

Inter-Governmental Action Group against
Money Laundering in West Africa

GIABA RESEARCH REPORT

THE VULNERABILITIES OF DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS TO MONEY LAUNDERING AND TERRORIST FINANCING AND THE ADEQUACY OF CONTROL MEASURES IN WEST AFRICA

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ABBRVIATIONS AND ACRONYMS

ADB	African Development Bank
AQIM	Al Qaeda in the Islamic Maghreb
BCV	Bank of Cape Verde
CDD	Customer Due Diligence
CECV	Caixa Económica de Cabo Verde
CML/TF	Combat Money Laundering and Terrorism Financing
CPLP	Community of Portuguese Speaking Countries
CPP	Criminal Procedure Code
DGC	Directorate General for Customs
DNFBP	Designated Non-Financial Business and Professions
ECOWAS	Economic Community of West African States
EITI	Extractive Industries Transparency Initiatives
FATF	Financial Action Task Force
FIs	Financial Institutions
FIU	Financial Intelligence Unit
FDI	Foreign Direct Investment
GREAD	Ghana Association of Real Estate Developers
GDP	Gross Domestic Product
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
GTB	Gambia Tourism Board
GBA	Ghana Bar Association
ICASL	Institute of Chartered Accountants of Sierra Leone
ICAG	Institute of Chartered Accountants of the Gambia
ICAN	International Federation of Accountants
KYC	Know Your Customer
MDG	Millennium Development Goal
ML	Money Laundering
MP	Member of Parliament
MLA	Mutual Legal Assistance

MSG	Multi Stakeholder Group
MUJAO	Movement for Tawhid and Jihad in West Africa
NASSIT	National Social Security and Insurance Trust
NC	Non-Compliant
NTB	National Tourist Board
PC	Partially Compliant
RBA	Risk-Based Assessment
SDFI	Supervision Department of Financial Institutions,
SLEITI	Sierra Leone EITI Steering Committee
SRO	Self-regulatory organization
STR	Suspicious Transaction Report
TF	Terrorism Financing
TCSP	Trust and Company Service Providers
UNCM	National Union of Chambers of Trade
UNTOC	United Nations Convention against Transnational Organized Crime
UNDP	United Nations Development Program

EXECUTIVE SUMMARY

1. The Designated Non-Financial Businesses and Professions (DNFBPs) play critical roles in economic and financial transactions in West Africa. DNFBPs, namely lawyers, notaries, accountants, real estate agents, dealers in precious metals and stones, casinos, trust and company service providers, and among others, provides essential services in both the formal and informal sectors of the economies in the region. For instance, the registration of companies, including fraudulent ones, the purchase and sale of real estate and high value goods, making and managing business investments, and electronic transfer of funds, require the services of a number DNFBPs, whether by legitimate business people or by criminals and terrorists. Real estate agents, notaries, lawyers and other legal practitioners in particular have become extremely important not least because of real estate boom in West Africa, especially in Nigeria, Ghana, and Senegal, in recent years. At the same time, dealers in precious metals and dealers in precious stones are important because of because of large extractive industries in the region (oil, diamond, bauxite and manganese in Ghana; diamonds in Sierra Leone, etc.

2. Notwithstanding their importance, however, regulation, supervision, and monitoring of the operations of DNFBPs remain poor in West Africa. Legal, institutional, and operational frameworks for regulating, supervising and monitoring DNFBPs are either weak or poorly defined. In some countries, specific legislations that govern particular types of DNFBPs (notaries, real estate agents, dealers in precious stones, and dealers in precious metals) contain obsolete provisions. Even in countries where legal, regulatory and supervisory frameworks exist, regulatory and supervisory authorities either do not fully understand them or are unaware of them. To be sure, anti-money laundering (AML) and counter financing of terrorism (CFT) laws and regulations apply to DNFBPs and they are required to meeting all obligations imposed on them by these laws and regulations. Even so, the majority of DNFBPs are unaware of, do not understand, or poorly comply with their AML/CFT obligations. Additionally, many competent authorities responsible for regulating, supervising, and monitoring the operations of DNFBPs have little or no knowledge of existing AML/CFT laws and regulations, thereby significantly impeding their ability to ensure that DNFBPs do not serve as conduits for illicit transactions.

3. The poor regulation, supervision and monitoring of DNFBPs is a reflection of structural issues related to the nature of governance and institutions in West Africa. Thus, governance in the region have long featured deliberate subversion of the state institutional capacity, including weakening of law enforcement and the rule of law, degradation of non-executive state institutions – the judiciary and the legislature, and minimal investment in developing functional and effective institutions. This has resulted in state institutions, including regulatory and supervisory agencies, that are empirically weak and, in some cases, dysfunctional in terms of their ability and even willingness to ensure the rule of law.

4. Poor regulation, supervision, and monitoring has made DNFBPs are extremely vulnerable to money laundering and terrorist financing. Not only could they be exploited by criminals, terrorist financiers and their appendages, but also DNFBPs could knowingly collaborate with them to launder criminal proceeds or move and conceal terrorist funds. Such vulnerability is compounded by the largely informal nature of West African economies. Specifically, economies

are characterized by large informal sectors where the majority of transactions are conducted in cash with unregulated businesses and semi-formal professionals. This provides an enabling environment for criminally-minded set-ups to conduct illicit transactions without detection by regulatory and supervisory authorities. Indeed, many DNFBPs, especially real estate agents, dealers in precious stones and dealers in precious and metals, operate outside the formal sector regardless of the fact that they conduct large cash transactions.

5. Therefore, there is the need for West African governments, regional institutions such as GIABA, development partners to focus on strengthening the frameworks for regulating, supervising and monitoring the operations of DNFBPs, strengthen the institutional capacities of regulatory and supervisory agencies, sensitize DNFBPs and regulatory and supervisory authorities on AML/CFT and related issues, integrating DNFBPs into the formal economy, and among others.

CHAPTER ONE: INTRODUCTION

Background

1. Over the past decade, West Africa has made significant progress in terms of economic growth and development.[1] This is evidenced by the average regional growth rate of 6.1% between 2004 and 2008, 6.5% between 2009 and 2012, the 6.7% in 2013 and the expected 7.4% in 2014.[2] Indeed, the economies of some countries in the region are among the fastest growing in the world, even in the context of a struggling global economy. In Sierra Leone, for instance, real GDP grew by 15.2% and 16.3% in 2012 and 2013 respectively and is expected to grow by another 13.8% in 2014[3], albeit the enormous human and material devastation suffered by the country during its decade-long civil war. Nigeria, the region's economic powerhouse, recorded real GDP growth rates of 5.4%, 8.3%, and 7.8% in 2011, 2012, and 2013 respectively.[4] A further 7.2% growth is expected in 2014.[5] Cote d'Ivoire, a country long afflicted by serious ethnic and civil strife, recorded growth rates of 9.8% in 2012 and 8.8% 2013, while Ghana also recorded 4% in 2009, 7.7% in 2010, 13.6% in 2011, 7.9% in 2012, and 4.4% in 2013.[6] Growth in other countries, with the exception of Benin, Cabo Verde, and Guinea-Bissau, is expected to exceed 5% during 2013 and 2014.[7] Such progress has also underpinned continuous inflow of Foreign Direct Investment (FDI), as evidenced by more than $15 billion invested in its economy in 2012 alone.[8] At the same time, West Africa continues to make advances in democracy, good governance, peace and security.[9] Democratic governance in particular, though not yet in full swing in all countries in the region, is increasingly emerging as the preferred way of political life.[10] This is in spite of the fact that the region has experienced a sharp rise in terrorism, and

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[1] West Africa includes Benin, Burkina Faso, Cabo Verde, Cote d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

[2] African Economic Outlook – Regional Edition/Western Africa. Available at http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/Regional_Editions/West_Africa_ENG_web.pdf. (Accessed 17 October 2014).

[3] African Economic Outlook – Sierra Leone Country Note. Available at http://www.africaneconomicoutlook.org/en/countries/west-africa/sierra-leone/. (Accessed 17 October 2014).

[4] African Economic Outlook – Nigeria Country Note. Available at http://www.africaneconomicoutlook.org/en/countries/west-africa/nigeria/ (Accessed 17 October 2014).

[5] Ibid

[6] African Economic Outlook – Cote d'Ivoire Country Note. Available at http://www.africaneconomicoutlook.org/en/countries/west-africa/cote-divoire/. African Economic Outlook – Ghana Country Note. Available at http://www.africaneconomicoutlook.org/en/countries/west-africa/ghana/. (Accessed 17 October 2014). See also World Bank Country Brief: Ghana

[7] African Economic Outlook – Regional Edition/West Africa

[8] Ibid

[9] Peace has been restored in Liberia, Sierra Leone, and Cote d'Ivoire after a protracted period of conflict. Peace in Sierra Leone in particular is evidenced by two successive multiparty elections and peaceful alternation of power between the two main political parties – the Sierra Leone Peoples Party (SLPP) and the All Peoples Congress (APC).

[10] For instance, Ghana has made significant democratic progress since its return to constitutional democratic rule in 1992. This is evidenced by more than two decades of uninterrupted civil rule, six successive multi-party elections without major flaws, peaceful alternation of power between the country's two main political parties – the National

recorded incidences of unconstitutional change of government.[11] Furthermore, West Africa has experienced a great deal of financial expansion, as evidenced by the increase in the number of banks and other financial institutions, the increase in banking and financial products and services.

2. At the same time, however, money laundering (ML) and terrorist financing (TF) have emerged as potent threats that could seriously distort, undermine and even undo much of West Africa's progress. Organized criminals, terrorist financiers, corrupt public officials and businessmen, advance fee and internet fraudsters, commodity thieves and smuggling networks exploit the region's deep structural challenges, porous borders, including weak, imprecise, and often dysfunctional legal, policy, and institutional arrangements, poor regulatory and supervisory capacities and arrangements, pervasive corruption, informal and cash-based economies to launder or transfer various sums of criminal proceeds and terrorist funds.[12] Money laundering, in particular, is underpinned by the expansion of transnational organized crime, especially drug trafficking,[13] and the resultant flow of enormous proceeds to criminals and criminal networks involved. In 2012, for instance, the UNODC estimated that $500 million out of the $1.25 billion generated from the sale of 30 tons of cocaine either remained in West Africa or was laundered through the region.[14] Such influx of drug money has often distorted currencies and foreign exchange reserves in the region, as evidenced by the rapid appreciation of the value of the Gambia's currency, the Dalasi, in 2007 without a corresponding flow of capital into the country,

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Democratic Congress (NDC) and the New Patriotic Party (NPP) in 2001 and 2009, and a peaceful transition after the death of its president in July 2012. Senegal is also known as a beacon of democracy.

[11] In 2012, governments in Guinea-Bissau and Mali were overthrown through military coups. On the rise of terrorism, see, for example, Inter-Governmental Action Group against Money Laundering in West Africa/Financial Action Task Force (2013). Terrorist Financing in West Africa. Dakar: GIABA. Copy available at http://www.giaba.org/media/f/632_TF-in-West-Africa.pdf.

[12] Issues of legal, policy and institutional deficiencies are well documented in the Mutual Evaluation Reports (MERs) of member States of at the ; Inter-Governmental Action Group against Money Laundering in West Africa (GIABA). Available at http://www.giaba.org/about-giaba/mutual-evaluation_629.html. (Accessed 17 October 2014). See also, United States Department of State (2013). International Narcotics Control Strategy Report – Volume II: Money Laundering and Financial Crimes. Washington, DC: Department of State. See the section on Nigeria, which mirrors the situation in West Africa. Report is available at http://www.state.gov/j/inl/rls/nrcrpt/2013/vol2/index.htm. (Accessed 14 October 2014). Issues related to corruption, prevalence of cash transactions, among others, are highlighted in Inter-Governmental Action Group against Money Laundering in West Africa (2010). Corruption-Money Laundering Nexus: An Analysis of Risks and Control Measures in West Africa. Dakar: GIABA; Inter-Governmental Action Group against Money Laundering in West Africa (2007). Typologies Report on Cash Transactions and Cash Couriers in West Africa. Dakar: GIABA.

[13] Transnational organized crime and drug trafficking are not new to West Africa. Yet, they expanded considerably in the mid-2000s as a result of strategic shift Latin America drug syndicates toward a rapidly expanding European drug market and 'operational success' against such syndicates by US law enforcement. For details, see, for example, United Nations Office of Drugs and Crime (2007).Cocaine Trafficking in West Africa: the Threat to Stability and Development. Vienna: UNODC; McGuire, Peter, Narcotics Trafficking in West Africa: A Governance Challenge, The Pardee Papers, No.9, March 2010; Akyeampong, Emmanuel (2005), Diaspora and Drug Trafficking in West Africa: A Case Study of Ghana, African Affairs, Vol. 104, No. 416, pp. 429-447; and New York University Center on International Cooperation (2012). The Impact of Organized Crime and Drug Trafficking on Governance, Development & Security in West Africa: Expert Meeting Summary of Proceedings.

[14] Cited in 'Drugs: The New Alternative Economy of West Africa', Available at http://mondediplo.com/2013/02/03drugs. (Accessed 10 October 2014). See also, Andrew Lebovich, 'Mali's Bad Trip: Field Notes from the West African Drug Trade', Available at http://www.foreignpolicy.com/articles/2013/03/15/mali_s_bad_trip. (Accessed 10 October 2014).

and a sharp rise in the foreign exchange reserves of Guinea-Bissau from $33 million in 2003 to $174 million in 2008, albeit the low inflow of foreign direct investment and donor assistance during the period.[15] Significantly, there is deep-seated suspicion in Ghana and Sierra Leone that drug money has been used to influence electoral processes and outcomes and, in the case of Ghana, to undermine the integrity of the judiciary.[16] At the same time, Al Qaeda in the Islamic Maghreb (AQIM), the Movement for Tawhid and Jihad in West Africa (MUJAO), and other terrorist groups are estimated to have accrued between $40-65 million in kidnapping for ransom payments between 2008 and 2012[17], thereby facilitating not only their planning and execution of terrorist attacks and infliction of serious physical and material devastation on individuals and societies in the region but also, as they have demonstrated in northern Nigeria and northern Mali, intimidate civilians, and challenge or undermine the sovereignty and authority of states.[18]

3. Designated Non-Financial Businesses and Professions (DNFBPs), identified by the Financial Action Task Force (FATF) as casinos, real estate agents, dealers in precious metals, dealers in precious stones, legal practitioners, notaries, other legal professionals and accountants providing services to external clients, and trust and company service providers (TCSPs),[19] have been discovered to be among the main vehicles especially for the laundering of criminal proceeds. Indeed, evidence of large amounts of drug money laundered in real estate markets in Ghana, Nigeria, and Senegal only goes to fuel such suspicions and undermines the integrity of these markets.[20] The real estate market in Senegal in particular has become attractive for criminal proceeds from Guinea-Bissau, with the capital city, Dakar, experiencing a construction boom in recent years.[21] Notaries in Cote d'Ivoire have been found to have facilitated the laundering of criminal proceeds in the country's real estate by notarizing documents used in fraudulent real estate transactions. Extractive industries in Guinea, Liberia and Sierra Leone are known to be particularly vulnerable to trade-based money laundering, as traders in precious metals and precious stones exchange their commodities for cash, often with foreigners who fly into these countries with large sums of cash.[22] There is also evidence, though scanty, of the involvement of Lebanese diamond dealers in Liberia and Sierra Leone in the financing of terrorist and rebel

[15] See GIABA (2010). Threat Assessment of Money Laundering and Terrorist Financing in West Africa. Dakar: GIABA. Pp. 56; UNODC (2008). Drug Trafficking as a Security Threat in West Africa. Vienna: UNODC. Pp.42, 45.

[16] See Aning, Kwesi (2007): Are There Emerging West African Criminal Networks? The Case of Ghana, Global Crime, Vol. 8. No. 3, pp. 202. The article notes that when Ghanaian police arrested an international drug smuggling gang that was in position of 675 kilos of cocaine worth $140 million, the suspects were eventually released on bail with $200,000 sureties. The state objected to the bail and demanded continued incarceration of the suspects.

[17] Lacher, Wolfram (2012). Organized Crime and Conflict in the Sahara-Sahel Region. Washington, DC: Carnegie Endowment for International Peace. Pp. 9. The report notes that amounts involved in ransom payments ranges between $1.5 and $4 million per hostage.

[18] See, for example, GIABA/FATF (2013). Terrorist Financing in West Africa. Dakar: GIABA. The report shows that AQIM, MUJAO, Boko Haram and likeminded groups have raised, moved, and distributed funds through formal and informal channels in the region.

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[20] GIABA (2010). Threat Assessment of Money Laundering and Terrorist Financing in West Africa

[21] Ibid

[22] See, for instance, Financial Action Task Force and Egmont Group of Financial Intelligence Units (2013). Money Laundering and Terrorist Financing Through Trade in Diamonds. Paris: FATF. Pp. 59. Copy available at file:///C:/Users/skwarkye/Downloads/318-2014-01-31-ML-TF-through-Trade-in-Diamonds-Report.pdf. (Accessed 17 October 2014).

groups in West Africa and beyond.[23] Frequent revelations of questionable transactions involving lawyers, accountants, and TCSPs in other countries in the region also point to the extent of the problem.

4. The seriousness of the threats posed by the ML/TF phenomena has attracted the attention of West African governments and thus prompted them to initiate a series of measures aimed at combating them. For instance, under the auspices of the Economic Community of West African States (ECOWAS), the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) was established in 2000 and mandated to, among others, assist ECOWAS member States in combating ML/TF and complying with international anti-money laundering (AML) and counter financing of terrorism (CFT) standards issued by the Financial Action Task Force (FATF).[24] As such, GIABA has provided extensive technical assistance, including training, to compliance officers of banks and other financial institutions as well as relevant law enforcement and judicial officials so as to help build their capacities to prevent, detect, investigate, prosecute and punish ML/TF.[25] GIABA has also assisted its member States to develop national AML/CFT strategies and action plans in order to better implement AML/CFT measures in their respective jurisdictions.[26] Furthermore, member States, with the assistance of GIABA, have passed AML/CFT laws, adopted relevant regulations and supervisory guidelines, established institutional frameworks, established Financial Intelligence Units (FIUs) to receive and analyze suspicious transaction reports, strengthen human and institutional capacities, and among others.[27] Additionally, GIABA has, with the agreement and cooperation of its member States, installed cash-detecting machines at various airports in West Africa with the aim of detecting undeclared and possibly criminal money and terrorist funds.

5. These measures have been adopted in accordance with the FATF Recommendations as well as multilateral agreements such as the 1999 International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention), the 2000 United Nations Convention against Transnational Organized Crime (UNTOC), the 2003 United Nations Convention against Corruption, all of which have been adopted to provide the framework for

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[23] Gberie, Lansana, War and Peace in Sierra Leone. Pp. 13-16. Available at http://dspace.africaportal.org/jspui/bitstream/123456789/33490/1/6_War-Peace_sierraleone_Eng-Nov2002.pdf?1.

[24] See 'Revised Statutes of the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA)' at http://www.giaba.org/about-giaba/statutes_647.html.

[25] See, for example, Chapter 5 on technical assistance of the 2011, 2012 and 2013 GIABA Annual Reports. Available at http://www.giaba.org/reports/annual/reports.html. Specific examples of technical assistance include the organization of a national workshop to train Nigerian custom officials on detecting cross-border smuggling and filing currency transaction reports in July 2014, and training of Malian law enforcement officers on investigating ML and other financial crimes in June 2014. See GIABA Press Release, 'GIABA Holds National Workshop on Detecting Cross-Border Cash Smuggling and Filing Currency Transaction Reports for Border Authorities in Nigeria, available at http://www.giaba.org/press/view_791.html and GIABA Press Release, 'GIABA Organizes Capacity Building Programme for Law Enforcement Officers' available at http://www.giaba.org/press/view_787.html.

[26] For instance, GIABA organized national stakeholders' workshops for the development of national AML/CFT strategies for Cabo Verde and the Gambia between November 2013 and April 2014. The two strategies are currently being finalized by the authorities of the two countries.

[27] For full treatment, see Mutual Evaluation Reports (MERs) and Follow-Up Reports (FURs) of GIABA member States. The MERs of member States and some of the FURs can be accessed at http://www.giaba.org/about-giaba/mutual-evaluation_629.html.

AML/CFT.[28] They have sought to restrict the operating environment of money launderers and terrorist financiers and, thus, frustrate or prevent their activities. Hence, they have been based primarily on two pillars: prevention and enforcement. While the former is designed to prevent money launderers and terrorist financiers from using private institutions – banks and financial institutions in particular – to launder criminal proceeds and move terrorist funds, the latter is designed to punish them when they circumvent preventive measures. The requirement of banks and other financial institutions to not only report suspicious transactions to FIUs, but also subject their existing and prospective customers to Customer Due Diligence (CDD) and Know Your Customer (KYC), and the establishment of regulatory and supervisory frameworks and guidelines, are key elements of prevention.[29] CDD in particular is aimed at preventing the entry of criminal proceeds and terrorist funds into financial systems. On the other hand, enforcement comprises of four components, namely, identification or criminalization of predicate offences, investigation, prosecution and punishment, and confiscation.[30] The criminalization of predicate offences provides the legal basis for criminalizing the resultant money laundering. Investigation of predicate offences then leads to prosecution, after which the offender is punished and have his or her proceeds or funds confiscated.

6. Money launderers, terrorist financiers, and their collaborators look for channels through which they can move, conceal, and transfer their criminal proceeds and terrorist funds. Thus, they constantly go to great lengths to, not only maximize these proceeds and funds, but also disguise their origin and identity and, by extension, avoid detection and scrutiny by regulators and law enforcement authorities. Criminals are particularly cognizant of the enormous allures of laundering their proceeds, including re-investing such proceeds into future criminal enterprises or legitimate businesses and improving their material status and those of their families or associates. Likewise, terrorist financiers are also aware of the importance of quickly and securely raising, moving, storing or gaining access to funds to conducting successful terrorist attacks and, more importantly, maintaining robust organizational and administrative structures.

7. Nonetheless, there is evidence that DNFBPs are poorly regulated and supervised for purposes of AML/CFT, thereby making them highly vulnerable to the ML/TF phenomena. A review of the AML/CFT systems of countries in the region shows that although AML/CFT laws and regulations are applicable to DNFBPs, the majority of them are unaware of, do not understand, or poorly comply with AML/CFT requirements. Even so, relevant authorities do not proffer or implement sanctions against defaulting DNFBPs. This raises concerns about the ease with which money launderers and terrorist financiers misuse DFNBPs in carrying out their activities, and questions about their commitment or capacity to ensure compliance with AML/CFT requirements. However, it should be stated that Nigeria has made commendable progress by way of establishing an AML/CFT control mechanism for DNFPBs.

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[28] For details, see FATF (2012). International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation. Paris: FATF. Copy Available at http://www.fatf-gafi.org/documents/documents/internationalstandardsoncombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html. The TF Convention also requires countries to ensure that the banks and financial institutions adopt and implement measures to detect, impede, or prevent the transfer of terrorist funds. Both the UNTOC and the UNCAC also contain elaborate provisions for depriving criminals and corrupt officials of the proceeds they generate from their activities. See Article 7of the UNTOC and Article 14 of the UNCAC.

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Objectives of the Study

8. Rather, it seeks to provide a deeper understanding of DNFBPs in West Africa, especially in terms of their role in economic and financial transactions, and shed a bright light on deep structural issues that underpin their vulnerability to ML/TF. Specifically, it seeks to conduct a comprehensive review and analysis of legal, policy, institutional and other measures put in place to prevent, detect, prosecute and adjudicate cases of ML/TF arising from misuse of DNFBP sectors. In doing so, it will bring out the challenges encountered by authorities in their regulation, supervision, and monitoring of DNFBPs for purposes of AML/CFT. The research team will pay particular attention to identifying and thoroughly analyzing cases of ML/TF involving misuse of DNFBPs so as to clearly identify the methods and techniques used by actors involved. Importantly, the team will also assess the level of risk posed by DNFBPs to AML/CFT efforts at the national and regional levels, especially in the context of regional integration. Finally, based on the findings and conclusions, the team examined the applicability of the Risk-Based Approach (RBA) to the implementation of FATF Recommendations related to DNFBPs in ECOWAS member States and, more importantly, proffer practical recommendations for consideration by national governments, regional authorities, and interested partners.

Research Methodology

9. The study covers eight (8) out of the fifteen (15) ECOWAS member States: Cabo Verde, Cote d'Ivoire, the Gambia, Ghana, Mali, Nigeria Senegal, and Sierra Leone. It commenced with an extensive review of literature drawn from MERs and Follow-Up Reports (FURs) of GIABA member States, official government reports, reports by the United Nations Office of Drugs and Crime (UNODC) and the World Bank, and internet-based sources. A research team, comprising of one researcher from each of the aforementioned member States and a Lead Researcher, then conducted field research and desk reviews under the supervision of the Lead Researcher between February and July 2014. The field research was conducted in six (6) out of the eight (8) member States: Cabo Verde, Cote d'Ivoire, Ghana, Mali, Nigeria and Senegal. The field research took the form of administration of questionnaires to various interlocutors, including lawyers, accountants, auditors, real estate agents and other individuals working within DNFBP sectors, as well judiciary, law enforcement, and government officials at the national level, and civil society representatives. This was followed by semi-structured interviews with these individuals and officials on the basis of strict confidentiality to confirm responses provided to the questionnaires and obtain other relevant information.

10. The countries selected for field research were selected based on the prevailing incidences of ML/TF involving DNFBPs compared with other GIABA member States. Nigeria, Ghana and Senegal are of particular importance because of the extent to which, for instance, their real estate markets have been reportedly contaminated with criminal proceeds. Mali is of equal importance, not least because of the high incidence of terrorism and, by implication, terrorist financing, in recent years, and the potential implication for regional peace, security, and stability. Interviews were conducted almost entirely in the capital cities of the selected countries (Praia, Abidjan, Bamako, Accra, Abuja, and Dakar) mainly because of the concentration of most DNFBPs there

and the unique and holistic insights that was to be provided by national judiciary, law enforcement, and government officials on the nature and dynamics of ML/TF involving DNFBPs. Importantly, without losing sight of the importance of identifying methods and techniques through which DNFBPs are misused for money laundering and assessing control measures, researchers in Bamako and Abuja paid particular attention to the terrorist financing angle.

Structure of the Report

11. The report is divided into seven (7) chapters. The forgoing ***Chapter One*** is followed by ***Chapter Two***, which examines the governance, institutional, and economic context of West Africa. The aim of the chapter is to shed light on the environment in which DNFBPs operate within the region. Special attention is paid to the nature of national economies, how economic and financial transactions are conducted, the nature and size of financial and banking systems with attention to the level of participation in these systems by the citizenry, etc. The institutional make-up of the region and their level of functionality – effectiveness in discharging their duties – is also assessed in the chapter. ***Chapter Three*** looks at the importance of DNFBPs to national economies in West Africa, especially in terms of their role in economic and financial transactions. The chapter explores the extent to which DNFBPs are trusted and relied upon. ***Chapter Four*** presents cases of ML/TF involving DNFBPs, with special attention to identifying and analyzing the methods and techniques employed by actors involved. Based on the methods and techniques identified, the chapter sheds some light on the vulnerabilities of DNFBPs to the ML/TF phenomena. ***Chapter Five*** provides an assessment of existing legal, policy, institutional, and operational frameworks governing the activities of DNFBPs. Examples of provisions in relevant laws, regulations, and guidelines are cited with the aim of highlighting loopholes that are exploited by money launderers and terrorist financiers. ***Chapter Six*** provides an analytical account of the strategic issues encountered by competent authorities in their regulation, supervision, and monitoring of DNFBPs. Special attention is paid to whether or not there are institutional deficiencies in terms of expertise, personnel, and resources, as well as the level of DNFBPs awareness of their AML/CFT obligations and their capacities to satisfactorily fulfill those obligations. ***Chapter Seven*** them provides a summary of the findings and conclusions, and suggests some recommendations.

CHAPTER TWO: THE GOVERNANCE AND INSTITUTIONAL, ECONOMIC AND FINANCIAL, AND SOCIAL CONTEXTS OF WEST AFRICA

12. To avoid drawing wrong and superficial conclusions about the subject under study, there is the need for a clear contextual understanding of West Africa in terms of its governance, institutional, economic and financial, and social dynamics. Undoubtedly, understanding these dynamics is essential because they collectively constitute the contextual framework within which DNFBPs in the region operate and are regulated or supervised, and also within which, as illustrated by various studies, the ML/TF phenomena manifest and perpetuate themselves. Thus, the vulnerabilities of DNFBPs to ML/TF in West Africa cannot be properly understood without taking cognizance of deep structural issues such as the nature of institutional/bureaucratic structures established to regulate and supervise the operations of DNFBPs, the capacity and willingness of the state to promulgate and enforce laws, the nature of national economies and financial systems as well as economic and financial transactions, the level of poverty and unemployment, among others, all of which form a broader regional framework. DNFBPs are therefore likely to be vulnerable to ML/TF because of high levels economic informality, unemployment, poverty, as well as weak regulatory and supervisory frameworks.

The Governance and Institutional Context

13. The governance and institutional environment of West Africa features centralized three-branch administrative arrangements with powerful Executive branches that wield near-complete control over productive resources such as government contracts, public employment, loans, grants, business permits, scholarships, development funds, import and export licenses, property rights, natural resource deposits, and among others. Such control, a major legacy of European colonial administration[31] that has underpinned the material enrichment of post-colonial governing elites and their relations, has been maintained through systematic undermining of key public institutions, including security, criminal justice, and regulatory and supervisory agencies that would otherwise keep these elites and the relations in check and challenge their excesses. In Nigeria under Sani Abacha, for instance, power was personalized to an unprecedented degree by way of establishment of a personality cult and bypassing or manipulation of consultative processes and state institutions, thereby resulting in significant institutional decline.[32] In Sierra Leone, personalized and monolithic rule, as evidenced by the establishment of a shadow state network of patronage centered on the presidency under by Siaka Stevens (1968-1985) and his successor, Joseph Momoh, seriously undermined the institutional capacity of the Sierra Leonean

[31] An example of Nigeria is comprehensively illustrated in Larry Diamond (1988). Class, Ethnicity, and Democracy in Nigeria: The Failure of the First Republic. Syracuse, NY: Syracuse University Press, pp. 33; and Larry Diamond (1982), "Cleavage, Conflict, and Anxiety in the Second Nigerian Republic", Journal of Modern African Studies, Vol. 20, No. 4, pp. 661-661.

[32] For details, please see, for example, Lewis, Peter. "The Dysfunctional State of Nigeria." Short of the Goal: US Policy and Poorly Performing States, Washington, DC: Center for Global Development (2006): 83-116. pp. 100-101. Available at http://www.cgdev.org/doc/shortofthegoal/chap3.pdf. (Accessed 8 January 2015).

state.[33] In Mali, the permission of politically connected individuals and networks to carry out and benefit from organized criminal activities by the country's governing elites as way of gaining influence or consolidating power seriously undermined the legitimacy and capacities of state institutions, eventually leading to the collapse of the Malian state in the northern part of the country in 2012.[34]

14. Thus, governance in the region has long featured consolidation of personal and sectarian power, deliberate subversion of the state's institutional capacity, including weakening of law enforcement and the rule of law, subordination of broader national/societal interests to narrow and sectarian (ethnic, clan, and often family) interests, and undermining of respect for state institutions.[35] Another feature has been the degradation of non-executive state institutions, namely the judiciary and the legislature.[36] The (re)definition of what constitutes, for instance, illegal economic behavior, by governing elites to suit their interests, and the selective issuance of exemptions from law enforcement and prosecution to their families, friends, and associates are only few examples.[37] Even in states where institutional degradation has been absent, their governments have invested little or no energy and resources in developing functional and effective institutions.[38] To the extent that institutions, especially police and other law enforcement institutions, have been developed at all, they have served as personal protection units for ruling elites and their associates as well as vehicles for subjugating domestic opposition that challenge their control over resources.

15. Consequently, notwithstanding the recent external investments in state building in West Africa, most states in the region exhibit profound empirical weakness and, in some cases, near-complete dysfunction in terms of their capacity to effectively govern their citizens and ensure the rule of law. State institutions, including security, law enforcement, regulatory and supervisory

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[33] A succinct and comprehensive account of state collapse in Sierra Leone is given in Reno, William (1995). Corruption and State Politics in Sierra Leone. Cambridge: Cambridge University Press. See also, Zack-Williams, Alfred (1999), "Sierra Leone: the Political Economy of Civil War, 1991-1998, Third World Quarterly, Vol. 20, No. 1, pp. 143-162; Alhaji Ahmed Tejan Kabbah, Two Decades of Conflict and Democracy in Sierra Leone: A Personal Experience, Institute for Security Studies Situation Report, April 2012. Available at http://www.issafrica.org/uploads/SitRep2012_12Apr.pdf. (Accessed 8 January 2015); and Christopher Clapham (2003), Sierra Leone: The Political Economy of Internal Conflict, Netherlands Institute of International Relations' Clingendael Working Paper No. 20. Available at http://www.clingendael.org/publications/2003/20030700_cru_working_paper_20.pdf. (Accessed 8 January 2015)

[34] See, for instance, Lacher, Wolfram (2012). Organized Crime and Conflict in the Sahel-Sahara Region. Washington, DC, Moscow, Beijing, Beirut, and Brussels: Carnegie Endowment for International Peace.

[35] William Reno (2000), "Clandestine Economies, Violence, and States in Africa," Journal of International Affairs, 53(2), pp. 433-459.

[36] Adebayo Olukoshi, "Drug Trafficking and its Impact on Governance in West Africa", West African Commission on Drugs Background Paper No. 3. Copy available at http://www.wacommissionondrugs.org/wp-content/uploads/2013/07/Drug-Trafficking-and-its-impact-on-Governance-in-West-Africa-Final-Version-2013-06-24.pdf. (Accessed 8 January 2015).

[37] Vanda Felbab-Brown, "The West African Drug Trade in Context of the Region's Illicit Economies and Poor Governance" Presentation to Conference on Drug Trafficking in West Africa, Arlington, VA 14 October 2010, pp.2 Copy available at http://www.brookings.edu/~/media/research/files/speeches/2010/10/14%20africa%20drug%20trade%20felbabbrown/1014_africa_drug_trade_felbabbrown.pdf. (Accessed 7 January 2015); George Ayittey (1999). Africa in Chaos. New York, NY: St. Martin's Griffin. Pp.151.

[38] Institutional degradation, whether done deliberately or tacitly, has been particularly borne out of the governing elites' fear of internal coups and the absence of external threats, even in the context of porous borders in the region.

agencies are undertrained, under-institutionalized, and under-resourced and often captured by narrow sectarian interests, thereby seriously undermining the rule of law.[39] Thus, there is a general lack of independent, professional and well-resourced security and criminal justice systems.[40] State weakness is particularly pronounced in conflict and instability-prone countries such as Cote d'Ivoire, Mali, and Sierra Leone, where quality of regulation and the rule of law are extremely low. Cote d'Ivoire and Sierra Leone, having gone through periods of violence and ethnic strife, are struggling to re-establish battered institutions. Related to such incapacity and dysfunction is intense public sector corruption. The institutional well-being of law enforcement, the judiciary, as well as regulatory and supervisory institutions does not seem to command significant attention of governments. Admittedly, the level of incapacity and dysfunction is not uniform in the region as the capacity and functionality of institutions in Ghana and Senegal, for instance, are not the same as those of institutions in Nigeria or the Gambia. Yet even Ghana and Senegal, two countries deemed to be regional models of reform and good governance, exhibit some cracks in their institutional structures, as evidenced, for instance, by weak law enforcement and rule of law.

Economic and Financial Context

16. According to the African Development Bank (ADB) regional economic outlook, about 60 percent of the rural population in the West African region survives on US$1 per day. Also, in 2012, the region recorded an average per capita income of US$824, the lowest among all regions in Africa. [41] The figure masks intra-regional differences and the wide gap between the relatively high urban incomes and very low rural incomes.[42] Ghana has the highest per capita income of $1550, followed by Nigeria with $1430, whiles Liberia and Niger have the lowest of $370. The high rate of unemployment, the low per capita income, the purchasing power parity below US$2 a day, the high illiteracy rates, poor nutrition and low life expectancy rates are suggestive of a substantial proportion of the population being poor over extended periods of time.[43] Indeed, the extent of poverty is such that the region as a whole is unlikely to meet the Millennium Development Goal (MDG) of reducing poverty to 35% by 2015.[44] More specifically, not only are 13 out of 15 countries in the sub-region ranked by the United Nations Development Program (UNDP) as experiencing 'lowing development', but also about half of countries in the sub-region are in the bottom 15 of the UNDP's ranking.[45] Widespread poverty in West Africa is therefore likely to be a strong factor driving unemployed youth into serious crimes, particularly the lucrative drugs trade.

[39] "The West African Drug Trade in Context of the Region's Illicit Economies and Poor Governance"
[40] Etannibi Alemika (eds.). The Impact of Organized Crime on Governance in West Africa. Abuja: Friedrich-Ebert-Stiftung. Pp 23.
[41] Etannibi Alemika (eds.). The Impact of Organized Crime on Governance in West Africa. Abuja: Friedrich-Ebert-Stiftung. Pp 23.
[42] See ADB/ADF Regional Department- West (ORWA/ORWD) Regional Integration and Trade Department, March 2011. The report compared per capita income in the Southern African Development Community (SADC) which was US$2,674; in the Common Market for Eastern and Southern Africa (COMESA) it was US$1019; and in the Economic Community of Central African States (ECCAS) it was US$1271).
[43] For a detailed discussion on poverty in West Africa, see Abena D. Oduro and Ivy Aryee Investigating Chronic Poverty in West Africa CPRC Working Paper No 28 Ap ril 2 003 Chronic Poverty Research Centre.
[44] See the United Nation Development Program's Human Development Reports.
[45] See UNDP (2009). Human Development Index

17. At the same time, the economic environment of West Africa reflects, among others, a complex mix of informality and underdevelopment. Economies in the region are dominated by large and heterogeneous informal sectors where transactions are conducted predominantly in cash and are either insufficiently or not at all regulated and supervised by existing formal arrangements – policy, legal and institutional frameworks.[46] This is evidenced, for instance, by the millions of unregistered and unregulated street traders and vendors and other informal actors, including small and medium scale businesses, whose activities account for an estimated 60-70% of the formal regional economy.[47] Indeed, some of the largest and fastest growing sectors of economies in the region, particularly real estate, construction, and retail and wholesale trade, are informal.[48] It is important to note, however, that discussions on economic informality in West Africa tend to focus largely on informal employment and labor market issues instead of the nature and structure of informal economies and businesses. In Cabo Verde, the informal sector is predominant and account for 70% of employment as well as 25% of GDP.[49] The figure is far higher in Nigeria where, in 2000, the informal sector accounted for about 58% of GDP.[50] In Senegal, 90% of entrepreneurs operate informally.[51] At the same time, in 2010, the formal sector was estimated to have accounted for only 3% of annual job creation in the country.[52] In Ghana, an estimated 86.1% of all employment is informal.[53]

18. Likewise, the region's financial environment is that of considerable informality. With the exception of Nigeria[54] and Ghana[55], national financial systems of countries are extremely small – with less than 23% of West African adults having formal bank accounts.[56] Despite Nigeria's

[46] See GIABA (2010). Threat Assessment of Money Laundering and Terrorist Financing in West Africa. Dakar: GIABA, pp. 17. The level of informality is even more pronounced in countries with relatively larger commodity export sectors.
[47] Ibid.
[48] Adams, A.V. (2008). Skills Development in the Informal Sector of Sub-Saharan Africa. World Bank: Mimeo; Haan, H.C. (2006). Training for Work in the Informal Micro-enterprise Sector: Fresh Evidence from Sub-Saharan Africa. Unesco-Unevoc, Springer, Lund, F. and C. Skinner (2003), "The Investment Climate for the Informal Economy: A Case of Durban, South Africa", School of Development Studies, University of Natal
[49] 2014 African Economic Outlook – Cabo Verde Country Note – Section on Economic and Political Governance.
[50] 2014 African Economic Outlook – Nigeria Country Note, pp. 14. Available at http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/Nigeria_EN.pdf. It is important to note that agriculture, which accounts for 70% of the labor force, is largely informal.
[51] 2014 African Economic Outlook – Senegal Country Note, pp. 13. Available at http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/Senegal_EN.pdf.
[52] GIABA (2010). Threat Assessment of Money Laundering and Terrorist Financing in West Africa. Dakar: GIABA,
[53] Haug, Julian (2014). Critical Overview of the (Urban) Informal Economy. Friedrich Ebert Stiftung, pp. 2. Available at http://www.fesghana.org/uploads/PDF/FES_CriticInformalEconomy_2014_FINAL.pdf. (Accessed 14 January 2015).
[54] The total assets of the Nigerian financial system in 2011 stood at NGN 23.5 trillion, nearly 79% of which was in the 20 commercial banks. See Nigeria Country Note of the African Economic Outlook.
[55] Ghana's financial sector is considered as relatively well developed, although total deposits account for only 26% of the GDP and lenders suffer from persistently high number of non-performing loans. In the World Bank's 2013 African Competitiveness Report, Ghana was ranked 59th out of 148 countries worldwide and 8th out of 37 African countries. See World Bank (2013). The Africa Competitiveness Report 2013. Washington, DC: World Bank; 2014 African Economic Outlook – Ghana Country Note: Section on Economic and Political Governance (Financial Sector).
[56] AfDB (2013), pp. 44

position as the regional financial center, data from Central Bank of Nigeria (CBN) shows that 46.3% of Nigerian adults are "completely excluded" from financial services.[57] In Cote d'Ivoire, penetration of the formal banking sector is only 13.4%, albeit the rapid growth of telephone banking and the government's encouragement of the opening of bank branches.[58] In Mali, only 6.9% of the population used the formal banking system in 2013, up from 6.1% the previous year, albeit plans by the government to increase bank use to 20% by 2012.[59] Also in the Gambia, young people are often excluded from the formal financial system due to their age, lack of work experience, limited credit history, and among others.[60] Sierra Leone's financial sector remains underdeveloped, notwithstanding its rapid expansion in recent years.[61] Small-scale entrepreneurs rely on families, friends, moneylenders and other informal sources to raise capital for their businesses. At the same time, there is considerable reliance on informal channels of remittances, especially with funds being sent or received through families and friends returning home.

19. Exploring the reasons for such economic and financial informality is beyond the scope of this study. However, it is not unreasonable to attribute it partly to a weak institutional and regulatory setting – manifested by weak law enforcement and rule of law, as mentioned in the previous section, which then compels economic and financial actors to conduct transactions informally. Indeed, the level of informality is symptomatic of, not only serious institutional deficiencies and the failure of West African states to enforce regulations that should apply to informal actors, but also the burdensome nature of regulations and taxation that inhibits compliance. More importantly, the prevalence of large informal sectors seriously undermines compliance with formal rules, regulations, and codes of conduct.

20. The extent of economic and financial informality and underdevelopment provides an enabling environment for criminally-minded individuals and networks to conduct illicit economic transactions with little or no detection by authorities.

Social Context

21. The diversity of West African states makes generalization about the socio-cultural lives of the people difficult. However, certain values are common throughout West Africa. One of the values is loyalty to one's extended family, tribe and ethnic group, a major factor in day-to-day behavior and interactions among individuals. As such, loyalty to the state is often subordinated to familiar, tribal and ethnic loyalty. This is often manifested by the bending or contravention of official rules and regulations to the benefit of family members, kinsmen, and particular

[57]Central Bank of Nigeria (2012). National Financial Inclusion Strategy. Abuja: Central Bank of Nigeria, pp. 5. Available at http://www.cenbank.org/Out/2012/publications/reports/dfd/CBN-Summary%20Report%20of-Financial%20Inclusion%20in%20Nigeria-final.pdf

[58] 2014 African Economic Outlook – Cote d'Ivoire Country Note: Section on Financial Sector

[59] 2014 African Economic Outlook – Mali Country Note: Section on Economic and Political Governance (Financial Sector). Significantly, the report notes that "[t]he percentage with access to financial services remained very low, at 20.7% at the end of 2013 (up year-on-year from 17.2%), including services offered by microfinance institutions.

[60] 2014 African Economic Outlook – The Gambia Country Note: Section on Economic and Political Governance (Financial Sector)

[61] For instance, the number of commercial banks increased from 8 in 2006 to 13 by the end of 2013. See African Economic Outlook – Sierra Leone Country Note: Section on Economic and Political Governance (Financial Sector).

communities. Indeed, West African public servants are often expected to promote the interest of their extended families, ethnic groups, and communities when carrying out their duties. This manifests itself in supporting social policies that are deemed vital to the ethnic group or taking measures to enable members of the ethnic group gain access to specific advantages.[62] Thus, although such familiar, tribal and ethnic loyalty leads to the establishment of networks of support for individuals and communities, it breeds favoritism, nepotism, and creates corrupt social networks within the society.[63] Significantly, loyalty to family, tribe and ethnic group could mean that criminals, particularly drug dealers, and terrorists are often protected or supported by their families and ethnic kinsmen. This is especially the case when these criminals and terrorists endear themselves to their communities by way of funding development projects. A classic example is that of Eric Amoateng, a former Ghanaian Member of Parliament (MP), whose arrest and prosecution for drug trafficking in the United States elicited protests from his kinsmen, not least because he had funded development projects, sponsored poor students, provided loans, among others things, in his community.

22. Nigeria in particular is a diverse country with tribes and ethnic groups. There are over 250 tribes in Nigeria with different languages, customs and beliefs. The major tribes include Hausa predominantly in the north, Yoruba in the south west and Igbo in the south-east. Like in many West African countries, citizens have strong affiliation with either their tribe and religious groups or a combination of both. There is a strong culture of identifying with 'successful' indigenes of the various tribes or religious groups. Due to this strong affiliation, it is always expected that citizens that are more affluent to trickle down wealth acquired, whether it was legitimately acquired or not. These expectations have an effect on corruption, because tribal sentiments are usually exhibited when law enforcement agencies are attempting to prosecute suspects. Religious bodies have also supported their faithfuls that have been engaged in illicit activities due to the social relationship between indigenes and their respective tribes and religions.

23. Generally, in West African society, wealth is considered as an index of respect and honor irrespective of how it is acquired. Indeed, 94% of Nigerians and 87% of Ghanaians place considerable premium on wealth acquisition.[64] As such, individuals may therefore be tempted to engage in all sorts of criminal activities to support their desire for ostentatious lifestyles.[65]

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[62] Ngouo, L (2000) "Organizational Development Consulting in the context of Structural Adjustment Program in Sub-Sahara Africa: Role and Responsibilities of Consultants", International Review of Administration Sciences 66: 105-18.

[63] See Dzorgbo, S (2001) Ghana in Search of Development: The Challenges of Governance, Economic Management and Institution Building. Aldershot: Ashgate Publishing Ltd. Also see Prah, K.K (1993) "Socio-cultural Dimensions of Ethics and Accountability in African Public Services", in S. Rasheed and D. Olowu (eds.) Ethics and Accountability in African Public Services: Nairobi: African Association for Public Administration and Management/ICIPE Press.

[64] Ibid

[65] In a recent high profile trial in London of a Ghanaian/Austrian citizen involved in transporting 12 kilograms of cocaine to the UK, the lawyer for the convicted drug dealer argued in Court that his client joined the drug trade as a means "to support her newly attained high-class lifestyle connected to powerful people in authority who are currently in power in Ghana." http://www.myjoyonline.com/news/2015/January-6th/nayele-ametefeh-sentenced-8-years.php#sthash.kC0dnbOX.dpuf"

CHAPTER THREE: THE IMPORTANCE OF DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS (DNFBPs) IN WEST AFRICA

24. Designated Non-Financial Businesses and Professions (DNFBPs) are generally defined as businesses and professions that provide non-financial services. As such, DNFBPs comprise of casinos, accountants, real estate agents, dealers in precious metals, dealers in precious stones, trust and company service providers (TCSPs), lawyers, notaries and other legal practitioners, and a range of other non-financial entities.[66] While the services provided by DNFBPs are often intertwined, depending on the transaction for which they are required, they are different in terms of mode of delivery. DNFBPs also differ not only in terms of the size of their operations, but also the depth and duration of relationships with their clients.[67] Lawyers, real estate agents, and TCSPs may have deeper, longer, and more complex relationships with their clients than casinos and accountants may have with their clients. Nonetheless, irrespective of the size or nature of the economy within which they operate, DNFBPs provide critical services in both economic and financial transactions, especially those of high monetary value. For instance, the management of business investments, purchase of real estate or precious metals require the services of lawyers, real estate agents, accountants and dealers in precious metals. In countries with large service (accounting, financial, legal, etc.) or real estate sectors, lawyers, notaries, accountants, and other DNFBPs are particularly important.

25. In West Africa, although DNFBPs play important roles in economic and financial transactions, the roles of a number of them are especially critical not least because of the emergence or relative relevance of particular sectors to economies in the region. Also, the importance of certain DNFBPs may not necessarily be cross-national but rather be solely dependent on the nature of their economies within which they operate. The importance and operational size of dealers in precious stones and dealers in precious metals in Guinea, Liberia, and Sierra Leone may be different from that of Cote d'Ivoire and Mali because of differences in, for instance, the size of the extractive industries – especially the mining sector. Likewise, TCSPs may be more active in Nigeria, Ghana, and Senegal than in other relatively less developed countries because of differences in the size and vibrancy of the private sector and the number of companies that are formed on an annual basis. Accordingly, it is important to situate the role or importance of DNFBPs within the context of, not only recent economic and financial developments in West Africa, but also the nature or structure of national economies. In doing so, the DNFBPs that are of particular importance and may be vulnerable to, or serve as conduits for ML/TF, are identified. Thus, the economic and financial realities of the region is such that not all DNFBPs may require the same attention in terms of AML/CFT.

A. DNFBPs (Real Estate Agents, Lawyers, Notaries and other Legal Practitioners) and the Booming Real Estate Sector in West Africa

[66] The list of DNFBPs is provided in the FATF Glossary, available at http://www.fatf-gafi.org/pages/glossary/d-i/. (Accessed 30 January 2015)

[67] FATF/OECD (2008). RBA Guidance for Casinos. Paris: FATF. Pp. 5. Copy available at http://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20for%20Casinos.pdf. (Accessed 30 January 2015).

26. In recent years, the real estate sector has emerged as a significant contributor to economic and social transformation in West Africa. Widespread belief in land and home ownership as secured investment has led to significant land acquisitions and construction of buildings.[68] Specifically, lands have been developed into residential, commercial, industrial and institutional properties, as well as agricultural real estate, by individuals and the private sector.[69] Conversion of residential properties into commercial ones and construction of high rise buildings and shopping centers have become common in business districts in major cities across the region.[70] The Ikeja City Mall in Lagos, opened in 2011, and the Palms Mall are examples of increasingly rapid construction of Western style retail and leisure malls in Nigeria and the region.[71] In Dakar, not only were an excess of 2,000 story buildings constructed between 2000 to 2010, but also more than 2,500 construction projects are started in the city each year.[72] With an average building cost of $200,000, construction alone contributes considerably (about $500 million) to the country's annual GDP.[73] Also, a number of luxury buildings have been constructed in Accra, especially in the city's western Krokrobite community.[74]

27. In Sierra Leone, the real estate sector is gradually emerging as a major attraction for investment. In recent times there has been a number of public private partnership drives in the sector evident by the joint National Social Security and Insurance Trust (NASSIT) and Regimanuel Gray project; an investment of US $10million in a sea view real estate project with a 60% and 40% shares between NASSIT and Regimanuel Gray Co., respectively. Consistent with ongoing reforms to improve the investment climate in Sierra Leone, the real estate sector has witnessed few big investments from the private sector; notable among them is Trillium Hills Development project launched in May 2014. The Trillium Hills real estate project aimed at building 30 modern luxurious villas on 33,885 sqm of prime land in one of the highly sought after location by the ocean. The Chinese investment under the Guoji Industry and Trade Zone has reached an agreement with the Government for a joint public-private investment in affordable housing project. Apart from the few large scale investment in the real estate sector, there are also large numbers of individual players in the sector. There is only one mortgage Finance Bank licensed and regulated by the Bank of Sierra Leone that provide various retail loans for housing. There is no single regulatory body for the real estate sector or a consolidated regulatory framework for the various actors in the sector

Real Estate Agents

[68] GIABA (2010). Threat Assessment of Money Laundering and Terrorist Financing in West Africa, pp. 58. During interviews with real estate agents, it became clear that land and home ownership is also considered is a major priority of West Africans living in the diaspora. It is seen as a way of securing or providing for their families back home.

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[70] GIABA (2007). Typologies of Money Laundering Through the Real Estate Sector in West Africa. Dakar: GIABA. Pp. 11

[71] Knight Frank. Africa Report – 2013. Pp. 32. Copy available at http://www.knightfrank.com/research/africa-report-2013-2013.aspx (Accessed 2 February 2015).

[72] GIABA (2010). Threat Assessment of Money Laundering and Terrorist Financing in West Africa, pp. 58

[73] Ibid

[74] Ibid

28. Several players operate within the real estate sector in West Africa: lawyers, real estate developers, real estate agents, appraisers, architects, quantity surveyors, land surveyors, notaries, banks and other financial institutions, among others. Yet real estate agents, who are mostly in direct contact with buyers, sellers or property owners play critical roles in the purchase or sale of properties, particularly those that involve large amounts of money.[75] They act as agents for either buyers or sellers based, in many cases, on written agreements. In the case of acting on behalf of a buyer, agents use their local market knowledge to assist in identifying property that meets the buyer's needs. Upon identifying an ideal property, agents guides the buyer through the purchasing process, including negotiating on his or her behalf to ensure that the property is purchased under the best possible terms, introducing the buyer to a range of service providers such as those that offer legal representation.[76] Buyers are often developers who purchase, renovate, or sell properties. Agents receive a percentage of the price paid as commission.[77] Likewise, agents acting on behalf of a seller/owner, assist him the seller/owner to identify a buyer who then purchases the property on sale at the highest possible price for a commission.[78] However, during interviews with some agents, it became clear that there are times when they act on behalf of buyers and sellers/owners. Also, while there are registered agents who operate formally with offices, business addresses, and websites, there are also freelance agents that operate informally. Formal agents often have complex and longstanding relationship with their clients – whether buyers or sellers, including, as in the case of leasing, collection or payment of rent and other fees. Informal agents, however, mostly end their relationship with clients upon receiving their commission. Interestingly, there are times when formal agents depend on informal agents for potential buyers or renters for a small fee, after which the latter acts an intermediary between these buyers or renters and sellers or landlords.[79]

Lawyers

29. Lawyers play a role in the legal formalities that form part of completing real estate transactions. In high value transactions, especially leasing, purchasing or selling of commercial properties, and those that involve complex financing arrangements, lawyers play a critical role by providing various legal services, including drafting financing agreements. To be sure, interviews with lawyers revealed that most transactions in the region do not involve financing agreements such as structured payments as payments are mostly one-off and done in cash. In the case of sale of property, lawyers, in collaboration with the seller/owner prepare documents for conveyance – transfer of ownership or title to the new owner. They also help seller/owners to understand their obligations in terms of payment of taxes and fees associated with the transaction. Like real estate agents, lawyers can act on behalf of other buyers or sellers, or both, depending on the nature and value of the transaction.[80]

[75] Interviews with real estate agents
[76] Follow up interviews to questionnaires distributed to DNFBPs (real estate agents)
[77] Interviews with real estate agents in Abuja, Accra, Bamako, Dakar, Abidjan, and Praia
[78] Interviews with real estate agents
[79] Interviews with real estate agents revealed that this is a widespread practice in the region.
[80] Interviews with lawyers

Notaries

30. Notaries are used by parties in a real estate transaction to ensure that signed legal documents, especially conveyance or property transfer title, are authentic. Thus, notaries ensure overall safety and trustworthiness as well as quality of documentation in transactions. Notarization of such documents also involves verification of the identities of persons who sign them – whether buyer, seller/owner, or a representative – in the course of the transaction. Lawyers and notaries across the region confirmed that it is impossible to close a transaction without authentication and notarization of a conveyance document.

B. DNFBPs (Dealers in Precious Metals, Dealers in Precious Stones, and Lawyers) and the Extractive Industry – Mining Sector in West Africa

31. The extractive industry is the bedrock of socio-economic development in West Africa. Ghana for instance has a long history of gold mining which led in colonial times to the country being known as the Gold Coast. It is the second largest gold producer in Africa, after South Africa and tenth largest globally.[81] The other important mineral resources found in Ghana are oil, diamond, bauxite and manganese. The acquisition of land for mining activities has made Ghana to witness seven (7) large scale companies producing gold, while over 650 registered small scale mining groups are engaged in the mining of gold, diamonds and industrial minerals. The mining sector maintained an average contribution of 5.5% to Gross Domestic Product (GDP) and 42% of total merchandise export during 2000 – 2008.[82] It is estimated that between 500,000 to one million people including foreigners (Chinese, Lebanese, Indian South Africans etc) are involved directly in small scale mining and another 500,000 to one million people benefit directly or indirectly from this activity.[83] The main challenges of the Ghanaian mining sector are the financial leakages in a cash based economy and environmental consequences[84]

32. In Sierra Leone, the extraction of diamond and other minerals have taken three main forms; a) large-scale production of non-precious minerals such as iron ore, rutile and bauxite; b) large scale production of precious minerals (diamonds); and c) artisanal and small-scale production of precious minerals mainly diamonds and gold. Recent economic statistics indicate that Sierra Leone is trending on a strong growth trajectory due largely to buoyant activities in the mining sector.[85] In 2013, total export receipts increased by 56.9% from 2012, reflecting

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[81] See Joseph Ayee, Tina Søreide, G. P. Shukla, Tuan Minh Le (2011). Political Economy of the Mining Sector in Ghana, Policy Research Working Paper 5730, The World Bank, p.6.; See KPMG (2014) Ghana Mining Guide www.kpmg.com/GH/en/Documents/ghana-mining-guide%202014.pdf, *p.2.*

[82] A Report on Ghana's mining sector for the 18th Session of the UN Commission on Sustainable Development www.**un**.org/esa/dsd/dsd_aofw.../National**Reports**/**ghana**/**Mining**.pdf. Accessed on 2nd February, 2015.

[83] Ibid.

[84] See Joseph Ayee, Tina Søreide, G. P. Shukla, Tuan Minh Le (2011). Political Economy of the Mining Sector in Ghana, p.11.

[85] AfDB, OECD, UNDP (2014). African Economic Outlook, Sierra Leone, www.africaneconomicoutlook.org. Date accessed, February 10, 2015.

improvement in earnings from mineral exports, including diamonds.[86] Similarly, precious metal and stones mining constitute a greater portion of DNFBPs in Senegal and Mali than in The Gambia and Cape Verde.[87]

Dealers in precious metals and dealers in precious stones

33. The term 'dealers' in precious metals and stones cover a wide range of persons engaged in these businesses. These dealers include those who produce precious metals or precious stones at mining operations, to intermediate buyers and brokers, precious stone cutters and polishers and precious metal refiners, jewellery manufacturers who use precious metals and precious stones, retail sellers to the public, and buyers and sellers in the secondary and scrap markets.[88] Diamonds, gold, jewels and precious metals have unique physical and commercial properties, which carry value in small, easily transportable quantities. The worldwide trade varies from modern international transactions conducted through the financial system, to localized informal markets. Dealers range from very poor individuals in some of the most remote and troubled places around the globe, to the wealthiest individuals, to large multinational companies working in major financial centers. Transaction methods also range from anonymous exchanges of handfuls of stones or nuggets for cash, to exchange-based government-regulated deals.[89]

34. Under the Kimberley Certification system, only diamonds that are legally mined are allowed to be exported. Legally mined means that they come only from areas under government control, and are the product of a chain of legally authorized transactions, from use of land, permission to mine, purchase by authorized dealers and agents, and export by licensed exporters.[90] This notwithstanding, the activities in the industry remain largely secretive with a wide spread of illegal gold mining known as Galamsey in Ghana, illegal diamond mining in Sierra Leone and Liberia, which generate high cash income to dealers.[91] Besides, the precious and metal stones are easy to smuggle across borders because of their portability and high value consumer durables.[92]

35. Most formal dealers in precious metals and stones in the Gambia are mainly found in the production of jewelry. These jewelers register as taxpayers with the Gambia Revenue Authority (GRA) and then proceed to register as a business at the Attorney General Chambers and the Ministry of Justice. They report transactions that involve an amount equal to or above $15,000. The clandestine precious stones and metals dealers who smuggle their items across the border, sell them and then use the proceeds to invest in the construction sector.[93] Additionally, the

[86] In 2012, total receipts from the mineral sector was USD 1,065.47 million. It increased to USD 1671.72 million in 2013. For details, see ibid p.6.
[87] Interviews and field report by Country Research Associates of Senegal, The Gambia and Cape Verde.
[88] See FATF/GAFI (2008) RBA Guidance For Dealers In Precious Metal and Stones, p.2.

[89] Ibid, p.3.
[90] For details, see The Global Witness (2006) Report on Sierra Leone Kimberley Certification System.
[91] See Typologies Report on Cash Transactions and Cash Couriers in West Africa: GIABA Working Group on Typologies (GWGTP), 2007.p.13.
[92] See GIABA Report on Threat Assessment of Money Laundering and Terrorist Financing in West Africa, 2010, p.14.
[93] Interview with dealers in precious metals and stones in the Gambia in July 2014.

underground nature of these operations created discrepancies among national dealers in precious metals and stones in the Gambia.[94]

36. Most formal dealers in precious metals and stones in Nigeria are mainly found in the production of jewelry particularly gold. These jewelers mainly trade with Middle Eastern and Asian countries of United Arab Emirates, Saudi Arabia, China, and Malaysia. Most of these jewellers are not under any regulation or supervision and hence operate informally with little records or data of size of industry. As noted by FATF, gold is attractive to money launderers due to its intrinsic value in a relatively compact form, and it's easy to transport. It can be bought and sold easily and often with anonymity in most parts of the world. It is more readily accepted that precious stones, because of ethical issues surrounding conflict diamonds, and can be melted into different forms. These qualities makes it a sought after commodity as a way of facilitating the transfer of wealth. Therefore, reports from Nigeria indicate that those engaged in money laundering use the structure of the business to purchase high value stones using legitimate dealers from mostly Asian countries. The stones are deposited in banks for a certain period of time, before it is resold and the proceeds used to buy properties or receive cash in foreign currency.

Lawyers

37. Lawyers possess an invaluable understanding of the day-to-day challenges facing the extractive industry and major resources projects. They have extensive experience advising on corporate, projects/construction and finance aspects for large-scale mining, resources and infrastructure projects in most corners of the region.[95] As the laws and activities in the extractive industry become more sophisticated with increasing and diverse stakeholders, so are clients from a broad range of the extractive industry increasingly turning to lawyers for advice on diverse issues related to supply chain compliance strategies, corporate governance, labor issues, bribery, corruption and whistle-blowing.[96]

38. Lawyers in the extractive sector provide comprehensive legal service to domestic and international mining companies and individuals. They assist their clients to draft and negotiate mining joint ventures, operating and royalty agreements. They advise in the acquisition of land and mineral leases. They also advise clients in respect to the sale or acquisition of mining properties, processing facilities, sale of minerals and general corporate issues.[97]

Some lawyers are retained by firms as solicitor to safeguard the interest of the companies. Sometimes, lawyers provide more of financial advice than legal advice; they have intricate business relationship with their clients and often try to fence clients from identifying themselves

[94] Ibid.
[95] **See** Mining in Africa: A Legal Overview - DLA Piper https://www.dlapiper.com Date Accessed, February, 9, 2015.
[96] Ibid.
[97] See www.spanglerflory.com/legal-services/mining-and-minerals. Date Accessed, February 9, 2015.

even where it is clear the law require them to do so.[98] The informal economy in West Africa is almost entirely cash and commodity based, and throughout the region, cash is used to purchase most things, including high-value goods such as electronics, cars and land. Indeed, legal experts in Accra, estimated that 80% of their dealing in Ghana's economy is cash based.[99] In high value transactions, especially leasing, purchasing or selling of commercial properties, and those that involve complex financing arrangements, legal practitioners play a critical role by providing various legal services, including drafting financing agreements. Information obtained in Nigeria through interviews with legal practitioners revealed that a large percentage of transactions do not involve financing agreements such as structured payments as payments are mostly one-off and done in cash.

Notaries

39. The role of notaries in the extractive sector is similar to the real estate transaction discussed earlier. They have provided professional services in the extractive sector for centuries by witnessing and identity verification of signers to deter fraud and to ensure that transactions are properly executed.[100] They receive land titles, documents and contracts, and follow certain legal procedures to authenticate them. They also charge fees to provide services. It is a common practice to make cash payments without passing through the notary's account, while others could pay cash on the spot into the notary account for their services.[101]

[98] See GIABA Typologies Report on Laundering the Proceeds of Illicit Trafficking in Narcotic Drugs And Psychotropic Substances in West Africa, 2010, p.42.
[99] See GIABA Report (2010) Threat Assessment of Money Laundering and Terrorist Financing in West Africa, p.18.
[100] See NotaryCam, http://www.notarycam.com. Date Accessed, February 14, 2015
[101] Interview with a Lawyer and a notary in Senegal February 2014.

CHAPTER FOUR: CASES OF MONEY LAUNDERING (ML) AND TERRORIST FINANCING (TF) INVOLVING DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS (DNFBPs)

40. The cases below illustrate the involvement of DNFBPs in money laundering and terrorist financing. DNFBPs are either exploited by criminals and terrorists or they knowingly collaborate with them in carrying out illicit transactions. The cases also illustrate a number of challenges with regard to enforcing AML/CFT laws and regulations as they relate to DNFBPs in the region.

A. Money Laundering Involving Real Estate Agents

Case 1.1
Mr. A, a Senegalese citizen, was stopped by law enforcement officers while being driven by a citizen of Country X in Western Europe in a luxury vehicle on a highway between two major cities in the country. Tests conducted Mr. M revealed that he had swallowed 763.7 grams of cocaine. An investigation by prosecutors in Country X revealed that he had entered the country from Country Y in North Africa. Country Y is a known transit point for drug destined for Europe.
Further investigation by authorities in Senegal revealed the following:

- Mr. M owned luxury villas in "Nouveau Dakar" and in his home village,
- Mr. M owned businesses in a major market in Dakar, and
- Mr. M owned twelve (12) luxury vehicles

Source: Senegal

Case 1.2

Mr. B decided to acquire an expensive piece of property. In order to avoid significant paper trail of the transaction, he insisted on paying for the property in cash into the notary's account.

Source: Senegal

Case 1.3

Mr. C is an employee of Company A, a real estate agency which has an account with Bank B, a local bank. He attempted to take advantage of the agency's honorable status by presenting a check for a large sum of money for cashing. An investigation by Bank B revealed, however, that the check was fake.
Source: Senegal

Case 1.4
Mr. S, Mr. T, and Mr. U are all members of a drug trafficking organization. They jointly created real estate companies, car dealerships, and construction companies and opened various

accounts at commercial banks for them in Cabo Verde. Large amounts of money were transferred into these accounts from abroad. The funds, which were discovered to be proceeds from their drug trafficking operations, were then used to purchase shares, bonds, cars, boats, parcels of land and apartments. The process of placement and conversion of illicit proceeds were set up having as a starting point the principle of trust and the bond of family legal relationships and collaboration with companies that had some credibility in the market.
Source: Cabo Verde

41. Case 1.1 shows that drug money have been laundered in Senegal's real estate sector, undoubtedly with the involvement – whether knowingly or unknowingly – of real estate agents. It also shows that criminal proceeds used to purchase real estate may often be disguised as business profits, thereby foreclosing any possibility of scrutiny by reporting entities involved in such transactions. This also brings to the fore the use of shell businesses in laundering criminal proceeds in the real estate sector. The case also shows the importance of international cooperation in conducting a money laundering investigation as it is clear that the arrest in Europe led to an investigation in Senegal.

42. Case 1.2 gives a glimpse of a widespread practice of purchasing real estate, irrespective of their value, with cash. The acceptance of cash by property sellers or owners may be reflective of little or no confidence in non-cash payment methods, which are often deemed as costly, tedious and time-consuming. Criminals exploit this preference for cash not least because its convenience, but also because it leaves little or no audit trial, thereby enabling them to avoid scrutiny by authorities. The case also shows that payment for purchased properties are not regulated or monitored by authorities.

B. Money Laundering Involving Lawyers

Case 2.1

Mrs. G deposited into her current account a huge amount so inconsistent with the transactions generally seen in the account since she started dealing with the bank. As her explanation for the unusual deposit, Madam G claimed she inherited the funds, but produced no documents to back her claim. An examination of the case drawing on intelligence enabled the FIU to question the beneficiary's' counsel. Effective collaboration with the lawyers of the beneficiary of the estate made it possible to gather evidence that the transaction was not justified. After investigations, the case was shelved

Source: Senegal

43. The law firm did not know that it has an obligation to file an STR as suggested by FATF Recommendations 12 and 20. The bank also failed to file an STR even though there was enough evidence that the transaction was inconsistent with her profile as captured in the accounts opening form. Further, the inability to produce documents to support the unusual deposit upon interview even heightened the suspicion. The use of interagency collaboration and the gathering of intelligence brought home the need for this system to be adopted by all in financial crime

investigations. The failure of LEAs to prosecute and enforce the law indicates the possible lack of knowledge of AML/CFT issues.

C. ML/TF Involving Notaries

Case 3.1

Mister M made a security deposit recorded in the notary's books through a bank transfer from abroad in excess of CFAF50, 000, 000. The commitment to sell remained unchanged for more than three quarters, an abnormally long time (longer than the normal time frame). Moreover, it was impossible to get hold of the client despite several attempts to contact him using all available means of communication.
Source: Senegal

Case 3.2

Mister Y, is from a Latin-American country, famous for producing, consuming and selling drugs. He pays nearly a quarter of the cost of a building valued at nearly CFAF100 million. Three years after depositing the amount with the notary's accounting service when signing the commitment to sell the building, he is yet to show up at the notary's office to conclude the sale or collect the money.
Source: Senegal

Case 3.3

Mrs. G purchased a 3-bedroom house in a suburb in Abidjan owned by Mr Y. He received a large amount of money, which was seven times the actual value of the house, as payment. Mr. F, a notary in Abidjan, was contacted by both Mr. Y and Mrs. G for purposes of regularizing the transaction. In addition to paying for the notary fees, Mr. Y and Mrs. G offered Mr. F a certain amount of money. He accepted the offer and regularized the transaction without visiting the house. The legalization of the transaction enabled Mr. Y to justify the deposits of sum X with a bank and then transfer the cash to Mrs. G.
Source: Cote d'Ivoire

44. This case indicated that record was kept in the books of the notary but the lack of regulation and supervision did not compel the service provider to file an STR. The lack or non-existence of an effective KYC/CDD made it difficult for the client to be located. The use of notaries is seen as an easy way to launder money and check payment was the instrument used.

45. Regarding case 3.2 the investor is said to come from a jurisdiction which is a high risk where drugs are trafficked. Here also the lack of regulation and supervision permitted non-performance of KYC/CDD on the client. More so, as a foreigner and the long period of absence to effect the rest of the payments for the property it should trigger the filing of an STR, but this was not the case. Therefore, notaries are used as a conduit to launder money and the use of check/wire transfer is the main instrument applied.

46. Case 3.3 shows the use of notaries to not only authenticate illicit real estate transactions, but also facilitate the entry of criminal proceeds into the real estate sector as well as the formal financial system. Hence, existing laws should be revised and strengthened so as to ensure that notaries, either knowingly or unknowingly, do not serve as conduits for laundering of criminal proceeds in the real estate sector.

D. Money Laundering through Dealers in Precious Stones and Metals

Case 4.1
Mr. Y, a citizen of a West African country settled in an area in Mali and obtained two fake identity cards from his country's diplomatic mission in Bamako. He disguised himself as two gold mining companies in Mali and created network of fraudsters consisting of customs brokers, a lawyer, and businessmen from Mali, Europe and other parts of the world.
In 2011, Mr. E, a Malian national who was working as a manager of a large gold trading company in Europe, traveled to Bamako to identify potential supplier of gold. He was approached by Mr. Y and his group about the possibility of supplying him the quantity of gold he needed. Upon conclusion of their discussion, Mr. E was convinced of the group's ability to supply him with the gold he needed. He returned to his base in Europe and subsequently transferred an amount of money to the account of Mr. D, a consultant for the group, with the expectation that he will receive consignment of gold. Upon receiving the money, Mr. D transferred 99% of it into the account of a shell company created by Mr. X, the brother of Mr. Y. The money was then transferred into the accounts of two other shell campanies also created by Mr. X. Members of the group made various withdrawals from the account.
Mr. K, the group's lawyer and a European national, purchased travelers' cheque with his share of the money, desposited them into his account, transferred the money into his home country account, and left Mali.
Comments: The case is taking its normal course before the Prosecutor of the Economic Division in Bamako.
Source: Mali

Case 4.2
Mr O, a professional jeweler based in Senegal, received more than 100 million CFA in his account at Bank P from Company Q, large precious metals trading firm located in South-East Asia, on behalf of Mr. R. Mr. R, while attempting to withdraw the money, claimed to be the younger brother of Mr. O. However, he could not provide proof of relationship with Mr. O upon inquiry by the bank. Mr. O, the account holder, then explained that the funds resulted from his jewelry activities.
However, he requested that the transaction be cancelled and the funds repatriated.
This suspicious behavior and the fact that no supporting documents were presented, led Bank P to contact the FIU. After investigating the transaction, the FIU ordered that it be blocked and contacted the judicial authorities to report acts likely to constitute an attempted money laundering offence.
Source: Mali

47. The cases above shows that Mali does not have a law banning the operations of shell companies as recommended by FATF Recommendations 9. There seem to be no effective KYC/CDD performed on client who opens bank accounts with this particular bank. The supervision of the banking sector was weak and the method used in this scheme is wire transfer.

48. The wire transfer credited by the bank to the account of Mac shouldn't have been done because the beneficiary name is different from the account holder's name. More so the beneficiary could not show any document to support the transfer. It was proper the funds were blocked to prevent a recall to the sender. The case brought to the fore the usefulness of strict compliance, good supervision and a robust regulation.

49. Case 4.1 shows the use of shell companies to commit advance fee fraud in the mining sector and laundering the proceeds from it. But more importantly, it shows how diplomatic missions may unwittingly facilitate the establishment of these companies by failing to conduct thorough due diligence when issuing identity cards to their citizens. It also shows the lack of due diligence or considerable weaknesses in the processes and procedures for registering companies. Furthermore, that foreigners were able to open accounts and use to transfer criminal proceeds shows that banks often do not implement customer due diligence (CDD) and know your customer (KYC) measures when doing business with their customers. The lack of CDD and KYC is also demonstrated by Case 4.2 in that funds were transferred into an account although the account holder was not the beneficiary.

E. Money Laundering Involving Accountants

Case 5.1
Mr. B, an accountant by profession, took advantage of delays in managing pending funds not yet settled, and of the fact that there is no suitable monitoring mechanism, to deposit in his personal local bank account a cheque of more than 100 CFA million given to him by one of his clients. The funds had been deposited in a fixed term deposit account in order to generate huge interests pending the settlement of the transaction, whereas they ought to have normally been deposited in a professional account or in the account of a dedicated financial institution.
Source: Senegal

Case 5.2
Firm E was contacted by company S to take up the position of auditor. Given the large amount of money to be used in setting up company S, Firm E decides to fulfil its AML/CFT obligation of ascertaining the origin of funds involved before getting into any business relations with the client.
Source: Senegal

CHAPTER FIVE: POLICY, LEGAL, INSTITUTIONAL AND OPERATIONAL FRAMEWORKS FOR REGULATING, SUPERVISING, AND MONITORING THE OPERATIONS OF DNFBPs IN WEST AFRICA

Introduction

50. In West Africa, there are a number of legal instruments for regulating, supervising, and monitoring the operations of DNFBPs. The provisions set out in these instruments mirror the differences in the legal systems and traditions bequeathed to countries in the region by colonial powers. Thus, legal instruments in former French and Portuguese colonies (Cabo Verde, Cote d'Ivoire, Mali and Senegal, for instance) are based on civil law while those in former British colonies (The Gambia, Ghana, Nigeria, and Sierra Leone) are based on common law. Nonetheless, these instruments relating to AML/ CFT) laws and regulations, to some extent, capture requirements of set in a number of international instruments that provide the general framework for developing legislative, regulatory, supervisory, and operational measures.

51. AML/CFT laws and regulations in the region are based on the requirements of the FATF Recommendations, the United Nations Convention against Transnational Organized Crime (UNTOC), the International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention), the United Nations Convention against Corruption (UNCAC), a number of United Nations Security Council Resolutions (UNSCRs), and other relevant international instruments. Although the aforementioned conventions contain specific provisions that call for the criminalization of money laundering and terrorist financing, the FATF Recommendations in particular are the primary instruments that guide countries' fight against the two phenomena. The Recommendations (specifically Recommendations 22, 23, and 28) stipulate measures for regulating, supervising, and monitoring the operations of DNFBPs. Recommendation 22 calls for the application of customer due diligence (CDD) and record-keeping requirements set out in Recommendations 10, 11, 12, 15, and 17 to DNFBPs. Recommendation 23 also calls for the application of requirements set out in Recommendations 18, 19, 20 and 21 to DNFBPs.

52. Below is a review of legal and institutional frameworks for regulating, supervising, and monitoring DNFBPs.

Real Estate Agents/Agencies

53. Despite being an important sector to economies in West Africa, activities in the real estate sector are not sufficiently regulated, supervised or monitored. It should be reiterated that the level of regulation and supervision of the sector differs from country to country.

54. In Senegal, real estate activities are subject to provisions stipulated by Law No. 94-69 of 1994. Other regulatory and supervisory requirements are also contained in Law No.81-61 of 1981, Law No. 82-07 of 1982, Decree No. 82-731 of 1983, and Decree No. 83-764. Decree No.

82-731 relates to activities involving real estate development. These legislations contain provisions that lay out the processes and procedures for issuing licenses to real estate agents. Specifically, real estate agents are to be issued licenses upon fulfilling various requirements, including those related to their integrity and their financial positions. The provisions of the aforementioned legislations can prevent real estate agents from serving as conduit for laundering illicit funds.

55. However, the potential for such laundering is real, given the following factors: the lack of an internal AML/CFT program in the form of a mechanism allowing real estate agencies to identify, detect, keep and report suspicious transactions to the FIU, the lack of guidelines prepared by monitoring and supervisory bodies to help reporting entities fulfil their AML/CFT obligations, and large disparities noted between various sector actors, from the real estate agency to the individual broker.

56. In the Gambia, there is no legislation requiring the registration, regulation or sanctioning of real estate agents in the event of committing an offence. Although the AML and CFT laws require large and medium size real estate agents and other DNFBPs to report all buying and selling of land under suspicious circumstances to the FIU, the real estate sector is largely unregulated. For instance, land transactions are conducted in cash through unregistered informal agents. The Real Estate (Liability for Debts) Act (CAP 57.04) 1913, which governs the real estate sector only relates to the payment of debt. Also, there are no effective regulatory and supervisory guidelines for real estate agents in terms of detecting and reporting suspicious transactions to the FIU.

57. In Sierra Leone, the AML/CFT Act 2012, requires real estate agents to, among others things, develop and implement AML/CFT compliance policies and programs, implement know your customer (KYC) and customer due diligence (CDD) measures, appoint AML compliance officers, train their staff on AML/CFT and related issues, keep records of transactions, and report suspicious transactions to the FIU. Also, the myriad of activities within the real estate sector in Sierra Leone are subject to various administrative and regulatory requirements, including company registration, tax and social security clearance. However, there is no legislation restricting cash based transactions and as such the cash intensive nature of real estate business in Sierra Leone makes the sector vulnerable to money laundering and terrorism financing. However, the AML/CFT Act, provides that in the absence of a supervisory body, the Financial Intelligence Unit assumes the role of supervisory authority for the purposes of AML/CFT controls.

58. In the case of Ghana, the Company Code, Act 179 of 1963 regulates the real estate sector. It is heartening to note that the sector has an Association of Real Estate Developers called GREDA. Its aim, among others, is to provide a central organization for real estate developers, to provide a united front in making recommendations to government on ways of promoting real estate development and in seeking solutions to the practical problems in the property market. It is envisaged that all real estate activities in Ghana would be routed through the association which will serve as a link between the FIC and other relevant authorities. However due to the inadequacy of Act 179 of 1963 and vulnerability of the real estate sector, the country has developed a Real Estate Agency Bill approved by Cabinet and awaiting submission to

Parliament for passage. The provisions under this bill seek to address issues relating to licensing, operation regulations and obligations to promote the fight against Money Laundering and Terrorist Financing (ML/TF).

59. In Cape Verde the real estate market is unregulated and highly informal, except for the general licensing requirements for the construction of buildings and the large resort-like projects, which account for the vast majority of intermediation.[102]

Lawyers and other Legal Professionals

60. Lawyers and other legal practitioners – barristers, solicitors, magistrates, etc. play critical roles in various transactions, especially those involving real estate management, business investments, and sale and purchase of goods and services in West Africa. To ensure ethical and professional conduct and adherence to high standards on their part, the activities of legal practitioners (lawyers in particular) are subject to the rules and regulations of Bar Associations in the countries in which they are based. In Mali, for instance, there are roughly 300 lawyers, all of whom are members of the Mali Bar Association.[103] There are about 120 lawyers licensed to practice in Cape Verde. However, their operations are supervised by the Bar Association which administers their disciplinary code.[104] Also in Senegal, 400 lawyers are registered with the Senegal Bar Association.[105] These Associations not only make provision for the admission of persons to practice as lawyers, but also serve as disciplinary bodies that sanctions legal practitioners for conduct that violate their rules and regulations. The Nigerian Bar Association and the General Legal Council serve as the supervisory regulatory authorities for lawyers in Nigeria and Ghana, respectively. Some of these Associations, like the Ghana Bar Association, are guided by specific legislations (such as the Legal Profession Act, 1960 and Law No. 0409 of 4 January 2004 in the case of Ghana and Senegal, respectively).

61. In addition to the rules and regulations of national Bar Associations, the activities of lawyers and legal practitioners are regulated by specific legislations. In particular, the activities of lawyers are regulated by Law 94-042 of October 13, 1994 in Mali, Law No. 0409 of 4 January 2004 in Senegal, the Legal Profession Act, 1960 in Ghana, the Legal Practitioners Act in Sierra Leone, the Legal Practitioners Act in the Gambia, the Legal Practitioners Act, 1975 in Nigeria, among others. However, these legislations do not contain provisions specifically related to AML/CFT. Hence, countries in the region, as part of complying with the FATF Recommendations, require lawyers and legal practitioners to comply with their AML/CFT laws. In Senegal, for instance, the Anti-Money Laundering Law No. 2004-09 of 2004 and Law

[102] See International Monetary Fund (2009) Cape Verde: Report on the Observance of Standards and Codes— FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism, Washington D.C, IMF, p.5.
[103] Mutual Evaluation Report of Mali, pp. 150
[104] See International Monetary Fund (2009) Cape Verde: Report on the Observance of Standards and Codes— FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism, Washington D.C, IMF, p.5.
[105] Mutual Evaluation Report of Senegal, pp. 24.

No.2009-16 of 2009 on terrorist financing, are applicable to the legal profession. In Cote d'Ivoire, the AML law (Law No. 2005-554 of July 2, 2005) and the CFT law (Law No. 2009-367 of 12 December 2009 are applicable to lawyers.

62. This is, to some extent, in line with the AML/CFT laws which indicate the inapplicability of confidential provisions in carrying out obligations as a reporting entity.

Dealers in Precious Stones and Dealers in Precious Metals

63. In Sierra Leone, the revised Mines and Minerals Act, 2009 and the National Minerals Agency Act, 2012, provide the legal and regulatory frameworks for the mining sector. The latter Act established the National Minerals Agency as the regulatory and supervisory institution for the sector. The Agency is mandated to process licensing applications, monitor compliance with the provisions of the Acts, and oversee exploration and mining activities. Sierra Leone also acceded to the Extractive Industries Transparency Initiatives (EITI) status on 22nd February 2008 and established the Sierra Leone EITI Steering Committee (SLEITI), which is a Multi-Stakeholder Group (MSG) made up of mining companies, government agencies and civil society organisations, including the media. The EITI initiative is geared towards promoting greater transparency in the extractive industry with the view to addressing resource governance challenges and maximization of revenues and benefits for the citizenry.

64. In The Gambia, mining activities are regulated by the Mines and Quarries Act (CAP 64.01) 2009. The Act established an authority with the mandate of issuing licenses. However, the mining sector is largely unregulated in practice, thereby making it vulnerable to ML/TF.

65. In Senegal, Law No. 77-92 of 1972 set up the Chambers of Trade and the UNCM (National Union of Chambers of Trade). The law does not cover any provisions related to anti-money laundering and terrorist financing. Concerning transactions in gold, the import and export authorization, which is valid for one (1) renewable year, is subject to the prior approval of the Currency and Credit Department of the Ministry of Finance.

66. In Ghana, the Minerals Commission is established under Article 269 of the 1992 Constitution and the Minerals Commission Act 1993 (Act 450). It serves as the main promotional and regulatory body for the minerals sector in Ghana. It is responsible for the regulation and management of the utilization of the mineral resources as well as the coordination and implementation of policies relating to mining in the country. It also ensures compliance with Ghana's Mining and Mineral Laws and Regulation through effective monitoring.

67. Other laws are the Minerals and Mining Law of 1986 (PNDCL 153), as amended by the Minerals and Mining (Amendment) Act of 1994 (Act 475) and the Minerals and Mining Act 2006, (Act 703) which regulates mining in Ghana.

68. There is also established the Ghana Chamber of Mines, which is the main minerals industry association in Ghana. The Chamber represents the collective interests of companies involved in mineral exploration, production and processing in Ghana. Its activities are entirely funded by its member companies, which produce over 90 per cent of Ghana's mineral output. The Chamber has represented the industry's interests since 1928.

Accountants

69. Accounting firms exist and are well organized in all the countries in the region. In Senegal, Law No. 2000-05 of 2000 which set up the national order of public and chartered accountants, does not contain any provisions directly linked to money laundering and terrorist financing. Regarding the AML/CFT, the study noted that in Senegal, large international accounting firms care about compliance with international AML/CFT standards, and firms working domestically. That apart, the anti-money laundering law No. 2004-09 of 2004 and law No.2009-16 of 2009 on terrorist financing are applicable to the profession. However, accounting firms are not clearly designated as reporting entities under AML/CFT laws.

70. In Mali, Act No. 96-024 provides for the status of the Association of Certified Accountants and Chartered Accountants and regulating the profession of Certified Accountants and Chartered Accountants. No one can use the title Chartered Accountant or practice the profession, if that person is not registered with the Association.

71. In Ghana, the Chartered Accountants Act 1963 (Act 170) requires the Institute of Chartered Accountants, Ghana (ICAG) to administer and manage the activities of accounting auditing firms. Specifically, the Institute is mandated to encourage research in accountancy, supervise and regulate the engagement, training and transfer of articled clerks, prescribe curriculum for the training of chartered accountants and conduct qualifying examinations for membership of the Institute, and provide and maintain a register of chartered accountants and practicing accountants. Therefore, one cannot operate an accounting/auditing firm/service unless the person is a qualified and certified member of the Association.

72. In the Gambia, the Financial Reporting Act of, 2013 established the Gambia Institute of Chartered Accountants, which considers application for the registration of members, establishes the code of professional conduct and disciplinary requirements and mechanisms. Accountants in The Gambia are required by law to practice according to the common international standards but the Act does not clearly provide the need for the keeping of records regarding transactions with clients and does not create a reporting obligation to the FIU or any other body on suspicious transactions.

73. In Sierra Leone, Accountants are regulated by the Institute of Chartered Accountants of Sierra Leone (ICASL). The powers of ICASL as a self-regulatory body are contained in the Institute of Chartered Accountants of Sierra Leone (ICASL) Act no. 5 of 1988. The ICASL is a member of the International Federation of Accountants (ICAN). The ICASL has a egal right to regulate the private practice of audit as enshrined in The Institute of Chartered Accountants of

Sierra Leone (ICASL) Act, 1988 section 21(1-6). A non-licensed firm or individual cannot legally engage in the practice of auditing leading to the issuance of an external auditors' opinion on the financial statements of any entity in Sierra Leone.

74. Under the AML/CFT law, accountants are obligated to report to the FIU. They are also bound by the rules of their regulatory body as well as international standards. The very nature of the activity of public and chartered accountants in the region provides them with wide possibilities of detecting suspicious transactions in business. However, the legal framework must first be reviewed in order to broaden the scope of AML/CFT to the profession.

Conclusion

75. The real estate sector is one of the most vibrant sectors where DNFBPs have had a strong influence for decades. Across West Africa, significant variations exist in the regulatory regimes governing the real estate sector. The real estate sector has also been a key target for ML across West Africa. However, while countries such as Sierra Leone and the Gambia have very little legal regulations for the sector, the sector appears to be better regulated in Ghana, Nigeria and Senegal.

76. The bar associations and accounting firms exist and are well organized in all the countries in the region. They are involved in assisting or representing clients in the purchase and sale of goods, commercial enterprises or goodwill; handling of money, securities or other assets belonging to the client and performing other financial transactions. Consequently, many regulations have been developed across the countries in West Africa to regulate the activities of accountants and legal professions in economic and financial transactions.

CHAPTER SIX: CHALLENGES ENCOUNTERED IN REGULATING, SUPERVISING AND MONITORING THE OPERATIONS OF DNFBPs

77. Although size and relevance of DNFBPs varies from country to country in West Africa, they operate in similar economic environments. As noted above, West African economies are characterized by large informal sectors where the majority of transactions are conducted in cash with unregulated businesses and semi-formal professionals. At the same time, widespread use of cash means most transactions are not conducted through the formal banking and financial systems. Also, these challenges, coupled with the low capacity of regulatory agencies provide an enabling environment for criminals to conduct illicit transactions without detection. Indeed, many real estate agents, dealers in precious stones and metals, and car dealers operate outside the formal sector regardless of the fact that they conduct large cash transactions. These key challenges and many others encountered are discussed below:

Weak Legal and Institutional Frameworks

78. The effectiveness and efficiency of laws and institutions are largely dependent on their design and scope. Indeed, the fact remains that weak laws and the lack of clarity in the laws largely account for the implementation failure of AML/CFT laws in the region. For instance, in Cote d'Ivoire, although there exist some specific laws regulating the activities of DNFBPs, the legal framework suffers from many deficiencies, including the lack of liability of accountants and chartered accountants in the AML/CFT, the absence of formal obligations regarding the implementation of Recommendations 5, 6, 8-11 to the DNFBPs, the absence of specific obligations relating to procedures vis-à -vis the Politically Exposed Persons (PEPs), no requirement for casinos to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, and the lack of explanatory guidelines for the implementation of Recommendations 5, 6 and 8-11 in relation to DNFBPs. In Nigeria, there are a number of legal instruments for regulating, supervising, and monitoring the operations of Financial Institutions and DNFBP's. The laws and regulations are informed by the FATF recommendation, and other international instruments. However, the rule governing the supervision of the operations of DNFBP's is unclear. The regulator of the DNFBP's is not specifically stated. It simply designated the powers of enforcing the MLPA on the Minister responsible for Commerce. It did not give powers for the establishment of a 'supervisor' or competent regulator for the effective supervision of DNFBP's. Also, there is no provision in the legal framework for the penalizing of DNFBP's for non-compliance with provision of the MLPA.

79. In Ghana, most legislations do not incorporate provisions on the AML/CFT in their laws. The bar association, and the institute of chartered accountants, do not have provisions on the AML/CFT compliance in their laws or charters. In the case of the real estate, a draft bill, which includes AML/CFT provisions is yet to be presented to Parliament for consideration and passage as real agency bill. Regardless of the type of DNFBP, country experts have complained that there is no regulatory guideline for compliance with laws relating to AML/CFT. There is almost no

control of DNFBPs in the real estate industry where many operators have no authorization to transact business.

Low Level of Knowledge about AML/CFT

80. The implementation of the AML/CFT law in the DNFBPs is ineffective to date because the level of knowledge on ML/TF in the sector is very low. For example, non-compliance with Customer Due Diligence (CDD) procedures in the region can be attributed to lack of knowledge. Evidence from the countries shows that, though there were efforts to educate the public on the dangers of money laundering, only a few people operating in the DNFBPs sector know about the AML/CFT law. Even so, most of them not aware of the details of the law.

81. Regulatory authorities responsible for regulating DNFBPs have an inadequate level of understanding of AML/CFT laws and the FATF Recommendations. Many of these authorities have little or no idea of their obligations under these laws. Consequently, the extent to which these authorities reach out to DNFBPs, in terms of guiding them on how to meet their AML/CFT requirements, is very low.

82. In Nigeria, most DNFBPS's are located in areas far away from where SCUML offices are located. Though there are various forms of media sensitization, there is still a wide gap because the outreach has been mainly to organized sectors such as the NBA and NIESV. Other unorganized sectors are not sensitized on the AML/CFT. Simply put, the knowledge on ML/TF in the sector is very low outside capital cities of Abuja, Lagos, Port-Harcourt and Kano.

Lack of Compliance by DNFBPs

83. DNFBPs, such as lawyers and real estate agents have little or no incentive to ensure compliance with AML/CFT laws and regulations when carrying out transactions on behalf of their clients. Ghana, for example, has supervisory bodies such as the Ghana Bar Association (GBA), Institute of Chartered (ICAG), Gaming Commission, Association of Real Estate Developers (GREDA), and Auctioneer Association. However, these bodies lack the power to sanction members for non-compliance. Lawyers often fall on ethical codes, such as the attorney-client privilege, which permits them to keep information about their clients confidential, irrespective of whether such information points to criminality or illegality on the part of their clients. Thus, lawyers cannot divulge confidential information without the consent of their clients. Such confidentiality, however cannot subsist when compelled to do so by order of court or enactment or if the circumstances give rise to a public duty of disclosure or the protection of the legal practitioner's professional integrity. Indeed, most AML/CFT laws in the region provide that no secrecy or confidential provision in any other enactment shall prevent a reporting entity from fulfilling its obligations under the law. In Nigeria, DNFBPs, such as legal practitioners and real estate agents have little or no incentive to ensure compliance with AML/CFT laws and regulations when carrying out transactions on behalf of their clients.

Lack of Mandatory Associations to Coordinate DNFBPs

84. The absence of self-regulatory bodies for certain types of DNFBPs – dealers in precious metals and dealers in precious stones in particular – adds to the challenges encountered in regulating, supervising, and monitoring their operations. This is especially significant in view of the fact that these DNFPs conduct transactions involving large sums of cash and are extremely vulnerable to corruption. In Senegal, the absence of self-regulatory bodies makes it difficult to regulate and supervise the operations of casinos and accountants. In the Gambia, DNFBPs are required to file STRs with the relevant authorities. However, the lack of a specific agency to coordinate compliance and effective supervision has made it very difficult to enforce the law.

Lack of Appropriate IT Infrastructure

85. Information technology software helps to effectively analyze large data quickly. It also helps to bring out variances for further analysis, which may result in the detection and filling of suspicious transactions. In all the countries covered by the study, state and non-state regulatory bodies complained that they do not have appropriate software to coordinate and regulate the activities of DNFBPs. The cost of this infrastructure is high beyond the reach of most small and medium scale institutions.

86. Coupled with cost is the lack of the know-how to operate and manage such softwares. Where similar infrastructures have just been installed, as in the case of Ghana's judiciary system, lack of expertise in the use of the software has meant that these softwares do not operate to the benefit of the institutions. Moreover, there must be a prescribed reporting template for the DNFBPs to report STR, cash transactions, and electronic transactions.

High Cost of Training of Regulatory Agencies

87. Due to the vast number of institutions under the DNFBPs, identifying the relevant persons and offering them training is sometimes cumbersome and problematic. In certain groups like car dealers, travel agencies and real estate companies, it is sometimes difficult to identify the correct umbrella body to train.

88. One major regional challenge is the lack of effective law restricting cash based transactions and, as such, the cash intensive nature of businesses in the DNFBPs sector. This invariably weakens effective enforcement and monitoring of the designated non-financial businesses and professions in member states posing a threat to the economy as well as creating avenues for laundering money or terrorist financing.

Conclusion

89. In summary, weak legal regulatory frameworks, level of knowledge about AML/CFT, lack of appropriate IT systems and expertise to coordinate information about DNFBPs, high cost of training of regulatory agencies, lack of cooperation of actors in the DNFBP sector in reporting ML, and lack of mandated agencies to coordinate activities of DNFBPs are among the key factors that challenge the effective regulation of DNFBPs in West Africa. How these challenges play out in practice is highlighted below in the reported cases related to the role of DNFBPs in ML/TF.

CHAPTER SEVEN: FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

FINDINGS AND CONCLUSIONS

90. Designated Non-Financial Businesses and Professions (DNFBPs) play critical roles in economic and financial transactions in West Africa. The roles played by real estate agents, dealers in precious stones, and dealers in precious stones are of particular importance in the region, not least because of the real estate boom in recent years and the importance of the mining sectors in the region. Lawyers are of great importance also, especially because of the role they play in real estate transactions in the region, including those involving large amounts of money.

91. Notwithstanding their importance, however, regulation, supervision, and monitoring of the operations of DNFBPs in the region remain poor. This is because existing frameworks – legal, institutional, operation, and among others – for regulating and supervising DNFBPs are either weak or poorly defined. Relevant provisions in AML/CFT laws and regulations are either incomplete or imprecise. In Senegal, for instance, provisions in the AML/CFT law do not clearly define AML/CFT obligations for notaries and there is no law that prohibits secret payments or payments for transaction that do not pass through the notary's accounts. Also, existing laws related to particular types of DNFBPs are either obsolete or do not contain provisions that imposes AML/CFT obligations on them. The legal cases reported from the countries in West Africa clearly show that the likely use of DNFBPs for criminal activities and money laundering and terrorist financing cannot be underestimated.

92. Additionally, many competent authorities responsible for regulating, supervising, and monitoring the operations of DNFBPs have little or no knowledge of existing AML/CFT laws and regulations, thereby significantly impeding their ability ensure DNFBPs do not serve as conduits for illicit transactions. Likewise, many – in some cases, the majority of – DNFBPs are either unaware of or do not understand their AML/CFT obligations.

93. It is evident from the study that DNFBPs are extremely vulnerable to money laundering and terrorist financing. They are very likely to be exploited by criminals, terrorist financiers and their appendages. They could collaborate with people to launder criminal proceeds or move and conceal terrorist funds.

94. The lack of knowledge among stakeholders in West Africa in the fight against TF/ML, weak enforcement of the relevant laws by the various supervisory authorities, lack of cooperation from the DNFBPs, and the sub-region’s predominantly cash-based economy makes it difficult to trace criminals who are involved in ML/TF. This notwithstanding, the following recommendations are made

95. There important role of DNFBPs in regulating ML/TF cannot be over emphasized. The findings clearly show that the crime of money laundering and terrorist financing is a global fight

and not confined to the borders of West African countries. The governance regime in the West African sub-region in relation to ML/TF is quite liberal. The institutions put in place are inadequate and lacks effective enforcement. The economic and socio-cultural settings of countries in West Africa are conducive for DNFBPs to be used in ML/TF.

96. There is no doubt that DNFBPs have created a number of jobs for citizens in West Africa and they contribute to the GDP of the countries. Because most DNFBPs operate mainly in the informal sector, they have become easy channels for money launderers and terrorist financiers to use in a number of economic and financial transactions which in no small way contributes to the economies of West African countries.

RECOMMENDATIONS.

97. **Review and Enforcement of the Legal Framework Governing ML/TF***:* The review of the legal and regulatory environment for DNFBPs revealed that the legal framework governing most of the activities and professions within the DNFBP sector exhibits weaknesses. It is imperative that the loopholes identified for each country be addressed. Moreover, the application of penalties for infringements of the provisions of the law relating to AML/CFT would be crucial. Furthermore, therefore should be clear guidelines to law enforcement agencies relating to the legal regulation and enforcement of ML/TF. In a region where poverty and socio-cultural norms have combined to place a high premium on wealth accumulation, AML/CFT laws should not just criminalize ML/TF, but also empower investigative agencies the authority to trace, seize and ultimately confiscate criminally derived assets. This is likely to make citizens become more circumspect about the sources of wealth.

98. **Strengthen the Institutional Capacity of Regulatory and Supervisory Agencies**: Weaknesses in legal regimes is compounded by the fact that a large section of DNFBPs, particularly those operating in the informal sector, lack effective and efficient supervisory institutions. There is a lack of capacity by the relevant institutions/competent authorities to effectively monitor, detect, investigate and impose sanctions when criminal activities occur. The criminals in money laundering and terrorist financing work with syndicate groups. They resort to more sophisticated methods and where capacity exists, they co-opt security agencies and public officials. For this reason, there is the need to strengthen the capacity of the supervisory institutions/competent authorities. A network of regional supervisory bodies is also commendable. The enforcement agencies and other competent authorities must be sensitized on their roles and responsibilities in the fight against ML/TF.

99. **Step up ML/TF Sensitization***:* There is the need for increased sensitization of DNFBPs so as to increase their knowledge and understanding of not only ML/TF, but also their AML/CFT obligations.

100. **Cooperation from DNFBPs Entities***:* It is easier to monitor the activities of an organization than individuals. Some entities in the DNFBP sector are well organized and structured while others are not. The operations in the DNFBPs sector therefore need concerted efforts to organize them under umbrella bodies. The AML/CFT laws can then be incorporated into their code of ethics and conducts. The cooperation of the leadership can be sought and

mobilized for sensitization and training programs. This will invariably increase their level of knowledge about AML/CFT as well as the implementation of the appropriate laws.

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