

CHAPTER 1

OBSERVATIONS ON TYPOLOGIES OF MONEY LAUNDERING IN THE SADC REGION

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Introduction

Since the beginning of 2001 the Institute for Security Studies (ISS) has been studying the factors that expose the financial and commercial sectors, among others, in Southern African Development Community (SADC) states to the laundering of tainted money and other illicit proceeds. This has been done in various ways. Much information has been revealed, published and discussed in many fora.¹ Some of the findings are relied on in this chapter, without repetition.

This chapter confines itself to the situation in the sub-region since the start of 2003. It traces trends and developments through examples and case studies. It makes no significant attempt to estimate the magnitude of money laundering in SADC states. In the process, the chapter gives a broad analysis of factors impacting on the capacity of key sectors of the relevant infrastructure to detect the laundering of tainted money and other illicit proceeds. To some extent, the chapter assesses their strengths and/or weaknesses against the backdrop of real challenges identified from sub-regional cases studies. It concludes with tentative suggestions for possible short-term options. At the outset some of the chapter's limitations need highlighting. Firstly, it does not purport to present a comprehensive picture of the incidence of money laundering across the SADC sub-region. Due consideration had to be given to space and time constraints. Secondly, money laundering is a relatively new offence in the SADC. It is not yet universally recognised as such in all member states. There is an understandable absence of statistics to reveal its prevalence. This is compounded by a deficiency of consolidated statistics² on the serious predicate economic crime and corruption cases that have occurred in the sub-region during the period reviewed. More than any other factor, this was the biggest barrier in preparing a tapestry of the desired detail. While prominent cases assist in illustrating detected trends, at most they only reveal part of the story. Further, the cases cited in this chapter did not all arise (in the sense that the predicate offences were committed) in the period under review. Indeed, in most cases the laundering preceded this period, but the nature and extent only became known or established in the review period.

Money laundering typologies

Proceeds of drug trafficking

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

the wholesaler makes the most money. Although his mark up (sic) is less than that of the retailer, the quantities in which he deals are much larger. Most poorly paid are the producer and the street dealer, who work for subsistence-level income. At no point in the domestic market chain is much money made, however, as the market is too diffuse and the unit cost too small. The real market is in export.³

Wholesalers are therefore best positioned to participate in significant money laundering from local dagga sales.

At its profitable levels, drug trafficking is cash intensive. Drug dealers usually rely on cash as a primary medium of exchange. Drug traffickers accumulate huge amounts of cash that must be hidden and converted to avoid detection of drug activity. They share at least three characteristics across the sub-region:

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

The drug market in South Africa is the largest in the sub-region. At the end of June 2002, two 'busts'—in Douglasdale, north of Johannesburg, and in Roodepoort on the West Rand—yielded massive seizures of dagga, cocaine, ecstasy, mandrax and chemicals for the manufacture of mandrax. The haul

was valued at ZAR2.7 billion (US\$270 million at that time). More than 100 syndicates are known to be active in the drug-trafficking industry in South Africa. It appears that most launder their assets locally in the acquisition of motor vehicles, legitimate businesses and front companies and residential properties. Asset seizures in the 18-month period from July 2002 to January 2004 give an indication of the scale of laundering of drug money. In June 2002, the Asset Forfeiture Unit of the National Prosecuting Authority reported that of the 150 cases in which assets had been seized,⁴ 31% involved drug trafficking.

Recent shifts observed in South Africa

Drugs

Drug trafficking tends to provide resources on which other forms of illegal activity feed. A report on typologies of money laundering in the sub-region prepared in 2002 underlined the positioning of Southern Africa, primarily South Africa, as a transit point for narcotics from the South-East Asia sub-continent and South America to markets in the northern hemisphere, especially in Europe. Intelligence-driven operations in South Africa involving the police and the Directorate of Special Operations (the Scorpions) have resulted in numerous 'drug busts'. The effect has been to curtail the availability of imported narcotics, thereby raising the need for domestic production. An increase in the number of manufacturing points, in the form of laboratories, is evident. Drugs found being produced include methacathinone (CAT-9 laboratories were discovered in 2003) and mandrax.

The drug seizures of June 2002, referred to above, yielded chemicals for the manufacture of mandrax estimated to be worth ZAR2.7 billion (then equivalent to US\$270 million).

Theft and hijacking of motor vehicles

The predominance of South African vehicles in the statistics of stolen and hijacked vehicles trafficked in Southern Africa continues and is linked to organised criminal groups. Stolen vehicles and trucks are still exchanged for other goods, such as drugs, firearms, cobalt and diamonds. The police report that corruption is a serious problem as those involved in vehicle theft acquire and use forged vehicle registrations as well as customs and immigration documentation. Insurance fraud has also been found in connection with truck and vehicle hijackings.

Money laundering and financial scams

Syndicates from South-East and East Asia, Nigeria and Eastern Europe have been active in criminal activities in South Africa. Nigerian syndicates are primarily involved in narcotics and financial scams, for example the Nigerian '419' scam. Their success rate has not been quantified. Russian Mafia syndicates have been found to be operating in a number of criminal groups in several Southern African states, including Angola, Botswana, Mozambique, Namibia, Swaziland and South Africa. They concentrate mainly on diamond and weapon smuggling, corruption, fraud and money laundering schemes. They are also involved in legitimate business.

Chinese Triad activity appears to take advantage of increased levels of illegal immigration from China and Taiwan. Triads have long been involved in smuggling endangered species, especially *perlemoen* (abalone). Illegal activities also include prostitution and blackmail. In South Africa, Chinese syndicates are believed to control trafficking routes for abalone to and from Hong Kong and Singapore, via Mozambique, Swaziland and Lesotho (and occasionally Zimbabwe).

Robberies

Cash-in-transit robberies, which may either be the 'classical' in-transit heists or pavement-type robberies, continued to provide a source of laundered funds in the period under review. The number of reported cash-in-transit robberies declined between January and August 2002. No statistics could be obtained for the period September 2002 to July 2003. The number of participants per group appeared to have increased, as did the level of violence and aggression used. There was also a notable pre-occupation with robbing security personnel of firearms. Bank robberies declined, a development attributed to greater security measures implemented in that sector, but armed robbery of tourists increased.

Laundering the proceeds of informal enterprise

The informal sector continues to be strong in Mozambique, Tanzania, Malawi and Uganda. Illicit activity is known to occur within this sector but has not been quantified. In Mozambique and Zimbabwe it extends to the marketing of commodities of all descriptions. In Mozambique, there is a black market that even trades in minerals. In Zimbabwe the

'parallel' economy is continuously expanding at the expense of the formal economy. There is anecdotal evidence that the informal sector is vulnerable to money laundering. An arrest was reported at Mavalane Airport of a prospective passenger active in the informal sector carrying a case containing US\$ 1 million.

An ISS researcher, Andre Standing, studied the contemporary socio-economic dimensions of drug-related criminal activity in Cape Town. He came up with rather startling, but important, findings, which may be of general application to illicit economies in transitional societies. Standing's observations are reproduced below.⁵

Observations on the Cape Flats' illicit economy

Operating without formal regulation, the illicit economy displays the most vivid failings of free market enterprise, what we may refer to as 'predatory capitalism'. Most strikingly, the spoils of crime are concentrated among a tiny minority, some of whom have become multi-millionaires. Predatory capitalism allows winners to take all. Subsequently, the fortune of the criminal elite that is derived from business on the Cape Flats is spent on lavish goods manufactured elsewhere or is invested, as recommended by business consultants, in promising property and businesses, almost all of which are based in prosperous regions outside the Cape Flats. Capital accumulated by unrestricted competition, which in the classic model of capitalism was supposed to trickle down and enrich society, is in fact pumped out of the area.

The gross polarisation of wealth on the Cape Flats is largely dependent on the activities of the majority of the powerless in the crime boss's community, especially the abundant members of territorial gangs. Unlike the boss who has properties in various areas and invests the proceeds of crime in prosperous industries, the average street gangster is confined to a small geographic area and is faced with extremely restricted social and geographic mobility. These "loyal brothers", as famously referred to by Don Pinnock, support the gang boss by being employees, foot soldiers as well as his major consumers. Therefore a sizeable proportion of the profits generated by working for the criminal

elite are re-spent on the same commodities and services supplied by him. The majority of those who operate in the criminal economy are simultaneously socially excluded and criminally exploited.

While the criminal elite can protect and sustain their position in the criminal economy through violence and corrupt relations, those at the less profitable end are far less secure. Here illicit economic activity is characterised by uncertainty and vulnerability. The criminal boss provides no income insurance or employment benefits, considered basic rights in the formal economy. What is more, few who engage in petty drug dealing or other forms of criminal trade escape arrest and prosecution. In prison the average employee of the criminal economy will receive no income from the outside and on his release he is not guaranteed re-employment, either in the illicit economy, which has an abundant supply of expendable workforce, or in the formal economy, which is typically closed to those with a criminal record. This experience can be contrasted with that of the criminal elite who, when occasionally forced to spend time in prison, continue to collect dividends from their business empires, which remain intact waiting for their release.

(Footnotes have been omitted from the extract.)

Currency speculation proceeds

Reports on the incidence of commercial crime in the SADC regularly highlight the role that currency speculation plays in generating proceeds for money laundering, facilitated by corruption and, in some cases, political cronyism and fraud.

Currency speculation in Zimbabwe: a brief exposition

The incidence of currency speculation is not quantified in Southern Africa, but there is no doubt that it constitutes a major predicate activity for money laundering.

The exploitation of fluctuations in the availability, and consequently, the value of foreign currency has become a major source of income in parts of the sub-region afflicted by shortages. Zimbabwe presents classic examples of the practice at a crude level. It also illustrates how what

commences as a series of sporadic transactions for subsistence purposes can quickly become a species of syndicated economic crime.

Currency speculators range from street traders to senior public officials, including government ministers. Part of the reason for the 'currency rush' is the vast disparity between the stipulated, lawful, rate at which the Zimbabwe dollar should trade and the 'real' market rate. A recent survey has shown the linkages between corruption and currency speculation. Well-connected individuals are known to have procured hard currency, in the form of US dollars, from official repositories, at the government prescribed rate of Z\$55 to the US dollar, and subsequently sold the same currency on the parallel market for Z\$6,000. This represents a profit of astronomical proportions. Recent reports point to the conversion of Zimbabwe currency into the Botswana pula. This is subsequently followed by the further conversion of the pula into US dollars in Botswana or other neighbouring countries. The US dollars are either repatriated back to Zimbabwe or transmitted to other countries.

Profits of currency speculation are known to have been invested on the stock market, in real estate, and used to acquire luxury motor vehicles.⁶

Proceeds of corruption

A series of judicial hearings in Lesotho dominated late 2002 and early 2003. The hearings are referred to in this chapter as the Lesotho Highlands Water Project corruption trials. The amounts of money involved were large in the sub-regional context, though they may appear trivial on the global scale. The technical disputes precipitated by the trials (which threatened to occupy nearly as much time as the adjudication of the merits of the cases), as well as the issues of principle, were certainly far more important.

The Lesotho Highlands Water Project corruption cases

The Lesotho Highlands Water Project resulted from a treaty concluded between Lesotho and South Africa in 1986. Its objective was to create a system of dams and tunnels to provide water to South Africa and electricity for Lesotho. The implementation of the project required

the establishment of at least three new bodies, one of which was called the Lesotho Highlands Development Authority (LHDA), mandated to manage the entire project. Its Chief Executive Officer (CEO) was Masupha Sole. The construction of two dams, an essential part of the project, involved the LHDA in conducting business with a wide range of transnational corporations (TNCs), some of which had hitherto unquestioned credentials. Competition to gain tenders was stiff, and a flurry of intermediaries participated at various stages. During the course of the project, it emerged that a large number of TNCs had paid money into bank accounts in Switzerland in the name of certain intermediaries, and that some of it had subsequently passed into bank accounts held by the LHDA CEO, Sole. In the case of the key intermediary, one ZM Bam, investigations revealed a general pattern of 60% of the money that was paid into Bam's account being transmitted to Sole very shortly thereafter. It was established in court that between January 1991 and April 1991, Sole received C\$493,000 and he received another C\$188,000 between June 1991 and January 1998.

The source of this particular bribe was a Canadian TNC, Acres International, which wanted to secure the contracts for the construction of the Katse Dam.

Sole also received bribes from other companies involved in the project, and, according to a member of the prosecuting team,⁷ more trials are expected. Firms that have been implicated include the Highlands Water Venture Group, which comprises Impreglio Impresit Girola of Italy, Hochtief of Germany, Bouygues of France and Basil Read of South Africa. The consortium is alleged to have paid Sole US\$375,000 between 1991 and 1998.

The Lesotho Highlands Water Project consortium, which includes LTA-Grinaker from South Africa and Alston of the UK, is alleged to have bribed Sole with ZAR6.6 million (just over US\$1 million as at April 2004). Intermediaries charged include Jacobus du Plooy and two Panamanian companies, namely Universal Development Corporation and Electro Power Corporation, as well as Max Cohen, ZM Bam and Margaret Bam. At the time of writing, Cohen, who did not attend the initial hearings, had disappeared without trace. ZM Bam died during the trial.

Sole was sentenced to 18 years in jail for receiving more than ZAR7.5 million (US\$1 million) from international contractors and consultants.

This was reduced on appeal to 15 years.

The forensic investigations revealed a trail of money leading from the TNC contractors to six intermediaries, all of whom managed banking accounts outside Lesotho, and then further on to a second tier of intermediaries and ultimately to Sole's accounts in Geneva. Transfers were traced further to an account in Sole's name at Standard Bank in Ladybrand, just across the border in South Africa. During the period in question ZAR406,985.79 was deposited into the Standard Bank account. In addition, Sole also deposited foreign currency to the value of £298,620 and US\$812,406. Small transfers were recorded between that account and Sole's account with Barclays Bank in the Lesotho capital of Maseru⁸ (Barclays Bank subsequently transferred its interests in Lesotho to Standard Bank).

As far as is known, the amount recovered from Sole in a civil judgment awarded against him in October 1999, and confirmed on appeal in April 2001, was ZAR8.9 million (then worth US\$1,186,666.60). In addition Acres International was fined ZAR22 million (US\$2,933,333.30) on conviction.

The Lesotho corruption trials will probably be remembered more for the multiplicity of procedural issues raised by the defendants than for any other reason. For the purpose of a study of money laundering in general, however, the trials have an added significance, in that they demonstrate:

- one of the modes by which funds for laundering are raised;
- a relatively straightforward transmission system for those funds, involving at least three stages;
- the practical challenges of detecting the infiltration of illicit proceeds; and
- the even more daunting task of investigating the laundering trail even where an 'audit' trail exists.

In fact, in both the case against Sole and that against Acres, the proof of money laundering was an inevitable component of the probative process of the bribery allegations. The crucial information was located in Switzerland. In a detailed case study prepared for Transparency International, Fiona Darroch points out that:⁹

An application to the Swiss courts for such information is a complex matter. The prosecution is not permitted to go on a 'fishing expedition', trawling through a set of bank accounts in order to find sufficient evidence to enable it to construct its case. It must make its application with particularity, giving the reasons which it has for suspecting that activities within an account will reveal grounds for bringing a criminal prosecution. Where the reasons are insufficiently defined, information in the accounts will not be revealed. It is also important to note that where an account contains many entries and withdrawals of different sums of money, tracing a direct connection between payments which is sufficient to give rise to the inference of bribery cannot sometimes be achieved.

It should be noted, however, that Switzerland can extend mutual legal assistance on the basis of its national law coupled with a declaration of reciprocity. This may be helpful and was useful in the Lesotho corruption cases. It should not obscure the enormity of the challenge that can emanate from transnational transfer of funds of illicit origin. One need only refer to the Abacha embezzled funds case to get a sense of the challenge. The estimated prejudice caused by Abacha through embezzlement and corruption was US\$5.5 billion. The funds were traced to banks in no fewer than 21 countries! Switzerland has been applauded as one of the most co-operative in locating the funds and securing repatriation. Abacha also deposited funds in Austria, the Bahamas, Brazil, Canada, France, Germany, Hong Kong, Italy, Jersey, Kenya, Lebanon, Libya, Liechtenstein, Saudi Arabia, Singapore, Sweden, the United Arab Emirates, the United Kingdom and the United States.¹⁰ The success, albeit modest, achieved by the Nigerian authorities in retrieving some of the Abacha funds cannot be completely disconnected to the opprobrium with which Abacha's regime was viewed by the time of his demise and the tremendous goodwill enjoyed by the Obasanjo government at the time that recovery representations were made.

Outgoing (and incoming) money laundering

Significant laundering of money often involves transnational transfers between two or more countries. Two important types of predicate activity contribute to such transfers. One concerns the proceeds of activities universally acknowledged to be criminal, such as drug trafficking or fraud. The other type involves assets derived from activities that may be criminal in the source country, but are not necessarily so regarded in the destination country. The latter category includes

tax evasion, transfer pricing, prostitution, embezzlement of private funds (private sector corruption) and insider dealing. In addition to the two kinds of money laundering, funds transfers may occur lawfully as offshore investments. In transit, as well as when deposited at the destination, funds originating from any of the three sources could be indistinguishable. Contending with money laundering requires that authorities in the sub-region take cognisance of the nature and pattern of all these activities.

Southern Africa has a long experience of outward capital movement. Its history dates back to colonial days, when exploitation of colonies was an important objective. Large-scale capital flight out of Mozambique and Zimbabwe has been recorded. In Mozambique, it probably reached its climax from 1974–8. Commentators such as Joseph Hanlon have written on the abuse of the banking sector in illicit transfers between Mozambique, South Africa and Portugal during that period.¹¹ The amount of money transmitted out of Zimbabwe and South Africa just before liberation, in each case, has yet to be quantified.¹² There are indications that some of the methods used in colonial plunder were adopted by highly-placed functionaries and some entrepreneurs long after the advent of liberation.

It is an established fact that the transfer of funds is easiest if a convertible currency is used. Global trends have shown that the favoured currency in fund transfers is the US dollar. Two related developments have been instrumental in opening up avenues for money laundering in the SADC. One is the relaxation, and in some cases, abandonment of exchange controls and the other is the proliferation of currency exchange outlets. It is evident that some of the outlets in countries without exchange controls have been used in the acquisition of hard currency for onward transmission beyond the sub-region. South African criminal groups are known to have used *casa de cambios* in Mozambique to launder the proceeds of cross-border activities, such as vehicle theft.¹³ Currency exchange outlets have also been abused in Malawi. The authorities in Zimbabwe closed down all such outlets in November 2002 on the basis that they were instrumental in externalising foreign currency.

Social Security Commission irregularities in Namibia¹⁴

A Commission of Enquiry was mandated by Namibia's President Nujoma to investigate and report on the operations of the Social Security Commission (SSC). Public hearings were conducted in the first half of

2003. At the end of the hearings a report was presented to the President but at the time of writing it had not been made public. However, the print media widely reported the hearings. Some of the 'shenanigans' revealed showed that high ranking and well-placed officials within the SSC, middlemen and insurance brokers, received huge returns by way of commissions for business generated through investments made on behalf of the SSC through various insurance companies.

The revelations during the Commission of Enquiry make it a classic case study to identify the factors that expose the financial and commercial sectors in Namibia to the laundering of tainted money. It is also a useful case study for analysing and assessing the strengths and weaknesses of these sectors in detecting the laundering of tainted money and other illicit proceeds in Namibia generally. It needs to be pointed out that in terms of financial and commercial activity, Namibia is a comparatively small but significant market.

The factors that facilitated the misappropriation of public funds at the SSC can be explained against the background of poor organisational and management structures.

These include the appointment of unqualified and inexperienced personnel to make crucial investment decisions and to manage the operations of the SSC, the appointment of an ineffective Board which could be manipulated by the executives, the absence of effective management structures, and the existence of corruption and nepotism within the Authority, which facilitated the growth of a syndicate within the institution that undermined the Commission by colluding with external 'entrepreneurs' in the insurance sector to perpetrate fraudulent deals on the Commission's behalf, for the benefit of its associates.

The Board did not authorise an Investments Committee that was set up within the Authority. Only a select membership of the Board was privy to its existence and operations. Those members in the know probably benefited from the activities that went on. Internal auditing structures were poor. There was lack of clarity about to whom the Auditing Unit reported.

There were patently ineffective checks and balances built into the structures of the Commission, which facilitated the perpetration of the predicate fraudulent activities. Inflated commissions and kickbacks were made and exchanged and then subsequently laundered by the

beneficiaries. One can see from this how crime, and the absence of proper management structures for the hiring and appointment of appropriate personnel, combined with poor corporate governance, can facilitate money laundering. This can arise in any sphere of the financial and commercial sectors.

After the commissions had been generated the beneficiaries were able to launder the money as a result of a variety of favourable factors and circumstances. The first and most important factor was the absence of anti-money laundering criminal legislation. The second was the absence of suitable anti-corruption provisions in the existing law. It is possible that some of the activities of the persons concerned can be prosecuted under the provisions of the current Anti-Corruption Ordinance. However, some of the activities that probably took place, such as the abuse of inside information, cannot be dealt with as such under Namibia's criminal law as it now stands.

An emergent insurance broker, X, who had used his close family connections in the SSC to divert business to himself, invested his funds in accounts opened in the name of shell close corporations. He used these corporations to open trust accounts with a law firm (run by his cousin) and to purchase motor vehicles, real estate and furniture without raising suspicion. In the absence of anti-money laundering criminal and regulatory law, the non-banking financial and commercial services sectors are not bound by any reporting obligations in the face of suspicious transactions. The dealerships, estate agents and retail furniture shops with which the budding broker dealt, as well as the law firm with whom he opened the trust accounts, were under no legal obligation to report the transactions. It is most improbable that the banking institutions would have suspected any of the subsequent deposits of the respective takings. In this manner the proceeds of X's corrupt deals were insinuated into the legitimate banking system through 'innocent' parties.

The exploitation of resources in the Democratic Republic of Congo

The economic activities of various players in the Democratic Republic of Congo (DRC), which first came to light in the late 1990s simultaneously with the ascent to office of the late Laurent Kabila, continue to generate much interest for scholars of money laundering in the sub-region. The emerging picture has been

sketched graphically in various reports of the panel of experts mandated by the United Nations (UN) Security Council.

Extract from the report of the UN Security Council Special Panel on the exploitation of resources in the DRC, October 2002

The report identifies and names the membership of three ‘elite networks’ that have carved out separate spheres of economic control in the DRC over the past four years. “The elite networks’ grip on the DRC’s economy extends far beyond precious natural resources to encompass territory, fiscal revenues and trade in general,” the Panel noted. Panel Chairman Mahmoud Kassem said the activities of the networks involved highly organised and documented systems of embezzlement, tax fraud, extortion, kickbacks, false invoicing, asset-stripping of state companies and secret profit-sharing agreements, and that these activities were orchestrated in a manner that closely resembled criminal operations. “The networks collaborate with organised criminal groups, some of them transnational organisations, in order to maximise profits,” he stated, adding that they use those criminal groups for discreet military operations, money laundering, illegal currency transactions, counterfeiting operations, arms trafficking, smuggling and many other activities aimed at political destabilisation.

The war economy directed by these networks functions under the cover of armed conflict, manipulation of ethnic tensions and generalised violence that generate enormous profits for “small coterie of powerful individuals or the commercial wing on military institutions,” Mr. Kassem said. The activities drain the DRC’s treasury of revenues at the national and local levels and leave the population without basic services.

The advent of peace in the DRC is expected to provide better opportunities to investigate the extent of money laundering involving resources from the country. At this stage, anecdotal evidence exists that minerals such as diamonds and coltan have been smuggled out of the DRC. Estimates by monitors of the international diamond trade are that on average, 85% of the US\$1 billion worth of rough diamonds extracted from the DRC have been smuggled out every year between 1999 and 2002.

The key strategists in the smuggling and money laundering networks are well known personalities, identified in the UN Panel of Experts’

Report. Some of them have invested resources in real estate in South Africa. A commercial bank with close connections to a SADC government has been abused in the acquisition and transmission of foreign currency between the DRC and South Africa.

Organised crime in general

Transnational organised (or syndicated) crime—manifested as theft and hijacking of vehicles, narcotics trafficking, illicit dealing in gold, diamonds and other precious minerals and illicit dealing in firearms and ammunition—continued to affect the sub-region in the period under review. Its incidence is perceived to be part of a global trend demanding the active attention of sub-regional, regional and international entities. The activities of syndicates are most visible in Southern Africa.

Estimates of the numbers of organised crime syndicates active in South Africa vary from 200 to 240. The majority specialise in drug trafficking, vehicle-related crimes and commercial crime. Others are more general and shifty in terms of occupational focus. At least 32 syndicates are believed to be engaged in transnational crime beyond sub-Saharan Africa. The criminal activities of approximately 150 syndicates are committed primarily in sub-Saharan Africa, particularly in Southern Africa. Relationships have been established between some syndicates and criminal gangs. Syndicates employ gangs in street level activities while they remain active in core areas of operation and in co-ordinating the activities of different gangs. The evidence recorded and accepted by the court in the Carlos Cardoso case in Mozambique highlights this.

Revelations from the Carlos Cardoso murder case

This case arose out of the assassination of Carlos Cardoso, prominent investigative journalist and publisher, and the attempted murder of his driver, Carlos Manjate, in a Maputo street on 22 November 2000. The prosecution produced evidence to show that the decision to murder Cardoso was prompted by his efforts in exposing the machinations of the organised crime syndicate responsible for the fraud on the Banco Commercial de Mozambique (BCM), which resulted in the loss of MZM144 billion (US\$13 million). The fraud was committed

in the first half of 1996, just as the bank was about to be privatised. Three of Cardoso's killers were implicated in the fraud. Two of them managed a chain of currency exchange bureaux.

The evidence also revealed that the vehicle in which the assassins travelled to and from the scene of the crime had been robbed (hijacked) from an employee of CESO-CEI Mocambique, Consultoria e Gestao, in Maputo. For the murder of Cardoso, the accused received MZM1 billion (US\$41,670) and ZAR600,000. With part of the money, the assassins bought several motor vehicles in Mozambique and South Africa, a house, a television set and cellular telephones. One of the culprits deposited a small amount of the proceeds in a bank account in Maputo.

Evidence was also presented of an unsuccessful attempt, in November 1999, on the life of the BCM's legal adviser for his part in the fraud expose. A fee of ZAR600,000 had been agreed for the murder of Dr Antonio Albano Silva.

The abuse of the *bureaux de change* in the provision of the bounty in both cases did not form part of the prosecution case, but it seems likely that the bureaux played a critical role.

The six accused—Anibal Antonio dos Santos Junior, Ayob Abdul Satar, Carlitos Rachide Cassamo (who pulled the trigger), Manuel dos Anjos Fernandes, Momad Assif Abdul Satar and Vicente Narotam Ramaya—were all convicted of murder, attempted murder and association with intent to commit a crime and were sentenced to lengthy terms of imprisonment.

The court ordered all the accused to compensate the heirs of Carlos Cardoso in the sum of MZM14 billion (US\$583,333) and to pay MZM500 million (US\$20,833) to Carlos Manjate, who was left paralysed by gunshot injuries to his neck. Compensation was also ordered against two of the accused implicated in the hijacking of the getaway vehicle, worth US\$12,000. All the property proved to have been acquired by the accused as a result of the murder was forfeit to the state.¹⁵

Each of the accused was ordered to pay the costs of the prosecution in the sum of MZM800,000 (US\$33.33).

The temptation to portray Southern Africa as a breeding ground for organised crime should not overshadow the advances made by the law enforcement sector in combating transnational crime in general and money laundering in particular. Proactive initiatives such as new legislation, along with regional co-operation, are proving increasingly successful in countering transnational crime. The period under review was characterised by increased co-operation between law enforcement agencies of South Africa, Tanzania, Zimbabwe, Namibia, Malawi, Swaziland and Mozambique to identify and monitor routes used by international syndicates. Some of the trends noted as a result of recent initiatives deserve to be highlighted.

Terrorist funding: an overview

In paragraph 4 of Resolution 1373 (2001) the UN Security Council highlighted what it characterised as “the close connection between *international* terrorism and *transnational* organised crime, illicit drugs, money laundering, illegal arms trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials...” (emphasis added).

In Southern Africa, incidents of domestic terrorism overshadow those of international terrorism in terms of gravity. Apart from the East African component of the SADC, it is debatable whether significant funding of international terrorism has originated in the sub-region. Notwithstanding the apparently exclusive focus of Resolution 1373 on the funding of international terrorism, to the exclusion of domestic terrorism, the situation regarding the latter deserves examination.

A number of examples of terrorist funding can be identified in Southern Africa. There is controversy regarding the validity of some of them, but this should be viewed against the background of the enduring controversy as to the concept of terrorism itself. Subjectivity permeates the identification of sources of terrorist funding. In the final analysis, terrorism continues to be defined subjectively, in terms of what are often parochial or transient security priorities,¹⁶ which may occasionally shift from time to time.

In the SADC sub-region, there is no country that better illustrates the dilemma (that the absence of a universal definition causes) in identifying sources than the DRC. How one identifies sources of terrorism in the DRC depends on the standpoint adopted. The long-held view of President Joseph Kabila is that the DRC is afflicted by terrorism sponsored by Uganda and Rwanda.¹⁷ In terms of this view, these countries have supported surrogate forces that have committed

(and in some cases continue to commit) terrorist acts. Any other countries that have rendered military and financial support to Uganda and Rwanda could be tainted as supporting terrorism. A British television station, Channel 4, alleged that Uganda and Rwanda continued to receive significant financial assistance from the United Kingdom, and that part of this could be assisting belligerents in the troubled areas of the eastern DRC.¹⁸

Opponents of the Kabila regime in the DRC would contend that government troops and their allies have also been guilty of terrorism, funded out of national resources in the form of minerals and timber. The reports of the UN Panel of Experts on the Exploitation of Natural Resources in the DRC, cited above, support this view. The ‘criminal elites’ are alleged to have privatised the conflict, or parts of it. Their primary motivation is access to precious resources.

Beyond the state and politically compromised actors, terrorist financing in the DRC can also be linked to drug trafficking, arms trafficking, and “mafia-type wheeling and dealing in the context of the vast potential of the DRC”.¹⁹

Other sources of the resources to sustain terrorism can be identified elsewhere in Southern Africa. The role played by diamonds in reviving and sustaining Unita in Angola is well documented. The prospect of gainful extraction of precious resources has lured foreign intervention into theatres of pre-existing conflict and precipitated the opening up of fresh conflicts in both Angola and the DRC. A virtual war economy has been nurtured. Beneficiaries of this economy range from political leaders to multinational corporations, intermediary networks, local military commanders, warlords and organised crime syndicates.

The conflicts around extractive resources have impacted on the fortunes of civilians in both the host countries and the exploiting countries.²⁰ In some cases, the effect has been to yield secondary conflict in the form of terrorism directed at civilians. This has been the case where civilians or civilian structures are perceived to be a hindrance to resource exploitation. In other cases, the local environment, economy and public welfare have been neglected as the focus is placed exclusively on resource exploitation.

At the same time, organisations involved in international terrorism have taken a commercial interest in precious extractive resources since the mid-1970s. Lebanese groups have been active in diamond exploitation, or rather extortion of proceeds from diamond sales, derived from the West African states of Liberia and Sierra Leone and Cote d’Ivoire.²¹ Several studies have linked al-Qaeda with the trade in gold and diamonds from the DRC, Tanzania and South Africa.²²

As the Financial Action Task Force on Money Laundering (FATF) points out:

The advantages that gold provides are also attractive to the money launderer, that is, the high intrinsic value, convertibility, and potential anonymity in transfers. It is used, according to the FATF experts, both as a source of illegal funds to be laundered (through smuggling or illegal trade in gold) and as an actual vehicle for laundering (through the outright purchase of gold with illegal funds).²³

The same can be said of diamonds. The bluish precious stone, tanzanite, has also been linked to illicit dealings for terrorist funding. At one stage, nearly 90% of tanzanite was sold through the parallel markets. In consequence, many different people and groups, including smugglers and terrorists, have attempted to exploit the situation. An organisation which is believed to front for al-Qaeda has made huge profits from sales of tanzanite and may have used them to finance acts of terrorism. (Osama Bin Laden’s one-time personal secretary, Wadih El Hage, is believed to have used the code name ‘Tanzanite’.)²⁴ Fund transfers may have been processed through the ubiquitous *bureaux de change*, retail and wholesale businesses and import/export outlets.

Charitable donations have increasingly come to be regarded as an important avenue for anonymous collection of resources in the form of funds and clothing to support terrorist activity. The significance of this source in the region has not been quantified, although anecdotal indications apparently exist. It has not been conclusively linked to terrorist funding. The most that can be said is that it may have been used in respect of tanzanite. It is arguable that events in Zimbabwe since mid-2000 are symptomatic of government-sponsored domestic terrorism. Terrorist activity is characterised by the widespread use of a government-trained militia, the police and the army.

Recommendations and concluding observations

The observations made in the study on which this chapter is based suggest that SADC states have yet to adopt comprehensive responses to money laundering. At the very least, the incidence of the predicate criminal and other unlawful activities which yield funds for laundering should be measured. The existence of a dual economy in many parts of the sub-region should be considered in formulating strategies against money laundering. There are indications that participation in the formal economy, and its institutions, is not as high as is assumed by emerging anti-money laundering laws.

It is suggested that SADC states should:

- build on the established consensus that money laundering threatens effective government and socio-economic advancement everywhere;
- improve methods of periodically monitoring and measuring the magnitude of money laundering activities. An important element is the official collection, collation and analysis of data. At present this capacity is generally poor and in some countries it has almost been abandoned. Money laundering detection and control is but a part of general law enforcement, so the capacity to achieve it is affected by any factor that impacts on law enforcement capacity as well. If police performance in other spheres is mediocre, it is likely to be even poorer in respect of money laundering. As a mode of criminal conduct, money laundering has the closest relationship to corruption than any other form of misconduct.

It should be pointed out that certain measures can assist in pre-empting the infusion of illicit funds, but these hinge on the level of co-operation linkages that are developed between source and destination countries of money for laundering.

It appears that given the commitment in the sub-region, SADC states can:

- Develop sustainable capacity in the SADC sub-region to address money laundering at nationally, regionally and internationally;
- Give practical effect to the declared commitment to ratify the UN Convention Against Transnational Organized Crime by harmonising supportive legislative instruments at national level. In this respect the ratification of sub-regional protocols would substantially move the process forward. Prominent examples include the SADC Protocols Against Corruption (2001), on Extradition (2002) and on Legal Assistance in Criminal Matters (2002);
- Formulate implementation plans on money laundering and serious economic crime, taking into account law enforcement capacity and shortcomings. Some priorities have already emerged in the course of joint police operations. The UN Office for Drugs and Crime, which has done much work in assisting police agencies to identify deficiencies in mutual co-operation, has pinpointed a set of priority areas including:²⁵
 - improved information technology and information sharing capacity;
 - comprehensive and recurrent training of border and port officials in risk analysis and screening; and

- improved national and regional capacities to collect, analyse and disseminate crime statistics that can help to formulate policies.

It appears that in the process of enacting laws against money laundering, the role of financial institutions in money laundering control needs to be carefully appraised to prevent imposing unmanageable due diligence obligations on them. There is much to be said for the view that the responsibilities of banks should be limited to keeping good records and being good corporate citizens, by:

- reporting suspicious transactions of any sort; and
- reporting crimes to law enforcement agencies.

It is doubtful that banks of the size encountered in the sub-region will be able, in the short to medium term, to go beyond basic 'know your customer' vigilance to the profiling envisaged in developed systems.

Outside the banking sector, the capacity to implement measures beyond the basic level is likely to be more uneven. The size of insurance companies varies considerably, as does that of currency exchange outlets (*bureaux de change*). To be sure, the larger players in these sectors may be able to establish and maintain a forensic analysis function, but they are certain to be a minority. In the short to medium term, profiling and investigative responsibilities should be allocated to government regulatory and law enforcement agencies such as the police and intelligence agencies.

The investigative capacity of the public law enforcement agencies evidently requires upgrading in many parts of the sub-region. A degree of specialisation in detecting suspicious transactions and forensic investigation needs to be built up. As regards the former, the use of information technology is increasing. A number of possibilities have been explored in recent times, for example involving the use of computer software to alert compliance officers and detectives to economic crime and even to trace money laundering. One of the companies that has developed investigative analysis software is United Kingdom-based i2. It claims that its software 'enhances the analytical capabilities of an organisation and enables understanding of complex and volume data'.²⁶ Financial institutions and economic crime investigators could find this kind of software useful.

Notes

- 1 An example is C Goredema, *Money laundering in Eastern and Southern Africa: An overview of the threat*, Institute for Security Studies (ISS), Pretoria, 2003.
- 2 In some cases, repositories of statistics on economic crime and corruption are dispersed between the police, prosecuting authorities, and specialised agencies, such as anti-corruption commissions.
- 3 T Leggett, Perspectives on supply: The drug trade in Johannesburg, Durban and Cape Town, in T Leggett (ed.), *Drugs and crime in South Africa: A study in three cities*, ISS, Pretoria, 2002.
- 4 Over a period of two years.
- 5 From A Standing, *The social contradictions of organised crime on the Cape Flats*, ISS, Pretoria, 2003. The paper can be found at <www.iss.co.za/Pubs/74/Paper74.html>.
- 6 The most recent revelation of the trend was published in an article by prominent journalist Allister Sparks. A Sparks, Zimbabwe slips into Zairisation, *The Star*, 8 October 2003. The article can be found at <www.star.co.za>.
- 7 Durban advocate, Guido Penzhorn SC.
- 8 The amount transferred to the Maseru account was ZAR90,000.
- 9 Fiona Darroch in a draft case study for Transparency International, *The Lesotho corruption trials: A case study*, unpublished, May 2003, at p 28.
- 10 E Joyce, *Recovering stolen assets: An overview*, UNODC Annex III, 2001, pp 14-16.
- 11 In a series of articles that appeared in *Metical* in September 2001.
- 12 At the time of writing in April 2004, the South African government had extended an amnesty to individuals and corporations that might have transferred money out of the country in violation of exchange control regulations before and after democratisation in 1994.
- 13 See P Gastrow & M Mosse, *Mozambique: Threats posed by the penetration of criminal networks*, unpublished paper presented at the ISS seminar on Organised Crime, Corruption and Governance in the SADC region, Pretoria 18-19 April 2002.
- 14 Based on a commissioned report on anti-money laundering capacity in Namibia (July 2003).
- 15 The following goods seized from the accused were forfeited to the state:
 - Light grey Volvo model 960A, registration KWY 870 GP;
 - Metallic grey Volvo model 570, registration MLI-29-46;

- Creme Mercedes Benz model 300D, registration MLS 94-19;
- Grey-blue Toyota Conquest, registration KNB 401 GP;
- Fiat Uno (damaged);
- Portable Casio Radio-TV, model TV-880 U, series no. 9171730A;
- Ericsson cell phone, Series 1130401 - bvca, 08010212 CE0682;
- Nokia 6210 cell phone, no. 449214/20/637345/4;
- Nokia 6210 cell phone, no. 350611/20200589/8;
- Nokia 6210 cell phone, no. 350146/20/706757/7;
- Nokia 6210 cell phone, no. 350769/20903494/7;
- Nokia 8210 cell phone, no. 449306/10/423617/9;
- Nokia 8210 cell phone, no reference number;
- Nokia 3210 cell phone, no reference number;
- Green and white Colman Keep Cold;
- Blue and white small Colman;
- Xirico television set, portable, no. 10370266;
- Xirico television set, model xbw 1299, no. 10369906;
- Black Artech H92World Receiver portable radio;
- Grey and black Ricardo PA982 pocket radio;
- Casio Radio-TV, model TV-770C, series no. 3620098A;
- Casio Radio-TV, model TV-880N, series no. 9171723A.

The court also permitted the state to search for and seize a Mercedes Benz vehicle, registration MLS-94-19.

- 16 The 1999 Anti-Terrorism and Effective Death Penalty Act in the United States describes terrorist activity as *activity which threatens the national security of the United States* (italics added).
- 17 As stated in the initial report submitted by the DRC to the Counter-Terrorism Committee (hereafter DRC Initial report) in compliance with paragraph 6 of the UN Security Council Resolution 1373, 2001, dated 26 December 2001. A supplementary report submitted on 31 March 2003 did not retract this assertion.
- 18 Channel 4 documentary, *Congo's Killing Fields*, shown by the South African Broadcasting Corporation programme *Special Assignment* on 9 September 2003.
- 19 DRC Initial report, p. 6.
- 20 C Goredema, *Diamonds and other precious stones in armed conflicts and law enforcement co-operation in Southern Africa*, ISS, Pretoria, 2002, pp. 2-3.
- 21 A more detailed account is set out in a report by Global Witness, *For a few dollars more: How al-Qaeda moved into the diamond trade*, April 2003.
- 22 See the Global Witness report; also P Bagenda, *Money laundering in Southern Africa: The case of Tanzania* (unpublished report to be included in a forthcoming ISS monograph profiling money laundering in Southern Africa).

- 23 Quoted in the Global Witness report, op cit.
- 24 Wadih el Hage is currently serving a lengthy term of imprisonment in the United States for his part in the embassy atrocities in East Africa in 1998.
- 25 United Nations Office on Drugs and Crime (UNODC), *Strategic programme framework on crime and drugs for Southern Africa 2003*, UNODC, Vienna, 2003, pp. 18-21.
- 26 See <www.i2.co.uk>.