

CHAPTER 7
**A POLICE PERSPECTIVE ON STRATEGIES AND
MECHANISMS AGAINST MONEY LAUNDERING
IN SOUTHERN AFRICA**

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Introduction

Interpol and SARPCCO

The International Criminal Police Organisation (ICPO–Interpol) has its head offices in Lyon, France. Its role is to co-ordinate law enforcement organisations and other authorities and organisations that have an interest in detecting and suppressing international crime. In order to achieve this goal, Interpol has strategic regional and sub-regional offices around the world. There are three sub-regional bureaux in Africa. The Interpol sub-regional bureau for the Southern African region is in Harare, Zimbabwe. This bureau also houses the secretariat of the Southern African Regional Police Chiefs’ Co-operation Organisation (SARPCCO). While Interpol takes a global view of law enforcement, SARPCCO takes a more regionally focused approach. Therefore, the two organisations are complementary. The two have one director and are driven by the same vision and values.

The Economic and Commercial Crime Desk

Interpol has identified priority crime areas. These areas are managed by specialised regional officers. Economic and commercial crime is one such priority crime area. There are many facets of economic and commercial crime, and one of the major ones is obviously money laundering.

It will not assist much to dwell on the history of money laundering. Suffice to mention that since the phenomenon emerged, it continues to be refined by those who perpetrate it.

Interpol definition of money laundering

The Interpol sub-regional bureau's working definition of money laundering is "any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources". However, Interpol remains aware of emerging trends in this phenomenon, which challenge the use of the phrase 'money laundering' as being somewhat imprecise. There is an increasing inclination to refer rather to 'asset laundering', a term that is broader and more encompassing of other significant forms and characteristics of laundering.¹

Rationale for money laundering

Under normal circumstances, organised criminals would like to enjoy the proceeds of their criminal activities out of reach of the long arm of the law. In order to achieve this, they need to disguise the origins of the proceeds. Thus, money laundering can be linked to virtually all other types of organised crime. By creating a perception that their wealth is not ill gotten, criminals will have succeeded in diverting the attention of law enforcement away from them. They know that by making the source of their proceeds 'legitimate', they will have reduced the probability of the proceeds being scrutinised. It will be impossible to seize and confiscate their wealth. They will have created a platform for ploughing the same wealth back into their criminal schemes and other activities.

Regional modus operandi

Our intelligence shows that money laundering is taking place in the whole of our region. The laundering takes different guises. It would be very difficult to find a more comprehensive classification than that made by the Institute for Security Studies in Cape Town.² This list includes laundering through:

- banks;
- lawyers;
- insurance companies;
- estate agents;
- casinos and gambling houses;
- shops;

- informal traders;
- car dealers;
- non-governmental organisations;
- stockbrokers;
- accountants;
- *bureaux de change*;
- government and quasi-government organisations;
- exporters; and
- alternative remittance systems.

There is a need to understand that these ways of laundering are in fact part of a process and that different countries in our region are affected by different combinations and degrees of sophistication of the above modes. The process of money laundering can be generally divided into the now widely accepted stages of placement, layering and integration.³

International law-enforcement authorities appreciate the link between laundering and other transnational crimes. Therefore, it is generally understood that combating laundering will negatively impact on the activities of criminal syndicates. Laundering can be easily linked to crimes such as the following, to mention but a few of the most significant ones:

- drug trafficking;
- armed robberies;
- commercial crime;
- tax and duty evasion;
- terrorism; and
- trafficking in blood diamonds,

An overview of regional police capacity

It is unfortunate that because our region is going through a transition, the capacity of our police infrastructures is not satisfactory. As a result, the tendency is that most of our countries labour under the misconception that there is

minimal or no money laundering in our region. In reality our systems are insufficiently developed to establish the existence of this phenomenon accurately, let alone deal with it.

Police agencies in the sub-region are generally sceptical about investigating cases of laundering and laying charges, because of the weaknesses inherent in the absence of specific anti-laundering legislation. Unlike fraud and other types of commercial crime, where investigations can start somewhere, the problem, from a prosecution point of view (whether real or perceived), is that there is neither a loser nor a complainant in money-laundering cases. The police operational rationale becomes hitched on the need to commit scanty resources to priority crimes whose investigation can produce easily visible results.

An overview of regional legislation

This analysis of regional legislation on laundering is not country-specific. I realise that other contributions in this work on other parts of the sub-regional countries are more focused and therefore more informative. The overview regional situation in this chapter is a simple one. A snap survey of the SARPCCO countries was done through a questionnaire. The questionnaire basically asked countries to specify whether they had any legislation specific to money laundering, and, if the answer was negative, to explain the law or laws under which they criminalised it. The questionnaire asked the countries to explain the challenges arising from the legislation. Further, statistics were requested on the number of cases prosecuted (successfully or otherwise), how many were still under investigation and how many had been withdrawn and why. In the questionnaire, countries were also asked to explain what strategies they had in place to deal with the challenges and finally to explain the kinds of money laundering they experience.

Responses to the questionnaire show that, generally, SARPCCO countries still do not have legislation to specifically address money laundering. They rely on other statutory provisions to criminalise it. Generally, within and between such statutes, laundering can be penalised, company officials can be held liable, proceeds may be liable to forfeiture, law-enforcement officers are empowered to investigate and search, and third parties may also be affected in similar ways. South Africa appears to have the most comprehensive anti-money-laundering provisions and these are well documented by the Centre for the Study of Economic Crime.⁴ At the time of writing, in Malawi and Mozambique the laws had yet to go through parliament. (Editor's note: Mozambique passed a

law against money laundering at the end of 2002,⁵ while parliament rejected the draft bill proposed in Malawi.)

From the feedback given by the countries, the following generalisations can be made:

- Most of the statutory provisions are restrictive in their interpretation of acts constituting laundering.
- Such provisions lack depth and lag behind the current techniques or methods being used to commit the offence.
- The laws of the countries in the region need to be harmonised not only with each other but also with those of other countries outside the region.

One solution to this problem could be for countries to seriously consider incorporating the concept of ‘reversal of the burden of proof’ into their legislation. The onus to clearly and satisfactorily explain perceived dubious acquisition of wealth, quick high-value financial and capital transfers and other suspicious transactions should be on the individuals concerned.

Generally, not many statistics were forthcoming from much of the region, apparently because there are no reported money laundering crimes, or because, due to inefficiencies in the judicial systems, no proper records were readily available. However, convictions for money laundering offences have been recorded in at least three cases in South Africa⁷ and there have also been three widely reported cases in Zimbabwe.⁶

Challenges

In view of the advent of new technology, the cyber revolution and the enhanced fluidity of capital that comes with faster communication systems, our countries are challenged to legislate against money laundering and to continuously review the legislation they pass to keep pace with changes in criminal trends.

There are huge problems in dealing with money laundering in the region, especially as concerns ‘inflowing’ laundering. Money launderers often have significant legitimate business interests and form partnerships with influential government officials. In this way, they can cloak and invest illegally generated funds while remaining untouchable. We have heard of cases where politically

significant individuals influence police investigations. Some investigations have reportedly been unceremoniously terminated. Certain governments could protect some launderers and even establish institutions for this. There are examples of countries inviting investment without the corresponding due diligence or appropriate background investigations. The link between money laundering and high-profile corruption cannot be overemphasised.

As it stands, questions of the absence of political will begin to arise. Launderers bring large amounts of money and investments into the region. Considering this from the perspective of political economy, are governments forced to choose between desperately needed investment and scaring away investors by probing them? Is it a question of 'chickens coming home to roost' for us? Are our countries labouring under the belief that historically Africa was unfairly exploited (and that the western world justified this exploitation or fails to adequately make up for it) and therefore the money flowing in, by whatever means, is simply coming back to where it 'belongs'? Perhaps these are the beliefs compromising regional political will to deal with laundering once and for all. If this is so, it is arguable that a paradigm shift is overdue in our systems. Our research institutes and influential authorities can influence a shift from such regressive mindsets.⁷

Ladies and gentlemen, all this having been said, we still have to appreciate that in Africa, most countries are desperately looking for foreign investments to improve their balance of trade and ailing economies. Therefore, these countries will continue to be vulnerable.

Strategies to overcome legislative and police capacity challenges

There are efforts by some non-governmental organisations and law enforcement authorities to heighten awareness of money laundering in some parts of the region, for example in Zimbabwe. There are also some systems being developed to monitor transactions by financial institutions, with banks being required to blow the whistle on suspicious transactions. There are apparent attempts by some countries to stiffen the licence requirements for business operations whose activities may promote laundering. Further, there are considerable regional efforts to exploit international co-operation in monitoring and controlling this phenomenon.

Interpol and SARPCCO continue to explore ways of assisting police organisations to reduce the impact of perceived regional challenges. Some courses have been developed in order to enhance investigative capacity. Such courses include the SARPCCO Generic Commercial Crime Investigation Course and the Computer-Related Crime Investigation Course. It is hoped that these will take care of the incompetence that occasionally impairs our investigations.

Interpol and SARPCCO continue to promote liaison with both the financial community and with other international organisations. The objective is to find common ground, eliminate duplication of efforts, and therefore achieve some synergy in the fight against money laundering. During the past 20 years, the ICPO-Interpol General Assembly has passed a number of resolutions which have called on member countries to concentrate their investigative resources on identifying, tracing and seizing the assets of criminal enterprises.⁸

Notes

- 1 C Goredema, *Money laundering in East and Southern Africa: An overview of the threat*, Institute for Security Studies (ISS) paper no. 69, ISS, Pretoria, April 2003.
- 2 B Fundira, Money laundering situation in Zimbabwe, unpublished report prepared for the ISS, 2002.
- 3 Ibid.
- 4 L de Koker, *Money laundering in South Africa*, Centre for the Study of Economic Crime, Johannesburg, 2002.
- 5 As Law 7 of 2002.
- 6 Office of the Attorney-General, Zimbabwe.
- 7 Speech by Mr Frank Msutu to the Barclays Bank Africa Region Money Laundering Conference, 8–9 September 1997.
- 8 At www.interpol.int <http://www.interpol.int>