

THE EXTENT AND SECURITY IMPLICATIONS OF MONEY LAUNDERING IN SOUTH AFRICA

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ABSTRACT

Money laundering presents challenges to legislators, both in South Africa and globally, considering that its use ranges from criminal syndicates profiting from criminal activities, to financiers of terrorist activities. By using South Africa as an example, it is indicated how the extent and security implications of money laundering undermine the legitimate private sector and lead to increased criminal activity and corruption. In order to effectively address the problem of money laundering, legislators must understand how confiscation and seizure, intended to discourage criminal syndicates and terrorist financiers, are treated as 'operational costs'.

1. INTRODUCTION

A critical challenge to understanding the impact of money laundering is that its clandestine nature makes it difficult to observe. In certain instances, this distinctive feature of money laundering requires that the casual relationship or consequences thereof be identified by means of inference. Based on these inferences, it is possible to identify the extent and the security implications of money laundering in South Africa.

*Based on a mini-dissertation for the Masters of Security Studies degree, completed in the Department of Political Sciences, University of Pretoria, under the supervision of Prof M Hough, Director of the Institute for Strategic Studies, during 2008.

1.1 Definitions of money laundering

Money not associated with criminal activity can be freely spent without any fear of incriminating the spender or the recipient as being party to any criminal misdeeds. With the possible exception of minor crimes where criminals steal for sustenance or instances when collectors of rarities purchase stolen antiquities for their private collections, it remains inherent in any criminal undertaking that the proceeds of the criminal activity will have to be carefully disguised. The process of meticulously applying this disguise forms the basis of money laundering.

Money laundering has been defined as the "transferring (of) illegally obtained money or investments through an outside party to conceal the true source".¹⁾ In South Africa, money laundering is more broadly defined in legislation as being "virtually every act or transaction that involves the proceeds of crimes, including the spending of funds that were obtained illegally".²⁾ This implies that the definition of involvement in money laundering can be extended to include participation in suspicious transactions, or even the failure to implement money laundering countermeasures.

The variations that exist in the definitions or interpretations of money laundering pertain not to the actual meaning of the term 'money laundering' itself, but rather to the transactions that could be indicative of money laundering. In practice, these variations and related transactions are stipulated in the relevant legislation which varies across different jurisdictions. For example, the Bahamas or the Cayman Islands are "usually cited as money laundering havens" because of their "tax regimes that are structured differently".³⁾ Money laundering therefore becomes easier when poorly structured legislation creates loopholes that can be exploited by criminal syndicates and sponsors of terrorism to disguise the sources of the funding of these illegal activities.

1.2 The process of money laundering

The process of money laundering has the following unique stages, namely placement, layering and re-integration.⁴⁾

Placement is the initial stage in the money laundering cycle in which the funds obtained from illegal activities are introduced into the

legitimate financial market.⁵⁾ Some of the more common ways of placement are the exchange of currency for smaller denominations that will make it easier to utilise, transport or conceal, or the use of multiple deposits involving small amounts in different bank accounts.⁶⁾ Other money laundering strategies include the use of representative offices of foreign banks, international 'houses' or 'sub accounts' — that are maintained by banks on behalf of their clients — for the funnelling of funds through casinos or unregulated Asian games such as Pai-Gow.⁷⁾

Layering, as a subsequent stage, serves to hide the source and ownership of the funds.⁸⁾ Methods to achieve layering include the use of offset accounts by dealers, online electronic fund transfers between certain tax havens, and suspicious gold transactions in which "large purchases of gold (are undertaken) in countries with low VAT rates and then (there is an) exporting (of) the bullion back to the country of origin".⁹⁾

Other methods of layering involve the over-invoicing and false invoicing of imports and exports.¹⁰⁾ A more complex scenario would involve the establishment of a 'shell' company or bank in a tax haven. These companies are commonly known as a 'suitcase bank' or a 'brass plate bank' because they do not have any employees and exist only as a post office box or nameplate on a building. An account, referred to as a correspondent account, is opened at a legitimate financial centre in say London or New York. Money is then transferred to and from this account to a front company, and then lent to the money launderer. This creates the impression that the loan was sourced from a legitimate foreign source.¹¹⁾

The final stage of money laundering involves integration,¹²⁾ namely re-introducing and integrating the property or money that was laundered into the legitimate financial system.¹³⁾ The techniques to integrate funds from a criminal enterprise are often similar to the practices adopted by legitimate business.¹⁴⁾ Hence it becomes more difficult to isolate a *modus operandi* that is unique to money laundering.

2. THE EXTENT OF MONEY LAUNDERING IN SOUTH AFRICA

Due to the clandestine nature of money laundering, it is difficult to

accurately estimate the extent of the problem in South Africa. Published estimates vary significantly with *The Star*, amongst others, reporting that white collar crime in South Africa amounts to approximately R150 billion a year.¹⁵⁾ Since the proceeds of these white collar crimes need to be laundered, it could be argued that money laundering should exceed this estimate if the value of the proceeds of other crimes (such as narcotics smuggling and cash-in-transit robberies) are included. Other estimates valued money laundering in the Southern African region at US\$22 billion in 1998.¹⁶⁾ Assuming that this estimate is reasonably accurate and that it increased at an inflation rate of six per cent per year, on a compounded basis, money laundering in South Africa would have been worth approximately US\$35 billion or R280 billion (at an exchange rate of R8,00 to the US\$) in 2006.

Other estimates of money laundering indicated that a figure of approximately R40 billion in 2005, had doubled by 2006.¹⁷⁾ In comparison, Trevor Manuel, the South African Minister of Finance, stated in 2005 that despite a lack of official studies, money laundering in South Africa was estimated to be between US\$2-8 billion (R16-64 billion) per year. In 2004 the South African Institute of Chartered Accountants had similarly estimated that money laundering in South Africa could involve as much as R80 billion per year.¹⁸⁾

3. THE EFFECT OF MONEY LAUNDERING IN SOUTH AFRICA

In order to assess the effect of money laundering in South Africa it is necessary to consider the extent to which it undermines the legitimate economy and creates opportunities for criminal syndicates to mask the proceeds of their criminal activities. In addition, the security implications of the funding of terrorism through money laundering that occurs within South Africa, as well as its effect on the proposed common African currency, will also be examined.

The key effects of money laundering are the following:¹⁹⁾

- Undermining the legitimate private sector;
- undermining the integrity of financial markets;
- loss of control of economic policy;

- economic distortion and instability;
- loss of revenue;
- security threats to privatisation efforts;
- reputation risk; and
- social costs.

3.1 Undermining the legitimate private sector

Money launderers often utilise front companies to launder money.²⁰⁾ Notwithstanding the use of these front companies, the large informal economy — estimated to be approximately 20,6 per cent of the total economy — also provides a fertile environment for money laundering in South Africa.²¹⁾ The private sector can be undermined since 'crowding out' may occur. This happens when criminal syndicates integrate money laundering with protection rackets, thus forcing informal businesses who have to absorb both higher capital costs and protection costs charged by the criminal syndicates, out of the market. Since similar businesses financed by laundered funds do not have these costs and do not have to operate at a profit — if the aim is to conceal the funds — they would force legitimate businesses out of the market.

Certain businesses such as cash loan businesses and she-beens are most likely to be targeted.²²⁾ Since these businesses are cash orientated and involve a high volume of transactions, they provide the ideal opportunity for money laundering. Other opportunities exist in the transportation sector and in respect of informal hawking. In the case of hawking, the sale of counterfeit goods and pirated Digital Video Disks (DVDs) may also contribute to money laundering.²³⁾ A criminal syndicate could either sell counterfeit goods or pirate DVDs and subsequently launder the proceeds, or use laundered funds to purchase these goods through the informal market. While the former scenario is more likely, the latter demonstrates how a syndicate could channel the proceeds of crime into the informal sector.

3.2 Undermining the integrity of financial markets

Depending on the extent of money laundering, financial markets may be susceptible to being radically altered when criminal syndicates invest or withdraw funds. The South African government estimates that

US\$2-8 billion is laundered through the formal banking sector.²⁴⁾ However, the problem may be compounded by the ease with which it is possible to illegally obtain a legitimate South African identity document by bribing corrupt officials.²⁵⁾ The opening of a South African bank account requires that the account holder submit both proof of identity and residence in terms of the *Financial Intelligence Centre Act, 2001* (Act No 38 of 2001). If identity documents can be illicitly obtained and proof of residence forged, it follows that requiring this documentation to be submitted may prove to be more of a 'nuisance' to a criminal syndicate than a mitigating control against money laundering.²⁶⁾

Similarly, the *Financial Intelligence Centre Act* requires that financial institutions report transactions above a stipulated threshold. This threshold is unlikely to reduce money laundering since a money launderer could easily transact below the threshold to avoid detection. The converse may also be true. Since the *Financial Intelligence Centre Act* requires that 'suspicious transactions' be reported, a money launderer could create a legitimate front company whose transactions are always above the threshold. After the financial institution had monitored the initial transaction flow over a period of time, and regarded the 'value' of the transactions as 'normal', the money launderer could engage in laundering funds knowing that the financial institution would not deem this to be suspicious.

An interesting turn to money laundering in South Africa is observed in the amnesty process that was initiated by the *Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003* (Act No 12 of 2003). In terms of this process, South Africans who had violated exchange control regulations and either obtained or were holding assets or funds offshore, were required to make a full disclosure to an Amnesty Unit. Based on this disclosure, and subject to certain penalties, these individuals could qualify for amnesty in respect of these contraventions.²⁷⁾

The value of the 42 672 amnesty applications that were submitted amounted to R47.6 billion. Considering that the population of South Africa was 46.6 million in 2004, this implied that an application was submitted by one out of every 1 000 people.²⁸⁾ This statistic is somewhat misleading as it is more prudent to express the applications as a measure of the number of people employed in both the formal and informal sector. Approximately seven million people were

estimated to be employed in formal non-agricultural businesses at the end of December 2004.²⁹⁾ Using this as a basis of measurement, it means that an amnesty application was received for six out of every 1 000 people employed.

If these applicants illegally held foreign assets or funds, this could only have been achieved through money laundering regardless of whether or not this also included currency/negotiable instruments abroad. The extent to which the disclosures represent the true value of money laundered will most likely never be known. Assuming that money launderers wanted to access these funds, and prior to the amnesty, money laundering would also have been necessary to avoid the original contravention being uncovered. Due to the large amount of funds involved, any significant movement to and from South Africa would therefore directly impact on the exchange rate, depending on the mode of laundering these funds.

3.3 Loss of control over economic policy

It is difficult to quantify the extent to which economic policy in South Africa is influenced by money laundering. The more successful a money launderer is, the more the mode of laundering funds will resemble legitimate business activity. Since money laundering in South Africa is largely cash based, this implies that where cross-border laundering occurs, there is likely to be some volatility between the exchange rate of the South African rand and the currencies of neighbouring states. There are also plans to implement a single currency in the Southern African Development Community (SADC).³⁰⁾ If a single currency is introduced, it would make it easier to launder funds without having to account for any losses due to exchange rate fluctuations. The impact on a particular country of money laundering in other participating countries that share this currency, would be more problematic.

The economic effects of money laundering are also more difficult to identify as it is not always possible to distinguish between the fruits of honest labour and benefits derived as proceeds of crime.³¹⁾ It is argued that other effects of money laundering, such as its use to support an extravagant criminal lifestyle, are indistinguishable from consumer spending. Thus the difference may not be that significant where spending is concerned. This viewpoint, while valid, ignores

the associated supply and demand implications. If both legitimate consumers and criminal syndicates in South Africa are consumers of the same goods, it implies that the demand for these goods would increase, which would lead to higher prices. In extreme cases, these higher prices may force legitimate consumers out of these markets, particularly if the goods are luxury items.³²⁾ In these situations, the local market for these goods could become more dependent on the purchasing power of criminal syndicates than on that of legitimate consumers.

Another economic effect is that since criminal syndicates are able to spend more — by virtue of not having to pay income tax — and through laundering have to engage in certain purchases, the signalling mechanisms within the economy could be distorted. It has been suggested that money launderers prefer to invest in property in South Africa.³³⁾ This implies that money launderers could spend more in purchasing property, thus leading to an increase in prices. Also, if their purchases are concentrated in a single area, it would indicate a growth in property demand in that area. This could incorrectly 'signal' property growth in an area to property investors.

3.4 Economic distortion and instability

The extent of economic distortion and instability caused by money laundering in South Africa depends on the unanticipated impact of capital in- and outflows. The value of offshore assets held by South Africans is approximately seven per cent larger than previously estimated.³⁴⁾ This means that if all of these funds were repatriated into South Africa, there would be a sudden increase in the amount of funds available to purchase the same amount of goods being produced. The higher demand would effectively increase the prices of these goods and would also result in an increase in inflation. To control the rising inflation, an increase in interest rates would most likely follow. Increases in interest rates would have a dampening effect on the economy.³⁵⁾ While this scenario is based on what would happen if funds that were previously laundered were re-introduced into the economy, the same analysis would be valid for any funds being laundered into South Africa.

If funds were laundered out of South Africa, it would create a distorted impression that the sector from which these funds were

being withdrawn, was underperforming. Alternatively, if these funds were laundered through the use of over-invoicing, it would create the impression that there was a higher demand for certain goods. This could also distort the economy as it sends out 'wrong signals' to both local and international suppliers and producers.³⁶⁾ For example, it could create the impression that there was a higher demand for a particular product, forcing local producers to shift production accordingly. When this demand fails to materialise, these producers would suffer financial losses having misinterpreted the market signals.

3.5 Loss of revenue

Income tax is the single most important contributor to the revenue raised by the South African government. Money laundering and its predicate offences are factors that contribute to the tax gap, as these activities decrease the amount of tax collected.³⁷⁾ The tax gap in Africa is more than 40 per cent.³⁸⁾ While similar information is not available for South Africa, Vanek reported that this is estimated to be between R10 billion and R30 billion.³⁹⁾ The Department of Home Affairs provides services to all South Africans and its budget for 2006/2007 was R2,8 billion.⁴⁰⁾ To put the extent of these revenue losses in perspective, the lost revenue amounts to between three and 10 times the 2006/2007 budget for the Department of Home Affairs. The extent of the lost revenue can also be viewed as being up to 7,5 times the foreign aid that South Africa received in 2004, and three to nine times of what was spent on addressing the HIV/AIDS pandemic in South Africa in 2005/2006.⁴¹⁾

The Commissioner of the South African Revenue Services (SARS) has stated that between 25 and 35 per cent of all businesses did not pay income tax, and that a large number of individuals were not registered as taxpayers.⁴²⁾ These businesses and individuals would need to launder the income that they received, and/or hoard this income to avoid being detected by SARS. The non-payment of taxes means that less revenue is raised by the government, which impedes service delivery. The lack of service delivery may have an effect on the stability of a country.⁴³⁾

Losses in terms of competitiveness may also occur since money launderers are willing to accept low profit margins in order to operate their front businesses. While it could be argued that the local

consumer benefits from having to pay less, this may not be sustainable if the money launderer decides to switch to another laundering scheme. The tax gap in South Africa is also exacerbated by the under-reporting of the value of textile imports.⁴⁴⁾ This form of criminal activity is prevalent as a method of facilitating money laundering schemes involving over- and under-invoicing.⁴⁵⁾ While there is a direct loss in terms of duties not collected, there are also long term revenue losses. For example, local textile businesses may not be able to compete, and as these legitimate businesses earned less, their tax contribution would decline.

3.6 Security threats to privatisation efforts

As part of the transformation of the South African economy to be more globally competitive instead of being dependent on government subsidies, a number of government corporations have been privatised and other parastatals restructured. This has allowed the South African government to obtain revenue by selling off certain resources, and to achieve further savings as subsidies previously paid to these organisations have been curtailed or are no longer applicable. The liberalisation of the economy has also led to more investment opportunities.

It has been suggested that privatisation attracts money launderers.⁴⁶⁾ This is attributed to the 'legitimacy' that a money launderer is able to acquire by purchasing into a previous government corporation and/or by being linked to the high volume/value of transactions. As a result, government corporations are ideal vehicles for laundering money. Money launderers are also able to bid higher prices for these corporations, a practice that undermines fair and legitimate competition.⁴⁷⁾ Legitimate buyers who believe that the bidding process has been compromised, are unlikely to bid in future.⁴⁸⁾ If any of South Africa's current privatisation efforts are tainted by money laundering, the future privatisation of other government corporations would attract lower prices (even if bids were still made by money launderers) as there would be less competition. However, the finite number of government corporations that can be privatised limits the opportunities for money launderers to utilise this *modus operandi*.

The potential ease with which organised crime could launder criminal proceeds through gaining ownership or a significant interest

in South African businesses, is more problematic. The use of over- and under-invoicing and other sham transactions, under the guise of legitimate transactions, makes it easier to cloak money laundering activities since the companies conducting these transactions are not only legitimate, but have an established track record. By placing their own collaborators in key positions, it is possible to subvert the organisation or to mingle illegal or sham transactions with valid business transactions. Authorities would therefore find it more difficult to unravel the laundering or tax evasion that occurs.

In 2005 there were 238 transformation orientated transactions in South Africa, valued at R56.2 billion.⁴⁹⁾ While not implying that any of these transactions involved criminal syndicates or money launderers, it provides an indication of the size of transactions involved. The possibility cannot be excluded that these transactions may be targeted by money launderers, to be used either as a vehicle to launder money, or as a foothold in legitimate businesses to subsequently create a vehicle for laundering money.

3.7 Reputation risk

For South Africa to attract foreign investment and retain domestic sources of investment, it is important that the country be seen to have a stable economy. Investor sentiment is often driven by perceptions, particularly where emerging markets such as South Africa are concerned. Thus any scandal that impacts on South Africa's reputation may have financial implications. Similarly, perceptions regarding the extent of money laundering in South Africa may negatively influence investment and impede economic growth.

3.7.1 The use of money laundering by terror groups with ties to South African donors

Groups, such as the Liberation Tigers of Tamil Eelam (LTTE), have received support and funding from donors within South Africa, and have been able to obtain arms and ammunition through the underground arms trade within the country.⁵⁰⁾ The LTTE is regarded by the US as a terrorist organisation.⁵¹⁾ This view is shared by India, Malaysia, Canada, the United Kingdom (UK) and Australia, who have also designated or banned this organisation.⁵²⁾ In order for the LTTE to

receive funding from sources within South Africa, these funds would have to be laundered.

The LTTE is not the only terrorist organisation with ties to South Africa. Al Aqsa — which has been listed as a Specially Designated Global Terrorist (SDGT) entity — has branch offices in South Africa.⁵³⁾ Al Aqsa channels money that it claims to collect for charity, to Hamas terrorists.⁵⁴⁾ The mode of soliciting these funds is apparently based on the collection of funds for charitable purposes. The emotive nature of charity and the Islamic tradition of *Zakât* make it difficult to prevent abuses of charities. *Zakât* refers to one of the pillars of Islam that requires an obligatory donation to be made on an annual basis to the poor.⁵⁵⁾ This approach is difficult to counter since it allows funds to be siphoned off to support terror activity, and to purchase assets that could be used for both charitable and terrorist purposes. This approach is also difficult to monitor since funds collected in South Africa may be used outside the country's borders for purposes other than what they were collected for. Al-Qaeda has similarly been able to obtain collected money from charities.⁵⁶⁾

South Africa's reputation is implicated as global pressure to prevent the financing of terrorism requires it to act decisively against the abuse of charities and donations made to sympathiser groups with links to terrorist organisations. Since the mode of financing these groups would require some form of money laundering, an inability to effectively prevent this funding would impact negatively on South Africa's own reputation.

South Africa held the presidency of the Financial Action Task Force (FATF) from July 2005 to June 2006.⁵⁷⁾ From a reputational perspective, and in the years following its period at the helm of the FATF, South Africa is expected to maintain its position as a leader in the fight against money laundering. Having previously held the presidency of the FATF, any funding of terrorist organisations originating from South Africa would be tantamount to the tacit support of these organisations and would have dire political consequences for South Africa.

3.7.2 Implications for a proposed common currency

As an example of reputational risk, Bulgaria's attempts to join the European Union (EU) demonstrates how the lack of strong measures

to counter money laundering impacts negatively on the ability of a country to join a common monetary union.⁵⁸⁾ Considering the plans to establish an African Central Bank by 2021 and to introduce a common African currency by 2018 — with SADC having laid the foundations for a SADC Central Bank by 2016⁵⁹⁾ — the lack of strong measures to counter money laundering would similarly have detrimental implications for South Africa and the SADC region.

The creation of a common currency implies that money laundering legislation needs to operate seamlessly across all SADC members. With a common currency, it would be easier to perpetrate under- and over-invoicing schemes as well as other money laundering schemes. Criminal syndicates would be able to target countries in the region that are less able to prevent money laundering and then use South Africa as a transit point. This *modus operandi* would be consistent with the role criminal syndicates in South Africa play in smuggling,⁶⁰⁾ and also with South Africa's role as the fourth largest producer of cannabis in the world.⁶¹⁾ In effect, criminals would be able to utilise the common currency and weaknesses in money laundering counter-measures to run operations in South Africa from neighbouring countries. This would negatively impact on South Africa's reputation as the country will be implicated by association, unless effective border intelligence addresses this new threat.

3.8 Social cost

The social cost of money laundering in South Africa is associated with the bribery and corruption that inevitably follows. A bribe is a payment made to an agent to ensure that the agent acts upon the instructions of the party giving the bribe,⁶²⁾ rather than in the interests of his/her principal. Corruption is generally considered to be the abuse of public office for private gain.⁶³⁾ From a social cost perspective, both bribery and corruption imply that (for a price) officials act in the interests of whoever is paying the bribe as opposed to the public good. A link is formed between money laundering and bribery and corruption when corrupt government officials launder the bribes they receive.

Similar to money laundering and due to the illicit nature of these activities, it is difficult to accurately estimate the extent of bribery and corruption in South Africa. Through bribery, criminal syndicates are also able to obtain protection from prosecution and this contributes

to the further growth of crime. Certain cases that have become public have had major ramifications, such as bribes in the form of secret commissions that BAE systems allegedly paid to secure the tender to supply South Africa with Hawk jets.⁶⁴⁾ If these allegations are true, they would imply that South Africa's ability to defend itself may be compromised, having purchased armaments that may be inadequate or unsuited to the country's defence requirements.

Another dimension of the social costs of money laundering in South Africa concerns the nature of crimes committed and the increase in crime. Crime that involves theft and armed robbery or is of a financial nature, is intrinsically linked to money laundering since the criminals need to be reasonably confident that the proceeds of the crime could be successfully laundered. If not, the possession of the stolen items would implicate the criminals. Between 2000 and 2006 R810 million was stolen in cash heists in South Africa. It is, however, not clear what the value of the cash heists were for each year.⁶⁵⁾ From April 2005 to March 2006 the number of cash-in-transit heists increased from 220 to 383. During the same period drug related offences also increased by 13.2 per cent.⁶⁶⁾ The increases occurred despite the introduction of legislative measures to combat money laundering. By implication, this suggests that criminals were able to commit more crimes and that they were still able to launder the proceeds of these crimes. From a social cost perspective, the increase in crime also undermines investor confidence in South Africa and its attractiveness as a tourist destination.

3.9 Underground banking

It is alleged that underground banking in the form of the *hawala/hundi* systems exists in South Africa.⁶⁷⁾ However, this view is not shared by analysts who found very little evidence of these systems in South Africa, and who contend that their use is mainly limited to Somalia.⁶⁸⁾ While the use of these systems is debateable, the prospects for their use cannot be ignored.

The use of *hawala/hundi* is dependent on a network of connections. As alternative payment systems, they allow operators to transmit payment instructions between countries. The actual transfer of money is achieved by manipulating invoices to settle net positions.⁶⁹⁾ From a law enforcement perspective it is difficult to trace

these transactions, mainly on account of the lack of records and the problems associated with identifying whether or not the value of goods is reflected in the supplied invoices.

The use of other non-traditional banking systems may also be prevalent in South Africa. Since the use of interest is forbidden under Islamic law, Islamic banking requires that losses and profits be shared between the lender and the borrower. Accordingly, a number of different payment mechanisms are structured to ensure this without relying upon interest charges.⁷⁰⁾ Since there are limited banking opportunities for Muslim consumers who want to borrow money while still adhering to religious requirements, a market therefore exists for financial products that comply with Islamic law. While this form of banking is legitimate, and is widely found elsewhere in the world, there are limited financial products in South Africa that adhere to these requirements. An aspect of Islamic banking that may be susceptible to abuse by money launderers, is that it allows for joint ventures to be engaged in. This would allow a money launderer to effectively become a 'silent partner' in a legitimate business. However, the extent to which this practice actually occurs in South Africa can only be speculated upon.

4. CONCLUSION

Money laundering in South Africa has significant negative economic consequences considering the extent to which it influences the level of cash holdings, causes fluctuations in interest and exchange rates due to cash movements, and impacts on the rate of inflation. Although these effects can only be speculated upon, certain distinctive patterns are evident.

The high levels of crime in South Africa imply that corresponding levels of money laundering occur. The amnesty process of 2006 that allowed the return of illegally held offshore funds to South Africa, necessitated a seven per cent increase in estimates for offshore assets. This suggests that South Africa had experienced significant money laundering in the past. Regardless of the motivations for exchange control violations, the extent of the funds laundered out of South Africa points to the existence of a successful underground money laundering 'pipeline'. It would be unrealistic to assume that criminal syndicates do not make use of the same *modus operandi* to

launder money.

South Africa has also attracted attention as a result of terror groups soliciting funds from sympathetic local donors. The funding of terrorism through these means originating in South Africa, in conjunction with possible abuses of unregulated underground banking, requires that South Africa implement a cogent, coherent and practical legislative approach — supported by a sound institutional framework — to address the threats that these practices pose to its security.

The reasons why criminal syndicates and terrorist financiers engage in money laundering vary. Criminal syndicates utilise money laundering to ensure that they are able to benefit from their illicit activities, while terrorist financiers regard money laundering as a means of supporting terror cells. Seizure and confiscation by law enforcement authorities which substantially reduce the profits of criminal activities, would to some extent constrain transnational criminal syndicates, but are unlikely to have a similar effect on terrorist financiers. Terrorist financiers are more likely to regard seizure and confiscation as a temporary setback as their primary objective is not to profit from money laundering, but to use these laundered funds to support their terror activities. Therefore, a more effective approach would be to trace the source of terror activities and to locate the terrorist financiers, as opposed to simply focusing on the tracing and apprehension of operational terror cells. Countering terrorism may also require a more holistic approach, as reducing terrorist funding will not necessarily lead to a decrease in terrorist activity. Reducing terrorist activity also requires interventions that focus on promoting suitable alternatives to fundamental radicalism, and encouraging transparent dialogue between belligerents.

The use of money laundering by criminal syndicates has been emphasised in South African government statements. Money laundering is seen by government as having the potential to undermine the country and negatively affect social and transformation goals. Furthermore, there is general consensus that the provision of safety and security to South African citizens also requires the government to successfully combat money laundering by implementing effective legislation through efficient institutions.

The Financial Intelligence Centre referred suspicious transactions of more than R2 billion between April 2007 and mid-March 2008 to law enforcement. While this suggests that the Financial Intel-

ligence Centre is successful, the "almost 1 000 suspicious transactions" that contributed to these referrals were drawn from 24 580 reports that had been submitted.⁷¹⁾ This volume implies that the definition of what constitutes a suspicious transaction may be too vague or unclear and that the ability to locate suspicious transactions may be driven more by the value of the transactions, than by the extent to which they are suspicious. This only encourages criminal syndicates and terrorist financiers to adapt their mode of behaviour. Similarly, despite the high volume of referrals, the Financial Intelligence Centre does not indicate to what extent the suspicious transactions have been translated from a referral into a successful prosecution.

Attempts to curb money laundering through legislation, such as the proposed *Financial Intelligence Centre Amendment Bill*, may prove to be contentious and myopic. Instead of creating a sound process of co-ordinating efforts across multiple stakeholders, its inadvertent focus on compliance may lead to additional costs for both consumers and accountable institutions.⁷²⁾ A more effective strategy would be to decentralise money laundering enforcement and reporting to the relevant supervisory bodies. All suspicious transactions should be reported and scrutinised by these supervisory bodies. Should transactions be deemed to be suspicious, these transactions could be reported to the Financial Intelligence Centre who would review and where necessary refer them to law enforcement for investigation. Instead of mechanically reporting a large volume of suspicious transactions, the supervisory bodies — who have the expertise and knowledge of their respective areas — would screen and reduce these reports, thereby allowing the Financial Intelligence Centre to focus its efforts on the effective and efficient addressing of money laundering.

To address money laundering in South Africa, it is necessary to demonstrate that the confiscation of the proceeds of criminal activity renders crime unprofitable. Without rendering criminal activities unprofitable, confiscation and seizure are unlikely to reduce either criminal activities or money laundering. Criminal syndicates are more likely to regard these confiscations and seizures as part of the costs of doing business, and will factor this into their planning. The South African authorities need to continually assess how criminal syndicates and terrorist financiers respond to confiscation and seizures — and how this leads to changes in the *modus operandi* to launder money

— to ensure that they proactively adapt enforcement strategies. In the absence of such an approach, criminal syndicates and terrorist financiers are likely to adapt to changes in legislation and reporting requirements. Sound processes and the right blend of trained personnel are essential to ensure that money laundering offences are identified; that the perpetrators are prosecuted and the funds laundered seized; and that vigilance in monitoring the modes of money laundering, combined with technological means, is maintained.

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