

CHAPTER 6

EVALUATION OF ANTI-MONEY LAUNDERING MECHANISMS IN MOZAMBIQUE, 2004 TO 2006

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Overview of money laundering typologies in Mozambique

Corruption, illicit drug trafficking and the transnational transportation of large amounts of foreign cash have been among the most significant phenomena linked to money laundering in the period 2004 to 2006.

Corruption

Corruption is considered one of the most critical money laundering predicate offences in Mozambique. It is not only a source of illicit proceeds that are subsequently laundered but also undermines the prosecution and punishment of other criminal offences, including money laundering.

In 2005 Transparency International ranked Mozambique the 97th most corrupt country out of the 159 countries that were ranked.¹ In 2006 no significant changes were noted and Mozambique was ranked the 99th most corrupt country out of 163.

The United States Agency for International Development (USAID) Corruption Assessment Report on Mozambique, dated 16 December 2005, identified several factors that facilitate the spread of corruption in a wide range of sectors and government functions. These are

- the merging of elite political and economic interests;
- a limited application of the rule of law and a corresponding sense of impunity because of the weakness and sometimes political manipulation of judicial institutions;

- alleged linkages between corruption and organised crime;
- lack of transparency and access to relevant governmental information;
- weak accountability mechanisms; and
- popular tolerance of corruption coupled with fear of retribution as evidenced by the fact that during the government-sponsored Governance and Corruption Survey in 2005, the most frequent answer when people were asked why they would not blow the whistle on corruption was “because there is no protection” for people who stand up to corrupt practices.²

The USAID report states that “the judiciary was identified by respondents to the 2005 corruption survey as well as many people the team interviewed, as one of the most problematic sectors in Mozambique”. The report says that corruption in the judicial sector manifests itself in the buying and selling of verdicts, the exertion of political control over judicial outcomes, ‘losing’ evidence or case files as directed or paid for, intimidation of witnesses, and freeing of key suspects. Political leaders, multinational firms and drug traffickers are seen as groups that have great or total influence over the state. Judges, prosecutors and the criminal investigation police are among key judicial actors susceptible to corruption.

In the period 2004 to 2006 many corruption cases were reported to be under investigation by the Anti-Corruption Unit or the Anti-Corruption Central Office but no significant cases have been prosecuted. One of the reported cases involved the Ministry of the Interior, where some officials from the Financial and Administration Department were reported to have manipulated information and obtained salaries claimed for non-existent policemen in 2004. This allegedly happened with the collusion of their superiors. Some of the people in this case have been linked to extensive wealth inconsistent with their normal income. The case was initially investigated by the Ministry of Finance auditors and the report was sent to the Anti-Corruption Central Office for additional investigation and eventual prosecution, which is where the matter still stands.

Another major case investigated in 2004 and 2005 was related to the former Minister of Education, who was accused of having used international donor

funds to provide scholarships to members of his family. He was interrogated by the Anti-Corruption Central Office but no decision to prosecute him was taken.

Recently the weekly magazine *Jornal Zambeze*³ reported on corruption involving the State Shares Management Agency (IGEPE). Two members of the board of the agency are alleged to have received US\$50,000 each from the Tanzanian company METL in order to benefit the company in an international bid in 2003 for the privatisation of the state’s 30% shareholding in the textile manufacturer Texmoque. The suspicion was based on phone call records of a conversation between one of the members of the IGEPE board and a representative of the winning company. The board denied the allegations at a media conference. The case has been reported to the Anti-Corruption Central Office for further investigation.

From these cases it can be concluded that corruption is still a major challenge in Mozambique to anti-money laundering investigation, prosecution and punishment owing to the very close link between the corruption of the law enforcers and money laundering. However, there is an expectation of change in this area based on the new government commitment to combating corruption. Among other measures, this commitment is reflected in the public sector reform programme, enhanced by the recent establishment of the High Authority for the Public Administration; the implementation of regulations to the Anti-Corruption Act, approved by Decree no. 22/2005 (22 June); and the allocation of significant human and material resources to the Anti-Corruption Central Office.

Illicit drug trafficking

During the first half of 2005 the media reported more than 10 cases of illicit drug trafficking, all of them involving Mozambican women returning from Brazil. They allegedly went to Brazil for a short visit or for shopping and were caught at Maputo and Beira airports with drugs stored in their stomachs.

The women were reported to be intermediaries whose task was to bring the drugs into the country and hand them to the owners, who are thought to be very wealthy people. The compensation for such a courier service is no more

than US\$1,000. The intermediaries are trained never to disclose the names of their principals. The questions that have not been answered are where the proceeds from such criminal offences are placed and how much money is involved. Building new houses for rental purposes, and purchasing and selling Japanese second-hand vehicles, seem to be some of the mechanisms for laundering the proceeds of the drug trade. Investigators consider the reported cases to be but a fraction of a huge business.

Foreign cash transportation

A phenomenon linked to money laundering that causes problems, particularly for the customs and excise authorities, is the transportation of large amounts of foreign cash (US dollars) outside the formal financial network.

In May 2005 the customs authorities at the airport of the northern town of Nampula challenged a Guinea-Conakry national who held a Kenyan passport. He had arrived from Thailand with US\$103,000 in his suitcase. The amount had not been declared to the authorities. Mozambican exchange regulations require foreign currency exceeding US\$5,000 to be declared to the customs and excise officials at the point of entry. The law does not stipulate any sanction for non-declaration except that the importer cannot export any undeclared foreign currency from Mozambique.

The money was confiscated and deposited in a branch of the central bank. After finding that there was no evidence of exchange law misdemeanour the case was reported to the provincial general prosecutor for investigation on suspicion of money laundering. During investigation the man claimed that he was a businessman living in Thailand, that the money had been earned from businesses in minerals and clothing, and that he had come to Mozambique to explore business prospects. After a few days the general prosecutor concluded that there was no evidence of money laundering and the money was returned to the man.

During the same period it was reported that a Mozambican truck driver with an amount of US\$400,000 had been apprehended by the South African police.

In neither case was the suspect able to give a satisfactory explanation for not using the services of a financial institution. In normal circumstances the men

should have used traveller's cheques, credit cards or wire transfers, as most visitors do when travelling in foreign countries. These and similar cases that are not officially reported support the inference that some of the cash may not be clean money, which is why it is kept away from financial institutions. Such cases call for more attention to, and monitoring of, transactions in the non-financial and informal sectors to prevent them being used to launder the proceeds of crime. Money laundering control mechanisms should apply across the board.

The anti-money laundering legal framework

Background

The enactment of legal provisions to prevent and combat money laundering in Mozambique dates back to 1997. In terms of article 41 of Law no. 3/97 (13 March), the laundering of the proceeds of illicit drug trafficking involves a sentence of between 8 and 20 years' imprisonment.

Law no. 7/2002 (5 February) extended money laundering punishment to other criminal offences. The law defined as predicate offences illicit drug trafficking, theft, robbery, fraud, the manufacture, importation and trading in arms and explosives, terrorism, extortion, corruption, speculation, and dealing in contraband. For financial institutions the law introduced 'know your customer', due diligence, and procedures for reporting suspicious transactions. These institutions were also expected to train staff to comply with the new obligations.

Both the new anti-money laundering law and the Banking Act no. 15/99 (1 November), as amended by Law no. 9/2004 (21 July), empower the central bank to monitor compliance by banking institutions with their legal obligations.

Other relevant legal instruments on money laundering or activities related to money laundering are the following:

- Decree no. 37/2004 (8 September), which approves the anti-money laundering regulations and provides details on their implementation, including supervision authorities and due diligence and reporting procedures;

- Law no. 3/96 (4 January), the Exchange Law and its Regulation, approved by Notice no. 05/GGBM/96 (19 July), in terms of which the border movements (entrance and exit) of foreign currency, including wire transfers, are controlled;
- Circular no. 001/DSB/2003 (21 August), which guides banking institutions on the implementation of the anti-money laundering procedures and creates the necessary internal infrastructure for that purpose;
- the Anti-Corruption Act no. 6/2004 (17 June);
- Decree no. 22/2005, the Anti-Corruption Regulation; and
- Law no. 9/2002, the law on the state financial administration system, which focuses mainly on budget execution, public accounts and the treasury system.

In addition to domestic legislation, Mozambique has signed and ratified international legal instruments on money laundering, including the United Nations Convention Against Transnational Organised Crime; bilateral agreements on drugs with Brazil and Portugal; and Southern African Development Community (SADC) protocols and bilateral agreements on customs and excise and criminal investigation co-operation. Under the Banking Act, the Banking Supervision Department may co-operate with any foreign banking supervision authority to investigate suspicious transactions.

Deficiencies in anti-money laundering legislation

The picture given of the relevant anti-money laundering legislation shows that there is a comprehensive legal basis for preventing, investigating, prosecuting and punishing money laundering. Any impunity observed in money laundering cases cannot be attributed to the lack of basic legal instruments.

However, there are some deficiencies in the main legislation that tends to contribute to its ineffectiveness.

One of the concerns about Law no. 7/2002 (5 February) is that although it applies to non-banking financial institutions such as insurance companies,

casinos, pension funds, managing societies and public mailing services, it does not apply to entities such as lawyers, notaries and non-governmental organisations, which are, among others, also susceptible to money laundering. This opens a gap for unmonitored activities, some of which could amount to money laundering. Any revision of the law should take note of this loophole.

The second concern relates to the duty of financial institutions to abstain from proceeding with any suspicious transaction until a decision of the General Prosecutor is made, as stated in article 19 of the law. Although this measure seems to be adequate in some cases – for instance when the withdrawal or transfer of money is requested – it is not prudent or practical in situations where a customer wants to open a bank account or make a deposit, since in these cases the customer can permanently withdraw from the transaction and not come back for fear of being subjected to investigation. In such instances the financial institution should identify the customer, accept and receive the cash amount or open the bank account, and immediately take steps to report to the General Prosecutor for investigation. This could require a very effective investigation infrastructure. The law should therefore clearly indicate where the duty to abstain is applicable and where it is not.

The third concern relates to the competence of the banking supervision authority, in terms of article 38, section 1, to investigate and send to the court all information concerning non-compliance with the obligations stipulated in articles 10, 12 and 14 to 18 of the law. Section 38 overlooks the fact that not all financial institutions are under the supervision of the Banking Authority. There are also three other anti-money laundering supervisory authorities, namely the Insurance General Inspection, the Gambling General Inspection, and the Ministry of Finance. There is no integration of function between these authorities, and it is unclear how the Banking Authority can act in cases of misconduct detected by other supervisory authorities. This is another aspect that requires revision.

During the period 2004 to 2006, the following developments indicated progress with money laundering legislation:

- the adoption of the anti-money laundering regulation by means of Decree no. 37/2004 (8 September);

- the adoption of the Anti-Corruption Act no. 6/2004 (17 June);
- the adoption of Decree no. 22/2005, the Anti-Corruption Regulation; and
- the adoption by Cabinet of the Bill to establish the Financial Intelligence Unit. The Bill now awaits the final approval of Parliament.

Implementation of anti-money laundering law

Although legislation on money laundering in Mozambique is comprehensive, there is no evidence of significant progress in the implementation of the legislation during the period 2004 to 2006.

Before the approval of the anti-money laundering regulation by means of Decree no. 37/2004 (8 September), the lack of such regulation was very often alleged to be the main impediment to the implementation of the law. This explanation no longer holds water, given that the regulation has been in place since September 2004.

Evaluation of customer due diligence

Under the anti-money laundering Law no. 7/2002 (5 February), financial institutions are obliged to identify their customers and keep records of personal documents when entering into any transaction. The regulation approved by means of Decree no. 37/2004 (8 September) details the kind of documents acceptable for identification purposes in financial transactions and what a financial institution should do in the event of a customer refusing to identify himself.

The Banking Supervision Department confirms that all banking institutions are carrying out their customer identification obligations, which they seem to perceive as a way of preventing bank fraud. Concern persists with respect to compliance by foreign exchange bureaux as it has been noticed that they sometimes do not adhere to identification requirements, despite being subject to inspection and liable to sanctions should infringements come to light. This implies that the risk of detection is not perceived to be high.

In December 2005 the Council of Ministers introduced changes to anti-money laundering regulations relating to the documents that are acceptable for customer identification in financial transactions. Additional documents are now acceptable, including driving licences, military identification cards, election registration cards, refugee identification cards and social security identification cards. This change extends the penetration of financial services and facilities, including micro finance, to the rural sector, where access to some of the documents traditionally accepted is much more difficult. In order to counter the increased risk of fraud, financial institutions are encouraged in terms of the regulation to use maximum due diligence, including possibly requiring testimonials when accepting the new documents.

In the view of the present writer this change is positive, in that it adds value to the creation of an adequate infrastructure to control money laundering while drawing in transactions that would have remained in the informal sector and therefore beyond monitoring.

Evaluating the reporting of suspicious transactions and the response of law enforcement

Under anti-money laundering law, financial institutions are required to report suspicious transactions to the General Prosecutor for investigation, and to send copies of the reports to the supervisory authority. The regulations give details of the reporting procedures.

More than 15 suspicious transactions were reported to prosecutors in Nampula, Beira and Maputo in the period 2004 to 2006. The cases were reported by commercial banks and by customs and excise authorities. However, none of the reported cases has been prosecuted and no asset forfeiture in connection with money laundering has occurred. This creates a problem for commercial banks, which may well feel that they embarked on high-risk processes that did not yield tangible results. It is known that the state is not in a position to compensate any financial institution for loss of business.

There are several factors to which the lack of prosecution in money laundering cases can be attributed.

Corruption

As stated above, corruption prevents investigators, prosecutors and magistrates from competently discharging their obligation to follow up or adjudicate in money laundering cases. Money laundering is notoriously connected to bribery for the purpose of weakening or distorting criminal investigations and court decisions.

Prioritisation

As Mozambique is still a very poor country, the government concentrates on poverty reduction programmes rather than on solving other problems. In the context of poverty reduction, monitoring and enforcing anti-money laundering measures may even seem to be counter-productive since this action could undermine private sector investment initiatives if people constantly have to account for the resources under their control.

Training

Although action is being taken to train supervisory officers, magistrates, policemen and other key actors, this is still inadequate to meet the complexity of money laundering cases. The fact that there are no judicial structures specialising in economic crimes is a significant gap in combating money laundering.

Supervision to ensure compliance and sanctions in the event of non-compliance

A supervision system has been created to monitor compliance with anti-money laundering obligations. Under the anti-money laundering regulations there are four authorities that monitor compliance. These are:

- the Banking Supervision Department of the central bank;
- the Insurance Inspector-General;
- the Gambling Inspector-General; and
- the Ministry of Finance.

Financial institutions that do not comply with anti-money laundering law are liable to fines of between 150 and 538 times the minimum salary,⁴ suspension or revocation of a licence, and the disqualification of officials found guilty from occupying management positions for a period of 1 to 10 years.

The anti-money laundering regulations give details of the supervisory role and procedures of the monitoring authorities. The Banking Supervision Department seems to be the only regulatory authority that monitors the implementation of anti-money laundering measures through on-site supervision. This was seen in 2006, when many banks and bureaux de change were inspected. There is still no evidence of other regulatory bodies undertaking inspections to check on compliance with anti-money laundering obligations. To rectify this weakness will require a great deal of training.

Establishing a financial intelligence unit (FIU)

One of the significant gaps in Mozambique is the lack of an FIU. Money launderers are increasingly aware of the impact of the work of the controlling mechanisms of financial institutions and therefore opt to use non-formal institutions or to spread their activities among multiple institutions to prevent suspicions based on the frequency of transactions or the amounts involved. For this reason the establishment of an FIU in Mozambique appears to be of critical importance in the centralisation and cross-checking of customer transaction data.

On 11 July 2006 the Council of Ministers commended to Parliament a Bill to establish the Mozambique Financial Information Centre (Centro de Informação Financeira de Moçambique or CIFiM). The Bill is expected to be discussed in the forthcoming ordinary session of Parliament.

According to the Bill, the CIFiM is national body endowed with administrative autonomy, operating under the Council of Ministers. The functions of the CIFiM are

- to collect, centralise, process and analyse information relating to financial operations that are susceptible to money laundering acts and others determined by law; and

- to support the investigation of money laundering acts implemented by competent bodies.

In order to carry out its functions, the CIFIIM is authorised to

- exchange financial information or transmit it to other national authorities defined by law;
- co-operate, and co-ordinate its actions, with other national authorities engaged in the detection, prevention and suppression of money laundering; and
- request information from entities that are suspected of suspicious transactions.

According to article 3 of the Bill, whenever there are sufficient indications of money laundering, the director of the CIFIIM may, at the same time as sending the information to the competent bodies, order the suspension of the activities in question and seize assets involved subject to an order by a judge of the criminal court, to be made within 48 hours.

The CIFIIM's policies and strategies are defined by the Council of Ministers, on the recommendation of the CIFIIM Co-ordination Committee, which comprises

- the Prime Minister (chairman);
- the Minister of Finance;
- the Minister of the Interior;
- the Minister of Justice;
- the Attorney-General;
- the Governor of the Bank of Mozambique;
- the Director of the CIFIIM; and
- the Deputy Director of the CIFIIM.

The CIFIIM Co-ordination Committee has ordinary meetings twice a year and extraordinary meetings whenever convened by the chairman.

The success of the CIFIIM will depend primarily on the political will to fight corruption. If this will is not strong enough, the same constraints that work against money laundering investigation, prosecution and punishment will prevent the achievement of significant results by the unit.

Training and awareness

After having identified training as a key issue in the implementation of anti-money laundering mechanisms, the government of Mozambique and some international financial institutions agreed to undertake the training of financial institution supervisors under the multilateral Financial Sector Technical Assistance Project (FSTAP) from the last quarter of 2005. The programme includes training in the monitoring of money laundering and the investigation of financial offences.

Within the framework of training, awareness and sensitisation, two significant events took place in 2005. A workshop on 'Enforcement and implementation aspects of anti-money laundering legislation for criminal justice officials', organised by the legal department of the International Monetary Fund (IMF), was held in Maputo from 16 to 20 May 2005. In addition, a workshop organised by military officers, held in Maputo on 5 August 2005, addressed the impact of money laundering on the country's economy and the need to fight it.

In June 2006 a training course on anti-money laundering banking supervision, sponsored by the IMF, took place in Maputo.

Similar events are expected to take place in the near future.

Conclusions

The findings made in the course of preparing this chapter lead to certain conclusions and recommendations.

- Corruption is the main money laundering predicate offence since it is through corruption that many other predicate offences remain unpunished.

In fact, the corruption of criminal investigators, prosecutors and magistrates undermines any political efforts or legal measures to punish and discourage such criminal offences. The government's 2005 Report on Corruption in the Public Sector confirms this fact.

- Other significant predicate offences in Mozambique include drug trafficking, tax evasion, car theft, trafficking in human beings and homicide.
- At this stage the anti-money laundering framework in Mozambique can be considered as satisfactory in terms of the criminalisation of money laundering, and the imposition of preventive obligations such as due diligence, suspicious transaction reporting, non-compliance sanctioning and training.
- In line with the legal framework, banking institutions are substantially complying with anti-money laundering prevention mechanisms and obligations imposed on them.
- There is still no evidence of other regulatory bodies undertaking inspections aimed at anti-money laundering compliance. Lack of awareness and training appear to be the main constraints.
- The establishment of an FIU may be a crucial factor for the success of the money laundering investigative infrastructure in Mozambique.
- Law enforcement is still relatively weak. The efforts of financial institutions, particularly banks, in reporting suspicious transactions have not been followed by prosecutions up to now. Corruption and the lack of training of law enforcers are the two main reasons for this weakness.
- A strong and adequate response by law enforcement agencies in preventing money laundering in Mozambique depends on the government's commitment to combat corruption at all levels and promote adequate training for law enforcement agencies.

Notes

- 1 See <www.voanews.com/portuguese/2006-10-25-voa7.cfm>.
- 2 For a more detailed account of these factors see <www.usaid.gov/mz/anti_corruption_po.htm>.
- 3 *Jornal Zambeze*, 201, 27 July 2006.
- 4 The minimum salary is now equivalent to US\$40.00.