# INTRODUCTION

A survey conducted at the beginning of 2002 revealed that, despite the existence of laws to criminalise it, money laundering was a little-understood phenomenon in many parts of southern Africa. While it had been known for a long time that, in the words of a veteran Canadian undercover agent, "[p]eople commit crimes to make money so that they can get power and so that they can buy stuff" (Mathers 2004), outside of the banking sector there was a low level of appreciation of the risks arising from the proceeds of crime. The obligations implicit in the recommendations of the Financial Action Task Force (FATF) did not significantly influence regulatory planning.

The last four years have witnessed a dramatic shift in the way countries in the region deal with the proceeds of crime. In August 2006 Malawi adopted a Bill against money laundering and the financing of terrorism, as a visible expression of commitment to confront these activities. Before Malawi acted, South Africa, Mauritius, Zambia, Botswana and Zimbabwe had each centred their strategies against money laundering on similarly titled legislation. This monograph contains analyses of the frameworks taking shape in most of these countries. Tracing their proximate inspiration from international instruments such as the United Nations Convention Against Transnational Organised Crime, the structure and content of the laws in southern Africa are heavily influenced by the recommendations of the FATF. It is somewhat inevitable that in the monograph their efficacy is assessed, firstly, against the backdrop of the recommendations, and thereafter against the peculiar challenges the laws have to confront.

The anti-money laundering mechanisms advocated by the FATF recommendations, and the relevant international conventions, are constructed around structures of prevention, law enforcement and international co-operation. Each structure comprises discernible sub-structures or elements (Reuter & Truman 2004), as shown in the table below.



**Table 1: Anti-money laundering structures**

| Money laundering preventive measures | Anti-money laundering enforcement measures co-operation | Measures to foster transnational |
|---|---|---|
| Customer due diligence | Criminalisation of predicate (underlying criminal) acts and of money laundering | Awareness of global trends |
| Reporting obligations | Investigation of predicate activities and of money laundering | Co-operation agreements; real-time transnational economic crime situation reviews |
| Regulation and supervision | Prosecution and punishment | Effective mutual assistance processes |
| Sanctions for non-compliance | Tracing and confiscating the proceeds | Transnational structures to trace and confiscate the proceeds |

Measures to prevent money laundering are premised on the idea that a distinction can be drawn between lawful income and 'dirty' income. Dirty income can mix with lawful income, principally through the agency of certain entry points that are vulnerable. Prevention measures are directed at these vulnerable entry points to alert them to the risk of manipulation or infiltration by dirty income. Typical among the entry points are the banks, widely regarded as the gatekeepers of the financial system. They are enjoined to know their customers and develop profiles of the transactions expected of them. Emphasis is placed on transaction recording and scrutiny in order to identify unusual or suspicious ones, which then have to be reported to state agencies. These agencies are obliged to set up and maintain a regulatory infrastructure to ensure compliance by the vulnerable institutions. Compliance is enforced using a range of punitive criminal (and in some cases administrative) sanctions.

Prevention is intricately connected to the enforcement of the law against money laundering itself. Included under the structure of law enforcement is the requirement to define and criminalise money laundering connected to as wide a range of economic crimes as is prescribed by the various international conventions on drugs, cross-border crime, corruption and terrorism. Measures within this structure are directed at the acquisition of or dealing with the proceeds of crime, as well as giving assistance to the criminal, wittingly or negligently. They also include mechanisms to augment the capacity of the mandated agencies to investigate predicate crimes and money laundering, and that of prosecuting agencies to present cases to court. In addition, anti-money laundering regimes give prominence to the confiscation of the proceeds of crime. While the positioning of this aspect in Table 1 may indicate that what is envisaged is conviction-dependent confiscation of the proceeds of crime, in reality there is ambivalence on this aspect. Some jurisdictions have adopted civil forfeiture, while others are averse to the idea of confiscation without a criminal conviction.

The susceptibility of moving the proceeds of crime across borders is the basis for the sustained effort that has been put into structuring mechanisms to foster international networking. International co-operation has been taking shape as a distinct structure since the late 1980s, particularly under the inspiration of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the FATF Recommendations and the Basel Committee on Banking Supervision. The FATF Recommendations and Basel Committee inspired similar institutions, such as the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) and the Southern African Development Community (SADC) Banking Council. International co-operation depends on collating and sharing intelligence. Reciprocity is its cornerstone, in the absence of an effective mechanism to penalise errant countries.

The contributions in this monograph examine the extent to which these structures, and in some cases their capacity to perform their assigned role, have developed in the period between 2004 and 2006. In most instances, it is only possible to conduct this assessment against the background of the typical money laundering typologies in the given country.



Jai Banda examines the position in Malawi, the most recent country to pass anti-money laundering legislation. The law was preceded by relatively extensive campaigns involving the public and stakeholders, to enable them to understand their respective roles in fighting money laundering and the financing of terrorism. It was argued that if all stakeholders appreciated the implications of money laundering and terrorist financing, they would realise the importance of supporting efforts to confront these activities. After securing political will and 'buy-in' from all stakeholders, the country would put in place appropriate legal and regulatory frameworks. The major assignment was to prepare legislation against money laundering and terrorist financing on the basis of the revised FATF 40+8 Recommendations, and United Nations conventions and resolutions.

Once the necessary legislation was in place, the country was expected to establish and build the capacity of a financial intelligence unit (FIU) to act as a hub linking the reporting institutions with the investigative and enforcement agencies or counterpart institutions in other jurisdictions. While the law is barely a year old, the anti-money laundering/combating the financing of terrorism (AML/CFT) strategy has existed for more than two years. This chapter reviews developments during the period the strategy has been in place.

Joseph Munyoro examines the progress made in Zambia towards implementing measures to pre-empt money laundering, or to detect money laundering and enforce the law against those involved. He highlights the significant role of political will in determining the pace of implementation of anti-money laundering measures. Munyoro acknowledges that the regulatory and institutional framework in Zambia is still deficient, and considers the areas that require review and improvement.

Bothwell Fundira focuses on money laundering in which intermediary institutions are implicated, which seems to be a dominant typology in crisis-afflicted Zimbabwe. He postulates three possible scenarios. The first is where the institution involved was corrupt from inception, or became corrupted by subsequent changes in ownership or changes in the economic environment. The use of such an institution to launder the proceeds of crime is inevitable. The second scenario involves an institution with "willing or rogue employees who provide [money laundering] services on an ad hoc and non institutionalised basis" (Reuter & Truman 2004). In other words, the leadership of the institution is not corrupt, but it has been infiltrated by corrupt insiders. The third scenario consists of an institution that facilitates money laundering transactions unwittingly, either because it does not have mechanisms to detect money laundering or because of dereliction in applying the mechanisms that exist. He provides interesting findings based on observation over the last three years.

South Africa's initiatives to address money-laundering date back to the 1990s, while measures to combat the funding of terrorism are more recent. The chapter by Charles Goredema reviews developments in establishing systems to combat money laundering and the financing of terrorism since 2004, against the backdrop of the current strategic plan of the ESAAMLG. South Africa has played a critical role in ESAAMLG since becoming a member a few years ago.

Ray Goba analyses the nature of money laundering activities observed in Namibia during the period 2004 to 2006, using concluded and ongoing cases to highlight the predicate crimes that generate funds that are subsequently laundered, the manner in which such funds are laundered, and the state's response. He finds that determinations about whether an institution was set up to facilitate criminal enterprise from the start or only became corrupted subsequently can only be made in retrospect. Mechanisms to detect these trends should be strengthened so that this determination can be made earlier.

Benjamim Capito analyses the progress made in Mozambique since 2004, against the backdrop of the formidable challenges emanating from money laundering in that country.



## *References*

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Reuter, P. and Truman, E.M. 2004. *Chasing dirty money: The fight against money laundering*. Washington D.C.: Institute for International Economics.