School, myriam.ruiz@espoch.edu.ec, orcid.org/0000-0002-5180-9542

typical commercial activity that is found in compliance with the fiscal and tax laws of a region.(Murillo Ortíz et al., 2021).

It should be noted that this problem has caused great concern worldwide, which is why there are international organizations that seek action mechanisms for the detection and prevention of money laundering, such as the FATF (International Financial Action Group) and GAFILAT. (Grupo de Acción Financiera Internacional de Latinoamérica), which were created for the purpose of preventing and combating money laundering in the different territories allied to the United Nations, however, this type of unlicensed practice continues to be part of the criminal language for what the actions and recommendations given by said organizations are of high priority for the member countries(Toso Milos, 2021).

However, despite the creation of these international organizations, it is known that every time there are new methods for money laundering that have been put into practice by illegal organizations such as the diversion of funds to charities or non-governmental organizations.(Burga Calonge, 2023). For example, the suspicion that various political parties in countries such as Peru have been financed with illegal or illegal funds can be taken into consideration, which, when used for campaigns and other activities of the political organization, fulfill the laundering function. of assets, for which reason requesting the declaration of obtaining said funds has become a priority for governments(Pucho Ccopa, 2019).

On the other hand, Latin America and the Caribbean, due to certain regulatory systems, are prone to criminal organizations trying to introduce illegal capital into their different commercial companies and NGOs.(Sintura et al., 2020)Therefore, it is important for governments to manage certain anti-money laundering policies, since this type of capital of dubious origin can generate negative effects both at a legal, economic and reputational level.(Banchón Cabrera & Suqui Romero, 2020). For example, promoting the investigation of investment capital in commercial and financial entities, by declaring how said funds were obtained and thus generating a trace in case they are linked to criminal acts.(Vergara Cuadros et al., 2019)

Reality of the region

Latin America and the Caribbean is considered, according to Transparency International, as the one with the highest concentration of corruption in its different members, where countries such as Venezuela, Nicaragua and Haiti are located according to the corruption perception index with the lowest scores, considering themselves the most corrupt. region of(Transparency International, 2022),Due to the growth of criminal organizations in the area, governments with low criminal control where violence and terrorist acts are part of the daily life of these societies. This problem suggests that organized crime currently has a significant presence in the area and that they have some power or influence among Latin American governments.(Valenzuela-Aguilera, 2019).

This situation is due to the fact that, both in Latin America and the Caribbean, the growth of illegal acts such as terrorism, guerrilla warfare, human trafficking and smuggling, drug trafficking and other illegal activities has been exponential in recent years, which has given way to underground economies within the countries included in the zone (Moncada, 2021), being the rural areas where there are various centers of operations of these criminal groups, due to the fact that the poverty rate of the peasant is increasingly high and he feels forced to commit crimes(Sauls et al., 2022). This statement is consistent with the information provided by ECLAC (2022) where he mentions that the poverty rate in Latin America is 32.1%, that is, about 201 million people, of whom 83 million live in extreme poverty, which is reflected in the fact that the largest production of Coca leaves is occurs in the rural sectors of the region where world cocaine production is currently concentrated (UN News, 2023).

According to a report by Transparency International, both in Latin America and the Caribbean in recent years the growth of the crime rate has increased by approximately 43%, because the region is considered fertile ground for the growth of organized crime.(Transparency International, 2023), where drug trafficking, human trafficking and sexual extortion are the main criminal acts, as a result of the high levels of corruption in the region, and that in many of these countries certain corrupt officials collaborate with criminal gangs or accept bribes to give them open letter for your various criminal activities without consequences (Zysman-Quirós, 2019). In many cases it has been shown that these criminal organizations have come to influence the election of public officials thanks to their financing, even running for public office.(Rotberg, 2019).

However, the flow of illicitly obtained assets is not only concentrated in the aforementioned organized crime, but also in acts of corruption that are recurrent in the region, such as those given in contracts of dubious origin, from the government of a country Latin American with its suppliers where there are diversions of funds thanks to the overpricing of a work or service provided to a public institution(Pring & Vrushi, 2019), with certain public officials being the beneficiaries, causing millions in losses to state coffers. Several recent examples can be mentioned such as the Odebrecht case where several countries such as Brazil, Colombia, Ecuador among others were involved, where the company was benefited from various works in exchange for a premium which was charged by authorities of the government of the countries involved (Rotberg, 2019).

Money laundering in Latin America and the Caribbean

In Latin America, the growth of money or asset laundering has been taking place for several decades of the 20th century, and the 21st century, where criminal groups dedicated to terrorism, drug trafficking, extortion, among other crimes, seek to clean up their illicit profits through the financial system or the commercial sector of countries that have little regulation on the acquisition of wealth and assets(Rust, 2019).In other words, the main objective of this money laundering dynamic is to hide the source of illegal funds by entering them back into the economy (Ponce Andrade et al., 2019).

According to a report from the Basel Institute of Governance, where the entire region is evaluated using the anti-money laundering index, it considers that the Caribbean is the most deficient area with regard to money laundering control, where Haiti ranks as one of the worst countries in this task in the year 2022 (Mistler-Ferguson, 2023), where it is known that several of its political leaders have been denounced in cases of corruption, links to drug trafficking and gang financing, also according to the FATF, Haiti has structural problems that allow senior officials of the political elite to participate in criminal activities and use the government as a front for laundering their illegally obtained fortunes(Clavijo Suntura et al., 2020).

Generally, this dynamic occurs thanks to legal gaps present in the legal, financial and tax framework of a country, where by not having a solid anti-money laundering mechanism, it is difficult to detect whether the flow of cash and assets that a natural person has or legal information was legitimately obtained(Sitompul & Sitompul, 2019), so it is possible that many people associated with criminal activities invest dubious capital in commercial companies and even that their funds are kept in financial institutions to later be invested in financial documents such as shares, state bonds under the figures of paper companies(King Mantilla, 2021).

Money laundering, both in Latin America and in the rest of the world, is generally carried out in three phases, in which the criminal trail is eliminated in order to transform illicit money into legitimate assets.(Singh & Best, 2019). The first phase is known as "Placement", it is where criminals introduce their funds into the financial system. The second phase is known as "Layering" is where the funds introduced into the financial system migrate to legitimate companies or businesses to disguise the original source of how they were acquired and finally, "Integration", where the "laundered" funds are

introduced through the acquisition of goods, such as properties, machinery, financial investment, and investments in other businesses, in this way the criminal organization is separated from the law, using the system in its favor(Kute et al., 2021).

In the first phase, thanks to the ambiguous policies of certain Latin American and Caribbean countries, regarding their financial systems, criminals can introduce through third parties that are not involved with their organization, their funds through micro deposits which do not generate suspicion (Gerbrands et al., 2022). However, in recent years, thanks to the creation of digital currency or "Cryptocurrency", it is possible to eliminate the aforementioned step, since many criminal organizations, such as drug cartels, have chosen to prefer payments with their clients through this type of "digital change", since this can be introduced into the banking system as real money (Dollars, Euros, etc.) and thanks to its code that prevents tracking, it is how to handle clean and undetectable cash(Albrecht et al., 2019)This procedure is becoming more and more popular, which is why international anti-money laundering organizations have chosen to create new ways to monitor this new modality.(Singh & Best, 2019)

Currently there are several strategies in the "Layering" phase implemented by criminal organizations for money laundering, such as the incursion into financing several micro-enterprises in order to have a low profile since the flow of cash and assets managed by a MSME generally It does not have greater control than the one that is subject to companies with greater productive capacity that by obligation are subject to audits by the financial regulatory bodies of each country(Prado Ramos, 2022), when managing several medium or small companies with illicit funds, it is possible that the trace of how they were initially obtained is lost and in this way the money passes through the regulatory system without raising suspicions, since for example in countries such as Ecuador, Colombia and Peru, micro-enterprises, or companies under the special regime are not required to keep accounts, so their accounting books are not necessarily kept by a public accountant.(Vergara Cuadros et al., 2019), so it is feasible to implement illegal funds in its total assets.

Finally, with respect to the "Integration" phase, in Latin America and the Caribbean, this process occurs in multiple ways, mainly linked to financing for political and non-governmental organizations, where the product as such is not an asset but rather , in political campaigns, acquisition of headquarters, charitable works, which seek above all to be intangible actions that cannot be seized by the competent authorities(Tiwari et al., 2020)This creates serious problems when looking for a link between these entities and crime, which is why measures have been implemented in countries such as Peru and Ecuador to counteract it. It is known that in Peru there has been evidence that political groups have received large amounts of money from drug trafficking to finance political campaigns in exchange for favors for these criminal groups.(Pucho Ccopa, 2019).

The real estate and automotive sector is also another path that is sought for money laundering, in the "integration" phase where on many occasions real estate companies or those in the automotive sector do not ask their potential clients for the minimum requirements for the acquisition of their product. , so to date it is a reliable method to transform illegally obtained money into an asset free of criminal traces(Ríos Jimenez et al., 2022)This case is particularly well known in Ecuador, as many companies in the sector do not comply with the mandate established by the UAFE (Financial Analysis Unit of Ecuador) where certain requirements are required, such as reporting suspicious transactions, and reporting additional information where these companies they must indicate the transactions, as well as the clients to whom they have sold their different products(UAFE, 2022)

Despite all of the aforementioned, it is important to indicate that several countries such as Uruguay and Chile have made large investments in their legal system, in order to detect financial crimes and to carry out regular confiscation of assets to keep the problem of

money laundering at a minimum.(Mistler-Ferguson, 2023), through the creation of specialized financial crime units, which are coupled to the different recommendations and regulations of the FATF and GAFILAT. Among these action mechanisms implemented by the region, mainly in the countries and in others that seek to improve the reduction of criminality in financial crimes such as Mexico, Brazil and Ecuador, are the mandatory declaration of investment capital and the lifting of the bank secrecy in case of suspicion of money laundering, both in commercial companies and in financial entities (Lokanan, 2022). This means that anti-money laundering laws are subject to constant changes and reviews to adapt to the new methodologies implemented by criminal organizations to hide their capital.(Burga Calonge, 2023).

Crime according to the legal framework

To talk about the legal framework focused on the detection of money laundering, it is important to consider the points stipulated by the FATF and GAFILAT, mainly since the latter has its direct focus on Latin America and the Caribbean. Due to the speed with which organized crime adapts its strategies in reference to the different legal provisions of the GAFILAT member countries, for this reason there is already a strategic plan by the organization aimed at the next 5 years between 2020 and 2025. , with the purpose that the different legal frameworks have a guide for the detection and penalization of crimes related to money laundering (GAFILAT, 2023).

As background, it is important to indicate that in Latin America, within the legal framework, money laundering was not considered a crime until the 1980s, when it was due to the massive growth of criminal groups such as Guerillas and drug cartels.(Sintura et al., 2020),What at first was considered a crime that was only punishable in the United States has become a gigantic market for goods and services that currently moves massive amounts of money.(Blanco Cordero et al., 2015)Therefore, it has been necessary to implement administrative regulations in order to prevent the access of dirty money to the financial system of a nation.(Gerbrands et al., 2022), through the creation of an administrative system led by Financial Intelligence Units, the same ones that are currently designed under the recommendations of the FATF and GAFILAT in Latin America and the Caribbean(GAFILAT, 2023).

The philosophy adopted by the vast majority of countries that seek to combat the entry of dirty money into their financial system is that of "Follow the money", which consists of tracking it from its point of criminal origin to carry out the confiscation procedure, to avoid so that crime is a lucrative activity(Blanco Cordero et al., 2015), this philosophy is tied to the criminological theory "Rational Choice Theory", where the criminal evaluates the different options that are presented to him with their respective risks, as well as the effort and logistics necessary to achieve his objective.(Moncada, 2021)In other words, it is sought that criminal activities do not use the financial system as an alternative and thus reduce money laundering.

Under this premise, there are international standards that seek to fully comply with the detection of crimes associated with money laundering, which have been arranged under review by the United Nations and the OAS.(Levi & Soudijn, 2020), which have been continuously reviewed and updated to adapt to the new modalities adopted by organized crime, such as the model law on money laundering and terrorist financing (2005), which was created after the attacks by September 11, 2001, and the Model Provisions for Common Law Legal Systems on Money-Laundering, Terrorist Financing, Preventive Measures and the Proceeds of Crime of 2009, which was prepared by UNODC in collaboration with the Commonwealth Secretariat and the International Monetary Fund (IMF). Both models have the same mission, they simply differ in that the second one described has the purpose of helping countries that want to create legislation against money laundering or improve the one they have.

Most of the international norms applied in Latin America seek as their main purpose to detect criminal behavior, which according to the Vienna Convention would be classified in the first place, in behaviors aimed at the conversion and transfer of assets of criminal origin, in second place. First, the actions that produce concealment of assets of illicit origin and finally the conversion, transfer or transport of illegal assets(Nahem, 2020), that is, the Nations subscribed to said agreements and regulations can punish these three types of behaviors under the constitutional principles of each nation and their respective legal concepts. In other words, the legal norms of each country that has an anti-money laundering law can proceed in accordance with its legal stipulations to sanction the behaviors described above to control the circulation of dirty money or assets associated with illegal activities in their territories.(Zavoli & King, 2021).

For example, countries like Ecuador, currently under the money laundering prevention law, which was signed according to article 393 of the constitution, stipulates the different controls and procedures that financial institutions must carry out to detect whether the funds deposited by their users are obtained legally, this includes reporting directly to the Financial and Economic Analysis Unit on all operations carried out, through reports stipulated by law(Ponce Andrade et al., 2019), these control tools imposed by law can be adjusted to the internal regulations of banking institutions for internal control and thus detect early if there are assets from any criminal or illegal activity that tries to be entered into their financial system(Meza Torres, 2020). So this would agree within article 3 b) ii) of the Vienna Convention, in article 1 of the EC Directive, in article 6 1. b) of the Council of Europe Convention, in art. 2.3 of the OAS Model Regulations, and in art. 6.1.1.ii) of the Convention against Transnational Organized Crime(Blanco Cordero et al., 2015)

## Conclusions

Under the arguments described above, it can be concluded that in Latin America and the Caribbean, there is a legal framework that is in force and that tries to detect in time the different methods applied by organized crime to conceal the origin of illegal money and assets, however Several of these countries are under corruption regimes that evade their own laws to cover up criminal activity. In other words, in several countries, corruption plays an important role in compliance with the laws based on the agreements made by the United Nations and the OAS, for which reason large operations carried out by the financial units are orchestrated facades to maintain the organizations. internationals at bay

It can also be concluded that even though Latin America and the Caribbean have a high rate of crime and corruption problems, several countries in the region such as Chile, Costa Rica, Brazil, among others, seek to adjust their laws to counter money laundering. assets through Financial Units, specialized Prosecutors, which adhere to international regulations and the recommendations made by the FATF and GAFILAT in order to reduce the rate of asset laundering and collaborate with international justice to identify criminal groups linked to terrorism , Drug trafficking, among others.In other words, at the legal level, it can be concluded that there is a legal aspect that must be complied with at the regional level and that this can be constantly adapted according to your country to control criminal activity through laws of the financial system.

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