



**UNIVERSITY** *of the*  
**WESTERN CAPE**

**FACULTY OF LAW**

**AN ANALYSIS OF THE CHALLENGES IN CURBING AND COMBATTING COVID-19  
RELATED MONEY LAUNDERING THREATS AND VULNERABILITIES IN  
SOUTH AFRICA.**

By

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Mini thesis submitted in partial fulfilment of the requirements for the award of the

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## DECLARATION

I declare that **AN ANALYSIS OF THE CHALLENGES IN CURBING AND COMBATTING COVID-19 RELATED MONEY LAUNDERING THREATS AND VULNERABILITIES IN SOUTH AFRICA** is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

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## KEY TERMS

Anti-Money Laundering

COVID-19

Disaster Management Act

Financial Action Task Force

Money Laundering

Money Laundering Threats

Nine Striking Solutions

Operation Accelerated Armoured Action

Pandemic

Pandemic Money Laundering Threat Structure

Personal Protective Equipment

Predicate Crimes

Procurement

Risk Based Approach

Regulatory Technology

Severe Acute Respiratory Syndrome Coronavirus 2

South Africa

Unpredictable

World Health Organisation



## LIST OF ABBREVIATIONS AND ACRONYMS

2021 MER	South Africa Mutual Evaluation Report
ACT	Analysis of Corruption Trends
AML	Anti-Money Laundering
Asisa	Association for Savings and Investment South Africa
BOR	Bill of Rights
CA	Companies Act and Regulations
CCCA	Constitutional Court Complementary Act
CFT	Combating the Financing of Terrorism
COVID-19	Coronavirus Disease of 2019
CPA	Criminal Procedure Act
CSD	Central Supplier Database
CW	Corruption Watch
DA	Democratic Alliance
DMA	Disaster Management Act
DoBE	Department of Basic Education
DoE	Department of Education
DoH	Department of Health
DoT	Department of Transport

DSD	Department of Social Development
DTA	Drugs and Drug Trafficking Act
FATF December 2020	December 2020 Paper Update regarding COVID-19-related Money Laundering and Terrorist Financing
FATF	Financial Action Task Force
FATF May 2020	May 2020 Paper regarding COVID-19 related Money Laundering and Terrorist Financing Risks and Policy Responses
FIC	Financial Intelligence Centre
FICA	Financial Intelligence Centre Act
FSRB	FATF-Style Regional Bodies
GDP	Gross Domestic Product
IMF	International Monetary Fund
JRCEA	Judges Remuneration and Conditions of Employment Act
JSA	Judicial Service Commission Act
KYC	Know-Your-Customer
MA	Magistrates Act
MCA	Magistrates' Courts Act
ML	Money Laundering



MLAC	Money Laundering Advisory Council
MLCA	US Money Laundering Control Act of 1986
NACS	National Anti-Corruption Strategy
NCCC	National COVID-19 Command Council
NHLS	National Health Laboratory Service
NPA	National Prosecuting Authority
NPA	National Prosecuting Authority Act
OECD	Organisation for Economic Co-operation and Development
Operation Triple A	Operation Accelerated Armoured Action
PFHA	Protection From Harassment Act
PCA	Proceeds of Crime Act
PDA	Protected Disclosures Act
PEP	Politically Exposed Person
PMLTS	Pandemic Money Laundering Threat Structure
POCA	Prevention of Organised Crime Act
POCDATARA	Protection of Constitutional Democracy against Terrorism and Related Activities Act
POPIA	Protection of Personal Information Act
PPE	Personal Protective Equipment
QLFS	Quarterly Labour Force Survey



RBA	Risk Based Approach
RegTech	Regulatory Technology
Sabric	SA Banking Risk Information
SAJEI Act	South African Judicial Education Institute Act
SAPS	South African Police Service
SAPSA	South African Police Service Act
SARS	South African Revenue Service
SARS-CoV-2	Severe Acute Respiratory Syndrome Coronavirus 2
SCA	Supreme Court Act
SCCA	Small Claims Court Act
SI	International System of Units
SIU	Special Investigating Unit
TERS	Temporary Employer-Employee Relief Scheme
TF	Terrorist Financing
The Constitution	The Constitution of the Republic of South Africa
The Hawks	Directorate of Priority Crime Investigation
The Zondo Commission	Zondo Judicial Commission of Inquiry into State Capture
UCT	University of Cape Town
UIF	Unemployment Insurance Fund
UN	United Nations





UNCAC	United Nations Convention against Corruption
UNCTOC	United Nations Convention Against Transnational Organized Crime
Vienna Convention	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
WHO	World Health Organisation
WPA	Witness Protection Act

\$ United States Dollar & Canadian Dollar

R South African Rand

€ Euro



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## CHAPTER ONE

### INTRODUCING THE BRIEF

#### INTRODUCTION

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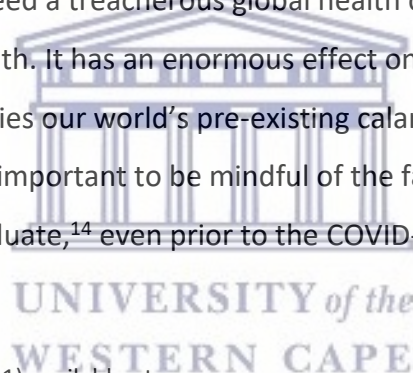
##### 1.1. Prelude

Earth is confirmed to be the only planet in the entire known universe perfectly located and resourced to host earthly life as we know it.<sup>1</sup> It is indeed a phenomenon to behold. South Africa, often referred to as the Rainbow Nation, certainly speaks to this phenomenon. The country is granted miraculous landmarks, tourist attractions, lush vegetation, platinum metals, gold,<sup>2</sup> cultural diversity and beautiful citizens.<sup>3</sup> Cape Town, the capital city of the Western Cape Province and also the legislative capital of South Africa,<sup>4</sup> is in fact named the third greatest city on earth because of its, amongst other aspects, outstanding topography and geography.<sup>5</sup> It is, however, incontestably and unfortunately so that with this said splendour, detriment also resides. Throughout the years and up until this very moment, South Africa and its citizens endure hardships, as does the rest of the world.<sup>6</sup> One of the many hardships suffered globally, with South Africa regrettably not escaping its atrocious grip, is Money Laundering (ML). ML is the unlawful method of converting 'dirty' proceeds, produced from predicate offenses, into 'clean' proceeds that can seemingly be used at liberty in legitimate business operations without being hidden from any regulatory

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- 1 Planetary Science Communications team at Nasa 'Overview' (22 March 2022) available at <https://solarsystem.nasa.gov/planets/earth/overview/> (accessed 24 April 2022). See also Greshko M 'Planet Earth, explained' (2022) available at <https://www.nationalgeographic.com/science/article/earth> (accessed 24 April 2022).
  - 2 Let's Travel More '10 Things South Africa Is Famous For' (2 November 2018) available at <https://lets-travel-more.com/10-things-south-africa-is-famous-for/> (accessed 15 November 2021).
  - 3 Morkel G 'South Africa has the ninth highest number of 'beautiful' people in the world – study' (2 November 2021) available at <https://www.news24.com/channel/the-juice/news/pageant/south-africa-has-the-ninth-highest-number-of-beautiful-people-in-the-world-study-20211102-2> (accessed 15 November 2021).
  - 4 Axelson E 'Cape Town' (7 September 2020) available at <https://www.britannica.com/place/Cape-Town> (accessed 14 June 2022).
  - 5 Sleith E 'Cape Town named third greatest city on Earth' (8 May 2022) available at <https://www.timeslive.co.za/sunday-times/lifestyle/travel/2022-05-08-cape-town-named-third-greatest-city-on-earth/> (accessed 14 June 2022).
  - 6 Some hardships may be the same or similar, and some may be completely different.

authorities.<sup>7</sup> ML is shockingly prevalent throughout the world. It is a process that has overwhelmingly distressed society for ages. The years 2019 to 2022, have, however, proven to be especially extraordinary in the history of humankind. The world is presently grappling with the deadly global COVID-19 Pandemic. It is caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).<sup>8</sup> Although vaccinations are available, the virus is still rampant, transmittable<sup>9</sup> and highly contagious,<sup>10</sup> mainly attacking the human respiratory system.<sup>11</sup> COVID-19 was officially declared a global pandemic by the World Health Organisation (WHO) on March 11, 2020. Subsequently, on March 15, 2020, and in terms of the Disaster Management Act (DMA),<sup>12</sup> the South African government declared a national state of disaster and also established a National COVID-19 Command Council (NCCC). South Africa's President, Cyril Ramaphosa, also announced on March 23, 2020 that a national lockdown was necessary for the purpose of controlling the spread of COVID-19 in the country and to effectively flatten the curve.

The COVID-19 Pandemic is indeed a treacherous global health crisis. The effects of it are, however, not restricted to health. It has an enormous effect on socio-economic factors,<sup>13</sup> and in many instances, intensifies our world's pre-existing calamities such as ML. Due to the extent of criminal activity, it is important to be mindful of the fact that ML has certainly been difficult to accurately evaluate,<sup>14</sup> even prior to the COVID-19 Pandemic. However, amid



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- 7 CFI 'Money Laundering' (2021) available at <https://corporatefinanceinstitute.com/resources/knowledge/finance/money-laundering/> (accessed 14 June 2022). See Chapter Two.
- 8 Shahid Z, Kalayanamitra R, McClafferty B, Kepko D, Ramgobin D, Patel R, Aggarwal CS, Vunnam R, Sahu N, Bhatt D, Jones K, Golamari R, Jain R 'COVID-19 and Older Adults: What We Know J Am' *J Am Geriatr Soc.* 2020 May;68(5):926-929. doi: 10.1111/jgs.16472. Epub 2020 Apr 20. PMID: 32255507; PMCID: PMC7262251 (2020) 926.
- 9 Ma K W F and McKinnon T 'COVID-19 and Cyber Fraud: Emerging Threats During the Pandemic' (2020) 1.
- 10 Mohapatra R K, Pintilie L, Kandi V, A K Sarangi, Das D, Sahu R, and Perekhoda L 'The recent challenges of highly contagious COVID-19, causing respiratory infections: Symptoms, diagnosis, transmission, possible vaccines, animal models, and immunotherapy' *Chem Biol Drug Des.* 2020 Nov;96(5):1187-1208. doi: 10.1111/cbdd.13761. Epub 2020 Jul 26. PMID: 32654267; PMCID: PMC7405220 (2020) 1.
- 11 Ma K W F and McKinnon T (2020) 1.
- 12 Act 57 of 2002.
- 13 Bhuiyan A K M I, Sakib N, Pakpour A H, Griffiths M D and Mamun M A 'COVID-19-Related Suicides in Bangladesh Due to Lockdown and Economic Factors: Case Study Evidence from Media Reports' *Int J Ment Health Addict.* 2020 May 15:1-6. doi: 10.1007/s11469-020-00307-y. Epub ahead of print. PMID: 32427168; PMCID: PMC7228428 (2020) 1.
- 14 Kepli M Y B Z and Nasir M A 'Money Laundering: Analysis on The Placement Methods' *International Journal of Business, Economics and Law, Vol. 11, Issue 5 (Dec.) ISSN 2289-1552* (2016) 32.

this global event, new risks have in fact evolved, making matters worse.<sup>15</sup> ML and ML threats have become increasingly evident in South Africa during the COVID-19 Pandemic. It is consequently crucial for South Africa to increase awareness, proactivity, vigilance, insight, intelligence, and implementation in order to adequately deal with this type of problem which may reoccur in the future. How South Africa is to accomplish this, is the focus of this thesis.

## 1.2. The Problem Statement

ML and the COVID-19 Pandemic currently pose as co-existing challenges, causing distress to the universal socio-economic wellbeing. They also co-exist in an unrelated sense and a related sense. The unrelated sense may be understood as follows. On the one hand, approximately 800 billion to 2 trillion in US dollars, or 2 per cent to 5 per cent of the global gross domestic product (GDP), is the estimated amount of money that is laundered worldwide in one year.<sup>16</sup> What worsens this matter is that, strictly speaking, ML is not a stand-alone crime. As mentioned above and in Chapter Three, ML works hand in hand with other crimes, known as predicate offenses. ML converts the illegal proceeds into legitimate proceeds, and in doing so, conceals the predicate transaction.<sup>17</sup> Predicate offenses are thus always to be kept in mind when alluding to ML and its threats. Then on the other hand, COVID-19 is still exceedingly contagious in nature<sup>18</sup> and due to the fact that it is mutating,<sup>19</sup> international infection figures continue to increase.<sup>20</sup> On June 18, 2022 it was deemed that a total of 543 971 735 confirmed cases of infection were reported globally along with a total of 6 340 004 global COVID-19 related deaths.<sup>21</sup> As ML and COVID-19 presently co-exist, they have simultaneously generated unparalleled worldwide tribulations, economic commotion,

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15 Kathrada-Khan S and van der Westhuizen M 'Money laundering risks in a global pandemic' (15 May 2020) available at <https://www.financialinstitutionslegalsnapshot.com/2020/05/money-laundering-risks-in-a-global-pandemic/> (accessed 14 June 2022).

16 United Nations Office on Drugs and Crime 'Money Laundering, Proceeds of Crime and the Financing of Terrorism' available at <https://www.unodc.org/unodc/en/money-laundering/globalization.html> (accessed 14 June 2022).

17 Goredema C 'Money laundering in Southern Africa Incidence, magnitude and prospects for its control' (2004) 1.

18 Ma K W F and McKinnon T (2020) 1.

34 Ries J 'The Coronavirus Is Mutating: What We Know About the New Variants' (22 January 2021) available at <https://www.healthline.com/health-news/the-coronavirus-is-mutating-what-we-know-about-the-new-variants> (accessed 14 June 2022).

20 Ma K W F and McKinnon T (2020) 1.

21 Worldometer 'COVID-19 Coronavirus Pandemic' (14 June 2022) available at <https://www.worldometers.info/coronavirus/> (accessed 14 June 2022).



human and environmental sorrow, as well as an increase in COVID-19-related delinquencies.<sup>22</sup> Unfortunately it is also a fact that crime groups target the vulnerable as they suffer these effects.<sup>23</sup> This is where ML and the COVID-19 Pandemic may be understood in the related sense. Even though South Africa has bolstered its Anti-Money Laundering (AML) regulations, it continues to lose between R 151.14 billion and R 378.59 billion a year in illegitimate financial dealings.<sup>24</sup> During the COVID-19 Pandemic, ML and ML threats in South Africa have proven to be increasingly evident and widespread. As a result of this global health and socio-economic crisis, South Africans need a range of specific essentials, amongst all the other non-COVID-19 related essentials they already need. These include, for example, personal protective equipment (PPE) and funding. Criminals take advantage of these needs by participating in associated predicate offenses and having to launder the proceeds thereof. This involves the procurement of PPE, sanitizing projects and the Unemployment Insurance Fund (UIF), to mention but a few, which will be elaborated upon further in Chapter Three. This relation or link between ML and its threats, and the COVID-19 Pandemic is a cause for great concern. As previously stated, ML has a crippling effect on the socio-economic status of South Africa. With the COVID-19 Pandemic and the innumerable challenges it has brought about, along with South Africa's pre-existing problems, ML has unsympathetically amplified, adapted, and evolved. Investigation, prosecution and eventual alleviation of ML and ML threats in South Africa is under constant attack. It thus cannot be stressed enough that South Africa needs urgent recommendations on ML and ML threats that occur during the COVID-19 Pandemic or any further pandemics for that matter.

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22 FATF 'FATF focus on COVID-19' (2020), available at [https://www.fatf-gafi.org/publications/covid-19/covid\\_19.html?hf=10&b=0&s=desc\(fatf\\_releasedate\)](https://www.fatf-gafi.org/publications/covid-19/covid_19.html?hf=10&b=0&s=desc(fatf_releasedate)) (accessed 14 June 2022).

23 BBC 'Coronavirus: Crime gangs target vulnerable groups with Covid-19 scams' (1 June 2020) available at <https://www.bbc.com/news/uk-scotland-52881498> (accessed 14 June 2022).

24 Business Tech Arachnys 'How to reduce money laundering in 2020' (23 January 2020) available at <https://businesstech.co.za/news/industry-news/367824/how-to-reduce-money-laundering-in-2020/> (accessed 14 June 2022).

### 1.3. Research Question

This thesis will seek to answer the following question:

‘How can the challenges and exposure to ML and ML threats be curbed and combatted in South Africa during a pandemic?’

To answer this question, a study commenced by setting out the significance of the problem at hand. It then created an understanding of ML, the effects thereof and the international response thereto. Furthermore, a discussion was delved into regarding the damage caused by ML and ML threats in South Africa due to the COVID-19 Pandemic, as well as the Financial Action Task Force (FATF)’s global response. The adequacy of the South African AML framework to deal with ML and ML threats during a pandemic was moreover interrogated. This was followed by the scrutiny of other related salient causes of ML and ML threats during a pandemic in South Africa. The study then reached completion by yielding recommendations and conclusions.

The aims and objectives of this study is to highlight the challenges South Africa endures concerning ML and ML threats during the COVID-19 pandemic and present solutions in order for future similar transgressions to be reduced or completely alleviated during any pandemic in South Africa.



### 1.4. Literature Review

Hamman and Koen examine the exploitation of the attorney’s trust account as a channel for ML resulting in the attorney evolving into a money launderer.<sup>25</sup> Reference is made inter alia to the Prevention of Organised Crime Act (POCA),<sup>26</sup> the Financial Intelligence Centre Act (FICA)<sup>27</sup>, and the Protection of Constitutional Democracy against Terrorism and Related Activities Act (POCDATARA).<sup>28</sup> Hamman and Koen state that the South African legislature has pursued to guarantee that attorneys carry out and adhere to their ML combatting duties by enforcing reporting responsibilities upon them that are enshrined in sections 28, 29 and

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25 Hamman A J and Koen K ‘Cave Pecuniam: Lawyers as Launderers’ *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 15(5):68-100 DOI:10.4314/pej.v15i5.3 (2012) 70.

26 Act 121 of 1998.

27 Act 38 of 2001.

28 Act 33 of 2004. See also Hamman A J and Koen K (2012) 72.

31 of FICA.<sup>29</sup> In his doctoral thesis, Hamman investigates both national and international legislative measures utilized in South Africa to battle the implication of lawyers in ML schemes.<sup>30</sup> The thesis also delves into the restrictions imposed by these measures upon the legal profession and the consequences for legal practice.<sup>31</sup> It is submitted that both POCA and FICA should be amended to exempt lawyers from prosecution if they are paid with contaminated funds. Hamman suggests that, similar to provisions in the US Money Laundering Control Act of 1986 (MLCA), an exemption clause should be interweaved into POCA and FICA. Hamman states further that the infringement of rights should not occur as a result of combatting crime.<sup>32</sup>

Furthermore, considering AML regimes, controls and structures, Rowan Bosworth-Davies analyses the impact that Western Christian fundamentalist religious ideology, as opposed to Asian social or cultural experiences, has on AML control.<sup>33</sup> Williams provides an analysis of the inadequacies of South Africa's AML regime. Though the study is restricted to South Africa's AML legal regime including POCA and FICA, this is scrutinized in light of the 2009 FATF mutual evaluation report and the International Monetary Fund Financial Sector Assessment Programme 2015. Williams also states that ML is an added peril to the solidity of South Africa's already susceptible economy.<sup>34</sup> Lowe examines the necessity for predictive intelligence to assist AML structures within the finance industry.<sup>35</sup> Tsingou sheds light upon an amplified professionalized compliance industry that has developed in answer to intensification of commotion in the international AML regime.<sup>36</sup> Keesoony deems the difficulty of enforcing international laws as the underlying hinderance in combatting ML.

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29 Hamman A J and Koen K (2012) 93.

30 Hamman A J *The impact of anti-money laundering legislation on the legal profession in South Africa* (unpublished LLM thesis, University of the Western Cape, 2015) 1.

31 Hamman A J (2015) ix.

32 Hamman A J (2015) 233.

33 Bosworth-Davies R 'Money Laundering: towards an alternative interpretation' *Journal of Money Laundering Control* 9(4):335-345 DOI:10.1108/13685200610707590 (2008) 179.

34 Williams C *An Analysis of the Critical Shortcomings in South Africa's Anti-Money Laundering Legislation* (unpublished LLM thesis, University of the Western Cape, 2017) 61.

35 Lowe R J 'Anti-money laundering - The need for intelligence' *Journal of Financial Crime* (2017) 472.

36 Tsingou T 'New Governors on the Block: The Rise of Anti-money Laundering Professionals' *Crime Law and Social Change* 69(2) DOI:10.1007/s10611-017-9751-x (2018) 4.

Keesoony investigates this problem and examines whether it is too overwhelming to overcome in practice.<sup>37</sup>

There is also literature which alludes to the COVID-19 Pandemic as well as ML and ML threats in South Africa. De Villiers, Cerbone and Van Zijl explore the action taken by the South African government in response to the COVID-19 Pandemic. Further examined is the effect on state budgets and finances. It is stated that the international community had commended the South African government's initial health response especially with regards to the extensive testing system and the early protocols such as the lockdowns. Though the initial lockdown somewhat deferred the escalation of the COVID-19 Pandemic, it further confounded a pre-existing perilous economy which unfortunately led to detrimental social consequences that will continue to be damaging long into the future.<sup>38</sup> Wan Fei Ma and McKinnon analyse cyber threats and cyber fraud victimization that occur within the COVID-19 Pandemic by means of traditional and psychological criminological theories. Ma and McKinnon further delve into a COVID-19 subject-based cyber fraud classification using experimental evidence from agency and institutional reports.<sup>39</sup>

The FATF scrutinizes COVID-19 related ML and Terrorist Financing (TF) risks and policy responses in their May and December 2020 issued papers. The FATF in essence detects and sets out challenges and novel ML and TF threats and vulnerabilities arising from the COVID-19 Pandemic.<sup>40</sup> De Koker elaborates upon the various ML trends in South Africa,<sup>41</sup> noting the major trends in 2001 to 2002 as including the use of professional assistance, cash and currency, and the purchase of goods and properties. It also includes the abuse of businesses and business entities, the informal sector of the economy, and financial institutions.<sup>42</sup> The

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37 Keesoony S 'International anti-money laundering laws: the problems with enforcement' *Journal of Money Laundering Control* (2016) 130.

38 de Villiers C, Cerbone D and Van Zijl W 'The South African Government's response to COVID-19, *Journal of Public Budgeting, Accounting & Financial Management*, forthcoming' (2020) 1.

39 Ma K W F and McKinnon T (2020) 1.

40 FATF 'COVID-19-related Money Laundering and Terrorist Financing Risks and Policy Responses' (May 2020). See also FATF 'Update: COVID-19-related Money Laundering and Terrorist Financing' (December 2020).

41 De Koker L 'Money laundering control: the South African model' *Journal of Money Laundering Control* (2002) 27.

42 De Koker L (2002) 10.

article aims to deliver a rudimentary standard to which the effectiveness and bearing of the future ML control structure can be appraised.<sup>43</sup>

Though the above-mentioned literature alludes to aspects relating to ML, COVID-19 and/or South Africa, none of them explore how the exposure and challenges of ML and its threats may be curbed and combatted in South Africa during a pandemic. The focus of this thesis is therefore uniquely positioned to address this intersecting gap in the literature and research studies to date.

### 1.5. Significance of the Study

The COVID-19 Pandemic was indeed unanticipated.<sup>44</sup> When COVID-19 was declared a global pandemic by the WHO and when the national lockdown had been enforced there was a wave of mixed emotion that had overcome the South African nation. Some citizens were pleased to work from home and be alleviated from enduring the treacherous traffic in the mornings, others were happy to spend more time with their families, animals or in their kitchens cooking and baking, more than they ever did before. On the contrary, and especially weeks into the lockdown, there were also citizens who experienced extreme despair. These include experiences such as losing a loved one and not being able to bid them a 'normal' funeral due to the lockdown protocol; loss of jobs or businesses; separation or divorces; anxiety, depression, loneliness, suicide;<sup>45</sup> poverty; and/or domestic abuse. The responses to the health and socio-economic crisis at hand are thus intricate, multifaceted, and triggered by a host of external and internal aspects.<sup>46</sup> Further to this, based upon the initial 21-day lockdown that had taken place in South Africa, forecasts by analysts proposed that there was a GDP contraction of 7.2 per cent in 2020 that resulted in a debt-to-GDP ratio of 81 per cent and a fiscal shortfall of 12 per cent of GDP in 2021. This will lead to an added strain upon the country's already overstrained public finances.<sup>47</sup> It is evident that the COVID-19 Pandemic signifies an intense economic and social strain test for South Africa and its government.<sup>48</sup>

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43 De Koker L (2002) 37.

44 de Villiers C, Cerbone D and Van Zijl W (2020) 3.

45 Bhuiyan A K M I, Sakib N, Pakpour A H, Griffiths M D and Mamun M A (2020) 1.

46 de Villiers C, Cerbone D and Van Zijl W (2020) 3.

47 de Villiers C, Cerbone D and Van Zijl W (2020) 3.

48 de Villiers C, Cerbone D and Van Zijl W (2020) 2.

Mind-blowingly, criminals unsympathetically bask in, and adjust to, vulnerable situations as previously mentioned. As if the world, and South Africa specifically, have not already experienced immense trauma due to the COVID-19 Pandemic, criminals, and economic criminals in particular, have proven their ruthless nature now more than ever. It is stated that ML techniques include camouflage; casinos and gambling; real estate acquisition; the catering industry; exporting and importing; and acquisition and smuggling of arms to mention but a few.<sup>49</sup> Because of the COVID-19 Pandemic lock down protocol, money launderers had to create new ML methods, adjust their current ML techniques, or rely upon and amplify some of their ML techniques more than others. Moreover, ML threats have been evolving. The FATF, of which South Africa is a member, diligently recognised this dilemma. In its May and December 2020 papers, it identifies vulnerabilities and threats that pose as emerging ML and TF risks. The FATF identified that numerous governments are providing support funds to alleviate the economic strain associated with COVID-19. It has been reported that criminals may attempt to misdirect or deceptively claim such funds. Also impacting international financial assistance, is corruption in procurement or aid delivery channels.<sup>50</sup> Chapter Three delves deeply into the FATF's responses.

In light of how the COVID-19 Pandemic has affected South Africa, it was considered, by the government, unrealistic and inapt to call for public procurement of goods and services in line with the normal public procurement regulations, as this may result in an aggravation of the said disaster. Thus, Regulation 9 of the Regulations, issued in terms of section 27(2) of the DMA, set out emergency procurement procedures.<sup>51</sup> According to Corruption Watch, during the COVID-19 Pandemic, some South Africans have observed and opined that procurement laws and policies can establish a gap for corrupt and unethical individuals, including government officials, to steal from the state's finances.<sup>52</sup> A report by the late Auditor-General, Kimi Makwetu, on the expenditure of the government's COVID-19 relief

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49 Unger B 'The Scale and Impacts of Money Laundering' (2007) 29 – 46.

50 FATF (May 2020). See also FATF (December 2020).

51 Malatji T 'Public Procurement' (23 April 2020) available at <https://www.lexisnexis.co.za/news-and-insights/covid-19-resource-centre/practice-areas/public-law/public-procurement> (accessed 14 June 2022).

52 Mahlangu T 'COVID-19: Rude Awakening to SA's Procurement Failures' (18 September 2020) available at <https://www.corruptionwatch.org.za/covid-19-rude-awakening-to-sas-procurement-failures/> (accessed 14 June 2022).

fund highlights that there are clear indications of fraudulent activities in PPE procurement.<sup>53</sup> Makwetu stated that the audit exposed frightening findings.<sup>54</sup> It is therefore evident that the fraudulent procurement findings in South Africa pose as one of the glaring red flags considering the warnings set out in the FATF May and December 2020 papers.

Despite the reception of vaccinations for COVID-19, it is clear that South Africa faces an unprecedented predicament. The significance of this thesis is to examine how the challenges and exposure associated with ML and ML threats may be curbed and combatted in South Africa during a pandemic. Therefore, an explanation of the severity of ML and its effects takes place. An investigation and exploration of the various effects of COVID-19 on the nature of ML trends, the identification of the various ML threats during the COVID-19 Pandemic, a scrutiny of the existing national and international AML tools and an analysis of deeper salient issues is undertaken. Furthermore, based on the findings of the research, the thesis puts forward uniquely coined recommendations in order to combat such threats. Best of breed technologies, including RelativityOne, Relativity Trace and Heretik, that are available to assist in the AML battle is also briefly alluded to. This thesis aims to provide an in-depth insight into why it is imperative to combat ML, the problems South Africa faces in regard to the COVID-19 Pandemic related ML threats and associated challenges, whether the South African AML regime is competent to combat such threats and then further provides guidelines to improve and essentially combat these ML threats. The ultimate purpose of this thesis is to generate insights and knowledge that will contribute to safeguarding South Africa and its citizens against the detrimental effects of ML, particularly during the COVID-19 Pandemic, and any possible future pandemics.

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53 Mukwevho N “Clear indications of fraudulent activities’ in PPE procurement – Auditor-General’ (2 September 2020) available at <https://health-e.org.za/2020/09/02/auditor-general-report-covid-19-fund/> (accessed 14 June 2022).

54 BBC ‘Coronavirus in South Africa: Misuse of Covid-19 funds ‘frightening’ (2 September 2020) available at <https://www.bbc.com/news/world-africa-54000930> (accessed 14 June 2022).

## **1.6. Methodology**

A desktop study was stringently utilized for this study. Relevant primary and secondary sources were consulted. The primary sources include international instruments, legislation, and case law. The secondary sources encompass books, chapters in books, unpublished theses, dissertations, reports, recommendations, principles, an assessment, a guide, a program, a notice, a framework, a presentation, a strategy, journal articles, papers, and internet sources. This serves as a solid foundation to establish the intricacy and depth of the problem at hand as well as to establish sound recommendations to curb and combat the problem.

## **1.7. Outline of Chapters**

Chapter One introduces the brief which essentially stipulates the problem that the thesis intends to examine and provide possible solutions to. As such, the chapter specifies the problem statement, research question, aims and objectives, literature review, significance of the study, methodology used for the study as well as the outline of the chapters.

Chapter Two elaborates upon the severity of ML by defining it and demonstrating the importance of combatting it both globally and in South Africa during the COVID-19 Pandemic. It also sets out the international response to ML.

Chapter Three explores the unwonted damage caused by ML. It examines ML trends in South Africa during the COVID-19 Pandemic, and further analyses the international response thereto, particularly the FATFs response.

Chapter Four investigates the adequacy of the authoritative 'words and walls' applicable to South Africa's AML regime, especially during the COVID-19 Pandemic.

Chapter Five presents a deep dive into what gives rise to ML and ML threats during the COVID-19 Pandemic, or any other pandemic, in South Africa, by way of a Pandemic Money Laundering Trampoline Structure coined by this study. It furthermore introduces Operation Accelerated Armoured Action and its Nine Striking Solutions, also coined by this study, which provides a strategy to effectively defy the Pandemic Money Laundering Trampoline Structures components and their forms.



Chapter Six is the concluding chapter which advocates ‘accelerated armoured action’ and explicates the Nine Striking Solutions of Operation Accelerated Armed Action. It offers possible solutions to the issues identified via the Pandemic Money Laundering Trampoline Structure. In doing so, it thus provides recommendations as to how the challenges and exposure to the laundering of money may be curbed and combatted in South Africa during a pandemic.



## CHAPTER TWO

### SEVERITY

#### UNDERSTANDING MONEY LAUNDERING AND THE INTERNATIONAL RESPONSE

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##### 2.1. Introduction

It is evident, as indicated in Chapter One, that ML and its threats have multifaceted causes and effects. It distresses financial and non-financial institutions<sup>1</sup> as well as the global society at large, making it an enormous challenge throughout the world. It is clear that criminality necessitates the laundering of the proceeds of crime. Further apparent is that criminal methods and activities are continuously evolving.<sup>2</sup> To make matters worse, the catastrophic COVID-19 Pandemic has viciously intensified both the ML and ML threat problem, and the AML crusade. On a problem scale from one, being the smallest, to ten, being the biggest, ML and ML threats during the COVID-19 Pandemic, would probably be a ten.

Therefore, to combat and curb this problem, it is important to start by creating a solid understanding of the severity of the problem itself and consequently cultivate a will to combat it. As stated before, ML is complex, making it difficult to fully pinpoint or capture all its related dynamics. Engaging in a process of problem identification, an in-depth understanding is hence required. The detection and acknowledgement that there is in fact a problem, defining it, and recognising its nature and effects, are all imperative considerations for effective solutions and preventative measures to be established.<sup>3</sup> Furthermore, because ML is a global problem, it is crucial to explore the global responses to it in order to design and facilitate relevant domestic responses for the South African context. This chapter thus accentuates the severity of the problem in order to motivate stronger efforts to combat and curb ML and its threats through defining the nature of the problem, delving into its effects

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1 Beekarry N 'The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law' *Northwestern Journal of International Law & Business* (2011) 140.

2 Rossi B 'Rapid change, but the same threat: money laundering is a rapidly evolving challenge' (26 August 2014) available at <https://www.information-age.com/rapid-change-same-threat-money-laundering-rapidly-evolving-challenge-123458401/> (accessed 14 June 2022).

3 Skills You Need 'Problem Solving' (2021) available at <https://www.skillsyouneed.com/ips/problem-solving.html> (accessed 14 June 2022).

and the importance of combatting it, and moreover discussing the international response thereto.

## 2.2. Money Laundering Defined

It is a struggle to understand what ML is, and understandably so. It is not the easiest concept to fully comprehend, but not to the extent that it is impossible to grasp. It is in fact vital to understand ML in the best way possible, to create awareness, and to establish and strengthen solutions. This section aims to provide a background and definition to ML in attempt to bring understanding to the concept accordingly.

In the 1920s, a notorious American gangster namely Al Capone concealed his criminal proceeds in cash-only launderettes<sup>4</sup> and the term ML is said to have been derived from this context.<sup>5</sup> Capone may have provided us with the phrasing due to his illegal association with laundromats but the practice of ML has actually been prevalent far before the 20th century.<sup>6</sup> It is interesting, however, that in 1973, the term ML was first used in a newspaper article detailing the Watergate scandal which involved the following. After being caught unlawfully breaking in and entering the opposing Democratic Party offices at the Watergate complex in Washington DC in June 1972, five employees of President Nixon's re-election campaign were convicted of wiretapping and burglary. Congressional hearings followed. Here it was found that Nixon had recorded telephonic calls and conversations in his office. Due to this, his part in the concealment of the burglary and other crimes was exposed. In 1974 Nixon resigned as a result of the Watergate Scandal. It was subsequently revealed that Nixon was entangled in unlawful break-ins, political spying, campaign fraud, improper tax audits, sabotage, and prohibited wiretapping on an enormous scale. Money attained from illegitimate party financing had been deposited into a surreptitious slush fund. It was then laundered in Mexico and thereafter, to reward those carrying out the procedures, it was sent back to the US.<sup>7</sup> It is furthermore fascinating to note that, in the legal context, the term

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4 Bown J 'What's the new weapon against money laundering gangsters?' (2 April 2019) available at <https://www.bbc.com/news/business-47772362> (accessed 15 June 2022).

5 Ferwerda J 'The Economics of Crime and Money Laundering: Does Anti-Money Laundering Policy Reduce Crime?' (2008) 1.

6 Debczak M 'The Myth of How Al Capone Gave Us the Term 'Money Laundering'' (5 July 2017) available at <https://www.mentalfloss.com/article/502449/how-al-capone-gave-us-term-%E2%80%98money-laundering%E2%80%99> (accessed 15 June).

7 Hamman A J (2015) 7.

ML first found its use in 1982 within the case namely, *United States v \$4,255,625.39*. which involved ML processes.<sup>8</sup>

ML is defined as a range of processes used to cover up the root of fraudulent profits, generated from predicate offenses, in order to integrate them into the legitimate economy.<sup>9</sup> As stated before, predicate offenses go hand in hand with ML, but what exactly are predicate offenses? A predicate offence may be described as a criminal activity through which a more serious crime is enabled. A predicate offence would be any crime that, for instance, produces monetary profits. This includes examples such as PPE fraud, smuggling and cybercrime. The larger crime would be, for example, ML.<sup>10</sup> Predicate crimes may also be viewed as ML threats. That said and to further elucidate the description of ML, when criminal activity, or predicate offenses, reach the stage where it produces profits, the criminal or group of criminals pursue ways in which to invest, save or use the illegally obtained profits without drawing the attention of reporting institutions or authorities. If unable to launder those profits gained fraudulently, criminal activity is curbed with the possibility of perpetrator identification and prosecution.<sup>11</sup> Hence, in order to freely spend their ill-gotten proceeds and to circumvent detection by law enforcement authorities, criminals apply ML systems to disguise the factual sources of their proceeds.<sup>12</sup> This system, in turn, bolsters, and therefore promotes, an increase in the global criminal activity.<sup>13</sup> This more serious criminal activity is called ML due to the fact that the phrase 'money laundering' aptly describes what actually takes place. Illegitimate, or dirty, earnings proceed through a series of dealings, or washing, to reach the other side as lawful, or clean.<sup>14</sup> ML creates a veil of legal cleanliness for illegally obtained profits.<sup>15</sup>

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8 *United States v. \$4,255,625.39*, 551 F. Supp. 314 (S.D. Fla. 1982); Hamman A J (2015) 7.

9 Kepli M Y B Z and Nasir M A (2016) 32.

10 6AMLD '6AMLD: The Updated List of Predicate Offences' (31 January 2022) available at [https://www.tookitaki.ai/compliance\\_hub/6aml-d-predicate-offences/](https://www.tookitaki.ai/compliance_hub/6aml-d-predicate-offences/) (accessed 12 April 2022).

11 Kepli M Y B Z and Nasir M A (2016) 32.

12 Ferwerda J *The Economics of Crime and Money Laundering: Does Anti-Money Laundering Policy Reduce Crime?* (2008) 1.

13 Stankiewicz N 'Using Anti-Money Laundering Measures in the Financial World to Combat Organized Crime' (2015) available at <http://www.inquiriesjournal.com/articles/1268/using-anti-money-laundering-measures-in-the-financial-world-to-combat-organized-crime> (accessed 15 June 2022).

14 Ihsan I and Razi 'A Money Laundering-A Negative Impact on Economy' *Global Journal of Management and Business Research* (2012) 51.

15 Keesoony S (2016) 130.

ML can also be classified into four categories.<sup>16</sup> The first category involves those who commit predicate offenses and then launder their own proceeds. The second category includes not only those who commit predicate offenses and launder their own earnings, but also those who launder the money of other criminals. The third category entails those in business who launder the profits of others' crimes as a part of their otherwise legitimate business but do not commit predicate crimes themselves. The fourth comprises of those who, as their sole business activity, launder the proceeds of others' crimes.<sup>17</sup>

Furthermore, it has been established that ML takes place in a process that involves three phases namely placement, layering and integration.<sup>18</sup> When the unlawful profits enter the economy, that is when the first phase, known as placement, arises in the ML process. Placement presents itself as more than simply the movement of illegally obtained funds into the accounts of banks.<sup>19</sup> It is in essence the procedure whereby illegally gained assets or funds are placed into the legitimate financial system.<sup>20</sup> The objective is to shift it from the root source to another form so that, as a result, further encrusting and obscuring of the illegal proceeds may occur.<sup>21</sup> Detection of the illegally obtained funds is still the easiest at this stage.<sup>22</sup> It must be stated, however, that it is a huge challenge to identify the array of developing placement methods as criminals and syndicates attempt to create various new approaches, systems and tactics with the purpose of defeating AML regimes.<sup>23</sup> Examples of placement include the use of smurfing and structuring, currency smuggling, camouflage, gambling casinos<sup>24</sup> and prepaid cards.<sup>25</sup>

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16 Thomas D 'The Psychology of Money Launderers' (2012) 4.

17 Thomas D (2012) 4.

18 Lacey K A and George B C 'Crackdown on Money Laundering: A Comparative Analysis of the Feasibility and Effectiveness of Domestic and Multilateral Policy Reforms' *23 Nw. J. Int'l L. & Bus* (2003) 267.

19 Kepli M Y B Z and Nasir M A (2016) 33.

20 Stankiewicz N (2015) available at <http://www.inquiriesjournal.com/>.

21 Kepli M Y B Z and Nasir M A (2016) 33.

22 Unger B (2007) 104.

23 Kepli M Y B Z and Nasir M A (2016) 33.

24 Unger B (2007) 131 – 134.

25 Sanction scanner 'Understanding The Risk of Money Laundering on a Prepaid Card' (2021) available at <https://sanctionscanner.com/blog/understanding-the-risk-of-money-laundering-on-a-prepaid-card-285> (accessed 15 June 2022).

27 Kepli M Y B Z and Nasir M A (2016) 33.

The second phase, namely layering, takes place when the money launderer intertwines and mixes the illegal profits with the legitimate ones by the layering of the illegal profits.<sup>27</sup> It is the process whereby financial transactions are layered to disguise the illegal profit owners and to ensure that the money trail is incomprehensible. For this to occur, intricate financial transactions will typically be performed by the participating party. Here, shifting of the illegal funds between numerous accounts, in various jurisdictions and through multiple companies occurs to ensure or attempt to ensure that the trail is as complicated as it possibly can be. This would, in turn, result in the audit trail being concealed and further provides for the obstruction of any link to the original criminal proceeds.<sup>26</sup> Before being amalgamated into the banking system, it is said that the unlawful proceeds can 'spin up to ten times.'<sup>27</sup> Layering occurs by or through various transactions including money exchange offices, correspondent banking, special purpose entities, collective accounts, fake invoicing, loan at low or no cost interest rates, trust offices, bank cheques and bank drafts, underground banking, back-to-back loans, the black market of foreign currency, fictitious sales and purchases, money transfer offices, payable-through accounts, shell companies and insurance markets, to mention but a few.<sup>28</sup>

The integration phase is the third and final phase of ML where the illegal funds receive the cloak of lawfulness through the assimilation of the proceeds into a legal flow of commercial or personal transactions. Access to the illegally obtained money is the ultimate intention of money launderers.<sup>29</sup> Intrinsically, they seek to situate the laundered funds with profit and without fraudulent activity being noticed. Integration takes place by and through, for example, real estate acquisitions, the catering industry, capital market investments, derivatives, the usage of currency, the diamond market, smuggling of loans, the acquisition of luxury goods, purchasing of jewels, the gold market, the buying of consumer goods for export, the import and export business, and cash-incentives.<sup>30</sup>

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26 Kepli M Y B Z and Nasir M A (2016) 33.

27 Kepli M Y B Z and Nasir M A (2016) 33.

28 Unger B (2007) 134 - 143.

29 Lacey K A and George B C (2003) 268.

30 Unger B (2007) 143 - 146.

From the above discussion it is crystal clear that ML is a tremendous hazard to the world. It is an illegal act.<sup>31</sup> The definition itself points to the fact that it is critical for countries across the world to combat ML. There is, however, more understanding to be gained by digging deeper into the dirt, so to say, by laying out the effects of ML, which is what the next section of this chapter will focus upon. The purpose of delving deeper into the effects of ML is to raise more awareness and understanding about the importance of combatting ML, especially during a global pandemic.

### 2.3. The Effects of Money Laundering

ML is seriously problematic for developed countries as well as developing countries. By disintegrating democratic institutions and demeaning the law, it burdens the social fabric and stability of countries world-wide.<sup>32</sup> As mentioned in Chapter One, \$ 800 billion to \$ 2 trillion, or 2 per cent to 5 per cent of the global GDP, is the estimated amount of money that is laundered worldwide annually.<sup>33</sup> ML distresses the universal economic wellbeing and humanity at large. Because the focus is on the criminal activity that takes place in the initial stages, ML tends to be mostly ignored whilst severe damage is caused during the interim process of ML.<sup>34</sup> Resulting in the exhaustion of resources from more productive economic activities and causing possible spill-over consequences that sabotage the economic welfare of other countries, ML could have adverse outcomes for a country's financial stability and macroeconomic functioning.<sup>35</sup> There is no doubt that the global socio-economic state is under attack due to ML.

South Africa is not excluded from the profoundly harmful ML tribulation that has been destroying our world, even prior to the COVID-19 Pandemic. South Africa loses billions of rands a year due to unlawful financial dealings!<sup>36</sup> As one can imagine, ML and ML threats have innumerable effects on all countries. These effects include an upsurge in crime and

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31 Ferwerda J (2008) 3.

32 Gopac A *Culture of Leadership* (2012) 11 & 12.

33 United Nations Office on Drugs and Crime available at <https://www.unodc.org/>.

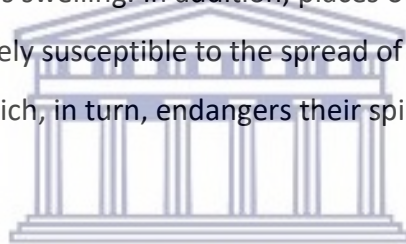
34 Lacey K A and George B C (2003) 268.

35 Phillip J *Obstacles to the Implementation of the Financial Action Task Force's Recommendations in the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG)* (unpublished LLM thesis, University of the Western Cape, 2011) 29 & 30.

36 Business Tech Arachnys (2020) available at <https://businesstech.co.za/>.

corruption,<sup>37</sup> impairment of financial systems,<sup>38</sup> intensification of economic volatility,<sup>39</sup> the hazard to privatization,<sup>40</sup> evasion of tax,<sup>41</sup> threats to social security,<sup>42</sup> increase in world poverty,<sup>43</sup> and contravention of Biblical instructions and disrespect of the Holy Triune God.<sup>44</sup>

In relation to and as a further consequence of the effects mentioned above, ML exacerbates the lack of resources during the COVID-19 Pandemic. Securing PPE for health workers and respiratory devices for patients is said to be a very important part of fighting the COVID-19 Pandemic. Disturbing to note is that the situation of healthcare commodities, that are already inadequate, are expected to worsen in low-income countries. Deficiencies were and still are detected in even the world's wealthiest countries.<sup>45</sup> Apart from the lack of physical health care resources, the COVID-19 Pandemic has caused immense damage to the mental and spiritual health resources. According to a new WHO survey, the COVID-19 Pandemic has disturbed or paused critical mental health services in 93 per cent of countries globally while the demand for mental health is swelling. In addition, places of worship such as churches are seen as places that are largely susceptible to the spread of the virus<sup>46</sup> thus causing people to avoid such places which, in turn, endangers their spiritual well-being.



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- 37 Lacey K A and George B C (2003) 269.
- 38 Davidsson H *The Phenomenon "Money Laundering" Whose money is dirty and what are the effects?* (Unpublished LLM thesis, HAMK University of Applied Sciences, 2014) 58.
- 39 LoreCentral (January 2020) 'Examples of Money Laundering' available at <https://www.lorecentral.org/2020/01/the-effects-of-money-laundering.html> (accessed 15 June 2022).
- 40 Phillipo J (2011) 33.
- 41 Storm A 'Establishing the Link Between Money Laundering and Tax Evasion' *International Business & Economics Research Journal (IBER)* 12(11):1437 DOI:10.19030/iber.v12i11.8181 (2013) 1439.
- 42 Clark D 'What are the Effects of Money Laundering?' (1 August 2019), available at <https://www.engageinlearning.com/faq/compliance/anti-money-laundering/what-are-the-effects-of-money-laundering/> (accessed 15 June 2022).
- 43 Partington T 'Tax abuse and money laundering is trapping billions in poverty, says UN' (25 February 2021) available at <https://www.theguardian.com/business/2021/feb/25/tax-abuse-and-money-laundering-is-trapping-billions-in-poverty-says-un> (accessed 25 May 2022).
- 44 *The Holy Bible King James Version* (2017) Vereeniging: Christian Art Publishers at Proverbs 10:2 at 763, 1 Timothy 6:9-10 at 1388, Acts 3:19 at 1262, and James 4:12 at 1419. Students right to freedom of religion, belief, and opinion. See Section 15 of the Constitution.
- 45 McMahon D, Peters G, Ivers L and Freeman E (2020) 'Global resource shortages during COVID-19: Bad news for low-income countries' available at <https://journals.plos.org/plosntds/article?id=10.1371/journal.pntd.0008412> (accessed 16 June 2022).
- 46 Henry T A '5 reasons why religious services pose high risk of COVID-19 spread' (7 December 2020) available at <https://www.ama-assn.org/delivering-care/public-health/5-reasons-why-religious-services-pose-high-risk-covid-19-spread> (accessed 18 April 2021).



Furthermore, President Ramaphosa indicated that the COVID-19 Pandemic has uncovered a lack of digital resources in most South African schools. ML and its threats, as previously stated, deprives countries of being able to provide for all the needs of their citizens as it endangers tax revenue, it drains resources because it causes upsurge in crime and corruption, it impairs financial systems, and it intensifies economic volatility, amongst other aspects. It also jeopardizes the pursuit of solving the problems of a suffering society, as alluded to above, and this especially now during the COVID-19 Pandemic where funding is crucial. There is indeed an urgency for it to be curbed and combatted.

Now that we have defined what ML and ML threats are, explored the detrimental effects thereof, established that it indeed is a global problem which includes South Africa, and that it urgently needs to be alleviated, the following may be asked. What has the international response been to this enormous issue and how does this involve South Africa?

#### **2.4. The International Response to Money Laundering and Money Laundering Threats**

ML and its threats are frequently described with reference to adverse externalities which accompany the surge in the flow of capital across worldwide borders following the liberalization of financial markets in light of globalization.<sup>47</sup> The configuration of an adaptable and appropriately flexible international regulatory strategy was thus necessitated in order to obstruct and tackle damage to the solidity of the international financial system and to grapple with and combat the innumerable challenges and various metamorphoses associated with ML. It is insinuated that the global AML strategy, which is said to have originated from the Venezuelan drug crisis in the 1980s<sup>48</sup>, offers the foundation for such an inclusive and malleable framework to manage ML concerns.<sup>49</sup> They are not perfect instruments though, especially where implementation is concerned. If they were, the global ML problem would highly likely be terminated. However, the global AML strategies present a strong effort in curbing and combatting ML world-wide which is why they are important to apply domestically.

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47 Beekarry N (2011) 139.

48 Hamman A J (2015) 34.

49 Beekarry N (2011) 140.

The COVID-19 Pandemic and the consequential transfiguration of ML specifically, speaks volumes to and furthermore profoundly challenges every respective point mentioned above. In conjunction with the multifaceted commotion worldwide, the COVID-19 Pandemic has transmuted the traditional methods of ML.<sup>50</sup> Therefore, to create effective recommendations in order to combat and curb the challenges and exposure to ML and ML threats in South Africa during the COVID-19 Pandemic or any further pandemics<sup>51</sup>, it is important to gain knowledge of all the available transnational AML instruments and their guidelines.

#### **2.4.1. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention)**

A notable period for the international fruition of AML measures is said to have occurred during the 1980s and 1990s.<sup>52</sup> During the 1980s the Venezuelan government intreated the United Nations (UN) to aid it in grappling with its drug crisis.<sup>53</sup> On November 11, 1990 the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, otherwise known as the Vienna Convention, came into force, being the first international instrument to battle illegitimate drug trades and related law enforcement matters.<sup>54</sup> As of June 16, 2022, there were 88 signatories and 191 Parties to this Convention.<sup>55</sup> On December 14, 1998 South Africa became a participant through accession.<sup>56</sup> Although ML is not specifically mentioned in this Convention as it primarily

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50 Sanction Scanner 'Expected Changes in AML After COVID-19' available at <https://sanctionsscanner.com/Static/Ebooks/Expected-Changes-in-AML-after-COVID-19.pdf> (accessed 16 June 2022).

51 Infinity 'Money Laundering: A Massive Global Problem' (4 October 2019) available at <https://www.infinitysolutions.com/blog/financial-planning/money-laundering-a-massive-global-problem/> (accessed 16 June 2022).

52 Williams C (2017) 24.

53 Hamman A J (2015) 34.

54 Al-Zaqibh A A M 'International Laws on Money Laundering' *International Journal of Social Science and Humanity* (2013) 44. See also Hamman A J (2015) 34.

55 UN Treaty Collections 'Status As At : 16-06-2022 03:15:59 Edt' (16 June 2022) available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-19&chapter=6&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&clang=_en) (accessed 16 June 2022).

56 UN Treaty Collections 'Status As At: 16-06-2022 03:15:59 Edt' (16 June 2022) available at <https://treaties.un.org/>.

focuses on the worldwide drug problem<sup>57</sup>, it is viewed as the first<sup>58</sup> guide and a template for dealing with ML offences for the international AML system.<sup>59</sup> According to Article 2 of this Convention, Parties must take the necessary measures to carry out their obligations under this Convention in their respective domesticated legislative systems.<sup>60</sup> All Parties must criminalize the proceeds of illegal trade in narcotic drugs and psychotropic substances in terms of Article 3 of this Convention.<sup>61</sup> Drug trafficking is to be criminalized globally including the hiding and disguising of its origin to elude the law. This can be seen in Article 3(1)(b)(i) and (ii) of this Convention. There are essentially two offences. The first one is that you alter the profits to hide the derivation. The second one is producing the impression that it was lawfully attained while, in actual fact, you are well aware that it originated from illegitimate drug trade. Article 3(c) states that it is an offence even if you receive it.<sup>62</sup> This Convention further provides for aspects such as mutual legal assistance,<sup>63</sup> co-operation and training,<sup>64</sup> and confiscation.<sup>65</sup>

#### **2.4.2. United Nations Convention against Transnational Organized Crime, and the Protocols Thereto (UNTOC)**

As referred to above, the United Nations Convention Against Transnational Organized Crime (UNTOC), and the Protocols Thereto,<sup>66</sup> otherwise known as the Palermo Convention, was then also adopted in Palermo, Italy in 2000.<sup>67</sup> On February 20, 2004, South Africa ratified the Palermo Convention.<sup>68</sup> Article 1 of this Convention states that its main objective is to

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- 57 Moroga D W *An Appraisal of the Institutional Framework Under the Kenyan Proceeds of Crime and Anti-Money Laundering Act, 2009* (unpublished LLM thesis, University of the Western Cape, 2017) 10.
- 58 Zoppei V 'Money Laundering: A New Perspective in Assessing the Effectiveness of the AML Regime' DOI:10.1007/978-94-6265-180-7 ISBN: 978-94-6265-179-1 (2015) 134.
- 59 Williams C (2017) 17.
- 60 Article 2 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention).
- 61 Article 3 of the Vienna Convention.
- 62 Article 3 of the Vienna Convention.
- 63 Article 7 of the Vienna Convention.
- 64 Article 9 of the Vienna Convention.
- 65 Article 5 of the Vienna Convention.
- 66 United Nations Office on Drugs and Crime the South African Government *The 10th Session of The Working Group on Trafficking in Persons* (September 2020) available at [https://www.unodc.org/documents/treaties/WG\\_TIP/WEBSITE/STATEMENTS/SOUTH\\_AFRICA.pdf](https://www.unodc.org/documents/treaties/WG_TIP/WEBSITE/STATEMENTS/SOUTH_AFRICA.pdf).
- 67 Williams C (2017) 22.
- 68 UNODC The South African Government (2020) 2.

encourage cooperation to avert and fight transnational organised crime more efficiently.<sup>69</sup> In addition to this Convention, three protocols were created involving the trafficking of persons, smuggling, and the illicit manufacturing of and trafficking in firearms.<sup>70</sup> This convention also provides for four additional specific crimes<sup>71</sup> including the criminalization of organized crime groups,<sup>72</sup> the laundering of proceeds of crime,<sup>73</sup> corruption,<sup>74</sup> and obstruction of justice.<sup>75</sup> Article 6(1)(a)(i) and (ii) of the Palermo Convention, are very similar to Article 3(1)(b)(i) and (ii) of the Vienna Convention. It is to be noted here, however, that unlike the Vienna Convention, the Palermo Convention makes specific reference to ML.<sup>76</sup> The range of the AML measures was thus expanded by this Convention in order to contest and thwart organized crime<sup>77</sup> including ML.<sup>78</sup>

### 2.4.3. United Nations Convention against Corruption (UNCAC)

Moreover, the United Nations Convention against Corruption (UNCAC),<sup>79</sup> otherwise referred to as the Merida Convention, was adopted in 2003 and thereafter it entered into force in 2005.<sup>80</sup> South Africa ratified UNCAC in 2004.<sup>81</sup> It is the first global tool that deals with the matter of corruption both nationally and internationally.<sup>82</sup> It was realised by the drafters of UNCAC that, along with preventing bribery and other types of corruption, effective AML tactics are imperative in order to detect and avert corruption. Global collaboration and unswerving standards in AML efforts are obligatory due to the transcontinental nature of ML activities, as is the case with other forms of corruption. Chapter II of UNCAC attends to preventative measures regarding ML. Chapter III then addresses the Criminalization and Law

69 Phillip J (2011) 19.

70 United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, 2000 at Article 1 to 21.

71 Hamman A J (2015) 37.

72 Article 5 to 21 of UNCTOC.

73 Article 6 to 21 of UNCTOC.

74 Article 8 to 21 of UNCTOC.

75 Article 23 to 21 of UNCTOC.

76 Anderson M 'International Money Laundering: The Need for ICC Investigative and Adjudicative Jurisdiction' *53 Virginia Journal of International Law* (2013) 432.

77 Al-Zaqibh A A M (2013) 45.

78 Williams C (2017) 22.

79 The United Nations Convention against Corruption, 2003.

80 Adade N A *An Assessment of Ghana's Legal and Institutional Anti-Money Laundering Framework* (unpublished LLM thesis, University of the Western Cape, 2017) 18.

81 United Nations Office on Drugs and Crime 'Signature and Ratification Status' (2021) available at <https://www.unodc.org/unodc/en/corruption/ratification-status.html> (accessed 16 June 2022).

82 Hamman A J (2015) 41.

Enforcement. Furthermore, Article 14 elucidates upon the standards State Parties need to adhere to with regards to AML measures. Article 23 moreover sets out the criminalisation of the laundering of the profits of corruption.<sup>83</sup>

#### 2.4.4. Financial Action Task Force (FATF)

In 1989, the FATF was established by the Group of Seven (G7) countries at their annual economic summit in Paris, France.<sup>84</sup> The Task Force is an inter-governmental body that purports to develop and promote both international and national policies with the intention of combatting ML and TF.<sup>85</sup> South Africa has been a Member since 2003.<sup>86</sup> Its standards are built upon the UN Conventions including the Vienna Convention and the Palermo Convention,<sup>87</sup> as seen below. The FATF Standards is known as a worldwide standard-setter.<sup>88</sup> The Task Force was given the duty of inspecting ML trends and methods, revising the global action which had already ensued, and elaborating upon the actions that are still required to take place to fight ML. Envisioned to deliver a wide-ranging plan of action needed to combat ML, the FATF issued a report, in April 1990, less than one year after its creation, encompassing a set of Forty Recommendations.<sup>89</sup>

In response to the September 11, 2001 attacks against the United States, in October 2001 the FATF extended its duties and issued Eight Special Recommendations to wrestle with the TF challenge.<sup>90</sup> In June 2003 the FATF revised its standards and in October 2004, further strengthening the agreed global standards for the battling of ML and TF, the FATF published a Ninth Special Recommendation, hence the 40+9 Recommendations.<sup>91</sup> The FATF again revised its Recommendations in 2012<sup>92</sup> by providing governments with sturdier guidelines to fight financial crime in order to face new threats such as the financing of the proliferation

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83 Ferguson G 'Money Laundering' in *Global Corruption: Law, Theory & Practice* (2018) CanLIIDocs 28 at 323.

84 Moroga D W (2017) 12.

85 GOPAC (2012) 39. See also the UNCTOC.

86 FATF 'Find a Country' (2021) available at <https://www.fatf-gafi.org/countries/#South%20Africa> (accessed 16 June 2022).

87 Phillip J (2011) 18.

88 Global NPO Coalition on FATF 'FATF Explained' (2021) available at <https://fatfplatform.org/context/fatf-explained/> (accessed 16 June 2022).

89 FATF 'History of the FATF' (2021) available at <https://www.fatf-gafi.org/about/historyofthefatf/> (accessed 16 June 2022).

90 Al-Zaqibh A A M (2013) 44.

91 FATF (2021) available at <https://www.fatf-gafi.org>.

92 Moroga D W (2017) 13.

of weapons of mass destruction, increasing toughness and transparency regarding corruption, and fully integrating the Nine Special Recommendations on TF. As a result, the related measures against ML have essentially led to a clearer and stronger set of standards.<sup>93</sup> Chapter Three also largely focus on the FATF and its response during the COVID-19 Pandemic. Chapter Four and Five briefly discusses the FATFs latest South Africa Mutual Evaluation Report.<sup>94</sup>

#### 2.4.5. European Union Money Laundering Directives

In addition to the AML instruments it is interesting to note that the European Union has issued ML Directives, established parallel to the FATF's initiatives, that must be included into national law by individual member states and which is binding on each member state.<sup>95</sup> The 1991 Directive regarded the deterrence of the usage of the financial system for the aim of ML.<sup>96</sup> It refers to criminal activity and not just drug trafficking offences.<sup>97</sup> The 2001 Directive concluded that other susceptible institutions, including lawyers and their activities, for example, dealings with trust accounts and legal professional privilege, should be included.<sup>98</sup> The 2005 Directive introduced the Financial Intelligence Units.<sup>99</sup> The 2015 Directive was seen as revolutionary. It dropped the cash payment threshold, improved data protection, extended the meaning of Politically Exposed Persons (PEPs), improved the risk-based approach, included the gambling sector, it accentuated the ultimate beneficial ownership and progressed customer due diligence.<sup>100</sup> The 2018 Directive then further included inter alia the augmentation of the sharing of information and cooperation, the upsurge of transparency, the introduction of stricter controls of transactions and the constraint of

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93 FATF (2021) available at <https://www.fatf-gafi.org>.

94 South African Government 'Treasury on South Africa's anti-money laundering mutual evaluation report released by the Financial Action Task Force' (7 October 2021) available at <https://www.gov.za/speeches/treasury-south-africa%E2%80%99s-anti-money-laundering-mutual-evaluation-report-released-financial> (accessed 20 March 2022).

95 Hamman A J (2015) 47.

96 Anti Money Laundering Forum 'Europe' available at <https://www.anti-moneylaundering.org/Europe.aspx> (accessed 16 June 2022).

97 Hamman A J (2015) 48.

98 Anti Money Laundering Forum available at <https://www.anti-moneylaundering.org/>.

99 Hamman A J (2015) 58.

100 Burke C and Suttle A 'The Fourth EU Money Laundering Directive – Evolution, not Revolution' available at <https://kbassociates.ie/fourth-eu-money-laundering-directive-evolution-not-revolution/> (accessed 16 June 2022). See also The VinciWorks Blog '4th Money Laundering Directive – What you need to know' (6 December 2017) available at <https://vinciworks.com/blog/4th-money-laundering-directive-what-you-need-to-know/> (accessed 16 June 2022).

unidentified usage of virtual currencies.<sup>101</sup> The European Union's Sixth AML Directive is in effect for all member states from December 3rd, 2020 and all regulated entities functioning in the union were required to be compliant by June 3, 2021. This directive addresses issues including the harmonizing of definitions and predicate offences, cooperation among member states, criminal liability for legal persons, Brexit, compliance and tougher punishments.<sup>102</sup>

## 2.5. Conclusion

This chapter provided an understanding of the severity of ML and its threats by expounding upon its definition as well as delving into its effects and why it should be combatted and curbed. It is manifestly clear that ML is a contagion. Whether internationally or nationally, the worsening of this axiomatic problem is unfortunately rampantly rife. It is of great importance to grasp the concept of ML, why it is problematic and why it so urgently needs to be alleviated, which is why this chapter elaborated upon it. The intention here was also to create perspective and strong motivation to solve this global problem especially in a country like South Africa, where it's citizens so desperately need resources and relief, and even more so during the COVID-19 Pandemic. Furthermore, ML is such an internationally intertwined complexity with South Africa unfortunately entangled therein. Though not perfect, the available international AML instruments are crucial in combatting ML if sufficiently implemented. It is therefore fundamental that South Africa be intensely cognisant of and active in integrating the global guidelines into its domestic laws to reach possible solutions to ML during a pandemic.

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101 European Commission 'Anti-money laundering and countering the financing of terrorism' available at [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing\\_en#:~:text=Traceability%20of%20financial%20information%20has,the%20purpose%20of%20money%20laundering](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing_en#:~:text=Traceability%20of%20financial%20information%20has,the%20purpose%20of%20money%20laundering) (accessed 16 June 2022).

102 Alessa 'Alessa: Your All-In-One AML Compliance Solution' (5 January 2021) available at <https://tier1fin.com/alessa/blog/6aml-d-eu-6th-anti-money-laundering-directive/#:~:text=As%20of%20December%203rd%2C%202020,effect%20for%20all%20member%20states.&text=Like%20its%20predecessor%2C%20this%20new,entities%20to%20fight%20money%20laundering> (accessed 16 June 2022).

Now that the severity of ML is borne in mind there is more to be embarked upon in the pursuit of sensible solutions to ML and ML threats during a pandemic in South Africa. An even deeper investigation into and around the problem will ensue henceforth. The next chapter will zoom in on ML and ML threats in South Africa during the COVID-19 Pandemic. It will moreover examine the flagship findings and guidelines that one of the abovementioned international AML instruments namely, the FATF, so courageously provided for its members and the world at large, specifically in relation to the COVID-19 Pandemic.





## CHAPTER THREE

### UNWONTED DAMAGE

#### COVID-19 MONEY LAUNDERING TRENDS AND THREATS IN SOUTH AFRICA AND THE FATF'S RESPONSE

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##### 3.1. Introduction

Chapters One and Two aimed to provide a valuable basis in support of the quest to unravel how the challenges and exposure to ML can be curbed and combatted in South Africa during a pandemic. It is thus apt to focus particularly upon the South African context and moreover, increase the specificity of the national search for problem-solving tools. In other words, two further aspects need to be clarified to formulate effective recommendations. The first aspect is the ML and ML threats which have arisen and caused unwanted damage in South Africa during the unprecedented pandemic. The second aspect is the FATF'S attempt to identify and tackle the unwanted damage caused by COVID-19-related ML and ML threats. There is no doubt that criminals in or linked to South Africa have tragically taken advantage of the global pandemic to commit ML or ML threats. It is important to keep in mind that, as mentioned in the previous chapters, ML is technically not an independent crime. Money is derived from an unlawful criminal activity, also known as predicate offenses, which may be seen as ML threats. The unlawful or 'dirty' money generated from the predicate offence needs to be laundered or 'cleaned' for the launderer to use it without any repercussions such as possible prosecution.

As such, practical and statistical findings of ML and ML threats that have occurred in South Africa during the COVID-19 Pandemic will be highlighted in this chapter. The aim here is to take cognisance and formulate a strong idea of what issues South Africa is dealing with regarding the topic. Furthermore, the link between the recently identified unwanted damage caused by ML and ML threats in South Africa, and the COVID-19 Pandemic is to be demonstrated. Moreover, the FATF has provided ground-breaking discoveries and strategies regarding ML and its threats during the COVID-19 Pandemic. The first part of the chapter focuses on unpacking ML and ML threats that have arisen in South Africa during the COVID-19 Pandemic. This is followed by the second part which explores the FATFs response.

### 3.2. Findings and Figures of the Covid-19 Pandemic Money Laundering Threats

The COVID-19 Pandemic has resulted in a lengthy and bizarre journey for most of the financial crime compliance industry in South Africa. It is a journey distinguished, not only by confusion and commotion, but also adaptation and innovation. The experience has not been any different for financial criminals. In fact, fraudsters and money launderers have speedily adjusted to the COVID-19 Pandemic reality. With the Zondo Judicial Commission of Inquiry into State Capture (the Zondo Commission) currently dealing with shockingly extensive fraud which took place throughout the tenure of former president of South Africa Jacob Zuma, Africa's most advanced economy is already extremely mired in corruption.<sup>1</sup> Chapter Five further discusses the Zondo Commission. Apart from what is being revealed in the Zondo Commission, the fact that the COVID-19 Pandemic never stopped the treacherous ways of criminals in South Africa, is distressing. This chapter will therefore now delve into a number of practical findings as well as statistical figures of ML and ML threats in South Africa during the COVID-19 Pandemic.

During 2020 the South African government banned tobacco sales. This caused an immense influx of illegal cigarettes into the market. Criminal syndicates generated enormous amounts of proceeds. Former SA Revenue Services (SARS) executive Johann van Loggerenberg states that the South African Government had inserted over R 2 billion into the illegitimate economy during that lockdown period.<sup>2</sup> This involved cash that was unrecorded, unaccounted for and never to be recovered. This is an illustration of the huge amount of cash that needed to be laundered in order to be reintegrated into the economy. Loggerenberg further stated: 'Crooks have made over R 2 billion within two months. Lord alone knows what they will do with it in future.'<sup>3</sup>

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1 Imray G 'Hope that South Africa's COVID-19 corruption inspires action' (15 March 2021) available at <https://apnews.com/article/government-contracts-cape-town-coronavirus-pandemic-africa-south-africa-c59e9fa1906b5622d38947e327fb6b6d> (accessed 16 June 2022).

2 Haffajee F 'Dlamini Zuma turns cigarettes into illicit drugs as the underground economy takes over' (12 June 2020) available at <https://www.dailymaverick.co.za/article/2020-06-12-dlamini-zuma-turns-cigarettes-into-illicit-drugs-as-the-underground-economy-takes-over/> (accessed 16 June 2022).

3 Haffajee F (12 June 2020) available at <https://www.dailymaverick.co.za>.

To make matters worse, the very entity that obligates itself to the establishment of a safe and protected environment for all people in South Africa,<sup>4</sup> is unfortunately tainted with fraud and corruption. It was discovered that, in the space of only six months of 2020, irregular PPE procurements to the amount of R 1.6 billion took place in connection with the South African Police Services (SAPS).<sup>5</sup> The obstinate high-level fraud and corruption at the SAPS truly dismantles South Africans of the right to safety.<sup>6</sup>

With the nature of the COVID-19 Pandemic increasing the usage of the internet, there has been a massive surge in digital financial crime. An example of the detriment caused by this is the fact that in 2020, more than R 500 million was lost in debit card scams in South Africa. This comes as a result of the 2020 crime statistics released by the SA Banking Risk Information (Sabric) on September 29, 2021.<sup>7</sup> It was reported that in comparison to 2019, digital crime occurrences increased by 33 per cent in 2020. Debit card fraud took place via various approaches. These include the usage of false applications amounting to R 4.8 million; account takeovers totalling R 1.6 million; lost or stolen debit cards adding up to R 193 million; a 'card not present'<sup>8</sup> method to the amount of R 278 million; non-receipt of issued debit cards to the value of R 484 983; and counterfeit debit cards worth R 39.5 million.<sup>9</sup> It is moreover indicated that the main technique used by criminals when targeting victims is social engineering which encompasses deception in order to manipulate an individual to avail confidential or personal information. Examples of this is phishing whereby a fake email, which seems authentic, is utilized in an attempt to acquire personal information including card numbers and passwords. Vishing, which is the use of fake SMSs

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4 South African Police Service 'About us' (2021) available at <https://www.saps.gov.za/about/about.php> (accessed 16 June 2022).

5 Thamm M 'SAPS blew R1.6bn in irregular PPE expenditure from March to August 2020, confidential internal audit uncovers' (30 May 2021) available at <https://www.dailymaverick.co.za/article/2021-05-30-saps-blew-r1-6bn-in-irregular-ppe-expenditure-from-march-to-august-2020-confidential-internal-audit-uncovers/> (accessed 16 June 2022).

6 Thamm M (4 August 2020) available at <https://www.dailymaverick.co.za>.

7 Smith C 'Over half a billion rand lost in debit card scams in SA last year' (29 September 2021) available at <https://www.news24.com/fin24/companies/financial-services/over-half-a-billion-rand-lost-in-debit-card-scams-in-sa-last-year-20210929> (accessed 16 June 2022).

8 A card not present transaction (CNP) takes place when the credit card or cardholder is not physically present at the time of the transaction. An example of this includes orders that occur remotely via the internet. See Galante M 'What Is a Card-Not-Present (CNP) Transaction and Why It Costs More' (26 December 2017) available at <https://squareup.com/us/en/townsquare/what-is-a-card-not-present-transaction> (accessed 16 June 2022).

9 Smith C (7 August 2021) <https://www.news24.com/fin24/>.

or phone calls, is used for the same aforementioned purpose but includes the attempt to attain one-time passwords.<sup>10</sup> It was found that criminals instigated spoof emails offering PPE like sanitizer, vaccines or masks. People were led to phishing websites through clicking on links to these emails. They were then provoked to provide banking details, which, in turn, resulted in criminals transacting with that information without permission.<sup>11</sup>

South African life insurance companies also discovered that there has been an increase in insurance fraud cases as a result of the COVID-19 Pandemic. According to the Association for Savings and Investment South Africa (Asisa), 3 186 claims, totalling R 587.3 million were recorded in comparison to the 2 837 claims amounting to R 537.1 million in 2019.<sup>12</sup> The convenor of the Asisa Forensics Standing Committee, Megan Govender, stated that the surge is not startling because the hard-hitting economic circumstances have caused temptation for deceitful syndicates and policyholders to attempt obtaining insurance payouts. It was found that the chief prevalence of fraud in 2020, concerning 2 282 claims, was related to funeral policies.<sup>13</sup>

Furthermore, between June and August 2020, the Gauteng Department of Education was entwined with suspicious dealings involving the spend of over R 431 million on the sanitising of schools. These proceeds were paid to hundreds of companies in sundry payments.<sup>14</sup> Sundry income is produced from sources other than a company's usual business operation. It is also referred to as other operating income or miscellaneous income. Sundry income is frequently seen as irregular. Over the long term, it is also not a guaranteed source of company income.<sup>15</sup> Many of the aforesaid companies involved with the Gauteng

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10 Smith C <https://www.news24.com/fin24>.

11 Smith C <https://www.news24.com/fin24>.

12 Hesse M 'A surge in insurance fraud cases as SA struggles during the pandemic' (31 August 2021) available at <https://www.iol.co.za/personal-finance/insurance/a-surge-in-insurance-fraud-cases-as-sa-struggles-during-the-pandemic-52b1ccd5-e44e-4128-a2b3-bb1697a6a6e8> (accessed 16 June 2022).

13 Hesse M <https://www.iol.co.za>.

14 Heywood M 'Gauteng Department of Education spent R431-million in three months on unnecessary 'deep cleaning' and 'decontamination' of schools' (26 January 2021) available at <https://www.dailymaverick.co.za/article/2021-01-26-gauteng-department-of-education-spent-r431-million-in-three-months-on-unnecessary-deep-cleaning-and-decontamination-of-schools/> (accessed 16 June 2022).

15 Kenton W 'Sundry Income' (6 September 2019) available at <https://www.investopedia.com/terms/s/sundryincome.asp#:~:text=Key%20Takeaways,income%20over%20the%20long%20term> (accessed 16 June 2022).

Department of Education debacle give the impression that they have no proficiency or erstwhile immersion in the cleaning industry. Aggravating the circumstances, was the fact that these transactions were for a type of ‘decontamination’ and ‘deep cleaning’ that was not recommended nor necessitated by neither the Department of Basic Education (DoBE) nor the Department of Health (DoH).<sup>16</sup>

Moreover, in order to speed up investigations into duplicitous claims at the Unemployment Insurance Fund (UIF), the portfolio committee on employment and labour called upon law enforcement agencies. Suspect claims totalling 75 were investigated, one of which related to the theft of R 5.7 million from the COVID-19 relief fund initially intended for 1 400 employees to receive.<sup>17</sup> Specifically, a bookkeeper of 39 years of age was also arrested in connection with defrauding the UIF COVID-19 relief scheme namely the COVID-19 Temporary Employer-Employee Relief Scheme (TERS). This bookkeeper allegedly swindled R 11.1 million out of the COVID-19 TERS.<sup>18</sup> Furthermore, Democratic Alliance (DA) councillor, Nora Grose, and Atlantis pastor, Reuben Swartz, have been charged with fraud and ML in connection with the TERS as well as money that was meant for food parcels, being channelled to the Life Changers Church in Table View, Western Cape.<sup>19</sup>

Yet another example of possible fraud in South Africa during COVID-19 was when PPE was astoundingly found dumped in a river that passes through Irene, Centurion, Johannesburg. This PPE was intended to protect health workers and restrain the spread of COVID-19. Nehawu spokesperson Khaya Xaba stated that they believe this formed part of the tenders that were issued illegally and PPE’s that were produced mediocrely. The matter was

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16 Heywood M ‘Gauteng Department of Education spent R431-million in three months on unnecessary ‘deep cleaning’ and ‘decontamination’ of schools’ (26 January 2021) available at <https://www.dailymaverick.co.za/>.

17 Mabuza E ‘75 UIF fraud cases under investigation, MPs call for speedy results’ (8 July 2020) available at, <https://www.timeslive.co.za/news/south-africa/2020-07-08-75-uif-fraud-cases-under-investigation-mps-call-for-speedy-results/> (accessed 16 June 2022).

18 Buthelezi L ‘Bookkeeper who allegedly scammed UIF out of R11.1m in Covid-19 grants due in court on Tuesday’ (27 August 2021) <https://www.news24.com/fin24/economy/bookkeeper-who-allegedly-scammed-uif-out-of-r111m-in-covid-19-grants-due-in-court-on-tuesday-20210827> (accessed 16 June 2022).

19 Charles M ‘DA ward councillor charged with TERS fraud, money laundering back in court’ (30 August 2021) available at <https://www.news24.com/news24/southafrica/news/da-ward-councillor-charged-with-TERS-fraud-money-laundering-back-in-court-20210830> (accessed 16 June 2022).

directed to the applicable institutions for investigation purposes following reports of enormous tender indiscretions and looting.<sup>20</sup>

Additionally, Dr Zweli Mkhize, former South African Minister of Health, his close associates, Tahera Mather and Naadhira Mitha,<sup>21</sup> as well as his family members were said to also have pocketed COVID-19 proceeds in connection with a sinister contractor selected by the DoH.<sup>22</sup> Contracts worth over R 150 million for work in connection with the COVID-19 Pandemic, is what the company, Digital Vibes, secured.<sup>23</sup> The firm obtained the orders from the DoH for the COVID-19 projects in just nine months.<sup>24</sup> Apparently and quite interestingly, Digital Vibes had no website. According to company records, its business address is recorded as a residential property in KwaDukuza, previously Stanger, on the Northern Coast of KwaZulu-Natal.<sup>25</sup> Radha Hariram, the company's principal director, did not seem to have any observable track record in the communications sector.<sup>26</sup> Following this, Mkhize resigned from his position as South African Minister of Health.<sup>27</sup> On September, 29 2021, the SIU's report on Digital Vibes was finally released which directly implicated the former health minister and his family, as well as Mather and Mitha.<sup>28</sup> To have the SIU findings set aside,



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- 20 Ntshidi E 'Nehawu: 'Tenderpreneurs' Likely Behind Dumped PPEs Found in Centurion' (2 August 2020) available at <https://ewn.co.za/2020/08/03/nehawu-tenderpreneurs-likely-behind-dumped-ppes-found-in-centurion> (accessed 16 June 2022).
- 21 Bhengu C 'Five shocking revelations from the SIU report on Digital Vibes' (29 September 2021) available at <https://www.timeslive.co.za/news/south-africa/2021-09-29-five-shocking-revelations-from-the-siu-report-on-digital-vibes/> (accessed 16 June 2022).
- 24 Myburgh P L 'Zweli Mkhize's 'family friend' and ex-private secretary pocket Covid-19 cash via R82m Department of Health contracts' (23 February 2021) available at <https://www.dailymaverick.co.za/article/2021-02-23-zweli-mkhizes-family-friend-and-ex-private-secretary-pocket-covid-19-cash-via-r82m-department-of-health-contracts/> (accessed 16 June 2022).
- 23 Naidoo J 'WATCH: Digital Vibes's non-existent office tip of the iceberg' (29 September 2021) available at <https://www.iol.co.za/news/politics/watch-digital-vibess-non-existent-office-tip-of-the-iceberg-6c5fa0f0-31c8-459d-a6ad-c8b3e84dfd37> (accessed 16 June 2022).
- 26 Myburgh P L <https://www.dailymaverick.co.za>.
- 27 Myburgh P L <https://www.dailymaverick.co.za>.
- 28 Myburgh P L <https://www.dailymaverick.co.za>.
- 27 Pillay K 'Zweli Mkhize resigns over Digital Vibes scandal' (5 August 2021) available at <https://www.iol.co.za/news/politics/zweli-mkhize-resigns-over-digital-vibes-scandal-8643a0df-74f1-4696-856d-408ea37610d2> (accessed 16 June 2022).
- 28 Myburgh P L 'Released: Damning SIU report finds at least R72m fruitless and wasted, implicates Mkhize, DoH officials in Digital Vibes contract' (29 September 2021) available at <https://www.dailymaverick.co.za/article/2021-09-29-released-damning-siu-report-finds-at-least-r72m-fruitless-and-wasted-implicates-mkhize-doh-officials-in-digital-vibes-contract/> (accessed 16 April 2022).

Mkhize has since launched a court bid on the grounds of the SIU's investigation amounting to a 'witch-hunt.'<sup>29</sup>

Via entities directly and indirectly linked to him, businessman, Hamilton Ndlovu, also illegitimately won approximately R 172 million in PPE contracts from the National Health Laboratory Service (NHLS). The SIU stated that the issue was raised with them in August 2020 subsequent to a R 72 million tender involving the provision of PPE which was awarded to entities owned by Ndlovu and Feliham, a company belonging to the fiancé of Ndlovu. Feliham was restricted via the Central Supplier Database (CSD) from engaging in business with the state. The SIU's probe revealed, however, that officials at the NHLS 'circumvented this restriction and awarded a contract to Feliham worth R 14 475 500 for 2 500 000 surgical shoe covers.' The SIU furthermore found inter alia that Ndlovu was indirectly connected to several other entities and that, by way of irregular procurement procedures, the entities were all given contracts by the NHLS. Ndlovu bought five luxury cars in one day and, in 2020, after posting a video of his luxurious vehicles including a Lamborghini Urus, a Jeep Grand Cherokee and three Porsches, Ndlovu made headlines.<sup>30</sup> The case involving Ndlovu namely *Special Investigating Unit and Another v Ndlovu and Others*<sup>31</sup> will be alluded to in Chapter Five.

Moreover, in January 2021 it was stated that 57 contracts for the procurement of PPE by the KZN Department of Education (DoE) worth R 492.6 million was originally investigated by the Special Investigating Unit (SIU) in South Africa. This included 18 contracts for the procurement of PPE by the Department of Social Development (DSD) to the value of R 21.2 million and four contracts for the procurement of blankets by the DSD to the value of R 22.4 million.<sup>32</sup> Swelling the sum of contracts under investigation to 226 totalling

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29 Davis R 'Digital Vibes scandal: The story behind the story' (19 October 2021) available at <https://www.dailymaverick.co.za/article/2021-10-19-digital-vibes-scandal-the-story-behind-the-story/> (accessed 16 April 2022).

30 Pijoos D 'How flashy businessman Hamilton Ndlovu scored close to R172 million in irregular PPE tenders' (27 January 2022) available at <https://www.news24.com/news24/southafrica/news/how-flashy-businessman-hamilton-ndlovu-scored-close-to-r172-million-in-irregular-ppe-tenders-20220127> (accessed 7 June 2022).

31 (GP 19 of 2021) [2022] ZAST 6 (07 June 2022).

32 Erasmus D 'KZN probe expanded: Covid-19 contracts worth over R600m now also being investigated' (15 January 2021) available at <https://www.dailymaverick.co.za/article/2021-01-15-kzn-probe-expanded-contracts-worth-r600m-now-also-being-investigated/>. (accessed 19 June 2022).

R 606 435 294 in value, the SIU had further added the contracts of numerous KwaZulu-Natal municipalities and the Office of the Premier to its COVID-19 investigations in the province.<sup>33</sup> In addition to this, Kaizer Kganyago, the SIU's head of stakeholder relations and communications, had indicated that many further contracts were also being investigated including nine contracts involving the Office of the Premier to the value of R 1 122 550; 13 contracts relating to the uMngeni Municipality valued at R 7 805 588; 59 contracts concerning the KwaDukuza Municipality totalling R 4 190 501; 64 contracts linked to the Thekwini Municipality to the value of R 53 214 200; and two contracts in connection with the Office of the Premier (Department of Transport (DoT)) totalling R 3 902 455 in value.<sup>34</sup>

On January 25, 2022, a new report published by the SIU presented that a large number, in fact more than half of COVID-19 procurement contracts entered into by the government, were untoward. The report places concentration upon procurement by all spheres of the government regarding services, works and goods linked to the COVID-19 Pandemic. As part of its task, the SIU probed 5 467 contracts awarded to 3 066 service providers totalling the amount of R 14.3 billion. Investigations have been concluded concerning 4 549 contracts. The SIU found 2 803 of these contracts to be improper. Of the finalised investigations, this totals 62 per cent.<sup>35</sup>

It is evident that the COVID-19 Pandemic has created a fertile environment not only for mental and physical impairment and fatality, but also in fact for the facilitation of ML. The aforementioned practical examples sorely illustrate the low levels to which criminals will stoop in order to carry out ML and ML threats. It also signifies the massive amounts of money involved in both the fraudulent activity as well as the investigation thereof. The following section of this chapter will provide a streamlined overview of the most common types of corruption during the COVID-19 Pandemic and make specific reference to statistical conclusions. These findings will assist in highlighting the most pertinent problems that South Africa is currently facing regarding corruption which, as previously discussed, will further uncover ML and ML threats during this unprecedented time.

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33 Erasmus D <https://www.dailymaverick.co.za>.

34 Erasmus D <https://www.dailymaverick.co.za>.

35 Staff Writer 'More than half of government's Covid contracts under investigation were irregular: SIU' (25 January 2022) available at <https://businesstech.co.za/news/government/552980/more-than-half-of-governments-covid-contracts-under-investigation-were-irregular-siu/> (accessed 16 April 2022).



### 3.3. Statistical Findings by Corruption Watch (CW)

On September 21, 2021 CW released its 2021 Analysis of Corruption Trends (ACT) report and podcast (the 2021 ACT), revealing the relentless magnitude of continued corruption during the first half of 2021. The 2021 ACT indicates that, in both the private and public sectors, 1 964 whistleblowers reported corruption. These actions of bravery often led to life threatening consequences as seen with the death of Babita Deokaran, discussed in Chapter Five. The 2021 ACT further states that the organization received various reports including inter alia COVID-19 associated irregularities, school principals forcing sexual favours from temporary teachers to safeguard their jobs, and abuse of authority by the police. These reports emphasise the complicity between the private and public sectors.<sup>36</sup>

In terms of corruption levels per sector, most reports, amounting to 12 per cent of all reports, are linked to police corruption. This underlines the unceasing corruption dilemma in the policing sector which is further worsened by the powers endowed to the police whilst lockdown regulations were in effect. This is followed by 8 per cent of reports which allude to corruption regarding procurement and maladministration associated with the COVID-19 Pandemic, such as maladministration with TERS funding. Moreover, 6 per cent of reports are in connection with corruption in schools. Numerous whistleblowers in Gauteng, Limpopo and the Eastern Cape reported abuse of authority, normally by principals and the chairpersons of school governing bodies.<sup>37</sup> Also reported in this regard were irregularities in employment procedures and the theft or embezzlement of school funds. Additionally, 4 per cent of reports refers to corruption in public housing. Gauteng and the Western Cape emerged as hotspots of public housing corruption, where most whistleblowers exposed irregularities in the allocation of RDP houses, fraud in relation to the housing waiting lists, and abuse of authority. Alarming, it was also reported that corruption still occurs in regard to food parcels.<sup>38</sup>

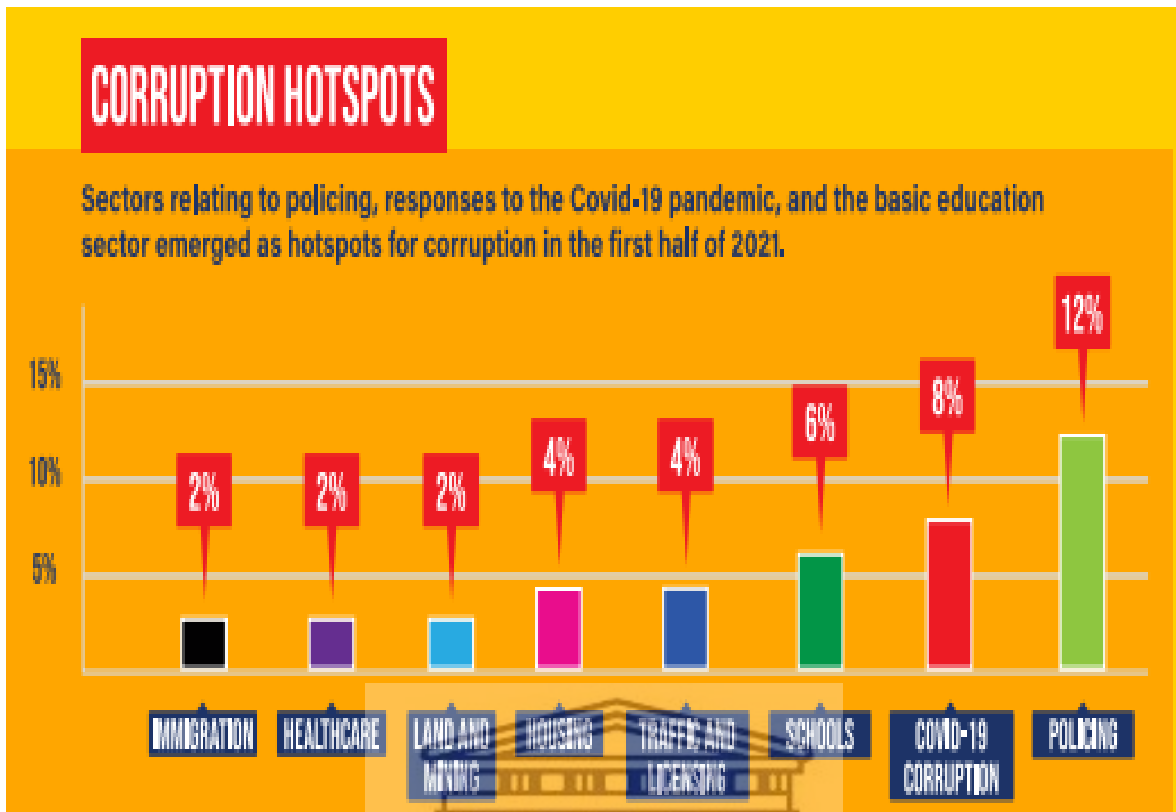
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36 Corruption Watch 'New Corruption Report Exposes Continued Rot In Public And Private Sectors' (21 September 2021) available at <https://www.corruptionwatch.org.za/new-corruption-report-exposes-continued-rot-in-public-and-private-sectors/> (accessed 18 April 2022).

37 Corruption Watch (21 September 2021) <https://www.corruptionwatch.org.za>.

38 Corruption Watch (21 September 2021) <https://www.corruptionwatch.org.za>.

The bar graph below details the per centages of the corruption sector hotspots as mentioned above.

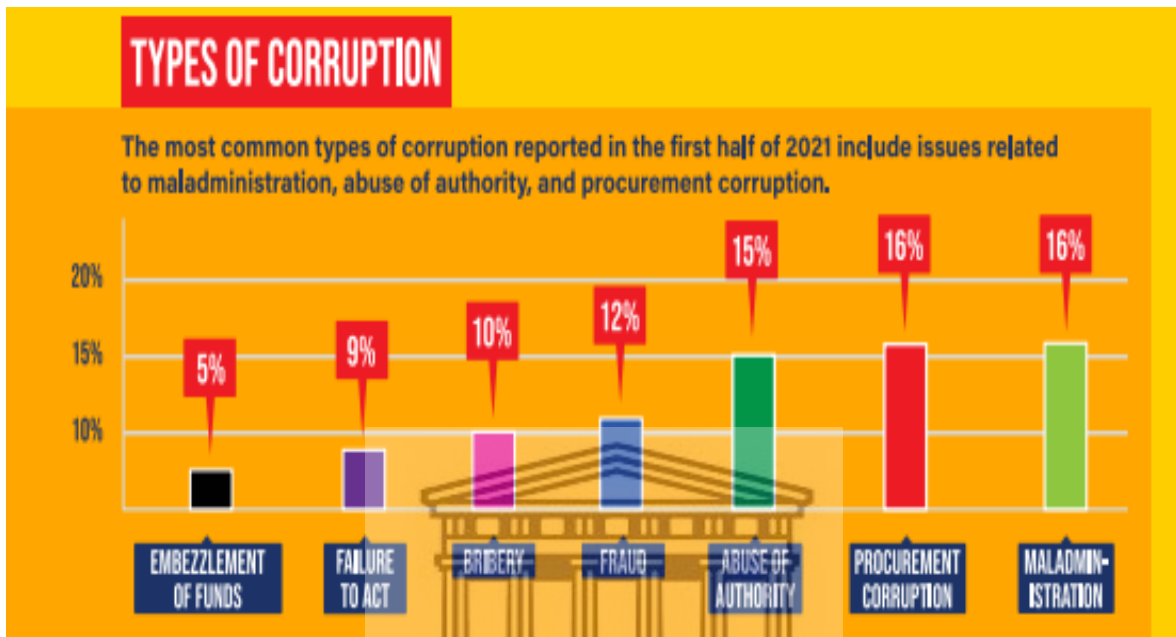


39

Source: Corruption Watch, 2021



Turning to the most common types of corruption experienced, the 2021 ACT specifies that these include maladministration at 16 per cent, procurement corruption at 16 per cent, and the abuse of authority at 15 per cent. According to the organisation, these statistics indicate that attempts by the private and public sectors to deal with the corruption problem in South Africa are extremely insufficient.<sup>40</sup> The bar graph below illustrates the abovementioned most frequently occurring types of corruption.



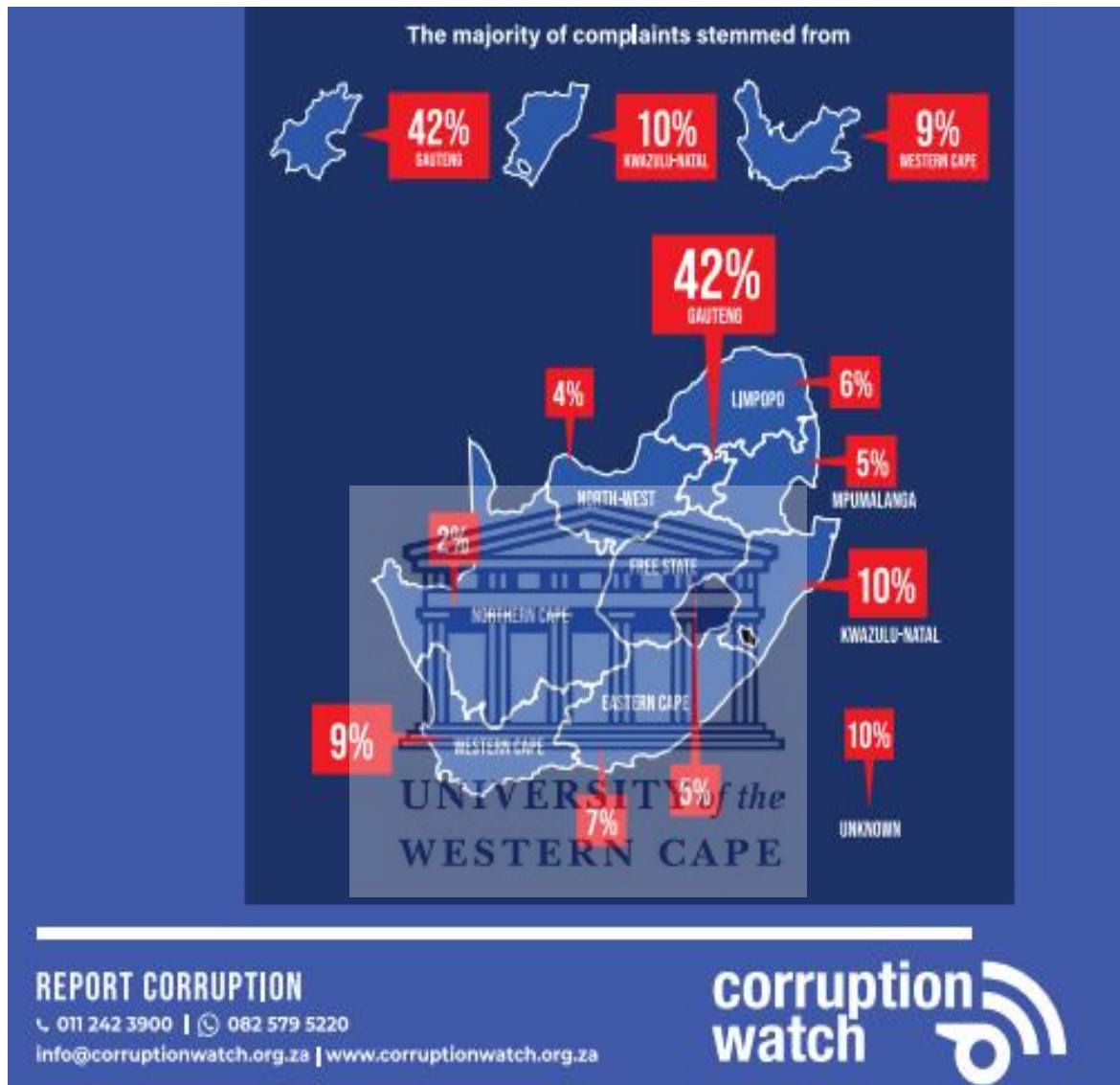
41

Source: Corruption Watch, 2021  
 UNIVERSITY of the  
 WESTERN CAPE

40 Corruption Watch (21 September 2021) <https://www.corruptionwatch.org.za>.

41 Corruption Watch (21 September 2021) <https://www.corruptionwatch.org.za>.

On further analysis, the 2021 ACT reveals that most complaints, amounting to 42 per cent of the total reports, came from Gauteng. This was followed by KwaZulu-Natal at 10 per cent, the Western Cape at 9 per cent and the Eastern Cape totalling 7 per cent.<sup>42</sup> The illustration below presents where the majority of complaints stemmed from.

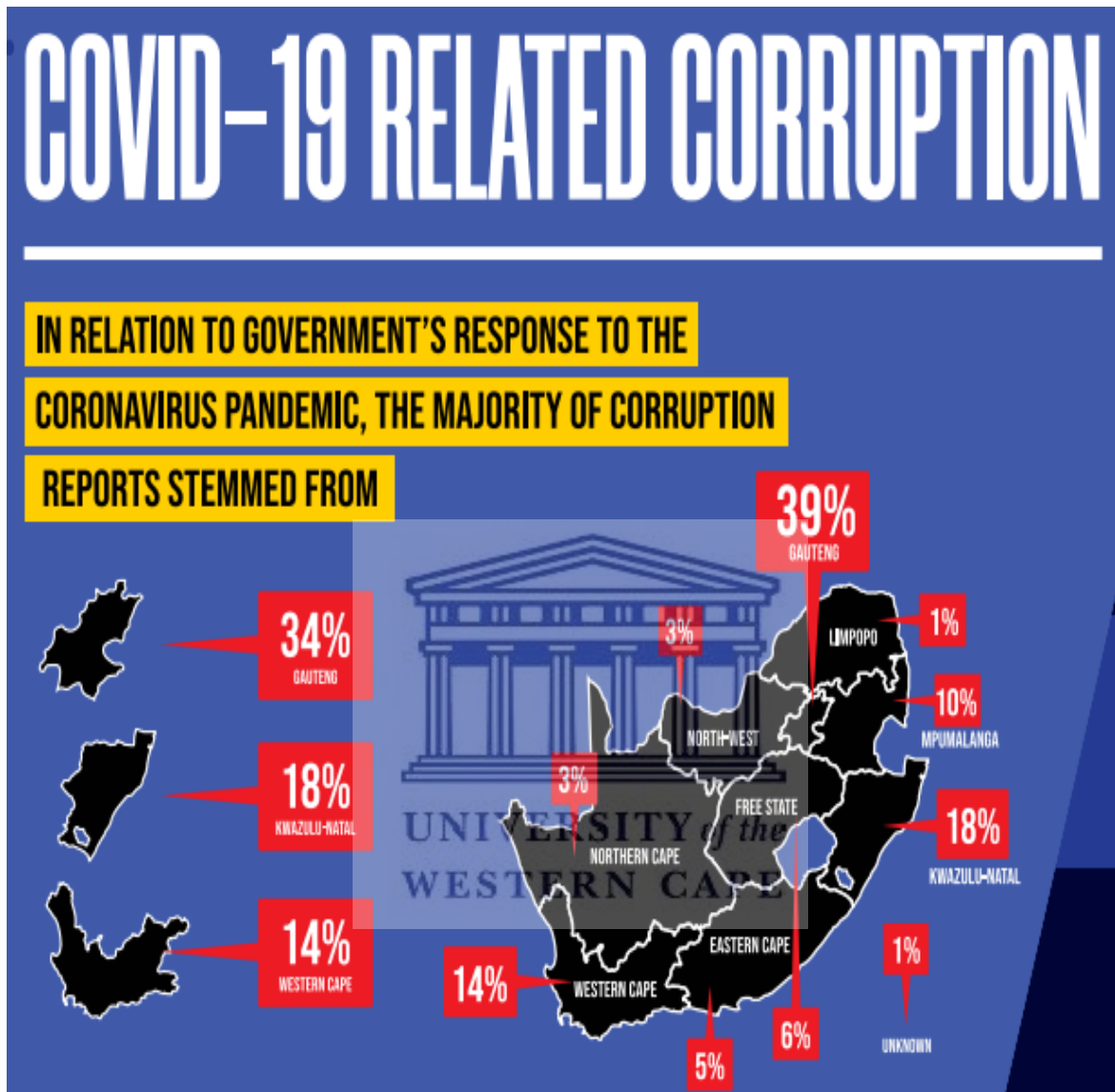


Source: Corruption Watch, 2021

42 Corruption Watch (21 September 2021) <https://www.corruptionwatch.org.za>.

43 Corruption Watch (21 September 2021) <https://www.corruptionwatch.org.za>.

Interestingly, corruption reports detailing government’s retort to the COVID-19 Pandemic transpired in Gauteng at 34 per cent, KwaZulu-Natal at 18 per cent, the Western Cape at 14 per cent, and Mpumalanga at 10 per cent.<sup>44</sup> The illustration below displays this COVID-19 related corruption.



Source: Corruption Watch, 2021

Pertinent to the focus of this thesis, the link between the COVID-19 Pandemic and a surge in ML and ML threats is indeed clear from what has been highlighted in the 2021 ACT.

Considering all the findings, Melusi Ncala, researcher at CW and author of the 2021 ACT

44 Corruption Watch (21 September 2021) <https://www.corruptionwatch.org.za>.

45 Corruption Watch (21 September 2021) <https://www.corruptionwatch.org.za>.

stated: ‘This continues to be the story of corruption in South Africa according to almost 2 000 brave whistleblowers.’ He then asks: ‘So when will the tide turn?’<sup>46</sup> This is indeed a relevant question that truly reflects what many South Africans currently struggle with and desperately seek answers and guidance to. The FATF, also referred to in Chapters One and Two, provides guidance in regard to ML and ML threats during the COVID-19 Pandemic. It elaborates upon global ML risks, practical examples, and proposed actions during the COVID-19 Pandemic. This is valuable information for South Africa, being a member of the FATF, to be cognisant of. The next section of this chapter will thus focus on the FATF’s response.

### **3.4. COVID-19 Money Laundering and Money Laundering Threats identified by the FATF**

Being the international standard setter for contesting ML, TF, and the proliferation thereof,<sup>47</sup> the FATF, in collaboration with its observers and members, have acted rapidly amid the COVID-19 Pandemic. They have done so with the purpose of addressing the susceptibilities incipient from the global catastrophe in relation to ML.<sup>48</sup> Though not discussed in this chapter, it is important to highlight the fact that the FATF took initiative by releasing various COVID-19 statements<sup>49</sup> and furthermore arranging a series of webinars, involving participants from both the private and public sectors, to raise awareness and discuss emerging risks.<sup>50</sup> However, attention in this section will be drawn to the FATF’s paper issued in May 2020 addressed together with the paper update issued by the FATF in December 2020, as well as the FATF’s January 18, 2021 Statement. The papers and statement present a collective global response to ML and TF associated with the COVID-19 Pandemic.<sup>51</sup> Due to the length of the papers and statement, reference will be made to the sections which are possibly the most applicable to the findings relating to South Africa as

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46 Corruption Watch (21 September 2021) <https://www.corruptionwatch.org.za>.

47 FATF ‘Statement by the FATF President: COVID-19 and measures to combat illicit financing’ (1 April 2021) available at <https://www.fatf-gafi.org/publications/fatfgeneral/documents/statement-covid-19.html> (accessed 16 June 2022). See also FATF *Annual Report 2020 2021* FATF (2020) 5.

48 FATF ‘FATF focus on COVID-19’ (2021) available at [https://www.fatf-gafi.org/publications/covid-19/covid-19.html?hf=10&b=0&s=desc\(fatf\\_releasedate\)](https://www.fatf-gafi.org/publications/covid-19/covid-19.html?hf=10&b=0&s=desc(fatf_releasedate)) (accessed 16 June 2022).

49 FATF (1 April 2020) <https://www.fatf-gafi.org>. FATF ‘The importance of allocating sufficient resources to AML/CFT regimes during the COVID-19 pandemic’ (23 October 2020) available at <https://www.fatf-gafi.org/publications/fatfgeneral/documents/covid-19-impact-oct-2020.html> (accessed 16 June 2022).

50 FATF (2021) available at <https://www.fatf-gafi.org>.

51 FATF (2021) available at <https://www.fatf-gafi.org>.

referred to under 3.2 and 3.3 of this chapter. Although not specifically mentioned in the FATFs responses, possible links between what occurred in South Africa and what the FATF mentions, will be made. A further in-depth analysis of the South African context will take place in Chapter Four and Chapter Five.

As previously mentioned, the unparalleled and hastily developing COVID-19 Pandemic has impelled the creation of the May 2020 COVID-19 related Money Laundering and Terrorist Financing Risks and Policy Responses Paper (FATF May 2020 Paper).<sup>52</sup> It is an integral fragment of a timely and synchronized retort to the effects of the COVID-19 health crisis on global AML/ Combatting the Financing of Terrorism (CFT) efforts and the application of the FATF Standards especially amid the current global catastrophe.<sup>53</sup> This paper is informed by information accumulated from open-source research and FATF observer organisations such as the International Monetary Fund (IMF), the United Nations and the World Bank as well as member countries of the FATF and FATF-Style Regional Bodies (FSRB)s.<sup>54</sup> There are three wide-ranging themes that this paper focuses upon which includes the evolving ML/FT risks, current COVID-19 impacts on AML/CFT regimes, and possible AML/CFT responses for deliberation.<sup>55</sup> The FATF has, since May 2020, perpetuated the collection and assessment of pertinent information on the ramifications of the COVID-19 Pandemic.<sup>56</sup> The assessments seen in the December 2020 Paper Update regarding COVID-19-related Money Laundering and Terrorist Financing (FATF December 2020 Paper Update) reaffirms the continued relevance of the risks and policy feedback.<sup>57</sup> The objective of the FATF December 2020 Paper Update is to provide supplementary information on COVID-19 associated ML and TF hazards to reporting entities, other private sector entities, as well as further stakeholders.<sup>58</sup>

Turning to the findings, it is stated that the COVID-19 Pandemic has explicably engendered several government responses. Though the exact circumstances and public health responses in every respective country contrast in accordance with the impact of the COVID-19

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52 FATF (May 2020) 5.

53 FATF (May 2020) 5.

54 FATF (May 2020) 5.

55 FATF (May 2020) 5.

56 FATF (December 2020) 5.

57 FATF (December 2020) 5.

58 FATF (December 2020) 5.

Pandemic, the embryonic risk depiction detailed in these papers are based upon the following general assumptions.<sup>59</sup> Individuals, businesses and governments are progressively turning to online technology in order to socially interact and work remotely; industries that are declared non-essential have physically closed; and both non-essential and essential industries have had larger online sales.<sup>60</sup> Furthermore, there is a massive need for medical supplies amid a global shortage due to extreme demand; financial institutions including banks are limiting in-person banking; and lockdown and other measures have caused the laying off of workers or mass unemployment, harm to government revenue and an over-all economic recession. This influences the social and financial conduct of businesses and individuals.<sup>61</sup> Moreover, resources are removed from other areas of work due to governments having to reprioritise resources in response to the COVID-19 Pandemic. In addition, since individual travel and international trade volumes are limited, conventional multinational organised crime structures exploit the traditional illegitimate revenue schemes of organised crime groups and global supply chains, which are affected by the COVID-19 Pandemic. While inadvertent, these measures create new prospects for criminals and terrorists to generate and then launder unlawful profits.<sup>62</sup>

These general assumptions and aspects are reflected in South Africa with reference to the findings in section 3.2. and 3.3. of this chapter. It is understood that the ML and ML threats that South Africa is grappling with during the COVID-19 Pandemic include, but are not limited to, maladministration, procurement corruption, fraud, abuse of power, bribery, employment corruption, dereliction of duty, embezzlement of funds, lockdown fraud, insurance fraud, digital fraud and fraud and ML involving places of worship. This then also comprises aspects such as procurement irregularities, compliance issues and fraudulent activities in various businesses, agencies, state institutions and departments. These forms of ML and ML threats have occurred mostly in the SAPS, government response to the COVID-19 Pandemic, school, and housing sectors. Following the assumptions, the next section of this chapter will highlight the evolving ML risks identified by the FATF. It will do so by probing into the FATF May 2020 Paper and will simultaneously intertwine findings of the

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59 FATF (May 2020) 5.

60 FATF (May 2020) 5.

61 FATF (May 2020) 5.

62 FATF (May 2020) 6.



FATF December 2020 Paper Update whilst concurrently linking possible indications in relation to the South African ML and ML threat findings during the COVID-19 Pandemic.

### 3.4.1. Amplified Fraud

The aspects reported by the FATF open sources, observers, and members, point to criminals attempting to profit from the COVID-19 Pandemic through increased fraudulent activities.<sup>63</sup> An increase in fraudulent activity is similarly identified in South Africa. The activities uncovered by the FATF include an increase in fundraising for fake charities whereby emails, distributed by criminals pretending to be international charities or organisations, request donations for victim, product and/or research based fundraising campaigns linked to COVID-19. Through the suspect's secure digital wallet, credit card details or payments are requested to be given or made by the recipients of these emails.<sup>64</sup> In South Africa it was also noted that fraudulent activities and ML took place in connection with the Life Changers Church in Table View, Western Cape.

Another activity is the impersonation of officials. With the purpose of acquiring physical cash or personal banking details, criminals contact individuals via email, telephonically or in person and mimic officials. Impersonation may occur in the form of criminals acting as government officials and intreating personal banking details for the purpose of tax relief,<sup>65</sup> or they act as hospital officials who claim that a family member is ill and they are in need of a payment for treatment.<sup>66</sup> These impersonations are said to increase because criminals endeavour to benefit from the profits of grant and tax relief payments by governments around the globe to their citizens.<sup>67</sup> It is likely that these occurrences could be found in the

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63 FATF (May2020) 6 and 7.

64 FATF (May 2020) 6 and 7.

65 FATF (May 2020) 6. See also US Treasury 'COVID-19 Scams' (2020) available at <https://home.treasury.gov/services/report-fraud-waste-and-abuse/covid-19-scams> (accessed 16 June 2022).

66 FATF (May 2020) 6. Interpol 'Criminals taking advantage of coronavirus anxiety to defraud victims online' (13 March 2020) available at <https://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-warns-of-financial-fraud-linked-to-COVID-19> (accessed 16 June 2022). See also Interpol 'Unmasked: International COVID-19 fraud exposed' (14 April 2020) available at <https://www.interpol.int/News-and-Events/News/2020/Unmasked-International-COVID-19-fraud-exposed> (accessed 16 June 2022).

67 FATF (May 2020) 6.

SAPS fraudulent activity in South Africa where statistics have shown that there indeed was dereliction of duty, abuse of power and bribery.

Known as further fraud increasing activity is the counterfeiting of, amongst others, essential goods including medicines, medical supplies, pharmaceutical products and personal protective equipment.<sup>68</sup> Offering testing kits, masks and other products, criminals that maintain that they are employees of charities, international organisations or businesses request credit card details for a shipping fee or a payment but then fail to distribute the goods.<sup>69</sup> Victims are in some instances requested to, via bank transfers, provide payments in advance. They would then be directed to collect the goods from various places only to be informed on arrival that there was actually no such arrangement made.<sup>70</sup> Similarly, in some instances the goods are distributed to the consumer, however, they are ineffective or forged. There is also an increase in deceptive COVID-19 treatment claims and sales in illegal products advertised as miracle cures.<sup>71</sup> South Africa can certainly relate here as there were findings of massive PPE fraud and even instances where massive amounts of seemingly counterfeit PPE were dumped in a river located in Johannesburg.

Amidst the COVID-19 Pandemic, scams, through fundraising for false charities, have continued according to the FATF December 2020 Paper Update. Criminals fool victims by using social media podia to request funds or they contact individuals, misrepresent themselves and demand money for fake or imaginary charities.<sup>72</sup> These impostors sometimes betray victims by creating false charities or by deceptively claiming that they were representatives of renowned international charities.<sup>73</sup> South Africans are found to be victims of digital fraud and are thus also prone to the social media dangers as discussed in the next section.

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68 FATF (May 2020) 6.

69 FATF (May 2020) 6.

70 FATF (May 2020) 6. See also 'Singapore Police Force Police Advisory - New Type of E-Commerce Scams Involving The Sale Of Face Masks' (2020) available at [https://www.police.gov.sg/Media-Room/News/20200222\\_OTHERS\\_New\\_Type\\_Of\\_ECommerce\\_Scams\\_Involving\\_The\\_Sale\\_Of\\_Face\\_Masks](https://www.police.gov.sg/Media-Room/News/20200222_OTHERS_New_Type_Of_ECommerce_Scams_Involving_The_Sale_Of_Face_Masks) (accessed 16 June 2022).

71 FATF (May 2020) 6.

72 FATF (December 2020) 13.

73 FATF (December 2020) 13.

### 3.4.2. Cyber Crime Attacks

Another augmented ML threat identified in this paper is Cyber Crime. This is an aspect that South Africa has also grappled with in relation to digital fraud during the COVID-19 Pandemic, as mentioned previously. The FATF indicates that there has been a strident upsurge in social engineering attacks largely due to the remote working element. These attacks include phishing via email and mobile messages. To insert malicious software,<sup>74</sup> otherwise known as malware, on mobile devices or personal computers, impostors are taking advantage of COVID-19 concerns. An example of this is where criminals impersonate government through SMSing to entice individuals to duplicitous government websites with the purpose of gaining usernames, passwords and/or other personal account details.<sup>75</sup> A further example is where cyber fraudsters, by impersonating the WHO and distributing mobile messages and emails, lead victims to open attachments or click into malevolent links which would, in turn, divulge the person's password and username.<sup>76</sup>

Cyber-attacks also include business email compromise scams whereby cyber criminals exploit the vulnerabilities in the network security of businesses to achieve entry into customer transaction and contact details. Once the information is obtained, it is then utilized via phishing emails for criminals to act as the business and demand payment for the valid services and/or goods. The payment is transferred into the illegal accounts of these criminals.<sup>77</sup> In a further instance, under the ploy of paying for bulk supplies of hand sanitiser and surgical masks, a company received hoaxed emails akin to those distributed by their

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74 FATF (May 2020) 7. See also Fruhlinger J 'Malware explained: How to prevent, detect and recover from it' (17 May 2019) available at <https://www.csoonline.com/article/3295877/what-is-malware-viruses-worms-trojans-and-beyond.html#:~:text=Malware%2C%20short%20for%20malicious%20software,gain%20access%20to%20sensitive%20information> (accessed 16 June 2022).

75 FATF (May 2020) 7. See also CISA 'COVID-19 Exploited by Malicious Cyber Actors' (8 April 2020) available at <https://us-cert.cisa.gov/ncas/alerts/aa20-099a> (accessed 16 June 2022).

76 FATF (May 2020) 7. WHO 'Beware of criminals pretending to be WHO' (2020) available at <http://www.who.int/about/communications/cyber-security> (accessed 16 June 2022).

77 FATF (May 2020) 7. See also FBI 'FBI Anticipates Rise in Business Email Compromise Schemes Related to the COVID-19 Pandemic' (6 April 2020) available at <https://www.fbi.gov/news/pressrel/press-releases/fbi-anticipates-rise-in-business-email-compromise-schemes-related-to-the-covid-19-pandemic> (accessed 16 June 2022).

business partner (company and partner details omitted by the FATF). The intention of this is to transmit payment transfers to the controlled bank accounts of fraudsters.<sup>78</sup>

Additional cyber-attacks identified are ransomware attacks. Ransomware is software that is able to demand a ransom for a computer's release after locking it.<sup>79</sup> Various methods of inserting ransomware into mobile devices or personal computers are reportedly what criminals are now also involved in. By means of fraudulent mobile applications and websites that seem to share COVID-19 related information, cybercriminals obtain and lock admission to victims' devices until payment is acquired. Organisations leading the COVID-19 response, particularly hospitals and other medical institutions have progressively become targets of cybercriminals for attacks relating to ransomware.<sup>80</sup>

It was confirmed in the FATF December 2020 Paper Update that a large number of global reports indicate a continuous rise in cyber-related fraud. There are concerns predominantly regarding ransomware attacks, business email compromise schemes, and email and SMS phishing scams.<sup>81</sup> It is important to also note that the COVID-19 associated email and SMS phishing schemes have shifted according to individuals' interests and governments' actions and adaptations over time. Emails with false links now tend to refer to bank distributing aids, government stimulus packages, websites selling masks, and infection rate maps.<sup>82</sup> Shockingly reported by a jurisdiction (details omitted by the FATF) was a case whereby fraudsters sent emails threatening to not only reveal personal information of victims, but to further infect them and their families with COVID-19 if they failed to pay the fraudsters.<sup>83</sup> Regrettably, South Africa is not excluded from this tragedy as the country struggles with digital fraud such as debit card fraud, phishing, identity theft, third party seller scams, accounts that have been taken over, stolen credit cards or fraudulent charges.

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78 FATF (May 2020) 7.

79 Kaspersky 'What is Ransomware?' (December 2021) available at <https://www.kaspersky.com/resource-center/threats/ransomware> (accessed 16 June 2022).

80 FATF (May 2020) 7. See also Interpol 'Cybercriminals targeting critical healthcare institutions with ransomware' (4 April 2020) available at <https://www.interpol.int/News-and-Events/News/2020/Cybercriminals-targeting-critical-healthcare-institutions-with-ransomware> (accessed 16 June 2022).

81 FATF (December 2020) 10.

82 FATF (December 2020) 10.

83 FATF (December 2020) 10.

### 3.4.3. Challenges in the Financial Sector

Further reported is an increase in banking online, with the inclusion of consumer onboarding processes and identity authentication. The increasing trend in online banking is reportedly due to limited in-person services, a decrease in opening hours and the actual closure of physical branches of some banks.<sup>84</sup> As elucidated by some supervisors, banks can delay some aspects of customer identity authentication during confinement periods in accordance with a risk-based approach, however, some financial institutions may not be capable of remotely authenticating the identity of customers as noted by FATF and FSRB members.<sup>85</sup> There are continued difficulties in this regard especially for identification purposes associated with financial institutions. With the increase in remote working and online transactions, there has been modification in the financial patterns and behaviours of customers.<sup>86</sup> Reporting organisations might not hitherto be familiar with enabling transactions or conducting services remotely in countries where remote transactions and services are used less frequently which makes customer due diligence or ongoing monitoring increasingly challenging.<sup>87</sup> Compliance staff, in some instances, are still incapable of performing their duties with the same efficacy carried out prior to the COVID-19 Pandemic due to remote working and the consequential repercussions on the systems and controls of reporting organizations.<sup>88</sup>

FATF and FSRB members report that as with previous prolonged economic depressions, individuals or organisations in need of funding might approach non-traditional or unlicensed lenders, conceivably including illegitimate groups.<sup>89</sup> Members have also identified the hazard of established financial protectors possibly becoming pre-occupied and distracted with business continuity matters whilst additionally having to see to the surveillance of apprehensive dealings.<sup>90</sup> Risk indicators are required to frequently update and adjust in line

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84 FATF (May 2020) 8.

85 FATF (May 2020) 8.

86 FATF (December 2020) 18 and 19.

87 FATF (December 2020) 18 and 19.

88 FATF (December 2020) 18 and 19.

89 FATF (May 2020) 9.

90 FATF (May 2020) 9.

with the embryonic risk landscape.<sup>91</sup> Due to the frequent changes over time, communiqué amongst the public and private sectors should be continuous in order to share information.<sup>92</sup> Individuals continue to use unregulated financial services as well as fraudulent schemes that are attractive to those who might have suffered a loss in income or lost their jobs. Some are also possibly being misused as money mules.<sup>93</sup> Particular sections of populations such as indigenous or remote societies, the elderly or low-income groups may have an increased risk regarding fraud as they are said to possibly be unfamiliar with online banking systems.<sup>94</sup> According to various reports, online bank fraudsters also seek to obtain account or financial data.<sup>95</sup> Since customers' social distancing measures and behavioural fluctuations result in reduced face-to-face interaction, the adequate use of technology, whether used to safeguard effective information distribution between competent authorities and reporting entities or to support the on-boarding process, has become increasingly crucial.<sup>96</sup> South Africa can relate to these findings because it is evident that fraudulent activities have seeped into various businesses, agencies, state institutions as well as departments. These findings also tie in with South Africa's digital fraud, compliance irregularity, lockdown fraud, and maladministration discoveries.

#### **3.4.4. Misuse of Stimulus Measures**

The global misuse of stimulus measures during the COVID-19 Pandemic has not escaped South Africa. According to the report of FATF and FSRB members, a small amount of financial aid focused on individuals and businesses may present possible fraud risks causing ML. More specifically, impostors may deceitfully insist that they offer access to financial aid in order to gain personal financial details.<sup>97</sup> By pretending to be valid businesses in search of aid, FATF members report that offenders might make use of legal entities to falsely claim for

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91 FATF (December 2020) 19.

92 FATF (December 2020) 19.

93 FATF (December 2020) 20.

94 FATF (May 2020) 8. Cellule de Renseignement Financier Luxembourg *ML/TF Vertical Risk Assessment: Virtual Asset Service Providers* (2020) 1 to 4.

95 FATF (May 2020) 8. See also Cellule de Renseignement Financier Luxembourg (2020) 2 and 4.

96 FATF (December 2020) 19.

97 FATF (May 2020) 9. See also US IRS 'IRS issues warning about Coronavirus-related scams; watch out for schemes tied to economic impact payments' (2 April 2020) available at <https://www.irs.gov/newsroom/irs-issues-warning-about-coronavirus-related-scams-watch-out-for-schemes-tied-to-economic-impact-payments> (accessed 16 June 2022).

government stimulus funding. FATF members advise distributing relief to businesses and individuals through standing government accounts for obtaining social aid.<sup>98</sup> It is said that loan schemes in connection with financial aid are possibly also exploited by criminals for ML.<sup>99</sup> The FATF identified that the exploitation of economic stimulus measures has continued to develop as countries have implemented augmented numbers as well as enlarged sizes of stimulus initiatives.<sup>100</sup> Criminals have indeed been opportunistic in this regard in that individuals, companies, or organised criminal organisations try to deceitfully seek money from governments.<sup>101</sup>

Over and above this, numerous jurisdictions have also articulated apprehensions regarding the probable misuse of international assistance received for fighting COVID-19.<sup>102</sup> In addition, many jurisdictions reported instances of exploitation connected to the mismanagement of government funds initially envisioned for publicly funded contracts or for the usage of medical equipment.<sup>103</sup> To tackle COVID-19, various nations have an instantaneous necessity for urgent financial support.<sup>104</sup> Global financial establishments report that countries where the rule of law is feeble and the practice of accountability and transparency is weak, present a hazard for emergency funding to be embezzled by dishonest officials.<sup>105</sup> Government contracts involving bulk COVID-19 medical supplies also provoke corruption and the misuse of public financial aid, which may worsen if there is the acuity of reduced financial supervision on government procurement and expenditure, as reported by FSRB members. Moreover, as reported by FSRB members, criminals are said to use fraud or informal methods to gain profitable government contracts by bypassing legitimate procurement processes.<sup>106</sup> These FATF detections interlink with those of South Africa especially with regard to the UIF and TERS fraud that ensued.

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98 FATF (May 2020) 9. Australian Ministers for the Department of Social Services 'Youth Homelessness in Australia' (15 March 2020) available at <https://ministers.dss.gov.au/media-releases/5636> (accessed 16 June 2022).

99 FATF (May 2020) 9.

100 FATF (December 2020) 14.

101 FATF (December 2020) 14.

102 FATF (December 2020) 16.

103 FATF (December 2020) 16.

104 FATF (May 2020) 10.

105 FATF (May 2020) 9.

106 FATF (May 2020) 9.

### 3.4.5. Growth in Financial Unpredictability

The FATF paper has identified growth in financial unpredictability as alarming because unscrupulous criminals might vary their activities to take advantage of the new vulnerabilities.<sup>107</sup> The findings in South Africa during the COVID-19 Pandemic sorely refers to this issue as well. According to the FATF's discoveries, one of the aspects that speak to this problem is the economic slump. Criminals might present illegitimate income into the economic structure by rearranging existing methods of credit and loans and may invest in property or struggling businesses in order to produce cash and hide illegal profits.<sup>108</sup> Criminals can smoke-screen the FATF members' emphasis on the fact that tax circumvention and associated crimes could increase as companies and individuals seek to decrease their fiscal burdens, by the freeing up of illegal cash contained in businesses through corporate insolvency proceedings.<sup>109</sup> The economic slump has also caused the private sector entities to have less resources to battle ML/TF and furthermore has, in emerging countries, caused an increase in subsistence crimes involving, for example, theft, wildlife pilfering and burglary.<sup>110</sup> The world continues to endure economic difficulty as alluded to in the FATF December 2020 Paper Update. This is said to result in numerous ML susceptibilities.<sup>111</sup> Funds obtained illegitimately is identified as a hazard because it could be used to abuse suffering businesses or businesses prone to swift variations in demand due to, for example, a take-over or the provision of capital.<sup>112</sup> Predominantly exposed are areas such as industrial cleaning, construction, transportation sectors, real estate, and small and medium enterprises in general.<sup>113</sup>

Further aspects that the FATF identified in their Papers is that South Africa may also be a victim of the increase in impacted predicate offenses comprising online child exploitation and human trafficking;<sup>114</sup> insider trading relating to bulk value changes in markets;<sup>115</sup>

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107 FATF (May 2020) 9.

108 FATF (May 2020) 9 and 10.

109 FATF (May 2020) 10.

110 FATF (May 2020) 10.

111 FATF (December 2020) 19.

112 FATF (December 2020) 19.

113 FATF (December 2020) 19.

114 FATF (May 2020) 8. See also FATF (December 2020) 6.

115 FATF (May 2020) 10. See also FATF (December 2020) 20.



increase in physical cash dealings concerning bank note withdrawals;<sup>116</sup> and virtual assets involving money mule schemes.<sup>117</sup>

It has been established that the aforementioned risks identified by the FATF, whether directly or indirectly, possibly correlate with the occurrences found in South Africa during the COVID-19 Pandemic. In riposte to the challenges faced amid the COVID-19 Pandemic, the FATF has demonstrated an array of practical examples and actions that have been or are considered to be taken by jurisdictions across the globe. This will briefly be alluded to in Chapters Five and Six.

### **3.5. Conclusion**

ML has been an immense challenge for ages but at the dawn of the COVID-19 Pandemic many thought, at least for one second, that this daunting and life-threatening global pandemic would finally yield world compassion, healing, and solidarity. Though it has in some instances, ML has deplorably not died down. It has in fact thrived, and mind-blowingly so. This conclusion is supported by the rise in unwonted damage caused by ML and ML threats in South Africa identified and linked to the COVID-19 Pandemic. It was sharply demonstrated by the findings that South Africa has been enduring very alarming and extremely serious ML and ML threats during the COVID-19 Pandemic. The fact that these evolving issues occupy a range of sectors involving the SAPS, schooling, housing, the government, health care, insurance, the digital space, places of worship and the employment realm is tremendously concerning.

These detections then led to the discussion of the possible responses identified by the FATF to tackle the global unwonted damage caused by ML and ML threats generated by the COVID-19 Pandemic. The FATF has produced revolutionary insight and stratagems for its members. A country such as South Africa, plagued with scars from the Apartheid regime, overwhelmed by poverty, unemployment, crime, lack of education, healthcare and basic sanitizing, really cannot afford to bear the massive burden of ML and ML threats. It is thus imperative for South Africa to strengthen cognisance of and collaboration with international

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116 FATF (May 2020) 10. See also FATF (December 2020) 19 and 20.

117 FATF (May 2020) 10. See also FATF (December 2020) 20.

AML tools such as the FATF. The ML and ML threats in South Africa, as well as the FATF's related global response have been dealt with in this chapter. That being said, and as immensely useful as this information is, the *status quo* in South Africa itself with regards to its AML regime and whether it has the capacity to combat and curb ML and ML threats in South Africa during a pandemic, is yet to be explored. For fruitful and functional recommendations to be established in relation to this problem South Africa faces, it is important to gain further insight into the South African regime in relation to ML and ML threats during the COVID-19 Pandemic or any other pandemic. This will be explored in Chapter Four.



## CHAPTER FOUR

### WORDS AND WALLS

#### THE ADEQUACY OF THE SOUTH AFRICAN AML FRAMEWORK

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##### 4.1. Introduction

Chapters One, Two and Three have established that ML is a global devastation and mayhem causing problems in general, and that there is in fact a link between the COVID-19 Pandemic and ML and ML threats in South Africa specifically. Now, when a country experiences problems relating to ML and ML threats during a pandemic, it is advised that its AML framework be examined. Therefore, the next step henceforth is to extend attention to the ‘words and walls’ in relation to the South African AML framework. It is an important point of focus because it essentially criminalises ML in South Africa. In other words, it sets out a structure that, if implemented correctly, would assist in the punishment, deterrence and/or prevention of criminals disguising illegal funds as legitimate income.<sup>1</sup> With the acknowledgement that South Africa has been experiencing a ML and ML threat problem during the COVID-19 Pandemic, it is imperative to know where South Africa stands in its AML framework and moreover evaluate the said framework. This chapter will therefore delve into an overview of South Africa’s focal regulation, institutions, commissions, as well as investigation and prosecution processes applicable to AML strategies. The chapter does not intend to provide an in-depth analysis or detailed outline regarding the law since this falls outside of the scope of this thesis.<sup>2</sup> However, the South African AML regulatory regime, institutions, commissions, and processes are evaluated to ascertain whether it is adequate to curb and combat ML and ML threat challenges and exposure during a pandemic in the country.

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1 Wheeler ‘Guidance on Anti-Money Laundering (AML) in Banking and Finance for 2022’ (6 April 2022) available at <https://www.jumio.com/aml-guidance-banking-finance-2021/> (accessed 27 April 2022).

2 For a detailed analysis of South African AML legislation please refer to Van Jaarsveld I L *Aspects of Money Laundering in South African Law* (unpublished PHD thesis University of South Africa 2011) at 458 to 583. See also Hamman A J (2015) 86 to 143.

#### 4.2. An Overview of the Anti-Money Laundering Framework in South Africa

During the 1980s and 1990s South Africa initiated the drafting of legislation in pursuit of combatting activities relating to the proceeds of drug-related offences.<sup>3</sup> This followed the country's ratification of the UN's Convention Against the Illegal Traffic in Narcotic Drugs of 1988. In 1992, the Drugs and Drug Trafficking Act (DTA)<sup>4</sup> was enacted. Interesting to note is that those who laundered illegitimate earnings were prosecuted as accessories after the fact according to the South African common law before the 1990s.<sup>5</sup> *Pillay & others v S*<sup>6</sup> demonstrated this fact. The case came to the fore consequential to a robbery undertaken by an armed gang. Some of the gang members even included police officers. An amount of R 31 million was stolen, making it one of South Africa's biggest robbery cases at the time. One of the nineteen accused was one Selvin Pillay. He faced charges of robbery with aggravating circumstances. He was ultimately convicted as an accessory after the fact to robbery because it was found that he did not engage in the robbery itself. What was found, however, was that he facilitated the laundering of a portion of the proceeds of the robbery thus leading to his said conviction.

After 1990, the DTA was the first Act whereby statutory ML offences were created.<sup>7</sup> It introduced ML as an independent offence and criminalised it in relation to drug-related offences. It also mandated the appropriate instances to report any apprehensive dealings, however, merely to the extent that they were linked to the proceeds of any drug-related crimes. The scope of the South African authorities in fighting ML was, hence, largely restricted.<sup>8</sup> To broaden this constrained scope<sup>9</sup> and essentially entirely repeal the DTA, 1996 marked the year in which the Proceeds of Crime Act<sup>10</sup> (PCA) was enacted.<sup>11</sup> By introducing a ML offence that was not limited to drug-related offences, the PCA expanded the scope of the fight against ML. However, this expansion still proved inadequate in

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3 Van Jaarsveld I L (2011) 461.

4 Act 140 of 1992.

5 Williams C (2017) 24.

6 2004 (1) All SA 61 (SCA) Para 60. See also Hamman A J (2015) 136.

7 Williams C (2017) 24.

8 Williams C (2017) 25.

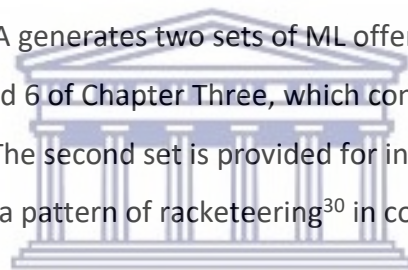
9 De Koker L (2002) 27.

10 Act 76 of 1996.

11 Van Jaarsveld I L (2011) 461. See also Williams C (2017) 25.

battling ML in South Africa.<sup>12</sup> It is important to note, too, that during 1997<sup>13</sup> the pressing rights provided by the Bill of Rights (BOR) and other chapters in the Constitution of the Republic of South Africa<sup>14</sup> (the Constitution) also came into effect which are to be adhered to. These rights include, amongst others, the right to equality,<sup>15</sup> human dignity,<sup>16</sup> life,<sup>17</sup> freedom and security of a person,<sup>18</sup> freedom of expression<sup>19</sup> and procurement.<sup>20</sup> The legislative developments that took place in South Africa henceforth form the principal statutes<sup>21</sup> and essentially the backbone of the South African AML regime.<sup>22</sup> These developments include legislation namely the POCA, FICA, and POCDATARA.

POCA's enactment in 1998 brought about the repeal of the PCA.<sup>23</sup> It became the chief statute criminalising ML in South Africa when it came into effect in 1999.<sup>24</sup> Its purpose is to combat criminal gang activities, organised crime, ML and activities involving racketeering.<sup>25</sup> It also provides for aspects such as the recovery of the earnings of illegitimate activity, and for the civil forfeiture of criminal assets used to commit an offence or assets that are the profits of illegal activity.<sup>26</sup> POCA generates two sets of ML offences.<sup>27</sup> The first set is provided for in Sections 4, 5 and 6 of Chapter Three, which concerns general ML offences<sup>28</sup> whereby ML is criminalised.<sup>29</sup> The second set is provided for in Section 2(1) of Chapter Two which regards the proceeds of a pattern of racketeering<sup>30</sup> in connection with the use,



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- 12 Williams C (2017) 25.  
 13 The Constitution of the Republic of South Africa came into effect on 4 February 1997. See also South African Government 'The Constitution of the Republic of South Africa' (2021) available at <https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-1#:~:text=The%20Constitution%20of%20the%20Republic%20of%20South%20Africa%2C%201996%2C%20was,the%20provisions%20of%20the%20Constitution> (accessed 28 November 2021).  
 14 of 1996.  
 15 Section 9 of the Constitution.  
 16 Section 10 of the Constitution.  
 17 Section 11 of the Constitution.  
 18 Section 12 of the Constitution.  
 19 Section 16 of the Constitution.  
 20 Section 217 of the Constitution.  
 21 Hamman A J (2015) 86.  
 22 Van Jaarsveld I L (2011) 635.  
 23 Van Jaarsveld I L (2011) 461.  
 24 Williams C (2017) 25. POCA came into effect on 21 January 1999. See De Koker L (2002) 4.  
 25 Corruption Watch 'Corruption and The Law in South Africa' (2015) 11.  
 26 POCA at 2.  
 27 De Koker L (2002) 4.  
 28 Williams C (2017) 25.  
 29 Williams C (2017) 25 and 26.  
 30 Williams C (2017) 26.

investment or receipt of profits of a pattern of racketeering activity.<sup>31</sup> Moreover, regarding penalties and punishments set out in POCA, any person who is convicted of ML in terms of sections 4,5, and 6 may be imprisoned for a period of not exceeding 30 years or may be fined a maximum of R 100 million.<sup>32</sup> If the ML offence was committed regarding the proceeds of racketeering, the convicted will be fined a maximum of R 1000 million or face a period of imprisonment up to life imprisonment.<sup>33</sup> It is also to be noted that a person who is charged with committing an offence negligently in terms of sections 2(1)(a) or (b) or 4, 5, or 6 may, as a defence, raise the fact that he or she reported a suspicion in line with section 7 of POCA.<sup>34</sup> POCA's ambit, including its amendments,<sup>35</sup> is quite broad, however, it was said that South Africa's lack of a general ML framework stalls the efficiency of POCA.<sup>36</sup> It is also important to note that whilst POCA is South Africa's main legislative measure concerning the demarcation of conduct that creates ML offences, it lacks the measures which should be applied so as to detect and suppress ML.<sup>37</sup> FICA was thus, amongst other reasons, created.<sup>38</sup>

FICA came into effect in 2003.<sup>39</sup> It was established with the aim of combatting financial crime such as fraud, TF activities, tax evasion, identity theft and ML. Regarding ML, FICA is South Africa's principle piece of legislation that creates a framework for AML measures.<sup>40</sup> It imposes comprehensive compliance obligations that are typically associated with a ML control system. Obligations created by FICA includes the provision for the formation and operation of the Financial Intelligence Centre (FIC)<sup>41</sup> and a Money Laundering Advisory

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31 Chapter 2 of POCA.

32 Section 8(1) of POCA. Also see Williams C (2017) 30.

33 Section 3(1) of POCA. Also see Williams C (2017) 30.

34 De Koker L (2002) 6.

35 POCA was amended firstly by the Prevention of Organised Crime Amendment Act 24 of 1999. POCA was then secondly amended by the Prevention of Organised Crime Second Amendment Act (38 of 1999). See van Wyk A *An analysis of anti-money laundering measures in the South African real estate sector* (unpublished Master of Commerce Dissertation 2020) 96.

36 Williams C (2017) 30.

37 Kersop M and Du Toit SF 'Anti-Money Laundering Regulations and The Effective Use of Mobile Money in South Africa' *Potchefstroom Electronic Law Journal* (2015) 1622.

38 Please refer to Hamman A J (2015) 88 to 93 for a detailed outline of POCA.

39 The Banking Association of South Africa 'Financial Intelligence Centre Act' (2021) available at <https://www.banking.org.za/consumer-information/consumer-information-legislation/financial-intelligence-centre-act/> (accessed 8 December 2021).

40 Lawack V 'The Legal and Regulatory Aspects of International Remittances and Their Impact on Migrant Workers and Asylum Seekers in South Africa' *Obiter* (2014) 363.

41 The FIC was created to implement the AML mechanisms provided for in FICA and POCA. See Hamman A J (2015) 87.

Council (MLAC), the regulation of access to specific information, and the creation of ML control duties for specific institutions and persons.<sup>42</sup>

The Index of FICA includes the Definitions section<sup>43</sup> as well as the application of the Act when in conflict with other laws.<sup>44</sup> FICA defines ML or ML activity as:

an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds, and includes any activity which constitutes an offence in terms of section 64 of this Act or section 4, 5 or 6 of the Prevention Act.<sup>45</sup>

The magnitude of FICA is displayed in Section 1A which states that if any conflict, in relation to the matters alluded to in this Act, occurs between FICA and the provisions of, save the Constitution, any other law standing at the commencement of FICA, the provisions of FICA prevail.<sup>46</sup> The provisions of FICA are thus strongly authoritative. It offers a general ML control framework by way of giving various entities several crucial responsibilities. Section 21<sup>47</sup> states that these entities have a duty to identify clients. Sections 22 to 26<sup>48</sup> states that these entities must keep certain records. It must be highlighted here that Sections 21 and 22<sup>49</sup> necessitate entities to ensure that they are in possession of the correct details for all of their customers, for example, by verifying and establishing certain customer details. This includes provision of proof of identity, physical address and income tax numbers so as to validate information. These sections of FICA are recognised as Know-Your-Customer (KYC). This process is known to be the cornerstone of ML control.<sup>50</sup> Section 27 to 41 of FICA also states that they have a duty to report, and to furthermore afford access to information, as set out in Section 27 to 41.<sup>51</sup> They are moreover, according to Sections 42 and 43B<sup>52</sup>, obligated to carry out measures in order to encourage compliance by accountable

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- 42 De Koker L 'Money Laundering trends in South Africa' *Journal of Money Laundering Control* (2002) 30 and 31.
- 43 Section 1 of FICA.
- 44 Section 1A of FICA.
- 45 Section 1 of FICA. See also Section 4,5 and 6 of POCA.
- 46 Section 1A of FICA.
- 47 Section 21 of FICA.
- 48 Sections 22 to 26 of FICA.
- 49 Sections 12 and 22 of FICA.
- 50 C van Dyk Attorneys 'Know-your-customer obligations in terms of the Financial Intelligence Centre Act 38 of 2001' at 2.
- 51 Sections 27 to 41 of FICA.
- 52 Sections 42 to 43B of FICA.

institutions as well as to administer and provide recommendations where needed in terms of Sections 44 and 45.<sup>53</sup> The Act was amended in 2017 to bring South Africa in line with international standards set by the FATF in fighting ML and TF.<sup>54</sup>

POCDATARA adds an important element and completion to the backbone of the AML regime in South Africa. POCDATARA primarily focuses on the fighting of terrorist and related activities in South Africa consistent with international best practices. It does not directly prohibit ML. It was enacted in line with the international instruments that forbid terrorism and related illegitimate activities according to the United Nations (UN) Security Council Resolutions. South Africa is bound by these resolutions because it is a member of the UN.<sup>55</sup>

Further to the proverbial backbone of the South African AML regime which includes POCA, FICA and POCDATARA, there are other imperative pieces of legislation which strengthen and support the above mentioned Acts. These include, amongst others, the Criminal Procedure Act<sup>56</sup> (CPA), the Protected Disclosures Act<sup>57</sup> (PDA), the Protection From Harassment Act<sup>58</sup> (PFHA), the Companies Act and Regulations<sup>59</sup> (CA) the Witness Protection Act<sup>60</sup> (WPA), the Protection of Personal Information Act (POPIA)<sup>61</sup> and, as previously indicated, the Constituion as well as the DMA.

The CPA governs all procedures that relate to criminal proceedings in South Africa. Procedures for charges,<sup>62</sup> pleas including plea bargaining,<sup>63</sup> bail,<sup>64</sup> search and seizure,<sup>65</sup>

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53 Sections 44 and 45 of FICA. See also Williams C (2017) 32. Please refer to Williams C (2017) 30 to 33 and Chitimira H 'A Legal Analysis of the Use of Innovative Technology in the Promotion of Financial Inclusion for Low-Income Earners in South Africa' *Potchefstroom Electronic Law Journal* (2020). at 5 to 10 for a detailed outline of FICA.

54 Financial Intelligence Centre Amendment Act, 2017 (Act No. 1 of 2017). See also Masthead 'FICA' (2021) available at <https://www.masthead.co.za/compliance/fica/> (accessed 7 December 2021).

55 Chitimira H (2020) 3. Please also refer to Land Bank 'Anti-Money Laundering (AML) & Combating the Financing Of Terrorism (CFT) and Sanctions Risk Management and Compliance Program (RMCP)' for a detailed outline of POCDATARA.

56 Act 51 of 1977.

57 Act 26 of 2000.

58 Act 17 of 2011.

59 Act 71 of 2008.

60 Act 112 of 1998.

61 Act 4 of 2013.

62 Chapter 14 of CPA.

63 Chapters 15, 17, 18 and 19 of CPA.

64 Chapter 9 of CPA.

65 Chapter 2 of CPA.



evidence,<sup>66</sup> arrest,<sup>67</sup> sentencing<sup>68</sup> and appeal<sup>69</sup> is what this Act, amongst other aspects, provides for.<sup>70</sup> The PDA is the fundamental South African whistleblowing legislation. It is also referred to as the Whistleblowing Act. This Act defines pertinent concepts and provides for both the process of reporting by whistleblowers as well as the protection offered to whistleblowers. The objective of the PDA is to safeguard whistleblowers from occupational harm in their work environment. It is applicable to people in private and public sectors. It is, however, directed at employees, and excludes volunteers and independent contractors. The PDA was amended in 2017.<sup>71</sup> The PFHA is pertinent and valuable to whistleblowers who suffer harassment because of whistleblowing. PFHA defines harassment as 'directly or indirectly engaging in conduct that the harasser knows or ought to know causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person...'.<sup>72</sup> PFHA further states that a citizen can obtain a protection order on application to the Magistrate's Court against a person harassing them. Once granted, it proscribes the perpetrator from harassing the victim any further.<sup>73</sup>

The CA mandates particular companies to launch 'social and ethics' committees.<sup>74</sup> A social and ethics committee has the duty to monitor the company's activities, including the company's standing in terms of the Organisation for Economic Co-operation and Development (OECD)<sup>75</sup> recommendations concerning corruption. Disclosures of unlawful activity can be made to a wide-ranging category of people and entities in addition to what is

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66 Chapter 24 of CPA.

67 Chapter 5 of CPA.

68 Chapter 28 of CPA.

69 Chapters 30 and 31 of CPA.

70 Corruption Watch (2015) 12.

71 Zussa D 'Whistleblowing – legislation in South Africa' (25 September 2020) available at <https://www.pinsentmasons.com/out-law/guides/whistleblowing-legislation-in-south-africa> (accessed 19 January 2022).

72 Section 1 of PFHA.

73 Section 2 of PFHA. See also Zussa, D (25 September 2020) available at <https://www.pinsentmasons.com/>.

74 Regulation 43 of the Regulations to the CA.

75 The OECD is an international organisation that works towards building improved policies for. Their purpose is to form and mould policies that cultivate opportunity, equality, well-being and prosperity for the world. Working with policy makers, governments, and citizens, they aim to establish evidence-based international standards and finding solutions to a range of environmental, social, and economic difficulties. See OECD 'About' (2022) available at <https://www.oecd.org/about/> (accessed 20 January 2022).

stipulated in PDA.<sup>76</sup> This includes a legal adviser, the Companies Tribunal, a regulatory authority, the Commission, the Panel, prescribed officer, company secretary, an exchange, an auditor, committee, director, or board of the applicable company. In terms of the CA, for that disclosure made by someone, immunity from civil, criminal and administrative liability is provided. The CA also necessitates not only the maintenance of systems and procedures for facilitating whistleblowing but it also requires the publication of these policies.<sup>77</sup> The WPA, in its preamble, states that it intends to provide for the following in respect of the protection of witnesses. The formation of an Office for the witness protection; the regulation of the duties, powers, and functions regarding the Director: Office for Witness Protection; the provision of temporary protection whilst placement under protection is pending; the provision of the placement of witnesses as well as interrelated persons under protection; the provision of services associated with the protection of witnesses and interrelated persons; the amendment of the CPA in order to provide for services connected to witness at courts; and the provision for matter that are incidental.<sup>78</sup>

POPIA protects people from harm by safeguarding their personal information or data. The application thereof prevents peoples money being stolen, their identity being stolen, and generally protects their privacy, which constitutes a fundamental human right. POPIA therefore provides for conditions to be set for when it is lawful for someone to process anothers personal information. Responsible parties are required to institute various steps to comply with POPIA.<sup>79</sup> These steps include for example, the appointment of an information officer, the drafting of a privacy policy, the amendment to contracts with operators, checking that personal information can legally be transferred to other countries, only sharing personal information when lawfully able to, and raising of awareness amongst employees.<sup>80</sup>

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76 Section 159 of the CA.

77 Corruption Watch (2015) 17.

78 Preamble of the WPA at 2.

79 Boda R, Gunning E, Dullabh R and Strachen W 'POPIA to commence soon' (22 June 2020) available at <https://www.ensafrica.com/news/detail/2930/popia-to-commence-soon> (accessed 11 June 2022).

80 Sections 2 to 38, 55 to 109, 110, 111, 114 of POPIA. See also Boda R, Gunning E, Dullabh R and Strachen W 'POPIA to commence soon' (22 June 2020) available at <https://www.ensafrica.com/>. See also Michalsons 'Protection of Personal Information Act Summary' (2022) available at <https://www.michalsons.com/focus-areas/privacy-and-data-protection/protection-of-personal-information-act-popia> (accessed 11 June 2022).

The Constitution, as aforementioned, includes a BOR which the state has a duty to fulfil, protect and promote. Section 217 of the Constitution refers to procurement. It commands organs of state in the local, provincial or national spheres of government, to contract for goods or services consistent with a system that is equitable, fair, competitive, cost effective, and transparent. This places a duty on the state to take positive steps in ensuring transparency of all public procurement processes. An example of a positive step is the investigation of allegations of improper conduct or corruption in procurement procedures.<sup>81</sup>

The DMA provides for a co-ordinated and cohesive disaster risk management policy that concentrates upon the following: the reduction or inhibition of the risks of disasters, the mitigation of the severity of disasters, the preparedness, swift and effective response to disasters, as well as the post-disaster recovery. Furthermore it focuses on the creation of municipal, provincial and national disaster management centres, disaster risk management volunteers and also matters associated with all of these aforesaid issues.<sup>82</sup> When referring to the emergency procurement procedures instituted whilst South Africa was declared a national state of disaster due to the COVID-19 Pandemic, the DMA also released and published regulations directing, inter alia, that emergency procurement for institutions during the COVID-19 Pandemic is subject to the Municipal Finance Management Act<sup>83</sup> and the Public Finance Management Act.<sup>84</sup> In addition to the aforesaid legislation, South Africa has also adopted a multi-pronged approach to tackling corruption in that it has established state corruption fighting bodies. This comprises a number of institutions, commissions and strategies that have the obligation and mandate to fight corruption, including ML. These include the following: the Public Protector, the Directorate for Priority Crime Investigation, the Asset Forfeiture Unit, the Special Investigating Unit, the Financial Intelligence Centre,

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81 Section 217 of the Constitution. See also Corruption Watch (2015) 6.

82 Westerncape.gov 'Introduction: A policy framework for disaster risk management in South Africa' (2005) 1.

83 Act No. 56 of 2003.

84 Act No. 1 of 1999. See also DMA Regulations Issued in terms of Section 27(2) of the DMA 'Disaster Management Act: Regulations relating to COVID-19' (accessed 2 May 2022) 16.

the Auditor-General, the Public Service Commission, the Independent Police Investigative Directorate<sup>85</sup> and the National Anti-Corruption Strategy (NACS) for 2020 to 2030.<sup>86</sup>

Further pillars of strength to the multi-pronged approach for combatting corruption, ML and ML threats include the SAPS, the National Prosecuting Authority (NPA), the Service Charter for Victims of Crime in South Africa, and the South African judicial authority. The SAPS is governed by the Constitution. Chapter 11 states that the SAPS has the duty to preserve public order; generate a secure and safe environment for all people in South Africa; investigate any crimes that impend the security or safety of any community; maintain and implement the law; secure and protect the inhabitants of the Republic and their property; avert, combat and investigate crime; prevent anything that may threaten the security or safety of any community; participate in efforts to address the causes of crime; and ensure criminals are brought to justice.<sup>87</sup> Section 205 of the Constitution specifically states the following:

The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.<sup>88</sup>

The SAPS is also governed by the South African Police Service Act<sup>89</sup> (SAPSA) which makes provision for the creation, organisation, regulation as well as control of the SAPS and matters associated therewith.<sup>90</sup>

The NPA is crucial in regard to the preparation and conducting of criminal prosecutions in the South African criminal justice system.<sup>91</sup> Section 20(1)(a)–(c) of the National Prosecuting Authority Act (NPA Act)<sup>92</sup> provides as follows:

(1) The power, as contemplated in section 179(2) and all other relevant sections of the Constitution, to:  
(a) institute and conduct criminal proceedings on behalf of the State;

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85 Corruption Watch (2015) 20 to 23.

86 NACS Republic of South Africa 'National Anti-Corruption Strategy (2020-2030).'

87 Chapter 11 of the Constitution.

88 Section 205(3) of The Constitution.

89 Act 68 of 1995.

90 South African Police Service 'About' (2014) available at <https://www.saps.gov.za/about/about.php> (accessed 19 January 2022).

91 The National Prosecuting Authority of South Africa 'About the NPA' (2022) available at <https://www.npa.gov.za/about-mpa> (accessed 2 May 2022).

92 Act 32 of 1998.

(b) carry out any necessary functions incidental to instituting and conducting such criminal proceedings; and  
(c) discontinue criminal proceedings,  
vests in the prosecuting authority and shall, for all purposes, be exercised on behalf of the Republic.<sup>93</sup>

The Service Charter for Victims of Crime in South Africa pertains to the rights of the victimized due to crime. A Minimum Service Standard for Victims of Crime, 2004 was also established to specify what services victims are entitled to concerning the seven rights listed in the Victims Charter which include the following:

- (1) The right to be treated with fairness and with respect for dignity and privacy.
- (2) The right to offer information.
- (3) The right to receive information.
- (4) The right to protection.
- (5) The right to assistance.
- (6) The right to compensation.
- (7) The right to restitution.<sup>94</sup>

The Service Standards sets out what each respective governmental department ought to provide when victims present themselves at public institutions such as hospitals, police stations, and courts, amongst others.<sup>95</sup>

The judicial authority in South Africa is vested in the courts. These courts are independent and subject only towards the Constitution and the law. A decision or an order of a court is binding upon all organs of State and people to whom it applies. No person or organ of State may hinder the functioning of the courts. The following courts are provided for in the Constitution: the Constitutional Court; the Supreme Court of Appeal; the high courts, inclusive of any high court of Appeal that may be established by an Act of Parliament to hear appeals from high courts; the magistrates' courts; and any other court recognised or established in respect of an Act of Parliament, including any court of a status similar to either magistrates' courts or high courts.<sup>96</sup> Specific legislation, including and in addition to the Constitution, that provides for the establishment, operation and functioning of the superior courts,

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93 Act 32 of 1998.

94 The Service for Victims of Crime in South Africa 'Your Rights as A Victim of Crime' (2022) available at <https://www.justice.gov.za/vc/VCindex.html> (accessed 2 May 2022).

95 The Service for Victims of Crime in South Africa (2022) available at <https://www.justice.gov.za/>.

96 Section 166 of the Constitution.

magistrates' courts and special courts comprise the following:<sup>97</sup> the Constitutional Court Complementary Act (CCCA),<sup>98</sup> the Supreme Court Act (SCA),<sup>99</sup> the Magistrates' Courts Act (MCA),<sup>100</sup> and the Small Claims Court Act (SCCA).<sup>101</sup> Further to this, there is legislation that stipulates provisions regarding the appointment of judges and other judicial officers. It also details conditions of service, discipline and training.<sup>102</sup> These include the Judicial Service Commission Act (JSA)<sup>103</sup> as amended, the Judges Remuneration and Conditions of Employment Act (JRCEA),<sup>104</sup> the Magistrates Act (MA),<sup>105</sup> and the South African Judicial Education Institute (SAJEI) Act.<sup>106</sup>

### 4.3. Evaluating South Africa's Anti-Money Laundering Framework

As alluded to in Chapter Three, South Africa has been fraught with ML and ML threats during the COVID-19 Pandemic. The country endured an incursion of illegal cigarettes into the market, an array of PPE procurement irregularities, digital financial crime, and suspicious dealings. It suffered deceitful claims at the UIF. It underwent fraud and ML in connection with the TERS where money was channelled to a church in the Western Cape; moneys that were, in actual fact, aimed at the provision of food parcels. There were tenders that were issued illegally. The former South African Minister of Health, his close associates and his family were involved in fraud, and this in a global health crisis. The majority of companies awarded contracts regarding PPE equipment in South Africa lacked accreditation or certification to distribute or handle equipment. The country was dragged through maladministration, compliance issues and fraudulent activities in various businesses, agencies, state institutions, and departments. There were massive amounts of corruption in the SAPS, schooling, housing, governmental and health care sector.

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97 The South African Government 'Legislation and policies' (2022) available at <https://www.gov.za/about-government/legislation-and-policies#:~:text=Legislation%20providing%20for%20the%20establishment,the%20Small%20Claims%20Court%20Act%2C> (accessed 13 May 2022).

98 Act 13 of 1995.

99 Act 59 of 1959.

100 Act 32 of 1944.

101 Act 61 of 1984.

102 The South African Government (2022) available at <https://www.gov.za/>.

103 Act 9 of 1994.

104 Act 47 of 2001.

105 Act 90 of 1993.

106 Act 14 of 2008.

When referring to the above overview of the South African AML framework it can be deduced that the regime is deeply comprehensive, sufficient, and powerful enough to combat ML and ML threats during a pandemic. South Africa bestows legislation that criminalizes and penalizes ML offences. ML is a punishable crime in South Africa according to legislation. This is provided for in POCA. It is submitted that the law in this regard thus does not need any amendments at this point. South Africa is equipped with a framework that is in place for AML measures to be carried out as prescribed by FICA. The country prohibits terrorist and related activities as stipulated in POCDATARA. It also governs all procedures that relate to criminal proceedings in South Africa as set out in the CPA. It provides for whistleblowing legislation as seen in the PDA, PFHA, and CA. It provides for witness protection legislation specified in the WPA. POPIA safeguards personal information or data. The Constitution provides for, inter alia, transparency regarding procurement processes. The DMA provides for disaster management. The CA provides for the establishment of social and ethics committees within organisations.

South Africa has additionally established corruption, ML and ML threat fighting bodies, institutions, commissions, and strategies including the Public Protector, the Directorate for Priority Crime Investigation, the Asset Forfeiture Unit, the Special Investigating Unit, the Financial Intelligence Centre, the Auditor-General, the Public Service Commission, the Independent Police Investigative Directorate and the NACS. It is also supported in its fight against ML and ML threats by structures such as the SAPS which is governed by the Constitution and SAPSA; the NPA which is governed by the NPA Act; and the Service Charter for Victims of Crime in South Africa. Associated legislation including the CCCA, the SCA, the MCA, the SCCA, the JSA, the JRCEA, the MA and the SAJEI Act assists the South African judiciary authority to be well equipped to adjudicate ML and ML threat matters.<sup>107</sup> It is moreover worth reiterating that the legislation including POCA, the CPA and the NPA Act is sufficient for criminalising ML activities, the reporting of crimes, laying the charges, the investigation of offences, the collection of evidence, the presentation of the evidence in court and the eventual successful prosecution, conviction and sentencing of perpetrators.

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107 Section 165(1) and (2) of the Constitution.

The South African AML framework, in as far as its regulations, bodies, institutions, commissions and structures, is thus suitably armed and largely adequate to curb and combat the detected ML and ML threats in South Africa during a pandemic. Yes, of course there are improvements that can and will be made with time and as society develops and where need be. This is completely normal. Life in general is a work in progress. An example of an area in urgent need of improvement and updating of legislation is the area pertaining to e-Discovery in South Africa.<sup>108</sup> However, the pertinent point is that ML is criminalised in South Africa. Further to this, the FATF, in its South Africa Mutual Evaluation Report (2021 MER) released on October 7, 2021, found that the ‘responsibilities of law enforcement and investigative authorities’ (Recommendation 30), and the ‘powers of law enforcement and investigative authorities’ (Recommendation 31) are fully compliant where AML in South Africa is concerned.<sup>109</sup>

Another factor to be respected is that those involved, in a bona fide capacity, with the drafting, building and establishment of South Africa’s AML framework have truly invested time, hard work, funding, resources, effort, intellect, grit, and dedication into all the associated processes. To illustrate this point, the hard work that goes into the bona fide process of creating and passing a law in South Africa, for example, can be referred to. The law-making process may commence with a Green Paper which is a discussion document drafted by the Ministry or department tasked with the respective issue considered. The document provides an idea of the general thoughts which inform a particular policy relating to the issue. The process then proceeds to being published for suggestions, comments, or ideas. Following this is the development of what is known as a White Paper which is a broad statement of government policy. It is an even more refined discussion document that is prepared by the applicable department or task team. The relevant parliamentary committees may then suggest amendments or alternative proposals. It is thereafter sent back to the Ministry for further input and discussion whereafter final decisions are carried out.<sup>110</sup> The aforementioned refers to the passing of laws, but what about the challenging

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108 Hughes K, Stander A, and Hooper V A ‘eDiscovery in South Africa and the challenges it faces’ DOI:10.1109/InfoSec.2015.7435507 (2015) 1-8.

109 FATF (2021) 213 – 216, and 231.

110 Parliament of the Republic of South Africa ‘How a Law is Made’ (2022) available at <https://www.parliament.gov.za/how-law-made> (accessed 4 May 2022).



processes in regard to establishing institutions, bodies, commissions and other structures? They all indeed require grit, hard work, time, resources, intellect, funding, effort, and dedication. It is therefore clear that parties involved have made countless sacrifices and have worked tirelessly for South Africa to have a well-equipped AML framework in place. The good intentions in all these processes simply cannot be ignored and further to this, as alluded to previously, ML is criminalized in South Africa. It is a punishable crime during a pandemic or not, and there is a largely sufficient AML framework in South Africa to support this and all associated aspects.

#### **4.4. Conclusion**

This chapter established that the South African AML framework is largely equipped and adequate to curb and combat the observed ML and ML threats in South Africa during the COVID-19 Pandemic, in as far as its regulations, bodies, institutions, commissions, structures and strategies are concerned. Important to note is that this chapter highlights that ML is criminalised in South Africa. It is clear that the law and suitable structures are in place as they should be. Further to this, the effort invested into all the bona fide associated processes of the drafting, building, and establishment of South Africa's AML framework have been emphasised and respected in this chapter as well. Considering the largely positive review of South Africa's AML framework, begs the following questions. If the South African AML framework is, with reference to its regulations, bodies, commissions, structures, and strategies, largely adequate to curb and combat ML and ML threats in South Africa during the COVID-19 Pandemic, why has such massive amounts of ML and ML threats still taken place? What facilitated and essentially gave perpetrators the 'leeway' to carry out ML and ML threats in South Africa during a global pandemic? Is the largely powerful South African AML framework a tragic waste of resources?

Seeing that the 'words and walls' in relation to the South African AML framework itself is largely sufficient, perhaps the application and implementation of the framework, the Constitution being part of same, is a substantial part of an array of other problems causing ML and ML threats to occur in South Africa, especially during a pandemic. It is imperative that these aspects be further explored for the purposes of this thesis. Chapter Five will therefore delve into these aspects by rendering a structured deep dive into what gives rise

to ML and ML threats during the COVID-19 Pandemic and possible future pandemics in South Africa, and moreover introduce possible solutions to these issues.



## CHAPTER FIVE

### DEEP DIVE

#### MONEY LAUNDERING CAUSES AND SOLUTIONS IN SOUTH AFRICA DURING A PANDEMIC

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##### 5.1. Introduction

The first three chapters of this thesis have provided comprehension to the problem at hand, the severity thereof, the damage caused in South Africa and the international response thereto. Chapter Four established that the South African AML framework is largely adequate with respect to its regulations, bodies, commissions, structures, and strategies. It was, however, proposed that the application and implementation of the framework is possibly one of the very many causes of ML and ML threats in South Africa during a pandemic, which leads this study to the next crucial area of examining and providing solutions.

Chapter Five will hence take a deep dive into what gives rise to ML and ML threats in South Africa during a pandemic. It suggests that a Pandemic ML Threat Structure (PMLTS), explained in 5.3., could be utilised to identify why ML and ML threats occurred on such a large scale during the COVID-19 Pandemic. It intends to provide a basis to identify the reasons why perpetrators committed these atrocities. Such a structure potentially provides a valuable and useful guiding framework to conceptualise and draft provisions as to how ML and ML threats could be curbed and combatted during a possible future pandemic in South Africa. This chapter furthermore introduces this study's proposed Operation Accelerated Armoured Action and its Nine Striking Solutions which provides a strategy to effectively defy the PMLTS components and their forms. The proposed PMLTS is based partly on Dr. Donald Cressey's (Cressey) fraud triangle discussed in the next section.

## 5.2. The Fraud Triangle (Dr. Donald Cressey, 1953)

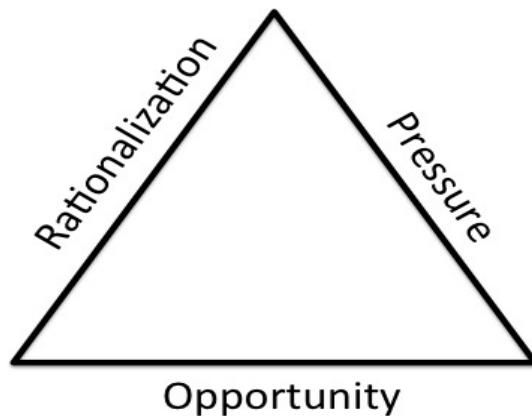


Figure 5.1.

The abovementioned fraud triangle stems from Cressey's hypothesis that<sup>1</sup>:

Trusted persons become trust violators when they conceive of themselves as having a financial problem which is non-sharable, are aware this problem can be secretly resolved by violation of the position of financial trust and are able to apply to their own conduct in that situation verbalizations which enable them to adjust their conceptions of themselves as trusted persons with their conceptions of themselves as users of the entrusted funds or property.<sup>2</sup>

Cressey established the Fraud Triangle in 1953.<sup>3</sup> His rationale is that, in order to combat fraud, it is not only required to comprehend that it occurs but also to determine how and why it happens. It is a three-pronged model that purports to set out reasons why an employee resolves to commit fraud in the workplace.<sup>4</sup> The components of Cressey's Fraud Triangle consist of pressure (also referred to as incentive or motive),<sup>5</sup> opportunity, and

1 Reciprocity 'What is the Fraud Triangle?' (15 January 2020) available at <https://reciprocity.com/resources/what-is-the-fraud-triangle/#:~:text=The%20three%20%E2%80%9Cpoints%E2%80%9D%20or%20elements,present%20for%20fraud%20to%20occur> (accessed 15 February 2022).

2 Cressey, D R *Other People's Money; a Study in the Social Psychology of Embezzlement* (1973) Montclair N.J. :Patterson Smit. See also Association of Certified Fraud Examiners 'Fraud 101: What Is Fraud?' (2022) available at <https://www.acfe.com/FRAUD-RESOURCES/FRAUD-101-WHAT-IS-FRAUD> (accessed 16 May 2022).

3 Lowers & Associates 'Fighting Fraud in Your Organization' (19 November 2021) available at <https://blog.lowersrisk.com/fraud-week-fighting-fraud/> (accessed 16 June 2022).

4 Lederman L 'The Fraud Triangle and Tax Evasion' *IOWA Law Review* (2021) 1156.

5 AGA intergov 'The Fraud Triangle' (2022) available at <https://www.agacgfm.org/Intergov/Fraud-Prevention/Fraud-Awareness-Mitigation/Fraud-Triangle.aspx> (accessed 15 February 2022).

rationalisation (also referred to as justification or attitude).<sup>6</sup> These three components, whilst mainly focussing on fraud, could help to identify the reasons why perpetrators commit crime in general and ML specifically.<sup>7</sup>

The pressure component establishes the factors that exist in a person's life which incentivises a person to commit crime. It may revolve around personal circumstances that generate a demand for more money. It could furthermore comprise instances such as greed, lifestyle needs, illness, drug use, gambling, a spouse losing a job or unrealistic performance targets.<sup>8</sup> Here, an individual believes that it is impossible to resolve his/her other problems legitimately or that reaching out to others to assist is not an option either.<sup>9</sup> The opportunity component is where the person who plans to commit the offence discovers an internal control weakness and believes that committing the offence will go unnoticed. Instances that could provide opportunities to commit any type of crime, for example, are internal control weaknesses, lack of oversight,<sup>10</sup> too much trust, no segregation of duties and poor management.<sup>11</sup> The rationalisation component consists of two facets. Firstly, the person must decide that what he/she will obtain from the criminal activity is more important than the likelihood of him/her being caught. Secondly, the person must justify the crime, for instance, the person may conclude that the organisation will not miss the funds, attention will not be drawn and therefore the actions will go unnoticed, the money will be repaid at some point<sup>12</sup> or that everyone else is also committing similar offences.<sup>13</sup>

Cressey's Fraud Triangle is important in the pursuit of tackling fraud and is utilized by a plethora of organisations such as PWC,<sup>14</sup> Deloitte<sup>15</sup> and the Association of Certified Fraud Examiners.<sup>16</sup> Although the Fraud Triangle could be helpful in the analysis of ML and ML threats during a pandemic, it is submitted that it does not comprehensively provide

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6 AGA intergov 'The Fraud Triangle' (2022) available at <https://www.agacgfm.org>.  
7 Reciprocity 'What is the Fraud Triangle?' (15 January 2020) available at <https://reciprocity.com>.  
8 AGA intergov 'The Fraud Triangle' (2022) available at <https://www.agacgfm.org>.  
9 Reciprocity 'What is the Fraud Triangle?' (15 January 2020) available at <https://reciprocity.com>.  
10 AGA intergov 'The Fraud Triangle' (2022) available at <https://www.agacgfm.org>.  
11 AGA intergov 'The Fraud Triangle' (2022) available at <https://www.agacgfm.org>.  
12 Reciprocity 'What is the Fraud Triangle?' (15 January 2020) available at <https://reciprocity.com>.  
13 AGA intergov 'The Fraud Triangle' (2022) available at <https://www.agacgfm.org>.  
14 PWC *Building trust through assurance* (2018) 29 to 30.  
15 Deloitte 'Tipping the triangle Predictive analytics to mitigate empty envelope fraud' (2014) 1 to 16.  
16 Association of Certified Fraud Examiners (2022) <https://www.acfe.com>.

sufficient answers and guidance. Therefore, it is envisaged that an adapted structure would be better suited to address this pressing problem.

### **5.3. Adapting Cressey's Triangle**

This study's proposed PMLTS structure is based on Cressey's Fraud Triangle theory comprising of pressure, opportunity and rationalisation.<sup>17</sup> Since the three points noted by Cressey are definitely not the only reasons for and causes of ML and ML threats that occurred during the Covid 19 pandemic, the proposed structure adds components namely the presence of a pandemic and the decay in morals and values.

The proposed PMLTS which this study coins, attempts to set out how and why the ML and ML threat atrocities occurred specifically during the unprecedented pandemic. Moreover, it introduces two further components namely pandemic and decay in morals and values. The PMLTS is essentially based on the premise that most, if not all, types of ML and ML threats arising in South Africa during a pandemic via trustworthy or untrustworthy individuals, groups, or organisations, occur because of the presence in their/its existence of all five PMLTS components. The five components of the PMLTS are pandemic, pressure, opportunity, rationalisation, and decay in morals and values.

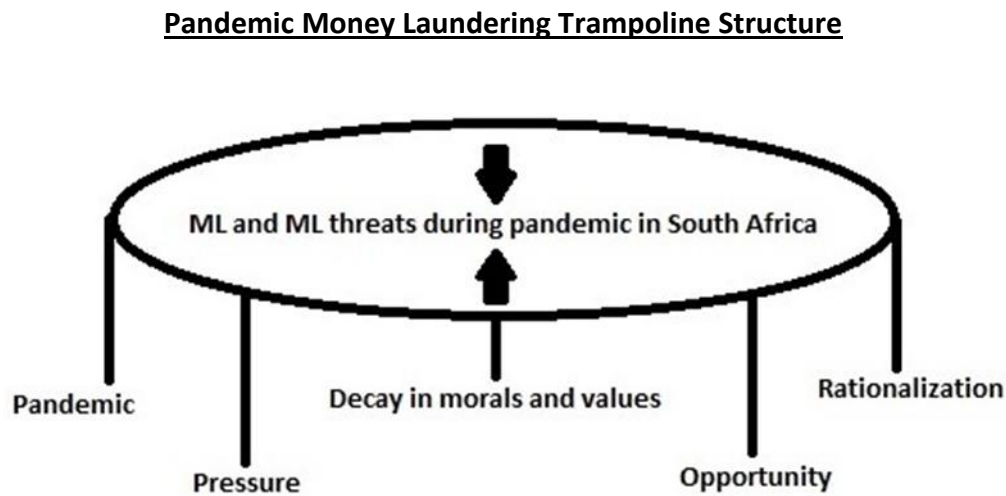


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17      Lowers & Associates (2020) available at <https://blog.lowersrisk.com/>.

## 5.4. The Pandemic Money Laundering Trampoline Structure (PMLTS)

### 5.4.1. Understanding the Structure



**Figure 5.2.**

The diagram above is a trampoline-like structure.<sup>18</sup> The five legs signify the five components. Together they elevate and support the canvas sheet or the buoyant webbed bed which is supported by elastic shock cords or springs, which represents ML and ML threats during a pandemic in South Africa. A trampoline is used as a springboard for the purpose of jumping and tumbling.<sup>19</sup> As a trampoline ‘gives rise’ or buoyancy to those who jump and tumble upon it, so the PMLTS, by way of its ‘legs and its canvas sheet’ as explained above, gives rise, buoyancy and ‘lift off’ to individuals, groups or organisations carrying out ML and ML threats during a pandemic. Contrary to the function and uses of a trampoline, the PMLTS can unfortunately not be seen in a positive light, due to the detrimental repercussions of ML and ML threats. It can, however, be seen as useful in detecting, demonstrating, organising, and categorising what gives rise to ML and ML threats during a pandemic and how culprits participate therein.

18 Vuly ‘The History of Trampolines’ (2022) available at <https://www.vulyplay.com/en-AU/blog/the-history-of-trampolines#:~:text=George%20Nissen%20and%20Larry%20Griswold,tumbler%20on%20the%20gymnastics%20team> (accessed 20 February 2022).

19 Made How ‘Trampoline’ (2022) available at <http://www.madehow.com/Volume-3/Trampoline.html> (accessed 20 February 2022).

Chapter Three sets out ML and ML threats that have occurred in South Africa during the COVID-19 Pandemic. With the purpose of combatting and curbing these occurrences, an understanding of the reasons that give rise to it, is critical. It is important to pinpoint the threats and attempt to prevent future occurrences. Once identified, it is expected that a massive decrease in the problem during a possible future pandemic is attainable. The PMLTS hence attempts to demonstrate, organise and categorise what gives rise to ML and ML threats during the COVID-19 Pandemic. Whilst PMLTS is a novel standalone structure, it encompasses Cressey's Fraud triangle and his hypothesis of trusted persons who become trust violators. It, however, builds upon and expands the Fraud triangle as indicated earlier. Also, to reiterate what was previously stated, the PMLTS is fundamentally based on the premise that most, if not all, types of ML and ML threats arising in South Africa during a pandemic via trustworthy or untrustworthy individuals, groups, or organisations, occur because of the presence in their/its existence of all five PMLTS components. These comprise the components namely pandemic, pressure, opportunity, rationalisation, and decay in morals and values.

As alluded to before, ML is strictly speaking not a standalone crime as it largely stems from predicate crimes. The PMLTS includes predicate crimes when it refers to ML threats and where it refers to ML, it is to be assumed that the predicate crime has already taken place. The following section will delve into a contextual analysis of the components or 'legs' of the PMLTS, providing applicable examples of the forms each component may pose as. To note, however, is that this thesis will not fully examine each possible form. It will though, as mentioned above, rather explore the forms that, if struck down i.e., possibly dealt with or alleviated, it would decrease, or even banish ML and ML threats during a pandemic in South Africa. The examples of each component given below does not exhaust all examples lurking in society. To be further noted is that although the components and their forms apply regarding a pandemic specifically, they also regard existing issues already present prior to a pandemic such as the COVID-19 Pandemic. These issues have possibly worsened considering the COVID-19 Pandemic. The components and their forms take place on recurring and/or non-recurring bases, and in similar and/or different ways. The next section will elaborate upon the PMLTS components namely pandemic, pressure, opportunity, rationalisation, and decay in morals and values.



## 5.4.2. Components of the PMLTS

### 5.4.2.1. Pandemic

The pandemic component is where an individual, group or organisation uses the presence of a pandemic to commit ML. They do so in accordance with the factors that emanate from a pandemic itself. COVID-19, which sparked a global health crisis, is a pandemic, as elaborated upon in Chapter One. It is clear that pandemics can have significant short term as well as the long term economic and social impacts.<sup>20</sup> The impacts that are unique to the current status quo in South Africa consists inter alia of the following. Where the virus and infection is concerned, impacts such as viral outbreaks, infection, the effect of comorbidities, contagiousness, super-spreader events, death, new variants, social distancing, quarantine, isolation and recovery exist.<sup>21</sup> Impacts regarding scientific medical treatment and PPE include vaccinations, boosters, side-effects from medication, shortages and urgent need of medical related aspects such as ventilators, PPE, masks and sanitizers.<sup>22</sup> With reference to natural remedies, there has been an urgent demand for food such as fruits and vegetables.<sup>23</sup> In terms of economic and financial impacts, aspects such as the lockdowns, banning of alcohol and cigarettes,<sup>24</sup> working from home, heightened usage of technology and the internet, contractual issues such as Force Majeure, as well as urgent procurement has come to the fore. Moreover, social impacts include poverty, fear, uncertainty, confusion, loneliness, and further severe mental health issues.

As seen in Chapter Three, many ML and ML threats have occurred since the outbreak of COVID-19. It is thus evident that the unique environment, consequential of the COVID-19

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20 UNDP 'Socio-Economic Impact Assessment' South Africa (2020) 38.

21 Webster 'A Guide to Coronavirus-Related Words' (13 April 2022) available at <https://www.merriam-webster.com/words-at-play/coronavirus-words-guide/covid-19> (accessed 21 February 2022).

22 WHO 'Shortage of personal protective equipment endangering health workers worldwide' (3 March 2020) available at <https://www.who.int/news/item/03-03-2020-shortage-of-personal-protective-equipment-endangering-health-workers-worldwide> (accessed 21 February 2022).

23 Burwood-Taylor L 'A quick look at the impact of Covid-19 on fresh produce and ag commodity prices' (6 April 2020) available at <https://agfundernews.com/a-quick-look-at-the-impact-of-covid-19-on-fresh-produce-and-ag-commodity-prices> (accessed 21 February 2022).

24 BBC 'South Africa: Queues as ban on alcohol and cigarettes ends' (18 August 2020) available at <https://www.bbc.com/news/world-africa-53821096#:~:text=For%20the%20first%20time%20in,new%20rules%20came%20into%20effect> (accessed 21 February 2022).

Pandemic, enabled individuals, groups or organisations to carry out ML and ML threats during this period. For this reason, it is indeed necessary to set the pandemic component apart as an independent component. That being said, although this thesis pertains specifically to a pandemic, the PMLTS is broad enough to extend to any future disastrous or emergency state of affairs. In other words, 'pandemic' may also be substituted with 'disaster' or 'emergency' in the PMLTS.

Therefore, other forms of this component may include mass poverty as well as violence during xenophobia attacks, flooding, drought, national power outage, shut down, strikes, wage disputes, defective service delivery and political and social unrest. Another form that this component could refer to is war. War is a very real threat in South Africa and globally. The conflict between Ukraine and Russia in 2021 and 2022 is testimony hereof, whereby Russian president Vladimir Putin ordered a 'special military operation' in the Ukraine after formally recognising two breakaway regions in eastern Ukraine. Although Putin stated that there was a need to 'demilitarise' the country and furthermore that the move was to 'protect' the Donbas region of eastern Ukraine, Ukraine said that it was an 'act of war.'<sup>25</sup> One of the various problems that war causes is the fact that war crimes pay. Grave violence and economic crimes often befall in tandem and produce profits for those involved.<sup>26</sup>

The pandemic component, which spreads itself wide enough to consist of various disaster and emergency situations, is hence a fundamental leg in support of the trampoline-like PMLTS. With this component present, individuals, groups or organisations find novel reasons and ways, flaring up from a catastrophic state of affairs, in which to perform ML and ML threats because, as KPMG states: 'Fraudsters never waste a good crisis.'<sup>27</sup> To address the

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- 25 Zeeman K 'Which South Africa?' — Government urged not to get involved in deadly Russia and Ukraine conflict' (25 February 2022) available at <https://www.timeslive.co.za/news/south-africa/2022-02-25-which-south-africa-government-urged-not-to-get-involved-in-deadly-russia-and-ukraine-conflict/> (accessed 26 February 2022).
- 26 OCHA 'Prosecute the Profiteers: Following the Money to War Crimes Accountability' (4 April 2019) available at <https://reliefweb.int/report/world/prosecute-profiteers-following-money-war-crimes-accountability> (accessed 26 February 2022).
- 27 Aloni 'Fraudsters never waste a good crisis' (2022) available at <https://home.kpmg/dp/en/home/insights/2020/07/fraudsters-never-waste-a-good-crisis.html> (accessed 25 February 2022).

severity of a pandemic is usually the relief offered by legislation and other measures, however, this is exploited by criminals for their illegal activities as discussed 5.4.2.3 below.

#### 5.4.2.2. Pressure

The pressure component in the PMLTS indicates instances where an individual, group or organisation seemingly faces a particular need which they perceive cannot be shared and therefore resolved appropriately.<sup>28</sup> This consequently poses as an incentive or motivation to commit ML.<sup>29</sup> Individuals, groups or organisations may never have ordinarily considered ML, but in exceptional circumstances they may feel as though they do not have any other choice.<sup>30</sup> The circumstance could be quite ordinary and solvable in a virtuous manner, however, the perpetrator really believes that due to the pressure they experience, that ML is the way in which to deal with their need. On the contrary, the pressure may swing more towards an illegitimate instance whereby solving the problem through ML is the only way to circumvent punishment. Some forms of the pressure component are discussed below.

Strenuous financial hardship suffered owing to loss of family income is a form of the pressure component.<sup>31</sup> Due to the COVID-19 Pandemic and subsequent lockdown, three million South Africans, most of which are females, have lost their jobs.<sup>32</sup> The economic fallout of the COVID-19 Pandemic which has caused these unprecedented job losses, has also significantly impaired the mental wellbeing of those affected.<sup>33</sup> The struggle to find a

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28 Financier Worldwide Magazine 'COVID-19 fraud outlook (February 2021)' available at <https://www.financierworldwide.com/covid-19-fraud-outlook#.YhPHI-hBzIU> (accessed 21 February 2022).

29 Hopkins G 'COVID-19: The Perfect Storm for White-Collar Crime' (21 October 2020) available at <https://www.perunconsultants.com/chs/blog/2020/10/18/covid-19-the-perfect-storm-for-white-collar-crime> (accessed 21 February 2022).

30 Hopkins G 'COVID-19: The Perfect Storm for White-Collar Crime' (21 October 2020) available at <https://www.perunconsultants.com>.

31 Mitchell D 'COVID-19: the perfect fraud and corruption storm' (16 April 2020) available at <https://newsroom.kpmg.com.au/covid-19-perfect-fraud-corruption-storm/> (accessed 24 February 2022).

32 Mabuza E '3-million lost their jobs after first month of Covid-19 lockdown' (15 July 2020) available at <https://www.iol.co.za/capetimes/news/lockdown-cost-3-million-jobs-caused-widespread-hunger-51062845> (accessed 24 February 2022).

33 Poself D, Oyenubi A and Kollamparambil U 'Job loss and mental health during the COVID-19 lockdown: Evidence from South Africa' (30 March 2021) available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0249352#sec006> (accessed 23 February 2022).

job due to lack of experience or qualifications amongst youth is seen as a pressure as well. Young people are still experiencing difficulty in the South African labour market according to the Quarterly Labour Force Survey (QLFS) of the 1<sup>st</sup> quarter of 2021. The official unemployment rate was 32,6%. This rate was 46,3% among young people aged 15 to 34 years. This suggests that nearly one in every two young people within the labour force was jobless in the first quarter of 2021.

Prior work experience and education play a vital role in the labour market. Employers frequently desire to employ individuals with prior work experience as well as an advanced level of qualification. Unfortunately for the youth, lack of work experience is a major stumbling block. Most youth thus find it very challenging to secure employment.<sup>34</sup> Linking into this form of pressure is poverty and fear of lack of resources, especially during a pandemic. South Africa faces deep structural problems which concern high levels of poverty for an upper-middle income country. This is largely because of massive income inequality and unemployment.<sup>35</sup> As stated in Chapter Two, some of the effects of ML and ML threats is poverty and lack of resources. A cycle can now be identified under the pressure component because ML and ML threats cause poverty and lack of resources. Poverty and lack of resources then causes pressure to participate in ML and ML threats which therefore exacerbates the problem.

For those who are possibly employed, paying off debt is furthermore seen as a form of pressure. According to DebtBusters, the debt situation of South African consumers has deteriorated further. South African consumers continue to supplement their income with additional unsecured credit, in the absence of a meaningful increase with respect to real income growth.<sup>36</sup> There is the pressure of paying medical bills, particularly during a global health crisis. If South Africans fall ill and do not have medical aid, or if they do have medical

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34 Stats SA 'Youth still find it difficult to secure jobs in South Africa' (4 June 2021) available at <http://www.statssa.gov.za/?p=14415> (accessed 24 February 2022).

35 Van der Berg S and Patel L 'COVID-19 pandemic has triggered a rise in hunger in South Africa' (21 July 2021) available at <https://theconversation.com/covid-19-pandemic-has-triggered-a-rise-in-hunger-in-south-africa-164581> (accessed 24 February 2022).

36 Buthelezi L 'More South Africans forced to live off credit cards, says debt counselling group' (16 August 2021) available at <https://www.news24.com/fin24/companies/financial-services/consumers-turn-to-counselling-as-income-going-to-debt-repayments-reaches-highest-levels-ever-20210816> (accessed 24 February 2022).

aid but their funds are depleted, this may cause immense pressure. Moreover, there are also 'noble cause' forms of pressure which activate the need to carry out ML and ML threats for a company to survive.<sup>37</sup> This is particularly pressurizing because of the strain caused by the COVID-19 Pandemic and also because employees and their dependents are reliant upon salaries.

Another form of pressure is an unhealthy approach towards the need to sustain or increase an already high standard of living or business operation. This can sometimes be referred to simply as greed or ego. For some white-collar fraudsters, there is a real pressure exerted by ego which causes ML and ML threats to ensue. This is not always the case, but at times, some of these criminals typically have an educated background, are esteemed members of the community and have high social standing, yet that is just not enough for them. They have a strong desire to be even more ahead of their game and constantly prove that they are, 'by hook or by crook', better than others. They have no issue using their expert knowledge and skills to get exactly what they want, when they want, and enjoy bending other people to their will, thus causing additional pressure to others.<sup>38</sup> Related or resultant pressures include bribery, influence, blackmail or even force applied in order to commit ML or ML threats, sometimes to the point where individuals, groups or organizations are threatened if they do not adhere to illegitimate instructions.

There are further forms of pressure that are, without any doubt, worth mentioning namely personal addictions such as alcohol, drugs or gambling that incentivise individuals, groups or organizations to commit ML and ML threats.<sup>39</sup> There are also deeper life issues such as the pressure to provide for families, immense life disappointment or prejudice, competitiveness with siblings, the desperate attempts to gain acceptance from others, or instances where there is a despairing attempt to escape an abusive or life-threatening situation. Another glaring instance of pressure is where a predicate crime or ML threat has been committed

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37 Mitchell D 'COVID-19: the perfect fraud and corruption storm' (16 April 2020) available at <https://newsroom.kpmg.com>.

38 Haywood | Hunt and Associates Inc. 'Why Even Rich People Commit Fraud' (12 September 2016), available at <https://haywoodhunt.ca/why-even-rich-people-commit-fraud/> (accessed 24 February 2022).

39 Mitchell D 'COVID-19: the perfect fraud and corruption storm' (16 April 2020) available at <https://newsroom.kpmg.com>.

which is then followed by a consequent need to launder the illegal proceeds in order to enjoy or make use thereof in a seemingly legitimate manner.

Pressure may come in various forms. Some of them are obvious and straightforward and others are more embedded and complex. Some of them are caused by the COVID-19 Pandemic and others are not. Either way, the existence of the pressure component, plays a part in the PMLTS as it displays how ML and ML threats arise during a pandemic.

#### **5.4.2.3. Opportunity**

The opportunity component in the PMLTS refers to an individual, group or organization noticing a weakness that directly or indirectly poses as a beneficial opportunity to further their duplicitous plans. The opportunity component includes, but is not limited to, the following forms briefly alluded to below.

The COVID-19 Pandemic has not only birthed the COVID-19 protocol but it has also caused immense emotional, mental, spiritual, physical, financial, and technological distress. Whilst many South African citizens have been left vulnerable and blindsided by these issues, perpetrators have identified this as a form of opportunity for their benefit.<sup>40</sup> Besides the fact that South African citizens have been blindsided, South African organizations have, too, been blindsided, as seen in Chapter Three. In the wake of the COVID-19 Pandemic, organizations were tasked with changing almost every aspect of the way they operate. This being said, it is noted that corporate internal investigation processes have been placed on the 'back-burner' due to the multitude of other urgent aspects organizations have had to grapple with, including adapting to remote work, managing supply chain commotions<sup>41</sup> and addressing the severe impact on their liquidity and working capital.<sup>42</sup> This oversight has resulted in a further form of opportunity for criminals to bask in. Pandemic preparation in, for example, at least a 'step-by-step' AML or AML threat policy, guide or support specific to

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40 Robson D 'How fraudsters exploited our fears during the 'scamdemic'' (14 June 2021) available at <https://www.bbc.com/future/article/20210611-how-fraudsters-exploited-our-fears-during-the-pandemic> (accessed 9 March 2022).

41 Wolff J 'How To Adapt Your Internal Investigations For COVID-19 And Beyond' (28 October 2021) available at <https://www.zylab.com/en/blog/how-to-adapt-your-internal-investigations-for-covid-19-and-beyond> (accessed 10 March 2022).

42 Deloitte 'Working Capital Roundup' (2020) 1.

a pandemic in South Africa was also non-existent and hence not offered to South Africans by the government, particularly at the start of the COVID-19 Pandemic. This fact also bids a form of opportunity for offenders to exploit. It is only recently that progress had been made in the reconstruction of the law-enforcement bodies, and the employment of a NACS.<sup>43</sup> Furthermore, even during the COVID-19 Pandemic, as seen in Chapter Three, the level of how ML perpetrators are connected in various ways and in various industries, is alarming. This causes a multitude of problems and provides forms of opportunities for perpetrators.

Though the abovementioned forms of opportunity are briefly referred to, they are very serious issues that South Africa faces relating to ML and ML threats during a pandemic, and they all need to be effectively addressed. The next section will focus on four further forms of opportunity which will be elaborated upon in more depth because if resolved, it will have a massive alleviation effect on all ML and ML threat opportunities during a pandemic. These include the of lack application and implementation of the South African AML framework, the lack of witness and whistleblower protection, the lack of resources and skill, and the lack of political will.

#### **(i) Lack of Application and Implementation of the South African AML Framework**

CW stated in an article dated November 23, 2021: ‘SA good on Legal Anti-Money Laundering Framework, poor on implementation.’<sup>44</sup> This followed the 2021 MER, as alluded to in Chapter Four.<sup>45</sup> The 2021 MER summarizes South Africa’s AML/CFT measures in place as at the dates of the onsite visit which took place from October 22 to November 12, 2019. It moreover scrutinizes the country’s level of compliance in regard to the FATF 40 Recommendations. It also analyses the level of efficiency of the country’s AML/CFT system and furthermore presents recommendations on methods through which the system may be

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43 IODSA ‘IoDSA’s views on government’s anti-corruption programme’ (24 February 2021) available at <https://www.iodsa.co.za/news/553371/iodsas-views-on-governments-anti-corruption-programme.htm> (accessed 9 March 2022).

44 Corruption Watch ‘SA Good on Legal Anti-Money Laundering Framework, Poor on Implementation’ (23 November 2021) available at <https://www.corruptionwatch.org.za/sa-good-on-legal-anti-money-laundering-framework-poor-on-implementation/> (accessed 17 May 2022).

45 South African Government ‘Treasury on South Africa’s anti-money laundering mutual evaluation report released by the Financial Action Task Force’ (7 October 2021) available at <https://www.gov.za/speeches/treasury-south-africa%E2%80%99s-anti-money-laundering-mutual-evaluation-report-released-financial> (accessed 20 March 2022).

strengthened.<sup>46</sup> The 2021 MER finds SA to be non-compliant with a few of its Recommendations. These include the following: Recommendation 12 of the FATF which concerns politically exposed persons (PEPs),<sup>47</sup> Recommendation 15 of the FATF which refers to new technologies,<sup>48</sup> and Recommendation 17 which makes reference to the reliance on third parties.<sup>49</sup> Apart from this, and as mentioned in Chapter Four as well as in the aforementioned CW article, the 2021 MER does find South Africa's AML legal framework to be solid. However, it also finds that South Africa not only has major shortcomings implementing an effective system but also pursuing serious cases, particularly those associated with state capture. Although there has been a reasonable number of ML convictions during the period inspected by the 2021 MER, these convictions are but only partly consistent regarding South Africa's risk profile.<sup>50</sup> The 2021 MER findings are based on a period in South Africa which occurred before the COVID-19 Pandemic; imagine what the findings would look like during the COVID-19 period. It would be ideal to support the arguments in this thesis with masses of case law where convictions have been secured regarding ML and ML threat convictions demonstrating that the South African AML Framework is in full and effective swing. Unfortunately, this has not been the case in South Africa during the COVID-19 Pandemic which potentially indicates a lack of application and implementation, as mentioned in Chapter Four.

Instead, where findings are clear, matters seem to just end up as drawn-out dead-end roads, as seen with the Mkhize matter mentioned in Chapter Four. The SIU's report on Digital Vibes directly implicated the former health minister and his family, as well as his close associates with being involved in corruption. Mkhize has launched a court bid to set aside the SIU's findings. Further to this, after resigning as health minister, he now aims to make a political comeback despite the allegations of his untoward benefit from the Digital Vibes contract.<sup>51</sup> The lack of application and implementation of the South African AML

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46 FATF *Anti-money laundering and counter-terrorist financing measures South Africa Mutual Evaluation Report* (October 2021) 3.

47 FATF (October 2021) 230.

48 FATF (October 2021) 230.

49 FATF (October 2021) 230.

50 FATF (October 2021) 3 to 5.

51 Tandwa L 'Zweli Mkhize makes a bid for ANC top job' (11 March 2022) available at <https://mg.co.za/politics/2022-03-11-zweli-mkhize-makes-a-bid-for-anc-top-job/> (accessed 17 March 2022).



Framework, including the Constitution itself, seen even before the COVID-19 Pandemic in South Africa, is indeed an immense opportunity component form in the PMLTS.

A ray of hope is to be mentioned where deserved. Although it possibly could have been dealt with more promptly, an example of a good effort that relates to implementation can be seen in the case of *Special Investigating Unit and Another v Ndlovu and Others*.<sup>52</sup> Further to what was mentioned in Chapter Three regarding this matter, the SIU provided evidence that the companies in question supposedly operating separately were actually all interconnected and were fronting companies owned by Ndlovu. On June 7, 2022, the Special Tribunal declared that the 19 PPE tenders worth R 172 million awarded to Ndlovu and associated companies were illegal and therefore invalid. The tribunal furthermore ordered Ndlovu and his companies to pay back R 158 million along with interest and also to forfeit to the state his frozen funds and properties to the value of R 42 million owned by Bugatti Security Services and Projects, Zaisan Kaihatsu and Ndlovu.<sup>53</sup> If swift and frequent implementation of South Africa's AML regime can occur similarly and in an even more efficient manner regarding the abovementioned matter, the problem of ML and ML threats during a pandemic in South Africa could possibly stand a good chance of being minimised drastically.

#### (ii) Lack of Witness and Whistleblower Protection

For a successful prosecution there must be willing witnesses to testify. When no one is prepared to testify there is usually no evidence and no case. These are the opportunities which are being exploited by criminals. Witnesses could be weary of involvement in matters and reluctant to testify due to apathy as well as fear for their own and their family's safety, as a result of no confidence in police and prosecution that offenders will be convicted and that witnesses will be protected.

Whistleblowers will be discussed henceforth. They are evidence providers and a special category of witness. They bring to light information of misconduct that would not

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52 (GP 19 of 2021) [2022] ZAST 6 (07 June 2022).

53 Sibiya N 'PPE millionaire Hamilton Ndlovu ordered to pay back R158m to the state' (7 June 2022), available at <https://www.sowetanlive.co.za/news/south-africa/2022-06-07-ppe-millionaire-hamilton-ndlovu-ordered-to-pay-back-r158m-to-the-state/> (accessed 7 June 2022). See also *Special Investigating Unit and Another v Ndlovu and Others* (GP 19 of 2021) [2022] ZAST 6 (07 June 2022).

necessarily have otherwise been identified and are thus essential to secure successful prosecutions.<sup>54</sup> The lack of support and protection of whistleblowers and the concomitant deterrence of whistleblowing hence results in a further form of opportunity in the PMLTS for criminals to take full advantage of during a pandemic. Whistleblowing is instrumental in deterring corruption as it boosts transparency, accountability, and high standards of governance in public institutions and the private sector.<sup>55</sup> Whistleblowers,<sup>56</sup> as seen in the case of *Communication Workers Union v Mobile Telephone Network (Pty) Ltd and another*,<sup>57</sup> assist in combatting criminal conduct and should therefore naturally be afforded encouragement and protection by the state. In some instances, the whistleblowing process is successful. A disclosure by a whistleblower must, inter alia, be made in good faith.<sup>58</sup> However, it cannot be denied that South Africa's system regarding whistleblowing is deeply flawed<sup>59</sup> and that there is a lack of witness and whistleblower protection in South Africa. As a consequence, some whistleblowers are being forced to leave the country, live under false identities, suffer disintegration of intimate relationships and experience their children being targeted for harassment. Some whistleblowers receive death threats<sup>60</sup> and some whistleblowers die.

Babita Deokaran, South Africa's Department of Health's chief director of financial accounting, as alluded to in Chapter Three, was killed outside her home in Johannesburg in August 2021. After dropping her child off at school, Deokaran was shot numerous times in an apparent hit. This followed after Deokaran provided evidence about an alleged

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- 54 Kohn, Kohn & Colapinto 'What Is a Whistleblower?' (2021) available at <https://kkc.com/frequently-asked-questions/what-is-a-whistleblower/> (accessed 13 March 2022).
- 55 EWN 'Analysis: SA Must Better Protect Whistleblowers Who Are Key In Corruption Fight' (24 September 2021) available at <https://ewn.co.za/2021/09/24/analysis-sa-must-better-protect-whistleblowers-who-are-key-in-corruption-fight> (accessed 14 March 2022).
- 56 Kohn, Kohn & Colapinto 'What Is a Whistleblower?' (2021) available at <https://kkc.com/>. See also Fasken 'Do whistle-blowers need to adhere to the duty of good faith, under the Protected Disclosures Act 26 of 2000?' (21 September 2021) available at <https://www.fasken.com/en/knowledge/2021/09/21-do-whistle-blowers-need-to-adhere-to-the-duty-of-good-faith> (accessed 14 March 2022).
- 57 24 ILJ 1670 (LC).
- 58 Sections 6,7,8 and 9 of the Protected Disclosures Act 26 of 2000.
- 59 EWN 'Analysis: SA Must Better Protect Whistleblowers Who Are Key In Corruption Fight' (24 September 2021) available at <https://ewn.co.za>.
- 60 Davis R 'Poor Support for Whistle-Blowers a Problem For Zondo' (21 August 2018) available at [https://www.corruptionwatch.org.za/sas-poor-support-whistle-blowers-problem-zondo/?gclid=Cj0KCQiAybaRBhDtARIsAIEG3kl4Ew5bCMppd8uBofUGDHmH0nFrZxLIHRmnx539\\_T9QcIP2J2\\_9xnQaAmJVEALw\\_wcB](https://www.corruptionwatch.org.za/sas-poor-support-whistle-blowers-problem-zondo/?gclid=Cj0KCQiAybaRBhDtARIsAIEG3kl4Ew5bCMppd8uBofUGDHmH0nFrZxLIHRmnx539_T9QcIP2J2_9xnQaAmJVEALw_wcB) (accessed 14 March 2022).

fraudulent contract to purchase COVID-19 PPE. She was a key witness in investigations concerning dubious multimillion-rand contracts. Deokaran's tragic death, being one of the very many deaths suffered by whistleblowers, reignited desperate requests for enhanced protection of whistleblowers.

In March 2021, whistleblower, Athol Williams, testified at the Zondo Commission.<sup>61</sup> The commission was established to address corruption where, in pursuit of advancing their own interests, politicians and businesses colluded to influence the decision-making procedure of a country. It also comprises the weakening of regulations, and the neutralising of any law enforcement agencies. Williams, a former University of Cape Town (UCT) ethics lecturer and a former senior partner at Bain & Co, testified about high-level corruption that involved Bain & Co and the South African Revenue Service (SARS). In a telephonic interview Williams stated: 'I have been crying all day. I am afraid, sad, and confused. Worse, I feel lost and displaced.'<sup>62</sup> Williams said in another statement that he's been forced to exit the country due to his safety being jeopardized.<sup>63</sup> Williams stated that Deokaran's assassination was an illustration of authorities choosing not to proactively safeguard whistleblowers. Williams further stated:

Knowing that my government offers me no protection after I've acted in the public interest is a disturbing reality. I implicated 39 parties in my testimony so threats could come from many places. After receiving warnings from trusted allies and a civil society organisation about a coordinated effort against me, I took the sad step to leave home, again without any help.<sup>64</sup>

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- 61 See du Toit P 'The state capture inquiry: what you need to know' (20 August 2018) available at <https://www.news24.com/news24/Analysis/the-state-capture-inquiry-what-you-need-to-know-20180819> (accessed 14 March 2022). Mitchley A 'Zondo the right man for the job - Advocates for Transformation throws support behind new Chief Justice' (13 March 2022) available at <https://www.news24.com/news24/southafrica/news/zondo-the-right-man-for-the-job-advocates-for-transformation-throws-support-behind-new-chief-justice-20220313> (accessed 14 March 2022).
- 62 Mahlaka R 'Athol Williams: 'I will continue whistle-blowing and making the corrupt uncomfortable'' (28 November 2021) available at <https://www.dailymaverick.co.za/article/2021-11-28-athol-williams-i-will-continue-whistle-blowing-and-making-the-corrupt-uncomfortable/> (accessed 14 March 2022).
- 63 Mthethwa C 'Whistleblower Athol Williams flees country fearing for his life, cites Babita Deokaran assassination' (7 November 2022) available at <https://www.news24.com/news24/southafrica/news/whistleblower-athol-williams-flees-country-fearing-for-his-life-cites-babita-deokaran-assassination-20211107> (accessed 14 March 2022).
- 64 Mthethwa C 'Whistleblower Athol Williams flees country fearing for his life, cites Babita Deokaran assassination' (7 November 2022) available at <https://www.news24.com>.

Williams also claimed that he experienced abandonment and alienation by corporate South Africa, UCT, government and even friends. He furthermore alleged that money was offered to him by UCT hoping that he would abstain from inquiring as to whether it utilized companies involved in state capture allegations. UCT, however, denied all claims. In his statement Williams moreover said that the calamity of this lack of whistleblower and witness protection needs to be fixed. He added that whistleblowers and witnesses had been let down by South African companies and government at every level.<sup>65</sup>

### (iii) Lack of Resources and Skills

The lack of resources can, too, be categorized as a form of the opportunity component. There are many issues that contribute towards this lack, but the focus here will be drawn to the lack of resources in terms of investigation of ML and ML threats. In 2020, South Africa's national director of public prosecutions, Shamila Batohi, stated that there is a deficiency, on various levels, in the state's law enforcement agencies regarding the skills to investigate severely complex corruption matters. One of the skill-lacking and underdeveloped areas identified by Batohi is the IT systems and capabilities area.<sup>66</sup> This is understandably so. It was stated that the overall amount of data generated globally in 2021 was approximately 79 zettabytes.<sup>67</sup> To contextualise this, one zettabyte comprises one billion terabytes or one sextillion bytes. This is a massive amount of data, and it means that one billion one terabyte hard drives are required to store one zettabyte of data. The zettabyte is the second largest International System of Units (SI) unit of memory measurement, just before the largest namely, the yollabyte.<sup>68</sup> This is a cause for concern for South Africa and its lack of skill in the IT and capabilities area. It is an opportunity that imposters take advantage of. In further research, it has become apparent that there is indeed a massive lack of skill in this regard,

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65 Mthethwa C 'Whistleblower Athol Williams flees country fearing for his life, cites Babita Deokaran assassination' (7 November 2022) available at <https://www.news24.com>.

66 Makinana A 'SA lacks skills to investigate 'complex corruption', Batohi tells parliament' (9 July 2020) available at <https://www.timeslive.co.za/politics/2020-07-09-sa-lacks-skills-to-investigate-complex-corruption-batohi-tells-parliament/> (accessed 19 March 2022).

67 Djuraskovic O 'Big Data Statistics 2022: How Much Data is in The World?' (10 January 2022) available at <https://firstsiteguide.com/big-data-stats/#:~:text=In%202021%2C%20the%20overall%20amount,amount%20is%20expected%20to%20double> (accessed 11 June 2022).

68 Geeks for Geeks 'Understanding file sizes' (15 April 2021) available at <https://www.geeksforgeeks.org/understanding-file-sizes-bytes-kb-mb-gb-tb-pb-eb-zb-yb/#:~:text=A%20group%20of%20eight%20bits,internally%20in%20the%20same%20fashion.> (accessed 11 June 2022).

not only in the National Prosecuting Authority (NPA) but also in organisations such as the Directorate of Priority Crime Investigation (the Hawks)<sup>69</sup> and South Africa in general.

It has moreover been ascertained that forensic investigators in the forensic services sector are incompetent to efficaciously grapple with procurement fraud as a result of the lack of skills, knowledge and resources to perform computer forensics during the course of investigations.<sup>70</sup> This is a problem because, as stated in Chapter Two and Three, procurement fraud and other grand scale corruption which encompasses ML and ML threats frequently encapsulates a complex set of crimes that occur over numerous years and involve various participants and jurisdictions.<sup>71</sup> Another resource that is lacking is funding. In 2020 Batohi looked to taking over the Zondo Commission's accumulated IT systems and capabilities. These skills would be shifted to law enforcement broadly which includes the NPA's investigative directorate. The objective of this is to enable and enhance investigation and prosecution of intricate commercial crimes.<sup>72</sup> Batohi, however, found that the salaries totalling over R 700 million paid by the Zondo Commission to its legal services and investigators remained difficult to match and that it is simply unsustainable within the public service. The level of the lack in capacity-building and funding is thus a grave concern for law enforcement, the NPA and the investigative directorate in taking forward investigations particularly avalanching from, but not limited to, the Zondo Commission.<sup>73</sup>

This lack is moreover troublesome because if investigations cannot be carried out proficiently, neither can prosecutions, let alone prosecutions during a pandemic. According to Batohi, other than one or two cases, the highly multifaceted corruption matters are not being prosecuted.<sup>74</sup> Steinhoff, for example, is possibly one of South Africa's largest fraud

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69 Roberts M 'SA digital forensics, open-source intelligence skills lacking in fight against corruption' (8 March 2021) available at <https://www.dailymaverick.co.za/article/2021-03-08-sa-digital-forensics-open-source-intelligence-skills-lacking-in-fight-against-corruption/> (accessed 19 March 2022).

70 Themeli A R *Exploring the value of computer forensics in the investigation of procurement fraud* (unpublished Master Technologiae Dissertation 2017).

71 Roberts M 'SA digital forensics, open-source intelligence skills lacking in fight against corruption' (8 March 2021) available at <https://www.dailymaverick.co.za>.

72 Makinana A 'SA lacks skills to investigate 'complex corruption', Batohi tells parliament' (9 July 2020) available at <https://www.timeslive.co.za/>.

73 Makinana A 'SA lacks skills to investigate 'complex corruption', Batohi tells parliament' (9 July 2020) available at <https://www.timeslive.co.za>.

74 Makinana A 'SA lacks skills to investigate 'complex corruption', Batohi tells parliament' (9 July 2020) available at <https://www.timeslive.co.za>.

matters. The matter emerged in 2017 and revolves around immense accounting irregularities linked to Steinhoff's former CEO, Markus Jooste. With approximately R 21 billion in public funds squandered, no arrests regarding the matter have been made to date.<sup>75</sup>

Another opportunity that simply cannot be denied is the fact that, besides the NPA, the SAPS are not trained sufficiently and do not have the necessary skill to bring perpetrators to book. The SAPS is in fact hampered by a skill and resource shortage especially regarding equipment and adequate training.<sup>76</sup> This aspect damages the already damaged South African society where crime is concerned and is an opportunity that perpetrators use and abuse. The 'knock-on' effect of lack of effective investigations equals lack of prosecutions, which is indeed evident in South Africa, and it undeniably brings forth an added opportunity component for ML and ML threat offenders to take advantage of. It is definitely also worth mentioning the flip side of the lack of resources opportunity. Opportunity also lies in cases where very good resources exist, whether it be on an individual, group, or organisational level, but these resources are unfortunately connivingly or willingly used to assist in or overlook ML or ML threat activities. There is much evidence publicly available that suggests same.<sup>77</sup>

#### **(iv) Lack of Political Will**

Though there are many more forms of the opportunity component, one more severe opportunity needs to be addressed. This form is the lack of political will to sufficiently fight corruption, including ML and ML threats. Corruption has unfortunately been a relentless

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75 Ngoepe K 'Steinhoff was SA's biggest corporate fraud, yet no arrests have been made' (14 February 2021) available at <https://www.iol.co.za/sundayindependent/news/steinhoff-was-sas-biggest-corporate-fraud-yet-no-arrests-have-been-made-b6590fb7-9420-4c53-b306-6bfac80a731b> (accessed 19 March 2022). See also Seeletsa M 'MP turns up the heat and grills NPA over Steinhoff probe in Parliament' (15 March 2022) available at <https://www.citizen.co.za/news/south-africa/parliament/3050097/npa-hawks-investigation-steinhoff-15-march-2022/> (accessed 19 March 2022).

76 Ross K 'Police hampered by resources, skills shortage' (7 November 2008) available at <https://www.iol.co.za/news/south-africa/police-hampered-by-resources-skills-shortage-423425> (accessed 17 May 2022).

77 Herd F and Kleyn N 'KPMG: Rogue reports, dead cows and state capture' (22 September 2020) available at <https://www.dailymaverick.co.za/article/2020-09-22-kpmg-rogue-reports-dead-cows-and-state-capture/> (accessed 23 March 2022).

part of the South African political life for most of the past 350 years. Deeply embedded corruption caused by the colonialism period through to the apartheid regime is said to have had a direct effect on the way South Africa was governed after democracy was obtained in 1994.<sup>78</sup> As such, corruption never ended when colonialism and apartheid ended, and is clearly an unsolved problem in politics up until today. It appears the problem, at this point, is not that the government is oblivious, unaware, or uninformed of solutions to corruption. The problem, however, gravitates towards the government's failure to sincerely and genuinely implement, or at the very least, strongly attempt to sincerely and genuinely implement the solutions. Yes, efforts such as the Zondo commission and the NACS<sup>79</sup> are existent but not much has been done to implement the possible solutions arising from these initiatives. For example, the initial step in implementing the NACS is to create an interim 'National Anti-Corruption Advisory Council.' Despite promises that establishment would take place by mid-2021, this has not yet happened which possibly indicates a lack of political will. This lack of political will is said to be regrettably fathomable though, seeing that corrupt individuals, groups, or organisations in power have everything to lose if anti-corruption efforts prosper.<sup>80</sup> South Africans are becoming increasingly aware of this problem as time proceeds. Citizens struggle to see real outcomes. They struggle to see prosecutions and money being pumped back into avenues such as health care, electricity, sanitization, education, safety and security, housing, and job creation to mention but a few. In May and June 2021, 1 600 adult South Africans were interviewed by the Afrobarometer team. This team was led by the Institute for Justice and Reconciliation as well as Plus 94 Research. Current state institutions are broadly viewed by citizens as corrupt. Half or more of South Africans say 'most', if not, 'all' officials are entangled with corruption in Parliament (50 per cent), local government councils (51 per cent), the president's office (53 per cent) and the police (56 per cent). In terms of the government's anti-corruption battle, Afrobarometer

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78 Friedman S 'How corruption in South Africa is deeply rooted in the country's past and why that matters' (28 August 2020) available at <https://theconversation.com/how-corruption-in-south-africa-is-deeply-rooted-in-the-countrys-past-and-why-that-matters-144973> (accessed 27 March 2022).

79 See Chapter 4.

80 Singh K and Pillay T 'Solutions Abound To SA's Graft Problem – Political Will, Not So Much' (14 February 2022) available at <https://www.corruptionwatch.org.za/solutions-abound-to-sas-graft-problem-political-will-not-so-much/> (accessed 27 March 2022).

moreover found that seven in ten citizens see the government performing 'very badly' or 'fairly badly'.<sup>81</sup>

It is evident that various forms of the opportunity component exist for criminals to take advantage of. Although this component can be caused by pre-existing factors, or by the current COVID-19 Pandemic circumstance, it clearly demonstrates how ML and ML threats arise during a pandemic. As with the forms of the pressure component, forms of opportunity may be forthright or concealed. It is indeed a serious part of the PMLTS that results in brutal consequences.

#### 5.4.2.4. Rationalisation

The rationalisation component in the PMLTS encompasses the following. Subsequent to the fact that a pandemic or disastrous circumstance has emerged and that the pressure and opportunity components are identified, perpetrators must then rationalise or justify that they are doing the right thing involving themselves in corruption, including ML and ML threats.<sup>82</sup> The aforementioned may be substantiated by what Charlopova, Andon and Free allude to in their publication which regards fraud offenders and how they rationalise the financial crime they commit. They state that regardless of the various domains, recurrent features of rationalisation remain. These include concentration on making behaviour seem more justifiable to others and to oneself; degrees of self-deception; manifestation in the unconscious and conscious mind; decreased feelings of anxiety and/or behavioural responsibility; explanations that are self-serving; and reduced ethical, legal, and/or moral concerns alluded to in 5.4.2.5. below.<sup>83</sup>

Rationalisation may be demonstrated by way of the following beliefs and mindsets:

I am doing this in the best interest of my family.  
If I do not do this, I will not be able to pay the medical bills.  
If others are doing it, so can we.

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81 Chabalala J 'Corruption 'worsening' during Ramaphosa's tenure – survey' (15 September 2021) available at <https://www.news24.com/news24/southafrica/news/corruption-worsening-during-ramaphosas-tenure-survey-20210915> (accessed 27 March 2022).

82 SVA 'The Fraud Triangle: Incentive, Opportunity, and Rationalization' (2022) available at <https://accountants.sva.com/biz-tips/fraud-triangle-opportunity-incentive-and-rationalization> (accessed 28 March 2022).

83 Charlopova I, Andon P and Free C 'How Fraud Offenders Rationalize Financial Crime' DOI:10.1108/978-1-78973-417-120201004 (2020) 40.



We have suffered; thus, we are entitled to whatever we want.  
If I do not do this, myself and my loved ones will be in danger.  
This is a once off opportunity to become wealthy and pay off my debt.  
I will pay the money back at a later stage.  
I graduated first place in my class, I deserve this.  
Nobody will even notice because they do not understand the process as we do.  
There is no other option.

This can be expanded upon and placed into further context. Based on the previously discussed components of the PMLTS namely pandemic, pressure and opportunity, rationalisation may be illustrated in the following beliefs and mindsets:

Nobody will notice if I undertake PPE fraud at my company because all my colleagues are infected with COVID-19 and not able to work.  
This 90-year-old female lost her husband to COVID-19 and is lonely. It is acceptable to trick her into falling in love with me, only for me to steal all her pension money.  
I do not have any money left to support my family and it is difficult for me to find a job during COVID-19. I have no choice but to join a ML syndicate to pay the bills.  
In South Africa there is hardly any implementation and application of the AML framework therefore I can easily get away with ML.  
There is a deficiency in protection for witnesses and whistleblowers hence I will commit ML, and nobody will testify or report me because if they even think of doing so, I will threaten to kill them and their family members.  
The police will never catch me in a million years because they have no understanding of what I did any way due to their lack of skill.  
I will not be arrested and will not be found guilty in a court of law.  
I am entitled to this, deserve this, and can get away with it.  
If politicians can steal the money and get away with it, so will I.

Depending on the situation, the thought process and decision making here can be rapid and almost instantaneous, bordering on automatic, or it can take place over a lengthy period of time. Despite the different situations, there are, however, certain factors that do reoccur or remain the same.

#### 5.4.2.5. Decay in Morals and Values

The last component of the PMLTS is the decay in morals and values component. It must be present along with all of the other abovementioned components in order for the PMLTS to demonstrate how ML and ML threats arise during a pandemic. This component encapsulates the following. A lack of morals and values is evident when an individual, group or organisation exploits any situation in order for ML and ML threats to arise, save for when force, duress or threats are used.

South Africa is already characterised in general by unmatched political and social adaptations. There are enormous differences regarding rationales, lifestyles, and opinions. One aspect of our society that most South Africans would almost certainly agree on is the decline of morals and values in the country. Aside from the political and economic crisis, South Africa is a wounded society with alarming pathologies. This can be seen in aspects such as violence, disintegration of families, indiscipline, xenophobic attacks, assault, rape, gender-based violence, and fraud. There is also the lack of personal accountability for the high levels of corruption and crime.<sup>84</sup> The situation in South Africa is bad as it is, and the consequences thereof have poisonously seeped through during the COVID-19 Pandemic. It is to be emphasised that this point is unnerving. Yes, the situation is indeed already bad in South Africa but in a situation such as a pandemic where, for instance, people are ill, if not dying in masses, it really takes a level of relentlessness, cruelty, depravity, desperation, greed and/or lack of respect to consider and/or carry out ML and ML threat activities during such a time. It can even be due to a lack of deep-rooted and sincere spiritual beliefs found in Christianity,<sup>85</sup> for example. Some people, for instance, are so attached to their earthly possessions that they will go to all lengths, including committing ML and ML threats, to maintain and increase their material wealth during a pandemic in South Africa. The unfortunate reality is that this component is prevalent. Chapter Three demonstrates how individuals took advantage of the fact that PPE was desperately needed in the COVID-19 Pandemic. It was found that cybercriminals exploited those who are sick, distressed, lonely,

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84 Sekhaulelo M A 'The profile and manifestation of moral decay in South African urban community' (28 April 2021) available <https://hts.org.za/index.php/hts/article/view/5422/17562> (accessed 18 May 2022).

85 This is not to say that Christians are perfect people. See Luke 6:31 in *The Holy Bible King James Version* (2017) 1186.

ill-informed or who work from home. Perpetrators took advantage of lockdown regulations. This component present in the PMLTS shows that perpetrators take advantage of disastrous conditions and those who are vulnerable<sup>86</sup> and therefore this contributes towards ML and ML threats during a pandemic.

The PMLTS, by means of its components namely pandemic, pressure, opportunity, rationalisation and decay in morals and values, offers a helpful foundation to reveal and classify explanations for the devastation this thesis addresses. The scrutiny of these components and their forms also provides support regarding the proposed recommendations to curb and combat ML and ML threats during a pandemic, which could furthermore expand to any disastrous circumstance, in South Africa. If the abovementioned components and their various forms are struck down i.e., possibly contended with or alleviated, it would lessen, or even eliminate ML and its threats amid a pandemic in South Africa. It is thus suggested that an accelerated, armoured action should be implemented which this study refers to and has coined as Operation Accelerated Armoured Action (Operation Triple A).

##### **5.5. Operation Accelerated Armoured Action (Operation Triple A)**

The necessity of drafting such a plan is based on various views expressed by certain members of the FATF as well as certain scriptures in the Holy Bible. The details of the proposed Operation Triple A and its Nine Striking Solutions will be explained in more detail in the next chapter.

Verbeek-Kusters, Chair of the Egmont Group of Financial Intelligence Units and Head of the Financial Intelligence Unit (the Netherlands), stated that ML and TF during the COVID-19 Pandemic is a global problem. The issues are, however, materialising differently depending on where it takes place. In countries where not many people have bank accounts, there are simply other financial systems with other financial challenges. The FATF also alludes to ML via mobile payment systems and encourages countries across the globe to learn from one

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86 Slater C 'Fraudsters are taking advantage of the vulnerable' (18 June 2020) available at <https://bedfordviewedenvalenews.co.za/450487/fraudsters-are-taking-advantage-of-the-vulnerable/> (accessed 28 March 2022).

another.<sup>87</sup> The FATF view is that the COVID-19 Pandemic has been and should be motivation for the implementation of Regulatory Technology (RegTech),<sup>88</sup> and more resourceful and adequate AML/CFT procedures.<sup>89</sup> It accentuated that the usage of technology as well as the implementation of an intelligence-led, risk-based, and smart approach to combatting ML and TF is of extreme importance.<sup>90</sup>

Ephesians 6:11-20 in the Holy Bible states:

Put on the whole armour of God, that ye may be able to stand against the wiles of the devil. For we wrestle not against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places. Wherefore take unto you the whole armour of God, that ye may be able to withstand in the evil day, and having done all, to stand. Stand therefore, having your loins girt about with truth, and having on the breastplate of righteousness; And your feet shod with the preparation of the gospel of peace; above all, taking the shield of faith, wherewith ye shall be able to quench all the fiery darts of the wicked. And take the helmet of salvation, and the sword of the Spirit, which is the word of God: Praying always with all prayer and supplication in the Spirit, and watching thereunto with all perseverance and supplication for all saints; And for me, that utterance may be given unto me, that I may open my mouth boldly, to make known the mystery of the gospel, For which I am an ambassador in bonds: that herein I may speak boldly, as I ought to speak.<sup>91</sup>

As previously discussed, ML and its threats during a pandemic in South Africa can be deeply rooted, connected, traditional, modern, multifaceted, dangerous, complex, and adaptable. Criminals seem to somehow be a step ahead of authority, if not involving authority themselves. Barrow, states: 'Money-laundering schemes are put together to make detection difficult – complexity is their friend.'<sup>92</sup> The South African response to the forms set out in the

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87 FATF 'The Impact of COVID-19 on the Detection of Money Laundering and Terrorist Financing, 31 July 2020' (31 July 2020) available at <http://www.fatf-gafi.org/publications/methodsandtrends/documents/covid-19-webinar-mltf-detection.html> (accessed 6 June 2022).

88 Ascent 'What is RegTech?' (2021) available at <https://www.ascentregtech.com/what-is-regtech/> (accessed 17 June 2022).

89 FATF 'Covid-19 and the Changing Money Laundering and Terrorist Financing Risk Landscape Lewis D' (18 January 2021) available at <https://www.fatf-gafi.org/publications/fatfgeneral/documents/mena-reg-tech-2021.html> (accessed 17 June 2022).

90 FATF 'Covid-19 and the Changing Money Laundering and Terrorist Financing Risk Landscape Lewis D' (18 January 2021) available at <https://www.fatf-gafi.org>.

91 Ephesians 6:11-20 in *The Holy Bible King James Version* (2017) 1364.

92 Parkinson J 'FinCEN Files: One of the world's 'dodgiest addresses' is in leafy Hertfordshire' (21 September 2020) available at <https://www.bbc.com/news/uk-54204053> (accessed 5 June 2022).

components of the PMLTS, and according to the FATFs guidelines, thus needs to be efficiently comprehensive, enhanced, insightful, strong, intelligent, risk-based, protective, empathetic yet stringent, tech-savvy, and effective. It furthermore needs to be aware of international guidelines, of a bona fide and objective nature, and highly cognisant of and responsive to justice and restoration. It also needs to be proactive and reactive functioning before, during, and after a pandemic. It moreover needs to be appropriately armoured, unassailable, and unshakable, as Ephesians 6:11-20 of the Holy Bible advises, in order to be prepared to fight and guard against evil such as ML and ML threats. Operation Triple A aims to encapsulate these features through its Nine Striking Solutions (as discussed in the next chapter) in its crusade to strike down the PMLTS and thus combat and curb ML and its threats during a pandemic in South Africa. The proposed Operation Triple A should be authorised, implemented and administered by the South African government as well as an objective, independent and rotating body that all stakeholders will be held accountable to.

## **5.6. Conclusion**

This chapter has taken a deeper dive into other ML and ML threat provocations during a pandemic in South Africa by way of the PMLTS. The PMLTS structure and dimensions are unique which signifies that ML and ML threats during a pandemic should be analysed from a traditional perspective but more so now from a radical viewpoint. This structure, provides a useful basis to detect, indicate and categorise reasons for the destruction this thesis tackles. The abovementioned scrutiny of these components provides further guidance in terms of obtaining solutions to curb and combat ML and ML threats during a pandemic which could extend to any disastrous situation, as explained, in South Africa.

As discussed in Chapter Four, the South African AML framework itself is largely sufficient to successfully deal with and provide for the necessary relief. Other reasons such as the lack of application and implementation of the South African AML framework, are causes for concerns. The various forms and examples of the structure's components range from being obvious and straightforward to immersed and complicated. Some have existed for decades, if not centuries, whilst others have been caused or worsened by the COVID-19 Pandemic. Seeing that the PMLTS imparts a traditional yet radical point of view to the challenges faced, conventional yet novel solutions should be developed, strengthened, deployed and/or

actioned in order to defy the issues raised in the PMLTS. As alluded to above, Operation Triple A imparts a strategy that provides for effective combatting and curbing of ML and ML threats during a pandemic in South Africa. Given the analysis and solutions provided by Chapters One to Five, it can be construed that Chapter Six is now sufficiently guided to yield recommendations and concluding remarks through the proposed PMLTS, Operation Triple A and its Nine Striking Solutions.



## CHAPTER SIX

### ACCELERATED ARMoured ACTION

#### RECOMMENDATIONS AND CONCLUSION

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##### 6.1. Introduction

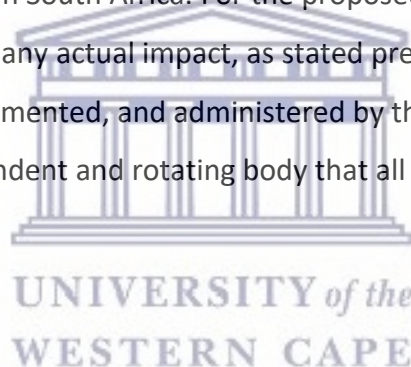
This concluding chapter is built upon a strong basis of preceding chapters which have investigated the research question this thesis tackles, namely: 'How can the challenges and exposure to ML and ML threats be curbed and combatted in South Africa during a pandemic?' It explained the severity of the problem and proved the significance of fighting it both globally and in South Africa during the COVID-19 Pandemic or any other possible further pandemics. It also briefly elaborated upon the international response to ML, the unwonted damage caused by ML and the adequacy of the South African AML regime. It was found that the South African AML framework is, in regard to its regulations, bodies, commissions, structures, and strategies, largely sufficient to curb and combat the issue at hand. Therefore, a deep dive into what gives rise to ML and ML threats during the COVID-19 Pandemic, or any other pandemic in South Africa, was then undertaken, through the suggested PMLTS structure. The components of the structure namely pandemic, pressure, opportunity, rationalisation and decay in morals and values need to be combatted. This study's proposed accelerated armoured action plan, Operation Accelerated Armoured Action (Operation Triple A) is thus offered as a possible solution to strike down or address this problem. Chapter Six advocates 'accelerated armoured action' by expounding upon Operation Triple A's Nine Striking Solutions which offers possible solutions to the issues identified via the PMLTS. In doing so, it thus provides recommendations as to how the challenges and exposure to the laundering of money as well as ML threats may be curbed and combatted in South Africa during a pandemic.

##### 6.2. Operation Triple A's Nine Striking Solutions

Operation Triple A, alluded to in the previous chapter, encompasses what its full name suggests. It is an operation which is accelerated, armoured and action based. It efficiently and continuously incorporates features such as enhancement, comprehensiveness,

insightfulness, strength, intelligence, protection, empathy, stringency, tech-savviness, justice, effectivity, objectivity, and restoration. It also contains a risk-based operation that involves proactiveness and reactivity prior, during and post pandemic, furthermore, also incorporating international guidelines. It is moreover a bona fide operation that should be set up to be unassailable, unshakable, and appropriately armoured. Operation Triple A does so through its proposed Nine Striking Solutions. The term 'striking' included in the name Nine Striking Solutions indicates what the solutions of the Operation Triple A intends on achieving, which is the constant striking down or alleviation of the PMLTS components and their forms. The Nine Striking Solutions of Operation Triple A are preparation, the application of a risk-based approach (RBA), implementation, awareness, technology, political will, objective accountability, restoration, and support.

The next section attempts to provide solutions to the component forms under the PMLTS and thus to the problem this thesis tackles which is the curbing and combatting of ML and ML threats during a pandemic in South Africa. For the proposed Operation Triple A and its Nine Striking Solutions to have any actual impact, as stated previously, they should be authorised, continuously implemented, and administered by the South African government as well as an objective, independent and rotating body that all stakeholders will be held accountable to.



### **6.2.1. Preparation**

Benjamin Franklin once stated: 'By failing to prepare, you are preparing to fail.'<sup>1</sup> Preparation in every aspect relating to South Africa and a pandemic need to occur. Adequate preparation for pandemics is crucial in strengthening South Africa's responses on all levels. The focus of this solution comprised in Operation Triple A, however, is on preparation for ML and ML threats during a pandemic in South Africa. It also should ideally incorporate research, training, and upskilling for all industries regarding AML in a pandemic. Furthermore, it should include updated preparation materials such as pandemic AML videos, documentation and policies put together by the best of breeds from all industries

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1 Patel J and Sridhar D 'Toward Better Pandemic Preparedness' (December 2021) available at <https://www.imf.org/en/Publications/fandd/issues/2021/12/Pandemic-preparedness-Patel-Sridhar> (accessed 7 June 2022).



and walks of life. This may involve inter alia actuarial scientists, health care specialists, financial advisors, accountants, safety and security specialists, psychologists, reverends, lawyers, academics, forensic investigators, and the public themselves.

### **6.2.2. A Risk Based Approach (RBA)**

As Recommendation 1 of the FATF advises, countries, including South Africa, should identify, understand, as well as assess the ML/TF risks and should act accordingly. This comprises the designation of a mechanism or an authority to organize actions in order to evaluate risks, and utilize resources, intended to ensure that the risks are effectively mitigated. On the basis of that assessment, an application of an RBA should occur to ensure that measures to avert or alleviate ML/TF in connection with the risks identified are undertaken. This approach should be an essential foundation for the efficient allocation of resources across the AML/CFT regime.<sup>2</sup> As such, this second striking solution in Operation Triple A regards the relevant authorities assessing the ML and ML threat risks that pandemics pose. In other words, it applies a risk-based approach accordingly by ensuring that South Africa pursues ML in line with its risk profile during a pandemic.<sup>3</sup>

### **6.2.3. Implementation**

Implementation goes hand in hand with inter alia, training, impartiality, understanding, efficiency, and justice. The implementation solution of the Nine Striking Solutions thus provides that the relevant authorities should carefully ensure that enhanced bona fide implementation and application of the South African AML regime takes place. Detection, reporting, preservation, and protection of evidence including data, protection of whistleblowers and witnesses, general and specific assistance, investigation, arrest, prosecution, punishment, rehabilitation and integration into society<sup>4</sup>, amongst other aspects, should take place to the best of the country's ability and in the most accelerated and accurate way possible. The RBA should also be considered here in order for aspects

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2 FATF *International Standards on Combating Money Laundering and The Financing of Terrorism & Proliferation the FATF Recommendations* (2012).

3 Corruption Watch 'SA Good on Legal Anti-Money Laundering Framework, Poor On Implementation' (23 November 2021) available at <https://www.corruptionwatch.org.za/> (accessed 10 June 2022).

4 Lipco Law For All 'How to Open a Criminal Case in South Africa' (2022) available at <https://www.lawforall.co.za/arrest-crimes/how-to-open-a-criminal-case-in-south-africa/> (accessed 17 June 2022).

such as PPE procurement during a pandemic to be carefully monitored. The implementation solution should be applicable to all citizens. The solution should not exclude certain individuals, for example, the impoverished thief is convicted, but the indirect reason he stole is because certain politicians or businesspeople are stealing moneys meant to resource the poor, yet those very politicians or businesspeople walk 'scot-free.' This solution should apply to all equally.

Authorities should also specifically have to ensure that services involving but not limited to, internal and external investigation, witness and whistleblower protection, evidence including data protection, financial intelligence, legal advice and representation, forensic investigation, and technology, are implemented and accessible at a reasonable to no cost for the public, especially those who are underprivileged. Furthermore, where there is any lack of skill and resources detected in the South African AML regime whatsoever, authorities should be required to provide sufficient remedy through training and upskilling, according to this solution.

#### **6.2.4. Awareness**

Citizens for the most part appreciate and function well whilst knowing what to expect, especially during a pandemic where immense uncertainty dwells. The awareness solution therefore requires authorities to create and cultivate awareness around ML and ML threats during a pandemic. This includes awareness around aspects such as the risks the country faces, what authorities are doing about the situation, where guidance and solutions can be found, and warning of what punishment will, is and has ensued in regard to perpetrators. This process should involve consistent and efficient research, specialists, deserved convictions and punishments. All citizens and industries should be made aware of ML and ML threats through every possible platform including amongst other aspects newspapers, the internet through trusted/official websites, social media, webinars, documentaries, meetings, television especially news channels, distribution of documentation, recordings, and videos.

### 6.2.5. Technology

The technology solution of the Nine Striking Solutions requires that authorities utilize technology to assist in the combatting and curbing of ML and ML threats during a pandemic. It is to ensure that best of breed technologies are employed to assist human beings in obtaining justice in this regard more efficiently. Best of breed technologies such as RelativityOne, Relativity Trace and Heretik could, for example, be utilized in this solution. RelativityOne is a simple yet powerful solution to all data challenges. This industry-leading tool assists with aspects such as internal investigations to e-discovery and more.<sup>5</sup> Moreover, Relativity Trace is a tool that identifies misconduct prior to escalation. It proactively monitors audio and electronic communications to detect collusion, insider trading, and other illicit behaviour. It allows for the automatic surfacing of the riskiest content, in order for action to ensue before it is too late.<sup>6</sup> Heretik then enables Relativity users to extend the tool further to reach corporate transactions as well as regulatory response projects, which augments best practices with minimum disruption. Heretik's solution facilitates this by concentrating on areas of functionality including truly structured data, document review, collection processes, speed to review, turning insight into action, regulatory responses, and contract data.<sup>7</sup>

This solution should also incorporate digital forensics. Digital forensics can be described as the application of scientifically generated and proven methods to preserve, validate, identify, extract, analyse, interpret, document and present evidence derived from digital sources for use in administrative, legal, or investigative procedures. This can also be defined in layman's terms as the investigation of mobile phones, electronic devices, computers, or any further type or category of digital media such as a hard drive or memory card, believed to be utilized in prohibited or illegal activities. This is done to determine what happened, how it happened, when it happened, and who was involved or affected. The investigation

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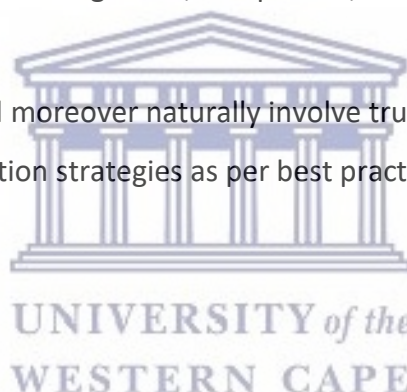
5 Relativity 'RelativityOne' (2022) available at <https://relativity.com/ediscovery-software/relativityone/> (accessed 17 June 2022).

6 Relativity 'Relativity Trace' (2022) available at [https://relativity.com/data-solutions/communication-surveillance/?utm\\_source=google&utm\\_medium=ppc&utm\\_campaign=Branded-EMEA&utm\\_term=relativity%20trace&gclid=Cj0KCQjwkruVBhCHARIsACVliOzCfDVKzvdvbuK7u8H873gTlfZBxzyJVW\\_F2dm36rjK8IKEYT4vQEaAutmEALw\\_wcB](https://relativity.com/data-solutions/communication-surveillance/?utm_source=google&utm_medium=ppc&utm_campaign=Branded-EMEA&utm_term=relativity%20trace&gclid=Cj0KCQjwkruVBhCHARIsACVliOzCfDVKzvdvbuK7u8H873gTlfZBxzyJVW_F2dm36rjK8IKEYT4vQEaAutmEALw_wcB) (accessed 17 June 2022).

7 Relativity 'Heretik' (2022) available at <https://www.relativity.com/data-solutions/customizations/app-hub/heretik/> (accessed 17 June 2022).

should be undertaken via a manner in which preservation of integrity of the evidence, compliance with rules of evidence and chain of custody, and legal procedures are adhered to. Any discoveries or conclusions derived from the investigation must be centred on scientifically proven methodology and techniques, and should also be replicable. Another forensic examiner should have the ability to duplicate the examination as well as produce equivalent findings.<sup>8</sup> Digital forensics in the technology solution may make use of the aforementioned technologies to carry out its strategies. Authorities should also approach experts in a bona fide manner in the field where deemed necessary. Experts include Africa's largest law firm, ENSafrica. Its intelligENS department offers clients RelativityOne. ENSafrica represents the first law firm in Africa to offer this innovative platform. As such, the firm, through the combination of the specialist expertise of their intelligENS team, offers a seamless digital way to preserve, collect, identify, analyse, as well as produce data. It furthermore offers a secure cloud-based end-to-end platform, to clients involved in litigation, internal and external investigations, compliance, and enforcement matters.<sup>9</sup>

The technology solution should moreover naturally involve trust as well as the implementation of data protection strategies as per best practices and Acts such as POPIA referred to in Chapter Four.



#### 6.2.6. Political Will

This solution encapsulates a bona fide political will to effectively fight ML and ML threats during a pandemic in South Africa. Here authorities are required to strictly adhere to aspects such as their oath taken as per the Constitution.<sup>10</sup> The oath or solemn affirmation of the President or Acting President of South Africa is as follows according to the Constitution:

The President or Acting President, before the Chief Justice, or another judge designated by the Chief Justice, must swear/affirm as follows:

8 Intertel 'Digital Forensics' (2022) available at <https://www.intertel.co.za/services/digital-forensics#:~:text=Digital%20forensics%20can%20be%20defined,legal%2C%20investigative%20or%20administrative%20processes> (accessed 11 June 2022).

9 Sheehan 'ENSAfrica intelligENS now offers clients a powerful bespoke e-discovery solution through RelativityOne' (16 May 2022) available at <https://www.ensafrica.com/news/detail/5694/ensafrica-intelligens-now-offers-clients-a-po> (accessed 12 June 2022).

10 Schedule 2 of the Constitution.

In the presence of everyone assembled here, and in full realisation of the high calling I assume as President/Acting President of the Republic of South Africa, I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa, and will obey, observe, uphold and maintain the Constitution and all other law of the Republic; and I solemnly and sincerely promise that I will always - promote all that will advance the Republic, and oppose all that may harm it;  
protect and promote the rights of all South Africans;  
discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience;  
justice to all; and  
devote myself to the well-being of the Republic and all of its people.  
(In the case of an oath: So help me God.)<sup>11</sup>

The oath or solemn affirmation of Ministers and Deputy Minister of South Africa is as follows:

Each Minister and Deputy Minister, before the Chief Justice or another judge designated by the Chief Justice, must swear/affirm as follows:

I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I undertake to hold my office as Minister/Deputy Minister with honour and dignity; to be a true and faithful counsellor; not to divulge directly or indirectly any secret matter entrusted to me; and to perform the functions of my office conscientiously and to the best of my ability.

(In the case of an oath: So help me God.)<sup>12</sup>

The political will solution requires that all politicians adhere to their oaths taken and understand the implications and magnitude of being afforded the honour and responsibility of leading a country and its citizens. This is even more so in relation to the remuneration levels and salary amounts that politicians earn in South Africa. If the requirements of this solution are not met here, legal action should be taken against perpetrators.

#### **6.2.7. Objective Accountability**

The objective accountability solution requires that a bona fide objective, independent rotating, highly respected and trusted body be duly authorised for all stakeholders to be held accountable to. This proposed body should be of an ethical and truth-seeking nature

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11 Schedule 2 (1) of the Constitution.

12 Schedule 2 (3) of the Constitution.

that acts in strength, boldness and perseverance. It should also function without fear, favour, or prejudice. It should essentially conduct inter alia quality control, damage control, frequent checking, regular reporting and should be authorised to punish and/or take legal action against stakeholders who are found guilty of illegalities. This body should also provide stakeholders with the platform to report any illegalities or issues that arise in the process. All financial matters should furthermore be reported to this body. It should be an objective and rotating body consisting of all relevant specialists applicable to Operation Triple A and its Nine Striking Solutions. It is proposed that such a body should have offices in each of South Africa's provinces largest cities and be available 24 hours per Day.

#### **6.2.8. Restoration**

A constant flow of training and implementation of morals and values should be ensured by authorities according to the restoration solution. Here, knowledge should be imparted regarding what is right and wrong,<sup>13</sup> the dangers of greed,<sup>14</sup> and the consequences of one's actions. Citizens need to understand that they should not do unto others that which they would not like to be done to themselves<sup>15</sup> and to also forgive<sup>16</sup> as they would want to be forgiven.<sup>17</sup> This is in regard to a pandemic, ML and ML threats during a pandemic in South Africa and also life in general. This is to occur regularly, and it needs to reach each and every organisation, industry and citizen from as young as infancy all the way through to pensioners. Authorities should arrange for ethics teams to go out into every level of the South African society and cultivate as well as inculcate a bona fide culture and lifestyle incorporating elements of morals and values in terms of this solution.

#### **6.2.9. Support**

Authorities should provide adequate support in regard to each of the Nine Striking Solutions of Operation Triple A. The support includes authorities adequately generating and managing special funding and/or investment for AML strategies during pandemics. Support should be provided to all citizens of South Africa in all areas where needed. The causes of ML and ML

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13 Luke 19:10 in *The Holy Bible King James Version* (2017) 1209.

14 Matthew 19:16-22 in *The Holy Bible King James Version* (2017) 1125 to 1126.

15 Matthew 7:12 in *The Holy Bible King James Version* (2017) 1106.

16 Luke 18:18-27 in *The Holy Bible King James Version* (2017) 1124.

17 Matthew 6:9-13 in *The Holy Bible King James Version* (2017) 1105.

threats according to the PMLTS vary immensely. It reflects many aspects ranging from inter alia desperation, emotional and physical suffering, mental health, and greed to lack of resources, skills, protection, and political will. Citizens are suffering. Criminals are ruthless and conniving. Therefore, authorities need to provide support on all levels whether it be emotionally, spiritually, mentally, psychologically, physically, technologically, financially, legally and/or intellectually. Support in relation to investigation, safety, skills, knowledge, punishment and/or restoration needs to be provided.

Now that Operation Triple A's Nine Striking solutions have been comprehensively described, the next section will focus on related recommendations regarding the PMLTS.

### **6.3. Recommendations**

#### **6.3.1. The PMLTS and Operation Triple A**

It is recommended that the South African authorities utilise this study's PMLTS to detect, demonstrate, organise, and categorise what gives rise to ML and ML threats during a pandemic and how perpetrators participate therein. The PMLTS is fundamentally based on the premise that most, ML and ML threats occur because of the presence all five PMLTS components namely pandemic, pressure, opportunity, rationalisation, and decay in morals and values.

It is further recommended that the South African authorities utilise this study's Operation Triple A to continuously and effectively strike down the findings of the PMLTS through its Nine Striking Solutions which include preparation, the application of an RBA, implementation, awareness, technology, political will, objective accountability, restoration and support. The challenges and exposure to ML and ML threats will therefore be curbed and combatted in South Africa during a pandemic by way of this study's PMLTS and Operation Triple A. This will be illustrated via the following hypothetical application example.

### **6.3.2. Hypothetical Application**

The PMLTS has identified that a pandemic exists namely the COVID-19 Pandemic and that there is a pressure for a particular highly successful and prominent businessman to desperately support his wife and 5 children especially because they are all infected by COVID-19, and his wife is already suffering from comorbidities. Moreover, identified is an opportunity to commit ML and ML threats through lack of political will to combat ML and ML threats. Further identified is that there is perpetrator rationalisation because this businessman believes that he simply must help his family and that he may commit PPE related ML and ML threats because many businesspeople commit same during a pandemic without it being detected by authorities. There is moreover a decay in morals and values identified because the businessman does not care about the immense suffering taking place in the lives of South African citizens during a pandemic. ML and/or a ML threat has therefore arisen and is in existence according to the PMLTS and the presence of all five of its components by way of the above forms.

Authorities will utilize Operation Triple A and its Nine Striking Solutions to combat this ML and/or ML threat identified by way of the PMLTS. This will happen through preparation for this pandemic ML and ML threat, the application of an RBA, the effective and enhanced implementation of the South African AML regime in the matter, awareness raised around the problem at hand, technological assistance to solve the issue efficiently, the existence of the political will to combat the problem, the existence of objective accountability for all stakeholders in the process, the restoration of the businessman's mindset and life in general, and the provision of support wherever needed.

### **6.4. Postlude**

The study conducted in this thesis has evidenced that ML and ML threats are massively problematic and that there is indeed a link between ML and ML threats during the COVID-19 Pandemic in South Africa. Though the South African Cabinet decided to terminate the National State of Disaster with effect from April 5, 2022 because it declared that the requirements for a National State of Disaster in terms of the DMA are no longer met, COVID-19 infections, ML and ML threats are still taking place in South Africa. The threat of further disastrous situations occurring is also inevitable.



This thesis set out to answer the following question: ‘How can the challenges and exposure to ML and ML threats be curbed and combatted in South Africa during a pandemic?’ To answer this question, a study commenced by detailing the magnitude of the crisis at hand. It furthermore generated insight of ML, the effects thereof as well as the international response thereto. It moreover delved into a discussion concerning the damage caused by ML and ML threats in South Africa due to the COVID-19 Pandemic, and further alluded to the FATFs global response. Also interrogated was the adequacy of the South African AML framework to combat ML and ML threats during a pandemic. The inspection of other related prominent causes of ML and ML threats during a pandemic in South Africa was undertaken. The study then concluded by producing recommendations and conclusions. It has done so by illustrating that the challenges and exposure to ML and ML threats can be curbed and combatted in South Africa during a pandemic through the effective application of this study’s proposed PMLTS and Operation Triple A.

South Africa indeed faces a monstrous problem, but South Africa is without a doubt, a strong nation that has already conquered monstrosities such as the Apartheid regime. There is a reason why the late Archbishop Desmond Tutu created the phrase Rainbow Nation as mentioned in Chapter One, with specific reference to the South African Nation. The phrase depicts, inter alia, the unity among racial, cultural, or ethnic groups in South Africa in the post-apartheid period. The rainbow is moreover incessantly correlated to hope<sup>18</sup> as well as an optimistic future in some South African cultures.<sup>19</sup> South Africa should tackle the challenges and exposure to ML and ML threats during a pandemic with unity, hope and optimism whilst using this study’s proposed PMLTS and Operation Triple A.

Nkosi Sikelel’ iAfrika.<sup>20</sup>

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18 Genesis 9:13-16 in *The Holy Bible King James Version* (2017) 13.

19 Handa V K ‘Why is the Republic of South Africa referred to as a Rainbow’ (4 November 2007) available at <https://timesofindia.indiatimes.com/why-is-the-republic-of-south-africa-referred-to-as-a-rainbow-nation/articleshow/2515812.cms> (accessed 15 November 2021).

20 English translation of this phrase is God/Lord bless Africa. This is the name and also the first line of the South African National Anthem composed by Enoch Sontonga. See Rodriguez C ‘National Anthem’ (2022) available at <https://www.southafrica-usa.net/consulate/anthem.html> (accessed 12 June 2022).

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