

UNIVERSITY OF THE WESTERN CAPE



FACULTY OF LAW

AN APPRAISAL OF THE ANTI-MONEY LAUNDERING REGIME IN ZIMBABWE

by

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ABSTRACT

Annually, money laundering costs global financial markets \$2.5 trillion. Money laundering is especially problematic in that it results in a plethora of socioeconomic problems including poor economic performance and an upsurge in crime. In fact, predicate crimes such as corruption, drug trafficking, tax evasion, smuggling, fraud, and terrorism are so embedded within money laundering so much so that combatting either is a complicated task. Although it is a daunting endeavour, best practice teaches that multilateral and international cooperation are most effective at fighting money laundering. For that reason, establishing locally sensitive and yet internationally focussed anti-money laundering regimes is a priority for numerous countries. This is particularly true for developing countries such as Zimbabwe that have recorded significant increases in the prevalence of money laundering and predicate crime in the last decade. In the same period, Zimbabwe has progressively improved its anti-money laundering measures; the latest being the promulgation of the Money Laundering and Proceeds of Crime Act of 2013 and its succeeded amendments in 2018 and 2019 to bolster the country's anti-money laundering regime (AMLR). The anti-money laundering legislation is both locally sensitive and yet aligned to international best practice. However, research testing the efficacy of Zimbabwe's AMLR is limited. It is, therefore, an important research opportunity to not only investigate the extent to which Zimbabwe's AMLR is aligned to international best practice but also to appraise if it is sufficiently empowered to stem money laundering in Zimbabwe. The study utilises the doctrinal approach to assess how the AML legal and institutional frameworks of Zimbabwe align with the international best practice. While findings suggest alignment of legal and institutional frameworks to international best practice, there is a need for designated institutions to improve on the implementation of AML measures.

DECLARATION

I, **Jane Shambare**, declare that **An Appraisal of the Anti-Money Laundering Regime in Zimbabwe** is my work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Student: Jane Shambare

Signature: Date:

Supervisor: Professor A J Hamman

Signature: Date:



DEDICATION

To my late parents, Luke and Rebecca Gogodo.



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- *Akuruma nzeve ndewako* (Those that give you counsel, are on your side)
- *Kakara kununa hudya kamwe* (success comes by the help of others – It takes a village to raise a child)
- *Chenga ose manhanga hapana risina rhodzi* (There is a reward in trying all things)
- *Ateya mariva murutsva haatyji kusviba magaro* (He who sets out to do a task cannot be deterred by minor setbacks – there is always a price for everything)

KEYWORDS

Anti-money laundering

Anti-money laundering Regime

Anti-corruption

Appraisal

Combating Financing of Terrorism

Corruption

Legal Framework

Institutional Framework

Money-laundering

Predicate Crime

Zimbabwe Anti-Money Laundering Regime



ABBREVIATIONS AND ACRONYMS

AML	: Anti-Money Laundering
AMLAC	: Anti- Money Laundering Advisory Committee
AMLR	: Anti-Money Laundering Regime
CDD	: Customer Due Diligence
CPI	: Corruption Perception Index
DNFBPs	: Designated Non-Financial Businesses Professions
ESAAMLG	: Eastern and Southern African Anti-Money Laundering Group
FATF	: Financial Action Task Force
FATFSRBs	: FATF Style Regional Bodies
FIs	: Financial Institutions
FIU	: Financial Intelligence Unit
GIABA	: Group Against Money Laundering in West Africa
GNU	: Government of National Unity
IMF	: International Monetary Fund
KYC	: Know Your Customer
LEA	: Law Enforcement Agency
ML	: Money Laundering
MLA	: Mutual Legal Assistance
MLPCA	: Money Laundering and Proceeds of Crime Act
MOU	: Memorandum of Understanding
PEPs	: Politically Exposed Persons
RBA	: Risk-Based Approach
RBS	: Risk-Based Supervision
STR	: Suspicious Transaction Report
TI	: Transparency International
UNCAC	: United Nations Convention Against Corruption
UNSCRs	: United Nations Security Council Resolutions
WB	: World Bank
ZACC	: Zimbabwe Anti-Corruption Commission
ZIMRA	: Zimbabwe Revenue Authority
ZRP	: Zimbabwe Republic Police

CHAPTER 1

INTRODUCING THE STUDY

1.1. INTRODUCTION

Money laundering (ML) is a complex and far-reaching crime.¹ It hardly exists in isolation, and it is associated with a chain of social ills and predicate crimes such as drug trafficking, fraud, terrorism, smuggling, tax evasion and corruption.² For this reason, many countries are continuously strengthening their anti-money laundering (AML) regimes.³ However, evidence suggests that combating money laundering is a multi-faceted endeavour that requires sound legislation, capable law enforcement agencies, cooperation and coordination of information among governments, financial institutions (FIs) and inter-governmental bodies.⁴ Collectively, these factors constitute the AML regime.

To effectively combat money laundering, AML regimes must be able to not only identify and punish perpetrators but should also lead to the confiscation of all proceeds of crime.⁵ Best practice further teaches that AML regimes, to be effective, should be sensitive to both local AML imperatives and international cooperation. Particularly for the latter, FATF standards provide a minimum benchmark for setting up essential AML legal and institutional frameworks.⁶ Against this background, this study seeks to evaluate the efficiency and efficacy of the legislation and institutions combating ML in Zimbabwe. Furthermore, the study examines the alignment of the legal and institutional framework to the international

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- 1 Alexander K (2001) "The International anti-money laundering regime: The Role of the Financial Task Force" *Journal of Money Laundering Control* 4(3):231-248 at 231.
 - 2 Rusanov G & Pudovochkin Y (2018) "Money Laundering predicate offenses: Models of Criminological and Legal Relationships" *Journal of Money Laundering Control* 21(1): 22-32 at 25.
 - 3 Anti-Money laundering and Combating of Financial Terrorism (AML/CFT) will be referred to as AML and it must be accepted that CFT is included.
 - 4 Alexander (2001) at 231.
 - 5 Bridges M J (1997) "Taking the Profit out of Crime" *Journal of Money Laundering Control* 1(1):26-39 at 27.
 - 6 Financial Action Task Force (2019) "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%202022%20Feb%202013.pdf> (visited 29 June 2019).

perspective. Finally, this study evaluates the AML regime's adequacy in combatting money laundering by assessing the ability of Zimbabwe to contribute to the combating of ML in a concerted multilateral effort that meets global standards.

1.2. BACKGROUND OF STUDY

In the last decade, developing countries including Zimbabwe experienced exponential growth in ML. Money laundering and predicate crime generate proceeds worth approximately US\$1 billion every year.⁷ The money laundering problem in Zimbabwe developed from and is intertwined with the country's socioeconomic challenges. The provenance of Zimbabwe's political and socioeconomic challenges began in the late 1990s when the government compensated war veterans for their participation in the liberation war.⁸ The war veterans' compensation was immediately followed, in 2000, by the infamous land invasions. Combined, these two events set in motion a cascade of events that resulted in the decimation of the Zimbabwean economy, and with it, the birth of the money laundering problem.⁹

From 2000 to around 2010, the Zimbabwean economy experienced negative growth, cash shortages, hyperinflation, record levels of unemployment, and food shortages. Zimbabwe was transformed from the breadbasket of Africa to the basket case of the region. Because of the shrinking economy and unavailability of jobs, the economy rapidly informalised. To survive, many Zimbabweans turned to informal currency arbitrage, cross-border trading, and foreign-exchange trading. Many other Zimbabweans migrated to South Africa, Australia, and the United Kingdom in search of job opportunities and a better life. These Zimbabweans in the diaspora created intricate Hawala networks to send money to their relatives back home.¹⁰ In turn, illegal foreign currency black markets sprouted throughout Zimbabwe. During this time,

7 The Second Money Laundering and Terrorist Financing National Risk Assessment Key Findings (2019) Chapter 2 at 18.

8 Pazvakavambwa S & Hungwe V (2009) "Land Redistribution in Zimbabwe" in Binswanger-Mkhize H P Bourguignon C & van den Brink R (ed) *"Agricultural Land Redistribution: Towards a Great Consensus"* The World Bank Washington DC 137-167 at 138.

9 Fundira B (2007) "Money laundering in Zimbabwe, 2004 to 2006" in Goredema C (ed) *Confronting the Proceeds of crime in Southern Africa: An Introspection* Institute for Security Studies 48-72 at 49.

10 Chisasa J (2014) "Nature and Characteristics of informal migrant remittance transfer channels: Empirical study of remittances from south Africa to Zimbabwe" *Banks and Bank Systems* 9(2):59-64 at 60.

several banks and financial institutions closed shop, which further catalysed the growth of the informal currency market. Eventually, a progressively informal economy, joblessness, Hawala networks and growing black markets turned Zimbabwe into a haven for money laundering. Predicate crimes (e.g., corruption, drug trafficking, tax evasion, smuggling, fraud) rapidly became embedded within the Zimbabwean socio-economic fabric.

Zimbabwe's isolation from the international community exacerbated an already dire situation. Political and economic sanctions as well as the country's withdrawal from international bodies such as the Commonwealth resulted in Zimbabwe's reduced cooperation with other countries and international bodies. The absence of international cooperation turned Zimbabwe into a lucrative destination for money laundering.

In the last decade, however, Zimbabwe has improved its anti-money laundering measures. Zimbabwe's coordinated AML initiatives began during the tenure of the Government of National Unity (GNU) between 2009 and 2013. The GNU was a political settlement that resulted in the coalition government between the Zimbabwe African National Union-Patriotic Front (ZANU PF) and the Movement of Democratic Change (MDC), following the disputed 2008 general election.¹¹ Among others, the GNU made three significant AML developments.

First, the GNU enabled the drafting of the new (i.e., current constitution) for Zimbabwe. This constitution empowered Parliament to promulgate and enact legislation specifically dedicated to dealing with money laundering.¹² Second, the government introduced the multi-currency monetary system to replace the weakened Zimbabwean Dollar (Z\$) as a measure to formalise the economy.¹³ Third, the GNU re-initiated cooperation with international bodies including the International Monetary Fund and World Bank. Although the re-integration objective was not specifically directed as an anti-money laundering initiative per se, it can be

11 Chigora P & Guzura T (2011) "The Politics of the Government of National Unity (GNU) and Power sharing in Zimbabwe: Challenges and Prospects for Democracy" *African Journal of History and Culture* 3(2): 20-23 at 20.

12 Money Laundering and Proceeds of Crime Act [Chapter 9:24] of 2013.

13 Ngwenya B Pelsler T & Chivaura T (2018) "Perceptions of Post Multi-currency Regime Financial Inclusion Confidence Challenges in Zimbabwe" *South African Journal of Economic and Management Sciences* 21 (1): 1-15 at 2.

a precursor to initiating international, multilateral, and financial cooperation, which are all important in AML.

To date, however, little research has been conducted to determine the efficacy of Zimbabwe's AML regime. The lack of a critical mass of research is to be considered a research gap. Therefore, the purpose of this research is to investigate the extent to which Zimbabwe's AML regime is aligned to international best practice and whether it is sufficiently empowered to combat money laundering in Zimbabwe.

1.2.1. Defining Money Laundering

Money laundering involves the concealment and disguising of the true nature and source of the proceeds of criminal activities. The objective of ML is to integrate (launder) proceeds of crime (dirty money) into legitimate financial systems.¹⁴ The crimes that are associated with ML are referred to as predicate crimes, these include fraud, corruption, drug trafficking, human trafficking, arms smuggling, extortion, misappropriation, tax evasion and terrorism.¹⁵

It is important to note that ML cannot exist in isolation, it usually is at the tail-end of predicate crimes. The laundering process takes place in three distinct stages:

- (i) **Placement:** is introducing criminally obtained assets into the formal economy.¹⁶ This is achieved by, say, depositing funds into the bank or selling of assets to acquire clean funds that can then be passed off as legitimate by hiding the true source of origin.¹⁷

14 Organisation of Economic Cooperation and Development (2002) "Glossary of Statistical Terms", available at <https://stats.oecd.org/glossary/detail.asp?ID=5081> (visited 04 July 2019).
15 Goredema C (2004) "Money Laundering in Southern Africa: Incidence, Magnitude and Prospects for its Control" *Institute for Security Studies* 92 1-10 at 3.
16 Booth R Farrell S Bastable G & Yeo N (2011) "Money Laundering Law and Regulation: A Practical Guide" Oxford University Press, New York at 5.
17 Madinger J (2012) "Money Laundering: A Guide for Criminal Investigators" 3rd (ed) New York: CRC Press at 259.

- (ii) **Layering:** is obscuring the criminal provenance of money laundering.¹⁸ Layering often involves investing in cash centred businesses like selling of arts, antiques, real estate or even moving of funds to offshore accounts.
- (iii) **Integration:** involves the money launderer re-investing his ill-gotten wealth in a legitimate financial system to assimilate it into regular business transactions.¹⁹ The distinction between layering and integration is that in the former, movement and use of money is strictly to distort the origins. In the latter, movement and use are made for a genuine economic purpose.²⁰

Once the launderer has been successful in the aforementioned three stages, the effects of ML become almost unstoppable. ML allows criminals to easily benefit from ill-gotten proceeds.

1.3. PROBLEM STATEMENT

AML efforts in Zimbabwe can be characterised in two distinct phases, pre-2013 and post-2013. Pre-2013, the legal framework was fragmented and lacked coordination. ML was only recognised in statutes such as the Serious Offences (Confiscation of Profits) Act;²¹ the Prevention of Corruption Act;²² the Presidential Powers Act;²³ the Bank Use Promotion and Suppression Act²⁴; and the Exchange Control (Money Transfer Agencies) Order.²⁵ Of the above-mentioned statutes, only the Serious Offences Act gave the police investigative, confiscation and forfeiture powers on ML matters. Consequently, the prosecution of ML and other financial crimes proved difficult as reported in the case of *S v Kuruneri*²⁶ which resulted in an acquittal. Suffice to say, money laundering was not recognised as a distinct crime. This meant that criminalisation of particular elements of ML as provided by the international

18 Cox D (2014) “*Handbook of anti-money laundering*” United Kingdom: John Wiley & Sons, Ltd at 17.

19 Cox (2014) at 18.

20 Parkman T (2012) “*Mastering anti-money laundering and counter-terrorist financing: A compliance Guide for Practitioners*” Great Britain: Pearson Education at 5.

21 Serious Offences (Confiscation of Profits) Act [Chapter 9:17] of 1990.

22 Prevention of Corruption Act of [Chapter 9:16] 2002.

23 Presidential Powers (Temporary Measures) [Chapter 10:20] Act of 2004.

24 Bank Use Promotion and Suppression Act [Chapter 24:24] of 2004.

25 Exchange Control (Money Transfer Agencies) Order of 2002.

26 *S v Kuruneri* (SC40/04) [2004] ZWSC 40 (16 June 2004);

conventions such as concealment and disguise of proceeds of crime were not sufficiently catered for.²⁷ There was also no framework outlining powers that authorise the investigation and prosecuting capabilities of competent authorities. The prevailing framework did not enable the investigation and eventual prosecution of ML adequately.

In the post-2013 AML era, having noted the deficiencies of the prevailing legal framework the government of Zimbabwe moved from a point of fragmentation to a unified AML legal framework. The Money Laundering and Proceeds of Crime Act (MLPCA) was promulgated in 2013. In 2018, legislation and amendments were introduced to support the MLPCA,²⁸ which further aligned Zimbabwe with the international instruments including the FATF standards, the International Monetary Fund, and the World Bank.²⁹ However, it has not fully been assessed if the unified AML legal framework under the MLPCA is now fully aligned to the international perspective.

1.4. RESEARCH QUESTION

In assessing the effectiveness of the AML regime of Zimbabwe, this study will address the following questions:

- 1) To what extent is the Zimbabwean AML regime in line with the international legal and institutional framework and the FATF standards?
- 2) Does the Zimbabwean legislation empower the various AML institutions to effectively execute their mandate?

1.5. PRELIMINARY APPROACH

The basis of this research is to ascertain the effectiveness of the AML legal and institutional framework of Zimbabwe. The study considers the effectiveness of the MLPCA in deterring financial crime. In analysing the MLPCA, it is considered against the principle of constitutional supremacy in accordance with the Zimbabwean jurisprudence. This study is also analysing

27 Goredema C (2001) "Beyond Declarations of Intent" *African Security Studies* 10 (3): 78-89 at 80.

28 Money Laundering and Proceeds of Crime Act (Amendment Act No. 12) of 2018.

29 Maguchu P (2018) "Revisiting Money-Laundering Legislation in Zimbabwe and the Role of International Organisations" *African Security Review* 1-13 at 4.

whether the doctrine of separation of powers between the executive, the legislature and the judiciary exists in supporting AML efforts. The impartiality of the judiciary, the police, and the prosecution in dealing in ML cases are examined. In pursuing this examination, it investigates whether the MLPCA establishes and maintains the rule of law. The implementation of effective legislation relies on the impartiality of both the executive and judiciary. Therefore, the failure of the executive and the judiciary in the impartial implementation of the law would suggest ineffective legislation. Thus, an appraisal of the effectiveness of the MLPCA, against the constitution of Zimbabwe and in alignment with international AML law provides the basis for this study.

1.6. LIMITATIONS OF THE STUDY

This study assesses the legal and institutional framework dedicated to the AML regime of Zimbabwe. The study is limited in that the method of the approach taken is strictly doctrinal in nature. The study does not access any first-hand information and the researcher does not rely on an affiliate member that can assist in the verification of the study. Another limitation is that the research is focused on a period between 2013, when the MLPCA was promulgated, until August 2021, when the study was concluded.

1.7. RESEARCH METHODOLOGY

This research adopts a doctrinal approach to analyse the AML legislation of Zimbabwe. Zimbabwe was chosen as a case study because its largely a cash economy that is prone to money laundering. The study was also inspired by the promulgation of a specific AML law – the MLPCA. A doctrinal approach will assist to determine how the MLPCA conforms to democratic and legal principles of constitutional supremacy, separation of powers and the rule of law. This analysis also helps to determine the designated institutions' ability to implement AML measures. Secondary data sources from international instruments, international regulatory bodies, the national legislation, national policy documents, books, scholarly articles, news reports and reports from international regulatory bodies were used.

1.8. LITERATURE REVIEW

Early Zimbabwean AML legislation had several limitations. Firstly, the law concentrated only on the seizure of proceeds of crime. While the seizure of proceeds of crime should be considered a positive step, the biggest hurdle to the early AML efforts was that the Zimbabwean laws failed to sufficiently define ML.³⁰ Goredema specifically identified two conceptual defects in the legal definition of ML.³¹ Firstly, the legislations' inability to incorporate criminal elements such as deception and the handling of laundered objects. Secondly, legislation's inability to criminalise ML elements of concealment and disguise of proceeds of crime. These shortcomings, however, seem to have been addressed in later legislation.

The promulgation of the MLPCA addressed the above-mentioned deficiencies by providing a clear definition of ML, which in turn, facilitates the criminalisation of the constituent elements of ML including concealment, conversion, disguise and acquisition and use of the proceeds of crime, among others.³² Close examination, however, reveals that the promulgation of the MLPCA was both a rushed exercise and lacked due process with the draft bill lacking thorough debate before Senate.³³ Maguchu³⁴ explains that the MLPCA appears to have been more of an FATF compliance exercise than it was a genuine AML measure. The MLPC Bill did not follow the required stages before reaching Parliament. This irregularity violates Parliamentary Standing Orders and the constitution. Furthermore, the Bill did not realise much scrutiny as it was gazetted on the same day it was presented to the house of assembly.

Maguchu's sentiments are most conspicuous when the effectiveness of AML initiatives in Zimbabwe are tested. Of note, the limited supervision of FIs and Designated Non-Financial Businesses and Professions (DNFBPs) is quite telling. On the other hand, the lack of enforcement of the law by the Law Enforcement Agencies (LEAs) seems to offer limited

30 Gubbay A R (1998) "Zimbabwe: Proposed additional Money Laundering Legislation" *Journal of Money Laundering Control* 1: (4)380-382 at 380.

31 Goredema (2001) at 80.

32 *S vs Chikukwa* (HH 813/16 CRB NO.146/16) (2016) ZWHHC 813 (03 October 2016);

33 Maguchu (2018) at 7.

34 Maguchu (2018) at 7.

deterrence, which researchers argue to be a factor in the significant increase in ML activities in Zimbabwe.³⁵ Simwayi & Haseed also found that the lack of resources and trained staff in the Financial Intelligence Unit (FIU) hampered the effective fighting of AML.³⁶ Of note, the FIU's inability to collect good quality financial intelligence on Suspicious Transactions Reports (STRs) severely affected the effectiveness of the Zimbabwe AML regime. Dzomira further enlightens that insufficient legislation and the lack of enforcement of AML regulations and guidelines by the competent authorities is a major hindrance to fighting cyber-money laundering in Zimbabwe's banks.³⁷

1.9. SIGNIFICANCE OF THE STUDY

This study attempts to fill a gap in the literature in terms of AML in developing countries, in general, and in Zimbabwe, in specific. Past studies on ML in Zimbabwe rarely appraise the AML regime. While past research identifies significant deficiencies to the Zimbabwe AML regime, these studies go no further. This dissertation goes much further to appraise the AML legal and institutional framework. In particular, the dissertation focuses on how the AML regime aligns with the international AML perspective and assesses the extent of empowerment of designated institutions to execute their mandate effectively. It is envisaged that results from this study will contribute to a meaningful AML discourse at legislative and policy levels in the fight against ML in Zimbabwe.

1.10. OUTLINE OF REMAINING CHAPTERS

Chapter two analyses the international instruments that combat money ML. It discusses the FATF standards as well as other international bodies involved in fighting ML.

35 Fundira (2007) at 70.

36 Simwayi M & Haseed M (2011) "The Role of Financial Intelligence Units in Combating Money Laundering: A comparative analysis of Zambia, Zimbabwe and Malawi" *Journal of Money Laundering Control* 15(1): 112-134 at 122.

37 Dzomira S (2014) "Electronic Fraud (cyber fraud) Risk in the Banking Industry, Zimbabwe" *Risk, Governance & Control: Financial Markets and Institutions* 4(1): 1-25 at 19.

Chapter three highlights and discusses Zimbabwe's AML legal and institutional framework. The discussion outlines the legislation and designated institutions for AML. Further discussion encompasses all other institutions that have a mandate to combat ML in Zimbabwe.

Chapter four analyses the Zimbabwe AML legislation to assert how consistent it is with the constitution of Zimbabwe. This will be done by assessing its ability to conform to the legal principles of constitutional supremacy, the doctrine of separation of powers as well as the establishment and maintenance of the rule of law.

Chapter five evaluates alignment of the legal framework of the Zimbabwe AML regime to the FATF standards. Examining the provisions set out in the MLPCA will help to determine alignment with the international best practice. The chapter concludes with an assessment of the procedural frameworks on investigating and prosecuting of ML.

Chapter six concludes the study and contains recommendations for empowerment towards improving an efficient and effective AML strategy.



CHAPTER 2

AN INTERNATIONAL PERSPECTIVE ON ANTI-MONEY LAUNDERING

2.1. INTRODUCTION

This chapter presents an analysis for the initiatives of the international AML regime to curb and reverse the effects of money laundering on the global financial system. The chapter focusses on how the international perspectives and best practices provide the basis for evaluating AML efforts. The set standards of the United Nations (UN) conventions, the African Union conventions, the Basel Committee, and the Wolfsberg Principles, amongst others, will be referred to in this chapter. Their role regulates and supervise AML efforts and multilateral standard measures could assist Zimbabwe to detect, prevent and stop ML.

Money laundering and terrorist financing is a threat to the stability of global financial systems.¹ As such, AML efforts require globally focussed solutions. The interconnectedness of the global financial systems means that money laundered in one part of the world can easily be transferred to another corner instantaneously. This, therefore, means that any meaningful AML effort depends on a multilateral approach. The chapter explores specifically how the legal and institutional framework put up by the FATF offers the basis for international AML best practice.

2.2. INTERNATIONAL INITIATIVES

Because of globalisation, financial institutions operate a close network of financial transactions. The interconnectedness of financial systems enables money to be transferred instantly across the world to facilitate trade.² This interconnectedness acts as a two-edged sword. On the one hand, it facilitates trade and on the other, it enables money laundering. To maintain the integrity of financial markets it is critical to not allow proceeds of crime access

¹ Muller W H Kalin C H & Goldsworth J G (2007) *Anti-Money Laundering: International Law and Practice* West Sussex: John Wiley & Sons Ltd at 6.

² Young M A (2015) "The dark figure of money laundering", *Journal of Financial Crime* 22(4).

into the global financial system. Consequently, effective AML efforts should ideally be global and international in nature.

International AML initiatives, therefore, are a collection of conventions that constitute the legal instruments and globally accepted standards to prevent, regulate, monitor, supervise and fight ML. The main conventions are the Vienna Convention,³ the Palermo Convention⁴ and the United Nations Convention against Corruption (UNCAC)⁵. It is from these conventions that the FATF formulated international best practices on AML. Each of these conventions will, in turn, be discussed.

2.2.1. The United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotic Substances of 1988 (Vienna Convention)

The Vienna Convention spearheaded the fight against ML and illicit trafficking on global markets. This, it achieved by pushing for a fully coordinated international initiative.⁶ Most notably, the Vienna Convention provides a framework for defining ML.⁷ Article 3 makes it obligatory for states parties to include within their domestic laws, legislation that criminalises all offences that relate to illicit trafficking.⁸ Article 3(1)(b)(i) specifies the criminalisation of conversion or transfer of property knowing that such property is derived from the illicit drug trade.⁹ On the same token, Article 3(1)(b)(ii) criminalises the concealment or the disguising of the true nature and the source of property derived from the illicit drug trade.¹⁰

Overall, the Vienna Convention highlights the connection between drug trafficking and ML. It facilitates stripping criminals of the profits realised from ML and its predicate crimes.¹¹ Article

3 United Nations Convention against Illicit traffic in Narcotics Drugs and Psychotic Substances (Vienna Convention) of 1988.

4 United Nations Convention against Transnational Organised Crime (Palermo Convention) of 2000.

5 United Nations Convention against Corruption (UNCAC) of 2003.

6 Simpson M (2010) "International Initiatives" in Smith & Srivastava (eds) *International Guide to Money Laundering Law and Practice* Bloomsbury Publishing, USA at 193.

7 Article 3 Vienna Convention (1988).

8 Booth R et al (2011) at 4.

9 Mugarura N (2012) *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* Surrey: Ashgate at 65.

10 Mugarura (2012) at 65.

11 Mugarura (2012) at 65.

5 requires member states to create forfeiture legislation that enables the identification, tracing, seizing and freezing of property or proceeds from drug trafficking and related offences.¹² In facilitating an asset forfeiture legal framework, the Convention established a sound legal framework to undermine those that obstruct cooperation and the provision of information by using laws for customer confidentiality and bank secrecy.¹³ State parties, through cooperation, can assist each other in the confiscation and seizure of property beyond their jurisdiction.¹⁴

2.2.2. The United Nations Convention against Transnational Organised Crime of 2000 (the Palermo Convention)

The Palermo Convention was adopted as a measure to curb the spread of international organised crime. As stated by Mugarura, State Parties are obligated to implement the criminalisation of ML by transposing these international obligations into domestic law.¹⁵ The purpose of the Convention is to promote cooperation and to prevent and combat transnational organised crime effectively.¹⁶

The Palermo Convention goes further than just the criminalisation of predicate offences such as corruption; it goes on to criminalise individuals' participation in organised crime.¹⁷ The emphasis is on the criminalisation of ML by intentional conversion or transfer of property, concealment or disguise of the true nature, acquisition, possession, and use of proceeds of crime. Moreover, the participation in the association, with conspiracy to commit and attempt to commit offences of ML is also criminalised.¹⁸

Furthermore, state parties are required to establish regulatory AML regimes that employ measures to combat ML in a standardised institutional framework.¹⁹ Specifically, institutions

12 Mugarura (2012) at 67.

13 Article 5 (3) Vienna Convention (1988). See also Mugarura (2012) at 67.

14 Article 5 (4) Vienna Convention (1988).

15 Mugarura (2012) at 71.

16 Article 1 Palermo Convention (2000).

17 Article 5 Palermo Convention (2000).

18 Article 6 (1) Palermo convention (2000).

19 Article 7 (3) Palermo Convention (2000).

such as banks and other financial institutions (FIs) and DNFBPs that are susceptible to ML must make use of these measures. Measures that help to detect, identify, and deter ML carry a mandatory obligation for state parties include customer identification, record keeping and the reporting of STRs.²⁰ Nationally coordinated cooperation is required for the exchange of information on ML matters. The creation of a Financial Intelligence Unit (FIU) is mandatory for countries. The FIU's main function is to collect, analyse and disseminate information regarding potential acts of ML.²¹ In executing AML measures, the Palermo Convention encourages international cooperation that could assist States Parties to collaborate.²² International cooperation and Mutual Legal Assistance (MLA) in civil and criminal matters, extradition, transfer of proceedings and conducting joint investigations is recommended.²³

2.2.3. United Nations Convention Against Corruption (UNCAC)

UNCAC was adopted, as a result of states realising the correlation between corruption and various other forms of crime including ML.²⁴ The overarching purpose of UNCAC is to promote, facilitate and support international cooperation and technical assistance in the prevention and fight against corruption also including asset recovery among state parties.²⁵

Corruption and ML share an intrinsic relationship.²⁶ Organised criminal groups resort to ML to clean their ill-gotten proceeds. In many instances, organised crime uses ML to integrate ill-gotten money into the global financial system. For example, money generated from the sale of illicit drugs can be easily channelled into legitimate financial systems facilitated by the bribing of bank officials to open bank accounts. Another example follows operations of grand corruption, whereby senior public officials of government accept bribes and abuse high levels of power to favour contracts and businesses run by organised crime syndicates.²⁷ Often public

20 Article 7 (a) Palermo Convention (2000).

21 Article 7 (b) Palermo Convention (2000).

22 Article 7 (4) Palermo Convention (2000).

23 Article 16-30 Palermo Convention (2000).

24 Preamble UNCAC (2003).

25 Article 1 UNCAC (2003).

26 OECD (2018) "Money Laundering", available at <https://www.oecd.org/cleangovbiz/toolkit/moneylaundering.htm> (visited 04 November 2019).

27 Transparency International (2016) "What is Grand Corruption and How can we stop it?", available at <https://www.transparency.org/news> (visited 28 February 2020).

officials are paid bribes to turn a blind eye on criminal syndicates' activities only to the detriment of many and society. Hence, corruption such as bribery and abuse of office facilitates ML.²⁸ Corruption offers corrosive effects that undermine democracy and the rule of law in societies. This leads to violations of human rights and erodes the quality of life of citizens by distorting markets and allowing organised crime, terrorism, and other threats to human security to flourish.²⁹ It remains imperative for the international community to fight corruption as a unified force.

However, even though a clear connection exists between corruption and ML, separate regimes have been created to fight these crimes more strategically. Individually they form an anti-corruption regime and an anti-money laundering regime. To date, UNCAC is the comprehensive instrument that precedes previous AML instruments. As such, UNCAC criminalises not only the basic forms of corruption such as bribery and embezzlement of public funds but also trading in influence and the concealment and laundering of proceeds of corruption.³⁰ Accordingly, UNCAC rests on four anti-corruption pillars, namely prevention, criminalisation, international cooperation, and asset recovery. These pillars help to improve effectiveness in the AML regime are briefly discussed next.

Prevention is one of the critical measures of fighting corruption and consequential crimes such as ML.³¹ In this regard, UNCAC obligates state parties to create regulatory as well as supervisory measures for monitoring financial and non-financial institutions.³² To achieve effectiveness in combating corruption including ML, state parties must develop and promote global, regional, sub-regional and bilateral cooperation among the judicial, law enforcement and financial regulatory authorities.³³

28 Mugarura (2012) at 32.

29 Annan K (2004) United Nations Office of Drugs and Crime "UNCAC: Foreword" United Nations: New York, available at: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf (visited 26 August 2019).

30 Summary UNCAC (2003).

31 Article 5 UNCAC (2003).

32 Article 14 (1) (a) UNCAC (2003).

33 Article 14 (4) (5) (f) UNCAC (2003).

The second pillar of UNCAC provides for the criminalisation of corruption and related crime including ML. To this end, UNCAC obligates State Parties to formulate domestic laws that criminalise corruption. Specifically, these laws should establish as a prerequisite whether the offence has been committed intentionally. Subsequently, other fundamental aspects such as concealment and disposition of proceeds of corruption can be addressed.³⁴ UNCAC stipulates ML elements to be the conversion or transfer of property knowing that such is proceeds of crime; the concealment or disguise of the true nature, source as well as disposition, movement or ownership to property that is proceeds of crime; the acquisition, possession and use of proceeds of crime; the participation in and association with conspiracy to commit, attempt to commit and aiding and abetting as well as facilitating and counselling the commission of the laundering of proceeds of crime.

UNCAC provides that countries are obligated to engage in international cooperation for the prevention and fight against corruption and related crime such as ML. However, such cooperation must be guided and consistent with the state party's domestic laws.³⁵ Hence, national legislation on anti-corruption and AML needs to be aligned to international instruments. International cooperation is facilitated by elements such as Mutual Legal Assistance (MLA) in which states assist each other in investigations by cooperating law enforcement, prosecutions, judicial proceedings, and extraditions. Also, MLA is used for cooperation in the transfer of offenders and even criminal proceedings from one state to the other. Subsequently, MLA facilitates recovering assets identified as proceeds of crime.

Since corruption and ML are transnational crimes, proceeds of these crimes can be located domestically or abroad. Hence, international cooperation through MLA can facilitate asset recovery. According to UNCAC, states parties must establish legal frameworks that establish the confiscation of proceeds of crime derived through corruption including ML.³⁶ As far as possible the asset recovery legal regime must be able to override bank secrecy laws, but in so doing must not prejudice third parties.³⁷ Adequate provisions must be made in domestic laws for asset recovery laws to cover all the stages in asset recovery which include identifying and

34 Article 23 UNCAC (2003).

35 Article 43 (1) UNCAC (2003).

36 Article 31 (1) UNCAC (2003).

37 Article 31 (7) (9) UNCAC (2003).

tracing of proceeds of crime, preservation of assets through freezing and seizure, management of preserved assets, actual confiscation and repatriation of assets back to the victim or state of origin.³⁸

2.3. THE FINANCIAL ACTION TASK FORCE (FATF)

The FATF is an intergovernmental body that was formed in Paris by the G7 as a response to criminals laundering drug money and funding terrorism in 1989.³⁹ Its mandate is to specialise in the formulation and enhancement of global AML standards and policies. To achieve this, the FATF seeks to harmonise national legislative and regulatory reforms in AML strategies by providing guidelines for AML frameworks and policy.⁴⁰ To date, FATF's membership consists of 39 countries and regional bodies, which are non-members that have an observer or associate member status.⁴¹ These associate members consist of 9 FATF-Style Regional Bodies including Eastern Southern African Anti-Money Laundering Group (ESAAMLG) of which Zimbabwe is a member.

2.3.1. The FATF Recommendations/Standards

Initially, the FATF developed 40 recommendations in 1990. These were later expanded post-September 11 attacks on the USA. The latest is 40+9 Recommendations. The expansion included special recommendations to combat Terrorist Financing (TF). FATF recommendations are reviewed regularly to keep with the latest ML trends. With each review, the recommendations are more precise and prescriptive as the FATF issues special interpretive notes to support its recommendations.⁴²

38 Article 31 (1) (2) (3); 57 UNCAC (2003)

39 Muller W H Kalin C H & Goldsworth J G (2007) *“Anti-Money Laundering: International Law and Practice”* West Sussex: John Wiley & Sons Ltd.at 6.

40 Mugarura (2012) at 80.

41 FATF (2019) “FATF Members and Observers”, available at <https://www.fatf-gafi.org/about/membersandobservers/> (visited 04 November 2019).

42 Tsingou E (2010) “Anti-Money Laundering Regime: What Lessons for International Political Economy?” *International Politics* (47): 617-637 at 619.

Although FATF recommendations are soft law and non-binding, member states are compelled to take these recommendations seriously and in practice are forced to comply with them.⁴³ For instance, the European Union (EU) mandates its member states to transpose the recommendations into national legislation.⁴⁴ Another example is through the FATF-Style Regional Bodies that conduct peer reviews to establish compliance of implementation of the FATF recommendations in specific regions of the world. Furthermore, the FATF requires that bank secrecy laws in member states should not inhibit the implementation of the FATF recommendations. It is equally important to note that the lack of cooperation and compliance with the recommendations often leads to penalties. The detrimental effect of these penalties equates to economic sanctions.

Moreover, world bodies such as the World Bank and the International Monetary Fund have made the FATF recommendations part of their pre-requirements for loan applications.⁴⁵ Naturally, this compels countries to comply.⁴⁶ The FATF has issued recommendations that prioritise prevention, detection, and deterrence of ML. These recommendations specify customer due diligence procedures that are based on the Know your client principle which helps to identify and collect relevant information from the customer in any financial transaction. In addition, the FATF recommendations have instructed a prescriptive record keeping measure to enable the securing of customer information for a specified time. Well-kept customer information forms the basis of an effective AML regime which enables a paper trail that can assist competent authorities in the investigation of ML cases.

Also, the FATF recommendations have mandated the filing of STRs which puts a reporting obligation on financial institutions and DNFBPs and keeps them alert to ML activity. The FATF have also issued recommendations to support international cooperation and coordination of AML efforts through mutual legal assistance. MLA is critical to transnational crime eradication because it paves way to asset recovery from one country to the other.

43 United Nations Charter Chapter VII binds member states to AML conventions that complement FATF Recommendations.

44 Booth R et al (2011) at 5.

45 Mugarura (2012) at 80.

46 Sharman J C (2008) "Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States" *International Studies Quarterly* 52 (3): 635-656 at 645.

2.3.2. THE FATF REGIONAL INITIATIVES ON AML REGULATION

Although cooperation, at a macro level is galvanised by international instruments such as the Vienna and Palermo Conventions and UNCAC, it is equally important to concentrate cooperation at regional levels.⁴⁷ Regional cooperation in AML helps neighbouring countries to learn from each other and to share best practices. The FATF has created regional bodies that are made up of countries from the same region. Although there are nine FATF-Style Regional Bodies only two are relevant for this research: the ESAAMLG and the GIABA.

2.3.2.1. The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)

ESAAMLG specialises with controlling ML threats within the Eastern and Southern African region and consists of 18 Eastern and Southern African countries including Zimbabwe and South Africa.⁴⁸ Since its establishment in 1999, ESAAMLG promotes the effective implementation of the FATF recommendations among its members by providing technical assistance, expertise, and input on making policy aimed at AML. The recommendations are enforced through peer reviews among member states who receive a Mutual Evaluation Report after each review.



2.3.2.2. The Intergovernmental Action Group against Money Laundering in West Africa (GIABA)

GIABA was formed through the Economic Community of West African States (ECOWAS) Authority of Heads of State and Government in 2000. It has a membership of 16 countries. GIABA is the specialised unit of ECOWAS that is responsible for ensuring the capacity of member states to enable effective prevention and control of ML. As an FATF-Style Regional Bodies, it also has the function of granting observer status to African and non-African states as well as organisations that support its objectives centred on prevention and control of ML. GIABA is responsible for identifying and addressing needs for its members, thereby providing

47 Article 7 (3) & (4) and art 27-30) Palermo Convention (2000). See also FATF Recommendation 36-40.

48 FATF (2019) "ESAAMLG" available at <http://www.fatf-gafi.org/countries/#ESAAMLG> (visited 5 November 2019).

technical assistance. Like the Eastern Southern African Anti-Money Laundering Group, GIABA performs the same function of enforcing peer reviews and monitoring compliance of member states in Africa.

2.4. CONTINENTAL REGIONAL INITIATIVES

Regional AML instruments assist member states to keep in line with binding measures. Several countries participate in these regional initiatives to combat ML. Examples of these are the European Union which has commissioned the European Union AML directives and the African Union initiatives. While both the EU and AU initiatives are important regional initiatives, only the latter will be discussed as this relates more closely to Zimbabwe than the former.

2.4.1. The African Union Convention on Preventing and Combatting Corruption (The AU Convention)

The AU Convention was adopted in Maputo on 11 July 2003 and is structured along the lines of the European Union Initiative. Its purpose is to help tackle corruption in Africa.⁴⁹ More specifically, the AU Convention seeks to address the root causes of corruption that impede transparency and accountability in the management of public affairs.⁵⁰

The AU Convention initiatives are similar to those of the Vienna Convention in that it promotes the establishment of domestic laws that seek to criminalise offences relating to trafficking of drugs. It also criminalises offences related to acquisition, possession and association of property derived from trafficking. Similarly, Article 6 of the AU Convention emphasises the importance of member states to adopt legislation and measures to establish as criminal offences the laundering of proceeds of corruption and all related offences.⁵¹

To deal with the proceeds of corruption, the AU convention provides for cooperation through mutual legal assistance.⁵² Furthermore, it provides for the confiscation and seizure of

49 African Union Convention on Combating Corruption (the AU Convention) 2003.

50 Preamble AU Convention (2003).

51 Article 6 AU Convention (2003).

52 Article 18 AU Convention (2003).

proceeds of corruption.⁵³ In support of the AU Convention member states have since adopted the AU declaration⁵⁴ which relates to the fight on IFFs. The declaration clarifies the need to curb the movement of capital that is linked with illicit activities such as smuggling of animals, minerals, illicit drugs, and the trafficking of people. In all these illicit activities corruption is a driving force to IFFs and requires governments to take a strong stance against.

2.5. OTHER AML BODIES

Effective AML regimes depend on the interchange of information on ML trends; hence, the multilateral efforts facilitated through international cooperation by the global community. Several bodies play a financial industry-specific role in the fight against ML. These bodies stand out from the generic overview that is offered by international bodies and instruments such as the UN and its AML conventions. Some of the critical AML bodies are discussed next.

2.5.1. The Egmont Group

The Egmont Group was set up in Brussels in 1995 and sponsored by the FATF as a global information exchange forum on ML within financial intelligence units. The commencement meeting was held at the Egmont-Arenberg Palace for which the name Egmont derives. Currently, the Egmont Group consists of 164 countries.⁵⁵ The FATF emphasizes the responsibility of FIUs to receive, analyse and disseminate information on ML matters, by promoting the implementation of domestic programmes. The Egmont Group promotes this standard and brings together world financial intelligence units to help curb ML.⁵⁶ The Egmont Group aims to improve cooperation for financial intelligence information through the use of technology, providing expertise to set up and run a financial intelligence unit as well as training of the FIU personnel. It also provides technical assistance and valuable information on information about indicators for ML activities on its secure website.⁵⁷ Similarly to the FATF-

53 Article 16 AU Convention (2003).

54 African Union Declaration on illicit Financial Flows Document., Assembly/AU/17(XXIV).

55 Egmont Group (2019) "List of Members", available at https://egmontgroup.org/en/membership/list?field_region_value=east_southern_africa (visited 05 November 2019).

56 Madinger J (2007) "Money Laundering: A Guide for investigators 2 (ed) USA: Taylor & Francis at 102.

57 Mugarura (2012) at 93.

style regional bodies, the Egmont group has regional groups that members can join after undergoing a particular process for admission. Zimbabwe's FIU is not yet a member to the group.

2.5.2. The Wolfsberg Group

The Wolfsberg Group was established in Switzerland in 2000 as an association of 13 international banks. Its mandate is to develop frameworks and guidance for the management of financial crime risks in processes involving customer due diligence and AML between private bankers and clients. The Wolfsberg Group issues non-obligatory guidelines that provide financial institutions with an industry perspective on effective financial crime risk management. In keeping with the FATF standards the group reviews and identifies gaps as well as relevant insights of ML in private banking.⁵⁸

The Group continues to review and revise its published guidelines to keep up to date and encourage the efficacy of international AML initiatives. To date, the Wolfsberg Group has issued the following publications: the Statement on suppression of the financing of terrorism; the AML principles on correspondent banking; the Guidance on Risk-based approach; the Due diligence repository on Politically Exposed Persons (PEPs) and beneficial owners; the Trade finance principles; the Guidance on the transparency of international wire transfers and the Guidance on anti-bribery and corruption including compliance programmes.⁵⁹

2.5.3. Basel Committee

The Basel Committee was established by the Group of 10 countries central bank Governors in 1974 with the mandate of enhancing financial stability through strengthening the regulation, supervision, cooperation, and practices of banks worldwide.⁶⁰ It now consists of 45 members

58 Wolfsberg Group (2019) "Global Banks: Global Standards", available at <https://www.wolfsberg-principles.com/about/mission> (visited 05 November 2019).

59 Wolfsberg Group (2018) "Wolfsberg Group Standards", available at <https://www.wolfsberg-principles.com/wolfsberg-group-standards> (visited 24 November 2019).

60 Basel Committee Charter (2018) available at <https://www.bis.org/bcbs/charter.htm> (visited 25 August).

who include central banks and bank supervisors.⁶¹ The Basel Committee serves as the primary global standard-setter for prudential regulation for banks. The committee provides a forum for international cooperation on banking supervisory matters. It establishes international standards for bank regulation, especially in AML. Its mandate involves identifying current and emerging risks for the global financial system and addressing regulatory and supervisory gaps that pose as risks to financial stability. The Committee has issued several guidelines which have become a standard on dealing with ML in the global banking sectors.⁶² However the guidelines are not binding but are a recommended standard across the banking world.

2.5.4. The World Bank and the International Monetary Fund

Both the World Bank and the International Monetary Fund implement programmes that promote stronger financial, economic, and legal systems. Their strategy involves forcing countries to be compliant with the FATF standards. As a prerequisite to accessing loans, the International Monetary Fund requires countries to have AML legislation and regulation in place. They offer corrective measures and policies to member countries to promote financial stability and prevent global financial crises. To prevent financial sector abuse, they also encourage financial institutions to assume robust legal and institutional frameworks and implement supervisory standards. The World Bank and IMF have a mandate that covers a wide spectrum of banks, money markets, foreign exchange, payment systems. Also, their mandate establishes regulatory, supervisory, and legal frameworks. Together they assess and evaluate financial sector weaknesses and strengths through the financial sector assessment programme. The main objective is to prevent and stop the abuse of the financial system through the implementation of the FATF standards. Therefore, they offer and encourage reforms in the financial sector that facilitate an AML environment.

61 Basel Committee (2019) "Basel Committee membership", available at <https://www.bis.org/bcbs/membership.htm?m=3%7C14%7C573%7C71> (visited 6 November 2019).

62 Basel Committee Guidelines on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering 1988.

2.5.5. Transparency International (TI)

Transparency International is a Berlin-based global movement that was founded in 1993.⁶³ It is dedicated to eradicating the injustices brought about by corruption through advocacy, campaigning, and research to expose the systems and networks that enable corruption to thrive.⁶⁴ TI focuses on transparency, accountability, and integrity in public affairs. In 1995, it developed the Corruption Perception Index (CPI) and later the Global Corruption Barometer (GCB), which have since become global indicators for corruption.⁶⁵ According to the CPI indicator, Zimbabwe has been rated to be one of the most corrupt nations in the world. In 2020, it has been ranked at 157/180⁶⁶ with a score of 24 out 100 (the score of 1 being most corrupt and 100 being the least corrupt). TI is determined to bring in check those that are entrusted with positions of power in society since corruption happens in all sectors of society including businesses, governments, and Banks. It also reigns in on the courts, the media, civil society, and individuals such as politicians, public servants, and members of the public.⁶⁷

TI also seeks to promote adherence to proper banking regulations such as know-your-customer and Customer Due Diligence, which promotes the stability of the global financial system.⁶⁸ It has voiced its concerns and revealed some of the shortfalls of the global anti-money laundering system to be largely caused by complicit Banks that are involved in corruption and ML.⁶⁹ Issues like the lack of supervision of Banks should be dealt with globally.⁷⁰

63 Transparency International (2020) "About", available at <https://www.transparency.org/en/about> (visited 12 May 2020).

64 Gutterman E (2014) "The Legitimacy of transnational NGOs: lessons from the experience of Transparency International in Germany and France. *Review of International Studies* 40: 391-418 at 401.

65 Lambsdorff J G (1999) "The Transparency International Corruption Perception Index 1999: Framework Document", available at https://www.researchgate.net/profile/Johann_Lambsdorff/publication/267241821_The_Transparency_International_Corruption_Perceptions_Index_1999Framework_Document/links/54d6462f0cf24647580d01da/The-Transparency-International-Corruption-Perceptions-Index-1999-Framework-Document.pdf (visited 22 May 2020).

66 Transparency International (2020) "Corruption Perceptions Index", available at <https://www.transparency.org/en/cpi/2020/index/zwe> (visited 21 November 2020).

67 Kimeu S (2014) "Corruption as a challenge to global ethics: the role of Transparency International" *Journal of Global Ethics* 10(2): 231-237 at 235.

68 Transparency International (2015) "Incentivising Integrity in Banks" Working Paper 02: 1-9 at 6.

69 Transparency International (2020) "Oops Banks did it again!" available at <https://www.transparency.org> (visited 04 December 2020).

70 Transparency International (2015) "Incentivising Integrity in Banks" Working Paper 02: 1-9 at 6.

The method of penalising those that fail to be compliant with AML regulation should change from the usual fining and deferring of prosecution, to be more severe and proportionate to the size and capabilities of the Banks.⁷¹ This will force deterrence for those that are charged with being the gate-keepers of the financial system. In keeping with its objectives, TI continues to advocate for the protection of ‘Whistle-blowers’ and for governments to do more to fight corruption.

2.6. The Anti-Money Laundering Legal Framework

According to FATF recommendations, domestic laws are required to specifically criminalise ML as set out in other international conventions. It should provide sufficient penalties that have a deterrent effect on potential money launderers and terrorists. Furthermore, the AML legislation should establish asset forfeiture laws that enable competent authorities to strip ill-gotten proceeds from the criminals and returning them to the victims. In addition, these laws should pay special attention to the protection of third parties and whistle blowers.

2.6.1. The Anti-Money Laundering Institutional Framework

To ensure an effective AML regime, the primary institution to be established by a country is the Financial Intelligence Unit. Recommendation 29 states that the FIU should play the central role to receive, analyse and disseminate ML information.⁷² In this regard, the FIU should be equipped with trained specialised staff that can manage and secure ML information effectively.

Using financial intelligence, the FIU can thus facilitate coordination and implementation of AML policies and programmes in collaboration with competent supervisory authorities and law enforcement agencies. Furthermore, the effective coordination by the FIU and all the

71 Transparency International (2020) “Fincen Files: Overhaul to Global Anti-Money Laundering System Needed” available at <https://www.transparency.org/en/press/fincen-files-overhaul-to-global-anti-money-laundering-system-needed> (visited 05 December 2020).

72 Financial Action Task Force (2012) “FATF Recommendations: International Standards on Combating Money Laundering & the Financing of Terrorism and Proliferation”, available at <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html> (visited 12 June 2019).

competent authorities creates a paper trail that can lead to a successful investigation, prosecution, and conviction in ML.

2.6.2. Competent Authorities

For the AML regime to be effective, there must be a supervisory and regulatory system that is established for all financial institutions and DNFBPs. Appropriate legislation should give supervisory authorities the necessary powers to enable their operational procedures. Competent authorities must be empowered to coordinate AML efforts amongst each other.

2.6.3. AML Policies, Procedures and Systems

Domestic laws and regulation influence AML regime policies and provides the basis for workable control systems. However, for an AML regime to comply with international standards, specific policies, procedures, and systems have to be implemented. Emphasis is placed on the key areas that generate and harness information as per international standards.⁷³ These key areas represent core elements that drive the AML policy that is facilitated specifically through the FATF recommendations.⁷⁴ The core elements are discussed in the following sections.

2.6.3.1. The Risk-Based Approach (RBA)

The Risk-Based Approach (RBA) is a risk analysis tool that enables laws enforcement agencies, financial institutions and DNFBPs in detecting, identifying, and mitigating the risks of ML and its predicate crimes.⁷⁵ RBA allocates 90 per cent of the best resources to 10 per cent of high-risk customers. In addition, the utilisation of the KYC principle and CDD measures then provides a gateway for early detection and identification of ML risks by financial institutions and DNFBPs. Early detection of ML through RBA is critical for an effective AML regime. The

⁷³ Mugarura (2012) at 55. See also Parkman (2012) at 60.

⁷⁴ UNODC (2009) "The Elements of an effective AML/CFT Framework" Chapter III 63-107 at 86, available at <https://www.unodc.org/documents/southeastasianandpacific/2009/02/TOCAMLO/08CHAPTERIII.pdf> (visited 27 February 2020).

⁷⁵ Cox (2014) at 25.

latter becomes the priority preventative measure in the AML standards.⁷⁶ Therefore, an effective RBA system can make ML difficult and expensive for criminals.⁷⁷ The deterrent effect fostered by the RBA has the potential to render ML not worthwhile for the perpetrator.

The FATF reiterates coordinated actions and policies within an institutional framework of designated authorities for an effective AML regime.⁷⁸ It encourages risk-based supervision from competent supervisory authorities to ensure compliance with AML requirements from financial institutions and DNFBPs. The risk-based supervision also ensures that for non-compliance, proportionate sanctions are applied. Therefore, the RBA serves as a prevention and deterrent tool in the AML regime. Hence, the coordinated and collaborated efforts from competent supervisory authorities by promoting and applying the RBA will protect the financial system from being used as a conduit in the disposal of ill-gotten proceeds.

2.6.3.2. Customer Due Diligence (CDD)

Customer Due Diligence is a process of assessing pertinent information from a customer to determine the level of risk they possess. The creation of a customer's risk profile satisfies the RBA standard. Depending on the type of customer, whereby one is classified as a high risk, enhanced due diligence is applied to ensure constant monitoring and supervision on the transactions and any future activities. Enhanced due diligence applies to identified high-risk customers and is based on the application of high scrutiny and increased monitoring. An example of high-risk customers is Politically Exposed Persons (PEPs) such as senior government officials. According to the FATF, countries are also classified as high risk and should also be subjected to enhanced due diligence.⁷⁹

CDD entails verification of the true identification documents of the customer.⁸⁰ Once applied, CDD excludes customer anonymity which involves bank accounts that do not reveal the

76 FATF Recommendation 1.

77 Simonova A (2011) "The risk-based approach to anti-money laundering: Problems and solutions" *Journal of Money-Laundering Control* 14(4): 346-358 at 347.

78 FATF Recommendation 40.

79 FATF Recommendation 19.

80 Sharman (2008) at 640.

customer's identity.⁸¹ It includes the identification and verification of the beneficial owner which is critical to the AML regime. It also allows transparency on transactions and stops misuse of accounts by criminals who might pose as invisible owners of trusts and financial off-shore accounts.⁸²

Customer due diligence also encourages financial institutions and DNFBs to monitor transactions that enable the detection of unusual activity on the customer's profile.

Mechanisms that allow customer identification and verification are essential to ensure that the financial system is not used as a channel for criminal funds.⁸³ The collection, identification, and verification of customer information in any business transaction or relationship enables CDD to be utilised as an AML tool. CDD can then serve as a deterrent and a preventative measure for money launderers that want to introduce criminally acquired proceeds into the financial system.⁸⁴ Therefore, whenever there is suspicion of ML or if there is doubt of the previously verified identification and information, CDD must be conducted.⁸⁵

2.6.3.3. Record Keeping

It is a good practice that information collected during customer due diligence should be kept on file by financial institutions and DNFBs for a prescribed period of at least 5 years.⁸⁶ Financial institutions and DNFBs are therefore, supposed to keep detailed and accurate customer databases. Well-kept customer databases can assist law enforcement agencies to trace and reconstruct a paper trail of identified proceeds of crime.⁸⁷ This is fundamental to the fight against ML and improves effectiveness of AML standards. Accurate records potentially are useful as evidence and providing competent authorities with information that can be utilised in investigations and prosecution of ML cases. It is also vital for countries to develop mechanisms that enable the collection and maintenance of accurate and updated beneficial

81 Stessens G (2008) "Money Laundering: A New International Law Model" Cambridge: Cambridge University Press at 146. See also FATF Recommendation 10.

82 FATF Recommendation 24.

83 Mugarura (2012) at 82.

84 Stessens (2008) at 146.

85 FATF Recommendation 10.

86 FATF Recommendation 11.

87 Stessens (2008) at 157.

ownership information for legal persons and arrangements. It is equally important to ensure that competent authorities have timely access to all the relevant information that financial institutions and DNFBPs possess for purposes of inquiries, investigations, and eventual prosecutions. Record keeping is Recommendation 11 of the FATF standards.

2.6.3.4. Suspicious Transaction Reports (STRs)

Suspicious transactions are those transactions that exhibit traces of criminality and need further investigation to determine their legitimacy. Examples of these transactions often include unusually large cash transactions, customers reluctant to disclose the source of funds, vague explanations on the origin of funds and structured transactions which do not exceed the designated threshold. AML regimes impose a reporting obligation for financial institutions and DNFBPs to report all suspicious transactions to the FIU. According to Stessens,⁸⁸ this reporting obligation is a pre-requisite to an effective AML regime. Consequently, the FIU receives, analyses, and finally disseminates information of suspicious or potentially suspicious financial activity. This information can then be relayed to the relevant competent authorities. The rule of thumb is that any financial activity that does not make any economic logic should be reported as a suspicious transaction.⁸⁹

2.7. CONCLUSION

This chapter has highlighted the international best practice that constitutes international UN conventions and the FATF recommendations. For a country, like Zimbabwe, to safeguard its financial system as well as to work in a global community against ML it must prioritise domesticating AML law and match the global standards. The chapter emphasised a multilateral approach that promotes effective AML cooperation and coordination of international stakeholders. The key role player is the FATF that is supported by several AML intergovernmental organisations. AML also requires independent organisations like the Transparency International to expose corruption and economic crime in all sectors of the

88 Stessens (2008) at 159.

89 Mugarura (2012) at 84.

world. The following chapter determines the extent to which the Zimbabwean AML regime conforms to international best practice.



CHAPTER 3

THE ZIMBABWE ANTI-MONEY LAUNDERING REGIME

3.1. INTRODUCTION

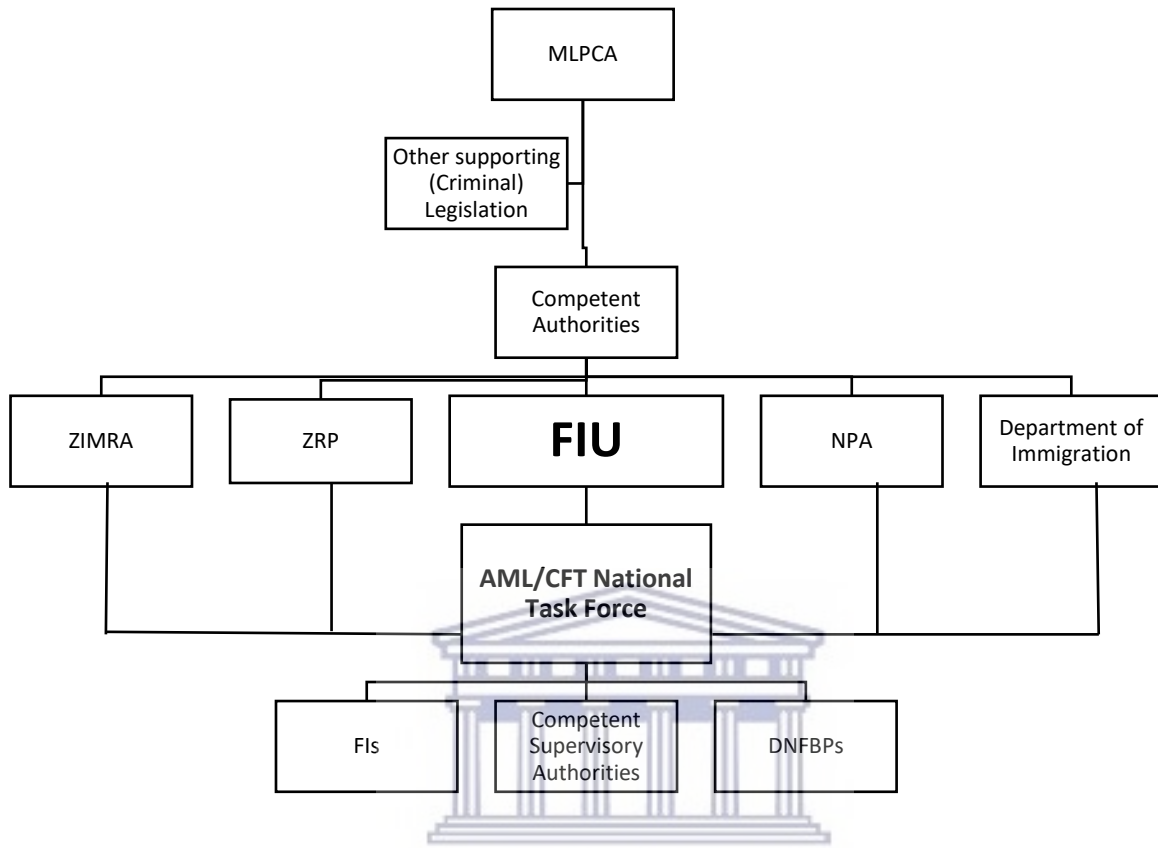
This chapter surveys both the legal and institutional framework of Zimbabwe. The purpose of this chapter is to determine the compliance of the regime to international best practice. With respect to AML, an institutional framework refers to the collection of legal instruments and statutory bodies charged with combating ML/TF. Consequently, effective institutional frameworks should enable the creation of competent authorities that are able to identify and mitigate ML risks. In other words, the utility of institutional frameworks is assessed by their ability to help law enforcement authorities understand the provenance and the identification as well as the prosecution of acts of ML.

3.2. THE LEGAL FRAMEWORK

While Zimbabwe's laws, prior to 2013, have always criminalised ML, there was no specific law dedicated to money laundering. ML offences were dealt with under several laws including the Serious Offences (Confiscation of Profits)¹ Act, the Prevention of Corruption Act²; the Presidential Powers (Temporary Measures) Act³; the Bank Use Promotion and Suppression Act⁴; and the Exchange Control (Money Transfer Agencies) Order⁵. It was only in 2013 that the country promulgated specific ML legislation, the Money Laundering and Proceeds of Crime Act.⁶ It is for this reason that this study considers 2013 as the reference point upon which to consider the appraisal of the AML regime – the point at which the AML legal framework in Zimbabwe was formalised. Figure 3.1 presents the interlinkages of the various components of the Zimbabwe AML regime.

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- 1 Serious Offences (Confiscation of Profits) Act of 1990 repealed.
 - 2 Prevention of Corruption Act of 2002.
 - 3 Presidential Powers Act (Temporary Measures) of 2004.
 - 4 Bank Use Promotion and Suppression Act [Chapter 24:24] of 2004.
 - 5 Exchange Control (Money Transfer Agencies) Order of 2002.
 - 6 Money Laundering and Proceeds of Crime Act [Chapter 9: 24] of 2013.

Figure 3.1: The AML Legal Framework of Zimbabwe



Source: Own source

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3.3. AML LEGAL INSTRUMENTS IN ZIMBABWE

The legal instruments related to AML in Zimbabwe are presented next.

3.3.1. The Money Laundering and Proceeds of Crime Act of 2013 (MLPCA)

The primary AML legislation in Zimbabwe is the Money Laundering and Proceeds of Crime Act⁷. In terms of AML in Zimbabwe, the MLPCA plays two important functions. First, it criminalises money laundering. Second, it authorises the establishment of an independent and functional FIU. The FIU, in turn, sets out regulatory powers over financial institutions and DNFBPs. The Financial Intelligence Unit’s compliance oversight over financial institutions and

7 Money Laundering and Proceeds of Crime Act (Amendment No.1) [Chapter 9:24] of 2019.

DNFBPs, therefore, provides for the implementation of the United Nations Security Council Resolutions 1267 and 1373.⁸ Some objectives of the MLPCA⁹ are to:

- (a) Suppress the abuse of legitimate financial systems in Zimbabwe.
- (b) Facilitate the identification of proceeds of unlawful acts including terrorism and other serious crime as well as to enable the tracing, freezing and the eventual confiscation of such proceeds.
- (c) Align Zimbabwe's AML regime to international standards.¹⁰

To achieve the above-mentioned objectives and to keep abreast with international AML trends, the FATF standards, the MLPCA has been amended several times. The most recent and notable amendment was in July 2018.¹¹ This amendment saw the addition of the unexplained wealth order provisions that empowered law enforcement agencies to seize proceeds of crime.¹² The FIU's powers and operational independence was also increased in the amendments. In addition, provisions for the Asset management unit were also established. Furthermore, in July 2019¹³ provisions for diligent identification of beneficial owners of insurance policies as well as provisions on how to deal with proliferation in financial assets were added.



3.3.2. Supporting legislation for the MLPCA

In addition to the MLPCA, there are several other pieces of legislation in Zimbabwe that are relevant to the AML legal framework. Although Zimbabwe was a signatory of the International Convention for the Suppression of Financing of Terrorism (the UN Convention) since 1999, it was only in 2014 that the UN Convention was ratified into the Zimbabwe's AML legal framework.¹⁴ Following the ratification, the Suppression of Foreign and International

8 United Nations Security Council Resolution 1267 and 1373.

9 Preamble Money Laundering and Proceeds of Crime Act (Amendment No. 1) [Chapter 9:24] of 2019.

10 Financial Intelligence Unit Republic of Zimbabwe (2019) "AML/CFT Framework", available at <https://www.fiu.co.zw/amlcft-framework/> (visited 7 November 2019).

11 Money Laundering and Proceeds of Crime Act (Amendment No. 12) [Chapter 9:24] of 2018.

12 MLPCA (2019) Chapter IIIA.

13 Money Laundering and Proceeds of Crime Act (Amendment No. 1) [Chapter 9:24] of 2019.

14 United Nations International Convention on the Suppression of Financing of Terrorism of 1999.

Terrorism (SFIT) Act came into force in 2014.¹⁵ This Act addresses both internal and external terrorism in which previous legislation neglected to cover elements such as mercenary activity in Zimbabwe as reported in the case of *Muyogo and 65 Others v Guvamombe and Others*.¹⁶

Following the UN Security Council Resolution 1373¹⁷ adopted on 28 September 2001, Zimbabwe pledged commitment to the prevention of terrorist acts. The recruitment of members of terrorist groups, terrorist financing, planning, facilitating of committing terrorist acts have all been criminalised. Zimbabwe is also committed to preventing the movement of terrorists, suppresses measures that support counterfeiting, forgery or fraudulent use of identity papers and travel documents.¹⁸ Furthermore, Zimbabwe passed Statutory Instrument (SI) 76 of 2014 regulation issued under the SFIT Act which gives effect to both United Nations Security Council Regulations 1267 and 1373 and successor UNSCRs.¹⁹ These measures implement specifically the UNSCRs regulation relating to the identification, freezing of assets of persons designated under the Taliban and Al Qaeda separate sanctions regime.

To effect the implementation of regulation under the SFIT Act, other pieces of legislation were passed.²⁰ As a member of Eastern Southern African Anti-Money Laundering Group, Zimbabwe is obligated to align its legal and institutional AML framework with the FATF standards.²¹ Accordingly, ESAAMLG has acknowledged that Zimbabwe's competent authorities have a general understanding of Terrorist Financing risks and threats and are supported by a compliant AML legal framework.²² This has resulted in a low-risk terrorist financing environment for Zimbabwe.²³ Other relevant legislation also include the Bank Use Promotion

15 Suppression of Foreign and International Terrorism Act [Chapter 11:21] of 2014.

16 *Muyogo and 65 Others v Guvamombe and Others (HH181-2004) [2004] ZWHHC 181 (16 November 2004)*;

17 UNSCR 1373 of 2001.

18 Chimbaru F (2002) "Report of UN Policy Working Group on the UN and Terrorism" Country Report: Zimbabwe 132nd International Senior Seminar Participants' Papers 71: 67-75 at 74.

19 FATF Recommendation 6.

20 Statutory Instrument 56 of 2019.

21 Eastern and Southern African Anti-Money Laundering Group (2007) "Mutual Evaluation/ Detailed Assessment Report: Anti- Money laundering and Combating the Financing of Terrorism" Republic of Zimbabwe, available at https://esaamlg.org/reports/Zimbabwe_detailed_report.pdf (visited 28 June 2019).

22 ESAAMLG MER (2016), para 54 at 24.

23 ESAAMLG MER (2016) para 54 at 24.

and Suppression Act,²⁴ the Trafficking in Persons Act,²⁵ which criminalises human trafficking, the Criminal Matters (Mutual Legal Assistance) Act²⁶ and the Amended Criminal Law (Codification and Reform) Act,²⁷ which criminalises sea piracy and enables the country's legal framework to deal with proceeds of crime emanating from piracy-related activities.

3.4. THE AML INSTITUTIONAL FRAMEWORK OF ZIMBABWE

The MLPCA harmonises the efforts of competent authorities in the AML regime. The mandate of these competent authorities is to monitor and regulate compliance across various sectors of the economy.

3.4.1. Designated Anti-Money Laundering Institutions

Zimbabwe's designated AML competent authorities include the Financial Intelligence Unit and law enforcement agencies such as the Zimbabwe Anti-Corruption Commission, the Zimbabwe Republic Police, the National Prosecuting Authority, Zimbabwe Revenue Authority, and the Department of Immigration. These are responsible for monitoring, regulating, supervising, and punishing compliance of AML requirements.

3.4.1.1. The Financial Intelligence Unit (FIU)

To ensure that it functions independently, the FIU has an independent budget, separate from that of its mother body, the Reserve Bank. The Financial Intelligence Unit's main purpose is to analyse Suspicious transaction reports, Cash Transactions Reports, and all financial data, which it then disseminates the results to law enforcement agencies, financial institutions, DNFBPs and to foreign counterpart agencies. Notably, the FIU is the AML supervisor for all banks in Zimbabwe. It regulates and supervises the financial institutions and DNFBPs for compliance to AML obligations in collaboration with the competent supervisory bodies. Moreover, it also monitors and ensures compliance of the MLPCA by all stakeholders. The FIU

24 Bank Use Promotion and Suppression Act [Chapter 24:24] of 2004.

25 Trafficking in Persons Act [Chapter 9: 25] of 2014.

26 Criminal Matters (Mutual Legal Assistance) Act [Chapter 9: 06] of 1990.

27 Criminal Law (Codification and Reform) Act of 2014.

chairs the National Task Force on AML, the Anti-Money Laundering Advisory Council, the Secretariat of the National Risk Assessment Committee and overseeing the implementation of the UNSCRs.²⁸ The FIU also facilitates the coordination of measures for seizure, detention and forfeiture of currency, bearer negotiable instruments and precious metals or stones.²⁹

3.4.1.2. Law Enforcement Agencies (LEAs)

Law Enforcement Agencies play a significant role in employing effective AML mechanisms in the investigation and prosecution of ML cases. The Zimbabwean the law enforcement agencies will now be discussed.

3.4.1.2.1. The Zimbabwe Republic Police (ZRP)

The Zimbabwe Republic Police is the country's leading law enforcement agency. Its mandate is to maintain law and order and to engender effective prevention, investigation, and detection of crime.³⁰ Its functions include among others, the investigation of ML, terrorism, and all other serious crimes. This mandate requires collaboration with the FIU which provides financial data to the police service. ZRP contains several specialist departments such as the Criminal Investigation Department (CID) Commercial Crimes Division and the CID Assets Forfeiture Department.

The Police service is a member of the International Criminal Police Organisation (Interpol) from which the Interpol National Central Bureau Unit (Interpol NCBU) ensues.³¹ The Interpol NCBU investigates transnational crime such as economic crime, terrorism, financial and high-tech crime, drug trafficking and human trafficking. The cooperation of all the above-mentioned departments in the police service facilitate for a robust approach to dealing with

28 FIU Republic of Zimbabwe (2019) "AML/CFT Framework", available at <https://www.fiu.co.zw/amlcft-framework/> (visited 9 November 2019).

29 MLPCA (2019) sec 12 A.

30 Zimbabwe Republic Police (2016) "About ZRP: Mission and Vision", available at http://www.zrp.gov.zw/index.php?option=com_content&view=article&id=114&Itemid=723 (visited 27 November 2019).

31 Zimbabwe Republic Police (2016) "Specialised Units", available at http://www.zrp.gov.zw/index.php?option=com_content&view=article&id=64&Itemid=736 (visited 27 November 2019).

perpetrators of financial crime including money laundering. To boost its AML efforts, the ZRP has also set up the Asset Forfeiture Unit to specialise in the investigating of ML cases.

3.4.1.2.2. The Zimbabwe Anti-Corruption Commission (ZACC)

Because of the intrinsic relationship between corruption and ML, corruption has to be taken seriously. As such, the Zimbabwe Anti-Corruption Commission was established, as provided for under the new constitution. The commission's mandate is to investigate and expose cases of corruption in both the public and private sectors.³² It is empowered by the Criminal Law (Codification and Reform) Act³³ to investigate criminal matters related to corruption.³⁴ In a proactive role against corruption, the President's Office has created an additional anti-corruption unit to collaborate with ZACC and the Zimbabwe Republic Police. The Special Anti-Corruption Unit has a mandate to help boost the non-tolerance agenda to corruption under the President of Zimbabwe. Their function works towards improving the efficacy of effective anti-corruption strategies by the government. It also prosecutes corruption cases handed over to the NPA by other law enforcement agencies.

Corruption in public institutions attracts governance vulnerabilities that interfere with public procurement and consequently affect the Reserve Bank of Zimbabwe operations. Countries need to play a proactive role in uprooting corruption in government institutions which are entrusted with public funds. The existence of the Zimbabwe Anti-Corruption Commission aligns with the international perspectives under UNCAC which call for the formation of an authoritative body by state parties to fight corruption.³⁵ Thus, the effective function of the Zimbabwe Anti-Corruption Commission can serve as a deterrent to corrupt activities in the country's state-owned enterprises.

The effective function of the commission has been highlighted in the many arrests of corrupt public officials. For example, at the beginning of May 2020, the Zimbabwe Anti-Corruption Commission arrested the Chief Executive Officer including board members and six senior

32 Constitution of Zimbabwe sec 255.

33 Criminal Law (Codification and Reform) Act sec 174.

34 Criminal law (Codification and Reform) Act sec 174.

35 Article 6 (1) UNCAC (2003).

executives of the state-owned enterprise NetOne.³⁶ The group was charged with the criminal abuse of office and alternative charges of fraud. The Zimbabwe Anti-Corruption Commission has also in May 2020, arrested the Registrar-General Clemence Masango on charges of criminal abuse of public office and ignoring tender procedures whilst acquiring vehicles for his office.³⁷

The Special Anti-Corruption Unit has also arrested certain high-profile persons for corruption. In September 2020, the Criminal Investigation Department Director Commission Chrispen Charumbira was arrested on charges of accepting bribes towards the protection of Drugs and Gold Dealers in efforts to stop criminal investigations against them. However, in as much as it should be celebrated that the Zimbabwe Anti-Corruption Commission and the Special Anti-Corruption Unit are making headway in curbing corruption by making significant high-profile arrests in government, it would go a long way if these arrests can lead to successful prosecutions and convictions. To date, there are very few recorded convictions in financial crime cases in Zimbabwe. Despite this, the role of ZACC in stemming ML related corruption is commended in the AML strategy.

3.4.1.2.3. The National Prosecuting Authority (NPA)

The NPA is a constitutional body that is responsible for instituting all criminal litigation including ML cases.³⁸ The NPA leads and oversees investigations in support of all other law enforcement agencies, and it is instrumental in facilitating a prosecution-led approach to all investigations. However, in financial crime the FIU can facilitate with the expertise and intelligence required for a successful prosecution. This is because financial crime requires specialised investigations that often require technical expertise to be utilised. Nevertheless, the prosecution led approach bolsters cooperation between the investigative authorities and the prosecution.³⁹ It also encourages better utilisation of operational resources. The function

36 Taruvinga M (15 May 2020) "NetOne boss, board members arrested by ZACC" New Zimbabwe News, available at <https://www.newzimbabwe.com/netone-boss-board-members-arrested-by-zacc/> (visited 25 May 2020).

37 All Africa (7 May, 2020) "Zimbabwe: ZACC arrests Registrar General over Tender Irregularities", available at <https://allafrica.com/stories/202005070253.html> (visited 22 May 2020).

38 Constitution of Zimbabwe sec 258.

39 MLPCA (2019) sec 12 C and sec 12 D.

of the NPA supports coordinated efforts to the fight financial crime in Zimbabwe’s AML regime.⁴⁰

3.4.1.2.4. The Zimbabwe Revenue Authority (ZIMRA)

Apart from its customs excise obligation to tax all goods that enter the country and to collect revenue, the Zimbabwe Revenue Authority has a mandate to advise the government on fiscal and economic matters. As such, the mission to mobilise revenue and facilitate sustainable compliance with fiscal and customs laws for the economic development of Zimbabwe is fundamental towards the protection of the country’s financial systems. Zimbabwe shares land borders with its neighbours including the busiest border in Southern Africa, the Beitbridge border. Zimbabwe also shares a one stop border with Zambia – the Chirundu port of entry. These two ports alone attract massive amounts of trade revenue which is advantageous for the country. It is critical for the Zimbabwe Revenue Authority to stem Trade Based Money Laundering through expert customs excise that is able to detect manipulation of value of goods through miss-invoicing or otherwise. This supports government’s obligation to significantly boost their customs enforcement by equipping and training officers to better detect intentional mis-invoicing of trade transactions.⁴¹

ZIMRA⁴² is commended for improving its operational systems and going digital on many of its services. Trade base ML trends are better fought through access to real-time world market pricing information at a detailed commodity level. The institution has made significant strides in cleaning its house and removing even the rot that has become endemic in many government institutions. The limiting of inter-face interactions with the public serves to remove corruption that was facilitated by corrupt ZIMRA officials, often found to be soliciting and taking bribes. Several of these corrupt ZIMRA officials have now been arrested and

⁴⁰ The Republic of Zimbabwe National Anti-Money Laundering and Combatting Terrorist Financing Strategic Plan 2015-2018 para 2.8 at 5.

⁴¹ Global Financial Integrity (2019) “Illicit Financial Flows to and from Developing Countries: 2006-2015”, available at <https://secureservercdn.net/45.40.149.159/34n.8bd.myftpupload.com/wp-content/uploads/2019/01/GFI-IFF-Update-Report-2019-Executive-Summary.pdf?time=1584360404> (visited 29 February 2020).

⁴² Zimbabwe Revenue Authority Board Chairs Report Publication for the Second Quarter Ended 30 June 2021 para 4 available at <https://www.zimra.co.zw> (visited 26 August 2021).

dismissed from public office.⁴³ Some have been ordered to provide statement and explain their wealth through the unexplained wealth order.

3.4.1.2.5. The Department of Immigration

The Department of Immigration has the responsibility to control the movement of people entering and leaving Zimbabwe. The department's task is to police the ports of entry (land borders and airports) around the country. The detection of terrorist movement is critical in the AML regime⁴⁴ and therefore the function of the department becomes essential. The department is also responsible for dealing with human trafficking⁴⁵, which is a predicate crime for ML. For example, Zimbabwe is faced with an influx of trafficking of children to and from South Africa due to many parents wanting to be with their children after crossing into the country without passports and work permits to look for employment. Criminal syndicates that engage in human trafficking also facilitate in the smuggling of cash, goods such as groceries, second-hand clothing meant for charity and various other commodities.

The role of the department also entails to a less extent the controlling of smuggling though this function rests on Zimbabwe Revenue Authority.⁴⁶ The Department of Immigration can work in collaboration with ZIMRA as the two competent authorities almost always work side by side at all the country's ports. However, due to an unprecedented economic crisis, the country is constantly faced with an increase in smuggling in and out of commodities including cash and precious metals through the borders.⁴⁷ The unavailability of adequate resources for operation impedes the effectiveness of these designated institutions from implementing their mandates.

⁴³ Zimbabwe Revenue Authority (2021) "Integrity management 2 available at <https://www.zimra.co.zw/about-us/integrity-management> (visited 28 October 2021).

⁴⁴ Pieth M (2006) "Criminalising the Financing of Terrorism" *Journal of International Criminal Justice* 4: 1074-1086 at 1075.

⁴⁵ Human trafficking regulated by the Trafficking in Persons Act [Chapter 9: 25] of 2014.

⁴⁶ NRA (2015) at 11.

⁴⁷ ZimFieldGuide.com (2020) Rushwaya gold-smuggling case exposes a microcosm of the corruption that exists in Zimbabwe today, available at <https://zimfieldguide.com/midlands/rushwaya-gold-smuggling-case-exposes-microcosm-corruption-exists-zimbabwe-today> (visited 20 December 2020).

3.4.2. The National Task Force

The MLPCA established the National Task Force for Anti-Money Laundering and Countering Financing of Terrorism. The National Task Force promotes national cooperation and coordination by bringing together all AML stakeholders. Its function includes ensuring capacity building on the supervisory authorities, improving understanding of ML risks among all stakeholders, developing comprehensive and adequate risk mitigating measures and guidelines for implementing the national AML policy. The National Task Force is chaired by the Director-General of the FIU, and its membership comprises of all the key Ministries and institutions designated to combat ML. The National Task Force is also responsible for making recommendations to the Advisory Committee on AML policies.⁴⁸

3.4.3. The Anti-Money Laundering Advisory Committee

The Anti-Money Laundering Advisory Committee (AMLAC) is established under the MLPCA to advise the Minister of Finance and Economic Development on AML policy. The committee is comprised of the Director-General of the FIU, heads of competent authorities, qualified experts in financial analysis, law, accounting, forensic auditing, law enforcement or any other field which is deemed relevant to the Advisory Committee.⁴⁹

3.5. SUPERVISORY AUTHORITIES IN ZIMBABWE

Competent supervisory authorities play a supervisory and regulatory role to ensure adequate and effective implementation on AML measures. Accordingly, FATF standards require that countries should ensure that financial institutions and DNFBPs are supervised and regulated to prevent criminals from abusing financial systems.⁵⁰ In Zimbabwe, competent supervisory authorities are statutory bodies responsible for the licensing, registration, regulation or discipline of financial institutions and DNFBPs.⁵¹ The FIU has issued legally binding guidelines

48 MLPCA (2019) sec 12 D (4) (a) and (b).

49 MLPCA (2019) sec 12 C.

50 FATF Recommendation 26.

51 MLPCA (2019) sec 2 (1).

which facilitate the implementation of AML standards across all supervisory authorities. Some of the competent supervisory authorities designated by the MLPCA are presented below⁵²:

3.5.1. The Reserve Bank

The Reserve Bank of Zimbabwe is responsible for supervising banks, money and value transfers, foreign-exchange bureaus, and mobile money service providers. It is also responsible for licensing the Exchange Control and the National Payment Systems which have a mandate for AML supervision on the DNFBPs. As a custodian of the banking sector, the Reserve Bank of Zimbabwe is charged with implementing appropriate AML measures which offer a basis for good governance in administration of public funds. This will encourage the uprooting of endemic vulnerabilities that negatively affect government institutions.

In criticism, the RBZ is blamed for engaging in direct lending schemes that only allow a few like the government state-owned entities, political elites, and their businesses to access and receive the scarce funds available from the national treasury.⁵³ These lending schemes increase the burden of an already suffering economy with a high fiscal cost as most of the funds fail to return to the national reserves. In a welcomed protest from the public, government critics cite these actions by the RBZ as a prelude to the country's money problems.⁵⁴ The RBZ Lending schemes not only fuel grand corruption but work well in distorting the markets which continue to pull Zimbabwe in a never-ending cycle of hyperinflation and severe economic decline. It also suggests a failure by government in protecting the country's financial system.

3.5.2. The Law Society

The Law Society of Zimbabwe is an independent body that has the mandate to represent, regulate and control the legal profession. It also is obligated to support the rule of law and foster public confidence in the justice system. In adherence to its core values, the Law Society

52 MLPCA (2019) Schedule 1 sec 3 part 2.

of Zimbabwe is keen on maintaining transparency and equity through the impartial and fair performance of its duties.⁵⁵

Lawyers hold a special position in the AML regime, as they deal directly with the law and have the ability to ‘make or break’ the regime, by either advising money launderers to continue with their illicit dealings or choose to bring them to book by pronouncing any illicit dealings openly.⁵⁶ Transparency International considers lawyers as gatekeepers that hold the keys to secure financial systems.⁵⁷ Often lawyers know the source of wealth and funds of their clients and if they are complicit, have the potential to let the abuse of financial systems prevail. The dangers of lawyers not adhering to global best practices are revealed in the infamous Panama Papers that exposed how a global law firm Mossack Fonseca dealt in illicit activity and offshore accounts for many years.⁵⁸

In support of the global fight against AML, the Law Society of Zimbabwe has signed a Memorandum of Understanding (MOU) with the FIU aimed at establishing a mechanism of cooperation that ensures that all legal practitioners adhere to their AML obligations.⁵⁹ Also, the MOU is designed to facilitate the Law Society of Zimbabwe in playing its role effectively as a competent supervisory authority and to comply with provisions set out in the MLPCA for DNFBPs.



3.5.3. The Securities and Exchange Commission

The Securities and Exchange Commission of Zimbabwe is established through the Securities Act.⁶⁰ Its key objectives include the prevention of market manipulation and financial crime. It is responsible for the promotion of market integrity and investor confidence.⁶¹ The

55 Law Society of Zimbabwe (2019) “About Us”, available at <http://lawsociety.org.zw/AboutUs> (visited 17 December 2019).

56 Trautman L J (2017) “Following the money: Lesson learnt from Panama papers” *Penn State Law Review* 121(3): 808-873 at 830.

57 Transparency International (2015) “Incentivising Integrity in Banks” Working Paper 02: 1-9 at 5.

58 Trautman (2017) at 830.

59 Business Weekly (25 August 2017) “RBZ v Lawyers”, available at <https://www.ebusinessweekly.co.zw/rbz-v-lawyers-ncentral-bank-pushes-for-lawyers-involvement-in-money-laundering-fight-n-but-lawyers-say-rbz-overstepping-mandate/> (visited 25 January 2020).

60 Securities Act [Chapter 24:25] sec 3.

61 Securities and Exchange Commission of Zimbabwe (2019) “About SECZ: Who is SECZ?”, available at

commission has the mandate to regulate capital markets and oversee the licensing of brokers, dealers, and investment advisors. Regulation of capital markets ensures the protection of the investor's interest. It also ensures compliance with requirements of establishing Securities Exchanges, maintenance of registers of interests in securities, accounting, and financial requirements. It is the AML supervisor for all entities licensed by it. The FIU has also issued AML guidelines for implementation in the securities sector.⁶² The commission has also begun training workshops to sensitise the industry on effective AML measures with the emphasis being put on initiating controls and application of a risk-based approach.⁶³ In September 2019, the Security and Exchange Commission of Zimbabwe launched the AML Handbook to ensure that the securities market intermediaries are not used as conduits for laundering proceeds of crime or to finance terrorism.⁶⁴

3.6. AN ANALYSIS ON THE EFFECTIVENESS ZIMBABWE'S LEGAL AND INSTITUTIONAL FRAMEWORK

The Zimbabwe legal and institutional framework as outlined in the above sections has prioritised the criminalisation of ML through the enactment of the MLPCA. This is consistent with international instruments and the FATF standards which obligates state parties and members respectively to transpose AML legislation into domestic law and create designated institutions that enforce compliance as well as to monitor and regulate AML requirements. As far as alignment is concerned, Zimbabwe's legal and institutional framework seems to be well aligned. There is sufficient legislation which meets the international standard.

However, when analysing the institutional framework, it also requires an assessment of how the institutions implement their mandate. The Zimbabwe AML institutional frameworks do

<http://www.seczim.co.zw/about-secz/who-is-secz> (visited 09 December 2019).

62 FIU Republic of Zimbabwe (2019) "Guidelines on Anti-Money Laundering and Combating Financing of Terrorism for the Securities Market Players, 2012", available at <https://www.fiu.co.zw/wp-content/uploads/2017/07/AML-CFT-Guidelines-for-the-Securities-Sector.pdf> (visited 14 December 2019).

63 Securities and Exchange Commission of Zimbabwe (2019) "Investor information", available at <http://www.seczim.co.zw/investor-information/latest-news/27233-three-day-training-on-aml-cft-held-at-secz> (visited 05 December 2019).

64 Zimbabwe Broadcasting Cooperation (25 September 2019) "SECZ move to curb money laundering", available at <https://www.zbc.co.zw/secz-moves-to-curb-money-laundering/> (visited 05 December 2019).

not seem to be able to tackle the proliferation of financial crime sufficiently. The cooperation and coordination of competent authorities needs to be improved. For the AML strategy to become efficient and effective there is need for key institutions to adhere to strict compliance of required measures. Also, those that formulate and develop AML policy like the Reserve Bank of Zimbabwe must not be found to be inconsistent in their policies.⁶⁵ To empower the AML regime, political leaders are encouraged to lead by example and not be found to be instigators of manipulation of the financial system. There must be open punishment of non-compliance to AML regulation on all stakeholders regardless of designation. In doing so the AML strategy evades the tragedy of becoming a toothless tiger.

More emphasis should be made on coordinating the efforts of competent authorities. The institutions need to be given sufficient resources in order to function. The institutional framework depends on all the institutions playing their part to achieve a positive outcome for compliance to the AML strategy. The effectiveness of competent authorities can be measured by outcomes of successful prosecutions, convictions, and asset forfeitures as reported in the case of *S v Tapfuma*.⁶⁶ The convicted was the Former Principal Director of state residences Douglas Tapfuma, who was charged with criminal abuse of office. However, when the credibility of the competent authorities is in question, such that the NPA or the courts are found to be impartial, this already spells a negative outcome in financial crime cases.⁶⁷ The fight against ML becomes almost futile and the institutional framework is almost shooting itself in the foot.

There is a critical need for government to force accountability and transparency in all its institutions. A culture of good governance, compliance and adhering to the basic financial standards of submitting financial statements, as alluded to in the Auditor General's report,⁶⁸

⁶⁵ Reserve Bank of Zimbabwe Monetary Policy statements from 2018 to 2020 available at <https://www.rbz.co.zw/index.php/monetary-policy> (visited 19 September 2020).

⁶⁶ *S v Tapfuma* (HH 565-19, B 1287/19) [2019] (23 August 2019); See also court file in the Harare magistrate court for *S v Tapfuma* CRB 10914/19;

⁶⁷ Court Watch 4/2019 Prosecutor General Appointed Gazetted and Court Decisions affecting the National Prosecuting Authority. Two Constitutional Court challenges were made for the controversial Appointment of the current Prosecutor General K. Hodzi. See *Zuze v President of Zimbabwe, the Judicial Service Commission and Others*; *Chirambwe v President of Zimbabwe, the Judicial Service Commission and Others*; available at <https://www.veritaszim.net/node/3546> (visited 29 March 2020).

⁶⁸ Report of the Auditor General for the Financial Year Ended December 31, 2018 "State Enterprises and Parastatals Executive Summary at vii.

will go a long way in supporting the AML strategy. The efficient management of public resources including prioritising can provide the basis for strong and stable economic reforms. The implementation of substantive economic reforms requires transparency, accountability and predictability on government revenue and expenditure. A country's effective and enabling fiscal policy can also provide a basis for potential consideration of debt rescheduling or cancellation which can promote economic development.⁶⁹ It is upon the appropriate use of public funds that renders a developing country the ability to be considered for budgetary support by international financial institutions. Therefore, sufficient record keeping, appropriate expenditure, accountability and transparency of public funds can enable financial assistance from international organisations such as the International Monetary Fund and the World Bank.⁷⁰ Financial assistance can assist to promote sustained, inclusive, and sustainable economic growth.⁷¹

Many developing countries are by nature are low-income countries, suffering budget constraints and heavy indebtedness. Therefore, they fail to create and implement effective AML regimes.⁷² Besides the challenges of meeting the cost, other issues of technical knowledge and expertise remain a constant challenge for developing countries. These prevalent factors affect implementation of many critical policies including AML.⁷³ Another point to consider that is often neglected is the fact that most developing countries are young independent democracies that are financially constrained. Many are still battling colonial legislation to address challenges brought about by colonisation. This means ratifying conventions and implementing their provisions into domestic laws often is a lengthy process. For example, Zimbabwe is a young democracy with a new constitution that was formulated in 2013.⁷⁴ There are many reforms and re-alignment of legislation that still need to be made. To

⁶⁹ International Monetary Fund (2021) "Debt relief under the Heavily indebted poor countries (HIPC) initiative", available at <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/11/Debt-Relief-Under-the-Heavily-Indebted-Poor-Countries-Initiative> (visited 22 Jan 2021).

⁷⁰ International Monetary Fund (16 February, 2021) "IMF Support for Low Income Countries" Fact Sheet available at <https://www.imf.org/en/About/Factsheets/IMF-Support-for-Low-Income-Countries> (visited 26 March 2021).

⁷¹ United Nations (2021) Sustainable Developmental Goal 8 available at <https://sdgs.un.org/goals/goal8> (visited 25 July 2021).

⁷² Reuter P & Truman E M (2005) "Anti-Money Laundering Overkill?" *The International Economy* 56-60 at 59.

⁷³ Moshi H P B (2007) "fighting Money Laundering: The Challenge in Africa. *Institute of Security Studies* 152:1-10 at 7.

⁷⁴ Constitution of Zimbabwe (2013).

implement these legislative changes, countries like Zimbabwe must be given the chance to absorb, scrutinize, understand, and reflect on their internal reforms. Therefore, the implementation of foreign regimes like that of the AML measures is more likely to take time to institute as a prioritised and effective regime.

3.7. CONCLUSION

This chapter presented Zimbabwe's AML regime. Overall, there is evidence that Zimbabwe is making positive gains in establishing an AML regime that both sufficiently addresses ML and is in line with international best practice. Certainly, it becomes more difficult to implement measures without proper legislation in place. It should be considered that, in as much as developing countries can sign and ratify international conventions, the implementation of the provisions is another matter that takes time. The failure of developing countries to implement makes the international conventions a futile endeavour. In this regard, committing to international obligations is reduced to being just a way to be present and relevant in the international community, rather than for driving a genuine cause.

However, the lack of implementation by developing countries must not be seen as an inherent unwillingness to comply with international standards. It should rather be recognised as a major vulnerability that must be considered seriously by the wealthy powers, who have matured democracies and who have well-established means for implementation. Developed countries should do more to level the field of implementation of standards in all countries. In this regard, doing more should start with awarding more flexibility and removing the threat of blacklisting by the FATF.

CHAPTER 4

THE CONSTITUTIONALITY OF THE ZIMBABWEAN AML REGIME

4.1. INTRODUCTION

The focus of this chapter is to assess the alignment of the Zimbabwean AML legal framework to the Constitution of Zimbabwe. In 2008 a coalition government between political opponents including ZANU PF and the MDC made resolutions for a draft constitution to replace the Lancaster House constitution of 1980¹. The New Constitution of Zimbabwe was then approved in February of 2013. Constitutional supremacy is recognised in Zimbabwe; therefore, any statute should be guided by and is subject to the values provided for by the constitution.² This chapter follows an assessment into democratic principles that establish a constitutional democracy since Zimbabwe recognises constitutional supremacy. The democratic principles to be assessed in order to establish the proficiency of the AML legislation of Zimbabwe are constitutional supremacy, the separation of powers and the rule of law.

The constitution of Zimbabwe has strengthened the AML institutional framework through facilitation of sound democratic values with the MLPCA. This then endorses critical elements set out in the MLPCA provisions, such as increased national cooperation and coordination on AML operational issues, through the National Task Force on AML. Furthermore, compliance with the legal framework facilitates policy coordination through the Anti-Money Laundering Advisory Committee whose composition encompasses key stakeholder national institutions on legal, law enforcement and financial sectors. It is incumbent that AML law be based on the same values that are founded by the Constitution. This will foster a practice of good governance especially in both private and public institutions.

¹ Constitution of Zimbabwe (1980) formulated as a result of the Lancaster House Agreement (21, December 1979) Southern Rhodesian Conference Held at Lancaster House, London.

² Constitution of Zimbabwe sec 2 (1).

4.2. THE ALIGNMENT OF AML LEGISLATION TO THE CONSTITUTION

For legislation such as the MLPCA to be consistent with the constitution, these must conform and support the same values and legal principles. To assess the empowerment of Zimbabwe's AML regime, the first step is to test its legality and constitutionality. Constitutional Supremacy means that all laws and legislation is subject to the provisions of the constitution.³ The alignment of the Zimbabwe AML regime must pass constitutional muster. Within the context of this dissertation, testing for constitutionality involved two separate but related enquiries: the constitutionality of both the promulgation process and the practical implementation of provisions as they relate to the global AML regime.

4.2.1. The Promulgation of the Money laundering and Proceeds of Crime Act (MLPCA)

The MLPCA was promulgated by the Parliament in 2013 and it remains the primary and principal legislation for AML. However, due process seems not to have been followed during the promulgation of the Act. Maguchu argues that the AML legislation was rushed through the formation process and not given thorough thought during the formulation and drafting process.⁴ However, the MLPCA has been progressively amended to better align it to the Constitution as well as to meet international best practice. The MLPCA has since been progressively amended, in particular 2018 as well as 2019. These amendments appear to be steps taken to address the deficiencies that resulted from rushing the promulgation of the law.

In 2018, for instance, the President, by means of the Presidential Powers (Temporary Measures) regulation⁵, issued a proclamation that effectively amended the Act. This amendment addressed the main issue concerning the independence of the FIU. The FIU, which had previously failed to be considered independent in the 2016 MER was given more powers to rectify this shortcoming. The FIU has now become a more autonomous institution.

3 Constitution of Zimbabwe sixth schedule para 10.

4 Maguchu (2018) at 7.

5 Statutory Instrument 246 of (2018) Regulation.

Despite aligning the AML legislation with international perspectives, criticism is levelled against the manner in which the amendment took place. According to the Constitution of Zimbabwe, only Parliament has the power to amend Acts of Parliament.⁶ The utilisation of the Presidential Powers to amend the MLPCA was only allowed as an urgent and temporary measure. This, invariably, necessitated regularisation of anomalies in the Act. The MLPCA was subsequently amended once more in 2019.⁷ This time around, it was done by the Parliament.

Albeit the above assertion, it is submitted that the Zimbabwe AML regime is sufficiently constituted in terms of valid legislation that conforms to the constitution principles. The MLPCA qualifies as appropriate legislation adequately geared for Zimbabwe's AML strategy. Therefore, the AML regime in Zimbabwe, in so far as the promulgation of the legislation is concerned, can be considered to be valid since it is consistent and aligned to the Constitution. None of its clauses are in conflict with the constitution. Furthermore, at the time of writing this thesis there was no known legal challenge brought up to dispute the constitutionality of any of the provisions of the AML legislation.

4.2.2. The Practical Implementation of the Anti-Money Laundering Regime in Zimbabwe

In practice, the MLPCA, although being quite a comprehensive legislation, on its own, is not sufficient to deal with the wide reach of ML. To strengthen collaboration, nationally and internationally, the Act is supported by several other legislation and supporting institutions, and competent authorities. The supporting legislation mainly authorises various institutions and enables them to collaborate and fight financial crime sufficiently. For example, the Financial Intelligence Unit was established under the Bank use Promotion and Suppression Act⁸. This Act covers all financial institutions. The Zimbabwe Revenue Authority was established under the Revenue Authority Act⁹ and the Zimbabwe Republic Police was established and is governed by the Constitution and also the Police Act¹⁰. ZACC is also established under the Anti-Corruption Act.¹¹ From the foregoing, it is clear that institutions

6 Constitution of Zimbabwe sect 119.

7 MLPCA (Amendment No.1) (2019).

8 Bank use Promotion and Suppression Act [Chapter 24: 24] of 2004.

9 Revenue Authority Act [Chapter 23:11].

10 Police Act [Chapter 11:10].

11 Anti-Corruption Act [Chapter 9: 22] of 2004.

designated under the MLPCA complement and give support through valid legislation. Most importantly, the legislation empowers designated authorities to legally cooperate and coordinate with each other including international players in the fight against ML.

For the purposes of investigation and prosecution, powers were also granted not only to the FIU, but also to competent authorities such as the Zimbabwe Republic Police, Zimbabwe Revenue Authority and ZACC to issue the Unexplained Wealth Orders which facilitates non-conviction-based asset recovery. This order is authorised by the High court for persons suspected of corruption, tax evasion and ML.¹² In June 2020, the Zimbabwe Anti-Corruption Commission issued the Unexplained Wealth Order to the former Commissioner of Police Augustine Chihuri to explain the vast amounts of properties he owned.¹³ The value of which are estimated to be US\$32 million. The state alleges that the former Commissioner of Police amassed his wealth from looting state funds during his tenure of office. Powers of these designated institutions also extend the arm of AML to cover matters of asset recovery and management. Already there seems to be a positive and effective implication of the utilisation of the unexplained wealth order. For example, ZIMRA as an AML designated institution, has managed to make applications for several senior government members who have since had their assets frozen.¹⁴

However, the independent voice of Transparency International Zimbabwe has called for transparency and accountability in the handling and management of recovered assets¹⁵ The AMLR needs to create effective mechanisms that promote accountability and transparency to protect recovered assets. This comes from the hope that recovered assets can be utilised to bring much needed development for the country. Mismanagement of recovered assets,

12 MLPCA (2019) sec 72.

13 VOA Staff (20 May, 2020) "Zimbabwe Investigates Former Police Chief Chihuri's Wealth. Over US\$32 Million 'Looted' States Funds." Voice of America, available at <https://www.voazimbabwe.com/a/zimbabwe-investigate-police-chief-augustine-chihuri-stolen-funds/5427631.html> (visited 30 May 2020).

14 The Herald (13 November 2021) "ZIMRA Official under fire over unexplained wealth which includes cars and immovable property", available at <https://www.herald.co.zw/zimra-official-under-fire-over-unexplained-wealth-which-includes-cars-and-immovable-property/> visited (17 November 2021).

15 Transparency International Zimbabwe (3 June, 2020) "Following the Money: The Role of Asset Recovery in the fight against corruption" available at <https://www.tizim.org/wp-content/uploads/2020/08/Asset-Recovery-blog.pdf> (visited 24 September 2020).

instead has the effect of not closing the loop but rather keeps continuing a cycle of financial crime.¹⁶

4.3. THE ANTI-MONEY LAUNDERING REGIME AND THE RULE OF LAW

Anti-money laundering legislation, as with any statute, must ensure that justice ought to be dispensed according to the prescripts of the law. Everybody, regardless of their position or standing in society, is subject to the law. If this basic principle is observed consistently without fear and favour, then equality before the law will be achieved. Citizens, as a result, will develop trust and confidence in the country's justice system, which in turn promotes the rule of law. The rule of law is best captured by the legal principle *Nemo iudex in propria causa est*, which implies that a person shall not judge his own case or any case and which may be loosely interpreted as "justice must not only be done but must be seen to be done." Accordingly, the United Nations defines the rule of law as a principle of governance in which all persons, institutions, and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards.¹⁷

It was instructive for this dissertation to examine the extent to which the AML legislation is promoting the rule of law, The MLPCA must be seen to be facilitating the enforcement of AML principles to successfully investigate and prosecute financial crime offenders in Zimbabwe. In other words, this study sought to determine whether the MLPCA has effectively been facilitating the investigation, the arrest, prosecution and ultimate conviction of ML and its predicate crime offenders.

From about 2010 to 2021, the Zimbabwe law enforcement agencies have made several arrests of suspects charged with crimes such as fraud, corruption, abuse of office and ML.¹⁸ The

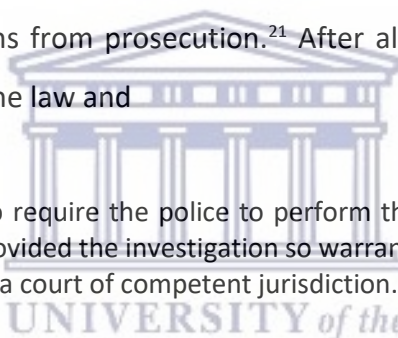
¹⁶ Transparency International Zimbabwe (3 July, 2020) "Following the Money: The role of Asset Recovery in the Fight against Corruption". Weekend Digest available at <http://www.tizim.org/wp-content/uploads/2020/08/Asset-Recovery-blog.pdf> (visited 24 September 2020).

¹⁷ United Nations (2019) "What is the rule of law", available at <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> (visited 16 February 2020).

¹⁸ Zim News Online (6 December 2019) "Zimbabwe Anti-Corruption Commission arrests 101 suspects",

suspects include numerous prominent politicians, high profile business persons and senior governmental officials. These include Ignatius Chombo (former Minister of Local Government), former Vice President Mphoko, the late Genius Kadungure (Businessman), Wicknell Chivayo (Businessman) and the most recent one, Mary Mubaiwa¹⁹ (wife to the Vice President, Constantino Gubeva Chiwenga). Despite these multiple arrests, none of the above-mentioned cases has been successfully prosecuted or convicted. This is far off from the principle as stipulated in *Chavhunduka and Anor v Commissioner of Police*,²⁰ where it was held that where a person commits an alleged offence, irrespective of status, the full course of the law must be allowed to take place because no one is above the law.

Consequently, the unsuccessful prosecutions have been met with much public outcry. Overall, the general public bemoans the lack of rule of law and the practice of selective prosecution that shields high profile persons from prosecution.²¹ After all of the constitution²² entitles everyone to the protection of the law and



embraces the right to require the police to perform their public duty in respect of the law, provided the investigation so warrants, then bring him or her for trial before a court of competent jurisdiction.

Notably, social commentary and the media have labelled the practice of arrest without prosecution of high-profile suspects alleged to be engaged in financial crime to be nothing more than a political gimmick. It seems it is designed to give the impression that the government is fighting corruption, ML, and other financial crime. The practice is now commonly referred to as the “catch-and-release” strategy.²³ Notwithstanding the prosecutorial challenges of corruption and ML cases, doubt has been cast on both the

available at <https://zimnewsonline.com/zimbabwe-anti-corruption-commission-arrests-101-suspects/> (visited 04 January 2020).

¹⁹ Reuters (15 December 2019) “Zimbabwe vice president’s wife arrested for fraud and money laundering”, available at <http://www.sabcnews.com/> (visited 16 December 2019).

²⁰ *Chavhunduka & Anor v Commissioner of Police* 2000 (1) ZLR 418 (S) p421-422;

²¹ Moyo T (19 December, 2019) “Zimbabwe: High-Profile prosecution reveals a toxic cocktail of corruption, misogyny and abuse of office”, available at <https://www.dailymaverick.co.za/> (visited 24 February 2020).

²² Constitution of Zimbabwe sec 18 (1).

²³ Ngoro T (2 November, 2019) “President Mnangagwa Explains Catch-and Release Programme” IHarare.com, available at <https://iharare.com/catch-and-release-programme-explained/> (visited 6 February 2020).

competence of the law enforcement agencies as well as the legal framework thereto. Either way, the rule of law, at least, from the perspective of the Zimbabwean public, is severely compromised.²⁴ Nonetheless it should be noted that the MLPCA should be regarded as still relatively new. Thus, it may take a while longer for many AML role players to be able to interpret and understand the provisions sufficiently for effective implementation. Therefore, it can be said the AML legislation is still in its infancy.

In response to the public outcry, the AML designated institutions have since embarked on a rather unprecedented public relations campaign. Some of the law enforcement agencies in Zimbabwe have publicly blamed each other for the slow delivery of justice. For instance, the Zimbabwe Anti-Corruption Commission blames the NPA for dragging their feet in prosecuting corruption cases that have been handed over to them.²⁵ On the other hand, the NPA accuses the judiciary of harbouring corrupt judges who are intent on protecting so called 'cartels' that have captured state institutions and continue to run the economy down.²⁶ The latter also extends blame for the continued economic crimes to the entire legal profession. Regardless of who is to blame, there certainly is evidence that the law is slow in resolving the prevalent economic crime through the criminal justice system.

The bottom line is that public perception of the rule of law is severely compromised. This seems contrary to the spirit of the Constitution²⁷ of Zimbabwe that sought to strengthen the rule of law. The rule of law means that everyone is subject to a universal set of rules that should be applied equally and makes all cases to be treated alike. However, this type of justice is still to be seen in Zimbabwe. Among others, the Constitution and the MLPCA seek to empower competent authorities to conform to the rule of law. Therefore, without any recorded convictions, especially of high-profile people, it would appear the current AML regime is not sufficiently empowered to promote the rule of law.

24 Ndlovu R (29 January, 2019) "Zimbabwean Lawyers march to demand the return of the rule of law" Times Live, available at <https://www.timeslive.co.za/news/africa/> (visited 15 February 2020).

25 Nehanda Radio (19 November, 2019) "ZACC blames legal system and NPA for catch-and-release tag", available at <https://nehandaradio.com/2019/11/19/> (visited 20 February 2020).

26 Newsdzezimbabwe (10 February, 2020) "Hodzi- Cartels have captured state" available at, <http://www.newsdzezimbabwe.co.uk/2020/02/> (visited 11 February 2020).

27 Constitution of Zimbabwe sec 3 (1) (b).

4.4. THE ANTI-MONEY LAUNDERING REGIME AND THE DOCTRINE OF SEPARATION OF POWERS

As a pre-requisite to the rule of law, the separation of powers principle must be respected and observed. The separation of powers enforces values of accountability and transparency to all public office-bearers as reiterated by the former Chief Justice Malaba:

“Transparency and accountability are concepts which obligate public officials to provide full information and to explain and justify their performance in the execution of functions assigned to them where it is necessary to do so. A system of accountability is executed through various mechanisms and reforms that ensure openness. The two concepts are mutually inclusive. Unless there is accountability, transparency is of little value. In the same vein, without transparency, it becomes impossible to hold public officials to account”.²⁸

The doctrine of separation of powers is at the heart of efficient and good governance.²⁹ It is critical to prevent and stop one branch from exercising the powers over another in a constitutional democracy. The purpose of separation of powers is to prevent the concentration of power in one branch of government. It also aims to provide for checks and balances and maintains the division of government responsibilities. As alluded to in the case of *Commissioner of Police v Commercial Farmers Union*,³⁰ the court ruled that the invasion of farms was illegal, and the police were to remove invaders from the farms as well as to inform them that their conduct was illegal. The court further ruled that police should not take any contrary instructions from the executive. However, as the land invasions continued it was realised that the police went against the court ruling and instead through their actions supported the invaders and failed to remove them from the farms.

Upholding the principle of separation of powers means that legislation remains the exclusive role of the legislature, with the executive arm keeping to the executive functions and the judiciary to the courts. Therefore, for any form of government to combat ML each organ of

28 Malaba L (2020) “Judicial Transparency and Accountability” Address by the Chief Justice of Zimbabwe The Occasion of the Opening of the 2020 Legal Year 13 January 2020, available at <https://jsc.org.zw/jscbackend/upload/Publications/CHIEF%20JUSTICES%20SPEECH%202020%20LEGAL%20%20YEAR%20OPENING-13-01-2020.pdf> (visited 17 May 2020) at 6.

29 Constitution of Zimbabwe sec 3 (2) (e).

30 *Commissioner of Police v Commercial Farmers Union 2000 (1) ZLR 503 (HC) 2000 (1) ZLR*; at 503;

state effectively and efficiently must perform its functions without interference from the other. This will promote correct and unhindered implementation of AML measures in all government institutions especially those designated to fight financial crime.

In 2018, the MLPCA was amended through the Presidential Powers (Temporary Measures) Regulation.³¹ According to the constitution, the President can issue an urgent regulation and bypass the parliamentary process by presenting a bill to the Senate and the National assembly, if he/she sees that it is in (among other interests) the economic interest of Zimbabwe or the general public.³² Subject to the Constitution and the Presidential Powers (Temporary Measures) Act the President can issue a regulation that will deal with the matter abruptly.

However, the above-mentioned provision presents an ambiguous interpretation when considered against the role of Parliament that has the mandate to enact laws. The provision suggests an overlap on the role of the executive and is open to abuse. In fact, concern has been raised by many citizens who feel that the President Powers Regulation Act, seems to have become the order of the day³³. Statutory Instruments are being issued too frequently to help fix the messes that the government finds itself in.

To illustrate the practical application of the doctrine of separation powers and the checks and balances among the three branches of government, the role of Parliament (the Legislature) is utilised. Also, Parliament has to hold the President accountable as the highest office bearer in the executive to which it is a constitutional obligation. However, the Parliament also must ensure that institutions and government act in the national interest. Therefore, it would seem the issue of national interest supersedes and establishes dominance over the President's accountability to Parliament.

Seemingly, the urgency to amend the MLPCA derived from pressure exerted on the government to revive the failing economy. Following the resignation of former President Robert Mugabe, the new administration of President Mnangagwa was forced to make several

31 Statutory Instrument of 246 (2018).

32 Presidential Powers (Temporary Measures) Act [Chapter 10:20].

33 M Chifamba (21, July 2021) "Zimbabwe: Mnangagwa's growing love for rule-by-degree" The Africa Report available at <https://www.theafricareport.com/111451/zimbabwe-mnangagwas-growing-love-for-rule-by-decree/> (visited 22 September 2021).

reforms. Among these were those related to legislation that aligns Zimbabwe with international standards. The reforms also form part of conditions set by the World Bank, IMF, and the African Development Bank to reengage Zimbabwe and begin debt consolidation as well as refunding. This can be considered a needed resolve following years of the political, financial crisis and economic mismanagement. Certainly, the amendment of the MLPCA has some national interest vested in it. The re-joining of Zimbabwe into the international community supports the AML regime especially for the commitment needed towards international cooperation and coordination.

4.5. CONCLUSION

In order to effectively fight ML, international AML measures must not conflict with domestic law but rather work together to achieve consistency. AML policy should also promote legal principles for it to remain relevant and foster democratic governance. This works well towards the national agenda. Therefore, individual countries should strive to align the AML regimes to the effective implementation of FATF standards.³⁴ Anti-money laundering regime's must utilise the FATF standards as they are an essential tool for deterring and preventing financial crime. Adhering to legal principles supports the AML strategy. In many ways AML legislation has the ability to force accountable behaviour in the financial economy. For instance, office bearers become accountable to the management of public affairs and keeping safe public resources. In conjunction with democratic principles, AML law has the potential to circumvent the growing incidence of ML and predicate crime as well as protecting the financial system. The following chapter assesses the alignment of the MLPCA to the international standards.

³⁴ Nance M T (2018) "The regime that FATF built: An introduction to the Financial Action Task Force" *Crime Law Society Change* 69: 109-129 at 123.

CHAPTER 5

THE ALIGNMENT OF THE AML LEGAL FRAMEWORK TO THE INTERNATIONAL STANDARDS

5.1 INTRODUCTION

In pursuing to meet international best practice, Zimbabwe has put in place AML designated institutions responsible for the effective implementation and monitoring of compliance. To be effective, these institutions are authorised through AML legislation under the MLPCA and other AML supporting legislation to execute their mandate. The mandate includes supervision by the FIU and competent supervisory authorities. In addition, investigation through certified FIU inspectors, the Zimbabwe Republic Police, Zimbabwe Anti-Corruption Commission and the NPA for prosecution and freezing and confiscation of assets. This chapter examines alignment and compliance of Zimbabwe's AML legal framework to FATF standards. To achieve this, the chapter examines ML cases that were prosecuted in Zimbabwe, as this will help to determine the effectiveness of the legal framework.

5.2 ALIGNMENT OF ZIMBABWE'S AML LEGISLATION TO FATF STANDARDS

Zimbabwe, as a member of the ESAAMLG, is obligated to meet international standards and conventions aimed at combating ML and predicate crimes. In keeping with this requirement, Zimbabwe has transposed several provisions of the AML international legal instruments into its domestic laws under the MLPCA. However, this requirement for strict alignment to international standards is criticised by some scholars.³⁵ These scholars seem to argue that there are many approaches to combating ML other than those prescribed by the FATF and UN Conventions. While this boards for an interesting discussion, such a debate falls beyond the scope of this dissertation. As such, this dissertation aligns itself to the school of thought that the FATF standards are the international best practice which many other scholars agree.³⁶ In

35 Matsuoka A (2018) "Ratify and Comply: A Pathway for Japan to follow the FATF Recommendation 35" *Journal of Money Laundering Control* 21(1): 71-78.

36 Jensen N & Png C (2011) "Implementation of the FATF 40 + 9 Recommendations: A perspective from developing countries" *Journal of Money Laundering Control* 14(2): 110-120 and de Koker L (2013) "The 2012 Revised Recommendations: Assessing and Mitigating Mobile Money Integrity Risks Within the New Standards Framework" *Washington Journal of Law, Technology & Arts* 8(3): 166-196 at 168.

keeping with this line of thought, this dissertation assesses the Zimbabwean AML legislation's alignment mainly to the FATF standards. As such, a competent AML regime consists of a legal framework and an institutional framework that establishes powers and procedures of competent authorities.³⁷

5.3 CRIMINALISATION

As alluded to in previous chapters, international AML conventions, in particular, the Vienna and Palermo conventions and the FATF standards criminalise ML based on four critical elements, namely:

- i. Conversion or transfer of proceeds of crime.
- ii. Concealment or disguise of true nature or source of the proceeds.
- iii. Acquisition or use and possession of proceeds of crime.
- iv. Participation through association with or conspiracy to commit, an attempt to commit, and aiding, abetting, facilitating, and counselling the commission of any of the offences listed above. Knowledge, suspicion, intent, or purpose are required as elements of all the offences listed.

The MLPCA criminalises money laundering based on the above four elements. To cater for the clandestine nature of financial crime, AML law should be careful to cover grey areas that often have missing details and only reveal a general picture of the crime. In many cases evidence or paper trails of the crime are often destroyed and become difficult to find during investigations. In *S v Mambo*³⁸ the accused was charged with contravening the Serious Offences (Confiscation of Profits) Act.³⁹ The prosecution realised the wide reach of the ML offence and proceeded rather to prove that the accused was guilty of laundering proceeds of crime.⁴⁰ It was

37 FATF (2019) Methodology for assessing compliance with the FATF Recommendations and the effectiveness of AML/CFT systems 2013, available at <http://www.fatfgafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf> (visited 6 November 2019).

38 *S v Mambo* 1995 (1) ZLR 50 (S);

39 Serious Offences (Confiscation of Profits) Act [Chapter 9: 17] of 1990 sec 63 (1) (now repealed by the MLPCA).

40 *S v Mambo* (1995) at p 52F-53D;

immaterial whether it was not clear that the accused was the perpetrator of the crime or that it was someone else or even that it was a joint effort. The court resolved that as long as there was reasonable proof that the accused knew or ought to have known that the money was derived from the commission of an offence made him guilty. There was no need to prove that the accused had committed an offence to be guilty of ML.⁴¹ Similarly, to the Serious Offences Act the MLPCA does not require a conviction of the offence that has generated the proceeds. Just a suspicion of criminal activity or a particular offence is enough to determine the offence.⁴² The proceeds of crime could include proceeds from other jurisdictions if the offence occurred in states where the conduct has occurred and also constituted as an offence if committed in Zimbabwe.⁴³

*S v Chikukwa*⁴⁴ provided clarity regarding the definition and criminalisation of ML. In July 2016, Arthur Chikukwa, was indicted on two charges: fraud and ML. These charges were defined under section 136(a) and (b) of the Criminal Law (Codification & Reform)⁴⁵ and the alternative to the fraud charge, a charge of contravening section 302 of the Mines & Minerals Act.⁴⁶ The second charge was of ML as defined in section 8 (3) of the MLPCA.

The facts of the case were that during the period between July 2014 and December 2015, the accused intentionally and unlawfully defrauded, misrepresented to Light-glass Enterprise (Private) Limited and claimed that he had a Coal Mining Concession in the name of Rockrabbit Investment (Private) Limited. He further claimed that he had the mandate to sell the Special Grant from Rockrabbit Investments (Private) Limited. At all times, the accused knew that he had not obtained authority to sell the said Special Grant. By his misrepresentation, Arthur Chikukwa caused Light-glass to surrender a property in Harare, and two Toyota motor vehicles, a Prado, and a Lexus and US\$125 000.00 cash. In total a loss in the amount of US\$2 775 000.00 was suffered by Light-Glass (Private) Limited. The court held that the accused had misrepresented that he had the authority to sell the Special grant which prejudiced the buyers

41 *S v Mambo* (1995) at p 50-52;

42 MLPCA (2019) sec 8 (6).

43 MLPCA (2019) sec 8 (7).

44 *S v Chikukwa* (HH 813/16 CRB NO.146/16) (2016) ZWHHC 813 (03 October 2016);

45 Criminal Law (Codification & Reform) Act [Chapter 9:23].

46 Mines & Minerals Act of [Chapter 21: 05].

and he committed ML offence. However, the Defence argued that the charges should be separated. They contended that the fraud charge should be established first and only then could the court determine the offence of ML. They argued that the charge for ML was baseless as the state had not precisely established the offence of fraud against the accused. They further submitted that the state could not seek for a conviction of both charges at the same time. The court held that indeed the accused had misrepresented and found him guilty of fraud. The court held that in terms of the MLPCA Section 8 (6), there was no need for a predicate crime to establish the offence of ML. There was sufficient evidence that the accused had made a clear misrepresentation with the knowledge that he had no authority.

As a result of the misrepresentation, he benefitted from the proceeds through the acquisition and occupation of both movable and immovable property. The fraud enabled him to acquire the property through proceeds of crime. This type of conduct is defined proceeds of crime as it was property or economic advantage or gains from the commission of a criminal offence.⁴⁷ The accused intentionally received, possessed, concealed, and disposed of the property with knowledge or suspicion that the property was proceeds to a crime of misrepresentation. The accused was found guilty on both fraud and ML charges sentenced to 10 years imprisonment of which 2 years were suspended under certain conditions. Clearly, this judgement confirms the definition of ML under the MLPCA and how the courts' view predicate crimes. In essence, the presence of predicate crimes is not a pre-condition for determining a charge of ML.

In addition to criminalising ML offences, the MLPCA prescribes certain penalties:

- (a) a fine not exceeding US \$5000 or not exceeding twice the value of the property involved, or the gain derived by the offender, whichever is greater; or
- (b) Imprisonment for a period not exceeding twenty-five years; or
- (c) Both such fine and such imprisonment.⁴⁸

In *S v Mubaiwa*⁴⁹ the defence used section 8 (b) to argue and refute the reasons that the state offered for the denial of bail for the accused Mary Mubaiwa. The accused was charged with

47 MLPCA (2019) sec 8.

48 MLPCA (2019) sec 8 (8a-8c).

49 *S v Mubaiwa* (HH 15-20 B 3004/19) [2020] ZWHHC 15 (06 January 2020);

money laundering and fraud. The state argued that if the accused was given bail, she would run away to avoid the eventual sentencing of imprisonment. However, the defence refuted this by clarifying to the state that the provision of sentencing gave discretion to suspension of imprisonment if the proceeds of crime is repatriated to Zimbabwe within a period specified by the court.⁵⁰ The court granted bail to the accused citing that the provision was clear on its discretion of allowing an option against imprisonment and that could not be a reason to argue for flight risk. Instead, other reasons such as of deteriorating health and that the accused was the primary carer of her minor children were compelling enough for giving her bail.

5.4 OTHER PREVENTIVE MEASURES

The MLPCA outlines the Risk-Based Approach, Customer Due Diligence, Record keeping, and STRs respectively as prevention, detection, and deterrence measures for effective AML measures.⁵¹ In order to have the correct preventative measures in place, a risk assessment is required. Having undergone a second technical compliance assessment by ESAAMLG in 2016⁵² that highlighted partial compliance on the implementation of FATF recommendation 1, Zimbabwe responded by developing a risk-based supervision programme. However, to mitigate the risk of ML adequately, all deficiencies⁵³ that were revealed in the 2015 National risk assessment had to be addressed promptly.

5.4.1. The National Risk Assessment (NRA)

The purpose of a NRA is to establish and facilitate the effective implementation of AML measures that enhance the integrity of the country's financial and economic sectors and also encourage foreign direct investment. Zimbabwe's first NRA revealed that competent authorities, financial institutions and DNFBPs had a lack of understanding of the identified ML risks. This lack of understanding subsequently has meant that identified ML risks were not properly assessed and mitigated. Consequently, it has resulted in redundant, ineffective AML

50 MLPCA (2019) sec 8 (8) (b).

51 MLPCA (2019) sec 15; sec 24 and sec 30, 31-48.

52 ESAAMLG MER (2016).

53 Zimbabwe National Risk Assessment (2015) Final Summary, available at https://www.fiu.co.zw/other_publications/# (visited 8 November 2019) at 11.

measures put in place. Largely it has contributed to a lack of oversight in both public and private companies.

As a resolve to the deficiencies outlined by the first NRA, the Risk-Based Supervision framework and risk rating tools on AML was developed. The Risk-Based Supervision framework is utilised by supervisory authorities. For instance, the Director-General of the FIU may issue directives or guidelines about risk assessments. These directives apply to all financial institutions and DNFBPs to improve their AML obligations.⁵⁴ The financial intelligence unit has invoked institutions to take part in risk-based institutional assessments, to understand the types of risks posed.⁵⁵ In 2018, through the implementation of risk assessments, the FIU managed to reveal a list containing several private companies⁵⁶ that were engaged in illicit financial activities. The illicit activities included tax evasion, profit shifting and externalisation of cash from Zimbabwe. These listed companies had contributed to the country losing over US\$500 000 million in suspicious transactions.⁵⁷ Zimbabwe has undergone a second NRA in 2019⁵⁸ to help pave way for the 2020-2025 AML Strategic policy. This policy pronounces a refinement of the initial goals set out in the previous NRA. It also reviewed ML cases recorded from the previous NRA until the current one. Notably, there are still very few ML cases being prosecuted and convicted. A total of 41 arrests for ML led to 27 prosecutions and only 4 convictions are recorded between 2014 and 2018.⁵⁹ Further research could explore the reasons for the low convictions.

54 MLPCA (2019) sec 12 B (5).

55 MLPCA (2019) sec 12 B (2).

56 Reserve bank of Zimbabwe (2018) "Full list of Externalised funds" available at: <https://news.pindula.co.zw/2018/03/19/download-pdf-looter-list-released-by-president-emmerson-mnangagwa/> (visited 25 May 2019).

57 Full list of externalised funds (2018) at 38.

58 The Second Money laundering and Terrorist Financing Risk Assessment (2019) "Key Findings" available at <https://www.fiu.co.zw/wp-content/uploads/2020/11/Consol-NRA-2020.pdf> (visited 15 May 2021).

59 Second NRA (2019) Chapter 2 at 50.

5.4.2. The Risk-Based Approach (RBA)

The risk-based approach as an AML tool encompasses understanding of money laundering risks through identification and mitigation by appropriation of adequate resources.⁶⁰ This means that when risks are correctly identified more resources are allocated to high risks and less resources to low risk. In adhering to this principle, the MLPCA provides that AML measures be implemented such that they are commensurate to the identified risks and mitigated appropriately. This also ensures that enhanced measures are applied for high risk and reduced measures are applied for low risk.⁶¹ Appropriate implementation of the RBA involves having to put up sufficient risk-based customer due diligence and know your customer KYC systems in place.

Zimbabwe's banking sector has been struggling to regain public and investor confidence due to many factors mostly influenced by a debilitating economy and inconsistent monetary policies. Applying a risk-based approach does not always bring favourable outcomes because customers do not appreciate much scrutiny. Customer due diligence and know your customer requirements can sometimes create a burden on financial institutions⁶² On the other hand, having adequate risk-based systems also attracts foreign investment as the investor expects security of their investment. Nevertheless, for a banking sector that needs customers, the risk-based approach must be tackled with great finesse so that the customer is not chased away.

During the latest follow-up compliance re-rating assessment in November 2019⁶³, Zimbabwe maintained a Partial Compliance rating on the RBA. The report suggests that despite a commended effort to improve the application of the risk-based approach within financial institutions and DNFBPs as well as the competent supervisory authorities, there is still much more progress needed to increase the effectiveness of AML measures under Recommendation 1.

60 FATF (2014) "Guidance for A Risk-Based Approach: The Banking Sector" available at <https://www.fatf-gafi.org/documents/documents/risk-based-approach-banking-sector.html> (visited 14 June 2020).

61 FATF Recommendation 1. See also MLPCA (2019) sec 12 B (2) (a) and (b).

62 Sharman (2008) at 642.

63 ESAAMLG Compliance Re-rating Report (2019) at 6.

5.4.3. Customer Due Diligence

The MLPCA obligates all financial institutions and DNFBPs to conduct identification and verification of a customer and a beneficial owner.⁶⁴ Identifying beneficial ownership is essential to the AMLR. This is because money launderers utilise companies to hide and move their ill-gotten funds as reported in the FIU report of what the President has since termed the ‘looter’s list’⁶⁵. Mitigating the risks associated with legal persons and arrangements is at the heart of the global AML strategy. For example, finding the owners of entities that utilise multiple shelf companies to hide the source and origination of funds and those that use offshore accounts for ML. The FATF has standardised the identification of beneficial ownership to include the revealing of natural and legal persons or arrangements. Countries have been encouraged to put up a Register for beneficial owners.⁶⁶

Zimbabwe has improved its technical compliance for beneficial owner requirements through amendment to the Companies Act⁶⁷ and also the MLPCA. It is critical that ownership and control of funds be made transparent. It makes it easier for competent authorities to trace the origination of funds from anywhere in the world. The FIU has held an awareness workshop to help conscientise law enforcement, banks and other key stakeholders like the Registrar of companies and of births and deaths on the need to identify beneficial owners.⁶⁸ The MLPCA also extends provision to the identification and verification of a beneficiary of a life insurance policy and other investment-related insurance policies.⁶⁹ Financial institutions and DNFBPs are also required to verify by name, the beneficiary of a life insurance policy that has been specifically identified as a natural person, legal person or legal arrangement.⁷⁰

64 FATF interpretive note to Recommendation 10.

65 Full list of externalised funds (2018) at 38.

66 FATF (2014) “Transparency and Beneficial Ownership” available at <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf> (visited 22 September 2020).

67 Companies and Other Business Entities [Chapter 24:31] Act.

68 FIU Republic of Zimbabwe (2020) “Awareness Workshop on Beneficial Ownership Requirements” available at <https://www.fiu.co.zw/2020/11/18/aml-cft-awareness-workshop-on-beneficial-ownership-requirements/> (visited 28 December 2020).

69 MLPCA (2019) sec 15 (4).

70 FATF Recommendation 24. See also FATF Interpretive note to Recommendation 10, B (5) (a) (b).

The MLPCA provisions on beneficial ownership have improved compliance for Zimbabwe. The identification for any customer can be carried out using an identity document and for the beneficial owner the use of any relevant information from a reliable source.⁷¹ The identification and verification must be done before the establishment of an account, any business relationship or when there is suspicion or doubt about the veracity of the previously obtained identity documents.⁷² Once performed, identification and verification can be done if there is any suspicion on the way the customer is operating the account.⁷³ Ongoing due diligence and special monitoring are required especially towards high-risk customers, PEPs and correspondent banking relationships.⁷⁴

Financial institutions and DNFBPs that are unable to verify and fulfil customer identification and verification are required to submit a report to the FIU.⁷⁵ Financial institutions and DNFBPs who fail to comply and fulfil customer identification and risk management requirements are charged with an offence and liable to a fine not exceeding US \$100 000 or to imprisonment for a period not exceeding three years, or both such fine and such imprisonment.⁷⁶

5.4.4. Record Keeping and Suspicious Transaction Reporting

The MLPCA provides also that financial institutions and DNFBPs maintain books and records of their customers and transactions.⁷⁷ This corresponds with the FATF prescription of at least 5 years for keeping customer records.⁷⁸ The records are to be made available on request by the FIU and any competent authority that may request them. The availability of customer information facilitates ease of tracing of relevant information. It also provides a paper trail in the event of investigations and subsequent prosecutions.

71 MLPCA (2019) sec 15 (1) and (3).

72 FATF Recommendation 10.

73 FATF Interpretive Note to Recommendation 10, E10.

74 MLPCA (2019) sec 26.

75 MLPCA (2019) sec 22.

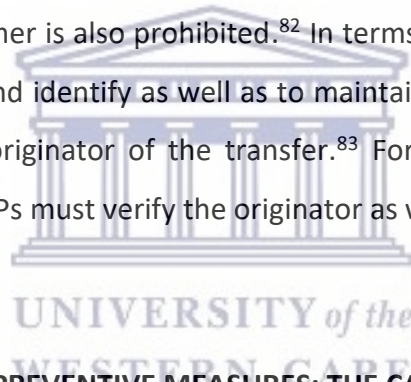
76 MLPCA (2019) sec 23.

77 MLPCA (2019) sec 24.

78 FATF Recommendation 11.

Reporting obligations are imposed on FIs, DNFBPs and their respective directors, principals, officers, agents, and employees. They must report any suspicious activity.⁷⁹ This provision is consistent with FATF recommendation 20. Competent authorities are also obligated to report to the FIU any matters relating to ML. This includes the reporting of non-compliance by the Financial Institutions or DNFBPS that it is a supervisory to.⁸⁰ The report must be directed to the FIU and must be made within and no later than three working days of making the suspicion. In this regard, suspicious activity can be any transaction or attempt to affect a transaction that is related to proceeds of crime.

The provision for tipping off and confidentiality is in line with FATF recommendation 21. The MLPCA prohibits the use of any secrecy or confidentiality provision from any other law that may prevent the fulfilment of ML reporting obligations.⁸¹ In the same regard, the disclosure of a report made to the customer is also prohibited.⁸² In terms of wire transfers, the MLPCA stipulates the need to verify and identify as well as to maintain the accurate name, address and account number of the originator of the transfer.⁸³ For cross border wire transfers, financial institutions and DNFBPs must verify the originator as well as the beneficiary identity and account number.⁸⁴



5.5. IMPLEMENTATION OF PREVENTIVE MEASURES: THE CASE OF ECOCASH

In May 2020⁸⁵ the FIU served a directive on Ecocash to suspend and re-register all Ecocash agents' accounts which were making high threshold transactions. The directive required Ecocash to freeze accounts of all Ecocash agents that were transacting above ZW\$100, 000. In addition, Ecocash was to establish and enhance its Know your customer protocols on all the suspended agents' accounts. The FIU was prompted to execute the directive after an investigation that revealed the abuse of the Ecocash mobile money platform in foreign

79 MLPCA (2019) sec 30 (1-3)

80 MLPCA (2019) sec 30 (4) (a-b).

81 MLPCA (2019) sec 31 (1).

82 MLPCA (2019) sec 31 (2).

83 MLPCA (2019) sec 27 (1) (a-d).

84 MLPCA (2019) sec 27 (2).

85 FIU Republic of Zimbabwe (2020) Press Statement: FIU Ecocash Agent Re-registration 20 May 2020 available at <https://www.fiu.co.zw/2020/05/21/press-statement-fiu-ecocash-agent-re-registration-20-5-2020/> (visited 05 August 2020).

currency transactions. A surge in the foreign currency parallel market activities was noticed and it seemed Ecocash was failing to stop it. There were many transactions of high values between agents that raised a lot of suspicion. Yet, despite the increase in suspicious activity, no STRs were filed to the FIU.

However, Ecocash defied the AML Directive⁸⁶ and refused to suspend the agents' accounts. The infringement on the directive was followed by penalties against Ecocash Private Limited including the Director and also the Chief Executive Officer for a failure to comply with obligations under section 5 of the MLPCA. In the case of *Ecocash Zimbabwe (Pvt) Ltd v RBZ*⁸⁷ the FIU pronounces Ecocash to have failed:

1. To comply with customer due diligence protocols.
2. To maintain and to provide records as required under section 24 of the MLPCA.
3. To report suspicious transactions as required by section 30 of the MLPCA.
4. To comply with a disclosure provision that prohibits disclosing to a customer that a suspicious transaction has been filed against to the FIU provided under section 31 (2).

The purpose of these directives goes largely to safe-guarding the financial system. Failure to comply with the issued directives results in an offence that is penalised through a fine.⁸⁸ In penalising Ecocash and its directors including the chief executive officer, the FIU complied with FATF Recommendation 35 that stands for effective and dissuasive sanctions to deal with natural and legal persons. Further administrative and civil penalties have also been added for this offence through the recently passed Financial Laws Amendment Regulation of June 2021.⁸⁹ The action taken by the FIU has resulted in effective curbing of abuse of the Ecocash mobile money platform and others like Zipit and One Money. The directive has emphasised the need for customer due diligence and the Know your customer procedure which ensures proper identification of customers. In this case only agents who have opened bank accounts and gone through enhanced know your customer protocols are allowed to transact without

⁸⁶ Anti-money Laundering Directive No. 2 of (2014).

⁸⁷ *Ecocash Zimbabwe (Pvt) Ltd v RBZ (HH333 of 2020, HC 3007 of 2020 [2020] ZWHHC 333 (26 May 2020).*

⁸⁸ MLPCA (2019) sec 4 (4).

⁸⁹ Statutory Instrument 127 of 2021.

exceeding the threshold limit. The system also allows better monitoring of transactions on mobile money platforms.

5.6. ASSET FORFEITURE AND INTERNATIONAL COOPERATION

Zimbabwe is obligated as a member of UNCAC to make provisions under domestic law for asset recovery.⁹⁰ To satisfy the reactive measures to be taken when investigating cases, the MLPCA strengthens the identifying, tracing, and confiscating of proceeds of crime including terrorist financing by aligning the asset recovery and forfeiture legal framework to FATF Recommendation 38. In doing this, the MLPCA supports the objectives of Sustainable Development Goal 16 which stands for the recovery of all proceeds of crime derived from organised crime. It is undeniable that the tracing and freezing of assets is a valuable tool in fighting transnational crime like ML and the proliferation of finance for weapons. This is emphasised under the Stolen Assets Recovery Initiative which works to combat corruption related to ML.⁹¹

The MLPCA provides for both investigative orders for criminal confiscation and civil forfeiture.⁹² The MLPCA provides for civil forfeitures orders under section 79 and 80. The case of *Prosecutor General v Madefit Investments (Pvt) Ltd*⁹³ reports on how civil forfeiture is implemented under the Act. In this case the court forfeited five vehicles to the state on suspicion of criminal activity known to the owner of the vehicles. The court decided on a balance of probabilities that the vehicle's identities were not the respective registration books they presented to be. The identities of the vehicle's had been falsified. Therefore, the five motor vehicles were tainted property. The court then gave the order to forfeit the vehicles to the state.

90 UNCAC (2003) Article 51-59.

91 UNODC (2020) "Stolen Asset Recovery Initiative" available at <https://www.unodc.org/unodc/en/corruption/StAR.html> (visited 12 July 2020).

92 MLPCA (2019) sec 72-95.

93 *Prosecutor General v Madefit Investments (PVT) LTD (HH 10-21) HACC 23/20 [2020] ZWHHC10 (18 January 2021).*

The MLPCA also provides for conviction-based confiscation of proceeds of crime as well as benefit recovery orders.⁹⁴ This provision encourages the recovery of assets from both Zimbabwe and foreign states. Asset forfeiture helps to secure foreign investment through boosting confidence to would-be investors that can be assured of effective AML measures in place. Investors are guaranteed that measures to follow the money trail are sufficient. TI Zimbabwe has been active in voicing for change in the management of assets that have been recovered. They have encouraged measures to be established to protect recovered assets so that they become a source of development for Zimbabwe.⁹⁵ Recovered assets should not be a source of corruption.

The MLPCA has gone further to create effective mechanisms for managing property recovered which is proceeds of crime. This has been done through the establishment of a Recovery asset fund which is responsible for the receipt, administration, and disbursement of all recovered assets. An Asset Management Unit has also been established which is responsible for receiving and acting as a trustee and preserver of all property that is recovered proceeds of crime.⁹⁶ The Asset Management Unit is also responsible for maintaining the property and its value until processes are complete to return the property to its owner.⁹⁷

To encourage successful investigations, investigative techniques and mechanisms should be developed.⁹⁸ The ZRP in collaboration with the NPA have set up the Asset Forfeiture unit to enable efficient investigation of ML cases and also the recovery of proceeds of crime. In doing this, the facilitation of cooperation between competent authorities and foreign counterparts through mutual legal assistance for identifying, tracing, freezing, seizure and confiscation of all proceeds of crime is enhanced. The MLPCA encourages international cooperation through the sharing of information by the FIU with foreign counterpart agencies that hold similar secrecy obligations towards the fighting of financial crime.⁹⁹ The FIU also facilitates inquiries

94 MLPCA (2019) sec 38.

95 Transparency International Zimbabwe (3 June 2020) "Following the money: The Role of Asset Recovery in the fight against Corruption" Weekend Digest available at: <https://www.tizim.org/wp-content/uploads/2020/08/Asset-Recovery-blog.pdf> (visited 22 November 2020).

96 MLPCA (2019) sec 96 and sec 100 A.

97 MLPCA (2019) sec 100 B (1a-1i) and (2).

98 FATF Recommendation 31.

99 MLPCA (2019) sec 37 (1)

towards relevant information involving suspected proceeds of crime, terrorist property or potential financing of terrorism on behalf of the foreign counterpart.¹⁰⁰

5.7. INDEPENDENCE AND POWERS OF THE FIU

The FIU has the power to obtain any information as authorised by the Director-General to be relevant. Information can be obtained from financial institutions, DNFBPS, law enforcement agencies, competent supervisory authorities, any public officer or authority, company, trustee of a trust and any private voluntary organisation.¹⁰¹ In addition, it is empowered to obtain any information concerning any report or information it has received, where otherwise prohibited by law, from all the institutions mentioned above.¹⁰² The FIU and any inspector including an officer of Zimbabwe Revenue Authority also have the power to seize, detain and forfeit any currency, bearer negotiable instruments and both manufactured and unmanufactured precious metals and precious stones.¹⁰³ In addition, the MLPCA provides for measures to disclose the physical cross-border transportation of currency and bearer negotiable instruments as well as precious metals and precious stones. This is in line with FATF Recommendation 32.

The MLPCA provides that inspectors have the power to enter the offices of any financial institution, DNFBP and any other business or premises for their inquiry or investigation.¹⁰⁴ This qualifies as an alignment with FATF Recommendation 31. The inspectors have the power to question any person as well as to request and take possession of any documents, records, list, notice and books. This can be for any examination, investigation, trial or inquiry related to the contravention of the MLPCA.¹⁰⁵ Moreover, the inspectors can request an explanation into any entry that is made in any documents, records, list, notice and books that they have in their possession.¹⁰⁶ The MLPCA has gone further to empower inspectors to act without a warrant under the following conditions: If the inspector has a reasonable belief that a delaying warrant

100 MLPCA (2019) sec 37 (2).

101 MLPCA (2019) sec 6E (1) (a-g).

102 MLPCA (2019) sec 6E (6) (a-d).

103 MLPCA (2019) sec 12 (1).

104 MLPCA (2019) sec 6D (3).

105 MLPCA (2019) sec 6D (3) (b; c; e; and f).

106 MLPCA (2019) sec 6D (3) (d).

would defeat the purpose of the inquiry or investigation; If the inspector believes on reasonable grounds that their action is in the interest of public safety or public order and if the inspector believes that their inquiry is for the prevention, investigation or detection of an offence of ML and any related predicate offence.¹⁰⁷ This is essential when dealing with economic crime such as corruption and ML which need to be expedited to avail as much evidence as possible. The clandestine nature of economic crime requires that investigations be handled timeously.

5.8. THE PROSECUTION OF MONEY LAUNDERING CASES

Prosecution of ML and related crime is authorised by the Prosecutor General. The office of the Prosecutor General is an independent public office. The Commissioner-General of Police must comply with any request from the PG. To that end, the PG can prosecute any individual or any authority without any fear, favour, bias, or prejudice and must remain impartial.

The Prosecutor General decides whether to proceed with the prosecution or not. The PG can make an application for an interdict against a suspect under investigation or charged and even a convicted offender for a serious offence prohibiting the use of a property that is believed to be tainted.¹⁰⁸ The interdict is enforced once granted by the court.¹⁰⁹ To enable asset recovery an interdict can be made for Benefit recovery or securing property for confiscation.¹¹⁰ In enforcing the interdict the PG may request assistance from another state if the property that is identified and traced is in that state as authorised by the Criminal Matters (Mutual Assistance Act).¹¹¹

However, despite the set-out processes for the prosecution of ML cases, there have been very few convictions.¹¹² Nevertheless, in February 2020, the NPA including the Zimbabwe Anti-Corruption Commission has claimed to be pursuing the root of confiscation and seizure of

107 MLPCA (2019) sec 6D (3) (i and ii)

108 *Prosecutor General v Madefit Investments (PVT) LTD (HH 10-21) HACC 23/20 [2020] ZWHHC10 (18 January 2021).*

109 MLPCA (2019) sec 41 (1) and (2) (a-c)

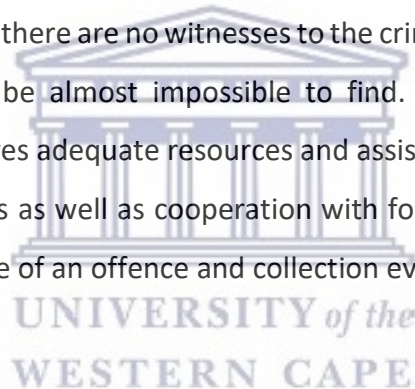
110 MLPCA (2019) sec 59 and sec 40 (5).

111 MLPCA (2019) sec 42.

¹¹² Second NRA (2019) Chapter 2 at 51.

property from many suspects of corruption, ML, and related crimes. According to ZACC, currently, assets (cash and properties) from former and current senior government officials worth USD 7 billion have been identified worldwide.¹¹³ Both ZACC and the NPA are commended for this positive step in ensuring that the culprits who have prejudiced the country through corruption and ML do not continue to benefit from the ill-gotten proceeds. However, there is still a long way to go in terms of seizure and confiscation of assets with the 2019 NRA showing the state only managing to recover USD14500.¹¹⁴

Financial crimes need to be properly investigated with the inclusion of experts enabled in parallel financial investigations. Sufficient evidence must be made available to the prosecution to warrant a successful prosecution. However, sufficient evidence is often the most difficult to gather as most financial crime are usually discovered a long time after commencement of the illicit activity. In many cases there are no witnesses to the crime. Therefore, much evidence including any paper trail can be almost impossible to find. Transnational crime remains complex crimes in that it requires adequate resources and assistance through cooperation by local law enforcement agencies as well as cooperation with foreign counterpart agencies to be able to prove the occurrence of an offence and collection evidence.



5.9. CONCLUSION

The chapter evaluated the implementation of the MLPCA provisions and examined how the provisions outlined align with the FATF recommendations for the purpose of compliance. To a large extent the AML legislation is aligned to the FATF standards. Regardless, Zimbabwe AMLR still lacks legislation on whistle blower protection and also regulation on the use of virtual currencies. It is vital that the AMLR prioritise protecting whistle blowers who play a critical role in exposing financial crime perpetrators. It is even more critical that competent authorities are equipped with legislation that regulates online transactions involving cryptocurrency. The chapter has explored how the MLPCA, and its supporting legislation are efficient preventive and reactive tools to drive the AMLR of Zimbabwe. Largely, the provisions,

¹¹³ Herald (23 February, 2020) "Asset recovery: ZACC identifies \$7bn cash, properties" Herald, available at <https://www.herald.co.zw/> (visited 01 March 2020).

¹¹⁴ Second NRA (2019) Chapter 2 at 51.

regulation, and guidelines from the FIU for financial institutions and DNFBPs are sufficient for operational systems. However, the law in the book versus the law in action does not yet collate.

There is need to match the practical implementation of AML policy to provisions set. To establish effectiveness, there is need for empowerment of competent authorities so as to accentuate and support enforcement measures and international cooperation.¹¹⁵ The incongruence in set AML measures and implementation of the measures exacerbates financial crime as many criminals go unpunished. Zimbabwe continues to record very high occurrences of illicit behaviour in the financial economy. Predicate crime such as smuggling, fraud, tax evasion and illegal dealing in precious stones are on the increase. In public administration there is also high incidence of corruption and abuse of office. All this financial crime continues to prejudice the country and affects economic growth negatively. The country needs effective MLA processes and transnational structures to promote the tracing and confiscation of proceeds of crime. However, the low statistics on conviction of ML cases and insufficient asset seizures and confiscations makes effectiveness of the MLPCA a lot more elusive to measure. It is concerning that even as ML seems to be at a medium to low risk, the values the country is losing due to predicate crime continues to increase.¹¹⁶ Strict implementation of measures provided by the MLPCA provisions is required to stem predicate crime. It is essential that the FIU and stakeholders must work together to remain compliant to their AML obligations.

¹¹⁵ Fundira (2007) at 49.

¹¹⁶ Second NRA (2019) Chapter 2 at 18.

CHAPTER 6

CONCLUSION AND RECOMMENDATION

6.1. FINAL REMARKS

This research concludes that in as far as alignment and compliance to the international perspective is concerned, Zimbabwe has a sound legal and institutional framework in place. The MLPCA including its supporting legislation are sound and comprehensive and can fight ML sufficiently. The procedural framework and its provisions sufficiently match the FATF standards. The legal framework offers a well-posed regime for the AML strategy. However, the implementation of effective AML measures was noted to still have some gaps especially when it comes to government institutions. Compliance and implementation by government institutions was noted to be under-performing mostly due to lack of qualified personnel and budget constraints. The MLPCA also does not yet address anything on the trading of virtual currencies, which is a novel phenomenon that many countries are still coming to grips with. However, it needs to be made a priority in the AMLR.

In terms of the empowerment of the institutional framework, varied results were observed. While some institutions seem to be empowered, others are not. Empowerment of the designated institutions relates to them being sufficiently resourced to enable them to monitor, investigate and punish non-compliance of AML policies.¹ Empowerment, therefore, encompasses the availability of consistent policies supported by laws, regulation, and guidelines, coordinated resources for information, financial intelligence and sufficient human resources and financial resources for operation. In addition, independence and cooperation of the designated institutions also constitutes critical elements of empowerment. In terms of policy and the legal framework, empowerment at that level appears to be in order. However, in terms of resources, budget allocation, training and independence, there is considerable work that needs to be done.

1 FATF Recommendation 27.

The AML regime requires adequate resources for effective implementation. It is essential that operational, financial, and human resources be adequately made available for the success of the regime. Empowerment can also be derived from political will as part of the national agenda. Strong political will enables an adherence to best practices in human rights and implementation of substantive legal reforms and informed policy. Zimbabwe needs sufficient and consistent political will that reflects respect to a national agenda including unity of purpose from the government. The lack of political will easily undermine AML policies and measures.

There is need for Zimbabwe to tackle ML head-on. This involves the regular calling out of government institutions, private companies the political elite and senior government officials that engage in illicit activities. The government must also avail adequate resources for all its designated institutions to enable adequate functioning. It must also exhibit shared values with the international community to encourage sustainable developmental goals and foster cooperation. The biggest statement in terms of political will appears to be the 2018² amendment to the MLPCA and also the recent June 2021³ financial laws amendment regulation.

Despite still existing political and economic strife, the government of Zimbabwe has begun programmes to rehabilitate the financial sector and pledged to the eradication of corruption and serious crime such corruption and ML. This resolution is applauded and the objectives of the Financial Laws Amendment Regulation⁴ attest to this. In fact, the FATF has commended the Zimbabwe government for its willingness to effect positive change to the financial system.⁵

Notably, various budget allocations have been made towards key players in the AML regime. The Financial intelligence unit, the Zimbabwe Anti-Corruption Commission and the NPA have received funding to improve operational capacity. This empowerment should facilitate

2 MLPCA (Amendment Act No.20) of 2018.

3 Statutory Instrument 127 of (2021).

4 Statutory Instrument 127 of (2021).

5 Financial Action Task Force (2020) "Jurisdictions under increased monitoring -21 February 2020", available at <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html> (visited 01 April 2020).

effective execution of the AML mandate. The empowering of these institutions has given a major boost to the AML regime. It has strengthened the fight against corruption, ML, and related financial crime. The move to empower these institutions has also encouraged a heightened awareness of the AML strategy for the country. It has also promoted and put these institutions in the public's view which to some extent forces transparency and accountability into the mandate. People are now aware of the institutions' presence and keep in check on their activities.

According to the FATF, the effective role of competent supervisory authorities is supported by adequate budget allocations, expertise, and sufficient technical assistance.⁶ Therefore, the lack of adequate resources contributes to adverse risk-based supervision. For Zimbabwe cases of non-compliance have been identified but the allocation of appropriate action has not taken place.⁷ This can be attributed to unavailable resources for implementation of measures such as needed to follow paper trails, to file suspicious transactions report and cash transaction reports. Without the adequate accumulation of financial data there is no basis for a successful prosecution of perpetrators.

Consequently, the NPA is unable to compile data or information on predicate crimes and ML prosecutions and convictions due to inadequate means. Ultimately, the effectiveness of investigations and prosecution cannot be determined.⁸ The NPA does not have comprehensive statistics on ML cases, and this makes it difficult to determine the effectiveness of AML measures applied in the regime.

Notwithstanding the infancy of the AMLR in Zimbabwe, it is apparent that most competent supervisory authorities need continued support in training and understanding of the ML threats that the country is faced with. It is then incumbent for the supervisory authorities to pass their knowledge and expertise to the financial institutions and DNFBPs that they supervise. This will ensure that strong AML systems are maintained. Besides, the supervisory

6 FATF Recommendation 31.

7 Fundira (2007) at 49.

8 ESAAMLG MER (2016) para 163 at 59.

authorities must be accustomed to recent amendments of the MLPCA and to keep abreast with any new AML developments.

6.2. RECOMMENDATIONS

Having considered the state of the AMLR in Zimbabwe, the dissertation makes the following recommendations:

6.2.1. Money Laundering Risk Mitigation

Zimbabwe will benefit from improving its understanding of ML risk among all the relevant stakeholders. This will assist in the implementation of the national AML strategy based on the ability to identify and mitigate risks. It will also encourage the implementation of risk-based supervision for financial institutions and DNFBPs. The undertaking of a second national risk assessment by Zimbabwe is commended. It goes a long way into providing a deeper understanding of the country's ML shortcomings. It will also pave way to implementing appropriate penalty measures to those exposed who disregard and defy compliance.

6.2.2. Coordination and Cooperation of competent authorities

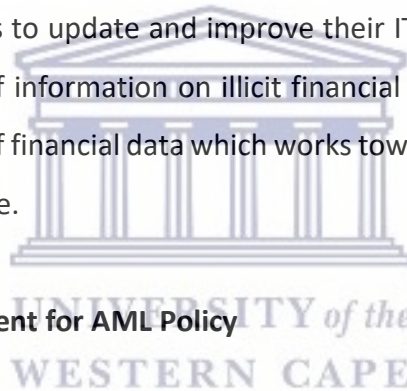
Effective implementation of AML measures is dependent on the coordination and cooperation of competent authorities. Cooperation encourages efficiency in the utilisation of the already scarce resources. In as much as domestic cooperation is needed, so is international cooperation and coordination. The FIU should consider joining the Egmont Group in order to improve its effectiveness and connections with other FIU's. This helps to keep Zimbabwe abreast with the latest ML trends and also adds to a better alignment of the FATF standards. Zimbabwe can also benefit in the restoration of the public Ombudsman's Office that was removed following the current constitution. Having an independent Public Protectors office can assist in the protection of public affairs especially where abuse of public office is rampant.⁹

⁹ Saungweme S (2017) "Nkandla Judgement: Lessons for Zimbabwe" *Zimbabwe Electronic law Journal zRoLJ 09*.

The autonomy of the office may help to solve some of the beaurocracy and corruption that affects competent authorities from executing their mandate in the AMLR.

6.2.3. Further Development of AML regulation

Zimbabwe needs to continue its efforts with aligning itself to international AML best practice. In doing so it must keep up with the latest trends and guidelines in AML. With the COVID-19 pandemic ongoing, many countries and businesses have begun to strengthen and encourage online transactions. Crypto-currency usage has become a prominent feature of virtual money technology globally. Zimbabwe needs to join the world in the adequate regulation of virtual currencies as provided by the FATF guidelines¹⁰. There must be measures put in place that will facilitate the transparent use of online transactions and crypto currencies in Zimbabwe. There is need also for key institutions to update and improve their IT systems to encourage better collection and dissemination of information on illicit financial activity. This will expedite the accumulation and movement of financial data which works towards the facilitation of timeous investigations on financial crime.



6.2.4. Training as Empowerment for AML Policy

Training of competent authorities should continue to be conducted regularly to keep up with dynamic ML typologies and foster a continuous skills' improvement. The Financial Intelligence Unit and other relevant competent supervisory authorities must develop and implement ongoing training programmes on all AML measures. Training empowers and equips staff on critical skills in the various AML institutions. Adequate training especially in ML and predicate crimes will equip the personnel in skills such as interpretation of the AML legislation, investigation of ML cases and their predicate crimes, evidence gathering, understanding the importance of quality analysis of STRs and Cash Transaction Reports, knowledge in regional and international standards, understanding forensic audit reports, criminal procedure, and asset recovery. Competent supervisory authorities must be exposed to Training workshops

10 FATF (2015) Guidance for a Risk-Based Approach to Virtual Currencies available at <http://www.fatf-qafi.org/media/fatf/documents/reports/Guidance-RBA-Virtual-Currencies.pdf> (visited 20 March 2021).

that involve training in analysis ML risk and threat assessment. This will improve their ability to investigate, prosecute and apply effective confiscation, seizure, and freezing measures.

6.2.5. Addressing the immediate need for resources

Designated institutions must be adequately capacitated for them to perform their functions effectively. Capacitation includes providing adequate financial and human resources as well as material resources for operational purposes. The AML national capacity building budget must be increased so that initiatives go beyond training workshops, but also facilitate operational resources needed for implementation in AML measures. Competent authorities need to be well resourced to achieve the primary objective of taking back proceeds of crime from criminals.¹¹

6.3. CLOSING REMARKS

Zimbabwe's AML regime continues to pursue full compliance with the FATF. It is encouraging that the Government of Zimbabwe is maintaining its commitment to combatting money laundering and its predicate crimes. The National Anti-Money Laundering and Combatting of Financing Terrorism Strategic Plan: 2020 – 2025¹² has highlighted as areas of priority some of the above-mentioned recommendations. For instance, increasing AML awareness and capacity building were specifically identified as needing special attention. In addition, the national AML strategy has put confiscation and asset forfeiture, proper implementation of recognising beneficial ownership as key enhancers to an effective AML regime. The fact that these key issues are highlighted appears to be a good step. What remains to be seen is the implementation of these plans.

¹¹ Madinger (2012) at 259.

¹² The Republic of Zimbabwe National Anti-Money Laundering and Combatting Financing of Terrorism Strategic Plan 2020-2025.

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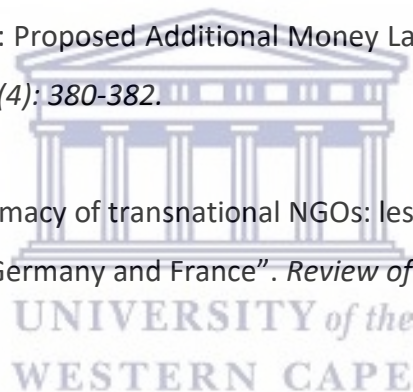
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