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**Using Money Laundering  
Investigations to Fight Corruption  
in Developing Countries: Domestic  
obstacles and strategies to  
overcome them**

***GOVERNANCE***

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### International Centre for Asset Recovery

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## Abstract

Anti-money laundering systems have the potential to curb the use of proceeds of corruption and other crimes by the perpetrators. An effectively implemented anti-money laundering framework limits the channels through which illicit funds can be laundered, making crime riskier and reducing the incentives for corrupt activities. However, those who stand to benefit from corruption have strong incentives to block anti-money laundering programmes. In addition, these programmes face significant obstacles to effectiveness in most developing countries. Relevant institutions do not trust each other sufficiently to share information necessary for investigations. Countries lack qualified staff and necessary resources, and slow bureaucratic procedures are unable to keep up with the speed of financial transactions. This paper explores these and other domestic obstacles and suggests strategies to overcome them, based on an analysis of the situations in Albania and Tanzania.

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## Acronyms

AC	Anti-corruption
AML	Anti-money laundering
BoA	Bank of Albania
BoT	Bank of Tanzania
DNFBP	Designated Non-Financial Businesses and Professions
DPP	Director of Public Prosecutions (Tanzania)
EFCC	Economic and Financial Crimes Commission (Nigeria)
EPA	External Payment Arrears (Tanzania)
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force
FIU	Financial intelligence unit
GDC	General Directorate of Customs (Albania)
GDP	Gross domestic product
GDPML	General Directorate for the Prevention of Money Laundering (Albania)
HIDAA	High Inspectorate of Declaration and Audit of Assets (Albania)
ILECU	International Law Enforcement Cooperation Units
JIU	Joint Investigative Unit (Albania)
MLA	Mutual legal assistance
MoU	Memorandum of understanding
NBAA	National Board of Accountants and Auditors (Tanzania)
OECD	Organisation for Economic Co-operation and Development
PCCB	Prevention and Combating of Corruption Bureau (Tanzania)
PEP	Politically exposed person
SAR	Suspicious activity report
SCC	Serious Crime Court (Albania)
STR	Suspicious transaction report
UNCAC	United Nations Convention Against Corruption

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## Executive summary

This paper identifies obstacles to effective synergy between anti-money laundering (AML) and anti-corruption (AC) agendas in developing countries, with the aim of making AML contribute more effectively to the fight against corruption. The two countries studied, Albania and Tanzania, were selected because they differ in important respects. They have different legal traditions—civil law in Albania and common law in Tanzania. They also have different institutional systems for fighting corruption, namely a centralised anti-corruption agency in Tanzania and a multi-institutional framework in Albania. Through the analysis of AML systems in these countries, their legal traditions, and current legal and institutional frameworks, this study identifies obstacles to the coordination of AML and AC activities and makes recommendations on how AML could be better employed to deter corruption.

While existing literature in the field addresses the obstacles to using AML to fight corruption, particularly through asset recovery processes, its focus is on dealing with multiple jurisdictions at the international level. This issue paper, in contrast, focuses on challenges at the local level. The findings are relevant to a wide range of other countries facing obstacles similar to those identified in Albania and Tanzania.

### Key findings

- Due to low levels of trust, government agencies within a country are often reluctant to coordinate efforts and share information with each other. They also struggle to obtain information from their counterparts in other countries.
- Duplication of structures increases bureaucratic overhead and reduces the efficiency of prevention and enforcement procedures.
- There is a lack of formal mechanisms for coordination of anti-money laundering and anti-corruption agendas and agencies. This further weakens the already weak supervision and enforcement capacities of jurisdictions. Combined with a serious shortage of skilled human resources in an area that requires highly educated staff, these obstacles reduce the possibility that AML will be used to support AC efforts.
- The emphasis on the formal banking sector as the main channel for money laundering, and therefore the principal focus for AML efforts, ignores the reality of cash-based economies. It also overlooks the important role of nonbank financial institutions and other businesses as potential channels for money laundering. A related problem is that many developing countries lack formal identification and address systems, making it difficult to verify ownership of financial and other assets.
- The lack of reliable AML statistics impedes identification of the sectors most vulnerable to money laundering. This reduces a country's capacity to strategically develop policies, set priorities, and allocate resources where they can have the greatest impact.
- Finally, abuse of immunity legislation poses a significant obstacle in terms of investigating and prosecuting senior government officials.

### Recommendations

#### *1. Improve trust and coordination among agencies, and reduce duplication of structures*

Dialogue, cooperation, and information sharing can help build trust and lead to more effective action against corruption. Government agencies should clarify and communicate more explicitly their roles and functions within a country's AML and AC structures. Mechanisms should be put in place to enable constant, direct dialogue and sharing of information between officials of the

different institutions, taking into consideration the secrecy requirements of criminal investigations. This would allow them to better coordinate activities with each other and with their counterparts in other countries. Such an institutional mapping is also valuable in identifying duplication of structures and overlapping responsibilities. Efforts should be made to reduce such duplication through necessary changes in legislation. Where avoiding duplication is not possible, alternative mechanisms should be explored to allow institutions to coordinate their efforts through informal means, such as the Joint Investigative Units in Albania.

Agencies playing a part in AML and AC should be able to channel information to an agency tasked with coordinating AML/AC policy making and implementation. While this might be a new body, it would also be possible to assign coordination responsibility to an existing institution that is already part of the AML/AC framework. This agency should serve as a forum for bringing together the policy views of different institutions dealing with AML, and also monitor the policy implementation efforts of the different frontline agencies.

### *2. Expand skilled human resources and technical capacity*

There is an urgent need to strengthen skilled human resources and provide adequate equipment (vehicles, computer software, surveillance equipment, etc.) to agencies with AML and AC responsibilities. Efforts to upgrade the qualifications of personnel should include not only law enforcement and other public officials dealing with AML and AC programmes, but also the staff of private sector institutions with obligations to report to financial intelligence units (FIUs), especially in sectors most vulnerable to money laundering. These efforts can make use of existing training platforms or local professional networks, but there is also an important role for external technical assistance.

### *3. Strengthen data collection to provide key statistics*

Relevant state agencies should start prioritizing routines to collect and analyse data, including suspicious activity reports at FIUs and data on cases that reach the courts. This is distinct from the role of the coordination agency mentioned above. Here the focus is on collecting data at the operational level to inform decisions on where to focus resources and to track progress as policies are implemented.

### *4. Establish ID systems and expand access to banking*

Improved identification systems are needed to identify ownership of financial and other assets. It is essential to establish formal identification and address registration systems for customers of financial institutions. Establishing or upgrading real estate and company registries is also essential, as these sectors are particularly vulnerable areas for money laundering in cash-based economies. In countries where a large proportion of the population is unbanked, steps should be taken to increase access to banking for the population.

### *5. Strengthen supervisory institutions and their ability to monitor compliance with AML standards*

Supervisory institutions, the agencies in charge of regulating and monitoring the activities of reporting institutions, need qualified staff and adequate regulatory frameworks. Laws or regulations defining their responsibilities should be established in consultation with the supervisory bodies in question so as to build ownership and take their resources into consideration. When such laws already exist, gaps in the laws should be identified and remedied. Priority should be given to sectors most vulnerable to money laundering in developing countries, such as real estate and money remittance businesses.

### *6. Amend legislation to curb abuse of immunities*

The purpose of immunities is to ensure that certain public officials can exercise their functions free

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from intimidation. However, in many cases this protection has been abused, creating a class of “untouchable” senior public officials. To deal with this issue, amended legislation is needed to change the conditions and procedures through which immunity can be lifted.

In addition to the recommended steps in these six areas, the remaining essential factor is the political will to set up and sustain a functioning AML system. While resistance from vested interests is to be expected, there may be creative ways to overcome lack of will at the highest political level. The example of the Joint Investigative Units in Albania is a case in point. Additionally, civil society and investigative journalism can play important roles in shaping public opinion and contributing to oversight. Capacity building directed at nongovernmental organisations and journalists in the area of anti-corruption should include awareness of the AML agenda and how it can support AC efforts.

## 1. Introduction

There is growing acceptance of the idea that anti-money laundering (AML) mechanisms can provide good tools to fight corruption, particularly grand corruption involving large sums.<sup>1</sup> This idea, put forward by Sharman (2011, 176; 2012), is grounded in four arguments that resonate with principles of anti-corruption:

- AML policies have the potential to make a large volume of financial intelligence transparent to authorities. This can be useful as a source of information on potential corrupt activity.
- AML requires, and thus potentially strengthens, international cooperation. International cooperation is particularly necessary in cases of corruption involving large sums, as such funds tend to be taken outside of the countries where they were generated.
- Provisions to recover proceeds of crime (including proceeds of corruption) are among the important tools put in place by AML.
- AML is a framework applied equally to rich and poor countries, so it demands consistency of behaviour on the part of rich countries. That is, developed countries also need to apply the standards they ask developing countries to adhere to.

The experiences of Peru, Nigeria, and the Philippines, among other countries, suggest that Sharman’s observation is correct. In those countries, investigation of grand-scale corruption in the 1990s and early 2000s relied significantly on anti-money laundering mechanisms and resulted in recovery of stolen funds. A former head of Nigeria’s Economic and Financial Crimes Commission (EFCC) commented:

‘I realized early on that . . . [the] anti-laundering arsenal that Nigeria put in place . . . offered a unique opportunity to address the much broader problem of corruption. . . . Whereas no major conviction for fraud, money laundering, or corruption had ever occurred in civilian courts in Nigeria before 2003, the EFCC secured over 250 convictions for financial crimes between 2003 and 2007. That the EFCC obtained convictions in over 90 percent of the cases it sent to court was a measure of its effectiveness. About eight in ten of those cases involved charges of money laundering.’ (Ribadu 2010, 9, emphasis added)

One may question why a set of tools created to hinder circulation of the proceeds of drug trafficking should be so valuable in addressing corruption when so many specific anti-corruption tools are already in place. This question is pertinent given criticisms levelled at AML effectiveness, even in the rich countries for which these standards were originally designed (Reuter and Truman 2004).

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<sup>1</sup> For the purposes of this paper, grand corruption is understood as corruption in which large amounts of public assets are stolen by high-level public officials, elected or not.

The answer begins with recognition that corruption-related offences are made possible by a veil of secrecy around the financial transactions related to corruption. By shedding light on suspicious financial transactions generally, AML mechanisms can aid anti-corruption investigators in discovering both the unlawful financial gain obtained through corruption and the corruption schemes themselves (if the proceeds pass through the channels supervised by AML authorities). This should not be understood as suggesting that AML mechanisms can or should replace the wide range of specific anti-corruption tools. Rather, they should be added to the stock of tools available to practitioners.<sup>2</sup>

However, while AML has great theoretical potential, the effects in practice require that all links in the “AML chain” of checks and procedures work properly. A problem in one link can easily render the whole chain ineffective (Reed and Fontana 2011, 31). Even if the system works efficiently in one area—for example, in customer due diligence for banking transactions—if it is not adequately implemented in other vulnerable sectors, such as real estate and other Designated Non-Financial Businesses and Professions (DNFBP), criminals may simply turn to those alternative channels to launder their illicit money. These and other obstacles that prevent AML’s potential for anti-corruption work from being realized are addressed in this issue paper, building on other research in this area (Brownbridge and Kirkpatrick 2000; FATF 2008; World Bank 2011).

This issue paper explores the obstacles to implementing AML measures in developing countries and the additional obstacles, when such measures are in place, to taking best advantage of them in corruption investigations. The two countries chosen as case studies, Albania and Tanzania, are analyzed not for purposes of comparing them but to explore the range of obstacles found in very different contexts. Based on this analysis, the paper suggests ways for national authorities and their international partners to address these obstacles. These insights hopefully will be of use not only to the two countries studied but to other developing countries as well.

Identifying obstacles to AML offers benefits both to those engaged in anti-money laundering and to those undertaking anti-corruption (AC) work. Stakeholders involved in AML can identify weak areas in need of support in order for AML to function as effectively as possible. For those focusing on AC, identifying these obstacles helps move the anti-corruption agenda forward by making AML regimes more coherent with the AC regime.

Following this introduction, section 2 of the paper offers a brief explanation of the methodology. AML mechanisms are explained in section 3. Section 4, the most detailed, describes the main obstacles to implementation of AML measures in developing countries, drawing on examples from Albania and Tanzania. Section 5 makes recommendations for strategies to address these obstacles in order to strengthen AML and its capacity for use in anti-corruption work. Finally, sections 6 and 7 present the two country case studies.

## 2. Methodology

Albania and Tanzania were selected as case studies because they offer both similarities and contrasts and therefore show a range of different obstacles of interest for the study. Both countries have institutions dealing with the problems at the centre of this paper—money laundering and

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<sup>2</sup> Both developing and developed countries are required to maintain AML regimes or risk being classified as noncompliant with the specific regulations in this area, those issued by the Financial Action Task Force (FATF). In extreme cases, they could be placed on international blacklists of jurisdictions that do not cooperate with anti-money laundering efforts. This could have consequences such as withdrawal of foreign investments and reduced access to international financial networks. These consequences usually fall more stringently upon poorer countries than on richer ones. The experience of some noncompliant small island states known as tax havens or secrecy jurisdictions illustrates the possible impact that noncompliance can have (Sharman and Mistry 2008). Senior public officials rush to comply with the regulations in order to avoid losing foreign investment and suffering the other sanctions mentioned above. This quick urge to catch up with international AML standards stands in stark contrast to the typically much slower response by the same authorities when corruption scandals are exposed.

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corruption. Both countries centre their anti-money laundering work around one institution, a financial intelligence unit (FIU), called the General Directorate for the Prevention of Money Laundering (GDPML) in Albania and the Financial Intelligence Unit in Tanzania. But they take different approaches to anti-corruption work. Tanzania's work in this field is led by one agency, the Prevention and Combating of Corruption Bureau (PCCB). Albania takes a multiagency approach to anti-corruption that relies on several institutions, most prominently the High Inspectorate of Declaration and Audit of Assets (HIDAA) and the Directorate against Financial Crimes, housed within the Albanian State Police.

The two countries also have different legal systems. Tanzania is a common law country, while Albania's legal system is based on civil law. These differences are relevant for AML work, particularly with respect to legal recourses available at the final stages of the AML chain, such as non-conviction-based asset forfeiture.<sup>3</sup> The study explored whether these disparate legal systems made a difference in the obstacles experienced, yielding conclusions of relevance to countries with similar legal systems. The choice of case studies, finally, was based on the networks already available to the authors in these two countries, which could be drawn on to facilitate access to research material and interviewees.

A desk-based review of documents on the topic of AML effectiveness and obstacles to implementation, as well as on the relevant features of each country, was conducted before the country visits. Questionnaires were prepared for distinct categories of interviewees. There were specific questionnaires for financial intelligence units and anti-corruption authorities, as well as a more general one to guide interviews with other types of institutions (such as prosecuting authorities, international donors, and financial institutions).

A total of 11 institutions were visited in Albania, and 12 in Tanzania (see lists of institutions in sections 6 and 7). The periods for data collection were August 2001 in Albania and October 2011 in Tanzania. Lack of reliable statistics presented a challenge, but data gaps were partially overcome by using relevant data from other reports published by international organizations and research institutions. Another limitation was that interviews were conducted solely with stakeholders located in the two countries in question. Although some were foreigners, they are considered domestic actors for the purpose of this study, in contrast to actors located in countries that receive funds laundered from Albania and Tanzania. No interviewees were contacted in those countries. Although these external actors could have provided evidence on different obstacles or confirmed those highlighted by domestic actors, the evidence provided by domestic actors on domestic obstacles remains valid in its own right.

### 3. What does AML entail?

Money laundering is the process through which criminal money passes in order for its true origin, nature, and ownership to be concealed. This is done for the purpose of hiding the criminal origin of the funds and allowing their owners to benefit from them without drawing the attention of law enforcement authorities.<sup>4</sup> The first efforts to deal with money laundering were put in place in the United States during the 1980s to counter the laundering of proceeds of drug trafficking (Reuter and Truman 2004; Chaikin and Sharman 2009). From this original focus on drug trafficking, AML standards have been extended to cover proceeds of other forms of crime, including corruption. Today 180 countries worldwide have made commitments to apply the measures promoted by the Financial Action Task Force (FATF).<sup>5</sup>

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<sup>3</sup> Non-conviction-based asset forfeiture is a means of confiscating proceeds of crime that does not require a criminal conviction, and in which the case is often brought against the assets and not against the person. For more about this mechanism, see Greenberg et al. (2009).

<sup>4</sup> For additional explanation of money laundering as a process, see Unger (2007), chapter 5.

<sup>5</sup> FATF is a standard-setting intergovernmental body responsible for developing the set of AML standards most commonly applied worldwide. FATF international standards were last updated in 2012 (FATF 2012).

This section provides a brief overview of current international AML policy and the mechanisms it requires as background for the analysis of obstacles to AML in the next section.<sup>6</sup> The broader range of anti-corruption policies, beyond than those that overlap with AML, that need to be in place in any country committed to dealing with corruption are outside the scope of this study.

FATF standards include recommended preventive and enforcement measures and call for an effective and proportionate sanctioning regime. Prevention is usually a task to be implemented by private sector actors, that is, the financial and other institutions that are obliged to report suspicious activity to a supervisory agency. The primary focus is on customer due diligence and subsequent notifications of suspicious activity.

Preventive measures usually include:

- Know your customer. Private actors are required to adequately identify potential customers by requiring name, legal proof of existence, and address of individuals or entities they will be doing business with.
- Customer due diligence and record keeping.<sup>7</sup> Private actors are further required to assess the risk of doing business with the customer. Customer transaction records must be maintained for a specified period of time in order to allow the private actor to reassess and mitigate risks, as well as to carry out due diligence on an ongoing basis.
- Notification of suspicious activity in the financial and nonfinancial sector.<sup>8</sup> Conducting customer due diligence and keeping records allows private actors to prepare suspicious activity reports (SARs) and submit them to the financial intelligence unit. Providing a SAR to a financial intelligence unit is a requirement imposed on both financial and nonfinancial sectors whenever there is suspicion that a transaction might involve funds that are proceeds of crime.
- Monitoring, oversight, and feedback. The FIU and the supervisory authorities<sup>9</sup> are responsible for monitoring the information provided by institutions with an obligation to report suspicious activities, as well for overseeing their activities. Finally, they have the responsibility of providing the reporting institutions with feedback on the quality of the information they provide.

Preventive measures are possibly AML's most important contribution to anti-corruption work. If effectively implemented, they should provide regular access to relevant information about senior public officials and political figures (known as "politically exposed persons" or PEPs). This would make it easier to identify unexplained changes in the patterns of their financial activity, which might indicate possible corruption. For example, if transactions that pass through bank accounts owned by PEPs or their associates suddenly start showing unusually large amounts, incompatible with previous transactions, this should be red-flagged by the AML monitoring system of the bank in question. Although an unusual transaction is not in itself proof of corrupt activity, it needs to be examined in more detail.

AML tools also include law enforcement measures that states have the responsibility to implement. Enforcement measures include:

<sup>6</sup> For an overview analysis of AML standards, see World Bank (2009), workbooks 2, 3a, and 3b; Reed and Fontana (2011), chapter 5; and Goredema (2011).

<sup>7</sup> For a detailed overview of customer due diligence and bookkeeping requirements, see the interpretative note to Recommendation 10 of the FATF international standards (FATF 2012).

<sup>8</sup> For a detailed overview of suspicious activity reporting requirements, see the interpretative note to Recommendation 20 of the FATF international standards (FATF 2012).

<sup>9</sup> Supervisory bodies are the agencies responsible for providing assistance to institutions with an obligation to report on money laundering issues (banks, foreign exchange bureaus, real estate agents, lawyers, etc.). Their work includes developing manuals and procedures for compliance with AML standards, training supervisors on these standards, and organizing on-site inspections. In the case of banks and other financial institutions, the supervisory body tends to be the central bank of the country. For lawyers, notaries, real estate agents, accountants, and others, it is usually the relevant professional association, although the responsibility may instead reside with other bodies.

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- Criminalization of money laundering
- Identification of suspicious financial transactions, bank accounts, and corporate vehicles<sup>10</sup>
- Seizure of the proceeds of crime
- Sanctioning of institutions that fail to comply with AML standards<sup>11</sup>
- Mutual legal assistance and international cooperation on AML
- Confiscation and recovery of the proceeds of crime

The contributions of AML regimes to anti-corruption work take place at the remedial stage, after the offence of corruption has taken place. For example, AML provides the mechanisms that allow victim countries to request confirmation of the existence of assets in a foreign jurisdiction, as well as the seizure and repatriation of those assets. This process embodies an important concept: the removal of the possibility of enjoying the proceeds of corruption. This provides a sanction but also potentially a preventive effect, since a demonstration that it will be difficult to benefit from corruption with impunity may dissuade others from pursuing corrupt activity.

However, such positive AML impacts assume that the appropriate mechanisms are in place and functioning effectively. In practice, there are many obstacles. Authorities face challenges in preventing corrupt money from entering the banking and other systems, in investigating where stolen funds are hidden, and in taking measures to confiscate them. These obstacles and others are addressed below, with illustrations from the experiences of Albania and Tanzania.

#### 4. Principal domestic obstacles to implementation of AML

To date, the dominant focus in the literature on AML and corruption has been the transnational and international aspects of combating corruption through asset recovery processes (Stephenson et al. 2011). The recommendations coming from this literature are mainly intended to enable policy makers to put in place the prerequisites for an international asset recovery system. These include, for example, international cooperation, provisions for dual criminality, and the maintenance of contacts necessary for cross-border coordination of asset recovery efforts.

In contrast, this paper addresses issues specific to the AML and AC regimes within countries. The focus is on the challenges faced by domestic state and private actors in meeting international standards and creating effective AML and AC structures. Obstacles identified in previous research are examined in the context of the realities of Albania and Tanzania. The two countries are at different stages of economic development: Albania had a per capita gross domestic product (GDP) of USD 7,800 in 2011, while Tanzania's was USD 1,500.<sup>12</sup> They also have different legal traditions. Nevertheless, this study shows that they face many similar challenges. As discussed by FATF (2008, 4), developing countries at different levels of development share a number of structural features that hinder their capacity to fully implement AML standards. These are explored in this section.

##### 4.1. Lack of trust among institutions

Trust is a necessary element in the good performance of institutions and in their capacity to relate

<sup>10</sup> Corporate vehicles are corporate entities such as corporations, foundations, partnerships with limited liability, and trusts.

<sup>11</sup> The sanctioning of reporting entities can be done through judicial proceedings against wrongful action committed by them. However, it should be noted that regulatory bodies should also have the power to issue administrative sanctions during their oversight processes if the reporting entities fail to comply with regulations in place.

<sup>12</sup> Figures are on a purchasing power parity basis. CIA Factbook, <https://www.cia.gov/library/publications/the-world-factbook/>.

to and work with each other. Its absence usually results in malfunctioning public institutions and increased levels of corruption.<sup>13</sup>

AML is a particularly sensitive public policy, since it entails access by authorities to individuals' financial information. Such access may lead to claims of misuse of information and infringements of the rights of the individual (such as the right to privacy). The extent to which such claims are made depends in part on the general level of trust in public institutions. AML also requires high levels of institutional trust among domestic public actors and counterparts abroad, since it depends on intelligence sharing and international cooperation for the gathering of evidence and for seizure and confiscation of assets.

At the domestic level, lack of trust between different public institutions involved in AML, such as between the police and the FIU or between police in different provinces, can prevent a case from being brought to court. In addition, lack of trust between institutions or within an institution itself can result in structures fragmented by geographic location or other divisions. In Albania, such factors historically have forced institutions to work in "silos," and even today they are reluctant to share information with each other. As explored in more detail in the Albania case study (see section 6), a clan-based mentality, corruption on a large and small scale, and the controlling nature of the former communist regime may be some of the underlying reasons for Albania's highly centralised but still not integrated approach to institutional configuration (Tamo, Baka, and Gjokutaj 2011). One notable example in this area is the Albanian State Police. Due to legal responsibilities, such as the obligation to investigate an offence based on the place where the perpetrator resides, national structures are duplicated in all of the country's regional police units. While these units are necessary, the low level of coordination and trust among them does not allow for synergies based on the needs of a specific investigation, nor for efficient allocation of available resources. This is discussed further in section 4.2.

The relationship of domestic AML agencies with foreign counterparts is also significantly affected by factors of trust, specifically the perceived trustworthiness of an institution in the eyes of its peers abroad. Information will not be shared easily when the FIU from which information is requested does not fully trust the requesting FIU's capacity to handle sensitive data. For the Tanzanian FIU, this is one of the most difficult obstacles to overcome. "When we contact an FIU in a foreign country, the first thing they ask is if we are a member of Egmont [Group]," remarked an FIU staff member in Dar es Salaam.<sup>14</sup> To become a member of Egmont, FIUs need to have attained certain standards of security in information management, among other requirements. Not surprisingly, one of the lengthier processes involving international exchange of information for AML purposes in Tanzania has been pending for five years, according to an informant at the PCCB. Soon, statutes of limitation may apply, bringing an end to the investigation.

#### **4.2. Duplication of structures and bureaucracy**

One of the main obstacles to preventing money laundering is the duplication of structures tasked with dealing with the problem. This results in a lack of clarity on which institution should be monitoring which process. It also delays investigative procedures, giving corrupt individuals time to escape, spend the assets, or use political influence to halt investigations.

In Albania, the police force is divided into 12 administrative regions, with jurisdiction based on both the location where the crime is committed and the location where the criminal resides. That

<sup>13</sup> Trust is a concept related to the deepest values of a society. It is linked to how resources are distributed. That is, the more equalizing the policies put in place by the government to redistribute resources, the more trusting the society tends to be (Uslaner 2003). Studies of how corruption affects levels of trust and how trust influences levels of corruption have provided mixed results (Kolstad and Wiig 2011; Uslaner 2004).

<sup>14</sup> The Egmont Group of Financial Intelligence Units ([www.egmontgroup.org](http://www.egmontgroup.org)) is a worldwide network. Tanzania hopes to become a member; the Albanian FIU is already part of the Egmont Group.

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means that a crime of corruption (or another type of crime) committed in one region by a resident of another region triggers multiple disconnected investigations. Police from one region cannot collect evidence in a different region. To complicate matters further, requests for intelligence or evidence collection need to pass through a hierarchical chain inside each administrative region. A police officer from one region cannot directly request information for an investigation from a fellow police officer in another region.

In Tanzania, where the Prevention and Combating of Corruption Bureau and the Director of Public Prosecutions (DPP) both have prosecutors on their staff, the PCCB in theory can bring corruption cases directly to the courts. However, in many cases it is the DPP that decides which cases go to court. It is not clear how the decision is taken on which body should lead a prosecution when corruption is identified as a predicate offence to money laundering. This division, which may have a reasonable justification on other grounds, should be thought through, taking into consideration the fact that it undermines the effectiveness of the overall criminal process and uses scarce resources. It may also contribute to competition among institutions and thus further reduce trust.

### 4.3. Lack of overarching coordination

Having an institution tasked with overall oversight and coordination of the different efforts in AML and AC would have a positive effect on most obstacles mentioned in this study. AML and AC are usually dealt with through individual operational strategies or policies, different legal frameworks, and parallel public and private sector institutions.<sup>15</sup> Although all are working towards the same goal—to reduce the possibility that crimes go undetected due to gaps in financial and nonfinancial systems—this separation can result in numerous communication and coordination problems.

Coordination challenges may appear in either the preventive or the law enforcement stages of AML. Practitioners in the banking sector in Tanzania, for example, cited lack of feedback after a suspicious activity report is filed. “Sometimes the police come back quickly asking for more information; sometimes we never hear from anyone for more than a week,” stated a money laundering reporting officer at a large international bank in Dar es Salaam. Such delays have negative repercussions. The bank must find excuses to explain to the client the reason for not proceeding with the transaction that generated the SAR. At the same time, however, the bank is not allowed to inform the client that a SAR has been filed. If it did, it would be committing a crime (“tipping off”). In addition, timely feedback is useful for reporting institutions so they know whether their systems are working effectively. In this regard, complete feedback, even if late, is preferable to incomplete feedback or none at all. The Tanzania FIU reported that it does not get feedback from the police until the investigation is at a much later stage. More timely feedback could help the FIU know whether the information collected through SARs is useful.

Given that Albania has a multiagency approach to combating corruption, with no single institution in charge, there are additional challenges of cooperation and coordination. There are problems in sharing information between supervisory agencies, which should monitor whether banks and other institutions with an obligation to file SARs are doing their job. This reflects the fact that supervisory institutions lack adequate resources and capacity to undertake their responsibilities. As a result, they rely heavily on Albania’s FIU (the GDPML) to supervise banks and various other institutions.

An added complexity is that Albania currently has two overlapping strategies. One deals with

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<sup>15</sup> As an example of the diversity of legal frameworks, note that Tanzania has one AML Act for the Mainland and another for Zanzibar, and an Anti-Corruption Act that applies only to Mainland Tanzania. As detailed in the case study in section 7, there are several public institutions involved in AC and AML, in addition to a large private sector with many banks and other DNFBP that are obliged to report SARs to the FIU, with different overarching supervisory bodies.

financial crime (including money laundering), and the other with corruption. As stated, proponents of both strategies recognise the need to work together. However, coordination between them has existed only at the operational level (many institutions are represented in the Joint Investigative Units, explained below) and not at the policy level. Consequently, there is a reduced capacity to map crime trends in money laundering and corruption. Such mapping would enable better responses to the challenges at the policy level.

At the operational level, nevertheless, Albania has created an effective response to these coordination challenges, namely the Joint Investigative Units (JIUs). JIUs were not created by law; rather, several different agencies responsible for AML and AC investigation and prosecution drafted a joint memorandum of understanding, committing themselves to a concerted effort to improve coordination in addressing corruption, money laundering, and related criminal offences.<sup>16</sup> This initiative has yielded positive results, beginning with creation of a JIU in Tirana, the capital, in 2007, and expanding to include seven others for territorial administrative divisions elsewhere in the country. While JIUs are not a fully adequate response, particularly with respect to policy issues, they constitute a positive and necessary step toward greater effectiveness.

The suggestion to have one institution serve as a focal point does not imply that a single hierarchy for reporting should be imposed on all the actors involved, as this might impede their ability to respond quickly to events. But a coordinating body can ensure that all involved have a point of contact for obtaining quick updates on what others are doing and the necessary information to do their work. This responsibility could be assigned to one of the different institutions already involved in AML or AC, provided it has adequate resources and time to perform this task.

#### **4.4. Lack of skilled human resources, technical capacity, and equipment**

Developing countries face resource constraints in many sectors. This applies to AML, which competes with many other more pressing public issues for financial and other resources.<sup>17</sup> The lack of human capital is a serious constraint, even more than in other sectors. This is because AML requires a level of complexity and sophistication that makes it a challenge even for developed countries (Borgers and Moors 2007).

For Tanzania, AML and AC are new policy areas.<sup>18</sup> Lack of qualified human resources is particularly severe in the police. Despite the number of detectives available (around 6,000 in total for the Criminal Investigations Department and 10 for the Financial Crimes Unit at police headquarters), interviewees stated that the police lack officials trained in scientific approaches to evidence collection. The result is that prosecutors send an average of 50 per cent of investigation files back to the police—or to the PCCB, in cases of corruption—due to technical problems with collection of evidence. Detectives interviewed stated that a few officers have benefited from training by Interpol, but most lack knowledge of how to conduct investigations in this area.

Deficient knowledge of legislation also prevents magistrates from making better use of the potential provided by AML regulations. Minor cases may receive disproportionate sentences, and confiscation of crime proceeds is underused as a sanction. Tanzania's criminal system focuses on incarceration, with few attempts to recover the proceeds of crime. Investigations typically try to prove the criminal elements of the offence but do not link the assets to the offence.

<sup>16</sup> As Albania follows a multiagency approach to preventing and combating corruption, it does not have one body that discharges these duties. The JIUs bring together the agencies that are responsible for combating money laundering, corruption, and tax- and customs-related offences, among other financial crimes.

<sup>17</sup> Sharman (2011, 38) even argues that a proper cost-benefit analysis of implementing AML in some poor countries would favour spending money on other areas instead of AML.

<sup>18</sup> The Prevention and Combating of Corruption Bureau is the country's lead agency for anti-corruption. Other relevant agencies include the FIU; the police; the Ethics Secretariat, in charge of receiving asset declarations; and the Directorate of Public Prosecutions, which prosecutes all crimes in the country (with the exception of those in martial courts).

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In terms of equipment and financial resources, AML requires, for example, wiretapping equipment to conduct surveillance. A site visit to the Tanzania police headquarters and the Ethics Secretariat showed that both institutions lack not only advanced devices (such as for wiretapping) but even basic software, photographic cameras, and secure computer systems. Asset declarations and suspicious activity reports are submitted in paper format. One interviewee in a large international private bank in Dar es Salaam stated that he personally hands all SARs submitted by his employer to the FIU. Such a practice does not comply with secure management of information as prescribed by the Egmont Group, since SARs are official information that should not circulate openly.

Finally, while a criminal conviction is pending, the police act as the custodians of seized assets. If these are financial resources, maintenance is less problematic, as it can be done through bank accounts. But in a country where cars, real estate, and even agricultural property such as livestock can be seized, the police lack capacity to manage these assets so that they can be returned intact to the owners in case of acquittal.

Albania shares similarities with Tanzania in this regard. For example, to police its borders and prevent illicit funds from being taken abroad, Albanian authorities rely on a voluntary disclosure system to identify money being taken outside the country. There are not enough police officers to check borders. While checking all vehicles and individuals that cross borders is not necessary, the current reliance on 100 per cent voluntary disclosure is also not a solution, given that those carrying illicit money obviously will not voluntarily inform the police about it.

#### **4.5. Lack of familiarity with AML laws and regulations in developing countries**

As already noted, anti-money laundering requires a large number of sources of information and significant expertise, as well as coordination between the private sector and government and between different government agencies. Creating enabling legislation and setting up the necessary structure is only a first step. It is also important to build the capacity of agencies so that they understand the content and scope of application of the legislation, how the mechanisms in place should work, and the role that each institution should play in AML (see sections 4.2 and 4.3).

In Albania, the investigative authorities do not seem to have a clear understanding of the role of the FIU. Many believe that the GDPML should collect intelligence and process it to begin a financial investigation, sending initial results to law enforcement authorities for finalisation of the criminal investigation and initiation of prosecution. But current legislation does not mandate or authorize the GDPML to initiate an investigation. Rather, it is only supposed to collect information and pass it on to police or prosecutors.

Moreover, there is lack of clarity on the scope of application of some laws. This is particularly relevant to Law 10.192 of 2009, On Preventing and Combating the Organized Crime and Trafficking through Preventive Measures against Property—popularly known as the “anti-mafia law.”<sup>19</sup> This seems to stem from the negative experience Albania had with an earlier statute, Law 9284 of 2004, the Law on Preventing and Striking at Organized Crime, and which the High Court deemed unconstitutional (Gomes Pereira and Ibrahim 2011, 9–11). Because of previous case law based on the prior legislation, many prosecutors and judges are wary of applying the full extent of the new AML legislation.

The interviews in Albania also made clear that while different authorities were sharing at least some of the information required by law, there was little or no follow-up. The institution responsible for asset declarations (HIDAA), for example, conducted extensive risk-based analyses

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<sup>19</sup> This law provides for non-conviction-based forfeiture in Albania for a set of criminal offences that include money laundering but not corruption. Interviewees reported that even though corruption-related offences are predicate offences to money laundering, the anti-mafia law could not be used to seize and confiscate assets derived from corruption offences.

of the information it received from asset declarations and implemented some sanctioning mechanisms on officials who do not comply with the obligation to submit declarations. It shared the information with relevant authorities such as the tax authorities, prosecutors, and the JIUs. However, there was no coordination to seek the most effective outcome, nor any follow-up on cases based on the information shared.

In Tanzania, prosecutors in the Directorate of Public Prosecutions in the General Attorney's Chambers were surprised to hear that financial assets could be confiscated without a prior criminal conviction. The fact that this concept was unfamiliar to the prosecutors interviewed in Dar es Salaam illustrates how new this area of action is.

#### **4.6. Lack of statistical data**

An important factor in the prevention of crime is the ability to collect statistical data. The use of statistics allows a country to assess risks, anticipate criminal behaviour, identify trends, and allocate resources to sectors that are more vulnerable. Asset declarations of public officials and data on how criminals have laundered their unlawful assets allow officials to analyze money laundering mechanisms, train local authorities to respond to the threats identified, and decide on what is necessary to equip their institutions. Both Tanzania and Albania suffer from inadequate data collection. In Albania, where some statistics are available for the criminal justice system, interviewees stated that the way in which they are collected (often manually and on paper) does not ensure the integrity of collection and thus renders the data unreliable. Data such as the proportion of money laundering cases that reach the courts and have corruption as a predicate offence would be important in judging to what extent corruption is generating funds to be laundered, but this kind of information was not available in either Albania or Tanzania. Even in rich countries, with developed court case management systems, such data are not easily available (OECD and World Bank 2011, 19).

#### **4.7. Lack of identification systems**

One of the fundamental features of an AML regime is that reporting institutions are obliged to collect reliable information on the identity of clients—the “know your customer” and “customer due diligence” procedures mentioned in section 3. Identification can usually be verified by means of a passport or national identity (ID) card. In some countries, a national ID system allows government agencies and private sector organizations such as banks to verify the information provided by citizens.<sup>20</sup> In the case of legal persons, appropriate documentation, such as the articles of incorporation, must be provided to verify the legitimacy of the business. In some developing countries, however, establishing the identity of a customer through official ID documentation can be difficult. Many low-income countries (and even some middle-income and wealthy ones) lack comprehensive ID and address systems.<sup>21</sup>

Banks in Tanzania have tried to overcome this problem by accepting a driver's license or a letter from a local government authority when the client does not have a passport or voting card. But proof of residence is also difficult to obtain, since the formal address system does not cover the entire country. These hurdles may not imply significant costs to large international banks operating in Tanzania, but they are significant for smaller domestic banks that serve less profitable clients

<sup>20</sup> This can be used by the government for other purposes beyond bank due diligence (to manage land rights and to prevent tax fraud, for example).

<sup>21</sup> For example, the United Kingdom does not have a national identification system for its citizens. While the UK government has attempted to introduce such an identification system, these efforts have been rejected due to concerns ranging from cost-effectiveness to human rights issues. In the UK, therefore, a valid form of identification would be a passport or a driver's licence.

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and cannot afford to reject a customer who lacks ID or proof of residence. There are two possible consequences, both negative. Banks may fail to thoroughly implement know-your-customer procedures, which increases money laundering risk. Or they may set up procedures to reduce AML that make it more complicated for poorer customers to access banking services (see section 4.8).<sup>22</sup> Lack of sanctions for noncompliance with AML standards—a characteristic of Tanzania’s regulations in this area—also leads banks and other reporting institutions to relax these obligations. Finally, company registries are also deficient, which poses problems in identifying the real beneficial owners of business entities.<sup>23</sup>

In Albania, one of the main challenges in this area is the lack of an adequate registry of real estate property. Currently, a large number of properties are not properly registered. The government has sought to address this issue by creating two different institutions to deal with real estate registration: one for formally registered properties and another for those in an informal situation. The existence of two different institutions dealing with landholdings makes it more difficult to access information about ownership. In both cases, moreover, the information held is for the most part stored in paper format, making retrieval of information burdensome and time consuming. Finally, real estate property in Albania can usually be purchased through cash transactions without use of the banking system (see section 4.9). This leaves a scanty paper trail and adds to confusion in determining real beneficial owners.

In Tanzania, poorly enforced property rights and the lack of an address system covering the entire country pose additional obstacles to registration of property, as an address system is required to create even a simple database of real estate property.

#### 4.8. Cash-based economies

Half the world’s population does not use banks (Chaia et al. 2009). Most of the unbanked are residents of developing countries. Factors include the low penetration of banking systems, a lack of ID systems, and distrust of banks. Societies with cash-based economies present a particular challenge to AML, which was developed by and for societies with complex formal financial systems. AML is based on the premise that authorities can gain access to information passing through formal channels, especially the banking system. When that is not the case, as with cash transactions, even an apparently efficient AML system cannot be effective, since so many of the relevant transactions do not show up on the AML radar screen and go undetected.

In Tanzania and Albania, only a small segment of the population uses banks. In Tanzania the proportion is only 10 per cent, and even high-value transactions such as paying for real estate are conducted in cash.<sup>24</sup> Despite the provision under the Tanzanian AML Act requiring real estate agents and other professionals (in DNFBP) to implement AML standards, authorities have mostly focused on monitoring the financial sector. The situation is similar, although less extreme, in Albania. The size of the informal sector is estimated at 33 per cent of Albania’s gross national product by the World Bank (Schneider 2002). A large number of transactions pass through money remittance systems like Moneygram or are cross-border cash transfers, particularly funds originating from the Albanian diaspora. Although not all remittances represent illicit funds, such flows pose a significant challenge to the authorities, as they do not have enough resources to monitor all remittance institutions or verify all those transactions crossing borders.

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<sup>22</sup> It can be argued that the ID requirement could be waived for poorer customers, since they don’t have illicit funds to launder. However, lack of a single standard procedure in terms of ID requirements could lead to increased noncompliance.

<sup>23</sup> Company registries are responsible for the incorporation and registration of business names in a country.

<sup>24</sup> Interview at Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).

#### **4.9. Domestic laundering of illicit funds**

Although many AML measures focus on laundered money that crosses borders, a significant proportion of corrupt funds either do not leave the country where they originate or are returned to that country after being laundered. These funds are often used to purchase domestic real estate and to finance extravagant lifestyles.

A common situation described by interviewees goes like this: A property is purchased with cash. Since large cash transactions are not uncommon, it does not raise suspicion. As the real estate sector is underregulated, the purchase is not reported to the FIU even if the agent responsible for the transaction or the lawyer involved in preparation of the ownership transfer documents has reason to believe the funds used to pay for it were not legitimate. After a period of time, the property is resold. The money that results from this is “clean,” that is, its origin can be conveniently tracked to the real estate sale. This scenario was cited as common in both Albania and Tanzania.

While international AML regimes can help bring to account political figures who are too powerful to be held accountable at home (Chaikin 2010), the situation described above challenges the potential for AML measures at the domestic level. Institutions involved in AML may be under local pressure from political elites, and efforts to establish effective AML systems may be blocked by those who benefit from the status quo. “Slow progress in the region is not only about lack of resources, but also lack of will to institute a functioning system,” stated a staff member at the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).

#### **4.10. Variation in the level of compliance of reporting institutions**

As noted in section 3, implementation of know-your-customer provisions and ongoing monitoring of PEPs is a responsibility of reporting institutions. These are mostly private sector businesses, such as banks, real estate agencies, bureaux de change (currency exchange outlets), and money transfer businesses, among others. The internationalization of the banking sector has resulted in multinational banks operating in many developing countries, either independently or in partnership with local banks. In Albania, for example, most major financial institutions are foreign-owned, including 13 of the 17 commercial banks in the country. There are also 283 registered bureaux de change, most of them under domestic ownership. Tanzania has a larger banking sector comprising 37 banks and financial institutions, 10 of which are subsidiaries of international banks, and around 170 bureaux de change. Interviewees at the central bank in each country stated that international institutions tend to follow the standards established by their headquarters but that indigenous banks are lax in applying the rules. This seems to imply that headquarters of foreign banks adopt strict AML standards and enforce these policies in their branches abroad.

However, even if most domestic and international banks diligently applied know-your-customer and due diligence procedures, there still would exist other sectors with obligations to file SARs that generally do not have the same level of standards. In Albania, most businesses operating in the real estate sector are informal. Properties and transactions are loosely regulated. There is inefficient supervision and a consequent failure to keep records on all property or enforce monitoring of AML standards on real estate agents and transactions, making this a sector that is vulnerable to money laundering (see section 4.11). The same is true in Tanzania.

#### **4.11. Weak or nonexistent supervisory institutions**

Financial intelligence units are the authority most commonly associated with the AML regimes. But supervision of AML compliance on the part of institutions with an obligation to submit SARs

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is often divided among several supervisory bodies, depending on which sector the reporting institution belongs to. For example, banks and bureaux de change are usually supervised by the central banks, lawyers by their professional association, accountants by their respective association, and so on. Supervisory bodies for professionals are responsible for overseeing whether registered professionals comply with the regulations that apply to their professions (AML being one such set of regulations). Poor performance of these bodies and their lack of capacity to sanction noncompliant institutions is at the heart of much AML failure.<sup>25</sup> If the nonbanking sectors were effectively implementing know-your-customer procedures and ongoing monitoring of clients in Albania and Tanzania, the chances of detecting unusual transactions would increase significantly.

Both the Bank of Tanzania and the Bank of Albania, the countries' central banks, have monitoring and compliance activities. Despite shortages of staff, they are capable of conducting some level of oversight and on-site monitoring of banks. The greatest challenges involve stretching available resources to cover supervision of other relevant institutions, which are far more numerous than banks. In Tanzania, for example, the Tanganyika Law Association, the equivalent of the bar association, with more than 2,000 registered lawyers, does not supervise its members on these matters. This means that the FIU, with only 15 employees as of 2011, is trying to fill this gap. Accountants in Tanzania, however, are currently supervised by the National Board of Accountants and Auditors, which has produced guidelines for its members on how to comply with AML.

The Bank of Albania does not have enough human resources to supervise all banks and nonbank financial institutions. The banking sector is perceived as less problematic because the majority of the banks are foreign-owned and must meet requirements imposed by headquarters (see section 4.10 above). But the bureaux de change pose a particular problem, since they are numerous and also fall under the supervisory responsibility of the Bank of Albania.

#### **4.12. Immunities**

The reasons for granting immunities to certain officials need to be balanced against the fact that sometimes immunity is abused for the purpose of escaping the law. In Albania, members of Parliament and other high-ranking public officials enjoy full immunity from investigation and prosecution. This can only be lifted by means of a parliamentary motion, which needs to be passed before the start of an investigation of a person benefitting from immunity. The members of Parliament must either accept or reject such a request. This has two negative implications. First, when a member of Parliament is the subject of an investigation, it is unlikely that other members will vote to lift the immunity and allow the investigation to go forward. Second, even if the motion is passed, the criminal investigation may suffer because of the lack of secrecy, as the subject of the investigation would be informed about it before it starts.

#### **4.13. Observations**

In sum, AML can provide good tools for prevention and enforcement in anti-corruption action, but coordination between AML and AC agencies is needed for anti-corruption practitioners to benefit from this potential. This paper has reviewed 12 specific obstacles to such effective collaboration and the resulting synergy. In contrast to most current literature on this topic, the focus has been on domestic rather than transnational issues. The paper draws on the specific country cases of Tanzania and Albania, which illustrate a variety of obstacles.

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<sup>25</sup> Mangels (2012) further argues that improved due diligence strategies are only designed and implemented after a highly visible money laundering scandal comes to light and obvious flaws in the previous due diligence strategy are exposed.

Although the paper does not attempt a systematic comparison of the two cases, it is interesting to note that differences in context did not necessarily lead to predictable differences in the obstacles encountered. With respect to lack of coordination, for example, it might be expected that Tanzania's more unified system, which is centred around one AC institution and the FIU, would be more effective than Albania's more dispersed system. However, this was not observed. In fact, the broad range of obstacles encountered in Tanzania—novelty of the AML legislation, lack of skilled and trained staff, an underdeveloped FIU, and poorly implemented processes for reporting on suspicious transactions from several important sectors and for investigating both corruption and money laundering—apparently outweighs the advantage of having one central anti-corruption institution. In Albania, the spread of responsibilities and resources over several institutions did lead to more obstacles than would otherwise have been the case, even though the country's institutions are more developed than those in Tanzania.

Nor did the differences in legal tradition result in significantly different obstacles or advantages. The authors' assumption was that common law countries, with a tradition of legislation in the area of non-conviction-based asset forfeiture, benefit from such arrangements to recover assets.<sup>26</sup> However, although Tanzania is a common-law country, its legal codes for anti-corruption and anti-money laundering did not include such a mechanism at the time of the study. In fact, Tanzanian prosecutors were not familiar with this type of asset recovery approach. One of the reasons is that AML, including its potential to focus on asset confiscation rather than incarceration as a form of sanction, is still very new to the country.

Albania, a civil law country, does have legislation on non-conviction-based forfeiture, popularly known as the anti-mafia law. But at the time of this study, prosecutors were still trying to work out details of the concept (such as whether the investigation of financial assets can start before or concurrently with the investigation of the crime) and had difficulty in implementing it. Legal complexity also created problems. While the anti-mafia law is applicable to the money laundering offence, it does not directly specify corruption-related offences as a crime subject to this law. While corruption-related offences may be predicate offences to money laundering, it remained unclear (or such possibility had not been taken to court) whether the anti-mafia law would be indirectly applicable to corruption when linked to the money laundering offence, given that in Albania the money laundering offence itself is autonomous to its predicate offences.

## 5. Recommendations

The following recommendations directly address the 12 obstacles outlined in the preceding section. There are two caveats. The first is that developing countries' authorities and their international partners involved in AML and AC must first assess whether money laundering is a significant threat to the country and which sectors are the most vulnerable.<sup>27</sup> In a context of scarce resources, such an assessment provides a basis for deciding the level of priority to be given to AML reforms.

The second is that political will on the part of the relevant national authorities is crucial. As one interviewee in Tanzania stated, no amount of technical assistance will compensate for the lack of will to institute a functioning AML system. Resistance can be expected, of course, from those who benefit from the status quo. However, in AML as in anti-corruption, it may be possible to overcome this obstruction with creative action by those determined to implement reforms.

The example of Albania's JIUs, discussed above, suggests that technocrats who want to solve a

<sup>26</sup> Countries with legal systems based on civil law may have similar possibilities, as is the case with Colombia and Mexico.

<sup>27</sup> The Organisation for Economic Co-operation and Development (OECD) has developed a political economy analysis tool to help countries determine which sectors are most vulnerable to the international aspects of corruption (OECD 2012). A proper cost-benefit analysis would also be needed, but this OECD tool gives countries an initial comparative view of vulnerable sectors.

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problem can find ways to overcome political hurdles. Faced with the difficulties of getting parliamentary approval to establish a statutory coordination mechanism to facilitate the work of different institutions in AML, public servants in these institutions found a less formal way to make coordination happen: a memorandum of understanding (MoU) creating the Joint Investigative Units. The JIUs show a “think outside the box” attitude on the part of prosecutors and lawyers who would normally expect a law to provide them with a legal framework to act. Even though an MoU is a weaker instrument than a law, it offered a workable solution and brought together many institutions for the benefit of AML and AC cases. While the idea of several institutions working together for anti-corruption purposes is not new, the innovative aspects of the JIUs are the concerted effort to overcome lack of will and the ingenuity to give the arrangement as permanent a configuration as possible, with employees from different agencies permanently seconded to the JIUs. This distinguished them from more common task forces on anti-corruption, typically set up to investigate one particular case and disbanded afterward. The JIUs have expanded to a total of seven in 2009 and have also added other institutions as participants.

Political will on AML can also be influenced by the work of civil society and other nonstate actors such as the media. Although they might seem only indirectly connected to AML, the capacity of nongovernmental organisations (NGOs) to inform and advocate for action, as well as the capacity of the media to investigate and publicize suspicious cases, can contribute to the willingness of public officials to act.<sup>28</sup> Therefore, efforts directed at building their capacity in the area of anti-corruption should consider integrating AML concerns.

Finally, one should note that these recommendations are primarily directed to domestic actors, who must take responsibility for making necessary changes in policies and improving processes for implementation. Other stakeholders, such as international development agencies and local and international civil society organizations, are a secondary audience. They can support developing countries in designing and implementing their AML systems or advocate for the reforms suggested here. The recommendations are presented in order of priority, given the fact that they demand scarce resources and thus compete with other pressing needs.

### **5.1. Improve trust and coordination among agencies, and reduce duplication of structures**

Agencies with responsibility for AML and AC in developing countries need to communicate more explicitly their roles, functions, and responsibilities. This would allow them to clearly set the parameters of their work and better coordinate their activities with their domestic and international counterparts. Law enforcement agencies, whether in poor or rich countries, are often weak in internal and external communication skills, and they need support in developing those skills. Taking into consideration the obvious requirements for secrecy linked to criminal investigations, appropriate mechanisms (such as the JIUs) should be put in place to allow for constant and direct dialogue and sharing of information at the staff level between relevant institutions. Understanding each other’s mandates and maintaining a more open dialogue can reduce interagency competition, foster an environment conducive to trust, and ultimately lead to more effectively preventing and combating corruption.

As part of this clarification of functions, roles, and responsibilities, agencies with roles in AML and AC should also establish procedures to feed their information into one coordinating agency. This agency, which may be either an existing agency or a new collective mechanism specifically set up for this purpose, should use this information to advise on improved policies to strengthen the contribution of anti-money laundering to anti-corruption efforts.

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<sup>28</sup> Pressure from a coalition of Swiss NGOs in partnership with Nigerian NGOs was key to the formation of a bilateral monitoring mechanism to oversee the use of funds from the Abacha dictatorship that were repatriated to Nigeria in the early 2000s (Thelesklaf and Gomes Pereira 2011, 120–30).

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Taking steps to improve coordination would entail a mapping of existing structures. This in turn can help identify unnecessary duplication of functions between these structures and the extent to which this duplication is required by the existing legal framework. Steps should be taken to revise the legal framework and the institutional apparatus to eliminate unnecessary duplication of efforts, whenever possible. Where duplications are justified or where it is not feasible to eliminate them, jurisdictions should explore other mechanisms to reduce overlap through informal means. The experience of JIUs illustrates how solutions can be found even in difficult environments.

Such measures to address lack of trust, poor coordination, and duplication of structures require only modest investments. No expensive equipment is needed, and no long-term training needs to be provided. Communication, however, is an area where some training might be required, given that these institutions are not designed with communication as their main task.

## **5.2. Expand skilled human resources and technical capacity**

This is an area that provides an immediate entry point for international support. AML is a sector in which developing countries clearly need better infrastructure and better-trained staff, particularly because of its complexity and sophistication. Training efforts should include not only public officials but also staff in the private sector who have the obligation to report suspicions of money laundering to FIUs. This is particularly urgent for sectors with greater vulnerability to money laundering or a record of lax compliance with standards. These efforts can take advantage of existing training platforms or local professional networks (the Bank of Tanzania, for example, has training facilities but needs experts and financial support to organize training sessions). Such training programmes would also enhance general knowledge about new legislation in this area.

Exchange programmes, with secondment of professionals between institutions in developed and developing countries, can provide developing country officials with training and exposure to international networks.<sup>29</sup>

## **5.3. Strengthen data collection to provide key statistics**

The question of how to improve general government capacity for collecting statistics is beyond the scope of this study. However, it is necessary and possible to improve structured data collection by the specific authorities involved in AML and AC. Even if agencies cannot afford expensive software or separate departments with specialized staff, internal agency management can put in place routines to collect and analyse information received—at the FIU and at the courts, for example. In the case of the courts, international development partners can provide assistance on how to structure case management systems. Such information will be particularly useful in making decisions on where to focus resources and in tracking progress once policies are being implemented. Other types of databases, such as real estate and company registries, should also be established or strengthened, as they provide information that is essential for AML.

## **5.4. Establish ID systems and expand access to banking**

Establishing formal ID and address systems and increasing access to banking for the population present enormous challenges in developing countries. Such programmes require significant resources, which may in turn require recourse to external support. But such improvements can provide wide benefits to the population in areas ranging from immigration to land ownership and

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<sup>29</sup> In the Balkans, for example, secondment has been used as an alternative to formal training programmes in deploying experts from rich countries and increasing the capacity of developing ones (Fontana and Hansen-Shino 2012).

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tax matters. Tanzania has started the process of issuing ID documents for all citizens (expected to be completed in 2015) and creating a proper address system (Kabigi 2012). The presence of a formal ID system is in itself conducive to increased access to banking services (Gianetti and Jentsch 2011).

### **5.5. Strengthen supervisory institutions and their ability to monitor compliance with AML standards**

Several of the preceding recommendations, such as improved training for staff of private sector institutions and clearer definition of the responsibilities of AML and AC agencies, would also help address the problems of supervisory institutions. In addition, the responsibilities of supervisory authorities with respect to monitoring compliance with AML standards for different sectors need to be clearly defined through appropriate regulations. Sectors that are particularly vulnerable—notably real estate, bureaux de change, and remittance systems—need particular attention. Furthermore, these regulations should be established in consultation with the supervisory bodies that will be in charge of implementing them; this builds ownership and understanding of the responsibilities entailed, taking into consideration resource constraints. Training programmes for private sector actors should be extended to these supervisory authorities as well. Programmes to support the development and qualification of private sector actors should consider including sectors particularly vulnerable to money laundering, such as real estate.

### **5.6. Amend legislation to curb abuse of immunities**

Immunities have been granted to certain categories of public officials to ensure that they are able to exercise the functions of their office free from intimidation (UNODC 2009, 116). Immunity further ensures that certain public officials, such as judges and prosecutors, are able to exercise their duties impartially; this is supposed to guarantee the independence of the judiciary (UNODC 2007, 35). However, in many cases this protection has been abused, creating a class of “untouchable” senior public officials. To deal with this issue, amended legislation is needed to change the conditions and procedures through which immunity can be lifted. Because lifting such immunities touches the senior political class directly, it is reasonable to anticipate that there will be much resistance. Anyone attempting to reform these provisions will need strong backing from civil society organizations, the press, and the international community.

In addition to these general recommendations, specific recommendations for each of the two countries studied are included in the following case studies.

## Appendix A. Albania case study

Albania is a civil law jurisdiction that has criminalised money laundering in its Criminal Code. Its anti-money laundering provisions are applicable to Albanians and non-Albanians in the country. Given the importance of the international component of money laundering, the criminal offence can also be applied to non-Albanians outside of Albania in cases where the crime was committed against the interests of Albania or its citizens. Criminal investigations are led by the General Prosecutor's Office, assisted by the Judicial Police (Albanian State Police). An investigation has to be concluded within three months. If necessary, a court can extend this time limit up to a maximum of two years. The two-year period begins once the person under investigation has been identified and registered in the investigative files.

### Box A.1 Institutions visited in Albania

- Council of Ministers (Department for Internal Administrative Control and Anti corruption)
- General Directorate of Customs (Anti-trafficking Division)
- Albanian State Police (Tirana Regional Police Directorate; Directorate against Financial Crimes; Sector for Criminal Asset Investigation)
- General Prosecutor's Office (Sector for Economic Crime and Corruption; Joint Investigative Unit of Tirana)
- Council of Europe Project Against Corruption in Albania (PACA)
- Police Assistance Mission of the European Community to Albania (PAMECA III)
- European Union FIU Twinning Project
- General Directorate for the Prevention of Money Laundering
- Embassy of the Netherlands
- Bank of Albania (Non-credit Risk Division)
- High Inspectorate of Declaration and Audit of Assets

Albania is divided into 12 administrative regions. Investigative and prosecutorial authorities working in one region cannot exercise their authority in another, a restriction that poses several challenges. The Serious Crime Court (SCC), established under Law 9284 of 2004 (see section 4), is a significant exception to this rule: unlike other courts, the SCC has jurisdiction over the entire country. But its jurisdiction is limited to the offences prescribed under the anti-mafia law, which include the offence of money laundering but not corruption as an offence predicate to money laundering. This limitation makes it impossible to use the mechanisms of seizure and non-conviction-based confiscation of proceeds of crime, created through the anti-mafia law, for corruption offences.

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## **A.1. Overarching strategies**

Albania has two overarching strategies on money laundering, financial crimes, and corruption. They are, first, the National Strategy against Financial Crime, and second, the Cross-Cutting Strategy for Prevention, Fight on Corruption and Transparent Governance.<sup>30</sup>

### **A.1.1. National Strategy against Financial Crime**

In 2010, the Council of Ministers of Albania approved the National Strategy on the Investigation of Financial Crime. It sets out medium- and long-term objectives as the basis for a detailed action plan to be implemented from 2009 to 2015. According to MONEYVAL (2011), implementation of the strategy includes coordination of the efforts of all relevant agencies.<sup>31</sup> Coordination responsibility is undertaken by the Inter-institutional Technical Group, whose members include, among others, the General Directorate for the Prevention of Money Laundering, the General Prosecutor's Office, the General Directorate of Customs, the Albanian State Police, the High Inspectorate of Declaration and Audit of Assets, and the Bank of Albania. This group is also responsible for monitoring the implementation of the action plan.

### **A.1.2. Cross-Cutting Strategy for Prevention, Fight on Corruption and Transparent Governance, 2008–2013**

This strategy was adopted by the Council of Ministers in October 2008. It seeks to provide for a “progressive and sustainable reduction of corruption” through:

- Reforms for corruption prevention;
- Strengthening the integrity of institutions and promoting good governance;
- Comprehensive monitoring of corruption;
- Strengthening the role of civil society in the fight against corruption;
- Administrative punishment for corrupt officials. (Republic of Albania 2008)

The strategy does not specifically include money laundering. Nevertheless, parties interviewed for this study recognised that there are overlaps that require coordination between the two strategies.

## **A.2. Anti-money laundering functions and institutions**

The Criminal Code in Albania enables any criminal offence to be a predicate offence to money laundering. Furthermore, money laundering is an autonomous offence in relation to its predicate offences.<sup>32</sup> This means that, while the predicate offence has to be identified, a person may be convicted only for money laundering, and need not be convicted for the predicate offence before he or she can be convicted for money laundering. The US Department of State (2011) has reported that corruption-related offences remain the most significant source of money laundering in Albania and that proceeds of crime are invested in real estate and business projects.

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<sup>30</sup> The latter title is written as it appears on the English version of the Council of Ministers report. See Republic of Albania (2008).

<sup>31</sup> MONEYVAL (Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) monitors compliance by Council of Europe member states with anti-money laundering recommendations.

<sup>32</sup> Interviews at the GDPML, 1 September 2011.

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### **Box A.2 Institutions with responsibility for AML in Albania**

- General Directorate for the Prevention of Money Laundering (GDPML, Albania's financial intelligence unit)
- Joint Investigative Units (include representatives from different institutions)
- Bank of Albania (the central bank)

Albania's legislation lays out a list of entities that are required to report suspicion of money laundering to the GDPML. It also provides due diligence requirements that reporting entities must have in place, with enhanced due diligence for high-risk clients. These requirements include the obligation to report cash transactions equal or greater to ALL 1.5 million, and noncash transactions equal or greater to ALL 6 million.<sup>33</sup> These amounts, however, are high in comparison to the minimum wage in Albania, which was only ALL 20,000 per month in July 2011.<sup>34</sup> This means that the great majority of transactions are smaller than the minimum required to be reported, posing an obstacle to AML efforts.

These high thresholds are also a problem because of Albania's large cash economy. The US Department of State (2008) notes that in Albania "few individuals have bank accounts." It also reports that 25 per cent of money circulates outside the banking system, much higher than the average of 10 per cent in the region. Moreover, despite the expansion of the banking sector, a significant portion of remittances still enter the country through unofficial channels.<sup>35</sup> It should be noted, however, that not all remittances are unlawful in origin.

As shown in box 6.2, four major institutions have responsibilities in anti-money laundering in Albania.

#### **A.2.1. General Directorate for the Prevention of Money Laundering (GDPML)**

The GDPML is an administrative FIU with authority to obtain information from many sources (e.g., other government agencies, reporting entities).<sup>36</sup> It is housed in the Ministry of Finance, but it retains both operational independence and an independent budget.<sup>37</sup> The work of the GDPML is based on inspections and supervision of reporting entities and on collection and analysis of suspicious activity reports (SARs) on a variety of transactions (MONEYVAL 2011). Transactions included are the following:

- Cash transactions over ALL 1.5 million;
- Noncash transactions over ALL 6 million;
- Cross-border movements of cash, bearer instruments, and precious stones with values in excess of ALL 1 million.<sup>38</sup>

In addition, all transactions that exceed ALL 350,000<sup>39</sup> must be conducted through a bank.

<sup>33</sup> Approximately EUR 10,000 and EUR 43,000, respectively, at the time of writing.

<sup>34</sup> Approximately EUR 143 at the time of writing.

<sup>35</sup> Remittances, although down from 14 per cent in 2007 (US Department of State 2008), still represent 9.2 per cent of GDP (MONEYVAL 2011).

<sup>36</sup> A FIU of the administrative type is organised as a centralised, independent, administrative authority, receiving and processing information from the financial sector to transmit to judicial or law enforcement authorities for prosecution. It functions as a "buffer" between the financial and law enforcement communities. Definition from the Egmont Group, <http://www.egmontgroup.org/about/what-is-an-fiu>.

<sup>37</sup> Interviews at the GDPML, 1 September 2011.

<sup>38</sup> Approximately EUR 7,000 at the time of writing.

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Wire transactions are not required to be reported, and there are no restrictions on international wire transfers. Although Albania is a cash-based economy, the number of money remittance businesses means that appropriate requirements should be in place to ensure that there is no misuse of the system. The lack of requirements for reporting wire transactions is a gap that needs to be addressed by the Albanian authorities, as noted by the MONEYVAL report (2011).

In addition to the high thresholds for reporting, two other significant obstacles are worth noting:

1. The required threshold for mandatory bank transactions is more than 15 times higher than the minimum wage. In addition, there appear to be no direct incentives from the anti-money laundering regulations in place to reduce the proportion of transactions that are carried out in cash.
2. The Bank of Albania has estimated that approximately half of remittances into the country do not use formal money remittance companies or financial institutions. While these remittances may not necessarily represent proceeds of crime, the fact that there is no obligation to report them makes it harder to follow a paper trail and identify the real beneficial owners.

The GDPML receives approximately 180–200 SARs per year. This is comparable to the number of SARs produced by other countries in the region.<sup>40</sup> The GDPML analyses these SARs by (a) checking all government registries, including the available registries for real estate, vehicles, and the national loan database at the Bank of Albania; (b) obtaining bank records; (c) requesting information from DNFBP (e.g., lawyers and accountants); and (d) making use of the law enforcement databases available.

After the analysis of an SAR is complete, it can be referred to the Joint Investigative Units (discussed below), the Serious Crime Prosecution Office, or the Albanian State Police. However, this information provided by the FIU cannot be used as evidence in court. Therefore, information gathered by the FIU must also be confirmed by a criminal investigation, in which the FIU can provide a supporting role.<sup>41</sup> In such cases, law enforcement officials can at any time submit a written request to the FIU for additional information. Regionally, the FIU also exchanges information within the Balkans through the International Law Enforcement Cooperation Units (ILECU).<sup>42</sup> It can initiate transmission of information to other members of the Egmont Group of FIUs (of which GDPML is itself a member). The GDPML also cooperates with the HIDAA in combating corruption, using a rule-based approach.<sup>43</sup> One important limitation, however, is that the current AML regulations in Albania only allow information to be gathered on national politically exposed persons (PEPs) and thus exclude foreigners.<sup>44</sup>

### A.2.2. Joint Investigative Units (JIUs)

Seeking to enhance the effectiveness of operations against organised crime and money laundering, Albania created the first Joint Investigative Unit in Tirana in 2007. It comprises eight prosecutors from the General Prosecutor's Office, eight judicial police officers, 10 Albanian State Police investigators, one FIU liaison officer, three judicial police officers from the Tax Authority, three customs officers, and two National Intelligence Service liaison officers.

<sup>39</sup> Approximately EUR 2,500 at the time of writing.

<sup>40</sup> Interviews at the GDPML, 1 September 2011.

<sup>41</sup> *ibid.*

<sup>42</sup> The ILECU project is funded by the European Commission and managed by the Austrian Ministry of Interior. It seeks to create Law Enforcement Cooperation Units to act as focal points for the exchange and collection of cross-border intelligence.

<sup>43</sup> A rule-based approach is based on a set of predefined rules. If the conditions specified in the rules are met, then action (normally also specified in the rule) is taken. This approach to preventing and combating money laundering and corruption may, however, encourage criminals to circumvent the rule by finding alternatives, leading in turn to reduced effectiveness.

<sup>44</sup> Interviews at the HIDAA, 2 September 2011.

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JiUs are specifically authorised to investigate certain crimes. These are listed in the memorandum of understanding that established JiUs and include 46 different offences, mainly related to corruption, tax offences, and money laundering. JiUs may initiate investigations. If the investigation relates to the offences enumerated in the anti-mafia law, the JiU will report the investigation to the Serious Crime Prosecution Office.<sup>45</sup> This referral is important, as the Serious Crime Prosecution Office can use the information to initiate a process of non-conviction-based forfeiture to confiscate the proceeds of crime, while the JiU continues an independent criminal investigation and prosecution. JiUs can initiate their investigations using almost any source of information, including the Albanian State Police, public officials, victims, informants, or the media. Furthermore, prosecutors in such cases (whether they are part of the JiUs or not) are authorised to employ special investigative techniques such as wiretapping and electronic surveillance in public areas, to gather evidence, without the need for court approval.

The JiU in Tirana is considered to have been successful. It produced 75 corruption-related prosecutions in the 2007–2008 period.<sup>46</sup> As a result, a second MoU was signed in 2009, establishing six district JiUs elsewhere in Albania. In addition to the new JiUs, the MoU added two liaison officers to the pool, bringing the HIDAA and the State Supreme Audit into the group of agencies involved. Seconded officials assigned to the JiUs work in the same place (with the exception of the liaison personnel) and report directly to the prosecutor in charge of each case. These prosecutors in turn report to the head of the JiU, who is also a prosecutor. The General Prosecutor's Office provides guidance on jurisdictional issues and coordination of all matters involving the seven existing JiUs.

One limitation identified relates to a JiU's capacity to investigate high-profile public officials who enjoy immunity from investigation and prosecution; this will be discussed later in the section on obstacles. Another limitation is that the JiUs are not authorised to use the anti-mafia law, which would ease their task by enabling them to reverse the burden of proof.

### A.2.3. Bank of Albania (BoA)

The Bank of Albania is the supervisory authority for banking and other entities licensed by it, such as bureaux de change, savings and credit companies, and postal payment services. It is important to note that Albania does not have a centralised database for bank accounts. There is, however, a central database on all loans made by banks, which can be accessed by the Albanian State Police and the GPO.

BoA's Supervision Department oversees the areas of compliance, transparency, anti-money laundering, and financing of terrorism. The BoA has a five-year anti-money laundering strategy. One of the major components of this strategy is the reduction of cash transactions. It also makes it mandatory for banks to have an AML compliance officer, although other institutions with an obligation to report are not subject to this requirement. The BoA does not involve itself in criminal investigation and prosecution, but it can take regulatory action and apply sanctions ranging from fines to the revocation of licences. Full-scope on-site inspection of supervised entities is conducted in an 18-month cycle.<sup>47</sup> Targeted on-site inspections are conducted for banks that have recurring problems.

The BoA has responsibility for supervising a large number of institutions. Albania currently has 17 commercial banks, of which 13 are foreign-owned; these 13 banks, according to interviewees, must meet stricter anti-money laundering standards imposed by their jurisdictions of origin. This is also the impression of MONEYVAL (2011), which reports that none of the banks operating in

<sup>45</sup> The Serious Crime Prosecution Office is part of the General Prosecutor's Office and is responsible for dealing with prosecutions relating to the anti-mafia law and the Serious Crime Court.

<sup>46</sup> Interview at the JiU, 1 September 2011.

<sup>47</sup> Interviews at the Bank of Albania, 2 September 2011.

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Albania are solely funded by Albanian capital. However, Albania has 283 bureaux de change that are supposed to be supervised by BoA. This is much too large a burden given BoA's resources (currently five staff are responsible for anti-money laundering compliance).

#### **A.2.4. General Directorate of Customs (GDC)**

The primary function of the customs authority is to guarantee revenue collection for the state.<sup>48</sup> For the GDC, law enforcement functions, which are closely connected to its AML role, are still new as a part of border management.<sup>49</sup>

In 2008 the GDC established a special unit responsible for combating money laundering at the borders. Cash and goods declarations are collected at border points and sent to the GDPML for analysis.<sup>50</sup> General cash and goods declarations received are not examined in more detail by the GDC unless the GDPML requests this. Exceptions to this rule are made when (a) cash and goods declarations are filed by commercial entities, or (b) suspicious activities are detected by the GDC. In these circumstances, the GDC will conduct its own operational analysis, checking its own databases and conducting physical inspections.

Albanian law requires all persons to present cash declarations when crossing borders if they are carrying over ALL 1 million. However, at present the GDC's resources do not allow it to inspect all persons and vehicles. Consequently, filing such declarations is in effect voluntary. This is one of the reasons why it is not possible for the GDC to estimate how much money circulates irregularly across borders or how much of it might be laundered money. Another challenge faced by the GDC is that it does not have the authority to request additional information from other government agencies. It is entirely reliant on feedback from the GDPML on any SARs submitted by GDC officers.

### **A.3. Anti-corruption functions and institutions**

Albania follows a multiagency approach in anti-corruption. AC efforts are spread among numerous agencies responsible for different stages of intelligence gathering, investigation, and prosecution. The principal specialized agencies involved are the High Inspectorate of Declaration and Audit of Assets, the Albanian State Police, and the State Supreme Audit.

#### **A.3.1. High Inspectorate of Declaration and Audit of Assets (HIDAA)**

Established in 2003, the HIDAA is responsible for receiving and analysing declarations of assets from public officials. It is an independent institution with its own budget and a total of 44 staff, including 11 inspectors with a law or economics degree. These 11 inspectors deal with declarations from approximately 4,500 officials, who must declare assets upon taking up office and thereafter on an annual basis. A final declaration is required upon termination of contract.<sup>51</sup>

Public officials who are required to file declarations include those dealing with budget matters and occupying positions vulnerable to corruption (prime minister, prosecutors, judges, directors of state-owned enterprises, and officials of tax and customs, among others). The HIDAA conducts full yearly audits on 450 to 500 of the asset declarations received. The interviewees stressed that

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<sup>48</sup> The government of Albania estimates that proceeds from the informal—non-taxpaying—sector of the country's economy represent anywhere from 30 to 60 per cent of GDP.

<sup>49</sup> Interviews at the GDC, 28 August 2011.

<sup>50</sup> Albania places suspicious transaction reporting requirements on both financial institutions and individuals. They are required to submit suspicious transaction reports if they exceed the legal thresholds at the border control areas.

<sup>51</sup> Interviews at the HIDAA, 2 September 2011.

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the information produced in these audits is considered admissible as evidence in court. The process for conducting audits consists of five steps:

1. All declarations are initially submitted to a risk-based computer analysis.
2. Most senior officials' declarations receive a more complete audit every other year.
3. Locally elected public officials and members of Parliament are fully audited every four years.
4. Four per cent of declarations (approximately 185) are chosen randomly to be fully audited each year.
5. Specific asset declarations receive additional verification based on tip-offs (approximately 50 to 60 audits per year).

Public officials are required to declare all assets, both formal and informal (given the informality of the economy, real estate, for example, may not be registered). Public officials' close family members are also required to declare their assets. However, this legal obligation does not apply to ascendants (parents) or collaterals (siblings)—a gap in the regulations. Another important flaw is the fact that only public officials (and not family members required to declare assets) are subject to sanctions. This means that, in practice, public officials who wish to hide assets can simply shift their ownership to a family member to escape sanctions.

Upon conclusion of an audit, the HIDAA may refer cases to any official institution for follow-up. But interviewees stressed that there is no coordination mechanism to verify follow-up actions taken by such authorities or the effectiveness of their actions. Like the interviewees at the JIUs, interviewees at HIDAA also indicated that immunity laws pose an obstacle to their work.

### A.3.2. Albanian State Police (ASP)

The ASP conducts corruption investigations under its Serious Organised Crime Division, which has 30 police officers designated as Judicial Police. As do the JIUs, the ASP can initiate a pre-investigation based on almost any source of information. This does not mean, however, that an official investigation has been initiated, a step that can only be taken by a prosecutor. Rather, the role of the ASP is to “verify the information” through a pre-investigation. Different sources of information can be accessed at this stage, such as by checking real estate ownership in Albania's real estate registration system, checking corporate ownership at the National Centre for Business Registration, and checking criminal records. Once there is sufficient information to indicate that a criminal violation has probably occurred, the case is referred to the prosecutor, who opens an official investigation by completing a case registration document. Judicial Police under the ASP then assist the investigation.

Two other directorates within the ASP also have anti-corruption responsibilities: the Directorate of Financial Crimes and the Directorate of Organised and Serious Crime.

*Directorate of Financial Crimes.* This entity currently has 146 police officers in the country. The scope of its work is limited to about 100 criminal offences, with corruption and money laundering as the top priorities.<sup>52</sup> Within the Directorate of Financial Crimes, the Sector for Criminal Asset Investigation has the role of verifying assets and deciding whether they are linked to any of the 28 offences listed in the anti-mafia law. This is the civil investigation into assets required by the anti-mafia law, which allows for non-conviction-based forfeiture. The anti-mafia legislation states that the financial investigation is autonomous from the criminal investigation. However, the interviewees said that they were only authorised to investigate once a criminal investigation had begun.<sup>53</sup>

<sup>52</sup> Interviews at the Albanian State Police, 30 August 2011.

<sup>53</sup> Interviews at the JIU, 1 September 2011.

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*Directorate of Organised and Serious Crime.* The Directorate for Organised and Serious Crime was created in January 2010, based on the new anti-mafia law.<sup>54</sup> Within the Directorate, a Sector for the Investigation of Criminal Assets was established. Prior to this, the Sector for the Investigation of Criminal Assets was part of the Directorate for the Fight against Money Laundering. However, the Albanian authorities decided to separate the anti-money laundering investigation from the financial investigation of assets to reflect the new legislative framework. A possible drawback to this new organization is the separation of the criminal investigation from the financial investigation, since they can benefit from coordination. However, interviewees said that the different sectors of the police will work jointly to make investigations effective.<sup>55</sup>

One remaining obstacle, however, is the territorial administrative divisions mentioned previously. If a crime is committed in one region, a financial investigation will be conducted there. However, if the person under investigation is from another region, an additional and separate investigation will have to be conducted by the Sector for the Investigation of Criminal Assets located in the other region. While the two sectors may share information, this is done indirectly, through the hierarchy of both institutions. One interviewee noted that this reduces efficiency, since the two parallel investigations can only communicate through several intermediate hierarchical steps.

The same interviewee stressed that a financial investigation can only be conducted once a case has been registered and the pretrial investigation phase has begun. It should also be noted that the Sector for the Investigation of Criminal Assets does not participate in the JIUs, which have their own financial investigators.

### A.3.3. State Supreme Audit

The State Supreme Audit is Albania's institution responsible for the supervision of the economic activity of state institutions and the use and preservation of state funds, as well as the economic activities of legal entities partially or fully owned by the state. It is responsible for the detection of corruption-related offences such as embezzlement or misappropriation of state funds.

## A.4. Obstacles and recommendations

The following obstacles were noted by stakeholders interviewed in Albania. Each description of an obstacle is followed by suggestions on how it might be overcome.

### A.4.1. Lack of trust among institutions

There is a reluctance to share information among institutions, and intelligence is seen by the authorities as something that should not be shared beyond the agency where it resides. Tamo, Baka, and Gjokutaj (2011) studied the relation between social trust, legal authority, and the rule of law in Albania. They concluded that the most important factors affecting social trust are the country's historical inheritance, a clan-based mentality, the performance of public institutions, and corruption on both a large and small scale. Another factor is that the former communist regime was characterized by a hierarchical and oppressive bureaucracy. This fostered a culture of fear of state institutions, which persists to some extent.

<sup>54</sup> The Directorate for Organised and Serious Crime is responsible for conducting investigations (in coordination with the Serious Crime Prosecution Office), leading to cases that are tried by the Serious Crime Court (SCC). The actions of this Directorate are subject to the scrutiny of the Serious Crime Prosecution Office, which in turn is responsible for initiating the prosecution at the SCC.

<sup>55</sup> Interview at the Albanian State Police, 1 September 2011.

*Recommendations:* Building trust may be particularly difficult where no previous relationship exists among the institutions in question. Nevertheless, efforts to develop and maintain meaningful agency-to-agency contacts may serve to build new professional relationships. Therefore, policies and procedures should be put in place to facilitate contact and communication. Institutions should also be helped to better understand the legal powers and responsibilities vested in each agency, on the premise that better understanding of each other's roles will promote greater trust. The JIUs can serve as a positive model in that respect.

#### **A.4.2. Lack of familiarity with AML laws**

Albania has been addressing the issue of corruption and money laundering since 2000. Commendable efforts have been made, notably the establishment of the JIUs and the enactment of the anti-mafia law. However, these efforts lack a comprehensive framework (see section 6.4.4 below) that would allow for a more efficient policy response from the government.

Despite 10 years of activity in the area, it became apparent during the interviews for this study that institutions were often unfamiliar with the roles, powers, responsibilities, and activities of other institutions operating in the same arena. One relatively new element is the anti-mafia law of 2009 and its provision for non-conviction-based asset forfeiture. While some interviewees stated that this law could not be used in cases where corruption was the predicate offence to money laundering (since corruption is not within the scope of the anti-mafia law), others believed that, because money laundering is an autonomous offence, this should be possible. There is therefore a need to clarify what can be achieved with the new anti-mafia law. With respect to financial investigation (which the anti-mafia law establishes as autonomous from the criminal investigation), there are diverging opinions on whether the financial investigation can take place before, during, or after the initiation of the criminal investigation.

*Recommendations:* The limits and possibilities imposed by the anti-mafia law should be clarified by the authorities, in discussion with investigators, prosecutors, and judges. There appears to be reluctance to apply the full text of the law, especially because there is no significant case law available to interpret it. Further clarification could make it possible to develop better strategies for dealing with future cases.

#### **A.4.3. Duplication of structures**

Territorial jurisdiction for criminal investigations in Albania is determined both by the place where the offence has been committed and the place where the defendant resides. Several interviewees stated that the specific departments of the Albanian State Police and the GPO (and even the JIUs) involved in investigations must go through a cumbersome bureaucratic process to request information from relevant offices in different regions. This process is slow, with communication in writing and formal submissions to the upper levels of the hierarchy. This leads to reluctance to collaborate and erosion of trust between institutional units. It also adds to strains on the financial and human resources available.

One attempt to deal with these jurisdictional obstacles was the creation of the Serious Crime Court in 2004. This court has criminal jurisdiction over the entire Albanian territory for over 30 different offences in the Criminal Code. After the passage of the anti-mafia law in 2009, the Serious Crime Court retained its jurisdiction over offences ranging from organised crime to money laundering (but not all of its predicate offences, such as corruption). Since money laundering is an autonomous offence and can be taken to court without a conviction on its predicate offence, the anti-mafia law could be used for prosecution when proceeds from corruption have been

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laundered.<sup>56</sup>

National jurisdiction under the anti-mafia law does not apply to the pre-trial investigation and prosecution phases, which must still rely on their own structures and respect the jurisdiction of each region. Nevertheless, the law has enabled Albania to informally create the JIUs. Interviewees suggested that it would probably have been safer to establish the JIUs through a legally binding provision instead of an MoU without legal standing (since the JIUs are not enshrined in law, they can in theory be disbanded at any time). But they recognized that it was unlikely that Parliament would pass such a law.

*Recommendations:* Albania should work to improve coordination in its criminal justice system, including better sharing of information to avoid duplication of work. This will require that administrative procedures be streamlined to remove barriers to direct sharing of information between staff in different administrative regions. The positive example of the JIUs should be replicated and such a cooperative approach applied more widely.

#### **A.4.4. Need for an overarching framework for coordination**

The lack of a comprehensive strategic framework to coordinate the different AML and AC agendas is another problem. Strategies for combating both money laundering and corruption exist separately rather than as part of an integrated whole. At the enforcement level, with the exception of the JIUs, government authorities have no follow-up mechanism for ensuring that different institutions work together for the most effective results. Mistrust both contributes to and is perpetuated by this situation. Without coordination, moreover, there can be no reliable statistics, making it more difficult for the government to map trends and prioritise actions strategically.

*Recommendations:* Current frameworks should be reviewed, and mechanisms should be put in place to link different institutions through the sharing of actionable information. As a part of this process, efforts should be made to collect reliable statistics available to all relevant stakeholders (see section 6.4.8 below).

#### **A.4.5. Cash-based economy**

Reports indicate, and interviewees confirmed, that Albania is still a cash-based economy, with a large informal sector. Although anti-money laundering mechanisms are in place to ensure that all transactions above a certain threshold pass through financial institutions, this threshold is high in comparison, for example, to the minimum wage. A large proportion of transactions are therefore not included.

*Recommendations:* The government is already making an effort to reduce the proportion of transactions in the country that are executed in cash. In addition, lowering the thresholds for reporting financial activities should be considered, taking into account the cost of living and the average per capita income of the country. Lower thresholds would facilitate better collection of data from nonbank reporting institutions in particular.

#### **A.4.6. Weak supervisory institutions**

Law 9917 of 2009, On the Prevention of Money Laundering and Terrorism Financing, contains a comprehensive list of entities with an obligation to file SARs, including bank and nonbank

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<sup>56</sup> It should be noted that corruption was specifically removed from the final draft of the anti-mafia law. The authors found no solid information about the reasons for this, but interviewees suggested it may have been done to preserve the institutional status quo.

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financial institutions, insurance and reinsurance (including retirement funds), stock exchange and entities active in securities trading, real estate firms, lawyers, casinos, accountants, and travel agencies, among others. The law also specifies the responsible supervisory institutions for each of these sectors. The BoA is responsible for supervising banks, nonbank financial institutions, bureaux de change, savings and credit companies, and postal outlets that perform payment services.

While the AML legislation also specifies supervisory agencies for other reporting entities (e.g., the National Chamber of Advocates for lawyers), interviewees said that several responsible supervisory institutions do not in fact carry out this function.<sup>57</sup> They lack the capacity or the will to supervise compliance with anti-money laundering standards in the sectors for which they are theoretically responsible. However, it is simply not possible for the BoA or the GDPML, given their limited resources, to step in and conduct on-site inspections of all the institutions with an obligation to file SARs.

*Recommendations:* Supervisory agencies licensed by the state to oversee AML compliance need to be trained and equipped with resources (both financial and human) to adequately conduct inspections on all reporting entities. Also, clear definition of responsibilities in the area of supervising compliance with AML should be set in the official bylaws that give authority to these agencies. Given the lack of resources, a comprehensive risk-based analysis should be conducted in order to determine which sectors have the highest risks of money laundering. Qualification of supervisory agencies should start by focusing on the authorities responsible for these sectors. The FIU could be in charge of conducting such risk analysis, given its overarching role in AML monitoring.

#### A.4.7. Variation in the level of compliance of reporting institutions

This obstacle is closely related to weak supervisory institutions. The BoA believes that most banks in Albania already meet the AML standards imposed by their jurisdictions of origin, since they are partly foreign-owned. Nevertheless, BoA notes that on-site compliance inspections could be improved. For example, a matrix with clear indicators of money laundering risk to be assessed could be made available. Nonbank financial institutions, such as bureaux de change, pose additional difficulties for supervision. With 283 bureaux de change registered and the BoA's limited resources, there is a serious risk that remittances may be used to circulate proceeds of crime into or out of the country with little fear of detection. This is because of the high monetary thresholds imposed for reporting, because no suspicious transaction reports (STRs) are produced for international transfers, and because there are no regular on-site compliance inspections of these bureaux de change.

Interviewees also pointed out that there is a large unregulated real estate sector in the country and that real estate agents do not provide SARs. The existence of unregulated real property allows for easier laundering of the proceeds of crime. Two institutions are currently involved in regulating the sector: the Central Office for the Registration of Immovable Property is responsible for formally registered properties, while the Agency for Legalisation, Urbanisation and Integration of Informal Areas/Constructions attempts to provide formal status for currently irregular real estate. Both rely only on paper records. The division of responsibility between two agencies and their reliance on paper records makes the investigation of property records, and therefore the evaluation of risk, extremely cumbersome and time consuming.

*Recommendations:* In order to establish indicators for AML risk assessment to be used in on-site visits, the BoA and the GDPML could create a matrix of "red flags" to be applied. This matrix could also be used to train staff of reporting institutions (particularly nonbank institutions) on

<sup>57</sup> Interviews at the Bank of Albania, 2 September 2011.

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indicators of risk. Steps should also be taken to begin transferring paper-based records into digital database format. Once the records have been digitalised, mechanisms should be put in place to allow the relevant authorities to access them to check information provided by the reporting institutions.

#### **A.4.8. Lack of statistics**

The authors requested statistics from several institutions, but consistent statistics were not available. One interviewee said that most AML statistics were collected manually, resulting in inaccurate data. MONEYVAL (2011) noted the need for more detailed statistics on the origin of the reports received by the FIU and the outcome of the cases forwarded to the GPO. Reliable statistics, as previously noted, are essential to effective follow-up mechanisms by related agencies.

Among the exceptions in this regard is the GDPML, which maintains statistics on the number of STRs and SARs received, as well as the value of proceeds confiscated (although there appear to be no statistics on the value of proceeds seized).

*Recommendations:* While addressing the general problems of statistical agencies in Albania is beyond the scope of this study, the institutions involved in AML and AC should take the initiative to collect more organised data on their own processes. This does not require expensive new software, but simply a managerial decision to start collecting and analysing data more systematically. It is also important to share these analyses with other relevant authorities.

#### **A.4.9. Immunities**

Interviewees mentioned that investigations and prosecutions are hindered by provisions for immunities. In particular, parliamentary authorisation is needed for investigations of PEPs. This reduces the effectiveness of an investigation since it is highly likely that the subject, given advance notice of the investigation, can find ways to dispose of or hide the relevant assets.

*Recommendations:* The regulations on immunity in Albania should be revised to balance the need for adequate protection for office holders with the need to permit investigation of serious crimes. Such reform admittedly would be difficult to pass without substantially increased pressure from stakeholders.

## Appendix B. Tanzania case study

### B.1. Anti-money laundering and anti-corruption legislation

Tanzania, a common law jurisdiction, criminalised money laundering through the Anti-Money Laundering Act (AML Act) in 2006. The act applies to both Mainland Tanzania and Zanzibar; however, the Financial Intelligence Unit established as a result of the act did not have jurisdiction over Zanzibar until recently (Goredema 2011). For AML laws to apply in Zanzibar, Zanzibar had to pass a separate act in 2010. Subsidiary legislation was passed in 2007, detailing measures that should be taken by reporting institutions to identify customers and report suspicious transactions to the FIU.

#### Box B.1 Institutions visited in Tanzania

- Prevention and Combating of Corruption Bureau
- UK Department for International Development
- Embassy of Norway
- Financial Intelligence Unit
- Bank of Tanzania (Office of the Secretary to the Bank; Directorate of Banking Supervision)
- General Attorney's Chambers (Directorate of Public Prosecutions)
- Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
- Tax Revenue Authority
- An international bank
- Ethics Secretariat
- Tanzania Police Force
- An independent researcher

In the area of prevention, the FIU established guidelines for the verification of customers' identities and AML guidelines for banking institutions (Tanzania FIU 2009a, 2009b). These set forth detailed procedures that banks are required to have in place to comply with AML. The National Board of Accountants and Auditors, Tanzania's regulatory body for the accounting industry, has produced its own guidelines. However, there are no similar guidelines for other DNFBP such as lawyers and real estate agents. Notably missing in the AML regulations are provisions for sanctioning reporting institutions in case of noncompliance with AML standards.

Corruption is a predicate offense for money laundering in the AML Act. The act states that predicate offences include corrupt practices, but it does not detail what those practices are.<sup>58</sup> Neither tax evasion nor tax fraud is among the predicate offences. However, tax evasion within the mining sector, which has grown in importance as a source of income for the state, seems to be a significant source of illicit flows.

<sup>58</sup> However, under Part III of the Prevention and Combating of Corruption Act of 2007, corruption is described as a series of different practices, from bribery of local and foreign officials to possession of unexplained wealth and embezzlement. A more straightforward approach would be to define the offences in terms of "any property obtained from criminal conduct," which would allow the proceeds of all criminality to be encompassed by the term.

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### **Box B.2 The EPA scandal in Tanzania**

Corruption and money laundering often take place in parallel; most commonly the presence of one enables the other. The External Payment Arrears (EPA) account case in 2005–2006 involved fraudulent payments made from the Bank of Tanzania, the central bank, to more than 20 companies owned by prominent Tanzanian business people. In some cases these companies and their bank accounts were registered in secrecy jurisdictions. Staff of the Bank of Tanzania were allegedly involved.

The EPA is an account set up by the Bank of Tanzania to allow import/export businesses to make payments in foreign currency to creditors outside the country. In this period approximately USD 131 million was transferred irregularly from this account to foreign banks. Some companies forged documents to show they owed money abroad in order to access funds in the EPA account. There were allegations that these transfers were linked to financing the electoral campaign of the ruling party in 2005. Funds were also used to purchase real estate property in Tanzania and abroad.

**Sources:** Norad (2011); Mosoba (2011); Bwahama (2012); ICAR (n.d.).

In the law enforcement sector, the Proceeds of Crime Act (PC Act) of 1991 regulates seizure and confiscation of property connected to, or any proceeds of, an offence. A criminal conviction for a serious offence is required to prove that assets are proceeds of crime.<sup>59</sup> Such a criminal conviction allows the Director of Public Prosecutions (DPP) to apply for confiscation of the proceeds. However, the judge is not obliged by law to request confiscation following a criminal conviction. Given Tanzanian judges' tradition of focusing on incarceration rather than on depriving criminals of illicit assets, there have in fact been few efforts at confiscation. Investigation of assets cannot start autonomously from the criminal investigation of the predicate offence; that is, there are no provisions to allow a financial investigation to take place independently. There are indications, however, that the Public Prosecution Division at the General Attorney's Chambers is considering an amendment to the PC Act to include civil forfeiture.<sup>60</sup>

Corruption has also been criminalized through the Prevention and Combating of Corruption Act (AC Act), enacted in 2007.<sup>61</sup> This law established the Prevention and Combating of Corruption Bureau (PCCB), whose director is appointed by the president. The PCCB is mandated to work on corruption prevention but also has police and prosecution powers, engaging directly in the investigation and prosecution of offences listed under the AC Act. Among the offences criminalized by the act are possession of unexplained wealth and transfer of proceeds of corruption. The act also envisages civil recovery of proceeds of corruption (in Article 44) after a criminal procedure. It states that "no conviction or acquittal of the agent ... in respect of an offence under this Act shall operate as a bar to civil proceedings for the recovery of such amount or money value." This should not, however, be confused with non-conviction-based asset forfeiture, since a criminal investigation is still required. Tanzania's three-year anti-corruption strategy, the National Anti-Corruption Strategy and Action Plan 2008–2011 (NACSAP II), has

<sup>59</sup> "Serious offence" was not defined in the 2006 AML Act, but this term was detailed in the Anti-Money Laundering and Proceeds of Crime Act of 2009. The definition includes drug trafficking, terrorism, illicit arms trafficking, organised crime, racketeering, trafficking in human beings and smuggling of immigrants, sexual exploitation including of children, trafficking in stolen goods, corruption or bribery, fraud, counterfeiting, armed robbery, theft, kidnapping, smuggling, extortion, forgery, piracy, hijacking, misappropriation of funds, insider trading, and money laundering, among other offences.

<sup>60</sup> Interview at the Attorney General's Chambers, Public Prosecution Division, 28 September 2011.

<sup>61</sup> The AC Act is only applicable to Mainland Tanzania. For a description of which activities are considered corruption offences, see note 58.

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expired, and a new strategy is expected.<sup>62</sup>

Requests for mutual legal assistance from foreign countries (for collection of evidence or asset forfeiture) are regulated by the Mutual Assistance in Criminal Matters Act, enacted in 1991. Another important piece of the AC framework is the Public Leadership Code of Ethics Act (Ethics Act), enacted in 1995. This establishes a requirement for declarations of conflict of interest by public officials and submission of annual asset declarations by certain officials, as well as their spouses and children. Failure to submit and fraudulent declarations are liable to sanctions such as warnings, suspension, or dismissal. Although the act states that these declarations shall be made available to the public (Article 20), in practice these are confidential documents.<sup>63</sup> However, declarations can be shared with the police for investigations. It is not clear whether or not these documents can be used as evidence in a court of law.

## **B.2. Anti-money laundering functions and institutions**

### **B.2.1. The Financial Intelligence Unit**

Tanzania's FIU, which began operations in September 2007, is under the Ministry of Finance and Economic Affairs. However, it is categorized as an extra-ministerial department, which is not obliged to report to the Ministry of Finance but publishes an annual report and presents accounts to the Auditor General. It had 15 employees in September 2011. As an administrative FIU, it has no police powers. It is mandated by the AML Act to gather intelligence and disseminate it to relevant law enforcement authorities (specific authorities are not clearly defined in the act). The FIU is also responsible for awareness-raising activities around AML.

The Tanzania AML regime requires financial institutions to provide suspicious transaction reports (STRs) to the FIU within 24 hours of noting the suspicious activity.<sup>64</sup> Providing STRs requires that reporting institutions having due diligence procedures in place to verify the identity of clients at the moment of establishing a business relationship. Due diligence procedures should also enable reporting institutions to monitor the business relationship on an ongoing basis, establishing a pattern of transactions for each client so that unusual transactions can be spotted. The guidelines published by the FIU also detail requirements for identification of beneficial ownership of corporate entities (identification of directors, of anyone holding 5 per cent or more of voting rights, and of any individual authorized to enter into a transaction on behalf of the entity).

The AML Act requires enhanced due diligence for politically exposed persons, or PEPs. In practice, this means that reporting institutions need to have mechanisms to establish whether a client is a PEP (or related to one) and the sources of his or her funds. The institution also needs to require senior management approval for engaging in business with such customers and to maintain ongoing monitoring of such relationships. Tanzanian banks feed information about clients rejected due to due diligence procedures into a collective electronic red-flag system.<sup>65</sup> Although it is not clear whether this system is open to all banks, it allows participating banks to cross-check new clients when opening an account to verify whether the new customer has been rejected by another bank. Although some reports say that enhanced due diligence is applicable only to foreign PEPs,<sup>66</sup>

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<sup>62</sup> NACSAP II emphasizes prevention and awareness raising, but law enforcement components are included in Goal 8 of the strategy (Good Governance Coordination Unit 2008). The new NACSAP was not ready at the time of writing.

<sup>63</sup> Interviews at the Ethics Secretariat, 27 September 2011.

<sup>64</sup> In addition to banks, bureaux de change, real estate agents, dealers in precious stones, customs officers, lawyers, notaries, accountants, and any other professionals involved in giving financial advice or advice on incorporation of legal entities are considered reporting persons under the AML Act.

<sup>65</sup> Interview at the branch of a large international bank, 30 September 2011.

<sup>66</sup> Interviews at the Bank of Tanzania, 29 September 2011.

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neither the AML Act of 2006 nor the FIU Guidelines differentiates between foreign and domestic PEPs. Moreover, interviewees at one of the largest banks operating in the country said that of their clients monitored due to a PEP profile (around 400 people in total), 95 per cent are domestic.<sup>67</sup> The extent to which the AML standards are effectively reducing the amount of illicit money passing through Tanzania's banks has not yet been assessed.<sup>68</sup>

The FIU has established a standard STR form, which can be submitted in writing by post, fax, or e-mail, or orally in urgent situations. A money laundering reporting officer interviewed at a bank in Dar es Salaam reported that STRs are usually submitted in paper format.<sup>69</sup> In 2010, the FIU received 20 STRs. Given Tanzania's large financial sector, one would expect there to be many more STRs in a given year.<sup>70</sup> Indeed, the number of 20 STRs is strikingly low, particularly given that AML reporting obligations also extend to nonfinancial institutions such as real estate agents. While one reason may be that Tanzania is largely a cash-based economy, this still seems to represent low levels of enforcement of the law.<sup>71</sup>

A National Multidisciplinary Committee on AML has also been established to advise the government on the effectiveness of AML policies and to work to protect Tanzania's international reputation. The commissioner of the FIU is a member, as are representatives of the Bank of Tanzania (who chairs the committee); the ministers of finance (from Zanzibar and Mainland), foreign affairs, and justice (from Zanzibar and Mainland); the police (from Zanzibar and Mainland); the Tanzania Intelligence Services; and the Capital Markets Authority. The PCCB is not a member.

To coordinate exchange of information with other government institutions at the operational level, the FIU staff also liaises directly with the police, tax, and customs authorities. STRs identified as having corruption as a predicate offence are sent to the PCCB; the rest are sent to the Financial Crimes Unit of the police Directorate of Criminal Investigation. The FIU rarely receives feedback on the investigations, leading to delay in response to the reporting institution on whether it can continue with the business transaction that generated the STR. However, the police may get back directly to the institution that submitted the STR with requests for more information or a freezing order.<sup>72</sup> The FIU has no powers to freeze or block bank accounts; this power instead rests with law enforcement agencies (the Inspectorate General of the Police in liaison with the Attorney General).

The Tanzania FIU was not a member of the Egmont Group at the time of this study. This prevents it from accessing Egmont's secure communication channels and sharing information with foreign FIUs. Its relationship with foreign institutions takes place through mutual legal assistance requests sent out by the Attorney General's Chambers or through memoranda of understanding. At the time of this study, the Tanzania FIU had only one MoU with a foreign FIU (the UK Serious Organised Crime Agency). The process of getting information from abroad is thus very challenging. In addition to not being an Egmont member, the FIU faces the difficulties of being relatively new and having no track record of engaging with foreign counterparts.<sup>73</sup>

<sup>67</sup> Interview at the branch of a large international bank, 30 September 2011.

<sup>68</sup> In 2009, ESAAMLG, the FATF regional body, conducted a review of Tanzania's AML system focusing on gaps in laws (ESAAMLG 2009). No studies that assess the magnitude of different sources of money for laundering in the country could be found.

<sup>69</sup> Interview at the branch of a large international bank, 30 September 2011.

<sup>70</sup> Tanzania has 37 banks and financial institutions (10 of which are subsidiaries of international banks) and about 170 bureaux de change, all under the supervision of the Bank of Tanzania (see the Bank of Tanzania website, <http://www.bot-tz.org/BankingSupervision/RegisteredBanks.asp>). The Bank of Tanzania is also obliged to provide STRs to the FIU.

<sup>71</sup> Interview at ESAAMLG, 29 September 2011.

<sup>72</sup> Interview at the branch of a large international bank, 30 September 2011.

<sup>73</sup> Interviews at the FIU, 27 September 2011.

## B.2.2. Reporting institutions and regulatory agencies

Although the FIU issues the guidelines, it is not responsible for supervising reporting institutions' compliance with AML standards. In fact, it seems to have very little interaction with reporting institutions except for receiving the STRs.<sup>74</sup> Interviewees at the FIU explained that it did not have the responsibility to supervise institutions. Instead, different types of reporting institutions are supervised by their own regulatory authorities. For example, the Bank of Tanzania (BoT) is responsible for supervising the financial industry in Mainland Tanzania and in Zanzibar. There are around 50 BoT staff to supervise more than 200 institutions (these include banks and bureaux de change, but no DNFBP). Since the BoT is required to perform onsite inspections and has limited human resources, annual visits are conducted only on those businesses that are assessed by the BoT as having more risk. On average, approximately 30 on-site examinations are conducted per year. Teams of up to 10 examiners are placed in the institution under review for a period of up to a month to analyze records and interview staff, assessing banks' compliance with AML standards and other aspects of their operations. The recommendations made in a final report are shared with the board of directors of the institution in question as well as with the BoT's Bank Supervisory Committee. Levels of compliance with recommendations tend to be high.<sup>75</sup> Sanctions can be as high as fines of TZS 1 million (EUR 636 at the time of this study) per day of noncompliance and may include dismissal of directors.

For accountants and auditors, the National Board of Accountants and Auditors (NBAA) is the supervisory authority.

There are, therefore, clear lines of responsibility for supervision of financial institutions, and of accountants and auditors. However, such clarity is lacking in other sectors. Attorneys and other legal professionals are obliged to submit STRs, but they are not effectively supervised. The Tanganyika Law Society, Tanzania's bar association, is not exercising its supervisory role in this area. Currently, the FIU is trying to fill in this gap, but with only 15 staff members to cover almost 2,000 lawyers operating in Tanzania, in addition to other FIU responsibilities, effective supervision is not feasible.<sup>76</sup> Real estate agencies, for their part, are not organised under one supervisory body and are not providing STRs despite their legal responsibility to do so.

## B.3. Anti-corruption functions and institutions

### B.3.1. The PCCB

The Prevention and Combating of Corruption Bureau (PCCB) is a large agency with more than 1,800 staff, 800 of whom are investigators. Its mandate extends from prevention to awareness raising and law enforcement. The AC Act gives the PCCB powers to subpoena, arrest, and conduct searches. Each investigation team at the PCCB comprises a lawyer and a group of investigators who meet daily to follow up on investigations. However, it is not clear whether PCCB investigators have been trained to carry out financial investigations, crucial in cases of money laundering.

The information collected by PCCB is considered evidence in court, unlike that gathered by the FIU. In addition, the PCCB has its own prosecutors, and thus in theory it can bring corruption

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<sup>74</sup> Training on AML standards was provided by the FIU in 2009 to some reporting institutions and supervisory authorities. But, as many interviewees acknowledged, the FIU is still a quite recent addition to Tanzania's regulatory framework on AML and has a small workforce. This may account for its low level of interaction with reporting and supervisory institutions.

<sup>75</sup> Interviews at the Bank of Tanzania, 29 September 2011.

<sup>76</sup> Figures for 2009, according to the Tanganyika Law Association (<http://www.tls.or.tz/pdf/rolls.pdf>).

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cases directly to the courts. However, in many cases it is the Director of Public Prosecutions at the Attorney General's Chambers who decides which cases are taken to court.<sup>77</sup> It is not clear from the interviews or the material collected how decisions are taken on which agency should lead a prosecution when corruption is identified as a predicate offence. It seems that greater clarity is needed as far as which cases require the DPP or the PCCB to take the lead and which require close cooperation between the two agencies.

The PCCB has offices in 94 districts across the country and is well known to the population (PCCB 2009, 42). At the district level, PCCB officials deal with petty corruption cases, while the head office in Dar es Salaam focuses on grand corruption. District offices have a goal of investigating and prosecuting at least one petty corruption case per month. At the head office, the target is five cases of grand corruption a year. Despite these goals, anti-corruption efforts in Tanzania in general have had only modest success (Meagher 2004, 9; Doig, Williams, and Watt 2005, 69; Chène 2009; Norad 2011). No data was provided to the authors on rates of successful prosecution and sentencing in corruption cases.

Cooperation between PCCB and other domestic authorities for the exchange of information is informal. No memorandum of understanding or structured channels of communication have been established between institutions. However, an interviewee reported that according to the AC Act, no confidentiality clause can be invoked by any Tanzanian institution against a request of information by the PCCB. Moreover, the PCCB's large staff includes some personnel seconded to other institutions, who serve as informal channels of communication.<sup>78</sup>

Mutual legal assistance (MLA) requests for information from other countries in cases investigated by the PCCB also need to go through the Attorney General's Chamber. There have been challenges in getting responses to such requests; in some cases Tanzania has been waiting for a response from foreign authorities for years. With the statute of limitation of five years applicable to corruption cases, delays in obtaining information are a significant obstacle to prosecution.<sup>79</sup> Delays may be caused by foreign authorities requesting more detail and better evidence to proceed with requests. This suggests that documents may not be properly drafted by Tanzanian authorities and/or that Tanzania authorities involved in anti-corruption and anti-money laundering lack effective international networks. Such networks would be helpful in allowing authorities to liaise with foreign counterparts, establish more effective channels of communication, and obtain guidance on what other states require as part of an MLA request.

The PCCB also relates to other local institutions on an ad-hoc basis through its training programmes. Some judges, magistrates, and prosecutors have participated in courses run by the PCCB on the AC legislation. The PCCB is also engaged with the Ethics Secretariat in a staff exchange. However, there is no systematic long-term programme of regular training for officials involved in anti-corruption and anti-money laundering from different government agencies. This was acknowledged as a need by several interviewees.

### B.3.2. Tanzania Police Force

Except for cases linked to corruption, which are followed up by the PCCB, it is the police force that is responsible for investigation of money laundering after the FIU reviews an STR and decides

<sup>77</sup> Particularly in the stages after obtaining a criminal conviction, the DPP takes the lead on any efforts to recover assets. The police can also bring cases before magistrates (the police have their own prosecutors, in addition to investigators), and that tends to take place in smaller districts. But the Attorney General's Chambers are working to bring prosecution completely under the DPP's control in a process of "civilianization" of prosecutions, according to an interview with a key informant.

<sup>78</sup> Interview at the Prevention and Combating of Corruption Bureau, 26 September 2011.

<sup>79</sup> It should be noted that the five-year statute of limitation period is in accordance with article 29 of the United Nations Convention Against Corruption (UNCAC). If necessary, longer statutes of limitation should be established to ensure time for effective investigation and prosecution of corruption-related offences.

that well-founded suspicions exist. In particular, STRs are forwarded to the Financial Crimes Unit within the Criminal Investigation Department of the Tanzania Police Force.

Compared to the PCCB, the police are much less well equipped in terms of personnel and equipment to conduct complex investigations of financial crime. The force has a total of 6,000 detectives. The Financial Crimes Unit, responsible for investigations based on STRs, has 10 detectives at headquarters. It also has 10 units in different regions with four or five detectives each. Compared with the 800 investigators that work for the PCCB, focusing on a single criminal offence (corruption), the number of detectives in the police Financial Crimes Unit is very small. More worryingly, these officials do not receive the necessary training on financial investigation. A few have received a course offered by Interpol.<sup>80</sup> But most of the responsible staff do not know how to conduct investigations in AML. Most police investigators are not clear on what information they should be looking for and do not know how to follow a money trail, a particularly serious constraint in a country where most transactions are in cash.

The result is that about 50 per cent of police dockets are returned by the Division of Public Prosecution at the Attorney General's Chambers due to lack of sufficient evidence.<sup>81</sup> To deal with this, the Attorney General's Chambers started to work more closely with the police, giving legal advice to detectives at the beginning of some investigations. In these cases, the rate of successful prosecution went up to 90 per cent.<sup>82</sup>

The use of special investigative techniques, such as surveillance, is permitted under both the AML and AC Acts. However, the police force does not have the necessary equipment to conduct this type of operation. Finally, the police act as the custodians of seized assets while a case is pending. However, they lack the capacity to maintain vehicles or real estate, not to mention agricultural properties (including livestock) that are sometimes seized. Although this is not necessarily a responsibility of the police, Tanzania also lacks a policy on management of assets confiscated abroad and returned to the country.

### **B.3.3. Division of Public Prosecutions within the Attorney General's Chambers**

The Division of Public Prosecution is responsible for all types of cases that require prosecution in Tanzania (except those involving court martial). There are 303 state attorneys employed under the Attorney General's Chambers in at least 17 zonal offices, covering both civil and criminal offences.<sup>83</sup> In 2010, 11 files of AML cases were taken to prosecution (no information was provided on the underlying predicate offences). Of these, five received a sentence and six had to be returned to the PCCB or the police for further investigation.

As mentioned above, the DPP receives cases investigated by the police for prosecution. When the evidence collected is not enough to be brought to court but the DPP still believes there may be grounds for a court case, files are handed back to the police or PCCB with guidance for further investigation. In those cases for which the DPP believes there is not enough material to bring the case to court, they advise that the investigation be closed. More frequently, the police request DPP guidance at early stages, and in some situations the DPP joins the police or the PCCB in investigative task forces, providing legal advice. Particularly in cases that will require asset recovery, DPP tends to join investigations at early stages.

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<sup>80</sup> Interpol has a liaison officer operating inside the police headquarters building.

<sup>81</sup> Interview at the Attorney General's Chambers, Public Prosecution Division, 28 September 2011.

<sup>82</sup> Ibid. The successful experiences mentioned did not refer to money laundering cases in particular, but efforts to work together at the early stages of investigations can benefit different types of criminal investigations.

<sup>83</sup> This figure does not include support and administrative staff working at the Attorney General's Chambers.

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### B.3.4. Ethics Secretariat

The Ethics Secretariat is an independent department operating under the president's office, mandated to receive asset declarations from civil servants, covering both Mainland Tanzania and Zanzibar. It was established in 1995 by the Public Leadership Code of Ethics Act. However, it has only had the institutional capacity to review declarations since 2009. The Ethics Secretariat is a small institution with 137 total staff at the time of this study, located in six regions. Seventy of these are investigators responsible for reviewing declarations and conducting on-site visits to verify assets. Approximately 8,800 public officials, spouses, and children under 18 are required to submit annual asset declarations.

The law requires the Ethics Secretariat staff to make a physical verification of all assets for those who submit a declaration. However, since the Secretariat does not have enough resources, a sample of 10 per cent of the declarations is verified.<sup>84</sup> Sometimes the PCCB or the police collaborate by providing initial information about individuals under review. Declarations that are shown to be fraudulent are referred to the Ethics Tribunal. The public official responsible for a fraudulent declaration needs to appear before a judge; sanctions may include demotion or suspension. Submitting a false declaration is not considered a criminal offence, but if after investigation, there are grounds to believe that the property or funds declared are proceeds of corruption, that opens up the possibility of prosecution for a criminal offence. The Ethics Tribunal has the same standing as regular courts in Tanzania. Since it was only set up in 2010, with its first session in 2011, there is as yet no record of a case brought forward. However, the rate of compliance with submission of declaration has gone up to 96 per cent in 2011, compared to approximately 60 per cent before the creation of the tribunal.<sup>85</sup>

The list of public posts that have an obligation to submit a declaration, as established by the Public Leadership Code of Ethics Act, could serve as an indication of posts whose holders would be considered domestic PEPs. No institution interviewed mentioned making such use of this list.

## B.4. Obstacles and recommendations

Given the features of Tanzania's AML and AC landscape, the following have been identified as obstacles in the country's capacity to use its AML framework to support AC work. Recommendations for possible remedies follow each obstacle. In many cases, the recommendations overlap, given that problems are interrelated.

### B.4.1. Cash-based economy

Tanzania is predominantly a cash-based economy. It is not mandatory to conduct large transactions through banks. Less than 10 per cent of the population has bank accounts, and even high-value transactions, such as paying for land and other types of real estate, commonly take place in cash. The country also receives large sums in informal remittances. In 2010, Tanzania received USD 17 million from citizens abroad, according to the World Bank (2011, 239). Although remittances are in most cases legitimate, money transfer operators handling these funds are vulnerable to being used for money laundering.

This raises the broader question of the usefulness of AML systems in such contexts, since these standards were developed for financial systems in which transactions are conducted through the

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<sup>84</sup> Only 250 public officials have had their properties verified so far, and physical verification has not been able to go much further than identifying minor discrepancies between what officials declared and the actual properties. In these cases, the Ethics Secretariat has requested public officials to correct their declarations and resubmit.

<sup>85</sup> Interview at the Ethics Secretariat, 27 September 2011.

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formal banking system. Despite the provision under the AML Act requiring real estate agents and other DNFBP to implement the standards, Tanzania's effort on AML has mostly focused on the financial sector.

*Recommendations:* While it would be desirable to establish a threshold above which all financial transactions should be conducted through banks, this is not considered feasible in the short term.<sup>86</sup> The population may resist, and the country is still far from able to offer banking services to the whole population. Increasing access to the banking system is a long-term effort that should be supported, as it brings benefits beyond fighting money laundering. Implementing AML controls, however, can have an impact on access to banking, particularly for the poor population, since AML increases the costs of bank transactions (Genesis Analytics 2008). One possible remedy to this dilemma is for banks to have simplified know-your-customer procedures for low-income clients.

Actions to integrate other types of reporting institutions (such as real estate agents or money transfer operators) and guarantee they comply with AML regulations would bring a segment responsible for large cash transactions in Tanzania under the supervision of authorities. This could be promoted by formalizing regulatory and supervisory bodies for real estate agents and other professions or sectors, as BoT is now responsible for banks and the NBAA for accountants.

#### **B.4.2. Domestic laundering of illicit funds from corruption**

The PCCB reported that that eight of the 10 cases of grand corruption investigated in 2010 had an international component. But interviewees nevertheless noted that most money from corruption tends to be spent in the country, to pay for lavish lifestyles, cars, and real estate.<sup>87</sup>

*Recommendations:* Research is needed to establish which sectors are most vulnerable to being used for money laundering. These sectors may vary with time, with launderers shifting to new areas as others become subject to stricter control. However, it is clear that real estate is a sector that requires immediate attention. Preliminary information on vulnerable sectors can come from BoT work or from analysis of STRs by the FIU. Tanzanian authorities should be supported in formalizing regulatory bodies capable of overseeing AML enforcement in sectors vulnerable to laundering. The FIU should also be strengthened by providing it with more skilled personnel, the necessary financial or other resources, and an official regulatory framework that places AML under the responsibility of supervisory bodies with the obligation to collaborate with each other.

#### **B.4.3. Lack of ID system**

Tanzania is in the process of establishing an ID system that will make due diligence easier. Currently, customers can prove their identity with voting cards, passports, or driver's licenses. In some cases, a letter from a local government authority may be requested. Proof of residence is difficult, since the formal address system does not cover the entire country. It is important to note, however, that the burden of identifying customers does not rest on clients alone but also on the reporting institution. They need to cross-check information with different state authorities, such as the Tanzania Revenue Authority. This should not imply significant additional costs for foreign banks, which are accustomed to meeting such standards in other countries. But it may imply significant costs for smaller domestic banks with a higher proportion of lower-income clients. This means that know-your-customer procedures may not be fully implemented. Lack of sanction for noncompliance with AML standards may lead reporting institutions to be lax in fulfilling their obligations.

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<sup>86</sup> Interview at ESAAMLG, 29 September 2011.

<sup>87</sup> Interview at the Prevention and Combating of Corruption Bureau, 26 September 2011.

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*Recommendations:* Establishing an ID system should be a priority for the Tanzanian government. In addition to facilitating AML, this would also help in establishing land rights. At a later stage, different identification databases (ID, tax, voting, etc.) should be interlinked, making the system more effective and less prone to manipulation. Reviewing regulations to incorporate sanctions for noncompliance with AML for reporting institutions is also necessary, as is the establishment of supervisory bodies capable of enforcing compliance.

#### **B.4.4. Bureaucratic delays**

Banks operating in Tanzania may have to significantly delay a client's transaction because of delays in response from the FIU or the police to an STR. It is not unusual for the police to take seven days to provide feedback to the bank, advising the bank to either freeze the transaction or allow it to proceed. The bank must find an excuse to explain the delay to the client without letting him or her know about the investigation, as 'tipping off' a client who is under suspicion constitutes a crime.

*Recommendations:* Delays in communication between the FIU and the police or the FIU and the PCCB should be minimized by formalizing the channels of communication and not relying solely on informal contacts, such as seconded employees. Ideally, a digital platform should be put in place to ensure that information flows swiftly between the reporting entities and the FIU (reducing the time for transmission of information in comparison to the paper-based process). Such an electronic system would also have the advantage of facilitating analysis of trends and more effective risk analysis of SARs. With a secure database system in place, formal MoUs could be signed between the relevant government authorities to ensure the prompt sharing of information.

Recently, the police and the Attorney General's Chambers have worked together from the early stages of an investigation to improve evidence collection, thus speeding information sharing and advancing the investigation more efficiently.

#### **B.4.5. Lack of established communication mechanisms and an overarching coordinating structure**

Tanzania lacks one overarching coordination mechanism to enable different institutions to collaborate on operational AML issues. This imposes a significant communication constraint. The National Multidisciplinary Committee on AML deals with policy issues, while the National Anti-Corruption Steering Committee, with quarterly meetings, discusses progress on the anti-corruption strategy. But there are no formal mechanisms allowing operational staff to come together to find solutions to difficulties encountered in implementing and enforcing AML.

*Recommendations:* Operational teams bringing in participants from the relevant institutions could be organised on a permanent basis. At the regional level, meetings to bring prosecutors and investigators together to discuss their challenges are already happening on an ad-hoc basis. This practice should be encouraged. The purpose is not to have a "talking shop" to savour successes. It is, rather, for investigators, prosecutors, and other relevant operational staff to focus on ways to do their jobs more effectively. A more effective overarching coordination group could also help with strengthening capacity. Given that the PCCB has better-trained staff and an internal training programme, it could consider opening its training programmes to other public officials.

#### **B.4.6. Variation in the level of compliance among reporting institutions and lack of sanctions**

International banks with branches in Tanzania are expected at minimum to follow the AML procedures established by their headquarters (or the Tanzanian standard, in cases where that is more strict). However, domestic banks do not have the same level of institutionalized AML standards. This may be caused by lack of supervision, but it also may be because smaller banks are reluctant to burden their clients with requests for ID information. Moreover, other institutions with an obligation to report, such as lawyers, notaries, real estate agents, and jewel dealers, are currently undersupervised. Moreover, there are no sanctions for noncompliance specified in the AML law.

*Recommendations:* As mentioned above, some banks in Tanzania share an electronic red-flag system that lists customers who have been rejected by a bank after a due diligence procedure. This practice should be shared with all banks and the database should be updated in real time.

#### **B.4.7. Weak supervisory authorities**

The Bank of Tanzania is the regulator for banks and discharges its function with some level of skilled human resources. Banks, particularly those that are part of international groups, have internal training systems and channels to pass information about AML to their staff. But other sectors do not have a regulatory agency willing or capable of enforcing AML standards, as illustrated by the Tanganyika Law Society. The residual responsibility therefore falls on the FIU. With only 15 staff, it is unable to effectively oversee all real estate agents, lawyers, notaries, and others having an obligation to report.

*Recommendations:* A legal framework should be established for the activity of regulatory authorities of different sectors, clearly defining their responsibilities. Reviewing the experience of the NBAA in this regard would be helpful. Finally, although it is not an official supervisory body, there is a role for investigative journalism in focusing on financial crime and money laundering. In many cases, it is such work that has led to the revelation of suspicious activities.

#### **B.4.8. Lack of statistics and data on crime trends**

As in many other developing countries, the lack of adequate statistics is a serious problem in Tanzania. Data on crime, and even import and export data—useful for assessing whether multinational corporations are abusing intracompany trade procedures and evading taxes—are important. While some institutions, such as the BoT, have management information systems, others lack them. Interviewees noted that the DPP is very weak in terms of case management records. There is no software or other tool for collating and analyzing information. Prosecutors therefore lack data such as number of cases, number of acquittals or guilty pleas, and duration of cases, with respect to both money laundering and other types of cases. Such data are essential for identifying and correcting problems in the system.

*Recommendations:* The FIU should build the capacity to produce data on sectors or types of predicate offences that most commonly generate STRs. These data would be helpful to institutions such as ministries or supervisory agencies. But to be able to perform this role, the FIU needs to have management information systems in place and the human capacity to analyze the STRs received, as well as an increased number of institutions in compliance with their obligations to report suspicious transactions. For the DPP, a simple case management system using Excel spreadsheets, without more advanced software, would facilitate better understanding of which offences are predicate to money laundering cases passing through the courts.

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#### B.4.9. Lack of familiarity with AML

The fact that AML is such a new area is probably one reason that prosecutors, police investigators, and judges lack awareness about the topic. Tanzania's AML laws are recent and were basically copied from international standards. Misinterpretation is common: for example, as mentioned above, several interviewees referred to enhanced due diligence as applying only to foreign PEPs. But neither the AML Act of 2006 nor the FIU's Anti-Money Laundering Guidelines to Banking Institutions makes any differentiation between foreign and domestic PEPs. The fact that AML is so new is also one reason that gaps may still be found in the legislation.

Another significant factor is that there is as yet no guide to decision making for prosecutors or to sentencing policy for magistrates. In practice, this leaves room for unreasonable decisions. Magistrates, for example, have limited discretion to decide on the best sentence for each case, with minimum penalties being mandated.<sup>88</sup> Also, the court is not obliged by law to proceed with confiscation of assets after a criminal conviction. Tanzanian criminal law is focused on convictions, with the court system concentrating on the result of a jail sentence.

*Recommendations:* As mentioned above, the DPP understands that it is necessary to amend the Proceeds of Crime Act to allow for civil forfeiture, as it offers the possibility of starting a civil investigation of the assets in parallel with a criminal investigation of the predicate offence. Subsidiary regulation on sentencing policy should also be available to guide magistrates and prosecutors. With more AML cases and asset confiscation processes reaching the prosecution stage, the DPP and the police are also aware of the need for tools to manage assets, which should be returned to defendants when they are acquitted. Currently, financial assets seized are simply added to government assets, while physical assets such as agricultural properties remain in custody of the police.

A programme is also needed to systematically train judges, prosecutors, and police officers in the content of new legislation and in innovative investigative techniques. This would help address the failure to implement this legal framework and build capacity to investigate financial crimes. The PCCB could help with this training. Training also needs to be supplemented with provision of necessary equipment for investigation and record keeping. Staff of institutions with an obligation to report also need to increase their knowledge on AML standards. The BoT has a training facility that can be used by banks and eventually other sectors. But it requires greater expertise in training, resources to maintain a long-term training programme, and a strategy on how to reach all institutions at risk of money laundering, whether directly or through other supervisory bodies.

#### B.4.10. Lack of skilled human resources and technical capacity

Tanzania still lacks a sufficient number of well-prepared criminal law attorneys. Particularly outside of Dar es Salaam, magistrates do not have access to the text of the laws. Both the police and the Ethics Secretariat, two institutions with key roles to play in AML cases involving PEPs, lack equipment and staff with capacity to use them.<sup>89</sup> The lack of skilled human resources for AML is even worse for the police. As noted above, the result is that on average 50 per cent of investigation files received by the prosecution were sent back due to technical problems with the collection of evidence. The situation is the same in other ministries or agencies that should

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<sup>88</sup> This results in minor cases receiving disproportionate sentences. In a story reported by the Tanzanian newspaper *The Citizen*, on 28 September 2011, a village official received a four-year prison sentence for a bribe of TZS 150,000 (around EUR 68 at the time of the study). The magistrate followed the AC Act that mandates a minimum sentence of three years for such an offence.

<sup>89</sup> This includes, for example, equipment for wiretapping and surveillance operations, which are common in investigations linked to organised and financial crime. But there is also a shortage of vehicles to allow the Ethics Secretariat to conduct its asset verifications, and of information technology to allow both institutions to maintain better records of their activities.

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collaborate in the area of anti-money laundering. For example, at the time of this study the Tax Revenue Authority had only one official trained on issues related to trade-related tax evasion at the newly established Large Taxpayers Unit for investigation of corporate tax evasion.

Finally, the Ethics Secretariat is the guardian of assets declarations, which provide essential information. But it lacks minimal capacity to conduct its work. Declarations are received in paper format and typed into the computer systems by staff, a process prone to errors. The institution suffers from shortages not only of staff but also of equipment and training.

*Recommendations:* Specific equipment and capacity building are needed for the different institutions involved. A staff exchange programme has been set up with the PCCB to help train some of the AML investigators at the Ethics Secretariat. Depending on the results of this effort, the model could be explored for other institutions. In 2010, the UK Department for International Development funded the acquisition of three vehicles and several cameras for use by the Ethics Secretariat's headquarters staff in the physical verification of assets. However, the institution needs more staff and equipment in the field, to conduct asset verification visits and to review declarations submitted by local leaders. Reducing the number of officials who should submit declarations by including only those in senior positions at national and local levels could also make the work flow more manageable. The police force also needs attention from the international development community if it is expected to improve its evidence collection and responsibly serve as the custodian of seized assets.

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