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Combating illicit financial flows and related corruption in Africa:
Towards a more integrated and effective approach

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Combating illicit financial flows and related corruption in Africa:

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By

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Abstract

The relationship between anti-money laundering and anti-corruption strategies is a key issue for developing countries. Corruption and money laundering cannot be effectively addressed solely by the specialised agencies mandated to deal with them. Supportive frameworks and complementary structures, such as other public agencies closely associated with vulnerable sectors, must be involved. These structures should be familiarised with money laundering risks and typologies and with the important role they can play in gathering intelligence that contributes to the work of financial intelligence units. FIUs in the countries studied here—Botswana, Tanzania, and Zambia—are undermined by lack of human and financial resources and by flaws in enabling legislation. In order to effectively contain the threat of money laundering as a facilitator of corruption, they need to confront context-based particularities, notably the prevalence of cash transactions in the economy. Governments and donors in developing countries should work to build the capacity of the financial intelligence units and strengthen their collaboration with anti-corruption agencies and with complementary institutions and partners at home and abroad.

Acronyms

AC	anti-corruption
ACA	anti-corruption agency
AML	anti-money laundering
AMLIU	Anti-Money Laundering Investigations Unit (Zambia)
AUSTRAC	Australian Transaction Reports and Analysis Centre
DCEC	Directorate on Corruption and Economic Crime (Botswana)
DEC	Drug Enforcement Commission (Zambia)
DPP	Directorate of Public Prosecution (Botswana)
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force
FIA	Financial Intelligence Agency (Botswana)
FIU	financial intelligence unit
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
LSU	Legal Services Unit (Botswana)
PCCB	Prevention and Combating of Corruption Bureau (Tanzania)
PED	Public Education Division (Botswana)
PEP	politically exposed person
SAR	suspicious activity report
UNCAC	United Nations Convention Against Corruption

1. Introduction

Deterring criminals from deriving benefits from the proceeds of their misconduct has been a matter of international concern at least since the advent of global conventions on drug trafficking, such as the 1988 Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. In Sub-Saharan Africa, the demise of colonial rule led to new opportunities for large-scale economic crime and grand corruption. In almost all African countries, there are multiple avenues by which unscrupulous corporate institutions and corrupt elites can illicitly acquire assets and transfer them to developed countries. This pattern of illicit financial flows has become almost a defining characteristic of post-colonial Africa.

A growing body of literature paints an alarming picture of the magnitude of these illicit capital flows between African countries and other parts of the world (Christian Aid 2008; Ndikumana and Boyce 2008; Kar and Cartwright-Smith 2010). The gravity of the situation has been one of the reasons for the gradual improvement in the uptake of strategies against money laundering in African countries over the last two decades. While some commentators attribute the adoption of anti-money laundering regimes more to a combination of coercion and peer pressure than to rational choice (Levi and Gilmore 2002; Sharman 2008), many African governments appear to genuinely accept the utility of combating money laundering.

This paper does not address the controversy about the reasons for the emerging anti-money laundering regimes. Rather, starting from the premise that most of these regimes are incomplete, it addresses one particular area of concern, namely the relationship between anti-money laundering (AML) and anti-corruption (AC) strategies. Corruption and money laundering are both considered conducive to financial outflows from the countries in this study and from developing countries in general. Moreover, the nature of corruption and money laundering, as well as the environment in which they occur, makes it unlikely that they can be effectively addressed solely by the specialised agencies mandated to deal with each of these problems. Supportive frameworks and complementary structures are required, and their shortcomings and weaknesses invariably come up for discussion in any evaluation of AC and AML strategies. The effectiveness of donor interventions in support of these strategies should be judged by their impact not only on the specialised AC and AML agencies but also on such complementary structures. The efficacy of AML and AC strategies, in turn, is ultimately evaluated on the basis of their potential to reduce illicit financial flows.

Without suggesting a necessary relationship between money laundering and corruption, or arguing that the containment of one necessarily affects the other, this U4 Issue Paper presents an overview of structures and measures in place to combat both corruption and money laundering in Botswana, Tanzania, and Zambia. It focuses particularly on steps that international supporting partners can take to facilitate and strengthen these efforts. The paper examines the validity of the observation that even though money laundering and corruption are intertwined vices, efforts to confront them are still disconnected (Reed and Fontana 2011), and it tests this perceived institutional and operational disconnect against the reality in the three countries reviewed. Finally, the paper analyses the need to include complementary structures in AML work, given that their contribution is required to address both corruption and money laundering.

2. Methodology

This U4 Issue Paper is based on a literature review and field research conducted during the final quarter of 2010 in Botswana, Tanzania, and Zambia. Each country has some experience in managing and maintaining an anti-corruption strategy centred around, and implemented by, a designated public institution.[1] Since 2006, each country has established a financial intelligence unit (FIU) as the focal point for its anti-money laundering strategy. The paper also draws on observations from several other countries in the region which have had similar experiences. Valuable interviews were conducted with key stakeholders in the Secretariat of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), and with experts in international donor agencies in Botswana and Tanzania.[2] The author also benefited from the exchange of views at four workshops held in Africa.[3]

Botswana, Tanzania, and Zambia were selected on the basis of the following considerations:

- Each country has laws which confer substantial competence on anti-corruption agencies (ACAs) to investigate money laundering derived from corruption.
- In each country, money laundering investigations currently can be triggered by the exposure of unexplained wealth.
- In each country, an FIU has been designated to lead the management of anti-money laundering mechanisms.
- As members of ESAAMLG, these three countries have undertaken to integrate their anti-money laundering regimes with complementary infrastructure. In the last five years, their anti-money laundering regimes have been evaluated against those prescribed by the Financial Action Task Force (FATF), an intergovernmental body that promotes a basic framework for AML efforts.
- All three countries are in the process of implementing improvements suggested in the evaluations. Unfortunately, the evaluations did not probe the extent of integration between anti-corruption agencies and anti-money laundering institutions.
- The Institute for Security Studies, based in Pretoria, has had a long research and capacity-building engagement in all three countries, which to some extent facilitated access to information and to stakeholders.

Like other ESAAMLG member countries, Botswana, Tanzania, and Zambia are regarded as having a low capacity to implement measures against money laundering.

[1] These include the Directorate on Corruption and Economic Crime (Botswana), the Prevention and Combating of Corruption Bureau (Tanzania), and the Anti-Corruption Commission (Zambia).

[2] See annex 1 for a list of institutions where interviews were conducted. The response from international development agencies to requests for interviews was weaker than anticipated. Donors are significantly involved, however, in support for regional bodies such as ESAAMLG, which was among the institutions where interviews took place, and donors also provide support through other government agencies based in donor countries and engaged in AML.

[3] These included the Seminar on Money Laundering in Malawi (Lilongwe, 24 November 2010); the World Economic Forum (Cape Town, 3–5 May 2011); the Anti-Corruption Training Workshop convened by the Kenya Anti-Corruption Commission (Mombasa, 2–8 May 2011); and the AUSTRAC Workshop on Enhancing AML Methodologies and Principles: A Forum for FIUs (Cape Town, 16–19 May 2011).

3. Understanding illicit financial flows

Illicit financial flows consist of the movement of illegally transferred assets or value, funds earned through illegal activity (i.e., corruption), or proceeds of tax evasion. It should not be assumed that these flows raise concern only because of their transnational character. The decisive factor is the motivation to hide the illicit funds from victims, regulatory bodies, and law enforcement agencies with the closest interest in identifying and confiscating them (Reed and Fontana 2011).

There is no unanimity on the scale of illicit financial flows, given their wide range and the clandestine and sometimes complex nature of the activities which generate them. The loss of corporate taxes in the developing world alone is estimated to be worth around US$160 billion a year (Christian Aid 2008). Kar and Cartwright-Smith (2010), in a report for Global Financial Integrity, contend that the proceeds of commercial tax evasion, mainly through transfer pricing, are the largest component of global illicit financial flows, accounting for 60–65 per cent of the global total.[4] Prominent multinational enterprises active in Africa have been implicated in shifting income or profits through transfer pricing.[5] Through these mechanisms, an estimated US$420 billion of capital was transferred out of Africa, predominantly to the major economies, in the three and a half decades following 1970 (Ndikumana and Boyce 2008). To be sure, not all corporate transfers in this period were illicit. There are, however, more than just anecdotal indications that a substantial proportion of them constituted illicit financial flows. Apart from underdeclaring the volume or value of exports, multinationals can use related-party agreements to transfer disproportionate levels of the costs of freight, insurance, or equipment leasing to the subsidiary company, cutting income accruals and tax payable in the producing countries.[6]

In addition to intra-company flows, the laundering of corruption money abroad accounts for an undetermined, but likely significant, proportion of losses. The magnitude of illicit financial flows of all kinds from Africa points to the enormity of the challenge in developing adequate strategies to rein them in. The task is compounded by the multiplicity of sources generating illicit funds, the variety of ways to shift funds to hide their origin, and the range of actors involved. The United Nations Convention Against Corruption (UNCAC) builds on previous international legal regimes dealing with illicit flows, such as conventions on drug trafficking and organised crime, and contains a number of provisions aimed directly at countering flows related to corruption. UNCAC should support the establishment of preventive measures against these flows and facilitate the investigations and international cooperation required to combat money laundering cases linked to corruption. Of the

[4] It should be noted that Global Financial Integrity's methodology relies on official statistics of import and export transactions as well as on Balance of Payments data. Corruption and criminal money are not considered in these statistics, so the resulting figures tend to minimize the contribution of these two sources to total illicit flows from developing countries circulating globally. Transfer pricing is a common and legal procedure that happens when multinationals transfer goods between subsidiaries. However, when the prices in these transactions are not consistent with the "arm's length principle" adopted by the Organisation for Economic Co-operation and Development (OECD), then transfer pricing is abused and becomes known as transfer mispricing or abusive transfer pricing. Companies frequently use abusive transfer pricing in an attempt to evade taxes (Fontana 2010).

[5] The Tax Justice Network regularly reports on some of the most glaring cases of irregular transfer pricing. See, for instance, the reported activities of Mineral Deposits Ltd., which mines gold in Senegal but conducts its banking and mine-equipment leasing operations from Mauritius (http://taxjustice.blogspot.com/2010/04/transfer-mis-pricing-and-looting-of.html). Another alleged front company, Grandwell Holdings, is also based in Mauritius and acts as a subsidiary of a South African company, New Reclamation Group. Grandwell runs Mbada Diamonds, which is involved in diamond extraction in the Marange area in eastern Zimbabwe.

[6] Following an audit of its Zambian subsidiary Mopani Mine late in 2010, mining resources conglomerate Glencore International is reported to be under pressure to pay additional tax in excess of US$50 million to the Zambia Revenue Authority. Glencore is alleged to have used another subsidiary, located in the United Kingdom, to inflate operational costs, underprice output, and engage in irregular hedging and abusive transfer pricing (Bariyo 2011).

countries considered in this paper, Zambia and Tanzania have signed and ratified UNCAC, while Botswana has not yet done so.

4. Anti-money laundering strategies, and corruption as an impediment to their implementation

Money laundering and corruption appear to have a symbiotic relationship, with corruption being one of the primary predicate contributors to and catalysts for money laundering (Chaikin and Sharman 2009; ESAAMLG 2009a; GIABA 2010). Money laundering consists of

> a process to disguise the source of criminally derived proceeds to make them appear legal. Money laundering is a specific legal concept that includes only the proceeds of a set of predicate criminal offences, which are defined by the laws of a given country. Funds originating from other criminal offences may not be used to build a case of money laundering in that particular country, although such funds may well be illicit. (Reed and Fontana 2011, 7–8)

Money laundering is a crime only insofar as the underlying act generating the assets to be laundered—the predicate offence—is a crime. The principle underlying the criminalisation of what is in essence derivative conduct is straightforward: unlawful action should not be rewarded. When such action has occurred, victims should be compensated or reunited with their property. It is a matter of debate whether the optimal way of achieving that is to create a distinct offence in addition to the predicate offence—such as criminalizing the laundering of proceeds of corruption, when corruption is itself an offence. Just as debatable is the attribution of criminal guilt to non-participants in the predicate crime who facilitate transactions involving the proceeds—for example, the financial and other types of intermediaries who help launder the proceeds of corruption. However, AML regimes uphold the principle of guilt through negligence. An intermediary who is oblivious to facts about the origin of the funds entrusted—information of which he or she could and should be aware—is as culpable as the criminal.

The term "corruption" describes the abuse of a position of trust, power, or authority to gain an unfair advantage. Recent studies from Africa and elsewhere highlight the corrosive impact of corruption on strategies to combat money laundering (Chaikin and Sharman 2009; ESAAMLG 2009a; GIABA 2010). In a report on the nexus between corruption and money laundering, ESAAMLG articulated the impact of corruption on the implementation of AML measures:

As one of the most significant contributors to proceeds of crime that become available for laundering, […] 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 [or] 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. (ESAAMLG 2009a, 29)

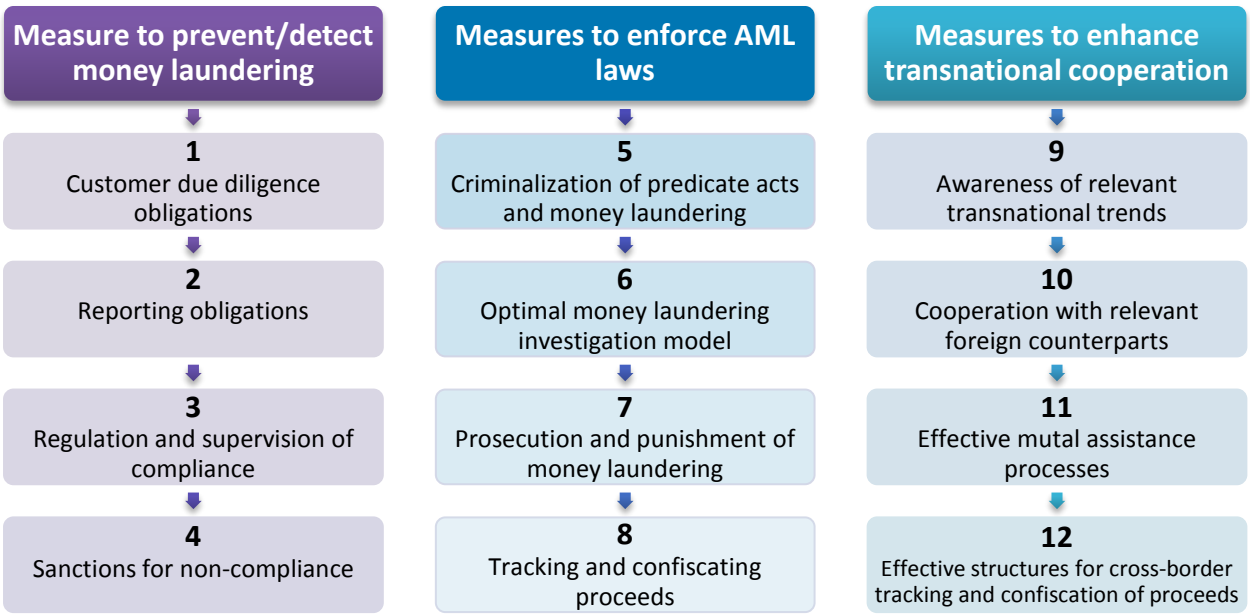
The links between corruption, illicit financial flows, and money laundering can hardly be contested. Measuring the contribution of proceeds of corruption to money laundering relative to other sources, however, has proved to be far more challenging.

4.1 An AML framework

The risk that corruption poses to anti-money laundering strategies can best be appreciated by examining the general features of an AML framework. The framework shown in figure 1 comprises measures that are commonly found in AML systems all over the world. It has three pillars:

- Measures intended to prevent and/or detect money laundering
- Measures intended to enforce laws against money laundering
- Measures to enhance international cooperation in combating money laundering

Figure 1. Framework for AML measures



Source: Adapted from Reuter and Truman 2004, 47.

Any AML framework envisages partnerships between state and non-state structures, regulatory bodies, and institutions, in which each partner owes reciprocal obligations to the others. The state's role is crucial, as it should facilitate access to information that enables the other partners to discharge their duties.

In figure 1, the spheres of competence in which the state is most visible are numbers 3 through 8—the first and second pillars. The state is expected to set up and manage the regulatory and supervisory structures (3) needed to ensure that organisations, including banks and relevant non-financial institutions, comply with their customer due diligence and reporting obligations (1 and 2). Reporting is usually done to a financial intelligence unit[7] or similar institution, and non-compliance is potentially punishable according to a pre-stipulated sanctions regime (4), mainly by means of a fine. To date, however, there is no record of penalties being imposed for non-compliance in Southern African states, including those in this study.

The state also defines the scope of the money laundering offence (5), and it should establish a model for how money laundering can most effectively be investigated and prosecuted (6 and 7). The state should also determine an optimal method of tracking and confiscating proceeds (8), which necessarily

[7] According to the Egmont Group of Financial Intelligence Units (http://www.egmontgroup.org), an FIU is a central, national agency responsible for receiving (and, as permitted, requesting), analysing, and disseminating to the competent authorities disclosures of financial information concerning suspected proceeds of crime and potential financing of terrorism, or other information as required by national legislation.

involves deciding between civil and criminal asset forfeiture and between simultaneous and contingent asset forfeiture.[8]

The third pillar contains measures that fall almost entirely in the domain of the state, but the state is usually in a weak position with respect to their discharge. Sphere 9 requires that the state mobilise intelligence on trends in or emanating from areas beyond its territory. The geographic size of the region to be monitored depends on many factors, including the political and economic history of the country, its geographic location (for instance, whether it is landlocked or has a sea coast), the state of its economy relative to those of its neighbours (which influences whether cross-border crime is drawn to or emanates from the country), the impact of migration on the demographic composition of the country, and the country's trading partners. The obligations summarised in spheres 9–12 assume that the state is familiar with the environment in those foreign countries which may be relevant to money laundering from its territory. This particularly involves knowledge and documentation of transnational economic crimes and financial flows. The range of activities which the state needs to know about is potentially quite vast and may include activities embedded in apparently legitimate transactions (Reed and Fontana 2011). Such activities may also include various forms of economic crime such as fraud and corruption, the evasion of tax on exports and imports, as well as crimes such as trafficking of drugs and counterfeit commodities.

In various countries in Southern Africa, information on the incidence and value of transnational crime is compiled by several institutions, including police departments, customs agencies, departments of immigration, mining ministries, wildlife management units, commercial banks, estate agents, and companies registries. This paper will refer to these as complementary institutions. Like anti-corruption agencies, these institutions do not have reporting obligations towards the financial intelligence units and do not necessarily share the same priorities. But they may be repositories of information that is needed to counteract money laundering. In the three countries surveyed for this study, there is no record of structured collaboration in mobilizing intelligence on transnational crime among these institutions themselves or with the FIU.

With respect to their AML infrastructure, Botswana, Tanzania, and Zambia have FIUs of an administrative type.[9] As such, these FIUs have been mandated to receive information from a range of sources, analyse it, and refer the outcome to various investigating agencies. Since the investigating agency is unlikely to have been involved in the initial analysis, the speed and depth of the subsequent investigation depends on how well substantiated is the original referral by the FIU. Equally important are the resources available to the investigating agencies. The FIUs are expected to collaborate with foreign counterparts in exchanging information relevant to transnational crimes. In the three countries studied, this competence is still being developed. Critical challenges include bureaucratic delays in communicating with counterpart institutions locally and abroad, language differences, and the uneven development of anti-money laundering laws in different countries.

[8] Asset forfeiture involves the seizure and confiscation of assets tainted by their connection with a crime (i.e., they were used in committing the crime or were derived from it). Forfeiture following a criminal conviction refers to the confiscation by the state of proceeds of a crime for which a conviction has been recorded. In civil forfeiture, a conviction is not necessary. Proceeds of a crime that has not been successfully prosecuted can be confiscated if the state can show that they are probably derived from a crime. Civil forfeiture has led to the establishment of private organisations that track property connected to suspected criminals and take action almost simultaneously with criminal processes.

[9] Administrative FIUs, unlike other types of FIUs, are usually independent institutions or function under the supervision of a ministry other than the judicial authorities. Banks and other institutions with reporting obligations may perceive this as a positive feature, given the "neutral" character such an FIU acquires by not being associated with an investigative or prosecutorial institution.

4.2 Vulnerabilities of AML systems

A number of factors, including corruption, can impede implementation of the anti-money laundering measures presented in figure 1. Certain vulnerabilities related to the preventive measures, which may stem from corruption or from other factors, are discussed below. Similar problems may also affect the other two pillars of the AML system, that is, enforcement and international cooperation.

The preventive measures set forth in the framework are utilised by all countries that have adopted AML regimes conforming to the recommendations of the Financial Action Task Force. Most of them are obligations directed at intermediaries, such as banks, to prevent money laundering through them. Yet these institutions are not necessarily in a strong position to block money laundering, due to several shortcomings.

For instance, in discharging their obligations to conduct due diligence and report suspicious activities to FIUs, banks and other reporting institutions will not be able to identify their clients properly in countries that lack a basic personal identification system or have an identification system that is deficient and susceptible to manipulation. Tanzania still lacks a basic personal identification system, as do quite a few other African countries. It is not clear how long this situation will continue, as no time frames for the introduction of such a system were available at the time of this study, but it is clear that introducing it requires significant financial and logistical resources. The absence of such a system has impacts on the efficacy of an AML regime that should not be underestimated. To be effective in stemming illicit financial flows, an AML system should have access to data on beneficial ownership of corporate institutions, which is quite difficult to assemble without personal identification data. The same can be said of the absence of a functional physical address system. It is beyond the capacity of any bank to remedy these two deficiencies, as they fall within the mandate of the state.

Another vulnerability is the risk that money launderers will corrupt or co-opt the institutions on which the AML regime relies, such as banks and other institutions which are supposed to report suspicious transactions. This can happen when institutions are swayed by the profit maximisation motive or infiltrated by criminals. Profit maximisation is at the core of tax evasion facilitated through abusive transfer mispricing. Collusive arrangements between financial intermediaries and their clients are also possible. Unravelling them requires substantial investigative capacity, which is not generally available within state structures in Africa. Private forensic investigators have been credited for the few successful investigations of corporate money laundering in the region. One example is the multimillion-dollar fraud case involving Namibia's Offshore Development Company and the so-called Great Triangle Investments.[10]

The fear of attracting reprisals for reporting transactions to the FIU can discourage institutions from complying with their reporting obligations. In a generally low-business-activity environment, as is found in some African countries, the loss of a major client is a serious matter. In the absence of protective mechanisms, such as laws to protect whistleblowers and secure data storage by the FIU, this can impede the work of the AML system. Fear of a political backlash is an even greater deterrent. The political parties in power in most countries in Sub-Saharan Africa have been dominant for a long period. Longevity in office tends to be accompanied by high levels of patronage and emasculation of institutions that should control abuse of power and corruption. In the context of illicit financial flows, lack of information on the private funding of political parties weakens both the anti-corruption and AML regimes. Furthermore, ESAAMLG (2009a) recently reported that the obligation to conduct enhanced due diligence on "politically exposed persons" (PEPs) was not being implemented by any of

[10] A Namibian pension fund invested about US$14 million in a Botswana-based investment corporation in 2006 on the understanding that high returns would be secured for its clients. The Botswana corporation was subsequently dissolved and the investments disappeared. The full facts only came to light through investigations conducted predominantly by private parties, including the media (Von Paleske 2007).

its member countries, with the possible exception of Tanzania. The resulting environment is conducive to the establishment of patronage networks linking state institutions, ruling political parties, and big business.

AML systems in all three countries surveyed are in their formative stages. The Tanzanian FIU, the oldest, has only been in operation since 2007. Not surprisingly, confidence in the credibility and competence of the system is low. The FIUs that were observed for this study lack the resources necessary to cope with even the limited volume of work they have to handle. Zambia's FIU appears to have the most promising foundation. It developed from the Anti-Money Laundering Investigations Unit (AMLIU), which was established in the early 1990s to investigate cases at the request of the Drug Enforcement Commission. Over the years, the AMLIU assembled a trained, experienced, and professional team of investigators.

4.3 Relationship of FIUs with reporting institutions

There are mixed views on how an FIU should provide feedback to the reporting institution when it has received a report of a suspicious transaction. Initial communication between the FIU and the institution which has submitted a suspicious activity report (SAR) is routinely needed to determine whether a transaction should be investigated further. If no facts are found to bear out the suspicion, the reporting institution should be informed of this so it can continue the business relationship which generated the SAR. If, on the other hand, an investigation is initiated, some argue that it is neither necessary nor feasible to give further feedback, since once the FIU has analysed and referred a report for investigation by other government agencies, the matter is out of its jurisdiction. Other government agencies will take forward the investigation without FIU participation, possibly leading to changes in the case that are not reported to the FIU. Thus any information that the FIU gives to third parties, including to the original source of the report, is likely to be outdated. Moreover, once a report has been taken up for further investigation, giving feedback might adversely affect the investigation (for example, by creating a risk that the individual whose account is the focus of the SAR will be tipped off about the investigation).

An alternative view is that feedback is valuable to the reporting institution. In the short term, it may determine how the reporting institution proceeds with a particular transaction or client. In the long term, feedback might be critical to the quality of future reports from the reporting institutions, enabling them to learn whether it was worth their while to file the reports. Feedback also adds to their stock of expertise for future transactions and is one way of establishing the credibility of a fledgling institution. Quite contrary to the fear that the information given will be inaccurate or outdated, compelling the FIU to give feedback will help ensure that it follows up referrals submitted to investigating agencies and maintains an active interest. The current situation in the countries studied, however, is characterised by the absence of feedback to reporting institutions.

It has also been suggested that reporting institutions in Sub-Saharan Africa are generally poorly equipped to make judgment calls on large transactions, adding to the vulnerabilities mentioned above. For one thing, they often lack adequate information on types of crime which may be relevant to the transaction. Such information may pertain, for example, to trends in economic crime and corruption in a specific industry, country, or region. Reports from newspapers and other media outlets in the region, which ideally could serve as sources of information bearing on the risk profile of a client, are sometimes speculative and unreliable. Thus there is speculation in the African media about the laundering of proceeds of Somali piracy into some economies in East Africa. Relying on the same information, however, different analysts have drawn diametrically opposed inferences. Moloto (2011) argues that piracy is responsible for some of the investment in real estate in Kenya. Abdulsamed (2011), however, contends that these accusations are overblown. In the absence of official information, it would be quite difficult for a financial intermediary in Kenya, for example, to judge whether a particular Somali client's financial affairs should be reported as suspicious. The result could be that the

reporting institution either submits no reports or inundates the FIU with unnecessary reports to protect itself.

4.4 Relationship of FIUs with complementary institutions

The perception that anti-corruption and anti-money laundering strategies are disjointed was confirmed by ESAAMLG (2009a) and further discussed by Reed and Fontana (2011). ESAAMLG found that there was generally no specific framework to guide the relationship between FIUs and ACAs. This is surprising, given that they are expected to collaborate and complement each other in cases where corruption might be involved. Both the UNCAC and the FATF envisage a close working relationship between such agencies. But this is unlikely to occur without a structure that defines their respective roles (Chaikin and Sharman 2007; O'Sullivan 2009).

The information which the FIU requires may be located within other government agencies, that is, in complementary institutions not obliged to submit reports to the FIU, such as the revenue collecting authority, department of mining, department of wildlife or marine resources management, or department of trade. The AML framework also envisages a role for bodies that exercise a supervisory role, monitoring compliance with AML rules by reporting institutions such as central banks, estate agents' councils, pension fund associations, and financial services boards. The supervisory bodies, because of their proximity to reporting institutions and their practical expertise in the sectors under their supervision, are in a good position to monitor both compliance and economic crime trends. They can be assumed to have the capacity to document transactions on important developments, such as ownership changes, in their sectors. The question, then, is how best to enhance their knowledge of factors relevant to the criminal environment in the sectors they supervise.

Sharing of information and coordination of work between FIUs and such complementary institutions was practically non-existent in the countries studied. Botswana is the only one of the three that has committed itself to establish a national coordinating committee on financial intelligence. The committee, still in formation at the time of writing, will be broadly representative, at least of departments within the public sector perceived to be custodians of information relevant to detecting and combating money laundering. The committee is expected to assist the FIU in preparing periodic money laundering risk assessments. The process should facilitate the streamlining of overall AML strategy, including the roles of the respective institutions in its implementation. If it functions well, the national coordinating committee will position the FIU at the core of a dynamic AML regime.

Within the AML infrastructure, it is not at all clear as to where the responsibility to document and disseminate information on crime trends should be. One option would be to assign this responsibility to the FIU, as a centrally positioned agency, on the assumption that it has access to the information necessary to compile information on the different types of money laundering. In practice, this would require the FIU to take a more pro-active approach to money laundering than would normally be expected of an administrative FIU. It would also require a more holistic overview of the terrain in which economic crime occurs and more coordination with the complementary institutions, as well as periodic appraisal of the manifestations of economic crimes.

4.5 Measures to enforce AML laws

In principle, all economic offences may be predicate to money laundering. In reality, there are disparities in definitions among countries, with some countries recognising a narrower range of predicate offences than others. As a general principle, and to ensure that AML measures have an impact on illicit financial flows, all forms of tax evasion should be regarded as crimes predicate to money laundering. But that is often not the case. Zambia is one of the few countries in Africa that recognise abusive transfer pricing as a crime against their tax regimes, potentially making it a crime predicate to money laundering. Botswana and Tanzania do not, even though both give discretion to revenue authorities to impose administrative penalties for suspected abusive transfer pricing. Similarly,

at the time of writing, Tanzania and Botswana did not recognise human trafficking as a criminal offence, while Zambia criminalised it several years ago. There are also doubts about the criminal status of cybercrime and trafficking in counterfeit commodities.

Although there has been significant legislative activity on AML in the last decade, and all countries in the region have criminalised money laundering, the rate of submission of SARs and prosecutions remains quite low. Activities enabling money laundering have continued during this period. Investigators and prosecutors still find it easier to proceed with charges for the predicate offences rather than for money laundering. One explanation is the lack of personnel trained in investigating or prosecuting money laundering cases. Another factor may be insufficient research into the impact of money laundering. There is need for more meaningful action on AML that goes beyond repeating the fact that money laundering is a deplorable abuse of the financial system. In particular, the link between money laundering and illicit financial flows needs to be substantiated to policy makers. This could motivate them to give greater investigative powers to the relevant agencies. It could also prompt increasing use of civil forfeiture actions, which allow proceeds of a crime that has not been criminally prosecuted to be confiscated if the state can show that they are probably derived from a crime. The latter approach is proving successful in South Africa, where it was adopted in the late 1990s to target assets linked to transnational criminal activities.

5. Current policy approaches in Zambia, Botswana, and Tanzania

At the time of the study on which this paper is based, the FIUs in Botswana and Zambia were in their formative stages, while Tanzania's has existed since 2007. Nevertheless, Zambia's AML infrastructure appeared to be the most firmly established, as it is based on legislation that came into force in 2001.

Bilateral development partners have assisted all three countries with their anti-corruption efforts, dating back to the establishment of their AC infrastructure. Donors have been aware that supporting dedicated institutions alone will not be sufficient to create the enabling environment necessary to combat corruption and money laundering. In general, support has also been directed at nongovernmental organisations working on anti-corruption. However, bilateral donors have given a somewhat lower level of support to FIUs and to the AML infrastructure than to the AC system. AML support has been a task undertaken mostly by multilateral institutions. Sections 5.1 through 5.3 give a more detailed picture of the countries and what they still require in terms of development support for their anti-money laundering efforts.

5.1 Zambia

Zambia's AML legislation, the Prohibition and Prevention of Money-Laundering Act, dates to 2001. It lays out five objectives:

- To prohibit and prevent money laundering
- To provide information on suspicions of money laundering activities
- To provide for the forfeiture of proceeds of crime
- To facilitate the extradition of persons involved in money laundering
- To provide for international cooperation in investigation, prosecution, and legal assistance in investigations

An amendment to the act established a financial intelligence unit called the Anti-Money Laundering Investigations Unit (AMLIU), as part of the Drug Enforcement Commission (DEC). Later, in 2010, a Financial Intelligence Centre Act created a separate institution to take over most of the functions of the AMLIU. After taking into account the views of various stakeholders and studying several models, Zambia settled on an administrative FIU. Its primary functions are to receive, analyse, and disseminate reports on suspicious transactions. Through its director, the FIU has limited intervention powers to freeze suspected proceeds of crime while referring the case to investigators to pursue. After this change, the AMLIU was left with a single responsibility, to investigate cases referred to it by the newly established FIU.

Zambia's Anti-Corruption Commission, set up in 1982, is the oldest of the anti-corruption structures among the three countries. It is responsible for investigation and prosecution of corruption-related offences. In response to cases of grand corruption that came to light after 2001, a task force was established to investigate grand corruption. It drew its authority and membership from various law enforcement agencies, but had no statutory mandate, and it has now ceased to exist (Ryder 2011). Lessons drawn from its experiences, however, informed a new position on asset forfeiture. In April 2010, the Forfeiture of Proceeds of Crime Act became operational. Its objective is to provide for the confiscation of the proceeds of crime and facilitate the tracing of any proceeds, benefit, and property derived from the commission of any serious offence. It provides for the attorney general to appoint an administrator to manage property forfeited to the state. In any proceedings for a forfeiture order, the applicant has to show grounds for the order. The act establishes a Forfeited Assets Fund and allows the attorney general to share forfeited proceeds of crime with foreign countries on a reciprocal basis.

In this context, an evident negative development was the removal from the Anti-Corruption Commission Act of section 37(1), a clause which made the possession of wealth or property disproportionate to one's known source of income a potential offence. Even though the "unexplained wealth" clause in the Anti-Corruption Commission Act of 1996 did not have a rich enforcement history, having it on the statute book meant that a government determined to act against corruption could invoke it. It therefore had some deterrent value. Its removal in 2010 reduced the scope for establishing a complementary working relationship between the Anti-Corruption Commission, the banks, and the newly established financial intelligence unit. Some critics say that this step, along with the non-enforcement of asset disclosure rules for political elites, has weakened AML initiatives in Zambia (Mungole 2010).

Among the major challenges facing Zambia's AML system are low human and institutional capacity, with a shortage of investigators and prosecutors and ineffective supervision, particularly of the financial sector. The prevalence of corruption and the dominance of cash transactions compound the situation.

5.1.1 Relationship with complementary institutions

Zambia's FIU works closely with other agencies and supervisory authorities, primarily the Bank of Zambia. However, the change in the Anti-Corruption Commission Act mentioned above seems likely to curtail the powers of both the ACA and the FIU by removing a key jurisdictional basis for action.

Illicit financial outflows from Zambia are closely connected to corruption and abusive transfer pricing in sectors such as the trade in natural resources, predominantly mineral and wildlife products in the region. A study of cross-border organised crime in the Southern African Development Community (SADC), conducted by the Institute for Security Studies between 2008 and 2010, established that the smuggling of unprocessed minerals affects most countries, is made possible by porous frontiers, and involves foreign intermediaries. Sale of minerals to networks of Nigerian and Lebanese buyers is common in Manica, Nampula, Tete, and Niassa provinces in Mozambique, as is the smuggling of gold from the Democratic Republic of the Congo and from Zimbabwe into Zambia for export to Zurich (Hubschle 2010). This suggests that other ministries or public agencies (such as customs or the mining authority), not usually associated with anti-money laundering work, could contribute at least with intelligence gathering in the affected sectors.

5.1.2 International assistance

At various stages, Zambia has received assistance in this field in the form of technical/advisory assistance and collaborative support from the following:

- UK Department for International Development
- Independent Commission against Corruption, Hong Kong
- Norwegian Agency for Development Cooperation
- US Department of the Treasury, Office of Technical Assistance
- World Bank
- Australian Transaction Reports and Analysis Centre (AUSTRAC)
- Basel Institute on Governance

Zambia seems to be moving away from an exclusive focus on training prosecutors and judicial officers in the prosecution and adjudication of money laundering cases. In early 2011, the Basel Institute on Governance and the Institute for Security Studies hosted a series of training workshops on practical aspects of implementing AML. Over 200 participants from the following sectors attended: supervisory

authorities (Bank of Zambia, Securities and Exchange Commission, Pension and Insurance, Auditor General, Ministry of Tourism, Ministry of Agriculture, Office of the Registrar of Societies, Patent and Company Registrar, and Zambian Institute of Estate Agents, among others); the financial industry; nonfinancial businesses and professions (including Internet service providers); judges of the Supreme and High Courts; and law enforcement officers (police, Drug Enforcement Commission, Anti-Corruption Commission, Revenue Authority, Director of Public Prosecutions, Magistrates, Immigration). The workshops combined training on AML principles with hands-on case studies. The wide representation of participants showed an appreciation in Zambia of the multifaceted nature of the predicate activities that give rise to money laundering. This suggests that more efforts to incorporate complementary structures into AML work may be forthcoming.

The Royal Norwegian Embassy in Lusaka provided support during preparation of the legislation to establish the new FIU. The FIU management is working on streamlining the modes of submitting, receiving, and processing suspicious activity reports. It is also implementing a computerised platform (with encryption) for receiving electronic SAR submissions. It expects to make available to reporting institutions a dedicated encrypted fax line in a securely locked environment. The FIU will set up a system for the transmission of SARs by courier, with secure restricted access to the section that receives and analyses SARs. These initial activities are also funded by the Royal Norwegian Embassy (Government of Zambia 2010).

5.2 Botswana

In Botswana, the Directorate on Corruption and Economic Crime (DCEC), set up in 1994, currently oversees the implementation of both anti-corruption and anti-money laundering measures. It also houses a Public Education Division (PED), mandated to raise awareness among the population of corruption and its impact. At the beginning of 2010, the PED began to offer input into the school curriculum with a view to introducing content on corruption. The mandate of the PED could potentially be broadened to include raising public awareness of the incidence and impact of money laundering. Such an expansion of activities would face challenges, however, as the PED lacks the capacity to carry out its existing mandate, having a staff of just 15 people and inadequate resources.

The DCEC has served as a co-repository of financial SARs, together with the Bank of Botswana. SARs are eventually referred to the Investigations Division within the DCEC. Concluded investigation dockets pass through the Legal Services Unit (LSU) for a final check and submission to the Directorate of Public Prosecution (DPP). The LSU is also involved in the investigation in terms of case conferencing and suggesting investigation tactics in pending cases.

Corruption complaints handled by the DCEC that involve money laundering are added to the cases originated by SARs. In 2009, the DCEC accepted 671 cases for investigation, of which 10 per cent were money laundering cases, 81 per cent were general reports of corruption, and 9 per cent involved other kinds of economic crime (DCEC 2010). The in-house receipt, analysis, and referral of cases offer good prospects in terms of response to money laundering, a situation which, in the region, seems to be unique to Botswana. The current challenge is the tiny size of the LSU, which has only three officers.

In 2010 a separate Financial Intelligence Agency (FIA) was established and housed in the Ministry of Finance. The FIA will take over the function of receiving and analysing SARs, then referring them to the Investigations Division at the DCEC. Locating the FIA in the Ministry seems to be a temporary measure for logistical purposes until the agency can acquire separate premises. The current head has been seconded from the DCEC.

The DCEC also uses SARs in identifying institutions that require AML compliance supervision. A dedicated unit to implement asset forfeiture does not exist. Botswana relies on the DPP to activate asset freezing during criminal investigations. Confiscation of proceeds is dependent on conviction. When the DCEC wants an order to prevent the disposal of property pending investigations, it has to

invoke the Proceeds of Serious Crime Act of 1990. The law requires an application, supported by a sworn statement from a police officer holding at least the rank of inspector. As no DCEC staff member is a police officer, this prerequisite can create problems in urgent cases and needs rectification.

The law does not require enhanced due diligence for politically exposed persons. As various international instruments have acknowledged, PEPs constitute a significant corruption risk factor in money laundering cases. The anti-corruption law envisages prosecutions for possession of unexplained wealth, but none have been initiated to date. The attorney general handles mutual legal assistance requests.

5.2.1 Relationship with complementary institutions

A joint research study of money laundering trends in Botswana by the DCEC and the Institute for Security Studies in 2008 reported anecdotal indications of illicit financial flows from Botswana to five countries in particular: South Africa, China, Zimbabwe, Nigeria, and Zambia. With the exception of those to China, these flows involved proceeds of crimes such as robberies and fraud. Proceeds destined for China were more likely to be derived from marketing activities and associated tax evasion. They were also more likely to have been converted from the Botswana currency to the US dollar, as were proceeds destined for Nigeria.

According to the Botswana Unified Revenue Service, the complementary institution which could contribute with intelligence gathering in this regard, up-to-date information is needed on trends and volumes of international trading traffic between Botswana and all five countries. Such information might assist in detecting modes and directions of illicit capital flows disguised through trade. Since the revenue authority has no presence at foreign missions maintained by Botswana, it does not have such capacity.

Since the DCEC has been, so far, responsible for both AC and AML, it has been active in a National Task Force on Money Laundering. The task force coordinates the efforts of various institutions considered important to the AML regime, including law enforcement, regulatory institutions, and the central bank. A national coordinating committee on financial intelligence, mentioned in section 4.3.2, will soon replace this task force. It will bring together at least those organisations of the public sector perceived to be relevant to detecting and combating money laundering and will assist the FIU in preparing money laundering risk assessments, thus creating a more dynamic AML regime. Among the three countries studied, Botswana is the only one with a concrete plan to bring different public agencies together to coordinate their work on AML.

5.2.2 International assistance

AML structures in Botswana have received a modest level of international assistance. In May 2008, some officers from the DPP and the DCEC were trained in financial investigative techniques in Lusaka by a combined team from ESAAMLG and the World Bank. In November 2009, Botswana received technical assistance from AUSTRAC, Australia's financial intelligence unit, in the form of training on how to establish an FIU. In May 2010, AUSTRAC sponsored three officers to receive training in Namibia in investigating money laundering. More recently, the FIA has received advisory and technical services from the US Treasury Department's Office of Technical Assistance. A resident technical adviser is assisting in setting up processes and systems to access and analyse the information to be received by the FIA in due course.

5.3 Tanzania

Tanzania criminalised money laundering and created the necessary supporting infrastructure to combat it in the Anti-Money Laundering Act of 2006, which came into effect in July 2007. Prior to the implementation of the AML system, the Central Bank of Tanzania monitored a customer due diligence

system for commercial banks. A Financial Intelligence Unit has been set up to investigate money laundering, and a national AML strategy has been developed to cover the period 2010 to 2013.

Enhanced due diligence on transactions involving foreign PEPs was among the provisions of the Anti-Money Laundering Act. Reporting institutions are required to establish risk management systems to determine whether a prospective client is a PEP, take reasonable steps to establish the source of funds, and conduct enhanced continuous monitoring of the business relationship with the PEP. Senior management has to be consulted prior to the opening of accounts by PEPs. Among other issues, the fact that the client is based or incorporated in a country with no AML measures should be considered. A weakness of the law is that it does not specifically envisage penalties for non-compliance. Tanzania has retained a provision to punish possession of unexplained wealth as part of its anti-corruption law, but there is no record of its enforcement.

Implementation of the AML regime is centred in the Financial Intelligence Unit, which is currently located in the Ministry of Finance. With a rather small staff of 15, the FIU currently lacks the capacity to undertake the main functions of receiving, analysing, and disseminating intelligence reports to law enforcement agencies, as well as issuing guidelines to reporting entities (Government of Tanzania 2010). Furthermore, the FIU has no jurisdiction over Zanzibar, which is a part of Tanzania but autonomous with respect to financial regulation. As a result, no SARs can be expected from that part of the country, even though research has linked Zanzibar to some of the illicit financial flows out of Tanzania.

The Prevention and Combating of Corruption Bureau (PCCB) was established in 2007. It has an investigative mandate and receives analysis of suspicious transactions from the FIU for further investigation. One of its primary challenges stems from an operating environment in which the police and the judiciary are perceived to be highly corrupt and therefore of questionable utility in probing economic crime, including money laundering (Government of Tanzania 2009). In 1996 the Warioba Commission found that corruption was pervasive in Tanzania and that a key department, namely revenue collection, was implicated. While the PCCB can independently investigate corruption without involving the police, it suffers from bureaucratic inefficiencies that may affect the prosecution, since it has no independent powers to prosecute but must submit cases to the Directorate of Public Prosecutions. Several recent surveys have found the criminal justice system to be slow and inefficient, which makes it susceptible to corruption, particularly where cases of grand corruption are involved (PCCB 2009; Heritage Foundation 2010).

Tanzania has identified a need to establish an asset forfeiture unit. It is also keen to address gaps in the guidelines on reporting SARs from the banking institutions and reissue them. In addition, the FIU needs to issue the guidelines to other reporting institutions to facilitate compliance with the money laundering laws.

5.3.1 Relationship with complementary institutions

As indicated above, the revenue collection department has been implicated in corruption. As Fjeldstad (2003) points out, this department was once nicknamed the “tax exemption department” for its notoriety in granting concessions to the well-connected and corrupt. In the same article, Fjeldstad details the factors influencing corruption in tax collection in Tanzania. Significantly, he contends that the dismissal of implicated officers has a limited effect on the elimination of corruption:

> Corrupt tax officers often operate in networks, which include both internal and external actors. The way the administrative reforms were implemented, where many of those dismissed were recruited to the private sector due to their knowledge of the workings of the tax system and their inside contacts, may have strengthened the corruption networks. Thus, a major challenge facing reformers of tax administrations is to crack corruption networks and the inherent trust that appears to prevail between members of such networks. (Fjeldstad 2003, 173)

Tanzania is endowed with vast mineral and other natural resources, nearly all of which are exportable. It is widely acknowledged that the risk of transnational money laundering involving the mining industry is very significant. In 2009 Finance Minister Ramadhan Khijah, in response to revelations of profit-shifting practices by some gold mining companies in Tanzania, lamented that Tanzania was "earning almost nothing from our vast wealth compared to what is being pocketed by investors" (Mkinga 2009). As in other countries, the institutions working closely with the mining sector, such as the departments of mining and trade, should be able to provide relevant information that they collect to the FIU.

The FIU would also benefit from information on trade which involves Tanzanian nationals in foreign jurisdictions, such as Dubai and China. Such information could be compared with tax databases at the revenue authority to detect possible money laundering related to tax evasion.

5.3.2 International assistance

AML has not received much explicit attention from bilateral development agencies in Tanzania, with AUSTRAC and the Royal Norwegian Embassy the only visible sources of assistance. AUSTRAC supports training initiatives, while Norway is interested in supporting a study of illicit financial flows from Tanzania.

Notwithstanding the low level of direct interaction with supporting partners, the initiatives of development agencies have yielded a great deal of information relevant to illicit financial flows and money laundering in Tanzania. Various surveys of corruption in general and in specific sectors have received assistance from bilateral donors, as have studies of illicit practices in the extraction of mining resources. An extensive study on the mining sector in Tanzania funded by the Heinrich Böll Foundation (SID 2009) is a case in point.

6. Weaknesses affecting enforcement of AML

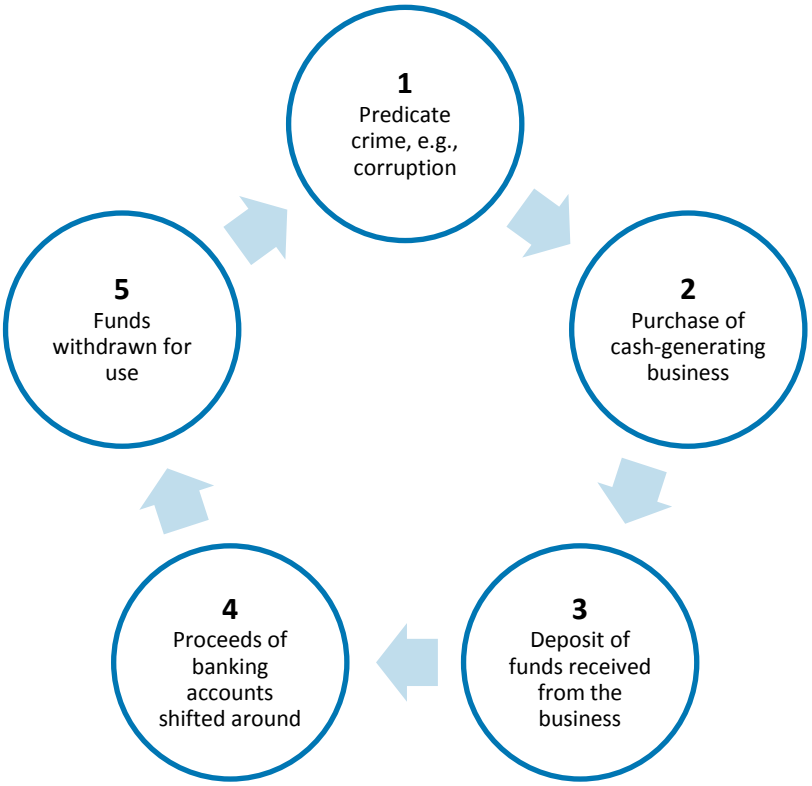
Several evaluation exercises conducted since 2002 in ESAAMLG member countries highlight key shortcomings in the AML framework in the region. The extent to which countries match the ideal AML framework varies, but there are some deficiencies common to all countries. Perhaps the most important of these concerns the failure to take account of the reduced role of banks in a cash-dominant economic environment.

6.1 Inappropriate focus on banks in cash-dominant economies

Financial institutions in the banking sector are generally regarded as the hub around which money laundering can be expected to occur. The AML regime accordingly pays a great deal of attention to them. The focus on banks, however, does not necessarily reflect an empirical assessment of the actual role that banks can play in deterring money laundering. In particular, it glosses over money laundering transactions in environments that are cash-dominant and have low bank penetration, as is the case in all three countries discussed here. Preoccupation with banks leads to the error of seeing the bank as always the first place to which a criminal turns to invest ill-gotten funds. In a cash-dominant economy, the more likely scenario is that proceeds from a crime are invested in a money-making venture, such as a public transport business. The money generated by the business is subsequently deposited in a bank account as lawfully earned proceeds. At that point criminals can deal with the proceeds in the same way as with lawful income. The money laundering cycle thus has one extra loop between the predicate offence and the banks, serving to hide the origins of the funds (Moshi 2007), as illustrated in figure 2.

This alternative pattern of money laundering implies that there should be greater focus on the other spheres where criminal proceeds may be invested before they reach a bank. These other spheres must be identified through research, as they may differ from country to country and from time to time. The responsibilities to be imposed on interests in these spheres have to be carefully constructed so that they have adequate incentives to comply.

Figure 2: Investment of crime proceeds in a cash-dominant economy



6.2 Weak enforcement of AML law

Prosecution of predicate crimes, when it occurs, often is not coupled with money laundering charges. The second pillar of the framework in figure 1, measures to enforce AML, is patently weak. As a result, not many precedents exist, and very little jurisprudence has developed in the region.

6.3 Risk-based due diligence

Another weakness relates to conducting due diligence on the basis of the level of risk raised by a client, business relationship, or transaction. The ESAAMLG report (2009b) noted that only Tanzania required enhanced due diligence measures for higher-risk categories of clients, specifically PEPs. But even there, the evaluation found that while the Anti-Money Laundering Act imposes a legal requirement to report persons regarded as PEPS,[11] there is no requirement to put in place appropriate risk management systems to determine whether a potential customer is a PEP. There are no provisions for obtaining senior management approval to continue a business relationship where an accepted customer has been subsequently found to be a PEP, nor for taking reasonable measures to establish the source of wealth of beneficial owners identified as PEPs. The value of ongoing due diligence in business relationships cannot be overemphasised, as changes in ownership or management can increase the risk profile. Some countries have difficulties grasping the need for, let alone implementing, continuous due diligence.

6.4 Low capacity to investigate money laundering cases

The specific investigation capacity needs highlighted in the cases of the three countries point to deficiencies found across the region. Specialised, periodic training on implementing anti-money laundering norms is required both for public sector AML institutions and for personnel of relevant private sector organisations.

Zambia, among the countries studied, appears to have identified this and has set out a programme of capacity building through training as mentioned in section 5.1. The personnel targeted for training include not only officials running regulatory bodies and reporting institutions, but also those in complementary institutions.

[11] Under section 15(1)(b)(ii).

7. Conclusion and recommendations

A 2010 report by the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) offered the following conclusions:

> Governments should align the structure of their anti-corruption and money laundering agencies to function in an organic and integrated manner. In the alternative, inter-agency cooperation should be made mandatory, with structured inter-agency checks and balances. And importantly, there should be recognition of the desirability of exploiting the anticorruption potential of AML regimes to fight corruption, in order to reverse the observed trend of relative failure by each of the two categories of agencies as they currently operate in isolation of each other.

This recommendation recognises the potential strength of a combined, collaborative AML infrastructure that benefits at an early stage from the structured input of an anti-corruption agency. The GIABA report goes on to recommend that international organisations support national governments in the region in their efforts to build up the capacities of the specialised agencies for the prevention and control of money laundering through training in investigative skills, knowledge of the global financial system, information technology, and so forth, as well as through provision of modern technical equipment for detection and investigation. The needs expressed in the various AML implementation plans compiled by ESAAMLG countries echo those outlined in the GIABA report. On the basis of these evaluations and the interviews conducted for this study, the following recommendations can be made to the authorities in these three developing countries and the donors operating there.

7.1 Clarify the roles of ACAs in the AML framework

It is important to unpack the implications of collaboration and the potential synergies to be harnessed. It is clear that all three countries intend to retain some investigating function for anti-corruption agencies. It is not clear whether or not this includes investigating money laundering, in addition to the predicate crimes. The first priority then is to clarify the role of ACAs in money laundering investigations. The impression gained during the research for this study in Botswana was that the DCEC, the institution that currently oversees the implementation of anti-corruption and anti-money laundering measures, will continue to exercise an investigative function, an approach which we would suggest be adopted in other countries as well.

An additional question is whether other investigative agencies also retain a similar role with respect to money laundering originating from predicate activity in their respective spheres. In other words, for laundering of proceeds of tax evasion, do the revenue authorities have the sole investigative mandate? The answer has to be affirmative, if one is to be consistent. This does not mean that the police service, with its residual investigative mandate, will have no role in money laundering law enforcement. It simply means that the mandate should be residual, that is, exercised in areas falling outside the reach of the specialised agencies.

7.2 Clarify the roles of FIUs in relation to other agencies with an interest in AML

It is also critical to identify and take advantage of synergies between other agencies and the financial intelligence units. Among the potential impediments to inter-agency cooperation, however, are the negative perceptions commonly held about FIUs. Unconstructive criticism, occasionally expressed quite explicitly, has been fostered by an atmosphere of secrecy about the creation of FIUs and the laws defining their roles, as well as by the sensitivities of incumbent governments. In some instances, the FIU is perceived to be the custodian of rather more information and power than it actually has. Even

so, there are areas of common interest between FIUs and ACAs that should be made clear (O'Sullivan 2009):

- The registry of declared assets and liabilities (where it is mandatory to do so)
- Information on unexplained wealth (which is related to the asset declarations)
- Information on the beneficial ownership of corporate institutions
- Databases on intra-group corporate relationships
- Databases on PEPs
- Information on procedures for activating mutual legal assistance and information exchanges with relevant foreign counterparts

It is unlikely that both an ACA and an FIU will simultaneously obtain the listed information. More often than not, and for various reasons, the information will be accessible to one and not the other. Sharing it will do much to establish goodwill and a basis for operational collaboration between them. This can also reduce the duplication of effort that appears to be happening in the early phases of the establishment of FIUs. In the event that neither agency has the required information, it is suggested that the responsibility of collecting, collating, and cataloguing it could be shared between them. The result could be a mutually developed and accessible database. During field research, the utility of a database on beneficial ownership of corporate institutions and cross-corporate ownership was discussed. The consensus among those interviewed was that this would be very useful, but that it would be quite time-consuming to produce.

7.3 Strengthen monitoring systems for PEPs

Another area needing attention is identification of politically exposed persons, even if only at the local level, to be used in determining the responsibilities of reporting institutions in conducting due diligence in compliance with international conventions such as UNCAC. Following UNCAC (which does not differentiate PEPs according to their country of origin in regard to monitoring their AML risk), this should include both domestic and foreign PEPs.

7.4 Provide assistance beyond capacity building

Technical capacity building looms large as an immediate need, but it is by no means the only need. Periodic reviews of typologies of money laundering are also required to enable the FIUs to identify which complementary structures of the AML infrastructure are likely to be affected by money laundering. While mutual evaluations conducted by or under the auspices of ESAAMLG serve a useful purpose in focusing the energies of the evaluated countries, it seems to be beyond their scope to assess the impact of AML systems and measures. Each country should engage in an assessment of the local impact of money laundering and an evaluation of the utility of AML measures.

7.5 Work with complementary institutions and partners abroad

It is also necessary to go beyond identification of the weak links within the AML infrastructure to examine the effectiveness of the measures undertaken. Accessing information relevant to corruption and money laundering from foreign jurisdictions has been a perennial problem for anti-corruption and anti-money laundering agencies. Information on bank accounts, property holdings, and trade patterns and volumes is essential to the effectiveness of such efforts. For example, while the FIU in Tanzania is aware that large-volume cash transactions occur between Tanzanian nationals and businesses in Dubai, it is nearly impossible to obtain any information on who is involved, how much they spend, and where the funds are derived from. Similarly, information useful to money laundering concerning Botswana may be available in the five countries implicated in the 2008 study mentioned in section 5.2. Such

information cannot be accessed at the moment. One way of rectifying this deficiency is for the FIUs to be directly represented in foreign missions in the relevant countries, as are, for instance, departments of trade or tourism. Officials with a mandate to look for information pertinent to money laundering are more likely to be useful in gathering such data than those not directly concerned with combating money laundering. It may well be that some of the information is accessible from open sources in the foreign countries concerned. Occasionally this will obviate the need for lengthy, complex, and expensive applications for mutual legal assistance.

7.6 Work with complementary institutions at home

An approach that would benefit from the support of donors is to augment the information-gathering competence of complementary institutions about AML threats in their sectors. Invariably such information will be most available in agencies concerned with major economic activities in a country. In an economy dependant on natural resources, the persons and institutions involved in this sector will be particularly relevant to money laundering. Therefore, regulatory agencies with oversight responsibilities over these sectors should be complementary to the AML infrastructure. If the resources concerned are marketed across the border, the authorities responsible for managing borders will also be complementary to AML, and so on.

With respect to abuses of transfer pricing and the shifting of profits between jurisdictions, the knowledge of corporate relationships already mentioned is important, but it is not easy to establish. There is need for an up-to-date service to provide information on ownership patterns in the corporate world, including linkages between multinational enterprises and their subsidiaries. An organization called Who Owns Whom has been providing this service by subscription in South Africa since 1989. It provides information on corporate ownership relevant to South Africa and also to some other African countries. During this field research, the utility of such a tool for FIUs also came under discussion. All the FIUs considered it to be of critical importance, as did the revenue authorities and investigators. But none of them had access to it. With the support of donor organisations, a similar service could be made available in each country, tailored to be relevant to the local context.

7.7 Provide support to FIUs

Finally, in addition to the work with complementary institutions, there is an obvious need to support those agencies that are mandated specifically to deal with AML issues. Existing laws should be reviewed and improved in light of the considerations discussed above. It has also been suggested that FIUs should be able to obtain information and disseminate it to the general AML community. To play this role effectively, an FIU must have the capacity to do the following:

- Scan the relevant environment to determine the sectors and countries that are significant for money laundering trends pertinent to its jurisdiction, including beyond the predetermined areas stipulated in the laws that created the FIU.
- Develop mechanisms for obtaining intelligence from these sectors and countries.
- Establish and maintain a presence in foreign jurisdictions where such a presence is the best way to obtain relevant information.
- Convert information into actionable financial intelligence, using the necessary technology, which the study showed to be in short supply in all the FIUs studied.

Annex 1. Interviews

Country and organisation	Interviewee(s) and location of interview	Relevance
Botswana		
Directorate on Corruption and Economic Crime	Deputy Director Gaborone, Botswana	Anti-corruption and anti-money laundering agency
Financial Intelligence Agency	Acting Director Gaborone, Botswana	FIU
Revenue Collection Service	Commissioner General, Head of Technical Services, and Head of Regions and Compliance Gaborone, Botswana	Revenue Collection, Technical Services, and Regions and Compliance (Revenue Collection is a member of National Task Force on Money Laundering)
United States Department of the Treasury	Officer Gaborone, Botswana	Donor
Tanzania		
Deloitte	Consultant Dar es Salaam, Tanzania	Adviser; provided initial support for start-up of FIU in Tanzania
ESAAMLG (Eastern and Southern Africa Anti-Money Laundering Group)	ESAAMLG Secretariat Dar es Salaam, Tanzania	Secretariat for FATF regional intergovernmental AML institution
Financial Intelligence Unit	Commissioner and Investigator Dar es Salaam, Tanzania	FIU
Royal Norwegian Embassy	Minister Counsellor Dar es Salaam, Tanzania	Donor
Zambia		
Financial Intelligence Centre	Director Lusaka, Zambia	FIU
National Institute of Public Administration	Lecturer Lusaka, Zambia	Former head of the Drug Enforcement Commission and researcher on money laundering
Other		
AUSTRAC (Australian Transaction Reports and Analysis Centre)	Africa Coordinator/Technical Adviser	Adviser and donor
London Metropolitan Police	Former detective with London Metropolitan Police, now investigating maritime piracy	Investigator
Norwegian Ministry of Foreign Affairs	Head of Project for Capital and Development Oslo, Norway	Donor

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The relationship between anti-money laundering and anti-corruption strategies is a key issue for developing countries. Corruption and money laundering cannot be effectively addressed solely by the specialised agencies mandated to deal with them. Supportive frameworks and complementary structures, such as other public agencies closely associated with vulnerable sectors, must be involved. These structures should be familiarised with money laundering risks and typologies and with the important role they can play in gathering intelligence that contributes to the work of financial intelligence units. FIUs in the countries studied here—Botswana, Tanzania, and Zambia—are undermined by lack of human and financial resources and by flaws in enabling legislation. In order to effectively contain the threat of money laundering as a facilitator of corruption, they need to confront context-based particularities, notably the prevalence of cash transactions in the economy. Governments and donors in developing countries should work to build the capacity of the financial intelligence units and strengthen their collaboration with anti-corruption agencies and with complementary institutions and partners at home and abroad.

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