



NATIONAL UNIVERSITY OF LESOTHO

**THE IMPACT OF CORRUPTION AND MONEY LAUNDERING ON GOOD
GOVERNANCE AND DEVELOPMENT: A COMPARATIVE ANALYSIS OF
LESOTHO ANTI-CORRUPTION AND ANTI-MONEY LAUNDERING LEGAL
FRAMEWORKS**

BY

MALERATO JULIA NTSATSI 200202349

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SUPERVISED BY: PROFESSOR ANTHONY NWAFOR

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DECLARATION

I **Malerato Julia Ntsatsi**, solemnly declare that this mini dissertation has not been submitted for a qualification in any other institution of higher learning, nor published in any journal, textbook or other media. The contents of this dissertation entirely reflect my own original research, save for where the work or contributions of others has been accordingly acknowledged.

Name: Malerato Julia Ntsatsi

Signature

A handwritten signature in black ink, appearing to read 'Malerato Julia Ntsatsi', written in a cursive style.

Date: 6th June, 2025

Place: Maseru, Lesotho

DEDICATION

This mini dissertation is dedicated to my family for their unconditional love and encouragement throughout my academic journey.

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I would like to give honor and glory to the Heavenly Father whose love, mercy, and grace have sustained me throughout the academic journey.

I wish to express my profound appreciation to my supervisor, Professor Anthony Nwafor, for his invaluable supervision and effectiveness. His expertise, courage, and support have been pivotal for developing this project.

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ABSTRACT

Lesotho is currently grappling with a global crisis of corruption and money laundering. These economic offences undermine the principles of effective governance and national development. They are dynamic phenomena, and their trends vary depending on various factors, including a state's cultural practices, political, economic, and social circumstances, legal frameworks in place, and the availability of responsible institutions and enforcement techniques. Lesotho has legal frameworks in place to prevent corruption and money laundering and has ratified international and regional treaties to curb these economic offences. Despite these initiatives, criminals still find a way to gain from criminal activities. The current legal frameworks leave unexplained wealth out of their asset recovery mechanisms, creating a gap.

This research aims to identify gaps and challenges with the current legal frameworks and investigates the impact of international and regional instruments ratified by Lesotho to curb these serious economic offences. The research recommends the enactment of the Unexplained Wealth Act, which will complement existing laws by authorising the forfeiture of properties and assets acquired through unexplained channels. The study also recommends that special courts be created for efficient and effective delivery of justice.

The methodology used in this study is entirely desktop-based, utilising both primary and secondary data. A comparative study will be conducted with the United Kingdom, a developed country that has legal frameworks like Lesotho, to draw best practices for the betterment of Lesotho.

Keywords: corruption, money laundering, good governance, development, and legal frameworks.

LIST OF ACRONYMS

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
APRM	African Peer Review Mechanism
AUCPCC	African Union Convention on Preventing and Combating Corruption
DCEO	Directorate on Corruption and Economic Offences
DMA	Disaster Management Authority
DPA	Deferred Prosecution Agreement
DPP	Director of Public Prosecutions
ESAAMLG	East and Southern Africa Anti-Money Laundering Group
FAFT	Financial Action Task Force
FIU	Financial Intelligence Unit
LMPS	Lesotho Mounted Police Service
MLPCA	Money Laundering and Proceeds of Crime Act
NCA	National Crime Agency
PAC	Public Accounts Committee
PCEO	Prevention of Corruption and Economic Offences
PEP	Politically Exposed Person
POCA	Prevention of Corruption Act
RSL	Revenue Services Lesotho
UK	United Kingdom
UNCAC	United Nations Convention Against Corruption
UNCTOC	United Nations Convention Against Transnational Organised Crime
UN	United Nations
UWO	Unexplained Wealth Orders

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Chapter One

1.1 Background to the study

Lesotho is affected by an alarming rate of corruption. It appears at every stage of decision-making, whether in government or the private sector. According to the Corruption Perception Index 2024, Lesotho ranks 99 out of 180 countries.¹ The rate of corruption and money laundering has been escalating recently in Lesotho. This is shown by the increasing numbers of reported cases wherein high-ranking government officials such as Principal Secretaries, Directors in government ministries, and Politically Exposed People are remanded before courts of law for committing these offences.

Lesotho ratified and signed the United Nations Convention Against Corruption on the 16th of September 2005.² In Chapter III, states are mandated to implement appropriate measures to guarantee that offenders, including people, organisations, or legal entities, are held accountable. It provides as follows, “each state party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally: bribery of national public officials, bribery of foreign public officials and officials of public international organisations, embezzlement, misappropriation or diversions of property by public officials, trading in influence, abuse of functions, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector, laundering of proceeds of crime, and obstruction of justice”.³

States commit to setting up independent, specialised law enforcement authorities tasked with combating corruption. They must possess adequate independence, capability, and specific expertise to effectively investigate, prosecute, and resolve corruption and associated charges. The Convention mandates enhanced coordination, collaboration, and information sharing between governments and the business sector. Concurrent measures must be enacted to safeguard witnesses, experts, victims, and informants.⁴ Article 32 specifically deprives perpetrators of their illicit assets through “freezing, seizure, and confiscation”.⁵

¹ Transparency International, ‘Corruption Perception Index’ (2024) available at <<https://www.transparency.org/cpi>> accessed on 14 May 2025.

² United Nations Office on Drugs Crime, Country Review Report of the Kingdom of Lesotho (2012-2013) 3 available at <<https://www.unodc.org>> Country visit final Report accessed on 20 January 2025.

³ United Nations Convention Against Corruption (2003) Chapter III, Articles 15-25 available at <<https://www.unodc.org>> accessed on 4 March 2024.

⁴ UNCAC, Articles 32,33,37,38 and 39.

⁵ UNCAC, Article 31.

The Parliament of Lesotho enacted pertinent legislation in compliance with the United Nations Convention Against Corruption, aimed at combating corruption and money laundering. The Prevention of Corruption and Economic Offences Act No. 5 of 1999, the Money Laundering and Proceeds of Crime Act of 2008, and the Penal Code Act of 2010 were enacted. The Directorate on Corruption and Economic Offences (DCEO) was founded under the Prevention of Corruption and Economic Offences Act.⁶ It was given the authority under the Money Laundering and Proceeds of Crime Act to be the Anti-Money Laundering Authority.⁷ The Financial Intelligence Unit (FIU) was also formed as a central agency authorised to investigate and report unusual money movements.⁸ The Financial Intelligence Unit works hand in hand with the DCEO and other stakeholders, such as the Lesotho Mounted Police Services, to detect and investigate economic offences.

The DCEO conducts investigations and prosecutes cases in court with the approval of the Director of Public Prosecutions.⁹ However, in most cases, the outcome of the Court's decisions is undesirable. In a few instances, recoveries are made, but they are far less than the actual loss suffered by the state due to these economic offences. In the end, recurring corruption activities and insufficient asset recovery leave this country in abject poverty.

The case of *R v Retšelisitsoe Khetsi*¹⁰ is a good demonstration of Court's decisions with unfavourable effects and showing lack of commitment to eradicate corruption. The accused was the Principal Secretary and the Chief Accounting Officer in the Ministry of Home Affairs. He was accused of corruption in awarding a contract in the amount of M300 000 000.00 to a foreign company called Nikuv International Projects for providing the country with National Identity Documents and Passports. It was alleged that the accused received M5 000 000.00 as a bribe. The accused was brought before the court in 2013. After four years, the court quashed the charges against him because the Prosecution had taken too long to proceed with the case. Therefore, the accused was deprived of an impartial judicial process. The Court disregarded the reasons advanced for the delay.

The case proceeded in Israel since Nikuv International Project was a company originating from Israel, and it is against Israeli law for a company to obtain a contract out of corruption deals. It

⁶ Prevention of Corruption and Economic Offences Act, 1999, S3.

⁷ Money Laundering and Proceeds of Crime Act, 2008, S11(2).

⁸ Ibid, S 14-15.

⁹ Ibid, S 3-4.

¹⁰ CRI/ T/0079/2014 (unreported) available at < <https://lesotholii.org/akn/judgments> > accessed 11 January 2024.

was presented before the court that in 2012, Nikuv entered in a contract with Lesotho to provide the country's National Identity Documents and Passports. It transpired that before completing the agreement, Nikuv engaged an intermediary who connected the accused with the company, and the amount of \$ 5,000,000.00 was paid as a bribe for the deal to materialize. The Israeli Court convicted the company of manipulating a foreign official to promote its business interests in the region. According to the Court, it was the first time an Israeli business has been convicted of paying a foreign official for business manipulation, a crime punishable according to Israeli legislation.¹¹

In light of this, the research endeavours to analyse the current law system against corruption and money laundering, to evaluate its capacity in eliminating these criminal offences. To assess whether it is effective enough to reduce the prevalence of corruption and money laundering in Lesotho.

1.2 Research problem

Lesotho has been battling corruption and money laundering for decades. Despite having legal and institutional frameworks in place, corruption and money laundering seem to be escalating. Criminal prosecution of corruption and money laundering cases does not bring the desired outcome since cases are stacked for years in courts. Asset recovery mechanisms provided in the Money Laundering Act also depend on proving how the property and the crime are related. The property ought to be a product of illegal activity, or a tool used to commit a crime for it to be seized by the state.¹² Evidence must demonstrate the likelihood that the property was acquired through the commission of a particular crime. The law concentrates on the products of criminal activity and leaves out property acquired through unexplained channels. This leaves criminals with the benefit of enjoying the proceeds of crime if it was undetected.

Recently, individuals who wanted to get wealth instantly entered politics. After being chosen, they quickly flourish. Since there is no Unexplained Wealth Legislation in the country, most politically exposed people and their relatives are wealthier than they were before becoming politicians. This inadequacy allows corruptors to thrive when no crime is detected. The Money Laundering and Proceeds of Crime Act concentrates on the proceeds of crime and links assets with specific offences. The gap in asset recovery procedures compels Lesotho to find a more

¹¹ The Times of Israel newspaper available at <<https://www.timesofisrael.com> dated (15 December 2016) > accessed 11 January 2024.

¹² Money Laundering and Proceeds of Crime Act, 2008, S 98(1).

effective way to recover the resources lost through corruption and money laundering. It is the right time to design and implement a system that will fill the crack in the current framework, especially through robust asset recovery processes.

1.3 Research questions

The overarching research question is whether the Lesotho Anti-corruption and Anti-money laundering legal frameworks effectively combat corruption and money laundering crimes and what are the primary challenges and loopholes within the current legal system that hinder the successful combatting of corruption and money laundering in Lesotho?

1. To what extent do corruption and money laundering interconnectedness undermine the principles good governance and development in Lesotho?
2. What specific legislative, institutional, and enforcement measures has Lesotho undertaken to align its domestic framework with the provisions of International and Regional Anti-corruption and Anti-money laundering treaties ratified?
3. To what extent does the Lesotho's criminal justice system result in successful convictions, asset recovery, and a demonstrable reduction in corruption and money laundering activities?
4. To what extent would the adoption and implementation of an Unexplained Wealth Order (UWO) within the current legal framework effectively strengthen anti-corruption and anti-money laundering efforts in Lesotho?

1.4 Aims and objectives of the study

The study's first aim is to assess the effectiveness of the current legal system to combat money laundering and corruption in the country.

The second aim is to investigate the relationship between corruption and money laundering and figure out ways in which they impede good governance and development in Lesotho.

The specific objectives of the study are:

1. To assess the impact of international and regional treaties ratified by Lesotho to prevent corruption and money laundering.
2. To evaluate the capacity of the criminal justice system in preventing corruption and money laundering in Lesotho.

3. To recommend new strategies, such as adopting the Unexplained Wealth Order, to strengthen the current legal systems and decrease the prevalence of corruption and money laundering.

1.5 Justification of the study

The research is important in several ways. First and foremost, it is intended to improve the current legal frameworks by studying what other nations have done and devising new tactics that control corruption and money laundering. It will also assist the government or policymakers with a clear overview of the suggested amendments to the current laws after finding bottlenecks. The study will also help society to understand how these offences affect the development of the country. Finally, it will help scholars in furthering their research in this area.

1.6 Literature review

1.6.1 Corruption

Corruption has been discussed in academic writings and books. The authors approached it in different dimensions. There is no standard explanation of corruption because it manifests in various ways. The basic description of corruption is that “it is the abuse of public power for private benefit.”¹³ This working definition is derived from the United Nations Convention against Corruption (UNCAC). It is defined as " the abuse of entrusted power for private gain."¹⁴

Corruption is classified into three categories. They are political corruption, electoral corruption, and bureaucratic or minor corruption.¹⁵ The first category includes people with authority, such as senior government officials, who make decisions, laws, and policies that suit their preferences. They use their positions to solicit money and other benefits for their own gain or the benefit of others. Typically, grand corruption involves large sums of money, and members of society become victims. That is where money laundering chips into disguise serves the dirty money derived from corrupt activities for reinvestment purposes.¹⁶

Electoral corruption involves political leaders who buy votes from society during elections. They promise people political posts or other benefits, such as scholarships and better living

¹³ George T Abed and Sanjeev Gupta, ‘Governance, Corruption and Economic Performance’ (2002) IMF, Washington DC 25 available at <eds-p-ebcohots-com.nul.remotex.co > accessed 24 February 2024.

¹⁴ United Nations Convention Against Corruption, (2003), Article 4.

¹⁵ Ibibio Lucky Worika, ‘Corruption and Good Governance in Nigeria: What Are We Not Doing Rights?’ (2022)3 Law and Social Justice Review 154 available at <https://heineonline.org.HOL > accessed 27 February 2024.

¹⁶ Ibid.

conditions, in exchange for votes. The third category is petty corruption, which occurs mostly in government departments. Government officers abuse their office in the discharge of their daily functions by soliciting bribes or other benefits from members of the public for rendering services.¹⁷

Other authors connect it with infringement of rights. According to Kumar, "The nexus between corruption and human rights needs to be examined from the standpoint of governance. Arbitrary exercise of power facilitates corruption and indeed a violation of human rights."¹⁸ Corruption diverts public resources away from society into personal benefits. Primary social services are affected, thereby causing human rights violations. Corruption also affects the economy and development of states. Sandgren indicated that research has shown that a high rate of corruption reduces investment, and the inflow of capital decreases since money is used on the wrong projects.¹⁹ Corruption is a worldwide problem. Its impact can be devastating, especially in developing countries, where it includes extortion, exploitation of public property, abuse of power, and theft costing billions of dollars each year. Corruption and the resulting illicit financial flows impede economic development and basic service delivery, erode trust in governments and the rule of law, and thus perpetuate poverty.²⁰

1.6.2 Money laundering

Money laundering is the act of concealing the fact that money was acquired through unlawful activities. The act of legitimizing such funds follows the occurrence of criminal activity.²¹ According to Latif Lyla, money laundering is defined as "the processing of criminal proceeds to conceal their illegal origin."²² It is an attempt to hide or convert money from illicit sources into licit assets and resources, allowing it to be used without restriction. It is a significant threat to the safety and soundness of the overall economy, and it reinforces criminal activities. Money

¹⁷ Ibid.

¹⁸ C. Raj Kumar, 'Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India (2003)' *Colum J Asian* available at <<https://heinonline.org.HOL>> accessed on 27 February 2024.

¹⁹ Claes Sandgren, 'Combating Corruption: The Misunderstood Role of Law' (2005) 39 *International Lawyer* 718 available at <<https://heineonline.org.HOL>> accessed 27 February 2024.

²⁰ Organization for Economic Cooperation and Development, 'Tracking Anti-Corruption and Asset Recovery Commitment: A Progress Report and Recommendation for Action' (2011) ACCRA Report available at <<https://www.worldbank.org/STaR>> accessed on 28 October 2024.

²¹ Sharman JC, 'The Despot's Guide to Wealth Management on the International Campaign Against Grand Corruption' (2017) Cornell University Press 20 available at <<https://www.ebsco.com/terms-of-use>> accessed on 01 November 24.

²² Latif, Lyla A "Intensifying the Study Fight against Corruption and Money Laundering in Africa (2022) UNOSAA 9 available at <<https://www.un.org/osaa>> accessed on 9 October 2024.

laundering can take place through a variety of channels, from simple monetary operations to complex financial and business transactions.²³

Money laundering involves three critical stages: The term "placement" is the introduction of illicit money into financial institutions, whether in a direct or indirect manner. To hide the audit trail and offer anonymity, criminals employ a technique called "layering," which entails establishing intricate webs of financial transactions. Once the layering is complete, the money laundering income can be reinvested into legal businesses through integration schemes, giving the impression that they are using regular company finances.²⁴

1.6.3 The current Anti-Corruption and Anti-Money Laundering legal framework.

The forfeiture proceedings under the Money Laundering and Proceeds of Crime Act (MLPCA) are intended to serve the State's interest in recovering what was stolen from its coffers. That interest is compelling because corruption diverts public resources away from public services towards private gain. However, there are some stumbling blocks that prevent complete recovery because asset recovery procedures under the Act require a link between the asset and the crime.

The MLPCA consists of two procedures: conviction-based forfeiture and non-conviction-based forfeiture. When the accused is convicted of a criminal offence, his or her property is taken by the state. The Authority should file a confiscation application within 6 months of the conviction.²⁵ An asset must be proven to have been obtained through criminal activity. The State or the Anti-money laundering authority bears the burden of proving a prima facie case that the property is derived from legal income or is an instrument for the commission of a crime. Another one is non-conviction based. However, it permits the confiscation of assets that are determined to be the proceeds or instrumentalities of crime, necessitating a connection between the asset and the offence committed.²⁶ This criterion is often hard to prove when assets have been transferred, changed, or laundered to hide or obscure their illicit origin.²⁷

The fact that Lesotho has no higher statistics of criminal convictions on corruption or related money laundering offences or recovered assets is not because bribes are not being paid by

²³ Ibid

²⁴ Ibid

²⁵ Money Laundering and Proceeds of Crime Act, 2008, S 37(1) and S 40(1).

²⁶ Money Laundering and Proceeds of Crime Act, 2008, S98(1).

²⁷ Jean-Pierre Brun, Larissa Gray, Clive Scott, Kelvin M. Stephenson, "Asset Recovery Handbook: A Guide for Practitioners" (2011) Stolen Asset Recovery Initiative-StAR 7 available at <<https://www.worldbank.org>> accessed on 9 October 2024.

companies to public officials. It is because investigating, prosecuting corruption cases, tracing, freezing, and recovering assets are complicated processes under the current legal frameworks.

1.6.4 The Proposed Unexplained Wealth Order (UWO)

The Unexplained Wealth Order (UWO) is typically an investigative and confiscation procedure that requires certain individuals to explain how they obtained specific property after authorities have determined that it is incommensurate with their lawfully obtained income and assets.²⁸ This unexplained wealth order is the subject of an investigation, enforcement action, or both, and the respondent must prove a legitimate source of wealth. In the absence of a reasonable explanation, authorities may apply for confiscation. When there is no explanation, the authorities benefit from the presumption of illicit origin. Unlike other asset recovery measures (criminal confiscation, non-conviction-based confiscation), a UWO does not necessitate establishing a connection between the asset and a crime.²⁹

The Unexplained Wealth Order may apply to anyone, including legal entities, or it may be directed specifically at Politically Exposed Persons (PEPs). If the concerned individual fails to justify the legitimate origin of the assets, confiscation may be ordered; there is no need to show a relationship between the asset and a crime.³⁰ UWO systems are designed to identify unexplained wealth and, at a certain point, impose the onus on the respondent to come up with an explanation for the difference between legitimate income and apparent wealth. The key legal innovation of UWOs compared to pre-existing proceeds-of-crime measures is, in broad terms, that UWO measures reverse the burden of production on proof so that if authorities can demonstrate a difference between a respondent's wealth and her lawful income, the respondent must account for her wealth. UWOs are civil and do not require a criminal conviction.

1.6.5 Application of Unexplained Order in the United Kingdom

The UWO system is used in the United Kingdom, among other countries. It is provided in the Criminal Finances Act of 2017, which came as an amendment to the Proceeds of Crime Act of 2002.³¹ It is civil, and only a court has the authority to impose an obligation on a person to provide information about the sources of income used to acquire certain wealth.³² If the targeted

²⁸ Jean-Pierre B, Rita J, Yoonhee H, Jeanne H, Jeffrey O, "Unexplained Wealth Orders: Towards a New Frontier in Asset recovery" (2023) Stolen Asset Recovery Initiative-StAR 16 available at <<https://www.worldbank.org>> accessed on 9 October 2024.

²⁹ Ibid.

³⁰ Ibid.

³¹ Criminal Finances Act 2017, Chapter 2, Part 1, S1.

³² Ibid

person is politically exposed, no separate or underlying criminal activity is required for the order to be imposed.³³

To obtain a UWO for property, the enforcement authority must show the court that several of the requirements listed below have been met. The court may then issue such an order if it considers there are reasonable grounds to believe the following: ³⁴

- (i) The respondent has property with a value greater than \$50,000.
- (ii) There are justifiable reasons to believe that the respondent's legitimate income was inadequate to acquire the property.
- (iii) That the respondent qualifies as a politically exposed person.
- (iv) There are justifiable reasons to suspect that the respondent is or has been engaged in serious criminal activity, either in the UK or abroad.

1.7 Research methodology

The study will rely entirely on a comparative analysis research method. The Lesotho anti-corruption and anti-money laundering legal frameworks will be compared with the United Kingdom legal frameworks, to provide recommendations to identified problems, since the United Kingdom is a developed country with similar legal systems to those of Lesotho. Secondary data in the form of books, legislation, journal articles, case law, international and domestic instruments, government reports, internet sources, and newspapers will be relied on.

1.8 Limitations of the study

Corruption and money laundering are sensitive issues, especially when dealing with high-ranking government officers and politically exposed people. The study seeks to analyse the current legal framework to fill loopholes. However, this might be a threat to the said people because they are benefiting from the gap. As a result, the recommendations are likely to face the challenge of a lack of political will to adopt the recommended system. Apart from that, the study might not cover other areas that are already operating with the Unexplained Wealth Orders due to limited time and lack of resources.

³³ Jean-Pierre Brun, Rita Julien, Yoonhee Hur, Jeanne Hauch, Jeffrey Owen, “Unexplained Wealth Orders: Towards a New Frontier in Asset recovery” (2023) Stolen Asset Recovery Initiative-StAR 84 available at <<https://www.worldbank.org>> accessed on 9 October 2024.

³⁴ Proceeds of Crime Act 2002 as amended by Criminal Financial Act 2017, S 362 B (1-4).

1.9 Chapter overview

Chapter 1. The chapter introduces the study. It lays down the background, the research problem the study intends to investigate, and the objectives thereof.

Chapter 2. Definitions of key concepts in the topic and a literature review.

Chapter 3. An analysis of the legal framework for anti-corruption and anti-money laundering in Lesotho is undertaken in this chapter. Also, discuss the impact of international and regional instruments ratified by Lesotho to combat corruption and money laundering on the domestic level.

Chapter 4. This chapter focuses on a comparative analysis of the Anti-Corruption and Anti-Money Laundering legal framework in the United Kingdom.

Chapter 5. The Chapter will table the findings of the study and make conclusions and Recommendations.

Chapter Two

Overview of the Concepts of Corruption and Money Laundering

2.1 Introduction

Corruption and money laundering are significant barriers to economic and political development, particularly in developing countries. In recent years, corruption and money laundering have been serious impediments to Lesotho's good governance and development. Every year, the Public Accounts Committee (PAC), which has the oversight function of ensuring accountability and transparency within the public sector, confronts Chief Accounting Officers in different government ministries with issues of misappropriation of public funds. In most instances, such misuse of public funds results in money laundering activities within the country and across borders.

This chapter will focus on the understanding of key concepts such as corruption, money laundering, good governance, and development. The chapter will also look at the nexus between corruption and money laundering. Their impact on good governance and the development of the country will be discussed. Factors that perpetuate corruption and money laundering in Lesotho will also be identified.

2.2 Meaning of corruption

Scholars and various international organisations have defined corruption, but there is no standard definition due to its complexity. Myint defines corruption as the use of public office for private gain. In other words, the use of an official position, rank, or status by an office bearer for their own personal benefit.³⁵ Corruption is the misuse of entrusted authority for personal gain. It covers a wide range of behaviours, from petty to grand bribery, insider trading, embezzlement, trading in influence, and illegal enrichment.³⁶

Corruption is generally defined by Transparency International as the abuse of entrusted power for private benefit.³⁷ The World Bank and the International Monetary Fund have preferred a straight forward definition of corruption as "misuse of public power for private benefit".³⁸ The

³⁵ Myint U, 'Corruption: Causes, Consequences and Cures' (2000) Asia-Pacific Development Journal 35 available at <<https://www.unescap.org>> accessed on 15 November 2024.

³⁶ Latif, Lyla A 'Intensifying the Study Fight against Corruption and Money Laundering in Africa' (2022) UNOSAA 8 available at <<https://www.un.org/osaa>> accessed on 9 October 2024.

³⁷ Transparency International, 'The Anti-corruption Plain Language Guide' (2009) 14 available at <<https://www.transparency.org>> accessed on 15 November 2024.

³⁸ The World Bank, 'Helping countries combat corruption: The Role of the World Bank' (1997) 8 available at <https://documents1.worldbank.org/curated>>accessed on 23 November 2023.

United Nations Development Programme defines corruption as ‘the misuse of public power, office or authority for private benefit -through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement’.³⁹

The United Nations Convention Against Corruption UNCAC does not define corruption in a strict sense. It lists and defines a series of offences which States Parties must criminalize and consider as acts of corruption. They are bribery of national public officials, bribery of foreign public officials and international organisations, embezzlement, misappropriation or diversion of property by a public official. The Convention also includes trading in influence, abuse of functions, illicit enrichment, bribery in the private sector, and embezzlement of property in the private sector.⁴⁰

It continues to say a public officer is using their position to make a gain for themselves if they receive, or offer to receive, a bribe. It is also a term misused whenever private actors bribe their way around public rules and laws just to make more money and gain an edge over others. Public posts can be exploited with or without bribery. This might occur through favouritism and nepotism, theft of state assets, or misuse of state funds.⁴¹

In Lesotho, the definition of corruption is covered in the Prevention of Corruption and Economic Offences Act No.5 of 1999 and its amendment Act of 2006. The Act does not define corruption in a strict sense, just like the UNCAC. It, however, covers a wide spectrum of corruption ranging from corruption by public officers, corruption in respect of official transactions, acceptance of bribes, promise of bribes, corrupt transactions with agents, bribery for award of tenders, contracts, or concerning auction, and conflict of interest.⁴² The Act established DCEO as the institution responsible for driving the fight against corruption. The DCEO is mandated to investigate complaints and prosecute suspected cases of corruption and economic crime, working together with the Director of Public Prosecution.⁴³

³⁹ UNDP, ‘Primer on Corruption and Development’ (2008)7 available at <[https:// www.undp.org](https://www.undp.org) > accessed on 23 December 2024.

⁴⁰ UNCAC, Article 15-22 available at <https://www.unodc.org/documents/Brussels> accessed on 23 December 2023

⁴¹ Ibid.

⁴² Prevention of Corruption and Economic Offences Act No.5 of 1999, Sections 21-29.

⁴³ Prevention of Corruption and Economic Offences Act No.5 of 1999, Sections 3,6 and 43.

2.2.1 Classification of corruption

Corruption is classified into two types: grand corruption and petty corruption.⁴⁴ Grand corruption occurs when politicians and political decision-makers who have the authority to formulate, establish, and implement laws are also corrupt. Grand corruption, otherwise known as political corruption, occurs when decision-makers use their political power to maintain their status and wealth. It occurs when policy formulation and legislation are designed to benefit politicians and legislators. It occurs at the highest levels of political authority.⁴⁵

Grand corruption is when high-ranking government officials misuse their authority to pilfer substantial amounts of money from the government coffers. Usually, they use the global financial system to launder this money, creating shell corporations in offshore secrecy jurisdictions to hide the source of their illicit gains.⁴⁶ As a result, political corruption frequently involves the abuse of power, which not only leads to the misallocation of resources but also affects the way decisions are made.⁴⁷

Grand corruption, or political corruption, can thus be distinguished from bureaucratic or petty corruption. Petty corruption is always the type of corruption that involves lesser amounts of money or gifts. It is a means of supplementing the low salaries paid to public employees, including judicial officers.⁴⁸ Petty corruption is the exchange of small sums of money or gifts between two or more people, each of whom is an insignificant figure within the organisation where corruption is practised. It is particularly prevalent in places where civil officials' monthly income falls short of their essential monthly needs.⁴⁹ Petty corruption involves the exchange of small sums of money, small favours or other items or services of small value for preferential treatment, in the delivery of a service, hiring of relatives or friends, and things of that nature.⁵⁰

⁴⁴ United Nations Economic Commission for Africa, 'Deepening the judiciary effectiveness in combating corruption' (2009) Addis Ababa 3 available at <https://hdl.handle.net/10855/4652> accessed on 23 December 2024.

⁴⁵ Ibid.

⁴⁶ Dávid-Barrett, E. and Tomić, S. 'Transnational governance networks against grand corruption: Cross-border cooperation among law enforcement' (2022) SOC ACE Research Paper No. 8. Birmingham, UK: University of Birmingham available at <https://eprints.whiterose.ac.uk/186496/> accessed on the 20 December 2024.

⁴⁷ Transparency International, 'Political Corruption: Topic Guide' (2014) available at <https://knowledgehub.transparency.org> accessed on 24 November 2024.

⁴⁸ Ibid.

⁴⁹ Daniel N. Mlambo, Mandla A. Mubecua, Siphesihle Edmund Mpanza, Victor H. Mlambo, 'Corruption and Its Implications for Development and Good Governance: A Perspective from Postcolonial Africa' (2019) *Journal of Economics and Behavioral Studies* Vol. 11, No. 1 available at <<https://herreonline.org.HOL>> accessed 31 August 2024.

⁵⁰ UNODC AC Toolkit, 'What is corruption: Chapter1' available at < <https://www.unodc.org/documents/treaties/toolkit>> accessed 23 November 2024.

Worika is of the view that corruption can be seen in many forms but can be grouped into three categories. They are political or grand corruption, electoral corruption, bureaucratic or petty corruption.⁵¹ However, Transparency International classifies election corruption as another form of political corruption and “it can be manifested in a wide range of ways, including illegal political financing, undue influence on policymaking, state capture, election fraud, vote buying, abuse of state resources during elections, abuse of immunities, and other prerogatives related to their position, as well as favouritism in appointments and decisions, among others”.⁵²

Electoral corruption can be seen in the form of vote buying, promises of political office, intimidation, coercion, promises of special goodwill, and interference with electoral freedom. In exchange for votes, they offer people political positions or other benefits like scholarships and better living conditions.⁵³ Aside from the two broad types of corruption discussed above, corruption can be found in various forms, such as bribery, extortion, misuse of public funds and property, embezzlement, influence peddling, patronage, nepotism, and shared experience.

2.2.2 Causes of Corruption in Africa

Corruption in Africa can be traced to three main factors. The first is that inadequate institutions enable government and public officials to steal and abuse their power with impunity. The second is that there has been a fall in economic opportunities and in the standard of living for those on the public payroll in many countries, making corruption a feasible way to put bread on the table. The third consideration consists of external factors, such as foreign businesses and private interests that often use Africa’s extreme poverty and poor institutional framework to bribe state officials to get unfair advantages or political favours in government policy.⁵⁴

2.2.3 Factors that contribute to corruption in Lesotho

Several factors contribute to corruption in Lesotho. In the public service, it is commonly attributed to a lack of resources. Lesotho's civil servants are earning little salaries, and civil servants frequently leave the public service and thereby leading to the state of flux rather than a steady team. For these reasons, some public servants use their position to solicit money and

⁵¹ Ibibio Lucky Worika, ‘Corruption and Good Governance in Nigeria: What Are We Not Doing Rights?’ (2002) LASJURE 154 available at <<https://herreonline.org.HOL>> accessed 27 February 2024.

⁵² Transparency International, ‘Political Corruption’ available at <<https://knowledgehub.transparency.org/topics/political-corruption-parent-label>> accessed 23 December 2024.

⁵³ Ibid.

⁵⁴ Economic Commission for Africa, ‘Deepening the judiciary effectiveness in combating corruption’ (2009) available at <<https://repository.uneca.org/bitstreams/handle/104652/Bib.%2031947-1pdf?sequence=4>> accessed on 23 December 2024.

take money or other benefits from their customers.⁵⁵ Civil servants consider breaking established norms by seeking bribes for survival.⁵⁶ The Afrobarometer indicated that the level of corruption is highest among the police, followed by business executives.⁵⁷

There is also the existence of a monopoly of power to certain authorities, which is allowed by regulations in the country. For instance, there is only one company the Lesotho Electricity Corporation, which is responsible for providing electricity services in the whole country. The IMF perceived this type of monopoly as one that promotes corruption in that officials have much power and an opportunity to seek bribes for offering services.⁵⁸

Another factor contributing to the prevalence of corruption is greed, especially among high-ranking government officers who earn good salaries. The case of *Rex v Mosito Khethisa*⁵⁹ is a clear demonstration of this. Mr Khethisa was accused of corruption in that he gave Civa Innovation contract with the government of Lesotho. This company was owned by his relative and it was alleged that he awarded the contract without following procurement procedures. The government had already paid six Million Maloti to the company for a job that was not done. He pleaded guilty to the charges.

Another factor that contributes to corruption is ineffective anti-corruption agencies and lengthy judicial processes.⁶⁰ People are no longer afraid of committing corruption because they know that DCEO will take a long time to investigate a case. The same case would also be tracked for a long time in courts of law after the suspect was charged. Therefore, enforcement of law in corruption and money laundering cases does not deter people from engaging in corrupt activities in Lesotho.

Recently, the main factor that contributes to the prevalence of corruption in Lesotho is weak anti-corruption legal frameworks. High-ranking government officials and politically exposed people are aware of this weakness and are taking advantage of it. In terms of the Money

⁵⁵ Transparency International, "Overview of corruption and anti-corruption in Lesotho" (2014) 3 available at <<https://tihelpdesk@transparency.org>> accessed on 30 December 2024.

⁵⁶ Ibid

⁵⁷ Afrobarometer 2014 available at www.afrobarometer.org accessed on 23 December 2024.

⁵⁸ International Monetary Fund, 'Corruption Around the World: Causes, Consequences, Scope and Cures' (1998) Working Paper of the IMF 11 available at <https://www.imf.org>> external. pubs> accessed on 14 November 2024.

⁵⁹ Interview available at <<https://nthakoana.wordpress.com/2016/03/28/what-thahane-and-khethisa-did/>> accessed on 20 November 2024.

⁶⁰ Nwosu-Ihema, Ugochukwu, 'A Practical Assessment of the Efficacy of the Nigerian Anti-Money Laundering Legal and Institutional Framework for Politically Exposed Person' (2021) Durham University available at <<https://etheses.dur.ac.uk/14121> accessed on 15 November 2024.

Laundering Act, forfeiture of a property will follow where the anti-corruption institution succeeds in proving on the balance of probabilities that the property, which is the subject of a preservation order, is an object of an offence, or is the proceeds of unlawful activities.⁶¹ If the state is unable to prove those two requirements, a suspect can enjoy the proceeds without interference.

The case of *Makhotso Mahosi and Another v DCEO*,⁶² demonstrates this shortcoming. In that case, the Directorate on Corruption and Economic Offences investigated the late Disaster Management Authority (DMA) chief executive officer for corruption and money laundering. The DCEO seized M500,000 in her house with suspicion that it was related to their investigations. She instituted an application before the court seeking the release of that money, which she claimed belonged to her three-member stokvel. The money was released to her by an order of the Court because DCEO could not prove that it was either an instrumentality or proceeds of crime as required by the law.⁶³

The reality that there are no unexplained wealth procedures in the anti-corruption laws allows corrupt officials to benefit from the products of criminal activities where such acts were undetected. Several studies have been done on corruption and factors that promote corruption, but so far, none of them have interrogated the issues of the absence of unexplained wealth legislation in the current anti-corruption and anti-money laundering framework.

2.3 Definition of money laundering

Money laundering refers to the process of disguising the source of money acquired through criminal activities. It occurs after a predicate offence that results in the financial gain of criminals.⁶⁴ Money laundering is any action that hides the illegal origin or source of criminal income. It entails hiding the source, ownership, or destination of money made by unlawful or dishonest means by mixing it in with legal business activity.⁶⁵ A definition of money laundering provided by the Financial Action Task Force (FATF) describes it as "the processing of criminal

⁶¹ Money Laundering and Proceeds of Crime Act, 2008, S98(1).

⁶² *Makhotso Mahosi & Another v DCEO* CIV/0004/23 LSHC available at <<https://lesotholii.org>> accessed on 30 December 2024.

⁶³ Lesotho Times, 20 January, 2023 available at <https://lestimes.com> accessed on the 2 January 2025.

⁶⁴ J.C. Sharman and David Chaikin, 'Corruption and Anti-Money-Laundering Systems: Putting a Luxury Good to Work' (2017) Cornell University Press 29 available at <<https://www.ebsco.com/terms-of-use>> accessed on 01 November 2024.

⁶⁵ *Ibid.*

proceeds to disguise their illegal origin."⁶⁶ The criminals are able to reap the products without jeopardising the source of their revenues ,which is why this strategy is necessary.⁶⁷

According to the Money Laundering and Proceeds of Crime Act No.4 of 2008,money laundering is when " A person commits the offence of money-laundering if the person (a) acquires, possesses or uses property; or (b) converts or transfers property intending to conceal or disguise the illicit origin of that property or of aiding any person involved in the commission of an offence to evade the legal consequences thereof; or (c) conceals or disguises the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is derived directly or indirectly from acts or omissions; (i) in Lesotho which constitutes an offence against this Part, or another law of Lesotho punishable by imprisonment for not less than 24 months; (ii) outside Lesotho which, had they occurred in Lesotho, would have constituted an offence under Lesotho law, punishable by imprisonment for not less than 24 months".⁶⁸

2.3.1 Phases of Money Laundering

Money laundering is classified into three phases, which are the placement stage, layering stage, and integration stage.⁶⁹ The first stage of placement involves placing funds into financial institutions. Here, the illicit funds are introduced into the financial markets. For example, criminals would open many bank accounts with various banks and make little deposits into them, but the money would never surpass the barrier required to present proof of evidence. Another means of depositing funds with financial institutions is through the employment of experts such as lawyers or accountants, who offer the option to pool funds or accept and place funds for their clients.⁷⁰

⁶⁶ FAFT available at <<https://www.fatf-gafi.org>> accessed on 1 November 2024.

⁶⁷ Ibid, see also De Koker, M Basson Symington and P Smit, "Money Laundering and Terror Financing: Law and L compliance in South Africa" (2019) Lexis Nexis 10 available at <<https://www.lexis.nexis.com>> accessed on 30 October 2024. and

Meridian Finance, 'Guidelines on Prevention of Money Laundering and Terrorist Financing', (2017) available at <<https://www.meridianfinance.com>> accessed on 1 November 2024.

⁶⁸ Money Laundering and Proceeds of Crime Act No.4 of 2008, Section 25 (1).

⁶⁹ De Koker, M Basson Symington and P Smit, 'Money Laundering and Terror Financing: Law and Compliance in South Africa' (2019) Lexis Nexis 5 available at <<https://www.lexis.nexis.com>> accessed on 30 October 2024.

⁷⁰ Ibid.

The second stage of layering is the method of dissociating illicit gains from their origin through complex financial transactions aimed at hiding the audit trail and ensuring anonymity.⁷¹

Integration is the final stage where illicit funds re-enter the financial systems as clean money. Real estate, luxury items, corporate shares, and other forms of investments. The money may be utilised to make legal investments because it is now transformed. However, it remains associated with illegal activities.⁷²

The case of *Rex v Moferefere Tebello Senatla Lejone*⁷³ is an illustration of money laundering and its stages. He was charged with fraud or theft and eight counts of money laundering. The Crown charged the accused with money laundering, alleging that he funded his businesses, namely City Brothers Catering, Greenside Tavern, Senatla Poultry, City Brothers Hair Salon, and Josysy Bar and Shop, and further purchased motor vehicles using the proceeds of crime. The accused was a messenger. He was accountable for the banking of currency collections on behalf of his employer, Sentebale Gap Funeral. The accused was accused by the Crown of obtaining money through fraud or theft between April 2017 and July 2018. The cash deposits with which he was entrusted for banking were unaccounted for in the amount of M2 328 000 00. To hide the illicit source of the profits, he directed this money through his enterprises and acquired assets.

The Court explained what money laundering entails as follows: Money laundering is the process of sanitising unlawful profits to conceal their illicit source. Money laundering offences are linked to criminal confiscation. Money laundering violations will probably be revealed during an investigation into the whereabouts of criminal proceeds. Criminals who are acquisitive will try to distance themselves from their riches by locating secure places for their assets to evade seizure and make the assets appear genuine. The Court further emphasized that money laundering strategies may be simple or complex. The most complex money laundering technique includes three stages: where illicit money enters the financial system through placement. Layering involves complicated operations, sometimes through offshore firms, to bring money into the financial systems. Integration is investing illegal money in real estate to integrate it into the economy. The accused was found guilty as charged.

⁷¹ Latif, Lyla A 'Intensifying the Study Fight against Corruption and Money Laundering in Africa' (2022) UNOSAA 9 available at < <https://www.un.org/osaa>> accessed on 9 October 2024.

⁷² Ibid

⁷³ CRI/T/0010/19 (unreported) available at < <https://lesotholii.org/akn/judgments>> accessed 14 November 2024

2.4 The connection between corruption and money laundering

Money laundering and corruption are inextricably linked because the proceeds of corruption must be laundered and integrated into the economy. Money laundering allows criminals to profit from their criminal activities, making crime a desirable choice. It also facilitates corruption and, eventually, the growing dominance of criminal networks gains financial control, which weakens the stability of national economies.⁷⁴ Corruption creates a demand for money laundering activities, while the potential to launder illicitly obtained funds serves as a supply-side incentive for corrupt practices.⁷⁵ This means corruption encourages money laundering, while the latter makes corruption possible and profitable.

The UNCTAD Economic Development in Africa Report states that while corrupt activities make money laundering profitable, the reverse is also true, as money laundering can make corruption viable and lucrative. Both present the most significant danger to economic expansion, political stability, peace and security, humanitarian efforts, and advancements in human rights. However, it is difficult to determine their frequency and scale to any degree. Nonetheless, they are challenging to assess with any precision.⁷⁶

The United Nations (UN) acknowledged the strong connections between money laundering and corruption, as stated clearly in the following statement: Money laundering and corruption have strong ties. Grand corruption requires the ability to transfer and conceal money. Therefore, an elevated level of coordination is needed to address both issues and policies that affect both areas.⁷⁷

2.5 The effects of corruption and money laundering in Lesotho

Corruption has the potential to obstruct tax collection at both the legislative stage as well as the collection stage.⁷⁸ The implementation of tax exemptions or other tax loopholes in return for bribes diminishes revenue potential. Customs administration is also susceptible to corruption.

⁷⁴ The Kingdom of Lesotho “Anti-Money laundering and combating the Financing of Terrorism Regime” (2020) National Strategy 4 available at <https://www.fiu.org.ls> accessed on 8 October 2024.

⁷⁵ Costa Jacopo, "The Nexus between Corruption and Money Laundering: deconstructing the Toledo-Odebrecht network in Peru" (2022) Trends in Organised Crime 344 available at < <https://doi.org/10>> accessed on 27 October 2024.

⁷⁶ United Nations Economic Commission for Africa, ‘Deepening the judiciary effectiveness in combating corruption’ (2009) Addis Ababa 10 available at <<https://hdl.handle.net/10855/4652>> accessed on 23 December 2024.

⁷⁷ United Nations Office on Drugs and Crime, ‘The Global Programme Against Corruption: UN Anti-corruption toolkit’ available at < <https://www.unodc.org/documents/corruption/Toolkit%20ed2.pdf>> accessed on 24 November 2024.

⁷⁸ IMF, ‘Curbing Corruption Chapter 2’, (2019) 39 available at <[https://www.protothema.gr/files/2019-04-10/FiscalMonitor April 2019](https://www.protothema.gr/files/2019-04-10/FiscalMonitor%20April%202019)> accessed on 23 November 2024.

In several countries, customs officials have a discretionary authority (including the power to delay the clearance of goods) with limited supervision. The distortion of tax legislations and the corruption of tax authorities reduce public trust. As a result, compromising the culture of tax compliance.⁷⁹ This means economic growth is also compromised.

Lesotho is not an exception. Recently, seven Revenue Services Lesotho (RSL) employees have appeared before the Maseru Magistrate Court, charged with bribery and money laundering. Five of these employees were deployed in the Smuggling Unit, while two were in Maseru Bridge and were engaged in bribery and money laundering at the border.⁸⁰ Their case is still pending in court. Corrupt activities such as the abovementioned case reduce government revenues. As a result, government services such as health services, public projects, and infrastructure will be at stake. Corruption and money laundering exacerbate poverty and starvation in the country.

2.6 The concept of good governance

Good governance broadly refers to the effectiveness, legitimacy, accountability, and transparency of a nation's governance, which is promoted by the World Bank.⁸¹ Okezie refers to good governance as “a state in which the duties of the government are carried out efficiently, openly, and responsibly, upholding the rule of law, maintaining the effectiveness and accountability of institutions, and establishing a framework for public participation and decision-making are all necessary to protect human rights.”⁸² Henk holds a distinct perspective, asserting that good governance encompasses more than just the transparent and participatory exercise of government power.⁸³ He thinks that, in order to be effective, power must be exercised in a decent and faithful manner. Fundamentally, it pertains to the execution of the government's three fundamental obligations: to ensure the security of the populace, to oversee the public sector in a manner that is both effective and accountable, and to advance the country's economic and social objectives in line with the population's needs.⁸⁴

⁷⁹ International Monetary Fund, “Curbing Corruption: Chapter” 2 (2019) 39 available at <<https://www.imf.org>> accessed on 5 January 2025.

⁸⁰ Lesotho News Agency, available at www.lena.gov.ls accessed on the 5 January 2025.

⁸¹ Lars Rudeberk, ‘Democracy and Development-A Disputed Pair (2016) Vol 41 African Development available at <<https://www.ebsco.com/terms-of-use>> accessed 09 May 2024.

⁸² Okezie Chukwemerije, ‘Peer Review and Promotion of Good Governance in Africa’ (2006) 32 North Carolina Journal of International Law and Commercial Regulation.63 available at <<https://heinonline.Org/HOL/License>> accessed 16 March 2024.

⁸³ Henk Addink, ‘Good Governance: Concept and Context’, (2018) Oxford University Press 3 available at <<https://www.dokumen.pub>> accessed on 10 May 2024.

⁸⁴ Ibid.

The Organisation for Economic Co-operation and Development defines good governance as follows: democratic institutions that are open, transparent, and accountable; fair and equitable, engagement with citizens through various channels, allowing their input and involvement, efficient and effective service delivery, laws and regulations that are clear, transparent and consistently applied, finally creation of consistent policies.⁸⁵

There are eight key components of good governance. Participatory, dependable, responsive, open, efficient, equitable, and inclusive. It ensures that corrupt practices are curtailed, minority opinions are given due consideration, and the needs of the most defenceless members of the community are addressed during decision-making. Additionally, it addresses both present and future societal demands.⁸⁶ Good governance is considered essential for attaining sustainable growth and human welfare. It is intrinsic in the fight against corrupt practices.⁸⁷

2.7 The concept of development

Yong-Shik Lee defines development as the "progressive transformation of the economy and society."⁸⁸ In recent years, the concept of development has expanded to include political freedoms, human rights, prosperity rights, elements that directly and indirectly improve life, gender equality, human security, and the availability of a safe and hygienic environment. Based on the definition of development's comprehensive approach, it can be argued that development is a dynamic concept that should not be viewed solely from the perspective of economic development but rather encompasses a broad spectrum of variables, such as demographic and political developments.

The UN views development as a multidimensional undertaking to achieve greater living standards for everyone and across various domains of existence, whether social, economic, political, and many more. That is why a new concept of human development, which encompasses a quality lifestyle and human security, was introduced by the United Nations Development Program.⁸⁹

⁸⁵ Yong-Shi Lee, 'General Theory of Law and Development: An Overview' (2019) 12 Law and Development Review 356 available at <<https://heinonline.Org/HOL/License>> accessed 17 March 2024.

⁸⁶ Muskaan Sharma, 'Good Governance: Principles and Importance' (2022) 4 Indian Journal of Law and Legal Research 3 available at <<https://heinonline.Org/HOL/License>> accessed 4 April 2024.

⁸⁷ Ibid.

⁸⁸ Yong-Shi Lee, 'General Theory of Law and Development: An Overview' (2019) 12 Law and Development Review 356 available at <<https://heinonline.Org/HOL/License>> accessed 17 March 2024.

⁸⁹ Ibid.

2.8 The connection between development and good governance

Good governance is a route to development. At all levels, it promotes the growth of responsive, transparent, and efficient institutions. Most significantly, it eliminates corruption and bribes as they are a detriment to development.⁹⁰ Bad governance cannot lead a country to development. The only possible outcome of bad governance is abject poverty and instability. According to the International Monetary Fund, any emerging nation that wants to win over the global financial markets must make excellent governance a priority. Stable and robust economic development is facilitated by good government. Economic growth in emerging nations may be slowed by poor governance, which can also harm private market confidence and lower private capital inflows and investment.⁹¹

Integral to the concepts of good and effective governance are accountability and transparency. A country cannot manage its resources properly without promoting transparency and accountability. These two characteristics of good governance prohibit corruption, and as a result, development will be on the rise. Reducing corruption and promoting growth can be achieved through implementing accountability and openness at every level of government decision-making and administration. Just like the law, these two principles cannot operate alone. There is a need for institutions to work on transparency and accountability. Such institutions should be independent and autonomous to execute their functions properly. Transparency and accountability in governance should be promoted by law, encompassed in clear legal frameworks, and enforced by capacitated and independent institutions.⁹²

2.9 Conclusion

Lesotho has been battling with corruption for decades, and the level of corruption has risen alarmingly lately. Society has normalised corruption. This is disturbing because corruption not only threatens the social security of a society but also compromises good governance and development in a state. This chapter has discussed several contributing factors to corruption and money laundering. The government should enact appropriate laws and capacitate designated institutions to combat this malaise. The struggle to combat corruption and money

⁹⁰ Muskaan Sharma, 'Good Governance: Principles and Importance (2022) 4 Indian Journal of Law and Legal Research 2 available at <<https://heinonline.Org/HOL/License>> accessed 4 April 2024.

⁹¹ AL- Jurf Saladis, 'Good Governance and Transparency: Their Impact on Development' (1999) 9 Transnational Law and Contemporary Problems 194 available at <<https://heinonline.Org/HOL/License>> accessed 16 March 2024

⁹² C.Raj Kumar, 'Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental right to corruption – Free Service in India (2003) 17 Colombia Journal of Asia Law available at <<https://heinonline.Org/HOL/License>> accessed 28 February 2024.

laundering should be a group effort. Society must change its mindset; corruption should no longer be considered a problem for only anti-corruption agencies to resolve. Stakeholders should change their attitude and take part in curbing its spread. The government and its citizens should uphold the principles of good governance to control corruption. The next chapter will critically examine Lesotho's Anti-Corruption and Anti-Money Laundering Framework.

Chapter Three

The Anti-Corruption and Anti-Money Laundering Legal Frameworks in Lesotho

3.1 Introduction

Lesotho enacted laws specifically designed to prevent corruption and money laundering. These laws were enacted in reaction to the country's signature and ratification of international and regional conventions, while others were enacted before ratification. The objective of this chapter is to critically evaluate the efficacy of Lesotho's present anti-corruption and anti-money laundering legal frameworks. To discuss ratified international instruments and their impact at the national level.

The chapter investigates factors that affect the proper execution of anti-corruption and anti-money laundering legislation in Lesotho. A determination will be made on whether the legal system addressing these economic offences in Lesotho is suitable to provide restitution. Also, whether asset recovery is a suitable option to prevent corruption and money laundering. The determination will be made based on decided cases.

Corruption and money laundering thrive on a weak legal system. Also, the legal system itself can be weakened by these offences. Both directions have a causal relationship. For most of the measures required to combat corruption to be effective, they must have a foundation in the legal system.⁹³ Therefore, the goal is to guarantee that this examination of Lesotho's legal framework will yield workable recommendations for bolstering the current legal system.

3.2 International and Regional Conventions

3.2.1 The United Nations Convention against Corruption (UNCAC)

The United Nations General Assembly formed the United Nations Convention against Corruption (UNCAC) in October 2003. In this Convention, member states are required to make a number of offences listed in the convention illegal.⁹⁴ Article 5(1) provides that “each member state shall in accordance with the fundamental principles of its legal system, develop and implementor maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of

⁹³ C. Sandgren, ‘Combating Corruption: The Misunderstood Role of Law’ (2005)39 Int Law 726 available at <<https://herreonline.org.HOL>>accessed 27 February 2024.

⁹⁴United Nations Convention against Corruption, Article 15-23 available at <https://www.unodc.org>documents>Brussels> accessed on 23 December 2023.

public affairs and public property, integrity, transparency and accountability”.⁹⁵ It binds members to create anti-corruption organisations, put anti-corruption policies into effect, and spread more information about preventing corruption.⁹⁶ These bodies should have independence and material resources to execute their functions efficiently and in the absence of undue interference.⁹⁷ The Convention obliges members to take steps to prevent and detect the transfer of illicit profits.⁹⁸

Chapter V of the Convention deals with processes for the seizure and forfeiture of illicit proceeds, allowing countries to enact required domestic laws for asset forfeiture. It urges State Parties to consider all possible measures to facilitate non-conviction-based asset recovery if a suspect is not criminally charged, because of death, flight, absence, or other reasons as determined by the national legislation of that member state. It is essential for the government to devise strategies for the recovery of proceeds derived from corruption committed by another member state.⁹⁹ It encourages collaboration among signatories, specifically in cross-border criminal affairs such as suspect extradition, sentence transfer, information sharing, identifying, freezing, and confiscating illicit proceeds, collaborative investigations, as well as unique investigation methods¹⁰⁰

3.2.2 The United Nations Convention against Transnational Organized Crime (UNTOC -Palermo Convention)

The Convention was adopted on the 15th of November 2000. It became operative on the 29th of September 2003.¹⁰¹ It pertains to the prevention, investigation, and prosecution of offences listed, which include serious crime, involvement in organised crime, laundering of illicit proceeds, and obstruction of justice.¹⁰² In terms of Article 2(b), serious crime is defined as “an activity that constitutes an offence punishable by at least four years imprisonment or a more severe penalty”.¹⁰³ To prevent and deter all types of money laundering, states must establish a domestic regulatory framework for banks and non-bank financial organisations to concentrate

⁹⁵UNCAC, Chapter II, Article 5(1) available at <https://www.unodc.org/documents/brussels> accessed on 23 December 2023.

⁹⁶ UNCAC Chapter II, Article 6(1) and (b) available at <https://www.unodc.org/documents/brussels> accessed on 23 December 2023.

⁹⁷ UNCAC, Article 6(2)

⁹⁸ UNCAC, Article 52.

⁹⁹ UNCAC, Articles 53 – 57.

¹⁰⁰ UNCAC, Articles 44-50

¹⁰¹ United Nations Office on Drugs and Crime, ‘Country Review of the Kingdom of Lesotho’ (2012-2013) 3 available at <<https://www.unodc.org>>CountryVisitFinalReport> accessed on 20 January 2025.

¹⁰²UNTOC, Articles 5, 6 and 23

¹⁰³UNTOC, Article 2(b).

on client identification, record-keeping, and reporting of suspect activities.¹⁰⁴ To prevent money laundering, state parties must enhance and establish global, regional, subregional, and bilateral collaboration among financial regulatory, judicial, and law enforcement organisations.¹⁰⁵

Member states are required to enact laws and other acts to criminalise corrupt activities when they are committed intentionally by public officials, foreign public officials, or international civil servants.¹⁰⁶ In Article 9 (b), countries are mandated to adopt steps to guarantee that their authorities effectively prevent, identify, and punish public official corruption, including giving them autonomy to avoid undue influence over their decisions.¹⁰⁷

3.2.3 African Union Convention Preventing and Combating Corruption (AUCPCC).

In 2003, the African Union Convention on Preventing and Combating Corruption was founded at Maputo, Mozambique.¹⁰⁸ It seeks to accomplish five goals. Firstly, to enhance and solidify the formation of anti-corruption systems in African countries.¹⁰⁹ Secondly, to foster, support, and oversee collaboration between member states.¹¹⁰ Thirdly, to synchronise and align policies and legislation between countries for the prevention, detection, punishment, and elimination of corrupt practices throughout the continent.¹¹¹ Fourthly, to eliminate barriers to the realisation of human rights, including economic, social, and cultural rights.¹¹² Finally, it creates the necessary structure to enhance openness and accountability in the administration of public affairs.¹¹³

For accomplishing the above-mentioned goals, the state parties are required to take necessary steps, such as requesting public officials to declare their assets and to create internal committees to oversee.¹¹⁴ Article 4 (1) has tabulated a list of crimes of corruption and other connected offences for which the Convention is applicable, including bribery, illicit enrichment, and

¹⁰⁴UNCTOC, Article 7 (1) (a).

¹⁰⁵UNCTOC, Article 7(4).

¹⁰⁶UNCTOC, Article 8.

¹⁰⁷ UNCTOC, Article 9 (b).

¹⁰⁸ African Union Convention on Preventing and Combating Corruption (2003) available at <<https://au.int/treaties/african-union-convention-on-preventing-and-combating-corruption>> accessed on 17 February 2025.

¹⁰⁹ AU Convention, Article 2(1).

¹¹⁰ AU Convention, Article 2(2).

¹¹¹ AU convention, Article 2(3).

¹¹² AU Convention, Article 2(4).

¹¹³ AU Convention, Article 2(5).

¹¹⁴ AU Convention, Article 7.

money laundering. It has a special provision that broadens its applicability to crimes that are not listed in the convention.¹¹⁵

In Article 16, it mandates that each state party grant its competent authorities the power to seize and return any "instrumentalities and proceeds of corruption" as well as to search, identify, track, manage, suspend, or obtain them until a final judgement.¹¹⁶ A final goal is that member states must cooperate with one another in criminal cases involving the listed crimes.¹¹⁷

3.3 The impact of the International and Regional Conventions signed and ratified by Lesotho nationally

3.3.1 Impact on national laws

The United Nations Convention against Corruption was approved and signed by Lesotho on September 16, 2005.¹¹⁸ The provisions of Chapter V of the UNCAC have been incorporated in the Money Laundering and Proceeds of Crime Act of 2008.¹¹⁹ The bribery offences cited under Article 15 of UNCAC apply equally to the private sector under Section 31A of the PCEO Amendment Act of 2006.¹²⁰ Lesotho adopted the Palermo Convention on September 24, 2003, after signing it on December 14, 2000.¹²¹ The convention requires governments to set up a comprehensive domestic regulatory and supervisory framework for banking and non-banking financial institutions.¹²² The MLPCA has fully incorporated these provisions of Article 701 of the convention.¹²³

Lesotho also signed the African Union Convention on Preventing and Combating Corruption on the 27th of February 2004 and ratified it on the 26th of October 2004.¹²⁴ It mandates state parties to implement mechanisms that obligate designated public servants to declare their assets when they are appointed, while serving in office, and after leaving their employment as public

¹¹⁵ AU Convention, Article 4 (2).

¹¹⁶ AU Convention, Article 16.

¹¹⁷ AU Convention, Article 18(6).

¹¹⁸ United Nations Office on Drugs and Crime, 'Country Review of the Kingdom of Lesotho' (2012-2013) 3 available at <<https://www.unodc.org/CountryVisitFinalReport/>> / <<https://uncaccoalition.org/files/official-document/country-review-report-Lesotho.pdf>> accessed on 20 January 2025.

¹¹⁹ UNODC, "Digest of Asset Recovery Cases" (2015) 57 UN Office Vienna available <<https://doclib.org/download/1061463/digest-of-asset-recovery-cases>.

¹²⁰ f.n 117.

¹²¹ Ibid.

¹²² UNCTOC, Article 7 (1) (a).

¹²³ Money Laundering and Proceeds of Crime Act No.4 of 2008, Sections 16-20.

¹²⁴ African Union, 'List of Countries which have signed, ratified or acceded to the African Union Convention on Preventing and combating Corruption' (2022) available at <<https://anti-corruption.au.int/document/status-ratification>> accessed on 10 February 2025.

servants.¹²⁵ The same provisions are included in the Prevention of Corruption and Economic Offences Amendment Act of 2006, which provides that “a public officer shall be required to make a full declaration of all assets belonging to him or her before his or her assumption of office, which declaration shall always be expected to remain commensurate to his or her overall earnings and interests, following a form to be prescribed by the Minister”.¹²⁶ Declaration of assets by public officers is also contained in Regulation 66(5) of the Prevention of Corruption and Economic Offences of 2021.

3.3.2 Impact on Decisions of the Courts

The impact of these conventions was emphasized by the Court in the case of *Rex v Tebello Moferefere Senatla*.¹²⁷ Mr Senatla was accused of several counts of fraud and money laundering. Hungwe AJ observed the following: “The United Nations Convention Against Corruption (“UNCAC”) is one such international initiative. The Kingdom of Lesotho acceded to this convention in 2005. Regionally, the African Union, in response, set up the African Peer Review Mechanism (“APRM”) and the East and Southern Africa Anti-Money Laundering Group (“ESAAMLG”), both of which the Kingdom of Lesotho has acceded. The literature generated by these important international and regional institutions provides an important yardstick with which to measure and interpret national legislation promulgated in fulfilment of Lesotho’s regional and international treaty obligations.”

3. 4 National Anti-Corruption and Anti-Money Laundering Legal Frameworks

The Constitution of Lesotho has no specific provisions concerning these economic offences. In terms of Section 99 (a), it only gives “the Director of Public Prosecutions powers to institute and undertake criminal proceedings against any person before any court (other than a Court-martial) in respect of any offence alleged to have been committed by that person”.¹²⁸ The main laws addressing corruption and money-laundering are the Prevention of Corruption and Economic Offences Act No.5 of 1999, as amended by Act No.8 of 2006, and the Money Laundering and Proceeds of Crime Act No.4 of 2008, as amended by Act No.50 of 2017.

¹²⁵ AU Convention, Article 7(1).

¹²⁶ Prevention of Corruption and Economic Offences Act No.5 of 1999 as amended in 2006, Section 16.

¹²⁷ CRI/T/0010/19 (unreported) available at < <https://lesotholii.org/akn/judgments>> accessed 14 November 2024 at Para 54.

¹²⁸ The Constitution of Lesotho 1993, Section 99(2)(a).

3.4.1 The Prevention of Corruption and Economic Offences Act No.5 of 1999 (PCEO)

The purpose of PCEO is to create a Directorate on Corruption and Economic Crime (DCEO) and to give it authority to investigate alleged cases of corruption, economic Crime, and other related matters.¹²⁹ The DCEO is formed in terms of Section 3 of the Act, which empowers it to perform its functions independently without control or supervision of anyone except under the PCEO Act.¹³⁰ However, the DCEO prosecutes cases subject to the written consent from the Director of Public Prosecutions.¹³¹

The DCEO is responsible for the receipt and investigating any complaints regarding corruption in any public entity or any purported or suspected violation of the Act. To investigate any alleged or suspected violations of this Act, as well as any other violations discovered during such an inquiry. To assist any government law enforcement agency in investigating offences under the Act. To educate individuals about the bad effects of corruption and implement any necessary steps to prevent corruption and economic offences.¹³²

3.4.2 Money Laundering and Proceeds of Crime Act No.4 of 2008 (MLPCA)

The Act's goals include creating a Financial Intelligence Unit and an Anti-Money Laundering Authority to find, track down, freeze, seize, and eventually confiscate illegal profits from major crimes. It also requires responsible organisations to take precautionary steps to stop money laundering.¹³³ DCEO is the Anti-Money Laundering Authority, and the Director General of DCEO also holds the same position in the Authority.¹³⁴ The Financial Intelligence Unit (FIU) was formed under Section 14 of the Act. Its responsibilities include receiving, assessing, and evaluating suspicious transaction reports filed by accountable institutions. To provide direction, counsel, and support in the investigation or prosecution of money laundering crimes in other nations.¹³⁵

3.5 Adjudication of corruption cases under the Lesotho Criminal Justice System.

Where an accused has been charged and found guilty of an offence, the judicial officer dealing with the case has the power to order payment of money to the State, which is equivalent to the profit gained from committing the offence. The PCEO provides that “where a person has been

¹²⁹ Prevention of Corruption and Economic Offences Act No.5 of 1999, Preamble.

¹³⁰ Prevention of Corruption and Economic Offences Act No.5 of 1999 as amended in 2006, Section 4(a) and (b).

¹³¹ PCEO, Section 43.

¹³² PCEO, Section 6.

¹³³ Money Laundering and Proceeds of Crime Act No.4 of 2008, Preamble.

¹³⁴ MLPCA, Section 11(2).

¹³⁵ MLPCA, Section 15(2).

convicted of corruption or cheating the public revenue under this Part, the Attorney-General may apply for attachment under section 322 of the Criminal Procedure and Evidence Act of 1981”.¹³⁶ Reference is made to the Criminal Procedure and Evidence Act because recovery of property is purely based on the conviction of the accused.

A popular case which has highlighted Lesotho's ability to combat corruption is *Ephraim Masupha Sole v The Crown*.¹³⁷ The accused was with many counts of bribery and perjury under common. After lengthy Court proceedings, the accused was convicted of receiving bribes and he was given a 15-year jail term, which he completed. Civil applications for confiscation of assets were lodged in the High Court. The Court ordered the Respondent to make available all his movable assets to the Deputy Sheriff, who shall take the inventory for sale in execution of a judgment.¹³⁸

After this landmark case, there were many other corruption cases wherein the accused were convicted.¹³⁹ Applications for restraint to prevent the dissipation of assets were not made; hence, no criminal confiscation was achieved. The disadvantage of this method is that a suspect has an opportunity to hide or dispose of all his assets immediately upon being charged.

3.6 Obstacles that make the criminal justice system ineffective

3.6.1 Delay in Prosecution.

Cases drag in Courts for a long time and may end up being dismissed on technical grounds, not on the merits of the case. The delay is defeating the goal of deterrence and recovering laundered public funds. In the case of *Rex v. Tumelo Moseme & Others*, the Court had to dismiss the case for want of prosecution.¹⁴⁰ The Director of Public Prosecutions or the DCEO is *dominitis litis* in such cases. Normally, they fail to complete investigations on time due to limited resources or fail to serve their opponents with a docket to enable them to prepare their case.

¹³⁶ PCEO, Section 46.

¹³⁷ *Ephraim Masupha Sole v The Crown* C of A (CRI) 5 of 2002.

¹³⁸ *Masupha Sole v Lemena & Another* CIV/T/318/01 and CIV/T/319/01(unreported) available at <<https://lesotholii.org/akn/judgments>> accessed on the 20 February 2025.

¹³⁹ *The Crown v Mochebelele and Another* C of A (CRI) No.2 of 2008 (LAC 2007-2008) 340, *Matlamukele Matete v The Crown* C of A (CRI) 4 OF 2010 and *Mahase v Director of Public Prosecutions* C of A (CRI) No.11 of 2006 (LAC 2007-2008)168 Reported.

¹⁴⁰ Maseru Metro News available at <<https://www.maserumetro.com/news/news/police-uniform-corruption-case>> published on December 2, 2020, accessed on 23 February 2025.

3.6.2 Misdirection of the Courts

There is a recent case of *Rex v Borenahabokhetha Sekonyela*,¹⁴¹ Wherein the Court failed to appreciate the true charge against the accused. The accused was discharged at the close of the Crown's case. During that phase in the trial, the court ought to have determined whether the Crown had made a prima facie case. It ought to have determined whether there was evidence on which a reasonable court might convict the accused. That was a serious misdirection.

3.7 Asset Forfeiture Procedures in the Money Laundering and Proceeds of Crime Act

Asset forfeiture seeks to reduce financial gains from illegal behaviour. Those who engage in unlawful conduct should not be permitted to benefit from their crimes.¹⁴² There are two typical procedures to recover assets: non-conviction-based forfeiture and post-conviction or criminal forfeiture.¹⁴³

3.7.1 Conviction-Based Forfeiture

Asset forfeiture under Part IV is entirely predicated on conviction, as it may only be implemented after the conclusion of a criminal trial. The Act provides that, "where a person is convicted of a serious offence, the authority may, not later than 6 months after the conviction, apply to Court for one or both of the following orders (a) a confiscation order against property that is tainted property in respect of the offence; (b) a pecuniary penalty order against the person in respect of benefits derived by the person from the commission of the offence."¹⁴⁴ That provision is intended to dispose of the profit the offender may have obtained from the criminal activity, rather than just the actual proceeds.

3.7.2 Non-Conviction-Based Forfeiture

The Act's Part V allows for the seizure of instruments and the proceeds of crime. It may even be enforced in the absence of any criminal charges against the perpetrator. This is applicable if an object was used in the commission of a criminal offence or if there are assets that can be linked to a criminal offence.¹⁴⁵ An *ex parte* application may be filed in the High Court and is referred to as a preservation of property. If the Court is satisfied with the grounds, the Court will make a preservation order which prohibits any person from dealing with the property in

¹⁴¹ CRI/T/0006/2020 (unreported) available at [available at <https://lesotholii.org/akn/judgments>](https://lesotholii.org/akn/judgments) accessed on 22 January 2025.

¹⁴² Theodore S. Greenberg, Linda M. Samuel, Wingate Grant and Larissa Gray, 'Stolen Asset Recovery: Good Practices Guide for Non-Conviction Based Asset Forfeiture' (2009) available at <https://www.starworldbank.org> accessed on 31 October 2024.

¹⁴³ Part IV and V of MLPCA.

¹⁴⁴ MLPCA, Section 37.

¹⁴⁵ MLPCA, Section 88 (1) and (2).

any manner.¹⁴⁶ During the enforcement of a preservation order, the Authority may petition the Court for an order stating that any or all property subject to the order is forfeited to the Crown.¹⁴⁷ If the Court determines on a balance of probabilities that the property is an instrument of an offence or the proceeds of a crime, it will make a forfeiture order. The court may also make such further orders as it considers appropriate, including orders to transfer any property forfeited following such an order.¹⁴⁸

3.8 Constraints to Non-conviction-based forfeiture

3.8.1 Constitutional challenges

Non-conviction-based forfeiture often faces constitutional challenges, including the allegation that it infringes on the rights to a fair trial, the right to remain silent, the presumption of innocence, and the right to be free from arbitrary deprivation of property. However, in Lesotho, such challenges were dismissed by the Court in several instances, including the recent constitutional case of *Mahelena Lephoto v DCEO and others*.¹⁴⁹

3.8.2 Failure to link the proceeds of crime with the committed crime

Investigators and prosecutors sometimes struggle to identify or associate the profits of crime, particularly in cases of co-mingling. This occurs when illicit gains are commingled with lawful assets, rendering them indistinguishable.¹⁵⁰ It is the requirement of law that assets must be the proceeds of an offence or instrumentalities of crime before they can be forfeited. If the link is broken, forfeiture is impossible. The challenge was faced by DCEO in the case of *Directorate on Corruption and Economic Offences v Thapeli Tjabane & others*.¹⁵¹ The accused were charged with 1438 counts of cyber theft of M5 319,620.00 from Lesotho Post Bank. DCEO applied to the Court to confiscate the accused's properties on the basis that they were purchased with stolen funds. Counsel for the respondents argued that there was no connection between the accused's property and the commission of the crime because some of it was obtained before

¹⁴⁶ MLPCA, Section 89.

¹⁴⁷ MLPCA, Section 97.

¹⁴⁸ MLPCA, Section 98(1) and (2).

¹⁴⁹ *Mahelena Lephoto v Directorate on Corruption and Economic Offences and 5 others*. (Const. Case No. 11/2017) [2022] LSHC Const. 10 (17 MARCH 2022) unreported available at <<https://lesotholii.org/akn/judgments>> accessed on 25 February 2025.

Motlohelo v Commissioner of Police and Others (Consti. Case No. 19/2017) [2019] LSHC 31 (21 March 2019) (unreported) available at <<https://lesotholii.org/akn/judgments>> accessed on 25 February 2025.

¹⁵⁰ Theodore S. Greenberg, Linda M. Samuel, Wingate Grant and Larissa Gray, 'Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture' (2009) available at <<https://issuu.com/worldbank.publication/doc/9780821378908>> accessed on 31 October 2024.

¹⁵¹ CIV/APN/421/16 (unreported).

the alleged offence. DCEO failed to connect the property and the commission of the criminal activity, and the case failed on that ground.

3.9 Conclusion

The chapter aims to critically assess the efficacy of the current legislative system addressing corruption and money laundering in Lesotho. It is observed that forfeiture under the criminal justice system must follow the assets to their current location. The task requires specialised skills, financial resources, and time, which are not always available in Lesotho. The 'beyond a reasonable doubt' standard of proof makes it harder to secure criminal convictions, and that is another impediment to recovering assets with this method. Non-conviction-based forfeiture likewise is ineffective where there is no connection between the proceeds of crime and the offence. There is a pressing need to close this significant legal gap. The legislative frameworks to combat corruption and money laundering should constantly evolve to address loopholes and enhance effectiveness in recovering criminal proceeds while discouraging people from committing crimes. There is a need to adopt another mechanism that will shift the burden of proof on the owner of property suspected of being proceeds of crime to explain the genuine and legal origins of the assets under consideration. That will increase asset recovery and economic development in Lesotho. The next chapter will discuss the United Kingdom's legal frameworks against corruption and money laundering and engage in a comparative analysis with Lesotho's frameworks.

Chapter Four

Comparative Analysis: The United Kingdom's Anti-corruption and Anti-money Laundering Legal Frameworks

4.1 Introduction

This chapter employs a contrastive methodology to analyse the United Kingdom's anti-corruption and anti-money laundering legal frameworks, aiming to integrate inventive concepts into Lesotho's legal system. The United Kingdom was identified for comparison examination because it is a standard law country with a constitutional monarchy and parliamentary democracy, like Lesotho. Its legislative framework has noted significant advancements addressing corruption, money laundering, and other economic offences. Additionally, it has robust asset recovery procedures. The findings of this comparative analysis will be utilised in Lesotho to discern potential lessons and assess their incorporation into the legislative framework.

The chapter is structured in three segments, with the first section examining the United Kingdom's ratification and implementation of pertinent international conventions to tackle corruption and money laundering. The second section will examine the United Kingdom's legislation addressing corruption and money laundering. The concluding division will comparatively analyse the two countries' legal frameworks and outline the lessons learned from the analysis.

4.2 International Conventions and their Implementation in the United Kingdom

4.2.1 The OECD Convention on Combating Bribery of Foreign Public Officials in International Transactions

The Convention to Combat Bribery of Foreign Public Officials in International Business Transactions was adopted on November 21, 1997.¹⁵² It went into force on February 15, 1999.¹⁵³ The Convention stipulates legally binding standards for criminalising the bribery of foreign public officials in international economic transactions, together with a continuous, collaborative review process to secure comprehensive execution of global responsibilities.¹⁵⁴

¹⁵² OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Background available at <<https://legalinstruments.oecd.org/public/doc>> accessed on 19 March 2025.

¹⁵³ J. Hatchard, 'How well are we doing? The United Kingdom and its implementation of the OECD Anti-Bribery Convention' (2017) 109, *The Denning Law Journal* Vol 29, available at <<https://www.ebsco.com/terms-of-use>> accessed on 19 March 2025.

¹⁵⁴ OECD Convention, P3.

The first instrument focuses on the origin of the bribery's supply side, which refers to the person or entity that offers, promises, or gives bribes.¹⁵⁵ Every party has to take the necessary steps to show that it is not legally permitted for any individual, either explicitly or implicitly, to wilfully offer, promise, or extend an illicit economic or personal gain to a foreign official or other advantage for the benefit of the official or a third party, with the intent to secure or sustain business or any undue privilege in the area of international business.¹⁵⁶

The UK ratified the OECD Convention in 1998.¹⁵⁷ This gives each state party the authority to initiate judicial proceedings against its citizens for crimes committed in foreign countries and to carry out steps required to assert its legal authority in the instance of bribery of an international official, based on similar principles.¹⁵⁸ States parties are highly encouraged to ensure that bribes and the money made from bribing an overseas government official, as well as assets whose worth is the same as the money made from bribes, can be seized and taken away, or that similar financial penalties are put in place.¹⁵⁹ The enactment of the UK Bribery Act of 2010 demonstrates the impact of the OECD Convention on UK laws.

4.2.2 The United Nations Convention against Transnational Organised Crime (Palermo Convention)

The United Kingdom signed the Palermo Convention on December 14, 2000, and ratified it on February 9, 2006.¹⁶⁰ The key objectives of the Palermo Convention are to foster collaboration among states to effectively fight against international criminal networks. It aims to impart a comprehensive foundation for states to criminalise activities related to organised crime such as involvement in criminal collaborations, financial misconduct, bribery and interference with legal proceedings.¹⁶¹ The Convention seeks to enhance collaboration among state parties through rendition, cross-national judicial assistance, and collaborative enforcement efforts to fight crimes that transcend national borders.¹⁶²

¹⁵⁵ Ibid.

¹⁵⁶ Article 1, OECD Convention.

¹⁵⁷ United Nations Office on Drugs and Crime, 'Country Review Report of the United Kingdom of Great Britain and Northern Ireland' (2016-2021) 40 available at <<https://www.unodc.org/document/treaties/UNCAC-CountryVisitFinalReport>> accessed on 8 March 2025.

¹⁵⁸ Article 4.2, OECD Convention.

¹⁵⁹ Article 3(3), OECD Convention.

¹⁶⁰ The United Nations Convention against Transnational Organized Crime ratification of states, available at <<https://www.unodc.org/document>> accessed on 20 March 2025.

¹⁶¹ UNTOC, Article 5(1).

¹⁶² UNTOC, Article 16, 18 and 19.

It had an impact on the United Kingdom laws, resulting in the enactment of the Serious Organised Crime and Police Act in 2005. Chapter 5 of that Act encompasses an international obligation to enforce international asset seizure rulings and mutual legal efforts to secure financial or evidential assets.¹⁶³ The Proceeds of Crime Act of 2002 was also enacted. It establishes a framework for the confiscation, freezing, and recovery of assets obtained through criminal activities. The Palermo Convention also resulted in the enactment of the Extradition Act 2003, which facilitates cooperation between the United Kingdom and other countries in extraditing individuals involved in transnational organised crime under the Convention.

4.2.3 The United Nations Convention Against Corruption (UNCAC)

The United Kingdom ratified the Convention on December 9, 2003, and it ratified the Convention on February 9, 2006. The Convention came into operation for the United Kingdom on March 11, 2006.¹⁶⁴ Following UNCAC, the United Kingdom established legislation against official corruption, including the Bribery Act 2010 and the Crimes and Courts Act 2013.¹⁶⁵ Another direct influence of UNCAC is the Criminal Finances Act 2017. This Act introduces Unexplained Wealth Orders as a tool to investigate suspicious wealth. It reflects UNCAC's emphasis on tracing and tackling illicit enrichment.¹⁶⁶

4.2.4 The Financial Action Task Force (FATF)

The FATF is the intergovernmental organisation created to formulate and advocate codes that safeguard the global economic framework from money laundering and terrorism financing.¹⁶⁷ It began operations in 1989.¹⁶⁸ It demands that monetary entities conduct a series of Customer Due Diligence and, in some cases, Enhanced Due Diligence checks. The Know Your Customer rules help banks recognize customers using document findings and official reports of potential misconduct when explicit cautionary signals are identified. Banks are only required to provide reports without restricting transactions or account closures. The suspicious activity report is

¹⁶³ Serious Organised Crimes and Police Act 2005, Sections 95 and 96.

¹⁶⁴ United Nations Office on Drugs and Crime, 'Country Review Report of the United Kingdom of Great Britain and Northern Ireland' (2016-2021) 3 available at <<https://www.unodc.org/document/treaties/UNCAC-CountryVisitFinalReport>> accessed on 8 March 2025.

¹⁶⁵ Akogwu Agada, 'An Appraisal of the Legal and Institutional Framework Combating Corruption and Financial crimes in Nigeria' (2024) available at <<https://www.researchgate.net/publication/383407399>> accessed on 4 March 2025.

¹⁶⁶ UNCAC, Article 20.

¹⁶⁷ FATF, 'International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation', (2012-2023) Paris, France, available at <<https://www.fatf-gafi.org/en/publications/Fatfrecommendations.html>> accessed on 14 March 2025.

¹⁶⁸ Latif, Lyla A, 'Intensifying the Study Fight against Corruption and Money Laundering in Africa', (2022) UNOSAA 30 available at <<https://www.un.org/osaa>> accessed on 9 October 2024.

then pursued by law enforcement, resulting in asset freezes, arrests, and potentially jail time.¹⁶⁹ There are 40 recommendations from the FATF that countries should follow to stop criminal financial schemes, financial backing of terrorism, and unauthorized weapon trafficking.¹⁷⁰

In the recent FATF evaluation of their Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) systems, countries are mandated to propose subsequent reports demonstrating advancement in securing adherence to regulations. The publicly available report derived from the assessment is the UK AML/CFT system which illustrates that the United Kingdom system has achieved significant growth and attained an acceptable degree of adherence to all major and important recommendations, including recommendation 5, which concerns “customer due diligence and record-keeping”.¹⁷¹

4.3 The United Kingdom Legal Framework

The United Kingdom has a plethora of laws addressing corruption and money laundering.¹⁷² But the most important laws against corruption and money laundering are the Financial Crimes and Corporate Transparency Act of 2023, the Proceeds of Crime Act of 2002, the Bribery Act of 2010, and the Criminal Finances Act of 2017.

4.3.1 The Proceeds of Crime Act 2002 (POCA)

It is intended to initiate the Assets Recovery Agency. To establish confiscation orders for individuals who profit from criminal activity, to establish restraint orders prohibiting transacting with property, to enable the reclamation of property that was acquired from illegal means or that is proposed for use in illegal conduct, to establish provisions regarding money laundering, to establish provisions regarding investigations about the benefit of criminal activity or to property that is or signifies assets acquired.¹⁷³ Under this Act, it is illegal to hide,

¹⁶⁹ Ibid, P34.

¹⁷⁰ FATF, ‘International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation’ (2012-2023) Paris, France available at [available at <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html >](https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html) accessed on the 24 March 2025.

¹⁷¹ Ali Alkaabi, George Mohay, Adrian McCullagh, and Nicholas Chantler, ‘Money Laundering and FATF Compliance by the International Community’ (2012) 89 available at <https://www.ebsco.com/terms-of-use> accessed on 22 March 2025.

¹⁷² Criminal Justice Act 1998, Extradition Act 2003, Crimes and Court Act 2013, Serious Crime Act 2015, Sanctions, Money laundering Regulations 2007, Money Laundering Regulations 2017, Anti-Money laundering Act 2018 and Money Laundering Regulation 2024.

¹⁷³ Proceeds of Crime Act 2002, Preamble.

disguise, change, transfer, or remove criminal property from England and Wales, Scotland, or Northern Ireland.¹⁷⁴

In terms of the Act, an asset is "Criminal Property" if it signifies or represents the gains obtained from unlawful activity, either fully or partially, directly or indirectly, and the accused is aware of or suspects that it comprises or reflects such an advantage.¹⁷⁵ POCA prohibits all types of money laundering and establishes penalties for neglecting to report suspected cases.¹⁷⁶ Non-compliance with the Act or involvement in money laundering can lead to penalties, including imprisonment.¹⁷⁷

The application of POCA was seen in the case of *R v Andrewes*.¹⁷⁸ Mr. John Andrewes obtained a high-level position by falsifying his qualifications and experience. He was convicted of fraud. The Court applied the provisions of POCA to confiscate his assets obtained through fraudulent means. He appealed the confiscation order. On appeal, the court ruled that the confiscation order should be proportionate. Mr. Andrewes has rendered services, so confiscating the entirety of his earnings would be unfair. The Court emphasised that confiscation orders should not be punitive but rather seek to recover the benefit derived from criminal activity.

4.3.2 The Bribery Act 2010

This is the primary statute for corruption offences by individuals or companies.¹⁷⁹ According to the Bribery Act, bribery occurs when an individual directly or indirectly offers, promises, or gives another individual an economic or alternative rewards and plans to gain either by persuading an individual to engage in 'improper conduct' regarding a 'relevant function or activity' or to compensate an individual for such illegal conduct; or the individual is aware or thinks that the receipt of the benefit would inherently represent the improper conduct of a applicable function or activity.¹⁸⁰

It classifies bribery offences into three categories. The first category involves the act of bribing another individual.¹⁸¹ The second category is accepting a bribe.¹⁸² The third category is bribery

¹⁷⁴ Proceeds of Crime Act 2002, Section 327(1).

¹⁷⁵ Proceeds of Crime Act, Section 340 (3) (a) and (b).

¹⁷⁶ Proceeds of Crime Act 2002, Section 330 and 331.

¹⁷⁷ Proceeds of Crime Act 2002, Section 35 (2A).

¹⁷⁸ *R v Andrewes* UKSC/2020/0166 available at <<https://supremecourt.uk/cases/uksc-2020-0166>> accessed on 27 March 2025.

¹⁷⁹ Anupreet Amole, Aisling O'Sullivan and Francesca Cassidy, 'Law and Practice' (2022) 3 Taylor Brown Rudnick LLP available at <<https://www.researchgate.net>> accessed on the 18 March 2025.

¹⁸⁰ Bribery Act 2010, Section 1.

¹⁸¹ Bribery Act 2010, Section 1.

¹⁸² *Ibid*, Section 2.

of a foreign public official.¹⁸³ It addresses circumstances in which a person makes promises or provides financial or other benefits to an overseas government official to influence that official in performing his or her official tasks.

The Act provides territorial jurisdiction to the courts for misdeeds committed in the UK. The courts also have authority over crimes committed outside the UK if the person performing them has a close link to the UK, such as being a British national or normally living in the UK, a UK-incorporated body, or a Scottish partnership.¹⁸⁴ Failure by corporations to prohibit bribery is criminalised and may result in prosecution.¹⁸⁵

The case of *Director of the Serious Fraud Office v Airbus SE*¹⁸⁶ is exemplary. The Serious Fraud Office investigated Airbus for bribery offences in different countries. Investigations revealed that Airbus offered substantial bribes to secure business advantages, such as sales of aircraft. The indictment contained five counts of bribery in contravention of the Bribery Act 2010. The High Court approved a Deferred Prosecution Agreement, and Airbus agreed to pay a financial sanction to the UK Consolidated Fund.

4.3.3 The Criminal Finances Act 2017

This legislation enhances the Proceeds of Crime Act of 2002 by granting government security services new abilities and authority to reclaim the proceeds of crime. It also allowed the data exchange among private entities to combat money laundering and terrorist financing.¹⁸⁷ The Act also established Unexplained Wealth Orders (UWOs).¹⁸⁸ It is an investigative tool granted to law authorities to mandate people who are potential lawbreakers to disclose their income sources that they have rapidly accumulated, which is beyond their reported financial status. Omission in fulfilling the order to respond to the order results in the assumption that the possession is the proceeds of a crime.¹⁸⁹ It has enhanced asset recovery by allowing law

¹⁸³Ibid, Section 6.

¹⁸⁴Ibid, Section 12.

¹⁸⁵Ibid, Section 7.

¹⁸⁶ Case No: U20200108 delivered on the 31 January 2020 available at <<https://www.judiciary.uk>> accessed on the 23 March 2025.

¹⁸⁷ United Nations Office on Drugs and Crime, 'Country Review Report of the United Kingdom of Great Britain and Northern Ireland' (2016-2021) 41 available at <<https://www.unodc.org/document/treaties/UNCAC-CountryVisitFinalReport>>accessed on the 8 March 2025.

¹⁸⁸ Ibid, 203.

¹⁸⁹ S. Yakubu, 'Combating the laundering of proceeds of crime in the United Kingdom: An analysis of the Criminal Finances Act 2017 (2017) 43 Amicus Curiae Issue 112, available at <<https://heinonline.org.HOL>> accessed on 18 March 2025.

enforcement to target assets suspected to have been acquired through unlawful means, even without a criminal conviction.

4.3.4 The Economic Crime and Corporate Transparency Act 2023

The Act strengthens anti-money laundering measures, particularly in the context of cryptocurrency transactions. The Proceeds of Crime Act 2002 is amended by Schedule 8 to include provisions regarding crypto assets and confiscation orders. Schedule 9 amends the Proceeds of Crime Act 2002 to provide for a civil recovery regime concerning cryptocurrency assets.¹⁹⁰

4.4 Asset Forfeiture in the United Kingdom

In the United Kingdom, asset recovery serves three purposes. Asset recovery is used to deprive criminals of their money and property, jeopardising not only their liberty but also their livelihoods. Recovered funds are allocated to enhance crime-fighting initiatives and provide compensation to victims.

Asset recovery serves as one of the deterrent tactics that the United Kingdom takes as part of its broader strategy.¹⁹¹ Asset forfeiture procedures are governed by the Proceeds of Crime Act 2002. The Act grants authority to target criminal funds in four key areas: Non-conviction-based asset forfeiture, criminal confiscation proceedings, cash seizure and forfeiture, and taxation.¹⁹²

4.4.1 Non-Conviction-Based Asset Forfeiture or Civil Recovery

Non-Conviction Based Asset Forfeiture was made legal by the Proceeds of Crime Act of 2002. This process starts with the High Court issuing a recovery order after the law enforcement agency has shown on the balance of probabilities that the property is obtained through illegal conduct.¹⁹³ One of the most important things about asset recovery, especially non-conviction-based asset forfeiture, is that it gives people options besides the limited choice of prosecution or no action.¹⁹⁴

¹⁹⁰ Section 179 and 180(1) Part 4, Economic Crime and Corporate Transparency Act 2023.

¹⁹¹ Jean-Pierre Brun, Larissa Gray, Clive Scott, Kelvin M. Stephenson, 'Asset Recovery Handbook: A Guide for Practitioners' (2011) Stolen Asset Recovery Initiative-StAR 138 available at < <https://www.worldbank.org> accessed on 9 October 2024.

¹⁹² Ibid.

¹⁹³ Proceeds of Crime Act 2002, Section 240.

¹⁹⁴ Ibid.

4.4.2 Conviction-Based Asset Forfeiture or Criminal Confiscation

Following a criminal conviction, money can be confiscated under criminal forfeiture laws. An offender is ordered to repay the value of the benefit obtained from a crime. It is not necessary to link a particular crime to a specific benefit. As a result, the court can assume that all the defendant's property accumulated over a certain period is the proceeds of the crime. This is known as the option of "general criminal conduct confiscation."¹⁹⁵ The court may issue a restraint order before the issuance of the criminal confiscation order to prevent the dissipation of assets that may subsequently need to be sold to satisfy the criminal confiscation order.¹⁹⁶

4.4.3 Cash Seizure and Forfeiture

In terms of this Act, Cash may be seized if there are reasonable grounds for suspecting that it constitutes recoverable property or is designated by any individual for participating in unlawful activities.¹⁹⁷ Customs and Excise Commissioners, a certified financial investigator, a constable, or a Serious Fraud Officer may apply to a magistrates' court for the forfeiture of the entire or any portion of it. The court or sheriff may direct the forfeiture of the cash or any portion thereof if it is established that the cash or part (a) constitutes recoverable property or (b) is intended by any individual for use in illegal activities.¹⁹⁸ Where an application for the forfeiture of cash is filed according to this section, the cash must be held in security until any proceedings following the application, including any proceedings on appeal, are concluded.¹⁹⁹

4.4.4 Taxation of the proceeds of crime

The proceeds of criminal activity are also subject to taxation in the United Kingdom. It is possible to utilise the authority to tax in conjunction with civil recovery procedures, and it may be employed in situations where there is a reasonable suspicion that a person has obtained income or profit from criminal activities.²⁰⁰

4.5 Unexplained Wealth Orders

It is an investigative power granted to law enforcement to compel individuals suspected of criminal activity to explain the source of wealth they have acquired overnight that is disproportionate to their known income. Failure to respond to the order results in the

¹⁹⁵ Proceeds of Crime Act 2002, Section 6.

¹⁹⁶ Proceeds of Crime Act 2002, Section 6-10.

¹⁹⁷ Proceeds of Crime Act 2002, Section 294 (1).

¹⁹⁸ Proceeds of Crime Act 2002, Section 298 (1) and (2).

¹⁹⁹ Proceeds of Crime Act 2002, Section 298 (4).

²⁰⁰ Jean-Pierre Brun, Larissa Gray, Clive Scott, Kelvin M. Stephenson, "Asset Recovery Handbook: A Guide for Practitioners" (2011) Stolen Asset Recovery Initiative-StAR 140 available at <<https://www.worldbank.org>> accessed on 9 October 2024.

presumption that the property is the proceeds of crime.²⁰¹ The United Kingdom Criminal Finances Act of 2017 established the UWO as a civil power and an investigative tool issued by the High Court. The Unexplained Wealth Orders' distinguishing feature is that, if certain criteria are met, the burden of producing evidence shifts to the asset holder. The individual is required to clarify the origin of the funds used to acquire those assets.²⁰²

4.5.1 How to apply for UWO

The law enforcement authority makes an application to the High Court under Section 362A (1) of the POCA. Such an application may be filed without notice, but it must specify or describe the property for which the UWO is sought, as well as identify the respondent whom the authorities believe owns the property.²⁰³ The application should urge the court to issue an order requiring the respondent to do the following: a) Describe the type and extent of their interest in the property; b) Describe how they acquired the property (including how any expenses incurred were covered); and c) If the property is owned by trustees of a settlement, describe the settlement in detail as may be required by the order.²⁰⁴

The law enforcement authority must satisfy the court that several requirements are met before a UWO is granted. It is necessary to satisfy the following requirements: the respondent must possess the property, and its value must exceed \$50,000. It is essential to possess reasonable suspicions that the respondent's legally obtained income would have been insufficient to enable the respondent's acquisition of the property.²⁰⁵

In addition, it is necessary to verify that the respondent is a politically exposed person. Finally, there are justifiable reasons to think that the respondent is, or has been, engaged in serious criminal activity, whether in the United Kingdom or elsewhere.²⁰⁶

²⁰¹S. Yakubu, 'Combating the laundering of proceeds of crime in the United Kingdom: An analysis of the Criminal Finances Act 2017 (2017) 45 *Amicus Curiae* Issue 112, available at <<https://heinonline.org.HOL>> accessed on 18 March 2025.

²⁰² Jean-Pierre Brun, Jeanne Hauch, Rita Julien, Jeffrey Owens and Yoonhee Hur, 'Unexplained Wealth Orders Toward a New Frontier in Asset Recovery' (2023) *Stolen Asset Recovery Initiative-StAR* P32<<https://www.worldbank.org>> accessed on 31 October 2024.

²⁰³ Proceeds of Crime Act 2002, Section 362 A (2).

²⁰⁴ Proceeds of Crime Act 2002, Section 362(A) (3).

²⁰⁵ The World Bank, 'The Unexplained Wealth Order in the U.K', (2019) available at <<https://star.worldbank.org/blog/unexplained-wealth-order-uk>> accessed on 18 March 2025

²⁰⁶ Proceeds of Crime Act 2002, Section 362(B) (2)-(4).

4.5.2 UWO Cases in the UK

The United Kingdom has notable successful cases of unexplained wealth orders, such as the case of *Zamira Hajiyeva*.²⁰⁷ and *Mansoor Mahmood Hussain*.²⁰⁸

In Hussain's case, the National Crime Agency applied for UWOs against Hussain, a property developer, for eight properties registered as his or six companies wholly owned by him. The National Crime Agency applied for an interim order restraining the properties. The properties were valued at approximately £9.970 million (US\$11.998 million). The NCA claimed that Mr Hussain owned the property because he was the registered owner, sole shareholder, and director of six other corporate-registered owners of the property. The NCA argued that there were reasonable suspicions that Mr Hussain's legitimate income would be insufficient to obtain the property. The NCA claimed that he aided criminal gangs by providing money laundering services and facilitating serious or drug crimes, gang violence, armed robbery, and major fraud. The judge issued the requested UWOs. A 76-page witness statement and 127 documents from Mr. Hussain satisfied the UWOs. These findings revealed a greater property portfolio than predicted. Mr Hussain resolved the matter by providing the National Crime Agency with 45 properties in London, Cheshire, and Leeds, four sites, and other assets valued at a total of £9.8 million and £600,000 in cash.²⁰⁹

4.5.3 Challenges and Advantages of UWO in the UK

The UWO is thought to be violating the right to privacy and family life. This was an argument in the case of *Baker and others*.²¹⁰ It was alleged that the respondents were forced to reveal potentially sensitive, personal financial documents when they were required to provide information about their income and possessions. In this case, the court discharged UWOs that were initially applied by the National Crime Agency on the basis that they did not meet the statutory requirements.

The advantage of UWO is that it has a retrospective effect, meaning that property or assets purchased before January 2018 can be the subject of UWO. The case of *Zamira Hajiyeva* is an example. She was the wife of Mr Hajiyev, the chairperson of the International Bank of Azerbaijan. The bank was initially state-owned, and after a gradual privatisation process, the

²⁰⁷ National Crime Agency v Zamira Hajiyev [2018] EWHC 2534.

²⁰⁸ National Crime Agency v Hussain and others [2020] EWHC (Admin) 432 (Eng).

²⁰⁹ Jean-Pierre, Rita Julien, Yoonhee Hur, Jeanne Hauch and Jeffrey Owen, 'Unexplained Wealth Orders', (2023) available at <<https://star.worldbank.org/sites/default/files/2023-06/stAR-wealth-report-08.pdf>> accessed on 31 October 2024.

²¹⁰ National Crime Agency v Baker & others [2020] EWHC (Admin)882 (63-65).

Ministry of Finance always maintained a controlling interest while Mr Hajiyev was chairperson.

In 2016, he was sentenced to 15 years in prison for a massive fraud and embezzlement scheme involving bank assets. The National Crime Agency sought an unexplained wealth order against his wife, citing the husband's employment as a state employee from 1993 to 2015. She allegedly used more than thirty credit cards her husband's bank issued to pay for her Harrods purchases.

She challenged the order, claiming that her husband was not a state employee performing public functions and, therefore, did not qualify as a PEP. The court disagreed and denied her application to discharge the order, ruling that the International Bank of Azerbaijan is a state-owned enterprise and that both Hajiyev and his wife are PEPs.²¹¹

4.6 Comparative Analysis of the Anti-Corruption Legal Frameworks: United Kingdom and Lesotho

4.6.1 Legal Frameworks

Both the United Kingdom and Lesotho possess legal frameworks designed to address corruption. Nonetheless, their enforcement strategies differ due to the United Kingdom's robust regulatory bodies, which possess the necessary resources and capacity to implement their mandates established by the legislative frameworks. The Bribery Act 2010 is the key legislation governing bribery and corruption offences within the United Kingdom. In Lesotho, there exist two main pieces of legislation that address corruption and bribery. They are the Prevention of Corruption and Economic Offences Act 1999, as amended in 2006, and the Penal Code Act 2010. The analysis will reveal the similarities and differences between the two countries' legal frameworks.

4.6.2 Extra-territorial jurisdiction statutes

The United Kingdom Bribery Act 2010 possesses extraterritorial jurisdiction. The commission of bribery is not required to occur within the United Kingdom for an offence to be established under the Act. The commission of the offence is contingent upon the individual possessing a close affiliation with the United Kingdom, as delineated in Section 12 of the Act or being associated with a firm established under UK law. Consequently, bribery may transpire both within and beyond the borders of the United Kingdom. Bribery charges may result in

²¹¹ Ibid,54.

prosecution for both corporations and people, even if these activities transpire outside the United Kingdom, if the entities implicated are incorporated in the UK.

Conversely, the Prevention of Corruption and Economic Crimes in Lesotho underscores the need to address corruption, including bribery and diverse economic crimes within its territory. The jurisdiction is limited within its borders. This highlights the disparity between the two frameworks.

4.6.3 Corporate Liability and Offences by Intermediaries

In the United Kingdom, corporations may be subject to prosecution if they do not establish adequate measures to prevent bribery.²¹² The legal framework of Lesotho does not include a specific provision that addresses corporate liability. Additionally, the United Kingdom Bribery Act does not cover the matter of bribery conducted via intermediaries or agents. However, this has not hindered the prosecution of bribery cases involving intermediaries.²¹³

On the other hand, the Lesotho Prevention of Crime and Economic Offences establishes legal prohibitions against corrupt transactions that involve agents or intermediaries.²¹⁴ The Lesotho Penal Code Act 2010 also criminalises the corruption of agents and employees.²¹⁵ Although these fines are substantial, they could not be an effective deterrence because Lesotho has a very low conviction rate, and cases take a long time to finish in court.

4.6.4 Penalties

The penalties for bribery are also distinct in these two countries. Upon conviction of an offence under sections 1, 2, or 6 in the United Kingdom, the following penalties are imposed: (a) For summary conviction, the penalty may include imprisonment for a term not exceeding 12 months, a fine not exceeding the statutory maximum, or both. (b) For an indictment conviction, the penalty may include imprisonment for a term not exceeding 10 years, a fine, or both.²¹⁶

In Lesotho, the Penal Code Act provides a maximum imprisonment penalty of up to 20 years for bribery.²¹⁷ The Prevention of Corruption and Economic Offences Act, as amended, imposes

²¹² Bribery Act 2010, Section 7.

²¹³ Serious Fraud Office v Rolls-Royce PLC Case No: U20170036 available at <<https://assets.publishing.service.gov.uk/media>> accessed on 28 April 2025.

²¹⁴ Prevention of Corruption and Economic Offences Act 1999, Section 25.

²¹⁵ Penal Code Act 2010, Section 81.

²¹⁶ Bribery Act 2010, Section 11(1).

²¹⁷ Penal Code Act 2010, Section 109.

a penalty that may consist of a fine of no less than M10,000, imprisonment for a minimum of 10 years, or both. In the case of a juristic person, the fine shall be not less than M100,000.²¹⁸

4.6.5 Law Enforcement Agencies

The UK has a strong law enforcement consortium. The Serious Fraud Office leads corruption investigations. It investigates and prosecutes complex fraud and corruption in England, Wales, and Northern Ireland.²¹⁹ It is established in terms of the Criminal Justice Act of 1987.²²⁰ The Serious Fraud Office collaborates with the Office of the Director of Public Prosecutions in cases of bribery in which deferred prosecution agreements are established. Deferred Prosecution Agreements (DPAs) may be proposed and executed by the Office of Serious Fraud and the Director of Public Prosecutions, provided that court approval is obtained.

There is also the National Crime Agency, which investigates and prosecutes complex financial crimes such as money laundering.²²¹ There is the Financial Conduct Authority, which is responsible for conducting investigations and bringing criminal proceedings that involve regulated organisations.²²² These agencies, including the Director of Public Prosecutions, are designated as relevant authorities to exercise the functions assigned for the reduction of crime.²²³

On the other hand, the Directorate on Corruption and Economic Offences is the main agency investigating and prosecuting corruption and related economic offences cases, subject to the written consent of the Director of Public Prosecutions.²²⁴ The Lesotho Mounted Police Services, created under the Police Service Act No.7 of 1998, also investigates significant economic offences such as fraud and bribery. There is also the Financial Intelligence Unit, which was established by the Money Laundering and Proceeds of Crime Act of 2008.

²¹⁸ Prevention of Corruption and Economic Offences Act 1999 as amended, Section 34.

²¹⁹ Rob McCusker, 'Comparative Analysis of the UK Bribery Act 2010 and Anti-Bribery Legislation in Ukraine, Indonesia and Kenya' (2021) 9 WFD Anti-Corruption and Integrity Series 3 available at <<https://www.wfd.org/sites/default/files>> accessed on 12 April 2025.

²²⁰ Serious Fraud Office, 'Annual Report and Accounts' (2023-2024)40 available at <[https:// assets.publishing.service.gov.uk](https://assets.publishing.service.gov.uk)> accessed on 28 April 2025.

²²¹ Proceeds of Crime Act 2002, Section 2 A.

²²² Ibid.

²²³ Proceeds of Crime Act 2002, Section 2A (2).

²²⁴ Prevention of Corruption and Economic Offences Act 1999, Section 6 and 43.

4.7 Comparative Analysis of the Anti-Money Laundering Legal Frameworks: United Kingdom and Lesotho

4.7.1 Legal Frameworks

Both countries possess legal frameworks that emphasise the confiscation of proceeds from criminal activities and the fight against money laundering. The United Kingdom's Proceeds of Crime Act 2002 established the Assets Recovery Agency and allowed confiscation orders against criminals. It also allows the recovery of assets acquired or planned for criminal use by restraint orders. Money laundering, investigations into criminal benefits or related properties, and compliance with international requests and orders for property suspected of being obtained through criminal activity are also covered by the Act.

The Money Laundering and Proceeds of Crime Act 2008 of Lesotho is designed to establish a Financial Intelligence Unit in conjunction with an Anti-Money Laundering Authority. This law intends to identify, trace, freeze, seize, and confiscate illegal proceeds from all serious crimes.²²⁵ Additionally, accountable institutions must implement sensible measures to combat money laundering. The difference is that the UK framework has a wider scope of application than Lesotho's framework, which addresses domestic challenges only.

4.7.2 Compliance and Regulations

The United Kingdom and Lesotho each have established frameworks that underscore the essential function of Financial Institutions in executing Customer Due Diligence and Reporting Suspicious Transactions.²²⁶ In the United Kingdom, the Money Laundering Regulation 2017 authorised Financial Institutions to conduct customer due diligence processes.²²⁷ This strategy streamlines risk-based compliance processes for banks and other financial organisations, enabling informed decision-making. After the customer relationship ends, Customer Due Diligence data must be safely stored for five years.²²⁸

4.7.3 Offences and Penalties

Both countries have enacted laws that criminalise the act of money laundering. Nonetheless, the distinction pertains to the penalties that are applied following a conviction. The United Kingdom employs more severe penalties compared to Lesotho. There are three money laundering crimes defined under the United Kingdom's Proceeds of Crime Act 2002. Firstly, a

²²⁵ Money Laundering and Proceeds of Crime Act, 2008, Preamble.

²²⁶ Money Laundering and Proceeds of Crime Act, 2008 as Amended, Section 11.

²²⁷ Money Laundering Regulation 2017, Regulations (20) 1 and 27.

²²⁸ Money Laundering and Proceeds of Crime Act, 2008 as Amended, Section 12.

money laundering offence is established when an individual hides, transforms, transfers, or removes illicit property from England and Wales, Scotland, or Northern Ireland.²²⁹

Secondly, money laundering occurs when someone acts in or gets involved in an arrangement that they know or think aids the acquisition, retention, use, or control of illicit property by or on behalf of another.²³⁰ Thirdly, an offence of money laundering is committed when an individual acquires, uses, or possesses criminal property without providing sufficient consideration for it.²³¹ If an individual is found guilty of money laundering offences that fall within Sections 327 to 329 of the Act, they may be subject to a maximum sentence of fourteen years in custody and/or an unlimited fine.²³²

The Lesotho Act defines money laundering as acquiring, possessing, using, or converting property to hide its criminal origin. This involves helping an offender evade legal consequences. Moreover, it comprises hiding or disguising the actual character, source, site, disposition, movement, or ownership of property while knowing or having reasonable cause to believe that such property is derived, either directly or indirectly, from serious crimes under this Act or any other Lesotho law.²³³ Violating the money laundering provisions of the Act carries a maximum penalty of 25 years in prison, a fine of M25,000,000.00, or both. Legal entities will be subject to a fine of up to M100,000,000.00.²³⁴

4.8 Adherence to International Conventions and Standards

Both countries adhere to the international standards set forth by the FATF as well as other treaties like the Palermo Convention and the UNCAC. The difference lies in the United Kingdom's enactment of numerous laws in alignment with UNCAC provisions, resulting in a robust and comprehensive legal framework.²³⁵

4.9 Lessons Learned

The United Kingdom's legal framework is frequently updated and responds promptly to emergent threats. Consequently, it has implemented legislation that addresses cryptocurrency-related crimes. An additional lesson that has been acquired from the application of asset

²²⁹ Proceeds of Crime Act 2002, Section 327.

²³⁰ Proceeds of Crime Act 2002, Section 328.

²³¹ Ibid, Section 329.

²³² Ibid, Section 334(1).

²³³ Money Laundering and Proceeds of Crime Act 2008 as Amended, Section 25 (1) (a), (b) and(c).

²³⁴ Ibid, Section 25(4).

²³⁵ Report on the UK's Compliance with the UN Convention against Corruption available at <<https://www.bond.org.uk>> accessed on 28 April 2025.

forfeiture laws in the United Kingdom's decided cases is that the sole effective method of combating corruption and money laundering is through the implementation of effective asset recovery systems, as they eliminate the reward associated with crimes.

Lesotho's absence of a specific instrument for addressing unexplained wealth, akin to that of the United Kingdom, constitutes a significant gap. The DCEO typically experiences challenges while attempting to confiscate assets or property obtained through dubious means. A tool is required to target politically exposed people due to their positions of power that may be susceptible to misuse. Unexplained Wealth Orders function as a deterrent while fostering transparency and accountability in governance.

The implementation of Deferred Prosecution Agreements for corporate settlements, commonly utilised in the United Kingdom, enhances the efficiency of justice delivery and asset recovery. This type of agreement is unavailable within the Lesotho system. The settlement mechanism in Lesotho involves entering a guilty plea as stipulated by the Criminal Procedure and Evidence Act. Plea bargaining entails admission of guilt, while the individual or corporation remains liable to charges and prosecution. This is distinct from a deferred prosecution agreement, as a result, it does not encourage settlements.

Legal frameworks having extraterritorial jurisdiction strengthen international collaboration by facilitating intelligence sharing, conducting joint investigations, and engaging closely with law enforcement agencies in other nations.

Legal frameworks having extraterritorial jurisdiction strengthen international collaboration by facilitating intelligence sharing, conducting joint investigations, and engaging closely with law enforcement agencies in other nations.

4.10 Conclusion

The United Kingdom possesses a comprehensive legal framework for addressing corruption and money laundering, supported by effective enforcement procedures and well-equipped institutions. Conversely, Lesotho possesses a legal framework with significant deficiencies. Apart from that, it is still facing institutional incapacity, a lack of resources, and weak enforcement mechanisms. These obstacles hinder the designated institutions from efficiently executing their responsibility to combat corruption and money laundering. The next chapter will provide recommendations and a conclusion.

Chapter Five

Conclusion and Recommendations

5.1 Introduction

This chapter presents the findings, conclusions, and recommendations resulting from the study. The recommendations are informed by the best practices observed in the United Kingdom as a comparative jurisdiction. The chapter comprises six sections. The introductory section will provide a succinct overview of the study's aims and objectives. The second part provides a summary of discussions in all chapters as a recap, while avoiding repetition of what was already discussed. The third section will discuss the study's outcomes, while the following section will present conclusions derived from the explored research questions. The last two sections of the chapter will provide recommendations and final remarks.

5.2 Recapitulation of the aims and objectives of the study

The major purpose of the study is to conduct a comprehensive analysis of the existing anti-corruption and anti-money laundering legal framework in Lesotho to establish its effectiveness in combating money laundering and corruption. Another purpose is to analyse the relationship between money laundering and corruption, to determine how these two economic offences impede development and good governance in the country. In addition, the study investigates the impact of international and regional conventions adopted by Lesotho to combat corruption and money laundering. The research also investigated the question of whether the traditional justice system, which is based on prosecuting cases, proving guilt beyond a reasonable doubt, and achieving criminal convictions, is an effective deterrent for people to engage in corrupt practices and money laundering. Lastly, provides recommendations for the deficiencies identified during the study and provides solutions to enhance the efficiency of the current legal framework.

5.3 Recapitulation of discussions

Chapter 1 outlines the background of the study, research problem, research objectives, justification of the study, research methodology, and limitations of the study. The status of corruption in Lesotho, as articulated by the Corruption Perception Index of Transparency International, was shown. The main problem of Lesotho's escalating corruption and money laundering, despite having both legal and institutional frameworks, was highlighted by the illustration of case law. In Chapter 2, the key words being corruption, money laundering, good governance, and development are defined. The chapter addresses the second research question,

which investigates the nexus between corruption and money laundering and how they impede good governance and development in Lesotho.

Chapter 3 discusses Lesotho's Legal framework against corruption and money laundering. Research question 3, which investigates the impact of international and regional treaties ratified by Lesotho, is addressed in this Chapter. The effectiveness of the Lesotho Criminal Justice System in adjudicating corruption cases is interrogated. The effectiveness of both conviction-based forfeiture and non-confiscation-based forfeiture, as well as their challenges, is analysed in detail.

In Chapter 4, the United Kingdom's Legal Framework against corruption and money laundering was discussed. A comparative analysis of Lesotho's legal framework was conducted. Out of that comparative analysis, there are lessons and best practices learned. In particular, the promulgation of the Criminal Finances Act 2017, which introduced Unexplained Wealth Orders against politically exposed persons (PEPS) and those suspected of being engaged in serious crime, was a great milestone towards dispossessing the wrongdoers of the benefits of their illegal conduct without pursuing any criminal action against them.

5.4 Key Findings

- (a) The study's findings confirm that the existing legislative framework is deficient and, thus, inadequate in addressing corruption and money laundering effectively. Conventional criminal justice is insufficient for dispensing justice and tackling corruption and money laundering issues in this country.
- (b) The country's economic development is weakened, and good governance is compromised by corruption, which is characterised by a lack of transparency and accountability in government transactions.
- (c) The forfeiture procedures for non-conviction-based convictions are only effective where there is a clear link between the property and the crime committed. Where there is no correlation between the assets acquired and the crime committed, forfeiture applications are inevitably unsuccessful. This is the main hiccup in the legal framework because sometimes the offence is undetectable; however, that does not mean the acquired assets cannot be proceeds of crime.
- (d) There are no extraterritorial jurisdiction provisions in the Lesotho Anti-Corruption and Anti-Money Laundering Laws. They are concentrating on offences that occur within the country. It is extremely difficult to investigate transnational crimes, as well as to arrest

and prosecute transnational criminals, due to the constraints that are imposed by territorial jurisdiction.

- (e) Lesotho is hesitant to incorporate the provisions of the ratified international conventions into its laws. Consequently, the conventions have a minimal influence on the prevention of corruption and money laundering due to a lack of domestication.
- (f) Adopting Deferred Prosecution Agreements (DPAs) like those implemented in the United Kingdom has the potential to reduce the backlog of cases in courts. This can increase the number of complete cases within a reasonable time because there will be no lengthy court proceedings and legal technicalities for conducting these agreements.
- (g) Key institutions established to fight corruption and money laundering are weak due to limited capacity and a lack of resources to match the dynamics of these offences.

5.5 Conclusion

Lesotho has achieved notable advancements in the development of legal and institutional frameworks aimed at tackling corruption and money laundering. Nonetheless, there are deficiencies in the legal framework that undermine the integrity of the entire system. Asset forfeiture serves as an essential instrument in combating corruption and recovering proceeds from criminal activities. As a result, it is imperative to implement comprehensive recovery mechanisms to guarantee that no individual benefits from unlawful actions. Unexplained Wealth Orders may serve as an effective enhancement to the current asset recovery mechanisms, which often face challenges due to legal requirements for the Crown to demonstrate that the assets in question are proceeds or instrumentalities of crime. The shift in the burden of proof to the individual in possession of assets is likely to yield positive results, as evidenced by the experience in the United Kingdom.

5.6 Recommendations

5.6.1 Compliance and domestication of international treaties ratified by Lesotho

The United Nations Convention against Corruption and the United Nations Convention on Transnational Organised Crime play a crucial role in facilitating collective efforts to recover proceeds from corruption and stolen assets. The ratification and complete implementation of these two conventions represent a crucial advancement.²³⁶ Lesotho has already ratified the two

²³⁶ Kelvin Stephenson, Larissa Grey, Ric Power, Jean-Pierre Brun, Gabriele Dunker, Melisa Panjer, “Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action” (2011) Stolen Asset Recovery Initiative-StAR 2 available at <<https://www.worldbank.org>> accessed on 9 October 2024.

treaties. As a result, the complete adoption of the provisions of these two conventions into domestic laws as a backup to the current legal system is highly recommended.

5.6.2 Legislative Reform

(a) Enactment of Unexplained Wealth Orders Legislation

There is a need to enact the Unexplained Wealth Orders legislation in Lesotho. This would allow the state to compel individuals to explain the lawful sources of their assets suspected to be disproportionate to their known income. Corruption is systemic. Politically Exposed Persons conceal assets through the registration of companies and trusts. It is also difficult to prove predicate offences like corruption, fraud, or bribery to link the property to the offences.

The advantage of Unexplained Wealth Orders is that the burden of proof shifts to the person to justify the sources of their wealth. Therefore, Unexplained Wealth Orders are the only way to dispossess these individuals of the benefits of crime. The existence of such a law can deter individuals from accumulating wealth they cannot account for. There are several incidents where public officers and politically exposed people benefited from unexplained wealth simply because such wealth could not be linked to a specific crime.

The Unexplained Wealth Orders would systematically tackle that gap. The FATF Recommendation 4 concentrates on the confiscation of proceeds from criminal activities, requiring states to assess their asset recovery frameworks to ensure ongoing effectiveness and to allocate sufficient resources for successful asset recovery initiatives.²³⁷ The enactment of this type of legislation would strengthen Lesotho's compliance with the FATF Recommendation 4.

The enactment of UWO legislation can also prevent judicial corruption and enhance judicial integrity. Its existence would discourage judicial officers from deliberately misdirecting themselves in the execution of their duties in return for certain benefits. It would be easy to determine whether a judicial officer is living above his or her legitimate sources of income after deciding on a certain case wherein the state lost the case in mysterious ways. Thus,

²³⁷ FATF, 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation' (2012-2023) 40 Paris, France available at <<https://www.fatfgafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>> accessed on the 24 March 2025.

Lesotho is urged to promulgate this law as it will detect, prevent, and limit the possibilities of judicial officers engaging in corrupt activities.

(b) Constitutional Reforms

Lesotho ought to initiate constitutional reforms. The constitution is the paramount legal authority of the nation. Weak or absent constitutional protection for institutions empowered to fight corruption creates a loophole that facilitates corruption and money laundering. Constitutional amendments are strongly advised in Lesotho to enhance good governance, accountability, and institutional autonomy. Constitutional amendments can establish a robust legal framework that enables anti-corruption institutions to execute their mandate free from political interference. As mentioned in Chapter Three, the existing constitution of Lesotho lacks explicit measures addressing corruption and associated economic offences.

5.6.3 Institutional Reforms

(a) Capacitate the responsible Institutions

The Directorate on Corruption and Economic Offences and the Financial Intelligence Unit are the main institutions tasked with the mandate of fighting corruption and money laundering; therefore, it is essential to capacitate them with resources and expertise. They should be provided with the necessary tools to detect and analyse complex financial crimes. The Directorate on Corruption and Economic Offences should be granted full autonomy. It must have its financial and operational independence from the executive. This autonomy would eliminate obstacles in the fight against corruption, such as political interference and bias. Strengthening inter-agency collaboration between the Directorate on Corruption and Economic Offences, Financial Intelligence Unit, Revenue Services Lesotho, and Lesotho Mounted Police Services is also necessary since success in the fight against corruption and money laundering requires active participation by various stakeholders.

(b) Establishment of a Specialised Anti-Corruption Court

Corruption is prevalent in Lesotho. According to Transparency International's 2024 Corruption Perception Index, Lesotho ranks 99 out of a total of 180 countries. The Corruption Perception Index has a scale of 0 to 100. Zero (0) denotes extremely corrupt, and 100 represents exceptionally clean. Lesotho scored 37 out of 100.²³⁸ Based on these scores, Lesotho needs

²³⁸ Transparency International, 'Corruption Perception Index' (2024) available at <www.transparency.org/cpi> accessed 14 May 2025.

judicial intervention through the adjudication of cases and the imposition of appropriate sentences for corruption and other economic offences. This will enhance efficiency and effectiveness in justice delivery. Apart from efficiency, there is a need to create a tribunal with greater expertise in related matters. Cases of corruption, particularly those involving intricate financial transactions or complex schemes, are far more difficult than the run-of-the-mill cases that populate many generalist judges' criminal dockets. Certainly, the need for a more knowledgeable adjudicative body to foster not only efficiency but also accuracy is necessary.²³⁹ As was seen in the discussion in Chapters 2 and 3, some of the reasons for the Crown losing corruption cases might be a lack of necessary expertise on the part of the judicial officers. Therefore, the establishment of specialised anti-corruption courts for both trial and appeal purposes is highly recommended.

5.6.4 Further Research

Money laundering and corruption are frequently committed in such a manner that law enforcement authorities find it exceedingly difficult to identify them unless informants or companies report misconduct. Whistleblowing is one of the most effective methods for exposing, combating, and rectifying money laundering and corruption. A whistleblower is invariably essential in the detection and investigation of these offences. Due to concerns regarding their safety and security, individuals may hesitate to report these offences.

The United Nations Convention against Corruption encourages all states that are parties to the convention to consider the possibility of incorporating appropriate measures into their domestic legal systems. These measures are intended to protect any unjustified treatment of any individual who reports any fact concerning offences to the authorities in good faith and on reasonable grounds.²⁴⁰ Following the discussions and findings in this study, the following topic is identified for further research:

A critical analysis of the necessity of promulgating a Whistleblower Protection Act in Lesotho to curb corruption and money laundering.

²³⁹ Matthew C Stephenson and Soflie Arjo Schutte, 'Specialised Anti-Corruption Courts: A Comparative Mapping' (2022) 23 available at <<https://www.u4no>> accessed on the 13 May 2025.

²⁴⁰ UNCAC, Article 33 available at <<https://www.unodc.org>>documents>Brussels accessed on 23 December 2024.

Cryptocurrency is a new phenomenon which is susceptible to money laundering activities. There is no law regulating cryptocurrency in Lesotho. However, the fact is that Basotho people are trading with cryptocurrency because no law illegalising that. Instead of the formal banking system, criminals can use cryptocurrencies to transfer substantial amounts of money, which could involve a lower risk of being caught by law enforcement or the conventional financial institutions obligated to file suspicious transaction reports.²⁴¹ Therefore, another area of research can be:

Assessing the impact of unregulated cryptocurrency transactions on anti-money laundering controls and economic development in Lesotho.

5.7 Final Remarks

It is imperative that Lesotho promptly address contemporary challenges by promulgating appropriate laws and regulations. The country's legal and institutional frameworks are made vulnerable by outdated laws, which create a gap that criminals can exploit. The current legal frameworks against corruption and money laundering have significant gaps and cannot effectively combat these economic offences in the country.

²⁴¹ Transparency International, 'Crypto Currencies, Corruption and Organised Crime' (2023) 1 available at <<https://knowledgehub.transparency.org/helpdesk>> accessed on 13 May 2025.

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