



**AN ASSESSMENT OF THE LINKS BETWEEN CORRUPTION AND THE  
IMPLEMENTATION OF ANTI-MONEY LAUNDERING STRATEGIES AND  
MEASURES IN THE ESAAMLG REGION**

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**ABBREVIATIONS & ACRONYMS**

ACC	Anti-Corruption Commission
AML	Anti-money laundering
AMLIU	Anti-Money Laundering Investigation Unit
APG	Asia Pacific Group
APRM	African Peer Review Mechanism
AU	African Union
AUCPCC	African Union Convention on Preventing and Combating Corruption
BUPSML	Bank Use Promotion and Suppression of Money Laundering Act
CDD	Customer Due Diligence
CID	Criminal Investigations Department
CFT	Combating the Financing of Terrorism
COMESA	Common Market for East and Southern Africa
CPI	Corruption Perception Index
DEC	Drug Enforcement Commission
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force on Money Laundering
FSAP	Financial Sector Assessment Programme
FDI	Foreign Direct Investment
FIC	Financial Intelligence Centre

FIIEU	Financial Intelligence Inspectorate and Evaluation Unit
FIU	Financial Intelligence Unit
ICAC Corruption	Independent Commission Against Corruption
ICPO	International Criminal Police Organisation
IGG	Inspectorate General of Government
IMF	International Monetary Fund
ISS	Institute for Security Studies
KACC	Kenya Anti-Corruption Commission
MDGs	Millennium Developments Goals
NACP	National Anti-Corruption Plan
NAMFISA	Namibia Financial Institutions Supervisory Authority
NGO	Non Governmental Organisation
NIS	National Integrity Systems
OECD	Organisation for Economic Co-operation and Development
PEP	Politically Exposed Person
TI	Transparency International
SADC	Southern African Development Community
SIU	Special Investigations Unit
SOCPA Act	Serious Offences (Confiscation of Proceeds)
UN	United Nations

UNCAC

United Nations Convention Against Corruption (also known as the Merida Convention)

UNCTOC

United Nations Convention Against Transnational Organised Crime (also known as the Palermo Convention)

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## Executive Summary

This report presents the findings of research on the impact of corruption on the implementation of anti-money laundering (AML) strategies and measures in the member countries of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). It is the result of an analysis of questionnaires completed by twelve (12) of the 14 member countries, data secured through desktop research and interviews with contact persons suggested by the ESAAMLG. As such, the study was non-intrusive, rather than investigative. As an evaluation of effectiveness, the survey was very limited.

The survey provided an opportunity to conduct an overview, at a regional level, of the relationship between corruption and anti money laundering regimes. Most of the member countries of the ESAAMLG are state parties to the main international instruments against corruption, namely the African Union Convention on Preventing and Combating Corruption (AUPCC) and the United Nations Convention Against Corruption (UNCAC). These conventions set benchmarks by which to assess the quality of measures adopted by member countries. The overall objective of the assessment is to expedite the adoption and implementation of effective measures to combat money laundering in all ESAAMLG member countries. It seeks to inquire into the nature of the relationship between corruption and the implementation of anti-money laundering measures. This survey was intended to:

- Develop a better understanding of the links between corruption and anti-money laundering systems
- Contribute to knowledge about the nexus between corruption and money laundering, which has also recently come under the scrutiny of, among others, the APG, FATF, the World Bank, GIABA and the UNODC.
- Assist with the development of appropriate safeguards against corruption in anti-money laundering structures
- Identify and highlight the importance of identifying and profiling politically exposed persons (PEPs) in anti-money laundering measures
- Evaluate the adequacy of mutual legal assistance arrangements within ESAAMLG member countries in so far as they are relevant to pursuing the perpetrators of corruption and the proceeds of corruption.

The research reviewed government policies as expressed in legislation in the respective member countries. It also utilized work already undertaken by the anti-corruption agencies, and the findings of other studies undertaken in the region and beyond.

**The study observed that:**

The implementation of anti-money laundering measures is vulnerable to corruption in several ways:

- Firstly, corruption is among the most significant contributors to proceeds of crime that become available for laundering.
- Secondly, and because of its connection to money laundering, corruption can prevent the adoption of effective measures against money laundering, and may succeed in doing so if not detected and checked.
- Thirdly, corruption impedes the effective implementation of AML measures that have been adopted – such as by interfering with the capacity of mandated institutions to perform their duties, or corrupting the relevant officials.
- Fourthly, institutions on whose co-operation the prevailing AML systems increasingly rely can, if corrupted, sabotage the effective implementation of AML measures by falsifying information or concealing information from the mandated institutions as to the true nature of questionable corruption-related transactions.
- Finally, corruption can take advantage of differences in levels of implementation of AML measures in different countries to frustrate trans-national co-operation to investigate money laundering or track proceeds of crime.

**The research found that:**

- Significant measures that could reduce money laundering exist in all the member countries, but as some member countries have not yet adopted the necessary legislation, the implementation of measures that specifically target money laundering across the region is uneven.
- Corruption is regarded as a serious offence, which contributes to money laundering in all member countries. The connection between corruption and money laundering does not appear to have impacted on the legislative or institutional frameworks to combat the two vices. Specifically, in most member countries, corruption and money laundering are investigated by agencies that are separate, distinct and have little interaction. This results in a regrettable dissipation of resources and unhealthy competition.
- Financial, human and communication resources allocated to anti-corruption and anti-money laundering interventions in most member countries are inadequate, and affect effective implementation of both anti-corruption and anti-money laundering measures.



- There is a generally low rate of successful prosecutions for money laundering in the region. This points to the need for a review of the effectiveness of the implementation of anti-money laundering measures in the member countries that have adopted them.
- Documentation of statistics on requests for mutual legal assistance, as well as of confiscations of proceeds of corruption is generally poor. As a result the effectiveness of these modes of international co-operation is difficult to assess.
- All the countries surveyed do not have comprehensive and documented national anti-money laundering strategies. Several have anti-corruption strategies, but these are not aligned to money laundering typologies, and do not take account of the vulnerability of the anti-money laundering infrastructure to corruption.
- State parties to the UNCAC are obliged to legislate for enhanced due diligence to be exercised in financial transactions involving domestic and foreign politically exposed persons (PEPs). The Financial Action Task Force (FATF) Recommendations opt for a narrower approach, requiring enhanced due diligence in respect only of foreign PEPs.
- Member countries have generally not yet adopted rules for the identification and application of enhanced scrutiny of politically exposed persons (PEPs) as required by the narrow approach in the FATF recommendations or the broad prescriptions of the UNCAC. Only one country had written such a requirement into its AML legislation.
- The autonomy of existing anti-corruption and anti-money laundering institutions is an important issue, as it appears to impact on their credibility, effectiveness and success. The extent to which institutions in ESAAMLG member countries are functionally autonomous could not be determined on the basis of available information.
- The absence of laws to facilitate access to information that could indicate:
  - (a) the accumulation of resources by corrupt means, or
  - (b) inadequacies in the implementation of measures against corruption and money launderingappears to blunt the effectiveness and success of measures to combat both corruption and money laundering.

**The study accordingly makes the following recommendations to member countries:**

- Acknowledging that corruption can take advantage of differences in levels of implementation of AML measures in different countries to frustrate trans-national co-operation, it is recommended that each member country take stock of the status of implementation of AML measures, as required by their international obligations, as well as by membership of the ESAAMLG. All member countries should move with greater urgency to plug any identified gaps in implementation. Specifically, countries that did not ratify the relevant international instruments in time should accede to them and implement them. Countries that have ratified them should implement commitments made.
- In order to negate the impact of corruption on combating money laundering, member countries should consider adopting legislative and institutional frameworks to formalize collaboration between the agencies responsible for investigating corruption and money laundering. This is likely to optimise the use of scarce resources.
- Data on:
  - (a) outgoing and incoming requests for mutual legal assistance, and
  - (b) on confiscations of proceeds of corruption in cases with trans-national dimensions should be better documented.
- Member countries should create the necessary legislative and administrative framework to facilitate non-conviction based asset forfeiture. This should include the establishment of dedicated structures for the management and disposal of recovered assets.
- Member countries should adopt comprehensive anti-money laundering strategies, taking into account their obligations in terms of the relevant international instruments and as members of the ESAAMLG. In particular, each member country should create the necessary legislative and administrative framework to facilitate the application of enhanced scrutiny of commercial financial transactions linked to politically exposed persons (PEPs).
- Member countries should adopt measures to enable monitoring and evaluation of the implementation of measures against corruption and against money laundering.
- Each country should legislate to facilitate access to information that could indicate the accumulation of resources by corrupt means. In particular, countries with unexplained wealth legislation should identify bottlenecks

impeding its implementation and take remedial action to clear them. Countries without such legislation should consider creating it.

- Member countries should enable the agencies mandated to combat corruption and money laundering to be autonomous in terms of structure and operations. Autonomy should be understood to mean the provision of adequate resources and freedom from undue influences. At the same time, the agencies mandated to combat corruption and money laundering should be accountable to the public, specifically through legislative and judicial institutions.
- Recognising:
  - (a) that the typologies of links between corruption and money laundering adverted to above are of a general nature,
  - (b) that each country will be affected in a different way, depending on the stage reached in constructing an AML regime,
  - (c) that the current study did not go beyond the main structures in the public sector

more expansive research on the specific linkages should be conducted in each member country.

#### **To the ESAAMLG**

**ESAAMLG** should periodically monitor the implementation of the recommendations made in this report.

**ESAAMLG** should consider developing a regional mechanism for FIUs within member countries to exchange information relating to money laundering, taking into account applicable national laws.

## SECTION 1: INTRODUCTION AND REGULATORY CONTEXT

### Chapter 1: Introduction

#### Background

1. This Chapter sets out the background to the assessment. It outlines the objectives of the research, the methodology used, and points to important limitations. The Chapter also explains the concepts around which the research revolved.
2. It is widely acknowledged that corruption impoverishes communities, and threatens the safety and security of many for the benefit of only a few. A country's potential to attract Foreign Direct Investment (FDI) and more critically to develop can be significantly impaired, making it less able to provide basic services to uphold the rights of its citizens.<sup>1</sup> Corruption damages trust in systems that affect people's daily lives and is a major obstacle to the achievement of the United Nations' Millennium Development Goals (MDGs), whose primary aim is to reduce poverty.<sup>2</sup>
3. Experience has shown that the prevalence of corruption in one country can affect other countries. As a result corruption has increasingly become a particular concern to international development institutions, global law enforcement and judicial systems. Research across the world shows that levels of corruption are high in spite of improved legislation and anti-corruption efforts. It is argued that more than US\$1 trillion is paid in bribes alone each year compared to the estimated size of the world economy of over US\$30 trillion.<sup>3</sup>
4. Levels of corruption in Africa are perceived to be unacceptably high. Corruption is a key impediment to sustained economic and human development. According to Transparency International (TI), corruption and lack of transparency are serious challenges in Africa, with thirty-six (36) out of the fifty-two (52) African countries assessed scoring less than three (3) out of ten (10) on the Corruption Perception Index (CPI). This score indicates that corruption is perceived to be rampant. Six (6) of these thirty-six (36) countries are from the ESAAMLG region. Fourteen (14) out of the fifty-two (52) countries scored between three (3) and five (5) indicating that corruption is seen as a serious problem. Six (6) of the fourteen (14) countries in this category are also from the ESAAMLG region. Only two (2) countries in Africa,

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<sup>1</sup> This view is shared by analysts and international organisations alike

<sup>2</sup> <http://www.unodc.org/unodc/en/corruption/index.html>

<sup>3</sup> Trade research reported in the World Bank Institute Report. Available at <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTPROGRAMS/EXTTRADER/ESEARCH/0..contentMDK:20191512~menuPK:215762~pagePK:210083~piPK:152538~theSitePK:544849,00.html>

both of which are incidentally ESAAMLG members, scored a CPI of more than five (5).<sup>4</sup>

5. Experience in the region and beyond shows that corruption has become more complex and sophisticated, and that it can no longer be adequately addressed through conventional law enforcement agencies such as the police. Many countries, including a number of ESAAMLG members, have introduced specific dedicated institutions, to detect and combat corruption.
6. The record of effectiveness of anti-corruption institutions has been mixed the world-over. Where performance has tended to be unimpressive, this has been attributed to:
  - Legal frameworks that are either inherently weak, or do not clearly demarcate the jurisdiction of dedicated anti-corruption agencies as against potentially rival agencies of government
  - The exclusion of anti-corruption agencies from probing spheres of activity that are susceptible to corruption
  - The absence of effective, transparent checks and balances to complement the work of anti-corruption agencies
  - Discordant relationship with other governance institutions, or with foreign counterparts
  - Inadequacy of resources.<sup>5</sup>
7. The preamble to the United Nations Convention Against Corruption reiterates the concern expressed at various levels about 'the links between corruption and other forms of crime, in particular organised crime and economic crime, including money laundering.' As crime motivated by and capable of yielding substantial resources, corruption is predicate to money laundering whenever and wherever it occurs.
8. Corruption weakens the integrity and effectiveness of institutions, corroding ethical standards. As a result, it may negatively impact on the implementation of anti-money laundering measures. The International Criminal Police Organisation (ICPO-Interpol) believes that corruption fuels trans-national organised crime and that terrorists and organized criminals would not be able to carry out their illegal activities without the complicity of corrupt public officials.<sup>6</sup>
9. Following the joint FATF/ESAAMLG plenary held in Cape Town, South Africa in February 2006, ESAAMLG set up an anti-corruption working committee and

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<sup>4</sup> Transparency International Corruption Perception Index 2007

<sup>5</sup> These factors appear consistently in all major international institutions' views on the impact of corruption

<sup>6</sup> <http://www.interpol.int/Public/Corruption/about.asp>

mandated it to conduct research into the linkages between corruption and money laundering. The purpose of the research was to analyse the links between corruption and the implementation of AML measures in the ESAAMLG region. It was envisaged that the outcome of the research would enhance the implementation of such measures. The committee took note of the findings of the research by the APG/FATF Joint Project Group on Corruption and Money Laundering, as reported in September 2007.<sup>7</sup>

10. The committee was requested to report on the analysis, and recommend how ESAAMLG member countries could improve their responses to money laundering.

### **Research Objective**

11. The overall objective of the research was to expedite the implementation of AML measures in ESAAMLG member countries. The inquiry into the relationship between corruption and the implementation of anti-money laundering strategies is intended to:

- Identify how corruption impacts on anti-money laundering measures
- Contribute to explaining the relationship between them
- Identify the specific points at which the impact of corruption on the implementation can be detected
- Produce suggestions of how member countries can minimise such impact

12. The research utilized work already undertaken by national anti-corruption agencies as well as other studies that have been undertaken, specifically by the Asia Pacific Group (APG) and the FATF. The study relied extensively on the responses to a questionnaire developed by ESAAMLG and adopted at the ESAAMLG Annual General Meeting (AGM) in Botswana in August 2007. To verify the accuracy or completeness of data, the researchers consulted widely.

### **Research Methodology**

13. This report was required to rely on data collected in Botswana, Lesotho, Swaziland, Mozambique, Kenya, Uganda, Mauritius, Seychelles, South Africa, Zimbabwe, Tanzania, Zambia, Malawi and Namibia. In a few cases, some of the required data was not available.

14. This study primarily relied on the review of literature, selected case studies, and analysis of responses to the ESAAMLG questionnaires. A conceptual framework in

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<sup>7</sup> The report was prepared for the Joint Project Group by David Chaikin and Jason Sharman, and is accessible on the FATF website as FATF/PLEN (2007) 37

which to analyse contemporary AML regimes, and explore the risk to them arising from corruption, was drawn up.

15. The study analysed the available mutual evaluation reports, in all cases where reports were not outdated. In identifying the obligations on member countries in respect of corruption and money laundering, the researchers considered:
  - The United Nations Convention Against Trans-national Organised Crime (2000)
  - The United Nations Convention Against Corruption (2003)
  - The African Union Convention on Preventing and Combating Corruption (2003)
  - The FATF Recommendations

Questionnaires were sent to all ESAAMLG countries. By the end of the research period, the researchers had received responses from twelve member countries.

### **Research limitations**

16. Given the expanse of the region, and the number of institutions that needed to be surveyed, the time in which the research was conducted was not long enough to permit quantitative research. The subject matter would have required more extensive and detailed research than could be achieved through desktop studies and survey by questionnaire. The scope to probe the facts beyond the responses was severely curtailed.
17. The private sector is regarded as an important partner in combating money laundering, mainly because it can be abused to launder proceeds of crime. This sector has increasingly been drawn into AML regimes. The research focused predominantly on public sector structures and did not pay sufficient attention to structures in the private sector.

### **Explanation of terms**

#### **Corruption**

18. Despite being a well-discussed and much vilified phenomenon, corruption still defies comprehensive, universal definition. Most definitions of corruption are descriptive of behaviour. The longest enduring description of corruption stipulates that it is:<sup>8</sup>

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<sup>8</sup> Briscoe A & Hermans HCL, *Combating Corruption in Botswana*, Friedrich Ebert Foundation (2001)

the misuse of public power by officials in the public sector, whether politicians or civil servants, in order to improperly and unlawfully enrich themselves, or those close to them, by the misuse of the power entrusted to them by their positions

19. Corruption also occurs in relationships existing entirely outside the public sector. Briscoe and Hermans (2001) contend that, to take account of this, corruption should be viewed in a wider sense, so that it entails:<sup>9</sup>
  - The abuse of a position of power or trust, and
  - Personal or commercial gain which benefits both the person who abuses his/her trust and the person or company benefiting from such abuse
  - Transactions that cause significant harm to the public interest
20. While the first formulation above takes a legalistic approach to determine what is corrupt, the second relies on prevailing ethics, contemporary morality or on some other point of reference, such as the public interest.
21. To minimise the risk of evaluating countries on a subjective basis, the researchers decided to use benchmark-setting international Conventions to which the countries have signed up.
22. Articles 15 to 22 of the United Nations Convention Against Corruption (2003) detail conduct that should be regarded as corruption. It includes:
  - a) bribery of domestic public officials
  - b) bribery of foreign public officials and officials of public international organizations
  - c) embezzlement, misappropriation or other diversion of property by a public official
  - d) trading in influence, colloquially termed influence peddling
  - e) abuse of functions
  - f) illicit enrichment
  - g) bribery in the private sector
  - h) embezzlement of property in the private sector

### **Money laundering**

24. In this report, money laundering is understood as:
  - acquisition, possession or use of property, knowing at the time of receipt, that such property is the proceeds of crime.

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<sup>9</sup> Ibid.



- conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action, or
  - concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime
  - participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.
25. Corruption is considered to be a major predicate offence to money laundering in all ESAAMLG member countries. Since the late 1990s efforts to investigate and trace some fund transfers tainted by corruption have been increasing. Between 2000 and 2007, Kenya, Lesotho, Tanzania and Zambia in particular have made high profile endeavours to recover the proceeds of economic crime and corruption attributed to officials in government and public corporations in those countries. Beyond the ESAAMLG region, initiatives to recover proceeds of corruption in Nigeria have been well publicized.
26. Corruption is a regular electoral issue in many countries. Political victories have been secured on the back of pledges to trace and confiscate proceeds of corruption, wherever they may be. The mandate to do this is generally vested in anti-corruption institutions.
27. By the beginning of the 1990s, corruption had been criminalised in most ESAAMLG member countries. Most ESAAMLG member countries had ratified international Conventions that require state parties to adopt and implement measures against money laundering. These include the Palermo Convention, the UNCAC and the AUCPCC.
28. In spite of ratification, the implementation of measures against money laundering remains inadequate. The wave of public enthusiasm for strong measures against corruption and economic crime has not been translated into effective AML regimes. Corrupt practices that are harmful to the public interest still occur, and capital flight continues to be problematic.
29. The absence of comprehensive anti-corruption measures, which weakens the capacity of any country to confront corruption, also impacts adversely on capacity to combat money laundering. The scope of substantive anti-corruption principles has a bearing on the scope of measures against money laundering.
30. Corruption is inherently committed clandestinely. As a result, it is difficult to

detect it, and to analyse how corruption relates to and impacts on the implementation of law. At the same time, corruption is not always the sole reason for the non-implementation of measures against money laundering. The lack of the resources necessary to get these measures in place is also a formidable impediment. Contradictions between the existing legislative or business context and proposed measures to combat money laundering can also play a part. The best intentions of government could also be frustrated by prevailing or transient economic or political challenges.

31. The challenge is to determine the extent to which corruption is a factor to which non-implementation of AML measures can be attributed. If this is established, the next task is to consider ways of negating corruption to enhance the uptake and implementation of such measures.

## Chapter 2: The required measures against money laundering

### Introduction

32. This Chapter identifies benchmarks by which to evaluate status in implementing AML obligations. Subscribing to the ESAAMLG Memorandum of Understanding binds each member country to be guided by the recommendations of the Financial Action Task Force on Money Laundering (FATF).
33. A labyrinth of principles, rules and measures to combat money laundering has emerged since the end of the 1980s, precipitated by the United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention). The Vienna Convention was in turn complemented by the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention) and the United Nations Convention against Corruption, 2003 (the Merida Convention or UNCAC) and the African Union Convention on Preventing and Combating Corruption, 2003 (AUCPCC).

### Framework of AML measures

34. The framework of measures against money laundering, around which this part of the report is woven, is derived from an analysis of FATF Recommendations and the provisions of the Conventions. It is supplemented with practices recommended by self-regulating structures in the financial sector, such as the Basle Committee on Banking Supervision.
35. Since coming up with the Forty Recommendations in 2000, the FATF has progressively reviewed them over the years. Now with an additional Nine Special Recommendations addressing the financing of terrorism, the key sections relevant to corruption in the FATF recommendations are highlighted below:

#### **Scope of the criminal offence of money laundering**

- Countries should criminalise money laundering on the basis of the Vienna and Palermo Conventions.
- Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Predicate offences may be described by reference to all offences, or to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence (threshold approach), or to a list of predicate offences, or a combination of these approaches.

- Where countries apply a threshold approach, predicate offences should at a minimum comprise all offences that fall within the category of serious offences under their national law or should include offences which are punishable by a maximum penalty of more than one year's imprisonment or for those countries that have a minimum threshold for offences in their legal system, predicate offences should comprise all offences, which are punished by a minimum penalty of more than six months imprisonment.
- Whichever approach is adopted, each country should at a minimum include a range of offences within each of the designated categories of offences.
- Predicate offences for money laundering should extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically.
- Countries may stipulate that the offence of money laundering does not apply to persons who committed the predicate offence, where this is required by fundamental principles of their domestic law.
- Countries should ensure that:
  - a) The intent and knowledge required to prove the offence of money laundering is consistent with the standards set forth in the Vienna and Palermo Conventions, including the concept that such mental state may be inferred from objective factual circumstances.
  - b) Criminal liability, and, where that is not possible, civil or administrative liability, should apply to legal persons. This should not preclude parallel criminal, civil or administrative proceedings with respect to legal persons in countries in which such forms of liability are available. Legal persons should be subject to effective, proportionate and dissuasive sanctions. Such measures should be without prejudice to the criminal liability of individuals.

36. When it revised its recommendations in 2003, the FATF defined politically exposed persons (PEPs) as:

'Individuals who are or have been entrusted with prominent public functions in a foreign country.' (Recommendation 6)

As examples the FATF cited Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned

corporations, important political party officials. It also advised that family members of PEPs were just as risky to deal with, and advocated for enhanced due diligence by financial institutions that transact with them or on their behalf.

37. As a prescriptive instrument on PEPs, Recommendation 6 of the FATF has been superseded by various formulations in UNCAC, the AUPCC and the European Union Third Directive on Money Laundering. UNCAC, for instance, includes domestic public officials in its definition of PEPs. It accepts that the identification of foreign PEPs would be quite challenging in the absence of the identification of domestic PEPs. Virtually all international anti-corruption instruments and organisations regard PEPs as raising a degree of risk that warrants enhanced due diligence. Transparency International regularly stresses risks to the reputation of institutions that handle proceeds of corruption.
38. Part of the experience in the ESAAMLG demonstrates that apart from PEPs, the institutions implicated in corrupting them, as well as their advisers, deserve to be carefully profiled as well.
39. The scope of the criminal offence of money laundering is based on the formulation in the Palermo Convention. Corruption is among the most obvious predicate offences to money laundering. The Convention, which was adopted in 2000, and came into force in 2003, primarily targets organized crime, but is wide enough in its scope to include related money laundering.
40. The UNCAC, which was adopted in 2003, represents one of the most important global steps with a bearing on corruption and money laundering. UNCAC aspires to promote, facilitate and support international cooperation and technical assistance in preventing and fighting corruption, including in the recovery of assets procured through corruption. It entered into force on 14 December 2005. It highlights the following dimensions,
  - Prevention
  - Criminalization
  - International cooperation
  - Asset recovery
41. Article 52 of the Convention imposed an obligation on State Parties to 'conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals

who are, or have been entrusted with prominent public functions and their family members and close associates.’ In this regard, it adopted a similar definition of PEPs as the FATF, with the important distinction that domestic PEPs are included.

42. The general objectives of the AU Convention on Preventing and Combating Corruption (AUCPCC) have an implicit bearing on the efficacy of anti-money laundering measures. The AUCPCC aims to:

- a) Promote and strengthen the development, of mechanisms to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors
- b) Promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa
- c) Coordinate and harmonise the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent

43. The AUCPCC offers a broad description of corruption, as well as a definition of the term ‘public official’ that is useful in determining who is a PEP.

“Public official” means:

- (i) Any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;
- (ii) Any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;
- (iii) Any other person defined as a “public official” in the domestic law of a State Party.

44. In general the UN and AU Conventions have the same objectives, - to promote and strengthen the development of mechanisms to prevent, detect, punish and eradicate corruption; to facilitate and regulate co-operation among State Parties; and to develop and harmonize policies and domestic laws of State Parties, relating to the prevention, detection, punishment and eradication of corruption.

45. UNCAC stresses international cooperation and technical assistance in the recovery of assets. State Parties commit themselves to prevent, detect and deter international transfers of illicitly acquired assets in a more effective manner, and to strengthen international cooperation in the recovery of laundered proceeds of corruption.
46. The benchmarks derived from the international Conventions and the FATF Recommendations are summarised in the framework below. Anti-money laundering infrastructure is constructed around three categories of measures, shown in the top row of the table below respectively as preventive measures, enforcement measures, and measures to foster trans-national co-operation. The measures are also applicable to combating the financing of terrorism, in so far as it is done through institutions susceptible to money laundering.

**Table 1: Framework for AML measures<sup>10</sup>**

Measures to prevent Money Laundering	Measures to enforce AML laws	Measures to foster trans-national co-operation
(1) Customer Due Diligence (CDD) obligations	(5) Criminalization of predicate (underlying criminal) acts and of money laundering	(9) Awareness of relevant trans-national trends
(2) Reporting obligations	(6) Investigation of predicate activities and of money laundering	(10) Co-operation agreements
(3) Regulation and supervision of compliance	(7) Prosecution and punishment	(11) Effective mutual assistance processes
(4) Sanctions for non-compliance	(8) Tracing and confiscating proceeds	(12) Trans-national structures to trace and confiscate proceeds.

47. The framework places different institutions in positions of implementing, overseeing, or in appropriate cases, enforcing compliance with explicit and implicit obligations. It involves accountable as well as supervisory institutions. Depending on the level of economic sophistication, and the degree of professional specialisation in a given country, supervisory institutions regulate the institutions expected to comply with anti-money laundering measures.

48. In the light of enduring concerns about vulnerabilities to money laundering

<sup>10</sup> Adapted from an analytical model of international instruments to combat money laundering. See Reuter & Truman *Chasing Dirty Money* (2004)

committed by or emanating from foreign PEPs, the extent of compliance with the prevention measures marked (1) and (2) is particularly important. Patronage networks can make it quite difficult for an accountable institution working in isolation to report on suspect activities by PEPs.<sup>11</sup> Alternatively, corrupt accountable institutions may abrogate their responsibilities to document and report suspicious transactions.

49. The AML framework envisages a partnership between state structures and accountable institutions, in which each partner owes reciprocal obligations to the other. On its part the state should create an environment to facilitate access to information to enable accountable institutions to discharge their duties to conduct due diligence on customers and report suspicious transactions. This can involve substantial changes in the legislative infrastructure or administrative practices, depending on the prevailing situation. Certain countries lack the basic personal identification systems to enable comprehensive due diligence. On the other hand some governments regularly prepare and make available information on crime trends to accountable institutions. In this research, we encountered countries in which company and land transfer registries have been in a dysfunctional state for some time.
50. The obligations most closely associated with supervisory/oversight bodies are set out in (3), (4) and (6). The obligation (5) to criminalise the activities predicate to money laundering, including corruption, falls on government, acting through legislation passed or authorised by parliament. It is also for government to determine which agency should investigate these activities, and which should investigate the money laundering resulting from them (obligation 6), and who should prosecute money-laundering cases (obligation 7).
51. Regardless of who allocates responsibilities, an anti-money laundering structure should pay attention to tracking proceeds of crime (obligation 8). The content of obligation 8 implies clarity as to where the mandate lies in following up and seizing proceeds of crime, as well as clarity on the funding and support of the mandated structure. This obligation potentially brings the police, anti-corruption agencies and the public prosecution into close proximity in what should be an integrated or collaborative law enforcement network.
52. The third column in the table comprises obligations located in the sphere of international political, legal and trans-border law enforcement relations. In this sphere, there are limits to what is within the capacity of local institutions or agencies. It is perhaps only obligation (9), which is within the capacity of a local institution to discharge without substantially relying on foreign counterpart institution. Even then, it is unlikely that any institution could become aware of

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<sup>11</sup> See the National Integrity Report on Zimbabwe (2006/7) commissioned by Transparency International.



relevant trends of crime without relying on other institutions.

53. International co-operation raises three related elements of relevance to this study, namely mutual legal assistance, the repatriation of proceeds of crime/corruption and extradition. Each has tended to be dogged by issues such as:

- Bank secrecy
- The insistence by some countries on dual criminality
- Slow pace of exchange of information between countries, partly because of protocol or differences in procedural systems between countries
- Costs

Countries with significant off-shore banking and investment sectors are regularly required to provide mutual assistance in investigations or asset repatriation. Switzerland is regarded as a major mutual assistance country. UNCAC has been praised as a vehicle to simplify this area of combating corruption and ML. Much can be learnt from experiences that developed before UNCAC, stemming from the Commonwealth Harare Scheme (1991) and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1998). The Palermo Convention is also an important instrument on which to rely. In its wake followed the SADC Protocol on Mutual Assistance in Criminal Matters (2002).

54. The upshot of it is that there is no shortage of international legislation to regulate mutual legal assistance even in the absence of bilateral treaties. Each instrument provides mechanisms for international co-operation for signatory countries to utilise. They all seek to prevent bank secrecy being used to impede mutual legal assistance requests, (Palermo, UNCAC, FATF Recommendation 40) and to expedite processing of requests. Information exchange could be speeded up by the greater use of technology, and joint membership of the Egmont Group of financial intelligence units.

55. Costs are a more formidable challenge, in that they may be incurred by a country with no interest in the case. UNCAC prescribes some kind of formula, in terms of which the requested country is compensated for extraordinary expenses incurred in tracing, freezing, confiscating and returning assets. In this regard, it adopts a similar approach to the SADC Protocol. Dual criminality is not a mandatory ground for refusing to assist a requesting state. In this regard, the APG/FATF Group recommended the streamlining of mutual assistance processes to make assistance 'timely and effective'.<sup>12</sup>

56. The principal objective of this study is to assess the impact of corruption on the implementation of all the obligations in the three pillars of the framework. It was

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<sup>12</sup> Paragraph 353.

therefore necessary to develop a comparable framework of anti-corruption measures and obligations.

**Table 2: Framework for Anti-Corruption measures<sup>13</sup>**

Measures to prevent corruption	Measures to enforce laws against corruption	Measures to foster trans-national co-operation
(1) Anti-corruption policies and practices	(5) Criminalisation of various acts of corruption in the public and private sectors and laundering of proceeds	(9) Awareness of risks arising from global trends
(2) Preventive anti-corruption bodies	(6) Establishing and resourcing effective corruption investigation	(10) Mutual legal assistance agreements
(3) Effective structures to hold public and private sector institutions accountable	(7) Protection of whistleblowers, witnesses, and victims	(11) Law enforcement cooperation
(4) Cooperation among national authorities and between national authorities and the private sector	(8) Freezing, seizure and confiscation of proceeds	(12) Trans-national tracing and seizure of proceeds

57. In the context of corruption, most of the obligations in the framework are imposed on the public sector. National authorities in the member countries are obliged to develop and implement effective anti-corruption policies that also encourage the participation of civil society. The policies and structures should be periodically reviewed in terms of effectiveness to combat corruption both in the public and the private sectors.

58. The obligation to criminalise all forms of corruption, falls on government, acting through legislation passed or authorised by parliament. The broadest possible range of acts of corruption covering both the public and the private sector should be criminalised. It is also for government to determine which agency should investigate corruption and how this should be mainstreamed into the anti-money laundering framework.

<sup>13</sup> This adaptation of the ‘three pillars’ framework summarises the provisions of the international instruments on corruption

59. Obligations (1) and (6) raise the controversial issue of unexplained wealth. In this regard, Article 20 of UNCAC obliges state parties to consider

‘adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, *a significant increase in the assets of a public official* that he or she cannot reasonably explain in relation to his or her lawful income.’ (Emphasis added by the authors)

60. Article 20 provides justification for legislating for the investigation of unexplained wealth by public officials. This in turn opens up scope for synergies between anti-corruption and AML regimes, in the sense that the same information that could be used in investigating corruption is relevant to investigating money laundering. As the UNODC observed in its Anti-Corruption Tool Kit:<sup>14</sup>

Money laundering statutes can contribute significantly to the detection of corruption and related offences by providing the basis for financial investigations. Identifying and recording obligations as well as reporting suspicious transactions, as is also required by the UN Convention against Transnational Organised Crime and the UNCAC will not only facilitate detection of the crime of money laundering but will also help identify the criminal acts from which the illicit proceeds originated.

Compliance with obligations (1) and (6) in Table 2 greatly assists in complying with obligations (2), (5), and (6) in Table 1. Hence the argument for integration of anti-corruption and AML measures.

61. At least five countries<sup>15</sup> in the ESAAMLG have included ‘unexplained wealth’ provisions in their legislative arsenal, but none of them has established a record of enforcement. Various challenges were raised, such as inconsistency with the presumption of innocence the difficulty of getting either the basic information of unexplained wealth in the first place or the information by which to establish the value of the wealth in question. That information could be in the custody of foreign or domestic banks, or that of other service providers. Obtaining it may require access to data that is not normally within the purview of an anti-corruption agency.
62. If anti-corruption and AML structures are integrated or at least in a formalized collaborative relationship, information on unexplained wealth could be easier to access. Suspicious transaction reports emanating from accountable institutions

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<sup>14</sup> Cited in the APG/FATF Report at pp 8-9

<sup>15</sup> Botswana, Kenya, Malawi, Tanzania and Zambia

would be shared with the anti-corruption agency, enhancing its database and making it easier to identify instances of unexplained wealth. The value of a legislated network should not be underestimated.

63. Access to information on unexplained wealth, which is in the custody of foreign institutions can only be accessed either from a counterpart anti-corruption or AML agency. It appears that countries with unexplained wealth legislation should identify bottlenecks impeding implementation and take remedial action to clear them. Countries without such legislation should create it.
64. Obligations (8) and (12), which are the same in both Tables, are pertinent to the corruption-money laundering nexus. The message in all relevant Conventions is unambiguous, namely that state parties should establish mechanisms for tracing, seizing and confiscating proceeds of crime and corruption. The FATF, in Recommendation 38, encourages countries to set up asset forfeiture funds. Article 31 of UNCAC is also important, although it does not prescribe the adoption of non-conviction based asset forfeiture.
65. In view of the suggestion that anti-corruption and AML measures should be aligned, there is much to be said in favour of adopting non-conviction based asset forfeiture. Since money laundering may be committed negligently, it is conceivable that assets to be seized are in the custody of a third party who has laundered them unwittingly for the principal suspect. Countries that have embraced civil forfeiture have accepted the premise that the subject of forfeiture is the property itself, rather than the defendant in whose possession it is found. They have also accepted that asset forfeiture is an instrument of the justice system that can be used to fund the system itself. Countries that have not accepted civil forfeiture reject these arguments, but are generally less successful with asset forfeiture. As a result, they do not create dedicated asset forfeiture funds as recommended by the FATF.
66. The obligations set out in the enforcement category bring the police, anti-corruption commissions and the public prosecution in an integrated network. Countries are required to take such measures as may be necessary to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters of corruption prevention, investigation and prosecution.
67. One of the observations repeatedly made by the APG/FATF joint research was that more 'regular communication and information exchange between FIUs, anti-corruption agencies, law enforcement, prosecutors and reporting entities when it comes to the money laundering-corruption nexus' is necessary. There is much

merit in this assertion.<sup>16</sup>

68. As is the case with the AML framework, the obligations in the third column are located in the sphere of international political, legal and trans-border law enforcement co-operation. In theory, countries are supposed to cooperate closely to enhance effective law enforcement against corruption. In practice, trans-national co-operation in corruption cases cannot be taken for granted in the absence of bilateral or multilateral agreements. Countries may resort to common ratification of an international convention in lieu of a bilateral or multilateral agreement.
69. International instruments prescribe the establishment of autonomous institutions to prevent, detect, punish and eradicate corruption. The instruments emphasise, in particular, the need for the establishment of independent institutions to deal with the implementation and enforcement of anti-corruption measures. The institutions need to be free of interference if they are to be effective.

#### **UNCAC**

Article 6 of UNCAC deals comprehensively with the establishment of independent preventative anti-corruption bodies. Article 6 stipulates that anti-corruption bodies should be independent, free from undue influence, and adequately resourced.

#### **AUPCC**

The AU Convention contains a similar provision. In terms of Article 5(3) of the Convention State Parties undertake to establish, maintain and strengthen independent national anti-corruption authorities or agencies.

The AU and UN Conventions emphasise the fact that these bodies, authorities or agencies should be independent and free from undue influence. In terms of the UN Convention the duties of these bodies should include overseeing and coordinating anti-corruption policies and disseminating knowledge on preventing corruption.

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<sup>16</sup> In paragraph 172 of the Report.

## SECTION 2: PROFILE OF IMPLEMENTATION

### Chapter 3: Corruption and the implementation of measures against money laundering

#### Introduction

70. This Chapter builds on the profile of obligations presented in Chapter 2. It discusses four related issues; firstly whether corruption impacts on the implementation of measures against money laundering, secondly, if that is so, how this occurs. It explores whether this is the case in ESAAMLG countries. Finally, having regard to the conclusions and observations pertaining to the preceding issues, this Chapter raises the policy implications for member countries.

#### Linking corruption and AML

71. UNCAC draws attention to the perceived linkage between corruption, organised crime and economic crime, including money laundering. Corruption can impact on the implementation of anti-money laundering measures in many ways:

- As one of the most significant contributors to proceeds of crime that become available for laundering, if endemic, corruption can render the AML system dysfunctional by clogging it with a large volume of cases to deal with;
- Because of its connection to money laundering, corruption will try to prevent the adoption of effective measures against money laundering, and may succeed in doing so if not detected and confronted;
- The implementation of AML measures that have been adopted can be impeded by corruption – such as by interfering with the capacity of mandated institutions to perform their duties, or influencing the relevant officials;
- By corrupting institutions in the private sector on whose co-operation prevailing AML systems increasingly rely, to secure their collusion in sabotaging the effective implementation of AML measures;
- Corruption will take advantage of differences in levels of implementation of AML measures in different countries to frustrate trans-national co-operation to investigate money laundering or track proceeds of crime.

72. To appreciate the risk that corruption poses to the implementation of measures against money laundering, one has to constantly keep in mind the framework portrayed in Figure 1 to determine which components are vulnerable to corruption.

73. A general point to note is that corruption is used by organized crime to penetrate

the public sector. Alternative methods, such as violence and blackmail, are used only if corruption is too risky, not cost effective or unsuccessful. Goredema (2003) articulated a typology of linkages between organized crime, corruption and the public sector.<sup>17</sup>

74. Five incremental levels of linkage between organized crime and public sector have been identified. The first (Level 1) consists of simple bribery on an isolated basis; the second level (Level 2) consists of repeated acts of bribery, where the corrupted person is virtually on the payroll of the corrupter; at the third level (Level 3), organized crime infiltrates government institutions. The fourth level (Level 4) consists of the infiltration of the higher levels of government, beyond the bureaucrats, while at the fifth level (Level 5) organized crime infiltrates the political arena, or key components of the political system.

#### **Preventing the adoption of comprehensive/effective measures against money laundering**

75. Money laundering is a derivative offence, in that it cannot be committed unless the predicate offence has been accomplished. The gap in terms of time between the predicate offence and the money laundering lends a retrospective dimension to money laundering. In addition, those who would be imperiled by AML measures will attempt to water down its efficacy by locating it in a legislative or institutional infrastructure that is incomplete. In Figure 1, one may find that while money laundering in a broad sense is criminalized, complementary aspects to support such criminalization do not exist. Typically, the measures on due diligence will be weak, getting the necessary information will be a monumental challenge, and investigating/prosecuting agencies will not be adequately resourced.
76. While the first two levels of penetration could be described as opportunistic, Level 3 infiltration is systemic, and takes various forms. The extreme form is actual occupation of the functional, though not necessarily the top, levels of relevant structures by members of criminal syndicates or by their friends/close relatives. Law enforcement agencies are not the only such departments, in some countries the prosecution, revenue and judicial services may be infiltrated.
77. The fourth level of infiltration may or may not evolve from the third level. It manifests itself in two alternative ways: either the occupation of the commanding heights of formal sector organisations by members of criminal syndicates, or by compromised individuals, which enables the syndicates to control decisions, and

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<sup>17</sup> See Goredema C, in Gastrow (ed) *Organised Crime in Southern Africa: Penetrating State and Business* ISS Monograph number 89 (2003)

even policy making processes. Major decisions are taken in secret caucuses outside formal institutions, and imposed on the former. If rules and processes impede the functioning of the syndicates, they are likely to be ignored or circumvented. Typical areas of infiltration are tender processes for procurement, law enforcement and revenue collection. Operatives infused into formal sectors during Level 3 infiltration, who have ascended to higher positions, may be used in this phase.

78. The fifth level of infiltration is at a more fundamental level. It entails corruption of the electoral system. Funding political campaigns and political parties is a common method, which can be complemented by bankrolling electoral malpractices, such as buying votes. Syndicates can use legitimate business enterprises for fifth level infiltration.
79. The joint APG/FATF Group found no instances of general inhibition of the adoption of or implementation of AML measures by domestic PEPs. The responses received in the current study did not point out any instances. However, a study conducted in 2002 in several Southern African countries found anecdotal indications that organized crime syndicates seek to influence the direction or pace of legislative programmes.<sup>18</sup>

### **Impeding the implementation of measures that have been adopted**

80. In Levels 1 and 2, undue influence is exerted on public officials responsible for implementing the law, in a regulatory or enforcement capacity, to overlook indications of money laundering. In Table 1, these would be officials with obligations 3 and 9. These are regulatory, supervisory, and investigative.
81. Corruption can impede enforcement, not only by starving the implementing agencies of resources, but also by creating confusion about mandates. Leadership in anti-money laundering work is still a contested area. The wide range of activities that are predicate to money laundering brings into the AML sphere treasury departments, anti-corruption agencies, financial intelligence units, drug enforcement units, revenue authorities, Attorneys General, Directors of Public Prosecution, Ministers of Justice, Central banks, intelligence operatives and others.
82. No single model of leadership of anti-money laundering structures exists, despite the exhortations of Article 7 of the Palermo Convention. Corrupt individuals can exploit the dispersed leadership of anti-money laundering structures to play one agency off against others. Rival departments of government, claiming the right to

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<sup>18</sup> The results of the study were published in two monographs edited by Peter Gastrow as *Organised Crime in Southern Africa: Penetrating State and Business* ISS Monograph numbers 87 & 89 (2003), which is accessible at [www.issafrica.org](http://www.issafrica.org)



lead in anti-money laundering cases, can withhold information from others.

### **Collusion of institutions on whom the AML system relies**

83. This dimension is particularly concerned more with the impact of corruption on the conduct of accountable or designated institutions, which any comprehensive anti-money laundering framework has to rely on to pick up and pass on information. In Figure 1, these institutions are mainly in the financial sector, where they are expected to perform obligations (1) and (2).

84. The international instruments discussed above require countries to regulate, monitor and supervise banks and non-bank financial institutions, as gatekeepers to the anti-money laundering regime and as institutions that are susceptible to money laundering. The concern is not entirely without substance, in the light of what has been experienced in some countries, within the ESAAMLG and elsewhere. Some risk factors in financial intermediation have been observed. They may be divided into four, as summarised in Table 3:

**Table 3: Financial intermediation vulnerabilities**

<b>Category</b>	<b>Characteristics of financial intermediation institution</b>	<b>Comment</b>
A	The institution involved is corrupt from inception	The institution is primed to be a vehicle for money laundering. Its use to launder proceeds of crime is thus inevitable
B	The institution is corrupted by subsequent changes in ownership, management or in the operating environment	Although not at first intended to be a vehicle for money laundering, it eventually drifts in that direction
C	The institution has corrupt employees who provide money laundering service on an <i>ad hoc</i> and non institutionalised basis	The institution could be separated from the corrupt employees.
D	The institution unwittingly facilitates money laundering because it does not have mechanisms to detect money laundering	Although the institution may not benefit from money laundering, it sabotages the AML system

85. The FATF has identified a long list of activities conducted through

intermediaries:<sup>19</sup>

- Buying and selling of real estate;
- Management of securities or other assets;
- Management of bank accounts.
- Creation, operation or management of companies.
- Buying and selling of business entities
- Audit and assurance services.
- Book-keeping and the preparation of annual and periodic accounts.
- Tax compliance work, and advice on the legitimate minimisation of tax burdens.
- Internal audit, and advice on internal control and risk minimisation.
- Regulatory and compliance services, including outsourced regulatory examinations and remediation services.
- Advice on the structuring of transactions, and succession advice.
- Advice on investments and the custody of client money.
- Forensic accounting.

86. In member countries with existing AML systems, the conduct of business by intermediaries is monitored by financial supervisory authorities (central banks), by professionals from the private sector (auditors) and by self-regulatory bodies. Compliance monitoring can detect institutions exhibiting the characteristics in categories C and D. It is unlikely to be appropriate or effective to pick up the characteristics in categories A and B. Category A demands the vigilance of government departments responsible for licensing intermediary institutions. Category B requires vigilance from the authority responsible for monitoring changes in management or ownership of intermediary institutions.

87. A survey of money laundering through intermediaries reveals the involvement of banks, bureau de change, lawyers acting as nominees, investment advisers, especially in offshore investment, and estate agents. Banks have played a role in the transfer of funds through or from the country's financial system to accounts held offshore.

88. Some banks operating in the region have been implicated in advising clients to circumvent tax laws by creating and funding off-shore companies, which declare no profit but in turn make interest-free loans to trusts that are also operated off-shore. One scheme is the subject of litigation in the High Court in a member country.<sup>20</sup>

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<sup>19</sup> FATF Guidance for Accountants, published in June 2008.

<sup>20</sup> The case involves First Rand Bank and Barry Spitz, a tax consultant. It had not been concluded at the time of writing. Before it was determined, it precipitated other litigation between First Rand Bank and Noseweek magazine, in which the bank unsuccessfully sought to interdict the magazine from publishing the identities of 100 of the high-value clients for which the bank had managed a loop scheme offshore.

89. Corruption within private intermediary institutions has not been the subject of attention for long. As a result, experience in detecting and dealing with it is scanty. In a recent study, Chaikin (2008) found that the risk arising from commercial corruption manifests itself at the placement stage of the money laundering cycle. At that stage 'private sector entities may be bribed to actively collude in money laundering, refrain from lodging suspicious transaction reports, or tip off clients that may be subject to a government investigation.'<sup>21</sup> Article 21 of UNCAC requires state parties to criminalize corruption in the private sector.
90. Corruption in a private intermediary institution exacerbates the risk of money laundering. Surveys point to the significant under-reporting of crimes, including corruption, within intermediaries as a sector. This makes it difficult to detect its patterns and trends. It is more likely to come to the attention of auditors or employees earlier than of anti-corruption authorities.
91. Concealment of business activities through financial intermediaries also affects the incidence as well as detection of money laundering, especially money laundering concealed in fraudulent trade transactions. Typologies of trade-based money laundering generally manifest themselves in either of two kinds of processes. According to the FATF<sup>22</sup>, proceeds of crime could be moved through the use of trade transactions in order to legitimize their illicit origin. International Trade Alert Inc, an organization that conducts research into abuses of international trading transactions, has observed money laundering in the form of conversion of large quantities of illicit or dirty cash into less conspicuous and marketable assets or commodities through international trade.
92. Commodities or value can also be moved between or among a number of countries through the use of subsidiary companies. The process envisaged by the FATF description can be illustrated by a transfer-pricing scenario, in which company A, which is engaged in exporting commodities from country B, sets up several subsidiary companies, each of which is registered in a different country. Subsidiary A1 is located in country C, subsidiary A2 in country D and subsidiary A3 in country E. Countries C and D are low-tax havens.
93. In a tainted transaction company A exports certain commodities to company A3. It declares a certain value-per-unit for the commodities, say USD10. While the commodities head for country E, a chain of value is built up through documented transactions. Company A1 levies a charge of USD3 for insuring the shipment, company A2 charges USD4 for management and marketing services provided to company A. These transactions result in a landing price of USD17 payable by

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<sup>21</sup> D Chaikin, 'Commercial corruption and money laundering: a preliminary analysis' (2008) Vol 15 Journal of Financial Crime, 269-281

<sup>22</sup> FATF Report on Trade-Based Money Laundering (Nov 2006)

company A3. A3 may mark each commodity up by a further USD3, and sell it for USD20. The laundering arises from the fact that A1 and A2 may in fact be shell-companies, existing only on paper, but generating a profit for the shareholders of A and A3. The tax declared in country B is based on the unit value of USD10. The tax declared in country E is based on the profit of USD3, but the value earned through the subsidiaries is greater, especially if the 'locations of convenience' C and D are low tax havens.

94. All trade-based money-laundering transactions involve crossing national borders, even though some transactions will occur through unlawful entry points. A proportion of such transactions is conducted through financial intermediaries that can be corrupted to advise on best methods to evade tax or to conceal sources of funds used to procure commodities. Foreign branches of intermediaries can be used to channel illegitimate funds from countries with effective AML systems to those with weaker systems. This risk is pertinent to the ESAAMLG region where AML systems are of uneven strength.

**Directly bribe the mandated officials to blunt their effectiveness;**

95. Institutions that fall into category C in Table 3 highlight this scenario. Employees of financial intermediaries can be bribed to overlook suspect documentation, or falsify records to mislead supervisory bodies and law enforcement authorities. Bribes may be paid to officials of the banking supervision authority to look the other way as illicit transfers of funds are siphoned to destinations overseas.
96. The impact of economic retardation is often felt acutely in the public sector. A deteriorating economy precipitates 'the erosion and compression of salaries of public officials' leading to a decline in standards of living and greater pressure on such officials to engage in corruption 'to maintain their living standards or to simply make ends meet'.<sup>23</sup>
97. A study conducted in 2003 by CEMB Consultants on behalf of the Drug Enforcement Commission of Zambia, drew up a list of constraints to the control of money laundering in Zambia. They included the following:
- Corruption - money launderers were influential people who bribed policy makers, law enforcement and regulatory authorities
  - Informants were not protected from reprisals or retribution
  - There were inadequate institutions or agencies to perform the task
  - Investors were not adequately screened

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<sup>23</sup> Kempe Ronald Hope, Sr in Hope & Chikulo (eds) *Corruption and Development in Africa: Lessons from case studies* Macmillan Press (2000)

## The picture in the ESAAMLG

98. The following section is derived from case studies from member countries.

### Case Study 1:

Country A prohibits exchanges of foreign currency on the street, i.e. between individuals other than through authorized outlets and businesses. A young woman, J was intercepted and arrested by the police after a transaction in which she had exchanged about USD5 000 with a businessman, Dido. Dido was a member of the advisory panel of the central bank, from which all new currency was distributed. She received a large amount of money in the local currency. The money was in brand-new notes, in denominations that were not yet in general circulation.

In her explanation to the court, the accused named the businessman as the other party to the transaction to whom she had sold the foreign currency. She also explained to the court that Dido had sent several text messages to her cell phone, pleading with her not to implicate him. She offered to surrender the phone to substantiate the claim. The court considered it to be unnecessary to note the messages. The court accepted that the local currency received by her had all been seized by the police. The court sentenced her to several years in jail. The businessman was absolved of any culpability. By the time that J appeared in court, the police had surrendered the seized money to the central bank and kept no record of the serial numbers of the notes.

*(Source: Court record, December 2007)*

**Observation:** While the business executive gained foreign currency in the illicit transaction, his influence and connections saved him from prosecution.

99. The case studies from the region also pointed to the inclinations of some public officials obstructing investigations, either by slowing them down or scuttling them altogether.

### Case Study 2

In one member country, a parliamentary committee investigating grand corruption and possible money laundering found that pressure had been exerted on a senior government official who was determined to investigate the case to dissuade him from the investigation. The committee found that the pressure escalated from gentle persuasion to death threats, and that it emanated from a number of government ministers.

The case highlighted how funds can be siphoned from the national treasury by means of contracts that appear legitimate. 18 contracts for the supply of various goods and services to state departments were involved. Each contract was structured in such a way that there was a company that would provide financing to government to enable it to pay for the contract, and a second company to supply the commodities or services ordered.

The financing mechanism was a deliberate means of creating public debt to finance the contracts. The contracts would not be financed from annual appropriations. Annual appropriations were perceived to be potentially fraught with problems, in that the funds provided might be inadequate, and/or their expenditure would be subject to direct parliamentary scrutiny, through the Controller and Auditor General. Public debt, on the other hand, was wholly controlled by the treasury, attracted much less scrutiny, and would enable the contracts to be paid for over a number of years directly from the Consolidated Fund.

Witnesses from the central Bank testified that once the Treasury entered into these contracts, the Bank would put in place standing orders in favour of the supplier, who would receive these as and when they fell due. Neither the Bank nor the Treasury would be concerned as to whether the supplier was performing its part of the contracts as a pre-condition to the payments. Fortunately the scheme failed when it was discovered and the contracts were cancelled.

**Observation:** In this case, corruption committed by highly placed politicians facilitated the diversion of funds from the national treasury to private hands. Once the scheme was uncovered, intimidation was used to frustrate investigations.

100. A case that occurred in country G highlighted the manner in which corruption can nullify a dedicated investigation even in a relatively clear-cut case of money laundering.

### Case study 3

The UM Bank was incorporated in May 1995. In less than three years the bank's licence was revoked after it became known that it had a low capital ratio and

inadequate liquidity to meet the claims of depositors and other liabilities. Police investigations subsequently revealed that many illegal activities had been committed.

### **1. Fraud: CSC bills**

Following its commercialisation (a prelude to privatisation), a statutory corporation, the CSC contracted the bank to raise funds on its behalf on the local money market. This was to be done through the flotation of CSC bills. The CSC required \$413 million. The government issued guarantees to the value of \$855.16 million to be used as security during the flotation of the bills. The bank raised the amount required by the CSC and remitted it. Thereafter the bank sold further bills worth \$1.263 billion on the local money market, and converted the entire amount to its own use. The founder and Chief Executive of the bank, RMB, was found to have been at the centre of the illicit activities, assisted by five associates. RMB died on 21 February 1999 before he could stand trial. It is not clear to this date how much of the converted money was recovered.

### **2. Conversion of depositors' funds**

Various persons and institutions deposited funds with the bank during its short life. Upon cancellation of its licence the bank owed \$1, 558 billion to depositors, which it was not in a position to repay. Some bank documents and computers could not be traced. Charges were laid against RMB and his accomplices in terms of the Serious Offences (Confiscation of Proceeds) Act, but he died before he could stand trial.

The investigation was transferred from the police to a government-appointed special investigator, in terms of the Prevention of Corruption Act. The central bank Governor was appointed as the special investigator. The Act did not clarify or structure the relationship between the investigator and the police, who had been investigating the case. After a while it became clear that the investigation did not go far in the hands of the special investigator. It was common cause that the appointing Minister had a cordial relationship with RMB, and was substantially indebted to the UMB.

### **3. Money laundering**

In the short life of the bank, RMB opened and operated several personal accounts with the following foreign banks:

<b>Botswana:</b>	First National Bank
<b>France:</b>	Bank Soci�t� General
<b>Germany:</b>	West Deutsche Landesbank

<b>Luxembourg:</b>	Hypo Bank
<b>South Africa:</b>	Nedbank, Amalgamated Banks of South Africa (ABSA), First National Bank
<b>United Kingdom:</b>	Midland Bank plc, National Westminster Bank plc
<b>United States:</b>	Marine Midland Bank (New York), Merrill Lynch Bank (New York)

Sometimes acting through his lawyer, GS, RMB externalised at least USD21 million in violation of exchange control legislation. GS, a senior partner in a law firm, was on the board of the UMB and a signatory to the bank's account at the DT Bank. The firm acted as corporate secretaries for the UMB and as legal advisers to both the UMB and the RB group of companies. The main business specialties of the group were tobacco and gold marketing. GS disappeared from the country soon after the death of RMB, by which time he had already been charged with violating the Prevention of Corruption Act and the Companies Act. It was later discovered that GS also operated a foreign bank account in England. None of the foreign funds were repatriated.

101. Case study 4 illustrates a case of direct manipulation of legitimate systems by public officials, who would be classified in terms of UNCAC as PEPs.

#### Case study 4:

A case involving a former president was concluded in the English civil courts in May 2007. It broadly illustrates the particular risk raised by PEPs. The ex-President was accused of abusing a facility established to support his country's state security agencies by siphoning up to \$52 million from the ministry of finance to an account held in a London bank. The account also held funds for the use of the country's security agents. The director of security intelligence was the sole signatory to the London account. Part of the money was subsequently transferred to a company registered in the country from where the funds came in the first place, which company was run by the former president's associates.

The court found that the main participants in the fraud were the former President; the director of security intelligence; the director of loans and investments in the Ministry of Finance; and the country's ambassador to the United States. The account was not operated in the name of any of them, but they all benefited, with the president being the main beneficiary.<sup>24</sup>

<sup>24</sup> More details of the case can be read in the civil judgment, cited as *Attorney General of Zambia v Cave Malik and others* [2007] EWHC 952 (Ch).



**Observations:** A feature of the case was the climate of fear, which pervaded the Ministry of Finance and the Department of the Auditor-General, where the fraud and corrupt transfers could have been picked up and stopped. The primary fear was of the loss of livelihood if dismissed on account of exposing apparent corruption in the absence of social security for the unemployed in the country concerned. It could also have been the fear of physical reprisals – in some cases of a life-threatening nature.

#### Case Study 5

A high net worth resident (R) of country A procures a non-resident company (RC) in which a non-resident trust (T) acquires a substantial shareholding. The company RC then acquires a 74% shareholding in a company (C) resident in country A in which R holds 26%. R subsequently transfers his shares to the resident company C. Profits and dividends accruing from the activities of company C after the transfer are credited to non-resident company RC, in which R has a controlling interest. These schemes were devised by, and operated with the assistance of large banks.

*Source: Local media*

**Observation:** Intermediaries can be used to mask the beneficial ownership in business concerns. A common tendency is to hide proceeds of crime in the accounts of one or more wealthy business associates. The large sums pushed through their off-shore bank accounts is later transferred to the beneficiary's account, supported by documentary evidence of the reason for the transfer. The account, if held offshore, is likely to be difficult to find, let alone freeze.

102. The analysis and case studies above expose some of the risks that corruption poses to adoption and effective implementation of AML initiatives. These observations provide practical insight into the extent and nature of impediments that corruption has on AML systems within the ESAAMLG member countries.

## Chapter 4: Existing and proposed strategies and measures in ESAAMLG countries

103. This report does not seek to evaluate the measures against money laundering in detail. That responsibility is best left to the mutual evaluations conducted under the auspices of ESAAMLG. This report accepts the findings documented in the respective official evaluations. Before the respective levels of implementation are profiled, this Chapter sets out the picture regarding ratification of the benchmarking international instruments.
104. The following is a tabulation of the status of ratification of the relevant international instruments in the region. The report takes the view that ratification indicates an acceptance of, and commitment to comply with benchmarks set in the respective international Convention.

**Table 4: A profile of ratification by the ESAAMLG countries of relevant international instruments<sup>25</sup>**

Country	UN Convention Against Transnational Organised Crime		AU Convention on Preventing and Combating Corruption		UN Convention Against Corruption	
	Signed	Ratified	Signed	Ratified	Signed	Ratified
<b>Botswana</b>	Yes	Yes	No	No	No	No
<b>Lesotho</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Kenya</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Malawi</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Mauritius</b>	Yes	Yes	Yes	No	Yes	Yes
<b>Mozambique</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Namibia</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Seychelles</b>	Yes	Yes	No	No	Yes	Yes
<b>South Africa</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Swaziland</b>	Yes	No	Yes	No	Yes	No
<b>Tanzania</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Uganda</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Zambia</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Zimbabwe</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Total</b>	All signed	13/14	12/14	10/14	13/14	12/14

<sup>25</sup> The status of ratification was extracted from the UN and AU websites

105. The majority of countries have ratified the international AML and anti-corruption Conventions. Four countries reported comprehensive implementation of UNCAC. Three reported significant implementation. Four ranked the extent of their implementation with Palermo as comprehensive and two ranked the extent of implementation as significant. The remaining two countries ranked the extent of implementation as minimal.
106. With regards to the Palermo Convention, six member countries ranked the extent of their implementation as comprehensive and three ranked the extent of implementation as significant. The overall status of signature and ratification suggests that countries are committed to measure up to international standards on anti-corruption. The ratification of an international instrument indicates the appreciation of the gravity of an international problem and the presence of political commitment to confront it. It is important to note that the numerous existing conventions all identify phenomena of corruption and money as a matter of high concern.
107. It is important for countries not to stop at ratification, but to effectively implement the requirements of international instruments. The implementation of preventive, enforcement and international cooperation measures on money laundering in Table 1 and corruption in Table 2 need to be streamlined and synchronised.
108. Eight countries made summaries of their anti-corruption strategic plans available, and gave some indication of the progresses with implementation. The strategies take cognisance of the broad themes of prevention, enforcement and public education. Their strategies recognise the importance of linking prevention, enforcement and awareness raising against corruption and its negative effects on the overall national development programmes. No member country has adopted measures for enhanced due diligence on politically exposed persons.

### **Country Analysis**

This section summarises only measures that may have a bearing on the corruption-money corruption nexus in the member countries.

#### **Botswana**

109. As noted by the World Bank mutual assessment of AML/CFT systems in Botswana, the existing legislative framework in Botswana embraces the

basic components of an anti-money laundering regime. Progress on developing national AML/CFT strategy is ongoing. The law makes money laundering a crime, provides for a regime of designated institutions that are required to perform due diligence and to report suspicious transactions.

110. The Directorate on Corruption and Economic Crime (DCEC) oversees the implementation of anti-corruption and anti-money laundering measures. Both the Bank of Botswana and the DCEC receive suspicious transaction reports, which are mainly used for AML compliance supervision and in the investigation of money laundering. Botswana is in the process of passing a law that will enable the establishment of an FIU. There is no dedicated asset forfeiture unit, relying on the Director of Public Prosecutions to activate asset freezing during criminal investigations. Confiscation of proceeds of crime is dependent on conviction. The law does not require enhanced due diligence for PEPs. The anti-corruption law envisages prosecutions for possession of unexplained wealth.

## Kenya

111. Kenya does not have a law to criminalise money laundering beyond the sphere of drug trafficking. A bill to extend the AML regime is before the legislature. Kenya's anti-corruption mechanisms include the following:
- The National Anti-Corruption Plan (NACP) which brings together a multi-sectoral committee consisting of the Kenya Anti-Corruption Commission (KACC) and other representatives from the Government, Civil Society, the private sector and the media. The NACP sets out the responsibilities of various stakeholders (grouped into sectors) in combating corruption. These are the legislature, executive, judiciary, the KACC, law enforcement agencies, watchdog agencies, the media, the private sector, religious organizations, civil society, labour and education sectors.
  - Ministers are bound to ethical conduct and integrity by a Code of Conduct during their tenure of service
  - The National Task Force on Anti-Money Laundering provides guidance on AML initiatives and is chaired by the Ministry of Finance while Secretariat services are provided by the Central Bank of Kenya
  - The Ministry of Justice and Constitutional Affairs (MoJCA) is politically responsible to Parliament for all national anti-corruption initiatives while the Attorney General ultimately handles mutual assistance applications.
112. The Attorney General has recently established the Anti-Corruption, Serious Fraud and Asset Forfeiture Unit, as a specialized department of the Directorate of Public Prosecutions, with seconded officers from the CID and the Anti- Fraud

Banking Unit of the Kenya Police.

113. Kenya has a detailed regime for the disclosure of assets by public officers, encapsulated in the Public Officer Ethics Act, 2003. The Act requires public officers to bi-annually declare assets and liabilities, and those of spouses and dependants. A significant development was the adoption of legislation to compel disclosure by political parties of all funds or other resources obtained from private or public sources. A scheme for witness protection has recently been established.

### **Lesotho**

114. Lesotho has passed an Act to criminalise money laundering. At the time of writing, it was not yet in force. There are ongoing efforts to establish an FIU, which will form part of the national AML/CFT strategy. At this stage, the Central Bank of Lesotho shoulders the responsibility of receiving suspicious transaction reports, regulating commercial banks and monitoring compliance with customer due diligence obligations. The Directorate on Corruption and Economic Offences is responsible for detecting, investigating and prosecuting corruption and money laundering.

### **Malawi**

115. Money laundering has been a criminal offence in Malawi since 2006. Malawi has established an FIU. National AML/CFT strategy is still being developed. The Anti-Corruption Bureau and the Fiscal Police are also mandated to enforce anti-money laundering law. The FIU is responsible for receiving suspicious transactions. Other control mechanisms include coalition building with all stakeholders driven by a multi-departmental Task Force on Money Laundering.
116. Malawi reported that it adequately provided for enhanced due diligence for financial transactions involving PEPs, in terms of existing legislation. Forfeiture is only possible in the event of conviction.

### **Mauritius**

117. Mauritius has adopted an anti-money laundering regulatory and supervisory regime for banks and non-banking financial institutions, with provision for criminalisation of predicate activities and money laundering, customer due diligence, suspicious transaction reporting, supervision, confiscation of proceeds and exchange of information with collegiate institutions. The Financial

Intelligence Unit of Mauritius is a member of the Egmont Group, giving it wider access to information exchange and cooperation.

118. No provision has yet been made for enhanced due diligence of PEPs, foreign or domestic. Only criminal forfeiture is permissible. Mauritius has a National Committee for Anti-Money Laundering. The laws relating to money laundering, terrorist financing and corruption have been harmonised. The Independent Commission Against Corruption, the FIU and the Director of Public Prosecutions are at the centre of the enforcement network.

### **Mozambique**

119. Mozambique has anti-money laundering legislation. An FIU has been established and efforts to make it operational are continuing. A Director has been appointed. National AML/CFT strategy is still being developed. Banks are obliged to do customer due diligence and report suspicious transaction reports to the central bank. The function of receiving such reports will gradually be taken over by the FIU. However, the legislation has not been extended in scope to apply to non-banking financial institutions. Training has been identified as a critical need. To date some training has been undertaken in the commercial banking sector and in the prosecution sector. Anti-corruption laws are enforced by the Anti-Corruption Agency, which is a unit in the Attorney General's Office.

### **Namibia**

120. Namibia has passed the Prevention of Organised Crime Act to criminalise money laundering. The Act is expected to come into effect in May 2009. A Financial Intelligence Centre was established in terms of the Financial Intelligence Act<sup>26</sup> and is located within the Bank of Namibia, to receive suspicious transaction reports from accountable institutions. The Financial Institutions Supervisory Authority (NAMFISA) regulates non-banking institutions. Much of the experience of investigating money-laundering cases vests in the Commercial Crime Unit of the Namibia Police. The Anti-Corruption Commission established in terms of the Anti-Corruption Act investigates corruption.
121. A National Task Force on Money laundering and Terrorist Financing is expected to co-ordinate the rollout of the new legislation. It comprises the Namibia Police, the Anti-Corruption Commission, the Ministry of Finance, Customs & Excise, Inland Revenue, the Prosecutor-General, the Attorney General, the Ministry of Justice, the Namibia Financial and the Central Intelligence Service.

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<sup>26</sup> The Act is expected to become operational in May 2009.

## Seychelles

122. Seychelles adopted the Anti-Money Laundering Act in 1996. The Financial Intelligence Unit is a part of the central bank. It receives reports of suspicious transactions, referring those that appear to involve money laundering to the police for investigation. Since Seychelles is undergoing mutual evaluation process, the study will incorporate the findings of the mutual evaluation report once approved by ESAAMLG.

## South Africa

123. South Africa's regime against money laundering is relatively extensive. Corruption is also comprehensively conceptualised. Current measures are encapsulated in four statutes and a set of complementary regulations.

124. Key elements of AML measures include the criminalisation of money laundering, imposition of due diligence and suspicious transaction reporting obligations, and the supervision and regulation of accountable institutions supported by penal sanctions. Administrative sanctions are expected to come into force when the Financial Intelligence Centre Amendment Act comes into operation. The Act was signed by the President in August 2008 and is expected to come into force around mid-2009.

125. Existing measures provide for the investigation of money laundering on reference by the Financial Intelligence Centre (FIC), for prosecution, and for tracing and confiscating proceeds. Civil forfeiture is permissible and is regularly invoked, giving the Asset Forfeiture Unit and the National Prosecuting Authority some experience in activating mutual assistance processes.

126. The FIC conducts workshops and training sessions to provide feedback and information on contemporary trends and typologies to affected sectors. However, there is no explicit legal obligation to conduct enhanced due diligence in transacting with or for PEPs. Within the Department of Public Service and Administration there is an Anti-Corruption Unit. An Anti-Corruption Coordinating Committee oversees the implementation of the Public Service Anti-Corruption Strategy and coordinates anti-corruption initiatives. The Special Investigations Unit (SIU) is responsible for investigating serious malpractice relating to the administration of state institutions, assets and money. The National Prosecution Authority has a Directorate of Special Operations which investigates and prosecutes cases of grand corruption and money laundering.

## Swaziland

127. Money laundering, which can be committed in respect of specific predicate activities, has been a crime since 2001. Anti-money laundering strategies are still being developed. There is no particular agency mandated to enforce money-laundering measures, with the central bank being the most prominent institution at this stage. The Anti-Corruption Commission (ACC) could fill the vacuum, but in its current form, the ACC has not existed for long. Suspicious transactions are reportable to the central Bank of Swaziland. Very few prosecutions for corruption or money laundering have been reported.

## Tanzania

128. Tanzania criminalised money laundering and created the necessary supporting infrastructure to combat it in November 2006, in a law that subsequently came into effect in July 2007. Prior to the implementation of the AML system, the central Bank of Tanzania monitored a customer diligence system for commercial banks. The Financial Intelligence Unit has been set up to investigate money laundering. National AML strategy is still being developed.

129. Enhanced due diligence on transactions involving PEPs has been required since the advent of the Anti-Money Laundering Act. Reporting institutions are required to establish risk management systems to determine whether a prospective client is a PEP, to take reasonable steps to establish the source of funds, and to conduct enhanced continuous monitoring of the business relationship with the PEP. Senior management has to be consulted prior to the opening of accounts with PEPs. Among other issues, the fact that the client is 'based or incorporated' in a country with no AML measures should be considered.<sup>27</sup> The Act is not specific on penalties for non-compliance, which is a weakness. Tanzania also has a provision to punish possession of unexplained wealth as part of its anti-corruption law.

## Uganda

130. A bill to criminalise money laundering has been approved by cabinet in Uganda. Pending its enactment, the Bank of Uganda shoulders the primary responsibility to ensure that financial institutions under its supervision are not abused to launder money. The Bank issued Anti-Money Laundering Guidelines to Financial Institutions in 2002, and forex bureaux in 2003. These are enforceable as orders of the Central Bank under the Financial Institutions Act (2004).

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<sup>27</sup> See section 15(1)(b) of the Anti-Money Laundering Act, 2006



131. The Inspectorate General of Government is mandated to implement an approach to corruption in the public sector that is pro-active, through managing an asset-declaration regime for higher-ranking public officers. The IGG is an important agency whose database needs to be co-ordinated with the planned AML regime.

### **Zambia**

132. Zambia legislated against money laundering in 2001. The Anti-Money Laundering Investigation Unit (AMLIU), which is led by the Drug Enforcement Commission (DEC), is mandated to enforce anti-money laundering laws, in conjunction with other law enforcement agencies and supervisory authorities – primarily the Bank of Zambia. The Bank issues directives setting out the manner of complying with due diligence obligations.
133. Zambia has a statutory Anti-Corruption Commission that is responsible for investigation and prosecution of corruption-related offences. Efforts are ongoing to finalise the national AML/CFT strategy. Elected public officials are obliged to declare their assets at the time of assumption of office. In addition, unexplained wealth can justify an investigation and prosecution for corruption. There is no obligation to profile PEPs.
134. In response to cases of grand corruption that came to light since 2001, a Task Force was established to investigate some of them. It draws its authority and membership from the various law enforcement agencies. Zambia's mutual evaluation report is due for discussion by ESAAMLG in August 2008.

### **Zimbabwe**

135. Money laundering became a criminal offence in Zimbabwe in 1990. The Bank Use Promotion and Suppression of Money Laundering Act, Chapter 24:24 (2004) ("BUPSML") encapsulated provisions of the Serious Offences (Confiscation of Proceeds) Act (SOCPA), whose provisions on money laundering had become somewhat moribund through non-enforcement.
136. Apart from criminalizing money laundering, the BUPSML created a compliance regime, which requires designated, susceptible institutions to identify their customers, record transactions and report suspicious ones. It inherited the confiscation, seizure and forfeiture of proceeds provisions of SOCPA and is intended to improve their efficacy. AML is implemented by a Financial Intelligence Inspectorate and Evaluation Unit (FIIEU) located in the Reserve Bank.

137. Anti-corruption measures are enforced by the Anti-Corruption Commission, which is located in a separate department of state. An Inter-ministerial committee has been set up to harmonise enforcement of AML and anti-corruption measures. It comprises the ministries responsible for:

- Anti-corruption
- Justice,
- Finance,
- Information
- State security
- Home affairs
- Education, and
- Defence

The central bank, revenue authority and immigration departments are also part of the committee.

138. There is no requirement to conduct enhanced due diligence on PEPs. Mutual assistance applications are handled by the Attorney General's Office.

### **Country Assessment/evaluation**

139. Periodical monitoring and evaluation of the implementation of anti-money laundering standards is a key element in the fight against money laundering. Under the auspices of ESAAMLG, several mutual evaluations that are broadly similar to the Financial Sector Assessment Programmes (FSAPs) of the IMF and the World Bank have been conducted.

140. Member countries also benefit from the evaluation of the overall context within which anti-money laundering measures have to be implemented. In addition, the World Bank, IMF and ESAAMLG undertake assessments/evaluations of the AML/CFT systems of member countries. The AU has introduced a peer review mechanism to which some member countries of ESAAMLG have committed themselves. The table below indicates the status of evaluation/assessment of ESAAMLG member countries. It clearly shows that all ESAAMLG member countries have undergone at least one assessment/evaluation process.

**Table 5: Peer review/mutual evaluation**

Country	African Peer Review Mechanism (APRM)		ESAAMLG/FSAP Evaluation	
	Evaluation Status	Date	Evaluation Status	Date of most recent
<b>Botswana</b>	No	-	Yes	2007
<b>Lesotho</b>	No	Consultations ongoing	Yes	2004
<b>Kenya</b>	Yes	2005	Yes	FSAP - 2003
<b>Malawi</b>	No	-	Yes	2004, FSAP - 2008
<b>Mauritius</b>	Yes	Undergoing evaluation process	Yes	2007
<b>Mozambique</b>	Yes	2007	Yes	FSAP - 2003
<b>Namibia</b>	No	-	Yes	2005
<b>Seychelles</b>	No	-	Yes	2006
<b>South Africa</b>	Yes	July 2007	Yes	2008
<b>Swaziland</b>	No	-	Yes	2002
<b>Tanzania</b>	No	Due for evaluation in November 2008	Yes	2009
<b>Uganda</b>	Yes	July 2008	Yes	2006
<b>Zambia</b>	Yes	In progress	Yes	2007
<b>Zimbabwe</b>	No	Consultations underway	Yes	2007
<b>Total</b>	6/14 evaluated		All evaluated	

## Resources

141. Four of the countries that responded to the question on this point stated that they did not have a budget or specific resources allocated for anti-money laundering. One of the countries confirmed the existence of a budget qualified the response with what appears to be the situation that holds for other countries, namely that

*“anti-money laundering and anti-corruption activities are performed by various institutions that budget for their activities independently”.*

Where this is the case, it is understandably difficult to determine specific budgets and resource allocations for anti-money laundering and anti-corruption. It was clear from the five countries that responded that anti-money laundering and anti-corruption structures are grossly under-resourced in terms of manpower. The ratios of officials to the population ranged from 1:40 000 to 1:700 000.

### **Record of law enforcement**

142. Countries were requested to provide statistical data on the number of prosecutions for corruption. The responses consistently demonstrated that a low number of cases of corruption eventually make it to the courts. The rate of convictions is even lower. The ratio of convictions to the reported cases ranged from 0 to only 3.6%. Countries attributed the lack of success to various factors, namely:

- Lack of sufficient evidence
- Bribery of officials
- Lack of prosecution capacity
- Unrealistically high standard of proof
- Witness credibility
- Death of crucial witnesses
- Death of suspect

143. Countries indicated that the timeframe for investigation and prosecution of corruption cases ranged from 2 to 18 months, with prosecutions lasting between a few months and 2 years. This means from inception to conclusion, the longer cases could take 3 and a half years. Although in relative terms, this is not unduly long, the length of time associated with investigation and prosecution of corruption offences is an impediment to success. It enables the suspect to move proceeds of crime from place to place. It also exposes the case to other factors – such as bribery or death of witnesses or of the suspect.

144. There were other challenges confronting law enforcement raised during the research. The fundamental ones were:

- Insufficient budget allocations in the face of other competing national needs
- Inadequate training of officials in relevant agencies
- Conflicts between unexplained wealth provisions in anti-corruption legislation and the presumption of innocence.
- Corruption of the judiciary

145. The worst cases of money laundering in terms of volume of proceeds and

impact, tend to involve corruption and transfer of proceeds across multiple jurisdictions. Both the Palermo Convention and UNCAC place emphasis on exchanges of information and expertise across borders.

146. Articles 38 - 39 of UNCAC envisage that information important to detecting and investigating corruption may be in the custody of public offices outside law enforcement agencies or the private sector. The Convention stipulates for the establishment of collaborative arrangements to facilitate investigation and prosecution of corruption. Country responses described multi-sectoral task forces/committees as the mechanisms developed to ensure co-ordination, both at the policy level and the operational level.
147. In respect of money laundering, the exchange of information within the public sector, and between the public sector and private sector institutions, hinges on:
- The existence of a credible AML regime, which can be trusted by those whose collaboration will be elicited
  - Awareness of money laundering, and its most recurrent forms beyond the mandated law enforcement sector
  - The existence of a constituency beyond the mandated law enforcement sector, to which mandated institutions can be held accountable
  - Clarity of mandates if multiple agencies are involved
  - A reliable and predictable framework for co-operation – i.e. an institutional framework whose efficacy does not depend on the inclinations or whims of personalities
148. International co-operation brings in additional dimensions. Table 1 attempts to summarise the reasons why such co-operation is critical. It is on account of it that trends of crime, the identity of criminals and their *modus operandi* get known across the world. At the level of government, this informs decisions on which countries to negotiate bilateral and multilateral treaties with, as well as their content. Private institutions with a role in AML also benefit from foreign sources in becoming 'street-wise' to their responsibilities, and appreciating suspicious situations.
149. The study made the following observations that have a bearing on domestic AML networking:
- An AML regime whose leadership is not clear, or in which there is no clarity as to mandate, is unlikely to command the confidence of structures whose support it needs to function optimally
  - Anti-corruption agencies with a track record were a sound basis on which to construct a credible AML regime
  - Financial intelligence units were generally considered to be credible, and enhanced the level of collaboration between law enforcement and private

sector institutions

- There does not appear to be a constituency beyond the mandated law enforcement sector, to which mandated institutions can be held accountable. Perceptions about lack of autonomy of some mandated institutions are detrimental to creating such a constituency.

150. With regard to trans-national co-operation in ML cases, the study observed that:

- Amongst ESAAMLG member countries, differences in implementation of AML systems had a negative impact on co-operation
- Trans-national co-operation is predominantly formal, and reciprocal. The competency of the authority that requests the collaborative assistance of a foreign agency or state is often important.
- Two ESAAMLG members countries had joined the Egmont Group, and appeared to encounter fewer challenges in getting co-operation from other countries beyond the ESAAMLG
- The costs of securing co-operation from foreign countries are usually very significant
- The content of mutual legal assistance needs to be reviewed to take into account demands arising from emerging AML regimes
- The Palermo Convention offers a basis for mutual assistance without resorting to bilateral or multilateral treaties.

151. Five countries did not have FIUs, and could therefore not report on requests for mutual assistance received by their FIUs from both domestic and foreign authorities. The four countries that provided information on the assistance received by their FIUs or equivalent institutions did not provide an adequate breakdown of the nature of the requests, their number and the number of those denied and the reasons. Only two countries provided information on this point. The first explained that while foreign authorities did not deny requests, local courts questioned the competency of the authority that requested and ruled the requests unconstitutional. The other did not face any problems at all with requests for foreign assistance, all requests were treated favourably even in the absence of bilateral agreements.

### **Commentary on approaches to linkages between corruption and anti-money laundering initiatives**

152. On the basis of the information considered in this study, corruption and money laundering are closely linked, in that the incidence of one impacts on the incidence of the other. It is necessary to establish structures that integrate the investigation of corruption and money laundering. It was observed that anti-

- corruption agencies with a track record were a sound basis on which to construct a credible ML regime.
153. It was observed that in a few cases, anti-corruption agencies are mandated to investigate money laundering. In formulating national AML strategies, all member countries need to determine the model that best achieves the investigation and prosecution of money laundering schemes, some of which can be quite complex.
154. The decision involves choosing between
- The 'traditional' model in which predicate activities most closely linked to money laundering are investigated by one agency, but prosecuted by a different agency, and
  - An 'integrated' model in which the predicate activities most closely linked to money laundering, and the money laundering are investigated by a multi-disciplinary investigating and prosecuting agency.
155. The traditional model enables the investigator to do what he is best trained to do, and the prosecutor to concentrate on proving the case in court while maintaining a professional detachment. An integrated approach entails investigators and prosecutors working together within the same structure. It 'facilitates a seamless process of investigation and prosecution, presenting as it does the fewest opportunities for delays and differences of approach between the investigators and the prosecution.'<sup>28</sup>
156. For all its merits, the traditional model disperses the skills that are necessary to combat complex cases of corruption and money laundering. It opens up the risk of errors being committed during the investigation that compromise the prospects of a successful prosecution. It also perpetuates the system of investigators and prosecutors operating in different 'silos' and not being able to access comprehensive information, or to benefit from each other's expertise.
157. In the integrated model, 'the involvement of the prosecutor from the outset may assist in the early identification of asset forfeiture potential and the swift restraint of the proceeds of crime, before they are hidden.' UNCAC stipulates for the establishment of collaborative arrangements to facilitate investigation and prosecution of corruption. In this regard, it was noted that multi-sectoral investigative task forces have been operating in some member countries.

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<sup>28</sup> Anton Steynberg, 'Examining Appropriate Models and Best Practices for an Organised Crime Fighting Agency' unpublished seminar paper (July 2008) Anton is the Deputy Director of Public Prosecutions in the Kwa Zulu Natal Province, South Africa. He has substantial practical experience of working with an integrated law enforcement model, from his work in the Directorate for Special Operations.

158. Clarity of mandate and of oversight are critical to the effectiveness of the proposed integrated investigative structures. AML is a sphere some of whose constituent components are already pervaded by law enforcement agencies, such as the police and customs departments. The extent of the mandate and the processes by which to hold an integrated AML agency should be resolved at the level of policy, and written into the law that establishes it. It is suggested that the agency should be mandated to investigate and prosecute:<sup>29</sup>

- Organised crime
- Cross-border corruption
- Domestic corruption involving an amount above a certain threshold
- Complex economic crime and money laundering

159. Access to information is important to investigations of corruption and of money laundering. Legislation to compel public officials to regularly disclose assets and liabilities appears to be established in several member countries, although verification of declarations may still be problematic.

160. As pointed out in paragraph 60 above, a comprehensive regime of measures against money laundering could significantly impact on the incidence of corruption. The essential features of such a regime have been highlighted in the framework in Table 1. Almost all the obligations imposed can have a bearing on the detection and investigation of cases of corruption. The more complex corruption cases tend to be either linked to organized crime or to involve politically exposed persons. The AML obligations of recurrent relevance are:

- The obligation to exercise due diligence, which is of particular utility when politically exposed persons are involved
- The obligation to report suspicious transactions
- The obligation to investigate predicate activities
- The obligation to enter into co-operative agreements and
- The obligation to construct effective processes for the exchange of mutual assistance

161. While it is a general challenge in the region, corruption particularly affects certain sectors. The most commonly affected are:

- The management of borders and related tax collection
- Dealings with identity documents
- Procurement of arms and equipment by defence forces
- Public procurement

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<sup>29</sup> The list is derived from the current mandate of the Directorate of Special Operations (South Africa), the Independent Commission against Corruption (ICAC, Mauritius) and the cases that tend to be investigated by the Task Force in Zambia.



- Public construction contracts
  - The extraction of precious resources
  - Embezzlement of pension funds and social grants
  - The abuse of documents to facilitate illegal immigration and/or crime
162. The major responses to corruption, which include commissions of inquiry, *ad hoc* task investigation teams, anti-corruption agencies, are predominantly re-active. For various reasons, these responses have had limited success in combating grand corruption encountered in the region, and should be augmented by AML measures.
163. The establishment of an effective financial intelligence unit in each country is critical. Its value in combating corruption can be demonstrated by a relatively simple case study, adapted from recent events in the region.

#### Case study 7

A customs officer employed by country X regularly receives bribes from a crime syndicate in order to facilitate the smuggling of cigarettes and liquor through two border crossings over which he has control. The cigarettes originate from two countries, Y and Z, and are transported by road on long distance haulage trucks, through X into neighbouring country A, a larger market. The liquor originates from country A, where it is obtained through the armed robbery of trucks and retail outlets.

At regular intervals, large deposits are made into the account of the customs officer, held at a bank in country X. The deposits are followed by small withdrawals. Over a period of time, and on account of his accumulated wealth, the customs officer acquires a powerful circle of friends and contacts in government, the police and the banking community in country X. He owns several properties within X, and in countries A and Y.

**Observation:** Investigating the corrupt customs officer can be quite difficult utilizing the conventional mechanisms, as he is well connected in the relevant sectors as well as in the underworld. Yet the most visible manifestations of his involvement in organized crime and corruption are well within reach, in the form of the banking transactions and the unexplained wealth. A well-resourced and functional FIU can facilitate the gathering of information pertaining to the sources of the deposits, where the funds are subsequently transferred to

(assuming that some of this is through inter-bank transactions), and in locating the various assets that belong to the suspect. It can also perform a lifestyle analysis of the suspect as well as that of his circle of friends. It may well be that from his account, the suspect pays off various subordinates for assisting the smuggling operations. The FIU should also be able to circumvent the conventional methods of securing mutual legal assistance, which are often bureaucratic and protracted. FIUs co-operate with each other through the Egmont Group or bilaterally in terms of memoranda of understanding. In the instant case, the FIU in country X will require the assistance of FIUs in A, Y and Z.

The FIU's involvement needs to be invoked by a report from the bank at which the suspicious transactions occur or the other intermediaries through which he acquires property.

164. The protection of sources of information is particularly important to the investigation of corruption and money laundering. Only one country had specific whistle-blowing protection in its law. Four countries stated that they had no witness protection legislation. Four reported that although they did not have specific witness protection legislation, they had other provisions scattered in non-specific laws that protected witnesses and whistle blowers. One country had draft legislation that was yet to be adopted.
165. It is important to note the difference between a whistleblower and a witness. A whistle blower may or may not become a witness. He/she is likely to require anonymity and protection that is available outside rather than within the formal state structures. The only protection available to whistleblowers in many countries is injunctory in nature - in the sense of prohibiting certain kinds of reprisals such as dismissal from employment. Invoking AML measures has the added benefit of affording some protection to the investigator, who would otherwise act alone, and be susceptible to intimidation.
166. Only two countries have legislated for witness protection. Their schemes provide regional best practice on the subject. They have the following attributes:
  - Temporary protection, pending placement under protection of witnesses;
  - Placement of witnesses and related persons under protection; and
  - Providing services related to the protection of witnesses and related persons.
167. In one country, the Witness Protection Unit is part of the national prosecution. Its functions and duties are classified as secret. It operates as a covert unit due to the risky nature of witness protection. The Unit provides support services to the national law enforcement agencies to ensure the effective and efficient services to

vulnerable and intimidated witnesses under threat in cases of serious crime, organized crime and terrorism. Witnesses may also testify “in camera”, i.e. in the absence of members of the public.

168. The funding of political parties from private sources is a potential source of corruption. It opens up the larger political system to corruption by criminal syndicates. The modes of infiltration have been discussed in depth above. The research revealed that two member countries regulate the public and private funding of political parties.

## SECTION THREE: FINDINGS AND RECOMMENDATIONS

### Chapter 5: A summary of findings

The study made the following observations:

169. The implementation of anti-money laundering measures is vulnerable to corruption in several ways:

- Firstly, corruption is among the most significant contributors to proceeds of crime that become available for laundering.
- Secondly, and because of its connection to money laundering, corruption will try to prevent the adoption of effective measures against money laundering, and may succeed in doing so if not detected and checked.
- Thirdly, corruption could impede the implementation of AML measures that have been adopted – such as by interfering with the capacity of mandated institutions to perform their duties, or corrupting the relevant officials.
- Fourthly, non-state institutions on whose co-operation the prevailing AML systems increasingly rely can, if corrupted, sabotage the effective implementation of AML measures by falsifying information or concealing information from the mandated institutions as to the true nature of questionable transactions.
- Finally, corruption can take advantage of differences in levels of implementation of AML measures in different countries to frustrate transnational co-operation to investigate money laundering or track proceeds of crime.

It found that:

170. Significant measures, which could have a bearing on money laundering, exist in all the member countries, but the implementation of measures that specifically target money laundering across the region is uneven. Some member countries have not yet adopted the necessary legislation.

171. Corruption is regarded as a serious offence, which contributes to money laundering in all member countries. The connection between corruption and money laundering does not appear to have impacted on the legislative or institutional frameworks to combat the two vices. Specifically, in most member countries, corruption and money laundering are investigated by agencies that are separate, distinct and have little interaction.

172. There was a generally low rate of successful prosecutions for money laundering in the region. This may reflect adversely on the effectiveness of the

implementation of anti-money laundering measures in the member countries that have adopted them. Whether this is the case can only be conclusively determined through detailed case studies.

173. Financial, human and communication resources allocated to anti-corruption and anti-money laundering interventions in most member countries are inadequate, and could affect effective implementation of both anti-corruption and anti-money laundering legislation.
174. There was poor documentation of statistics on requests for mutual legal assistance, as well as of confiscations of proceeds of corruption. As a result the effectiveness of these modes of international co-operation could not be analysed. The information available showed that only two countries use non-conviction based asset forfeiture.<sup>30</sup>
175. All the countries surveyed did not have comprehensive and documented anti-money laundering strategies. Several had anti-corruption strategies, but these were not aligned to money laundering typologies, and did not take account of the vulnerability of the anti-money laundering infrastructure to corruption.
176. State parties to the United Nations Convention Against Corruption (UNCAC) are obliged to insist that financial institutions operating within their jurisdiction conduct enhanced due diligence in handling financial transactions involving domestic and foreign politically exposed persons (PEPs). The Financial Action Task Force (FATF) recommendations opt for a narrower approach, requiring enhanced due diligence in respect only of foreign PEPs. The selective treatment of PEPs is motivated partly by the known contribution of corruption to money laundering, and partly by the presumed vulnerability of the anti-money laundering infrastructure to corruption.
177. Member countries have generally not yet adopted the identification and application of enhanced scrutiny of financial transactions linked to politically exposed persons (PEPs) as required by the narrow approach in the FATF recommendations or the broad prescriptions of the UNCAC. Only one country<sup>31</sup> requires reporting institutions to conduct enhanced due diligence of transactions conducted with PEPs. It also requires that such institutions consider that fact that a PEP is based in a country with no AML measures as a red flag. Unfortunately, there are no explicit penalties for non-compliance.
178. The autonomy of existing anti-corruption and anti-money laundering institutions is an important issue, as it appears to impact on their credibility, effectiveness

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<sup>30</sup> Kenya and South Africa

<sup>31</sup> Tanzania

and success. The extent to which institutions in ESAAMLG member countries are functionally autonomous could not be determined on the basis of available documentation.

179. The absence, or non-enforcement of laws to facilitate access to information that could indicate
- a. the corrupt accumulation of resources, or
  - b. inadequacies in the implementation of measures against corruption and money laundering
- contributes to an environment which is conducive to corruption and money laundering.

## Resources

180. Financial, human and communication resources allocated to anti-corruption/anti-money laundering interventions appear to be inadequate. This is likely to impede success in the effective implementation of both anti-money laundering and anti-corruption legislation. In trans-national cases, poor skills raise the cost of investigations and impact adversely on the chances of success. Furthermore, poorly skilled investigators lack confidence and may be susceptible to corruption.
181. Anti-corruption agencies are still a novelty in the region. Anti-money laundering agencies are even younger. The level of autonomy/independence enjoyed by the anti-corruption agencies impacts on their effectiveness, success and in turn the public confidence in them. It is necessary for FIUs or equivalent institutions to be insulated from improper political influence. The Egmont Group has noted that FIUs that do not possess operational independence in law and in fact represent a major point of vulnerability to corruption in the anti-money laundering system.
182. Anti-corruption agencies in ESAAMLG countries are generally not directly accountable to the public. With regard to anti-money laundering, this trend is being followed, perhaps with even more secrecy shrouding the work of anti-money laundering agencies. In consequence, a constituency to support anti-money laundering initiatives and to monitor the work of anti-money laundering agencies is unlikely to develop.

## Chapter 6: Conclusion and Recommendations

183. Corruption has international dimensions. Corrupt acts usually take place in multiple places and are generally linked not only to ordinary crimes carried out in other countries, but also to organised crime, money laundering and the financing of terrorism. Critically, fighting money laundering and corruption are challenging tasks because the acts are typically carried out in secret, while in most cases victims and enforcement authorities realise they have occurred only after the passage of precious time.
184. As a result of the transnational nature of these offences, international co-operation seeks to promote international co-operation among countries to combat them. Despite the obvious sensitivity of devising and implementing universal strategies to combat grand corruption, international organizations help by establishing an international framework to help foster co-operation.
185. The objective of this research was to establish whether corruption either diminishes the effectiveness of institutions from performing their obligations or undermines the implementation of anti-money laundering structures and strategies. The inadequacies of the questionnaire have been noted. Certain recommendations can however, be made at this stage.

### Recommendations

#### To member countries:

186. Acknowledging that corruption takes advantage of differences in levels of implementation of AML measures in different countries to frustrate transnational co-operation, each member country should take stock of the status of implementation of AML measures, as envisaged by membership of the ESAAMLG and required by their international obligations. Member countries that have not criminalised money laundering should do so and establish FIUs.
187. All ESAAMLG member countries should finalise national AML strategies as encouraged by the Strategic Plan for the period 2005-08., taking into account the vulnerabilities highlighted in this report. Member countries already having FIUs should provide them with the necessary human, technical and financial resources to enable them to function effectively.
188. Agencies responsible for investigating corruption and money laundering should be obliged to co-ordinate their activities. Member countries should clarify the mandate of agencies mandated to combat corruption and AML. They should

also structure the accountability of such agencies. Information on the structures thus established should be shared with other countries.

189. Data on outgoing and incoming requests for mutual legal assistance should be better documented. Data on confiscations of proceeds of corruption in transnational cases should also be better documented.
190. Member countries should create the necessary legislative and administrative framework to facilitate non-conviction based asset forfeiture. This should include the establishment of dedicated structures for the management and disbursement of recovered assets.
191. Member countries should create the necessary legislative and administrative framework to facilitate the application of enhanced due diligence of financial transactions linked to foreign politically exposed persons (PEPs) as required by the FATF recommendations.
192. Regarding the observations made in table 4, member countries that did not ratify relevant international instruments on time should accede to and implement them. Member countries that have signed and ratified should align national implementation strategies to the provisions of the international conventions.
193. To facilitate the monitoring and evaluation of the implementation of measures against corruption and against money laundering, each country legislate for access to information relevant to:
  - the corrupt accumulation of resources or
  - the implementation of measures against corruption and money laundering

Member countries should enable the agencies mandated to combat corruption and money laundering to be autonomous in terms of structure and operations. At the same time, they should be accountable to the public, specifically through legislative and judicial institutions.

#### **To the ESAAMLG**

194. **ESAAMLG** should mandate its appropriate organs to periodically gather and collate case studies and statistics on attempts to corruptly influence the implementation of measures against money laundering as described in this report or in any other way.
195. **ESAAMLG** should consider developing a regional mechanism for FIUs within member countries to exchange information relating to money laundering, taking into account applicable national laws.



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## ANNEXURE 'A': LEGISLATION

## Legislation in ESAAMLG countries with a bearing on corruption and the financing of terrorism

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<p><b>LESOTHO</b></p> <p>Public Service Act, 2005  <u>Central Bank Act 2000</u>  <u>Constitution 1993</u>  Criminal Procedure &amp; Evidence Act, 1981  <u>Financial Institution Act No. 6 of 1999</u>  Financial Institutions (Anti-Money Laundering) Guidelines 2000  Income Tax Act, 1993  <u>Insurance Act, 1976</u></p>	<p><b>MALAWI</b></p> <p>Corrupt Practices Amendment Act, 2004  Public Procurement act 2003  Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act, 2006  The Constitution 1994  <u>Exchange Control Act</u>  <u>Extradition Law</u>  <u>Mutual Assistance in Criminal Matters</u>  <u>Penal Code (Amendment) 1974</u></p>

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