AN ASSESSMENT OF THE CHALLENGES OF INVESTIGATING, PROSECUTING AND ADJUDICATING MONEY LAUNDERING AND TERRORIST FINANCING CASES IN WEST AFRICA
AN ASSESSMENT OF THE CHALLENGES OF INVESTIGATING, PROSECUTING AND ADJUDICATING MONEY LAUNDERING AND TERRORIST FINANCING CASES IN WEST AFRICA
The Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) is a specialized institution of ECOWAS and a FATF-style regional body that promotes policies to protect member states against money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction. The FATF Recommendations are recognized as the global standards for Anti-Money Laundering, Anti-Terrorist Financing and Anti-Proliferation (AML/CFT).

For more information on GIABA, you are invited to visit the website: www.giaba.org

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1. Guinea was not visited due to the COVID 19 pandemic
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<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACGSCRA</td>
<td>Central Agency for the Management of Seizures, Confiscations and Asset Recovery</td>
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<tr>
<td>AML</td>
<td>Anti-Money Laundering</td>
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<tr>
<td>AML/CFT</td>
<td>Anti-Money Laundering, Anti-Terrorist Financing and Anti-Proliferation</td>
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<td>ANAGRAS</td>
<td>National Agency for the Management and Recovery of Seized Assets</td>
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<td>ANR</td>
<td>National Intelligence Authority</td>
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<tr>
<td>ARIN-WA</td>
<td>Asset Recovery Inter-Agency Network for West Africa</td>
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<td>ARMU</td>
<td>Asset Recovery and Management Unit</td>
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<td>ML</td>
<td>Money Laundering</td>
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<tr>
<td>BCEAO</td>
<td>Central Bank of West African States</td>
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<td>BEF</td>
<td>Economic and Financial Brigade</td>
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<td>BNI</td>
<td>Bearer Negotiable Instruments</td>
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<td>BSIAT</td>
<td>Special Anti-Terrorist Brigade</td>
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<td>CDD</td>
<td>Customer Due Diligence</td>
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<td>CFT</td>
<td>Counter-Financing Terrorism</td>
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<td>CID</td>
<td>Criminal Investigation Department</td>
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<td>CRIET</td>
<td>Court for Repression of Economic Crimes and Terrorism</td>
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<td>Armed Forces Intelligence Agency</td>
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<td>DLEA</td>
<td>Drug Law Enforcement Agency</td>
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<td>DNFBPs</td>
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<td>STRs</td>
<td>Suspicious Transaction Reports</td>
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<tr>
<td>DPC</td>
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<td>DPEF</td>
<td>Economic and Financial Police Directorate</td>
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<td>DPP</td>
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<td>DST</td>
<td>Direction de la Surveillance du Territoire</td>
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<td>National Intelligence Authority</td>
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<td>EFCC</td>
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<td>EITI</td>
<td>Extractive Industries Transparency Initiative</td>
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<td>EU</td>
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<td>FATF</td>
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<td>Financial Intelligence Centre</td>
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<td>Financial Intelligence unit</td>
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<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>TF</td>
<td>Terrorism Financing</td>
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<td>GIABA</td>
<td>Inter-Governmental Action Group against Money Laundering in West Africa</td>
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<td>Ghana Revenue Authority</td>
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<td>Good Governance Agency</td>
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<td>HAPLUCIA</td>
<td>Anti-Corruption High-Level Agency</td>
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<td>IMF</td>
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<td>International Criminal Police Organization</td>
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<td>Law Enforcement Authorities</td>
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<td>ML/TFP</td>
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<td>NACOC</td>
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<td>National Risk Assessment</td>
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<td>Central Office for the Protection of Minors</td>
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<tr>
<td>OCRTIDB</td>
<td>Central Office for the Repression of Illicit Trafficking and Money Laundering</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>OHADA</td>
<td>Organization for the Harmonization of Business Law in Africa</td>
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<td>OPJ</td>
<td>Criminal Investigation Officers</td>
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<tr>
<td>ORDEF</td>
<td>Office for the Repression of Economic and Financial Crimes</td>
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<tr>
<td>ORIC</td>
<td>Office of Criminal Intelligence and Investigation</td>
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<tr>
<td>OTR</td>
<td>Togolese Revenue Authority</td>
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<td>PEPs</td>
<td>Politically Exposed Persons</td>
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<tr>
<td>PJ</td>
<td>Criminal Investigation Dept.Judicial</td>
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<td>PJS</td>
<td>Specialized Judicial Division</td>
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<td>PRG</td>
<td>Policy Review Group</td>
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<tr>
<td>RECENT-UEMOA</td>
<td>UEMOA-FIU's UEMOA</td>
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<td>RINLCAO</td>
<td>Network of National Anti-Corruption Institutions in West Africa</td>
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<td>RTMG</td>
<td>Risks, Trends and Methods Group</td>
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<td>STRs</td>
<td>Suspicious Transaction Reports</td>
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<tr>
<td>TFS</td>
<td>Targeted Financial Sanctions</td>
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<td>TRACFIN</td>
<td>Intelligence processing and action against clandestine financial circuits</td>
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<td>UCT</td>
<td>Transnational Crime Unit</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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<td>UNSC</td>
<td>United Nations Security Council</td>
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<td>UNSCR 1373</td>
<td>United Nations Security Council Resolution 1373</td>
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<td>WACI</td>
<td>West Africa Coast Initiative</td>
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EXECUTIVE SUMMARY

West African countries are at different levels in their implementation of AML/CFT international standards. Countries in the region are generally characterized as low or medium capacity countries. The porous nature of borders, the dominance of the informal economy, predominance of cash, the low rate of banking in the economy and financial inclusion and the low level of digitalization of government services generally complicate the effective and efficient handling of ML/TF and security issues. Notwithstanding this context, countries are making significant efforts to ensure that their territories do not become safe havens for criminals. For example, all GIABA member States have, in one way or another, a national development strategy that places security issues at the center of their priorities.

In terms of AML/CFT, many actions have been taken by GIABA member states, ranging from legislative reforms to the establishment of new institutions, including capacity building for key players. Despite these important efforts, which are often part of a global dynamic of good governance, traditional security and a cleaner business climate, the States' enforcement measures are still not very dissuasive, especially with regard to investigations, prosecutions and adjudication of AML/CFT offences.

One of the main objectives of this assessment was to examine existing AML/CFT law enforcement practices in GIABA member countries and to identify gaps in relation to international standards and best practices. The study was initiated in a context where the overall adequacy of the countries’ criminal justice response to AML/CFT was considered as unsatisfactory, despite the increasingly complex criminal environment in the region. The study provided an understanding of the efforts made by countries, identified strategic challenges to effective law enforcement, and key areas of work to build AML/CFT systems based on dynamic and deterrent law enforcement.

On the Policy front

- Overall, the national AML/CFT frameworks reveal that they are not designed to consider the respective risk profiles of each country.
- The intrusion of politics into the sphere of law generally tends to complicate the possibilities of conducting ML/TF investigations and prosecutions with integrity and independence, especially when it comes to cases involving politically exposed persons (PEPs);
- Most actors in the criminal justice chain have an inadequate understanding of national AML/CFT laws and related legal concepts and categories;
- Inter-agency collaboration is not organized or legislated and, in some circumstances, data privacy laws impede the ability of law enforcement to obtain information needed for investigations;
- The autonomy of FIUs in the UEMOA space is not necessarily effective or sufficiently guaranteed by the provisions contained in the 2015 Community Directive on AML/CFT;
- The criminal policy of the member States does not generally include clear and specific mechanisms for international cooperation and especially mutual legal assistance in AML/CFT matters. The same is true for the recovery of criminal assets. Confiscation of proceeds of crime has not been established nor defined as a priority area by countries.
- In all the countries visited, policy orientations related to AML/CFT tend to focus only on the predicate crimes to the exclusion of financial investigations and asset recovery.
At the Operational level

- In all the 14 ECOWAS countries visited (Benin, Burkina Faso, Cabo Verde, Côte d’Ivoire, The Gambia, Ghana, Guinea Bissau, Mali, Liberia, Niger, Nigeria, Senegal, Sierra Leone, Togo), there appears to be a very low number of judgments for cases relating to ML or TF, i.e., a total number of hundred and seven (107) cases identified at the time of the field visits. This performance does not consistently reflect the ML/TF threats assessed in these countries. In addition, where court decisions are made for confiscation, the lack of enforcement documents is an impediment to the recovery of confiscated assets.

- International cooperation is recognized as an essential tool in AML/CFT matters, not only in the investigation of criminal networks but also and especially in the tracing and recovery of assets that are often spread over several countries. Judicial practitioners and experts in the countries under review are not familiar with the range of existing international cooperation tools and instruments. In this case, the Egmont Group, RECEN, UEMOA, Interpol, the Accra Initiative, etc. are not used to their full potential. Countries generally resort to diplomatic channels, which are generally inexpensive, but time-consuming and inefficient.

- The complexity of the modus operandi used by criminals to launder funds or to finance terrorist activities is exacerbated by the precariousness of civil status, addressing systems, cadastral matrices, and land transfer registers, etc. This situation complicates, in a context where AML/CFT laws are already resisting the control of actors, the collection of evidence in the judicial phase. Technology is also not sufficiently modern or leveraged for the search for and acquisition of evidence of AML/CFT offences. In addition, the lack of relevant case law in UEMOA jurisdictions does not facilitate the adjudication of the first PO or TF cases that judges face. Importantly, when investigating terrorism and/or terrorist financing cases, prosecutors are not involved at an early stage in determining what intelligence might be admissible as evidence, or what steps should be taken to make it admissible.

- The actors in the criminal justice system, in particular the judges and prosecutors, are generally attracted by the traditional and classical approach to criminal investigations and therefore do not fully implement the scope of legal powers and possibilities offered by the AML/CFT legal framework. For example, in some countries, the majority of judges mistakenly believe that the predicate offence should be accurately characterized in all its constituent elements before it is possible to prosecute the ML offence. However, the failure to prosecute the predicate offence has no impact on the prosecution of the consequential offence. This requirement to distinguish between the laundering offence and the original offence is all the less understood by national actors as it creates confusion between self-laundering and autonomous laundering. The category of objective factual circumstances is also neither adequately understood nor properly exploited with a view to deducing the intentional elements when searching for evidence.

- Judges, prosecutors, and other legal experts also face technical challenges in translating financial intelligence into judicial language, which affects the performance of prosecution and trial of ML and FT cases in most countries. Most FT cases involve a predicate terrorism case, which shows a low level of understanding of the FT concept by the relevant judicial authorities.

- Criminal justice actors are not well informed about the methods used by criminals to launder money from organized crime or to finance terrorism. There is also a lack of capacity and expertise to deploy special investigative techniques and conduct proactive financial and asset investigations. Similarly, investigators do not always have the culture of targeting ML and therefore do not systematically undertake parallel financial investigations. In terms of criminal asset recovery, there are almost no formal frameworks adapted to international AML/CFT standards.

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2. Guinea could not be visited due to the Covid 19 pandemic
3. Bénin (2), Burkina Faso (03), Cabo Verde (05), Côte d’Ivoire (07), Ghana (11), Mali (01), Niger (01), Nigeria (67), Sénégal (05), Sierra Leone (02), Togo (03)
• Most member states lack the resources and capacity to set up a centralized online criminal database accessible to all relevant authorities. The rivalry among AML/CFT Agencies or lack of cooperation among agencies adds to this critical resource gap and increases the lethargy of the entire criminal justice chain.

General recommendations

The effectiveness of the fight against money laundering and terrorist financing (AML/CFT) depends essentially on the dynamism of the criminal chain. For an adequate judicial treatment of ML and TF offences, this study reveals the interest of:

(i) Strengthen AML/CFT legal and policy frameworks, as well as their understanding and ownership by actors in the criminal justice chain in member States,
(ii) Establish platforms for the exchange and sharing of information among criminal justice actors on lessons learnt from recorded prosecution, adjudication, and conviction of ML/TF cases.
(iii) Promote the adoption by the member States of coherent criminal policies adapted to AML/CFT requirements.
(iv) Strengthen the specialized judicial processing of ML/TF offences through the creation of specialized judicial bodies and the provision of substantial resources.
(v) Streamline technical assistance and ensure to coordinate resources allocation to AML/CFT activities, based on the country’s priorities.
(vi) And strengthen the technical and operational capacities of the actors of the penal chain in specific areas.

These recommendations can be carried out otherwise through targeted actions implementable in the short, medium and long terms, including:

Specific recommendations

**Recommendation 1**
Provide resources and capacity to entities involved in the investigation, prosecution, and adjudication of AML/CFT cases, particularly the Financial Information Units, criminal investigation officers, judges and magistrates, bailiffs, anti-corruption agencies, agencies in charge of asset recovery and State judicial agencies.

**Implementation Strategies**
- Initiate a policy of specialization of AML/CFT agencies backed by measures for the retention and promotion of skills related to investigations, prosecutions and adjudication of ML/TF cases.
- Adopt legislations designed to systematize collaboration between intelligence agencies and AML/CFT stakeholders, and among criminal chain actors.
- Increase the national budgets of agencies responsible for investigating, prosecuting, and adjudicating money laundering and terrorist financing cases. These budgets should fund training, acquisition of appropriate equipment, and promote the use of modern technology in investigations, prosecutions, and adjudications.

**Recommendation 2**
Strengthen the capacity of all entities involved in the investigation, prosecution and adjudication of money laundering and terrorist financing cases

**Implementation Strategies**
- Training must be provided to the agents who will specialize in the fight against money laundering and terrorist financing.
- Specialized training programs must be set up for police and gendarmerie investigators, prosecutors, judges, and other court officials on themes related to AML/CFT and the seizure, freezing and confiscation of proceeds of crime.
- Specific modules on AML/CFT should be integrated into the basic training curricula. The resource persons teaching these modules could be drawn from GIABA, FIUs and from the global network of experts with practical experience of these issues.

**Recommendation 3**
Improve the understanding of the public in general and particularly judges and magistrates of national AML/CFT laws, particularly with respect to the judicial handling of evidence in ML or TF cases.

**Implementation Strategies**
- Ensure the public availability of AML/CFT legal texts, and their ready access for the public at large in order to support civic education efforts on these phenomena.
- Ensure the broad dissemination of laws to entities such as the gendarmerie, police, law enforcement, customs, immigration and drug, etc.
- Produce operational manuals on AML/CFT.

**Recommendations 4**
Promote systematically and as a matter of urgency inter-agency cooperation in the fight against money laundering and terrorist financing.

**Implementation Strategies**
- Review national laws that conflict with AML/CFT laws, such as client privilege or confidentiality laws.
- Revise AML/TF laws, especially the sections that create unproductive boundaries between agencies and hamper judicial actions.

Provide more tools to the FIUs so as to improve the quality of financial intelligence they generate and to facilitate their utilization by the prosecution authorities.

**Recommendation 5**
Strengthen the political commitment to fight against corruption in the criminal sector, money laundering and terrorist financing.

**Implementation Strategies**
- Assess risk factors associated with corruption in the criminal justice area and take measures to alleviate these risks.
- Establish a system for checking morality or controlling integrity, to guide the recruitment of staff directly or indirectly involved in AML/CFT, in addition to normal swearing-in procedures.
- Define and implement administrative and criminal sanctions against investigation and prosecution authorities guilty of default with their obligations of impartiality, integrity and transparency in AML/CFT matters.

**Recommendation 6**
Prioritize the understanding by the actors of the criminal chain of ML/TF methods and techniques in the sub region

**Implementation Strategies**
- GIABA should organize regular training workshops for FIUs and investigation and prosecution authorities on the findings of the various typology studies conducted.
- National governments of countries that have not experienced terrorist activity on their territory (e.g., Senegal, Cabo Verde, etc.) should collaborate with high-risk jurisdictions to share experiences and information in order to adopt risk-based border surveillance mechanisms.

**Recommendation 7**
Strengthen the mechanism for regional cooperation in the investigation, prosecution and adjudication of money laundering and terrorist financing cases.

**Implementation Strategies**
- All West African governments should invest more resources in legal cooperation in the fight against money laundering and terrorist financing. This should include joint investments in technology acquisition and use in joint border patrols. In the same vein, they should expressly provide for cooperation in cases of confiscation without prior conviction, at least in situations where the presumed criminals are dead, on the run or not found.
- FIUs should strengthen the exchange of information with their counterparts on predicate offences that could lead to investigations of money laundering and terrorist financing offences.
- GIABA, in partnership with other international organizations, should support the member States in establishing operational frameworks for effective cooperation and mutual legal assistance in ML/TF investigations.
- Set up a Regional AML/CFT Forum of Judges and Prosecutors in partnership with the UNODC and GIZ. Indeed, given the complexity of AML/CFT issues, particularly with regard to evidence for this category of specific offences, the importance of jurisprudence as a source of best practices in legal matters, and the crucial need to have a shared understanding within the ECOWAS space of the laws and the legal options they provide on AML/CFT in terms of investigations and prosecution, one such Regional Forum would allow the specialized magistrates to benefit from real time continuous training and experience sharing.
Recommandation 8
Enhance the specialized judicial handling of ML/TF offences.

Implementation strategies
- At strategic level:
  • Establish specialized divisions or jurisdictions in charge of investigation and adjudication of ML and TF cases, equipped with qualified staff and adequate resources.
  • Avoid conflicts in powers between jurisdictions and specialized investigative and common law structures by defining precise criteria.

- At operational level:
  • Provide continuous training for all qualified staff assigned to such specialized structures.
  • Establish mechanisms for cooperation and collaboration between investigative structures and specialized jurisdictions, intelligence agencies and FIUs.
  • Strengthen the processes and mechanisms of using intelligence in the criminal justice system relating to both ML and TF cases.
CHAPTER 1:
General introduction

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2. SITUATIONAL ANALYSIS 14
3. RESEARCH QUESTIONS 15
4. METHODOLOGY AND LIMITATIONS 15
CHAPTER 1:

GENERAL INTRODUCTION

1. Background

1. The ECOWAS economic integration process is making good progress. The process is moving forward at a slow pace, but it is moving forward, nonetheless. Since its inception in 1975, the organization has made significant gains in consolidating the foundations of free movement of people, goods, services and capital, a common external tariff, and the launch of a single currency, which was postponed to a later date due to the economic impact of COVID-19. In the political and security areas, which were added to the organization’s competencies late in the day, ECOWAS’s record remains mixed due to the increasing complexity of the criminogenic environment and the emergence of new forms of crime in the economic space.

2. Conscious of its mandate to be at the forefront of the fight against transnational financial crime in West Africa in support of the Community’s integrative mission, and in accordance with its mandate, GIABA is intensely pursuing its efforts to promote the implementation of international AML/CFT standards by its member states. In this regard also, the supervision of national AML/CFT policies by the GIABA Secretariat through various training, evaluation and monitoring mechanisms is slowly bearing fruit. For this reason, States are still slow, at various levels, to raise their level of political commitment in supporting the institutions in charge of preventing and repressing money laundering and terrorist financing offences.

2. Situational Analysis

3. In terms of AML/CFT at the regional level, the challenges are still multiple and multifaceted. Twenty (20) years after the creation of GIABA, more than fifteen (15) years after the adoption of the first legal instruments to fight against money laundering by the countries, almost fifteen (15) years after the birth of the first Financial Intelligence Units and the first round of mutual evaluations, it must be noted that the results obtained are still far below expectations.

4. However, the reports of the first round of assessments reveal that states have signed and ratified the relevant international conventions whose offences fuel money laundering and terrorist financing. To date, the countries have investigative structures and anti-corruption agencies capable of conducting investigations and handing down judicial decisions in all types of cases. For its part, the GIABA Secretariat has produced and published some twenty research studies and typologies on various manifestations of AML/CFT to expand the pool of AML/CFT expertise in the sub-region. Several training sessions have also been provided to AML/CFT actors and stakeholders, with the support of technical partners such as the FATF, UNODC, IMF, World Bank, etc. Despite all these efforts, it is still very rare to see cases of prosecutions and convictions for ML or cases of assets freezing for TF in the region, while the prevalence of profit-making offences and terrorist activities is becoming more prevalent every year.

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4. The first WAEMU directive was adopted in 2002 (Directive No. 07/2002 of September 19, 2002), and Senegal’s FIU was created in 2005.
5. Seizures of large quantities of drugs are increasing in several countries in the region, but the revenues from trafficking and the wealth of the traffickers are not questioned. Corruption cases involving huge sums of money occupy the media but are not reflected in the statistics provided by countries when reporting on progress in the fight against ML and TF.

6. The existence of legislation, operational entities, and sometimes even specialized jurisdictions does not yet seem sufficient enough to substantially improve the quality of criminal law enforcement in the area of ML/TF. This is demonstrated by the Mutual Evaluation Reports (MERs) adopted in the second round (Senegal, Cabo Verde, Ghana, Sierra Leone, Burkina Faso and Mali).

7. In view of this, and as GIABA reaches its twenty (20) years, the Secretariat deemed it appropriate to commission, in November 2019, a Project Team with the support of two (02) Francophone and Anglophone Expert-Consultants, to assess the challenges that hinder the dynamism and performance of the penal chain of its Member States in terms of investigations, prosecutions and adjudication of ML and TF acts. This study, which actually started in January 2020 and was initially scheduled to be completed in June 2020, was severely disrupted by the COVID-19 pandemic. The Republic of Guinea could not, as a matter of fact, be visited due to the above-mentioned reasons.

3. Research Questions

8. The overall strength of a chain depends on the strength of its weakest link. The AML/CFT chain includes the links of detection, investigation, prosecution, adjudication, conviction, forfeiture, and asset recovery. The goal of this process is to successfully deprive offenders of the proceeds of their criminal activities in the case of ML, and to successfully dry up the sources of terrorist financing in the case of TF. Thus, there would be no AML/CFT or without conviction or asset freezing. An important part of this study is the comprehensive analysis of AML/CFT law enforcement to identify bottlenecks, i.e., factors that impede the quality of law enforcement. In this regard, a number of questions were central to the research, namely:
   - What is the basis for effective ML/TF enforcement?
   - Do member states have an AML/CFT regime that allows for effectively investigating, prosecuting, and adjudicating ML and TF cases?
   - Are there any strategic or operational gaps in the legal articulation of the AML/CFT?
   - Does the criminal policy of the Member States promote the adequate judicial treatment of ML and TF offences?
   - What are the factors that impede the dynamism of the AML/CFT criminal chain?
   - To what extent can the quality of ML/TF enforcement be improved in light of the progress already made?

9. The main question guiding this evaluation is the relevance and effectiveness of the policies and strategies implemented to achieve the main objective of depriving offenders of the enjoyment of illicit proceeds generated by their wrongful activities. This will involve assessing the extent to which the actors in the law enforcement chain have sufficient capacity and resources to work effectively to prosecute and thus punish perpetrators of ML/TF offences and to seize, freeze, and confiscate the proceeds of the predicate offences.

10. To answer these questions, the project team deployed a number of traditional research techniques to collect appropriate data.

4. Methodology and Limitations

11. This evaluation is based on a literature review including the MREs adopted in the first and second round of mutual evaluations of GIABA member states, best practices contained in the guidelines published by the FATF, national legislation in force, GIABA typology reports, FIU activity reports, some UNODC publications on the investigation, prosecution and adjudication of ML/TF cases, as well as the legislation of some European countries from a comparative law perspective.

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6. Mali has a Judicial Pole specializing in ML/TF cases, Benin has set up a Court of Repression of Economic Offences and Terrorism (CRIET)
12. In addition, field visits were conducted in 14 ECOWAS countries. During these visits, interviews were held, and detailed questionnaires were also administered to all stakeholders. These questionnaires aimed to assess the adequacy of the implementation of the various AML/CFT legal frameworks based on stakeholders’ perceptions and experiences. This approach enabled the project team to meet with the widest possible range of structures involved in the criminal treatment of AML/CFT offences, including FIUs, Judicial Police Officers (Police and Gendarmerie), central anti-corruption and anti-drug trafficking agencies, customs and tax services, judges and magistrates of the courts of first instance, Courts of Appeal and Cassation, Specialized Judicial Divisions, etc.

13. However, in terms of limitations, it should be noted that the project team received very little feedback from the administered questionnaire, certainly due to the reduced workload caused by the COVID-19 pandemic. The discussion in this report is therefore based primarily on the group and individual interviews conducted during the field visits. It must be said that the qualitative nature of this exercise, the time allotted and the means used make it difficult to envisage other methods or use of other types of information.
CHAPTER 2:
A brief review of the AML/CFT situation in West Africa

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The fight against money laundering and terrorist financing is a set of efforts that rely on the establishment of legal and institutional frameworks capable of supporting the effective implementation of acceptable international standards. The purpose of this chapter is to provide an overview of the overall situation in the region, and to highlight its achievements and limitations. The idea is to summarize the general conditions under which ML/TF investigations are conducted for law enforcement purposes in the countries.

I - OVERVIEW OF MEMBER STATES’ LEGAL AND INSTITUTIONAL FRAMEWORKS FOR AML/CFT

The FATF 40 Recommendations and the Assessment Methodology are the normative foundation par excellence for AML/CFT around the world. This international reference defines a complete and coherent framework of measures to be implemented by countries to combat money laundering and terrorist financing, as well as the financing of the proliferation of weapons of mass destruction. Given the specific legislative and jurisdictional characteristics of each country, the measures to counter these security threats cannot be identical.

In West Africa, while UEMOA is a community agreement with a uniform AML/CFT policy, the other ECOWAS member states implement distinct AML/CFT policies. To lay the strategic and structural foundations for security in the economic area, ECOWAS not only established GIABA in 1999, but also adopted several regional instruments on the fight against terrorism, organized crime, illicit drug trafficking, illicit trafficking in small arms and light weapons, corruption, trafficking in persons, etc. These initiatives have enabled member states to take action to combat these problems. These initiatives have enabled member states to find a favorable political context for AML/CFT.

1. In UEMOA Member States

Directive No. 02/2015CM/UEMOA of July 2, 2015 on AML/CFT sets out the criminal policy of member states both in terms of prevention and repression. This directive results from the merger of Directive No. 07/2002 of September 19, 2002, and Directive No. 04/2007/CM of July 4, 2007 on AML and TF respectively. UEMOA also adopted another directive, No. 09/2008 of March 28, 2008, amending Decision 09/2007 of April 6, 2007, on the list of persons, entities, or bodies subject to the freezing of funds and other financial resources in the context of the fight against terrorism.

In addition, a framework agreement on security and intelligence cooperation was concluded in April 2018 between UEMOA member states. Through this framework agreement, the ministers in charge of security in the UEMOA space agreed to combine their efforts and capacities in several areas to prevent and/or fight against any security threats that could compromise the stability of institutions and social peace.
19. To make these various commitments and directives operational, the Union has also issued several instructions, including Instruction No. 010-09-2017 of September 25, 2017, under the aegis of BCEAO, setting the threshold for reporting cash transactions to FIU, and Instruction No. 007-09-2017 of September 25, 2017, on the modalities for the application by financial institutions of the Uniform Law on the Fight against Money Laundering and Terrorist Financing. These directives have been successively internalized into the legal order of all UEMOA Member States. Some member states have had to adopt additional legislative and regulatory texts to strengthen their legal and institutional frameworks for combating ML/TF and/or related offences.

20. As national hubs for the implementation by countries of the guidelines prescribed by this legal framework, the FIUs continue to strengthen their operational capacities and to mobilize stakeholders, particularly the private sector, to better take into account their respective AML/CFT obligations. All eight (8) UEMOA Member States have conducted their national AML/CFT risk assessments and are actively updating their national AML/CFT strategies based on the identified risks and implementing action plans to mitigate them.

21. The revitalization of national AML/CFT coordination committees in UEMOA countries is continuing, with the conduct of national risk assessments for some countries and mutual evaluations for others. It should be noted that these committees play an essential role in the effective and efficient involvement of all AML/CFT actors and stakeholders, in particular at the highest level.

2. At the level of other ECOWAS Member States

22. Other ECOWAS member states, in particular Cabo Verde, Gambia, Ghana, Guinea, Liberia, Nigeria and Sierra Leone, have also undertaken legislative and institutional reforms to demonstrate their respective political commitments to effectively combat money laundering and terrorist financing.

23. In Cabo Verde, the AML/CFT legal framework is generally sound and in line with international standards. The country underwent the second round peer review of its national framework in 2017. In this report, Cabo Verde is rated compliant or largely compliant with 24 out of 40 Recommendations. Also, the country was not rated non-compliant with any of the other 16 FATF Recommendations. This reflects the effective existence of a legal mechanism capable of overseeing the investigation and prosecution of ML and TF cases.

24. In The Gambia, the AML/CFT framework has strengthened considerably over the years. The various monitoring reports from the GIABA Secretariat in 2018 identified significant progress, including in the following areas: supervision of financial institutions, national coordination and cooperation, international cooperation, ML prosecution, capacity building for FIU effectiveness, and training of partner institutions. The mutual evaluation of the Gambia’s AML/CFT framework, as part of the second round, is scheduled to take place in August/September 2021.

25. Ghana came under the microscope of its mutual evaluation in September 2016. The country was not rated non-compliant with any of the 40 FATF Recommendations. Better yet, 15 Recommendations were found to be fully addressed by Ghana as a result of this evaluation. This reflects the existence of a minimum legal basis for the effective prosecution of ML/FT offences. Following the adoption of its EMN, the country has taken further legislative and regulatory measures to strengthen its legal and criminal arsenal.

26. In Guinea, the legal bases for AML/CFT exist and allow for the operationality of the FIU, the fight against corruption, drug seizures, money laundering prosecutions, international cooperation, and asset freezing. Law L/2006/010/AN on the fight against money laundering, and Law L/010/AN/2014 of May 31, 2014 on the Fight Against the Financing of Terrorism in Guinea set specific AML/CFT requirements in Guinea. In January 2012, the criminal code and the code of criminal procedures also had to be revised to take into account the need to provide an adequate criminal response to the repression of economic and financial crimes. In addition to FIU, the Office for the Repression of Economic and Financial Crimes (ORDEF) and the General Secretariat in charge of special services, the fight against drugs, organized crime and organized crime are key agencies in the AML/CFT efforts in the country.
27. In Liberia, the minimum legal basis for initiating ML/TF law enforcement actions exists. The ML/TF Preventive Measures and Proceeds of Crime Act of 2018 has strengthened the country’s AML/CFT framework. Among other things, this law aims to provide criminal investigation and prosecution agencies with the powers necessary to identify and locate assets that may be forfeited or may be proceeds of crime, require reporting entities to provide timely customer and transaction records and information to the national competent authorities, and establish a Fund to receive forfeited assets. Liberia has also enacted the Targeted Financial Sanctions against Terrorists Regulations and the Financial Intelligence Unit Act to facilitate the effective implementation of UNSC resolutions 1267 and 1373, respectively, and to meet the requirements for membership in the Egmont Group, respectively.

28. Nigeria was the first country in West Africa to have an AML law in 1995. Since then, the Nigerian government has passed several pieces of legislation in support of AML/CFT. These laws are reviewed at regular intervals to improve their effectiveness. In this context, a series of laws have been passed by the Senate on proceeds of crime, mutual legal assistance, the Nigerian Financial Intelligence Unit and whistleblower protection. The Federal Attorney General, who is also the Minister of Justice, has established an Asset Recovery and Management Unit (ARMU) housed in the Federal Ministry of Justice, pending the enactment of the Proceeds of Crime Act. The Economic and Financial Crimes Commission (EFCC), established in 2004, is also playing a central role in the country’s efforts.

29. As a result of its mutual evaluation, the report of which was adopted by the Plenary in December 2020, Sierra Leone’s legal and institutional framework was found to be generally adequate for the investigation and prosecution of money laundering and for the implementation of targeted financial sanctions in the fight against terrorist financing. The country also has a legal framework on provisional measures and confiscation that allows criminal investigation and prosecution agencies to deprive criminals of the proceeds and instrumentalities of crime.

30. In total, all ECOWAS member states have to date various legal and institutional frameworks capable of effectively repressing money laundering and terrorist financing offences. It is therefore legitimate to ask why the implementation of these legal bases still does not seem to produce any effects. In the following section, we will try to review the main results achieved so far by the implementation of the various AML/CFT legal and regulatory frameworks in West Africa in order to assess their major achievements and limitations.

II - PERFORMANCE OF MEMBER STATES IN AML/CFT

1. Foundations of an Effective AML/CFT System

31. AML/CFT achievements and limitations can be analyzed in terms of the effectiveness of the implementation of the legal and institutional framework. In an effective AML/CFT framework, AML/CFT risks are understood and, where appropriate, actions are coordinated at the national level to mitigate them. Because of the highly complex and transnational nature of this dual phenomenon, international cooperation must be intelligent and dynamic to facilitate the search for evidence and the neutralization of criminals and their assets.

32. Therefore, the reporting and detection of ML and TF must be regulated and protected, and reporting entities must be made aware, trained, equipped, and monitored to report suspicious transactions to the FIU. Supervisors should adequately monitor and regulate FIs and DNFBPs to ensure that they are fulfilling their AML/CFT obligations in a manner commensurate with their risks.

33. With an effective AML/CFT system, it is not possible to use legal entities and arrangements for ML or TF purposes. This assumes that transparency on beneficial ownership is sufficiently guaranteed to allow competent authorities to access the information without hindrance.

34. In addition, financial intelligence is at the heart of the AML/CFT. This makes the FIU a hub in all countries. Another feature of an effective system is the ability of competent authorities to collect a wide range of financial intelligence and other financial information in the course of AML/CFT investigations.
35. Most importantly, offenders must be denied the enjoyment of their crimes. Similarly, individual terrorists and terrorist organizations must not be able to access resources to carry out their criminal activities. This is only possible if investigations, prosecutions and convictions are carried out systematically and if effective, proportionate and dissuasive sanctions are applied. Effective AML/CFT law enforcement also has important implications for AML/CFT prevention.

36. Finally, since the purpose of the AML/CFT is to deprive criminals of the assets generated by their criminal activities, confiscation is therefore an essential link in the law enforcement chain. In an effective system, assets are recovered through criminal, civil or administrative proceedings. Countries must ensure the consistent management of seized or confiscated assets, repatriate confiscated assets or share them with other countries, with the ultimate goal of making offences unprofitable and discouraging the commission of crime.

37. In light of the efficiency requirements outlined above, what are the achievements of ECOWAS member states? What prevents states from becoming unattractive or unattractive destinations for criminals?

2. Achievements and Limitations of AML/CFT in West Africa

38. The diligent implementation of the various AML/CFT legislative and regulatory frameworks in GIABA member states has produced a number of encouraging results, to say the least. Although the member states evaluated in the second round of mutual evaluations have a low overall level of effectiveness, no doubt due to the importance of contextual factors, efforts have been made by all countries, as demonstrated by the various monitoring reports of the GIABA Secretariat.

39. On should recall that at the time of this study, six (06) countries in the region have been evaluated in the second round of mutual evaluations. These countries are Ghana, Senegal, Cabo Verde, Burkina Faso, Mali and Sierra Leone. Overall, the results show that Ghana has the best performing AML/CFT system, with acceptable and encouraging performance in international cooperation, understanding and mitigating AML/CFT risks, monitoring and supervision, financial intelligence and AML investigations. It is followed by Burkina Faso, whose performance is considered acceptable in the areas of international cooperation and financial intelligence.

40. In terms of ML/TFP risks, the region has seen success in a number of countries that have completed their NRA (12 out of 17). Of the five GIABA member states that have not yet completed their NRAs, four (4) are currently underway, of which 80% are at an advanced stage of completion and all are on track to complete by 2021 and early 2022. Overall, the uptake of the FATF requirements on risk identification, assessment and understanding tends to remain average in most countries, including deficits in the effective implementation of the risk-based approach by reporting entities.

41. In terms of AML/CFT, the private sector is the first line of defense in the detection and prevention of AML/CFT activities, notably through the implementation of customer due diligence measures, document retention, and suspicious transaction reports (STRs). It also aspires to more than 40% of the FATF Recommendations. Performance in this area depends on whether it is at the level of financial institutions or designated non-financial businesses and professions.

42. Much has been achieved at the level of financial institutions (FIs), whose control by supervisory authorities tends to be more assiduous and effective. It must be said that this environment used to benefit from a prudential supervision system that already exerted a certain pressure on the financial system actors through classic inspection mechanisms before the advent of AML/CFT. This context has fostered the serious application of AML/CFT requirements, with a growing tendency for entities to set up divisions specifically dedicated to AML/CFT compliance or to revise the remit of compliance or internal control officers to incorporate new AML/CFT-oriented obligations.

43. However, in almost all countries, it appears that the regulation of the national financial environment, particularly the banking, microfinance and insurance sectors, is still very vague and not very focused on the specificities of AML/CFT. This hinders the effectiveness of the overall detection system and weakens the compliance of reporting entities. Moreover, none of the six countries evaluated in the second round obtained
a satisfactory rating for preventive measures. In addition to these limitations, there are practical difficulties with AML/CFT in the context of an informal economy, especially in the absence of financial inclusion.

44. With regard to designated non-financial businesses and professions (DNFBPs), results are not very encouraging in the region. Knowledge and understanding of the AML/CFT framework by these actors is generally lacking. The legal profession in particular still resists AML/CFT compliance in several countries due to lack of awareness. In addition to the low level of awareness and regulation in certain sectors such as real estate, hotels, tourism, casinos, etc., one of the factors hindering AML/CFT efforts at the DNFBPs level remains the predominant use of cash.

45. In terms of financial intelligence processing in the ECOWAS region, it should be noted, in light of the various country reports submitted by countries between 2015 and 2020, that the FIUs as a whole are functioning quite well, supported by the Egmont Group and its information exchange principles. To date, 10 of the 15 FIUs in the ECOWAS region are members of the Egmont Group. Two (02) others, namely Gambia and Sierra Leone, are at an advanced stage of the Egmont Group membership process, with the technical guidance of two regional mentors, Ghana and Nigeria. Liberia and Guinea Bissau are currently being supported by Nigeria and Portugal, respectively, to formally apply for membership in the group.

46. In addition, an important component of FIU effectiveness, under the revised FATF Methodology (2013), is the diversity of financial intelligence sources. Indeed, there is a wide range of financial intelligence sources needed to achieve an effective system. The FATF issued Operational Guidance in 2012 that sets out possible sources:

- **Criminal Records and Intelligence:** This is information held by law enforcement agencies related to the subject and/or criminal activity. Information such as prior arrests, indictments, convictions, but also statements of connections to known criminals. Criminal information is usually gathered from surveillance, informants, interviews/interrogations and data searches, or perhaps simply collected «on the street» by individual police officers.

- **AML/CFT disclosures:** In addition to suspicious transaction reports (STRs), this disclosure incorporates other information required by national law, such as cash transaction reports, wire transfer reports, and other threshold-based reports or disclosures.

- **Financial information:** This is information about the financial affairs of entities of interest that helps to understand their nature, resources, structure, and capabilities, and also helps to forecast future activities and locate assets. This practice goes beyond the information contained in AML/CFT disclosures and is normally maintained by private third parties. This includes bank accounts, financial accounts, other records of personal or business financial transactions, and information collected as part of customer due diligence (CDD) compliance.

- **Classified Information:** Information collected and maintained for national security purposes that includes information on terrorist financing. Access to this data is generally restricted by law or regulation and are accessed by specific groups of people.
47. With respect to the capacity of FIUs in GIABA member states to make use of the widest possible range of intelligence sources, a recurring observation in the region is that staffing levels are generally not sufficient to handle the volume of information available. In addition, there is a lack of adequate information technology to support the analysis function. Similarly, law enforcement agencies rarely make use of other intelligence sources, in some cases because of a lack of resources. Although the FIU functions well in most countries in the region and produces quality financial intelligence, many jurisdictions still lack the skill set required to use financial intelligence appropriately. This situation is compounded by the lack of inter-agency cooperation, as FIUs do not always have focal points in stakeholder institutions and agencies.

48. In terms of the fight against terrorist financing, the performance of member states in implementing acceptable international standards is very unsatisfactory. In 2019, GIABA conducted an assessment of the capacity of the most affected countries (Niger-Nigeria-Burkina Faso-Mali and Côte d’Ivoire) to combat terrorist financing. The study found that most terrorist financing investigations are handled as part of general terrorism investigations, demonstrating the absence of a specific targeted financial sanctions (TFS) regime. While the risks of terrorism or terrorist financing are high in some countries, the volume of frozen assets remains paradoxically very low.

49. Yet, the real meaning of the TF is to successfully prevent terrorists, terrorist organizations and terrorist financiers from collecting, moving and using funds. Financial sanctions regimes, as prescribed by the FATF requirements, have both a freeze and a prohibition component. Both elements must be in place for the system to be effective. Asset freezing obligations apply to all natural and legal persons in the country, not just FIs and DNFBPs. This includes other types of entities such as NPOs as well as individuals. The Secretariat’s peer reviews and other various monitoring reports have noted that most countries do not have a designation mechanism under UNSCR 1373 or a system for communicating with the private sector to ensure that the private sector is informed of the requirements and of new designations or de-listings, and also to require the private sector to report to the relevant authorities any frozen assets or actions taken pursuant to the prohibition requirements, including attempted transactions.

50. In terms of law enforcement, the record of achievement is not good in the region. With the exception of Ghana, all the countries evaluated so far in the second round have scored low on immediate outcomes 7 and 9 on ML/TF investigations and prosecutions. It is clear that the intrusion of politics into the justice system undermines AML/CFT efforts in the ECOWAS region. The poor performance of the states is also certainly due to a set of factors that this study aims to elucidate in the next chapter.
CHAPTER 3:
Practical challenges in ML/TF enforcement

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CHAPTER 3:

PRACTICAL CHALLENGES IN ML/TF ENFORCEMENT

51. «The Palermo Convention does not explicitly formulate a general criminal strategy against organized crime, but a general analysis of its provisions clearly identifies the theory behind it: in addition to the concrete manifestations of criminal conduct, criminal justice action should be directed at the criminal organization as such and all efforts should be directed at dismantling the entities constituting that organization. This theory should therefore be strategically reflected in all aspects of criminal law and criminal justice systems. The criminal policy approach based on the search for and dismantling of organized criminal entities places the Palermo Convention at its core, with the mechanisms contained in the Vienna, Merida and New York Conventions perfectly complementing the designed strategic criminal approach. It appears that the ratification of all of these conventions is not reflected in the criminal justice systems and strategies of the countries in the region.

52. An analysis of the national systems for the repression of ML/TF offences has made it possible to take stock of the legal and operational framework in which the actors in charge of this repressive aspect operate. These observations are of a general nature (I) when they are shared by at least most of the jurisdictions in question and of a specific nature (II) when they relate to the individual situation of these jurisdictions.

53. These findings reveal major limitations both in general and in the specific countries covered by this evaluation.

I - GENERAL FINDINGS

54. In West Africa, countries are at different levels of implementation of international standards in the fight against money laundering and terrorist financing. The porous nature of borders, the predominance of cash, the low rate of banking in the economy and the low level of digitalization of administrative services generally complicate the effective and efficient handling of global security issues. Notwithstanding this context, countries are making significant efforts to ensure that their territories do not become safe havens for criminals. As proof, all UEMOA countries have, in one way or another, a national development strategy that places security issues at the center of current priorities.

55. Thus, many actions have been taken by GIABA member states, ranging from legislative reforms to the establishment of new institutions, including capacity building for key players. Despite these remarkable efforts, which are often part of a global dynamic of good governance, traditional security and a cleaner business climate, the States’ enforcement measures still do not have much of a deterrent effect, especially as regards the investigation, prosecution and trial of ML/TF offences. The study revealed several challenges to effective law enforcement at both the policy and operational levels:

At the policy front

- Overall, national AML/CFT frameworks are not designed to take into account the respective risk profiles of each country;
- The intrusion of politics into the sphere of law enforcement generally complicates the possibilities of conducting ML/TF investigations and prosecutions with integrity and independence, especially when it comes to cases involving politically exposed persons (PEPs);
- Most actors in the criminal justice system have an inadequate understanding of national AML/CFT laws and related issues;
- Inter-agency collaboration is not organized or legislated and, in some circumstances, data privacy laws impede the ability of law enforcement to obtain information needed for investigations;
- The autonomy of FIUs in the UEMOA space is not necessarily effective or sufficiently guaranteed by the provisions contained in the 2015 Community Directive on AML/CFT;
- The policy of member States does not generally include clear and specific mechanisms for the effective implementation of international cooperation and especially mutual legal assistance in AML/CFT matters. The same is true for the recovery of criminal assets. Confiscation of proceeds of crime has not been established or defined as a priority area by countries.

At the operational level

Judicial statistics

56. In all the 14 countries visited there appears to be a very low number of judgments for cases relating to ML or TF, i.e. a total of 107 cases identified at the time of the field visits. This performance does not consistently reflect the available statistics on the predicate offences detected in these countries. In addition, where court decisions are made for confiscation, the lack of enforcement documents is an impediment to assets recovery.

International cooperation

57. International cooperation is recognized as an essential tool in AML/CFT matters, not only in the investigation of criminal networks but also and especially in the tracing and recovery of assets that are often spread over several countries. Judicial practitioners and experts in the countries under review are not familiar with the range of existing international cooperation tools and instruments. In this case, cooperation mechanisms such as the Egmont Group, RECEN, UEMOA, Interpol, the Accra Agreement, etc. are not adequately utilized to their full potential. Countries generally resort to diplomatic channels, which are generally inexpensive, but time-consuming and inefficient.

Reliability of identification infrastructures

58. The complexity of the modus operandi used by criminals to launder funds of criminal origin or to finance terrorist activities is exacerbated by the precariousness of civil status, addressing systems, cadastral matrices and land transfer registers, etc. This situation complicates, in a context where AML/CFT laws are already resisting the control of actors, the collection of evidence in the judicial phase. Technology is also not sufficiently modern or leveraged for the search for and acquisition of evidence of AML/CFT offences. In addition, the lack of relevant case law in UEMOA jurisdictions does not facilitate the adjudication of the first ML or TF cases that judges face. Importantly, when investigating terrorism and/or terrorist financing cases, prosecutors are not involved at an early stage in determining what intelligence might be admissible as evidence, or what steps should be taken to make it so.

Interpretation of texts

59. The actors in the criminal justice system (judges and prosecutors) are generally attracted by the traditional and classical approach to criminal investigations and therefore do not fully implement the scope of legal powers and possibilities offered by the AML/CFT legal framework. For example, in some countries, many judges mis-

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14. Benin (02), Burkina Faso (03), Cabo Verde (05), Côte d’Ivoire (07), Ghana (11), Mali (01), Niger (01), Nigeria (67), Senegal (05), Sierra Leone (02), Togo (03).
takenly believe that the predicate offence should be accurately characterized in all its constituent elements before it is possible to prosecute the ML offence. However, the failure to prosecute the predicate offence has no impact on the prosecution of ML. This requirement to distinguish between the laundering offence and the predicate offence is all the less understood by national actors as it creates confusion between self-laundering and autonomous laundering. The category of objective factual circumstances is also not understood or properly exploited.

Weak articulation of procedures

60. Judges, prosecutors, and other legal experts face technical challenges in translating financial intelligence into judicial language, which affects the performance of prosecution and trial of ML/TF cases in most countries. Most TF cases involve an predicate terrorism case, which shows a low level of understanding of the TF concept by the relevant judicial authorities.

Training and sensitization of actors in charge of law enforcement

61. Criminal justice actors are not well informed about the methods used by criminals to launder money from organized crime or to finance terrorism. There is also a lack of capacity and expertise to deploy special investigative techniques and conduct proactive financial and asset investigations. Similarly, investigators do not always target ML and therefore do not systematically undertake parallel financial investigations. In terms of criminal asset recovery, there are almost no formal frameworks adapted to international AML/CFT standards.

Non-existent databases and poor interdepartmental cooperation

62. Most member states lack the resources and capacity to set up a centralized online criminal database, which is accessible to all relevant authorities. Inter-agency rivalry or lack of cooperation between agencies adds to this critical resource gap and increases the lethargy of the entire criminal justice system.

II - SPECIFIC FINDINGS

BENIN

63. Contextually, Benin completed its first ML/TF National Risk Assessment (NRA) in April 2018 as a prelude to its mutual evaluation. The NRA establishes a combined assessment of the country’s level of vulnerabilities to ML/TF threats. It analyzes the inherent risks and mitigation measures related to financial products, as well as the activities of selected DNFBPs and NPOs. This exercise enabled the country to assess Benin’s level of ML risk as high, while that of TF as medium. The NRA report identifies corruption, breach of trust, tax evasion, cybercrime, smuggling of goods (drugs, cigarettes, wildlife, and forest products), trafficking in persons (including organ theft), and drug trafficking as the main predicate offences in the country. In addition, the country underwent its onsite visit from February 25 to March 13, 2019, as part of the second round of GIABA mutual evaluations. In this context, Benin’s AML/CFT system revealed, at the time of the field visit a certain dynamism at all levels of the value chain.

64. This study found that the Brigade Economique et Financière (BEF) and the Cour de Répression des Infractions Economiques et du Terrorisme (CRIET) are the major responses of the country to the challenges of ML/TF. There was no criminal asset recovery agency in Benin at the time of the field visits. Despite the important reform actions undertaken by the country as part of its 2018-2025 National Development Plan, the performance of the judicial system still struggles to reflect the country’s ML/TF risk profile. Not only are the predicate offences not systematically investigated by other investigative and prosecutorial authorities in parallel to ML/TF, but the critical shortage of resources and expertise in financial investigations limits the BEF’s ability to fully exercise its powers.

65. Despite the creation of a specialized court to fight economic and financial crimes (CRIET), prosecutions and convictions remain rare and the two (02) cases known to date only concern self-laundering. Insufficient staffing within these two organizations, high mobility of skills and the absence of specific policy guidelines also complicate the challenges of TF investigations.
and prosecutions. It is important to note that the reports produced by FIU were generally considered of little use to the judicial because of inaccuracies in the identification of defendants, inaccurate addresses, and the unsuitability of their content for judicial language. Conflicts between the law and custom were also raised by actors in the judicial system, who felt that the implementation of the ML/TF law sometimes tends to deconstruct certain forms of customary beliefs and practices in the country, leading to reprisals on the one hand and reluctance on the other.

66. In terms of confiscation, the Judicial Agent of the Treasury is confronted with the unavailability of enforcement documents, the precariousness of civil status, addressing, and the land registry, and also with latent attribution conflicts between the AJT and the emerging asset recovery structure. Three (03) enforcement procedures following judgments rendered by the CRIET were underway at the time of the field visits. Only one case of recovery involving an estimated amount of 3 billion CFA francs required recourse to international cooperation (Senegal, Mali, Benin, France). AJT has more than fifty (50) personnel.

67. Part of the major challenges to the investigation, prosecution and judgment of cases of ML/TF, we also noted the weak collaboration between the BEF and other investigative bodies such as the Judicial Police, the Brigade des Mœurs, the Central Office for the Protection of Minors (OCPM), which have several cases of trafficking, including Internet-based pimping and human trafficking. In 2019 alone, 750 procedures were transmitted to the Public Prosecutor’s Office, some of which were the subject of detention warrants. Added to this are the difficulties of systematically accessing the data of individuals.

68. In terms of context, Burkina Faso’s AML/CFT system was the subject of a peer review with an on-site visit from July 23 to August 8, 2018. In May 2019, the report of the evaluation was adopted by the Plenary Meeting of the GIABA Technical Commission in Conakry, Republic of Guinea. No national AML/CFT strategy had yet been put in place at the time of the field visit to capitalize on the lessons learned from its mutual evaluation. Previously, Burkina Faso had conducted its national AML/CFT risk assessment in 2018.

69. Although the country appeared to have a coherent and comprehensive legislative framework to combat transnational financial crime, the threat of ML at the time of the field visit was still very real because of the increasing trend in cases of terrorism, embezzlement of public funds, illicit drug trafficking, wildlife crime, tax and customs fraud, illicit currency trafficking, illicit enrichment and gold smuggling. According to the NRA report, the proceeds of these crimes are generally laundered through cross-border money movements, real estate transactions, banking transactions, microfinance institutions, and DNFBPs.

70. The work of this research study in Burkina Faso has shown that in criminal matters, the countering of ML/TF still faces important strategic and operational challenges. Only three cases of OC (dismissed by the investigating judge) have been tried in Burkina Faso. No convictions have been handed down to date. Statistics provided by the country indicate that out of a total of thirty (39) cases of investigations on PO, about 50% of these cases concern predicate offences of a cross-border nature. Notwithstanding the measures taken by the country to restore judicial dynamism and guarantee the effectiveness of the repression mechanism, through a penal orientation note from the Ministry of Justice and the establishment of two specialized judicial divisions, as well as the creation of a Special Anti-Terrorist Brigade (BSIAT), difficulties remain in the investigation, prosecution and trial of ML/TF cases.

71. At the operational level, judicial police officers operate on the basis of requisitions, which limits their ability to systematically access certain types of information. Insufficient staffing in specialized investigation units, the lack of adequate investigative tools, and the scarcity of expertise in the area of financial investigations exacerbate the lethargy of criminal policy. Although the BSIAT also has a mandate to combat TF, it remains essentially an OPJ with a profile of traditional investigators with no expertise in financial investigations. However, although it generally operates on the basis of referrals from the National Intelligence Authority (ANR), the BSIAT has been involved in approximately 130 terrorism-related investigations since its creation, of which more than 60 have been referred to the courts and more than 10 are ongoing as at the time of the field visit.
72. With regard to AML, not only are joint investigations (police, gendarmerie, customs) rarely conducted (once a year on average), but no formal mechanism for collaboration and information exchange with the FIU existed at the time of the study. Only four of the 14 officers (including three commissioners) who make up the Economic and Financial Police have been trained in AML/CFT. The lack of tools and equipment for monitoring offenders makes some investigations more difficult. However, there is a platform for sharing information among police officers in the subregion, which facilitates international cooperation.

73. Parallel investigations by ML/TF are not systematic in Burkina Faso. Collaboration between the FIU and the country’s various investigation units is not governed or supported by cooperation agreements. The culture of information sharing and the tendency to report suspicious activities related to ML/TF within the tax investigation units are almost non-existent. Extractions from the Customs General Directorate database are made on a quarterly basis and transmitted to the Tax General Directorate for tax adjustment purposes. Customs-tax collaboration does not go beyond this framework of exchanges. Moreover, the initiatives of mixed brigades (customs-taxes) have not been successful. In addition, asset investigations face problems of nominee status, personal data, reliability of civil status, rudimentary filing, corruption, lack of adequate resources and expertise, poor inter-agency cooperation, and most importantly, the intrusion of politically exposed persons into judicial work. The reluctance to cooperate with other agencies is said to harbor corrupt tendencies. While the Directorate General of Customs carries out the detection and investigation of customs fraud as part of its traditional remit, little attention is paid to the ML component. At the time of the field visit, inter-service personnel rotations had emptied the customs administration of its AML/CFT resources.

74. In terms of prosecution and trial, the country’s penal response has consisted of specialization of judges and magistrates. Since preliminary investigations, economic and financial cases (from the FIU or the OPJ) are assigned by the Public Prosecutor’s Office to the competent jurisdictions (either to specialized judicial divisions or to other jurisdictions) according to the criterion of great complexity. The staff of the specialized division of the Ouaga 1 High Court (TGI) includes two (2) investigating judges, three (3) deputy judges and three (3) sitting judges. The judges are assisted by ten (10) police and gendarmerie agents for investigative purposes. In view of the volume of ML cases handled, the number of staff at the ECOFIN Unit is considered insufficient.

75. As for the financing of terrorism, the anti-terrorist unit, which is in charge, has national jurisdiction and is composed of only three (03) magistrates. At the time of the field visit, ten (10) cases on the financing of terrorism were underway, all of which were associated with terrorism cases. The inexperience of judges in trying TF cases, in a context where terrorists in Burkina Faso do not use traditional financial channels, is a major challenge. In addition, the renewal of more than half of the members of the two specialized divisions has created a new need for training in investigative techniques. In short, the specialization of magistrates to improve the efficiency of the AML/CFT criminal system is not accompanied by a real support policy in terms of deploying adequate staff, reorganizing working conditions, prioritizing the activities of these units, building capacity and retaining or even developing expertise in the field.

76. In terms of international cooperation, Burkina Faso has requested mutual legal assistance from a number of countries, including Saudi Arabia, Canada and Switzerland. Requests have also been received from Switzerland. More than 30 requests have been processed between 2014 and 2020. This momentum is nevertheless limited by protracted processing times and insufficient use of the full range of existing international cooperation instruments (formal and informal). In terms of asset recovery, problems still remain around the institutional anchoring of ANAGRAS, the nascent structure responsible for managing confiscated assets.

77. Contextually, predicate offences such as drug trafficking, human trafficking, economic and financial crimes are prevalent in the country but the capacity to counter them is weak for the reasons discussed below. In situations where perpetrators of these crimes have been apprehended, sanctions such as incineration of property (drugs), confiscation of property,
83. Côte d’Ivoire conducted its 2019 national risk assessment. This exercise provided a comprehensive understanding of the country’s ML/TF risks and its ability to manage them effectively. It also identified the predicate offences that are most prevalent in the country. These include drug trafficking, corruption, fraud, tax evasion, commodity smuggling, human trafficking, theft, counterfeiting, piracy, and other crimes. The country’s AML/CFT system will be subject to a peer review in 2021 or early 2022 by the IMF. The field visit to Côte d’Ivoire as part of this study was therefore timely to interrogate the performance of the AML/CFT investigative and prosecutorial agencies and identify bottlenecks. Several actors in the criminal justice system were met, including the judicial police units (police, gendarmerie, customs), the first and second degree courts and the judicial agency of the Treasury.

84. The study revealed that actors are at different levels of understanding and mastery of the tools of criminal law enforcement in ML/TF. While the OPJs are becoming more open to the subject, judges and magistrates as a whole share the need to have their capacities strengthened on special investigative techniques and the search for evidence in relation to ML/TF. For example, the Economic and Financial Police Directorate (DPEF), which is the organization in charge of financial and economic investigations, has seen a reorganization of its services to optimize its human resources and track down a maximum number of cases involving the interests of the State, including those related to ML. Each of the 14 sections that make up the investigation divisions (economic and financial) within the DPEF is led by a judicial police officer. In addition to the classic methods of referral (either transmitted, flagrante delicto, judicial delegation or denunciations), the DPEF also initiates proactive investigations, especially during periods of high referral. This dynamism has enabled them to detect a number of cases of computer attacks and organized fraud, including the agro-business case that led to the seizure of 28 billion CFA francs. In 2016, 1304 cases were processed, of which 982 were forwarded to the Public Prosecutor’s Office and 76 to the detached services. Even if parallel investigations of ML are not yet systematized, the culture
is gradually taking hold. Despite this, several challenges have been reported, including the lack of criminal databases, the use of nominees, the pressure of police custody, the low rate of banking, and the inadequate management of seized or recovered assets.

85. In addition, and at the level of other investigative structures such as the DGD, DGI, UCT, DPC and HABG, the detection of predicate ML offences (customs fraud, tax fraud, organized crime, etc.) is not accompanied by asset investigations in order to target potentially illicitly acquired assets. This is due to the lack of human resources, adequate equipment and specialized training. To some extent, the remit of these existing institutions is not sufficiently adapted to the specific AML/CFT context.

86. In the fight against terrorism and its financing, the Territorial Surveillance Department (DST), which has specialized in intelligence and border security since its establishment in 1997, dismantles jihadist networks and arrests suspected individuals with the support of France and the United States. Since 2012, the fight against terrorism has focused on terrorist groups. To date, no cases have been prosecuted and the financing of terrorism has been limited by a total lack of collaboration between the DST and the FIU. Among the sources of information (open and closed), we noted the use of informants, environmental surveys, surveillance based on the targeting of individuals, the deciphering of preaching speeches, alerts from the religious cell within the DST, and activity reports from NGOs. Notwithstanding the dynamism of this important institution, the capacity of agents remains weak and ill-suited to the fight against terrorist financing. The low level of collaboration between the DST, FIU, and the judicial authorities with regard to information sharing undoubtedly hinders the possibility of detecting TF cases in Côte d’Ivoire. Apart from the list of suspects it receives from either France or the United States, the DST was not aware of the UN sanctions lists.

87. On the judicial side, the relevant authorities do prosecute for ML/TF. The vast majority of cases prosecuted and adjudicated, between 2018 and 2020, come from reports forwarded by the DPEF and the Criminal Police. A total of 85 ML cases were prosecuted over the same period and 07 decisions were rendered in 2019 alone. In addition, and during preliminary investigations, the category of objective factual circumstances is used to deduce the intentional element constituting the ML/TF offence. Cases of self-referral to the judge in matters of ML/TF are rare (no cases of ML in flagrante delicto) and the high number of files at the Public Prosecutor’s Office coming from the FIU compared to the low rate of judgment of ML/TF cases raises questions.

88. Even if judges are becoming more and more inclined to target ML/TF in parallel with the prosecution of predicate offences or terrorism, the lack of specialization of judges and the high mobility of skills from one department to another tend to undermine these important gains. ML cases involving cybercrime generally pose the challenges of identifying defendants and tracking the proceeds of their criminal activities. The technical capabilities of judges to decipher and even forensicate financial intelligence is a major challenge. Still on the subject of challenges, the practices of international letters rogatory are considered slow, at a time when the lack of inter-agency collaboration, especially between the judicial and those subject to the law, is mentioned with acuity by several stakeholders.

89. In terms of TF, the establishment of a special anti-terrorist unit with 03 investigation offices and 02 clerks per office, is a major step forward in the fight against terrorism in Côte d’Ivoire. The unit has its own premises. However, the number of staff is considered insufficient, as is the capacity of the judges to deal with TF cases. The DST reportedly collaborates with the judicial authorities, but there is no formal framework defining the terms of this collaboration.

90. All stakeholders expressed concern that money laundering and terrorist financing are not adequately addressed by existing laws in The Gambia. They therefore called for the laws to be updated to properly address this twin phenomena. Among the factors that hinder the investigation and prosecution of ML/TF, the following were noted.

- Investigating and closing cases takes time, and criminals are so organized and connected that they make good use of delays in the legal process to get out of trouble.
- The Gambia is more of a transit route for criminals. Most of them use the seaport, it is always difficult to track them, even when they use Gambians as cover, they are not arrested to face justice, nor do they jump bail in the process.
Some criminals operate fake companies; they register the company and operate it with funds from illicit sources. They make it look like the registered company is providing the money.

Inadequate communication between the FIU and other stakeholders sometimes affects effectiveness. This is most pronounced when an agency’s focal person does not report adequately or is removed and replaced after receiving a series of trainings.

Insufficient resources, in terms of office equipment and staff training are some of the challenges.

Another obstacle is the bypassing of banking services by some people involved in money laundering. They do not conduct banking transactions; some of them deal in expensive used cars, while others engage in real estate, among other things, to hide illegally acquired funds.

In terms of investigation, the Gambia Police, in collaboration with the Attorney General’s Office, is responsible for investigating most cases of money laundering and terrorist financing. The Gambian police are aware of their responsibility and are eager to fulfill it. However, limited resources hamper their effectiveness and make it difficult for them to combat money laundering and terrorist financing.

In addition, inter-agency collaboration at the national level is so weak in AML/CFT matters that FIUs, police, State Investigation Services (SIS), DLEA, and prosecutors work in a piecemeal and isolated fashion on potentially complex AML/CFT issues. In addition, there is political intrusion into criminal cases, including undue interference by politically exposed persons.

On the criminal side, the ministry of justice has young, dynamic solicitors and prosecutors who are more willing to cooperate. The mobility of their staff, however, hinders the momentum of the justice system in dealing with ML/TF cases. The system should allow prosecutors to stay on long enough, instead of people leaving right after training. In addition, the courts do not demonstrate sufficient competence in handling ML cases.

At the level of international cooperation, advanced countries such as the United States and Canada cooperate little or not at all, probably because they consider the funds involved too insignificant to invest their energy.

95. The Anti-Money Laundering Act of 2008 (Act 749) and its amendments provide an adequate framework for the investigation and prosecution of money laundering in Ghana. A number of relevant authorities investigate money laundering offences, including the Ghana Police Service, the Economic and Organized Crime Office (EOCO), the National Bureau of Investigation, which is accredited to investigate matters of high national interest, and the Narcotics Control Commission (NACOC), which is responsible for monitoring drug offences. Other agencies such as the Ghana Revenue Authority (GRA) refer money laundering cases to any agency depending on the nature of the offence. However, the EOCO is specifically designated by the Economic and Organized Crime Office Act 2010 to handle cases involving economic and financial crimes, including money laundering and terrorist financing.  

96. Authorities have indicated that the money laundering investigation is integrated with the predicate offence investigation. Cases already handled include self-laundering, independent ML offences, foreign prosecutions, and third-party laundering. However, most ML convictions have been obtained in cases where an predicate offence was tried along with the ML offence. In addition, the identification and investigation of third-party laundering and foreign prosecutions is limited.

97. A number of ML cases stem from police investigations of predicate offences. The FIU has produced several intelligence reports since its inception in 2010. Authorities have indicated that the 761 intelligence reports disseminated to LEAs by the FIU have been used in the investigation of ML and 47 predicate offences. In a few cases, money laundering investigations were also initiated based on media reports. The Ghana Revenue Authority (GRA) also refers cases to the Economic and Organized Crime Office (EOCO) for investigation. Between 2012 and August 2016, the GRA reported 64 cases of potential money laundering to EOCO. Customs normally refers suspected ML cases to the police for investigation even if Customs currency reporting reports were not used to identify ML activity. EPSAs, including the Ghana Police Service and EOCO, do not have comprehensive statistics on investigated ML cases. However, investigations, prosecutions, and convictions of ML/TF cases in the country are affected by the following factors:
Challenges

- There are no specific charges for money laundering, only for the predicate offences. Thus, when the main cases fail, the money laundering cases also fail.
- Use of Interlocutory injunctions: Lawyers are constantly seeking injunctions to prevent a speedy trial, thereby obstructing justice. An interlocutory injunction is a court order to compel a person to do or not do something pending final judgment. The effect of an injunction varies greatly and can be very far-reaching.
- Prosecutors are not trained in money laundering cases, making it difficult to bring offenders to justice.
- Time limit: The law states that the courts cannot prevent people from accessing their property for more than twelve (12) months. Courts are therefore obliged to freeze the accounts of "suspects" and dismiss cases if prosecutors are unable to bring charges, perhaps because of incomplete investigations.
- Manipulation of the justice system: The accused use their purchasing power to manipulate and corrupt the justice system. There is a case where five defendants absconded and the document used to secure their bail was stolen.
- Insufficient prosecutors: Poor conditions of service have not encouraged lawyers to opt for public sector employment; as a result, the few prosecutors available are unable to handle the growing number of cases in a timely manner.
- Political interference by higher authorities: Although not very common, one case was cited in which the speaker of parliament wrote to the court stating that he would attend court proceedings in a financial crime case involving a member of parliament.

Office of the National Security Coordinator

- Corruption: Drug lords manipulate agencies by paying them bribes. Some agency officials are on the drug lords’ payroll. Being compromised, the agencies are unable to present a credible and effective effort that will lead to a conviction and confiscation of the proceeds of crime.
- Difficulty in gathering irrefutable evidence: Investigators have difficulty tracing the transactions and ownership of assets of the accused. As a result, without credible evidence, prosecutors are forced to charge defendants in court. Investigators are many years behind the antics and methods used by criminals.
- Inadequate record-keeping: The shift from paper to computers has allowed interested parties to manipulate data and even conveniently delete it, leaving no trace to track money laundering cases.
- Outdated legal framework: In Ghana, some of the anti-money laundering laws are outdated. The FATF keeps revising its recommendations, but Ghana’s laws remain static and do not reflect the new ingenuities and inventions of offenders to evade justice in the country.
- Delay in adjudication and administration of justice: From investigation to adjudication takes a long time and the law does not allow accounts to be frozen for more than 12 months, so after 12 months of no charges, assets are released to the accused. The right to appeal to the Supreme Court takes an infinite amount of time, with lawyers using delaying tactics through injunctions to drag the case out endlessly until it loses its salt.
- Inadequate mutual legal assistance support: Ghana provides mutual legal assistance to countries like Germany, the United States of America, Italy, to name a few, but when Ghana requests information from these countries on money laundering cases, they do not reciprocate. Since the crime involves international transactions and dimension, it becomes difficult to make progress without mutual collaboration between the countries involved, which provides a golden opportunity for the accused to evade the law due to the inability of investigators to obtain evidence.
- Ineffective inter-agency collaboration: Each agency appears to perform its role in parallel with the other. Collaboration between agencies is weak with regard to information sharing between the DNI, CID, BNI, and FIC, which affects the efficiency of investigations and the speed of the process of charging defendants in court.
- Inadequate funding for AML agencies: It was reported that 70% of government revenue is spent on salaries, while only 30% is left to meet other needs. As a result, anti-money laundering agencies are not adequately funded to meet optimal working conditions (staff motivation, logistics and training needs). This has undoubtedly affected the performance of the various agencies in their fight against money laundering.
AN ASSESSMENT OF THE CHALLENGES OF INVESTIGATING, PROSECUTING AND ADJUDICATING MONEY LAUNDERING AND TERRORIST FINANCING CASES IN WEST AFRICA

Criminal Investigation Department (CID)

- Insufficient knowledge of money laundering by judicial police officers: Most officers are more familiar with predicate offences. Money laundering cases are relatively new, making it difficult to link predicate offences to money laundering.

- Poor inter-agency cooperation: This is particularly true of the Financial Intelligence Centre. The CID asks the FIC for reports on the financial transactions of defendants and this takes a long time, sometimes more than 12 months, while the law prohibits depriving defendants of access to their assets for more than 12 months.

- Using a court order: This also takes a long time. This undoubtedly affects the speed of the investigation process to establish watertight evidence for the prosecution of the accused. This has led to the lawyers of the accused taking advantage of the 12-month expiration period to request for the release of their clients’ property or to go to court to file lawsuits for human rights violations.

- Limited Threshold for Prosecution: Any financial crime case worth more than $20,000 equivalent to GC100,000 will have to be referred to the Attorney General’s office for prosecution. In 2019, 20 cases were filed with the Attorney General’s office, but the Attorney General’s office was slow to prosecute the defendants. This explains the low conviction rate.

- Lack of authority over network service providers (Telecommunications): The CID does not have the authority to compel network service providers to disclose information about electronic transactions and the location of their network users, which could facilitate the investigation process. The CID must rely on the FIC and the courts, which are equally slow to provide the requested information. Sometimes the CID has to wait more than 12 months after the request. This scenario significantly affects the collection of evidence for prosecution.

- Bank secrecy: Collecting information from banks is a Herculean task because of the confidentiality law. Banks notify their «valued» customers of the IDA request and most of the time the request is not granted or is ultimately doctored to evade the law. The FIC, which regulates these banks, has reportedly left many stakeholders out of the fight against money laundering because of its very slow response to requests for information critical to improving the investigation. Given the limited time given by the court and the lack of evidence due to the FIC’s delay, courts always request the return of seized assets to the defendant, thus evading the law.

- Difficulty in tracing offenders’ assets: Most of the time, money laundering suspects do not list themselves but third parties as the owners of the assets. This makes it difficult to link them to the crime. For example, they buy exotic cars and other assets that are documented in other people’s names. Therefore, the suspects can hardly be linked to the crime of money laundering.

- Complex Concealment Antics: The innovative ways in which the defendants redirect illicit money to pass as genuine and legal money using mobile banking, bitcoins and other virtual currencies, offshore banking, have made it difficult for law enforcement officers who have no prior technical knowledge to investigate and gather relevant information to prosecute money laundering cases. The layering of funds by these suspects has likely prevented investigators from nailing them for money laundering. Money flows in and out without a trace.

- Lack of mutual assistance from foreign countries: Foreign countries do not provide sufficient support and cooperation in tracing and tracking the financial assets and property of suspects. This creates an enabling environment for money laundering in Ghana.

Department of Drugs and Narcotics

- The department’s jurisdiction is to investigate drug crimes, not money laundering. This means that it only deals with predicate offences.

- It does not have prosecutorial powers.

- It was also noted that there were only two financial courts, so most judges are not aware of money laundering cases, especially the temporary judges.

Economic and Organized Crime Office (EOCO)

- Capacity: EOCO has not been given the authority by the Attorney General to prosecute offenders as an agency. At this time, it does not have a prosecutor seconded from the Attorney General’s office. There used to be one prosecutor who handled over 30 cases a year. The staff was overwhelmed and transferred to another agency due to poor conditions of service given the risk involved in the job. The administrative process with the Attorney General’s office is very time consuming, which affects the prosecution of cases.
Lack of specialized financial courts: There are only two specialized financial courts located in Accra, although Ghana has 16 regions. This has likely led to a backlog of financial crime cases at the Attorney General’s office and, given the slow pace of justice, has affected the conviction rate.

Limited legal time: EOCO has only 14 days to prosecute suspects to freeze accounts for one year. However, due to the complicity of investigators, lawyers, and judges, most of the time the time limit is not met, so accounts are unfrozen under the guise of human rights. Lawyers and criminals are always ahead of the game in finding ways to circumvent the law. They also use delaying tactics such as adjournment requests to ensure that the case goes on and on. Criminals have studied how the law works (14 days), go into hiding and emerge a year later to demand for the respect of their human rights and the release of the proceeds of their crimes.

No synergy between the drafting of laws and their interpretation: When predicate cases fail, the money laundering cases that depend on them also fail.

Cash-based economy: The use of cash for transactions has made it difficult to trace, track, and build evidence against money launderers.

Code of Criminal Procedure: Where the burden of proof is on the state rather than the accused, it is difficult to maintain charges against suspects, given the method and high level of concealment employed by suspects. It is difficult for investigators to gather compelling evidence to apprehend the offenders.

Poor response to requests for mutual legal assistance: Requests for information from foreign countries, if granted, take a long time. As a result, if the investigation is incomplete, it is difficult to bring suspects to justice, let alone obtain convictions. A mutual request for additional information may take up to two years. Criminals have studied the situation, go into hiding, and come out after one year, which is the maximum time their assets can be frozen or they can claim human rights violations in court.

Political interference: Being closely connected to the cream of society, suspects use their wealth and influence to obtain an unjustified release from detention. They fall into the category of politically exposed persons. This undoubtedly affects the possibility of conviction.

Human Rights Commission

Claiming human rights to evade the law: Regarding allegations that offenders are claiming human rights violations to evade the law, was considered a failure of procedure. Investigators and prosecutors do not follow due process. For example, it was noted that investigators and prosecutors are not in contact with each other. There is no synergy between the two on money laundering cases. Each works alone, which results in procedural flaws that suspects take advantage of to evade the law.

Inadequate inter-agency coordination: There is little inter-agency coordination to combat money laundering. Each agency seems to be a lone fighter and there is no regular exchange of information or joint investigations.

Lack of awareness of money laundering: Police investigators lack awareness of money laundering and the law that criminalizes it.

Corruption: There is also complicity of officials. Money is used to manipulate the system to escape the law.

Office of Special Prosecutions

The Special Prosecutor’s Office is established only to try public officials who have abused their office. It does not prosecute money laundering. However, it can seize property and refer the case to the Attorney General’s Office and EOCO for prosecution and money laundering.

The number of prosecutors required is insufficient. Senior prosecutors are shifting their service to the judicial to get better conditions of service. For example, the office is supposed to have three prosecutors, but has only one. As a result, many cases have accumulated without being prosecuted. Obviously, without prosecution, there can be no convictions.

Directorate of Criminal Prosecutions (DPP)

Length of trial: Trial takes a long time. For example, in one case, there may be about 40 lawyers representing different interests, and each lawyer argues for one reason or another to move the case forward. This delays the process and the trial of the case, resulting in a low conviction rate.

Inadequate reference (jurisprudence) materials for judges: The judicial has yet to build up a greater number of case laws from which judges could...
draw. High Court cases are not reported, but Court of Appeal and Supreme Court cases are.
• Difficulty in tracing properties: Currently, the police have no investigative skills to break through the wall of layers of concealment by offenders. This makes it difficult to link offenders to the crime, allowing them to escape the law and convictions.

• Inadequate staffing: The Attorneys General office has a high attrition rate, which led to a backlog of cases in the attorney general’s office and slow prosecutions. Conditions of service were not attractive for recruiting new people or retaining old ones.
• Legal framework: The constitutional provision requires the prosecutor to establish guilt, which is difficult because of the tricks of concealment, rather than allowing offenders to prove the origin of their wealth.

Armed Forces Intelligence Agency (DIA)

98. The agency conducts covert operations to investigate and report its findings to other agencies concerned. It does not prosecute and is not involved in the adjudication process. In its efforts to investigate money laundering cases, it is limited by the following factors:
• Limited institutional capacity: This refers to the technical expertise needed to penetrate the walls of concealment of money laundering.
• Cash-based economy: Money laundering transactions are difficult to trace, track and monitor because they leave no visible records.
• Inadequate inter-agency collaboration: This has affected the speed of investigations, particularly considering the techniques involved in money laundering. The slow response of other agencies, which are relied upon to provide critical information, affects investigative work.
• Disclosing classified information: The agency’s report is given to suspects by other agencies, rendering its efforts useless and raising the question of «who’s watching the watchman.»

National Intelligence Directorate (DNI)

• Lack of familiarity: Money laundering issues are relatively new and law enforcement agencies are just trying to understand the basics.
• Difficulty linking the crime to the suspects: This is the result of the layering and concealment of the proceeds of crime. The schemes used are difficult to unravel and link to suspects.

As a result, the investigation takes longer than necessary.
• Inadequate mutual legal assistance: Mutual legal assistance is not forthcoming. However, information sharing is essential to the investigation. Besides, there is a delay in responding to requests for information.

Ghana Revenue Agency (GRA)

99. GRA deals primarily with tax evasion, not money laundering. However, the agency noted that because it is a cash economy, it difficult to identify people involved in ML. If financial crimes are suspected, it refers them to the EOCO for prosecution. There is a need to strengthen the capacity of officers and collaboration between agencies to facilitate the discharge of their responsibilities.

GUINEA BISSAU

100. The main crimes in the country are drug trafficking, logging, and poaching, and cross-border currency movements were facilitated by the porous nature of the many borders. Political instability in the country hinders the investigation, prosecution, and conviction of offenders under money laundering and terrorist financing laws.

101. Anti-money laundering and terrorist financing laws define the offences that constitute ML/TF but are weakly enforced to combat financial crimes in the country. In addition, discussion and interest in TF is rare.

Challenges

• Little attempt to investigate, prosecute, and adjudicate beyond predicate offences such as drug trafficking, logging, poaching, etc. The practice of seizing, confiscating, and recovering assets and fines without thorough investigation that could lead to the discovery of money laundering or terrorist financing is common. This explains why there are few convictions for money laundering or terrorist financing in the country.
• The weak culture of reporting by the country’s citizens hinders the investigation of predicate offences as well as those involved in terrorism and TF. This situation has been compounded by low citizen awareness of the laws against ML/TF.
One case of terrorism-related activity was discovered in the country, and the arrested suspect was deported while the others involved were released by the courts. There was no attempt to investigate further to discover the source of funding and links of the suspect(s) to other terrorist cells within and outside the country.

The institutions responsible for investigating, prosecuting, and convicting ML/TF crimes, such as the Police Investigation Department, Ministry of Interior, Ministry of Justice, the National Guard, Coast Guard, Nature and Environment Brigade, Ministry of Finance, the Judicial in particular, the Attorney General’s Office, the Criminal Investigation Judges, and the Airport Fiscal Action (Customs) Brigade, etc., are ill-prepared, ill-equipped, and ill-armed to play their roles. This explains the low level of expertise in combating complex ML/TF-related crimes.

Inter-agency collaboration is weak among some entities, particularly between investigators and the Attorney General’s office. At another level, cooperation in the dissemination of financial crime information by international entities is weak, resulting in delays in investigations and prosecutions. suspects are released and files declassified.

There are reports of judicial compromise in financial crime cases, which prevents the conviction of ML/TF offenders.

There was no follow-up on internal and external training for investigators, prosecutors, and judges on money laundering and terrorist financing laws.

There is a high turnover of investigators, prosecutors and other trained personnel.

Politically exposed persons (civil servants, military personnel and politicians, both active and retired) engage in financial crimes and obstruct investigations, prosecutions and convictions through subtle means such as intimidation and media blackmail of investigators, prosecutors and judges. Sometimes investigations into PEPs are leaked to them. It is argued that political power is blocking law enforcement and judicial powers. In the face of such intimidation, these agents do not have adequate protection.

There is little political will to contribute to a culture of investigation, prosecution, and conviction of those involved in financial and related crimes. This lack of political will is reflected in the lack of resources, equipment, and motivation of institutions. Public service workers were on strike during the study to demand payment of three months’ salary.

The country does not have a common database on the incidence and prevalence of crimes related to money laundering and terrorist financing.

National laws recognize asset recovery, but a dedicated office has not been established.

Other AML/CFT issues relate to the burden of proof, witness protection legislation, and delays in investigations.

LIBERIA

102. There is a general consensus in Liberia that most government officials charged with this responsibility have not demonstrated sufficient knowledge to understand the dynamics, let alone how to combat AML/CFT. Therefore, there is a consensus that all key actors need additional training and advanced familiarization with AML/CFT issues, especially from an international perspective.

Challenges

• In the course of its research, the team discovered that investigations are poorly conducted because of the international ramifications of the crime. This has allowed most of the suspects and their foreign collaborators to escape justice.

• Even among judges, most do not have a basic knowledge of money laundering and terrorist financing cases, while the few who do have a good understanding of the issue are often assigned to other courts. This has only compounded the problem. There are strong allegations that courts are engaging in unprofessional conduct by «manipulating» or distorting cases.

• Most agencies are not adequately staffed. For example, the Liberian Anti-Corruption Commission has only seven judges and, at the time of writing, two of them were leaving the commission.

• Although the Liberian government has well-defined and structured public institutions to prosecute ML/TF crimes, they are generally unable to do so. There are logistical problems arising from the non-release of funds, budgeting, lack of operational vehicles and modern equipment.

• There are vested interests within the state apparatus that stand in the way, especially at the investigative level.

• There is weak interagency collaboration in
the challenges of investigating, prosecuting and adjudicating money laundering and terrorist financing cases in West Africa

AN ASSESSMENT OF THE CHALLENGES OF INVESTIGATING, PROSECUTING AND ADJUDICATING MONEY LAUNDERING AND TERRORIST FINANCING CASES IN WEST AFRICA

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the fight against ML/TF in Liberia. There are frequent role conflicts between agencies. There is little sharing of information among agencies. In addition, functions intended for the agencies are usurped, particularly by their line ministries, making them ineffective in their primary function. The Transnational Crime Unit, whose statutory function includes the investigation and prosecution of transnational organized crime and money laundering, does not enjoy a harmonious relationship with its parent ministry, the Ministry of Justice, due to unnecessary interference and lack of delegation of responsibilities.

- Stakeholders agree that Liberian laws are very weak and ineffective, making it difficult to combat money laundering and terrorist financing.

MALI

103. Mali underwent its second round mutual evaluation, the report of which was validated by the GIABA Plenary in November 2019. Generally speaking, the evaluation revealed a number of shortcomings in the country's AML/CFT system, including the lack of understanding of risks by NPOs, the absence of supervision of the sector, difficulties in accessing information on beneficial owners, the low level of investigation and prosecution of ML/TF offences, inadequate use of international cooperation instruments, and poor statistical data at all levels of the AML/CFT system.

104. Due to health constraints related to the COVID-19 pandemic, the field visit to Mali for this study was unfortunately not completed. Nevertheless, the 2019 country activity report, the country’s Mutual Evaluation Report (MER), and a supplemental desk review indicated a clear political commitment by Mali to make the country an unfriendly destination for criminal activity. Indeed, the high Malian authorities have recently granted a site and funding, at more than eight hundred (800) million CFA francs, optimal conditions of comfort and security. This would strengthen the operationality of the FIU in Mali for a better fight against ML/TF in the country.

105. In terms of criminal law enforcement, Mali’s MER rather recognizes a weak dynamism of investigations and prosecutions of ML/TF. As an indication, only one ML case had been tried, and by the Court of Appeals in its August 22, 2017 assizes session for an amount of 16,864,693 CFA confiscated. The lack of convictions in ML cases, despite the high number of predicate offences prosecuted in the country, raises questions. Statistics provided by Malian authorities in this report indicate that twenty-three (23) ML cases were referred to the PJS investigating judges at the time of the site visit. Some of these cases involved computer fraud, criminal association, and forgery. No cases of money laundering by a third party were reported at the time. However, there were five (5) stand-alone ML cases, ten (10) ML cases involving legal entities, and twelve (12) self-laundering cases. Even if the Malian authorities had not yet defined clear and specific guidelines aimed at prioritizing the investigation and prosecution of ML, the creation of the Specialized Judicial Division (PJS) of the courts remains an important step forward in revitalizing the ML law enforcement system.

106. In the area of counterterrorism and counterterrorism financing, the authorities have established a specialized court and a specialized investigative unit to handle terrorism and TF cases. However, the investigating and prosecuting authorities are not sufficiently trained or equipped to deal effectively with TF cases. They also do not use special investigative techniques and do not systematically include TF in their terrorism investigations. Although FIU has not disseminated information on TF to the judicial, Mali has conducted some investigations on TF through the PJS, which has prosecuted three (3) cases against TF, one of which resulted in a conviction for terrorism. The country has also seized money related to TF. However, SJP officers in charge of TF investigations do not have sufficient material resources to expedite TF investigations. In addition, Mali has a counterterrorism strategy but it does not incorporate CTF.

107. Among the challenges related to countering ML/TF, and following the example of other UEMOA countries, Mali is confronted with a lack of training of the actors of its criminal chain on the implementation of the AML/CFT law. Initiatives aimed at specializing judges and magistrates must be accompanied by a strategy to develop AML/CFT expertise.
108. In context, the security situation in Niger has deteriorated in recent years, particularly in the border areas with Nigeria, Burkina Faso, and Mali, where armed groups have established bases and carry out repeated attacks on security forces and civilians. The government has rightly declared a state of emergency in the regions of Diffa, Tahoua, and Tillabéri. To strengthen its resilience in the face of these threats, the country has reinforced the defense and security forces with significant material and human resources. Also, as a prelude to the second round of mutual evaluations, Niger adopted its national risk assessment report by Decree No. 2019-401/PRN/MF of July 26, 2019, which identified trafficking and possession of firearms, tax evasion, corruption, embezzlement of public funds, smuggling of migrants, trafficking in persons, as well as terrorism, including its financing, and fraud among the predicate ML offences that are strongly present in Niger.

109. Despite this particularly difficult context, which certainly had the disadvantage of favoring military options in the fight against terrorism and organized crime, AML/CFT implementation in Niger deepened in 2019, thanks to an increasingly strong political will. Achievements in recent years also include addressing the requirements for understanding and mitigating AML/CFT risks. Notwithstanding these efforts, Niger continues to be an attractive environment for criminals. Importantly, Niger is one of the few countries that have not effectively implemented Directive No. 08/2002/CM/UEMOA of September 19, 2002 on measures to promote bank penetration and the use of non-cash means of payment. Countering ML/TF in the absence of financial inclusion remains a difficult task.

110. Among other factors, this study noted the weak partnership between the private and public sectors in AML/CFT matters. For example, suspicious transaction reports tend to be considered by a large majority of reporting entities, including DNFBPs, as acts of denial. In addition, there is a scarcity of local expertise and specialized skills at all levels of the AML/CFT enforcement chain.

111. At the criminal level, investigative and prosecutorial actions are often hampered by cultural reticence, as illustrated above, but also and above all by undue political interference. Indeed, the work of this study has revealed that most cases involving money laundering are dismissed or acquitted, sometimes calling into question the integrity of the public administration and politically exposed persons. Those involved in such legal proceedings usually have the profile of economic operators with great influence and the ability to corrupt the judge.

112. In addition to the untimely opposition of professional secrecy, abuse of sovereignty, lack of criminal databases, identification problems, deficiencies in the cadastral register, and difficulties in tracing financial flows due to the low rate of banking, the study also found a lethargy of criminal proceedings by the insufficient or inadequate understanding of the AML/CFT law. By way of illustration, the 2015 EU directive gives the judge regional jurisdiction over ML/TF. In other words, the investigating judge is custodian of a mutual assistance and judicial cooperation mechanism, i.e., the ability to personally request a foreign counterpart to indict and/or transfer a citizen of his jurisdiction. The absence of recourse to this legal tool confines judges to the classic and lethargic mechanism of cooperation through traditional diplomatic channels, which are reputed to be cumbersome, slow and inefficient. Moreover, Nigerien judges are clearly more interested in preventive detention than proactive investigation, which complicates their ability to gather evidence in a timely manner and dismantle networks of money launderers or organized criminals. In addition, the lack of a culture of letters rogatory, the low level of inter-agency coordination, and the insufficient cooperation by banks and cell phone companies hinder judicial dynamism in AML/CFT matters.

113. In terms of asset recovery, Niger has provided notable progress. Indeed, in 2017, the country set up a central agency specifically dedicated to the management of seizures, freezes, confiscations and recovery of assets involved in criminal proceedings. ACGSCRA, the new structure, which has been operational since 2019, reports to the Cabinet of the Ministry of Justice. It is also envisaged the introduction of collaboration gateways between the National Unit of Mutual Assistance in Criminal Matters and Judicial Cooperation and the said agency in order to give a new breath to international cooperation. In the same vein, the government had created in 2016, the High Authority for the Fight against Corruption and Related Offences (HALCIA).
NIGERIA

114. Contextually, the investigations in Nigeria as part of this study took place shortly after the mutual evaluation on-site visit held in October 2019. The main predicate ML offences in Nigeria are corruption, fraud (including high levels of cybercrime such as advance cost fraud), drug trafficking, maritime offences, armed robbery, arms trafficking, kidnapping, embezzlement oil and human trafficking. Corruption is endemic and systemic across all sectors of the Nigerian economy, inherently posing a threat and fostering other illicit behavior. For the most part, the activities related to these crimes are national, the flows being laundered both inside and outside the country. The proceeds generated from the criminal activities envisaged outside Nigeria and transferred through laundering within the country are certainly significantly lower than those generated in Nigeria and transferred abroad, but they are still significant.

115. The Nigerian government has been showing a certain level of seriousness in the fight against ML by making one hundred and twenty-three (123) arrests, pursuing four hundred and fifty-two (452) prosecutions and obtaining ten (10) convictions. Three hundred and forty (340) vehicles and motorcycles of undetermined value and other property valued at sixty billion five hundred and thirteen million one hundred and seven thousand naira (N60, 513.107.000) were confiscated. The EFCC in Nigeria discovered that former Nigerian politicians illegally acquired and transferred around US $ 521 billion from foreign banks while former Nigerian military leaders laundered around US $ 400 billion.

116. From the field study, it was found that with the improvement of the country’s investigation, prosecution and sentencing efforts, more efforts still need to be made to curb the ML/FT threats in the country. Under the main challenges, we note:
- Budget constraints of AML / CFT agencies to implement their mandate;
- Logistical difficulties for the conservation of evidence and exhibits;
- Slowness of prosecution for the following reasons:
  • Lack of cooperation from witnesses in some cases for fear of intimidation or reprisals from politically exposed persons or criminal gangs;
  • Weak legislation on witness protection;
  • Insufficient availability of specialized equipment for operational purposes.
- Slowness of judgments and court decisions due to the following:
  • Very high volume of charges laid;
  • Low relevance of the evidence available;
  • Request for release on general bail for medical or religious reasons or quite simply as of right;
  • Frequent change of lawyer;
  • Frequent postponements for unconvincing reasons;
  • Internal transfers of first instance judges, leading to perpetual recommendations;
  • Lack of witnesses or uncooperative witnesses;
  • Incessant calls to interlocutory;
  • Negative role of defense counsel and the use of delaying tactics;
  • Trafficking in political influence to delay, cancel a case, have it struck out for lack of prosecution or lack of evidence or both or to gain public and media support that the accused is the victim of a witch hunt;
  • Political rehabilitation of the accused by high-level political appointment, electoral victory in the public service;
  • Political arrangements behind the scenes and rehabilitation of the accused;
  • Compromise of the court or the prosecution or both;
  • Apathy or fatigue from pursuits;
  • Decreased media and public interest which affects zeal for prosecution; and;
  • Under-funding of anti-corruption agencies.

SENEGAL

117. Senegal has made a number of improvements since the Mutual Evaluation conducted in 2017. That report highlighted a number of significant weaknesses in both technical compliance and effectiveness. Based on the results of this evaluation, Senegal has been placed under the enhanced follow up regime.

118. To address many of these shortcomings, Senegal had to domesticate Directive No. 02/2015/CM/UEMOA on the fight against money laundering and terrorist financing in the member states of the West African Economic and Monetary Union (UEMOA) in order to bring its AML/CFT legal framework into line with the
119. The commitment of the Senegalese authorities to continue strengthening the fight against OC is real and serious. Investigations are increasingly being conducted, particularly on the basis of reports sent to the Public Prosecutor’s Office by the FIU. Some of the reports are sometimes considered sketchy, which sometimes makes it difficult to use them. In addition, parallel financial investigations are not systematically carried out during investigations into offences that predicate the ML. However, on the basis of the reports transmitted by FIU, conviction decisions for suspects have been issued, particularly in cases where the prior offences were committed abroad. Out of five (05) confiscations that were pronounced, three (03) were executed. In general, investigations, prosecutions, and forfeitures are partially consistent with the risks identified. The application of effective, proportionate and dissuasive sanctions must be improved.

120. The new AML/CFT Law provides for special techniques to enable investigating authorities to obtain information relevant to ML/TF investigations (art. 93, 94 and 95). In addition, through the requisitions provided for in the Code of Criminal Procedure, judicial police officers can request bank information and obtain it within a reasonable period of time, which could even be used to identify assets without prior notification to the owner.

121. With respect to TF, Senegalese authorities reported ongoing investigations, but no convictions had been made at the time of this study. Mutual legal assistance provided by Senegal is generally satisfactory; in particular, it involves the provision of information and the gathering of evidence at the request of foreign authorities. However, in some cases, this mutual assistance could be hindered by considerations relating to the principle of reciprocity and to information considered sensitive by the Senegalese authorities. The FIU maintains cooperation with its foreign counterparts that is increasingly evolving, in particular through bilateral agreements and within the Egmont Group.

122. At the operational level, the Senegalese legislative framework provides competent authorities with a wide range of possibilities for accessing financial intelligence and all other relevant information in the context of investigations into ML/TF, both to prove the commission of the offence, identify the perpetrator, and to trace and locate the related assets. FIU generates quality financial information on ML/TF. It uses databases and cooperates with all national authorities and foreign counterparts that can provide additional information. FIU also conducts vulnerability analyses of the sectors subject to the law, which it communicates to all interested authorities and persons. The judicial authorities have informed the evaluators that some of the FIU reports sent to them are sometimes considered to be summary and therefore difficult to use in investigations and prosecutions.

123. Senegal, compared to other UEMOA countries, has a long history (since 2004) in AML/CFT. However, interviews with most of the Criminal Investigation and Prosecution Authorities reveal that these agencies have limited resources to deal with the complexity of the financial circuits used by criminals. The number of ML prosecutions is low relative to the high rate of predicate offences committed in Senegal. It is also low in relation to the number of cases referred to the prosecutor’s office by the traditional and special investigation units and by the FIU.

124. The number of convictions for ML is low in relation to the number of reports transmitted by FIU to the criminal prosecution authorities. However, these convictions are often not accompanied by confiscation measures, and when these are pronounced, they are not systematically followed by execution. Similarly, prison sentences are low or suspended, which does not allow for effective, proportionate and dissuasive sanctions for AML violations. Convictions include both self-laundering and third-party laundering. The scope of AML actions is limited by the lack of a national coordination strategy between the investigative services and the magistrates in charge of legal proceedings.

125. On the criminal level, the statistics provided by the Senegalese authorities show that there have been seizure and confiscation decisions for ML offences. Since the mutual evaluation in 2017,
there have been five (05) court decisions ordering seizures and confiscations in relation to ML, three (03) of which have resulted in the full execution of the confiscation for the benefit of the State. In the other cases, it was found that the confiscated assets were seized or that the authorities believed that they were free at the time of the seizure when in fact they had already been seized.

126. In both cases, this situation highlights the lack of expertise of the competent authorities in the execution of confiscation orders. There were no cases of confiscation of property of equivalent value. The criminal justice authorities have stated that they place great emphasis on confiscation, but the information provided does not show that consistent objectives have been set in this regard. Similarly, the implementation of proactive and parallel financial investigations to clearly identify assets that could be confiscated could not be demonstrated.

127. With respect to Customs authorities, confiscations are regularly made on readily available and identifiable proceeds. They often use the customs transaction to resolve disputes related to seizures of funds in connection with the cross-border transportation of cash and bearer negotiable instruments. This practice is a limitation on the requirements of the AML/CFT and may thus inhibit the potential for forfeiture in this area. It has not been established that confiscation in relation to cross-border cash movements is implemented as a deterrent sanction for false reporting at the border. The customs authorities believe that Article 16 of the Uniform Law No. 2014-12 of February 28, 2014, on the litigation of offences against the regulation of external financial relations of UEMOA member states, provides that a transaction that has been duly concluded and fully executed prohibits any prosecution or other action based on the same facts. They state that the facts of money laundering, not being concerned by the customs transaction, may still give rise to subsequent legal actions.

128. In addition, the slowness of judicial proceedings is also likely to be detrimental to confiscation measures, as indicated above. The Senegalese authorities do not yet have complete and centralized statistics on:
- Seizure and confiscation of assets in Senegal and/or abroad (property);
- Confiscations relating to the communication of false information or false declarations at the borders (except at Dakar airport);
- Amounts returned to victims.

129. However, the execution of confiscation decisions is carried out by the State Judicial officers. The rate of execution is very low. In view of these elements, the Senegalese Authorities have affirmed that they scrupulously respect the rights of third parties in the procedures that may lead to confiscations in accordance with their positive law. It should be noted, however, that the tendency of the Senegalese authorities to consider that compensation awarded to the victim would compensate for confiscations (which, when they occur, are systematically awarded to the Senegalese State), is problematic.

130. In terms of international cooperation and mutual legal assistance, Senegal has an acceptable legislative, conventional (through the treaties to which it is a party) and administrative framework offering various cooperation mechanisms ranging from diplomatic channels to direct formal and informal relations between the judicial authorities. It has a satisfactory level of activity for incoming and outgoing requests. Senegal’s responses to requests for mutual legal assistance appear to be generally satisfactory and timely. However, Senegal has pointed out the extreme slowness and lack of cooperation on the part of some of the countries it has sent request to.

131. However, it appeared that there are several cases with transnational ramifications in which Senegal has not used mutual legal assistance. The Senegalese authorities also noted, and rightly so, that the non-conformity of some of their procedural rules with sacrosanct international standards of fair trial, in particular the presumption of innocence as well as the guarantees of the right to a defense, seriously hinder the mutual legal assistance that several countries could grant.

132. The investigative authorities cooperate with their foreign counterparts through several channels. Police, Gendarmerie, Customs and Tax authorities exchange information on predicate offences, money laundering and terrorist financing through Interpol,
the African Gendarmerie Organization, the World Customs Organization and the OECD. Several bilateral and multilateral agreements have been concluded by these actors. The exchange of information between the investigative authorities and their foreign counterparts is encouraging.

133. However, Senegal’s strict application of the principle of reciprocity and certain sovereignty and security considerations limit the effectiveness of these information exchanges in some respects. Senegalese authorities have indicated that they also suffer from the excessive slowness of cooperation with certain countries. To overcome these delays, some informal mechanisms have been developed. In the fight against drug trafficking, for example, Senegal participates in information exchange platforms.

134. Still on the level of international cooperation, the FIU is part of the Egmont Group, which is a platform for information exchange between FIUs. It has also signed some thirty cooperation agreements to facilitate exchanges with its foreign counterparts. The FIU sends numerous requests for information to its foreign counterparts and uses the information obtained to enrich its analysis of suspicious transaction reports. It also responds to requests for information. In this context, it can serve as a channel for requesting information from reporting entities and correspondents on behalf of a foreign FIU. On the other hand, the Senegalese investigative and prosecutorial authorities cannot ask it to obtain certain information from its foreign counterparts.

135. In the area of extradition, Senegal has provided a few instances of simplified extradition procedures, which have not, however, entirely relieved Senegal of its obligation to provide simplified extradition mechanisms, for example, by allowing direct transmission of requests for provisional arrest between the competent authorities, extradition of persons solely on the basis of a warrant of arrest or final judgment, or simplified extradition of persons agreeing to waive the formal extradition procedure.

136. The AML/CFT Act sets out the conditions for extradition and allows for the gaps identified to be covered (Articles 156-161); there is no derogation from the ordinary rules of extradition, including those relating to dual criminality. The AML/CFT Law does not specify in any particular way the prioritization, management, and monitoring of extradition requests, and there are no clear processes in place for this purpose. The law does not specifically state whether dual criminality requirements are met in the event that both the requesting and requested countries criminalize the predicate offence if both countries classify the offence in the same category or use the same terminology to refer to that offence.

SIERRA LEONE

137. Sierra Leone underwent its mutual evaluation in July 2019, as part of the second round. In this report, which gives a complete picture of the robustness of the country’s AML / CFT system, a number of vulnerabilities are mentioned which have a negative impact on the effective implementation of international AML / CFT requirements in Sierra Leone. These include the existence of a large, cash-based informal economy, the lack of resources from the authorities, the porosity of land borders, the weakness of cash control measures at the borders, the poor implementation of AML / CFT requirements by DNFBPs, the lack of supervision of AML/CFT, in particular in NBFIs (except BDCs) and DNFBPs, and the lack of effective, proportionate and dissuasive sanctions against reporting entities that violate AML/CFT requirements.

138. Although investigating and prosecuting authorities have access to financial intelligence to support their investigations, under the MER, they make only limited use of it. The quality of the financial analysis reports and financial intelligence of the FIU is considered to be good, although the information communicated by the FIU is considered to be underutilized by the investigative and prosecution authorities (other than the TOCU and the police).

139. In terms of law enforcement against ML/FT offences, the MER revealed that Sierra Leone has a comprehensive legal framework and a strong institutional structure to investigate and prosecute ML cases. However, this study found that due to a low level of skills and expertise in financial investigations coupled with a critical lack of resources, criminal investigation and prosecution agencies are still struggling to put implement the legal possibilities offered by the
law on AML / CFT. Several other challenges were recorded:
- There are no explicit mechanisms in Sierra Leone for seeking evidence, investigating or prosecuting ML / TF;
- Delays in transmitting information to the FIU upon request by ministries, departments and agencies (MDAs) fail many investigations and prosecutions;
- Knowledge of ML / FT laws is limited by many MDAs in the country as the proceeds of crime are kept by investigators;
- The Anti-Corruption Commission, by law, works to combat corrupt individuals and structures in the country’s public sector. It carries out arrests and confiscations of the proceeds of crime. On the other hand, it does not investigate corruption in the private sector or the deployment of the proceeds of corruption that could be linked to ML or TF;
- There is little knowledge of FT by state agencies. Few lawyers have been trained in this area. This results in poor tracking of individuals and organizations that engage in this offence. The monitoring of transactions by the Bureau de charges proves to be faulty;
- The lack of a centralized database hampers the quality of investigations and prosecutions against violators of ML/TF laws;
- It is argued that Sierra Leone is a country poor in resources and that this affects the resourcing of state institutions, which hinders them in the exercise of their functions, including the fight against ML/TF;
- There is sometimes political interference in highly publicized corruption cases and this often causes investigations to fail, when these could have led to the detection of the proceeds of the offence or to the neutralization of an FT attempt.

TOGO

140. The adoption of Togo’s national risk assessment report in December 2018 was an important milestone in the country’s march towards a more vigorous and targeted response to ML/TF. In addition to the challenges of undergoing the mutual evaluation the country was subjected to in January 2021, the continuous improvement of the AML/CFT system will ensure that Togo, as part of its National Development Plan, has significant financial resources available to enhance effective law enforcement against money laundering offences and subsequent recovery of criminal assets. As at the time of the field visit to Togo for this study, the prevailing criminal offences were attacks on property and private property (theft, breach of trust, fraud, swindles including cyber fraud), violent acts such as armed robbery and kidnapping. Various forms of trafficking/smuggling (drug trafficking, smuggling of migrants, trafficking in persons, smuggling of petroleum products, etc.) were also cited as frequent predicate offences in the country.

141. While Togo’s political will to advance AML/CFT efforts is real, this study found that significant institutional and procedural reforms are still needed to make the AML/CFT system effective and dissuasive. For example, the framework for dialogue between the judicial police, the public prosecutor’s office, and the investigating authorities should be strengthened, as the effectiveness of criminal law enforcement depends on a strong partnership between the judicial and the investigative services, especially with regard to AML/CFT matters. In addition, the objectives of the tax and customs controls carried out by the OTR remain more budgetary than repressive, which explains the regrettable tendency to favor the transactional route rather than the judicial route to settle disputes.

142. With regard to investigations, while the detection of the predicate offences of ML is dynamic in Togo (OCRTIDB, HAPLUCIA, PJ, OTR, Police, Gendarmerie, etc.), the operational practices were still not systematically focused on conducting parallel financial investigations. In the vast majority of cases, investigators are more reactive than proactive and do not have the expertise to use a wide range of special investigative techniques (controlled deliveries, interceptions, wiretaps, etc.). Problems of address, civil status, massive use of cash, inaccurate land registers, use of false documents, use of nominees, lack of a criminal database, and lack of legal channels for exchange between key AML/CFT actors, The lack of identification data for people and goods, the reluctance of inter-agency cooperation due to conflicts of competence or power rivalries, as well as the slowness of international cooperation, are among the major challenges to ML/TF investigations in Togo.
143. At the judicial level, the Prosecutor’s Office has become aware of the need to conduct parallel prosecutions of ML/TF. On the other hand, the higher courts, particularly the Court of Appeal and the Supreme Court, which is the highest court in Togo for judicial and administrative matters, have limited knowledge of the AML/CFT law. Judges’ methods of assessing and deploying evidentiary strategy tend to be inspired solely by the mechanisms contained in the penal code and the procedural code, which limits the chances of exploring the legal opportunities offered by the AML/CFT law, especially with regard to the judicial treatment of ML/TF evidence. Also at the level of prosecutorial actions, the resources available to investigators are limited.
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KEY FINDINGS AND RECOMMENDATIONS

144. One of the main objectives of this exercise was to examine existing AML/CFT law enforcement practices in countries and to identify gaps in relation to international standards and best practices. The study was initiated in a context where the overall adequacy of the countries’ criminal justice response to AML/CFT was considered unsatisfactory, despite the increasingly complex criminal environment in the region. The study provided an understanding of the efforts made by countries in the region, identified strategic challenges to effective law enforcement, and identified key areas of work to build AML/CFT systems based on dynamic and deterrent law enforcement.

MAIN CONCLUSIONS

145. In summary, the study revealed that national AML/CFT frameworks are not designed to take into account the respective risk profiles of each country. Not only is the criminal policy of the Member States generally not accompanied by clear and specific mechanisms for cooperation and mutual legal assistance, but also and above all confiscation has not been established in any country as a priority. It emerged clearly from the interviews that the policy orientations related to AML/CFT tend to focus only on the mobilization of tax revenues in a context of scarce external resources, rather than on the dispossessing of criminals of the revenues drawn from their criminal activities.

146. Also, inter-agency collaboration is not organized or framed by any legal texts and, in certain circumstances, laws on data confidentiality and professional secrecy seriously hamper the ability of investigation and prosecution authorities to obtain the necessary information. This situation is further compounded by an inadequate understanding of the special AML/CFT laws by the actors, as well as the associated legal concepts and categories.

147. Furthermore, the intrusion of politics into the judicial sphere is mentioned by countries as a bottleneck, since this generally complicates the chances of conducting investigations and prosecutions for ML/FT with integrity, impartiality and transparency, particularly when dealing with cases involving politically exposed persons or their relatives. In addition, the autonomy of FIUs in the UEMOA space is considered limited by actors and stakeholders, so much so that their dependence on the ministry in charge of finance as provided for by the 2015 community directive, is widely questioned. This reasonably justifies the limits of the ML/FT repression system in GIABA member States.

148. These limits can be otherwise circumscribed around four (04) major descriptions: a still incomplete legal and institutional framework; a still tenacious institutional partitioning, a situation of critical lack of resources; a situation of recourse to a still very embryonic international cooperation.
A weakly articulated legal and institutional framework

149. While the FATF 40 Recommendations form the basis of AML/CFT legal frameworks around the world, it is clear that AML/CFT also draws legal and regulatory inspiration from all the international legal instruments covering all categories of predicate ML offences, terrorism and international cooperation. The accession of countries in the region to some or all of these instruments has not been followed by adequate criminal policies or a coherent articulation of these laws, resulting in disparate and often deficient legal mechanisms. The assumption of responsibility for the legal link between ML/TF and organized crime has not translated into coherent and comprehensive criminal policies within the various states of the subregion.

150. By way of illustration, there are multiple policy frameworks and legal mechanisms to fight organized crime in West Africa. Specifically, they include (i) the ECOWAS Regional Action Plan (December 2009), the ECOWAS Political Declaration and Initial Plan of Action on Trafficking in Persons (2001), the ECOWAS Convention on Small Arms and Light Weapons (June 2006), and the West African Coast Initiative (WACI) created in 2009. Despite the importance of these instruments, few countries have specifically addressed the notion of organized crime, let alone determined a specific procedure for it, as have other countries such as France\textsuperscript{16} and Spain\textsuperscript{17}, but especially Madagascar,\textsuperscript{18} one of the few African countries to have specifically legislated on the issue.

151. Burkina Faso remains an exception in the subregion for being the only country to have adopted a law that deals globally and specifically with the issue of organized crime\textsuperscript{19}. The other countries have opted for a piecemeal approach to certain offences that are or are supposed to be related to organized crime.

152. Senegal, like several other countries, has put in place several texts\textsuperscript{20} that deal separately with certain aspects of the said phenomenon, without referring, if only timidly, to the notion of organized crime. The texts in question try as best they can to set up a derogatory procedure to that of common law in order to adapt to the repression of the offence in question; which, numerically, multiplies the exceptional procedures and makes them more and more indecisive.

153. The same approach is generally observed in Côte d’Ivoire, which has developed Laws No. 97-09 of August 7, 1999, on the control of narcotics and other psychotropic substances, but also Law No. 2016-111 of December 08, 2016, on the fight against human trafficking.

154. The lack of precision in the definition of organized crime offences and the absence of a specific procedure for the suppression of organized crime do not encourage the adoption of coherent and appropriate operational mechanisms. The criteria for defining organized crime, namely the plurality of perpetrators and the seriousness of the offence, have not been sufficiently integrated into West African criminal legislation. It is therefore urgent to put in place precise and coordinated substantive and procedural criminal law rules in order to deal with the issue of organized crime through a comprehensive criminal policy.

A still tenacious institutional compartmentalization

155. ECOWAS has adopted the Convention of 14 June 2006 on Small Arms and Light Weapons, Their Ammunition and Other Related Materials, Protocol A/P3/12/01 of 12 December 2011 on the fight against corruption, Directive C/DIR/1/08/11 of 19 August 2011 on the fight against cybercrime in the Community, as well as the Protocol of 12 January 2006 relating to the creation of an Office of Criminal Intelligence and Investigation (ORIC).

\textsuperscript{16} Law No. 2004-204 of March 9, 2004 on adapting justice to changes in crime (Loi Perben II); Law No. 2016-731 of June 3, 2016 strengthening the fight against organized crime, terrorism and their financing, and improving the effectiveness and guarantees of criminal procedure.

\textsuperscript{17} Article 282 of the Spanish Penal Code, resulting from the 1999 reform, which establishes a list of 16 offences that fall under the category of organized crime.

\textsuperscript{18} Law No. 2014-005 of June 10, 2014 against terrorism and transnational organized crime.

\textsuperscript{19} Law No. 005-2017/AN on the creation, organization and functioning of judicial divisions specialized in the repression of economic and financial offences and organized crime.

156. The creation of the Network of National Anti-Corruption Institutions in West Africa (RINLCAO) in March 2009 also contributes to better coordination of actions in this area. However, it appears that the efforts of the sub-regional organization, as well as those of the member states in setting up specialized structures, are not producing the expected effects. Countries are tending to set up anti-corruption bodies whose composition and powers are designed to ensure independence and significant operational capacity.

157. The Guinean law\textsuperscript{21} introduces some important innovations. Article 11 of the law links the fight against corruption with the fight against corruption by affirming the maintenance and applicability of anti-corruption legislation in corruption cases. Article 16 of the law includes the Head of State in the list of public officials subject to anti-corruption regulations. However, although the law identifies FIU as the recipient of financial information held by those subject to the law, particularly financial institutions, concerning transactions that may be related to corruption, Article 16 merely provides that «FIU shall inform the national anti-corruption body.

158. Anti-corruption regulations and institutions are evolving in parallel with those of the fight against corruption, but this has not resulted in coordinated interventions. In the state of our research, we have not been able to observe or come into possession of any information or cases in which the prosecution of acts of corruption may have led to significant prosecution for OC. However, it would be difficult to accept that the acts of corruption referred to or investigated by the authorized institutions do not involve acts of corruption. The exercise of the legal prerogatives conferred by the different legislations must converge towards a synergy of action of the different actors. This will only be possible if the different actors overcome the institutional compartmentalization in which they move.

159. The option of the FATF to convene the four flagship conventions mentioned in the 40 Recommendations (VIENNA, NEW YORK, PALERMO and MÉRIDA) illustrates the indispensable need to coordinate the mechanisms and strategies of the fight against drug trafficking, smuggling of migrants and trafficking in persons, organized crime, corruption; and the mechanisms and strategies of the fight against ML and FT. The exchange of information provided for in the various subjects concerned is certainly an important step, but it is not sufficient to decouple the operation of the specialized structures.

160. In addition, the recipient of the investigations carried out is in principle the judicial. The judicial treatment given to these different cases often fails to link the facts of the predicate offences with the proceeds of the offence that would have been the subject of a laundering operation.

A critical shortage of resources dedicated to AML/CFT

161. The AML/CFT criminal chain consists of the following links: investigation, prosecution, adjudication, forfeiture, recovery and management of recovered assets. Each of these stages requires a combination of resources, ranging from a good command of the law to the use of special techniques and skills, as well as interactive exchanges between actors in the field. The study found that in all countries of the region there is a serious lack of specialized human resources, sufficient budgetary allocations for the operation of key AML/CFT agencies, and local expertise in financial investigations.

162. In a context where security threats are becoming increasingly strong and diversified, the pressure and urgency of the need for soldiers, weapons and military logistics tend to negatively influence, to the detriment of AML/CFT, the new priorities of governments inclined to restore the state, guarantee survival and subsistence. This situation aggravates the lack of resources dedicated to AML/CFT in GIABA member states.

163. The option of specialized structures comprising several entities is also advocated by the FATF standards. In the eight countries, certain activities for the prevention, detection or detection of offences involve mixed units. This is the case for the Joint Container Control Unit (which has been set up in Senegal, Benin, and Côte d’Ivoire), which includes police and customs forces. This unit carries out the

\textsuperscript{21} Law L/2017/041/AN of 04 July 2017 on the fight against corruption.
necessary checks to ensure that containers do not contain imported prohibited products.

164. Specialized units in the fight against economic and financial crime, as is the case in Nigeria, Benin and Côte d’Ivoire, rely on all the investigative units that request it when the treatment of the predicate offences extends to financial aspects. To achieve the desired results, financial information from the widest possible range of sources must be available and accessible, but above all, it must be useful for the investigations conducted. In this perspective, criminal law enforcement structures must be able to understand the different techniques and mechanisms of ML, as well as the functioning of the financial machinery.

165. The weakness and incompleteness of the data collected from the countries in the framework of this study indicates, if it were necessary, the operational difficulties of the investigative entities. The difficulties extend their impact to the judicial responses adopted, both with regard to the implementation of targeted financial sanctions (TFS) and the repression of ML/TF offences, as well as the tracking and neutralization of criminal assets. The use of special investigation techniques is still insufficient.

166. The various training activities initiated by GIABA and its technical partners, such as the UNODC, as well as the States themselves, do not seem to be sufficient. The approach, consistency, duration and frequency of these transfers should be thoroughly analyzed to better define their contours.

The use of international cooperation is still at its infancy

167. An analysis of the countries’ mutual evaluation reports, as well as the GIABA Secretariat’s follow-up reports, provides a picture of international cooperation that is still in its infancy. However, cases of international drug trafficking, migrant smuggling, and human trafficking occupy the investigative bodies and courts. Investigations and judicial treatment do not provide a relevant criminal response to the complexity of the offences of ML and TF. The traditional recourse to the opportunities of mutual legal assistance agreements is not enough. Like the establishment of joint investigation units within countries, investigations should be conducted internationally by adopting a proactive approach. The challenges of the complexity of the cases must incline towards a paradigm shift in the use of international cooperation.

168. The forms and opportunities for international cooperation are, however, multi-faceted. Each of the 15 ECOWAS countries regularly signs bilateral conventions on legal or judicial assistance, including mutual assistance, exchanges of information and access to certain documents. The UEMOA community framework in particular, through Directive 02/2015, provides for a very advanced cooperation mechanism, to the point that the transfer of proceedings accentuates the unified territorial jurisdiction in the UEMOA area. The Vienna, Palermo and Merida Conventions also provide for these cooperation mechanisms. In addition to these institutional frameworks, there are also so-called informal forms of cooperation, such as ARIN-WA.

169. Many of the provisions of the Palermo Convention relate to police and judicial cooperation: combating money laundering (art. 7); cooperation for the purpose of confiscation (art. 13); extradition (art. 16); transfer of sentenced persons (art. 17); mutual legal assistance (art. 18); joint investigations (art. 19); special investigative techniques (art. 20); transfer of criminal proceedings (art. 21); and various forms of cooperation between law enforcement agencies (art. 27). The three Protocols to the Convention also contain provisions on mutual assistance and administrative and police cooperation in relation to specific aspects of the offences they cover.

170. It is clear that the legal framework for international cooperation goes far beyond the provisions of the Palermo Convention. From the analysis of the information gathered in this study, it can be concluded that in situations where cooperation can be granted only if there is a legal provision for it (e.g. for extradition and mutual legal assistance), national legislation (with or without guarantee of reciprocity) and bilateral and regional agreements are the predominant legal basis.
171. The issue of institutional specialization, which was first discussed in relation to national investigations and prosecutions, also concerns the field of international police cooperation. There are many reasons to argue that international assistance between different police services should be as quick and informal as possible, and offered directly to as many national units and services as possible. In addition, a certain level of specialization makes it possible to make better use of international cooperation mechanisms, possibly leading to the centralization of international investigative activities in special units or offices.

172. INTERPOL’s operation at the national level provides a good example in this regard: on the one hand, INTERPOL’s National Central Bureaus constitute a de facto node for certain international investigative activities; on the other hand, at least in certain sectors, INTERPOL itself encourages other national entities to establish direct contacts and use its services.

173. In summary, the instruments for a flourishing and beneficial cooperation to the countries exist. However, the information provided by the states points to the rare and insufficient exploitation of the panoply offered. In a context of cross-border crime, regular movements of armed groups, or at least of people claiming to be from entities or organizations considered terrorist, across the borders of our countries, the weakness of international cooperation remains a major challenge.

The UEMOA AML/CFT Community Law and other issues

174. The 2015 UEMOA Directive is considered deficient by many criminal justice practitioners. It is worth recalling that the new community law is a product of a revision exercise of community standards that led to the harmonization of various AML legal texts - (2002 Directive) and the PCL (2007 Directive) and the 2015 Directive. The structure of the law highlights the important place given to terminology (53 terms), in order to better clarify the different interlocutions (actors - methods - techniques - instruments - activities).

175. Certain provisions of the law may be subject to misinterpretation that could jeopardize AML/CFT efforts due to the fact that the drafting differs from the 2002 Directive, which was more explicit. Indeed, the question of the autonomy of the money laundering offence, which makes it possible to prosecute it independent of the original offence, has not been clearly articulated as was the case in the wording of article 3 of the 2002 directive. Similarly, the mechanism of characterizing the original offence, without seeking judicial proof in order to initiate prosecution for ML is not clearly reflected in the wording of Article 7 of the 2015 Directive.

176. It should be noted, however, that the new regulation corrects certain imperfections, particularly with regard to the criminalization of self-laundering and the establishment of the concept of objective factual circumstances in the search for the moral element of the ML offence. In any case, a consultative forum could be initiated to bring together legal experts and practitioners in the field to promote constructive and shared reflections on the best ways to implement the provisions contained in the community law. This would have the advantage of creating a body of case law on the subject.

177. The community authorities, in this case the UEMOA finance ministers, should consider making a diagnosis of the new directive based on the difficulties of implementation in order to study the possibilities of yet another legislative reform.

178. The issue of beneficial ownership is of concern in the various countries. One of the main geostrategic characteristics of the region is the abundance of natural resources, in particular, extractive metals and minerals. The countries are either members or aspiring members of EITI, which requires them to identify the beneficial owners of the companies that exploit these resources, to disclose them and to publish the figures relating to the exploitation of the resources. This obligation is reflective of the FATF Recommendations 24 and 25, which emphasize the transparency of legal persons and legal arrangements. Country legislation should be strengthened to adequately meet these requirements.

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22. The Extractive Industries Transparency Initiative promotes the widest possible transparency in the exploitation of countries’ natural resources
23. The Organization for the Harmonization of Business Law in Africa
Moreover, the law on commercial companies depends, in design, on another community framework, OHADA, which defines the applicable rules. The mechanisms put in place by the Uniform Laws with regard to the registration of companies emphasizes company creation and speeding up their operation, to the detriment of the integrity of the sources of financing and the identification of ultimate beneficial owners. OHADA should take into account the issue of financial integrity in relation to AML/CFT requirements and consider mechanisms such as the company register to help correctly identify true beneficiaries. At the very least, countries should supplement the legislation proposed by the uniform acts to remedy the shortcomings.

The management of criminal assets (frozen, seized or confiscated) is another area of concern. The investigative structures are not, in principle, empowered to take charge of the custody and management of seized/forfeited assets. It appears that they are obliged to carry take custody due to the absence of a dedicated entities entrusted to perform this function. It is then critical for UEMOA countries to close this lacuna by putting in place Assets Recovery and management mechanisms to effectively manage recovered criminal asset.

RECOMMENDATIONS

The effectiveness of AML/CFT system depends largely on the effectiveness of the criminal justice system. In order for the criminal justice system to effectively contribute to countering ML/TF in GIABA member states, there is the need for them to take some specific actions: (i) Enhance the understanding and ownership of the AML/CFT program by criminal justice system stakeholders in member states; (ii) Adoption of coherent policies adapted to AML/CFT requirements; (iii) strengthen the special judicial processing of ML and TF. iv.) Promote and coordinate rationalization the rationalization of technical assistance and thersources allocated for AML/CFT activities; v) establish platforms for the exchange of information and sharing of experiences between actors in the criminal justice system on the lessons learned from cases of investigations, prosecutions and judgments in the area of ML/FT; vi) and build the technical and operational capacities of actors in the penal chain in specific areas.

Enhancing the understanding and ownership of the AML/CFT program by criminal justice system stakeholders in member States

The laws on money laundering and terrorist financing are often enshrined peculiarly in the legal systems of member States. To this extent, most of the actors in the criminal justice system, and in particular judicial police officers, judges and magistrates, are not fully aware of the legal provisions. As a matter of urgency, countries should assess the vulnerabilities of their criminal justice systems to ML/TF in order to fully appreciate the existing gaps that need to be filled. There is the need to provide targeted training or retraining, as the case may be, to investigators, judges and magistrates for them to fully appreciate and understand the requirements of the national AML/CFT laws and other relevant provisions. This initiative should be supported by all partners.

Adoption of coherent policies adapted to AML/CFT requirements

Several laws covering various sectors or fields exist and are related to AML/CFT in one way or another especially considering that money laundering is a secondary offence. It is therefore obvious that investigations into a case of illicit drug trafficking will systematically trigger the use of a country’s anti-drug law and anti-money laundering law. A holistic approach to the design of the relevant legal framework is needed to better address the complex relationships that may exist between different categories of predicate offences. Indeed, the legislative approach should systematically correlate predicate offences and ML/TF offences and asset forfeiture in order to facilitate the effective prosecution of these offences. Such a legal approach could lead to better synergy among stakeholders and criminal justice practices.

For a better articulation of countries’ criminal policy, there is the need to systematically integrate in criminal proceedings of an predicate ML offence, all the legal considerations necessary to detect criminal proceeds. An evidentiary strategy should be adopted within the same framework to guide the countries’ criminal policy regarding the assessment of evidence when it comes to ML/TF.
185. In the same vein, States should provide for legislation with regulatory or administrative sanctions that require the relevant agencies to collaborate interdepartmentally in the investigation and prosecution of cases that may have either ML/TF implications or international ramifications.

186. In addition, there is the need to address the high mobility of competent staff in public services due to the various policies of systematic rotation of staff in effect in most countries of the region, which, unfortunately leads to significant loss of local expertise in AML/CFT. For example, a former head of an FIU may be recalled to new positions in the administration that have little or no connection with AML/CFT. To avoid the considerable loss of already scarce AML/CFT expertise, countries should consider including general AML/CFT requirements in job descriptions and, where appropriate, specific AML/CFT responsibilities. This would encourage those in such positions to seek out the required knowledge and expertise.

187. In addition, it has been found that where the obligations of officials are not contained in the respective laws, compliance with these obligations ceases when officials are replaced. More attention needs to be paid to what the applicable laws and regulations actually state in terms of the obligations of officials in the area of implementation. In this way, institutions (agencies) and officials can be held legally accountable for ineffective implementation or non-compliance with their AML/CFT obligations.

Enhance the specialized judicial handling of ML/TF offences.

- At strategic level:
  • Establish specialized divisions or jurisdictions in charge of investigation and adjudication of ML and TF cases, equipped with qualified staff and adequate resources;
  • Provide support for such established specialized investigative structures with enhanced staffing and adequate resources;
  • Avoid conflicts in powers between jurisdictions and specialized investigative and common law structures by mapping out some specific criteria;

At operational level:
  • Provide continuous training for all qualified staff assigned to such specialized structures;
  • Establish mechanisms for cooperation and collaboration between investigative structures and specialized jurisdictions, intelligence agencies and FIUs;
  • Strengthen the processes and mechanisms of using intelligence in the criminal justice system relating to both ML and TF.

Provision and effective coordination of targeted technical assistance and effective rationalization of resources allocated for AML/CFT activities

188. At the national level, the effectiveness of the AML/CFT system depends largely on the material, financial and human investment made and the effectiveness of collaboration, coordination and cooperation. In all member countries of GIABA, the operationality of the FIUs is certainly much better than it was ten (10) years ago, but it still require to be further strengthened with regard to the provision of ICT equipment, budgetary resources, working conditions, and training. Considering the role of the FIU as the national correspondent of GIABA and the hub for national AML/CFT activities, it requires special attention from the political authorities. The quality of the public-private sector partnership in AML/CFT certainly depends on the capacity of the FIUs to fully play their leadership roles.

189. Also at the national level, training and capacity building activities must be effectively coordinated in order to build a pool of national AML/CFT expertise. In this regard, the actors in the criminal justice system must increasingly organize feedback sessions for the benefit of other collaborators at the end of the training received on AML/CFT. Judges and magistrates should cultivate the culture of consulting the right sources of information to keep abreast of new developments in AML/CFT both locally, regionally and globally.

190. At the regional and international level, technical partners are called upon to take into account the priorities identified by countries based on demand or in their NRAs, the recommendations contained in their MERs and other relevant action plans that may be in place as at the time.
of planning for the assistance. In addition, in criminal matters, all countries have first-degree courts, second-degree courts and high courts, whose operations vary from one country to another. The training provided to the different actors in a country must take these specificities into account so that the technical assistance provided does not disrupt the existing jurisdictional arrangements or aggravate the internal conflicts of jurisdiction that already exist in several countries.

On GIABA’s Initiative and in Partnership with UNODC and GIZ, establish a Regional AML/CFT Forum for Judges and Prosecutors

191. Considering the complexity of AML/CFT issues particularly with regard to evidence for this category of specific offences, the importance of jurisprudence as a source of best practices in law, and the critical need to have a shared understanding in the ECOWAS region of the laws and legal opportunities they offer on AML/CFT in terms of investigation and prosecution, GIABA, in partnership with UNODC and GIZ, should establish a Regional Forum of Judges and Prosecutors involved in AML/CFT with a view to providing continuous training for specialized Magistrates and real time experience sharing.

Strengthening of the technical and operational capacities of the various actors in the criminal justice system based on clearly identified needs.

192. Because of its highly transnational nature, AML/CFT relies on key legal instruments for international cooperation. In addition to traditional diplomatic channels and existing information sharing platforms, actors in the criminal justice system will need to be trained in the use of the various cooperation and mutual legal assistance tools contained in the various legal instruments adopted by their countries. Technical partners should give priority to the training of trainers in order to optimize sustainability of the assistance being provided to the countries.

193. The investigation and prosecution of ML/TF offences rely essentially, beyond the predicate offences that support them at the factual level, on the quality of financial intelligence. It is a matter of having the necessary and useful instruments to track, identify and neutralize the structures and instruments linked to the offence, to establish the relationship between them in order to prepare and apply an adequate judicial response. In order to achieve this result, it is important that financial intelligence is of good quality, the LEAs and prosecutors have a clear understanding of ML offences in order to successful prosecute the cases in court.

(i) Strengthening the Quality of financial intelligence

194. The FIU’s role is to centralize financial information, analyze it and, as necessary, transmit the processed information to competent authorities either for further investigation or prosecution. However, it does not have a monopoly on receiving financial information, nor of initiating investigation on ML/TF. The FIU must therefore be equipped with adequate resources (human, material, technical) to meet this challenge. The law gives it some important prerogatives, in particular, the non-invocability of professional secrecy to its requests and the obligation of reporting suspicious transactions by reporting entities.

195. Financial information should thus be made available and accessible. Availability refers here to the proper implementation of the obligations of the authorities, entities and structures that hold or may hold this financial information. It is a matter of collecting all the information that can affect the quality of financial information and that is related to those behind the transactions. This is the whole point of the obligations to identify customers (natural or legal persons) and especially the beneficial owners of financial transactions. Identification is only relevant if it is based on a good knowledge of the customer, his environment, his activities and the sources of his income, in order to be able to determine the economic justification of the various transactions that he may carry out with certain entities.

196. The information collected should be kept in conditions, whatever the medium, that preserve its integrity and guarantee its reliability. The conditions of a good conservation have the double advantage of facilitating the traceability of the operations, and the possibility of updating the information on customers and taxpayers. Indeed, timely updating of information enhances the quality and credibility of financial information.
197. There is the need to ensure that financial information is not only available and accessible but also usable i.e. it can be read, understood and utilized to serve the purpose it is meant to serve. Financial information may be related to several activities, come from several sources and concern various operations; for example, it may be an international transfer with meant for the purchase of a property from a notary, carried out by a commercial company. Such a situation involves, for a proper reading of the financial information, several subjects (financial institution, notary, auditor, tax authorities) and challenges several facets of the concept of financial information (financial transaction, beneficial owner, accounting operation).

198. The accessibility of financial information can help facilitate the identification or destination of the funds/assets in question, but also, possibly, the predicate offence. Countries have designed legal frameworks that govern access to and the conduct of economic activities, and the processes of creating and exchanging wealth are governed by principles set out in legal instruments. It is up to the actors involved in the management of financial information to know how to approach the transactions with these frameworks in order to determine their integrity or probity.

(ii) Understanding of the ML/TF offence

199. The proper use of financial information requires an appropriate knowledge of the methods, mechanisms and techniques employed in the commission of ML/TF offences. With regard to ML, it is generally accepted that it follows three phases (placement, layering and integration). The first phase reis connected to the original source of the illicit proceed, the second phase seeks to delink the proceed from its criminal origin, the last phase legitimizes the proceeds, removing any suspicion on its criminal origin.

200. The main point of vigilance that AML actors seem to be struggling with in member countries is how to conduct financial analysis of wealth-generating activities in order to identify what is licit and what is illicit. To help them do this, GIABA, FATF and many other bodies have conducted several typologies studies identifying ML/TF risks, trends, methods techniques, mechanisms and instruments.24

201. The different typologies reports indicate that criminals use several techniques to launder the proceeds of crime. These include the use of both the formal financial system and the informal economy. The criminals use all the opportunities at their disposal to help them in their enterprise - use of cash (of several currencies: CFA, US Dollars, Euros, etc.), checks and other bearer instruments, transfers, and now electronic and digital currencies. Countries need to put in place a mechanism that will allow them to harness the available knowledge on the risks, trends and methods of ML/TF and make this available seamlessly to all stakeholders in the criminal justice system.

202. In addition, the lack of expertise on the part of Criminal Prosecution Authorities (CPAs) and other key actors affects the good understanding of ML/TF risks at the national level. As a result, risks are not properly identified for different sectors of the economy. Worse, national databases do not always sufficiently reflect the reality of ML prevalence in the countries. This often makes the conclusions of national risk assessments biased or inappropriate, being more of a perception survey than an assessment due to the lack of factual and objective information. There is a need to rethink and redress the paradigms of risk assessment by ensuring that the tools to be used are reliable, appropriate for the country and well understood and mastered by those who will use them.

(iii) Use of special investigative techniques

203. One of the major findings of this study concerns the difficulties encountered by judges and magistrates in seeking proof of the offence of ML/TF. However, the AML/CFT laws give investigating judges the power to order, for a specific period of time, and without being subject to professional secrecy, various actions, including -
- the monitoring of bank accounts and similar accounts, when there are serious indications that they are being used or are likely to be used for the commission of a predicate offence or ML/TF related offences as provided for in law;
- access to computer systems, networks and servers used or likely to be used by persons against whom there are serious indications of participation in the commission of a predicate offence or ML/TF related offences as provided for in law;
- the communication or seizure of authentic or private deeds, banking, financial and commercial documents;
- surveillance or interception of communications;
- audio or video recording or photographing of acts and actions or conversations;
- mail interception and capture.

204. These set of techniques, known as special investigative techniques, are used when there are strong indications that various instruments or mechanisms are or may be used by persons suspected to be involved in money laundering or terrorist financing. Member countries need to take full advantage of these special investigative techniques, with due regard to the limits set by the law, in order gather required information and evidence to identify, investigate and prosecute ML/TF, as the case may be.
REFERENCES

Publications
Paul, CAZALBOU: Étude de la catégorie des infractions de conséquence : contribution à une théorie des infractions conditionnées, Toulouse, 2014
Marty, MICHÈLE: Criminalité économique et atteinte à la dignité de la personne, Maison de la science de l’homme, Paris, 1996
Mireille, Marty DELMAS: Criminalité économique et atteinte à la dignité de la personne, Maison de la science de l’homme, 1995 Vol 1 EUROPE
Christian, CHAVAGNEUX ; Ronen, PALAN : les paradis fiscaux / new edition, les incorruptibles, 2006 collection repère,
Christian, Emmanuel Lucie : the smell of dirty money in the backstage of financial crime Eyrolles sociétés/paris 2003

Official documents

- Conventions
  - United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 1988;
  - ECOWAS Convention on Mutual Legal Assistance in Criminal Matters, Dakar, 1992;
  - ECOWAS Convention on Extradition, Abaja, 1994;
  - International Convention for the Suppression of the Financing of Terrorism, New York, 1999;
  - United Nations Convention against Corruption, Merida, 2003;
  - ECOWAS Convention on Small Arms and Light Weapons in West Africa, 2006;

- Guidelines, Regulations and Decisions
  - Directive No. 02/2015/CM/UEMOA on the fight against money laundering and terrorist financing in the UEMOA Member States;
  - UNSC Resolutions 1267, 1373 and 2462;
  - FATF Recommendations, 2012;
  - Evaluation Methodology, 2013;

- Rapports
  - Sierra Leone Mutual Evaluation Report, December 2020;
  - Mali Mutual Evaluation Report, November 2019;
  - Burkina Faso Mutual Evaluation Report, May 2019;
  - Cabo Verde Mutual Evaluation Report, May 2019;
  - Senegal Mutual Evaluation Reports, May 2018;
  - Ghana Mutual Evaluation Reports, May 2017;
  - Summary of GIABA Country Reports, 2019;
  - TRACFIN Activity Report 2018;
  - Organized Crime Casebook, UNODC, 2012;
  - FATF President’s paper: Anti-money laundering and counter terrorist financing for judges and prosecutors (2018);

Webographie
- www.giaba.org
- www.ecowas.int
- https://www.efccnigeria.org
- https://www.fatf-gafi.org
AN ASSESSMENT OF THE CHALLENGES OF INVESTIGATING, PROSECUTING AND ADJUDICATING MONEY LAUNDERING AND TERRORIST FINANCING CASES IN WEST AFRICA
APPENDICES

QUESTIONNAIRE

In order to achieve the above objective, the research team developed a questionnaire for administration in the member states. The questionnaire is designed to collect information on the various challenges that impede the effective investigation, prosecution, and conviction of AML/CFT cases, as well as the adequacy of current capacity to enforce AML/CFT laws and regulations. The information collected will be used only for the purposes of this study. This questionnaire contains questions relevant primarily to criminal investigation and prosecution agencies, judges and prosecutors, and Financial Intelligence Units. All respondents are invited to submit their feedback one week after their interview with the research team.

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<td>Name and organization of the contact</td>
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A. ADEQUACY OF THE CRIMINAL JUSTICE SYSTEM FOR ML/TF CASES: CURRENT PRACTICES AND CHALLENGES

1) a. What is the overall national level of ML risk in your country/jurisdiction? Please tick the appropriate box
   ☐ High
   ☐ Medium high
   ☐ Moderately low
   ☐ Low

   b. What is the overall national level of TF risk in your country/jurisdiction? Please tick the appropriate box
   ☐ High
   ☐ Medium high
   ☐ Moderately low
   ☐ Low

2) a. What are the main weaknesses of your AML system? Please tick the appropriate box
   ☐ Poor quality of financial information produced for AML.
   ☐ Inadequate AML criminal enforcement systems.
   ☐ Lack of responsiveness of the criminal justice system to ML issues.
   ☐ Other. Please specify below

3) b. What are the main weaknesses of your LFT device? Please tick the corresponding box
   ☐ Poor quality of financial information produced for LFT.
   ☐ Insufficient law enforcement systems for LFT.
   ☐ Lack of responsiveness of the criminal process to TF questions
   ☐ Other. Please specify below

4) Can you list the agencies involved in the detection of PO offences in your country/jurisdiction?
   …………………………………………………………………………………………………………………
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   …………………………………………………………………………………………………………………

5) Which agency in your country handles ML/TF investigations?
   ……………………………………………………………………………………………………………………………
6) Does your country deploy financial investigation specialists for financial investigations?
   - Yes
   - No

7) Is there a legal requirement to investigate money laundering cases whenever an predicate offence is being investigated?
   - Yes
   - No

8) Are the authorities investigating money laundering the same as those investigating financial crimes or are they different?
   ........................................................................................................................................................................
   ........................................................................................................................................................................

9) Have you had any cases of TF in your country that are not related to a specific terrorist attack?
   - Yes
   - No
   If yes, please provide details of the case(s).
   ........................................................................................................................................................................
   ........................................................................................................................................................................

10) Can you specify the number of financial crime investigations conducted in the last five years?
    ........................................................................................................................................................................
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11) What is the percentage of investigations for ML out of this total?
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12) Are there any secrecy laws in your country that affect ML/TF investigations? If yes, please tick the appropriate box
    - Minimal impact
    - Medium impact
    - Maximum impact
    - Does not apply

13) Are financial institutions in your country required to keep all necessary records of domestic and international transactions? If so, please explain which specific document requires it.
    - Yes
    - No
14) Are transaction records sufficient to allow reconstruction of individuals’ transactions to provide, if necessary, evidence for the prosecution of criminal activity?

- Yes
- No
- Not sure

15) Can you list the range of special tools and techniques that are used to gather intelligence, cross-reference facts, and collect evidence in ML/TF investigations? (e.g., wiretaps, undercover operations, controlled delivery, etc.)?

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16) How often are reports on ML/TF typologies used by the relevant authorities, including the FIU and law enforcement and investigative authorities?

- Regularly
- From time to time
- Almost never
- Never

17) How often are the results of the survey disseminated to the appropriate authorities?

- All the time
- From time to time
- Almost never
- Never

18) Has your country ever sent or received informal requests for international cooperation regarding financial investigations of persons involved in ML/TF (e.g., through asset recovery networks, Egmont’s secure website, FIU to FIU, Interpol, foreign-based police liaison posts, UNODC, or NGOs)? If yes, please provide details.

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19) Has your country ever sent or received formal requests for international cooperation in relation to financial investigations of persons involved in ML or TF (e.g., through mutual legal assistance or extradition requests, MOUs)?

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20) Have you contacted foreign counterparts to share or collect financial information related to ML or TF’s business?

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21) What are the best practices and main obstacles to international cooperation to combat ML/TF financial flows? (e.g., inconsistent legal frameworks, capacity issues, etc.)

22) What are the challenges faced by the institutions or agencies responsible for ML/TF investigations? Please tick as many boxes as necessary

- Inter-institutional competitions
- Poor information sharing among agencies.
- Low level of political will among the country’s leaders to support ML/TF investigations.
- Bureaucratic interests that impede the investigation
- Poor interagency cooperation among banks, customs, immigration, and foreign agencies
- Autres.
B. EFFECTIVENESS OF CRIMINAL PROCEEDINGS FOR ML/TF CASES: CURRENT POLICIES AND CHALLENGES

23) Which institutions handle the prosecution of ML/TF cases in your country?

24) How systematic and consistent is the investigation report for prosecution purposes?
   - Excellent
   - Good
   - Fairly good
   - Low

25) Can you briefly describe the evidence collection policy or procedures at the court level?

26) How would you rate the level of transparency and fairness of the judges presiding over ML/TF trials?
   - Very high
   - High
   - Low
   - Very low

27) What is your opinion on the competence of counsel and judges in the adjudication of ML/TF cases?
   - Very high
   - High
   - Low
   - Very low

28) How adequate is the number of staff assigned to pursue ML/TF’s business?
   - Very adequate
   - Adequate
   - Insufficient
   - Very inadequate
29) What is the level of cooperation between non-state institutions (the private sector) in supporting the adjudication process?

- Very high
- High
- Low
- Very low

30) To what extent have new technologies played a role in facilitating the adjudication of ML/TF cases?

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31) Is confiscation explicitly included in strategic policy statements as an objective to deprive criminals of the proceeds or instrumentalities of crime? If so, please provide a reference.

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32) Is there a legal framework in your country that allows authorities to restrict and confiscate property that is the proceeds or instrumentalities of crime?

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33) If so, please list the various legal provisions that set out the rules and mechanisms for dealing with this issue

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34) Confiscation is usually underpinned by a conviction. However, is non-conviction-based forfeiture applicable in your country? If so, please provide some examples of cases.

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35) Can you specify the aggregate amount of forfeiture over the past 2 years for the major predicate offences?

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36) Can you indicate the amount of forfeiture related to the TF over the past 5 years?

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37) Does your country have rules or procedures in place to manage seized and recovered assets? If so, are you satisfied with the adequacy of these rules and procedures?

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38) Is there an asset recovery agency or administrative unit in your country responsible for pursuing the proceeds of crime and managing seized or confiscated assets at the national level?

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39) How well tested is the mechanism for repatriating assets from other countries?

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40) What do you see as the challenges related to convictions? (tick as many boxes as necessary)

☐ Oversight of the effectiveness of reporting entities, particularly NPDES.
☐ Misreporting of DOS by DNFBPs
☐ Weak or no international cooperation between competent authorities.
☐ Low or no cooperation between the FIU and its foreign counterparts.
☐ Poor provision of mutual legal assistance.
☐ Poor response to request for extradition of suspects.
C. AVAILABILITY OF APPROPRIATE RESOURCES FOR THE INVESTIGATION, PROSECUTION, AND CONVICTION OF ML/TF CASES: CAPACITY AND TECHNICAL ASSISTANCE NEEDS

41) Do the agencies responsible for criminal investigations and prosecutions have the necessary resources to fully and effectively carry out their functions?
   a) In terms of human resources
      - Yes
      - No
   b) In terms of financial resources
      - Yes
      - No
   c) In terms of technical resources
      - Yes
      - No

42) Do the competent authorities keep comprehensive statistics on AML/CFT issues?
   - All the time
   - From time to time
   - Not at all
   - Not quite sure

43) Are special training or awareness programs offered to judges and courts regarding ML/TF offences and the seizure, freezing and forfeiture of criminal assets?
   - Yes
   - No

44) What policies are needed to improve investigation of ML/TF cases in your country? (tick the appropriate options)
   - Availability of information on beneficial owners in real time
   - Availability of a list of Politically Exposed Persons.
   - Review of formal secrecy laws to reflect the AML/CFT Act.
   - Removal of official secrecy laws to avoid contraction with ML/TF laws.
   - Implementation of international conventions, protocols and agreements against ML/TF.
   - Others ........................................................................................................................................
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45) Are there other challenges (operational and institutional) that you would like to share with us?

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46) Would you like to make any recommendations or advise on some good practices that could help improve the fight against ML/TF in your country?

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47) Does your country have a mechanism to facilitate the exchange of information between relevant agencies on ML/TF investigations, prosecutions, convictions and asset recovery?

☐ Yes
☐ No

48) If so, please describe how the mechanism works.

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49) What are the main challenges in inter-institutional cooperation and information exchange on ML/TF investigations, prosecutions, convictions and asset recovery?

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50) Does your country have a centralized or shared national database on predicate ML/TF offences?

☐ Yes
☐ No

51) If yes, please provide details

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AN ASSESSMENT OF THE CHALLENGES OF INVESTIGATING, PROSECUTING AND ADJUDICATING MONEY LAUNDERING AND TERRORIST FINANCING CASES IN WEST AFRICA
EVALUATION DES DÉFIS EN MATIÈRE D’ENQUETE, DE POURSUITE ET JUGEMENT DES AFFAIRES DE BLANCHIMENT DE CAPITAUX ET FINANCEMENT DU TERRORISME EN AFRIQUE DE L’OUEST

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