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Curbing Illicit Financial Flows and Trade Mispricing in Zimbabwe: The Role of the Legislature, Judiciary and Tax Administration

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Abstract

Illicit Financial Flows (IFFs) and trade mispricing continue to pose a menace both to developed and developing countries. Their ever-increasing effect coupled with ineffective regulatory and control measures form the theme of this research. This research aims to explore the role of legislature, judiciary and tax administration in curbing IFFs and trade mispricing in Zimbabwe. The study used a qualitative-descriptive research design. The study will assist the government to strengthen the roles of the legislature, judiciary and tax administration in fighting IFFs. Furthermore, it will bring out the need for partnerships among the government, business community and civil society in curbing IFFs. Zimbabwe has a strong legislature, judiciary and a standalone tax administration. However, major hindrances to their capacities to fight IFFs and trade mispricing stem from lack of independence, corruption, limited knowledge, lack of collaboration, information sharing and inadequate resources. The study recommends government to effectively use existing legislation, adequately resource and support independence of the legislature, judiciary and tax administration to foster impartiality in cases under dispute. These key institutions should shun corruption, embrace collaboration and information sharing among themselves. Finally, political will is key to fighting IFFs.

KEY WORDS: Illicit Financial Flows, Judiciary, Legislature, Tax Administration, Trade Mispricing

1. Introduction

The issue of Illicit Financial Flows (IFFs) has gained currency and has become a major issue on the development agenda particularly Goal 16 of the Sustainable Development Goals (SDGs). It calls for serious and determined consideration since it significantly affects development in any country.

Illicit financial flows are by nature hidden and involve the hidden movement of profits, transfers of ownership, or income streams (Cobham, 2014). Nicolaou-Manias & Wu (2016) note that illicit financial flows result in tax evasion, base erosion and profit shifting (BEPS), corruption, money laundering and terror financing. As Froberg & Waris (2011) points out, illicit financial flows are the most damaging economic condition hurting the poor in developing and transnational economies.

A 2017 study by the Global Financial Integrity (GFI) showed persistently high figures of illicit financial flows from developing countries that ranged from US\$620 billion to US\$970 billion in 2014. Africa shoulders the greatest share of these illicit financial flows estimates despite

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inadequate and incomplete data. Cobman (2005) estimates the total loss to developing countries from tax evasion and tax avoidance at US\$385 billion per year. A study by Hollingshead (2010) estimates that Africa and Zimbabwe lost 3.4% and 31.5% of their total government revenues to illicit financial flows respectively.

Global Financial Integrity (2017) identifies trade mispricing as the major channel for illicit financial flows and constitutes over 80% of illicit financial flows. Trade mispricing robs governments of tax revenues and domestic capital for investment. On the other hand, the High-Level Panel (HLP) estimated that of the nearly US\$1 trillion in illicit flows from developing countries annually, over 83% is due to trade mispricing or mis-invoicing.

It is against this background that this paper explores the roles of the legislature, judiciary and tax administration in curbing these deleterious economic crimes in Zimbabwe, which are estimated to have cost the economy US\$2.0 billion in 2017.

1.1. Statement of the Problem

Failure by the legislature, judiciary and tax administrations to curb the problem of illicit financial flows and trade mispricing continues to erode the tax base and rob the government of tax revenues. This has had unabated disastrous effects on the economy and human rights.

Therefore, improving and strengthening the roles of the legislature, judiciary and tax administration will help curb illicit financial flows and trade mispricing. In addition, political interference in decisions made by these three bodies should be dealt with effectively.

1.2. Research Objectives

The objectives of the research are:

- a. To examine the role of the legislature, judiciary and tax administration in combating illicit financial flows and trade mispricing in Zimbabwe.
- b. To explore the effectiveness of current regulatory frameworks in curbing illicit financial flows and trade mispricing.
- c. To develop a set of assertions that can be used to draw conclusions and proffer recommendations to improve the effectiveness of these bodies.

1.1. Research Questions

The study sought to answer the following questions to address the objectives.

- a. What is the role of the legislature, judiciary and tax administration in curbing illicit financial flows and trade mispricing in Zimbabwe?
- b. Are the existing pieces of legislation and regulatory frameworks effective in fighting illicit financial flows and trade mispricing?

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- c. What conclusions and recommendations can be made to improve effectiveness of these bodies.

1.2. Scope of the Study

The study focuses on the roles of the legislature, judiciary and tax administration in fighting illicit financial flows and trade mispricing in Zimbabwe.

2. Literature Review

2.1. Illicit Financial Flows

Various scholars and researchers define illicit financial flows differently. The Council for Economic Cooperation (2014) defines it as transfer of financial capital out of a country in contravention of national and international laws. Ostheimer (2015) defines illicit financial flows simply as all transfers of illegally acquired and employed capital. On the other hand, United Nations Economic Commission for Africa (2013) defines illicit financial outflows as illegally earned, transferred or utilized money. The term refers to financial crimes and how their proceeds are transferred out of a country. Main practices are corruption, money laundering, tax evasion and trade mispricing (the most important component of illicit financial outflows). On the other hand, these definitions seem to disregard the fact that the transfer of legitimate or illegally obtained funds to other territories either by physical smuggling or through the banks constitutes illicit flows. Seemingly, legitimate transfers of finances purported to be funding imports that never materialize are also illicit. Non-remittance of the proceeds of exports from a country and use or savings of those funds in foreign lands is also illicit, as Zimbabwe discovered after years of weak institutional controls and rampant corruption led to the discovery of approximately US\$1.4 billion salted away by Zimbabwean companies and individuals. These flows are still defined in Zimbabwe as externalized funds, a sanitary term which by any means points to illicit financial flows.

The channels of illicit financial flows can be diagrammatically presented as follows,

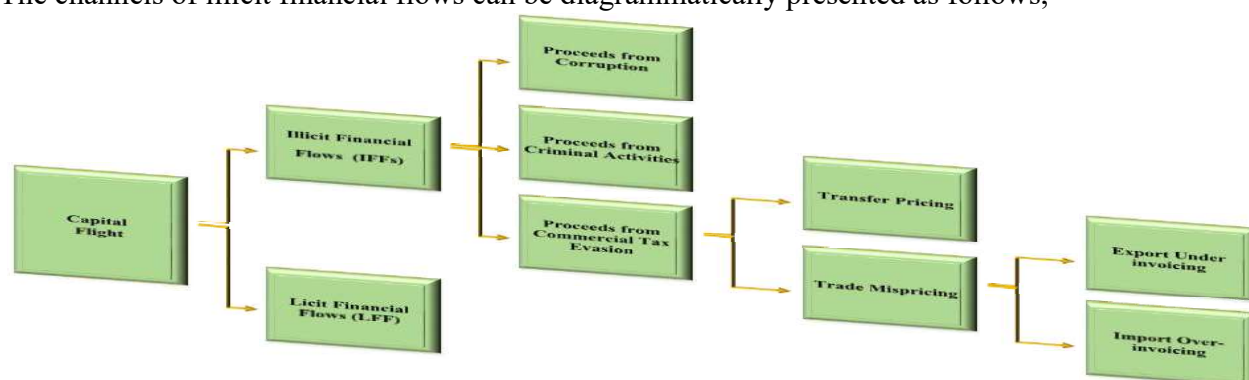


Figure 1: Theoretical Flow of IFFs; Source: Mevel, et al. (2013)

A key concept of illicit financial flows is that they are committed with the intent to avoid any kind of detection by government official statistics. Major characteristics of illicit financial flows are that transfers may be illegal, the funds are proceeds of illegal activities, and there is no paper trail,

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which could potentially identify the owner, the origin and the activity of the business. According to United Nations Economic Commission for Africa (2013), what makes them illicit is that somewhere at its origin, movement, or use of the money broke laws.

Although estimates differ, figures in the table below indicate substantial illicit financial flows from Zimbabwe.

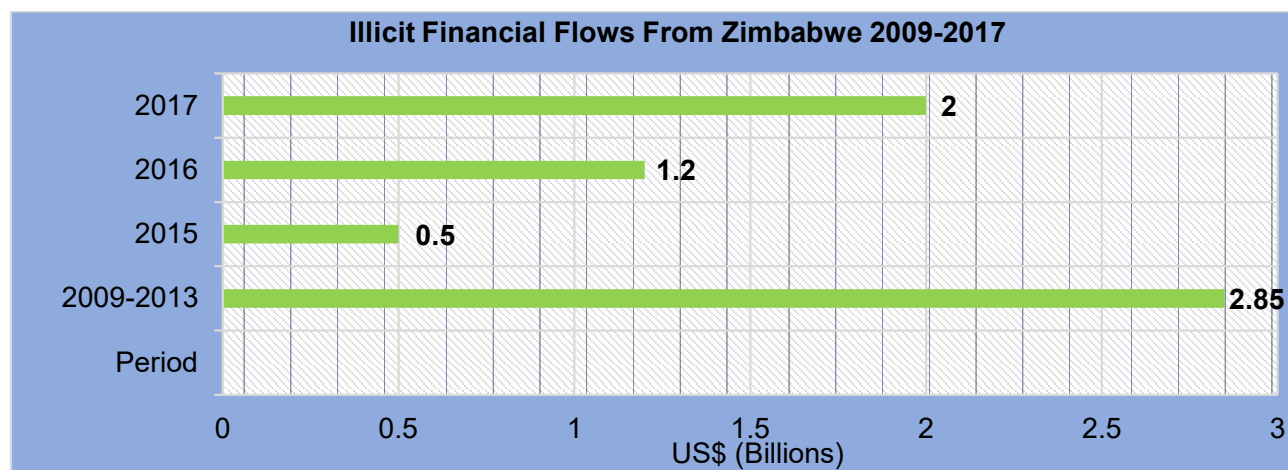


Table 1: IFFs from Zimbabwe 2009 – 2017: Source, Own

Major Sources of Illicit Financial Flows

According to Government of Zimbabwe (2015), in 2013 major sources of illicit financial flows were smuggling, illegal dealings, fraud and corruption, externalization and tax evasion. However, the naming and shaming list released in March 2018 identified the major sources of illicit financial flows as externalization, fictitious imports and non-repatriation of export proceeds (BBC News, 2018).

Destination of Proceeds

Government of Zimbabwe (2015), pointed out that in 2013 the destinations for illicit proceeds were South Africa and China in order of priority. There is no indication of Zimbabwean funds have landed in tax havens, ostensibly because of the secrecy provisions in tax havens. The naming and shaming list released in 2018 revealed the major destinations for illicit proceeds from Zimbabwe as China, Botswana and South Africa.

2.2. Trade Mispricing

There are various definitions of trade mispricing, the most prominent definitions are those by MacSkimming (2010), Nicolaou-Manias & Wu (2016), and Hollingshead (2010) that trade mispricing is the deliberate over-invoicing of imports or under-invoicing of exports usually for the purpose of tax evasion. de Boyrie, et al. (2005), stated that trade mispricing occurs if the true values of exports or imports deviate from the amounts that businesses report to the authorities. According to MacSkimming (2010) trade-mispricing transactions reveal crimes such as tax fraud,

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smuggling, money laundering and capital flight. The transfers of moneys to finance the fictitious purchases also violate exchange controls. Trade mispricing becomes a problem when individuals and corporations engage in fraudulent commercial activities to facilitate tax evasion and illicitly move funds (Freitas, 2011).

2.3. Theoretical Framework

Role of Legislature

The role of the legislature in combating illicit financial flows and trade mispricing can be achieved in a number of different ways that include debates and questions in the legislature itself through the work of an Auditor General or equivalent that reports directly to the parliament (legislature). The main role of the legislature is to design laws that provide for effective, proportionate and deterrent criminal, civil and administrative sanctions and for the protection of the rights of companies and individuals within its territories. The legislature should be able to close loopholes in existing domestic laws including tax laws. For instance, drafting anti-abusive clauses to be incorporated in domestic tax laws (Pelizzo & Stapenhurst, 2014). In addition, the legislature enacts laws to institute a comprehensive domestic regulatory and supervisory regime for financial institutions while allowing financial institutions to have own administrative regulations that are in line with government laws. Geenblatt (2005) cements it when he points out that the legislature should design laws in a way that empowers financial institution to determine true beneficial owners behind corporate entities or anonymous accounts.

Good legislation alone will not suffice in curbing illicit financial flows and trade mispricing. Therefore, it is the duty of the legislature to establish an effective Financial Intelligence Unit (FIU) as recommended by the Financial Action Task Force (FATF). The World Bank (2004) defines a FIU as a central national agency responsible for receiving, analyzing and transmitting disclosures on suspicious transactions to competent authorities. According to Pelizzo & Stapenhurst (2014) the legislature plays a crucial role in the development, launching and monitoring of FIU through advising on the structure and ensuring that the FIU is properly mandated and resourced. The legislature should take necessary measures to allow for appropriate modern and specialized investigative techniques such as electronic surveillance and undercover operations for the purposes of effectively curbing commitment of economic crimes. Another role of the legislature is to ensure that the courts impose stiffer sentences on criminals who have committed serious financial crimes, taking into account the gravity of such offences.

A fundamental requirement for the legislature, as individuals or as a body, to refrain from dictating the interpretation of the legislation and to avoid involvement in business dealings of a shady nature, thereby becoming interested parties to the arbitration or control system. Even with sound legislative frameworks, effectiveness is usual disturbed by political interference and partisan consideration of issues.

Boyce and Ndikumana (2014) points out that in designing solutions to stem illicit financial flows from Africa, an important issue is to understand why honest African savers may prefer foreign assets to domestic ones. Though they acknowledge that there are number of reasons to it, taking

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them into consideration is vital. In this vein, the duty of the legislature is to develop and uphold policies that encourage home bias investment and aim at balancing fiscal and tax incentives between foreign and domestic investors.

To curb illicit financial flows through trade mispricing, the legislature should strengthen trade regulations and exchange control mechanisms to better track international trade. This involves strengthening capacity and regulatory oversight in relevant departments in trade ministries and central banks. African parliamentarians should collaborate trading partners to establish and enforce regulations and laws that make complicity costly.

Conclusively, apart from making laws, the legislature plays an important oversight role on the implementation of laws that it makes. Stapenhurst, et al.(n.d.) state that legislative oversight consists of legislative supervision of the policies and programs enacted by government and the supervision of the executive's legislative proposals. A study by Stapenhurst, et al.(n.d.) found out that forms of governments with parliamentary forms and legislatures in parliamentary systems have lower levels of corruption (a form and cause of illicit financial flows) and have more oversight tools available to help reduce corruption.

Role Judiciary

It is important to note that Zimbabwe cannot expect to win the war against illicit financial flows and trade mispricing if the judiciary is perceived as being distant from the crusade. The judiciary's duty is to interpret the law without fear or favour so that its vibrancy is celebrated regardless of where the judgement swings. To deliver its roles, the judiciary must be independent and ensure that the rule of law prevails. In this regard, judges must be fair, just and must not allow themselves to be influenced by extraneous considerations and should tower above corruption and always be true to their judicial oath. The judiciary must not be partisan, should be aware of the sensitivities of the public, and must avoid doubt in regards to its independence.

A plethora of measures to counter illicit financial flows and trade mispricing are within the criminal justice system. The measures include but not limited to establishing criminal offences of illicit financial flows and trade mispricing, legal provisions for corporate criminal liability, access to financial information and the freezing, confiscation and repatriation of criminal proceeds. It is important to note that implementation of these laws also relies on core elements of the criminal justice system including law enforcement, prosecution authorities and the judiciary. As Pelizzo and Stapenhurst (2014) point out, offences relating to illicit financial flows are complex and time consuming to investigate and prosecute, thereby placing significant demands on investigators, prosecutors and judges in terms of time, resources and technical qualifications.

Illicit financial flows and trade mispricing practices are criminalized deviant behaviours by various African governments through the promulgation of laws such as the Economic and Financial Crimes Commission Act and The Prevention of Corruption Act in Nigeria and Zimbabwe respectively. Therefore, it is the duty of the judiciary to uphold the penal laws of the land, which involves punishing deviant behaviours. Stapenhurst, et al. (n.d.) are of the opinion that sentences for economic crimes should be proportionate to the gravity of these crimes for them to sufficiently

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serve as a deterrent to those crimes. However, Sarwar (2004) points out that the courts should convict where convictions are warranted, acquit where the law requires and sentence appropriately in accordance with guiding principles. In executing its duties, the judiciary must play the rule of the game by ensuring that there is an end to criminal trials within a reasonable period.

Role of Tax Administration

Typically, tax administrations play a central role in preventing and detecting tax crime and illicit financial flows due to their extensive powers to access information and documentation from taxpayers and third parties. However, tax systems in many developing countries, including Zimbabwe, have tax structures that are not in line with international standards. They lack tax policy management, have low compliance levels and inappropriate capacities in tax administration. In addition, they suffer from high levels of corruption, making it easier for companies and individuals to engage in illicit financial flows and trade mispricing activities Martini (2015), that lead to tax losses. For example, in Zimbabwe, there is a high risk of encountering corruption in the tax administration with bribes in connection with annual tax payments often occurring. The majority of the citizens believe tax officials are corrupt and most find it hard to know how the government uses tax revenues, indicating lack of transparency in the tax system (Business Anti-Corruption Portal, 2016)

It is the role of the tax administration to address issues of low tax compliance, which contributes largely to insufficient revenue mobilization resulting from illicit financial flows and trade mispricing. The improvement in taxpayers' tax morale requires measures ensuring and visualizing that the state is acting in a transparent, accountable and efficient manner. Such measures go beyond reforming the tax system by developing a sound state-society relationship. A key factor to strengthen voluntary compliance is sound education of taxpayers in focal areas of taxation (GIZ, 2010). A case in point is the Peruvian Revenue Authority (SUNAT) that educates citizens in the scope of taxation. It offers among other services, E-learning, education programs at schools and universities, virtual library and a range of publications with the aim of educating both current and future taxpayers. Tax authorities should concentrate on measures that reduce taxpayers' compliance costs by for example, introducing online services or automation

Tax administrations should undertake measures that improve the ability to enforce tax laws. Measures include capacity development such as training and courses on specialized areas of detecting illegitimate profit shifting activities or tax fraud at the same time restructuring of the salary schedule to offer sufficient incentives in order to attract and retain capable staff and minimize risk of corruption that facilitates illicit financial flows and trade mispricing.

GIZ (2010) and Martini (2015) agree that a key role of the tax administration in curbing illicit financial flows and trade mispricing is developing simple and coherent tax laws including transfer pricing and strong revenue administration rules. In this regard, reform of the tax laws should be comprehensive to avoid complex financial law that will aid revenue losses through illicit financial flows and trade mispricing.

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Globalization and the liberalization of goods and financial markets pose a new challenge for many countries in the field of taxation and fighting illicit financial flows. To be more precise, international modes of tax evasion and avoidance (trade mispricing, transfer pricing) cannot be solved by a single country. Hence, GIZ (2010) brought out the need for international and regional cooperation through enhanced exchange of information. Therefore, it is the responsibility of tax administrations to sign Tax Information Exchange Agreements (TIEA) with other countries and to participate in international networks and forums to exchange information and ideas on how to reduce revenue losses from illicit financial flows and trade mispricing. Such fora include the WCO, WTO, IMF, WB, ICTD and ATAF. It is also important to note that TIEAs have their challenges in terms of effectiveness, particularly where information is sought from tax havens, secrecy jurisdictions whose own legislation shields the collection of crucial tax data.

2.4. Empirical Evidence

Domestic Laws

A number of domestic laws to fight illicit financial flows and trade mispricing do exist in Zimbabwe. These laws criminalizes and facilitates investigations of money-laundering, corruption (a predicate offence for money laundering) and regulates the transfer of money into Zimbabwe from abroad. Fundira (2007) identifies the legislation as the Serious Offences (Confiscation of Profits) Act, Chapter 9:17, the Prevention of Corruption Act, the Presidential Powers (Temporary Measures) and (Amendment of Criminal Procedure and Evidence Act) Regulations 2004. Others are the Bank Use Promotion and Suppression of Money Laundering Act (Act 2 of 2004), the Exchange Control (Money Transfer Agencies) Order, VAT Act and Income Tax Act. (Financial Intelligence Unit, 2010), noted that between 2010-2015, Zimbabwe enacted the following legislation;

- Money Laundering and Proceeds of Crime Act, Chapter 9:24, which provides a comprehensive AML/CFT framework including criminalizing money laundering and terrorist financing.
- Statutory Instrument (SI) 76 OF 2014, which implements the requirements of UN Security Council Resolutions relating to the identification and freezing of assets of persons, designated under the Taliban and Al Qaida sanctions regimes.

In 2017, the government enacted Statutory Instrument 145 of 2017 to provide for a moratorium to enable illicit financial flows offenders to return, without prosecution, funds looted from Zimbabwe. Failure by offenders to comply with the moratorium will led to naming, shaming, and prosecution.

International Conventions/Membership

In its quest to fight illicit financial flows and trade mispricing, Zimbabwe is a signatory to a number of international conventions. These include Vienna Convention (UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998, Palermo Convention (UN Convention against Transnational Organized Crime, 2000, Merida Convention (UN Convention

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against Corruption, 2003, SADC Protocol against Corruption, AU and UN Conventions on the Prevention of Corruption, UN Convention on the Suppression of Financing of Terrorism and SARPCCO Protocol and INTERPOL.

Legislative Oversight

Legislature's derives its oversight powers from the Standing Orders made in terms of section 57 of the Constitution. House of Assembly Standing Order 159(2) and Senate Standing Order 149(2) confer and codify the oversight role to parliament. Parliamentary portfolio and thematic committees are formed based on such provisions and have powers to summon any person or institution to give evidence or produce documents, and report to them. The Parliamentary Standing Rules and Orders clearly state that any public official who fails to obey them could be charged with contempt of Parliament.

Judiciary

Zimbabwe set up Special Economic Crime Courts to expedite the prosecution of economic crimes. The government established DCCs and toll free number in 2017 to expedite prosecution of corruption related cases and report corruption direct to the President's Office.

The Financial Intelligence Evaluation and Security Unit (FIIES) resident in the Reserve Bank of Zimbabwe (RBZ) was established in 2004. It is the main regulator of AML/CFT and works closely with supervisory/regulatory bodies and relevant stakeholders in ensuring the investigation, prosecution, conviction of criminal offenders and confiscation of recovered assets or funds. For the first half of 2016, the FIU received 474 cases of Suspicious Transactions Reports (STR) (The Herald, 2016). However, the unit does not have arresting powers.

In addition, in 2005 the government established Zimbabwe Anti-Corruption Commission an independent body to combat corruption and crime in terms of Chapter 13, Part 1 of the Constitution of Zimbabwe. Like the Financial Intelligence Evaluation and Security Unit (FIIES), the commission has no arresting powers.

Tax Administration

A standalone tax administration was established in 2001 under the Zimbabwe Revenue Authority Act (Chapter 23:11) and other subsidiary legislation. It combined the former Departments of Customs and Excise, and Taxes, and its mandate is to collect revenue, advise the government on fiscal and economic matters, facilitate trade and travel and protect the civil society. It has overall oversight over the Income Tax Act, Chapter 23:06, Customs and Excise Act, Chapter 23:02, Capital Gains Act, Chapter 23:01, Finance Act, Chapter, Value Added Tax Act, Chapter 23:12, Stamp Duties Act, Chapter 23:09, Excise Duty Act, Chapter 23:03, General Regulations and other subsidiary legislation.

The tax administration also enforces the laws of other government departments on importations and exportations of goods and services. It also enforces RBZ's Exchange Control Act (Chapter 22:05), a critical law to fighting illicit financial flows and trade mispricing in Zimbabwe. ZIMRA

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has the powers to audit and investigate cases of tax evasion and tax fraud through its Investigations Division. However, as is the case with other law enforcement agencies (FIU and ZACC), it does not have arresting powers.

3. Research Methodology

The study followed a descriptive research design that uses qualitative methods.

The research used secondary research technique. Secondary sources of data such as publications by governments and reputable international bodies like the International Monetary Fund (IMF), World Bank and African Development Bank (AfDB) were used. Reports by research scholars and economists from various institutions and reliable data from institutions such as the Global Financial Integrity (GFI) were utilized in this research. In addition, the study used statutory documents, policy documents, key legal and judicial institutions, and tax administration operations reviews to understand their roles in fighting illicit financial flows and trade mispricing in Zimbabwe.

4. Research Findings

4.1. The Legislature

- 4.1.1 Zimbabwe has a vibrant legislature and adopted legislation to criminalize illicit financial flows and trade mispricing.
- 4.1.2 Zimbabwe is a member of international conventions against illicit financial flows and trade mispricing.
- 4.1.3 Implementation or effective use of the enacted laws is weak
- 4.1.4 Provisions against illicit financial flows and trade mispricing are scattered in varied pieces of legislation. This negates accessibility and frustrates successful prosecution of culprits.
- 4.1.5 The Serious Offences (Confiscation of Profits) Act does not appropriately define money laundering and the penalties it imposes are small in relation to the crimes.
- 4.1.6 The Prevention of Corruption Act blurs the relationship between the investigator and the police. It fails to clarify procedures for sharing information with the police in circumstances where the police were investigating the matter before the appointment of the special investigator.
- 4.1.7 The Bank Use Promotion and Suppression of Money Laundering Act promotes the use of banking system that establishes an audit trail to detect money laundering.
- 4.1.8 The secrecy provisions in the legislation limits effective and timeous information sharing, requiring extensive protocols through various structures for approval.

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4.2. The Judiciary

- 4.2.1 Specialized Criminal Courts (SCC) and Dedicated Corruption Courts (DCC) were established to expedite the prosecution of economic crime cases.
- 4.2.2 The judiciary system has insufficient and weak mechanisms for checks and balances.
- 4.2.3 Laws pertaining to corruption and illicit financial flows are strong, but the government often prosecutes individuals who have fallen out of favour with the influential members of the society.
- 4.2.4 Settlement of cases including economic or financial crime cases can take several years.
- 4.2.5 Inspectors in the Financial Intelligence Unit (FIU) do not have arresting powers.
- 4.2.6 The performance of the Zimbabwe Anti-Corruption Commission is poor and does not have arresting powers.
- 4.2.7 Zimbabwe also has a Fiscal Appeal Court Act for the hearing of cases where persons appeal against decisions made under any of its Acts.

4.3. Tax administration

- 4.3.1 The tax administration has limited knowledge of illicit financial flows and trade mispricing.
- 4.3.2 There are complicated tax laws and rules, and tax officials have high discretionary powers that increase the potential for non-compliance and abuse of tax laws.
- 4.3.3 Section 98, 98A and 98B of the Income Tax Act lacks specific provisions for transfer pricing and are not clear on the principle of arm's length.
- 4.3.4 Limited knowledge on transfer pricing regulations and legislation, and capacity to implement transfer-pricing regulations.
- 4.3.5 Lack of a stand-alone Transfer Pricing Unit.
- 4.3.6 Limited use of forensic audits to unearth illicit financial flows through tax evasion or tax avoidance abuse.
- 4.3.7 Tax administration is not sufficiently involved in designing policies for domestic resource mobilization, and in negotiations of investment and tax treaties.
- 4.3.8 Zimbabwe has signed Double Taxation Agreements (DTA) with many countries constraining its domestic resources mobilization and exposing itself to the risk of illicit financial outflows.
- 4.3.9 There is no indication of programmes supporting the negotiation of tax information exchange agreements despite a prevalence of multinationals operating in the country, to the extent that the tax authority has a specific subunit handling the auditing and investigation of multinationals.

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4.4. Cross Cutting Findings

- 4.4.1 Zimbabwe still lags behind in terms of good governance. The Executive branch of government interferes much with the operations of institutions that should be independent and autonomous.
- 4.4.2 The new political dispensation in Zimbabwe is showing political will and commitment to fight economic and financial crimes.
- 4.4.3 There is weak information sharing mechanisms and collaboration among agencies making it difficult to track and monitor illicit leakages.
- 4.4.4 The legislature, judiciary and tax administration are perceived to be corrupt.
- 4.4.5 The legislature, judiciary and tax administrations are inadequately

5.0 Conclusion and Recommendations

Like any country in the world, Zimbabwe is losing domestic resources to illicit financial flows and trade mispricing. To curb these crimes, it has shown a lot of commitment by developing laws, and improving operational efficiencies of the judiciary, law enforcement agencies and the tax administration. However, corruption, lack of independence, inadequate resources, limited knowledge of illicit financial flows and trade mispricing, and lack of coordination among relevant agencies are impeding the fight against illicit financial flows and trade mispricing. Political will and government commitment are key to fighting these cancerous and deleterious crimes.

5.1 Legislature

To curb illicit financial flows and trade mispricing, the legislature should;

- 5.1.1 Effectively use its sound and vibrant legislation and regulatory framework.
- 5.1.2 Develop and adopt one comprehensive Act that will combine the various legislations on illicit financial flows and trade mispricing to enhance the accessibility and prosecution of culprits.
- 5.1.3 Amend section 63 of the Serious Offences (Confiscation of Profits) Act, Chapter 9:17 to appropriately define money laundering, fully criminalize money laundering and identify accountable institutions or specify reporting obligations.
- 5.1.4 Amend the Prevention of Corruption Act to clarify the relationship and information sharing procedures between the investigator and the police.
- 5.1.5 Develop penal provisions that deter economic crimes.
- 5.1.6 Pass stringent laws criminalizing manipulation of import and export prices for the purposes of evading taxes or any other source of government revenue.
- 5.1.7 Develop simple laws including tax laws.

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5.1.8 Stay ahead of perpetrators of economic crimes by adopting modern technology.

5.1.9 Vest Financial Intelligence Unit (FIU) inspectors, tax officials and Zimbabwe Anti-Corruption Commission (ZACC) officers with arresting powers.

5.1.10 Enter into more Mutual Agreements (MA) with other countries for the investigation, prosecution and repatriation of proceeds of crime.

5.2 Judiciary

To fight illicit financial flows and trade mispricing, the judiciary should be;

5.2.1 Ensure that its personnel stay to their judicial oaths and should never be partisan.

5.2.2 Establish standard time frames for the completion of financial crime cases.

5.2.3 Publicize the courts' decisions on financial crime cases to restore the citizens' confidence in the judiciary systems.

5.2.4 Investigate and prosecute offenders named and shamed by government.

5.2.5 Set up regional tribunals under regional bodies such as SADC and COMESA to deal with common cases within the trading bloc.

5.3 Tax Administration

To avoid illicit financial flows and trade mispricing, the tax administration should;

5.3.1 Capacitate its employees through training on specialized areas of detecting illegitimate profit sharing activities and tax fraud.

5.3.2 Assist government in developing simple and coherent tax laws.

5.3.3 Amend Section 98, 98A and 98B to include more specific transfer pricing provisions.

5.3.4 Develop effective transfer pricing rules and guidelines.

5.3.5 Establish an adequately resourced Transfer Pricing Unit comprised with an appropriate skills mix. South Africa, Uganda, Kenya, Tanzania and Nigeria have developed functional Transfer Pricing Units and are realizing positive results.

5.3.6 Adopt a proactive risk based audit approach.

5.3.7 Improve partnership with the Reserve Bank not only for information sharing but also for implementation of provisions that empower the setting up of inspectorate units under the Bank Promotion Act [Cap 24:24].

5.3.8 Implement forensic auditing when auditing taxpayers especially on suspected cases of tax fraud and evasion.

5.3.9 Adequately participate in policy-making and tax treaty negotiating processes.

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- 5.3.10 Review existing Double Taxation Agreements (DTAs) with the aim of renegotiating or cancelling the abused ones and those with tax havens. DTAs that lead to loss of taxing rights on key tax heads should be avoided.
- 5.3.11 Increase effective participation in international and regional networks.
- 5.3.12 Encourage voluntary tax compliance through aligning tax structures with international standards and embark on taxpayer education programs.
- 5.3.13 Adequately and significantly, record and share all international trade transactions with international institutions responsible for compilation of trade statistics.
- 5.3.14 Enter into Tax Information Exchange Agreements (TIEA) with other countries. For instance, accede to the ATAF Agreement on Mutual Assistance in Tax Matters (AAMATM) for easier information exchange with other ATAF member states.
- 5.3.15 Avail customs officials with global trade databases to enable risk assessments of imports and exports.
- 5.3.16 Adequately reward tax officials to retain and attract capable staff and to help minimize the risk of corruption that facilitates illicit financial flows and trade mispricing.
- 5.3.17 Take advantage of capacity building programmes such as the Exchange of Information (EOI) training under ATAF or the Tax Inspectors Without Borders (TIWB) initiative under OECD and UNDP.

4.5. Cross Cutting Recommendations

In order to succeed in the fight against illicit financial flows and trade mispricing;

- 5.4.1 The government should continue showing political will and commitment.
- 5.4.2 The government should develop and implement good governance systems and respect the independence of institutions that are key to fighting illicit financial flows and trade mispricing.
- 5.4.3 The key institutions in fighting illicit financial flows and trade mispricing (legislature, judiciary and tax administration) should shun corruption to avoid tax losses and capital flights.
- 5.4.4 The government should implement mechanisms to enable inter-agency cooperation among all relevant stakeholders.
- 5.4.5 The government should develop policies that encourage and promote domestic investment.

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6.0 Conclusion and Recommendations

4.6. Suggestions for Further Research

Further research on this critical topic be conducted using field study approach to practically explore existing pieces of legislation and the role of judiciary and tax administration in order to bring out their deficiencies and strengths. This will assist in proffering practical and feasible recommendations to strengthen the roles of the legislature, judiciary and tax administration in fighting illicit financial flows and trade mispricing.

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