

# Money laundering in Southern Africa Incidence, magnitude and prospects for its control

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## INTRODUCTION<sup>1</sup>

On 17 June 2004, South Africa's Finance Minister, Trevor Manuel, announced a reprieve for financial institutions. Apparently acting on the advice of the money laundering regulatory structures, he postponed the deadline for the verification of the identity and other personal particulars of existing clients by more than three years, from 30 June 2004 to 30 September 2006. In the somewhat muted public debate that occurred shortly afterwards, it emerged that there is much doubt about whether the rationale for current initiatives against money laundering is understood and whether the chosen approach is supported by the public. The period leading up to the Minister's announcement exposed a certain amount of scepticism about the utility of the much talked-about obligation to 'know your customer'. Some analysts attributed these misgivings to the cost, the persistence of a dual economy, the low usage of formal financial services and the high levels of customer irritation expected.

This paper does not seek to highlight or explain the perceptions of the financial sector or those of any other organisation concerned with combating money laundering; it rather explores some of the key issues at the heart of contemporary concerns about money laundering and considers them as they relate to Southern Africa. In particular, the paper discusses:

- current trends of money laundering activity in the region;
- measures to combat money laundering and the impact expected of them in the light of the challenge; and
- the medium-term prognosis for money laundering in the region (will we become a 'shining example', or will we be further down the pit?).

It concludes with a précis of factors that are key to the development of a regional strategy to combat money laundering comprehensively.

## MONEY LAUNDERING IN SOUTHERN AFRICA: THE ISSUES

### The concept

Since it was coined to describe the notoriously sneaky activities of the entrepreneur criminal syndicates that mushroomed in the early part of the twentieth century in the United States (US), the term 'money laundering'

Money laundering involves converting money from illicit transactions into legitimate assets, thereby concealing the predicate transaction.

has established itself in criminal justice systems all over the world. It is therefore often assumed that there is consensus over its definition and the meaning of concepts such as 'dirty money,' 'illicit transaction' and 'legitimate assets'. The primary objective of the laundering process, it is often asserted, is to convert money derived from an illicit transaction, which is therefore 'dirty,' into some other legitimate asset, thereby concealing the predicate transaction.<sup>2</sup> International law has therefore urged governments to criminalise the money conversion (laundering) process. Countries are required to penalise the laundering of funds derived from activities that happen within their territory, as well as funds originating from beyond their borders. In addition, attention should be paid to proceeds generated by local crime and transmitted

to foreign countries. In fact, several grey areas continue to afflict the criminalisation of money laundering around the world. Uncertainty is centered around the lack of uniformity on what predicate transactions are illicit, with the exception of activities recognised by international criminal law, such as drug trafficking. Controversy about whether the basic transaction from which money was derived was unlawful or criminal stifles the transnational enforcement of criminal law.

It is easier to describe money laundering than to define it. Money laundering comprises:

all activities to disguise or conceal the nature or source of, or entitlement to money or property that has been acquired from serious economic crime.<sup>3</sup>

Through legislation, some countries have extended money laundering to include the fruits of activities besides serious crime. Others have decided to designate a list of activities and confine the definition to proceeds of those activities.

Following the well-publicised atrocities in New York on 11 September 2001, there is growing pressure from Western countries to expand the concept of money laundering to include dealings in *money or property that is intended to be used in committing terrorism, or to facilitate the commission of terrorism*. If successful, this will shift the focus to the intended use of resources whose source may be legal.

Increased efforts to combat money laundering recognise the link between money laundering and serious crime. Successful money laundering activities not only enrich criminals but also assist in funding more serious criminal activity. Money laundering is said to be closely linked to economic crimes, such as fraud, bribery, corruption, exchange control violations and tax evasion and even to international terrorism. As an activity located within the economic environment, money laundering often has to use mechanisms that are intended to serve the lawful economy. It may therefore be classified as economic activity.

## The extent of criminalisation

It is fair to say that there is a common aversion to money laundering in Southern Africa. At least 12 of the 14 member states of the Southern African Development Community (SADC) have committed themselves, through the Eastern and Southern Africa Anti-Money Laundering Group of countries (ESAAMLG), to take effective measures against money laundering. The two exceptions are Angola and the Democratic Republic of the Congo (DRC). Controversy persists, however, on the range of predicate activities for money laundering. Part of the reason is that, while there may be agreement regarding nomination of predicate offences, no regional criminal law exists. As is the case at the global level, the rate of development of common criminal law is generally slow. Progress has been relatively rapid in respect of drug trafficking but lethargic regarding corruption, economic crime and terrorism. Instruments such as the SADC Protocol Against Corruption have been brought into existence in order to precipitate a convergence of the criminal law against corruption, but the level of domestication is uneven.

The United Nations Convention Against Transnational Organized Crime (the Palermo Convention, 2000) requires member states to establish:

a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering...<sup>4</sup>

**Table 1: Criminalisation: the regional fabric at a glance**

Jurisdiction	Is money laundering a criminal offence?		Does the jurisdiction have client-profiling guidelines for financial services intermediaries and facilitators?		Are financial services intermediaries and facilitators required to report suspicious transactions?		Is the money laundering law extra-territorial in effect?	
	Yes	No	Yes	No	Yes	No	Yes	No
Angola		X		X		X		X
Botswana	X			X		X	X	
DRC		X		X		X		X
Malawi		X		X		X		X
Mauritius	X		X		X		X	
Mozambique	X			X		X		X
Namibia		X		X	X			X
Seychelles	X		X		X		X	
South Africa	X			X	X		X	
Tanzania		X		X	X (in terms of a Central Bank circular)			X
Zambia	X			X		X		X
Zimbabwe	X			X		X	X	

This regime should emphasise requirements for customer identification, recordkeeping and the reporting of suspicious transactions.

The table on page 2 regarding criminalisation of money laundering shows that as many as six SADC member states still do not have a law against it.

Where anti-money laundering law does exist its scope of application is important, as is the capacity to take account of the extra-territorial dimensions of money laundering. Regarding scope of application, a recurrent question is whether money laundering pertains only to proceeds of criminal activities, but not to proceeds of other 'unlawful' activity. A potentially problematic area is double criminality, i.e. does the law only concern itself with proceeds of activities that are regarded as a crime both in the source country and the destination country? These matters are addressed in the assessment of the prospects of success of anti-money laundering measures.

## REGIONAL TRENDS

### Predicate organised crime

Anti-money laundering strategies and laws rely heavily on the identification of 'suspect' transactions. By definition, compliance legislation can only work where there are grounds for suspicion. The existence of such grounds is based on background information and a degree of profiling. Money laundering trends give some indication of situations which create greater risk of exposure to money laundering. A profile of money laundering typologies is particularly important in respect of proceeds derived from activities that took place in a foreign country and deposited with a financial institution.

A starting point in identifying money laundering trends is to locate the predicate activity areas from which proceeds for laundering are derived. Potentially, there are as many activities relevant to the inquiry as there are varieties of economic crime. Practical reasons make prioritisation necessary. In the absence of objectively acceptable criteria, or a quantification of the magnitude of different kinds of crime, this is a difficult exercise. Some guidance may be derived from the perceptions of law enforcement authorities, insofar as they have been codified in international conventions. The American origin of the term 'money laundering' is intricately connected to organised crime in the spheres of alcohol trafficking and prostitution. When it was introduced into international criminal law, money laundering control was directed at drug trafficking. In many ways, syndicated drug trafficking is still regarded as a core predicate activity for money laundering.

*Drug trafficking* is identified most readily with money laundering in all parts of Southern Africa. *Dagga* (marijuana) and mandrax (methaqualone) sales feature prominently among the sources of illegal funds, but they are by no means the only ones familiar to crime syndicates. Significant sums are also generated from sales of cocaine, heroin and ecstasy. Since the early 1980s the drug industry has been known to influence trends in 'downstream' crimes, notably vehicle theft, smuggling, corruption, housebreaking, armed robbery and murder. As it is an industry that 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 have identified a chain of entrepreneurs that includes small (subsistence) farmers, transporters, wholesalers, retailers, vendors (some operating from the street) and exporters. Research conducted by the ISS has revealed that, in the market chain:

the wholesaler makes the most money. Although his mark up (sic) 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 is much money 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 sub-region:

- they need to conceal the origins and often the ownership of the money;
- they need to control the money; and
- they need to change the form of the money.

The drug market in South Africa is the largest in the sub-region. Occasional drug 'busts' by the police provide an indication of the scale of the trade. At the top end of the spectrum must rank the discoveries in June 2002, in Douglasdale, north of Johannesburg, and in Roodepoort on the West Rand, of massive quantities of *dagga*, cocaine, ecstasy, mandrax and chemicals for the manufacture of mandrax. The haul was valued at R2.7 billion (US\$415.38 million). Over the weekend of 12/13 June 2004, mandrax worth R1 million was seized in Pretoria and the following weekend another mandrax seizure in Cape Town yielded several million Rands worth of the drug. More than 100 syndicates

Drug trafficking is most readily identified with money laundering in all parts of Southern Africa.

are known to be active in the drug trafficking industry in South Africa. Most appear to launder their profits locally in the acquisition of motor vehicles, legitimate businesses, front companies and residential properties. Asset seizures since mid-2001 by the Asset Forfeiture Unit of the National Prosecuting Authority paint a frightening picture. In June 2002, the Unit reported that of the 150 cases in which assets had been seized, 31% involved drug trafficking.

The Anti-Money Laundering Unit in Zambia has identified drug trafficking as probably the principal source of illicit proceeds in that country, in the form of cash and motor vehicles.<sup>6</sup>

*Corruption*, which has a long history in Southern Africa, is both a predicate activity and a facilitator of money laundering in the region. The nexus between corruption and money laundering manifests itself in one form or another, in that either the laundered assets are proceeds of corruption, or the process of laundering is facilitated by corrupting law enforcement agencies or financial institutions. Where these agencies and institutions would normally be expected to detect or prevent money laundering, they are induced to turn a blind eye or facilitate iniquitous practices. In this regard, the region is not unique. The most well-publicised instances of money laundering in Africa generally and in the region in particular, are related to corruption.<sup>7</sup>

Classic cases include the notorious exploits of kleptocrats Mobutu Sese Seko in the DRC, Kamuzu Banda in Malawi and Sani Abacha in Nigeria.<sup>8</sup> Evidence from the ongoing judicial commission into the Goldenberg scam (revolving around ghost mineral exports in Nairobi, Kenya), suggests that former President Daniel Arap Moi belongs to that club. As these cases fade into history, they are replaced by revelations of public sector corruption in Angola and the DRC.<sup>9</sup> Identity documentation fraud continues to plague countries such as South Africa<sup>10</sup> and Zimbabwe.

In the wake of—and to a certain degree, precipitated by—persistent shortages of foreign currency and outmoded economic policies, predatory practices of various kinds took root in the financial sector in Zimbabwe between 2000 and 2004. A common form of corruption was the siphoning of investors' funds through cheap loans for speculative activities. The contribution of the resulting scams to proceeds of crime was in billions of Zimbabwean dollars. There is evidence that some of this money is circulating in the region.

Zimbabwe's Minister of Finance, Chris Kuruneri, is currently facing charges of violating foreign currency control laws by withdrawing foreign currency from a Harare bank and transferring it to South Africa. Papers filed in the case allege that he unlawfully withdrew

R5.2 million (US\$800,000) from the Jewel Bank (previously known as the Commercial Bank of Zimbabwe) in March 2002. The money was passed on to a firm of attorneys in Cape Town to invest in the city's residential property market and was used to acquire a property in a Cape Town suburb.<sup>11</sup> The house, which is reported to be valued at R30 million (US\$4,615,384.60), was registered in the name of a shell company. At the time of writing, the Minister's prosecution was pending in Zimbabwe.

It also appears that some of the proceeds of grand corruption in Angola and the DRC have been invested in residential property in South Africa. More than 20 such properties in the up-market Sandton area of northern Johannesburg have been traced to serving government ministers in the DRC.<sup>12</sup> Other properties linked to former and current military officials in Angola have been located in plush suburbs of Cape Town.<sup>13</sup>

The use of shell companies to invest proceeds of corruption is evident in parts of the region, notably Namibia, Zambia and Zimbabwe. A judicial inquiry in 2003 into fraud committed on the Social Services Commission in Namibia highlighted the use of shell companies and trust accounts to launder proceeds of economic crime.

There are numerous other activities that yield laundered funds, which need not be explored in detail in this paper. The major ones are:

- under-invoicing of exports;<sup>14</sup>
- theft and smuggling of motor vehicles within and into the region through East Africa and the eastern seaboard of Southern Africa;<sup>15</sup>
- currency 'externalisation', which may use fraudulent documentation and shell companies;<sup>16</sup>
- cross-border smuggling of cash;
- the abuse of currency exchanges;
- illicit dealings in precious resources, including smuggling of gold (Zimbabwe), rough diamonds (Angola, DRC, South Africa), *perlemoen* (abalone, from South Africa) and wildlife (Mozambique, South Africa, Zimbabwe);
- fraud, exemplified by the notorious 419 scams. In June 2004, the head of Nigeria's Economic and Financial Crimes Commission, Malam Nuhu Ribadu, disclosed that 500 suspects in 419 fraud cases had been arrested by the Commission since its establishment in 2002. It confiscated suspects' assets to the value of more than US\$500 million;<sup>17</sup> and
- cash-in-transit robberies.

These zones of activity are rife with criminal syndicates, at least 200 to 240 of which are active. A recent phe-

## Corruption is both a predicate activity and a facilitator of money laundering.

nomenon is the theft in transit of mineral ore between mines and refineries.

Human trafficking into and out of the region is perceived as the third most problematic form of syndicated crime in Southern Africa after drug trafficking and motor vehicle theft.

The International Organization for Migration (IOM) conducted a seven-month study of the trafficking industry in Southern Africa and its findings, published in March 2003, included some disconcerting conclusions. It found that:<sup>18</sup>

1. Angola, Botswana, the DRC, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe are source countries for trafficking activities in Southern Africa. South Africa is regarded as both a source and a destination country.
2. Botswana, Malawi, Mozambique, South Africa, Tanzania, Zambia, and Zimbabwe are transit countries for trafficking activities.
3. China, Thailand, and Eastern Europe are the extra-regional sources for victims trafficked to Southern Africa.
4. Trafficking victims who come from countries within the region are mainly transported overland, while those from extra-regional sources enter the region by air, if coming directly to South Africa, or overland from a country bordering South Africa.
5. The exploitation suffered by African victims in South Africa ranges from exploitation for the personal sexual gratification of the trafficker, sexual exploitation for the financial benefit of the trafficker, to forced 'marriage' for sexual and labour exploitation.
6. The exploitation suffered by extra-regional victims in South Africa is primarily in brothels, for the financial benefit of the traffickers.
7. When identified by police in South Africa, victims of trafficking are deported as illegal immigrants without being questioned about their experiences.

The IOM noted that "the absence of specific legislation criminalising trafficking in persons in Southern Africa is a main obstacle preventing police and prosecutors from investigating the practice, and charging the perpetrators".<sup>19</sup> The National Prosecuting Authority in South Africa conceded ignorance of the scale of human trafficking in South Africa.<sup>20</sup>

### Money laundering and legitimate economic activity

The affinity of money laundering to legitimate economic activity is particularly in evidence in respect of the transnational transmission of funds. One can expect the direction of such transmissions, as well as the scale, to be influenced by similar factors to those that en-

courage or discourage legal business. At a general level, studies of the alternative remittance system called *hawala* are relevant to the analysis of money laundering in the region. The system has been observed to be in much use in the Middle East, South-East Asia, the US, Western Europe, and, to a certain extent, in China.<sup>21</sup>

The primary incentive for informal fund transfers is cost effectiveness. As commentators on the *hawala* have observed, this is attributable to low overheads, exchange rate speculation and integration with existing business activities.

The second reason is efficiency. A *hawala* remittance takes place in one or two days, at most, compared with longer periods—sometimes weeks—when formal transmission methods are used. As Jost and Sandhu<sup>22</sup> point out, an international wire transfer or the transmission of a bank draft via a courier service between North America and South Asia, involving at least one correspondent bank and delays due to holidays, weekends and time differences, can take several weeks.

*Hawala* is also competitive because of its reliability. At its most efficient level, it has been able to eliminate disadvantages associated with formal international transactions, which can be complex and involve the client's local bank, the latter's correspondent bank, the main office of a foreign bank and a branch office of the recipient's foreign bank.

The fourth reason is the lack of bureaucracy. Alternative remittances are attractive to those without official documentation, fixed addresses or bank accounts. It

tends to be also the vehicle of choice to any who do not trust banks, regard bank charges as excessive, or simply prefer anonymity.

The fifth reason is tax evasion as non-formal remittances provides an unscrutinised and thus tax-free channel.<sup>23</sup>

To what extent is the *hawala* in use in Southern Africa? The absence of an empirical survey makes this question difficult to answer. It is clear however, that factors associated with *hawala* exist in certain parts of the region. There are even circumstantial indications of the use of similar remittance systems in Tanzania, Malawi, South Africa and Zimbabwe<sup>24</sup> and the contiguous East African countries of Kenya and Uganda.

Anecdotal evidence abounds about the transmission of disposable funds between countries in the region that occasionally circumvents the formal system. It has emerged that, since the 1980s, significant quantities of money have been transmitted and used in South Africa. Source countries noted include Angola, the DRC, Malawi, Mozambique (from the 1970s, especially around the advent of Frelimo rule), Zambia and Zimbabwe. The trend does not seem to have abated, even with the advent of the Prevention of Organised Crime

## The primary incentive for informal fund transfers is cost effectiveness.



Act (1998) and the Financial Intelligence Centre Act (2001) in South Africa. Part of the reason is that the factors that encourage the trend have remained virtually intact. In certain cases, developments in the source countries have increased the flow. Asset flows to South Africa are influenced by:

- *The scope for investment in residential property.* With the exception of Botswana, Lesotho, Swaziland and Zimbabwe, the average price of good quality residential property in South Africa is relatively lower than in other parts of the region.<sup>25</sup> This oddity is probably attributable to the creeping dollarisation of economies in Southern Africa. In addition, the prevailing security of property rights in South Africa is rather less fragile than it is in some other parts of the region.
- *The existence of educational facilities.* South Africa has a variety of institutions offering tertiary education and training in English, which is internationally marketable. On account of shifts in funding policies, some institutions are desperate for patronage by foreign students. This creates a niche that can be exploited by illicit investment in education.
- *Imbalances in the availability of essential commodities, such as medical drugs, construction equipment and materials.* This provides opportunities for the conversion of illicit funds into re-saleable assets in countries such as the DRC, Zambia and Zimbabwe.
- *The abundance of hard currency and the ease with which it can be obtained beyond the borders of South Africa, which is in turn attributable to the lack of faith in state capacity or efficiency.* This translates into a lack of faith in local currencies, low use of local financial institutions and a predatory relationship with the local economy. The ubiquitous *bureaux de change* open up numerous opportunities for the acquisition of hard currency in an unregulated manner, or by false pretences. These practices have been reported in Malawi, Mozambique, Tanzania, Zambia and Zimbabwe on a continuing basis.
- *The presence in South Africa of a relatively developed financial system and safe investment climate/environment.* This factor is self explanatory and related to the last.

The presence of migrant communities across national borders enriches the environment for the transmission of resources between the respective countries, often informally and with no recourse to the financial institutions and regularly in violation of currency movement control laws. An example is the spread of the Lundas in Angola, the DRC and Zambia, the Tutsi in Rwanda, Uganda and the DRC, the Venda in South

Africa and Zimbabwe and the Chewa-speaking communities on either side of the Malawi/Zambia border. In addition, dual nationality eases movement between the countries and makes it difficult to regulate currency transmission.

## COMBATING MONEY LAUNDERING: IS THE REGION UP TO THE CHALLENGE?

### Structure and power of law enforcement: the fragmentation/centralisation debate

The commitment of governments in Southern Africa to combat money laundering implies the existence of political will. However, when one examines the prevailing structures dedicated to performing key functions in implementing the prevailing measures, the strength of the resolve becomes questionable. A key debate revolves around the issue of whether law enforcement institutions dedicated to anti-money laundering should be fragmented or integrated. In a sense, the debate is not confined to money laundering control frameworks but extends to all initiatives against organised crime.

The fragmented approach is based on the notion that data relating to money laundering activity is accessed by the formal sector through multiple points. Each of them should be empowered to combat such activity as and when it is detected, without necessarily deferring to a central authority. This approach perceives functional compartmentalisation as being conducive to specialisation, greater efficiency and confidentiality of information. Within the state system, the relevant law enforcement points may comprise the department of customs, the police, the anti-corruption commission/bureau, the drug enforcement bureau/commission,

the prosecuting authority and revenue collection agencies. The dispersal of authority is subject to the condition that if a prosecution is required, cases should be referred to the head of the prosecution for his/her consent to prosecute. In the region, Swaziland comes close to this model, even though it is moving towards centralisation/integration. Other examples are Malawi and Zimbabwe.

The integration model, on the other hand, is motivated by several different considerations. The first is the need to have specialised expertise, which is not present within all law enforcement agencies, pooled in one institution. The second is that it is quicker and more efficient to dispose of suspicious transactions and to freeze assets if a single authority is responsible for all actions. It is further argued that only in an integrated system is it possible to create a credible intermediary between law enforcement authorities and financial in-

Should law enforcement institutions dedicated to anti-money laundering be fragmented or integrated?

stitutions. The intermediary, usually but not exclusively in the form of a financial intelligence unit, is then responsible for building a climate of trust between them and minimises the risk that innocent people will be subjected to intrusive police investigations<sup>26</sup> or economic espionage by business rivals.

The trend at the international level is decisively in favour of integration. The UN Model Law on Money Laundering, which was subsequently adopted in the Palermo Convention, advocates the establishment of financial intelligence units. In the sub-region, Botswana, Lesotho, Namibia, Mauritius, Mozambique and South Africa have ratified the Palermo Convention. Only two of these countries—Mauritius and South Africa—have implemented integration by creating dedicated units to marshal and analyse financial intelligence. Botswana has opted to allocate the responsibility to its anti-corruption agency, called the Directorate on Corruption and Economic Crime.

The prospect of a significant shift towards the integration model depends on the extent to which governments in the sub-region accept the idea that strong, autonomous law enforcement agencies will not act in

a way that is unduly inimical to the interests of the incumbent political and economic elites. This concern is a formidable challenge in most of Southern Africa, specifically Angola, the DRC, Malawi, Namibia, Swaziland, Tanzania, Zambia and Zimbabwe. In all these countries, ruling parties are evidently apprehensive of promoting competing centres of authority of any description. Political and business elites regard such a course to be precarious. It is unlikely that it will be adopted.

The preoccupation with financial institutions may be blunted by a relatively low usage of banking and other financial services in certain parts of the region. Table 2 presents a rudimentary picture of the extent to which deposit-taking banking institutions are used by the public in certain parts of the region. The column headed 'Bank use' records approximate percentages of the economically active population that make use of these institutions, even where such use is merely in the form of withdrawal of salaries, disability grants or pensions.

The rate of bank use is highest in Namibia, Botswana, Mauritius and Swaziland, and lowest in Tanzania. This does not necessarily translate into a higher incidence

**Table 2. Comparative bank use levels in Southern Africa in 2003**

Country	Number of banks	Rate of employment (%)	Bank use (%)
Angola	No figures available	No figures available	No figures available
Botswana	6	45	87*
DRC	No figures available	No figures available	No figures available
Lesotho	2 (both subsidiaries of South African banks)	55	38*
Malawi	10 (3 foreign-owned)	<30	>20
Mauritius	11	>80	<80
Mozambique	8	<45	<50
Namibia	5		93*
South Africa	47 (33 South African banks, 14 branches of non-South African banks)	68.8	>30
Swaziland	4 (1 Swazi bank, 3 subsidiaries)	<50	82*
Tanzania	10 (3 Tanzanian, 7 subsidiaries of foreign banks)		7**
Zambia	21 (12 Zambian, 9 subsidiaries)		15
Zimbabwe	23 (17 Zimbabwean, 6 subsidiaries of foreign-owned banks)	30	60

\* Figures based on a study by the Namibia Economic Policy Research Unit (NEPRU) for the FinMark Trust in 2003. See [www.nepru.org.na](http://www.nepru.org.na)

\*\* Figure given in a speech by the Minister of Finance, Tanzania, in an address to the Task Force on Money Laundering of the ESAAMLG, Dar es Salaam, 23 March 2004.

of money laundering in Tanzania than anywhere else. It simply means that the effectiveness of measures that depend on deposit-taking institutions in the formal sector is likely to be marginal in that country.

Some attempt is made in Table 2 to indicate the extent of penetration of the local institutions by foreign ownership. The reason for highlighting this dimension is the potential of foreign ownership to influence regulatory systems and practices of their subsidiaries through 'vertical' seepage of prudential practices from countries in which the principal office of the institution is based. For example, some Namibian banks that are subsidiaries of South African banks follow banking practices based on main branch policies. Barclays Bank branches outside the United Kingdom are influenced by rules laid down by the main branch.<sup>27</sup>

### **The prognosis for medium-term money laundering control in Southern Africa**

This section attempts a prediction of the picture in 2014, two decades into democracy in South Africa and after just over a decade of anti-money laundering efforts. In many respects this prediction is difficult to make, partly because some of the acknowledged characteristics for an effective anti-money laundering regime are not in place yet. The first part of the prediction therefore deals with the prospects of these features coming into being.

For efforts against money laundering to be sustainable, *all* countries in the region must:

1. develop a comprehensive appreciation of the structure of their economies and the relative proportions of the formal and informal sectors;
2. ratify the Palermo Convention and implement its prescriptions in respect of predicate money laundering activities and anti-money laundering strategies;
3. have a clear strategy that defines the roles and responsibilities of each component in its delivery. It is clear that the public sector (law enforcement and revenue collection) and private institutions have to jointly combat money laundering.<sup>28</sup> The factors that discourage the use of the formal sector should be identified and ameliorated to create a broad business sector;
4. determine the best manner of integrating roles and responsibilities and allocating resources to key components to enable them to discharge their responsibilities;<sup>29</sup>
5. regularly monitor the incidence of money laundering on a sector-by-sector basis, using objectively verifiable indicators, with a view to identifying and

reviewing high risk spheres and improving the targeted efforts of reporting institutions;

6. ratify and implement the international instruments that target predicate transnational criminal activities which have been linked to money laundering, such as corruption;
7. ensure that there is uniformity in the integration and functioning of corresponding law enforcement institutions and structures in different countries; and
8. complement the mutual legal assistance arrangements to which international instruments commit them by entering into memoranda of understanding relating to the exchange of information and mutual technical and financial assistance. Information exchange should embrace the full range of what is relevant to profiling high risk individuals and corporate entities and agreement to facilitate it should be flexible enough to allow modification in the light of new developments.

Implicit in these suggestions is the notion that the prospects of attaining the envisaged ideal depend on transforming the state of affairs in the lowest common denominator country. How likely is this to occur within the next decade? The state of affairs and trajectory of development in the highest common denominator countries should be regarded as key indicators. In this respect, it is fair to say that there is a basis for optimism. At the time of writing, two countries have taken the lead in setting the trend in money laundering detection and control, namely Mauritius and South Africa. The level of legislative innovation in the two countries is more advanced than elsewhere and the indications are that the trend will be sustained.

South Africa's broad anti-money laundering law predated the Palermo Convention. The Prevention of Organised Crime Act (1998) (POCA) conceived of the crime of money laundering in wide terms. POCA is complemented by the National Prosecuting Authority Act (1999) and the Financial Intelligence Act (2001). In 2003 the legislature added the Prevention and Combating of Corrupt Activities Act to the range of laws against economic crime. The latter has a wider definition of corruption than before. It is also significant that the orientation to law enforcement that is grounded in and fortified by this emerging legislative structure is integrated rather than fragmented.

The basis already exists for most countries in Southern Africa to exchange mutual legal assistance and enter into extradition treaties in the next decade.

The Harare Scheme Relating to Mutual Assistance in Criminal Matters Within the Commonwealth (1986) (the Harare Scheme) is fairly well established and has influenced the pace and thrust of legislative develop-

All countries in the region must ratify and implement the Palermo Convention.



ments in the four specified states. The opening words of the Harare Scheme proclaim its purpose to be “to increase the level and scope of assistance rendered between Commonwealth Governments in criminal matters”.<sup>30</sup> It is additional to any existing or future arrangements in this sphere.

The forms of assistance contemplated by the Harare Scheme relevant to this discussion, set out in paragraph 1(3), include:

- identifying and locating persons;
- obtaining evidence; and
- tracing seizing and confiscating the proceeds or instrumentalities of crime.<sup>31</sup>

Police agencies in Southern Africa have some experience in joint operations and collaborative work through the Southern Africa Regional Police Chiefs Co-operation Organization (SARPCCO).

In respect of extradition, the Scheme binds Commonwealth states among themselves. After the amendments agreed at Kingston in November 2002, it defines an extraditable offence as “an offence however described which is punishable in the requesting and requested country by imprisonment for two years or a greater penalty”.<sup>32</sup> It incorporates a streamlined process for apprehending fugitives from justice at the instance of the requesting state (on the issue of a warrant of arrest), appearance before a competent judicial authority in the requested state and extradition. An Interpol notice against a fugitive is valid for the issue of a warrant of arrest.

It is likely that the countries with the furthest distance to make up in terms of legislation and institutional changes will do so in the next five years. Within this period, it is also anticipated, with good reason, that regional instruments on extradition and transnational mutual legal assistance will come into effect.<sup>33</sup> It is, however, doubtful that within that period they will secure the capacity to implement the new systems. The pessimism is founded on the mediocre performance of anti-corruption agencies in Malawi and Swaziland.

Whether greater use will be made of the existing and emerging infrastructure for transnational co-operation in money laundering cases will depend on how Southern African countries manage the intersection between politics and law enforcement, which tends to recur regularly in extradition and mutual legal assistance cases. A common resolve to extradite suspects implicated in serious economic crime, including money laundering, is required. At the moment major deficiencies and loopholes pervade issues such as the extradition

of nationals. In the absence of extradition treaties, even the extradition of non-nationals is problematic.<sup>34</sup>

## CONCLUSION

From the profile given in this paper it will be clear that to control money laundering, state agencies have to go beyond controlling the channels in which it occurs. The level of success depends just as much on the extent to which states are able to reduce the incidence of the key predicate activities from which proceeds of crime, which constitute the bulk of what is laundered, are derived. What may not be as clear is the imperative to extend the zones of interaction within economies, between the formal (or ‘first’ or ‘mainstream,’ both of which terms are often misleading in the regional context) and the informal sectors. This suggestion is not borne out of a conviction that the informal economy is prone to money laundering, or indeed that there is an inherent inequity about it. Rather it is based on the reality that the existing methods of containing money laundering have been designed to function in

the formal economy. They co-exist uneasily with the informal sector and in a few cases have no value. Some countries, notably Nigeria, have sought to broaden this interface by compelling people to use the formal banking sector. The strategy adopted is to criminalise bulk cash transactions and the unexplained conveyance of cash in bulk. There is no evidence of the effectiveness of the Nigerian approach. In Southern Africa, Zimbabwe has recently emulated it by legislation. It will be interesting to observe that country’s record in this regard, given the prevailing trends in respect of inflation and commodity shortages.

Mauritius seems to present a model with the potential to succeed in this area. Mauritius has opted to influence the criminal markets through sustained social security support programmes, which reduce criminality, at the same time increasing the use of the formal economy.

In consequence, the rate of bank use is higher in Mauritius than anywhere else in Southern Africa. There are indications that Botswana has the potential to follow suit. South Africa, with the largest economy in the region, faces a major challenge in integrating the dual economy. Income disparities and poverty levels are just as high in that country as they are anywhere else in the world. Unlike Zimbabwe and Nigeria, however, the fundamental elements of the formal economy in South Africa offer a platform for its growth and incorporation of the informal economy. Indications are that, in the next decade, the informal economy will shrink rather than expand. The pessimism alluded to at the beginning of this paper is not entirely well-founded.

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As for the prospects that vertical seepage of anti-money laundering regimes will make a significant difference, it is the view here that the difference will be marginal. Such seepage cannot be expected to significantly impact upon the basic structure of the economy in which the subsidiary institution is located, or on law enforcement capacity.

## Notes

- 1 This is an edited version of a paper that was presented at the Grahamstown Arts Festival Winter School, South Africa, 1-10 July 2004.
- 2 The UN Global Programme on Money Laundering (GPML) states that: "In today's globalized economy, organized crime groups generate huge sums of money by drug trafficking, arms smuggling and financial crime. 'Dirty money,' however, is of little use to organized crime because it raises the suspicions of law enforcement and leaves a trail of incriminating evidence. Criminals who wish to benefit from the proceeds of large-scale crime have to disguise their illegal profits without compromising themselves. This process is known as money laundering."
- 3 This is a working description adopted by a research group commissioned by the Institute for Security Studies (ISS) at a workshop in Cape Town in March 2003, as capturing most of the constituent elements of money laundering as it is understood in the region.
- 4 Article 7 (1)(a) of the United Nations Convention Against Transnational Organised Crime.
- 5 Ted Leggett (ed), *Drugs and crime in South Africa*, ISS, Pretoria, 2002, p 31.
- 6 See the Zambian publication, *The Sunday Post*, May 23 2004.
- 7 Money laundering empowers corruption and organised crime. Corrupt public officials need to be able to launder bribes, kickbacks, public funds and, on occasion, even development loans from international financial institutions. Organised criminal groups need to be able to launder the proceeds of drug trafficking and commodity smuggling, and, if necessary, will bribe anyone who might expose their activities.
- 8 Abacha, who is believed to have embezzled approximately US\$5 billion, has been described as the third most corrupt person in the world.
- 9 See the South African *Sunday Times*, 20 June 2004.
- 10 In June 2004 a syndicate specialising in securing permanent residence permits for illegal immigrants was uncovered in Durban. The facts revealed that the syndicate achieved this by using fraudulent marriage certificates purporting to show marriages between South African women and foreign men. Some of the women were recruited for bogus marriages, but in other cases the syndicate used the identity details of job applicants or those of terminally ill Aids patients.
- 11 Details obtained from the *Sunday Times*, 21 March 2004. See also <[www.allzimbabwe.com/modules.php?name=News&file=article&sid=251](http://www.allzimbabwe.com/modules.php?name=News&file=article&sid=251)>.
- 12 *Sunday Times*, 20 June 2004.
- 13 A minister from Equatorial Guinea, who is under investigation for money laundering in the US, was reported to have acquired residential property in Cape Town, South Africa. See *This Day*, 28 June 2004.
- 14 A Zimbabwean business executive was arrested in Johannesburg at the end of May 2004 on suspicion of 'externalising' export earnings by under-declaring the value of asbestos mined in Zimbabwe and exported to or through South Africa. The amount involved is in millions of US\$ and extradition proceedings are pending.
- 15 Virtually every country in the region is affected, but the problem is acute in Angola, Malawi, Mozambique, South Africa and Zimbabwe. Only Mauritius is relatively safe in this sphere.
- 16 In Zambia, for instance, companies have been known to use forged invoices to support purchases of foreign currency. A banking and financial consultant was quoted by the *Sunday Post* (May 23 2004):  
  
"Take the example of a corporate client with a wholesale shop and a chain of retail outlets. He goes to his bank and says he wants to buy US\$30,000 for his business. He is asked for an invoice and he produces one he says is from his suppliers. His bankers will look for the necessary details on the invoice and then process the paperwork and sell him the money at the going exchange rate because they are convinced the invoice is genuine. It is not the bank's job to investigate the supplier whose invoices they have been given or request company profiles. Besides, banks do not have the time. There is an even bigger problem in that there are invoices coming through e-mail where you do not even have any authentication to be signed and stamped by the supplier...we are living in an age where everything is computerised. The bank looks at the details on the invoice...they transfer the money on the basis of the invoice."
- 17 Reported on the AllAfrica.com website, accessible at <[allafrica.com/stories/200406240859.html](http://allafrica.com/stories/200406240859.html)>.
- 18 IOM, Research study on the trafficking of women and children in Southern Africa, (unpublished), released in March 2003. I am grateful to my colleague Mpho Mashaba, who brought this study to my attention.
- 19 *Ibid*, p 17.
- 20 *This Day*, June 23 2004.
- 21 In China, *hawala* has a variant system called the *chit*, while in India the term *hundi* is also used.
- 22 P M Jost & H S Sandhu, The hawala alternative remittance system and its role in money laundering, accessible at <http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/hawala/default.asp>
- 23 *Ibid*.
- 24 Information based on studies commissioned by the ISS in 2002/2003. The author is grateful to Prince Bagenda, Eugene Mniwasa, Jai Banda and Bothwell Fundira. Their reports will be published in a forthcoming monograph.



- 25 The average price of a residential house in middle-income areas of South Africa in May 2004 was R488,456 (US\$75 147). This is lower than that for similar property in neighbouring Mozambique (US\$135,000) or Tanzania (US\$120,000). Information based on Property Section in the *Weekend Argus*, 29 May 2004, which circulates in Cape Town, South Africa.
- 26 Guy Stessens, *Money laundering: A new international law enforcement model*, Cambridge, Cambridge University Press, 2000, p 184-6.
- 27 This has been observed to be the case at Barclays Bank Zambia.
- 28 Adapted from suggestions in a report by Philip Robinson, Sector Leader, Financial Crime, Financial Services Authority, entitled 'Anti-money laundering regulation—next generation developments,' given at the City & Financial Conference, London, 21 April 2004.
- 29 Ibid.
- 30 Preamble, The Harare Scheme Relating to Mutual Assistance in Criminal Matters Within the Commonwealth, 1986.
- 31 Ibid.
- 32 Ibid, Article 1.
- 33 The SADC Protocols on Extradition and Mutual Legal Assistance have been pending ratification for several years.
- 34 Former Zambian Intelligence chief Xavier Chungu, who is facing charges of money laundering (among others), is reported to have fled to the DRC in May 2004 and was still at large at the time of writing. There is no extradition treaty between Zambia and the DRC, which prompted the Deputy Home Affairs Minister to say that it was unlikely that Chungu would be returned to Zambia. See Z Geloo, Suspects are beginning to look like victims, at <http://ipsnews.net/africa/inerna.asp?idnews=24134>, accessed 29 June 2004.



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## About this paper

This paper explores some of the key issues in contemporary money laundering trends in Southern Africa. Twelve of the fourteen SADC countries have committed themselves to take effective measures against money laundering through the Eastern and Southern Africa Anti-Money Laundering Group. The paper considers the extent to which money laundering has been criminalised. It examines the main activities from which proceeds for laundering are derived, such as drug trafficking, corruption, human trafficking and fraud. It also explains the close connection between money laundering and alternative fund remittance systems typified by the *hawala* system. The paper examines two approaches to law enforcement prevailing in the region and suggests that effective combating of money laundering requires an integrated approach. It concludes with a prognosis for medium-term money laundering control in Southern Africa, looking at what all countries in the region must do to curb it and at some of the obstacles to achieving a uniform position.

## About the author



CHARLES GOREDEMA is a senior research fellow in the Organised Crime and Corruption Programme at the ISS. He has been conducting research into forms of organized crime in Southern Africa and appropriate criminal and civil justice responses since mid-2000. Charles holds qualifications in law from the universities of Zimbabwe and London.

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