



MONEY LAUNDERING SURVEY IN EAST AND SOUTHERN AFRICA – January to June 2006

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(PART 1)

1. Introduction

The Organised Crime and Money Laundering programme of the Institute for Security Studies is dedicated to study the nature, prevalence and impact of money laundering in sub-Saharan Africa. Since 2003, the study has been limited to eastern and southern African countries. The study considers and evaluates the responses by states and other key stakeholders to money laundering, on the basis of principles and practices emerging in various parts of the world, including the developed economies. Drawing on lessons from, and comparisons with other parts of the world, the current study focuses on Botswana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. It also covers (to a limited extent) the Democratic Republic of the Congo. As part of the world community, these countries are showing an awareness of the importance of money laundering. Their common membership of the East and Southern Africa Anti Money Laundering Group (ESAAMLG) is of more than symbolic significance, since it commits them to certain prescriptive standards, exposes them to peer scrutiny, but also avails to them limited forms of technical assistance in combating money laundering and the financing of terrorism.

The study of money laundering involves identification of behaviour patterns of criminal income. Criminal income is not homogenous. Its scale and the way it impacts on the host economy depend on the nature of the crime from which it is derived. Economic crime analysts draw a functional distinction between predatory and market-based (or related) sources of criminal income. The categorisation is admittedly woven around stereotypes, but serves a useful purpose. At its simplest, predatory crime involves:¹

‘the redistribution of existing wealth. The transfers are bilateral, involving victim and perpetrator... (and) the transfers are involuntary, commonly using force or the threat of force, although deceit may suffice. The victims (individuals, institutions or corporations) are readily identifiable. The losses are also simple to determine—a robbed (or defrauded) person, institution or corporation can point to specific money and property lost.’

Market-based crimes, on the other hand:

‘involve the production and distribution of new goods and services that happen to be illegal by their very nature. The exchanges are multilateral, much like legitimate market transactions, involving (among others) producers, distributors,

retailers and money managers on the supply side and final consumers on the demand side. Because the transfers are voluntary, it is often difficult to define a victim, unless it is some abstract construct like 'society'. Therefore there are no definable losses to any individual from the act itself (although there may be from indirect consequences of the act...)'ⁱⁱ

2. Methodological note

These primary sources of money laundering are highlighted to draw attention to the dynamics of the predicate context, as well as its breadth. The basic research methodology employed in the Organised Crime and Money Laundering programme is three-pronged: Firstly, it maps and identifies established and potential activities that yield surplus assets that can be laundered – in the process analysing actual linkages to local, incoming and outgoing money laundering;

Secondly, we examine responses by government agencies and the private sector institutions most visibly affected by money laundering and the predicate acts that sustain it, as they evolve or are implemented;

Finally, the adequacy and effectiveness of these responses is assessed in the light of the perceived challenges. The survey is but one of a range of tools to disseminate the findings of the resulting process. As a result, not all the findings can be articulated in it. This survey dwells on the dynamics of money laundering as recently encountered in the region.

The capacity to detect and recover proceeds of serious economic crime needs to be seen in the context of awareness of the scale of criminal activity and the quantity of criminal income impacting on a given country. Information, which enables this kind of estimation to be made, needs to be available, otherwise the task cannot be achieved at all. The information should relate firstly to domestic criminal markets, and then to criminal activity by foreigners transferring assets into and out of the country. Finally the statistics on domestic criminal markets should take account of criminal income from crimes committed outside the country, introduced to the country by nationals.

There is no doubt that the process envisaged is rigorous. Yet, if ignored, it means the measures taken to disrupt criminal business are sporadic rather than strategic. Prioritisation of focus becomes more difficult. No country in the sub-region has completed this kind of survey. Beyond the region, steps in this direction have been taken in Australia.

A more serious approach to proceeds of crime demands greater involvement of law enforcement (including police) agencies in financial investigation. As law enforcement cannot be in all places at all times, and certainly not at the key entry points of criminal income into the economy, it should be able to confidently rely on the sectors that are 'on the frontline.' It is becoming conventional to select from a wide spectrum of vulnerable institutions, a number of them, and impose on them obligations to record and report suspicious and unusual transactions.

The designated institutions comprise the framework for detecting the infiltration of proceeds of crime into the legitimate economy. They are also mandated to prevent such infiltration. They should be linked to law enforcement through reporting mechanisms, and the capacity to freeze suspected proceeds of crime if directed to do so.

This survey overviews developments in the accumulation/production and disposal of proceeds of crime. Much of the information is from open sources, supplemented by data emanating from discrete inquiries. Beyond proceeds of crime, the survey also looks at

proceeds and assets procured by means of other unlawful activities. In this regard, it adopts a broad view of money laundering as a method of dealing with proceeds of crime and non-criminal but unlawful conduct. (South African conceptualisation) The survey draws attention to the information available in the countries over a certain reviewed period, usually 6 months. In addition, it draws lessons from it as to trends and behaviour patterns in money laundering.

The survey derives information from observations made at various stages of money laundering processes, technically referred to as placement, layering and integration. It is based on reports submitted by:

Bothwell Fundira, Benjamim Capito, Ray Goba, Greg Mthembu-Salter, Raphael Mungole, Kamogediso Mokongwa, George Kegoro, Peter Edopu and Jai Banda.

The survey is premised on certain assumptions, namely:

- Money laundering conceals the link between underlying crime and its proceeds
- Proceeds of underlying crime can be concealed by depositing them in financial institutions
- Proceeds of crime are visible as assets of economic value
- They can be identified during one or other of the stages of money laundering processes
- Any commodities with economic value can be laundered
- Money laundering is not committed only as part of organised crime, or by structured crime syndicates.

Money laundering when committed by the perpetrator of the underlying (predicate) crime, is criminal activity. This is so regardless of whether the country in which it occurs has a specific law penalising its commission. Whether it is also criminal if committed by individuals and institutions that come into contact with the proceeds, oblivious of the underlying criminal activity is a matter of debate. To pre-empt controversy, many countries have created laws to broaden the reach of anti-money laundering regimes by including intermediaries through whose hands proceeds of crime pass.

This survey overviews the primary criminal activities observed in the first part of 2006 across the region. It also highlights the structure of the formal economy used or abused, as well as any noteworthy methods used.

3. Money laundering situation

3.1 Structures (ab)used

Trading in securities.

Stockbrokers accept cash to purchase shares, deposited by prospective purchasers into commercial bank accounts. Brokers then purchase shares, which can subsequently be traded in exchange for funds deposited to the credit of the share trader.

Tax evasion by and through business monopolies

In the period under review, the use to which an inter-connected web of related business concerns can be put was demonstrated in Kenya. In a real case reported in hypothetical terms at a regional anti-money laundering meeting, the following scenario was portrayed:

An innovative scheme involving a retail supermarket chain, a bank, several companies engaged in import and export, and a law firm was set up. All of these concerns were interconnected under common ownership. For five years, the supermarket chain under-

declares sales to reflect losses, thereby cutting substantially its tax liabilities. The savings were deposited to a bank in which the supermarket had a 10% shareholding. The bank in turn is represented in all outlets of the supermarket. The bank opened two accounts, operated by the supermarket chain in fictitious names. Funds from the supermarket chain are deposited into the two accounts, ostensibly as payment for good supplied. Substantial deposits are built up over time. The main supplier to the supermarket is a sister company, which also operates accounts with the bank, in fact four accounts. A law firm, which handles the legal affairs of the supermarket chain and its sister (supply) company, also has operates an account with the bank.

The highest level of deposits held in the accounts associated with the supermarket, sister company and law firm during the relevant period was KShs 5.551 billion (USD73.9 million). The tax that under-paid on account of this scheme represents proceeds of crime, subsequently laundered through heavy investment in real estate. Utilising the unfair advantage, the supermarket chain was able to construct large shopping malls. It also invested in an Inland Container Depot and an electronic franchise. The depot became a hub for the imports brought in by the supermarket chain and its sister companies. The capitalisation of the bank grew to KShs3.4 billion (USD45.3 million) substantially raising its profile.

Laundering of proceeds from evasion of tax and duty

The combination of corruption and multi-variant schemes of evading import/export controls and customs duty is acute in East Africa. Goods are regularly imported into Kenya or Tanzania free of duty on the pretext that they are destined for landlocked Uganda, Rwanda, Burundi or Zambia. Consignments are subsequently diverted and the commodities offloaded into the local market.

The sub-regional economy is incurring significant losses of revenue as a result of the smuggling of cigarettes from Kenya. Criminal syndicates, acting in collusion with state functionaries, have been blamed for diverting cigarettes destined for export beyond the sub-region, back into Kenya, or into Uganda. Losses are reported to be in billions of Kenya shillings annually.ⁱⁱⁱ

The income produced by devious trading practices is not quantified, but it is used locally or transferred to other countries after conversion. Locally it is invested in the real estate sector, which continued to thrive in Kenya in the period under review. In the case of a retail chain, proceeds of under-declared income have been linked to its rapid expansion in the country, thus gaining an unfair advantage in the market place.

Abuse of financial institutions

Unauthorised use of depositors' funds in speculators ventures continued to feature as a significant money laundering activity in Zimbabwe, involving Rapid Discount House and the former Zimbabwe Development Bank, now called the Industrial Development Bank. Typifying speculative dealings are the revelations that emerged late in 2005, even though they related to an earlier period. The findings of a commissioned report from Zimbabwe are reproduced in full below for their illustrative value:

The curator of Trust Bank, a Mr. Peter Bailey, found that Trust Bank externalised a total of USD14, 8 million between 2002 and 2004. He noted that there was 346 556 Euros that was debited to Trust bank's bank account and could not be accounted for. A total of ZAR1,4 million, BWP27 200, □706 000 and USD703 470 could not be accounted for. A report by KPMG chronicled 'dereliction of duty' on the part of the directors who are supposed to work in the interests of the company.

The report shows that in one instance, USD3 million advanced to 'CJ and MA' was in actual fact a loan to the directors. Of the money, USD2 972 949 was used to purchase 100 percent shareholding in an off – shore company, Bareto, using a special purpose vehicle, Blantyre, incorporated in the Virgin Islands. It was noted that Mr. N. Hlupo and Mr. P. Dhliwayo later became directors of CJ and MA after they had bought shares in the company using depositors' funds. According to the report, former directors and employees, Mr. William Nyemba, Christopher Goromonzi, Phillip Dhliwayo, Kevin Sachikonye, J. Mavhimba, N.J. MacDonald, Amon Chitagu, and Kennedy Mutonhori contravened the Prevention of Corruption Act, Exchange Control Act and Companies' Act through fraudulent deals.

According to the report, a false paper trail was created in order to give the impression that CJ & MA borrowed funds from Trust on an arms' length basis and so had no connection with the directors. In order to give credence to the transactions, board resolutions were issued. Mr. Sachikonye a director of both Trust bank and CJ & MA signed a facility letter (13 May 2003) on behalf of CJ & MA. Investigations indicated that there was no board resolution in CJ & MA to support Mr Sachikonye's signature.

The connection between the loan amount of USD 3 million and the directors of Trust, Mr. Nyemba, Goromonzi and Sachikonye was underscored by the fact that they borrowed USD1 933 000 from A1 Shams, an offshore company in order to part pay the USD3 million advanced to CJ & MA.

Another asset management company, Barbican Holdings, implicated in speculative transactions and cross-border subsidy of subsidiaries in South Africa and Botswana, was suspended from the Zimbabwe Stock Exchange. A report on its dealings was prepared by Kudenga & Company, a firm of chartered accountants, and issued in July 2006.

Capital flight, disguised as trans-national investment ventures is not as rampant as was the case in 2004, but its effects continue to reverberate through the economy, as was acknowledged at various levels (See Reserve Bank Monetary Policy Statements January 2006, July 2006 and the Kudenga Report on Barbican Holdings). Concern lingers around abuses of transfer pricing mechanisms in multinational conglomerates, which will be covered in the second survey for 2006.

Investigations into white-collar crime and fraud committed using genuine or fake corporate institutions concluded in the first half of 2006 revealed disconcerting trends. Contemporary forms of organised white-collar crime combine fraud, corruption and money laundering in interconnected webs of deceit. Enclaves of secrecy, undemocratic systems inherited from colonial public administration and poor corporate governance in the private sector facilitate economic crime. Sometimes the complexity of the schemes by which such crime is committed makes it difficult to detect the fraud, corruption or money laundering features.

The patterns of white-collar crime include fraud committed on government institutions and against corporate bodies by employees. Fraud on investors and shareholders has also featured prominently in the last five years. The scenario is typified by financial scams encountered in Kenya, Zimbabwe and South Africa. Many of them had transnational dimensions (in the sense that laundered funds ended up in a different country) and involved corporate 'vehicles of convenience'.

The malpractices in the private sector in Zimbabwe, adverted to above, which turned out to be acts of massive banking sector fraud were facilitated by barely regulated forms of corruption, particularly poor corporate governance. In summary, management in seven banks speculated with depositors' funds to acquire foreign currencies. The currencies were then used to establish business outside Zimbabwe, or to procure high value commodities abroad for importation and re-sale in the country. The use of rapidly constructed corporate institutions to siphon depositors' funds for laundering is further highlighted in the speculative activities involving the Royal Bank, one of the banks that collapsed in August 2004. Its directors used the bank to raise funds, which were then channelled to their companies as loans. Some of the loans were used to purchase shares in the bank itself. Repayment would be anticipated from share appreciations, an extremely risky approach.

In other instances the loans were used to purchase equipment to be leased to the bank, or to be used in performing services to the bank, such as construction of new branches. In breach of ethics on conflict of interest, directors virtually awarded themselves contracts to supply automated teller machines, carpets and consultancy services to the bank.^{iv} The Reserve Bank of Zimbabwe has compiled a report on the 'banking scams', and fraud prosecutions are pending.

The statistics emanating from the larger economies underscore the scale of the challenge. By 2000, the average annual commercial crime reports handled by the Commercial Crimes Unit of the South Africa Police Service (SAPS) was in the region of 60 000. Forensic investigators were agreed that commercial crime was under-reported, partly because of perceptions about risks to business and partly on account of lack of confidence in the general capacity of law enforcement.

The 2005 survey of 100 companies in South Africa by PriceWaterhouseCoopers found that 83% of them had been subjected to economic crime.^v At the end of 2004, South African companies were reported to be losing R40 billion (about US\$6,452 billion) per year to white-collar crime. In 2005 this figure was reported to have doubled. A trend, which replicates that encountered in Zimbabwe, emerged in South Africa, with discoveries of unauthorised diversion of surplus pension funds from 'dormant' institutions to unpublicised corporate institutions. After subsequent transactions, any profits would be siphoned as 'management fees' or similar descriptions. A case under investigation by the Financial Services Board involves fund diversions from nine reputable pension funds. The surplus funds generated dividends, which accrued to a single company, Soundprop.

Use of forex bureaux

It is a critical part of the business of bureaux de change to attract and avail themselves for transactions to convert currency. Some of these transactions are casual, while others are with regular clients. Bureaux are an integral part of tourism business, but they are particularly susceptible to abuse in illicit trans-national transfers of funds. Subsequent transfers into accounts in the Middle East.

Transnational cash transmissions, sometimes through smuggling but also through formal financial instruments occurs regularly in the sub-region. Currency smuggling has tended to involve neighbouring countries or countries in the Middle East, in which case the currency is first converted into US dollars or Euros.

3.2 Methods used

Property purchases

- On 1st February, 2006 Zambia's Drug Enforcement Commission arrested Ministry of Finance officials for money-laundering involving K228,438,899.00 (USD **53,348.6**) by fraudulent false accounting. These officials were seconded to the Ministry of Home Affairs where they stole funds. They bought houses in the Chalala residential area and motor vehicles. The Commission has seized the properties pending the outcome of court proceedings. Another businessman was arrested for obtaining money by false pretences amounting to K96 million (USD22,419.46) from the Army by falsely claiming that he supplied beans to the Army. He managed to get K5 million (USD1,167) as part payment and he was arrested.
- In March 2006 Gabriel Kalabo and Evelyn Munakopa were arrested for theft of public funds and money-laundering amounting K272 million (USD63,521) from the judiciary. The money was used to buy houses in Chalala residential area and motor vehicles, which have been seized by the DEC.
- The period under review also saw the arrest of a District Council Secretary, Godfrey Chanda Kangwa, 43 years old of Kapiri Mposhi for forgery, obtaining money by false pretences and money-laundering involving K103 million (USD24,054). Kangwa forged documents and stole the funds from Kapiri Mposhi District Council using his position as the Council Secretary. A motor vehicle and a firearm have also been seized from him. Two others were also arrested for forgery and obtaining money by false pretences involving part of the K103 million stolen by Mr. Kangwa. A second motor vehicle was seized from one of them. The third person, a peasant farmer and businessman, is charged with laundering K103 million.
- The former permanent secretary for the Ministry of Health, Kashiwa Bulaya has been charged with corruption and abuse of authority involving K3 billion (USD12,845,945) which was earmarked for the purchase of Anti-Retroviral HIV/AIDS medicine for HIV patients. He has been linked with the following property acquisitions:
 - Anbul Investments, a company located at plot No. 10935 Chirika area, which was registered in the name of another individual M. P. but set up and registered by Bulaya.
 - Plot No. 12488 situated in Woodlands Chalala area also registered in the name of a different person, M.M.
 - Some motor vehicles which have been seized, - a Mitsubishi Pajero, a Toyota Land Cruiser and a Mercedes-Benz registered in the names of relatives. Bulaya's case is still under trial in a magistrate's court.

The Financial Action Task Force on Money Laundering (FATF) has noted the central role that investment in real estate plays in facilitating, and frequently completing the money-laundering circle. A report on the Netherlands commissioned by the Ministry of Finance found this sector to be among the most regularly used by money launderers, a situation attributable to a range of reasons. Factors of relevance to South Africa, which is also affected, have been summed up by Mthembu-Salter (2006) in the following passages:^{vi}

'.....there has been an enormous increase in South African property prices over the last few years, coupled – since 2003 at least – with the appreciation of, and then stability in, the value of the South African rand against major international currencies. This has made South African real estate an excellent investment for anyone with sufficient funds at their disposal, whether these funds be derived from criminal or legitimate activities.....

Other important factors behind the popularity of South African real estate as a money laundering vehicle are that South Africa has a sophisticated banking infrastructure, making it relatively easy to move funds around despite exchange controls. Coupled with this is a sound legal framework, which facilitates the purchase and sale of real estate and provides effective protection for property rights.....South Africa is regarded favourably by some international criminals as reassuringly distant from the rest of the world and, in particular, the law enforcement agencies of other countries and thus a place where they might be able to hide out safely.’

Mthembu-Salter also gives a brief glimpse into the historical basis for the attractiveness of the country to criminal money generally. The historical basis is not explored in detail in this survey. It is evident that the anti-money laundering authorities are aware of this unfortunate legacy. It is proposed to amend tax legislation to rope into the tax system foreign speculators in the property market .

Smuggling of commodities and cash

Money laundering activity in the reviewed period has revolved around commodity smuggling out of Zimbabwe. Indications of trends are based on anecdotal interceptions, mainly involving cigarettes and gold.

Interceptions of smuggled cigarettes continued. The Zimbabwe Revenue Authority intercepted a South African registered truck, which was being driven by a Zambian national, en route to South Africa. Carried on it were 277 boxes of Remington cigarettes worth more than Z\$2 billion (USD79,996.80). The truck was towing a fuel tank at Beitbridge border post on 23 October 2005. Although the truck was coming from Zambia, the cigarettes had been loaded in Zimbabwe.

Barely three weeks prior to this incident, three fuel tankers were intercepted at the Plumtree border post. The cigarettes, which were destined for Botswana, had a value of about Z\$8 billion (USD319,987.20). Several immigration officers from both South Africa and Zimbabwe were arrested for smuggling cigarettes in the first quarter of 2006. Two container loads of cigarettes packed for smuggling through Durban harbour, valued at millions of rand were discovered in August.

There were 2 arrests in Zimbabwe, both of Nigerian nationals attempting to smuggle foreign currency in cash out of the country. Chinonso Ozoenema, a Nigerian national was apprehended trying to leave Zimbabwe with US\$40 313, 2 900 Pounds sterling, 685 Euros and 70 Australian dollars through Harare international airport. He was travelling to Ethiopia. (March 2006)

Ozoenema, who did not declare the money on entering the country or on exit, argued that he had obtained the money as a holiday allowance in Nigeria, but intended to use it to purchase tobacco for export. The money was found by alert Civil Aviation Authority (CAAZ) officials at Harare international airport concealed in bottles of peanut butter. Ozoenema told the court that he hid the money in peanut butter bottles in order to conceal the money from officials in his own country who would otherwise seize it. Upon arriving in Zimbabwe, he learnt that the tobacco auction season would open in May. After a few days of arrival, the accused claims that he learnt of his father’s death so had to go back to his country.

Another Nigerian national allegedly tried to smuggle out USD26 995, 220 Pounds and 720 Euros stashed in his sandals. Antony Chinedu Kelechi Oluwa did not declare the

foreign currency that he had in contravention of the Exchange Control Act. The wads of currency stashed in his shoes were detected by a Zimbabwe Revenue Authority (ZIMRA) X ray machine and detained.

Bogus sale transactions

The accounts of a prominent Ugandan businessman and lawyer were used to execute a transfer of US\$5 million from a Kenyan bank to Uganda. However, the transactions were foiled before the transfer of the full amount after the recipient banks became suspicious and reported the transactions to the central bank and the police. Following investigations the two Ugandans were briefly arrested and questioned by the police but later released. The transactions were frozen and investigations continued in both Kenya and Uganda. The business man got away with the explanation that the transfer to his account was the purchase price of construction equipment, which he had sold to a Congolese customer. The sale was later cancelled at the instance of the customer, and the money refunded, less a cancellation penalty of USD40 000.

Unaccounted for proceeds

Proceeds of armed robbery

The period under review was dominated by organised economic violence, as a predicate source of money laundering.

Criminal activities associated with this violence are armed robbery, motor vehicle hijacking and cash-in-transit robbery.^{vii} The latter two forms of crime tend to have a transnational dimension, as stolen vehicles are often smuggled (trafficked) across borders for sale, and the proceeds laundered elsewhere. Some of the weapons used in committing the crimes originate from outside the country.^{viii}

There is a connection between motor vehicle theft and the robbery of security vehicles transporting cash (known as cash-in-transit-heists), as stolen motor vehicles are invariably used in committing robberies or escaping from crime scenes. Robberies of cash, in transit or at its source, are prevalent in the region, but South Africa is the worst affected. The groups involved are highly organised and occasionally carry immense firepower. Assault rifles such as AK47s have been regularly used. The relatively wealthy provinces of Gauteng and the Western Cape have been the hardest hit by armed robbery syndicates for at least a decade. The recent figures are alarming. More than 50 shopping malls in Gauteng fell victim to armed robbery of up to R70 million (USD10 million) in cash in the first 2 months of 2006! (Business Day, 22 February 2006). During the 2005/6 festive period, incidents of armed robbery of cash surged in Cape Town, at one stage averaging 3 per day. The most common *modus operandi* is to use stolen BMWs or Mercedes Benz sedans to block the way of armoured transit vans, or to cause contrived collisions.

Security companies in South Africa reported a 30% upsurge in the robbery of vehicles carrying cash to, or from commercial and/or industrial concerns in the first half 2006. The large short term insurance companies witnessed an increase in claims for violent vehicle theft.^{ix} At this stage the fate of proceeds of cash-in-transit heists and other forms of dramatic robberies of cash appears to be linked to the composition of the syndicate involved. In cases where Zimbabwean nationals have been implicated, some of the proceeds have been moved to Zimbabwe. The same applies with cases involving Mozambicans.

A dispute rages as to the effectiveness of casinos in combating the laundering of proceeds of cash robberies. Reserve bank Governor Tito Mboweni accused them of allowing their facilities to be used to convert tainted (by special dye) cash notes through the purchase and re-sale of betting chips. A casino industry representative, Derek Auret refuted the allegation, saying that casinos do not accept tainted money, and in fact have apprehended a number of suspects trying to use such money. He lauded the "voracity and effectiveness" of the sophisticated security systems casinos had in place to detect and deal with crime, as having exposed numerous major syndicates in recent months.

A casino conglomerate has implicitly conceded the laundering of R200 000 through some of its outlets. It operates automatic card dispensing machines, which load value onto and issue 'smartcards' used to bet on gambling machines, called 'fruit machines'. There is no human involvement. It appears that some of the machines accepted money obtained in a robbery. The money was tainted with special dye to indicate this and to facilitate future identification. The automatic machines evidently cannot detect the dye. The casino company having unsuccessfully tried to turn the money in to the Reserve Bank in exchange for equivalent value, it is suing the Bank. The case is yet to be decided.

Unsubstantiated claims continue to link estate agencies, car dealerships, hotels and diamond traders with proceeds of drug trafficking. Director of the Scottish Drug Enforcement Agency Graeme Pearson is quoted as alleging that European drug syndicates were laundering money through real estate and diamonds in Africa. (*The Star newspaper* August 28, 2006)

Theft and smuggling of commodities

The Reserve Bank of Zimbabwe has repeatedly attributed continuing declines in gold output and consequently earnings to smuggling of ore as well as crudely refined gold out of the country. For the period August 2005 to July 2006, the decline amounted to 36%. In actual figures, 22 tonnes of gold were turned over in 2004, 13.5 tonnes in 2005, while between January and June 2006, a mere 4.3 tonnes were delivered to the Bank's gold procurement subsidiary Fidelity. On the other hand, the local Chamber of Mines explains the decline as due to high production costs and erratic supplies of electricity and fuel. (Economist David Matyanga)

Whatever the case is with gold, instances theft of mineral have occurred in Zimbabwe the reviewed period. Two truckloads of copper ore en route from Zambia to South Africa were stolen north of Harare.

Retail of counterfeit goods

The region is confronted by a highly visible influx of counterfeit goods of various kinds brought in by corporate institutions. Malawi, Swaziland, Zambia, Lesotho, South Africa and Zimbabwe highlight prominent manifestations of counterfeit goods flooding the market.

The commonest goods are clothing, shoes, digital video discs (DVDs), compact discs (CDs), play station games and computer software. Between November 2004 and March 2005, counterfeit goods with a street value of R43 million (US\$6,935 million) were confiscated at Johannesburg International airport.

The ports of Durban and Cape Town have also been used to import fake products. The impact of counterfeit goods on the economy and jobs has been so great that a campaign has been launched in response, complete with a website www.crimesucks.co.za In response to the successes of law enforcement in tracing and seizing goods coming into South Africa, syndicates are now producing some of the goods within the country.

Goods worth millions of rand have been located at backyard factories in Gauteng. One such factory was involved in producing music videos and films for the Pakistani and Indian markets. It is conceivable that some of the products sold to local television stations could be from similar factories.

In 2005, more than 40 syndicates dealing in counterfeit DVDs and CDs were believed to be active in the Gauteng province.^x The scale of the counterfeit industry in the first part of 2006 is yet to be established, but it is possible to arrive at an estimate. This point is discussed below. (See scale and distribution)

Proceeds of corruption

Corruption is a significant source of illegally earned wealth in the sub-region. In Kenya it ranks ahead of the illegal trade in narcotics and other forms of organized crime. While 2003 estimates by anti-corruption analysts that KSh. 600 billion (US\$8.57 billion) was held in foreign accounts by about a dozen members of Kenya's erstwhile political elite have not been convincingly refuted, other grand corruption and money laundering schemes have come to light.^{xi}

Details of the Anglo-Leasing corruption scam emerged in February 2006. The Anglo Leasing Scandal emanates from a contract that was a prototype of a series of contracts entered into initially by the KANU government, and subsequently inherited by the NARC government, with shadowy business persons, to supply 'security-related equipment and services' to the government. The contracts were entered into in great secrecy and were not open to competitive bidding because of the claim that they were for the supply of security equipment and services. All the companies on the supply side of the contracts were interrelated and were controlled by Sri Lankan international wheeler-dealer, Anura Pereira with a reputation for questionable dealings with the KANU government. The contracts were a source of massive corruption for the benefit of a small clique of public officials. The KANU government whose leadership benefited from these scams first entered into these contracts from 1997 and by the time it was voted out of power had entered into 12 contracts worth USD355 million and a further Euros 67 million. The new government entered into its own contracts with Pereira although it was aware of his reputation and although it was elected on an anti-corruption platform. By the time the Anglo Leasing scandal broke out the new government had entered into 6 contracts worth U\$42million and a further Euros242 million. In total, the principals of Anglo Leasing had entered into 18 contracts with the government of Kenya, worth Euros 309 million and a further U\$397 million.

Githongo claimed that the Anglo Leasing type contracts were entered into as a means of providing finances for the ruling NARC party and that the President was aware of and had fully sanctioned the contracts. He named a number of ministers, considered to belong to the President's inner circle, as having given protection to the business people behind Anglo Leasing, giving them cover from investigation and blocking his efforts to get to the bottom of the Anglo Leasing scandal, when it broke out.

On its return to Kenya, the Committee interviewed several witnesses, among them, the senior partner of the law firm that made an advertisement on behalf of Anglo Leasing, the ministers implicated by Githongo, including the Vice president, and compiled another report. The report was eventually tabled in Parliament and, this time, Parliament unanimously adopted the report. The findings of the Public Accounts Committee provide important insights on how grand corruption in Kenya, including corruption related to the procurement of public goods and services is organized.

Corruption continues to top the list of predicate offences that contribute to money laundering in Uganda. Lingering instances over the reviewed period include the incidence of ghost soldiers and revelations of multi-million dollar corruption involving donor funds to fight HIV/AIDS, malaria and tuberculosis under the Global Fund. An estimated 24,000 ghost soldiers have been 'created' and Ugandan Shs600 billion (USD333,334 million) credited to them in 13 years between 1990 and 2003.^{xii} In 2001 some dead soldiers and others who had long deserted the army were even 'promoted'.

A case investigated by the Anti-Corruption Bureau in Malawi revealed that a top public official responsible for authorizing and approving contracts to procure goods and services received a bribe of MK2 million (USD14,925) from one supplier. The supplier quoted MK21 million (USD156,712.50) as cost of supplying materials to government. A contract was awarded to the supplier. Three months after winning the contract, the supplier complained that the value of the Malawi Kwacha had depreciated against the major currencies of the world. A price revision for the contract was sought, which the official approved. Behind the scenes, the official and the supplier colluded. They agreed that the price of the contract be raised by MK4 million (USD29,850), and further that the MK4 million be split between the two parties, with the official getting MK2 million.

To disguise the proceeds, it was agreed that the supplier should build a six bed-roomed house for the official. The official applied and got a loan of K500,000.00 (USD3,731) from government, ostensibly to finance the construction of a dwelling house.

Investigations revealed that the amount K500,000 was inadequate to finance a six bed-roomed mansion. The MK2 million bribe received was laundered and used to build a dwelling house. The government loan was a subterfuge to hide the corrupt proceeds from the public view.

4. Scale and distribution

There are major challenges in computing the scale and assessing the distribution of money laundering, even for a limited period. One has to recognise that one is confined to a small part of what is probably a grander picture. Extrapolation is inevitable. The question is whether it is reliable, and how to estimate the relative size of the visible field. In the case of cross-border smuggling, one could rely on the official proportion of recorded trade which is inspected at the borders. Contraband intercepted there gives an indication of the size of contraband which is not intercepted. In terms of the formula, I if, for instance, customs officials only inspect 10% of goods imported into a given country, the proportion of the inspected goods intercepted as unlawful imports may approximate the global proportion of contraband in all imports for a given period. A cautionary note is that this formula should only be applied to two kinds of contraband: goods that are illegal by their very nature and goods that are illegal because import duty or tax has been understated. At the same time, a deficiency of this mode of quantification is that it rests on attempts to launder rather than completed acts. Goods in transit, once intercepted and seized, cannot therefore yield funds for laundering. At most therefore, their aggregate value represents the scale of attempts to launder.

It should be noted that the examination rate for customs authorities in the region is around 5%.^{xiii} Even within that fraction, much reliance is placed on risk profiling, which means goods entering through certain routes, or originating from certain territories are subjected to more rigorous scrutiny than imports in general. The risk of laundered goods entering or exiting through the borders is understandably higher. In certain countries in

the region, money laundering attributable to smuggling has been put at higher than 50%. Gold smuggling has reportedly exacted a heavy toll on the economy in Zimbabwe, although its scale is still a matter of controversy.

If one takes into account that counterfeit goods seizures at Johannesburg amounted to USD6.9 million worth of counterfeit commodities, in an examination of a mere 5% of imports through that port, it becomes clear that the scale of their entry is astronomical. About USD130 million worth of counterfeit merchandise probably finds its way into the streets from this source.

The Tobacco Institute of South Africa estimates that the trade in smuggled tobacco products has grown from being almost non-existent 10 years ago to more than 20% of the total South Africa market.

Corruption is a significant contributor to money laundering. The amounts involved appear to be greater than those relating to smuggling. The involvement of all manner of parasitic role-players is part of the reason. In the period under review, corruption in both the public and private sector continued to raise concern. High stakes corruption in the private sector revolved around funds held in trust for depositors and pensioners.

Fortunately, the problems inherent to smuggling-related money laundering do not afflict certain forms of commercial crime, such as fraud. Official estimates are emerging. Money laundering cases reported to the investigating authorities in Botswana between January 2005 and March 2006 involved BWP52 618 747.10 (USD9,523,993), SAR197 861.38 (USD30,020.40) and USD1 255 553.00. Of 151 cases of suspected money laundering investigated, 10 had been completed. It was difficult to distinguish the figures for 2005 from those for the first quarter of 2006.

Zimbabwe reported that only Z\$15 trillion () of the Z\$43 trillion (USD) in circulation was being handled through the banking institutions. It is not a crime to withhold money from the banking system, unless in the case of a business entity. It therefore does not follow that about two thirds of currency in circulation was being laundered. The proportion laundered can only be determined if the uses to which the money was put are established. It is a matter of common knowledge that currency exchange of local currency for foreign currencies of various descriptions has been flourishing at least since the late 90s. The proportion of the Z\$28 trillion that was used in this way has not been established.

5. Outstanding issues

Theft of funds

The Chiluba cases remain outstanding. Former President Fredrick Jacob Titus Chiluba has been charged for theft of public funds abuse of authority of office and money laundering involving about US \$488, 000.00 from the Government of Zambia during the time he was in office as President. He is charged together with Xavier Franklin Chungu former Director General of the Zambia Intelligence Service, Ambassador Attan Shansonga and two businessmen Aaron Chungu and Faustin Kabwe from Access Finance Company.

The allegation is that the former President abused his office and used public funds in the London ZAMTROP Accounts to pay school fees for his children in London and to transfer some to his wife. These offences were committed through the office of

Director-General Xavier Chungu who collected money from Zambia National Commercial Bank with the collusion of Samuel Musonda the Managing Director of the Bank. The latter has admitted delivering large sums of money to former President Chiluba.¹⁵ A good number of vehicles and houses were seized in Zambia by the Task Force on corruption using Anti-Money-Laundering Legislation. The Task Force also seized a block of flats and houses belonging to a company called ZAMDELL owned by Faustine Kabwe and Aaron Chungu. The movement of funds used and or stolen by the former President has been traced by the DEC.

The trial of Chiluba and others has been stalled by his illness. At the time of the survey, he was receiving attention for a heart ailment at a private clinic in South Africa. Furthermore, Chiluba's co-conspirator Attan Shansonga is at large, having fled from Zambia just before the trial started.

The Serious Crime squad of the Botswana Police Service started investigating four cases of the electronic theft of BWP3.5 million (USD633,500) from a number of banks, committed using stolen or copied identity particulars, a technique familiar to cyber criminals in February 2006. It appears that a few financial institutions have fallen victim to similar crimes, but some are not prepared to report them. The funds were transferred to a bank in South Africa, but subsequently withdrawn. The fate of the investigation has not yet been established.

Among many issues for law enforcement agencies raised by cyber crime activities are two that concern us in Southern Africa, firstly that they can be committed from a jurisdiction separate from the location of the victim(s), and secondly they are often not clearly illegal.^{xiv} Occasionally they may be illegal in one of the jurisdictions involved, but rarely will they be illegal in both or all.

6. Responses to Money Laundering and Terrorist Financing

6.1 General Framework

The general framework within which anti-money laundering laws and institutional alignments have taken shape around the globe can be graphically summarised in table 1 as follows:

Anti-money laundering pillars

Money laundering preventive measures	Anti-money laundering enforcement measures	Measures to foster trans-national co-operation
Customer due diligence	Criminalization 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 (MoUs); Real time trans-national economic crime situation reviews
Regulation and supervision	Prosecution and punishment	Effective mutual assistance processes

Sanctions for non-compliance	Tracing and confiscating proceeds	Trans-national structures to trace and confiscate proceeds.
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6.2 Legislation/ Regulations

In May 2006, The Reserve Bank of Zimbabwe issued ‘Guidelines on Anti – Money Laundering and Combating of Terrorism for Financial Institutions and non Financial Businesses & Professions’ The regulations aim to buttress the ‘Bank use and Suppression of Money Laundering Act’. Features in the regulations that are worth noting are:

- ‘Lawyer client relationship based information shall continue to be covered by privilege.’
- Banks are liable to pay a Z\$1 billion (USD39,998.4) penalty for not following know your customer regulations and Z\$5 billion (USD199,992) for not reporting suspicious transactions that they come across.
- Professional intermediaries are required to categorically indicate that they know their client inside out during the account opening process.
- Qualified personnel should man the internal audit function for financial institutions.

Administrative measures

Kenya reported that its police agency was assembling a cyber-crime laboratory to equip police in Eastern Africa States to detect and combat crimes committed through and on the Internet. The facility will be used by member states of the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO).^{xv}

Zimbabwe continued to rely on anti-corruption legislation, in the form of the Prevention of Corruption Act and a Presidential decree that was later converted into an Act of Parliament, called the Reconstruction of State Indebted Companies Act, in cases of economic crime. It entitles the Minister of Justice to act against investments and assets of persons and corporate bodies suspected of grand corruption, by declaring them to be ‘specified’ persons. A widely reported use of these laws involved one Mutumwa Mawere, a dual citizen of South Africa and Zimbabwe.

The protégé of an influential politician, Mutumwa Mawere managed to acquire interests in a conglomerate that embraced mining houses, insurance companies, manufacturers of building equipment and the retail sector with the patronage and apparent financial assistance of the ZANU(PF) party. In return, he extended many favours to the party and government especially in the procurement of foreign currency. As the economy continued to decline, the impact of maintaining a dual exchange rate, and greed, precipitated fallout between Mawere and the dominant clique of the party. In consequence, patronage was replaced by outright hostility, and Mawere was stripped of all his Zimbabwean interests. Particularly contentious is mining company SMM Holdings. During the period under review, Mawere lodged successive court applications to overturn the specification. See

http://www.zimbabwesituation.com/jun1_2004.html#link3

The South African Revenue Service is examining the tax files of what it calls the top 500 'high net worth individuals'. Most have gross annual incomes in the region of R5 million (USD675,675). The objective is to determine whether their known asset holdings have been correctly declared to tax authorities. The value of a broad range of assets including trusts and share options.

6.3 Accountable/designated institutions

The most extensive lists of accountable or designated institutions are to be found in the laws of Mauritius, South Africa and Zimbabwe. Problems continue to be encountered in including lawyers as accountable institutions, notably in Botswana and Malawi. Having regard to experiences in Kenya and South Africa, this deficiency needs to be addressed.

Kenya, Tanzania and Uganda still do not have anti-money laundering laws. In the wake of the attempted transfer of USD5 million referred to above, banks in Uganda appear to be more vigilant in detecting suspicious transactions, if the absence of major reports of large transfers through Ugandan banks is anything to go by.^{xvi}

In Tanzania, most businesses still do not accept personal cheques. High Value assets such as real estate, motor vehicles and jewels worth millions of shillings can be bought in cash. The Government is yet to put a limit on cash transactions. There is no regulatory framework for alternative money remittance systems. These include among others, Expedited Mail Services and money transfers by public transportation such as buses. Vulnerabilities to money laundering attributable to cash economies apply.

6.4 Profile of recent successes

In South Africa, the Asset Forfeiture Unit (AFU) has taken proceedings, which are either separate from or run parallel to the underlying criminal cases. The AFU appears to be succeeding in extending its reach to proceeds of crime stashed abroad. In July 2006 the AFU reported not only locating, but also repatriating R6.6 million (about USD1 million) from a bank account held in Switzerland by a fugitive gold smuggler.^{xvii}

In February 2006, the unit secured a court order to freeze a residential property belonging to a former Nigerian state governor, Diepreye Alamiyeseigha, on the Cape Town Waterfront. Alamiyeseigha is charged with 39 counts of money laundering in Nigeria. An application to sell the apartment, which is valued at R14 million (USD 2.06 million) was granted by the High Court in Cape Town in late July 2006.

The AFU recently secured an order from the Royal Court of Guernsey in the Channel Islands to freeze about R1 billion (USD147 million) held in the name of businessman Dave King, who is charged with more than 300 counts of fraud, exchange control violations, tax evasion and money laundering by the South African authorities.^{xviii}

The Standard Bank runs a Fraud Miles programme, which encourages and rewards employees vigilant to fraud on the bank. Staff earn 'rand miles' for each fraud incident reported. Mile accruals depend on the type and scale of fraud involved. Accumulated miles qualify them for an annual prize of R1 million (USD **151,724**). The scheme has been credited for the reporting of 586 incidents in the past year. The amount that the bank could have lost amounted to R168 million (USD25,489,632).

During the year ending 31st December 2005 the Anti-Money Laundering Investigation Unit (AMLIU) of the Drug Enforcement Commission (DEC) in Zambia intercepted and

blocked about K22 billion (USD5,137,792) worth of fraudulent payments from government to fictitious suppliers of goods and services to the government.¹³ This figure is two times the figure seized and blocked in 2004.¹⁴

One of the lingering issues in anti-money laundering is the degree of market penetration by financial institutions. The higher profile accorded to banks, for instance, in preventing money laundering, is premised on the assumption that they occupy a front-line role in detecting dealings with proceeds of crime. The extent to which this is true largely depends on the nature of banks' presence in the susceptible market. Progress has been registered in this regard. Commercial banks in South Africa introduced a regime of low-cost banking accounts specifically designed for previously un-banked South Africans. In August 2006, it was reported that in 18 months, the Mzantsi accounts, as they are collectively called, had acquired 3,3 million new account holders.^{xix} This represents a significant inroad into the proportion of the economically active population that is not exposed to banks. It can be assumed that the mandatory due diligence processes required by the Financial Intelligence Centre Act occurred, producing valuable data for future implementation of anti-money laundering measures.

7. Concluding observations

Developments over the period reviewed show a greater level of awareness of vulnerabilities to money laundering. At the level of rhetoric, there appears to be unanimity that money laundering is counter-productive, and that facilitating it is tantamount to participating in economic crime. Being largely secretive, at least in its early stages (so-called placement and layering) money laundering is difficult to detect and quantify. It appears to be easier to detect at the point when proceeds are deployed in property acquisition. But because by that time the underlying act which yielded the funds is concealed in history, the issue of connecting the act to the funds remains a challenge. All countries surveyed seem to have accepted the efficacy of the structures for optimal responses to money laundering shown in Table 1 above. A common thread running through them is the need for pro-active approaches to the underlying (predicate) activities in combating money laundering.

Part of what is advocated is a restructuring of the way law enforcement authorities perceive financial aspects of unlawful activities. Certain factors have tended to impede progress in combating organised financial crime, both domestic and trans-national.

Professor Levi as has set out the critical ones:^{xx}

1. 'moderate investigative knowledge, due to the inherent secrecy of the activities and inadequate resource allocation to financial aspects of crime;
2. inadequate co-ordination and intelligence exchange between police and the revenue department, due partly to legislative prohibitions on data sharing but also reflecting differences in cultural and policy objectives;
3. inadequate use made of suspicious transaction reports by the police and customs agencies due to a lack of resources and the inherent difficulty of following up many reports without contacting the account holder for an explanation;
4. inadequate powers to detain cash of unexplained origin other than drugs money at borders.....'

Some of these factors are relevant to the detection of money laundering as well. To prevent them hobbling the effort required of law enforcement, there should be a shift in terms of how the confiscation of proceeds is perceived.

Effective systems to recover proceeds of crime have to address the conceptual conflict between pursuing proceeds as an instrument of criminal justice enforcement or as part of economic justice. The issue is critical in so far as the ethical constraints on the state differ depending on which ideology is dominant. The connection between assets and the crime from which they were produced makes it very difficult to conceive that their recovery can ever be regulated differently to the determination of guilt or innocence of the alleged criminal. This obviously renders the efficiency and effectiveness of the recovery regime dependent on the efficiency of the rest of the criminal justice process. In turn this means that the fewer the number of convictions in corruption and economic crime cases, the smaller the level of recoveries. A system that is premised on economic justice, on the other hand, is more likely to recognise that organised crime and corruption, as well as the myriad other sources of criminal income, cannot be confronted only by the criminal justice system. The process of detecting and recovering criminal income is separated from the rest of the criminal justice process, especially from the criminal trial. The goals are to bring criminal income into the legitimate mainstream, if it is circulating outside. If criminal income has already penetrated the legitimate economy, the objective becomes to remove it from the possession or control of the suspect beneficiary, even though he/she may never be convicted of any crime. Asset seizure as an instrument of economic justice will easily use amnesties and taxation measures to mop up illicit income. Such measures have been used in Southern Africa, without much controversy. Recent indications are that R64 billion was declared to have been removed unlawfully from South Africa during the latter years of the apartheid system. Some accruals to the fiscus, through taxation are expected.

ⁱ R T Naylor, *Wages of crime*, Cornell University Press, 2002, pp. 252–3.

ⁱⁱ Ibid.

ⁱⁱⁱ The Corporate Affairs manager of one company, Mastermind, was quoted as saying that a cartel, which includes ‘moneyed traders outside the tobacco industry, colludes with law enforcement officials to facilitate the dumping of illegal products in the local market.’ A detailed report is accessible from the Standard newspaper, at http://www.eastandard.net/hm_news/news_is.php?articleid=27676 (accessed 22 August 2005)

^{iv} More on the saga at:

<http://www.theindependent.co.zw/news/2006/February/Friday10/4171.html>

^v See http://www.pwc.com/za/ENG/pdf/pwc_GECS05SA.pdf

^{vi} Greg Mthembu-Salter ‘Money Laundering in the South African Real Estate Market Today’ in C Goredema (ed) *Money Laundering Experiences*, (2006) ISS Monograph Series number 124, pp 21–38, at p. 25

^{vii} Charles Goredema, ‘Organised Crime in Zimbabwe’, in P. Gastrow (ed.), *Penetrating State and Business, Organised Crime in Southern Africa*, Institute for Security Studies Monograph no. 89, vol. 2, 2003. p. 5

^{viii} Goredema. p. 9

^{ix} Business Day, 6 September 2006

^x The *Star* newspaper 4 February 2005.

^{xi} See G Kegoro ‘Money Laundering Patterns in Kenya’ in C Goredema (ed) *Profiling Money Laundering in Eastern and Southern Africa* (2003) ISS Monograph series number 90

^{xii} Ibid

^{xiii} South Africa Revenue Services Authority figures.

^{xiv} *Cyber Crime . . . and Punishment? Archaic Laws Threaten Global Information* A Report prepared by McConnell International in December 2000

^{xv} See All Africa News 7 September 2006 at <http://allafrica.com/stories/200609070049.html>

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- ^{xvi} Interview with Legal Manager Standard Chartered Bank Uganda on March 27 2006
- ^{xvii} Named as Nicholas Michaelidis, a member of a syndicate linked to gold smuggling from South Africa.
- ^{xviii} Reported in the July 30, 2006 edition of the *Sunday Times* (SA).
- ^{xix} See *Business Day*, 30 August 2006
- ^{xx} Michael Levi, 'Criminal Asset Stripping' in A Edwards and P Gill (editors) *Transnational Organised Crime: Perspectives on Global Security* pp. 212-26