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**TYOLOGIES REPORT ON MONEY LAUNDERING  
THROUGH THE REAL ESTATE SECTOR IN THE ESAAMLG  
REGION**

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**ACRONYMS**

AML/CFT	Anti-Money Laundering/Combating Financing of Terrorism
CDD	Customer Due Diligence
DNFBPs	Designated Non Financial Business and Professions
ESAAMLG	Eastern and Southern Africa Anti Money Laundering Group
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
IMF	International Monetary Fund
KYC	Know Your Customer
LEA	Law Enforcement Agencies
MDGs	Millennium Development Goals
ML	Money Laundering
ML/TF	Money Laundering/Terrorist Financing
PEP	Politically Exposed Persons
RSA	Republic of South Africa
STR	Suspicious Transaction Report
TF	Terrorist Financing
UNSC/S/RES	United Nations Security Council Special Resolution

## EXECUTIVE SUMMARY

An increase in demand for immovable property, such as residential properties, commercial properties, government programmes such as resettlement programmes in an effort to fulfil International Millennium Development Goals (MDGs) of housing for every family by 2020, has spanned growth in the Real Estate Sector. This makes the Real Estate industry vulnerable to a number of criminal activities which include fraud, forgery, tax evasion, embezzlement, terrorist financing and violations of specific statutes related to the Real Estate Sector most of which are predicate offences to Money Laundering (ML). The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) in its efforts to combat ML/FT in the region has found it necessary to carry out a typologies study into the Sector.

The study looked at vulnerabilities, methods and/or channels used by criminals in the Real Estate Sector with the intention to assist member countries to put in place measures that can mitigate the ML/FT risks in the sector. The study will equip policy makers, regulators/supervisors, Real Estate professionals and Law Enforcement Agencies with requisite knowledge, trends and vulnerabilities in the Real Estate Sector through highlighting of risk indicators. This will enhance focus on preventing money laundering through the Real Estate Sector using standards set by the Financial Action Task Force (FATF).

The region shares an almost common definition for Real Estate which is characterized by cash based transactions. The study revealed common methods employed by money launderers in the region.

Most countries in the region do not have designated units for investigating ML/FT within the Real Estate Sector but such cases are investigated by the Police as part of their normal course of duties. The study further revealed that most law enforcement agencies in the ESAAMLG Region do not go beyond investigating the predicate offence thereby limiting cases where the money laundering aspect of the offence will have been pursued. The report encourages aggressive campaigns to bring awareness to law enforcement on issues related to money laundering in the Real Estate Sector but also highlighting challenges faced by the investigators which need to be addressed.

The study also revealed that lack of sufficient regulatory bodies and legal frameworks covering the Real Estate Sector pose a threat to efficient policing of the Sector. Most registry/deeds departments were realised to be still using manual methods for record keeping and compilation affecting efficient, reliable and accurate maintenance of updated information.

The study also captured concerns about some of the DNFBPs which aid money launderers in concealing illicit gains by holding the funds in their trust accounts and later facilitate payment of such funds into purchase of real estate on behalf of the money launderers who will be their clients.

The project team composed of members from Kenya, Malawi, Namibia, Swaziland, Zambia, and Zimbabwe, assisted by the Secretariat carried out the study. The project team highlight strengths and vulnerabilities linked to the Real Estate Sector suggested for consideration to help suppress ML/FT in the ESAAMLG Region. The report provides useful information and vivid case studies intended to help postulate the current criminal activities in the Real Estate Sector.

## **1. INTRODUCTION AND BACKGROUND**

### **1.1 Introduction**

1. The ESAAMLG in its effort to combat ML/FT has found it necessary to carry out a study on ML activities in the Real Estate Sector. The main objective of this report is to identify vulnerabilities, methods and/or channels used by criminals in the Real Estate Sector to launder money, in order to assist member countries to implement measures that mitigate ML/FT risks in the Sector. There is significant fast growth that has been noted in the Real Estate Sector, which makes it one of the sectors vulnerable to ML/TF activities.

2. In addition to equipping policy makers, regulators/supervisors, Real Estate professionals and Law Enforcement Agencies (LEAs) with requisite knowledge and ML trends in the Real Estate Sector, the study reveals need for greater transparency in the land registration, privatizations and immovable property transfers.

## 1.2 Background

3. Money Laundering through real estate by criminal groups and corrupt officials has been identified on every continent, but has failed to command the attention it deserves to determine ways to minimize the amount of ML through this sector. It is possible to construct a typology on ML trends in the ESAAMLG Region by analysing the areas in which the proceeds of crime are invested.

4. The recent ESAAMLG typologies report on Money Laundering related to Illicit Dealings in Smuggling of Motor Vehicles in the ESAAMLG Region brought out among other issues that the Real Estate Sector is the most vulnerable area where the proceeds from crime are invested.

5. Reports produced by the FATF and International Monetary Fund (IMF) over the last few years have made reference to the Real Estate Sector being possibly one of the vehicles used by both individuals and criminal organizations to launder their illicitly obtained proceeds.

6. According to the World Economic Forum report (2011), environmental destruction and over construction are characteristic features of Real Estate development often facilitating ML. The report further states that commercial and residential real estate is vulnerable to money laundering because of the easy mixing of legitimate and illegitimate funds. The aspect of immovable properties appreciating value most of the time adds to the quick movement of such funds into this Sector. This sets a clear distinction of this kind of laundering as funds are quickly laundered into the Real Estate Sector losing its physical presence compared to the other types of money laundering where proceeds remain in cash or other equivalent forms.

7. The general overview is that the Real Estate market in the ESAAMLG region is not always stable and is often marked by prices having an upward trend. This creates a perfect environment for criminals to conceal their illegal funds regardless of whether the investment is going to bring the criminal profit or not. The Real Estate Sector becomes a perfect haven for criminals to hide their dirty money and at the same time making it legitimate. To combat money laundering channelled through the Real Estate Sector, Governments are encouraged to have efficient AML regulatory frameworks and monitor their implementation by all stakeholders in the sector to ensure laundering of dirty money through the sector is minimised, if it cannot be totally stopped.

## **2. OBJECTIVES**

8. The main objectives of this project are:

**A.** To identify:

- The predicate offences that provide the main sources of unlawful funds which are later laundered into the Real Estate sector in the ESAAMLG region;
- The products/services which are vulnerable and could be used to facilitate money laundering into the real estate sector;
- Methods and/or channels used by perpetrators of ML into the Real Estate Sector and resultant trends and typologies;
- Sectors related to Real Estate and vulnerabilities in these sectors that can be exploited by money launderers to launder proceeds of crime into the Real Estate Sector;
- Key players involved in Money Laundering through the Real Estate Sector;

**B.** To determine whether the existing legal frameworks and policies are adequate to combat and deter ML activities in the Real Estate Sector in the ESAAMLG Region.

**C.** To ensure awareness raising amongst stakeholders in the Real Estate Sector on ML activities associated with the Sector in the ESAAMLG Region, and where possible, through sharing of trends, typologies and red flag indicators.

**D.** To encourage law enforcement agencies to investigate cases beyond the predicate offence aspects in order to establish whether there is no possibility of a ML offence having been committed.

## **3. METHODOLOGY**

9. The ESAAMLG Secretariat developed a comprehensive questionnaire that was distributed to all ESAAMLG member countries in October 2012. The quality of responses received on the questionnaire was generally good but with gaps being noted in some of the member countries' responses. Open sources, media and semi structured interviews were also carried out in an effort to provide relevant information for the success of this exercise. The interviews were mainly to clarify or get further insight into responses given by member countries and different entities. Furthermore, internet based research was conducted, and media articles published by different crime fighting organisations were reviewed and compared. Finally the project team

met in Pretoria, South Africa to analyse the gathered information and consolidate on the draft report.

10. Through use of these research tools, the project team was able to identify:

- Vulnerabilities associated with the Real Estate Sector in the ESAAMLG Region
- Weaknesses in the regulation, implementation and enforcement of laws relating to the Real Estate Sector.

#### **4. ANALYSIS OF QUESTIONNAIRE RESPONSES**

11. This section of the report focuses on the jurisdictions' responses to the questionnaire. It further summarises the result of the comparative analysis of the responses to the questionnaire in terms of the sectors set out in the questionnaire as follows:

##### ***4.1 Definition of Real Estate***

12. Real Estate is defined as ownership and rights to land, purchasing and selling of immovable property (residential, commercial, and agricultural), leasing and management and valuation of immovable property.

##### ***4.2 Common offences related to the Real Estate Sector***

13. The study revealed that Real Estate sector is not different from other sectors as it is affected by the same type of predicate offences which lead to ML/FT. These include:

- Forgery - manipulation of records;
- Fraud;
- Tax evasion ;
- Embezzlement; and
- Violations of specific statutes relating to the Real Estate Sector.

##### ***4.3 Methods associated with laundering illicit proceeds into the Real Estate Sector***

14. The common methods used to launder money through the Real Estate Sector include the following:

- Purchases of Real Estate using large cash amounts;
- Use of third parties, gate keepers (Attorneys/conveyancer's)/fronts to purchase and lease immovable property;
- Buying of building material which can be purchased in cash or through successive deposits in the accounts of the construction material stores;
- Acquiring of mortgage bonds and settlement of the bonds using large cash amounts;

- Purposely defaulting payment of mortgage instalments and later settling them off using lump sum amounts (cash, wire transfers, using other property, series of transactions);
- Foreign PEPs and nationals, investing in real estate;
- Foreign nationals using locals to acquire real estate;
- The use of corporate structures through buying and/or owning companies or corporations which own real estate;
- Use of third parties (minors, spouses, other family members, companies, trusts etc.) to register real estate, mainly for tax evasion; and
- The use of unregistered real estate agents, who are not accountable to the regulators.

#### 4.4 *Agency specific requirements:*

4.4.1 *Law Enforcement:* It was noted that the majority of the countries did not have a designated unit to investigate real estate cases but are investigated as normal criminal investigations by law enforcement agencies. In addition to investigating cases arising from STRs disseminated by the FIUs, law enforcement does also investigate cases arising from reports made to them by the public. The study also showed that law enforcement does not investigate real estate cases reported to them beyond the predicate offences thus limiting investigation of possible money laundering cases involving the Real Estate Sector. Of the 16 responses received on the questionnaires, only five countries reported on having had investigations done on money laundering relating to the Real Estate Sector and out of these four of the countries had cases which had finally proceeded to trial. It was also established that different national law enforcement agencies have a sound interaction base at both domestic and international levels.

The study revealed the following as challenges faced by investigators:

- Denial of access to premises for investigations;
- Requested information not being provided in a timely manner;
- Poor record keeping in the area of Real Estate attributed to manual maintaining of records;
- Inadequate resources;
- Very cumbersome and technical legislative processes relating to asset recovery, particularly of immovable assets;
- Lack of sufficient transaction records due to cash nature of the economies in the region; and
- Such difficulties not being clear cut as investigators in the majority of the circumstances do not proceed to investigate cases beyond the predicate offence to establish whether there is money laundering connected to the case.
- Lack of awareness and alertness to ML/TF elements or indicators arising out of most of the cases reported as predicate offences.

4.4.2 *FIUs:* In most of the member countries, it was established that they have functional FIUs and that Real Estate Agencies are designated reporting institutions with an obligation to report STRs to the FIUs. However, only one country indicated having received STRs relating to real estate.

4.4.3 *Real Estate Agencies*: According to the Real Estate Agencies, the common method used to purchase or sell immovable property is cash. The Real Estate Sector does not determine property prices, as these are determined by market forces. It takes an average of up to 3 months to complete a purchase or sell of an immovable property. The Real Estate Agencies do not have an obligation to establish beneficial ownership relating to transactions they handle. It was also noted that the sector is not adequately monitored or supervised for AML/CFT purposes, as not all jurisdictions in ESAAMLG have regulatory bodies for the Sector. The Real Estate Agencies reported their main clients being locals compared to foreigners. In most member countries, Real Estate Agents are required to be registered, although not all comply with the requirement. The study also revealed that in two of the member countries the sector is not regulated at all. In some of the member countries where legislation designates Real Estate Agencies as reporting institutions, with some of them being big reputable companies in the Sector, are either unaware of the legal requirements for them to implement the AML/CFT laws as reporting institutions or are simply not complying with the law because the authorities are not enforcing it.

4.4.4 *Deeds Registry Department/Office*: According to the outcome of the questionnaire, it was noted that these are designated offices to facilitate the registration of real estate. It was also noted that, there are legal frameworks for registration of immovable properties in almost all the jurisdictions in ESAAMLG. However, third parties can register properties and there is no obligation to identify beneficial ownership in most of the jurisdictions. The registration takes up to 3 (three) months. The Deeds Registry Department retains all records both in manual and electronic forms. The records are available and accessible to the public for a fee. In all the jurisdictions to ESAAMLG records are kept indefinitely and updated as and when transactions are made.

4.4.5 *Designated Non Financial Businesses and Professional (DNFBPs)*: DNFBPs are designated institutions for AML/CFT purposes, however at the time of compiling this report, no STRs had been reported by DNFBPs in all the jurisdictions. From the responses received, there were indications that conveyancers deal with huge amounts of funds relating to real estate, and based on the fact that all countries indicated that there were no STRs filed by this profession, the view created is that the requirements on due diligence are not being followed. In the majority of the member countries, conveyancers have got no obligation to establish

beneficial ownership information when carrying out a transaction on behalf of a client. It was also noted that there was very limited or no information at all provided by member countries on accountants and tax advisers/consultants.

## **5. TRENDS OF MONEY LAUNDERING IN THE REAL ESTATE SECTOR**

15. The trends of money laundering in the Real Estate Sector, like with any other crimes are dictated by changing circumstances. During the period ranging from 2010 to 2012, newspapers in East Africa often reported on the boom in real estate and the sudden steep rise in immovable property prices. The newspapers reported on the source of funds being invested in the Real Estate Sector as being proceeds from ransoms paid on piracy cases. Estate agents interviewed by some of the newspapers confirmed on some of their clients paying double the price of a property in order to close on deals quickly and that in a market where prices of real estate normally double in about ten years, they had tripled in a mere five years<sup>1</sup>.

16. Where such factors influence the pricing of the real estate sector it is often observed that the economy of the country will not be performing at the same pace to justify funds going into the real estate sector being based on legitimate income earned which also influence the extent of exposure to mortgage bonds and loans. The ability to do quick purchases in real estate also attracts movement of money launderers from jurisdictions with tight AML/CFT controls on movements of funds into the sector to these countries, which was the case with some of the ESAAMLG member countries in East Africa at the time. It can not also be doubted that a quick boom in the Real Estate Sector which is not consistent with the country's economic performance can be a good indicator on the adequacy or inadequacy of the AML/CFT legal framework of the country or extent of enforcement and compliance with the AML/CFT obligations by stakeholders in the Sector.

17. In preparation for a workshop on Asset Freezing relating to UNSC/S/RES/1373 held by the United Nations Counter Terrorism Executive Directorate in Dar es Salaam, Tanzania from 4 – 6 June 2013, one of the big Real Estate Agencies not only with offices in Tanzania

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<sup>1</sup> Money Laundering in the Real Estate Sector of Eastern and Southern Africa- Preliminary Literature Review, 19 November 2010-newspaper articles attached to the report.

but in most ESAAMLG member countries, was invited to do a presentation on its internal policies to enhance AML/CFT customer due diligence measures on its clients. The main reason of inviting this Real Estate Agency to the workshop was based on the size of the market of the real estate sector that it controls and that in terms of the Tanzanian AML/CFT law, Real Estate Agencies are accountable institutions for purposes of AML/CFT and are supposed to report suspicious transactions to the FIU. The organisers of the workshop were disturbed when they were informed by this big Real Estate Agency that it would not help with the request to make a presentation as it was not familiar with its AML/CFT obligations. This confirmed the finding by the project team that some of the Real Estate Agencies are not playing their complimentary role in the Sector to limit money laundering through the Sector by implementing the minimum standards expected under their AML/CFT legislation.

18. Member countries are encouraged to observe the trends in the Sector as they come up with strong AML/CFT legal regimes and enforce compliance with AML/CFT obligations to the Sector to mark whether there is still continued unexplainable escalation of prices in the Sector. The Real Estate Agencies in jurisdictions where they are designated reporting institutions or their Regulatory Authorities, can be useful in observing these trends.

19. The other factors which have been seen to influence increased activity in the Real Estate Sector cited by some of the researchers in the ESAAMLG Region are to do with the stability of the currency of a country which could also have an additional dimension of the political stability of the country. The competitiveness of the currency with other international currencies becomes a factor which attracts funds being invested in the Real Estate Sector<sup>2</sup>. The money laundering trends however become distorted as the source of the funds invested might be legitimate and/or from criminal activities. This is also confirmed by the responses to the questionnaire to this project where a number of member countries note intermingling of legitimate and illegitimate funds to purchase real estate.

20. The responses to the questionnaire from member countries also highlight another area

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<sup>2</sup> Money Laundering Survey in Eastern and Southern Africa- January to June 2006, ISS Cape Town Office.

where there could be a possibility of money laundering into the Real Estate Sector. This area relates to the huge amounts handled by legal practitioners (conveyancers) on behalf of their clients when purchasing immovable properties compared to the insignificant numbers of STRs being reported to the FIUs from this sector. The responses to the questionnaires could not establish whether the low level of STRs reported is due to no suspicious amounts being handled by the conveyancers on behalf their clients or non-compliance by the conveyancers with the AML/CFT obligations. The low STRs are not consistent with the observation that most of the transactions on purchase of real estate in the Region are done in cash. The on-going struggle based on the extent of professional privilege and secrecy indulged to the legal profession affecting some of the ESAAMLG member countries to have legal practitioners, including conveyancers designated as accountable persons under the AML/CFT laws and where they are designated to uphold compliance with the AML/CFT requirements, could also be contributing to distortions to information related to the profession regarding the Real Estate Sector. In the typologies report titled, “Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals” published in June 2013 by the FATF<sup>3</sup>, real estate is reported to be one of the key areas which pose potential ML/TF vulnerability for legal professionals. The report further describes in detail the conduct of legal professionals that has ended up assisting with facilitating ML through the Real Estate Sector whether wittingly or unwittingly. Some of the common futures which came out of that report which have already been identified in this report include:

- a) Use of large amounts of cash to purchase property involving legal practitioners who do not report STRs giving the conclusion that they are either complacent in the money laundering or give a blind eye to circumstances relating to the payment where they could have asked more questions;
- b) Distorting information on ownership by using intermediaries and false particulars during purchase of the property through a legal practitioner;
- c) Legal practitioners facilitating quick money laundering havens through aborted property transactions where the initial deposited amount has to be paid back or transferred to another account from the legitimate client/trust account of the lawyer;

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<sup>3</sup> FATF Report: Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals, pgs.44 -53, 115 – 127: [www.fatf-gafi.org](http://www.fatf-gafi.org)

- d) Instances where legal practitioners have assisted with setting up complex structures to purchase real estate; and
- e) Avoiding exposure of the beneficial owner by using the legal practitioner to purchase the property through a company or a trust.

## 6. CASE STUDIES

### Money Laundering through the Real Estate Sector

#### CASE STUDY ONE: Politically Exposed PERSON (African country)

21. The Centre was requested by one of the domestic Law Enforcement Agencies to assist in locating properties and associated companies linked to a high profile PEP. The case related to a Money-Laundering investigation on a former high ranking PEP in the continent who embezzled huge sums of monies from the state coffers of his jurisdiction. Three countries were involved in the case that is, the RSA, the home country of the PEP and a third party country where the ML crimes were initially discovered.

22. The information received revealed that the PEP owned a high value property, worth approximately ZAR 2 million in one of the most sought after, prime residential areas in RSA. Further revelations were that the PEP, whilst in the third party country, contacted his local associates (lawyers) to assist in procuring real estate. To transfer funds the PEP utilised a shell company registered in another country as a conduit to ensure that his identity is not revealed. The attorney's trust account in the RSA received the funds and duly purchased the property and registered it under another company's name, which analysis revealed to be controlled by the PEP. A financial intelligence product was compiled and disseminated, leading to a joint application by the three investigating agencies for restraining and forfeiture of the real estate to the home country of the PEP, where funds were misappropriated.

23. Offence: Being in possession of property suspected to be stolen  
 Customer: Individuals  
 Industry: Real Estate/ Legal  
 Jurisdiction: South Africa  
 Technique : Use of gate keepers (Lawyers), Trust accounts, wire transfers  
 Indicators : Purchase of Real Estate  
 Abuse of Attorney's Trust Accounts to hide true source of funds

Usage of shell company registered in third party countries to act as a

conduit of transferring proceeds of crime

International wire transfers to countries considered to be tax havens

Registering of property under company name to disguise true ownership (third party accounts)

Third parties used to open bank accounts

*CASE STUDY TWO: International Drug Trafficking Case*

24. The Centre received a request for information from a local Law Enforcement Agency on a person of interest that was known to be a king-pin in an international drug trafficking syndicate. The information required included bank accounts and properties under the subject's name, including those of his immediate family members and possible close associates.

25. The Centre commenced with the analysis cycle and requested financial information from accountable institutions. Statutory and private databases were also accessed to source more information such as his movement in and out of the country and assets under his name or his family's. The information received and analysis conducted revealed that the subject had transferred huge sums of funds into the country, and further bought assets such as real estate and a game farm. It was also revealed that outward funds transfers were effected to his home country and the funds were deposited into different bank accounts. Some of the funds were transferred into the spouse's account.

26. This information was duly consolidated into a report and forwarded to the relevant authorities. Ultimately properties and funds to the amount of ZAR 3 million were seized by the State.

27. Offence type: Drug Trafficking.

Industry : Banking / Real Estate

Report type : STR

Method : Use of third parties / purchase of high value assets

Technique : Cash deposits

Mechanism :	Financial institutions
Instrument :	Cash
Indicators:	Purchasing of high value assets such as property to hide the proceeds of crime  Frequent cross-border transfers of huge sums of funds  Usage of spouse's banking account to hide the proceeds of crime  (third party accounts)

CASE STUDY THREE: Armed-Robberies

28. An investigation by the Law Enforcement Agencies into a spate of armed robberies led to a request for assistance from the Centre. The investigative authorities required financial intelligence and assets of a high flyer in the country who was highly suspected of being involved in criminal activities.

29. Upon receiving the request, the Centre commenced with analysis by requesting financial information from the accountable institutions. The Centre further accessed both the statutory and private databases to ascertain information such as ownership of real estate and directorship in companies. Information received revealed that the subject owns an entertainment place, an expensive mansion and a holiday home in one of the prime areas, expensive motorbikes and motor vehicles. An intelligence report was duly compiled and forwarded to the relevant authorities. The investigative authorities were able to link the subject's transactions to the purchasing of the above mentioned properties. The subject was arrested and was sentenced to many years in prison. A restraining order was applied for to ensure that the assets were not dissipated before they could be forfeited to the State.

30. Offence type:	Aggravated Robbery
Industry :	Banking/ Real Estate
Report type :	Other
Method :	Multiple accounts, third party account, purchase of high value assets

Technique :	Cash deposits
Mechanism :	Financial institutions
Instrument :	Cash
Indicators:	Purchasing of high value assets such as mansions and holiday homes Opening of multiple accounts to spread the ill-gotten gains Usage of spouse's account to hide proceeds of crime (third party accounts) Multiple cash deposits

*CASE STUDY 4: Use of false documents and laundering the proceeds through real estate.*

31. A syndicate that had its members from Zimbabwe, Zambia, Botswana, Malawi, Mozambique, South Africa and the DRC stole 28 vehicles in South Africa over a period of time in 2011.

32. The criminals generated false Zambian vehicle registration documents and registration plates and somehow acquired genuine customs stamps for Zambia, Zimbabwe and Botswana.

33. The stolen vehicles were smuggled from South Africa to Botswana where they were fitted with the false Zambian registration plates. The criminals then generated false documentation purporting that each of the vehicles was registered in Zambia and that it had been driven to Botswana via Zimbabwe.

34. The vehicles would then be driven from Botswana to Zimbabwe under the pretext that they were returning to Zambia. In Zimbabwe the vehicles would be taken to the North Eastern small town of Mutoko which is within easy reach of the Mozambican boarder. In Mutoko the vehicles would be sold by the criminals to a local Zimbabwean.

35. The Zimbabwean would sell the vehicles to customers on the Mozambican side of the

boarder. The vehicles were all expensive luxury vehicles including Range Rovers, Toyota Hilux and Audi Q5.

36. The Zimbabwean purchased a number of immovable properties from suspected proceeds following disposal of the vehicles.

37. The criminal syndicate was eventually busted when an alert Botswana customs officer alerted Botswana police after noticing that the same people were often crossing the border in different expensive cars.

38. Offence: Being in possession of property suspected to be stolen  
 Customer: Individuals  
 Report Type: Customs report  
 Industry: Real Estate/Transport /Banking  
 Jurisdiction: South Africa, Botswana, Malawi, Zambia, Zimbabwe, Mozambique  
 Method : Smuggling of Motor Vehicles, purchase of high value assets,  
 Falsification of documents.  
 Technique : Cash deposits, Purchase of high value assets  
 Mechanism : Financial institutions  
 Instrument : Cash  
 Indicators : Purchase of Real Estate  
 Purchase of high value motor vehicles  
 Same people crossing the border with high value motor vehicles

*CASE STUDY 5: Laundering Proceeds of A Pyramid Scheme Through the Real Estate Sector*

39. Mr. Q, a television station owner and Director of an advertising company provided services to a certain foreign company which took deposits from members of the public purporting to be selling to them insurance products. Mr. Q through his television station

and advertising companies produced and aired a programme encouraging members of the public to join in and invest by buying the insurance products. Viewers were given a bank account in which they could deposit money when joining and purchasing the insurance product.

40. The Central Bank advised the foreign company that it was violating the Financial Institutions Act by collecting cash deposits from the public as it is the preserve of a legally recognized and registered financial institution. After this intervention, Mr. Q in concert with the local promoters of the foreign company decided to open their own version of the foreign company by engaging in a similar business. The only difference is that their purported product was no longer insurance products but offering a sort of investment scheme. Mr. Q literally took over from the foreign company and became the ring leader/kingpin of the new scheme. Mr. Q promoted the new scheme through his television and advertising company by airing promotions where he personally appeared encouraging viewers to join this new investment scheme. At the end of these promotions, viewers and members of the public were encouraged to join the scheme and advised to deposit money in two bank accounts of two local banks. These two accounts belonged to his two companies, the television station's business account and the advertising company's business accounts. Mr. Q was sole signatory to these accounts.

41. The Central Bank again intervened and advised Mr. Q to desist from engaging in purely banking business. However, Mr. Q continued even after being engaged by the Central Bank and received millions into his account. Instead of heeding the call from the Central Bank, Mr. Q purported to register a Savings Co-operative Society in terms of the Co-operative Society Act. He cajoled some official in the Commissioner of CO-operatives' office to give him a letter to open a bank account in the name of the intended Co-operative Society on grounds that the money was already in hand and had to be saved in a bank account.

Mr. Q never registered the Co-operative Society as he was advised he could do under the Co-operative Society Act. Rather members of the public were then invited to deposit their investments into this new account for the proposed Co-operative Society that was opened at another local bank. Again Mr. Q was the sole signatory and the account was therefore under his control.

42. The Central Bank eventually instituted legal proceeding for the breach of the Financial Institutions Act by Mr. Q and by this time, millions had been collected from unsuspecting members of the public and a substantial part thereof spent by Mr. Q. During the civil proceedings in which the Central Bank challenged the illegal activities of Mr. Q and also during the course of a subsequent criminal trial, it was revealed that Mr. Q had actually paid out “Dividends” to registered contributors who got back much more than what they had deposited in investing in the scheme. The amounts paid out of these registered contributors amounted to US\$1.9m leaving some US\$ adrift and squandered by Mr. Q.

43. During the legal proceedings, it was revealed how monies which were received into the various accounts, managed and controlled by Mr. Q were withdrawn by him to finance his lavish life style. Mr. Q purchased expensive cars for himself, wife and mother of his children. He paid his sister substantial sums of money even though she had no contributions to the funds to warrant a “Dividend”. Mr. Q bought property, a block of residential flats directly from the funds of the registered contributors. In paying for this property, he issued four cheques on four subsequent days because of a limit set by the Central Bank, at the time on the maximum amount that could be drawn by cheque. When the scheme was finally stopped, Mr. Q was in the process of purchasing another residential property which fell through, but for the intervention.

44. Mr. Q registered the property he bought in his wife’s name. However, all the properties Mr. Q acquired using funds from the scheme were subsequently confiscated and a liquidator was appointed to pay back the money to the prejudiced unsuspecting members of the public.

45. In the criminal trial that followed, Mr. Q was charged with fraud, theft by false pretences (alternatively), contravention of the Financial Institutions Act, money laundering and he was sentenced to eight (8) years imprisonment, four (4) of which were suspended for three (3) years. The Supreme Court upheld the decision of the High Court and Mr. Q is currently serving his term in prison.

46. Offence: Operating a Pyramid Scheme, Fraud and money laundering  
Customer: Individuals

Industry:	Banks, Registered Companies, Real Estate
Jurisdiction:	Swaziland, South Africa
Method :	Use of a pyramid scheme, Purchase of high value assets, structuring of Payments, use of third parties, use shell companies as fronts.
Technique :	Cash deposits, Purchase of high value assets
Mechanism :	Financial institutions/company registration
Instrument :	Cash
Indicators:	Purchase of Real Estate Use of shell companies Use of third parties to register property Structuring of payments Investment with no economic benefit Disregarding official advice (Bank and company registration)

(Finding; - the observation made from this case is that the offences could have been prevented if the financial institutions involved had fully Implemented the KYC and CDD measures provided under the law).

CASE STUDY 6: Fraud through real estate

47. Mrs. B, a Director of a private hospital offering Anti Retroviral Treatment (ART) to mothers and their children manipulated the procurement and payment systems of the hospital. The hospital received periodic donations from external donors for operations and upkeep. Mrs. B and her husband, Mr. B caused an account to be opened with a bank in a neighboring state in the name of a company incorporated in the neighbouring state. Mr. B was a Director in this company. In paying for supplies delivered to the hospital, Mrs. B submitted the account of her husband's company in the neighbouring state and huge amounts were indeed electronically transferred into this account.

48. Using the funds from the hospital, the company bought a mansion in one of the affluent

areas in the neighbouring state and expensive cars. The property has since been seized through Mutual Legal Assistance Agreements between the two countries and the case is still before the courts.

49. Offences: Fraud and Corruption

Industry : Real Estate, Foreign Banks, Foreign Registered company

Method : offshore accounts, shell company

Technique : Wire transfers, Purchase of high value assets

Mechanism : Financial institutions/company registration

Instrument : wire transfers

Indicators: Purchase of Real Estate in a neighboring state

Purchase of high value motor vehicles

Wire transfers to an offshore account

Shell company

*CASE STUDY 7: Theft and corruption through real estate*

50. Ms X, a senior accountant in a citrus exporting company dealing with suppliers from a neighboring state siphoned huge amounts of money from the company. Ms X was responsible for paying the company's creditors in the neighboring state. Ms X enlisted the help of two locals to go to the neighbouring state to find a person who would offer his/her bank account so that she could deposit money while purporting to be paying a creditor without company superiors knowing.

51. The duo found someone in whose account millions were deposited. This person would periodically withdraw the money and hand over to the two enlisted by Ms X for this purpose after taking a substantial commission herself. The two enlisted persons would then come back into the country, take the money to Ms X who would also give them their commission. This continued for a while and Ms X constructed a block of modern flats which she leased out. The flats have been seized and Ms X and her accomplices are awaiting trial and she was extradited from the very neighboring state where she siphoned

the money from after fleeing arrest.

52. Offences:	Theft and corruption
Industry :	Foreign Banks, Registered Companies Real Estate
Method :	offshore accounts, use of third parties, cross border transportation of Cash, payment of fake suppliers.
Technique :	Periodical cash withdrawals, Purchase of high value assets
Mechanism :	Financial institutions
Instrument :	wire transfers, cash
Indicators:	Building of modern leasing units on native land Cross boarder transportation of cash Account opened without probable reason by a person with no stable Income Receipt of huge sums of money followed by periodic withdraws International travels for no apparent reason.

*CASE STUDY 8 – laundering through the real estate by using a mortgage and trust accounts.*

53. The investigations unit received a report from a reliable source that one lawyer who had been engaged as a share transfer agent had defrauded the complainants in the case of billions of dollars. Mr. X (the Lawyer) sold thousands of shares on the stock exchange on behalf of the clients but could not account for the proceeds of the sale. Investigations revealed the proceeds having been directly credited to the Trust Account of the lawyer's law firm to which he was the only signatory.

54. Investigations further revealed that Mr. X bought a house through a mortgage bond facility and used money from the Trust Account to redeem the mortgage before time. He further bought a latest version of a Chrysler motor vehicle. He invested money belonging to the clients

from the Trust Account into the purchase of a lodge in a different town from where he was living. Mr. X, also sponsored a very expensive kitchen party and wedding ceremony at one of the most expensive hotels in the city using direct transfers of funds from the Trust Account. He also made a lot of cash withdraws from the same account and the money could not be traced as to what it had been used for.

55. At the end of the investigations, Mr. X was arrested for theft and money laundering.

56. Offence: Theft and Money Laundering  
 Customer: individual  
 Industry: Banking, Real Estate  
 Technique : use of clients account, mortgage  
 Mechanism : Financial institutions/ Lawyers  
 Instrument : wire transfers, cash  
 Indicators: Cash withdrawals  
 Mortgage bond redemption before time  
 Purchases being paid on behalf of the lawyer directly from the Trust Account  
 Extra ordinary expenditure on social events like weddings  
 Lavish life style  
 Sudden change in one's life style (Purchase of expensive motor vehicles and Real Estate in a prime residential area).

CASE STUDY 9 – Laundering through real estate using the insurance industry

57. A Mr. JF was working for his country's embassy in one of the countries in Southern Africa. Whilst there he defrauded the embassy of millions of dollars. He used to transfer money to an offshore account pretending to be paying for purchases for goods and services. He also made double payments and by the time of his dismissal from work, he had defrauded the embassy of

millions of dollars.

58. Back home, money was transferred from the offshore account as a loan to Mr. JF. Mr. JF then withdrew the money and invested it in a lodge. When the Embassy reported the matter Mr. JF had destroyed a lot of evidence. The investigations extended to the Lodge which was mysteriously gutted by fire when the investigations reached an advanced stage. The property could not be seized as it had been destroyed.

59. Mr. JF was then arrested for Theft only and not money laundering. Whilst in prison his next of kin made an insurance claim over the gutted property which was honoured and a new lodge was put up using the money from insurance.

60. Offence: Theft  
 Customer: individual  
 Industry: Banking, Real Estate, insurance  
 Technique : wire transfers, insurance claim  
 Mechanism : Financial institutions  
 Instrument : wire transfers  
 Indicators: property which is being investigated suddenly gutted  
 Insurance claim for property included in a criminal investigation  
 Purported loan from an offshore Bank

*CASE STUDY 10 – Laundering through real estate using an offshore shell company*

61. A PEP was involved in a syndicate in which state funds were siphoned from government coffers. The syndicate incorporated a shell company in a foreign country. When the Pep's term of office came to an end, investigations were instituted relating to a corruption matter that took place during the PEP's time in office.

62. Investigations revealed that the syndicate siphoned millions of dollars using another government account from which wire transfers were made to offshore accounts including to a the shell company. It was further revealed that the shell company was used to acquire a number

of real estate in the PEP's country and abroad. Money was used by the PEP to pay his school children's fees and upkeep abroad. He also bought clothes in bulk without consideration and his kids started living a lavish life style.

63. Upon conclusion of the investigation, the trio was arrested for corruption, theft and money laundering. The properties were seized and a number of them were forfeited to the state.

64. Offence: Theft, corruption, money laundering

Customer: individual, company

Industry: Banking, Real Estate

Technique : wire transfers, investment

Mechanism : Financial institutions

Instrument : wire transfers

Indicators: property owned by an offshore company without clear directors details  
Shell company purchasing property and unwilling to disclose the beneficial owners.  
Government account being operated without proper procedures.  
Outward wire transfers to a PEPs child from a government account.  
Lavish life style.

## **7. GENERAL INDICATORS (RED FLAGS)**

- Large and unexplained transfers or deposits
- Unusual bank transactions
- Repeated unexplained transfers or deposits
- Use of unnecessary 3rd parties during property transactions
- Use of unusual methods of payment/settlement
- Complicated proposals where identity of the beneficial owner or source of funds or both is not clear, which gives the impression that they are designed to mislead or

confuse the transaction

- Complicated structures involving multiple jurisdictions for no apparent reason
- Reluctance by any of the parties to a transaction to complete the relevant documents or provide required proof
- Operating unregistered estate agents
- Use of cash to facilitate transactions regardless of amount involved
- Use of Shell companies to buy property
- Foreign nationals making huge investments directly in real estate using locals
- Fund structuring
- Liquidating mortgagees using lump sum payments before time
- Payments of long leases of say one year by a tenant whose economic background is not sound
- Transactions by individuals who unexpectedly repay problematic loans or mortgages or who repeatedly pay off large loans or mortgages early, particularly if they do so in cash.
- Transactions involving legal persons which, although incorporated in the country, are mainly owned by foreign nationals who may not be resident for tax purposes
- Transactions involving legal persons whose addresses are unknown or are merely correspondence addresses (e.g. a shared office or shared business address or telephone), or where the details are believed to be or likely to be false.
- Establishment of legal persons to hold properties with the sole purpose of placing a front man or straw man between the property and the true owner.
- Transactions relating to the same property or rights that follow in rapid succession (e.g. purchase and immediate sale of property), which often entail a significant increase or decrease in the price compared to the initial purchase price.

- Transactions entered into at a value significantly different (much higher or much lower) from the real value of the property or differing remarkably from market values.

## **8. KEY FINDINGS**

### **8.1 Strengths and Vulnerabilities**

65. The study has highlighted strengths and vulnerabilities linked to the Real Estate sector in the region.

#### 66. Strengths

- Almost common definition of Real Estate;
- Most jurisdictions have operational FIUs;
- Time taken to complete a transaction gives the law enforcement agencies enough time to intervene where necessary;
- Deterrent penalties to offences related to Real Estate in all jurisdictions;
- Adequate cooperation structures both locally and internationally;
- Adequate legal framework requirements for registration of properties; and
- Easy access to records;

#### 67. Vulnerabilities

- The use of cash for transactions;
- A significant growth in the Real Estate sector attributed to illicit proceeds;
- There has not been effective implementation of laws relating to Real Estate Sector;
- Use of mortgage bonds to launder proceeds of crime;
- Use of corporations to acquire property;
- Unregistered players in the industry, e. g., estate agents;
- Records still being kept manually;
- Role played by conveyancers;

- Lack of awareness and alertness to ML/TF elements/indicators arising out of most of the predicate offences to investigators;
- Lack of full compliance with KYC and CDD measures by financial institutions;
- Lack of Integrity by some of the lawyers and senior bank officials.

## **9. ISSUES FOR CONSIDERATION**

68. The strengths noted are of paramount importance in this study and member countries are encouraged to maintain and improve on them. The project members after considering the vulnerabilities identified, came up with the following recommendations:

- Member countries are encouraged to effectively implement financial inclusion;
- Improve regulation, supervision and monitoring of the Real Estate Sector
- Countries are encouraged to have a legal framework which establishes regulatory authorities to the Real Estate sector.
- Legal framework which requires disclosure of beneficial ownership.
- Make it a mandatory requirement to know and disclose the beneficiaries and that all parties should know their customers;
- Countries are encouraged to maintain electronic databases;
- Countries are encouraged to fully implement and monitor adherence with laws that cover stakeholders to the Real Estate Sector;

## **10. CONCLUSION**

69. It is evident from this study that, like all other countries in the world, the ESAAMLG Region is equally vulnerable to the laundering of proceeds of crime through the Real Estate sector.

70. The general overview is that the Real Estate market in the ESAAMLG region is not always stable and is often marked by prices having an upward trend. This has created a perfect environment for criminals to conceal their illegal funds regardless of whether the investment is going to bring the criminal, profit or not. The Real Estate Sector has become a perfect haven for criminals to hide their dirty money and at the same time making it legitimate.

71. From the study, it was also clear that all member countries have almost a common definition of Real Estate and most jurisdictions have operational FIUs. This is a good platform to enable successful cross boarder investigations and the time taken to complete a transaction gives the law enforcement agencies enough time to intervene where necessary. The study further highlighted that there are currently adequate cooperation structures both nationally and internationally, as well as adequate legal framework requirements for registration of properties and easy access to records.

72. The study has since highlighted a number of vulnerabilities in the region such as the use of cash for transactions and none effective implementation and non-compliance with laws relating to the Real Estate Sector. It was further noted that mortgage bonds are also being used to launder proceeds of crime. The case studies illustrated that corporations are sometimes used to acquire property in order to hide the beneficial owner. The study further established lack of integrity exhibited by some of the lawyers practicing as conveyancers as they aid criminals in laundering funds through the Real Estate Sector through abuse of the various services they provide. The study of laundering through the Real Estate Sector is one area that seems to have more case studies in the region confirming that the sector could be one of the sectors being largely abused by criminals to launder their proceeds of crime.

73. Member countries are therefore encouraged to effectively implement financial inclusion and improve regulation, supervision and monitoring of the Real Estate Sector. Member countries are further encouraged to enhance their legal framework to provide for the establishment of regulatory authorities for the sector and require disclosure of beneficial ownership. It is further recommended that countries should maintain electronic databases and fully implement laws that cover stakeholders to the Real Estate Sector.

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