GIABA

INTER-GOVERNMENTAL ACTION GROUP AGAINST MONEY LAUNDERING IN WEST AFRICA



ASSESSMENT OF COUNTER TERRORIST FINANCING CAPACITIES IN WEST AFRICA

BURKINA FASO | COTE D'IVOIRE | MALI | NIGER | NIGERIA

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ACRONYMS AND ABBREVIATIONS

AML	Anti-Money Laundering
ANR	National Intelligence Agency
APBEF	Association of Professionals of Banks and Financial Institutions
APGML	Asia Pacific Group on Money Laundering
API	Agence pour la Promotion des Investissement (API) au Mali
AQIM	Al Qaeda in Islamic Maghreb
AQN	Al Qaeda Network
ASCE-LC	Supreme Authority for Control of the State in the Fight against Corruption
ASTAC-CI	Association of Cash Exchange and Transfer Companies-Cote d'Ivoire
AU	African Union
BOA-BF	Bank of Africa – Burkina Faso
BCEAO	Central Bank of West African States
BDC	Foreign Exchange Bureau
BF	Burkina Faso
BVN	Bank Verification Numbers
CARPA	Autonomous Fund for the Regulation of Lawyers
CBN	Central Bank of Nigeria
CCB	Code of Conduct Bureau
CCGA	Consultative Commission of Administrative Freezing in Abbreviation
CDD	Customer Due Diligence
FIU	Financial Intelligence Unit
CFT	Counter Financing of Terrorism
CI	Cote d'Ivoire
CNI	National Intelligence Coordination
COE	DGHL Council of Europe Select Committee for Assessment of Anti-Money Laundering Measures
CSO	Civil Society Organization
CTC	Counter Terrorism Committee
CTU	Counter Terrorism Unit
DGD	Customs Department
DGI	National Revenue Authority (BF)
DGTA	Territorial Administration Department
DGTCP	State Treasury and Public Accounting Department (BF)
DITT	Information and Technological Department
DNFBP	Designated Non-Financial Businesses and Professions
DONGAD	Directorate of Non-governmental Organizations and Development Associations
DPJ	Criminal Investigation Department
DSE	Department of External Services (DSE)
DST	Directorate of Territorial Surveillance

DSTE	Systematic Cash Transaction Reporting
DUCT	Directorate for the Unit against Transnational Organized Crimes
ECOBANK	Pan-African Bank
ECOWAS	Economic Community of West African States
EDD	Enhanced Due Diligence Obligation
EFCC	Economic and Financial Crime Commission
ESAAMLG	Eastern and Southern African Anti-Money Laundering Group
ESW	Egmont Secure Web
FATF	Financial Action Task Force
FEF	Friedrich Ebert Foundation
FGD	Focal Group Discussion
FHI	Family Health International
FIRS	Federal Inland Revenue Services
FIU	Financial Intelligence Unit
FMBN	Federal Mortgage Bank of Nigeria
GABAC	Action Group against Money Laundering in Central Africa
GAFIC	Caribbean FATF (GAFIC)
GAFISUD	South American Financial Action Task Force against Money Laundering and Financing of Terrorism
GIABA	Intergovernmental Action Group against Money Laundering in West Africa
ICSC	Ivorian Civil Society Convention
IFI	International Financial Institutions
IMC	Inter-Ministerial Committee
IMF	International Monetary Fund
IMOLIN	International Money Laundering Information Network
INTERPOL	International Police Organization
IRSAD	Ansar-ul-Islam lil-Ichad wal Jihad
ISGS	Islamic State in the Greater Sahel
ISIS	Islamic State of Iraq and Syria
ISWAP	Islamic State in the West African Province
JNIM	Jamaát Nasr al-Islam wal Muslimin
JP	Criminal Investigation Officer
KYC	Know Your Customer
LCBC	Lake Chad Basin Commission
M&E	Monitoring and Evaluation
MENA	Middle East and North Africa
MENAFATF	Middle East and North Africa FATF (MENAFATF)
MER	Mutual Evaluation Report
MLA	Mutual Legal Assistance

MNJTF	Multinational Joint Task Force
NAICOM	National Insurance Commission
NCC	National Coordinating Committee
NDLEA	National Drug Law Enforcement Agency
NEXIM	Nigeria Export and Import
NFIU	Nigerian Financial Intelligence Unit
NGO	Non-Governmental Organization
NRA	National Risk Assessment
NPO	Non Profit Organizations
OAU	Organization of African Unity
OCRTIS	Central Office for the Suppression of Illegal Traffic in Narcotics
OFAC	Office of Foreign Assets Control
OHADA	Organization for the Harmonization of Business Law in Africa
ONSA	Office of the National Security Adviser
OPS	Organized Private Sector
PEP	Politically Exposed Persons
PoA	Plan of Action
POCA	Proceeds of Crimes Legislation
REN-LAC	National Anti-Corruption Network
ROTAB	Organizations for Transparency & Budget Analysis
SCLCT/CTO	Central Agency against Terrorism and Transnational Crime
SECO	Permanent Secretariat of Domestic NGOs in Mali
SGBF	Société Générale Burkina Faso
SONIBANK	Société Nigérienne de Banque
SPONG	Permanent Secretariat for NGO Monitoring
STR	Suspicious Transaction Report
TPA	Terrorism Prevention Act
UEMOA	West African Economic and Monetary Union
SCUMBL	Special Control Unit against Money Laundering
SEC	Securities and Exchange Commission
TF	Terrorist Financing
UN	United Nations
UNODC	United Nations Office for Drug and Crimes
UNSC	United Nations Security Council
USA	United States of America
WTC	World Trade Centre

EXECUTIVE SUMMARY

The scourge of terrorism in West Africa which is sustained by numerous channels of terrorist financing have persisted despite numerous levels of engagements adopted at national and regional levels by the member states of the Economic Community of West African States (ECOWAS) to address it. The sources and methodologies for the financing of terrorism in the region have also continued to evolve and include the use of funds derived from licit and illicit activities. These funds are sometimes moved through the relatively under-regulated formal and largely unregulated informal channels to support the perpetration of various forms of terrorist activities. The incidences of terrorist financing have therefore persisted in West Africa irrespective of the measures adopted and targeted at combating them.

This background formed the motive force for this study initiated by the Inter-Governmental Action Group against Money Laundering in West Africa, otherwise known as GIABA. The study focuses on the assessment of the capacities of five (5) of GIABA's terrorism most affected member States, notably Burkina Faso, Cote d'Ivoire, Mali, Niger and Nigeria in countering the financing of terrorism. The main objective of the study is to examine the capacities of the selected GIABA member states in countering financing of terrorism (CFT) through the application of international CFT standards and requisite domestic measures with a view to strengthening the capacities of these states in meeting the respective national CFT needs.

The GIABA engaged an External Consultant who embarked on field survey alongside GIABA personnel to the selected countries and conducted interviews, Focus Group Discussions while also administering questionnaires to relevant officials between 3 February and 8 March 2019. This report therefore discusses the outcome of the analysis of data collected through the working sessions in these countries.

The key findings of the study are that the financing of terrorism in these countries is continuously being perpetrated through both formal and informal sectors. It also notes that all the 5 countries have relevant laws and are signatories to several international conventions as well as functional Financial Intelligence Units (FIUs) targeted at countering the financing of terrorism. In addition, the various reporting entities especially the banks and financial institutions have established guidelines and elaborate procedures for reporting suspicious transactions. This rarely seems to be the case for Designated Non-Financial Businesses and Professions (DNFBPs). Furthermore, the respective national governments under study established various regulatory institutions to supervise the activities of the reporting entities to ensure compliance with extant standards. Yet, the knowledge base and technical competences of official charged with reporting, supervisory and criminal justice responsibilities to meet their responsibilities are also many times lacking.

Further analysis of the data collected from the working sessions reveals that despite the above mechanisms, a number of vulnerabilities still persists that weaken the capacities of the states to effectively counter the financing of terrorism. For instance, there exist observable deficits in the level of compliance of reporting entities with extant CFT standards which have created gaps often exploited by terrorists to perpetrate their activities. Such gaps sometimes arise from inabilities of reporting institutions to detect and report suspicious transactions to the national FIU for further actions among others. The vulnerabilities are further sustained by the low level of supervision by various regulatory agencies in the five countries under review.

In addition, there exists poor regulation of the artisanal mining sector especially around the border areas in these countries. Consequently, terrorist organisations have exploited the lack of

traceability of several transactions to fund their activities. Meanwhile, there exist continuous land borders connecting the five countries studied and parts of the vast border areas are porous and under-patrolled and sometimes overlapping. These border areas also have under-governed spaces with numerous unofficial access points often exploited by terrorists for illicit cross-border trafficking that aid their activities.

Yet, several of the CFT laws are not modelled to accommodate some realities of Africa such as the culture of largely cash transaction evident in the informal economic sector as well as the neglect of traditional rulers and religious leaders. These further reveal the inability of these countries to effectively forestall their vulnerabilities to terrorist financing. In light of the above, some of the key recommendations proffered in the research include but not restricted to the following:

a. The respective National Governments should take effective measures at criminalising the financing of terrorism and terrorist organisation for all purposes while also acting in collaboration with strategic partners, provide adequate resources for national institutions mandated to implement CFT standards. In addition, the national governments reviewed should evolve and enforce robust legal and policy frameworks to ensure due diligence or effective compliance of the mining sector to CFT standards.
b. The regulatory agencies should ensure commensurate and competent workforce that uphold CFT compliance standards as applicable. Specifically, the respective Central Banks should strengthen the gains of financial inclusion through relevant policy adjustments that encourage more informal exchange rate operators into the formalised and well-regulated CFT regimes while also initiating policies that reconcile the traditional financial circuit within the framework of the regulated cash economy.
c. The supervisory authorities should strengthen the supervisory mechanism to ensure that customer due diligence measures (CDD) are effectively implemented by reporting entities, subject to penalties.
d. The GIABA, in collaboration with the United Nations Office for Drugs and Crimes (UNODC) and respective national FIUs, should evolve a terrorist sanctions compliance policy that suits the national needs of member states. Furthermore, the GIABA and respective national FIUs should organise training sessions on CFT obligations to build the capacities of various regulatory agencies and reporting entities especially NGOs and charities while also conducting periodic public enlightenment campaigns to stimulate awareness and public interests on CFT standards.

CHAPTER 1:
INTRODUCTION

BURKINA FASO



COTE D'IVOIRE



MALI



NIGER



NIGERIA



CHAPTER 1: INTRODUCTION

Background

1. Since the last decade of the 20th Century, the scourge of terrorism with respect to the financing of terrorism emerged a critical security challenge confronting Africa. Varying attempts at explaining this phenomenon revolve around internal contradictions of state fragility, weak institutions, deep rooted grievances as well as the failed attempts at state building and nation building within African states. Further explanations seek to relate the emergence and persistence of terrorism in Africa to extra continental influences. One such narrative seeks to link the terrorist age in Africa to the activities of the Armed Islamic Group (GIA) and other pseudo-Salafist groups that emerged in the Middle East and North Africa (MENA) in the aftermath of the Mujahidin uprising against Soviet invasion in Afghanistan which ended with the withdrawal of Soviet troops from the country in February 1989. Subsequently, the Mujahidin coalition in Afghanistan fragmented and foreign fighters returned to their respective countries.

2. Several individuals who fought alongside the Mujahidin returned with broad networks and determination to engage the polities of their respective countries for change and often resorted to terrorist acts against the state when resisted. For instance, in Egypt, repeated terrorist attacks involving the shooting of tourists, assassination of government officials, and intermittent bombings in Cairo, Sinai and Luxor perpetrated by the Al-Gal'a a;-Islammiyya and the Egyptian Islamic Jihad led to general apprehensions and severe loss of about 1,051 lives between 1993 and 1995.[1]

3. In East Africa, the Embassies of the United States in Nairobi (Kenya) and Dar es Salam (Tanzania) were simultaneously attacked by terrorists on 7 August 1998 leading to the death of over 224 persons and wounding over 5000.[2] These incidents were clear manifestations that terrorist aggressions constitute the next major security challenge as Africa enters the 21st Century. It was in the realisation of this reality that the leadership of the defunct Organisation of African Unity (OAU) adopted the Convention for the Prevention and Combating of Terrorism at Algiers (Algeria) on 14 July 1999. Article 4 (1) of this Convention provides as follows:

   State parties undertake to refrain from any act aimed at organising, supporting, financing, committing or inciting to commit terrorist act, or providing havens for terrorists, directly or indirectly, including the provision of weapons and their stockpiling in their countries and the issuing of visas and travel documents.[3]

4. It is however noteworthy that two decades after the adoption of the Convention for the Prevention and Combating of Terrorism in Africa, the scourge of terrorism across the continent has persisted. This is not unconnected with the domino effects arising from the intensification of measures at Countering Financing of Terrorism (CFT) by extra continental powers which are targeted at crippling the funds at the disposal of terrorist groups while also stifling the ease at which they can access funds to continue their activities.

5. Studies have revealed that funds are needed by terrorist organisations such as the Al Qaeda Network (AQN) or the Islamic State in Iraq and Syria (ISIS) and their affiliates to ensure their existence and also facilitate the perpetration

1 Michelle Dunne and Scott Williamson, "Egypt's Unprecedented Instability by the Numbers" Carnegie Endowment for International Peace, March 2014, https://carnegieendowment.org/2014/03/24/egypt-s-unprecedented-instability-by-numbers-pub-55078 (Retrieved 26 October 2019)
2 Cable News Network (CNN) Library, "1998 US Embassies in Africa Bombings Fast Facts" 3 August 2019, http://edition.cnn.com/2013/10/06/world/africa/africa-embassy-bombings-fast-facts/index.html?no-st=9999999999 (Retrieved 26 October 2019)
3 Organisation of African Unity, "Convention on the Prevention and Combating of Terrorism in Africa" (Addis Ababa, Organisation of African Unity, 1999)

of terrorist acts.[4] Such funds are required to maintain their organisations (or cells), recruit and train combatants and also maintain the combatants and their families, where necessary. It is also needed by terrorists to procure arms, explosives and logistics, mount propaganda and launch deadly operations. To this effect, it became imperative to adopt far reaching CFT measures to prevent, track, intercept and disrupt the flow of funds to terrorist individuals, small cells and organisations. Consequently, CFT measures have become a priority engagement and key to counter-terrorism strategies across the globe.

6. At the global level, the United Nations (UN) system has since 2001, adopted far-reaching measures to prevent, track, intercept and disrupt the flow of funds to terrorist individuals, small cells and organisations. For instance, the United Nations Security Council (UNSC) adopted Resolutions 1373 (2001), 2178 (2014) and 2253 (2015) which requires member states to criminalize terrorism financing and to take a number of measures to prevent and suppress it.[5] Additional provisions on terrorist financing (TF) are spelt out in the provision of the UNSC Resolution 2341 (2017) and UNSC Resolution 2462 adopted on 28 March 2019 which upheld previous resolution and among other things calls on member states to strengthen international cooperation to prevent and counter the financing of terrorism including the effective exchange of relevant financial intelligence through bilateral and multilateral mechanisms.6 Similarly, the FATF adopted its 40 Recommendations of the Financial Action Task Force (FATF), as revised in February 2012, including Recommendation [5] ("Terrorist Financing" Offence), Recommendation[6] (Targeted Financial Sanctions Related to Terrorism and Terrorist Financing).

7. The UNSC further urged member states to implement the recommendations of the FATF with special attention devoted to the Interpretative Notes, best practices papers and the assessment methodology evolved to assist members of the FATF and FATF-styled regional bodies (FSRBs) to implement extant resolutions relating to CFT especially in the area of assessing the effectiveness of measures through the evaluation of immediate outcomes (I.O.s).[7] The methodologies keep evolving to reflect new threats and vulnerabilities relating to the financing of terrorism.

8. In Africa, the 2002 Plan of Action (PoA) of the African Union High-Level Inter Governmental Meeting on the Prevention and Combating of Terrorism in Africa enumerated measures geared at suppressing the financing of Terrorism in the region. Paragraph 13 of the instrument commits member states to enact national legislations that criminalize the financing of terrorism, carry out stringent control of funds that belongs to individuals and organisations suspected of financing terrorist groups, operationalize the Palermo Convention and regulate public collection of funds to ensure that proceeds are not used to fund terrorism.[8] The instrument also enjoins member States of the AU to confiscate assets intended for and which may give shelter to terrorist groups. Furthermore, member states of the AU were by this PoA mandated to establish Financial Intelligence Units in accordance with the recommendations of International Financial Institutions (IFIs), train personnel in charge of preventing and combating money laundering with international technical assistance and also cooperate with the IFIs for the development of a global, comprehensive, Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT) methodology and assessment process.[9]

4 Financing of Recruitment for Terrorist Purpose, FATF, January 2018; Terrorist Financing in Central and West Africa, FATF/GIABA/GABAC, October 2016; Emerging Terrorist Financing Risks, October 2015; and Financing of the Terrorist Organisation Islamic State of Iraq and the Levant, FATF, February 2015.
5 United Nations Counterterrorism Committed Executive Directorate (CTED), Technical Guide to the Implementation of Security Council Resolution (1373 (2001) and other Relevant Resolutions, https://www.un.org/sc/ctc/wp-content/uploads/2017/08/CTED-Technical-Guide-2017.pdf (accessed 16 April 2019).
6 United Nations Security Council, Resolution 2462 of 28 March 2019; S/RES/2462 (2019)
7 Ibid.
8 African Union, Plan of Action of the African Union High-Level Inter-governmental Meeting of the Prevention and Combating of Terrorism in Africa, adopted in Algiers, Algeria, 11-14 September 2002, Mtg/HLIG/Conv.Terror/Plan.(1)
9 Ibid.

9. As part of the response to the threats and incidents of terrorism in West Africa, the Authority of the ECOWAS Heads of State and Government expanded the mandate of the GIABA to include the provision of critical financial intelligence required for AML/CFT during the Niamey meeting of January 2007.[10] Similarly, the ECOWAS Counterterrorism Strategy adopted by the Authority of the ECOWAS in 2013 has AML/CFT compliance as a critical strand.

10. In spite of these global, continental and regional efforts, however, the intensification and spread of terrorism in a number of countries in West Africa indicates that the application of the global CFT tools in the region has not been appropriate and/or completely effective. Notwithstanding the whole-of-state engagements in CFT in Burkina Faso, Cote d'Ivoire, Mali, Niger and Nigeria, terrorist groups in the region have continued to maintain their organization, grow in size, spread to neighbouring countries, recruit more fighters, secure deadly combat weapons, perpetrate more attacks and sustain their propaganda. Their resilience suggests and proves that West African terrorist groups are successful in securing funds. It further raises questions on why the affected countries are not able to detect and disrupt TF in their jurisdictions. It is this curiosity that this assessment is undertaken to address.

11. In light of the above, the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) conducted an assessment of the capacity of five of its member states to effectively counter terrorist financing (TF). These countries are Burkina Faso, Côte d'Ivoire, Mali, Niger and Nigeria. The assessment covered the following specific areas such as national TF risk assessment, the national legal framework, national coordination and inter-agency cooperation and the criminal justice system in terms of investigation, prosecution and adjudication. Others areas covered include the vulnerable sectors, issues associated with the responsibilities of FIUs as well as nature of regional and international cooperation.

Objectives

12. The overarching goal of this project is to appreciate the capacities of the selected GIABA member states to efficiently and effectively counter the financing of terrorism through the application of international CFT standards and requisite domestic measures. The ultimate aim of this project is to arrive at a diagnosis with a view of providing the GIABA member States with adequate technical assistance based on the identified priorities. The specific objectives are:

a. Establish the extent to which competent authorities in each of the five countries understand the Terrorism Financing (TF) risks in their countries.
b. Ascertain the conformity of the relevant domestic TF legal and regulatory frameworks to international standard and identify gaps/weaknesses where applicable.
c. Ascertain the responsiveness of the criminal justice system in terms of investigation, prosecution and adjudication with regard to TF.
d. Review the existing national coordination and inter-agency cooperation mechanisms and identify its strengths and weaknesses.
e. Ascertain the responsiveness of selected private sector actors in meeting their CFT obligations.
f. Establish the extent to which each country is engaged in regional and international cooperation to counter TF both locally and in other jurisdiction as well as identify the challenges being faced.
g. Identify the common issues among the countries at all levels as enumerated above and provide an in-depth analysis of the issues.

10 C. Nna-Emeka Okereke, "Combating Financing of Terrorism: The African Experience" in African Journal for the Prevention and Combating of Terrorism, Vol. 2, No 1, December 2011, p. 24

h. Provide targeted policy and operational recommendations that could help to address the different issues both at local and regional levels.

Scope

13. Five GIABA member states notably Burkina Faso, Cote d'Ivoire, Mali, Niger and Nigeria were selected for this study. The choice of countries for this study was informed by the fact that they have experienced glaring incidences of terrorism especially since 2010 and their respective experiences remain instructive for the region.

14. It is however important to note that Cote d'Ivoire has only experienced the Grand Bassam attack in 2016. It has however taken measures that have prevented another terrorist attack despite sharing borders and certain socio-cultural realities with Burkina Faso and Mali which have repeatedly experienced terrorist attacks. For instance, the country adopted the UEMOA law on CFT and also became serious with demands on information relating to Suspicious Transactions Reporting (STRs). In addition, renewed emphasis was monitoring and supervising the activities of Non-Governmental Organisations (NGOs). However, the Republics of Niger and Nigeria have also continued to experience repeated attacks despite concerted efforts of the respective governments against terrorism.

Methodology

15. This study utilized primary and secondary data obtained through field survey and document analysis. The GIABA Secretariat engaged one External Consultant who travelled alongside GIABA Research Team to each of the five countries under study, and reviewed relevant literature on the subject matter. The literature consulted included declassified documents released by government, as well as open-source materials published by international organisations and their subsidiary institutions.

16. The GIABA Research Team and the Consultant spent a total of five weeks in the field from 3 February to 8 March, exactly one week in each of the countries. The Team administered questionnaires, conducted unstructured interviews including FGDs with relevant stakeholders in the respective countries. The stakeholders were drawn from various government agencies and private sector institutions engaged in legislative, judicial, supervisory, control and regulatory mandates. The private sector actors were drawn from the financial sector, professional bodies and non-profit organisations.

17. The working visits began in Abidjan, Cote d'Ivoire from 3rd -10th February 2019 where the GIABA Team and Consultant held Focus Group Discussions (FGDs) with relevant actors and then moved to Ouagadougou in Burkina Faso where the survey took place from 11-15 February 2019. The GIABA Team and Consultant carried out 16 working sessions holding technical discussions with critical actors whose operations have implications for CFT. In the Republic of Niger, the Mission carried out fifteen (15) working sessions from 18 to 22 February 2019 and the respondents were drawn from critical stakeholders whose mandates and activities are related to CFT. The missions to Mali and Nigeria took place from 23 February to 2 March and from 3-8 March 2019 respectively.

18. The data collected for the study were analysed qualitatively and quantitatively where applicable. The respondents were drawn from government officials, including law enforcement and judicial personnel, administrators, representatives drawn from civil society groups, hotel administrators, estate managers, journalists, legal practitioners, financial sector operators from the banking, insurance, bureau de change and cash transfer operators including experts and reporting institutions in each of the countries.

CHAPTER 2: LITERATURE REVIEW

BURKINA FASO



COTE D'IVOIRE



MALI



NIGER



NIGERIA



CHAPTER 2: LITERATURE REVIEW

19. The literature review will focus on establishing the operational meaning of two key concepts in the study. These concepts are Financing of Terrorism and Countering Financing of Terrorism. The clear distinction between both concepts is considered important to ensure a better understanding of the comprehensive report.

UNDERSTANDING TERRORIST FINANCING

20. The attempt to understand CFT is better preceded by an explanation of financing of terrorism. The UNSC Counterterrorism Committee (CTC) notes that terrorists require money to operate because without funding, they will be unable to procure weapons, equipment, supplies and services. The sources of funding may be licit or illicit and could be obtained from multiple small donations instead of one huge sum. It notes that the source of terrorist financing could be through organized criminal activities such as extortion, hostage taking and kidnapping for ransom as well as trafficking in arms and illicit drugs.[11] Terrorist groups are therefore linked to organized crimes syndicates either directly or indirectly.

21. For the FATF, Terrorist Financing is the financing of terrorist acts, and or terrorists and terrorist organisations.[12] By implication, FT involves solicitation, collection or provision of funds with the intention that they may be used to support terrorist acts or organisation. Article 2 (1) of the International Convention for the Suppression of the Financing of Terrorism indicates that a person commits the crime of financing of terrorism "if that person by any means, directly or indirectly, unlawfully and wilfully provides or collects fund with the intention that they should be or in the knowledge that they are to be used, in full or in part, in order to carry out "an offence within the scope of the Convention" as spelt out by the 1999 instrument.[13] The limitations of this Convention to the collection and provision of funds for terrorist acts is addressed by the UNSC Resolution 2462 which among other provisions emphasised the financing of individual terrorists as well as terrorist organisations.

22. Kagan (2018) explains that individuals and organisations that engage financing of terrorism usually conceal the source of the funds and what the fund will be used for and that the funds may come from legal sources or illegal sources. The illegal sources could appear to have emanated from a legal source due to money laundering.[14] As such, combating money laundering is considered as one of the keys to countering the financing of terrorism. Kagan further notes that financial institutions play very important role in combatting the financing of terrorism. Consequently, CFT engagements include the use of laws that mandate banks and relevant financial institutions to conduct due diligence on their existing and intending customers. Such financial institutions are further to report suspicious transactions including high-value cash transactions to the authorities in line with CFT measures.[15]

23. In her efforts to broaden an understanding of terrorist financing in Africa, Annette Hubschle identified the sources of funds for terrorism in Africa which are considered important for understanding and appreciating the dynamics of countering the financing of terrorism in Africa.

11 United Nations Security Council Counterterrorism Committee, "Terrorism Financing" https://www.un.org/sc/ctc/focus-areas/financing-of-terrorism/ (Retrieved 7 October 2019)
12 Financial Action Task Force, "Glossary of the FATF Recommendations" http://www.fatf-gafi.org/glossary/s-t/ (accessed 4 September 2019)
13 United Nations, International Convention for the Suppression of the Financing of Terrorism, United Nations General Assembly Resolution 54/109, 9 December 1999.
14 Julia Kagan, "Combating the Financing of Terrorism" Investopedia, 14 August 2018, https://www.investopedia.com/terms/c/combating-financing-terrorism-cft.asp (accessed 21 April 2019)
15 Ibid.

These sources are as follows:

a. Criminal activities such as bank robberies, kidnapping for ransom, extortion, smuggling and drug trafficking.
b. Donations from local and foreign supporters, including emigrants and charitable organisation, and cash infusions from wealthy individual or organisation.
c. Assistance from foreign sympathetic states; and
d. Revenue from legitimate business operations.[16]

24. On their part, the FATF and GIABA identified a number of trends threatening the security and stability of states in West Africa. These trends are:

a. The upsurge in acts of terrorism and terrorist financing in the sub-region.
b. Emerging linkages between West African extremist groups and international terrorist organisations and provision of support by the later to the former.
c. The use of both legitimate and illegitimate means by terrorists and terrorist groups to raise funds for personal upkeep, recruitment, purchase of tools and equipment, the dissemination of propaganda.
d. The exploitation of formal and informal channels to move funds; and
e. The use of NGOs and charities as conduits for terrorist financing in the region.[17]

UNDERSTANDING THE COUNTER TERRORIST FINANCING

25. Bearing in mind that the financing of terrorism could undermine economic development and the stability of the financial market, the UNSC Resolution 1373 (2001) calls on states to prevent and suppress the financing of terrorism, inter alia, by criminalizing the collection and provision of funds for terrorist purposes. It also urges states to set up effective mechanisms to freeze funds and other financial assets of persons involved in or associated with terrorism and also prevent the funds from being made available to terrorists.

26. The International Monetary Fund (IMF) identifies the task of CFT as one of its priorities and invests resources in protecting the integrity and stability of the international financial system while also severing resources available to terrorists.[18] To this effect, it engages in critical surveillance functions which rely tremendously on the universal spread of its membership to implement relevant financial regulations relating to CFT. 17. For Onuoha, CFT refers to the measures conducted to detect, deter, disrupt, dismantle and destroy all the multiple layers of activities, actors, networks, means and objects of value used to generate funds to support terrorists or terrorist groups.[19] Onuoha's explanation of CFT is quite rich but devoid of the basic legalities.

27. Writing on the importance of CFT, the FATF observes that terrorists need money and other assets, for weapons but also training, travel and accommodation to plan and execute their attacks and develop as an organisation. Consequently, it asserts that disrupting and preventing these terrorism-related financial flows and transactions is one of the most effective ways to fight terrorism. This because such endeavours could prevent future attacks by disrupting their material support as the footprints of their purchases, withdrawals and other financial transactions can provide valuable information for on-going investigations.[20] The FATF therefore insists that countering terrorism financing is therefore an essential part of the global fight against terror threat.

16 Annette Hubschle, "Terrorist Financing in Southern Africa: Are we making a Mountain out of a Mole Hill? ISS Paper132, January 2007, p. 7
17 Financial Action Task Force and Intergovernmental Action Group Against Money Laundering in West Africa, FATF Report: Terrorist Financing in West Africa, October 2013, p. 4
18 International Monetary Fund, "Anti-Money Laundering/Combating the Financing of Terrorism – Topics" https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm (accessed 17 April 2019)
19 Freedom C. Onuoha, "Collaboration in Countering Boko Haram Financing Operations in the Lake Chad Area: Charting the Roles of Special Operation Forces" in *African Journal for the Prevention and Combating of Terrorism*, Vol. 7, No. 2, December 2018, p. 60.
20 Financial Action Task Force "Terrorist Financing" https://www.fatf-gafi.org/publications/fatfgeneral/documents/terroristfinancing.html (accessed 4 September 2019)

28. In a study on terrorist financing in West and Central Africa, the GIABA and GABAC otherwise known as the FATF Style Regional Bodies (FSRBs) observed that the countries in West and Central Africa are particularly vulnerable to terrorism and extremist violence which constitute threats to political stability and pursuit of development within the component states in the regions. The report considered the possible sources of funding for the Boko Haram and the Al Qaeda in Islamic Maghreb (AQIM). It distinguishes between confirmed and suspected sources of terrorist financing in the regions and the importance of cash transactions including use of foreign currencies such as the dollar and Euros to terrorist financing. Specifically, it notes that whereas the Boko Haram group is locally funded, the Al Qaeda affiliates receive foreign donations for their operations. In addition, it noted that cattle rustling have become a key feature of rural and that although some successes have been recorded through the operations of the Multinational Joint Task Force (MNJTF) of the Lake Chad Basin Commission (LCBC), cross-border criminalities in the Lake Chad area still remains an important source of terrorist financing.[21]

29. Explaining the weaknesses of West African states in relation to the financing of terrorism, the FATF and GIABA identified the following vulnerabilities among the member states:

a. Reporting institutions often lack the capacity to identify suspicious transactions related to terrorist financing;
b. Terrorists, terrorist groups and their supporters take advantage of the large informal, cash-based economy to fund their activities;
c. Security ad surveillance at various national borders are weak, compounded by numerous unofficial border cross points, thereby resulting in the infiltration of terrorists and illicit Small Arms and Light Weapons (SALWs); and Domestic inter-agency co-operation and collaboration, as well as information sharing among ECOWAS member states remains weak and thus providing an enabling environment for the illicit flow of cash and SALWs across borders without being detected.[22]

30. From the review of existing literature on CFT, this report conceives it as deliberate endeavours and engagement targeted at tracking and intercepting funds, logistics, assets, actors and networks involved in planning and executing terrorist activities and neutralising these resources within the framework of extant laws and treaties on CFT. The main sources of terrorist financing are criminal activities, donations from local and foreign supporters including states, charity organisation and religious obligations as well as revenues and protection fees paid by legitimate businesses. The next level of engagement is the assessment of the capabilities of five GIABA member states to meet the CFT obligations.

21 GIABA and Groupe dÁction contre le Blanchisement dÁrgent en Afrique Centrale, *Terrorist Financing in West and Central Africa*, October 2016, p. 1
22 FATF & GIABA 2013, Op. Cit., p. 4

CHAPTER 3: SITUATION ANALYSIS IN THE FOCUS COUNTRIES

BURKINA FASO



COTE D'IVOIRE



MALI



NIGER



NIGERIA



CHAPTER 3: SITUATION ANALYSIS IN THE FOCUS COUNTRIES

31. The section of the report focuses on country-specific report on the finding of the fieldwork in the five countries assessed for this study. These countries are Burkina Faso, Cote d'Ivoire, Mali, Niger and Nigeria. The country-specific report also focuses on the common issues at all levels in the five countries under study with a view to provide policy and operational recommendations that could help to address the different issues at local and regional levels.

32. The critical areas discussed in this chapter include TF Risk Assessment, the country's CFT responses to legislative and institutional issues, the operational mechanism, the country's criminal system's response to TF, challenges in effectively countering the Financing of Terrorism and Recommendations. The country-specific report is presented in the subsequent sections.

BURKINA FASO

33. Since the year 2015, Burkina Faso has experienced over 200 incidents of terrorist attacks especially in the northern frontiers. The January 2016 terrorist attacks on the Hotel Splendid and Capuccino café in the heart of Ouagadougou which resulted in the death of about 30 persons mostly Europeans was very pronounced. The country has repeatedly experienced intermittent terrorist attacks afterwards and in 2018, about 136 terrorist attacks were unleashed across Burkina Faso by violent extremist groups.[23] Subsequent terrorist attacks in the country include the 12 May 2019 attack on Sunday worshippers at a Roman Catholic church in Dablo in which a priest and five other persons were killed and the series of lethal attacks by Islamic extremists across the northern provinces of Burkina Faso. The litany of terrorist assaults in Burkina Faso also extends to the kidnap of foreigners for ransom.

23 The Counterterrorism Project, "Burkina Faso: Extremism and Counter Extremism" www.counterterrorism.com (accessed 20 July 2019)

34. The Project Team, during its field trips, met various CFT stakehoders including the BCEAO, Treasury Department, Permanent Secretary at the Ministry of Justice, State Prosecutor and Substitutes, Criminal Justice Department, President of Ouagadougou Court of First Instance, Presding Magistrates, Officials of the Counter-terrorism Unit and Permanent Secretary General at the Ministry of Security. Furthermore, group interviews were held with private sector stakeholders including Coris Bank International, ECOBANK, BOA-BF, SGBF, Foreign Exchange Bureaus, the casino and gaming sector. Other stakeholdrs in the DNFBP sector representing the Bar Association, Chamber of Notaries, the tourism and hospitality professionals, were also met.

KEY FINDINGS

Legal and Institutional Framework

35. In Burkina Faso, the responses to terrorism financing are constituted through a set of legal and institutional measures. However, there is no established time span or frequency for the revision of these laws. Rather, issues relating to their revision are dictated by time and necessity. The key legal instruments for CFT in Burkina Faso are as follows:

a. Law 016-2016/AN of 3rd May 2016 on the fight against money laundering and terrorist financing (AML/CFT) in Burkina Faso;

23 The Counterterrorism Project, "Burkina Faso: Extremism and Counter Extremism" www.counterterrorism.com (accessed 20 July 2019)

b. Law n 004-2015/CNT of March 03, 2015 on prevention and repression of corruption in Burkina Faso
c. Law 084-2015/CNT of December 17, 2015, amending Law No. 060/2009/AN of December 17, 2009, on the repression of acts of terrorism in Burkina Faso;
d. Decree 2012-1136/PRES/PM/MEF of 31 December 2012, appointing the competent administrative freezing authority;
e. Organic Law No. 082-2015/CNT of 24 November 2015, on the attributions, composition, organization and functioning of the State Supreme Audit and Anti-Corruption Authority (ASCE-LC);
f. Decree n 2016-465/PRES/PM/MINEFID of 31st May 2016 establishing the threshold on the appearance offence;
g. Decree n° 2017-0015/PRES/PM/MATDSI/MINEFID of 23rd January 2017, establishing a National register of Nonprofit Organizations in Burkina Faso.

36. In addition to the legal framework, there exist various government institutions with mandates relating to CFT. The key government institutions involved are:
a. The Ministry of Justice (General Directorate of Criminal Justice and Seal, Specialized Courts, Court of Appeal, Court of Cassation);
b. The Ministry of Economy, Finance and Development (DGTPC, FIU, DGI, DGD);
c. The Ministry of Security (Criminal Investigation Department, Gendarmerie, National Police and Criminal Investigation Units);
d. Ministry of Territorial Administration;
e. National AML/CFT Coordination Committee;
f. The Ministry of Foreign Affairs and Cooperation.

37. The above institutions of the government are responsible for ensuring the implementation of CFT requirements in Burkina Faso. In 2017, the responsibility for countering terrorist financing in Burkina Faso was taken over from the Ministry of Finance and Ministry of Foreign Affairs by the Minister of Territory Office of Public Freedoms and Associations.[24] The FIU is responsible for the coordination of inter-agency collaboration relating to AML/CFT regimes.

38. On the whole, one of the major obstacles to the effective coordination of CFT efforts is the lack of mechanisms for the systematic exchange of information among actors involved in CFT. The frequency and responsibility of various stakeholders to meet and discuss the implementation of CFT requirements lies with the Central Bank (BCEAO), FIU and the supervisory Ministry of the Government.

39. The National Intelligence Agency (ANR) was established in 2016, with the mandate to coordinate the activities of the structures in charge of domestic and foreign intelligence as well as counter-terrorism. It is also responsible for developing cooperation in the area of intelligence with partner countries and ensuring the national Intelligence Council endorses the National Intelligence Guidance Plan (PNOR), designed to guide the Burkinabe Intelligence Community (CBR) in the execution of its mandate. The ANR collaborates with the FIU which is a specialized structure of the CBR and other intelligence entities. It also processes information gathering requests filed by institutions in the fight against terrorism. It is currently working on the establishment of an Economic and Financial Intelligence Division that will take on board Money Laundering and Terrorism Financing for intelligence purposes.

40. However, there still exists the lack of adequate national legislative framework relating to the collaboration among actors engaged in CFT. For instance, the national coordination process is characterised by the absence of systematic exchange of information between actors in the criminal justice chain. There also exists the lack of robust legislative framework and CFT strategy to guide collaboration stakeholders involved in the implementation of the CFT measures. At the operational level, the Special Anti-Terrorism Brigade, in its current configuration,

24 Refworld "Country Report on Terrorism 2017 – Burkina Faso, https://www.refworld.org/docid/5bcf1fb2a.html (accessed 2 February 2020)

is not adequately equipped to implement CFT requirements. It lacks the adequate staffing and requisite expertise to conduct investigations on financial aspects associated with terrorism cases. Besides, due to lack of communication, collaboration and concerted inter-agency efforts, there are incidences where the military services and the judicial system have a different understanding of the judicial proceedings in terrorism or terrorist financing cases.

Operational Framework

41. The Project Team engaged the FIU, representatives of the BCEAO and those of the State Treasury and Public Accounting Department (DGTCP). The exchanges revealed that there are no supervisory frameworks to guide companies on the implementation of AML/CFT measures. The study further reveals that anti-money laundering cases have taken precedence over those relating to counter terrorism financing. Since the NRA was not specifically designed to understand the sectoral aspects of risks (but national aspects instead), the insufficient knowledge of sectoral vulnerabilities remains an obstacle to the effectiveness of the supervisory system.

42. Majority of the respondents noted that Burkina Faso has no CFT-related written policies and procedures. On the other hand, some others, especially competent authorities, affirmed that such policies and procedures do exist. Some of the policies and procedures cited are as follows:

a. Guideline on the transmission of information to the FIU. Information to be transmitted to the competent authorities using the networks of information exchanges (within the association)
b. AML/FT Guidelines Regulation No. 09/2010/CM/UEMOA
c. Directive on AML/CFT of 06/01/2017
d. The strategy against ML/TF, which was used as a guide for criminal action by the Minister of Justice and resulted in the establishment of specialized legal Division in charge of economic and financial affairs, including CFT issues.

43. Essentially, in terms of risks, the financial system in Burkina Faso is deemed to be at a higher level of TF vulnerability, particularly the banking sector. Yet, the level of supervision of Financial Institutions (FIs) remains low in this area. The same obtains for Designated Non-financial Businesses and Professions (DNFBP) and Non-profit Organizations (NPOs). The existing supervision is purely conventional and administrative and, as such, is not suited to the specific requirements of AML/CFT. The first-ever AML/CFT banking commission inspection mission was carried out in 2018 and involved five (05) commercial banks. It was discovered that the supervision of the BCEAO is more a reactive than a proactive exercise and is carried out essentially on the basis of the reports of banks. In addition to commercial banks, the microfinance structures also fall under prudential supervision.

44. In terms of detecting TF offences, there is close collaboration between the Burkina-FIU and reporting entities (Financial Institutions and DNFBPs) as well as NPOs. In the efforts to understand the dynamics associated with detection of suspicious transactions, the Project Team, using the Platform of the Association of Professional Bankers and Financial Institutions (APBEF), representatives of financial banking and non-bank institutions.

45. Apart from highlighting the vulnerabilities of the domestic financial system, including the cash intensive and predominantly informal economy, financial exclusion, issues relating to social and religious beliefs, poor regulation of Foreign Exchange Bureaus, non-popularization of legislations, identification inadequacies, etc., the discussions with the participants also highlighted the following issues:

i. The reference list of persons under sanctions has some errors (names, dates and places of birth, etc.), which create some uncertainties at the time of carrying out customer due diligence;
ii. The existence of parallel transfer circuits, like the HAWALA method, undermines competition and weakens law enforcement;
iii. The digitalization of monetary services creates gaps in the identification criteria using telephone numbers, thereby presen-

ting one and the same person with several telephone numbers as several customers;
iv. The Gendarmerie are not sufficiently informed on the foreign exchange black market (booming);
v. The populace are not adequately sensitized on the importance of KYC-CDD measures for the opening of bank accounts, leading them to consider certain banks as being more flexible than others;
vi. The AML/CFT Law requires banks to train foreign exchange bureau operators. However, the latter continue to demonstrate low levels of enthusiasm and interest, as well their rate of participation in the said training programs;
vii. There are challenges with the exact location of the customer because of the multiplicity of indirect postal addresses;
viii. The effective implementation of KYC-CDD measures is compromised by the prevalence of false documents and challenges in the authentication of documents;
ix. The high volume of cash transactions makes it difficult to trace funds flows and identify the origins and destinations of such funds;
x. The utilisation of undercover mailing addresses by customers distorts verification by reporting institutions.

46. Furthermore, a consultative meeting was held with some DNFBP officials to review their levels of understanding of counter-terrorism financing issues as prescribed by the FATF.The Bar Association and the Notary Court, the tourism and hospitality professionals were all represented. Overall, the stakeholders considered that they were performing a support function, the proper functioning of which presupposes the proper functioning of the functions to which they are backed. The findings suggest that DNFBPs in Burkina Faso usually suffer the effects of financial crime more than they cause. These DNFBPs do not usually undergo periodic checks required for the verification of their KYC/CDD practice. For instance, several of the travel and tourism agencies lack sufficient awareness of their CFT obligations while in the real estate business, the operators insist that the rate of banking is low or negligible to trace the funds in the sector.

47. Generally, professional organisations have Ethical Codes that tend to regulate the conduct of members. This makes them credible partners for CFT. However, basic trainings on CFT standards are required by the lawyers to enhance their vigilance towards detecting suspicious transactions. This is because several lawyers rely on the declarative principles contained in identification forms designed for clients without necessarily ascertaining the authenticity of information declared. Furthermore, several DNFBPs do not undergo periodic training to appreciate their KYC/CDD obligations.

48. Given the vulnerability of non-profit organizations as channels for financing terrorism, the Research Team interviewed certain entities coordinating the action of NGOs such as the Permanent Secretariat for monitoring NGOs (SPONG), as well as with certain civil society organizations such as the National Anti-Corruption Network (REN-LAC). One of the major findings from these various interviews reveals a very low level of understanding of the players in this AML/CFT sector, the role of the FIU and the obligations to which they are subject in terms of due diligence.

49. In addition, the weak involvement of NPOs in Burkina in general in training and awareness-raising activities on CTF and the absence of a formal framework for collaboration between the FIU and the NPO sector confirm the limits of the existing mechanism in the country, in order to prevent NPOs from being misused as terrorist financing channels. Some of the factors impeding CFT efforts in the NPO sector include:
- Lack of real association project, projecting most of these organizations as means of attracting resources;
- Inadequate CFT inspection mechanism. Indeed, a primary inspection is carried out during the declaration of the NPO and the second once a year on a rotational basis, to ensure the accounting ledgers are kept and activities implemented in line with the purpose of the association or organization. Only fifty (50) NPOs are inspected each year, due to lack of requisite resources and manpower.

Criminal Justice System

50. The criminal justice system's CFT-related action centres on investigation, prosecution and adjudication. The Project Team engaged all the stakeholders in the penal chain in Burkina Faso (Ministry of Justice, State Prosecutor, Director-General of Criminal Justice, Deputy Public Prosecutor, Head of Mission of the Minister of Justice and Focal Point of the FIU, the Appeal Court and High Court of Ouagadougou, Magistrates of the Anti-terrorist Division, Counter-terrorism Financing Division, Dean of the Bench, Presiding Magistrates, Prosecutor of Burkina Faso, Deputy Prosecutor of Burkina Faso, President of the Chamber and other Court Counsellors), to discuss on the major technical challenges encountered in the process of adjudicating terrorism and terrorism financing-related cases. During these discussions, the lack of appropriate expertise to investigate and prosecute TF cases was clearly re-echoed.

51. Findings from the study conducted in Burkina Faso reveal that the procedural laws in the country's penal code have been updated to address the technicalities associated with terrorist financing offences. There are also dedicated assistants for the prosecution of offences related to terrorist financing and conscious efforts are being made to ensure that they are spread to all the jurisdictions in the country. However, there is a downward trend in the budget allocated to the Justice Department when compared to budgetary allocations to the military and security agencies. This suggests that the Burkinabe authorities rely more in the military solution in its counterterrorism engagements.

52. So far, while there are few cases relating to the financing of terrorism pending in Burkina Faso courts, there has not been any conviction of offenders for such activities. This is not unconnected to the unavailability of adequate means and resources to investigate and prosecute the offenders. There also exist difficulties associated with the collation of material evidence required for prosecution. This is partly because of the lack of technical and technological equipment such as wiretap technology which aids surveys and investigations through spinning tools of interceptions, sounds and image captures.

53. Generally, the financing of terrorism cases in Burkina Faso are often associated with specific incidents of terrorist attacks which were financed through organised crimes. In terms of investigations, some Magistrates have been trained specially on investigation techniques for terrorist financing offences. Yet, there still exists deficits in the technical capabilities of jurists handling TF offences. Finally, the lack of human and financial resources of supervisory agencies to meeting their CFT mandate hinders the momentum of the judicial system to bring cases to trial. This is believed to be one of the reasons for the lack of convictions to date for TF in Burkina Faso. Some of the information obtained during the various consultative meetings with stakeholders in the judicial system include:

- The Penal Code has been updated to take on board the peculiarities of the terrorist financing offence and procedural laws passed;
- Legislative texts have also been issued to designate assistants in charge of the TF prosecution component, to cover the entire country and extend the powers to all jurisdictions;
- Special training sessions on TF-related investigative techniques have been delivered to a given number of Magistrates;
- The challenges encountered are mainly related to the reconstituting the facts and gathering of material evidence;
- The lack of adequate equipment and resources impede the judicial system from adjudicating casefiles, which explains why there has been no conviction for TF to date;
- The requisite equipment range from wiretaps to investigative technologies, including surveillance, interception, image and sound capturing tools;
- Mobile telephone companies are not cooperating enough to help trace call histories;
- TF is generally channelled through the informal sectors rather than the formal sectors, which makes detection difficult;
- Lack of systematic CFT coordinating and information exchange mechanisms among stakeholders in the penal chain;
- Lack of legislative framework organizing and regulating collaboration among all stakeholders involved at various levels;

- The prevalence of terrorist acts financed through organized criminality;
- Due to the unavailability of TF-related typologies and research studies in Burkina Faso, every magistrate is required to try to understand how terrorist acts are financed and Katibats (jihadist groups) are formed;
- The lack of CFT strategies is a major challenge that may undermine all efforts deployed and lead to ineffectiveness;
- Since 2015, about 200 terrorist attacks have been perpetrated in Burkina Faso. The country's response led to the passing of the 2016 Law on suppression of terrorism, establishment of the anti-terrorist, anti-terrorist financing and anti-economic and financial crime divisions, with a special tribunal established to arbitrate the 2 divisions. 2 substitutes have been appointed to deal with CFT cases but with no assistants, out of a total of 5 Substitutes for the 3 Divisions. With the heavy workload, the rising number of referred cases, inadequate staffing, the effectiveness of measures taken are compromised;
- The Prosecution's resources are inadequate in spite of the support provided by partners including the French Embassy, and staff security is not guaranteed;
- The non-involvement of staff in developing legal texts creates practical inadequacies that are difficult to manage, as the anti-terrorist and CFT Divisions clash;
- Experience reveals that request for mutal legal assistance may take 2 years to get to the country of destination and most times the countries do not respond, although Burkina Faso generally responds. The cooperation challenge is crucial and there should be frank and swift collaboration.

TF RISK ASSESSMENT

54. There exists no doubt that the Government of Burkina Faso has put in place basic legal and policy frameworks as well as institutions for CFT. Yet, the TF threat and vulnerability levels of Burkina Faso are considered as moderately high and identified in the Mutual Evaluation Report (MER) released in May 2019.[25] The high threat rate is attributed to the presence of terrorist groups in the country and facilitated by porous borders with neighbours like Mali and Niger which are also threatened by various terrorist groups. Prominent among these groups are the Ansar-ul-Islam lil-Ichad wal Jihad (IRSAD), Islamic State in the Greater Sahara (ISGS) which is a breakaway faction of the Al-Mourabitoum which pledged allegiance to the ISIS and the Jamaát Nasr al-Islam wal Muslimin (JNIM) otherwise known as the Group for the Support of Islam and Muslims which pledged allegiance to the Al Qaeda in Islamic Maghreb (AQIM), Consequently, Burkina Faso has recorded recurrence of terrorist attacks and kidnapping for ransom as perpetrated by these groups in recent years.

55. The major vulnerabilities arise from the inherent weakness or near absence of AML/CFT-related controls and sanctions for reporting entities while the prevalent violations relating to FT occur through foreign currency exchange, artisanal mining, cross-border movement of cash. The vulnerability and risks of terrorism financing in Burkina Faso is facilitated by the preponderance of cash transactions through the informal economy and the existence of under-regulated black market which has become increasingly popular as alternative means of currency exchange. Others are the lack of sensitization on CFT regimes, weak regulations of the foreign exchange bureaus and problems associated with social and religious beliefs especially the demands of Hawala and Zakat.

56. At the sectoral level, while the financial institutions, especially banking institutions, and their respective competent supervisory authorities have a good understanding of the ML/TF risks confronting them, there exists observable deficits in the appreciation level of the risks among the DNFBPs. So far, the real estate, transportation, NPOs, hotels and restaurants, bank and Money Transfer Agencies (MTAs) are considered as high-risk sectors.

57. The mining sector in Burkina Faso which is estimated to produce about 10 tonnes of gold annually has emerged another theatre of terrorist attacks. Between September 2017 and January 2018, a total of nine (9) terrorist attacks were executed on mining sites in Burkina Faso

25 GIABA, Anti-Money Laundering and Counter Financing of Terrorism: Burkina Faso Mutual Evaluation Report, May 2019, p. 20

leading to several deaths and injuries and the closure of some companies. Despite the repeated terrorist attacks on the mining sector where about 700 to 800 craft sites are exploited, there is no indication of AML/CFT supervision. The situation is further compounded by the fact that the informal or artisanal nature of the sector inhibits the traceability of the transactions carried out. This has made it a useful conduit for funding terrorist activities in the Sahel.

58. In summary, the overall level of understanding of ML/FT risks at the national level is adjudged to be satisfactory. The Government of Burkina Faso has continued to make gradual progress in addressing the deficiencies in its AML/CFT compliance rate and has also completed it Mutual Evaluation exercise for 2019. Furthermore, a risk mitigation mechanism is planned through coordination within the National Intelligence Agency which is the highest CFT information coordination body in Burkina Faso. There however exist the absence of studies relating to the typologies of terrorist financing in Burkina Faso and the establishment of Katibas (terrorist cells) in the country. It is in light of the above, that the imperative of CFT in Burkina Faso becomes immeasurable especially as it has serious political implications for security and stability of the country.

CHALLENGES

59. The implementation of the CFT regimes in Burkina Faso is encumbered by certain deficiencies identified in the existing laws, policies and procedures. Majority of the respondents to the questionnaires and participants at the FGDs and accompanying interactive sessions identified the challenges as follows:

a. The country has no terrorist sanctions compliance policy and no institutional framework to nationally designate individuals involved in terrorist activity.
b. There is preponderance of informal foreign exchange operators.
c. The growing circumvention of traditional financial circuits or regulatory requirements for large cash payments (for instance, splitting of money transactions).
d. The banking and financial institutions do not invest requisite rigour with regard to the effective implementation of CDD obligations.
e. Several institutions engaged in the field work do not have any written policies and procedures in place to counter terrorism financing and sanctions violations.
f. The continued co-existence of a thriving under-regulated informal sector characterised by huge cash flows alongside a regulated financial sector has created a platform through which the financing of terrorism in Burkina Faso is usually orchestrated through the informal sector which makes detection somewhat difficult.
g. The non-criminalisation of the financing of a terrorist or terrorist organisation for all purposes.
h. The lack of popularization of the requirements of the text on CFT has resulted to widespread ignorance of a majority of the population on their CFT responsibilities.
i. There is a high mobility of staff trained on AML/CFT matters which often comes with the loss of skills for the institutions. The mobility of the workforce and the scarcity of adequate CFT expertise therefore constitutes impediment to the supervisory efforts.
j. Emergence of new forms of financial crime with the advent of crypto-currency does not facilitate risk control and the application of appropriate sanctions in the event of non-compliance with CFT measures.
k. Deficit of relevant CFT assets required by the security agencies in Burkina Faso such as especially the wiretap technology to survey and investigate as well as intercept and capture vital images and sounds.
l. The unavailability of basic means and resources to investigate offenders has contributed to the difficulties associated with the reconstruction of facts and the collation of material evidence required for prosecution. This also contributes to the absence of conviction of offenders for FT.
m. There exist policy deficits regulating the vulnerability of the mining industry to financing of terrorism.
n. Lack of cooperation by the telecommunication companies especially when needed to track and trace calls to ensure that proper CDD was carried out when transferring funds through the mobile phones.
o. Weak regulation of foreign exchange bureaus has heightened the risks and vulnerabilities of such bureau for FT.

RECOMMENDATIONS

60. In light of the realities and challenges associated with implementing effective CFT standards in Burkina Faso, the following recommendations are proffered:

a. The Burkinabe Government should conduct comprehensive review of extant legislations and policies regulating the economic and financial transactions in Burkina Faso that have implications to CFT standards.

b. The Burkinabe Government should establish a robust framework for exchange and collaboration between the military and security services with the judiciary to address the misperceptions that accompany the lack of understanding of the realities of judicial procedures relating to CFT.

c. The FIU should solicit donor support either directly or through the GIABA for the acquisition of appropriate software that facilitate access the necessary CFT related intelligence and information.

d. The BCEAO should introduce the use of Bank Verification Numbers (BVN) within banking system for proper surveillance and scrutiny of transactions of their individuals and corporate customers.

e. The BCEAO should enforce the regulations on the financial sector to ensure compliance with CFT regimes.

f. The FIU should organise basic training for various reporting and supervisory entities among the DNFBPs, NPOs and NGOs whose activities are key to implementing effective CFT regime in Burkina Faso.

g. The GIABA in concert with the FIU should strengthen targeted training programmes for various categories of stakeholders working on the CFT regimes. Such training should take into cognisance the specific CFT needs of each stakeholder institution within the government, Organised Private Sector (OPS), NPOs and NGOs.

h. The GIABA should engage on High-Level advocacy missions to sensitize political authorities on the urgent need to strengthen CFT measures and supporting all regulatory and supervisory entities.

i. The Government of Burkina Faso should evolve and enforce robust legal and policy frameworks to ensure due diligence or effective compliance of the mining sector to CFT standards.

j. The Burkinabe Government should explore international cooperation and assistance to acquire vital technological equipment necessary to strengthen its delivery of her CFT obligations.

k. The regulatory agency for the telecommunication industry should deploy appropriate sanctions regime to ensure that operators of mobile money transfer compliance effective to existing CFT standards especially with respect to virtual money transfers.

l. The National Parliament should review the legal framework relating to the FIU to enhance its financial and administrative autonomy.

COTE D'IVOIRE

61. The field trip to Abidjan in Cote d'Ivoire took place from 4th 8th February 2019, where the GIABA Team and Consultant carried out 13 working sessions holding technical discussions with critical actors whose operations have implications for CFT. These actors were drawn from various government agencies and private sector institutions engaged in legislative, judicial, supervisory, control and regulatory mandates. The private sector actors were drawn from the financial sector, professional bodies and non-profit organisations.

KEY FINDINGS

Legal and Institutional Framework

62. In Cote d'Ivoire, the National Security Council headed by the Presidency of the Republic is at the apex of policy engagements relating to counterterrorism in the country. The council coordinates the policy against terrorist financing. The thrust of the national CFT responses and coordination in Cote d'Ivoire are operationalized through legal, policy and institutional platforms. The key legal/policy instruments for CFT in Cote d'Ivoire are as follows:

a. The Anti-money Laundering Law No. 2005-554 of 2nd December 2005 Ordinance 2009-367 of 12 November 2009 on the fight against money laundering and financing of terrorism.

b. The Anti-Money Laundering/Counter Financing of Terrorism Act No. 2016-992 of 14th November 2016
c. Decree No. 2018-440 of May 3, 2018 on the attributions, organization and functioning of the Coordinating Committee for National Policies to Combat Money Laundering, the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction (Co-ordination Committee).
d. Decree No. 2018-439 of 3 May 2018 on the implementation of targeted sanctions related to the financing of terrorism and the proliferation of weapons of mass destruction.
e. Order N° 2018-439 of 9th May 2018 on the responsibilities, composition and functioning of the Consultative Commission of Administrative Freezing, (CCGA)
f. Côte d'Ivoire also has a National Counter-terrorism Strategy adopted in 2015.

63. Cote d'Ivoire has also adopted a terrorist sanctions compliance policy and has further adopted the audit/compliance review function to test the level of compliance to established standards. There is however no established frequency for the revision of relevant laws/policies relating to terrorism and terrorism financing.

64. At the international level, Cote d'Ivoire subscribes to the following instruments for CFT:
a. International Standards adopted (FATF Recommendations, UN resolutions 1373, 1267 and 1989, and Directive n 07/2002 / CM / UEMOA on AML/CFT);
b. Convention on the suppression of terrorism financing of 1999 called the New York Convention;
c. Law n°2016-992 of November 14, 2016 relating to the AML/CFT;

65. The specific institutions involved in the fight against terrorism financing in Cote d'Ivoire include the Prosecutor's office, Territorial Surveillance Department (DST), Chamber of Notaries, Territorial Administration Department, National Intelligence Coordination and Ivorian Civil Society (CISC). The others are IT and Technological Tracking Department, BCEAO National Agency, Foreign Service Department (DSE), Association of Foreign Exchange and Money Transfer Companies in Cote d'Ivoire (ASTAC-CI), Customs Department (DGD) and Management of the Unit against Transnational Organized Crime (UCT). All these stakeholders were consulted during the Project Team's field trip. Detailed findings of the study on Cote d'Ivoire are reviewed in the following paragraphs.

Operational Framework

66. Several agencies of government have been established in Cote d'Ivoire to play the roles of guardianship and supervision of reporting entities tasked with the implementation of the CFT regimes. Prominent among these institutions are:
a. National Coordination of Intelligence
b. Directorate of Territorial Administration
c. The Directorate of Territorial Surveillance;
d. FIU (the FIU) of Cote d'Ivoire;
e. The Management of the Economic and Financial Police;
f. Department of Information Technology and Technological Tracking which undertakes investigations into terrorism and cybercrimes;
g. National Coordinating Committee for Anti-Money Laundering, Terrorist Financing and Proliferation Activities;
h. Customs Department.

67. The Directorate of Territorial Administration, which is responsible for the registration of local NPOs, has no power of supervision or control over their activities and funding. Rather, it is the local administrators where the NPOs operate that are responsible for the security surveillance over their activities. When alerts emanate from any local administrator, they are forwarded to the Minister of Territorial Administration for further actions. The Department of Territorial Administration however has the power to deregister an association. However, it has never exercised this power. The approval for operation of international Non-Governmental Organisations (NGOs) is granted by the Ministry of Interior and Security while their Headquarters agreement is issued by the Ministry of Foreign Affairs. The requests for the origin and justification of funds are made by bank within the framework of the AML/CFT standards. In summary, the NGOs in Cote d'Ivoire remain under-controlled, under-supervised with little records of the origin of funds at their disposal and its utilisation. These observed gaps therefore heighten the vulnerability of Cote d'Ivoire to CFT risks.

68. The BCEAO exercises supervisory control over

the banks, micro-finance companies, currency exchange, electronic money institutions and remittance societies in line with the provisions of the 2016 AML/CFT Act. In 2018, the BCEAO declared five banks as controlled entities while two banks were under sanctions. It further approved structures for electronic money issuance. Presently, the BCEAO maintains that the sector is sufficiently supervised to protect itself against being used for terrorist financing activities.

69. In compliance with the policy of financial inclusion, several actors have appeared on the money transfer sector of the financial system. The responsibility for the supervision of all registered agents involved money transfer operations in Cote d'Ivoire rest with the BCEAO and UEMOA Banking Commission. It is these agents that have the responsibility of supervising and controlling their sub-agents. However, due to the large number of sub-agents that have entered the system as a result of the policy of financial inclusion, it has become difficult to effectively supervise the compliance rate of the money transfer sector to the CFT regimes. Despite the availability of sanctions regime for violations, no sanction has been imposed against an operator, an agent or a sub-agent.

70. In the area of detection and reporting of suspicious transactions, banks and financial institutions are to make Suspicious Transactions Reports (STRs) relating to terrorist financing by individuals and corporate bodies including and Specially Designated Nationals and Blocked Persons List. Such tax payers could be persons and entities whose names are contained in the list of Resolutions of the United Nations Security Council (UNSC) or the Office of Foreign Assets Control (OFAC) List. The STRs are expected to focus on certain transactions and transfers, including donations to NPOs and should contain the countries of origin and profile of actors involved.

71. Some commercial banks have resorted to closing accounts at risks to the frustration of the FIU in Cote d'Ivoire. Such de-risking of accounts has adverse effects on CFT as it stops the traceability of financial flows necessary to establish further links to terrorist financing for freezing and confiscation. Despite extant directive of the FIU to banks to notify it of closures of customers' accounts related to de-risking, no such notifications have been received from the banks.

72. In its bid to enhance detection of suspicious goods whose proceeds could be diverted to terrorism financing, Cote d'Ivoire is in the process of setting up a physical transport reporting system with the Customs Services. The objective of this measure is to get travellers to make online declarations of currencies and other banking instrument prior to their trips. This is targeted at facilitating the traceability of financial flows with clear identification of the persons involved in the cross-border movement of cash in line with the standards of the fight against the financing of terrorism. By this medium, the FIU which will also be connected to the platform will be able to get real-time statistics on cross-border cash movements. The proposed physical transport reporting system is inspired by the Systematic Declaration of Cash Transaction (DSTE), an online application set up by the FIU for commercial banks in Cote d'Ivoire. It is further designed to respect the country's Customs regime while also taking cognisance of the principle of free movement of goods and people as guaranteed by the Economic Community of West African States (ECOWAS) and the UEMOA.

73. Violations of funds declaration with the Financial Intelligence Unit and Customs at the borders constitutes another source of risks associated with terrorist financing in the area. Huge cash transiting through Mali, Ghana, Benin and Togo often pass through Cote d'Ivoire on transit without detection. Some Lebanese in Cote d'Ivoire have established networks for currency trafficking and Ivorian authorities have intercepted huge sums of money from some Lebanese sometimes reaching One million Euros which were not documented or traceable through the formal circuit. Such intercepted undeclared funds sometimes emanate from acts of tax evasion and may have been collected from several persons for movement back to Lebanon for legitimate engagements. They

could however be diverted to the financing of terrorism, thereby making the risk potent.

74. In Cote d'Ivoire, Notaries are aware of the risks associated with terrorism financing especially the dangers associated with large cash transactions, real estate transactions and transactions associated with the mining sector. However, the Chamber of Notaries has not produced any guidelines or guidance to facilitate the effective and efficient implementation of anti-money laundering and counter terrorist financing measures by the profession. In addition, the application of due diligence measures is not done in the spirit of a risk-based approach, as the profession has not conducted its assessment of the risks of money laundering and terrorist financing. Following the sensitisation programmes of the FIU in Cote d'Ivoire to the DNFBPs on the CFT regimes or standards, the Notaries have become increasingly informed on the obligations in terms of vigilance and diligence to reporting suspicious transactions. To this effect, some suspicious transaction reports have been made by the notaries in the country, but in general notaries feel they should not betray their clients by denouncing them. This appears to be a conflict between their professional standards of obligations to clients and commitments to the CFT. This conflict has informed the proposal that there should be a formalised process through which it is the Chamber of Notaries that transmits suspicious transaction reports to the FIU instead of individual Notary.

75. Some respondents to the questionnaire administered to the reporting entities indicated in the affirmative that their institutions have written policies and procedures in place to combat terrorist financing and sanctions violations. The key documents cited are:

i. Operational mode to monitor operations
ii. Operational mode dealing with suspicious transactions
iii. Operational mode to assess CFT risks
iv. Law no. 2016-992 of 14/11/2016; AML/CFT

76. The Ivorian Civil Society Convention (CSCI) is the umbrella organisation of the Civil Society Organisations (CSOs) in the country. The CSCI brings together the 171 national structures of CSOs drawn from religious, professional, trade union and NGOs backgrounds. Its responsibilities include capacity building for the CSOs as well as the coordination and monitoring of their activities through regular reporting. While the CSCI acknowledged that its members have received some training on the fight against money laundering through the support of the Friedrich Ebert Foundation (FEF) and the African Union, nothing of such has been extended to their members on their CFT obligations. The CSCI suggests reported that it is not under any form of control and supervision by the competent authorities. In addition, none of their members has ever made any declaration of suspicious transaction to the FIU and none has ever been sanctioned.

77. Following the promotion of financial inclusion, several sub-agents have entered the money transfer and foreign exchange sector through agreements with banks and electronic issuance structures. During the engaging session with the Association of Cash and Exchange Transfer Societies of Côte d'Ivoire (ASTAC-CI), the GIABA Research Team noted that the presence of several agents from the informal sector constitutes challenges for the implementation of CFT standards. Some agents such as Orange, MTN and Moov have made efforts to form sub-agents on preventive measures and procedures but this has proved insufficient which has made it difficult to build their capacities for CFT. It has been observed that some of the sub-agents that apply due diligence measures such as identification of customers and compliance to threshold limit act in compliance with the instruction manuals of big agents like Western Union and Moneygram.

78. In addition, the information attached to customer's telephone number also contributes to the identification and traceability of transactions with a sub-agent. However, in several instances, the authenticity of inputs relating to the identity of the customers as stipulated in the 2016 AML/CFT Law remains difficult. This is because several sub-agents often ignore the requirements especially when the amount is below FCFA 100,000.

Furthermore, due to the absence of inter-operability of the operators, With regards to threshold holding, some customers resort to using various operators for cumulative transactions well above the thresholds thereby circumventing the regulations without detection. It is important to note that although the actors are aware of their CFT obligations, they still do not make a suspicious transaction report to FIU as required.

Criminal Justice System

79. The engagements with the criminal justice system in the Republic of Cote d'Ivoire centred on investigation, prosecution and adjudication. In terms of prosecution, a Special Investigations and Counter-Terrorism Unit dedicated to counterterrorism was created and placed under the Office of the Public Prosecutor of the Republic. So far, the only investigations conducted in Côte d'Ivoire with regard to the financing of terrorism were made in connection with the attacks of Grand Bassam. Yet, despite the reports of suspicious transactions on the financing of terrorism received by the FIU and the files transmitted to the Prosecutor's Office, there have never been any prosecutions or convictions. It has however been observed that most judicial officers involved in handling of CFT are ignorant of issues relating to terrorist financial flows.

80. As part of the support infrastructure for investigation, the Directorate of Information Technology and Technological Tracking focus on internet user security, security of the information system and the safety of citizen through technological traces. Consequently, the DITT has participated in several investigations on terrorism, including the attack on Grand Bassam in which 75% of arrests made were supported by its services. The DITT provided assistance to Cote d'Ivoire in search of evidence relating to terrorist attacks within the latter's territory. It is however important to note that the DITT has no module on AML/CFT standards for its staff.

TF RISK ASSESSMENT

81. The appreciation of the TF risks level by authorities in Cote d'Ivoire is considerably high. The Government of Cote d'Ivoire embarked on the domestication and effective implementation of the draft UEMOA Law on AML/CFT as adopted by the National Parliament in November 2016. Côte d'Ivoire has continued to improve its AML/CFT regime by addressing the deficiencies in its regime. She has reported efforts with regard to investigations, assets freeze and confiscation, drug seizures, and regional cooperation. She is on the Enhanced Follow-Up process. Notwithstanding, Cote d'Ivoire still has a number of significant deficiencies outstanding.

82. While it is remarkable that no other terrorist attack has been successfully executed in the country since the 13 March 2016 terrorist attack at Grand Bassam, the threat of terrorism still persists; likewise her vulnerability to TF. The threats of TF in Cote d'Ivoire is not unconnected to the fact that she shares contiguous and porous land borders with Burkina Faso and Mali which are kinetic theatres of terrorist aggression and base for the AQIM and the AM both linked to the Grand Bassam attack.

83. The investigations into this attack revealed the involvement of some foreigners in the planning and commission of the terrorist act while also indicating that some dormant terrorist cells of the AQIM and AM could be incubating in various quarters across the country. This became more glaring following the discovery that foreign nationals resident in Cote d'Ivoire were involved in the foiled plans by Kassim Konate and his terrorist group based in Burkina Faso to attack Abidjan, Bamako and Ouagadougou. In addition, the country plays host to a large population of Shiite Lebanese many of who in addition to operating legitimate business investments in Cote d'Ivoire and neighbouring countries and significant links to the Hezbollah movement in Lebanon also have illegitimate business dealings whose proceeds could be diverted towards the financing of terrorism. Furthermore, the perception by the terrorist groups in the Sahel that the Cote

d'Ivoire is a close partner of France in terms of counterterrorism engagements exposes her to risks of terrorist attacks.

84. In terms of vulnerabilities, institutional weaknesses by some supervisory and reporting entities are being exploited to facilitate TF. For instance, Cote d'Ivoire has received some STRs relating to the financing of terrorism which were processed by the FIU but the law enforcement agencies have been unable to successfully prosecute and secure conviction on any case. The inability to prosecute and convict suspects on the reported suspicious transactions has been attributed to capacity deficits of law enforcement and judicial officials on CFT standards and procedures. There is therefore the need to build capacity in law enforcement in the areas of identifying potential terrorist financing schemes, investigating and prosecution of suspected cases of terrorist financing. This draws further requires a corresponding training of judicial officials.

85. Cote d'Ivoire's vulnerability level to TF is further heightened by the under-regulated artisanal mining especially in border communities', including illegal gold washing in Cote d'Ivoire has resulted to lack of traceability of transactions in gold zones and therefore constitutes another risk of TF in the country.

86. At the sectoral level, the reality is that the level of supervision and regulatory control is weak thereby increasing the risks and vulnerabilities of being used as channels for the financing of terrorism. Other sources of vulnerability of Cote d'Ivoire to the financing of terrorism is the apparent lack of effective supervision of NPOs, the physical trans-boundary transport of cash and negotiable instruments to bearers within WAEMU and the role of the Hawala tradition.

87. These has placed Cote d'Ivoire at risks of increasing illicit transnational trafficking in arms, smuggling and trafficking of protected species such as Ivory, which could constitute sources of TF. It is these revelations that strengthened the resolve of Cote d'Ivoire's political leadership to intensify counterterrorism engagements and this has led to the significant level of official preparedness to confront TF risks.

CHALLENGES

88. The main challenges constraining the effective implantation of the CFT standards in Cote d'Ivoire are as follows:

a. Lack of rigorous and effective supervision of the activities of Non-Profit Organisations (NPOs) by the Department of Territorial Administration.
b. Absence of robust legal and policy framework regulating artisanal mining of gold.
c. The existence of conflict of Professional standard of Notaries with the requirement of CFT obligations in terms of reporting suspicious transactions.
d. The existence of several sub-agents from the informal sector operating in the money transfer and currency exchange sector.

RECOMMENDATIONS

89. The following recommendations are proffered:

a. The Government of Cote d'Ivoire should establish a Department of Mines and Geology to allow small operators to have operating licenses to mitigate clandestine activity.
b. The Chamber of Notaries should produce Guideline to facilitate the implementation of the CFT standards.
c. The various regulatory and supervisory entities should strengthen effective oversight of all vulnerable sectors and activities within it's the strengths of their respective mandates.
d. GIABA should provide more technical support to the FIU.
e. The supervisory agency should evolve a specialized mechanism to organize and profile all NPOs particularly the religious NPOs.
f. GIABA should repair the non-functional scanner at the Abidjan airport which it donated to the country.
g. GIABA and FIU should organise training for the CSCI on their CFT obligations.
h. The BCEAO should design policies that facilitate the inter-operability of operators of mobile fund transfers to strengthen compliance with threshold limits.
i. GIABA should organise technical training for Judges, Magistrates and other judicial personnel on the identification of terrorist financial flows and the extant CFT guidelines and procedures.

MALI

90. The risk of TF in Mali is real. This is because Mali plays host to various extremist groups that deploy terrorist acts such as the Islamic State in the Greater Sahel (ISGS) and the Jamaát Nasr al-Islam wal Muslimin (JNIM) which is a merger of the Ansar Dine, Maccina Liberation Front, Al-Mourabitoun and the Al Qaeda in Islamic Maghreb (AQIM). This has resulted to recurring incidences of terrorist attacks in the country especially since the Arab Spring in the Middle East and North Africa (MENA). Furthermore, there is the availability of opportunities for illegal gold mining in the country as the sector is largely under-regulated and this serves as a pull factor, which facilitates the financing of terrorism in the country.

91. The working visit to Bamako in Mali took place from 24-28 February 2019 where the GIABA Team and Consultant carried out 13 working sessions holding technical discussions with critical actors whose operations have implications for CFT. These actors were drawn from various government agencies and private sector institutions engaged in legislative, judicial, supervisory, control and regulatory mandates. The private sector actors were drawn from the financial sector, professional bodies and non-profit organisations.

KEY FINDINGS

Legal and Institutional Framework

92. As part of its commitment to AML/CFT obligations, The Government of Mali has undertaken several measures targeted at meeting these obligations. For instance, the country adopted the law to combat illicit enrichment and trafficking in persons in 2012. Subsequently, the Law No. 2013-016/ of 21 May 2013 which amending Law No. 01-080 of 20.08.2001 on the Code of Criminal Procedure instituted in the High Court of Commune VI of the District of Bamako, a specialized judicial unit in the fight against terrorism and transnational organized crimes.

93. Furthermore, Mali also adopted legislations on prosecution, investigation and adjudication of corruption and economic and financial offenses, terrorism and other transnational organized crimes. The legislations are as follows:

a. The bill on prevention and repression of illicit enrichment was adopted by the Council of Ministers on 1 August 2013;
b. Inter-Ministerial Order No. 2011-4671/MJ-MEF-MSIPC of 18.November 2011 instituting the Inter-Ministerial Committee against Money Laundering and the Financing of Terrorism was adopted and the members appointed. The members of the said Committee are appointed and it is operational;
c. The draft decree freezing funds for criminal assets is developed and validated by the Inter-Ministerial Committee against money laundering and terrorist financing; and
d. The Central Office of Narcotics is operational and the law 01-78 is subject to review and gives this structure judicial police power.
e. Presently, the UEMOA Uniform Law No 008 of 17 Mars 2016 is the basic legal instrument regulating AML/CFT in Mali.[26]

94. The national CFT response and coordination are operationalized through various government institutions with targeted mandates. These institutions are:

a. Ministry of Justice
b. Ministry of Economy and Finance
c. The BCEAO

95. So far, there are difficulties in the area of inter-agency cooperation in AML/CFT implementation such that the level of international cooperation is considered higher than inter-agency cooperation within Mali. Consequently, the authorities are still working on evolving a standard and functional mechanism for cooperation and intelligence gathering for AML/CFT implementation.

96. The institutions engaged include the CENTIF, BCEAO, Procureur-General, Judicial Police, Notaries, Direction-Generale de l'Administration de Territoire, Caritas Mali, Association of Real Estate Agencies and ECOBANK. Others are Secretariat de Concertation des ONG

26 GIABA, Fifth Monitoring Report, Mutual Evaluation, Mali, November 2013, p. 4

nationales (SECO) du Mali, Gambi Bureau de Change (BDC), and Agence pour la Promotion des Investissement (API) au Mali. The detailed findings of the study in Mali are discussed in succeeding paragraphs.

Operational Framework

97. In terms of supervision and monitoring, the Cellule Nationale de Traitement des Informations Financières (FIU) in Mali is responsible for the coordination of inter-agency collaboration on AML/CFT regimes and it is a member of the Egmont Group. Several other agencies of the Government play supervisory roles as demonstrated in succeeding paragraphs. For instance, the BCEAO exercises supervisory control over the Wafi Cash and Orange money while the FIU and Customs collaborate on issues relating to declaration of cash and other forms of money at the border posts to ensure automatic declaration.

98. The Direction Generale de l'Administration de Territoire (DGAT) is responsible for supervision of NPOs. The DGAT requires the NPOs to submit their financial reports annually, which it then utilizes for Monitoring and Evaluation (M&E). The national laws require the DGAT to visit various communities to ascertain if the projects declared as budgeted in the Annual Financial Reports of the NPOs were actually carried out. Consequently, the DGAT conducts on-site supervision through which they are able to reconcile the sources of the funds at the disposal of the NPOs and how such funds are utilized. However, the agency noted that it lacks the expertise to trace the underlying intents of the funds, especially as quite often, it lacks the proofs or evidences to verify the real sources of funds contained in the annual financial reports submitted by the NPOs.

99. It is however important to note that the relevant staffs of the DGAT have not been adequately trained on AML/CFT standards and obligations that could enhance their abilities to communicate observations to relevant authorities/Ministries. Consequently, they lack the capacity for on-site visits and verifying the accuracy of the financial reports, especially in terms of tracking sources and utilization of funds as well as comparing the figures given by donors with the amounts actually declared by the NPOs as required by their mandates. In addition, the extant law is silent on scrutinising the sources of finances utilized by the NPOs.

100. It has therefore become imperative that adequate platforms of interactions be established between the NPOs and their supervisory entities relating to AML/CFT standards. This is because of the clear absence of forums through which the various NPOs are brought together with the Government at all levels. Consequently, platforms such as national training programmes with participation of government and NPO officials and technical partners have become necessary.

101. The detection and reporting of suspicious transactions are the responsibilities of financial institutions and the several DNFBPs. Following FGD with financial institutions at the ECOBANK Headquarter in Bamako, the representatives of these institutions acknowledged that they have transposed the UEMOA Directive on AML/CFT into their operations and this has significantly reduced the vulnerabilities which the banks and other financial institutions encounter. Presently, most banks in Mali now have tools for monitoring banking transactions of their clients and usually submit STRs to the FIU as part of the AML/CFT obligations. In addition, the banks acknowledged that as part of recruitment procedures, new employees are made to sign commitments to compliance to the extant AML/CFT obligations.

102. In addition, the banks are in possession of the Sanctions List of persons and entities under watch and often check transfers while also conducting due diligence on relations with correspondence banking against violations of the AML/CFT standards. The banks however encounter challenges with regards to sensitizing the population on the AML/CFT standards.

103. The Bureau de Change (BDCs) are also engaged in the task of STRs in Mali. It has however been noticed that while some BDC implement the KYC-CDD regulations, several other BDCs with accreditation do not have any fixed address and co-exist alongside the black market. There is also a constant difference between the exchange rates at the BDC and the black market. So far, it is only the Gambi BDC that submits the annual trimester Transactions Declaration Reports (TDRs) to the BCEAO. It provides AML/CFT trainings to its staff while also engaging regularly at the Inter-Ministerial Committee (IMC) to discuss the issues of AML/CFT compliance.

104. The notaries and various charity organisations in Mali require supervision. This is because these channels are at high risk of being used for financing of terrorism. The notaries claim to be victims in Mali as dealers used them mainly as witnesses in business transactions and thereafter bypass financial vigilance. This has often proved a regular pattern through which big merchants utilize to move huge money. The notaries further noted that the laws are somewhat weak and do not require evidence of payment while the percentage tax required for transactions has resulted to under-declaration. In addition, although the law specifically requires inspection by supervisors, this is in reality rarely done. Despite requests for training on CFT obligations, the FIU is yet to deliver such training for Notaries and other Charity organizations. The notaries have however embarked on marginal training of their staff on CFT regimes and compliance.

105. Other DNFBPs such as the Agence pour la Promotion des Investissement (API) au Mali, which gives accreditation for investments noted that as a reporting entity, there is no agency of the Malian government that supervises their activities in terms of AML/CFT compliance. The API noted that only 60% of investments have accreditation out of which a meagre 10% have the "Carte Professionel" (professional certification card) – a means of combating violations from quacks within the informal sector. The API categorically stated that there has been no inspection visit to their offices by the authorities and that the only report they send to the authorities is the monthly fiscal reporting on Value Added Tax (VAT), which is sent to the Tax Administration.

106. There still exist ignorance of CFT obligations among some reporting entities especially NGOs and Charities. For instance, officials of Caritas Mali, established in 1959 as a charity organisation of the Catholic Church, acknowledged that although they submit annual financial reports containing the sources and amount of donations, they are not very familiar with their AML/CFT obligations. They therefore sought for relevant trainings from the FIU and other technical partners relating to their obligations. In addition, the Caritas Mali also noted that the supervisory authorities have not visited them since 2011 for on-site inspection.

107. The Secretariat de Concertation des ONG nationals (SECO) du Mali also claimed that several of its members are not aware of their AML/CFT obligations, and quite often, only apply the obligations contained in the Memorandum of Understanding (MoU) signed with donor agencies. Generally, the SECO maintain that the DGAT does not provide adequate supervision over the activities of its members, besides collecting the mandatory Annual Financial Reports at the end of March each year. Yet, there are still NGOs that have failed to submit the National Intelligence Agency (ANR) for about one decade without incurring any penalty. The effectiveness of SECO to facilitate compliance of NGOs to AML/CFT standards is also curtailed as it lacks the power to regulate organisations that are its members. This is further worsened by the absence of any robust mechanism for tracking the ownership, control structure, finances and operations of NGOs in the country.

108. The Association of Real Estate Agencies in Mali acknowledged their awareness of the relevant provisions of the law on AML/CFT and therefore seeks to conduct transactions through the bank. They however noted that

the largely informal nature of the economy still constitutes a challenge to strict compliance with the AML/CFT obligations, as several dealers are often reluctant to accept cheques.

Criminal Justice System

109. The research team engaged key officials of the Ministry of Justice such as the Procurer-General of the Republic, Prosecutor Judicial Police and other staff authorized by the Ministry to participate in the interactive session. From the interaction, they confirmed that Mali has had a case of Terrorist financing under investigation but that the burden of proof became a major challenge to the investigators and prosecutors. This is because of the problems of low financial inclusion and traceability of funds in Mali as the FIU is more active in the relatively narrow formal financial sector of the economy. This became obvious following realisations that operators of small scale businesses and persons involved in livestock business could actually finance terrorism. Consequently, there is low financial intelligence over activities in the informal sector which makes it difficult to track funds that are often diverted for terrorist financing.

110. Furthermore, the Prosecutor Judicial Police observed that within the extant legislations, the prosecutor lacks the legal authority to request for information from the financial institutions. This gap has raised concerns for a review of UEMOA directives on AML/CFT.

111. Furthermore, most of the existing Judges in the country lack the technical expertise to deal with issues of CFT. This informed the need for specialised training for investigators and prosecutors dedicated to CFT and the training should be based on the local realities of Mali.

112. In terms of international cooperation relating to CFT, Mali has entered into judicial cooperation platform on transnational crime organized between Mali, Mauritania and Niger is functional. Like Burkina Faso, Cote d'Ivoire, Niger and Nigeria, Mali is a member of the GIABA. She has also domiciled the UEMOA uniform law on CFT and has further signed Cooperation Agreements with Russia and Nigeria as well as Macedonia, Chile, Argentina, Ghana and Cape Verde.

111. As part of the exchange of information through the Egmont Group or in the bilateral framework it should be noted:

a. Requests for information have been entertained from the ECOWAS region, Europe and America have received responses;
b. Requests for information sent to other FIUs have followed up relevant information.

TF RISK ASSESSMENT

113. The TF risk level for Mali is considered as considerably high. This is not unconnected to the domestic and cross-border activities of various extremists groups that adopt terrorist acts for their operations. Prominent among these extremist groups which often resort to terrorist acts and which have in the last decade enhanced Mali's vulnerability to TF are the AQIM (2012-2017), Movement for Oneness and Jihad (2011-2013), Ansar ul Dine (2012-2017), Macina Liberation Front (2015-2017), JNIM, AM (2013-2017) and Ansar al Sharia (2012 –till date). Yet, Mali's risk level is further strengthened by the vast, porous and under-regulated borders she shares with Algeria and Niger which also have history of terrorist activities.

114. In terms of vulnerabilities, the evident deficits in effective supervision of the NPOs and the weak implementation of the legal and policy framework regulating the mining sector further exposes and heightens Mali's TF risks. This is facilitated by the preponderance of cash transactions through the informal economy and the existence of under-regulated black market which has become increasingly popular as alternative means of currency exchange. Others are the lack of sensitisation on CFT regimes, weak regulations of the foreign exchange bureaus and problems associated with social and religious beliefs especially the demands of Hawala and Zakat. Mali's vulnerabilities to TF also arises from the near absence of AML/CFT-related controls and sanctions for reporting entities while the prevalent violations relating to FT occur through foreign currency exchange, artisanal mining, cross-border movement of cash and kidnapping for ransom

perpetrated by extremist groups. The transport services are vulnerable to TF and should be subjected to TF regulation.

115. At the sectoral level, while the financial institutions, especially banking institutions, and their respective competent supervisory authorities have a good understanding of the ML/TF risks confronting them, there exists observable deficits in the appreciation level of the risks among the DNFBPs. So far, the real estate, transportation, NPOs, hotels and restaurants, bank and Money Transfer Agencies (MTAs) are considered as high-risk sectors. So far, the real estate, transportation, NPOs, hotels and restaurants, bank and Money Transfer Agencies (MTAs) are considered as high-risk sectors. This informed the conduct of sensitisation seminars for operators of the Treasury, the professions (Lawyers, Notaries, etc.), Insurance companies, casinos and other gambling halls.

116. Due to the under-regulated nature of mining in Mali, the sector has emerged another high-risk sector for TF because there is no clear indication of firm supervision of the activities of artisanal miners. The situation is further compounded by the fact that the informal or artisanal nature of the sector inhibits the traceability of the transactions carried out. Consequently, it has become a useful conduit for funding terrorist activities within Mali and the Sahel. This has made illegal artisanal mining a vulnerable conduit for funding terrorist activities in the country.

117. In summary, the overall level of understanding of ML/FT risks at the national level is adjudged to be satisfactory. Mali has continued to make gradual progress in addressing the deficiencies in its AML/CFT compliance rate and she completed another round of mutual evaluation exercise in 2019.

CHALLENGES

118. The key challenges relating to CFT endeavours in Mali are identified as follows:

a. Low level of financial inclusion as the country has a big informal sector co-existing with the formal sector.
b. Significant level of ignorance exhibited by reporting entities, especially NGOs and Charities with regards to their AML/CFT obligations.
c. Proliferation of humanitarian NGOs across the country as there is no robust mechanism for filtering the NGOs.
d. The transport sector in Mali remains largely under-regulated and vulnerable to facilitate the financing of terrorism.

RECOMMENDATIONS

119. The recommendations are as follows:

a. The Government of Mali should create robust monitoring mechanisms for effectiveness and compliance to the CFT standards.
b. The FIU could facilitate the conduct of training for NPOs and relevant officials of the Malian Government at national, regional and community levels, with technical support from the GIABA.
c. The FIU should conduct a mandatory training for all new entrants to businesses that fall within the category of reporting entities.
d. There should be periodic training for officials of the judicial police dedicated to AML/CFT investigation and prosecution.
e. GIABA should evolve a secure and rapid platform through which various national governments strengthen regional information exchange relating to mutual AML/CFT issues.
f. The Malian parliament should enact laws enforcing compliance on threshold limits for cash transactions.
g. The FIU and other supervising entities should enhance vigilance on NGOs, donor institutions and their beneficiaries to prevent diversion of funds to financing of terrorism.

NIGER

120. The working visit to Niamey in the Republic of Niger took place from 18th -22nd February 2019. The Project Team carried out 15 working sessions with critical actors whose operations are more or less related to CFT. On the whole, the technical discussions focussed on stakeholders in the legislative and judicial system, supervisory, monitoring and regulatory authorities as well as stakeholders in the financial system, professional bodies and non-profit organizations.

KEY FINDINGS

Legal and Institutional Framework

121. On the legislative front, the fight against terrorism financing is regulated by several legislations and international conventions ratified by Niger. Based on the legislations adopted, Niger's relevant legal framework is satisfactory and compliant with international standards. These include:

- AML/CFT Law No. 2016-33 of 31st October 2016 and International Convention for the suppression of terrorism financing, adopted by the United Nations General Assembly on 9th December 1999 including its Appendices;
- Law No. 2017-007 of 31st March 2017, amending and complementing law 61-33 of 14th August 1961, establishing the code of Criminal Procedure;
- Law No. 2017-007 of 31st March 2017, amending and complementing law 61-33 of 14th August 1961, establishing the code of Criminal Procedure;
- Decree No.2017-097/PRN/MF of 17/02/2017 on the administrative freezing of funds, assets and other financial resources in the fight against money laundering, terrorism financing and the proliferation of weapons of mass destruction, etc.

122. In Niger, there is terrorism financing even if the facts that are at the origin of the acquisition or possession and transfer of assets meant to be used for terrorism financing are committed on the territory of another Member State or that of a third State. Both attempted financing and complicity are punishable offences.

123. In 2018, the Republic of Niger adopted several legal instruments designed to support the AML/CFT issue. These instruments are as follows:

a. Act No. 2018-35 of May 24, 2018 on the status of notaries;
b. Act No. 2018-37 of June 1, 2018 on the organization and jurisdiction of courts in the Republic of Niger;
c. Act No. 2018-43 of June 22, 2018 amending and supplementing Act No. 2000-006 of June 7, 2000, regulating the profession of Business Agent;
d. Decree No. 2018-233/PRN/MJ of March 30, 2018 appointing the Director General of the Central Agency for the Management of Seizures, Confiscations, Freezes and Asset Recovery (ACGSCGRA).

124. In CFT, the effective implementation of the FATF Recommendations and relevant Resolutions of the United Nations Security Council is the base of the operational framework in all the countries. In Niger, like the other GIABA Member States, the coordination of such CFT efforts on the institutional front mainly involves the FIU, BCEAO, OCRTIS, the Anti-Terrorist Division and Central Agency against Terrorism and Transnational Organized Crime.

125. The institutions involved in CFT in Niger are CENTIF-NE, BCEAO, the Appeal Court, the Central Agency against Terrorism and Transnational Organized Crime (SCLCT/CTO), Criminal Investigation Department (DPJ), Bar Association (Lawyers' Regulatory Authority), Office of the Public Prosecutor, Department of Non-Governmental Organizations and Development Associations (DONGAD), Non-profit Organizations (NPOs), Financial Institutions and Designated Non-Financial Businesses and Professions (DNFBPs). The others are the Central Office for the Repression of Illicit Trafficking of Narcotics (OCRTIS), National Association of Chartered Accountants and Licensed Accountants and National Chamber of Bailiffs.

Operational Framework

126. Even though the security situation has become more worrisome since 2014, no terrorist group has been identified on the national territory. Indeed, Niger is often a victim of activities of terrorist groups operating in neighbouring countries like Mali and Nigeria. For instance, between 2014 and 2016, according to the UNODC data base, the victims of terrorist acts include 962 deaths and 257 wounded in 116 terrorist attacks perpetrated throughout the country.

127. At national level, statistics from the Ministry of Justice revealed that between 2015 and 2017, more than 1530 alleged terrorists of the BOKO HARAM group arrested and handed over to the Legal Division specialized in terrorist matters. The latter were involved in over 109 terrorist acts for which 140 convictions and 117 acquittals were delivered.

128. Terrorism financing through financial circuits is not very frequent in Niger, as the resources are not channelled through the banking system. Indeed, the retailed zakat system, support in foodstuff and equipment supply to terrorist groups (traders in Diffa, an area in the south-east of the country who secretly supply foodstuff to the Nigerian Islamic group, Boko Haram), trading in red pepper, smoked carp and cat fish, generating income estimated at billions of CFA francs, etc. are some of the methods used in terrorism finanacing peculiar to Niger.

129. It was generally observed that the TF component is generally considered as a remotely related to AML/CFT in Niger, like the other GIABA Member States. On the geopolitical front, the country's capacity to fight against terrorism and its financing is largely limited by: (i) the length of the borders shared with seven (7) countries: 1497 km with Nigeria, 1175 km with Chad, 956 km with Algeria, 821 km with Mali, 628 km with Burkina Faso, 354 km with Libya and 266 km with Benin; (ii) the security lapses at the borders and a distinct disparity in the distribution of border Police check points with 14 check points out of the twenty-two erected along the border with Nigeria; (iii) as well as the poor regulation linked to the free movement of goods and persons within the Community areas.

130. Furthermore, the rampant mobility of the workforce and the scarcity of local CFT expertise hamper the success of the supervisory and monitoring efforts. Consequently, the frequency in the inspection missions of Financial Institutions (FIs), DNFBPs as well as NPOs as part of supervision, is deemed unsatisfactory with regards to CFT, particularly in view of the country's risk profile.

131. The core vulnerabilities of the financial sector and DNFBPs also include the structure of the informal-based economy and strong predominance of cash transactions, coupled with the ignorance of AML/CFT standards, socio-cultural and religious barriers to the reporting of suspicious transactions, weak regulation and challenges in tracing financial transactions.

132. The DNFBP sector is still poorly organized and regulated in terms of CFT so much that the legal professionals are sometimes exposed to ML/TF risks by contracting or acquiring property for and on behalf of third parties. The notary sector is also exposed to similar risks. However, there are best practices in surveillance and due diligence measures within the Chamber of Notaries, including the keeping of a register and an accounting of Notaries, which allows supervisors to trace, read and analyse transactions. The Code of Ethics of lawyers favours Customer Due Diligence and the systematic monitoring of accountable professionals, while the President of the Bar Association has the right to conduct inspection and monitoring exercises of its entities to ensure compliance with AML/CFT measures.

133. Another vulnerable area through which funds could be concealed and diverted for financing of terrorism is the real estate sectors. This is because there is no clear procedure to know who buys or sells properties. The same obtains for the gambling sector which should be more effectively monitored.

134. 130 lawyers, 24 trainees and 6 civil societies of professional lawyers are currently registered with Bar Association of Niger. Lawyers' activities in Niger are mostly judicial. It is only in exceptional cases that lawyers deliver services to companies and Trusts, although there has so far been no independent entity specifically dedicated to this type of activity. Similarly, lawyers hardly manage funds or other assets for and on behalf of others and hardly work at international level.

135. However, and in a bid to strengthen the supervisory framework of layers, Decree No. 2015-582/PRN/MJ of 1oth November 2015 has established the Lawyers' Cash Settlement Autonomous Fund (CARPA) operating in all member countries of the UEMOA zone. This fund is mandated to centralize all revenue derived from Lawyers' activities. CARPA makes for the traceability of funds and can provide inputs to the fight against certain offences, particularly fraud and other abuses.

136. Although the team of experts obtained no information attesting to the operationalization of CARPA, it however assessed the idea of operationalizing CARPA as a bank, with premises and a dedicated administration. A sanctions regime is expected to be established to this effect, such as the expulsion of lawyers operating outside the rules governing the Fund. This practice will guarantee real-time cash flows processing and ensure transparency and integrity of finances. It is however important to note that the lack of official state support has resulted in delays in the CARPA project as the Niger government seems not to have interest in the project.

137. With regard to national coordination, information obtained intimates that the Niger-FIU works in collaboration with the Financial Institutions, DNFBPs and NPOs. However, and in order to understand the perceptions of the NPOs on the problem of terrorist financing in Niger and identify the obstacles to suspicious transaction reporting, a joint working session was held with representatives of certain NPOs of influence Transparency International, Caritas and ROTAB.

138. The Project Team noted that in terms of customer due diligence, customer or donor identification is limited and not backed by measures designed to question the authenticity of identity-related information.

139. The NGOs and NPOs in Niger constitute another potential source of risks. As at the time of the field trip, the law governing these organisations dates back to 1984 and requires reviews to respond to the emergence of new security problems. Generally, the AML/CFT laws are not well entrenched within the community of NGOs despite the latter's role as democracy and good governance watchdogs. Many NGOs and NPOs are not sensitized on their role in the mechanism designed to combat terrorism and its financing, and this has stimulated some perception that AML/CFT is an elitist affair. The low involvement of these organisations in CFT efforts is considered as a failure of the national coordination system. In addition, there is no comprehensive database of NGOs and NPOs or any mechanism for the updating of relevant information. It has therefore become important to review the laws and make them more relevant to meeting the constantly evolving international CFT standards. Consequently, the NGO Monitoring Department in Niger should strengthen its engagement while fostering active collaboration of the NGOs in order to establish a more robust CFT regime.

140. On the whole, the discussions during the field visit revealed that the bottlenecks to the effective and efficient implementation of CFT requirements by stakeholders in Niger include, among other things, the lack of monitoring by the supervisory authority with regard to suspicious transaction reporting, lack of national list of politically exposed persons, ignorance of the texts and risks associated with terrorism financing and particularly targeted financial sanctions, lack of customer information, lack of information system for the monitoring of customers' transactions and their profiling, as well as challenges in identifying suspicious transactions.

Criminal Justice System

141. The concept of terrorist financing is inseparable from that of terrorism, particularly because the fight against terrorist financing broadly aims to prevent terrorist acts. The FATF Recommendations provide a framework for comprehensive interventions designed not only to dry up or suffocate terrorists' financing sources (groups or individuals) but also and above all, to secure, at the end of the criminal investigations and prosecutions, confiscations of funds or instrumentalities intended for the financing

of terrorism. In this regard, Niger's judicial capacity to combat terrorism financing, in the study carried out, has been assessed based on the level of the judges' and magistrates' understanding of the TF concept (including TF risks) and the FATF standards on CFT, inter-institutional coordination and collaboration to specifically address the TF offence, and also taking into account human, material and financial resources deployed to combat the phenomenon in the country.

142. In this regard, three (3) separate working sessions were organized with the Court of Appeal, the Prosecutor's office and Criminal Investigation Department to discuss, in addition to the above issues, the outstanding legislative and regulatory gaps in the country's CFT system, as well as the major technical challenges encountered in the process of adjudicating criminal cases related to terrorism financing. In attendance at these various meetings were the President of the Chamber, the State Prosecutor, the Substitutes of the State Prosecutor, Magistrates from the Anti-terrorist Division, the Economic and Financial Division, Investigating Judges, Judges from the Supreme Court and other Counsellors in the Court.

143. On the whole, the investigations revealed the low level of expertise of judges and magistrates handling TF offences in court and their limited knowledge of the relevant tools (FATF Recommendations, Domestic AML/CFT Law, relevant UNSC Resolutions, TF Typologies, etc.). This observation leaves a whole lot of uncertainties on the country's operational capacities to effectively prevent and repress terrorism financing.

144. In Niger, the Anti-Terrorism Division is responsible for terrorist financing. Previously, the responsibility was assigned to the Criminal Investigation Department which has prerogatives over all general issues. However, the specialization of the Anti-Terrorist Division was certainly not complemented with a transfer of expertise or a mechanism for sharing of experiences between the Criminal Investigation Department and the Anti-terrorism Division on issues of economic and financial crime, terrorism and terrorist financing, thereby rendering the CFT regime inconsistent.

145. The number of magistrates at the Anti-terrorism Division is deemed inadequate to enable it carry out its activities. Similarly, it was noted that the capacity building programs implemented by GIABA as well as International Partners for the benefit of judges and magistrates do not take into account the specific ways the judiciary is functioning in the various countries. For instance, it should be underscore that the Niamey High Court can only handle tort cases, while the Court of Appeal has jurisdiction to handle criminal cases. In the same vein, the lack of expertise and adequate resources slows down the momentum of the judicial system to adjudicate cases, which explains why convictions for TF are rare to date.

146. It should also be noted that Niger has set up a Central Agency against Terrorism and Transnational Organized Crime which has national jurisdiction in the fight against terrorism and not TF. This Agency includes of criminal and judicial investigations and inquiries, with 233 staff. Discussions with the Management of this Agency revealed the essence of establishing a systematic information sharing platform with the Anti-Terrorism Division in order to promote intensive financial investigations into identified cases of terrorism. Some of the challenges in using clues provided by the military in terrorist operation locations (objects seized and persons arrested) have also been raised.

147. In terms of best practices, in addition to the creation of a specialized division to deal with issues of terrorism and its financing, it should be noted that the Prosecutor's office also carries out periodic monitoring to ensure the smooth conduct of investigations. A national CFT coordinating committee has been set up by a Ministerial Decree. It is chaired by the State Prosecutor and is supposed to be convening on the last Wednesday of each month. This mechanism promotes better coordination at the highest level in terrorism-related matters. It is envisaged that in the medium term, this committee will be in a position to act as an integrated structure bringing together all

national CFT stakeholders. However, the lack of resources of this committee has somewhat weakened its dynamism. With regard to international cooperation, the Republic of Niger has signed several judicial cooperation agreements with other countries.

148. A brief overview of the issues observed after diagnosing Niger's CFT regime is presented as follows:

- The principle of establishing an anti-terrorist division with national jurisdiction, given the size of Niger, is not very adapted to the CFT specificities and does not cover the entire country, by extending the powers to all jurisdictions;
- The lack of expertise and adequate resources slows down the momentum of the judicial system to adjudicate trials, which explains why convictions for TF are currently scarce;
- No framework has been put in place for the experience of the CID to be tapped by the agencies specialized in economic and financial crime;
- There is a feeling that terrorism is financed more from foreign sources than domestic sources and that there is need to foster international cooperation;
- There are technical challenges and lack of adequate resources for TF-related investigations to facilitate the reconstruction of facts and the gathering of material evidence;
- Legislative reforms are carried out without the involvement of the key stakeholders in the Judiciary, which does not reflect the practical challenges encountered or provide an opportunity to tap the experience of magistrates.

TF RISK ASSESSMENT

149. Presently, the risk of TF in the Republic of Niger is considerably high and she was ranked 23rd with a score of 6 points among the top 50 countries classified in the Global Terrorism Index 2018.[27] Like other UEMOA member countries, Niger has an administrative type Financial Intelligence Unit (FIU) placed under the tutelage of of the Minister of Economy and Finance. In this regard, the Niger-FIU coordinates and monitors the implementation of the country's AML/CFT policy.

150. Niger is a Sahelian country with an estimated population of 19.8 million inhabitants and a surface area of 1,267,000 km•, making it the 22nd largest country in the world and 6th at continental level. It is a landlocked country that shares borders with of about 5697 km long with seven (7) countries, namely Nigeria, Chad, Algeria, Mali, Burkina Faso, Benin and Libya.

151. The vastness and great porosity of its borders project the country as a terrain suitable for all kinds of trafficking. Furthermore, it is considered as part of the so-called core countries because of the terrorists threats or other serious offences in organized crime hovering over its territory, particularly human trafficking, migrants' smuggling, trafficking in drugs of all kinds, firearms and ammunition as well as protected species.

152. The Country conducted its national ML/TF risk assessment in May, 2018. This exercise particularly identified some of the real threats including the high prevalence of the following predicate offences: corruption, illicit trafficking in drugs, fire arms, human trafficking and migrants' smuggling, tax fraud, receiving stolen goods and embezzlement of public funds. Corruption, illicit trafficking in drugs, weapons and tax fraud are the high level threats.

153. With regard to vulnerabilities to money laundering at the global level, the following were highlighted: (the importance of the informal sector in the economy; (ii) predominantly cash-based transactions; (iii) misuse of the free movement of people, goods and capital within the Community region; (iv) Weak border controls; (v) Difficulty in identifying beneficial owners of assets ; (vi) Inadequate monitoring and sanctions for reporting entities; (vii) Lack of reliable databases for information gathering; (viii) Inadequate implementation of texts guaranteeing the integrity of officers investigating financial crimes (working conditions, protection, remuneration); (ix) Inadequate implementation of confiscation procedures; (x) Inadequate compliance with exchange control regulations; (xi) Difficulty in identifying people involved in money transfer transactions.

27 Statistica Research Department, "Global Terrorism Index 2018" (https://www.statista.com/statistics/271514/global-terrorism-index/ (accessed 10 October 2019)

154. Not only are the vulnerabilities to TF based on the same contingencies identified in ML, but they also include a number of worsening contextual factors such as: (i) Border porosity and weak controls; (ii) Poverty and youth unemployment; (iii) Poor supervision of NGOs; (iv) Abuse of the free movement of people and goods; (v) Inadequate compliance with exchange control regulations; (vi) Difficulty in identifying people involved in money transfer transactions.

155. On the whole, and based on the combination of these threats and vulnerabilities, the national stakeholders perceive terrorist financing risk in Niger as medium-high.

156. According to certain Nigerian exponents in the fight against organized crime, the dangers of TF in the Republic of Niger have been further heightened by illicit transnational trafficking such as drug trafficking, human traffickers, illegal traders in arms and currency traffickers that work to gather momentum in the Sahel and maintain strong grip in the country by penetrating the state system through corruption. For instance, there was a case of a Nigerian who was arrested for carrying a large sum of undeclared money while travelling from Gao in Mali to Kano in Nigeria. He was tried and sentenced to a 10-year imprisonment.[28] This incident heightened the perception that terrorism in Niger is more externally funded.

157. It is important to note that the Government of Niger is aware of the menace of terrorism and has since 2016, made concerted efforts towards strengthening her AML/CFT regime and addressing the deficiencies. The notable efforts include legislative enactments, capacity building for the judiciary, substantial AML prosecutions, seizures and confiscation of narcotic and other illicit assets, and international cooperation on information exchange.[29] Niger has been earmarked for the Second Round of the Mutual Evaluation exercise, with the on-site visit scheduled for January 2020.

158. The core areas in which Niger needs capacity building are training, spreading the awareness of CFT obligations for FIs and DNFBPs to enhance compliance to standards, deficits in Information and Communication Technology (ICT) equipment and logistics as well as the typologies/research capacity for the FIU. Further areas of assistance indicated by Niger include organising training for the judiciary, training, and mentoring on international cooperation for stakeholders.

CHALLENGES

159. On the legal and institutional fronts, significant progress has been made in strengthening the legislative and regulatory framework as well as the mechanisms for cooperation and coordination in CFT. Specialized structures are increasingly cooperating amongst themselves and formal frameworks are emerging. However, and considering the CID's accumulated expertise in economic and financial crime, its involvement in the financial investigations conducted by other structures specialized in the fight against terrorism and its financing, should be strengthened.

160. On the operational front, the CFT requirements contained in Niger's AML/CFT law are yet to be sufficiently proven, due to inadequate sensitization and thorough knowledge of the legal mechanisms provided for by law. The effective contribution of the private sector to the fight against TF is grappling with a poor understanding of the designated financial institutions sanctions regime. Also, the detection of TF offences has remained the prerogative of the financial sector which has a better compliance regime, while the TF methods recognized in Niger only very rarely use the financial circuits. Furthermore, the low level of legislative and regulatory framework for NPOs for the purposes of CFT slows down the momentum of this sector already reluctant to file reports for fear of reprisals.

161. In criminal matters, judges and magistrates in Niger specialized in prosecuting TF offences are not adequately equipped to conduct complex financial investigations or asset investigations. With the exception of the usual diplomatic channels, other instruments of international cooperation including that of Interpol, the Accra agreement, the Egmont Group, etc. are not being used effectively.

28 Testimony shared during a Focus Group Discussion in Niamey with Judicial officials of the Republic of Niger, February 2019.
29 GIABA, Annual Report 2016, p. 28.

162. With regard to resources, the lack of an updated TF risk-based strategy identified does not allow the country to apply a risk-based approach, guaranteeing the rational allocation of available resources. Similarly, the difficulties in tracing funds due to the size of the resources circulating on the fringes of the traditional economic circuit, make CFT in Niger very difficult.

RECOMMENDATIONS

163. In light of the realities and challenges associated with CFT in Niger, the following recommendations are proffered:

a. Embark on intensive review of laws governing the operation of the NPOs in order to meet the CFT requirements contained in the law. The revision should take on board the need to establish a comprehensive data base for NPOs in Niger, map out a permanent updating mechanism, enhance supervision of the sector, encourage more transparency into access to resources and more effective collaboration with intelligence agencies, including the Niger-FIU. In addition, the 1999 Ordinance on Combating Drug Trafficking should be updated to reflect contemporary realities;
b. Enhance the operationalization of the National CFT Coordinating Committee through the establishment of a functional Secretariat and allocations of requisite resources to enable it perform its functions;
c. Envisage the establishment of a National Counter-terrorism Unit within the High Command of the Police to mitigate the challenges arising from the proliferation of specialized agencies and overlapping services;
d. Continue and intensify programmes to raise public awareness, particularly NPOs, on their CFT obligations;
e. ……
f. e. Strengthen and provide training for SCLCT/CTO staff on financial and asset investigative techniques. A policy should also be mapped out to guarantee the availability of adequate expertise within the Agency; Regulatory measures should be taken to monitor money transfer through transport companies;
g. Studies should be conducted nationwide to identify the TF specificities in Niger order to guide the legislative reforms and enhance the knowledge of law enforcement authorities on the methods and techniques used by terrorism financiers;
h. GIABA should undertake advocacy missions in order to sustain Niger's political commitment to deploying adequate financial and material resources for domestic CFT stakeholders.
i. Establish a national register of Politically Exposed Persons with a view to minimizing political interference in the Judiciary and ensure equitable criminal justice;
j. Establish a mechanism to ensure transparency in the financing of electoral campaigns with a view to minimizing the intrusion of slush funds into the country's legal economy, and anything that may taint the integrity of stakeholders and facilitate terrorism financing.

NIGERIA

164. Nigeria has since 2009 emerged as one of the frontline countries experiencing active terrorist presence in West Africa. This is evidenced with the emergence and sustained aggression of the Boko Haram, Ansaru and affiliate organisations. The Federal Government proscribed the Boko Haram and Ansaru as terrorist organisations in 2014 while the United Nations Security Council listed both organisations under the Al Qaeda Sanctions List of Designated Terrorist Entities. The vulnerability of Nigeria to the risk of terrorist financing is exposed by the sustained terrorist assaults perpetrated by the Boko Haram, which is now a cell of the Islamic State in the West African Province (ISWAP), and other groups across the country. As the scourge of armed banditry, cattle rustling, illegal artisanal mining of solid mineral as well as kidnap and hostage taking among other crimes have persisted and become increasingly violent, Boko Haram and other groups have continued to raise funds to finance terrorist acts in Nigeria and the larger Lake Chad Basin area.

165. Previous studies have identified the legitimate means through which terrorist organisations in Nigeria especially the Boko Haram and Ansaru raises fund for their activities as involving the voluntary contributions from members, and compulsory levies imposed on members. Others include the use of legitimate proxy business outfit and sale of dried fish along the Lake Chad basin. In addition, terrorist groups in Nigeria also raise funds through illegitimate means as follows:

26 Statistica Research Department, "Global Terrorism Index 2018" (https://www.statista.com/statistics/271514/global-terrorism-index/ (accessed 10 October 2019)

a. Extortion, begging, smuggling and violent robbery, human trafficking, Protection fee, and kidnapping for ransom especially by the Ansaru;
b. Sale of gold jewelleries and precious metals acquired through raids on various communities;
c. Livestock rustling, especially cattle stolen from herders in Cameroon and Chad; This has led to closures of some cattle markets in Nigeria and Cameroon;
d. Abuse of Non Profit Organisations; payment of Zakat, raiding of villages for consumables, local sympathies and protection fees.
e. Sale of seized land acquired through Boko Haram raids;
f. Engagement in transportation business; and
g. Trading in kolanuts and dry fish to raise money for raise funds for operations.[30]

166. It is in light of the above that as part of the field study, the Research Team conducted a working visit to Nigeria from 04-08 March 2019 to assess the country's capabilities on CFT. Several working sessions and technical discussions were held with critical actors whose operations have implications for CFT. These actors were drawn from various government agencies and private sector institutions engaged in legislative, judicial, supervisory, control and regulatory mandates. The private sector actors were drawn from the financial sector, hospitality industry and non-profit organisations. The findings of the study are discussed in succeeding paragraphs.

KEY FINDINGS

Legal and Institutional Framework

167. The Nigerian government has adopted several legislations targeted at AML/CFT, which are reviewed at intervals for enhanced effectiveness. It is important to note that there is no uniform established frequency for the revision of these laws. Rather, their revision is dictated by necessity and the evolution of time and related thematic issues. These extant legislations are as follows:
a. Money Laundering Prohibition Act 2011 (as amended in 2012)
b. Terrorism (Prevention) Act 2011 (as amended in 2013)
c. The Corrupt Practices and Other Related Offences Act 2003
d. Economic and Financial Crime Commission (EFCC) Establishment Act, 2004
e. Nigerian Criminal Code Act
f. Code of Conduct Bureau and Tribunal Act
g. National Drug Law Enforcement Agency Act
h. Customs and Excise Management Act
i. Advanced Fee Fraud Act 2006
j. The Investment and Securities Act 2007
k. Federal Inland Revenue Service Act 2007
l. Nigerian Financial Intelligence Unit Act, 2018

168. It is important to note that Section 2 of the TPA puts the responsibility for the effective implementation and administration of the TPA on the Attorney-General of the Federation. It further tasked the Attorney-General of the Federation to strengthen and enhance the existing legal framework to ensure:
a. Conformity of Nigeria's counterterrorism laws and policies with international standards and United Nations Convention on Terrorism.
b. Maintain international cooperation required for preventing and combating international acts of terrorism, and
c. The effective prosecution of terrorism cases.[31]

169. Similarly, Section 1A (1) of the Terrorism (Prevention) Act (TPA) stipulates that the Office of the National Security Adviser (ONSA) shall be the coordinating body for all agencies and military services to prevent and combat acts of terrorism in Nigeria.[32] Within the ONSA, CFT matters are discussed weekly at the coordinating meeting of the CT Operations (CT Ops).

Operational Framework

170. The NFIU Act 2018 established the NFIU as the unit charged with the responsibility for receiving, requesting, analysing and disseminating financial intelligence reports on money laundering, terrorist financing and other relevant information to law enforcement, security and intelligence agencies and other relevant authorities.[33]

30 Federal Republic of Nigeria, NFIU Report of Nigeria National Risk Assessment on Money Laundering and Terrorist Financing 2016: The National (Money Laundering and Terrorist Financing) Risk Assessment Forum; Onuoha, Op. Cit.
31 Federal Republic of Nigeria, Terrorism (Prevention) (Amendment) Act, 2013
32 Ibid.
33 Federal Republic of Nigeria, Nigerian Financial Intelligence Unit, Act, 2018

171. The core regulatory authorities for AML/CFT in Nigeria are the Special Control Unit against Money Laundering (SCUML), Central Bank of Nigeria (CBN), Securities and Exchange Commission (SEC) and National Insurance Commission (NAICOM). The critical Ministries involved in the AML/CFT are the Federal Ministry of Justice, Ministry of Foreign Affairs, Federal Ministry of Trade and Investment and the Federal Ministry of Finance. Meanwhile, from responses to the questionnaires, virtually all law enforcement, anti-corruption agencies and the intelligence agencies have responsibilities of ensuring the implementation of the AML/CFT standards. In addition, all the relevant agencies meet at least quarterly to discuss the implementation of the CFT requirements.

172. The provision of Part 4, Section 15(1) of the Nigeria Financial Intelligence Unit (NFIU) Act 2018 stipulates that the NFIU shall hold a database of all reporting institutions which shall be populated as provided in Section 15(2) as follows:

a. Supervisory authorities shall provide the Unit the details of every reporting institution supervised by them; and
b. Self-regulatory organisations shall provide details of every member registered by them for the purpose of the Money Laundering (Prohibition) Act and Terrorism (Prevention) Act.

173. Section 25 of the money Laundering Act 2012 (as amended) defined the reporting entities to include, but not restricted to, Financial Institutions and DNFBPs. It identified financial institutions as commercial banks, primary mortgage institutions, micro-finance banks, finance companies, discount houses, Bureau de Change (BDCs), Development Financial Institutions such as the Nigeria Export and Import (NEXIM), Agricultural, Rural and Urban Development Banks and the Federal Mortgage Bank of Nigeria (FMBN). Others include the Money Service Businesses and Transmitters, Stock Broker, Issuing House, Registrars, Trust, Fund and Assets Managers, Investment and Portfolio Managers, Insurance Companies, Reinsurance Companies and Insurance Brokers.

174. The DNFBPs refers to NGOs, Estate Surveyors and Valuers, Dealers in Precious Stones and Metals, Trust and Company Service Providers, Casino, Pool Betting and Lottery, Dealers in Jewelry, Cars and Luxury Goods, Chartered/Professional Accountants and Audit Firms, Tax Consultants, Clearing and Settlement Companies, Legal Practitioners, Supermarkets, Hotel and Hospitality Industries and Casinos.

175. The reporting entities in Nigeria operate under the following AML/CFT regulations:

a. Terrorism Prevention (Freezing of International Terrorist Funds and other related Measures) Regulation, 2011
b. Securities and Exchange Commission (Capital Market Operations, AML/CFT) Regulations 2013
c. Central Bank of Nigeria (Anti Money Laundering/Combating Financing of Terrorism in Banks and other Financial Institutions in Nigeria) Regulations, 2013
d. National Insurance Commission (AML/CFT Regulation 2013)
e. Central Bank of Nigeria Anti-Money Laundering and Counter Financing of Terrorism Strategy Policy and Procedure Manual 2018.

176. Various reporting entities in Nigeria have CFT Compliance policies including established audit and compliance review function for testing the adequacies of CFT sanctions compliance procedures. Some of the reporting entities acknowledged that their company's documentation relating to its compliance programmes are periodically updated, usually annually or every two years. This activity involves periodic review by units such as procurement, finance, compliance and internal audit. The institutions identified as responsible for the reviews include the following:

a. Compliance Department;
b. Inter-Ministerial Committee (IMC) on AML/CFT;
c. Counterterrorism Unit (CTU) at the Office of the National Security Adviser;
d. Compliance and Associated Centre;
e. Nigerian Financial Intelligence Unit;
f. Central Bank of Nigeria.

177. As part of measures to ensure that the Know Your Customer (KYC) laws, regulations are upheld, the various reporting institutions embark on special reporting on funds transactions, demand detailed information from corporate firms and individual clients and also embark on strong vendor engagement processes involving screening of vendors, Know Your Vendors (KYV) and Employee Due Diligence (EDD). In addition, requisite education and training programmes including test controls are further utilized accordingly. There are indications that the KYC requirements are often manipulated by bank officials of reporting entities to ensure that customers accounts pass the mandatory regulatory validation in clear violation of extant CFT obligations.

178. Certain legislative amendments in the national AML/CFT regime, whatever the good intent, tend to constrain the SCUML by creating windows for huge funds to pass unreported. For instance, previously, the threshold limit of cash transactions was N500, 000 under the Money Laundering (Prohibition) Act of 2004. However, the provisions of Part 1 Section 1(a) and 1(b) of the Money Laundering (Prohibition) Act 2011 (as amended) raised the threshold limit for cash transactions to N5 million in the case of individuals and N10 million in the case of corporate institutions. The implication is that several transactions which could be intended for terrorist financing will go unreported as long as the threshold ceiling has not been violated.

179. In terms of money transfer, the regulations of the MoneyGram or Western Union are utilized by several operators while also implementing the existing national laws and policies relating to terrorism. MoneyGram money transfer services are subject to the stringent USA Patriot Act including the AML laws and regulations and the respective state's Laws and Regulations. MoneyGram also screens all names involved in money transfer transactions against the Office of Foreign Assets Control Specially Designated Nationals and Blocked Persons List (OFAC SDN) and any other applicable worldwide government watch list. Potential matches to names on the list are automatically placed on hold and alert is generated so that customer information is obtained for further action. Similarly, NGOs like the FHI 360 operate within the FHI 360 National Financial Manual Standard Operating Procedures (SOP) on Procurement which is reviewed as the need arise but not more than two years interval.

180. In its response to the questionnaire, the GolfView Suite & Conference Centre Ltd which is a service provider in the hospitality industry stated that it operates a cashless policy transaction despite that the regulatory agency allowed maximum cash transaction of N5million andN10million for individual and corporate organisations respectively. In terms of compliance to CFT obligations, the hotel has developed its internal policies and procedures and usually demands detailed information from individual and corporate guests to meet the KYC standards. In the area of training, the hotel communicates new and existing CFT regulations to its staff and also equips staff with CFT standards through its established employee-training program which assist them in identifying suspicious activities.

181. The ONSA acknowledged in its response to the study questionnaire that it has several training programmes for reporting entities under its regulation for compliance with CFT standards. Similarly, the reporting entities under financial institutions have established employee-training programmes through which its personnel are trained on CFT standards and to assist them in identifying suspicious activities.

Criminal Justice System

182. In its response to the questionnaire, the ONSA noted that there has been no separate investigation for financing of terrorism in Nigeria. Rather, investigations relating to terrorist financing are treated as part of the general investigations on terrorism cases. The ONSA further noted that more than 700 of such terrorism cases were completed as at the end of 2018 and that the accompanying trials lasted between 1-3 years. The ONSA further noted that several investigations on

terrorism cases, which include financing, are still pending as terrorist violence in Nigeria persists. It identified the main challenge encountered during prosecution of terrorism financing cases to be the provision of evidence. This is because of the difficulties relating to tracking the movement of funds using NGOs and other innocuous entities, the largely cash-based economies in the country and the use of unconventional means to generate revenue such as Zakat, cattle rustling, extortion and kidnap for ransom.

TF RISK ASSESSMENT

183. Generally, Nigeria has continued to make significant progress in the area of AML/CFT compliance. Nigeria undertook National Risk Assessment (NRA) on Terrorism Financing in 2016 and made progress in its impending membership of the FATF. The most notable areas of progress include improved requirements for CDD, improved reporting by financial institutions and DNFBPs and enhanced supervision of reporting entities. Others include the increased dissemination of intelligence reports and increased AML convictions and confiscation. Furthermore, Nigeria has achieved the separation of the NFIU from the Economic and Financial Crimes Commission (EFCC) as contained in the NFIU Act 2018. The Nigeria Financial Intelligence Unit (NFIU) has conducted a NRA and other studies on how terrorists raise, move and utilize fund in Nigeria and part of the findings were highlighted above.

184. However, despite measures embarked by the Nigerian Government to mitigate the risks of TF still persists and the country's vulnerability status to TF can still be rated significant. This is because Nigeria is still vulnerable to TF risks arising from the activities of various financial institutions and DNFBPs irrespective of whether or not they are regulated or unregulated. The multiplicity of sub-agents engaged in foreign exchange dealing further constitutes another vulnerability factor for Nigeria's CFT engagements. Although the Sub-agents are under licensed agents to whom they report, there exists the risk that some gullible Sub-Agents could become channels that facilitate accessibility to fund for terrorist activities.

185. The country has not effectively implemented the requirements for countering the financing of terrorism, particularly the receipt of STRs, freezing of funds or other property, investigation, prosecution and, especially, conviction relating to the financing of terrorism despite the activities of Boko Haram. There are a number of crucial bills pending with the legislature, and the UNSCRs 1267 and 1373 have not been effectively implemented.[34]

186. Going from the above, it becomes obvious that irrespective of the extant policy frameworks and actions plans already adopted by the Nigerian Government, the country still has significant deficiencies in its AML/CFT system. The areas of technical assistance needed centres on training for regulatory and supervisory bodies, training for civil society organisation and the media, raising awareness on CFT obligations and the provision of necessary ICT equipment.

187. With regard to international cooperation, Nigeria hosted the 2nd International Conference on Combating Illicit Financial Flows and enhancing Asset Recovery for Sustainable Development in January 2018. Subsequently, during the 25th Plenary held in Sydney, Australia in October 2018, the Egmont Group lifted the suspension slammed on her on 5th July 2017 which also halted efforts at processing Nigeria's application for the membership of the FATF. Following the lifting of the suspension, Nigeria was granted access to the Egmont Secure Web (ESW) and other useful platforms to aid her AML/CFT engagements.

CHALLENGES

188. The following challenges have been identified as indicators to the overall vulnerability of Nigeria to terrorist financing:

a. Cash based nature of economy and large Informal sector: In Nigeria, Payments for most trading activities are usually conducted using cash, and this obliterates the trail of the money flow. This makes it difficult for

34 GIABA Annual Report 2016, pp. 28-29

investigators of TF to follow the money, thus makes the entire economy vulnerable to TF;

b. The inadequate supervision of the DNFBP has rendered it vulnerable to TF due to the large size with businesses spread across the country. The supervision and regulation of the sector is weak due to limited number of officers compared to the size of the sector. This challenge has contributed to the low count and poor quality of suspicious transaction reported from the sector;
c. Flow of funds through Porous and numerous illegal Borders: There are numerous porous and illegal borders which are not secured and is being exploited by smugglers who carry out trading activities and generate funds to perform their illicit activities including terrorist financing;
d. Limited domestic cooperation among relevant stakeholders treating Terrorism and TF cases, agencies are often guided by the principle of "need to know" which limits their capacity to share timely intelligence;
e. Lack of centralized database for intelligence sharing on terrorism/terrorist financing by agencies makes it difficult for quick retrieval of data;
f. Unavailability of Data on TF in the required format: The lack of data on TF and where available not in the right format serves as a vulnerability. The lack of data is occasioned by the fact efforts/attention was focused on combating terrorism by the law enforcement agencies;
g. There exist obvious inadequate technical capacity for Law Enforcement Authorities (LEA), NFIU and the Judiciary as the trainings provided were generic in nature and was not comprehensive especially as such trainings excluded some personnel based in hinter states;
h. Delay in the prosecution of Terrorism/ Terrorist Financing cases: There is often delay in prosecuting terrorist financing cases in courts, this is due to the fact that Judges are assigned other (criminal and civil cases) which is time consuming;[35]
i. There exists the illegal and undocumented mining of solid minerals and this makes traceability of transactions difficult thereby sustaining the risks of TF; and
j. There exist gaps relating to legislations on Mutual Legal Assistance (MLA) and Proceeds of Crimes Legislation (POCA), which hamper the official engagements in CFT in Nigeria.

RECOMMENDATIONS

189. The following recommendations are proffered for Nigeria:

a. The Central Bank of Nigeria should encourage and sustain the policy of financial inclusion.
b. The GIABA in collaboration with the NFIU should organise relevant training programmes to boost manpower and technical know-how of various regulatory institutions.
c. The border control agencies should intensify border surveillance to intercept and prosecute actors involved in illicit transnational trafficking;
d. The GIABA in collaboration with the NFIU should organise seminars and training workshops that boost the propensity for inter-agency cooperation among the various supervisory and regulatory agencies whose mandates are related to upholding the CFT standards;
e. The NFIU should build a comprehensive database on AML/CFT matters as it now serves as the National Data Centre for AML/ CFT matters.
f. The relevant law enforcement agencies should profile data relating to counterterrorism operations to distinguish them from data relating to terrorism and other organised crimes.
g. The GIABA should organise capacity building courses relating to CFT standards for Law Enforcement Authorities (LEA), NFIU and the judicial officers drawn from across the country which should also include trainings on the use and applications of modern technological tools for efficiency.
h. The Federal Ministry of Justice should dedicate some members of the jury specifically to handle CFT cases.
i. The Ministry of Mines and Solid Minerals should enact and dutifully implement robust frameworks that enforce compliance in the mining sector.
j. The National Assembly should pass the requisite legislations on Mutual Legal Assistance (MLA) and Proceeds of Crimes

35 Federal Republic of Nigeria, NFIU Report of Nigeria National Risk Assessment on Money Laundering and Terrorist Financing 2016: The National (Money Laundering and Terrorist Financing) Risk Assessment Forum, pp. 203-210

Legislation (POCA) to mitigate the deficiencies in existing laws, policies and procedures relating to CFT in Nigeria.

HIGHLIGHTS OF OVERALL FINDINGS

180. The summary of the findings of this study are outlined as follows:

a. Financing of terrorism in the countries under study is usually conducted through the informal sector rather than the established and significantly monitored formal sector, and this makes detection more difficult.

b. Terrorist financing in the target countries thrive on cross-border criminalities, such as smuggling, arms and drug trafficking and other illegal trading activities. Consequently, terrorist groups exploit the vulnerabilities of these states including the scourge of corruption to facilitate the financing of terrorism.

c. Cases dealing strictly on the financing of terrorism are rare compared to cases on actual acts of terrorism.

d. Each of the countries studied have laws relating to CFT. In the 4 UEMOA countries studied, there is relative uniformity of the CFT regime, which also ensures the conformity between national law and regional and international standards. However there is also a lack of consistency of the law with remaining articles of Penal Code dealing with terrorism and TF that are not consistent with the provisions of the Uniform legislation.

e. In Nigeria, the Terrorism (Prevention) Act 2013 (as amended) and the Money Laundering (Prohibition) Act 2011 are critical to CFT in the country. These national laws however require periodic reviews to meet the emerging dynamics of AML/CFT problematic.

f. All the countries studied have official coordinating agencies with mandate for CFT. The Nigeria Financial Intelligence Unit (NFIU) is the key coordinating institution for CFT surveillance and conformity in Nigeria, while the FIU in the Francophone states of West Africa is the key coordinating institution through which the operation of the various stakeholders engaged in CFT are supervised in Burkina Faso, Cote d'Ivoire, Mali and Niger. However, while coordination is indeed taking on AML, it is limited on CFT as there still exists limited awareness of the requirements and few dedicated coordinated meetings, as well as a limited involvement of the FIU on terrorism investigations.

g. Some of the training provided by GIABA does not take into account jurisdictional functioning specific to countries. For example, in the Republic of Niger, the High Court of Niamey cannot deal with criminal cases, while the Court of Appeal is competent to do so ;

h. Reporting entities in the countries under study, especially the banks and organised financial institutions, have established elaborate procedures for reporting suspicious financial and related transactions to the Financial Intelligence Unit for further investigations and other related measures. Yet, several of these reporting institutions are not alert to their responsibilities in terms of reporting every violation of CFT standards thereby hindering effective engagements in CFT.

i. Reporting institutions all agreed that they do not have any direct relationship with shell companies and have no policies to reasonably ensure that they don't conduct transactions on behalf of shell companies.

j. The level of supervision of financial institutions, Non Profit Organisations and other stakeholders in CFT remains low as the existing supervision processes remain purely conventional and administrative in economies that have huge informal activities. In relation to NPOs, there is no consistency between the provisions of the Uniform legislation and the existing laws regulating NPOs.

k. Several cross-border linkages exist among the countries under study which are exploited for the financing of terrorism. For instance, Cote d'Ivoire shares contiguous borders with Mali and Burkina Faso, which is repeatedly targeted by terrorists. Similarly, Niger Republic shares contiguous borders with Mali on its Southwest axis and with Nigeria's vulnerable frontiers. The sensitive cross-border linkages of the Republic Niger are further heightened by its contiguous frontiers with Southern Libya.

l. The security cooperation between France and her erstwhile colonies of Mali, Niger and Burkina Faso within the framework of the G-5 Sahel, alliance, as well as collaborations

between France and Cote d'Ivoire is further considered to be factors for sustaining the targeting of the countries by terrorist groups in the region.

m. Under-regulated artisanal mining especially in border communities, including illegal gold washing in Cote d'Ivoire and Nigeria constitute another risk of TF. This has resulted to the difficulty of traceability of transactions in gold zones in Cote d'Ivoire.

n. Due to the large sizes of some of the countries, the level of effectiveness in implementing the CFT standards vary across different jurisdictions as a result of weak institutional capabilities.

o. Respondents in the countries studied demonstrated discordant observations relating to risk assessment. While government officials tasked with CFT had clear knowledge on the existing policies and legislations relating to CFT obligation, some respondents from the private sector especially the DNFBPs expressed ignorance of their CFT obligations. This gives the impression that there is some knowledge gap between government officials and private sector operators that have roles to play in the national CFT engagements.

p. The AML/CFT laws are not modelled on African realities and customs especially the culture of largely cash transactions that dominate the informal economic sectors while traditional leaders and religious authorities are often ignored in legislations.

q. Several stakeholder institutions have not formally appointed dedicated personnel to take charge of CFT responsibilities in the countries under study and, even in cases where such personnel have been appointed, the number is often inadequate to meet the responsibilities involved.

r. Several stakeholder institutions do not have monitoring programmes for suspicious and/or unusual transactions that cover fund transfer and monetary instruments, such as travellers' cheque, money order and related instruments. It is however important to note that some of the respondents are not from the organised financial sector like banks and bureau de change and fund transfer agencies.

s. Several of the stakeholder institutions lack established systems to scan accounts and transactions in order to detect entities or individuals contained on a national, regional and/or international sanctions list.

t. A huge proportion of the local population in the countries under study are ignorant of the requirements of the CFT regimes and this poses difficulties for the banks to do efficient and effective due diligence on their customers and intending customers as required by law.

u. The lack of rigorous supervision and surveillance of activities, including the funding of several NPOs in these countries, constitutes further risks of TF. Yet, some of the NPOs in operation are ignorant of their CFT roles and responsibilities.

v. Effective KYC-CDD is constrained by following key challenges:

- The absence of a robust performance system, which aids in revealing client declarations according to the level of risk; the volume and traceability of cash transactions that are difficult to verify and the origin and destination of funds; the origin of the funds financing client associations, so the exact nature and the location of the projects finances can be traced when it is cash.
- The low level of information about the population on KYC-CDD requirements. For instance, thorough addressing of streets and roads are almost non-existent in some localities while the reliability of official documents issued by certain authorities remains low.
- Lack of human and financial resources of supervisory agencies to meet the tasks.
- Various actors in the stakeholder institutions lack requisite training and expertise for the efficient and effective discharge of their respective mandate and tasks.
- Lack of technical and technological equipment among the stakeholder institutions.

HIGHLIGHTS OF COMPREHENSIVE CHALLENGES

190. The summary of challenges identified from all the countries are as follows:

a. Some of the countries have no terrorist sanctions compliance policy that suits the respective national needs.

b. Existence of a largely cash-driven informal sector, which is not adequately captured by national and international standards on CFT in these countries.
c. Volume of financial transactions sometimes exceeds the volume to which available labour structure and resource capabilities of the institution to handle.
d. Connivance of personnel of regulatory institutions and reporting entities sometimes lead to concealment of suspicious transactions related to AML/CFT.
e. The rapid evolution of traditional financial circuit circumvention methods or regulatory requirements for large cash payments (splitting of money).
f. The banking and financial institutions do not invest requisite rigour with regard to the effective implementation of CDD obligations.
g. Several of the institutions, especially in the informal sector, do not have any written policies and procedures in place to counter terrorism financing and sanctions violations.
h. There is a general tolerance of the operation of informal actors in a highly regulated financial sector.
i. The non-criminalisation of the financing of a terrorist or terrorist organisation for all purposes.
j. Significant level of ignorance exhibited by reporting entities, especially NGOs and with regards to their AML/CFT obligations.
k. There is low level of public information and awareness on CFT regimes and this has stimulated resentment of the CFT procedures by several clients especially when they experience difficulties with justifying their transaction.
l. There is a high mobility of staff trained on AML/CFT, which often comes with the loss of skills for the institutions. The mobility of the workforce and the scarcity of adequate CFT expertise therefore constitutes impediment to the supervisory efforts.
m. Emergence of new forms of financial crimes with the advent of crypto-currency does not facilitate risk control and the application of appropriate sanctions in the event of non-compliance with CFT measures.
n. The unavailability of basic resources to investigate offenders has contributed to the difficulties associated with the reconstruction of facts and the collation of material evidence required for prosecution.
o. Lack of rigorous and effective supervision of the activities of NPOs, NGOs, FIs and DNFBPs.
p. There are deficits in policy and legal frameworks for addressing the vulnerability of the mining industry to financing of terrorism.
q. Lack of cooperation by the telecommunication companies, especially when needed to track and trace virtual money transactions through mobile phone companies.
r. Weak regulation of foreign exchange bureaus and money transfer agencies has heightened the risks and vulnerabilities of such bureaus for TF.
s. The existence of conflict of Professional standard of Notaries with the requirement of CFT obligations in terms of reporting suspicious transactions.
t. The lack of requisite legislations on Mutual Legal Assistance (MLA) and Proceeds of Crimes Legislation (POCA) have been identified as deficiencies to existing laws, policies and procedures relating to CFT in countries.
u. The proliferation of humanitarian NGOs in the countries studied especially as there is no robust mechanism for filtering the NGOs.
v. Respondents in the field noted that the FATF has notified that the UEMOA directive in terms of legislation is considered as inadequate to meet the requisite standards for AML/CFT as it focuses more on terrorist cells or groups ignoring the individuals.

CHAPTER 4:
CONCLUSION AND RECOMMENDATIONS

BURKINA FASO



COTE D'IVOIRE



MALI



NIGER



NIGERIA



CHAPTER 4: CONCLUSION AND RECOMMENDATIONS

CONCLUSION

191. This study set out to assess the capabilities of GIABA's terrorism most affected member states (Burkina Faso, Cote d'Ivoire, Mali, Niger and Nigeria) to efficiently and effectively counter the financing of terrorism through the application of international CFT standards and requisite domestic measures. The study established that these countries have basic legal and policy frameworks dedicated to CFT standards but that there are gaps in the level of understanding of the risks of terrorism financing by various regulatory institutions and reporting entities. The study identified gaps between the extant international standards with the sociological realities of the countries studied thereby leading to weaknesses in the enforcement of global standards in the countries.

192. The study also observed that each country has a system of criminal justice system but noted observable gaps in the competence of the respective criminal justice systems to effectively respond to the dynamics of CFT. The gaps are associated with deficits in modern technological facilities for investigation, inadequate manpower for prosecution and the lack of technical competence of judges for handling CFT cases in the courts.

193. The study further noted that the various countries have established national frameworks for coordination of supervisory entities. However, there are still problems of inadequate resources, leading to poor supervision and regulation of reporting entities many of which are in the private sector. Furthermore, several of the private sector institutions, especially the banks and financial institutions have well-crafted compliance mechanisms for meeting their CFT obligations. However, there are variations in the compliance rates between the banks and other financial institutions, especially the BDCs, which have several under-regulated sub-agents. In addition, several DNFBPs, NGOs and NPOs are not complying with their AML/CFT obligations and are not sanctioned accordingly because the respective supervisory institutions are not implementing their respective mandates efficiently and effectively.

194. Finally, the study noted compliance to regional guidelines relating with CFT standards among the UEMOA states. Yet, several challenges have been identified to be common to these GIABA terrorism most affected states. It is on the basis of the identified challenges as outlined above that this report proffers recommendations as shown below.

195. To be effective, all counter-terrorism financing efforts should be further based on the exchange of financial intelligence among countries and enhanced coordination between the public and private sectors. Furthermore, the financial regulators in the public sector and regulated and semi-regulated entities in the private sector, including banks, often hold information that could be beneficial to the other party if shared through the most effective and fastest channels. To be more effective, targeted financial sanctions and other FATF mandatory measures should be supported by a risk assessment and identification of typologies, more effective exchange of intelligence and enhanced cooperation between the public and private sectors. There should also be full compliance with international standards in the areas of human rights and regular procedural issues.

RECOMMENDATIONS

196. In light of the above challenges, the following recommendations are hereby proffered:

e. Member States should map out a national CFT strategy consistent with their respective risk profiles;

f. Member states should endeavour to complete typologies studies at domestic level in order to understand the dynamics of TF and ensure all stakeholders have a broad based and shared understanding of the phenomenon;

g. Member States should without delay provide training on CFT-related legislations and mechanisms for the implementation of the requirements contained in the domestic laws;

h. The respective national parliaments should legislate on all relevant sectors relating to CFT with a view to providing the enabling legal frameworks for effective actions;

i. The respective national governments should engage in periodic review of extant CFT policies to address the evolving dynamics;

j. The respective Central Banks should strengthen the gains of financial inclusion through relevant policy adjustments that encourage more informal exchange rate operators into the formalised and well-regulated CFT regimes;

k. The regulatory agencies and reporting entities should ensure commensurate workforce to meet the requirements of their businesses;

l. The various reporting entities should ensure that staff abide with the internal compliance regulations and those identified for violations are appropriately sanctioned;

m. The respective Central Banks should introduce and enforce policies that reconcile the traditional financial circuit within the framework of the regulated cash economy;

n. The banks and other financial institutions should ensure strict compliance with the CDD obligations;

o. The respective Central Banks should introduce and enforce mandatory written policy guidelines on CFT for all formal and informal reporting entities;

p. The respective National Governments should take effective measures to criminalize terrorism financing and terrorist organisations for all purposes.

q. The respective FIUs should embark on public enlightenment campaigns to stimulate awareness and public interests on CFT standards;

r. The respective national FIUs should enforce regulations mandating the various regulatory agencies and reporting entities to have competent personnel to meet their CFT obligations at all times;

s. The respective Governments studied should, in collaboration with strategic partners, provide adequate resources for national institutions mandated to implement CFT standards;

t. The various supervisory institutions overseeing the activities of NPOs, NGOs, DNBPBs and FIs should implement their respective mandates efficiently and effectively to ensure enhanced compliance rating;

u. The countries studied should evolve and enforce robust legal and policy frameworks to ensure due diligence or effective compliance of the mining sector with CFT standards;

v. The respective supervisory and regulatory agencies should enforce the more stringent regulation of money transfer agencies and foreign exchange bureaus to reduce their risks and vulnerabilities to TF;

w. The respective telecommunications regulatory agency in each country should ensure effective compliance and cooperation of the telecommunication industry in the implementation of CFT standard especially with respect to virtual money transfers. If in the evaluated countries there is no approved regulation, a legislation related to electronic money payment institutions should be adopted, bringing to the regulated universe the payment transactions carried out by the telecommunications agencies. Another strategy may be to rethink the perimeter of supervision, in order to ensure that these financial service providers (Telcos) are integrated. PLC/CFT supervision should be carried out by the Central Bank or another agency dedicated to the purpose. "Telcos" role is very key to financial inclusion;

x. The respective regulatory agencies for professional bodies should work in concert

with members to eliminate conflict between Professional standard of members and the performance of the CFT obligations;

y. Governments should enact robust legislations on Mutual Legal Assistance and Proceeds of Crimes to strengthen the implementation of AML/CFT standards;

z. The relevant supervisory and regulatory agencies should establish robust framework for profiling and filtering the activities of NGOs;

aa. The UEMOA countries should reconcile their CFT legislation with FATF standards to address all observable gaps in the risk management systems relating to terrorist cells as well as active and potential individual terrorists;

bb. GIABA and the respective national FIUs should organise training sessions for various reporting entities, especially NGOs and charities with regards to their CFT obligations;

cc. GIABA, in collaboration with the UNODC and respective national FIUs, should evolve a terrorist sanctions compliance policy that suits the national needs of Member States;

dd. GIABA and the respective national FIUs should build capacities of regulatory agencies and reporting entities in financial risks control to tackle new forms of financial transactions and related crimes;

ee. GIABA and strategic partners should engage the respective FIUs to advice on the technical support required to strengthen capacities of regulatory agencies and reporting entities to meet their CFT obligations.



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