

**The Impact of Mutual Evaluation Report on National Anti-Money Laundering and Combating
the Financing of Terrorism Strategy: The Case of Tanzania**

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Tanzania

Terrorist Financing



Dedication

To my dear wife Anastazia Arnold Gesase and our son Ethan Mkami Arnold, for unceasing love and care.



Declaration

I, Arnold Gesase, do hereby declare that ‘The Impact of Mutual Evaluation Report on National Anti-Money Laundering and Combating the Financing of Terrorism Strategy: The Case of Tanzania’ is my own work, that it has not been submitted for any degree or examination in any other university or academic institution, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Arnold Gesase

Signed:..... Date:.....



Professor Dr. Lovell Fernandez

Signed:..... Date:.....

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List of Abbreviations and Acronyms

AML	Anti-Money Laundering
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
DNFBPs	Designated Non-Financial Businesses and Professions
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FSRBs	FATF-Styled Regional Bodies
MER	Mutual Evaluation Report
NCCTs	Non-Cooperative Countries and Territories
NGO	Non-Governmental Organisation
PCCB	Prevention and Combating of Corruption Bureau
SFO	Serious Fraud Office
TSH	Tanzanian Shilling
UN	United Nations



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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Problem Statement

This work assesses the impact of the Mutual Evaluation¹ on Tanzania's measures to combat money laundering and the financing of terrorism. It analyses the Mutual Evaluation Report (MER) on Tanzania following the evaluation conducted by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)² in 2009. The purpose of this study is to see to what extent Tanzania has, in the meantime, implemented the recommendations contained in the MER. Tanzania, like other countries worldwide, also faces the problem of money laundering. This has necessitated the government to enact laws and designate institutions for enforcing anti-money laundering (AML) and combating the financing of terrorism (CFT) measures.

Money laundering is a process of hiding the true origin of illicit money so that a criminal can avoid punishment under the law and at the same time be able to reap benefits of their criminal activities.³ The problem of money laundering knows no borders as operatives of organised criminal syndicates crisscross the world employing the best technology and techniques at their disposal to elude law enforcement agents and thereby succeeding in making the proceeds of their illegal undertakings to look legal. With the globalisation of the world's financial system,

¹ It is a monitoring programme designed to assess a country's level of compliance with international standard for anti-money laundering and combating the financing of terrorism. See ESAAMLG Mutual Evaluation Procedures 4. Available at <http://www.esaamlg.org/userfiles/ESAAMLG%20ME%20Procedures%202009.pdf> (accessed 26 April 2013).

² This is an Inter-governmental Organisation that was launched in 1999 in Tanzania for the task of combating money laundering. Its membership is voluntary and currently it has 16 members. Further information is available at <http://www.fatf-qafi.org/pages/easternandsouthernafriacaanti-moneylaunderinggroupesaamlg.html> (accessed 26 April 2013).

³ Levi M 'Money Laundering and Its Regulation' (2002) 582 *The Annals of the American Academy of Political and Social Science*.

countries have no choice but to pool their resources together and adopt a spirited universal preventive regime against money laundering activities.⁴ A unified global response to money laundering is of great necessity otherwise the weakest anti-money laundering jurisdiction could be utilised at the expense of the rest of the world.⁵

The Financial Action Task Force (FATF) is currently recognised as the global standard setter in the fight against money laundering.⁶ Its AML and CFT recommendations have been accepted and implemented in many countries. By the same token, with its comprehensive compliance monitoring process and the backing of the United Nations (UN), the World Bank and the International Monetary Fund and powerful countries in the G8, the FATF has been able to influence many countries to implement its recommendations. Failure to adhere to the 40 Recommendations⁷ has, in the past, led to countries being blacklisted as Non-Cooperative Countries or Territories (NCCTs). Such countries run the risk of being isolated from the world's financial system which, in turn, impacts negatively to their economy.⁸

By joining ESAAMLG, which is a FATF-Styled Regional Body (FSRB), Tanzania recognises that the crime of money laundering is sophisticated and transnational in nature, necessitating

⁴ Michael Camdessus, a former Managing Director of the IMF on 'Money Laundering: The Importance of International Countermeasures' available at <http://www.imf.org/external/np/speeches/1998/021098.htm> (Accessed 21 February 2013).

⁵ Blazejewski KS 'The FATF and Its Institutional Partners: Improving the Effectiveness and Accountability of Transgovernmental Networks' (2008) 22 *Temple International and Comparative Law Journal*.

⁶ Paton PD 'Cooperation, Co-Option or Coercion? The FATF Lawyer Guidance and the Regulation of the Legal Profession' (2010) *Journal of the Professional Lawyer* 169.

⁷ New 40 FATF Recommendations on AML/CFT were adopted in February 2012. Available at http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf (accessed 18 September 2013).

⁸ Beekary N 'The International Anti-Money Laundering Law and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law' (2011) *Northwestern Journal of International Law and Business*.

international co-operation in the fight against it. As per the Memorandum of Understanding, all ESAAMLG members have pledged to adopt and implement the FATF's 40 Recommendations and to subject themselves to mutual evaluation.⁹ According to its mandate, ESAAMLG acts as a regional enforcer of AML measures by conducting periodic studies on money laundering typologies and mutual evaluations on countries' levels of implementation of FATF Recommendations which are widely regarded as international *standard* in combating money laundering and terrorist financing.

In the mid 1980s, during the period of economic liberalisation, Tanzania experienced an upsurge in economic criminality such as drug trafficking, arms trafficking, corruption, fiscal offences, fraud, and poaching.¹⁰ Today, predicate offences (i.e. offences that give rise to money laundering, e.g. theft, fraud, and illegal poaching) for money laundering are almost the same as they were in the 1980s although they vary as regards gravity and the motives and methods of commission. Being a largely cash-based economy, the country is more prone to money laundering because it is easier to integrate illicit profits into the economy without necessarily involving financial institutions.¹¹

⁹ Article II (3) and III (2) of the MOU available at [http://www.esaamlg.org/userfiles/ESAAMLG_MOU_INCORPORATING_MAUITIUS_AMENDMENTS_SEPTMBER_2011\(1\).pdf](http://www.esaamlg.org/userfiles/ESAAMLG_MOU_INCORPORATING_MAUITIUS_AMENDMENTS_SEPTMBER_2011(1).pdf) (accessed 26 April 2013).

¹⁰ Mwema SA 'Current Situation and Counter Measures against Money Laundering: Tanzania's Experience' available at http://www.unafei.or.jp/english/pdf/RS_No58/No58_36PA_Mwema.pdf (Accessed 21 February 2013).

¹¹ Moshi H 'Implications of Cash Dominated Transactions for Money Laundering' (2012) *Institute for Security Studies*. Available at <http://www.issafrika.org/publications/situation-reports/implications-of-cash-dominated-transactions-for-money-laundering> (accessed 21 February 2013).

The government of Tanzania, realising the serious threats posed by money laundering to national economic development,¹² has taken the following measures: first, it has ratified the International Conventions relevant to the fight against money laundering and terrorist financing¹³; and secondly, it has criminalised money laundering and terrorist financing and set up regulatory institutions for enforcement of various AML/CFT measures.¹⁴ It has also continued to participate in ESAAMLG activities.

In 2009, ESAAMLG conducted a mutual evaluation of Tanzania in line with the procedures adopted and approved by the ESAAMLG Council of Ministers in Lesotho in 2009. The aim of the evaluation was to assess Tanzania's level of compliance with international AML and CFT standards as set out in the FATF 40 Recommendations. Therefore, the evaluation was based on the FATF Recommendations as well as on the laws and regulations of Tanzania.¹⁵ Subsequently, it issued a report detailing the findings of the evaluation exercise.



The report identified various weaknesses in the law,¹⁶ some of which concerned the fact that the definition of a predicate offence under the AML Act did not include all the categories of designated offences as listed by the FATF, and that predicate offences for money laundering did

¹² Tanzania National Anti-Money Laundering and Combating the Financing of Terrorism Strategy (the National AML/CFT Strategy) 6. Available at http://www.esaamlg.org/userfiles/NATIONAL_AML_STRATEGY_TANZANIA.pdf (accessed 21 February 2013).

¹³ The United Nations Convention against Illicit Traffic in Drugs and Psychotropic Substances (the Vienna Convention of 1988) was ratified in 1996; The International Convention for the Suppression of Financing of Terrorism was ratified in 2003. Also, the United Nations Convention against Transnational Organised Crime (the Palermo Convention of 2000) was ratified in 2005.

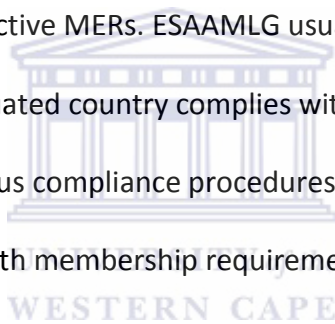
¹⁴ The Anti-Money Laundering Act No.12 (the AML Act) of 2006. Available at <http://polis.parliament.go.tz/PAMS/docs/12-2006.pdf> (accessed 22 February 2013). Likewise, the Prevention of Terrorism Act No.21 of 2002 criminalises terrorism and terrorist financing.

¹⁵ Tanzania MER 11. Available at http://www.esaamlg.org/userfiles/Tanzania_Mutual_Evaluation_Detail_Report.pdf (accessed 22 February 2013).

¹⁶ MER 229ff.

not cover conduct that took place in another jurisdiction. Furthermore, according to Tanzania's law, there had to be a conviction for a predicate offence when proving that property constitutes the proceeds of illicit activities.

This study stems from the assumption that mutual evaluation is the best compliance monitoring mechanism for implementing the FATF Recommendations at the domestic level. The evaluation exercise reveals a country's compliance status. If a country is found to be non-compliant with certain aspects then it faces pressure from other countries to rectify the deficiencies.¹⁷ This has led to most countries adopting national strategies for remedying deficiencies identified in the respective MERs. ESAAMLG usually undertakes post-evaluation follow ups to ensure that the evaluated country complies with the FATF Recommendations.¹⁸ A country can be subjected to rigorous compliance procedures, the worst of which is suspension from ESAAMLG until it complies with membership requirements.¹⁹



In 2010 the government of Tanzania adopted the *National Anti-Money Laundering and Combating the Financing of Terrorism Strategy (July 2010 – June 2013)* in response to the issues raised in the MER.²⁰ For example, on the objective of “Implementation of Anti-Money Laundering and Prevention of Terrorism Legislation”, one of the strategies is to “strengthen and

¹⁷ In 2012, Tanzania was labelled a ‘Non-Compliant Jurisdiction’ by the FATF for not implementing some FATF Recommendations. This made some countries like the UK to issue a warning about financial dealings with Tanzania. This is the kind of pressure that coerces countries to implement the FATF Recommendations. The risk of non-compliance is isolation from the world's financial system. See ‘Advisory Notice on Money Laundering and Terrorist Financing Controls in Overseas Jurisdictions’ issued by the UK Treasury available at http://www.hm-treasury.gov.uk/d/advisory_notice_moneylaundering_nov2012.pdf (accessed 30 April 2013).

¹⁸ Article IV of ESAAMLG Mutual Evaluation Procedures (MEP).

¹⁹ Article IV paragraph 70 of ESAAMLG MEP.

²⁰ The National AML/CFT Strategy 21.

refine the AML/CFT regulatory framework” which would be achieved by, among other things, amending the AML/CFT law so as to incorporate the Recommendations of the MER.

Sticking to the action plan under the National AML/CFT Strategy,²¹ in 2012 the Parliament of Tanzania amended the AML Act with the Anti-Money Laundering (Amendment) Act.²² This law introduces changes which are based on the recommendations contained in the MER. Some of the amendments include making the AML Act applicable to Zanzibar in respect of Part II which relates to the Financial Intelligence Unit (FIU) and National Multidisciplinary Committee on Anti-money laundering,²³ and increasing the number of regulators for AML measures.²⁴

Despite such amendments which were aimed at removing weaknesses in the AML Act, the FATF has nevertheless identified flaws in the Tanzanian AML/CFT legal framework. The FATF’s criticism was principally directed at the fact that, despite earnest endeavours to remedy the flawed legislation, Tanzania has failed to implement its action plan within the agreed timelines.²⁵ Also, there was still a need to clarify what predicate offences are and to devise concrete and enforceable asset-freezing procedures for terrorist assets.

The significance of this work lies in the fact that there is no scholarly literature on Tanzania’s legal regime for AML and CFT. This study evaluates the current AML/CFT law in Tanzania and exposes legal and other impediments to an effective AML/CFT regime. That would be useful for

²¹ Action Plan C under the National AML/CFT Strategy 22.

²² Act No.01 of 2012 available at <http://polis.parliament.go.tz/PAMS/docs/1-2012.pdf> (Accessed 22 February 2013).

²³ Section 2 of the AML (Amendments) Act.

²⁴ Section 3(b) of the AML (Amendments) Act.

²⁵ FATF Public Statement available at <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/fatfpublicstatement-19october2012.html#Tanzania> (Accessed 22 February 2013).

policy decisions in the government and the ESAAMLG. Likewise, based on the mistakes that Tanzania made in implementing the FATF's Recommendations, this research paper serves as an important guide for many other countries especially in the developing world on how to, or how not to, go about devising and enacting an AML/CFT legal regime. The Tanzanian experience could help other countries that do not have AML/CFT laws to save time and expense in creating effective measures against money laundering and the financing of terrorism.

1.2 Research Question

This research work is guided by two research questions namely: What is the significance of the mutual evaluation exercise in the fight against money laundering and terrorist financing? Is Tanzania's legislative and institutional capacity good enough for combating money laundering and terrorist financing effectively?



1.3 Answer to the Problem

This study addresses the problem by looking at the status of implementation of the FATF 40 Recommendations in Tanzania. It focuses on the implementation of the National AML/CFT Strategy, which is a direct response to the ESAAMLG's MER. At the time of writing, the strategy has not been fully implemented. There are a number of action plans under the strategy that have not been implemented thus far. For example, there are law "enforcement objectives"²⁶ that have not been fulfilled including: establishing a financial intelligence database; strengthening investigation capacity through the use of modern tools; and the use of modern surveillance equipment at border crossings for detecting movements of cash, just to name a

²⁶ National AML/CFT Strategy 33 – 34.

few. On the legal objectives, one significant step is the enactment of the amendments in 2012. The legislative amendments have significantly strengthened the AML/CFT regime. However, there are some gaps that still exist in the AML/CFT laws as discussed in chapter 4. For a robust AML/CFT system, Tanzania needs to amend the laws so as to remove the gaps and to strengthen the enforcement capacity of its institutions. For example, there is a need to ensure independence of the FIU as well as strengthening its capacity to enable it to carry out its mandate under the law effectively. At the time of writing, the FIU is a ministerial department under the Ministry of Finance. This breeds conflict of interests which could derail its efforts to combat money laundering and terrorist financing.

1.4 Literature Survey

There is dearth of scholarly literature on Tanzania regarding money laundering and terrorist financing. There is a chapter in a monograph by Eugene Mniwasa.²⁷ He defines the offence of money laundering from the point of view of international law. He further explains predicate offences for money laundering in Tanzania as well as the legal and institutional framework for combating money laundering. He also discusses obstacles to a successful anti-money laundering regime in Tanzania and offers recommendations on what should be done to address the impediments. However, his work gives only a general picture of the problem. It does not give a detailed discussion of specific legal issues relevant to AML and CFT. Furthermore, his analysis of the law is based on the AML legal framework under the Proceeds of Crime Act²⁸ as opposed to

²⁷ Mniwasa EE 'Detection and Suppression of Money Laundering in Tanzania' (2004) 2 in monograph 108 'Tackling Money Laundering in East and Southern Africa – An Overview of Capacity' *Institute for Security Studies*. Available at <http://www.issafrika.org/uploads/Mono108.pdf> (accessed 29 April 2013).

²⁸ Act No.25 of 1991 available at <http://polis.parliament.go.tz/PAMS/docs/25-1991.pdf> (accessed 29 April 2013).

the current regime under the AML Act of 2006, as amended in 2012. This study broadens the discussion on AML/CFT measures in Tanzania by evaluating the existing AML/CFT laws against international standards.

Prince Bagenda has also written on the problem of money laundering in Tanzania.²⁹ He gives a good summary of the sources of illicit money in Tanzania and the laws proscribing money laundering. However, his work lacks legal substance as it only mentions the laws without giving a concrete analysis of the AML regime. He also does not discuss Tanzania's current AML/CFT legal regime.

1.5 Structure of the Paper

This paper consists of the following chapters:



Chapter One

This chapter outlines the research proposal.

Chapter Two

It provides information relating to organised criminality in Tanzania. Major predicate crimes for money laundering in Tanzania are discussed here.

²⁹ Bagenda PM 'Combating Money Laundering in the SADC Sub-Region: The Case of Tanzania' (2003) in monograph 90 'Profiling Money Laundering in Eastern and Southern Africa' *Institute for Security Studies*. Available at <http://www.issafrika.org/uploads/Mono90.pdf> (accessed 29 April 2013).

Chapter Three

It deals with the role of the mutual evaluation exercise in the implementation of international AML/CFT standards. It also provides a summary of international law on AML/CFT. The ESAAMLG's mutual evaluation of Tanzania is also discussed here.

Chapter Four

This chapter studies Tanzania's current AML/CFT legal regime and critiques the pertinent provisions of the law insofar as they relate to international AML/CFT standards.

Chapter Five

It concludes the work.

1.6 Research Methodology

This study is a desktop activity which draws on both primary and secondary sources available electronically and in hard print. The latter comprises mainly books, chapters in books, journal articles, notes, internet reports and press statements.



CHAPTER TWO

A SURVEY OF ORGANISED CRIMINALITY IN TANZANIA

2.1 Introduction

There is an acute scarcity of literature on organised crime in Tanzania. However, this chapter tries to provide facts on organised criminal activities in Tanzania. It shows how political and socio-economic changes have led to the rise of organised crime in modern Tanzania. It also provides an account of incidents of organised crime that have been reported in official reports and the media. Finally, in the course of discussing such incidents, this author describes the present laws for curbing specific forms of organised crime.

2.2 The Historical Account of Organised Crime in Tanzania

The emergence of modern organised crime in Tanzania is closely linked to economic reforms that were implemented in the 1980s. In 1967, Tanzania introduced socialism as an official state policy. This was done through the Arusha Declaration of 1967.³⁰ The declaration proclaimed the policy of socialism and self-reliance.³¹ The policy resulted into the establishment of a command economy in Tanzania, according to which the State controlled and owned the major means of production. The private sector was stifled to make way for nationalisation and the public ownership of key resources.³² The implementation of socialism was not a smooth ride for the government. In early 1970s Tanzania plunged into economic difficulties which would later lead to a realignment of the economic policies towards an open market economy. The country

³⁰ Arusha Declaration available at <http://www.marxists.org/subject/africa/nyerere/1967/arusha-declaration.htm> (accessed 24 July 2013).

³¹ O' Neill N and Mustafa K (eds) *Capitalism, Socialism and the Development Crisis in Tanzania* (1990) 13.

³² Kahama GC, Maliyamkono TL, & Wells S *The Challenge for Tanzania's Economy* (1986) 31 – 39.

experienced severe droughts which crippled agricultural output. This resulted in an acute shortage of food in the country with huge amounts having to be imported from elsewhere.³³ Due to a balance of payments crisis in 1979, Tanzania ran short of foreign currency and this curtailed the government's purchasing power to import goods.³⁴ The manufacturing sector also declined sharply due to a shortage of infrastructure and fuel. This situation led to an unprecedented shortage of consumer goods in Tanzania.³⁵

This development marked the beginning of organised criminality in Tanzania in early 1980s. Criminal gangs colluded to hoard goods, especially food products, and to sell them on the black market at prices higher than the ones set by the state. At the time, trade was strictly regulated by the government. In 1983, the government vowed to fight what they called *walanguzi* (Swahili for black market operatives). The then Minister for Trade ordered all industries to sell their commodities to state-regulated trading companies, and violators of this order were subjected to criminal sanctions.³⁶ Despite a warning by the government, hoarding and illegal manipulation of market prices continued to hurt the economy. Criminal gangs continued to flourish in the country by illegally obtaining industrial products and selling them to the needy at exorbitant prices. The government deemed this as economic sabotage. As a result, in 1983, special legal measures were adopted to deal with economic saboteurs.³⁷

³³ Kahama, Maliyamkono, & Wells (1986) 41.

³⁴ O' Neill and Mustafa (1990) 246.

³⁵ O' Neill and Mustafa (1990) 247.

³⁶ Bryceson D *Liberalising Tanzania's Food Trade: The Public and Private Faces of Urban Marketing Policy* (1993) 24.

³⁷ Carter RJ 'Economic Sabotage Law' (1983) *Tanzanian Affairs*. Available at <http://www.tzaffairs.org/1983/07/economic-sabotage-law/> (accessed 24 July 2013).

The Economic Sabotage (Special Provisions) Act was enacted in 1983. This law set up special anti-economic sabotage tribunals to try perpetrators of economic crimes, such as hoarding of goods and money. In no time, thousands of economic saboteurs were arrested and charged under the Economic Sabotage Law.³⁸ In addition, hundreds were arrested and detained without trial under the Preventive Detention Act³⁹ which authorised the President to detain without trial any person considered “dangerous to the peace and good order in any part of Tanganyika”.⁴⁰ Some of the detainees were tried by anti-economic sabotage tribunals while others were released without being tried. The tribunal’s bench was constituted by a judge and lay people appointed by the President. The accused persons had neither right to bail nor to legal representation. Furthermore, the tribunals dispensed with the procedural safeguards ordinarily available in regular courts.⁴¹ These violations of human rights were highly criticised by the legal fraternity and human rights activists. The tribunals were also deemed to be a manifestation of the government’s mistrust of the judiciary in the adjudication of such cases.⁴²

In 1984, the Economic Sabotage Law was substituted with the Economic and Organised Crime Control Act.⁴³ The law vests the High Court with jurisdiction to hear and decide cases constituting economic crimes.⁴⁴ When hearing such cases, the High Court becomes an

³⁸ Bryceson (1993) 25.

³⁹ Act No.60 of 1962.

⁴⁰ Maina CP ‘Tanzania’ in Harding A and Hatchard J (eds) *Preventive Detention and Security Law: A Comparative Survey* (1993) 247 – 258.

⁴¹ The Criminal Procedure Act as well as the Evidence Act was inapplicable to economic sabotage cases.

⁴² Peter CM ‘Independence of the Judiciary in Tanzania: Many Rivers to Cross’ *Kituo cha Katiba* 11. Available at http://www.kituoachakatiba.org/index2.php?option=com_docman&task=doc_view&qid=365 (accessed 24 July 2013).

⁴³ Chapter 200 of the Laws of Tanzania.

⁴⁴ Section 3(1) of the Economic and Organised Crime Control Act.

economic crimes court.⁴⁵ The court is mandated to inquire into economic offences and to make a determination according to the law.⁴⁶ A trial would not commence unless the Director of Public Prosecutions has consented to prosecution.⁴⁷ Unlike the previous law as described above, investigations, trial and the conduct of proceedings are required to be conducted, unless the law prescribes otherwise, according to the Criminal Procedure Act and the Evidence Act.⁴⁸ The right to bail⁴⁹ and the right of appeal⁵⁰ are guaranteed. The law lists economic offences, which include:⁵¹

- Hoarding of commodities. This offence covers numerous scenarios .For example, it is an offence where a person hoards goods not for commercial purposes but solely for creating an artificial scarcity in the supply of such goods and sells them at higher prices or in an unlawful way;
- Leading organised crime. The law makes it an offence for a person to intentionally organise and or finance a criminal racket⁵² for the purposes of committing economic crimes;
- Possession of goods suspected of having being stolen or unlawfully acquired;

⁴⁵ Section 3(2).

⁴⁶ Section 11.

⁴⁷ Section 26.

⁴⁸ Section 20, 28, and 46.

⁴⁹ Section 36.

⁵⁰ Section 62.

⁵¹ Section 57(1).

⁵² Section 2 defines a criminal racket as “any combination of persons or enterprises engaging, or having the purpose of engaging, whether once, occasionally or on a continuing basis, in conduct which amounts to an economic crime”.

- Unlawful sale of goods. Under the Trade Regulation Act of 1980, a Minister may designate goods which are to be sold only by certain authorised traders. Any non-authorised trader who sells such goods breaks the law;
- Authorisation of supply of designated goods to a person who is not an authorised trader for the purpose of resale;
- Negligently or wilfully occasioning damage to property or pecuniary loss to a specified authority;
- Interfering with a necessary service to the public;
- Being unlawfully in the possession of arms.

There are no official statistics on economic crime cases that have been brought before the Tanzanian courts so far. It is therefore difficult to gauge the effectiveness of the law in taming organised crime. However, there is one recent high profile case involving a former Tanzanian Ambassador to Italy. This is the case of *R v Ricky Costa Mahalu and Grace Martin*⁵³ which was decided by the Resident Magistrates' Court of Dar es Salaam at Kisutu. The accused persons were charged with conspiracy,⁵⁴ use of erroneous documents to mislead the principal, stealing,⁵⁵ and occasioning pecuniary loss to a specified authority.⁵⁶ Briefly, the facts are as follows:

In 2002 the government of Tanzania needed to purchase a building in Rome, Italy, for its diplomatic mission. The then Ambassador, the first accused person, got permission from the

⁵³ Unreported Economic Criminal Case No.1 of 2007. It is available at <http://www.scribd.com/doc/104776274/Hukumu-Mahalu> (accessed 8 August 2013).

⁵⁴ Contrary to section 384 of the Penal Code.

⁵⁵ Contrary to section 265 and 270 of the Penal Code.

⁵⁶ Contrary to section 57(1) and 60 as well as Para 10 of the First Schedule to the Economic and Organised Crime Control Act.

government to find a suitable building. The Ambassador, on behalf of the government, agreed to purchase a house owned by an Italian company, CERES S.R.L, at a price of € 3,098,741.40. The deal was sanctioned by the government. The purchase price was paid under two different contracts in two instalments, all making up the total agreed price. The first notarised contract showed that the purchase price was € 1,032,913.80. This amount was duly paid into account number 2182/51 SWIFT Code: BROMITRDNOR of Rome, Italy. The remaining amount of € 2,065,827.60 was paid into account number 106705 SWIFFT Code: CFMOMCMX of Monaco. This was made under the second unnotarised contract. The two payments were effected on 24 September 2002 through a bank called Direzione Territoriale Italia Centrale.

The thrust of the prosecution's case was that the accused persons conspired to steal public funds and thereby occasioned monetary loss to the government of Tanzania by using fraudulent documents to misstate the purchase price so that they siphon off the balance. Their investigation concluded that the purchase price was € 1,032,913.80 and not € 3,098,741.40 as communicated to the government by the Ambassador. They had thus colluded and succeeded to steal the balance of € 2,065,827.60. To support their case, the prosecution argued that the accused had circumvented public procurement procedures and the use of the two contracts was a scheme for swindling the money. The defence denied any wrongdoing by asserting that they adhered to the law and that the government had duly approved the deal. They further contended that the use of two contracts for purchasing real property as such is a common practice in Italy and that the seller wanted two payment contracts, to which government agreed.

The court acquitted the accused on all charges. The prosecution's evidence was dismissed as being too circumstantial and theoretical. It stated that the accused Ambassador was duly authorised by the government to purchase the house in the manner it was done. As for two separate payments, the court said that the use of two contracts is not criminal under the law and that the charge of stealing could not stand since the money was paid into the vendor's accounts and there had been no evidence showing that the accused had withdrawn the money afterwards. Critical to the judgment is the admission by the court that the two contracts could have been used by the Italian vendor for evading tax. It further stated that this was a matter of concern only to the Italian government. The prosecution have appealed in the High Court, and at the time of writing, the appeal is still pending.

Most of the criticism is levelled at the court's comments that the two contracts were ideal for tax evasion but the Tanzanian government should not be concerned with that, only the Italians. This was a grave error. According to Italian law, transfer of ownership of real estate by way of sale is taxable. The amount of tax is based on the purchase price stated in a notarised contract which legally transfers ownership to the buyer.⁵⁷ This means that Italy earned tax only on the purchase price stated under the first notarised contract. No tax was gained from € 2,065,827.60 paid under the second under-the-table contract. This whole scheme amounts to two indictable crimes under Italian law. Incorrect statement of the sale price could constitute charges of tax evasion and falsified sale agreement.⁵⁸ Although tax evasion was not an issue in the case, it is an offence in Tanzania and should not be condoned by a court of law, even if committed

⁵⁷ Kalin CH *International Real Estate Handbook* (2005) 405 and 414.

⁵⁸ Kalin (2005) 417.

abroad. The deal involved the government of Tanzania and, therefore, by agreeing to the two contracts, the Ambassador knowingly helped the Italian vendor to evade tax. It would be possible for the Ambassador to be prosecuted in Italy, if the sending state lifts diplomatic immunity,⁵⁹ for complicity in tax evasion. This has not happened thus far.

This case underscores some of the critical weaknesses in Tanzania's justice system. The judgment indicates that the prosecutor and investigators did not follow the money but the person. The evidentiary gaps in the prosecution's case indicate that they are not well versed to deal with white collar organised criminality. This was possibly a case of tax evasion and money laundering. They did not bother to follow the money that was paid into an account in Monaco to try and trace the route which the money might have taken from there. This could have possibly provided a clue as to how the Government was swindled. Monaco is a tax haven known for money laundering. Circumstantial evidence produced in court suggests surreptitious and dirty conduct on the part of the accused, but this was not enough to secure a conviction.

As for the law, there are serious gaps in the Economic and Organised Crime Act. The law lacks a transnational dimension as envisaged under the Palermo Convention.⁶⁰ Likewise, the offences listed in the law do not include serious crimes like corruption, money laundering, tax evasion, human trafficking, drug trafficking and terrorism. Another shortcoming is the lack of a provision for protection of property belonging to *bona fide* third parties during confiscation.⁶¹ It is

⁵⁹ Article 32 of the Vienna Convention on Diplomatic Relations, 1961.

⁶⁰ Kenya's Prevention of Organised Crime Act No.6 of 2010 is a good example. The law mirrors the Palermo Convention and covers all serious crimes. Available at http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Acts/Prevention_of_Organised_Crimes_Act_No.6_of_2010.pdf (accessed 8 August 2013).

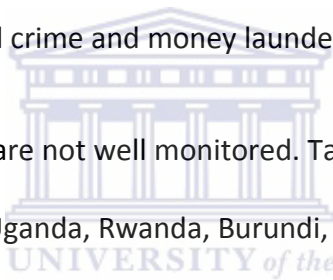
⁶¹ Section 45 of the Economic and Organised Crime Control Act allows confiscation.

submitted that there could be some historical and political reasons for such weaknesses. The 1984 Anti-Organised Crime Law was specifically enacted for controlling trade in consumer products and dealing with economic sabotage. At the time of its enactment, the country was facing an acute shortage of goods and increasing activities of economic saboteurs. There was a need to stop hoarding of goods and black market transactions, as stated above. This scenario is aptly explained by the list of offences covered under the law. The section below discusses the factors that make Tanzania vulnerable to organised crime.

2.3 Tanzania's Vulnerability to Organised Crime and Money Laundering

Tanzania is vulnerable to organised crime and money laundering for the following reasons:

- Strategic border crossings are not well monitored. Tanzania shares borders with eight countries, namely Kenya, Uganda, Rwanda, Burundi, Malawi, Zambia, Mozambique, and the Democratic Republic of Congo (DRC). See the map below.





Official Map of Tanzania.⁶²

It has a total of 43 official inland border crossings.⁶³ Only seven entry points are manned by immigration officials in twenty four hours. The rest (36) have such services from 6.00hrs to 18.30hrs. Most border posts lack sufficient human and law enforcement resources, making

⁶² Available at http://www.ardhi.go.tz/sites/default/files/TANZANIA_0.pdf (accessed 8 August 2013).

⁶³ Immigration Entry Points, available at <http://immigration.go.tz/module1.php?id=37> (accessed 8 August 2013).

them porous and vulnerable to perpetrators of organised crime. Porous country borders have been cited for increasing drug trafficking activities⁶⁴ as well as human trafficking in Tanzania.⁶⁵

- Tanzania has an Indian Ocean coastline of 1424 kilometres⁶⁶ and three major ports.⁶⁷ There are also six smaller ports.⁶⁸ These ports have been used by criminals as a conduit for drug trafficking.⁶⁹
- Law enforcement officials are poorly versed in information communication technology (ICT).⁷⁰ This lack of skill impedes their ability to fight cybercrime. There is evidence of an upsurge of ICT-related crimes in recent years⁷¹ with the result that the police have been compelled to set up a unit to deal with cybercrime. Anecdotal information indicates that the unit is understaffed and not well equipped to deal with e-organised crime in the cyberspace.
- Tanzania's economy is cash-based as most transactions are concluded in cash. Financial Institutions operate only in major cities and towns, with most of the rural population

⁶⁴ Tanzania Foreign Policy and Government Guide (2011 Volume 1), Strategic Information and Developments 18, International Business Publications USA.

⁶⁵ Kenya and Tanzania in Human Trafficking Web, available at http://www.hiiraan.com/news4/2011/may/18864/kenya_and_tanzania_in_human_trafficking_web.aspx (accessed 8 August 2013).

⁶⁶ <http://www.tic.co.tz/ticwebsite.nsf/7404c871f3f2020d8825722d007ea173/03dbfd14019cfd94432572c20028adf8?OpenDocument> (accessed 8 August 2013).

⁶⁷ Dar es Salaam, Tanga, and Mtwara.

⁶⁸ Lindi, Kilwa Masoko, Mafia, Bagamoyo, Pangani and Kwale.

⁶⁹ US State Department International Narcotics Control Strategy Report on Drug and Chemical Control (Vol.1 2010) 597.

⁷⁰ 'Cyber Security in Tanzania' available at http://www.academia.edu/1925835/Cyber_Security_in_Tanzania_Proceedings_of_the_Cyber_Security_Mini-Confrece (accessed 8 August 2013).

⁷¹ 'Tanzania: 500 held over cybercrimes' available at <http://allafrica.com/stories/201206270137.html> (accessed 8 August 2013).

having no access to banks.⁷² This situation suits organised crime as criminals launder money by splashing out cash for luxurious goods such as posh cars and luxurious flats. There is no limit on cash transactions. Tracing and investigating cash-based transactions for money laundering is difficult because they do not involve banks. Were the banks to be involved, this would ease investigations since banks are required to conduct due diligence audits and to report suspicious transactions.

- Cellphone electronic financial transactions present new challenges. The majority of Tanzanians have resorted to mobile electronic financial services. A sizeable section of the population uses mobile phone operators to transfer money and to effect financial transactions.⁷³ There are currently six mobile phone operators⁷⁴ with a total of 27,428,903 million subscribers.⁷⁵ Recently, Vodacom is reported to have made a monthly turnover of \$ 823.3 million in mobile cash transactions.⁷⁶ Mobile electronic financial service works for both lawful and unlawful activities. For criminals, mobile money enables them to integrate illicit profits into the legal economy. The integration

⁷² 'Tanzania Banking Sector Performance Review ended 31 December 2011' available at <http://monfinance.files.wordpress.com/2012/07/2011-tanzania-banking-sector-performance-review-final.pdf> (accessed 15 July 2013).

⁷³ 'Mobile Phone Transfers grow fast' available at <http://www.dailynews.co.tz/index.php/biz/10556-mobile-phone-money-transfers-grow-fast> (accessed 23 July 2013). See also a report on mobile money in Tanzania available at http://www.intermedia.org/wp-content/uploads/FITS_Tanzania_FullReport_final.pdf (accessed on 23 July 2013).

⁷⁴ Vodacom, Tigo, Airtel, Zantel, TTCL, and Benson. Statistics available at <http://www.tcra.go.tz/images/documents/telecommunication/telecomStatsJune13.pdf> (accessed 18 October 2013).

⁷⁵ TCRA Quarter Telecom Statistics (March 2013) available at <http://www.tcra.go.tz/images/documents/telecommunication/telecomStatsMarch13.pdf> (accessed 8 August 2013).

⁷⁶ 'Vodacom Tanzania reports five million M-PESA subs; transactions top USD823m' available at <http://www.telegeography.com/products/commsupdate/articles/2013/05/02/vodacom-tanzania-reports-five-million-m-pesa-subs-transactions-top-usd823m/> (accessed 10 August 2013).

takes place quietly and smoothly as telecom operators have yet to implement anti-money laundering measures.

- Business transactions are poorly documented. Most retail businesses in Tanzania conduct transactions without giving receipts to customers. Purchases worth billions of shillings countrywide are not documented. This creates a benign environment for money launderers.

Against this brief background, let us now look at the most prevalent forms of organised crime in Tanzania.

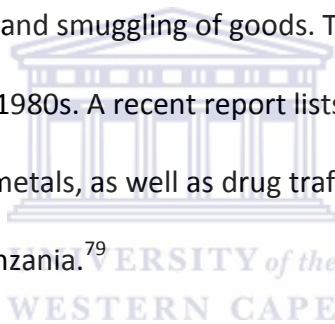
2.4 Incidents of Organised Criminality in Modern Tanzania

As stated earlier, Tanzania embarked on a programme of economic restructuring in the mid-1980s. At the time, the country had experienced economic difficulties such as food insecurity, inability to import consumer products due to dwindling foreign currency reserves, an energy crisis, and an underperforming manufacturing sector. These problems forced the government to scrap the socialist system in favour of agreeing to be rescued by the International Monetary Fund and the World Bank. This rescue package came with strings attached, which meant that the government was required to structure its economy in such a way that it shifted from a consumption-based economy to an investment-based economy. In 1986, the government accepted and implemented an economic recovery programme which, in effect, introduced the open market economy into Tanzania.⁷⁷ This led to price deregulation, public sector reforms,

⁷⁷ Agrawal N, Ahmed Z et al 'Structural Adjustment, Economic Performance, and Aid Dependency in Tanzania' *The World Bank and the IMF Working Paper*. Available at <http://www->

private sector empowerment, removal of import restrictions and trade barriers, promotion of investor friendly policies, and privatisation of public institutions.

The introduction of a free market economy spawned the growth of organised crime in modern Tanzania. The radical economic changes opened up the economy to ordinary people, private entities and international actors. This development worked for both legal and illegal operators in the economy at the level of both the national and global economy, thus contributing to the growth of transnational organised crime.⁷⁸ It was from the mid 1980s that Tanzania really started to experience forms of organised crime such as poaching, corruption, tax evasion, armed robbery, trade in narcotics, and smuggling of goods. Today, profit-generating crimes have remained the same as in the 1980s. A recent report lists theft, robbery, corruption, the smuggling of precious stones and metals, as well as drug trafficking, as major profit-generating crimes for money laundering in Tanzania.⁷⁹



2.4.1 Drug Trafficking

Illegal dealing in narcotics is one of the most profitable crimes in the world.⁸⁰ Drug trafficking is a highly lucrative business that produces profits which require laundering. In the illicit drug trade, Tanzania has been categorised as a destination and transit country.⁸¹ The most prevalent

wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/1993/10/01/000009265_3961005101627/Rend/red/PDF/multi0page.pdf (accessed 28 July 2013).

⁷⁸ Mwema (2000).

⁷⁹ Mutual Evaluation Report 14.

⁸⁰ ESAAMLG 'Laundering the proceeds of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances' (2011) 6. Available at <http://www.esaamlg.org/userfiles/DRUG-TRAFFICKING-REPORT.pdf> (accessed 28 July 2013).

⁸¹ 'Organised Crime and Trafficking in Eastern Africa', UNODC Discussion Paper (2009) 29. Available at http://www.unodc.org/documents/easternafrika/regional-ministerial-meeting/Organised_Crime_and_Trafficking_in_Eastern_Africa_Discussion_Paper.pdf (accessed 28 July 2013).

drug trade and abuse in Tanzania involves cannabis.⁸² People in most regions of Tanzania cultivate cannabis for food and trade.⁸³ The drug trade is still on the rise and this has impacted negatively on the economy. The increase in the illegal narcotics trade is attributable to porous country borders, corruption, a weak criminal justice system, poverty, illiteracy, lack of modern law enforcement techniques, just to name a few.⁸⁴ In 2012, the police impounded 55 499 kg of illegal drugs and a total of 6 933 individuals were arrested.⁸⁵ In January 2012, the police seized 210 kg of heroin, the largest haul in Tanzania's history, in the Lindi region.⁸⁶ There are also reported incidents where Tanzanians have been used as couriers of illicit narcotics. Recently, two Tanzanian women were arrested at Oliver Tambo International Airport in South Africa with 150 kg of illicit drugs called crystal methamphetamine, worth ZAR 42.6 million.⁸⁷ In another incident, a Tanzanian woman was recently arrested at Harare International Airport with 15 kg of ephedrine.⁸⁸ The woman was arriving from India, a country known for illicit drug trade. These facts reveal that drug trafficking is a huge transnational problem for Tanzania. Many of Tanzania's unemployed youth have been enticed by drug lords into doubling as couriers and

⁸² UNODC 'Cannabis in Africa: An Overview' available at http://www.unodc.org/documents/data-and-analysis/Can_Afr_EN_09_11_07.pdf (accessed 28 July 2013).

⁸³ 'Bhang Farming in Forest on the Rise' available at <http://www.ippmedia.com/frontend/?l=49623> (accessed 28 July 2013); and "Trade-East Africa: Low Crop Prices Drive Farmers to Marijuana" available at <http://www.ipsnews.net/2008/11/trade-east-africa-low-crop-prices-drive-farmers-to-marijuana/> (accessed 28 July 2013).

⁸⁴ ESAAMLG 'Laundering the Proceeds of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances' (2011) 12-13.

⁸⁵ 'Tanzania: Police Impound 55,000 kilos of narcotics' available at <http://allafrica.com/stories/201212210041.html> (accessed 28 July 2013).

⁸⁶ 'Drug Squad Impounds 210 kg of Heroin in Tanzania' available at <http://www.netnewspublisher.com/drug-squad-impounds-210kg-of-heroin-in-tanzania/> (accessed 28 July 2013).

⁸⁷ 'Tanzanians Seized in Dar, Jo'burg with Tsh 7.1 billion drugs' available at <http://www.thecitizen.co.tz/News/-/Tanzanians--seized-in-Dar--Jo-burg-with-Sh7-1bn-drugs/-/1840392/1908334/-/1yu8yw/-/index.html> (accessed 28 July 2013).

⁸⁸ 'Tanzanian Woman Arrested for Drug Possession' available at <http://www.newsday.co.zw/2013/07/09/tanzanian-woman-arrested-for-drug-possession/> (accessed 28 July 2013).

swallowers of illicit narcotics pallets destined for other parts of Africa, Europe and Asia. Many of the couriers/mules have been arrested and prosecuted in various countries. Some are now languishing in jails and others have been executed. Anecdotal evidence shows that drug trafficking has greatly contributed to the growth of modern organised criminality in Tanzania. Today, the laundering of the proceeds from the illicit narcotics trade is one of the major forms of organised crime in Tanzania. In a bid to curb drug trafficking, Parliament has enacted the Drugs and Prevention of Illicit Traffic in Drugs Act.⁸⁹ This law criminalises illicit dealings in drugs. It provides for the forfeiture of property derived from the illicit narcotics trade. It also implements the 1988 Vienna Convention. The Vienna Convention, among other things, prohibits trade in narcotics⁹⁰ and enjoins States Parties to confiscate the proceeds from the narcotics trade.⁹¹ In addition, the government has set up an anti-drug trafficking taskforce comprising of officers from the police and the intelligence.⁹² The government is now considering a bill that aims to provide a legal framework to give effect to what the anti-narcotics taskforce needs to do.⁹³

2.4.2 Poaching and Illicit Trafficking in Endangered Wildlife

Poaching and the illicit trade in wildlife is a very lucrative transnational criminal activity, second only to drug trafficking.⁹⁴ This illegal trade involves trafficking in animal parts and endangered

⁸⁹ Act No.9 of 1995.

⁹⁰ Article 3.

⁹¹ Article 5.

⁹² 'Tanzania: Government Steps Up Anti-Narcotics Fight' available at <http://allafrica.com/stories/201106141563.html> (accessed 29 July 2013).

⁹³ 'Tanzania: State Drafts Anti-Drugs Bill' available at <http://allafrica.com/stories/201211121382.html> (accessed 29 July 2013).

⁹⁴ Warchol GL 'The Transnational Illegal Wildlife Trade' (2004) 17 *Criminal Justice Studies: A Critical Journal of Crime, Law and Society* 58.

animal species. Tanzania has 15 national parks which harbour the nation's wildlife resources.⁹⁵ This natural endowment has attracted criminal gangs within and outside the country. Ivory poaching is the most prevalent form of poaching in Tanzania⁹⁶ and transnational criminal gangs have been killing about 20 elephants a month for their tusks.⁹⁷ This has contributed even more to the dwindling population of elephants in Tanzania.⁹⁸ More than 1 000 people were arrested for poaching between December 2012 and March 2013.⁹⁹ It is believed that poaching and illicit trafficking of endangered wildlife in Tanzania is perpetrated by organised criminal syndicates in collusion with corrupt law enforcement officers.¹⁰⁰ Just recently, two prison officers were arrested, together with others, for giraffe poaching. There are also some Tanzanians who have been arrested in the neighbouring Kenya, trying to export elephant tusks illegally from there.¹⁰¹



⁹⁵ http://www.tanzaniaparks.com/useful_documents.html# (accessed on 29 July 2013).

⁹⁶ 'Tanzania Government Responds over Elephant Poaching' available at <http://www.eturbonews.com/36288/tanzania-government-responds-over-ivory-poaching> (accessed 29 July 2013).

⁹⁷ 'Tanzania Battles Elephant Poaching' available at <http://www.theeastafrican.co.ke/news/Tanzania-battles-ivory-poaching/-/2558/1395686/-/view/printVersion/-/n88qf7/-/index.html> (accessed 29 July 2013).

⁹⁸ 'Poachers Decimate Tanzania's Elephant Herds' available at <http://www.npr.org/2012/10/25/163563426/poachers-decimate-tanzanias-ivory-herds> (accessed 29 July 2013).

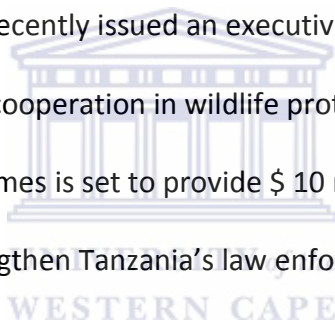
⁹⁹ 'Tanzanian Minister For Tourism Says Over 1,000 Suspects Arrested In Anti-Poaching Drive' available at <http://www.africanjournalist.com/news/tanzanian-minister-tourism-says-over-1000-suspects-arrested-anti-ivory-poaching-drive> (accessed on 29 July 2013).

¹⁰⁰ 'Organised poaching, illegal trade — why Tanzania lost out at Cites meet' available at <http://www.theeastafrican.co.ke/news/-/2558/887848/-/view/printVersion/-/lte9d9/-/index.html> (accessed on 29 July 2013); Tanzania: Two Tanzanian Police Officers Apprehended With Illegal Elephant Tusks, available at <http://allafrica.com/stories/201301170324.html> (accessed 29 July 2013).

¹⁰¹ 'Chinese and Tanzania nationals arrested smuggling ivory as a poacher is gunned down' available at <http://www.kws.org/info/news/2013/~18febpoacher.html> (accessed 29 July 2013).

The fact of the matter is that there is a huge demand in China and other Asian markets for elephant tusks coming from Tanzania and the East African region.¹⁰² A Tanzanian media outlet has recently alluded to a report that implicates China in the illegal ivory trade in Tanzania.¹⁰³

International criminal syndicates profit hugely from the poaching. In response to the devastating effect the poaching has on the national economy, the Parliament of Tanzania has enacted the Wildlife Conservation Act.¹⁰⁴ Tanzania is also a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.¹⁰⁵ This signifies the government's commitment to international cooperation in fighting wildlife crimes. In addition, the US President, Barack Obama, recently issued an executive order that would, among other things, reinvigorate transnational cooperation in wildlife protection.¹⁰⁶ This US-led international initiative for combating wildlife crimes is set to provide \$ 10 million in aid to Tanzania and other countries.¹⁰⁷ This would help strengthen Tanzania's law enforcement capability.



2.4.3 Corruption

Corruption is a global problem that hampers economic development. In many parts of the world, it is hard to gain access to public social services without paying a bribe.¹⁰⁸ Tanzania has

¹⁰² '695 Elephant Tusks seized in Malaysia' available at

<http://www.monkeyland.co.za/index.php?comp=article&op=view&id=1918> (accessed 29 July 2013).

¹⁰³ 'Dar's Secret Poaching Report Implicates China' available at <http://www.ipppmedia.com/frontend/?l=54837> (accessed 29 July 2013).

¹⁰⁴ Act No.5 of 2009.

¹⁰⁵ CITES, The Convention was adopted on 3rd March 1973 and entered into force on 1st July 1975. Available at <http://www.cites.org/eng/disc/E-Text.pdf> (accessed 29 July 2013).

¹⁰⁶ Executive Order on Combating Wildlife Trafficking, available at http://www.cites.org/eng/news/pr/2013/us_wildlife_eo.pdf (accessed 29 July 2013).

¹⁰⁷ 'Obama Hears the Voice of Wildlife Conservationists' available at <http://www.eturbonews.com/35863/obama-hears-voice-wildlife-conservationists> (accessed 29 July 2013).

¹⁰⁸ 'Countering the Global Problem of Corruption' available at <http://www.unodc.org/newsletter/200601/page004.html> (accessed 29 July 2013).

for years been grappling with the problem of both petty and grand corruption in the public sector.¹⁰⁹ The most affected area of the public sector is the law enforcement sector. This includes the judiciary and the police. Just recently, the Minister for Home Affairs, Dr. Emmanuel Nchimbi, admitted in public that corruption is rampant in the police.¹¹⁰ Tanzania has been ranked number 102 out of 176 on the global corruption perception index.¹¹¹ This shows that public sector corruption is widespread. In East Africa, Tanzania is second to Uganda as regards the incidence of bribery.¹¹²

The Tanzanian Parliament has enacted laws and designated institutions to fight corruption. The Prevention and Combating of Corruption Act¹¹³ establishes the Prevention and Combating of Corruption Bureau (PCCB) to enforce anti-corruption measures.¹¹⁴ Tanzania has also ratified the United Nations Convention against Corruption¹¹⁵ and the United Nations Convention against Transnational Organised Crime (the Palermo Convention).¹¹⁶ The government's commitment to eradicating corruption has resulted in senior politicians being charged for corruption. Since 2008, two cabinet ministers have been facing prosecution for abuse of office which resulted in

¹⁰⁹ 'Pay Reform and Corruption in Tanzania's Public Service' available at <http://www.tzonline.org/pdf/payreformandcorruptionintanzaniaspublic.pdf> (accessed 29 July 2013).

¹¹⁰ 'Tanzania: Corruption Makes More Inroads in Police Force' available at <http://allafrica.com/stories/201307290123.html> (accessed 29 July 2013).

¹¹¹ http://issuu.com/transparencyinternational/docs/cpi_2012_report?e=2496456/2010281 (accessed 29 July 2013).

¹¹² The East African Bribery Index 2012, available at http://www.transparency.org/news/pressrelease/the_east_african_bribery_index_2012_bribery_levels_remain_high_in_kenya (accessed 29 July 2013).

¹¹³ Chapter 329 of the Laws of Tanzania.

¹¹⁴ Section 5.

¹¹⁵ It was adopted on 31 October 2003 and entered into force on 14 December 2005. Available at http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf (accessed 14 June 2013).

¹¹⁶ It was adopted in Palermo on 15 November 2000 and came into force on 29 September 2003. Available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> (accessed 14 June 2013).

a loss of revenue to the government in the amount of over Shillings 11.7 billion (US\$ 7.3 million).¹¹⁷ The case is, at the time of writing, still pending in court. In 2008, Tanzania's Prime Minister, Edward Lowassa, resigned from office due to corruption over a contract in the energy sector.¹¹⁸ This led to the dissolution of the cabinet by the President.¹¹⁹ There are numerous prosecutions for corruption in progress involving senior government employees as well as mid-level officials. However, corruption has continued to be one of the most prevalent forms of organised criminality in Tanzania. It has, for example, enabled criminals to deal freely in illicit drugs and to export elephant tusks illegally.

2.4.4 Theft of Cars

Theft of cars is another lucrative undertaking for organised criminal gangs in Tanzania. Sophisticated and well-connected criminal rackets have been operating at the international level from Tanzania. Car theft is one of the crimes that preoccupy organised criminal gangs in the Southern African Development Community (SADC) region.¹²⁰ South Africa, the most affected country, is the main source of stolen cars, alongside Namibia and Zimbabwe. The stolen cars are transported by road to East African countries for sale. In 2001, Tanzanian police seized hundreds of vehicles which were stolen in South Africa.¹²¹

¹¹⁷ 'Tanzania: Court Told of Mramba and Yona Confessions' available at <http://allafrica.com/stories/200909180246.html> (accessed 29 July 2013); Tanzania Charges ex-minister over deal, available at <http://mg.co.za/article/2008-11-26-tanzania-charges-exministers-over-deal> (accessed 29 July 2013).

¹¹⁸ 'Tanzania PM tender resignation over corruption allegations' available at <http://www.aaj.tv/2008/02/tanzanian-pm-tenders-resignation-over-corruption-accusations/> (accessed 29 July 2013).

¹¹⁹ 'Tanzanian President Dissolves Cabinet' available at <http://www.google.com/hostednews/afp/article/ALeqM5hBovlBZ4i-li3lZAprhyhaj45Cq> (accessed 29 July 2013).

¹²⁰ Gastrow P 'The SADC Region: A Common Market for Criminals?' (2001) 10 *African Security Review*.

¹²¹ 'Hundreds of Stolen Cars Turn Up in Tanzania' available at <http://www.iol.co.za/news/africa/hundreds-of-stolen-cars-turn-up-in-tanzania-1.71837?ot=inmsa.ArticlePrintPageLayout.ot> (accessed 30 July 2013).

In recent years, a Tanzanian national, Mponjoli Malakasuka, was convicted in the UK of conspiracy to steal cars and export them to Tanzania for sale.¹²² He was the mastermind of a crime racket in the UK which targeted luxury cars for export. It has been reported that he successfully stole and exported cars worth US\$ 2.5 million.¹²³ In some incidents, he was hiring cars and exporting them. He would later tell a car hire company that the car had been stolen. When the police arrested him they found him with over thirty credit cards in fake identities and 70 bank accounts, which he used to launder the profits. Just recently, the police impounded 22 cars which had been stolen in South Africa, Japan, Malaysia and the UK.¹²⁴

2.4.5 Human Trafficking and Migrant Smuggling

Human trafficking and smuggling of immigrants is a booming criminal endeavour in Tanzania and East Africa.¹²⁵ A recent US report labels Tanzania as “a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking”.¹²⁶

Internal trafficking is much higher than transnational trafficking. There is internal trafficking of young women for domestic servitude and sexual exploitation in urban centers. This iniquitous crime is committed by well-connected criminal rackets scattered all over the country. A 2009

¹²² ‘Stolen cars syndicate man has jail sentence doubled’ available at <http://www.thisday.co.tz/?l=10178> (accessed 30 July 2013).

¹²³ ‘How UK Police nailed Dar Young Millionaire’ available at <http://www.ippmedia.com/frontend/?l=31991> (accessed 30 July 2013).

¹²⁴ ‘Tanzania Police arrest 61 suspects, confiscate stolen vehicles’ available at <http://in2eastfrica.net/tanzania-police-arrest-61-suspects-confiscate-stolen-vehicles/> (accessed 30 July 2013).

¹²⁵ An International Organisation for Migration report titled ‘Human Trafficking in Eastern Africa: Research Assessment and Baseline Information in Tanzania, Kenya, Uganda, and Burundi’, at page 67. Available at http://www.google.co.za/url?sa=t&rct=j&q=human%20trafficking%20in%20eastern%20africa&source=web&cd=3&sqi=2&ved=0CEqQFjAC&url=http%3A%2F%2Fwww.eac.int%2Fmigration%2Findex.php%3Foption%3Dcom_docman%26task%3Ddoc_download%26qid%3D161%26Itemid%3D186&ei=GA_5UeL5EaqU0AW-woCACQ&usq=AFQjCNGkH5c0pozPXidMW-X5fbc-nDaZIA (accessed 31 July 2013).

¹²⁶ US State Department Report on Human Trafficking (2013) 356. Available at <http://www.state.gov/documents/organization/210742.pdf> (accessed 31 July 2013).

report reveals that internal human trafficking for prostitution and domestic servitude is rampant in 8 regions namely Iringa, Morogoro, Dodoma, Manyara, Arusha, Singida, Tanga, and Dar es Salaam.¹²⁷ The crime of smuggling immigrants is just as big a problem. Organised criminal gangs operating in Tanzania have been smuggling immigrants, mainly Somalis and Ethiopians, into Tanzania at a huge financial profit.¹²⁸ In 2012, 10 000 illegal immigrants were arrested,¹²⁹ but the problem persists to the present day.¹³⁰ The smuggled immigrants hide in trucks carrying goods. In 2012, about 45 illegal immigrants died from suffocation in a truck in Dodoma, Tanzania, en route to Malawi.¹³¹ Despite the government's enactment of the Anti-Human Trafficking Act¹³², the lack of means to implement it remains a worrying impediment to dealing with this menacing scourge effectively.¹³³

2.5 The Scale of Money Laundering in Tanzania

There is no official information on how much money is laundered in Tanzania on an annual basis. Anecdotal evidence suggests that it runs into the billions. On 10 September 1999, British Aerospace Group (BAE), PLC won a tender to supply the Tanzanian government with radar defence system at a contract price of \$ 39.97 million. The deal was honoured and the radar was

¹²⁷ Kamazima SR 'Human Trafficking Baseline Assessment in Tanzania: Findings from Selected Regions' available at <http://www.nacp.go.tz/documents/humantrafficking.pdf> (accessed 31 July 2013).

¹²⁸ 'Tanzania Accuses 14 Somalis of Human Trafficking' available at <http://www.theeastafrican.co.ke/news/Tanzania-accuses-14-Somalis-of-human-trafficking/-/2558/1760098/-/ya927k/-/index.html> (accessed 31 July 2013).

¹²⁹ 'Over 10,000 Illegal Immigrants Arrested last year in Tanzania' available at <http://www.ippmedia.com/frontend/?l=55295> (accessed 31 July 2013).

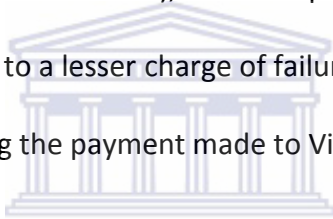
¹³⁰ '8 Ethiopians Held over Illegal Entry into Tanzania' available at <http://girumpost.com/?p=1223> (accessed 31 July 2013).

¹³¹ 'At least 45 illegal immigrants died in central Tanzania due to suffocation' available at <http://somalilandpress.com/at-least-45-illegal-immigrants-died-in-central-tanzania-due-to-suffocation-31103> (accessed 31 July 2013).

¹³² Act No.6 of 2008.

¹³³ US State Department Report on Human Trafficking 257.

delivered to Tanzania. In 2004, the British Serious Fraud Office (SFO) ventured into an investigation of BAE PLC transactions across the world after it received allegations of corruption and bribery. The investigation concluded that the Tanzanian deal was soiled with corruption. In a plea bargain agreement between BAE and SFO, it was revealed that BAE paid a total of \$ 12.4 million to a Tanzanian marketing advisor, Shailesh Vithlani, for making Tanzanian officials more amenable to the deal.¹³⁴ The payment involved four companies: BAE used the Red Diamond Trading Limited Company (incorporated in the British Virgin Islands) and BAE (Operations) LTD to channel the money to the Envers Trading Corporation (incorporated in Panama) and Merlin International Limited (incorporated in Tanzania), both companies controlled by Vithlani.¹³⁵ For the settlement, BAE pleaded guilty to a lesser charge of failure to maintain adequate and accurate financial records regarding the payment made to Vithlani's offshore companies.¹³⁶



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In the case of *Regina v BAE Systems PLC*, BAE admitted to breaching Section 221 of the Companies Act 1985 by not providing accounting records with respect to the \$ 12.4 million paid to Vithlani.¹³⁷ The court alluded to an admission by BAE that such money could have been used by Vithlani to influence the negotiation process with the government of Tanzania in favour of BAE.¹³⁸ In short, the court found BAE guilty under the law for failing to “keep accounting records sufficient to show and explain the payments, and identifying the matters in respect of

¹³⁴ Settlement Agreement between Serious Fraud Office and BAE Systems PLC, at paragraphs 4.3 and 4.4 of page 2. Available at <http://www.sfo.gov.uk/media/133535/bae%20-%20settlement%20agreement%20and%20basis%20of%20plea.pdf> (accessed 31 July 2013).

¹³⁵ Settlement Agreement between SFO and BAE Systems PLC, at paragraph 4.2 of page 2.

¹³⁶ Settlement Agreement between SFO and BAE Systems PLC, at paragraphs 4.6 and 4.7 of page 2.

¹³⁷ Judgment of the case available at

<http://www.sfo.gov.uk/media/133543/bae%20opening%20statement%2020.12.10.pdf> (accessed 31 July 2013).

¹³⁸ Judgment at paragraph 24 and 25 of page 9.

which the expenditure took place”.¹³⁹ BAE was fined £ 500 000.¹⁴⁰ Under the settlement agreement between SFO and BAE, BAE agreed to pay £ 30 million as compensation to the people of Tanzania.¹⁴¹ In 2012, BAE paid £ 29.5 million which, according to a memorandum of understanding between Tanzania, SFO, BAE, and the UK government, would be used for educational projects in Tanzania.¹⁴²

This is a classic case of grand corruption and money laundering. Unlawful money was paid to Tanzanian officials. This money has been, as we shall see, laundered through offshore banks and then integrated into the legal economy. The facilitator, Vithlani, had negotiated bribes with Tanzanian officials and made payments through wire transfers from a Swiss bank.¹⁴³ Between June 1997 and April 1998, Andrew Chenge, Tanzania’s then Attorney-General, received money transfers worth US\$ 1.5 million into a Barclays account number 59662999 in Jersey.¹⁴⁴ The bank account was owned by Franton Investment Limited, an offshore company set up by Chenge in Jersey for the purpose of money laundering. In May 1998, Mr.Chenge transferred US\$ 600 000 to an account owned by Langley Investments Limited, an offshore company controlled by Dr.Idrissa Rashid who was the Governor of the Bank of Tanzania at the time.¹⁴⁵ The laundering process was completed in September 1999 when Chenge authorised the transfer of US\$ 1.2

¹³⁹ Paragraphs 36 and 39 of the Judgment.

¹⁴⁰ ‘BAE Fined in Tanzania Defence Contract Case’ available at <http://www.sfo.gov.uk/press-room/press-release-archive/press-releases-2010/bae-fined-in-tanzania-defence-contract-case.aspx> (accessed 31 July 2013).

¹⁴¹ Para 5 of the Settlement Agreement.

¹⁴² ‘BAE Systems will pay towards educating children in Tanzania after signing an agreement brokered by the Serious Fraud Office’ available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/bae-systems-will-pay-towards-educating-children-in-tanzania-after-signing-an-agreement-brokered-by-the-serious-fraud-office.aspx> (accessed 31 July 2013).

¹⁴³ ‘Military Radar Probe: The Key Suspects and the Case against them’ available at <http://www.thisday.co.tz/?l=10648> (accessed 31 July 2013).

¹⁴⁴ Feinstein A *The Shadow World: Inside the Global Arms Trade* (2011) 194.

¹⁴⁵ Feinstein (2011) 194.

million from the Franton account to the Royal Bank of Scotland in Jersey. The two Tanzanian officials, given their mandate under the law, were crucial for any contractual negotiations involving the government. The Attorney-General was responsible for the legal clearance, while the governor had a say in the financing aspects. Andrew Chenge, who held a ministerial position in 2008, resigned when investigations into BAE dealings implicated him.¹⁴⁶

This scenario sheds light on how widespread the problem of money laundering is in Tanzania. It points to a fact that organised crime has permeated government institutions in Tanzania.

Furthermore, it supports an assertion that politically exposed persons have been using shell companies and offshore banks to clean dirty money emanating from corruption and other illegal undertakings. It is submitted that the UK justice system did not properly handle the radar scandal. The word 'corruption' was carefully avoided in the judgment. The British court wrongly stated that what BAE did amounted to lobbying, which was not the same as corruption.¹⁴⁷

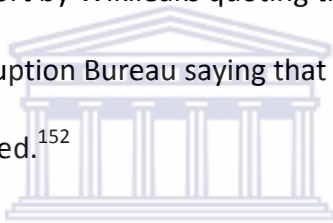
Lobbying by paying kickbacks worth millions of dollars to covert marketing advisors? Perhaps the settlement agreement could help explain this conspiratorial conclusion of the BAE case by the British justice system. The settlement agreement concluded that "it was in the public interest that BAE should be prosecuted on this basis".¹⁴⁸ The basis of the plea agreement was that BAE should be prosecuted for improper and inadequate financial records and **not** corruption. The charge of corruption, if proved, could have dented BAE's business prospects in Europe and the world at large. And this is a company that is so vital for British defence and commercial interests. The settlement agreement was meant to protect wider British interests.

¹⁴⁶ 'Tanzanian Minister Quits over BAE Investigations' available at <http://www.theguardian.com/politics/2008/apr/22/defence.bae> (accessed 31 July 2013).

¹⁴⁷ Judgment, at paragraph 26 of page 9.

¹⁴⁸ Settlement Agreement at paragraph 6.1 of page 3.

The case has been concluded and will never be reopened as there is a clause in the Settlement Agreement that says “there shall be no further investigation or prosecution of any member of the BAE Systems Group for any conduct preceding 5 February 2010”.¹⁴⁹ This means that the Tanzanian officials will never be held to account for the bribes from BAE. Their money laundering endeavours in relation to the BAE dirty money have been condoned. The British court judgment has made Mr.Chenge to claim publicly that he is innocent.¹⁵⁰ Theoretically, the Tanzanian authorities could still investigate the case and prosecute the culprits, but this will not happen as the PCCB has already cleared Chenge of any liability in the radar deal.¹⁵¹ This has aroused suspicion as there is a report by Wikileaks quoting the Director General of the Prevention and Combating of Corruption Bureau saying that the radar deal was dirty and senior government officials were implicated.¹⁵²



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Another red flag for money laundering activities in Tanzania is a recent Swiss National Bank revelation that Tanzanians, mostly politicians and business people, have US\$ 196.87 million stashed in various Swiss accounts.¹⁵³ This issue has aroused public attention as people demand answers as to the legal provenance of the money. Hoarding of money in foreign accounts is a crime under Tanzanian law.¹⁵⁴ The only logical conclusion with regard to the money would be that such money is the proceeds of crimes such as corruption and tax evasion. Owing to the

¹⁴⁹ Clause 8 of the Settlement Agreement at page 2.

¹⁵⁰ ‘Chenge says Crown Court clears him of graft’ available at <http://in2eastafrika.net/chenge-says-crown-court-clears-him-of-graft/> (accessed 31 July 2013).

¹⁵¹ ‘Not Yet Free’ available at <http://www.ippmedia.com/frontend/index.php?!=31033> (accessed 31 July 2013).

¹⁵² ‘US embassy cables: BAE’s dirty deal to sell radar to Tanzania revealed’ available at <http://www.theguardian.com/world/us-embassy-cables-documents/116436> (accessed 31 July 2013).

¹⁵³ ‘Revealed: TZ thieves have Sh315bn in Swiss banks’ available at <http://www.ippmedia.com/frontend/index.php?!=42903> (accessed 1 August 2013).

¹⁵⁴ The Foreign Exchange Act 1992, the Bank of Tanzania Act 2006, and the Banking and Financial Institutions Act of 2006.

government's reluctance to investigate, a Member of Parliament for Kigoma North has demanded a parliamentary probe into Tanzanians who have money in financial havens worldwide.¹⁵⁵ Indeed, Parliament passed Resolution 9/2012, committing the government to investigate Tanzanians hiding money in offshore financial havens.¹⁵⁶ Consequently, the government formed a probe team under the Chairmanship of the Attorney-General, Fredrick Werema.¹⁵⁷ Results of the probe are yet to be tabled in Parliament.¹⁵⁸ However, the probe may not yield any results, for tax havens are notorious for their stringent bank secrecy laws, which obstruct any investigations into the financial affairs of their banks' customers. Furthermore, developing countries like Tanzania lack officials with the forensic skills who know how tax havens work. Attempts by the Tanzanian authorities to extract information from Switzerland have been qualified by the steep preconditions that Switzerland has set to complying with the requests. These are that: Tanzania should provide Swiss authorities with names of account holders and hard evidence on the illegal origin of the money kept in the bank accounts.¹⁵⁹ These preconditions are almost impossible to meet, which effectively translates into non-cooperation from the Swiss. It is doubtful, too, whether the World Bank or the G8 countries would encounter lesser impediments if asked by Tanzania to intervene.

¹⁵⁵ 'English Translation: Zitto Kabwe's Private Motion to Investigate & Recover Money Stashed in Swiss Accounts' available at <https://zittokabwe.wordpress.com/2012/11/12/english-translation-zitto-kabwes-private-motion-to-investigate-recover-money-stashed-in-swiss-accounts/> (accessed 1 August 2013).

¹⁵⁶ 'English Translation on: Tanzanian Parliament Resolution on Hiding Illicit Money Offshore' available at <http://zittokabwe.wordpress.com/2013/05/08/english-translation-on-tanzanian-parliament-resolution-on-hiding-illicit-money-offshore-swissaccounts-tanzania-tackletaxhavens-ryleqerard-nickshaxson-icijorg/> (accessed 1 August 2013).

¹⁵⁷ 'Tanzania: Government Probes Swiss Accounts' available at <http://allafrica.com/stories/201306242243.html> (accessed 1 August 2013).

¹⁵⁸ 'Government not ready with Swiss billions probe results' available at <http://www.ippmedia.com/frontend/?l=53776> (accessed 1 August 2013).

¹⁵⁹ 'Mystery on Dar's offshore billions' available at <http://www.ippmedia.com/frontend/?l=53807> (accessed 1 August 2013).

2.6 Terrorism and Terrorist Financing in Tanzania

Geographical location and geopolitical factors have made Tanzania an attractive country for terrorist activities. The country's proximity to Somalia's Al-Shabab is the prime terrorist threat of concern.¹⁶⁰ On 7 October 2013, the Tanzanian police arrested eleven people who were conducting the Al-Shabab-style military drills in a forest in Mtwara region.¹⁶¹ The terrorist suspects were in possession of various traditional weapons and digital video discs on the Al-Shabab training methods. The 1998 terrorist bombing of the US embassy in Dar es Salaam has thus far been the only major terrorist attack in Tanzania.¹⁶² A Tanzanian national, Ahmed Khalfan Ghailani, was convicted of conspiring in the 1998 attacks on US establishments in Kenya and Tanzania.¹⁶³ Ghailani received a life sentence for the attacks.¹⁶⁴ He has since appealed the conviction.¹⁶⁵ At the time of writing, a decision on his appeal has not yet been handed down. Despite the lack of terrorist attacks in Tanzania since 1998, several foreign nationals have been arrested for being wanted for terrorism charges abroad. In June 2012, Tanzanian security personnel arrested a German national of Turkish origin, Emrah Erdogan, for involvement in terrorist attacks.¹⁶⁶ Likewise, in July 2013, Tanzanian security personnel arrested a British

¹⁶⁰ US State Department Country Reports on Terrorism 8. Available at <http://www.state.gov/documents/organization/210204.pdf> (accessed 1 August 2013).

¹⁶¹ '11 Shabab 'recruits' arrested after reports of secret drills' available at <http://www.thecitizen.co.tz/News/11-nabbed-with-Shabab-training-manuals/-/1840392/2023368/-/daqytoz/-/index.html> (accessed 8 October 2013).

¹⁶² US State Department Country Reports on Terrorism 36.

¹⁶³ Ahmed Ghailani Verdict available at <http://www.justice.gov/usao/nys/pressreleases/November10/ghailaniahmedkhalfanverdictpr.pdf> (accessed 1 August 2013).

¹⁶⁴ 'Ex-Detainee Gets Life Sentence in Embassy Blasts' available at http://www.nytimes.com/2011/01/26/nyregion/26ghailani.html?_r=0 (accessed 1 August 2013).

¹⁶⁵ 'Embassies bomber appeals conviction for denial of speedy trial' available at http://www.upi.com/Top_News/US/2013/05/09/Embassies-bomber-appeals-conviction-for-denial-of-speedy-trial/UPI-40671368102313/#ixzz2aIMc9e1x (accessed 1 August 2013).

¹⁶⁶ 'Tanzania arrests man over recent Nairobi attack' available at <http://www.bbc.co.uk/news/world-africa-18426049> (accessed 1 August 2013).

terrorist suspect, Assan Ali Iqbal, as he was trying to flee to Malawi.¹⁶⁷ These arrests indicate that terrorists have working networks in Tanzania and money, whether licit or illicit, is used for such operations.

2.7 Conclusion

Government efforts to combat money laundering and the financing of terrorism are hampered by the lack of information communication technology literacy, porous country borders, lack of financial resources, lack of skilled criminal justice personnel to deal with white collar criminality, corruption and a lethargic commitment to the Rule of Law.



¹⁶⁷ 'Tanzanian Police Arrest British Terror Suspect' available at <http://www.bbc.co.uk/news/uk-23209089> (accessed 1 August 2013).

CHAPTER THREE

THE ROLE OF THE MUTUAL EVALUATION EXERCISE IN THE IMPLEMENTATION OF INTERNATIONAL MEASURES AGAINST MONEY LAUNDERING AND THE FINANCING OF TERRORISM

3.1 Introduction

This chapter deals with implementation of international minimum standards for combating money laundering and terrorist financing. The mutual evaluation exercise is deemed as the best tool for achieving compliance with such standards. The chapter also provides an understanding of the mutual evaluation exercise and the role it plays in the implementation of FATF standards. Finally, it discusses the mutual evaluation of Tanzania by ESAAMLG and Tanzania's subsequent response to the report.

3.2 International Anti-Money Laundering and Terrorist Financing Legal Framework

Transnational organised crime needs to be combated by resorting to the international legal framework against illicit profits.¹⁶⁸ No single state can assume this task alone. It is for this reason that the UN has adopted conventions specifically devised for curbing transnational crimes such as money laundering and terrorist financing. Likewise, inter-governmental organisations like the FATF have also developed international standards for preventing economic crimes.

¹⁶⁸ Leong (2007) 55.

3.2.1 International Anti-Money Laundering Law

Trade in narcotics reached unprecedented levels in the 1980s, prompting the international community, led by the US, to adopt countermeasures aimed at stopping the laundering of the proceeds from the illegal trade in narcotics.¹⁶⁹ Against this background, the discussion below focuses on the international approaches to anti-money laundering and combating the financing of terrorism.

Shaw argues that an authoritative description of the sources of international law is article 38(1) of the Statute of the International Court of Justice (ICJ),¹⁷⁰ which lists the sources of internal law as ‘international conventions, international custom, general principles of law recognised by civilised nations, judicial decisions and teachings of most highly qualified publicists’.¹⁷¹ Let us now look at the international law norms against money laundering emanating from conventions and other sources.



(a) *The United Nations Convention against Illicit Traffic in Drugs and Psychotropic*

Substances (1988 Vienna Convention).¹⁷² This convention calls for member states to: criminalise money laundering;¹⁷³ adopt measures for identification, tracing, freezing or confiscation of proceeds of drug-related offences;¹⁷⁴ designate drug-related offences

¹⁶⁹ Pieth M ‘International Standards against Money Laundering’ in Pieth M & Aiolfi G (eds) *A Comparative Guide to Anti-Money Laundering: A Critical Analysis of System in Singapore, Switzerland, the UK and the USA* (2004) 3 – 5; Alldridge P ‘Money Laundering and Globalisation’ (2008) 35 *Journal of Law and Society* 438.

¹⁷⁰ Shaw MN *International Law* 5ed (2003) 66.

¹⁷¹ Statute of the International Court of Justice available at <http://www.icj-cij.org/documents/?p1=4&p2=2&p3=0> (accessed 13 June 2013).

¹⁷² It was adopted in Vienna on 20 December 1988 and came into force on 11 November 1990. Available at http://treaties.un.org/Pages/ViewDetails.aspx?mtdsq_no=VI-19&chapter=6&lang=en (accessed 13 June 2013).

¹⁷³ Article 3(1) (b).

¹⁷⁴ Article 5.

extraditable among them;¹⁷⁵ and to afford one another mutual legal assistance in relation to crimes under the convention.¹⁷⁶ The convention does not expressly mention the term *money laundering*, but the wording of Article 3 replicates traditional elements that constitute the crime of money laundering.

(b) *The United Nations Convention against Transnational Organised Crime*.¹⁷⁷ It criminalises: participation in organised crime;¹⁷⁸ laundering of criminal profits;¹⁷⁹ corruption;¹⁸⁰ and obstruction of justice.¹⁸¹ To prevent criminals from enjoying their ill-gotten gains, it provides for freezing or confiscation of proceeds of crime.¹⁸² The Convention enjoins States Parties to establish regulatory and supervisory measures for banks and non-banking financial institutions in order to detect and prevent money laundering.¹⁸³ States are also required to establish a financial intelligence organ for gathering, analysing and sharing information on money laundering activities.¹⁸⁴ Monitoring cross-border movement of cash is another anti-money laundering requirement under the Convention.¹⁸⁵ Unlike the 1988 Vienna Convention which is limited to drug-related

¹⁷⁵ Article 6.

¹⁷⁶ Article 7.

¹⁷⁷ It was adopted in Palermo on 15 November 2000 and came into force on 29 September 2003. Available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> (accessed 14 June 2013).

¹⁷⁸ Article 5.

¹⁷⁹ Article 6.

¹⁸⁰ Article 8.

¹⁸¹ Article 23.

¹⁸² Article 12 and 13.

¹⁸³ Article 7(1) (a).

¹⁸⁴ Article 7(1) (b).

¹⁸⁵ Article 7(2).

offences, the Palermo Convention widens the scope of predicate crimes¹⁸⁶ for money laundering to include all *serious crimes*.¹⁸⁷ Likewise, member states are enjoined to establish 'the widest range of predicate offences' for money laundering.¹⁸⁸ To promote international cooperation in the fight against organised crime, the Convention provides for extradition¹⁸⁹ and mutual legal assistance.¹⁹⁰

(c) *The United Nations Convention against Corruption*.¹⁹¹ This convention criminalises money laundering¹⁹² in the same manner as the Palermo Convention and enjoins signatories to apply criminalisation of money laundering to 'the widest range of predicate offences'.¹⁹³ Predicate offences for money laundering include those committed abroad subject to application of the principle of double criminality.¹⁹⁴

(d) *The Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (The European Convention*

¹⁸⁶ A predicate crime refers to a crime that brings about proceeds that need laundering so as to obscure the illegal provenance of the proceeds.

¹⁸⁷ Article 6(2) (b). According to article 2(b) of the Convention, 'serious crime' means an offence attracting a prison sentence of 4 years or more serious punishment. This threshold would obviously cover a greater number of crimes in most jurisdictions.

¹⁸⁸ Article 6(2) (a).

¹⁸⁹ Article 16.

¹⁹⁰ Article 18.

¹⁹¹ It was adopted on 31 October 2003 and entered into force on 14 December 2005. Available at http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf (accessed 14 June 2013).

¹⁹² Article 23(1).

¹⁹³ Article 23(2) (a).

¹⁹⁴ Article 23(2) (c). The principle of double criminality is a legality principle that applies to extradition requests amongst States whereby it requires that the crime in respect of which an extradition is sought must be a crime in both the requested and the requesting States. See Cryer R et al *An Introduction to International Criminal Law and Procedure* 2ed (2010) 89.

against Money Laundering and Terrorist Financing).¹⁹⁵ The convention criminalises the laundering of proceeds of crime¹⁹⁶ within the confines of the Palermo Convention. The threshold requirement for predicate offences under the convention is reasonably wide.¹⁹⁷ It includes serious offences under domestic laws. Predicate crimes also include conduct that occurred in another state subject to the principle of double criminality.¹⁹⁸

(e) *The 40 Recommendations of the FATF*. The problem of the illegal drug trade and money laundering propelled developed industrialised countries to establish the FATF for the purpose of combating money laundering.¹⁹⁹ The FATF is an inter-governmental body whose mandate is to develop and promote policies for combating money laundering and terrorist financing.²⁰⁰ The FATF issued its first set of Recommendations in 1990. The Recommendations built upon the provisions of the 1988 Vienna Convention as well the Basel Statement of Principles, which set out the standards that banks should maintain in respect of combating money laundering²⁰¹. Generally speaking, the 1990 Recommendations aimed at preventing misuse of financial institutions by money launderers. However, the Recommendations applied only to banks and focused on drug trafficking as a predicate offence for money laundering.²⁰² In 1996 the FATF revised its Recommendations to enlarge the scope of predicate offences beyond those involving

¹⁹⁵ It was adopted in Warsaw, Poland on 16 May 2005 and entered into force on 1 May 2008. Available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/198.htm> (accessed 14 June 2013).

¹⁹⁶ Article 9(1).

¹⁹⁷ Article 9(4).

¹⁹⁸ Article 9(7).

¹⁹⁹ Scherrer A *G8 against Transnational Organised Crime* (2009) 13 – 14. The FATF was established in 1989 during the French Chairmanship of the G7 group.

²⁰⁰ Damais A 'The Financial Action Task Force' in Muller WH, Kalin CH, & Goldworth JG (eds) (2007) 71.

²⁰¹ Leong (2007) 59.

²⁰² Pieth (2004) 12.

dealing in drugs.²⁰³ Similarly, the FATF Recommendations underwent a major overhaul in 2003 to keep abreast of new money laundering methods employed by criminals.²⁰⁴ The 2003 Recommendations offer an approach to defining the scope of predicate crimes under three options: include all crimes; define predicates by categorisation of offences; or list specific crimes as predicates. They also introduce tighter reporting requirements as well as broadening the scope of professionals bound by anti-money laundering rules.²⁰⁵ The FATF Recommendations have been domesticated in many countries. Nevertheless, the Recommendations are soft law and, therefore, not binding on states.²⁰⁶ Being *soft law*, the Recommendations are significant in signalling the evolution and establishment of guidelines that could ultimately crystallise into binding norms under international law.²⁰⁷ It is only a matter of time for the FATF Recommendations to become binding under international law as there are some *binding treaties* which obligate member states to implement the Recommendations.²⁰⁸

²⁰³ Pieth (2004) 15.

²⁰⁴ Damais (2007) 74.

²⁰⁵ Pieth (2004) 16 – 17.

²⁰⁶ Aust (2010) 11.

²⁰⁷ Shaw (2003) 111.

²⁰⁸ Article 7(3) of the Palermo Convention requires states to use “as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money laundering” when establishing regulatory and supervisory regime to combat money laundering. By the same token, Article 13(1) of the European Convention on Money Laundering and Terrorist Financing states that “Each Party shall adopt such legislative and other measures ... to prevent money laundering and shall take due account of applicable international standards, including in particular the recommendations adopted by the Financial Action Task Force .”

3.2.2 International Anti-Terrorist Financing Law

International efforts to combat terrorist financing intensified after the September 11 attacks on the Twin Towers and the Pentagon in the US.²⁰⁹ However, before 9/11, the UN had already passed a Resolution which, among other things, targeted the finances of the terrorist group, al Qaeda.²¹⁰ International instruments for curbing terrorist financing are:

(a) *International Convention for the Suppression of the Financing of Terrorism (Convention against Terrorist Financing)*.²¹¹ The Convention criminalises terrorist financing.²¹²

Liability for terrorist financing attaches not only to individuals but also organisations with a legal personality.²¹³ It also provides for freezing and confiscation of terrorist finances as well as proceeds of terrorist activities.²¹⁴

(b) *The United Nations Security Council Resolution 1373 (SCR 1373)*.²¹⁵ The Resolution requires states to: criminalise financing of terrorism;²¹⁶ freeze financial resources of terrorists and their organisations including their supporters;²¹⁷ prohibit donation of funds to terrorists;²¹⁸ prosecute individuals who participate in terrorist financing and

²⁰⁹ Biersteker TJ, Eckert SE & Romaniuk P 'International Initiatives to Combat the Financing of Terrorism' in Biersteker JT & Eckert SE (eds) (2008) 234 – 235.

²¹⁰ Paragraph 4(b) of the UN Security Council Resolution 1267 of 15 October 1999 available at [http://www.un.org/qa/search/view_doc.asp?symbol=S/RES/1267\(1999\)](http://www.un.org/qa/search/view_doc.asp?symbol=S/RES/1267(1999)) (accessed 17 June 2013).

²¹¹ It was adopted on 9 December 1999 and entered into force on 10 April 2002. Available at <http://www.un.org/en/sc/ctc/docs/conventions/Conv12.pdf> (accessed 17 June 2013).

²¹² Article 2.

²¹³ Article 5.

²¹⁴ Article 8.

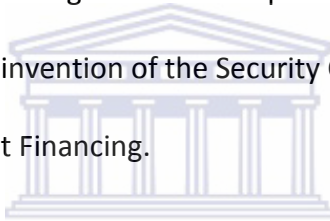
²¹⁵ Adopted on 28 September 2001. Available at https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf (accessed 18 June 2013).

²¹⁶ Paragraph 1(b) of the Resolution.

²¹⁷ Paragraph 1(c) of the Resolution.

²¹⁸ Paragraph 1(d) of the Resolution.

perpetration of terrorist acts;²¹⁹ and to cooperate with one another in criminal matters involving terrorist acts and terrorist financing.²²⁰ Furthermore, the Resolution calls upon states to ratify the Convention against Terrorist Financing.²²¹ To ensure compliance with the Resolution, a special committee of the Security Council has been established to monitor implementation of the resolution by states.²²² Security Council Resolution (SCR) 1373 constitutes a decision under Chapter VII of the UN Charter²²³ and is therefore binding on all members of the UN.²²⁴ It declares *international terrorism* a threat to international peace and security and imposes collective binding measures on all states for suppressing terrorist financing. The relevant part of the Resolution on counter terrorist financing is not an invention of the Security Council but builds upon the Convention against Terrorist Financing.



(c) *The Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism*. It criminalises terrorist financing by making a reference to the Convention against Terrorist Financing.²²⁵ Signatories are also required to institute measures for identification, freezing, and confiscation of property, whether legitimate or illegitimate, used for financing terrorism.²²⁶

²¹⁹ Paragraph 2(e) of the Resolution.

²²⁰ Paragraph 2(f) and 3(a) (b) (c) of the Resolution.

²²¹ Paragraph 3(d) of the Resolution.

²²² Paragraph 6 of the Resolution.

²²³ Decisions taken by the Security Council to alleviate threats to international peace and security.

²²⁴ Article 24, 25 and 48 of the UN Charter available at <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf> (accessed 18 June 2013); Talmon S 'The Security Council as World Legislature' (2005) 99 *The American Journal of International Law* 179; and Szasz PC 'The Security Council Starts Legislating' (2002) 96 *The American Journal of International Law*.

²²⁵ Article 1(h) of the European Convention against Money Laundering and Terrorist Financing.

²²⁶ Article 2(2) of the European Convention against Money Laundering and Terrorist Financing.

(d) *FATF IX Special Recommendations on Terrorist Financing*.²²⁷ The Recommendations call for states to: ratify the Convention against Terrorist Financing and implement SCR 1373;²²⁸ Criminalise terrorism and the financing of terrorism;²²⁹ and freeze and confiscate terrorist assets.²³⁰

Having discussed international law for AML/CFT, let us now see the role of the FATF in enforcing implementation of such standards.

3.3 The FATF and Implementation of International Standards against Money Laundering and Terrorist Financing

As pointed out earlier, recommendations of the FATF are not binding. However, the FATF has all along been working towards achieving universal participation in implementation of its standards for AML/CFT. One scholar opines that lack of universal implementation would create enforcement dissimilarities which would make criminals gravitate towards jurisdictions with weaker laws.²³¹ Using strict implementation monitoring mechanisms and peer pressure on non-compliant countries, the FATF has been able to influence countries to implement its recommendations.²³²

²²⁷ In the wake of September 11 terrorist attacks in the US, the FATF issued 8 Special Recommendations for combating terrorist financing. The Recommendations are available at <http://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Standards%20-%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf> (accessed 18 June 2013). Recommendation number 9 on couriers was added on the list in 2004. Recently, the FATF integrated the 9 Recommendations with the other 40 Recommendations on money laundering and came up with 40 recommendations on AML/CFT.

²²⁸ Recommendation I.

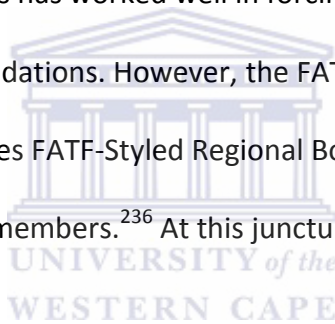
²²⁹ Recommendation II.

²³⁰ Recommendation III.

²³¹ Blazejewski (2008) 7.

²³² Pieth M 'International Standards against Money Laundering' in Pieth M & Aiolfi G (eds) (2004) 11.

The mutual evaluation exercise is the primary mechanism for securing implementation of FATF standards by States.²³³ This is just a review exercise conducted for the purpose of ascertaining a country's compatibility with international standards. It is done according to a standard methodology published by the FATF.²³⁴ The review exercise is completed with publication of a report containing findings and recommendations. An evaluated country must come up with a strategy for dispelling weaknesses identified in the report. Normally, there is peer pressure from other countries exerted on an evaluated country to comply with the standards. A jurisdiction that fails to effectively implement FATF recommendations would be blacklisted and even subjected to sanctions.²³⁵ This has worked well in forcing countries, especially developing ones, to implement the recommendations. However, the FATF only conducts mutual evaluation of its members. It therefore requires FATF-Styled Regional Bodies (FSRBS) such as ESAAMLG to conduct mutual evaluations of its members.²³⁶ At this juncture, let us look at the ESAAMLG mutual evaluation of Tanzania.



3.4 Mutual Evaluation of Tanzania

The Mutual evaluation of Tanzania was conducted by the ESAAMLG in 2009. A report was published in the same year, detailing anti-money laundering and combating the financing of

²³³ Blazejewski (2008) 16.

²³⁴ Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, available at <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf> (accessed 2 August 2013).

²³⁵ Blazejewski (2008) 18 - 19.

²³⁶ High Level Principles and Objectives for FATF and FATF-Style Regional Bodies 6. Available at <http://www.fatf-gafi.org/media/fatf/documents/High-Level%20Principles%20and%20Objectives%20for%20FATF%20and%20FSRBs.pdf> (accessed 5 August 2013).

terrorism measures.²³⁷ It also provides recommendations on how to strengthen the AML/CFT system in Tanzania. Some of the shortcomings of the AML/CFT system in Tanzania that were identified in the report included:

- Non-regulation of the real estate business;
- Designated Non-Financial Businesses and Professions were not monitored for implementing AML/CFT measures;
- Non-regulation of internet casinos;
- There was no law for registration of trusts;
- Prosecution of money laundering was dependent upon conviction for a predicate crime;
- The list of predicate crimes excluded serious crimes under the FATF definition;
- The AML Act was ambiguous as to what a corrupt practice was;
- The definition of terrorist financing under the AML Act did not reflect offences under the Prevention of Terrorism Act (POTA);
- The AML Act was unclear as to whether self-laundering was prosecutable;
- The AML Act did not allow parallel criminal, civil, or administrative proceedings;
- The law did not allow prosecution of foreigners for offences committed abroad;
- The POTA did not define the term 'funds';
- There was no civil forfeiture regime in Tanzania;
- There was no mechanism for freezing terrorist assets as provided under the United Nations Security Council Resolutions 1267 and 1373;
- The law did not provide for security of tenure of the Commissioner of the FIU;

²³⁷ MER of Tanzania.

- The FIU was not legally empowered to seek information from other stakeholders;
- There was no legal framework for regulating trans-border movement of cash;
- The law excluded vital reporting persons like pension funds executives;
- There was non-implementation of AML/CFT requirements by insurance brokers;
- The law did not obligate reporting persons to identify the beneficial owner of property;
- Enhanced due diligence was not covered under the law;
- Some money exchange service providers did not undertake customer due diligence (CDD);
- The law regulating financial institutions did not allow sharing of CDD data amongst banks;
- The definition of terrorist financing did not conform to the FATF special recommendation IV;
- Immunity for reporting persons did not extend to all, excluding other entities like bureau de change;
- The FIU was understaffed and its officials lacked the expertise to deal with money laundering and terrorist financing;
- The law did not expressly prevent domestic banks from dealing with shell banks;
- Money transfer services by mobile phone operators were not subject to AML/CFT requirements;
- The law permitted the use of nominee directors leading to obscurity of beneficial ownership;
- The NGOs sector was not monitored for implementing AML/CFT measures;



- The National Anti-Money Laundering Committee did not deal with terrorist financing;
- There were no measures for detection and monitoring cross border transportation of cash;
- Tanzania lacked a law for protection of witnesses and victims;
- There was no asset forfeiture fund for custody of confiscated property; and
- The extradition law did cover terrorist financing offences.

Some of the deficiencies had to do with implementation while others focussed on gaps in the laws of Tanzania. How has Tanzania responded?

3.5 Tanzania's Response to the Mutual Evaluation Report

Once a Mutual Evaluation Report (MER) has been adopted by the ESAAMLG Council of Ministers²³⁸ and published,²³⁹ the evaluated country must come up with an implementation plan, identifying actions to be taken to address deficiencies identified in the MER so as to comply with international AML/CFT standard.²⁴⁰ Failure to do so could result in suspension or expulsion from the ESAAMLG.²⁴¹ In compliance with the ESAAMLG Memorandum of Understanding and Mutual Evaluation Procedures, in 2010, Tanzania introduced an AML/CFT strategy as a direct response to the MER.²⁴² The strategy deals with five areas namely legal, law enforcement, financial sector, governance and regional and international cooperation.²⁴³ A key objective for the legal sector is implementation of the Anti-Money Laundering Act and the

²³⁸ Para III.11 of ESAAMLG MEP.

²³⁹ Para III.12 MEP.

²⁴⁰ Para IV.65 MEP.

²⁴¹ Para IV.71&72 MEP.

²⁴² National AML/CFT Strategy 7.

²⁴³ National AML/CFT Strategy 8.

Prevention of Terrorism Act (POTA).²⁴⁴ The overriding objective here is to implement such laws in conformity with the FATF Recommendations. The strategy has set out nineteen areas for this objective. Some of the areas include:

- Ratification of all international conventions on AML/CFT;
- Amending laws for compliance with international standards and recommendations of the mutual evaluation report;
- Issuing regulations for implementing POTA and AML Act;
- Designating regulators for DNFBPs; and
- Enforcing implementation of AML/CFT measures by NGOs.

Most of these action plans have not been implemented. For example, nothing has been done with regard to implementation of AML/CFT measures by NGOs. Most of the non-financial businesses and professions such as lawyers, casinos, dealers in precious metals and stones, trusts and real estate agents have no regulators and this means non-implementation of FATF standards. However, the government has already issued regulations for the POTA.²⁴⁵ Likewise, there are new regulations in place for AML.²⁴⁶

²⁴⁴ National AML/CFT Strategy 21.

²⁴⁵ The Prevention of Terrorism Regulations 2012 available at <http://www.fiu.go.tz/POTA-Regulations.pdf> (accessed 7 August 2013).

²⁴⁶ They mainly deal with collection of customer information by reporting persons and verification, customer due diligence, and cross border movement of cash. Available at <http://www.fiu.go.tz/AML-Regulations-2012.pdf> (accessed 7 August 2013).

CHAPTER FOUR

THE LEGAL FRAMEWORK FOR AML/CFT IN TANZANIA

4.1 Anti-Money Laundering Legal Framework

The principal legislation for combating money laundering in Tanzania is the Anti-Money Laundering Act of 2006. In response to the MER, the law was amended in 2012. The section below discusses its salient features.

4.1.1 Criminalisation

The law criminalises *money laundering* in conformity with the Palermo Convention and the 1988 Vienna Convention.²⁴⁷ Criminal liability attaches to both natural and juridical persons.²⁴⁸ It also provides for lesser modes of commission of money laundering such as conspiracy, aiding, and abetting.²⁴⁹ The law lists 29 crimes as predicate crimes.²⁵⁰ It is submitted that the scope of predicate crimes needs to be widened to cover “all unlawful activities” so as to catch all illegal undertakings which would give rise to proceeds that need laundering.²⁵¹ Most countries including the UK and South Africa have an “all crimes” approach. The *mens rea*, which is the mental element requirement, for money laundering exists when a person *knowingly* deals with a property that is the proceeds of crime.²⁵² At the time of writing, this provision has not been interpreted by the Tanzanian courts. However, the MER has interpreted the *mens rea* threshold

²⁴⁷ Section 12 AML Act. It criminalises all manners of conversion or the disguise of proceeds of crime for the purpose of giving them a lawful appearance.

²⁴⁸ Section 13.

²⁴⁹ Section 12(e).

²⁵⁰ Section 3 AML Act and Section 3(c) AML (Amendments) Act.

²⁵¹ UK House of Lords Report (2009) 33 Para 102. Available at <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldecom/132/13202.htm> (accessed 13 September 2013).

²⁵² Section 12 (a).

under Section 12 to mean that prosecution for money laundering is dependent on conviction for a predicate offence.²⁵³ This interpretation is flawed as the law only requires evidence to show that the defendant knew of the illegal provenance of the property in question and not proof of the predicate crime. In some common law jurisdictions, provisions akin to Section 12 have been interpreted to mean that proof of the predicate crime is not required. The Prosecution is only required to prove that the defendant knew of the illegal origin of the property in question. In the case of *R v Allison* [2006] 1 NZLR 721, the Court of Appeal of New Zealand stated that proof of a predicate crime was not required.²⁵⁴ The Privy Council reached the same finding in the case of *The DPP v Bholah* [2011] UKPC 44.²⁵⁵ These decisions do not bind the Tanzanian courts but are of persuasive precedential value. They could be used by Tanzanian courts to interpret Section 12. However, one good solution is to introduce an explicit provision in the law to say that proof of a predicate crime is not necessary.²⁵⁶ This would work well if an “all crimes” regime exists. This would afford the prosecution with the freedom to prosecute either for the predicate crime or for money laundering.

²⁵³ MER 43.

²⁵⁴ The decision led to amendments to the New Zealand Crimes Act of 1961 so as to introduce section 243(5) that specifically says that proof of a predicate offence is not required. Available at <http://www.legislation.govt.nz/act/public/1961/0043/latest/DLM330289.html> (accessed 3 September 2013); Article 9(6) of the European Convention against Money Laundering and Terrorist Financing states that conviction for money laundering is not dependent on proof of the predicate crime; only proof that property is the proceeds of crime.

²⁵⁵ Judgment available at http://www.icpc.gov.uk/decided-cases/docs/JCPC_2010_0059_Judgment.pdf (accessed 3 September 2013).

²⁵⁶ For example, Mauritius has section 6(1) of the Financial Intelligence and Anti-Money Laundering Act No.6 of 2002. Available at http://www.fiumauritius.org/images/stories/FIAMLA_as_at_30_05_13.pdf (accessed 3 September 2013).

4.1.2 Universal Jurisdiction

The law vests the High Court with jurisdiction to try foreigners for money laundering offences committed outside Tanzania subject to double criminality.²⁵⁷ Such a trial could only take place where the Director of Public Prosecution consents²⁵⁸ and extradition to the territorial state is impossible.²⁵⁹

4.1.3 Prevention of Money Laundering

The law requires reporting persons²⁶⁰ to undertake Customer Due Diligence (CDD) in order to establish the true identity of persons or entities with whom they wish to conduct business.²⁶¹ This includes establishing the identity of beneficial owners.²⁶² They are also obligated to keep records of all transactions²⁶³ for a minimum period of 10 years.²⁶⁴ In addition, the reporting persons are required to report suspicious transactions to the FIU.²⁶⁵ The law provides for administrative or criminal sanctions against reporting persons for failure to comply with their AML obligations.²⁶⁶ Critical to prevention measures is the absence of a requirement for enhanced CDD except for politically exposed persons (PEP).²⁶⁷ The law also leaves out crucial reporting persons such as the Tanzanian Revenue Authority, the Tanzanian Immigration Service,

²⁵⁷ Section 28C (1) AML (Amendments) Act.

²⁵⁸ Section 28C (2).

²⁵⁹ Section 28C (3).

²⁶⁰ According to Section 3 AML Act and Section 3(f) AML (Amendments) Act, reporting persons are: banks; cash dealers; accountants; real estate agents; dealers in precious stones and work of arts; regulators; customs officer; lawyers; auctioneers; pension funds managers; securities' market brokers; financial leasing entities; micro financing institutions and companies; and financial housing companies. Regulators are listed under section 3(b) of the AML (Amendments) Act.

²⁶¹ Section 15(1) (a) AML Act.

²⁶² Section 15 (4).

²⁶³ Section 16 as amended by section 11.

²⁶⁴ Regulation 30 of AML Regulations of 2012.

²⁶⁵ Section 17 as amended by section 12.

²⁶⁶ Section 16 and 19A.

²⁶⁷ Section 15(b).

mobile phone operators, dealers in motor vehicles, NGOs and religious institutions. Lastly, the law does not penalise malicious reporting of suspicious transactions.²⁶⁸

4.1.4 The Financial Intelligence Unit

The law establishes the FIU as a department in the Ministry of Finance.²⁶⁹ The FIU is mandated to receive, analyse, and disseminate to law enforcers suspicious transaction reports (STRs), currency transaction reports, cross border currency reports and electronic funds transfer reports.²⁷⁰ The FIU is vested with powers to demand or access information from the reporting persons and regulators.²⁷¹ The FIU is headed by a Commissioner appointed by the President.²⁷² The Commissioner is the Chief Executive Officer of the FIU²⁷³ and his security of tenure is guaranteed under the law.²⁷⁴ The law grants immunity to all employees of the FIU against prosecution.²⁷⁵ Most criticism is directed at the fact that the FIU lacks independence. The law says that the FIU has “operational and budgetary independence”.²⁷⁶ Practically, it could be impossible for the FIU to operate independently as it is a ministerial department. This could breed political interference in the discharge of its duties. Most African countries have established their FIUs as independent organs.²⁷⁷ Another limitation to an effective FIU is lack of

²⁶⁸ For example, Kenya criminalises malicious reporting under Section 10 of the Proceeds of Crime and Anti-Money Laundering Act No.9 of 2009. Available at http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Acts/ProceedsofCrimeandAnti-MoneyLaunderingAct_No_9of2009.pdf (accessed 4 September 2013).

²⁶⁹ Section 4 (1).

²⁷⁰ Section 4 (2) as amended.

²⁷¹ Section 6 as amended.

²⁷² Section 5 (1).

²⁷³ Section 5 (3) as amended.

²⁷⁴ Section 5 (4) and (5) as amended.

²⁷⁵ Section 27.

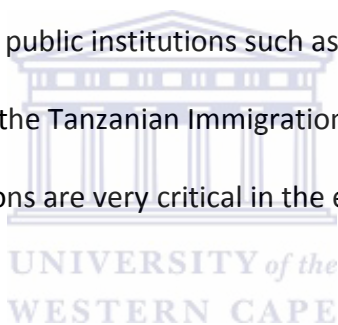
²⁷⁶ Section 4 (3) as amended.

²⁷⁷ For example, Kenya established its FIU under section 21 of the Proceeds of Crime and Anti-Money Laundering Act as a body corporate with perpetual succession and a common seal capable of independently discharging its

sufficient financial and human resources. The FIU receives meagre finances from the government, making it unable to discharge its functions effectively.²⁷⁸

4.1.5 The National Multidisciplinary Committee

The AML Act establishes the National Multidisciplinary Committee on AML.²⁷⁹ The committee is charged with formulating and assessing the effectiveness of policies and measures for curbing money laundering and terrorist financing.²⁸⁰ It is also responsible for advising the government on legislative and policy reforms in relation to AML and CFT.²⁸¹ A shortcoming here is the composition of the committee as constituted under the law,²⁸² for it leaves out representatives from the private sector and crucial public institutions such as the National Prosecution Service, the Tanzanian Revenue Authority, the Tanzanian Immigration Service, and the Tanzanian Investment Centre. These institutions are very critical in the enforcement of AML/CFT measures.



functions; Malawi established its FIU as an autonomous institution under section 11 of the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act No.11 of 2006 available at <http://www.rbm.mw/documents/pisu/Money%20Laundering%20Act%202006.pdf> (accessed 4 September 2013); Ghana did the same under section 4 of the Anti-Money Laundering Act 749 of 2008 available at <http://www.parliament.gh/assets/file/Acts/ACT%20749%20Anti-Money%20Laundering.pdf> (accessed 4 September 2013).

²⁷⁸ The FIU has been allocated the sum of Tsh. 1.9 billion (US\$ 1.2 million) for the financial year 2013/2014.

Information on ministerial budgetary allocations available at

[http://www.mof.go.tz/mofdocs/budget/Budget%20Books/2013_2014/VOLUME%20II%20PUBLIC%20EXPENDITURE%20ESTIMATES%20SUPPLY%20VOTES%20\(MINISTERIAL\)%20AS%20SUBMITTED%20TO%20THE%20NATIONAL%20ASSEMBLY%202013-2014.pdf](http://www.mof.go.tz/mofdocs/budget/Budget%20Books/2013_2014/VOLUME%20II%20PUBLIC%20EXPENDITURE%20ESTIMATES%20SUPPLY%20VOTES%20(MINISTERIAL)%20AS%20SUBMITTED%20TO%20THE%20NATIONAL%20ASSEMBLY%202013-2014.pdf) (accessed 8 October 2013).

²⁷⁹ Section 8 (1).

²⁸⁰ Section 9 (a) as amended.

²⁸¹ Section 9 (b) as amended.

²⁸² Section 8 (2) as amended.

4.1.6 Reporting Requirements and Secrecy Obligations

The law permits reporting persons to dispense with secrecy obligations under written laws for the purpose of fulfilling AML/CFT requirements.²⁸³ Banks can now divulge customer information to the FIU.²⁸⁴ Furthermore, all reporting persons are immune to *any* legal action for breach of “banking or professional secrecy or contract” in relation to reports submitted in good faith to the FIU.²⁸⁵ This immunity also applies to lawyers (advocates) as reporting persons under the law.²⁸⁶ However, the law does not define the applicability and limitation of the common law right to *legal professional privilege* in relation to reporting obligations for lawyers.²⁸⁷ The doctrine of legal professional privilege is a substantive right²⁸⁸ that guards against disclosure of lawyer-client communications pertaining to legal advice or litigation.²⁸⁹ Such communications are regarded as privileged and therefore not amenable to disclosure to third parties. However, criminal communications are not privileged as such. This right is applicable to Tanzania as a common law country. It is also recognised under the law of evidence.²⁹⁰ As the AML Act provides, lawyers as reporting persons could be required to supply such privileged

²⁸³ Section 21 (1) as amended.

²⁸⁴ Section 21 (2) as amended. Bank secrecy in Tanzania is covered under section 48 of the Banking and Financial Institutions Act No.5 of 2006 available at <http://www.bot-tz.org/BankingSupervision/BAFIA2006.pdf> (accessed 4 September 2013).

²⁸⁵ Section 22 (1) as amended.

²⁸⁶ Under Section 3 of the AML Act, lawyers are required to report suspicious transactions to the FIU when they deal with clients in transactions such as dealing in real property; buying and selling of shares and facilitating take-overs of companies; and facilitating financial transactions for or on behalf of clients.

²⁸⁷ Section 3 of the AML Act only replicates Recommendation 22(d) of the FATF Recommendations that requires lawyers to conduct CDD when dealing with clients in certain transactions.

²⁸⁸ *Diane J in Attorney-General (NT) v Maurice* [1986] HCA 80. Available at <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1986/80.html> (accessed 5 September 2013).

²⁸⁹ Itsikowitz A ‘Legal Professional Privilege/Intermediary Confidentiality: The Challenge for Anti-Money Laundering Measures (2006) in Monograph 124 ‘Money Laundering Experiences: A Survey’ *Institute for Security Studies* 73 – 75. Available at <http://www.issafrica.org/chapter-5-legal-professional-privilegeintermediary-confidentiality-the-challenge-for-anti-money-laundering> (accessed 5 September 2013).

²⁹⁰ Section 134 of the Law of Evidence Act No.6 of 1967. Available at <http://www.fiu.go.tz/EvidenceAct.pdf> (accessed 5 September 2013).

communications. This is an unwarranted attack on the age-old common law principle that protects and upholds the right of access to justice. There is need for the law to clarify lawyer's reporting requirements in relation to the principle of legal professional privilege. South Africa is an example on this issue. Section 37 (1) of the Financial Intelligence Act (FICA)²⁹¹ dispenses with secrecy rules applicable to the accountable institutions for the purpose of reporting suspicious transactions. Section 37 (1) is substantively similar to section 21 (1) of the AML Act. Nevertheless, South Africa's FICA clearly states that section 37 (1) does not apply to the common law right to legal professional privilege between attorney-client communications pertaining to pending litigation, contemplated litigation or existing litigation.²⁹² The same approach has been taken by Kenya²⁹³ and Australia.²⁹⁴ However, the Kenyan law permits lodging an application with the High Court for an order of disclosure of lawyer-client communications by an Advocate for the purpose of investigation on money laundering.²⁹⁵ However, an Advocate is not compelled to comply with a court order if it amounts to breaching the principle of legal professional privilege.²⁹⁶

²⁹¹ Act No.38 of 2001. Available at <https://www.fic.gov.za/DownloadContent/LEGISLATION/ACTS/01.a38-01b.pdf> (accessed 5 September 2013).

²⁹² Section 37 (2) FICA; Hamman AJ and Koen R 'Cave Pecuniam: Lawyers as Launderers' (2012) 15 *Potchefstroom Electronic Law Journal* 78.

²⁹³ Section 18 (1) and (2) of the Proceeds of Crime and Anti-Money Laundering Act.

²⁹⁴ Section 242 of the Anti-Money Laundering and Counter-Terrorism Financing Act of 2006 states that "law relating to legal professional privilege no affected". Available at http://www.comlaw.gov.au/Details/C2013C00371/Html/Text#_Toc362266786 (accessed 5 September 2013).

²⁹⁵ Section 18 (3).

²⁹⁶ Section 18 (4) of the Proceeds of Crime and Anti-Money Laundering Act.

4.1.7 Confiscation of Proceeds of Crime

The law on the confiscation of the proceeds of money laundering is governed by the Proceeds of Crime Act (POCA).²⁹⁷ The POCA allows for confiscation of tainted property.²⁹⁸ For the purpose of enforcing AML measures, the term “property” has been redefined to include title deeds and negotiable instruments.²⁹⁹ The law also permits confiscation of property of an accused person who dies during the investigations or before conclusion of the trial.³⁰⁰ The law safeguards the rights of *bona fide* third parties with respect to confiscation of tainted property.³⁰¹ The Police are permitted to freeze a bank account for seven days and seize bank documents upon reasonable suspicion that the account holder is involved in money laundering.³⁰² Leave of the court must be obtained for continued seizure after the seven days. By the same token, the Police have been given extensive powers to investigate a bank account and demand production of account details for the purpose of money laundering investigations.³⁰³ In addition, the Director of Public Prosecutions is empowered to obtain a court order directing a bank to provide the Inspector General of Police with transaction records of a certain account.³⁰⁴ With

²⁹⁷ Section 28 AML Act.

²⁹⁸ Section 14 and 25 POCA, Act No.25 of 1991. Available at <http://www.fiu.go.tz/POCA.pdf> (accessed 5 September 2013).

²⁹⁹ Section 3 of POCA as amended by section 16 (b) of Written Laws (Miscellaneous Amendments) Act No.6 of 2012.

³⁰⁰ Section 13B of POCA as amended by section 19 of Written Laws (Miscellaneous Amendments) Act No.6 of 2012.

³⁰¹ Section 16 of POCA allows a person having an interest in property against which a forfeiture order has been made to apply to the court for protecting his property rights. The court may grant the application upon being satisfied that the applicant did not perpetrate the crime or wittingly involved in the acquisition of criminal profits. Article 12(8) under the Palermo Convention and Article 5(8) under the 1988 Vienna Convention requires protection of property rights of third parties during confiscation.

³⁰² Section 31A of POCA as amended by section 11 of Written Laws (Miscellaneous Amendments) Act No.15 of 2007.

³⁰³ Section 63A of POCA as amended by section 11 of Written Laws (Miscellaneous Amendments) Act No.15 of 2007. This is in line with Recommendation 31 of the FATF Recommendations.

³⁰⁴ Section 65 POCA. This is in line with the ambit of Articles 5(3) and 12(6) of the 1988 Vienna Convention and the Palermo Convention respectively.

regard to extraterritorial confiscation, the law permits the enforcement of foreign confiscation orders against property held in Tanzania.³⁰⁵ Tanzania's asset forfeiture regime has its flaws.

One shortcoming is the lack of a non-conviction recovery procedure that targets tainted property as opposed to criminals.³⁰⁶ The FATF advocates the use of civil recovery.³⁰⁷ Today, most countries use civil recovery alongside criminal forfeiture to target proceeds of crime. Civil forfeiture has become an essential tool in fighting organised crime as it is increasingly becoming difficult to bring leaders of organised crime groups to justice. This view was upheld by the Constitutional Court of South Africa in *National Director of Public Prosecutions and Another v Mohamed NO and Others* (CCT13/02) [2002] ZACC 9.³⁰⁸ Another shortcoming is the absence of a confiscation procedure for dealing with proceeds of crime that have been intermingled with property from lawful sources. In this scenario, the Palermo Convention provides that such intermingled property would be liable to confiscation only to the extent of the assessed value of the proceeds of crime.³⁰⁹ It is difficult to gauge the effectiveness of the criminal forfeiture regime in taming money laundering in Tanzania as there are no official statistics. However, anecdotal evidence shows that criminal forfeiture has not been fully utilised to tame organised crime in Tanzania. Identification and tracking of assets liable to confiscation has been hampered

³⁰⁵ Section 18 POCA and Section 32 of the Mutual Assistance in Criminal Matters Act (MACM Act) No. 24 of 1991, available at <http://www.fiu.go.tz/MutualAssistanceInCriminalMattersAct.pdf> (accessed 10 September 2013). Article 13 of the Palermo Convention enjoins States to enact laws for facilitating international cooperation on confiscation of proceeds of crime.

³⁰⁶ Young SNM (Ed) *Civil Forfeiture of Criminal Property: Legal Measures for Targeting the Proceeds of Crime* (2009) 13.

³⁰⁷ Recommendation 4.

³⁰⁸ Judgment at page 11. Available at <http://www.saflii.org.za/za/cases/ZACC/2002/9.pdf> (accessed 5 September 2013).

³⁰⁹ Article 12(4); Article 5(6) (b) of the 1988 Vienna Convention and Article 31(5) of UNCAC.

by limited capacity to investigate white-collar organised crime, corruption and lack of financial resources.

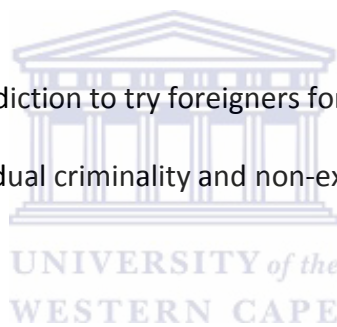
4.2 Counter-Terrorist Financing Legal Framework

4.2.1 Criminalisation

The POTA criminalises the provision of funds³¹⁰ or property³¹¹ for the purpose of carrying out terrorist acts.³¹² Acts of terrorism and terrorist financing are predicate crimes for money laundering.³¹³ The law also criminalises dealing in property owned by a terrorist group.³¹⁴

4.2.2 Universal Jurisdiction

The High Court is vested with jurisdiction to try foreigners for terrorist financing committed abroad subject to the principle of dual criminality and non-extradition of the offender to the State of commission.³¹⁵



4.2.3 Prevention of Terrorist Financing

Information gathering is a primary tool for detection and prevention of terrorist financing under the POTA. The public has a duty to disclose information to the police and the FIU that may help counter acts of terrorism or bring potential suspects to book.³¹⁶ *Bona fide* informants are immune to prosecution.³¹⁷ Similarly, the public and financial institutions have a duty to disclose

³¹⁰ Section 14. The term “funds” is broadly defined under Section 24 of the Written Laws (Miscellaneous Amendments) Act No.6 of 2012 to include assets of all kinds and negotiable instruments.

³¹¹ Section 15.

³¹² The list of terrorist acts is provided for under Section 4.

³¹³ Definition of “predicate offence” under Section 3 of the AML Act.

³¹⁴ Section 17.

³¹⁵ Section 34(6) POTA. This is a requirement under Article 7(4) of the Convention against Terrorist Financing.

³¹⁶ Section 40 POTA and Regulation 4(a) of the POTA Regulations of 2012 (POTA Regulations).

³¹⁷ Section 40(3) POTA and Regulation 10(1) of the POTA Regulations.

information pertaining to property either owned by a terrorist group or being used to perpetrate terrorism.³¹⁸ Accountable entities³¹⁹ are obligated to report transactions with no apparent lawful purpose.³²⁰ In doing so, they are not bound by secrecy obligations.³²¹ Unlike the AML as discussed above, the reporting obligation for lawyers under the POTA does not affect the common law right to legal professional privilege.³²² Business people are also required to report to the police and the FIU if they hold property linked to terrorist financing or when they conduct a transaction that facilitates terrorist financing.³²³ The police are empowered to order an accountable entity to cease transactions involved or suspected to be involved in terrorist financing.³²⁴ A flaw here is that the law does not prescribe time limit for such an order.³²⁵ Another prevention tool is the power of the Minister for Home Affairs to declare persons and groups suspected international terrorists and international terrorist groups respectively.³²⁶ A person declared a terrorist is not allowed to enter Tanzania.³²⁷ The Tanzanian Immigration Service keeps a list of persons who have been declared international terrorists so as to make sure that they do not enter Tanzania. However, due to the problem of bureaucratic corruption and porous country borders, there is still a possibility for such terrorists to enter

³¹⁸ Section 41 POTA and Regulation 4(b) of the POTA Regulations.

³¹⁹ List provided under Part II of the Schedule to the POTA. The list of accountable entities does not include important organisations such as charities and religious entities. In the past, charities and religious entities have been abused as conduits of finances for terrorist operations.

³²⁰ Regulation 5(1) of the POTA Regulations.

³²¹ Regulation 9(1) of the POTA Regulations.

³²² Regulation 9(2) of the POTA Regulations clearly states that a reporting duty for lawyers does not apply to legal professional privilege with respect to legal advice or litigation and communications between a lawyer and a third party with respect to litigation.

³²³ Regulation 6 of the POTA Regulations.

³²⁴ Regulation 8 of the POTA Regulations.

³²⁵ All it says is “for such a period as may be determined in the order” to enable the Police to carry out investigations or advise the Minister on what to do. This is a loophole that could be abused by the Police to harm legitimate business operations and property rights of people. There is need for setting a time limit for such orders or make them amenable to scrutiny by the courts.

³²⁶ Regulation 11 of the POTA Regulations.

³²⁷ Regulation 18 of the POTA Regulations.

Tanzania undetected. The accountable entities could be ordered to suspend transactions with such persons or groups.³²⁸ The Minister can also proscribe an organisation if it promotes or participates in acts of terrorism.³²⁹ The decision of the Minister to label people and groups as terrorists could be challenged in court.³³⁰ The court can revoke a ministerial declaration if it is satisfied, on preponderance of evidence, that it was unreasonable.³³¹ However, the law is silent on the right of appeal in the event the court refuses to revoke the declaration.³³²

4.2.4 Seizure, Freezing and Confiscation of Terrorist Assets

The Police are empowered to seize property involved or suspected to be involved in the commission of terrorism.³³³ The accountable entities are obligated to freeze assets of persons or groups that have been declared terrorists.³³⁴ By the same token, the law permits conviction-based confiscation.³³⁵ The rights of third parties with regard to forfeited property are safeguarded.³³⁶ Interestingly, the law permits confiscation without conviction with respect to property that is either owned by a terrorist group or has been or will be used to commit a

³²⁸ Section 12 and Regulation 15 of the POTA Regulations.

³²⁹ Regulation 12 of the POTA Regulations.

³³⁰ Regulation 23(1) of the POTA Regulations.

³³¹ Regulations 23(2) and 25(a) of the POTA Regulations.

³³² A clarification on the right of appeal is necessary since the High Court is generally not a court of last resort in Tanzania as there is the Court of Appeal above it.

³³³ Section 33 POTA.

³³⁴ Regulation 17 of the POTA Regulations.

³³⁵ Section 36(1) POTA.

³³⁶ Section 36(2).

terrorist act.³³⁷ One shortcoming of the POTA is the non-provision of a mechanism for using forfeited assets to compensate victims of terrorism as required under international law.³³⁸

4.3 General Shortcomings of Tanzania's AML/CFT System

- 1) There is no comprehensive law for witness protection. International law requires states to adopt measures for protection of witnesses from retaliation or intimidation.³³⁹ There are laws with patchy provisions for witness protection that fall short of the standard envisaged under international law.³⁴⁰
- 2) The AML/CFT laws do not deal with cyber money laundering and terrorist financing. The FATF requires countries to assess and mitigate money laundering and terrorist financing risks that may stem from “new technologies” as regards new payment products and new business practices.³⁴¹
- 3) There is no regulation of informal money transfer operations. The FATF recommends that all persons and entities dealing in money or value transfer business be licensed and subjected to supervision for compliance with AML/CFT requirements.³⁴²

³³⁷ Section 43 POTA. This is awkward as the AML Act does not permit civil recovery with respect to property owned by suspected money launders.

³³⁸ Article 8(4) of the Convention against Terrorist Financing requires States to establish a mechanism for utilizing confiscated funds to compensate victims.

³³⁹ Article 24(1) of the Palermo Convention.

³⁴⁰ For example, Section 53 of the Economic and Organised Crime Control Act requires the Police to provide security to witnesses but it does not define the kind and scope of such security. Likewise, Section 22(2) of the AML Act empowers the Attorney General to apply to the court for an order for witness protection. However, the said provision is not mandatory as it gives discretion to the Attorney-General to decide whether to apply to the court or not. By way of analogy, South Africa's Witness Protection Act No.112 of 1998 is comprehensive and permits witnesses themselves to apply for protection.

³⁴¹ Recommendation 15.

³⁴² Recommendation 14.

- 4) There is no legislative limit for cash payments.³⁴³ This provides a benign environment for criminals to launder money outside the formal financial sector by buying high value assets with cash.
- 5) There is no criminalisation of structuring and the use of smurfs.³⁴⁴ In other words, the law does not prohibit the practice of breaking money into smaller amounts and the use of different people (smurfs) to deposit such money into various accounts at different banks for the purpose of avoiding an AML/CFT reporting threshold of suspicious transactions by the banks.
- 6) The real estate sector is not regulated. In other words, there is no law that specifically regulates dealers in buying and selling real property.³⁴⁵ This is a grave omission as there are companies and agents dealing in real estate but they are not subject to any regulatory regime especially to make sure that such transactions are not used to facilitate money laundering and the financing of terrorism. Today, it is possible to purchase land or a house in Tanzania worth millions of shillings without involving the banks. The risk for money laundering through the real estate sector is much higher in a cash-based economy like Tanzania. Strangely, real estate agents are “reporting persons” under the AML Act but the law does not designate a regulatory body to ensure that they comply with AML/CFT obligations. Furthermore, real estate agents are not licensed.
- There is an urgent need for the Tanzanian Parliament to enact a law for regulating the

³⁴³ For example, Mauritius limits cash payment under Section 5 of the Financial Intelligence and Anti-Money Laundering Act.

³⁴⁴ For example, Section 31 of Ghana’s AML Act and Section 64 of South Africa’s FICA criminalize structuring.

³⁴⁵ All what one needs is to get a lawyer to do the conveyancing and get the title deed registered with the Ministry of Lands.

real estate sector,³⁴⁶ for it poses serious challenges in the fight against money laundering and terrorist financing.

- 7) The AML Act does protect informants who are not “reporting persons” against legal action.³⁴⁷



³⁴⁶ For example, Canada enacted the Real Estate Trading Act to make sure that real estate agents are licenced and operate lawfully.

³⁴⁷ Section 22(1) of the AML Act as amended does not protect “other members of the public” against prosecution for reporting information to the FIU. This weakness needs to be removed. Section 38 of South Africa’s FICA protects not only reporting persons but also “any other person”.

CHAPTER FIVE

OBSERVATIONS AND CONCLUSIONS

The study reveals that Tanzania has taken great strides in implementation of international AML/CFT standards. The mutual evaluation exercise impelled the government to come up with a strategy for better implementation of the standards. Despite such efforts, there are various legislative and enforcement shortcomings which hamper the fight against money laundering and terrorist financing. The previous chapter has described legal challenges for an effective AML/CFT system. However trivial such weaknesses are, they have the potential to benefit criminals. They need to be removed immediately.

There are a number of implementation issues that need to be dealt with. The FIU is the principal organ that has been charged with supervising the implementation of AML/CFT standards in Tanzania. Among other things, the FIU suffers from lack of autonomy as well as limited human and financial resources. Anecdotal information indicates that it has not been able to discharge its mandate effectively due to such constraints. The government has issued AML/CFT regulations that should be implemented by various regulators. It has been difficult to gauge the extent of implementation of the regulations due to a dire scarcity of statistics. The FIU is obligated to “maintain comprehensive statistics”³⁴⁸ that would inform on money laundering and terrorist financing trends for the purpose of enabling an effective implementation of the standards. However, to date, the FIU has not published any useful information on money laundering and terrorist financing.³⁴⁹ Its website only contains laws,

³⁴⁸ Regulation 36 AML Regulations.

³⁴⁹ This flouts Recommendation 33 of the FATF Recommendations.

regulations and reports such as MER. In addition, the FIU has not conducted any scientific study on the problem of money laundering and terrorist financing in Tanzania. It is therefore difficult to employ the risk-based approach to combating money laundering and terrorist financing as required by the FATF. That countries need to identify, study and understand their money laundering and terrorist financing risks so that they direct their scarce resources towards areas with higher risks. As of now, this would not be possible in Tanzania due to lack of scientific typologies on money laundering and terrorist financing.

Despite the lack of official statistics, anecdotal information reveals that DNFBPs such as lawyers, real estate agents, and accountants, to name a few, have not been fulfilling their AML/CFT reporting obligations.³⁵⁰ The FIU is largely dealing with financial institutions for enforcement of AML/CFT measures. This is a grave enforcement deficit as lawyers, accountants and real estate agents are known for facilitating money laundering schemes. Tanzania needs to adopt a robust supervisory mechanism for specific DNFBPs to make sure they implement AML/CFT measures. There is also a need to designate special regulators for DNFBs such as lawyers and real estate agents.

Another implementation challenge is the lack of resources. The government has not directed a significant portion of its resources towards the fight against organised crime. This negatively affects enforcement actions envisaged in the National Strategy for AML/CFT. For example, the government intends to strengthen the capacity of law enforcement organs through the

³⁵⁰ This goes against Recommendation 28 of the FATF Recommendations which requires countries to regulate and supervise DNFBPs for compliance with AML/CFT measures.

provision of modern tools for investigation and monitoring of borders.³⁵¹ This has not been done and the usual excuse is the lack of financial resources. As a result, the police do not have state-of-the-art tools to curb the increasingly sophisticated organised crime gangs.³⁵² By the same token, their inability to investigate white-collar organised crime derails the use of POCA to target criminal assets. They are unable to properly identify and track criminal assets for freezing or confiscation as required by the FATF.³⁵³ In view of the recent terrorist attacks on the Westgate shopping mall in Kenya, there is a need to step up border security.³⁵⁴ Therefore, for a successful AML/CFT regime, Tanzania needs to remove all legislative gaps and enhance enforcement of AML/CFT measures across all sectors. In addition, investigation authorities should be provided with more resources as well as training on how to go about investigating organised crime.



Word Count: 18972.

³⁵¹ National AML/CFT Strategy 24.

³⁵² Recommendation 31 of the FATF Recommendations requires countries to ensure that their investigation authorities use top rate investigative techniques capable of exposing tricky money laundering and terrorist financing plots.

³⁵³ Recommendation 30 of the FATF Recommendations.

³⁵⁴ 'Kenya Mall Attack: Dozens More Bodies Believed Buried Under Rubble' available at <http://www.theguardian.com/world/2013/sep/25/kenya-mall-attack-bodies> (accessed 8 October 2013).

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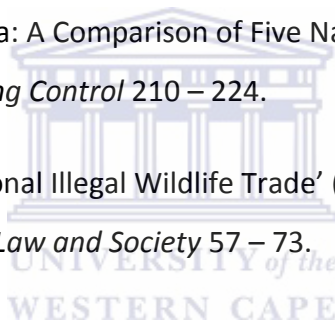
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