



# **Money laundering in East and Southern Africa: a preliminary overview of the threat**

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# **MONEY LAUNDERING IN EAST AND SOUTHERN AFRICA: A PRELIMINARY OVERVIEW OF THE THREAT**

## **1. Introduction**

Much has been written during the last decade or more concerning the phenomenon of money laundering, both as a manifestation of organized criminal activity and as a catalyst to it. Against the background of much publicized outrages, the most graphic of which was the attack on New York's Twin Towers on September 11, 2001, a convergence of attention on money laundering and terrorism has emerged. There seems to be consensus that money laundering is a universal phenomenon, and further that it is both iniquitous and problematic. Nevertheless, it remains a relatively under-studied problem in East and Southern Africa. There is not much data on the nature, varieties, and extent of money laundering in the region. To an extent, this may account for the lethargy, evident in certain parts of the region, which negates the adoption and/or implementation of effective measures to remedy the macro-economic and structural weaknesses conducive to money laundering.

This preliminary overview is an attempt to contribute to an understanding of the dimensions of money laundering in the countries which comprise the East and Southern African Anti-Money Laundering Group (ESAAMLG). These are **Botswana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.**<sup>1</sup> The overview is mainly derived from observations and perceptions recorded during the first six months of 2002, by researchers commissioned by the Institute for Security Studies. The study was premised on certain assumptions, and the report does not endeavour to delve into detailed discussion of their validity. The key assumption is that money laundering is of strategic importance to organized crime generally, and corruption in particular. Another is that organized economic crime of one form or another exists in most of the ESAAMLG countries. Specific forms of organized crime, which have been linked to money laundering include drug trafficking, armed robbery, tax evasion/customs fraud, exchange

control evasion, and motor vehicle theft. A third assumption is that serious corruption plagues virtually every country in the region.

The report commences with a profile of the definition of money laundering as a distinct crime. It then outlines the strategic importance of money laundering, and discusses laundering patterns within the ESAAMLG region from three distinct, but related perspectives – the internal, incoming and out-flowing. The report makes extensive use of practical instances of money laundering, drawn from the region. It concludes with an attempt to quantify the scale of the threat that the practice presents.

## **2. The evolving definition of money laundering: A brief profile**

Money laundering, as a proscribed activity, was originally perceived to be a derivative offence. Its status as such was contingent upon the genesis of the money to be concealed, converted or otherwise processed. In his work on money laundering, Smit (2001) provides a useful starting point. He contends that:

‘(M)oney-laundering aims to thwart the enforcement of criminal law by creating the justification for controlling or possessing **money or property derived from any form of criminal activity**. It is *defined* as all activities aimed at disguising or concealing the nature or source of, or entitlement to money or property derived from criminal activities.’

I have added the emphasis. Immediately apparent in Smit’s propositions is that the term money as a descriptive tag for the object of laundering is potentially misleading, as money is only one of a variety of susceptible assets. Asset laundering would probably be a more accurate term, as all forms of property are envisaged. Experience has demonstrated that it is more difficult to define ‘laundering’. Various formulations have emerged, only to be superseded in due course.<sup>2</sup> Among them is the original definition adopted by the Financial Action Task Force on Money Laundering (FATF), namely that laundering was the processing of criminal proceeds to disguise their origins. Subsequent to FATF, the United Nations Convention Against Transnational Organized Crime (the

Palermo Convention) came up with the modified view that laundering is the concealment of the proceeds of **serious** crime, as determined by the potential sentence. Serious crime is crime punishable by at least four years imprisonment. The implications of this attenuated conceptualization for fledgling transnational initiatives against money laundering have yet to be fully considered, but they would appear to be quite grave. In the wake of the atrocities of 11 September 2001, the FATF definition was broadened, to embrace the destination of assets as a source of liability. The new definition is adapted from the United Nations Convention on the Suppression of Funding of Terrorism (1999). It perceives laundering to include the concealment of assets to be used in committing, or to facilitate the commission of crime.

The study on which the report is based accepted money laundering to mean ‘all activities to disguise or conceal the nature or source of, or entitlement to money or property, or rights to either, being money or property or rights acquired from serious economic crime or corruption, as well as all activities to disguise or conceal money or property that is intended to be used in committing, or to facilitate the commission of serious crime.’ Unlike the Palermo Convention, the study did not ascribe a meaning to the term ‘serious’. In essence, the definition of money laundering includes economic and non-economic misconduct, even if it was punishable by less than four years’ imprisonment. In consequence, it was believed that certain iniquitous conduct would not be unjustifiably defined out of the study.

Regardless of the definition adopted, there is consensus that systematic, (rather than haphazard) money-laundering usually takes a traceable pattern, comprising:

- \* **the placement stage** where the illegitimately acquired or destined assets are placed in the financial system;
- \* **the layering stage** where numerous transactions are carried out with the assets or proceeds; and
- \* **the integration stage** where the product of placement and layering is placed at the disposal of the criminal or prospective criminal.

It is not every variety of money laundering surveyed in this report which will neatly demonstrate the three stages of the above model. It should also be pointed out that the stages are not cumulative constituent elements of money laundering, in the sense that they should all exist before the offence is committed. The commission of any one of them may be sufficient for guilt to arise. It is however improbable that layering or integration could occur without placement having preceded them. As will become apparent in the discussion of the three dimensions of laundering below, there may be instances when laundering is committed even before the placement stage.

A study of money laundering trends requires an appreciation of the strategic importance of money laundering. As far as the criminal world is concerned, this stems from a multiplicity of qualities. It is rooted primarily in its potential to facilitate the evasion of detection of the underlying criminal activity that generates the profits.<sup>3</sup> Secondly, laundering can sustain the enjoyment of the profits from crime or their reinvestment in future criminal activities. With time, it enhances professionalism in both the structure and operation of criminal syndicates, with managers and the financially astute types ascending to the top. Thirdly, money laundering facilitates the development of transnational networks, and linkages with criminal environments of disparate origins. Law enforcement authorities in many parts of the world have come to the conclusion that by combating money-laundering activities, they can disrupt the cycle used by criminals groups to derive benefits from illegal profits, and thereby weaken or even destroy their viability. If the primary motivation behind syndicated crime is economic, and the economic gain is removed, the crime will cease.

Outside organized crime circles, money laundering serves certain investment objectives. It may speed up the acquisition of assets, or facilitate access to new commercial opportunities. Finally, it enables the launderer to take advantage of certain economic systems and transient circumstances/situations. In the context of the fragile socio-economic systems prevailing in much of the ESSAMLG region, these are significant considerations.

### **3. Money laundering typologies**

It is convenient to consider the patterns of money laundering within ESSAMLG as consisting of three dimensions. These are:

**Internal money laundering** – which is characterized by the laundering of proceeds of crime committed within a given country or assets to be used in committing crime there;

**Incoming (or inflowing) money laundering** – in which the assets laundered are derived from crime(s) committed outside the country, and thereafter introduced into the country; and

**Outgoing (or out flowing) money laundering** – where the proceeds of crime(s) committed within the country are exported (to one or more countries) for laundering.

Placement can occur in any of the three dimensions of laundering. So can layering, and integration of the laundered assets. It is clear that in the case of internal laundering, all three phases would occur in the same jurisdiction. Where laundering is incoming, the assets may have been kept out of the formal institutions until their introduction into the jurisdiction in which placement is to occur. The same could apply to outgoing laundering. Subsequent to acquisition of the proceeds of crime, the launderer may conceal them, with a view to smuggling them to a foreign jurisdiction. The concealment *per se* constitutes laundering, even though it precedes placement in any financial or commercial system.

The study reveals the incidence of various kinds of laundering activity within each dimension.

#### **3.1 Internal money laundering**

The clandestine nature of money laundering makes it difficult to obtain accurate statistics on its scale and frequency. Commentators in this area tend to rely on indicators and anecdotal evidence to draw conclusions regarding the incidence of laundering. Some of the indicators identified include the number of organised criminal groups identified by law enforcement authorities, the nature of the activity in which they engage, the number



of suspicious transactions identified by financial institutions, (where such transactions are recorded), the prosecutions for money-laundering activities and forfeitures of the proceeds of criminal activities, and economic trends concerning trade and the flow of funds.<sup>4</sup> The nature and incidence of organized economic crime are of particular utility, in so far as they highlight sources of proceeds to be laundered.

### **3.1.1 The trade in illicit drugs**

Drug trafficking is identified most readily with money laundering virtually everywhere in the region. Dagga and mandrax (methaqualone) sales tend to feature prominently among the sources of illegal funds, but they are by no means the only narcotics familiar to crime syndicates. Significant amounts are also generated from sales of cocaine, heroin, and ecstasy. The drug industry is known to influence trends in ‘downstream’ crimes, notably motor vehicle theft, housebreaking and armed robbery. Because it is an industry which involves a range of participants, it is necessary to identify the important role players for the purposes of money laundering. Studies of the dagga market in South Africa identified a chain of entrepreneurs which includes small (subsistence) farmers, transporters, wholesalers, retailers, vendors (some operating off the street) and exporters. It appeared that in the market chain,

‘..the wholesaler makes the most money. Although his mark up is less than that of the retailer, the quantities in which he deals are much larger. Most poorly paid are the producer and the street dealer, who work for subsistence- level income. At no point in the domestic market chain made, however, as the market is too diffuse and the unit cost too small. The real market is in export.’<sup>5</sup>

Wholesalers are therefore best positioned to participate in significant money laundering from local dagga sales.

At its profitable levels, drug trafficking is cash intensive. Drug dealers usually rely on cash as a primary medium of exchange. Drug traffickers accumulate huge amounts of

cash that must be hidden and converted to avoid detection of drug activity. They share at least three characteristics across the region:

- (a) they need to conceal the origins and often the ownership of the money.
- (b) they need to control the money
- (c) they need to change the form of the money.

Money laundering is therefore an attractive option. In Malawi drug trafficking continues to increase. Dagga, technically referred to as Indian hemp, is mainly grown in the northern part of Malawi around the town of Nkhotakota. From Nkhotakota the drug is transported to the cities of Blantyre and Lilongwe. Some of it is sold there, and the funds used to purchase basic and luxury commodities. Much of it however, is exported to foreign jurisdictions mainly Zimbabwe, Namibia and South Africa for sale.

The drug market in South Africa is the largest in the region. Two busts in Douglasdale, north of Johannesburg, and Roodepoort on the West Rand at the end of June yielded massive seizures of dagga, cocaine, ecstasy, Mandrax, and chemicals for the manufacture of Mandrax. The haul was valued at R2.7 billion (US\$270 million). More than 100 syndicates are known to be active in the drug trafficking industry in South Africa. It appears that most of them launder their assets locally, in the acquisition of motor vehicles, legitimate businesses and front companies, and residential properties. Asset seizures during the past twelve months give an indication of the scale of laundering of drug money. In June 2002, the Asset Forfeiture Unit of the National Prosecuting Authority reported that of the 150 cases in which assets had been seized,<sup>6</sup> 31% involved drug trafficking.

The inclination of retail businesses in many countries to conduct transactions in cash facilitates the local laundering of funds derived from drug sales. Signs reading “strictly no cheques accepted” or “only cash or bank certified/guaranteed cheques” are a common sight in Malawi, Kenya, Tanzania, Uganda, Zambia and Zimbabwe. This makes it convenient for criminals to purchase commodities from these businesses without fear of

detection of the source of the cash. Large amounts of cash, some of which are derived from drug trafficking, regularly change hands in the commercial districts of Mozambique and Zimbabwe. The advent of hyperinflation in Zimbabwe exacerbates the vulnerability of commerce to money laundering. Retailers are unlikely to report, even when suspicious as, in some instances, they are involved in evading tax. It has been observed that retailers in Malawi generally do not issue receipts.

Investment in motor vehicles is a common avenue for laundering illicit funds. Dealers in this industry in the majority of ESAAMLG countries are not under any duty to report any transaction to the police or anyone merely because they are suspicious about the source of the funds. Any individual can buy a motor vehicle from a dealer with cash, whether legitimately or illegitimately acquired. In Malawi, a recent survey showed that no identity particulars are required in motor vehicle purchasing. One can easily buy a vehicle in a fictitious name. Several motor vehicle dealers did not even know what money laundering entails. Although figures are not available at this stage, it is probable that a significant proportion of motor vehicle sales in the region involve dirty money. Vehicles which are usually bought are lorries, minibuses and pick-ups.

Drug merchants also use legitimate bank accounts of family members or third parties, to de-link proceeds from underlying illegalities. In some schemes this is done with the connivance of the family member or third party, who allows the criminal to deposit and withdraw money from his or her account. In South Africa, a study by the Centre for the Study of Economic Crime found that:<sup>7</sup>

‘Criminals sometimes deposit money into their own bank accounts, but more sophisticated criminals will often open accounts with false identification documentation or will open these in the names of front companies or trusts. There is also a trend of using legitimate bank accounts of family members or third parties. An arrangement would be made with a family member who will allow the criminal to deposit and withdraw money from his or her account. In subsequent

investigations, the family member will invariably plead ignorance of the true nature of the funds that were deposited.’

(The footnotes have been omitted from the quotation)

Zambia’s Drug Enforcement Commission has recorded instances of drug traffickers who use the identity particulars of third parties without their consent, or fictitious identity documents to open and operate bank accounts. The accounts can subsequently be used to fund further crime, or as repositories of funds for outward laundering.<sup>8</sup>

Drug traffickers also use business entities, notably shell companies and front companies, to legitimize dealings in illicitly obtained funds. Shell companies are distinct from front companies in that they do not trade, but they can be used to open and operate accounts with financial institutions, such as banks and insurance houses. In the region, it is relatively easy to incorporate a shell company. In South Africa, the cost is as little as R450. Front companies, on the other hand, are identifiable, trading concerns, used as a medium through which to infuse criminal proceeds into the financial system. They are frequently companies operating cash based outlets such as shebeens, restaurants, cash loan businesses, and cell phone shops. In Namibia, South Africa and Zambia, commuter transportation fleets are a peculiar favourite.

### **3.1.2 Armed robbery proceeds**

Armed robbery is both a crime of violence and a serious economic, and frequently lucrative one. It occurs with disturbing regularity in South Africa, but in general it afflicts more than half of the membership of ESSAMLG. Motor vehicles and cash account for the bulk of commodities stolen in armed robberies. Stolen motor vehicles have long been regarded in regional criminal circles as an important form of currency, to be used to pay for other goods or exchanged for cash. Most of the vehicles are stolen in South Africa. Interpol statistics indicate that in 2001, South Africa accounted for between 96% and 98.7% of the total number of vehicles stolen in the region.

Some of the stolen vehicles are sold to people involved in supplying the domestic market where they are re-registered and re-sold. However since the 1980s an increasing number

of these vehicles have crossed South African borders into neighbouring states often to be exchanged for other illegal goods, such as dagga, firearms, or diamonds.

As with motor vehicle robbery, most of the armed robberies of cash-in-transit in the region are committed in South Africa by relatively well-trained groups which have access to weaponry including automatic firearms. Between 1996 and 1998 armed robbers seized more than R150 million (US\$15 million) in 854 violent cash-in transit attacks.<sup>9</sup> One of the most publicized cases illustrates the link between armed robberies and money laundering. The reported facts are given below as example 1.

### **Example 1**

**S v Dustigar and others** (*Case no CC6/2000 (Durban and Coast Local Division unreported)*)

19 persons were convicted for their involvement in what was then the biggest armed robbery in South Africa's history. Nine of the accused were convicted as accessories after the fact on the strength of their involvement in the laundering of the proceeds and a tenth accused (Neethie Naidoo) was convicted of money laundering in terms of the Proceeds of Crime Act 76 of 1996. Many of the accused were family members or third parties who allowed their bank accounts to be abused to launder the money. In some cases they also allowed new accounts to be opened and fixed deposits to be made in their names.

Accused No. 9 was a practising attorney. A robber who turned state witness testified that the accused approached him at the court. After confirming confidentially that the witness participated in the robbery, the accused said that he "must (then) have a lot of money". Some time later he approached the witness and offered him an investment opportunity in a nightclub. The attorney then brokered a deal between the sellers and the witness. He drafted a sales agreement in which the name of the purchaser was left blank. He handed R500 000 in cash to the sellers at his office as a deposit in terms of the agreement. He drafted another sham agreement in the name of another purchaser and also manipulated his trust account records to hide the identity of the purchaser and the actual amounts that were paid.

Accused No. 9 was sentenced to five years imprisonment.

Accused No. 13 was a police captain who had served for 18 years in the South African Police Service. The judge described him as highly intelligent person with business acumen. He created the laundering scheme that involved seven of the other accused:

"Of all the accused who have been convicted as accessories, accused No. 13's role was undoubtedly by far the most serious. He

took upon himself the task of organizing the so-called money laundering. He did so spontaneously and apparently with considerable vigour. He did so, furthermore, in enormous proportions. His ingenuity was limitless. In doing what he did he over-reached and manipulated not only police colleagues but also the women in his life who were under his influence, being accused Nos 15, 16 and 19.”

Accused No. 13 was sentenced to 15 years' imprisonment.

In Kenya, robbers typically invest their money in real estate. They usually buy real estate in down market Nairobi or in small towns on the outskirts of the city. They avoid investing in up-market property in Nairobi, as that would make them conspicuous. Typically, property is bought in the name of a female companion. If the property is residential, the companion might reside there, if not, she might be asked to manage it.

One of the most notorious armed robbers in the history of Kenya held himself out to be a real estate developer in a small township 150 kilometres from Nairobi, where he had developed a complex of high-rise properties.

In addition, or as an alternative, robbers will establish retail businesses that generate a lot of cash. Popular businesses include bars, butcheries and dry-cleaning establishments, but by far the most favoured business enterprise among robbers is passenger transport, popularly called the ‘matatu’ business.

One of the factors which determine whether proceeds of armed robbery will be laundered locally or externalized is the strength of the connection between the perpetrators and the jurisdiction where the crime is committed. If the criminals are of foreign origin, it is likely that the proceeds will be externalized, at least in the initial instance. At the close of

2001 an armed robbery occurred at Johannesburg International airport. A large amount of money was stolen. It transpired that most of the criminals involved were Zimbabwean nationals. Within a month of the crime, some of the proceeds were discovered in Zimbabwe.

### **3.1.3 Currency speculation**

The exploitation of fluctuations in the availability, and consequently, value of foreign currency has become a major source of income in parts of the region afflicted by shortages. Zimbabwe presents classic examples of the practice at a crude level. It also illustrates how what commences as a series of sporadic transactions for subsistence purposes can quickly become a species of syndicated economic crime.

In consequence of erroneous economic decisions, and ambivalent policy responses to the catastrophic devaluation of the local currency in comparison to foreign hard currencies, speculating in foreign currency has become one of the most lucrative enterprises in Zimbabwe. Participants in it range from street traders to senior public officials, including government ministers. Part of the reason for the 'currency rush' is the vast disparity between the stipulated rate and the market rate at which the Zimbabwe dollar should trade. The example below highlights the simplicity of the transactions, but their potential to generate large amounts of money. It reflects the operations of street currency traders in the city of Bulawayo, who claimed that the foreign currency in which they dealt was from local sources. Their experience is typical, and can be extrapolated to similarly placed traders in other centers in Zimbabwe. The story was adapted from the weekly newspaper *The Financial Gazette* (July 18 2002).



### **Example 2: Informal currency trading**

Foreign currency street traders use their personal savings to buy the South African rand, the Botswana pula, the British pound sterling and the United States dollar — the most popular currencies — which they sell to individuals, banks and companies in need of the scarce commodity.

The dealers position themselves on street corners to conduct their (illegal) transactions but say business has been hit by a crackdown by police on illegal money changing in the past few weeks.

Many now engage sentries at various points of the city to look out for the police. The foreign currency dealers quickly disappear each time the sentries alert them of suspicious people who might be plainclothes policemen.

Making handsome profits through the illegal trade however seems quite easy for most of them. They buy the foreign currency at a cheaper rate and sell it at exorbitant rates to foreign currency starved-banks and companies.

"Apart from employing sentries, most of us now dress like shoppers in town to evade the police," Angie (the street trader) said. "But it is back-firing because they now know the trick."

If caught, the illegal foreign currency peddlers such as Angie are fined Z\$500 (US\$10) on the spot but could face much stiffer sentences under the Exchange Control Act.

Police in Bulawayo denied that any of their officers could be taking bribes, as alleged by some of the moneychangers, to allow the illegal transactions of foreign currency.

"Any member of the public who has paid anything to the police is free to report,"

said a police spokesman. "It is a crime for a police officer to take a bribe. Those who have done so in the past have been dealt with according to the laws."

Thembi, another dealer along the bustling Fort Street, said some of her colleagues had become instant millionaires because of the flourishing foreign currency exchange market.

"When the rates went mad about three weeks ago, most of the women made millions," she said, barely concealing her smile.

"The business is so lucrative that we don't mind being harassed by the police," said Thembi, one of the energetic women who sprint up and down to every car with foreign number plates driving along Fort Street.

Earlier this week, the dealers were buying the rand for \$55 and selling it for as much as \$70. They bought the Botswana pula for \$85 and sold it for \$110, the British pound was being bought at \$780 and sold for \$1 000 and the American greenback changed hands at \$800 after being bought for just \$590.

"This is good business. Why should the government want to make us poor?," protested Thembi, who said she studied commerce at high school.

"We are not stealing from anyone; we are merely taking advantage of their poor economic policies."

She said most dealers were in business because of large amounts of hard cash that was being sent into the country by Zimbabweans working abroad in countries such as Botswana, the United Kingdom, South Africa and the United States.

"This week, for instance, was a good one for some of us because of public holidays in Botswana," Thembi noted.

Asked how the dealers arrived at a particular exchange rate each day, she explained: "We liaise with some bureaux de changes that we sell the foreign currency to. We also have friends at the banks.

"We work hand in hand with the financial institutions of this country. *The government should understand this and make sound economic policies.*"

The italics were not in the original.

The difficulties confronting law enforcement authorities intent on combating currency speculation are captured in the final four paragraphs of the inset. The dispersal of nationals in the diaspora ensures a steady flow of foreign currency to the streets, and the participation of informants involved in the financial services sector, secures both a source of information on market trends (availability of currency being an important factor determining price) and a market. Currency traders appear to have access to more reliable, up to date information on the state of the economy than state authorities.<sup>10</sup> The italicized words point a finger at government economic policies as the major catalyst of the currency speculation industry.

Cross border traders swell the ranks of the informal currency traders. On account of greater access to foreign currency, as well as exposure to a variety of financial markets, these traders can do better than street currency dealers, through currency interchanges. Until mid-2001, Zimbabwean currency could be traded in the Botswana financial market at a rate of Z\$10 to the pula (BWP). A trader could purchase 3 000 BWP for Z\$30 000 in Botswana. Once that currency was exported to Zimbabwe however, it could be exchanged at a rate of Z\$60 units to the BWP, yielding Z\$180 000, six times its original

nominal value. The trader could repeat the process, by smuggling the Zimbabwean currency to Botswana, and using it to purchase a further amount of BWP. Z\$180 000 could be exchanged for 18 000 BWP. If taken across the border, the Botswana currency could be sold for Z\$1 080 000. The process could be performed in a day. Over a longer period and with repeated transactions, the returns would rival any successful business in the legitimate formal sector.

Street trading in foreign currency at phenomenal rates is replicated in the numerous bureaux de change dotted all over the commercial centers of the country. Bureaux operators are aware of the competition from the streets. In spite of regulations requiring the display of exchange rates and recording of transactions, bureaux trade at flexible rates, which reflect market trends rather than the dictates of government, and rarely prepare transaction records. Government officials are known to have interests in some bureaux de change in Harare, Bulawayo, Victoria Falls and Beitbridge. Unlike street traders, operators of bureaux are not desperate to procure local currency by off-loading foreign currency received onto the market immediately. They are in a better position to 'warehouse' it for speculative purposes, or for outward laundering.

Some bureaux de change facilitate the externalization of foreign currency without smuggling it out. On the pretext of assisting nationals living outside the country to transmit money home,<sup>11</sup> Zimbabweans living abroad are provided with external accounts into which to make deposits in hard currency. The Zimbabweans in turn provide accounts in Zimbabwe into which the local equivalent should be paid. The parallel, bloated rate is used in the transactions. No documents are exchanged, although reconciliation can later be effected. While this deprives the country of much needed foreign currency, it enables the expatriate Zimbabwean community to acquire funds for investment in high return spheres, such as real estate<sup>12</sup> and the stock market.

It is estimated that at least 70% of foreign exchange transactions in Zimbabwe are transacted on the streets or by bureaux de change. It has been observed that *virtually all banks have, at one point or another, violated exchange control law* by selling or buying

foreign currency at an unofficial exchange rate. In 2001, three commercial banks were fined by the Reserve Bank for dealing outside the controlled exchange rates. It is also a matter of record that government corporations like the National Oil Company of Zimbabwe (NOCZIM) and Air Zimbabwe procure foreign currency at the unofficial, parallel exchange rate, thereby breaking the law.

Currency speculation also occurs in Malawi and Kenya on a smaller scale.

### **3.1.4 Commercial crime and fraud**

Apart from being a species of commercial crime, internal money laundering feeds on predicate commercial crimes of all varieties. The greater the incidence of the predicate crimes, the more likely it is that the proceeds for laundering will be generated. Commercial crime in this respect is defined widely to encompass corruption, and fraud includes currency forgery.

While commercial fraud may not be universally prevalent in the region, there is a multitude of indications of the forms it takes. Some of them are well established. They invariably also constitute corruption. Among them is the phenomenon of ‘ghost’ employees, which has tended to take many forms. At the time of writing, a case arising from ‘ghost’ soldiers was pending in Namibia.

#### **Example 3: Claims from ghost soldiers**

Along with Zimbabwean and Angolan counterparts, the Namibia Defence Force (NDF) intervened in support of then President Laurent Kabila in the civil war in the Democratic Republic of Congo. During the conflict the army sustained casualties, in respect of which the Ministry of Defence paid out certain benefits to next of kin. It emerged that some claims were fraudulent. “Ghost soldiers” had been created using false identification particulars lodged in the Ministry of Defence. The claims were made on the basis of the death of the non-existent soldiers in action in the DRC and Angola. The Defence Force paid out several hundred thousand Namibian dollars.

A number of senior officers in the NDF have appeared in court on allegations of fraud.

The Ministry of Health and Social Services has also sustained losses on account of ghost employee claims.

**Example 4: Fraud on the Ministry of Health**

The case involved G H and others. Government employees in the Ministry of Health and Social Services created ghost workers. In order to effect payment to them falsified requisitions were submitted to the Ministry of Finance. With the collusion of some employees in that Ministry, cheque payments were approved. When the cheques were ready, they were either physically collected or posted to post box numbers which had been opened in the names of non-existent and or deceased persons. Some of the post box addresses were in Windhoek while others were at Rundu, some 800 kilometres away.

A bank account had been opened with a modest sum of money at an obscure branch of Bank Windhoek in Katutura Township in Windhoek, using the identification particulars of a deceased person. Records at the bank showed that the teller who opened the account followed all the preliminary procedures, all account-opening questionnaires were completed and a copy of the photograph of the customer taken and retained in the bank. The cheques were subsequently deposited into the account, made out in the name of the customer. Once the cheques were cleared, some of the money was withdrawn through the auto teller machine (ATM) network

G H was arrested because he allegedly attempted to withdraw money from the account. A person resembling G H approached a teller. The teller requested him to wait. When the teller went to the manager's office he disappeared. G H was later identified by reason of his ownership of a vehicle which had been seen parked in front of the bank at the time. He denied making the attempted withdrawal. He was unemployed at the time but owned a number of luxury motor vehicles and immovable property in Katutura Township. As there was little else to implicate him in the case was dropped.

The cheques posted to Rundu were deposited into the account of a person who, according to records held at the Registry office, did exist. A bank employee opened and operated the account using a chequebook and an ATM card. On his arrest he claimed that he was doing so on behalf of an employee at the Ministry of Health. The employee was traced to the department where the ghost workers were created. However, he could not be linked to the ghost workers as the entries had been punched into the computer using a password which was different to his.

Checks made with the Registry office confirmed that an identification document bearing the particulars used at the Ministry of Health and to open the account at Bank Windhoek was indeed issued to the person named before 1990, and that he lived at a village several hundred kilometers from Windhoek. A visit to the village revealed that nobody there had ever heard of such a person.

### **3.1.5 Evasion of tax and duty**

The evasion of tax and of customs duty is a common problem in the region. In Uganda, for instance, tax evasion, with or without the collusion of revenue officials is common. The Uganda Revenue Authority (URA), which is responsible for collecting and managing taxes is reported to be riddled with mismanagement and corruption, compromising its

capacity to combat tax evasion. Officials from its Large Taxpayers Department have been suspended and detained for conniving with crooked exporters to lodge fictitious claims, resulting in losses estimated at US\$ 20 billion (US \$14million) between September 2000 and December 2001. The head of the department is facing fraud charges. A commission of inquiry to probe into its operations headed by Justice Sebutinde is probing the activities within URA. It started public hearings on 22 July 2002.<sup>13</sup>

The commission has exposed a long list of big and powerful tax evaders and bribe payers, including business tycoons. The owner of Genesis, Classics and a chain of companies has been directed to pay a tax bill of US\$4 billion (about US \$2.5m), in respect of taxes evaded between the beginning of 2000 and April 2002.<sup>14</sup> URA has successfully sued two companies for US\$ 400,000 arising from tax evasion.<sup>15</sup>

Fiscal coffers in Malawi, Kenya and South Africa have also been subjected to plunder, resulting in the generation of substantial funds for laundering.

#### **Example 5: Surtax fraud**

Goods which are bought in Malawi for export are not subject to the 20% surtax levied on those consumed locally. Dishonest companies have taken advantage by purchasing some commodities on the pretext that they are for export even though they subsequently sell them locally, with a mark-up which includes surtax. The money meant for surtax is thereafter laundered. The Malawi Revenue Authority is investigating a large company for this practice. The Anti Corruption Bureau, working with the Malawi Police exposed a wholesaler who evaded surtax estimated at over MK80 million (US\$1,052,631.00) in a 12-month period. The wholesaler allegedly bought sugar meant for export, repacked it in 1 Kilogram packs and sold it locally, evading the surtax due. Forged Malawi Revenue Authority documents seized purported to show that the sugar was exported to countries outside Malawi. At the time of writing the wholesaler was on trial.



Kenya has long been afflicted by corruption in many forms, resulting in monumental losses of public resources. In the period 1990-95 the Government lost a total of KShs. 127 billion (US\$1.693 billion) through corruption. In the 1996-97 financial year alone, the loss amounted to over KShs. 12 billion (US\$160 million) through fraudulent payments. These figures represent the loss of one in every six shillings allocated by Parliament. Kenya has experienced one corruption scandal after another, but the biggest is probably the Goldenberg scandal, which hit the headlines in the 90s, but has yet to be buried.

### **Example 6**

#### **The Goldenberg Scandal**

What came to be known as the Goldenberg scandal comprised a series of financial scams, involving collusion between a young Nairobi entrepreneur and high-ranking state officials. The scams are believed to have cost the state an estimated US\$500 million. The actors in the scandal included a state vice-president, a Governor of the Central Bank of Kenya, the Commissioner of Geology and Mines, a Permanent Secretary, the head of national security intelligence and the young entrepreneur, P who appeared to be the mastermind of the multiplicity of schemes. In 1990, the government accepted a proposal from P to export gold and diamonds from Kenya. The entrepreneur also requested authority to set up a commercial bank to handle the trade transactions. The government agreed to pay P 35% of the value of his exports, as compensation. (At the time there was an export incentive in terms of which government subsidized emerging exporters to the extent of 20% of the value of exports) It initially rejected the proposal to establish a bank. Kenya has no known deposits of diamonds which could be the subject of export trade.

In 1990 P incorporated Goldenberg International Limited, to handle the exports, with himself and JK, the head of national security intelligence head. From 1991 P started sending invoices to the government for the subsidy as agreed. P's bankers,

the First American Bank, produced records as evidence of export receipts. There were discrepancies between some of the receipts and the invoices, but with the intervention of the Governor of the Central Bank, P's claims were paid.

As time went on, P's claims were supported by evidence of payment in a cocktail of foreign currencies (dollars, sterling, deutsche marks and francs). Government paid all. It was later to emerge that P was buying the assortment of foreign currencies in the local market and, with the collusion of his bankers, representing them as foreign exchange earnings from the sale of gold and diamonds. Goldenberg's exports were over-priced. In June 1992, the government granted P's request to start his own commercial bank. He incorporated the Exchange Bank, with himself and JK as directors. He started using the bank in dealings with the Central Bank of Kenya.

When questions were raised about where the gold was being exported to, P named two consignees, both Zurich-based, Servino Securities and Solitaire. Inquiries revealed that these firms did not exist. P then claimed that exports, worth KShs. 13 billion (about US\$ 400 million), had been made to a company called World Duty Free based in Dubai. The company denied doing business with Goldenberg. Despite indications that money was being paid for non-existent exports, P's claims continued to be settled.

P also took advantage of the export retention scheme introduced in 1992. The scheme allowed exporters to retain a portion of their foreign exchange earnings (50%) in special accounts. This would be available to them conveniently in subsequent transactions that needed foreign exchange.

Goldenberg claimed to be an exporter. It received preferential treatment. Whereas other exporters of raw materials, such as coffee and tea were allowed to retain only 50% of their earnings, Goldenberg could retain its full "earnings". It is believed that Goldenberg amassed US\$ 75 million under the cover of this scheme. This

money was put away in Exchange Bank, and laundered through various projects.

*Laundering the Proceeds of Goldenberg*

During the early 1990s, P built a grand hotel in Nairobi, the Grand Regency, reported to be the best hotel in Kenya. The movables within the hotel are valued at KShs. 2 billion (US\$26.67 million) and the whole investment is worth about KShs. 10 billion. (US\$133.33 million) P himself likened the hotel to the Taj Mahal. Uhuru Highway Development Limited, another of P's companies, owns the hotel.

The Exchange Bank, through which a vast number of Goldenberg's transactions were processed, went into voluntary liquidation, just before the Central Bank of Kenya commenced proceedings to recover a KShs 13 billion loan. In 1995, allowed the bank to sell the hotel to recover the KShs. 13 billion. To date the hotel has not been sold.

There is evidence that P engaged in outward laundering of cash out of Kenya using the

Exchange Bank. P is believed to have acted for both himself and others, some of whom were in positions of authority.

Some of the money externalized through Goldenberg, is returning in the form of 'foreign' investment in equities in new ventures opening up in Kenya. For the last seven years, P has been facing a charge of theft of a part of Goldenberg money. He is jointly charged with the former Permanent Secretary. The case has not made much progress, and not many people believe that it will ever be finalized.

In South Africa fraudulent claims for the refund of value added tax (VAT) in respect of fictitious exports have long been a source of funds for laundering. Typical schemes

involve companies that may be engaged in the legitimate export of goods or services. The company could use a real or shell company in a foreign jurisdiction to create the false impression that goods have been exported, and payment received. The export price includes VAT, (currently pegged at 14%) which is subsequently claimed back from the South Africa Revenue Service. Invoices, delivery notes and export documentation may even support the false claim. Within a relatively short space of time, large sums of money can be generated virtually from nothing. This kind of fraud (involving what SARS officials describe as ‘ghost exports’) is usually quite difficult to detect, without infiltrating one of the companies involved or securing the co-operation of law enforcement in the foreign jurisdiction. It underscores the importance of vigilance and international co-operation in combating money laundering.

### **3.2 Incoming money laundering**

There are many reasons why criminals consider it prudent to move the proceeds of economic crime across territorial borders. The desire to complicate the investigation trail is only one of them. Another factor might be the existence of better investment opportunities, or weaker law enforcement, in the destination jurisdiction. Competition for investment, and the demands for foreign currency renders many countries in the region vulnerable to the infusion of tainted funds from abroad.

In Malawi, bureaux de change accept casual foreign currency cash transactions without any due diligence inquiries. The same applies to Zambia. In 2001, the Reserve Bank of Zimbabwe directed banks to accept foreign currency deposits without querying their source(s). The importation of foreign currency ostensibly for investment tends to be encouraged by open door policies promoted by state investment agencies. In some countries, a prospective investor with foreign funds above a certain threshold can qualify for permanent residence.<sup>16</sup> Law enforcement agencies occasionally find such an attitude exasperating. A police delegation from Tanzania to a regional conference pointed out that the police encounter much difficulty in distinguishing between genuine and bogus investors. The delegation also lamented:<sup>17</sup>

‘Being a poor country which welcomes investments from all over the world, sometimes it is felt that if you start inquiries against the so-called investors you risk the possibility of chasing them away with their much wanted investments. As a result we are always in (a) dilemma not knowing the right course of action to take.’ (sic)

The region is littered with examples of investments by shady characters. The nature and duration of such investments seems to depend on factors like the links between the launderer and the country, his or her perceptions about its political and economic stability, his or her estimation of the risk of detection, and the potential returns. Hence, where the launderer enjoys citizenship of both the country where the predicate crime was committed and the destination of the proceeds, and that destination has a stable economic environment, funds are likely to be transferred between the two countries.

#### **Example 7: The Widdowson funds**

Although Widdowson was born in England, he had dual English and South African citizenship. During the period 1991 to 1997, Widdowson spent time working for a company, Regent Security Services, in England. He returned to South Africa in 1997, but continued to render services to the company on an intermittent basis.

The company discovered that between May 1995 and April 1999, £667 480.09 (US\$1 001 220) was stolen from the company’s bank account, and transferred to Widdowson’s three bank accounts in England. There were subsequent transfers to a bank account in South Africa. Widdowson then left England and returned to South Africa. At no stage did he try to earn other income from employment in South Africa. He did, however, make various investments in South Africa, in both movable and immovable property.

Following the discovery of the theft, a successful application was made for the seizure and forfeiture of Widdowson’s assets.

### **3.2.1 Drug trafficking proceeds**

#### **3.2.1.1 Intra-regional trade**

The evidence from Malawi is that some drug dealers pass off as curio-exporting businessmen conducting business in the South African market. They purport to convey curios to South Africa, but in reality mingle them with drugs for sale. In similar fashion, proceeds from curio sales are combined with the proceeds of drug trafficking. These illicit businessmen not only buy cars and furniture but sometimes physically bring back to Malawi foreign cash and exchange it for Malawi kwacha. In Malawi the money is used according to the preferences of the launderer. Much of it is spent on consumer goods, as most transactions in Malawi are conducted in cash.

According to Namibian police intelligence reports, South African and Zimbabwean truckers smuggle dagga sourced from Swaziland, Lesotho and as far north as Malawi, into Namibia. For this purpose, the dagga from Swaziland and Lesotho is packed in South Africa before export to Namibia. Namibian permanent residents of South African origin have been found to be at the center of the distribution and marketing chain. Once the dagga has been sold, and the persons who provide the warehouses and salesmen have been paid, the proceeds are taken out of Namibia in cash. The South African currency is interchangeable with the Namibian dollar with no loss of value, and the proceeds can therefore be exported as rands.

The dagga from Malawi is smuggled by truck drivers through Zambia, Zimbabwe and South Africa and into Namibia. Some of the dagga originates from South Africa itself. Dagga the most popular drug for consumers in Namibia, being generally consumed in the lower echelons of Namibian society.

#### **3.2.1.2 International trade**

It was pointed out earlier that the more lucrative part of the drug industry generally, including the dagga trade, lies outside the region. Drug smuggling from southern Africa is a multi-million dollar business, exposed from time to time through high profile police successes in countries such as the United Kingdom. In one operation in July 2002,

Lancashire Constabulary discovered a consignment of 3 tonnes of dagga with an estimated street value of £6 million (US\$9 million) at a warehouse in Chorley. The dagga was vacuum packed in one-kilogram blocks and concealed in wooden crates. The dagga appeared to have been imported from South Africa.

### **3.2.2 Stolen motor vehicles, cheques and illicit diamonds**

There is a thriving trade between Namibia and South Africa, which involves the movement of stolen motor vehicles from South Africa to Namibia, and the payment of the suppliers with funds stolen from Namibia. The vehicles are sold in Namibia, and payment is made to the criminals in South Africa through transfers of funds from bank accounts of Namibian third parties. The Government of Namibia has been a major victim. A common *modus operandi* involves the theft of specimen signatures of authorized signatories to Government accounts and the forging of letters instructing a banking institution to effect transfer of funds to an account in South Africa. The funds are thereafter withdrawn without trace, partly because the operators of the account in South Africa will have used forged identity documents to open and operate the account.

Some fraudulent transactions may go undetected even by the Government authorities. In terms of such schemes the criminals in Namibia receive the motor vehicles without paying a cent while their South African counterparts receive payment for the stolen motor vehicles.

Motor vehicles stolen in Botswana, South Africa and Namibia itself have been smuggled to Angola through the Oshikango border post. Particular types include sports cars, luxury 4 x 4 station wagons, whether single or double cabin. In roughly equal proportion, the stolen motor vehicles are exchanged for diamonds or paid for in hard currency, usually US dollars. The purchase price is repatriated to the source country. Angolans are generally more liquid in US dollars than neighbouring nationalities. In Angola, the long enduring civil war and associated economic and financial instability, has precipitated a calamitous lack of confidence in the Angolan monetary and banking system. Individuals and corporate entities generally do not convert their funds into the local currency. Neither

do they entrust their liquid assets to the banking system. Only large companies and the government make use of the banking system for their transactions. Medium and small companies open bank accounts only to comply with one of the provisions of the governing legislation. Most will maintain their monetary wealth in hard cash, with large volumes of cash circulating in the economy completely outside the banking system. Business transactions, such as the purchase of real estate or cars, are carried out in once-off cash payments, in United States Dollars. It is probably unfortunate that Angola is outside the ESSAMLG.

### **3.2.3 Second-hand luxury motor vehicles from Japan**

For many years, motor vehicles reportedly stolen from Japan have been traced to east and southern Africa. Since September 2000, the Motor Vehicle Theft Unit of the Namibian Police has been aware that some second-hand luxury 4 x 4 motor vehicles stolen in Japan have been imported into Namibia for sale to affluent individuals.

### **3.3 Outgoing money laundering**

The transfer of money from the jurisdiction in which the predicate crime is committed is the other side of the coin of inward laundering, Outward laundering is not always motivated by an intention to invest in the destination jurisdiction. It can involve a number of transient jurisdictions, if only to obscure the laundering trail. The initial decision the launderer will make is whether or not to involve the financial services network.

The most basic mode of transferring proceeds of crime, circumventing the financial services network, is to carry it out of the country. Movement of cash in bulk is common within and across the region. Reports from South Africa, Kenya and Tanzania provide ample illustrations of the movement of assets in the form of bulk cash within and across borders.<sup>18</sup> They also demonstrate the use of convertible assets as a mode of international laundering of funds.

A more insidious form of outward laundering, which partly sidesteps the banking system, involves a combination of tax fraud, currency speculation and resort to alternative



remittance systems. It has been detected in the region, although its incidence has not been established. It is used in order to facilitate the externalization of capital, for instance from the disposal of immovable property. Examples from South Africa and Zimbabwe abound. In Zimbabwe it has been precipitated by a combination of three factors, first the calamitous decline in the value of the currency, secondly the evaporation of investor confidence, and thirdly the re-location of nationals in better performing economies of the world. Its most common manifestation is the conduct of major sale transactions of real estate in foreign currency. Transactions usually involve speculators on both sides, and often both the seller and buyer are nationals. A house with an asking price of Z\$20 million, for instance, can be acquired for a South African equivalent (at the non-official/parallel market rate of Z\$50 to the rand) price of just over R400 000. If the purchaser can afford to pay in US dollars, the price converts (at the rate of Z\$650 to a US\$) to US\$30 769. The transaction does not entail any transnational currency remission, and for that reason is attractive and relatively safe for the parties involved.

A survey of estate agents in Harare, Zimbabwe, in June 2002 revealed that several preferred to receive payment for residential property sales in foreign currency. In all cases, payment offshore was also preferred. Only one regional country featured among the reported destinations of funds thus externalized, South Africa. Others are the United States, United Kingdom, and Canada. At the time of writing there was no reported detection of any transaction of this nature. It appeared however, that in the destination countries, the foreign currency payments were made through the banking system. In Kenya, it was reported in July 2002 that a presidential aide had acquired immovable property valued at US\$6 million in London. Tanzania provides illustrations of the abuse of the ubiquitous bureaux de change to externalize currency.

**Example 8 : Externalizing currency through bureaux de change**

In Tanzania the travel allowance system, in terms of which travelers are entitled to purchase hard currency up to US\$10,000, is open to abuse. Many travelers cannot afford to purchase that much. Syndicates and couriers prey on them, by offering them a commission of one or two hundred dollars for applying for the maximum allowance, which is then laundered.

Indian, Pakistan and Arab trading communities in Tanzania, have long established linkages with groups in Dubai and other Gulf States some of which have criminal inclinations. Dubai was the main centre through which most Tanzanians used to launder money. Since the September 11<sup>th</sup> terrorist attacks in New York, however, there has been a shift to centers in India, Jakarta, and Hong Kong, which are believed to raise less suspicion.

In southern Africa, Malawi is a favoured transit country of most launderers from Tanzania, as it is perceived to have a banking system that is easy to use in sending foreign currency to any part of the world. Foreign currency, preferably US. Dollars is transported from Tanzania to carry. The amount involved is not yet determined but since leading Bureaux de Change are involved, it could be in hundreds of thousands or millions of U.S. dollars.

In a few instances, laundering has occurred in more crude forms, such as absconding with receipts from foreign currency transactions. Instead of depositing proceeds from daily or weekly transactions with the Central Bank, in 1999, the owner of Expresso Bureau de change disappearing with them, millions of U.S. dollars as it turned out.

In addition, some industrialists in Tanzania have been shown to have siphoned off capital abroad, declared their industry insolvent and then sold them to foreign

proprietors, who paid them through foreign banks. Tanzania receives no taxes in consequence.

It is not always practical or prudent to completely outflank the banking system in an outward laundering scheme. Some funds are inevitably transferred through intermediaries in the financial services. A proportion of financial services intermediaries may facilitate transfer of illicit funds unwittingly, but some will do so knowingly, even as principal beneficiaries. Instances of institutions which were found to bear corporate responsibility for outward laundering include the BCCI case which exploded in 1991 and the European Union Bank of Antigua case (1997). In between them, and within the region, were cases involving the Meridian Biao Bank, whose collapse in the early 90s impacted on both Zambia and Tanzania, and the United Merchant Bank, which had a short but disastrous existence.

### **Example 9**

#### **The United Merchant Bank saga**

The United Merchant Bank (the bank) was incorporated in May 1995. In less than three years the bank's license was revoked after it became known that the bank had a low capital ratio and inadequate liquidity to meet the claims of depositors and other liabilities. Police investigations subsequently revealed that many illegal activities had been committed.

##### *1. Fraud: Cold Storage Commission Bills*

Following its commercialization (a prelude to privatization), the Cold Storage Commission (the Commission) contracted the bank to raise funds on its behalf on the local money market. This was to be done through the floatation of Commission bills. The Commission required Z\$413 million (US\$7.5 million).

Government issued guarantees to the value of Z\$855.16 million (US\$15.55 million) as security during the floatation of the bills. The bank raised the amount required by the Commission and remitted it. Thereafter the bank sold further bills worth Z\$1.263 billion (US\$22.96 million) on the local money market, and converted the entire amount to its own use. The founder and Chief Executive of the bank, Roger Boka was found to have been at the centre of the illicit activities, with the assistance of five others. Boka died on 21 February 1999 before he could stand trial. Up to the time of writing it was not clear how much of the converted money had been recovered.

### *2. Conversion of Depositors' Funds*

Various persons and institutions deposited funds with the bank. Upon cancellation of the bank's licence, the bank owed just over Z\$1.558 billion (US\$ 28.32 million) to depositors, which it was not in a position to repay. Some bank documents and computers could not be found. Money laundering charges were laid against Boka and his accomplices in terms of the Serious Offences (Confiscation of Proceeds) Act, but he died before standing trial. The investigation was transferred from the police to a special investigator appointed by the Minister of Justice, in terms of the Prevention of Corruption Act. The investigation does not seem to have moved much since. The then Minister of Justice was a known friend of Roger Boka and an acknowledged debtor of the United Merchant Bank.

### *3. Externalization of funds - Money laundering*

In the short life of the bank, Roger Boka opened and operated several personal accounts at foreign banks in Botswana, South Africa, the United Kingdom, the United States of America, Germany, Luxembourg and France, as follows:

Botswana - First National Bank

South Africa - Nedbank, Amalgamated Banks of South Africa (ABSA), First National Bank

United Kingdom - Midland Bank plc, National Westminster Bank plc

United States - Marine Midland Bank (New York), Merrill Lynch Bank (New

York).

Germany - West Deutsche Landesbank

Luxembourg - Hypo Bank

France - Bank Societe General

Acting personally and sometimes through his lawyer, GS, Boka externalized at least US\$21 million. S, who was the senior partner in a law firm in Harare, was a director on the board of the bank and a signatory to the bank's account at the Zimbabwe Banking Corporation. The firm acted as corporate secretaries for the bank and as legal advisors to both the bank and the Boka Group of Companies. The main business specialties of the group were tobacco and gold marketing. S disappeared from Zimbabwe shortly after the death of Roger Boka, by which time he had already been charged with violating the Prevention of Corruption Act and the Companies Act. It was later discovered that S also operated a foreign bank account in England. None of the foreign funds appear to have been repatriated.

The Drug Enforcement Commission in Zambia's exploits reveal the use by drug traffickers of bank accounts opened with fictitious identity documents to facilitate outward laundering. *The People v De Souza and others* (unreported) (CCR. SSP/8/2001) revolves around the opening of several bank accounts using a false name, between 1 January 1999 and 28 February 2001. The prosecution alleged that, acting in concert, the accused opened several bank accounts in Kitwe and Ndola on the Copperbelt, using fraudulently obtained documentation. Using these accounts, the accused externalized a total of US\$1 158 533.2 to the United States of America and Taiwan.

#### **4. ESAAMLG region as a destination of laundered funds**

In so far as the discussion above shows that laundered funds have tended to flow in certain directions, it raises two issues, firstly, what determines the attraction of a country to such funds, and secondly, does the region attract laundered funds?

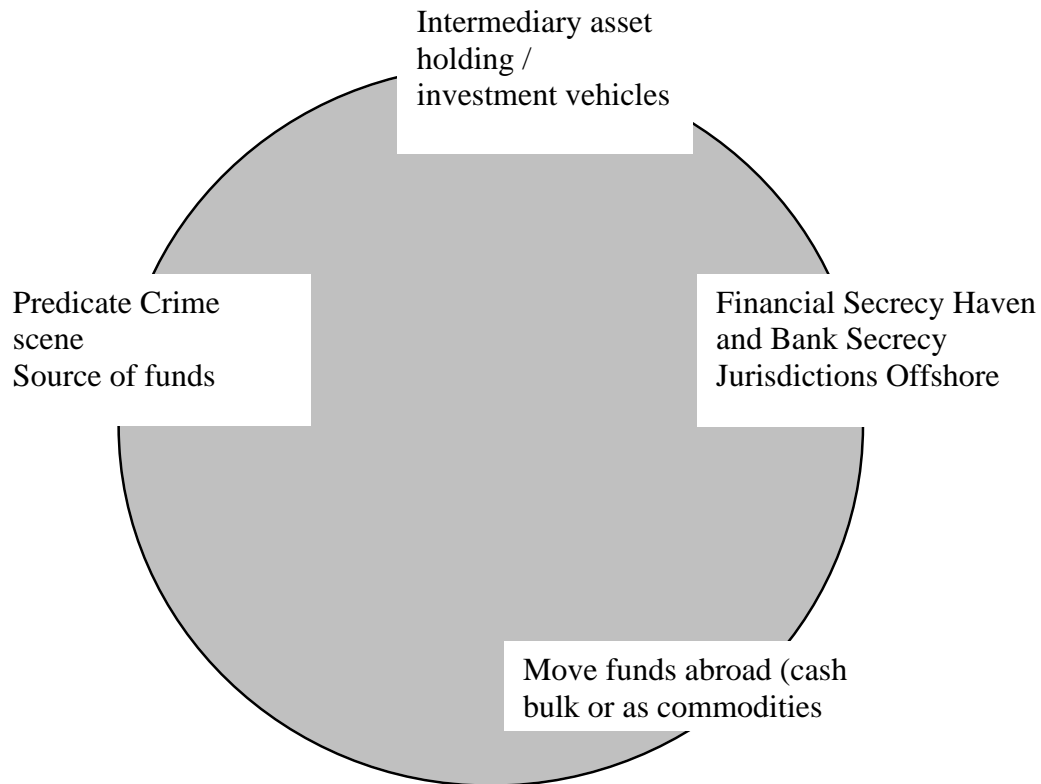
In a study prepared by Blum, Levi, Naylor and Williams, offshore financial systems were identified to be amenable to manipulation by money launderers.<sup>19</sup> Various components were found to be both characteristic and predisposing. The authors highlighted many factors, nine of which seem to be of particular importance. They are not necessarily listed in order of precedence:

- An environment in which banking institutions can easily be established, with minimal due diligence investigations and where there is a preoccupation with basic capitalization requirements
- Availability of instruments and mechanisms to facilitate anonymous conduct of investment business, while allowing the creator to retain a beneficial interest – examples are trusts, bearer shares and international business corporations
- Prevalence of bank-like institutions, with the capacity to transfer funds rapidly, such as brokerages and bureaux de change
- Banking secrecy laws, or laws that create formidable impediments to the discovery of beneficial holders of bank accounts
- Availability of mobile or walking accounts – being accounts opened on the understanding that any funds above a certain amount credited to the account should be immediately transferred to another location. Funds can be transferred thereafter to one or more other accounts.
- Proliferation of loosely regulated casinos
- Availability of free trade zones
- Facilitation by intermediaries in establishing corporate entities, opening accounts, dishonestly or without any kind of due diligence
- Permissibility of shell companies

To these factors can be added a tenth, namely the existence of correspondent banking relationships linking banks in the source or intermediate countries with those in destination countries. The outward laundering trends can be graphically presented in the form of a circle, as shown in Figure 1 below.

**Figure 1**

**Outgoing and incoming money laundering circle**



No single member state of the ESAAMLG possesses all of the characteristics outlined. The region however includes countries in which some of these characteristics are prominent.

Viable markets in which to trade in securities are well established across the region, particularly in Kenya, Zimbabwe, Swaziland, South Africa, Botswana, and Mauritius. In a few of these countries, the law permits investors to deal in bearer securities and other negotiable instruments, including derivatives.<sup>20</sup> International trends show that these instruments can be abused in the setting up of laundering schemes. The involvement of shrewd intermediaries only increases the scope for such abuse. Lawyers have been used in outward laundering, as the Boka case shows.

There are indications that stockbrokers may be used as a conduit for money laundering. Shares can be issued in the names of nominees, to disguise beneficiaries. This disguises launderers engaged in criminal activities.<sup>21</sup>

On account of their fungibility, securities in entities with dual or multiple listings, such as Old Mutual, can be used to move currency between countries. Individuals and companies can purchase shares on the London stock exchange and trade them on one or more of the regional stock exchanges, and vice versa. At the time of writing at least one commercial bank was under investigation by the Reserve Bank of Zimbabwe for having transferred Old Mutual shares to the London and Johannesburg stock exchanges without authorization. The Reserve bank claimed that the transfer resulted in prejudice of £1,4 million and SAR9 million. In addition to the securities market, the region boasts a relatively unregulated casino industry, and an evident proliferation of bureaux de change.

Within the region, Mauritius and the Seychelles, which have been classified by many experts as financial ‘tax’ havens, have generally been regarded as particularly vulnerable. The Seychelles had virtually singled itself out as a prospective laundering haven by its decision in the mid 90s, to offer citizenship to any investor with at least US\$10 million, regardless of the source. The offer, which had been enshrined in legislation was rescinded following international objections. Mauritius’ potential weakness stems from its off shore financial regime, which permits corporate institutions with no physical presence within Mauritius to open and operate bank accounts. The primary rationale for the practice is to take advantage of the lower rate of taxation available in Mauritius in comparison to neighbouring jurisdictions. In 2001, Botswana took measures to expand its commercial sector by permitting the registration of international financial services companies (IFSCs). The structure and envisaged functions of IFSCs companies indicates that they would effectively operate as an off shore investment sector. As such, the sector will benefit from a taxation rate of 15%, which is 10% lower than the average corporate rate.



An analysis of the off shore financial system in the region indicates that one of its attractions is the level of confidentiality that it offers, as to the identity of shareholders of corporate entities operating in it. Although director and shareholders' names are filed with the government registry in Mauritius, the register is not accessible to the public. It has been said that Mauritius is committed to maintain its status as a premier offshore financial center, and has therefore tightened up on due diligence investigations in respect of off shore corporate entities and the regulation of financial services intermediaries. Mauritius is among the few ESAAMLG member states to ratify the Palermo Convention, which has a strong emphasis on money laundering control. Offshore financial centers will always be susceptible to incoming money laundering, and it is incumbent upon their regulatory authorities and accountable institutions within them, to be familiar with the laws of the jurisdictions from which incoming investment funds are derived, and prevailing outflowing money laundering trends. It is not sufficient to put up structures and mechanisms just to contain internal money laundering.

## **5. Terrorist funding**

The transferability of equities also creates a possible avenue for laundering funds to finance terrorist activities. No transfers for this purpose were detected in the study. The scope for laundering of funds to advance terrorism deserves some examination.

Experts have identified two primary sources of terrorist funding. According to the FATF, the first method involves state sponsorship or funding by large organisations or wealthy individuals. State sponsored terrorism is believed to be in decline.<sup>22</sup> It appears to have been superseded by individual or corporate funding. The second method involves the mobilisation of funds from a multitude of revenue-generating activities, some of which may be lawful. Among the lawful sources identified are:

- The collection of membership dues and/or subscriptions;
- The sale of publications
- Cultural and social events
- Door to door solicitations within the community
- Appeals to wealthy members of the community
- (regular or irregular) donations of part of personal earnings.

Unlawful activities to raise funds for terrorism identified in FATF countries include kidnapping and extortion, racketeering, smuggling operations, fraud, counterfeiting currency trafficking,<sup>23</sup> and drug trafficking. Even robbery has been associated with terrorist fund raising.

While there are terrorist outfits operating in parts of the region, notably in East Africa, the study to date has not been able to trace terrorist groups to particular sources or methods of funding. Indications are that if such funding is occurring, it is likely to be associated with unlawful rather than lawful activities.

## **Conclusion**

There is consensus that laundering on a significant scale is occurring in the region. The statistics often cited are based on the results of the Australian developed Walker model. According to the model, a total of US \$22 billion was laundered through the financial systems of southern Africa in 1998. US\$15 billion of it was generated within the region. It was estimated that US\$7 billion was infused from outside the region, with East Asia accounting for US\$1 billion, North America for US \$5 billion and Europe US\$1 billion. A recent estimate stated that in the last six years, money laundering had cost Zimbabwe Z\$55 billion (US\$1 billion).<sup>24</sup> Although the estimate was not substantiated, the underlying predicate crimes were identified as fraud, theft, corruption, illicit dealings in precious metals, and currency speculation.

A study conducted by international forensic auditors' firm PriceWaterhouse Coopers early in 2002 found that, in terms of susceptibility to money laundering, 50% of ESAAMLG countries are regarded as high risk, 35.7% fall into the medium risk category, and only 14.3% are regarded as low risk jurisdictions.<sup>25</sup>

## Endnotes

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<sup>1</sup> Although all the named countries have declared their support for the aspirations and objectives of the ESAAMLG, not all of them are official members. At the time of writing, only two thirds had signed the memorandum of understanding, an essential step in the acquisition of membership. These were Kenya, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania and Uganda.

<sup>2</sup> The first attempt at a universal definition and proscription of money laundering was the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (the Vienna Convention). It confined the launderable assets to proceeds of drug trafficking.

<sup>3</sup> The classic illustration being the transformation of commodities from illegal to legal circuits, exemplified by the insurance of a stolen motor vehicle, which is subsequently destroyed by the insured, who claims its replacement value.

<sup>4</sup> Smit

<sup>5</sup> Ted Leggett, 'Perspectives on Supply: The Drug Trade in Johannesburg, Durban and Cape Town' in Ted Leggett (editor) *Drugs and Crime in South Africa: A Study in Three Cities* ISS Monograph Series (2002) number 69

<sup>6</sup> Over a period of two years.

<sup>7</sup> See Louis de Koker, *Money Laundering Trends in South Africa* (2002) CenSec p.19

<sup>8</sup> This was the basis of the allegation in the Zambian High Court case of *The People v De Souza and others* CCR SSP/8/01 (unreported at the time of writing)

<sup>9</sup> African Security Review Volume 8 (1999) number 6

<sup>10</sup> Zimbabwe's Minister of Finance is quoted to have described Fort Street in Bulawayo as the World Bank of the country.

<sup>11</sup> See *Financial Gazette*, 11-17 April 2002

<sup>12</sup> The rapid upward movement in the price of residential premises has in large part been attributed to citizens outside the country who illegally change their money on the parallel market in order to boost returns. It is common for such premises to appreciate by as much as ten times in a period of a few years. A 4 roomed garden flat bought for Z\$750 000 in 1998 was sold in 2002 for Z\$7 million!

<sup>13</sup> *The Sunday Monitor* newspaper, July 21, 2002 quoting Maureen Owor, lead counsel to the commission.

<sup>14</sup> The directive was set out in a letter from URA to Genesis, dated July 10 2002.

<sup>15</sup> *Sunday Monitor*, July 21 2002.

<sup>16</sup> The *Comprehensive Investment Guide to Zimbabwe* promises that an investor who invests not less than US\$1 million in a project approved by the Zimbabwe Investment Centre will qualify for permanent residence on application. An investor who invests at

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least US\$300 000 qualifies for a residence permit of 3 years, as do professional/technical persons investing US\$100 000 in their respective field, or in a joint venture with a permanent resident. In South Africa, an applicant for permanent residence who can invest at least R1.5 million (US\$150 000), which includes a deposit in a bank or a residential property maintained for 3 years, will be regarded favourably.

<sup>17</sup> 'Current Situation and Counter Measures Against Money laundering: Tanzania's Experience' a paper presented by the Tanzania delegation to the 1<sup>st</sup> Southern Africa Regional Conference on Money Laundering, Johannesburg, 26-28 February 2002

<sup>18</sup> The South Africa study by the Centre for the Study of Economic Crime noted:

'Evidence has been found that substantial amounts are transferred physically to and from destinations in South Africa, whether by the criminals themselves or by third parties who act as couriers. Cash can be transferred physically in many ways, but during the workshop specific examples were cited where cash was strapped to bodies of passengers in motor vehicles and aircraft or hidden in their luggage.<sup>18</sup> Similar methods are used to convey cash across the borders of South Africa. While it is legitimate to convey cash physically within South African borders, substantial cash amounts can only be transferred across South Africa's borders legally if the exchange control requirements have been met.'

See L de Koker *Money Laundering in South Africa* (2002) CenSec p. 18

<sup>19</sup> J A Blum, Profs. M Levi, R T Naylor and P Williams 'Financial Havens, Banking Secrecy and Money Laundering a study commissioned by the United Nations Office for Drug Control and Crime Prevention (1998) accessible at

<https://www.imolin.org/finhaeng.htm>

<sup>20</sup> South Africa, Kenya, Mauritius and Zimbabwe

<sup>21</sup> *Motsi v Attorney General & ORS* 1995 ZLR 278 (H). In this case, nominee companies were used to conceal the proceeds of criminal activities that were perpetrated by a company chief executive and his accomplices.

<sup>22</sup> See FATF Report on Money Laundering Typologies 2001 – 2002 (February 2002) pp. 2-7

<sup>23</sup> The *Cape Argus* newspaper (July 22, 2002) reported that US customs agents had arrested a Jordanian-born man in possession of US\$12 million in false bank cheques, that he was attempting to smuggle into the country from Indonesia, a country suspected to have provided refuge to al-Qaeda and Taliban fighters who escaped from Afghanistan.

<sup>24</sup> The *Herald* newspaper (July 6, 2002) quoting the government aligned National Economic Consultative Forum.

<sup>25</sup> The high-risk countries are Kenya, Malawi, Seychelles, Tanzania, Uganda, Zambia and Zimbabwe. Medium risk countries are Botswana, Lesotho, Mauritius, Mozambique and South Africa. Only Namibia and Swaziland are regarded as low risk countries.