

**Namibia's implementation of the Financial Action Task Force's International
Standards on Combating the Financing of Terrorism**

**Research Paper submitted in partial fulfilment of the degree of Master of Laws: Transnational
Criminal Justice and Crime Prevention**

BY

SANDI ISAACS Student Number 3691355



Prepared under the supervision of Prof. L. Fernandez
UNIVERSITY of the
WESTERN CAPE

AT THE FACULTY OF LAW, THE UNIVERSITY OF THE WESTERN CAPE, SOUTH AFRICA.

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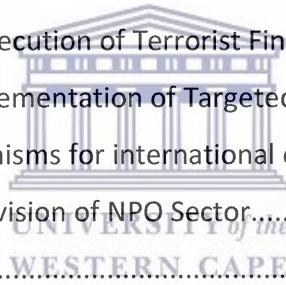
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Declaration

I **SANDI ISAACS** hereby declare that this research paper is my own work, that it has never been submitted before any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Student Name: Sandi Isaacs

Signature:

Date:



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Key words

9 Special Recommendations

Effectiveness

FATF

Financing Terrorism

International Standards

Namibia

PACOTPA

Terrorism



List of Abbreviations and Acronyms

AML	:	Anti-Money Laundering
AML/CFT	:	Anti-Money Laundering and Combating Terrorist Financing
ARS	:	Alternative Remittance Systems
AU	:	African Union
CDD	:	Customer Due Diligence
CFT	:	Combat the financing of terrorism
DNFBP	:	Non-Financial Businesses and Professionals
ESAAMLG	:	Eastern and Southern African Anti-Money Laundering Group
FATF	:	Financial Action Task Force
FI	:	Financial Institutions
FIC	:	Financial Intelligence Centre
FIU	:	Financial Intelligence Unit
FSRB	:	FATF-Style Regional Bodies
ICRG	:	International Co-operation Review Group
ISIL	:	Islamic State of Iraq and the Levant
MER	:	Mutual Evaluation Report
MVRS	:	Money or Value Remittance Services.
NAMPOL	:	Namibian Police Force
NPO	:	Non-profit Organisations
PACOTA	:	Prevention and Combating of Terrorist Activities Act
PACOTPA	:	Prevention and Combating of Terrorist and Proliferation Activities Act
POCA	:	Prevention of Organised Crime Act, 29 of 2004
SADC	:	Southern African Development Community

STR : Suspicious Transaction Reports
TF : Terrorist Financing
UN : United Nations
UNSCR : United Nations Security Council Resolution



CHAPTER 1

GENERAL INTRODUCTION AND OVERVIEW OF THE STUDY

1.1. Statement of the Problem

Terrorism has become one of the biggest threats to international peace and security.¹ It threatens to destroy basic human rights and freedoms, particularly the rights to life, liberty, security, and in more recent times, religious rights.² The methods used by terrorists to carry out their activities have become more sophisticated and complex, making it increasingly difficult to decipher how they operate. There is, however, one aspect that can be pinned down, namely, that terrorists need money to terrorise.³

The methods used to move funds in support of terrorist activities are continuously evolving and the revenue streams are diversified and far-reaching.⁴ While individual terrorist attacks can result in huge damage at low costs, a significant financial infrastructure is necessary to sustain terrorist networks and to promote their goals.⁵ Terrorists are well-connected and have networks that enable them to gain access to various resources that are used to fund their activities. Consequently, the international community has started to strengthen efforts to combat the financing of terrorism (CFT).⁶ Terrorist financing can be explained as, 'the financial support, in any form, of terrorism or those who encourage, plan or engage in terrorism'.⁷ It incorporates the distinct activities of fund-raising, storing and concealing funds, using funds to

¹ J-Myong Koh, *Suppressing the Financing of Terrorism and Money Laundering* (2003) at 30.

² B Saul, *Defining Terrorism in International Law* (2010) at 28.

³ Jimmy Gurule. *Unfunding Terror – The Legal Response to the Financing of Global Terrorism* (2004) at 21-51.

⁴ FATF Typologies paper on Terrorist Financing (29 February 2008), available at www.fatfgafi.org/ (accessed 8 April 2016).

⁵ Ja D Souza, *Money Laundering, Terrorist Financing and Tax Evasion, Examining the Performance of Financial Intelligence Units* (2012) at 28.

⁶ C N Okereke. 'Combating financing of terrorism: the African experience' *African Journal for the Prevention and Combating of Terrorism* (December 2011) Vol 2 No.1 at 14.

⁷ Bachus. 'From drugs to terrorism: the focus shifts in the international fight against money laundering after September 11, 2001' *Arizona Journal of International and Comparative Law* (2004) Vol 21 at 836.

sustain terrorist organizations and infrastructure, and transferring funds to support or carry out specific terrorist attacks. The objective of the CFT sanctions is, therefore, to starve terrorists of funding worldwide, in order to prevent terrorist acts.

The Financial Action Task Force (FATF) is an independent intergovernmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.⁸ In 2001, the FATF enunciated a set of standards aimed at combating the financing of terrorism. Countries around the world are urged to adopt and implement the FATF's Recommendations in order to establish a robust domestic CFT regime.⁹ Rigorous mutual evaluation procedures have been set up to assess countries' level of compliance with the FATF's recommendations, and those jurisdictions which lag behind may be 'blacklisted' and publicly shamed. The blacklisting of a non-compliant country may, in turn, have dire consequences for its financial system.¹⁰

Namibia is a member of the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG), an affiliate member of the FATF.¹¹ During 2005, Namibia underwent its first mutual evaluation by the ESAAMLG.¹² The mutual evaluation highlighted that Namibia was largely non-compliant with the FATF's standards. The country was found to have not criminalised money laundering and the financing of terrorism at the time. During 2011, Namibia was escalated to a targeted review by the FATF and the government was called upon to develop an action plan to address the identified deficiencies, failing which the country could be listed as a high risk non-cooperative jurisdiction.¹³

⁸ FATF Recommendations (2013), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation at 1, available at www.fatf-gafi.org/recommendations.html (accessed on 1 April 2016).

⁹ Consolidated FATF strategy on combating terrorist financing 19 February 2016.

¹⁰ N Turner, 'The Financial Action Task Force: International Regulatory Convergence through Soft Law' (2014/2015) 59 *New York Law School Law Review* at 554.

¹¹ ESAAMLG membership available www.esaamlg.org (accessed on 11 April 2016).

¹² Mutual Evaluation Report on Namibia, available at <http://www.esaamlg.org/reports/index.php> (accessed on 11 April 2016).

¹³ Topic: High Risk and Non-Cooperative Jurisdictions on FATF website. Global AML/CFT Compliance: on-going process (24 June 2011) – Namibia and Improving Global AML/CFT Compliance: on-going process – 21 June 2013 – Namibia, available at www.fatf-gafi.org/ (accessed on 11 April 2016).

The government of Namibia immediately rushed to establish a legal and institutional framework for CFT. In October 2014, the FATF Plenary Session noted that the country's action plan was completed successfully and in January 2015, following an on-site assessment, Namibia was released from FATF's targeted review process.¹⁴

Namibia's CFT regime was established in haste, under international pressure. The laws were passed in an attempt to satisfy the FATF's reviewers - a 'face-saving exercise' to avoid blacklisting.¹⁵ While the newly established CFT legal regime may comply technically with the FATF's standard, it is doubtful whether Namibia has the necessary institutional infrastructure, human capacity and resources to implement and enforce the law. Given the fact that the laws were enacted only recently, their constitutionality remains untested. Besides, the authorities have been slow in implementing the legislation and, in some respects; they have implemented it without success.



During 2017, Namibia will be subjected to a second mutual evaluation which this time will be based on the revised FATF Recommendations and the FATF's 2013 methodology for assessing both technical compliance and effectiveness.¹⁶ The method used to assess effectiveness differs fundamentally from that used to evaluate technical compliance, as it places more emphasis on measuring the effectiveness of national Anti-Money Laundering and Combating Terrorist Financing (AML/CFT) regimes. It is doubtful whether Namibia's current regime, particularly its measures on CFT are effective. There are, however, some key risk-based measures that the country may consider applying ahead of the 2017 review to improve the effectiveness of its efforts to combat the financing of terrorism. This paper seeks to identify these measures and to outline how they could be implemented.

¹⁴ Improving Global AML/CFT Compliance: on-going process (27 February 2015) – Namibia, available at www.fatf-gafi.org/ (accessed on 11 April 2016).

¹⁵ Jean Phillipou. *Obstacles to the Implementation of the Financial Action Task Force's Recommendations in the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG)*. (2011) page 3. LLM Thesis, University of the Western Cape. Available at www.uwc.ac.za. (accessed on 1 April 2016).

¹⁶ FATF mutual evaluation calendar available at www.fatf-gafi.org. (accessed on 1 April 2016).

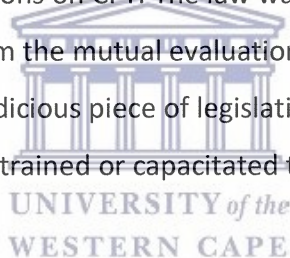
1.2. Research Questions

The main question this paper seeks to answer is whether Namibia has established a robust and effective CFT regime.

Given the haste with which the AML and CFT laws were passed to avoid blacklisting, the question that arises is this: Can Namibia implement its law on CFT effectively?

1.3. Hypothesis

The study is premised on the view that the Namibia has not adopted adequate measures to implement the FATF's Recommendations on CFT. The law was enacted as a response to international pressure emanating from the mutual evaluation exercise. The legislative process was rushed, which resulted in an injudicious piece of legislation that is to be implemented by national agencies that have not been trained or capacitated to carry out their task.



1.4. Significance of the Study

If the FATF's assessment team that will visit the country in 2017 finds that the Namibian CFT law is non-compliant with the FATF's requirements, the country is at risk of being subjected to another vigorous review and being listed as a 'high-risk and non-cooperative' jurisdiction.

The study is thus significant in that it seeks to identify the shortcomings of the current CFT regime that may be addressed directly by the relevant national authorities ahead of the FATF's next round of mutual evaluations.

1.5. Limitations of the Study.

The international standard with regard to the CFT has been designed in line with measures to combat money laundering and the financing of proliferation of weapons of mass destruction. Namibia has implemented an integrated regime that covers all three spheres. This paper will, however, focus only on the measures specifically designed for CFT. It will consider the measures regulating the crimes of money laundering and the financing of proliferation only to the extent that they may be necessary for the analysis of the CTF regime.

1.6. Structure of the Research Paper.

This paper comprises six chapters. The remaining chapters will cover the following areas:

Chapter 2 will provide a brief introduction to Namibia. It will give an overview of the country's financial sector for AML/CFT purposes and provide a snapshot of the existing crime situation in Namibia, particularly the status of organised crime in the country. It will also give a brief overview of the national situation pertaining to terrorism and terrorist financing. The second part of this chapter will provide an overview of the FATF, the scope of its work, its main objectives, membership and peer review process. It will also highlight the FATF's strategy for CFT.

Chapter 3 will examine the scope of terrorist financing. It will discuss terrorists' need for funding, the main sources of their funding and the methods and trends used for the movement of funds associated with terrorism. The chapter will seek to explain why it is important for countries to implement measures to prevent, detect and suppress the financing of terrorism.

Chapter 4 will provide a critical evaluation of the FATF's international standards on CFT, particularly its Recommendations. It will identify, discuss and critique those Recommendations that are regarded as being fundamental to a national CFT regime.

Chapter 5 will analyse Namibia's domestic CFT regime. It will discuss the development of the national regime and highlight how the FATF's International Review (ICRG) Process influenced the national regime. It will identify the legislative, policy and institutional framework that Namibia has adopted in order to comply with the FATF's Standard. It will highlight the successes as well the shortcomings of the legal and institutional mechanisms that form part of the national regime. The Chapter will provide an overview of the FATF's post -2012 assessment criteria and the methodology that will be used to assess Namibia's compliance in 2017.

The final chapter will conclude with risk-based recommendations commensurate to the identified risks in order to enhance the domestic regime.



1.7. Methodology

This research will be a qualitative desktop study. Primary sources, such as International Conventions, UN Security Council Resolutions and the FATF's Recommendations and mutual evaluation reports serve as benchmarks for examining the Namibian law.

Secondary sources such as books, journals, articles, and the other literature will also be referenced. The study will refer as well to the relevant FATF publications such as guidance papers, typology papers and strategies.

CHAPTER 2

NAMIBIA AND THE FATF

2.1. Overview of Namibia

2.1.1 General

The Republic of Namibia is a country in Southern Africa on the Atlantic coast. It shares borders with Angola and Zambia to the north, Botswana to the east, and South Africa to the south. Namibia is a member state of the United Nations (UN), the African Union (AU), the Southern African Development Community (SADC) and, as previously mentioned, Namibia is one of the founding members of ESAAMLG.¹⁷ The country gained its independence from South Africa on 21 March 1990, and has since been a constitutional democracy.¹⁸ It has a bicameral parliament that consists of the National Council and the National Assembly.¹⁹ The highest judicial authority in the country is the Supreme Court.²⁰



Namibia has one of the most stable and highly developed financial systems in Africa. Sound macroeconomic policies, in addition to a stable political environment, have contributed to the strong economic growth rates that Namibia has recorded over the past decade. It's real gross domestic product (GDP) growth is projected at 4.4% and 5.4% for 2016 and 2017, respectively.²¹ The official currency of the country is the Namibian dollar.

The economy is heavily dependent on the extraction and processing of minerals for export. Mining accounts for 11.5% of (GDP), but constitutes more than 50% of foreign exchange

¹⁷ Country Profiles: 'Namibia', UCLA African Studies Centre, accessed 17 September 2016.

¹⁸ United States, Central Intelligence World Fact book – Namibia as at 20 September 2016, available at <https://www.cia.gov> (accessed on 14 July 2016).

¹⁹ Article 44, Legislative Power. Namibian Constitution, Act 1 of 1990.

²⁰ Article 78, The Judiciary. Namibian Constitution, Act 1 of 1990.

²¹ Bank of Namibia. Economic Outlook Report, July 2016.

earnings.²² Namibia is the fourth largest exporter of non-fuel minerals in Africa, with this category contributing around half of all exports over the past decade. Namibia's mining industry produces diamonds, uranium, copper, magnesium, zinc, silver, gold, lead, semi-precious stones and industrial minerals. The country is amongst the world's top ten diamond producers and the world's fifth largest producer of uranium.²³

2.1.2. Financial Sector

The financial system in Namibia consists of a network of integrated financial markets, instruments, institutions and infrastructure. The banking sector is mature, profitable, and well capitalised. The country has seven licensed commercial banks, one micro finance bank and a state-owned banking institution.²⁴ The Bank of Namibia (BON) is the primary regulator of the banking sector while the Financial Intelligence Centre (FIC) carries out all additional AML/CFT supervision and controls. Most of the international financial transactions are processed through four of the commercial banks, as these banks are registered also as authorised dealers in foreign currency and international fund transfers. There are six additional authorised dealers in foreign exchange.²⁵



The non-bank financial institutions are well developed too. As at 31 March 2016, the long-term insurance industry comprised 16 insurance companies and the recorded assets for the sector amounted to N\$45.4 billion.²⁶ The short-term insurance sector comprises 13 companies and its industry assets are valued at N\$6.0 billion.²⁷ The assets of collective investment or unit trust schemes were recorded at N\$27.2 billion, while the investment managers' assets

²² World Bank Study. *Ill-gotten Money and the Economy: Experiences from Malawi and Namibia* (2011) at 55. Also see United States, Central Intelligence World Fact book – Namibia as at 20 September 2016. available at <https://www.cia.gov> (accessed on 1 October 2016)

²³ KPMG mining guide (2014). Diamond mining is one of the major contributors to economic growth with a GDP contribution estimated to average 10.2% between 2016 and 2017.

²⁴ Bank of Namibia. *The banking system in Namibia* available at www.bon.com.na.

²⁵ Bank of Namibia. *Currency Exchange* available at www.bon.com.na (accessed on 1 October 2016)

²⁶ Namibia Financial Institutions Supervisory Authority (NAMFISA). *Quarterly Report – First Quarter 2016*. At 12.

²⁷ NAMFISA (2016) at 14.

amounted to N\$151.8 billion.²⁸ For the same period, the micro lending sector, which consists of 278 companies, disbursed loans to the value N\$710.9 million.²⁹ The Namibian Financial Institutions Supervisory Authority (NAMFISA) was created in 2001 and is the primary regulator of the non-banking financial sector.³⁰

Namibia's financial structure is a complex hybrid of old and new. While it has sophisticated and modern components, particularly in the banking sector, there is still a large informal sector that is cash based.³¹ According to the World Bank, 'poverty, low (financial) education ("People are afraid of banks"), limited presence of banks in remote areas, and inefficiencies and high costs of having and using bank accounts, partly explain the important role of the informal sector in the lives of many people'.³²

2.1.3. Other Accounting and Reporting Institutions

Namibia also has a vast Designated Non-Financial Businesses and Professions (DNFBP) sector, which is comprised of lawyers, accountants, estate agents, dealers in precious stones and metals and some casino houses. At the end of 2015, the country had 466 registered accountants in practice.³³ The number of lawyers at the beginning of 2014 was 614, of whom 304 were active in private practice.³⁴ There are currently 3 casinos, and roughly 10 motor vehicle dealers. There are reportedly about 430 registered estate agents operating in Namibia's real estate sector.³⁵ There are also several diamond companies operating in Namibia. The market leaders in the diamond sector are Namdeb Diamond Corporation (PTY) LTD, a joint venture between the Namibian government and De Beers South Africa and Namibia Minerals

²⁸ NAMFISA (2016) at 4.

²⁹ NAMFISA (2016) at 4.

³⁰ Namibia Financial Institutions Supervisory Authority Act (*Act No. 3 of 2001*).

³¹ World Bank(2011) at 57.

³² World Bank(2011) at 57.

³³ Institute of Chartered Accountants of Namibia, Annual Report for that ended 31 December 2015.

³⁴ Law Society President's, remarks on the occasion of the High Court legal year opening on Thursday, 16 January 2014. www.lawsociety.na.

³⁵ Catherine Sasman. 'Rogue estate agents' days numbered' in *Namibian Sun* 12 December 2016.

Corporation (NAMCO). Anglo Ashanti and B2G, a Canadian mining company, are the two main players involved in gold mining in Namibia.³⁶

2.1.4. Organised Crime in Namibia

Namibia is said to have a number of vulnerabilities that make the country an attractive haven for transnational criminal syndicates. Factors such as porous borders, inadequate border controls, lack of trained customs, immigration and law enforcement officers, corruption and the lack of adequate laws, have been cited as causal factors.³⁷

Money laundering in Namibia occurs within and across territorial borders and involves both local and foreign nationals. According to a study published by the World Bank, cross-border flows of ill-gotten money are an issue of concern in Namibia. In 2010, the BON reported an increase in the number of suspicious activities related to money laundering and terrorism financing in the country.³⁸ In 2015, the *Namibian Sun* reported that suspicious transactions amounting to N\$329 million were halted by the country's FIC during 2014, following suspicious transaction reports.³⁹



The 2011, World Bank study also highlighted, that diamond stealing and smuggling are the oldest and by far the most lucrative forms of organised crime in Namibia.⁴⁰ Cases that have come before the courts suggest the involvement of organised crime syndicates in the theft and marketing of diamonds. According to Goba, the former Deputy Prosecutor-General of Namibia, 'there is an undoubted international dimension to the illegal trade in diamonds. In the

³⁶ KPMG (2014) at 30-31.

³⁷ Zenobia Barry. 'Challenges in the investigation, prosecution and trial of transnational organized crime in Namibia'. Work Product of the 134th International Training Course, Participant papers (2007). Available at www.unafei.or.jp (accessed on 1 July 2016)

³⁸ *The Economist*. 'Money laundering on the increase?' April 5, 2012.

³⁹ *Namibian Sun*. 'Smuggling, poaching feed money laundering' 16 April 2014.

⁴⁰ World Bank (2011) at 68.

experience of Namibia, some of the illegal buyers are from Europe, the Middle East, South Africa and Angola'.⁴¹

Other environmental crimes relating to protected species include poaching of rhinos, illegal hunting, illegal possession and the trade in protected game products.⁴² Chinese and Zambian organised crime groups have also been linked to the trafficking of rhino horns.⁴³ The smuggling of high-value and counterfeit goods, drug trafficking, motor vehicle theft and cross-border smuggling of stolen vehicles are also noted as crimes of concern.⁴⁴ Because of its good infrastructure, modern telecommunications systems and general accessibility, Namibia serves as a conduit for illicit trade in a variety of commodities.⁴⁵ The involvement of foreign buyers is indicative of the fact that there are effective organisational and communication channels between local and foreign criminal groups.

2.1.5. Terrorism and Terrorist Financing

Namibia is a relatively peaceful country. According to the 2016 Global Peace Index, the country enjoys a high state of peacefulness and is ranked 55th out of 163 countries.⁴⁶ The overall threat of terrorism has also been rated low.⁴⁷ Since the enactment of the Prevention and Combating of Terrorist and Proliferation Activities Act, 4 of 2014 there have been only two reported police investigations relating to domestic charges of terrorist activities and one widely publicized case related to suspected terrorist financing.⁴⁸ None of these cases has been brought to court, and

⁴¹ R Goba. 'Developing a Comprehensive Prevention and Enforcement Framework against Money Laundering and Terrorist Financing in Namibia, 2004 to 2006' in *Confronting the Proceeds of Crime in Southern Africa*, ed. Charles Goredema (2006).

⁴² World Bank (2011) at 69-70.

⁴³ 'Government calls on Namibians to assist in the fight against poachers-reward doubled' in *Namib times*, 12 May 2015.

⁴⁴ World Bank Study *Ill-gotten Money and the Economy: Experiences from Malawi and Namibia*(2011).

⁴⁵ Grobler John. 'Namibia' in *Penetrating State and Business: Organised Crime in Southern Africa* (2003) ed. P Gastrow. Vol1, ISS Monograph No. 86, South Africa.

⁴⁶ Global Peace Index (2016) Institute for Economics and Peace.

⁴⁷ Global Terrorism Index (2015) Institute for Economics and Peace.

⁴⁸ Tileni Mongudhi. 'FNB linked to money laundering' in *The Namibian* 14 December 2015. 'Bank faces flak over money laundering' in *Insight*, 16 February 2016.

the charges of terrorism have reportedly been withdrawn.⁴⁹ Media reports over the last few years suggest that because of the laxity and inexperience of law enforcement and other relevant agencies, terrorists or terrorist organisations have, on occasion, been able to infiltrate the country to fund acts of terrorism and to recruit mercenaries.⁵⁰

The African Centre for the Study and Research on Terrorism (ACSRT) has warned that radicalisation and violent extremism are caused by unresolved ideological factors, social grievances, unresolved conflicts, politics, history, marginalisation and exclusion. A society's inability to respond properly and effectively to these problems leads eventually to the emergence of hotbeds for spawning violence, which, in turn, cause recurrent insecurity and instability. According to the Director of the ACSRT, '[s]uch a situation usually contributes to the creation of an enabling environment for recruitment and radicalisation, where extremist and intolerant philosophical, political, religious, nationalistic and ethnic theories, ideologies and movements thrive and terrorism becomes appealing to some as an instrument of political activism'.⁵¹



Namibia has a number of radicalised groups and organisations that have threatened the government and have, at times, caused insecurity in the country. Some cases have been more extreme than others. Social grievances have been at the core of the conduct of groups like the Namibia Transport and Taxi Union (NTTU) which, in 2014, threatened to mobilise thugs, gangsters and the jobless in a violent anti-apartheid-like strike.⁵² The Affirmative Repositioning

⁴⁹ Staff reporter. 'Terrorism added to farmer's charges' in *The Namibian*, 22 June 2016. Staff reporter. 'Wild claims by NTTU's Januari against police, NDF' in *Namibian Sun*, 9 June 2014. Tileni Mogudhi. 'FNB linked to money laundering' in *The Namibian*, 14 December 2015.

⁵⁰ Press Release by Namrighs, 2 November 2011, 'Namibia a terror paradise'. Tileni Mongudhi 'Nam probes al-Qaeda links' in *The Namibian*, 14 August 2015. Tileni Mongudhi. 'Namibia's mysterious 'unwanted' citizen' in *The Namibian*, 25 September 2015. Staff reporter. 'Police chief concerned about Namibians fighting for ISIS' in *Confidante*, 1 July 2015. Max Hamata. 'Namibian ISIS trained terrorist killed in Syria' in *Confidante*, 26 November 2015. Tileni Mogudhi. 'Unholy marriages lead to Govt probe' in *The Namibian*, 6 August 2013.

⁵¹ African Centre for the Study and Research on Terrorism February 12, 2015 available at www.acsrt.org (accessed on 1 April 2016).

⁵² Staff Reporter. 'Taxis threaten June 16 violent strike' in the *Namibian Sun* 29 April 2014. Wild Claims by NTTU's Januari against Police, NDF' in *the Namibian Sun*. 9 June 2014.

(AR) is a radical youth movement ostensibly aimed at improving the socio-economic conditions of urban youth. During 2015, the group, leading thousands of youths, threatened to 'grab unoccupied land' across the country, due to Government's failure to make housing and affordable land available.⁵³ The group used social media platforms to rally and instigate youth to join in the illegal land grabbing. The Inspector-General of the Namibian Police referred to the group's actions as organised crime.⁵⁴

Higher risk groups harbouring undisclosed political ideologies include the Namibia War Veterans' Trust (NAMVET), which consists of erstwhile members of the former counter-insurgency unit (Koevoet) and the South West Africa Territory Force (SWATF) members. The group has been in a scuffle with the Namibian government since the country's independence, demanding that they be recognised as war veterans. Having exhausted their rhetorical demands, the group recently commenced with public demonstrations and have vowed that any opposition from the government will be met with resistance.⁵⁵ Probably the most extreme of the groups is the United Democratic Party (UDP) and its affiliate groups such as the Caprivi Concerned Group (CCG). On 2 August 1999, the UDP's Caprivi Liberation Army (CLA) attempted coup d'état' in Katima Mulilo in the Caprivi Region of Namibia. The group sought the secession of the Caprivi Strip from Namibia. Its actions resulted in some deaths, numerous injuries, and severe damage to state property.⁵⁶ The group's leader fled to Denmark, where he has been granted asylum. In September 2015, almost 16 years later, the High Court of Namibia convicted 30 men of high treason and related charges.⁵⁷ However, despite its initial failure, the CCG continues to call for the secession of Caprivi from Namibia.⁵⁸ The group uses social media, the internet and mass meetings to spread its propaganda and solicit support for its cause.⁵⁹

⁵³ AR has been accused of harbouring political agendas, primarily because of the fact that it was established by individuals that were expelled from the ruling South West Africa People's Organisation (SWAPO) party. Staff reporter. 'Ndeitunga calls AR plans organized Crime' In the *New Era* 17 July 2015.

⁵⁴ Catherine Sasman. 'Army on alert over Koevoet' in *Namibian Sun*, 11 August 2016.

⁵⁵ *S v Malumo* (CC 32-2001) [2015] NAHCMD 213 (7-14 September 2015).

⁵⁶ Werner Menges. 'A burden lifts with Caprivi high treason trial's end' in *The Namibian*, 18 December 2015.

⁵⁷ *S v Malumo* (CC 32-2001) [2015] NAHCMD 213 (7-14 September 2015).

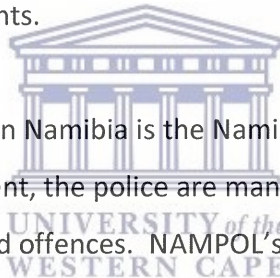
⁵⁸ Capriviconcernedgroup.com

⁵⁹ Nampa. 'Ndeitunga lays down the law against Caprivi group' in *The Namibian* 22 July 2015.

All the above-mentioned groups and organisations remain volatile. Although the government has been able to engage them on various occasions and has sometimes been able to halt potential violent episodes, their demands remain largely unmet and the government's failure to attend to these issues may result in further radicalisation.

2.1.6. Law Enforcement Agencies

The prosecutorial authority in Namibia is vested in the Prosecutor General, who is appointed by the President, in terms of Article 88 of the Namibian Constitution. The power to prosecute is delegated to public prosecutors appointed in terms of Section 4 of the Criminal Procedure Act, 51 of 1977. The office of the Prosecutor General is divided into specialised units to investigate different forms of organised crime, including money laundering, human trafficking, drug trafficking and the smuggling of migrants.



The primary law enforcement agency in Namibia is the Namibian Police Force (NAMPOL). Established through an act of parliament, the police are mandated to maintain law and order and investigate all offences and alleged offences. NAMPOL's Criminal Investigations Directorate is responsible for the investigation of all criminal cases and consists of various specialised divisions, sub-divisions and units that are responsible for different areas of investigation.⁶⁰ These include the drug law enforcement division, the commercial crime division, the high profile crimes investigation division, the women and child protection division, the high treason and counter-terrorism sub-division, the protected resources sub-division, the motor vehicle theft sub-division and the serious crime investigation sub-division.⁶¹ There are also supplementary law enforcement institutions such as the Anti-Corruption Commission, which is tasked with investigating all corruption cases; the Directorate of Inland Revenue, which investigates tax-related crimes; and a specialised Customs Investigation Unit.

⁶⁰ Directorates and Divisions available at nampol.gov.na. (accessed on 2 August 2016)

⁶¹ ESAAMLG (2007) at 19.

2.2. Overview of the FATF.

2.2.1. General

The FATF was established by the G-7 Summit held in Paris in July 1989.⁶² The mandate of the FATF is to set standards and to promote effective implementation of legal, regulatory and operational measures that will help countries detect, prevent and punish the abuse of the international financial system.⁶³ Initially the FATF was mandated to focus on the prevention of money laundering, which is evident from the scope of its 40 Recommendations released in 1990. However, in 2001, following the 9/11 al Qaeda terrorists attack in the United States, the FATF's mandate was broadened to tackle the financing of terrorism, which led to the adoption of its 8 (later 9) Special Recommendations.⁶⁴ In 2008, the FATF's mandate was expanded again, this time to include the financing of proliferation of weapons of mass destruction.⁶⁵ It adopted a new Recommendation 7 aimed at ensuring that countries implement targeted financial sanctions imposed by the United Nations Security Council.



2.2.2. Membership

The FATF is made up of 37 members, comprising 35 jurisdictions and two regional organisations representing most major financial centres across the world.⁶⁶ Its membership is governed by a policy that lists a number of both qualitative and quantitative criteria for membership.⁶⁷ The FATF also has one observer member and eight affiliated members, known as the FATF-Style Regional Bodies (FSRB's) whose purpose is to ensure the implementation of the FATF's

⁶² FATF 'who we are' available at fatf.gafi.org. (accessed on 1 August 2016).

⁶³ FATF Recommendation 7.

⁶⁴ FATF Recommendation 8.

⁶⁵ FATF Recommendation 8.

⁶⁶ As at September 2016. FATF members and observers at www.fatf.gafi.org (accessed on 1 August 2016).

⁶⁷ FATF membership policy available at www.fatf.gafi.org (accessed on 1 August 2016)

standard.⁶⁸ The FATF has a permanent secretariat which is based at the offices of the Organisation for Economic Co-operation and Development (OECD) in Paris, France.⁶⁹

2.2.3. Peer Review Process

The FATF is not only the international standard setter, but also monitors and oversees effective implementation of those standards at the international level. In 1991, the FATF introduced mutual evaluation practices aimed at assessing whether or not countries comply with its Recommendations. The Mutual Evaluation Reports (MER) analyse comprehensively the AML/CFT measures that countries have introduced and they evaluate the strengths and weaknesses of such measures. In 2007, the FATF strengthened its monitoring process through the creation of the International Co-operation Review Group (ICRG). The ICRG monitors closely countries that are considered to be high-risk jurisdictions and recommends specific action to address the identified risks. The FATF, through the ICRG, has developed what many refer to as a 'name and shame policy'. Countries that fail to implement the FATF standards adequately are shamed publicly by being listed as a 'high risk non-cooperative jurisdiction'.⁷⁰ This is often referred to as "blacklisting".⁷¹ A blacklisted country is considered to have strategic AML/CFT deficiencies and FATF member countries are advised to take additional cautionary measures when dealing with such countries.⁷² The FATF thus uses its rock-hard peer review mechanisms to enforce soft law on countries. It aims at ensuring that countries across the world implement its AML/CFT Recommendations uniformly.

2.2.4. FATF's CFT Strategy

⁶⁸ Nicholas Turner, 'The Financial Action Task Force: International Regulatory Convergence through Soft Law' (2014/2015) 59 *New York Law School Law Review* at 553.

⁶⁹ FATF Secretariat available at www.fatf.gafi.org (accessed on 1 August 2016).

⁷⁰ More about the International Co-operation Review Group (ICRG) at <http://www.fatfgafi.org> (accessed on 8 April 2016).

⁷¹ Jonathan Winer. 'Globalization, Terrorist Finance, and Global Conflict – time for a White List?' in Mark Pieth (Ed) *Financing Terrorism* (2003) at 30-31.

⁷² N Turner (2014/2015) at 554-555.

According to the FATF, the scope and nature of terrorist threats have considerably intensified in 2015. International terrorist organisations are becoming more significant and increasingly sophisticated and therefore further concerted action is urgently needed to strengthen global CFT regimes.⁷³ In 2015, the FATF adopted a Consolidated Strategy on Combating Terrorist Financing which lays out key policy objectives and priority actions that the FATF and its global network must take in the fight against terrorism and terrorist financing. As a fundamental component of this strategy, the FATF has called upon all countries to implement effective measures to bring their national systems for terrorist financing into compliance with the revised FATF Recommendations. The organisation has vowed to use its mutual evaluation process to ensure that jurisdictions across the globe implement the FATF recommendations for an effective CFT regime, fully and effectively.⁷⁴



⁷³ FATF. Consolidated Strategy on Combating Terrorist Financing. (2016) available at www.fatf-gafi.org. (accessed on 20 September 2016)

⁷⁴ FATF(2016) at 6-7.

CHAPTER 3

TERRORIST FINANCING

3.1. The Terrorist Requirement or Finance.

Terrorist organisations vary widely in their size, structures, operations and objectives. Their financing requirements reflect this diversity, varying greatly between organisations.⁷⁵ According to Jodi Vittori, resourcing also affects the capability of terrorist organisations to conduct their operations: 'it is the quantity and quality of resources that largely determine their level of capabilities'.⁷⁶ In 2008, the FATF carried out a comprehensive typology study on the terrorist requirement for funds.⁷⁷ The report explains that, financing is required not just to fund specific terrorist operations, but also to meet the broader organisational costs of developing and maintaining a terrorist organisation and to create an enabling environment necessary to sustain their activities.⁷⁸



Specific terrorist operations require funding for manpower, weapons, explosives, travel/transport and logistics.⁷⁹ These costs are supplemented by the preparatory costs of recruitment, training, communications and bribing of government officials.⁸⁰ A significant financial infrastructure is also necessary to sustain terrorist networks and promote their goals.⁸¹ Day-to-day expenses on items such as food, shelter and salaries for recruited operatives present a great financial demand on these groups.⁸² Extensive propaganda campaigns, as well as sophisticated social media networks, help terrorist groups to promote their ideology and

⁷⁵ FATF Typologies paper on Terrorist Financing (29 February 2008) at 4.

⁷⁶ Jodi Vittori. *Terrorist Financing and Resourcing* (2011) at 6.

⁷⁷ (FATF) 2008.

⁷⁸ FATF (2008) at 4.

⁷⁹ FATF (2008) at 7-8.

⁸⁰ FATF (2008) at 7.

⁸¹ Jayesh D' Souza. *Money Laundering, Terrorist Financing and Tax Evasion, Examining the Performance of Financial Intelligence Units* (2012) at 28.

⁸² Jodi Vittori (2011) at 18.

provide terrorist organisations with training and operations, money, arms, and logistics with diplomatic backing, as well as sanctuary.⁸⁹

Similar to organised criminal networks, terrorist organisations derive funding also from a variety of criminal activities ranging in scale and sophistication from low-level crime to involvement in serious organised crime. Bank robberies provide a significant source of financing for some terrorist groups.⁹⁰ According to the FATF, ISIL derives a large portion of its wealth from controlling the bank branches in Iraq, where it operates.⁹¹ The smuggling of illicit goods, such as drugs, weapons, antiquities and cultural artefacts has also been identified as a fundraising tool for terrorist organisations.⁹² A study on the opiate trade in Afghanistan found that the multi-million dollar profits of drug trafficking operations are channelled into terrorist activities.⁹³ ISIL is alleged to have boasted in its own publication, *Al Dabiq*, of its involvement in human trafficking, specifically targeting women and children.⁹⁴ Kidnapping and ransom has become a dominant source of financing for some terrorist organisations.⁹⁵ The US government has estimated that, between 2008 and 2014, terrorist organisations have generated at least \$222 million in ransom payments.⁹⁶ In 2014, Abu Huraira, a former ISIL agent, told the *BBC News*, that the group has an entire department dedicated to carrying out kidnappings called the 'Intelligence Apparatus'.⁹⁷ Boko Haram, the West African jihadist militia has gained worldwide infamy through the mass kidnapping of schoolgirls in northern Nigeria. It is alleged that some of these girls have been sold on the black market.⁹⁸

⁸⁹ Jodi Vittori (2011) at 29-30.

⁹⁰ Jodi Vittori (2011) at 35

⁹¹ FATF. *Financing of the terrorist organisation Islamic State of Iraq and the Levant* (2015) at 12. available at www.fatf-gafi.org (accessed on 14 October 2016).

⁹² FATF (2015) at 15.

⁹³ FATF. *Financial Flows linked to the production and trafficking of Afghan Opiates* (2014) available at www.fatf-gafi.org (accessed on 12 October 2016).

⁹⁴ United Nations. *Monitoring Team's report on the threat posed by ISIL and ANF.* (2014) at 26. Available at www.un.org (accessed on 17 October 2016.).

⁹⁵ FATF (2015) at 18.

⁹⁶ US Department of Treasury. *National Terrorist Financing Risk Assessment* (2015) at 14-15.r

⁹⁷ Omar Al-Maquadud's TV documentary 'The Islamic State Kidnap Machine'. *BBC News Magazine's* 22 September 2015

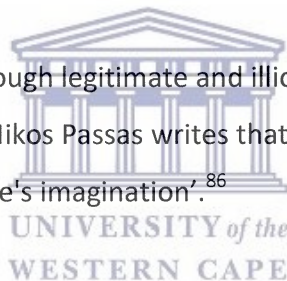
⁹⁸ Kathleen Caulderwood. 'Fake Charities, Drug Cartels, Ransom and Extortion: Where Islamist Group Boko Haram Gets Its Cash'. *International Business Times*. 16 May 2014.

attract new operatives, supporters and sympathisers, but are often expensive and require expertise.

Generally, the financial requirements to maintain a terrorist organisation's infrastructure, personnel and activities are very high.⁸³ Prior to 9/11, Al Qaeda's annual operational budget was estimated to be between \$30 and \$50million. HAMAS's annual operational budget has been estimated to range between \$30 and \$90million, while bigger groups such as the Hizbollah's operating budget has been estimated to be as high as \$200 million per year.⁸⁴ Since 2012, ISIL (Islamic State of Iraq and the Levant) has published annual reports of its funding, detailing the collection and distribution of millions every month.⁸⁵

3.2. The Main Sources of Terrorist Financing.

Terrorist organisations raise funds through legitimate and illicit activities, but more commonly through a mixture of both. Professor Nikos Passas writes that 'the sources of funding for terrorist actions are only limited by one's imagination'.⁸⁶



State sponsorship of terrorism, is one of the oldest sources of terrorist financing. There is a variety of public sources and national governments that have claimed that certain terrorist groups have been, and continue to be, financially supported by a number of national governments.⁸⁷ The United States has publicly listed Sudan, Iran and Syria as states that have repeatedly provided support for acts of international terrorism.⁸⁸ Vittori contends that states

⁸³ FATF. *Emerging Terrorist Financing Risks* (2015) at 9. Available at www.fatf-gafi.org (accessed on 1 October 2016)

⁸⁴ Jimmy Gurule (2004) at 25.

⁸⁵ Khalaf, Roula. 'Selling terror: how Isis details its brutality'. *Financial Times*. (17 June 2014).

⁸⁶ Prof Nikos Passas (2003) Page 154.

⁸⁷ FATF (2015) at 20.

⁸⁸ Designated State Sponsors of Terrorism – US Department of State. Available at www.state.gov (accessed on 13 October 2016).

Individual terrorists and smaller cells are often self-funded from salaries, savings or personal loans.⁹⁹ Donations from affiliates, supporters and sympathisers have also been noted as a substantial source of terrorist funding. In 2003, the *Wall Street Journal* published an article naming 20 of Saudi Arabia's richest and most influential families as among the first financial supporters of Osama bin Laden and Al Qaeda.¹⁰⁰ A number of charities have also been accused or convicted in court of using their revenues to fund terrorism or revolutionary movements, rather than for the humanitarian purposes for which contributions were ostensibly collected.¹⁰¹

A more complex means of funding is through a series of legitimate business holdings. Some terrorist organisations operate legitimate business ventures which generate their own profits, which are then used for terrorism.¹⁰² The Eastern and Southern African Anti-money Laundering Group (ESAAMLG) has reported that used car dealerships import vehicles from countries such as the United Kingdom, Japan and Singapore and generate revenue from the sale of these cars as part of a complex money laundering scheme which is then funneled to terrorist groups.¹⁰³



3.3. The Movement of Funds Associated with Terrorist Financing.

The methods used by terrorists to move funds are highly evolved and varied.¹⁰⁴ According to the finding of real case studies by the FATF, all financial institutions used to move funds are potentially vulnerable to terrorist financing.¹⁰⁵

⁹⁹ FATF (2008) at 34; FATF (2015) at 19.

¹⁰⁰ Glenn Simpson. 'List of Early al Qaeda Donors Points to Saudi Elite, Charities'. *The Wall Street Journal* March 18, 2003.

¹⁰¹ Richey, Warren. 'On the trail of US funds for IRA'. *Christian Science Monitor*. (January 14, 1985).

¹⁰² Annete Hübsche at 7.

¹⁰³ FATF (2015) at 19.

¹⁰⁴ Kathryn L. Gardner *Fighting Terrorism the FATF Way Global Governance* 13 (2007), 325–345 at 328.

¹⁰⁵ FATF (2015) at 20.

Experts find that the banking sector, as the most reliable and efficient way of moving funds internationally, remains the primary institution for moving funds for terrorism.¹⁰⁶ Because of the size and scope of the international banking sector, terrorist financing can easily blend in with normal financial activity, moving small amounts of money inconspicuously to fund their global operations. Another reported method of moving terrorist funding is through the remittance sector. Alternative Remittance Systems (ARS) take the form non-bank institutions that transfer funds on behalf of clients through their own network.¹⁰⁷ According to studies by the FATF, terrorists use ARS for convenience, rapidity and access. It is a diverse sector, consisting of both large formal remitters such as Western Union or MoneyGram and small informal remittance operators such as the hawaladors, Hundi or the Fei ch'ien.¹⁰⁸ The latter have weaker and less stringent record keeping requirements and no regulatory oversight bodies, which make them particularly vulnerable to covert activities.¹⁰⁹

The *Hawala* is a form of informal value transfer systems that has attracted most policy and legislative attention after the 9/11 attacks.¹¹⁰ Although no evidence was found that Al Qaeda used this system to finance the New York attack, it was found that the organisation had, on other occasions, frequently used this method to move funds through Pakistan, the United Arab Emirates and Afghanistan.¹¹¹ *Hawala* simply involves the transfer of money and value from one place to another, often transnational. In order to ensure that the rightful recipients receive the transferred funds, there is usually a 'reference' or exchange between *hawala* operators. It is reportedly quicker and cheaper than using regular financial institutions, and it is also possible to reach remote regions where regular money transaction offices do not operate.¹¹² The World Bank has found that the informal remittance systems rely on trust between close-knit

¹⁰⁶ FATF(2008) at 21.

¹⁰⁷ Annette Hübsche. *Terrorist Financing in Southern Africa: Are we making a mountain out of a molehill?* ISS Paper 132. (2007) at 8.

¹⁰⁸ Matteo Vacani. *Alternative Remittance Systems and Terrorism Financing: Issues in Risk Management* (2010) World Bank at 4.

¹⁰⁹ FATF. *Terrorist Financing Typologies Paper* (2008) at 24.

¹¹⁰ In Arabic, *hawala* means "transfer", whereas in Hindi it means "reference".

¹¹¹ Matteo Vacani (2010) at 7-8.

¹¹² Melvin Soudjin. 'Hawala and Money Laundering: Potential Use of Red Flags for Persons Offering Hawala Services'. *European Journal for Criminal Policy and Research* (2015) 21:257–274 at 268

communities, based on common ideological, religious or tribal ties, and are thus a secret and reliable channel for transferring funds for economic support to terrorist groups.¹¹³

The physical transportation of cash is another known method of moving terrorist funds.¹¹⁴ Porous national borders and weak detection systems make this an attractive option for terrorist groups. The FATF's report on terrorist financing in West Africa found that in almost all of the cases it studied, cash was used and terrorist suspects were often found in possession of large amounts of money.¹¹⁵ In most cases, cash couriers are used for moving funds generated outside the financial system and kept out of the financial system to avoid detection. It has been suggested, too, that some terrorist groups convert cash into 'high value and hard-to-trace commodities' like gold or precious stones in order to move funds outside the financial system.¹¹⁶

Charities and Non-profit Organisations (NPOs) are other controversial vehicles found to be a popular for routing terrorist funds.¹¹⁷ According to the FATF, the NPO sector has a variety of vulnerabilities that make it prone to abuse by terrorists. They enjoy public trust, have access to considerable sources of funds and other assets, and are often cash intensive.¹¹⁸ Both Al Qaeda and Boko Haram have been accused of exploiting charities to channel financial and material support to their operatives across the globe.¹¹⁹ In 2014 the FATF published a comprehensive Typologies Report on the risk of terrorist abuse in the NPO sector.¹²⁰ The report highlights that the risk of terrorist misuse manifests in five different ways: the diversion of donations through affiliated individuals to terrorist organisations; the exploitation of some NPO authorities for the sake of terrorist organisations; the abuse of NPO programmes to support the terrorist

¹¹³ Matteo Vaccani (2010) at 10.

¹¹⁴ FATF (2015) at 20.

¹¹⁵ FATF. *Terrorist Financing in West Africa* (2013) at 23-25.

¹¹⁶ FATF (2008) at 23.

¹¹⁷ FATF (2008) at 25.

¹¹⁸ FATF (2013) at 20.

¹¹⁹ Glenn Simpson (2003); Kathleen Caulderwood (2014).

¹²⁰ FATF. *Risk of Terrorist Abuse in Non-Profit Organisations*. (2014).

organisations; support for recruitment into terrorist organisations and the, creation of sham NPOs through misrepresentation/fraud.¹²¹

The advances in payment system technology have also opened new opportunities for potential terrorist financiers. The speed and efficiency with which funds can be sent across international boundaries through wire transfer systems appeals to financiers of terrorism. According to the FATF, ISIL has manipulated social media and virtual social networks to encourage donations and conduct a marketing campaign consistent with industry standards established by major crowdfunding companies.¹²² Crowdfunding is a method of drawing donations from a large group of people through a combination of technology and marketing.¹²³ Donations are commonly wired between private bank accounts, making use of complex wire transfer schemes created to confuse audit trails deliberately, or to disguise the source and destination of funds destined for terrorist use.¹²⁴



3.4. National Obligation to Combat Terrorist Financing.

Terrorist Financing is a global phenomenon which is predominantly transnational in nature. Because a chain is only as strong as its weakest link, the international community relies on every country to establish an effective CFT regime that is capable of preventing, detecting and suppressing terrorist financing. According to Kruger, every state has a duty to prevent its territory from being used for unlawful attacks on other states and should be held accountable for actions emanating from their territories.¹²⁵

¹²¹ FATF (2014) at 5 and 23.

¹²² FATF ISIL (2015)

¹²³ FATF ISIL (2015) at 24-25.

¹²⁴ FATF 2003/2004 Money Laundering Typologies paper.

¹²⁵ Kruger (2008) page 126, referring to ICJ judgment of Corfu Channel Case (1949).

According to the FATF, there is no universally agreed standard as to what represents a high risk of terrorist financing for a particular country or geographic area.¹²⁶ Terrorist financiers seek to operate in friendly environments, where the risk of detection is low. Other aspects such as a sound financial sector will also appeal to financiers in order to safeguard their funds or have them appear legitimate. The international community thus expects that all jurisdictions adopt national measures to establish a comprehensive legal, regulatory and operational framework to lessen the severity of its risk. According to Thomas Biersteker and Sue Eckert, 'states are expected to increase their coercive capacity to deal with the challenges of global terrorism by strengthening intelligence gathering, law enforcement, and imposing new financial controls to counter the financing of terrorism'.¹²⁷

Failure to establish a robust national CFT regime may have dire consequences for a country. A reputation as a terrorist financing haven will be particularly devastating for a country's financial sector. Foreign financial institutions may decide to limit their transactions with institutions from these countries. Increased scrutiny of transactions from this country would make trade more expensive. Some countries may terminate correspondent or lending relationships altogether. For developing countries, eligibility for foreign governmental assistance or foreign direct investment is also likely to be severely limited if a country is known for lax enforcement of CFT measures.¹²⁸ Ultimately these bilateral or multilateral economic or other measures will cause socio-economic difficulties for the population.

The FATF has agreed that when a country chooses not to engage in the fight against terrorist financing in a meaningful way, it will take firm action which may result in dire consequences for such defaulting country.

¹²⁶ FATF Report (July 2010) 'Global Money Laundering and Terrorist Financing Threat Assessment. A view of how and why criminals and terrorist abuse finances, the effect of this abuse and the steps to mitigate these threats.' Available at www.FATF-Gafi.org.

¹²⁷ Thomas Biersteker and Sue Eckert. 'Introduction: the challenge of terrorist financing' in *Countering the Financing of Terrorism* (2008) at 1.

¹²⁸ Paul Schott. *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* (2006) The International Bank for Reconstruction and Development/ The World Bank/The International Monetary Fund at II-3.

CHAPTER 4

THE FATF'S INTERNATIONAL STANDARDS FOR COMBATING THE FINANCING OF TERRORISM

4.1. The FATF Recommendations.

The FATF's 40 + 9 Recommendations are considered to be the cornerstone of its work. The recommendations set out a comprehensive framework of measures that countries must implement in order to establish an effective CFT regime. United Nations Security Council Resolution (UNSCR) 1617 (2005) has endorsed the Recommendations as the international standards against terrorist financing and urges all UN member states to implement them.¹²⁹

According to Gardner, initially the FATF's Recommendations were purposely imprecise to allow for wide interpretation in order to accommodate different legal systems and institutional environments. However, following in-depth research and learning from global experiences, the FATF has reviewed and updated the Recommendations to enhance precision, narrowing the scope for reasonable interpretation, detailing conditions of application and elaborating on the required or proscribed behavior.¹³⁰

On 15 February 2012, the FATF adopted the revised 40 Recommendations, formally entitled the 'International Standards to Combat Money Laundering and the Financing of Terrorism and Proliferation'. The FATF recognised terrorist financing as a 'very significant challenge'.¹³¹ The organisation decided that an effective CFT regime required mechanisms beyond just the nine Special Recommendations, and consequently integrated the terrorist financing recommendations fully throughout the new 40 Recommendations in order to create a

¹²⁹ United Nations Security Council Resolution 1617(2005), adopted by the Security Council at its 5244th meeting, on 29 July 2005. Available <http://www.un.org> (accessed on 1 October 2016).

¹³¹ Kathryn Gardner 'Fighting Terrorism the FATF Way' *Global Governance* Vol. 13 (2007) at 325–345.
¹³¹ FATF (2013) at 8.

comprehensive Anti-Money Laundering and Combating of Financing of Terrorism or AML/CFT framework. This section will discuss the recommendations which are critical to any CFT regime.

The FATF has issued various Interpretative Notes on some of the recommendations and has published dozens of Best Practice Papers and Typology Reports identifying new risks, methods and trends of terrorist financing.¹³² Drawing on the knowledge and experiences of field experts, the FATF has also provided Guidance Notes for law enforcement bodies, financial institutions and policy writers to assist countries with the implementation of its recommendations.¹³³

4.1.1. Ratification and Implementation of United Nations Instruments.

The FATF requires states to take immediate action to become parties to and implement prescribed international conventions pertaining to the financing of terrorism. In terms of Recommendation 36, states must ratify and implement fully the United Nations Convention on the Suppression of the Financing of Terrorism (TF Convention).¹³⁴ Signing and ratifying an international convention is a show of political commitment to its cause and, therefore this recommendation requires states to commit to combating the financing of terrorism.

The TF Convention imposes three main obligations on states parties: they must criminalise the financing of terrorist acts in their domestic criminal legislation; they must adopt measures that would ensure wide ranging co-operation and legal assistance between them; and they must establish mechanisms to involve financial institutions in the detection and reporting of evidence of financing of terrorist acts. As will be evident later in this chapter, many of the FATF's Recommendations reinforce these obligations.

¹³² FATF Recommendations. 'Introduction' at 8.

¹³³ The FATF Recommendations. Annex I : FATF Guidance Documents at 129.

¹³⁴ Signed on 10 January 2000 and came into operation on 10 April 2002.

4.1.2. Criminalisation of Terrorist Financing.

Recommendation 5, Formerly Special Recommendation II, obligates states to criminalise the financing of terrorism and associated money laundering. The requirement is twofold: firstly, states must criminalise terrorist financing in line with the TF Convention and, secondly, they must prescribe terrorist financing as a predicate offence for money laundering.¹³⁵ According to the FATF, this recommendation is aimed at ensuring that countries have the legal capacity to prosecute and apply criminal sanctions to persons who finance terrorism.¹³⁶

The FATF does not define terrorism, but requires that the offence extend to 'any person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act'.¹³⁷ A terrorist act is defined as an 'act which constitutes an offence within the scope of, and as defined in United Nations anti-terror Conventions and protocols'.¹³⁸

In defining the element of financing, the FATF requires states to adopt a wide and comprehensive definition of the term 'funds'. It should include assets of every kind, whether tangible or intangible, movable or immovable, however acquired.¹³⁹ The offence of financing terrorism must be specific. The conduct should not simply be criminalised as an ancillary offence, such as aiding and abetting, or assisting in terrorist acts.¹⁴⁰ The terrorist financing

¹³⁵ Paul Schott (2006) at IX-4.

¹³⁶ Interpretative Note to Special Recommendations II (2010) at 4.

¹³⁷ Interpretative Note to Recommendation 5.

¹³⁸ Interpretative Note to Special Recommendation II.

¹³⁹ Interpretative Note to Special Recommendation II.

¹⁴⁰ Paul Schott (2006) at IX -6.

offence should extend to any funds, whether from a legitimate or illegitimate source, and the sanctions for terrorist financing should be effective, proportionate and dissuasive.¹⁴¹

4.1.3. Targeted Financial Sanctions

Recommendation 6, Formerly Special Recommendation III, requires countries to adopt measures to implement targeted financial sanctions in accordance with the United Nations Security Council Resolutions (UNSCRs) relating to the prevention and suppression of the financing of terrorism. Furthermore, countries must freeze without delay the funds or other assets of, and ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity designated in terms of UNSCR 1267 (and its successor Resolutions) or UNSCR 1373 (and its successor Resolutions).¹⁴²

This Recommendation requires the freezing of funds or assets on the reasonable suspicion that they could be used for financing terrorist activity. The Recommendation aims at depriving designated terrorists or terrorist organisations of funds and assets that have been linked to them. The first objective is thus preventative, whilst the second is punitive. According to the FATF, both requirements are necessary to deprive terrorists and terrorist networks of the means to conduct future terrorist activities and maintain their infrastructure and operations.¹⁴³

The first leg of this Recommendation requires states to establish a national terrorist designation regime. When a country identifies any person or entity within its jurisdiction linked to a designated terrorist or terrorist organisation, it must have the legal mechanisms to initiate proposals for designation by the UN Security Council. Although countries are not required to find and identify persons and entities, they must have the legal authority and effective procedures and mechanisms in place to be able to do so. Countries must also develop

¹⁴¹ Interpretative Note to Recommendation 5.

¹⁴² Recommendation 6.

¹⁴³ Interpretative Note to Special Recommendation III.

mechanisms and procedures to initiate applications and proposals for the de-listing of listed terrorists, where necessary.¹⁴⁴

The second leg of this Recommendation requires states to implement the international asset freezing sanctions under relevant UNSCRs. UNSCR 1267 was adopted unanimously on 15 October 1999. Initially, it imposed sanctions on the Taliban for harbouring and training terrorists on the territory of Afghanistan, as well as for their refusal to surrender Osama bin Laden. By its terms, Resolution 1267 imposed on states a ban on travel, an arms embargo and, above all, the freezing of the Taliban's assets worldwide. The UNSCR also established a Sanctions Committee that is tasked with the responsibility of managing the list of targeted individuals and entities against which the sanctions had to be applied. Over the years, the sanctions regime has been expanded widely to include Osama bin Laden, Al Qaeda and its affiliates, and recently, ISIL and its associates.¹⁴⁵ UNSCR 1373 was adopted on 28 September 2001 under Chapter VII of the UN Charter. It declares international terrorism to be a threat to international peace and security.¹⁴⁶ It also obligates states to freeze all funds or financial assets of persons and entities that are directly or indirectly used to commit terrorist acts, or that are owned or controlled by persons engaged in or associated with terrorism.¹⁴⁷ Under its terms, states must adopt measures to prevent their nationals, including financial institutions, from making funds available to terrorists. All UN member states are required to review their domestic laws and practices to ensure that terrorists cannot finance themselves or find safe havens for their adherents or from which they can operate.

¹⁴⁴ Interpretative Note to Recommendation 6.

¹⁴⁵ UNSCR 1333 (2000), expanded the reach of the freezing measures to Osama bin Laden, Al Qaeda and its affiliates. UNSCR 1989(2011), modified the Committee established in Resolution 1267 to include only Al-Qaeda and associates. UNSCR 2253 (2015) expanded and strengthened its Al-Qaida sanctions framework to include a focus ISIL. The 1267/1989 is now known as the "1267/1989/2253 ISIL (Da'esh) and Al-Qaida Sanctions Committee", while the Al-Qaida Sanctions List is known as the "ISIL (Da'esh) and Al-Qaida Sanctions List.

¹⁴⁶ Paragraph 3 of UNSCR 1373 (2001).

¹⁴⁷ The UN Charter makes provision for the imposition of economic sanctions along with other measures not involving the use of Force, in Article 39 and 41 under Chapter VII of the Charter. A decision to impose economic sanctions may only be taken in the event of a threat to the peace, a breach of the peace or an act of aggression.

For purposes of this Recommendation, ‘freezing means to prohibit the transfer, conversion, disposition or movement of funds or other assets on the basis of, and for the duration of the validity of, an action initiated by a competent authority or a court under a freezing mechanism.’¹⁴⁸ The frozen assets and funds remain the property of the owner and may continue to be administered by the financial institution or other arrangement designated by the owner, prior to the freezing action.¹⁴⁹ The purpose of the freezing is to eliminate control over the assets by the owner so that the assets cannot be used for any prohibited purpose. The freezing obligation must be implemented ‘without delay’. According to the FATF, the term ‘without delay’ must be interpreted in the context of the need to prevent flight or dissipation of the funds or assets.¹⁵⁰ The FATF’s 2013 Best Practice Paper advises that freezing measures may be either judicial or administrative in nature.¹⁵¹

In terms of this Recommendation, countries must also adopt measures to ensure that competent authorities may seize and confiscate property that is the proceeds or instrumentalities of the financing of terrorism, terrorist organizations or terrorist activities.¹⁵² Seizure is the authorisation to take control of the funds and assets, while confiscation refers to the authorisation to transfer ownership of the funds and assets.¹⁵³ The FATF mechanisms are not intended to replace other measures or obligations dealing with asset freezing, seizing or confiscation.¹⁵⁴ The objective of the FATF mechanism is to establish a concerted global interdict and disruption of terrorist financing.¹⁵⁵

¹⁴⁸ Interpretative Note to Special Recommendation III.

¹⁴⁹ Paul Scott (2006) at IX-5.

¹⁵⁰ FATF. International Best Practices. Targeted Financial Sanctions Related to Terrorism and Terrorist Financing (Recommendation 6). (2013) at 3.

¹⁵¹ FATF (2013) at 9.

¹⁵² FATF IX Special Recommendations (2010) at 2.

¹⁵³ Paul Scott (2006) at IX-6.

¹⁵⁴ Like the asset freezing, seizure and confiscation mechanisms under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1998) of the United Nations Convention against Organized Crime (2000).

¹⁵⁵ Interpretative note to Recommendation 39.

4.1.4. Preventative Measures

The FATF places great emphasis on prevention as part of its whole AML/CFT framework. This is evident from the great number of Recommendations which set out preventative mechanisms that states must adopt as part of their national regime. According to Paul Scott, the preventative measures, generally, are not recommendations but mandates for action by a country if the country concerned wishes to be regarded as being compliant with international standards.¹⁵⁶ These preventative measures impose various obligations on Financial Institutions (FIs) and, in prescribed circumstances, on Non-Financial Businesses and Professionals (DNFBPs) such as: casinos; real estate agents, dealers in precious metals and precious stones; lawyers, notaries and other independent legal professionals, accountants and trust and company service providers.¹⁵⁷ They are referred to jointly as reporting institutions.

The FATF requires states to adopt measures to ensure that reporting institutions conduct Customer Due Diligence (CDD).¹⁵⁸ This is a process that involves the identification of clients, understanding the nature of their business and the purpose of their transactions, as well as identifying the source of their funds. CDD measures also seek to identify the beneficial owners and control structures of legal persons or arrangements. Most importantly, reporting institutions must conduct on-going monitoring and scrutiny of transactions undertaken by their clients to establish a customer's business and risk profile.¹⁵⁹ Recommendation 19 imposes a supplementary obligation on reporting institutions, requiring them to conduct enhanced CDD in business relationships and transactions with natural and legal persons and financial institutions from countries identified by the FATF as 'high risk countries'. When dealing with high risk countries, states should also be able to apply countermeasures that are effective and proportionate to the risk.¹⁶⁰

¹⁵⁶ Paul Scot (2006) VI-2.

¹⁵⁷ Paul Scott (2006) VI-2.

¹⁵⁸ Recommendation 10 and Recommendation 22.

¹⁵⁹ Interpretative note to Recommendation 10.

¹⁶⁰ Interpretative note to Recommendation 19.

Recommendation 20 deals with Suspicious Transaction Reports (STRs). It requires states to adopt measures to ensure that when reporting institutions, during the establishment or in the course of a customer relationship, suspects or has reasonable grounds to suspect that transactions are linked or related to terrorism, they must promptly reports such suspicion to the Financial Intelligence Unit (FIU).¹⁶¹ STRs must be lodged when there is a suspicion that funds are linked to or will be used for terrorist financing. The reporting obligation is mandatory and should not depend on a possible investigation or prosecution for terrorist financing i.e. indirect reporting.¹⁶² STRs must cover also attempted transactions and should be reported regardless of the amount involved in the transactions.¹⁶³

In terms of Recommendation 11, the FATF requires states to adopt measures to ensure that reporting institutions maintain, for at least five years, all necessary records on transactions, both domestic and international. Records must be comprehensive and sufficiently detailed to reconstruct individual transactions and must be kept available to comply swiftly with requests from competent authorities.¹⁶⁴



As already indicated, these preventative measures are obligatory and states must adopt legal or other enforceable measures to ensure that reporting institutions comply with them. States must also adopt a range of effective, proportionate and dissuasive sanctions whether criminal, civil or administrative to deal with natural or legal persons who fail to comply with such measures.¹⁶⁵

4.1.5. National AML/CFT Authorities

The FATF requires states to establish competent national authorities to implement, regulate, supervise and enforce its AML/CFT regime.

¹⁶¹ Recommendation 20. The old Special Recommendation IV, has been joined with old Recommendation 13.

¹⁶² Interpretative Note to Recommendation 20.

¹⁶³ Interpretative note to Recommendation 20.

¹⁶⁴ FATF (2013) at 15.

¹⁶⁵ Recommendation 35.

In terms of Recommendation 26, states should ensure that FIs are subject to adequate regulation and supervision to ensure that they are effectively implementing the national AML/CFT prescriptions. According to the FATF, all FIs that provide a service of money or value transfers, or of currency exchange, should be licensed or registered and should be subject to effective monitoring and supervision. Competent authorities should be appointed to regulate, monitor and supervise FIs and should, at a minimum, be empowered to conduct inspections.¹⁶⁶

For DNFBPs, Recommendation 28 requires countries to adopt effective systems for monitoring and ensuring compliance on a risk-sensitive basis. The monitoring may be carried out either by a government agency or a self-regulating organisation. Unlike the case of FIs, there is no licensing or registration requirement.¹⁶⁷

Recommendation 29 requires all countries to establish an FIU that serves as a national centre for the receipt and analysis of STRs and other information related to AML/CFT and for disseminating the results of that analysis. An FIU plays a central role in a country's AML/CFT operational network.¹⁶⁸ FIUs must guide and support the work of other national authorities by adding value to any information that they receive. They are encouraged to use analytical software together with trained human judgment to carry out their analysis.¹⁶⁹ FIUs must be empowered to have the widest possible access to financial, administrative and law enforcement information. Most importantly, an FIU must be operationally independent and autonomous in order to carry out its functions free from any undue political, government or industrial influence or interference.¹⁷⁰

Finally, countries should ensure that designated law enforcement authorities are responsible for terrorist financing investigations.¹⁷¹ Law enforcement authorities must be empowered to

¹⁶⁶ Recommendation 27.

¹⁶⁷ Paul Scott (2006) V-26.

¹⁶⁸ Interpretative Note to Recommendation 29.

¹⁶⁹ Interpretative Note to Recommendation 29.

¹⁷⁰ Interpretative Note to Recommendation 29.

¹⁷¹ Recommendation 30.

carry out specialised investigations and must be able to use a wide range of investigative techniques necessary for and suitable to such cases.¹⁷² Investigative endeavours, as with all other competent authorities involved in the AML/CFT regime in a country, should receive adequate financing, staffing and technical resources, including personnel that meet high standards of integrity.¹⁷³

4.1.6. Co-operation and Co-ordination

The FATF requires countries to adopt mechanisms for prompt and constructive domestic and international co-operation. Recommendation 2 requires states to develop national AML/CFT policies that must be co-ordinated, implemented and reviewed by designated competent authorities. Policy makers, FIUs, law enforcement authorities, supervisors and other relevant authorities must co-operate and co-ordinate their efforts to prevent and suppress the financing of terrorism.



Recommendations 37 to 40 deal with mechanisms for international co-operation. In terms of Recommendation 37, states must afford each other the greatest possible measure of assistance in connection with criminal, civil, administrative investigations or inquiries and proceedings relating to the financing of terrorism, terrorist acts or terrorist organisations. This requirement is extended to co-operation in identifying, freezing, seizing and confiscating assets relating to terrorist financing.¹⁷⁴ It bears noting that the main purpose of international co-operation in the field of the suppression of the financing of terrorism is to confiscate the terrorists' monies and their financial resources, thus undermining their capability of sustaining a terrorist campaign.¹⁷⁵

The FATF's Recommendation 39 requires states to adopt all possible measures to ensure that they do not provide safe havens for individuals charged with terrorism or the financing of

¹⁷² Recommendation 31.
¹⁷³ Paul Scott (2006) IV-14.
¹⁷⁴ Recommendation 38.
¹⁷⁵ Jae-Myong Koh(2003) at 76.

terrorism and should have procedures in place to extradite, where possible, such individuals. Under Recommendation 40, international co-operation must be rapid, constructive and effective and may be done through bilateral or multilateral treaties, arrangements or other mechanisms for mutual legal assistance or information exchange.¹⁷⁶

4.1.7. Money or Value Remittance Services. (MVRS)

Recommendation 14, Formerly Special Recommendation VI, deals with money or value remittance services. This Recommendation obligates states to ensure that natural persons or legal entities, including agents that provide money or value remittance services, should be licensed or registered and subject to all the above-mentioned FATF Recommendations that apply to reporting institutions.¹⁷⁷ Persons or legal entities that carry out these services without a licence or registration must be subject to administrative, civil and criminal sanctions.¹⁷⁸

According to the FATF, MVRS have shown themselves to be vulnerable to misuse for terrorist financing purposes.¹⁷⁹ This Recommendation is said to increase the transparency of payment flows by ensuring that states impose AML/CFT measures on all forms of money or value transfer systems, particularly those operating outside the conventional financial sector.¹⁸⁰

The MVRS targeted by this Recommendation include a wide array of remitters, ranging from large multinational companies to small, covert value transfer outlets operating incognito.¹⁸¹ Of particular interest here are, of course, the ARS. According to the FATF, there are two often competing and conflicting views on *Hawala*. Many countries and communities view them as essential financial service providers for unbanked communities that have limited access to financial institutions. However, law enforcement agencies in most countries view them as the

¹⁷⁶ Recommendation 40.

¹⁷⁷ For Example, CDD and STR requirements.

¹⁷⁸ Recommendation 35.

¹⁷⁹ Interpretative Note to Special Recommendation VI.

¹⁸⁰ Interpretative Note to Special Recommendation VI.

¹⁸¹ Matteo Vaccani. *Alternative Remittance Systems and Terrorism Financing: Issues in Risk Management* (2009) World Bank at 1.

leading channel for terrorist financing and money laundering. The objective is thus not to eliminate informal money value transfer systems as such, but to regulate and supervise these services as part of the wider AML/CFT regime.¹⁸²

4.1.8. Wire Transfers

Recommendation 16, Formerly Special Recommendation VII, now new Recommendation 16, was developed with the objective of preventing terrorists from having access to wire transfers for moving their funds and for detecting such misuse when it occurs.¹⁸³ It requires states to adopt measures requiring FIs, including money remitters, to include accurate and meaningful originator information on funds transfers and related messages that are sent. This information must remain with the transfer or related message all the way through the payment chain.¹⁸⁴

Financial institutions and money remitters must conduct enhanced monitoring of transfers to detect suspicious funds transfers which do not contain complete originator information.¹⁸⁵ The FATF distinguishes between domestic and cross-border payments and prescribes the information that must accompany both these transfers.¹⁸⁶

According to the FATF, this Recommendation aims at ensuring that basic wire transfer information is available to appropriate law enforcement, prosecutorial or other competent authorities to assist in the detection, investigation and prosecution of terrorists or tracing their assets.¹⁸⁷

4.1.9. Non-profit Organisations.

¹⁸² FATF. *The Role of Hawala and other Similar Service Providers in Money Laundering and Terrorist Financing*. (2013) at 9-11. Available at fatf-gafi.org (accessed on 1 October 2016)

¹⁸³ Interpretative Note Special Recommendation VII.

¹⁸⁴ At a minimum these should include name, address and account number.

¹⁸⁵ Special Recommendation VII.

¹⁸⁶ Jae-Myong Koh(2003) page 29.

¹⁸⁷ Interpretative Note to Special Recommendation VII.

Recommendation 8, Formerly Special Recommendation VIII, requires enhanced monitoring and controls for non-profit organisations (NPOs). Countries are required to review the adequacy of their laws and regulations that relate to NPOs to ensure that they cannot be abused for terrorist financing purposes.

The FATF acknowledges that NPOs play an important role in the world economy and in many national and social systems.¹⁸⁸ NPOs provide charitable services around the world and often complement government efforts to provide essential services to communities in remote regions of the world. According to the FATF, this Recommendation is thus aimed at facilitating NPO efforts and protecting the integrity of the NPO sector by ensuring states introduce measures to protect the sector from abuse by terrorists.¹⁸⁹

The Recommendation obligates countries to ensure that NPOs are not misused: by terrorist organisations posing as legitimate entities; for the exploitation of legitimate entities; or to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations. In pursuance of this objective, countries must ensure that competent authorities have the capacity to obtain timely information on the activities, size and funding of NPOs.¹⁹⁰ The Recommendation consists of general guidance for preventing and combating terrorist misuse of NPOs and recommends that countries adopt a comprehensive approach that involves outreach to the sector, supervision and monitoring, effective investigation, information gathering and effective mechanisms for international co-operation.¹⁹¹

4.1.10. Cash Couriers.

¹⁸⁸ Interpretive note to Special Recommendation VIII.

¹⁸⁹ FATF. Best Practices, Combating the abuse of Non-Profit Organisations (Recommendation 8)(2015) at 4.

¹⁹⁰ Interpretative Note to Recommendation 8.

¹⁹¹ The FATF has done a considerable amount of work on TF vulnerabilities in the NPO sector. In 2002, the organization issued its first Best Practice Paper on Combating the Abuse of NPOs which was updated in 2013; in 2014, a comprehensive Typologies Report on the risk of terrorist abuse in NPO was published; and in 2015 the FATF issued a revised Best Practice Paper on new Recommendation 8.

Recommendation 32, Formerly Special Recommendation IX, deals with cash couriers and requires countries to ensure that they have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including a declaration system or other disclosure obligations. Countries must adopt measures to implement mandatory disclosure or declaration systems for cash couriers transporting cash of a value exceeding a pre-set threshold.¹⁹² Competent authorities should have the legal authority to stop, restrain and when necessary, confiscate currency or bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering. Lastly, competent authorities must have the legal authority to apply sanctions for any falsely declared or undisclosed cash couriers.

The FATF defines physical cross-border transportation as 'any in-bound or out-bound physical transportation of currency or bearer negotiable instruments from one country to another'. This includes the physical transportation of cash or bearer negotiable instruments by a natural person, in luggage or a vehicle, in shipment or through containerised cargo or mailing.¹⁹³ According to the FATF, terrorists move funds through cash couriers to evade AML/CFT safeguards established by financial institutions. In February 2010, the FATF adopted an international Best Practice Paper entitled *Detecting and Preventing the Cross-Border Transportation of Cash by Terrorist and Other Criminals* to explain the risks and provide guidance for the implementation of this recommendation.¹⁹⁴

4.2. Critique of the Recommendations

In as much as the FATF's Recommendations represent the leading global efforts against terrorist financing, they have elicited intense criticism. Various scholars and experts in the field

¹⁹² Interpretative Note to Special Recommendation IX.

¹⁹³ Interpretative Note to recommendation 32.

¹⁹⁴ The FATF Recommendations. Annex I: FATF Guidance Documents at 129.

have raised serious objection to some of the CFT recommendations and have shed doubt on their real effectiveness.

One of the key challenges in the implementation of Recommendation 5 is the adoption of a universal definition of terrorism. Because of the significant political, religious and national implications surrounding the concept, the international community has failed to agree on such a definition. So how does one criminalise the financing of conduct that has not been defined? The FATF offers no assistance in this regard; it simply refers states back to the TF Convention. According to Professor Mark Pieth, the TF Convention adopts a 'patchwork' definition of terrorism.¹⁹⁵ The first leg of the definition refers to offences within the scope of a set of treaties in the annex of the Convention. The obvious problem with this is that states are not all parties to the full set of annexed treaties and therefore the definition would be different in every state.¹⁹⁶ The second leg of the TF Convention's definition refers to terrorism as 'any other act intended to cause death or serious bodily injury to a civilian or to any other person not taking part in the hostilities in a situation of armed conflict when the purpose of such act, by its nature is to intimidate, or to compel a government or an international organisation to do or to abstain from doing any act'.¹⁹⁷ Pieth argues that this definition raises serious issues relating to clarity and certainty, and it does not draw an adequate distinction between terrorism and other forms of armed combat.¹⁹⁸

Kalyani Munshani, an expert in financial crimes, devoted her doctoral thesis to the study of the limitations of the FATF's terrorist financing Recommendations.¹⁹⁹ She highlights the operational shortcomings of the Recommendations, concluding that they are an unrealistic, flawed and counter-productive strategy to combat terrorist financing.²⁰⁰ Her first criticism is founded on

¹⁹⁵ Mark Pieth. 'Criminalizing the Financing of Terrorism'. *Journal of International Criminal Justice*. Vol. 4 (2006) at 1079.

¹⁹⁶ Mark Pieth (2006) at 1079.

¹⁹⁷ Article 2.

¹⁹⁸ Mark Pieth (2006) at 1086.

¹⁹⁹ Kalyani Munshani. *The 9 special recommendations on terrorist finance: operational limitations of the regulatory regime* (2010). LLM Thesis, York University.

²⁰⁰ Kalyani Munshani (2010) at 133.

what she believes is the 'erroneous conceptual convergence' of money laundering and terrorist financing under the leadership of the FATF. In her view, the amalgamated strategy, which employs the anti-money laundering regulatory structure to terrorist financing, is 'ill considered, untested, exaggerated and unsupported by evidence'.²⁰¹ Technically, terrorist financing is the reverse of money laundering. While money laundering cleans dirty funds, terrorist finance, typically, dirties clean funds. AML measures thus seek to identify proceeds of a wide range of predicate offences and cannot detect terrorist financing, which is often accomplished through legitimate business transactions that are non-conspicuous and consist of minor amounts. In her view, the structures built to prevent money laundering do not lend themselves naturally or effectively to detect or deter terrorist financing.²⁰² She notes that the FATF itself has, in later years, conceded that 'money laundering and terrorist financing are distinct activities and that the measures which have been successfully applied in the identification and prevention of money laundering are by themselves less effective in the prevention of terrorist financing',²⁰³ but still, the regulatory convergence remains.



Following on the above criticism, Munshani raises concerns about the tremendous costs involved in the implementation of the mandatory CFT recommendations.²⁰⁴ She finds the recommendations to be overly inclusive and wide ranging, imposing obligations on 'all economic actors' and therefore entailing extraordinary costs.²⁰⁵ Her further analysis of this issue concludes that the expended costs bear no real fruits as they are invested in a regulatory framework designed to interdict proceeds of crime, which is incapable of identifying terrorist financing transactions.²⁰⁶

²⁰¹ Kalyani Munshani (2010) at 2.
²⁰² Kalyani Munshani (2010) at 2.
²⁰³ FATF (2008) at 34.
²⁰⁴ Kalyani Munshani(2010) at 35.
²⁰⁵ Kalyani Munshani(2010) at 35.
²⁰⁶ Kalyani Munshani(2010) at 42.

Munshani has also followed other experts²⁰⁷ in criticising the FATF's Recommendation on the ARS. According to her, there is empirical evidence that the demand for regulation of ARS was influenced more by economic competition than security concerns. From the late 1990s to early 2001, the ARS competed fiercely with other financial institutions. The bigger remitters were well established and had a long-standing client record, while the smaller remitters could offer clients a service at nearly no charge.²⁰⁸ At some point the banks tried to operate in remittance, but simply could not compete with the existing market. The events of 9/11 opened an extraordinary opportunity to use the security rhetoric to impose a regulatory framework such as registration and record keeping, which was incompatible with the nature of ARS. She concludes that 'rhetoric and regulations surely assisted in financial-institution success and negatively impacted MSBs, but did little to assuage the problem of terrorist finance'.²⁰⁹

Jean-Francois Thony and Cheong-Ann Png, too, have raised concerns about the FATF's Recommendation on remitters. They assert that, given the clandestine nature of the ARS, prohibition or regulation is unlikely to eradicate them or stop their use. Moreover, increased regulations may push up the administrative costs of these operators, which may increase the cost burden of its customers, rendering it inaccessible.²¹⁰ This may result in the further perpetuation of the informal value transfer sector, but this time, driving them even more underground.

Recommendation 6 is probably the most controversial of the FATF's catalogue of recommendations for combating terrorist financing. Thony and Png highlight both legal and procedural challenges for states in the implementation of the targeted financial sanctions in terms of UNSCR 1267 and its successor Resolutions. According to them, the listing of individuals is based solely on intelligence brought by the state which requests the listing and

²⁰⁷ Jean-Francois Thony and Cheong-Ann Png. 'FATF special recommendations and the UN Resolutions on the financing of terrorism: view of the status of implementation and legal challenges faced by countries' *Journal of Financial Crime* (2007) Vol. 14 Iss: 2, pp.150 – 169.

²⁰⁸ Kalyani Munshani (2010) at 65-66.

²⁰⁹ Kalyani Munshani (2010) at 73.

²¹⁰ Jean-Francois Thony and Cheong-Ann Png (2007) at 153.

does not require any evidence that the person concerned supported terrorism or is engaged in its commission.²¹¹ Moreover, while the listing is done by the UN Security Council, freezing must be implemented at a national level. National courts lack jurisdiction to rule on the justification of the measures taken in implementation of the UNSCR, as they cannot examine the legality of an inclusion on the UNSCR list. This obvious lack of due process has been challenged in the courts of different countries over the years.²¹²

Thony and Png also raise a procedural challenge for implementation, criticising the FATF's failure to provide adequate guidance for post-freezing actions. The measures taken for implementation of UNSCR 1267 are provisional in nature, as they are measures taken in pursuance of Chapter VII of the UN Charter, to restore peace and security. The freezing mechanism is intended to be a temporary measure, but no timeframe is provided for the freezing order and no procedure for lifting the freezing, except for the release of funds for humanitarian needs, or when a person has successfully petitioned the relevant UN Committee for delisting. In the absence of these exceptions, the frozen assets cannot be turned over for confiscation. According to Thony and Png, this has created a number of problems for banks and financial institutions which, for many years now, have had frozen accounts on their books, the future of which is not known.²¹³

Munshani focuses her critique on the more practical shortcomings of Recommendation 6, old special Recommendation III. She points to the absence of guidance on the criteria for creating a profile in respect of a typical terrorist financing transaction. According to her, the FATF has not provided any guidance to countries and suggests instead that bankers and other commercial entities should use their anti-money laundering 'experience' to make determinations regarding these transactions.²¹⁴ This is not feasible because of the inherent difference between money

²¹¹ Jean-Francois Thony and Cheong-Ann Png (2007) at 158-159.

²¹² *Ayadi v. Council of European Union and Commission of the European Communities (Case T-253/02) judgment 12 July 2006; Segi and Gestoras Pro-Amnistia v. Germany and Others (Application No. 6422/02) judgment 7 June 2004.*

²¹³ Jean-Francois Thony and Cheong-Ann Png (2007) at 158.

²¹⁴ Kalyani Munshani (2010) at 138.

laundering and terrorist finance activity. Although effective training and guidance is often provided for anti-money laundering risk assessment, very little attention is given to understanding the finer details of terrorist financing profiles. Munshabi finds that this has resulted in a religious, regional or racial profiling exercise undertaken by reporting entities. She points out also that, in practice, compliance with this Recommendation amounts to reporting institutions using electronic means to match names on different lists against their client database, via computer software. 'The software works like spell-check feature of a word processing program: once installed it monitors every transaction, filtering out those that contain a name or a relevant information field that match any list'.²¹⁵ When the software picks up a match, assets are frozen and an STR is lodged.

These critics have pointed out some of the challenges which countries face in the implementation of the CFT Recommendations and may provide some explanation for the delays that national authorities face to reach full compliance with the FATF international standards. The next chapter will demonstrate how Namibia was and continues to be confronted with some of these challenges and will evaluate the legality, practicality and effectiveness of the country's responses.



²¹⁵ Kalyani Munshani(2010) at 5.

Chapter 5

NAMIBIA'S CFT REGIME

5.1. The Arduous Road to Compliance

The government of Namibia has firmly resolved to play its part in international efforts aimed at combating the financing of terrorism. According to the government, the creation of efficient anti-money laundering and anti-terrorism financing programmes is regarded as necessary both to protect Namibia's fundamental national interests and to discharge Namibia's international treaty obligations.²¹⁶

The establishment of the national regime was a complex process which included: raising awareness amongst both public and private sector role-players; enacting new laws and reviewing and amending existing's ones; establishing new institutions and the restructuring others, and developing and funding a national strategy aimed at streamlining multi-agency efforts in pursuit of common national interests. The result, moulded under pressure, rushed and ill considered, it says what it needs to say, but the question is; can it do what it is meant to do?

5.1.1. A 'Show' of Political Commitment

On 27 August 1999, in Arusha Tanzania, Namibia joined with 13 other countries to sign the Memorandum of Understanding (MOU) for the establishment of ESAAMLG.²¹⁷ In terms of this MOU, Namibia undertook to: adopt and implement the FATF's 40 + 9 Recommendations on money laundering and terrorist financing; make all serious crimes predicate offences of money

²¹⁶ Eastern and Southern Africa Anti-Money Laundering Group from Arusha to Maseru: ESAAMLG at 69, 1999-2009 (2009) Available at www.esaamlg.org (accessed on 1 October 2016).

²¹⁷ ESAAMLG at 10 (2009) at 73.

laundering; introduce a comprehensive AML/CFT legal framework and establish various specialised structures, including an FIU.²¹⁸

In 2001, the government established an inter-ministerial National Anti-Money Laundering Taskforce, the primary responsibility of which is to co-ordinate Namibia's AML/CFT programmes.²¹⁹ The country adopted a national AML/CFT strategy which outlines seven key objectives, including: ensuring compliance with international treaties and obligations; establishing an effective legal system to combat money laundering and terrorist financing; ensuring effective domestic and international co-operation; establishing effective AML/CFT structures; ensuring effective co-ordination of national AML/CFT programmes; training personnel on AML/CFT; and allocating sufficient resources for AML/CFT programmes.²²⁰ In terms of the strategy, numerous ministries and agencies within government, as well as experts in the private sector, were required to co-ordinate and join resources in order to meet the challenges posed by money launderers and terrorist financiers.²²¹

On 10 November 2001, in response to the international shock wave caused by the 9/11 attacks, Namibia promptly became a signatory to the TF Convention.²²² By this time the UN Security Council had adopted Resolution 1373 (2001) which was binding on Namibia. In December 2001, the government filed its first report to the 1373 UN Committee, indicating that the country had completed drafting an anti-terror bill and that all banking institutions were 'strongly advised' to tighten their existing financial regulations to prevent terrorist financing in line with the relevant UN resolutions.²²³ This enthusiasm was, however, not accompanied by any real action. Over

²¹⁸ Memorandum of Understanding among member governments of the Eastern and Southern African Anti-money laundering Group, entered into on 27 August 1999, in Arusha, Republic of Tanzania. Article 1-Objectives. Available at www.esaamlg.org (accessed on 1 October 2016).

²¹⁹ ESAAMLG at 10 (2009) at 69 (footnote2).

²²⁰ Republic of Namibia National Strategy on Anti-Money Laundering and Combatting the Financing of Terrorism Strategy at 5 Available at www.esaamlg.org (accessed on 1 October 2016).

²²¹ Strategy at 5.

²²² Signed on 10 November 2001. See United Nations Treaty Collection. Available at www.treaties.un.org (accessed on 1 October 2016).

²²³ Letter dated 27 December 2001, from the permanent mission of the republic of Namibia to the united nations addressed to the chairman of the committee established pursuant to resolution 1373(2001) dated 21 December 2001. Available at www.un.org.ctc (accessed on 1 October 2016).

the next few years, similar worded reports were filed in monotonous compliance, but no real efforts were made to implement any of these commitments.²²⁴

5.1.2. Mutual Evaluation Process

In July 2004, ESAAMLG conducted its first regional evaluation of Namibia.²²⁵ Its report was adopted by the Council of Ministers in October 2005.²²⁶ Later that month, the World Bank, as part of its Financial Sector Assessment Programme, commenced with a mutual evaluation to assess the country's progress with its implementation of the FATF standards.²²⁷ The MER on Namibia rated the country largely not compliant with the FATF's recommendations as its anti-money laundering and anti-terrorist financing framework fell short of international standards.

In December 2004, parliament enacted the Prevention of Organised Crime Act, 29 of 2004 (POCA), which creates the legal framework for regulating the crime of money laundering, but it had, at the time, not entered into force and there was no FIU to monitor and supervise AML/CFT measures in Namibia.²²⁸ Terrorist financing had not been criminalised and there was no legislative, regulatory or institutional framework or mechanism to freeze, seize and confiscate terrorism-related funds.²²⁹ The country had signed but not ratified the TF Convention and the draft anti-terror bill was still under development, with no time frame as to when it would be tabled in parliament for debate and passage.²³⁰

²²⁴ Some four years later in its 2006 report to the committee, the country had still not enacted an anti-terrorism bill, still had no legislation on financial intelligence measures and had still not signed or ratified any of the anti-terrorism conventions

²²⁵ Mutual Evaluation Report on Namibia (2007) at 20.

²²⁶ ESAAMLG at 10 (2009) at 20.

²²⁷ The FSAP is a joint programme of the International Monetary Fund and the World Bank that was launched in 1999. It follows a three-pronged approach when assessing a country's financial sector. (1) the Soundness of the financial system versus its vulnerabilities and risks that increase the likelihood of severity of a financial sector crises; (2) A country's developmental needs in terms of infrastructure, institutions and markets; (3) a country's compliance with the observance of selected financial sector standards and codes.

²²⁸ Mutual Evaluation Report on Namibia (2007) at 9.

²²⁹ Mutual Evaluation Report on Namibia (2007) at 11.

²³⁰ Mutual Evaluation Report on Namibia (2007) at 11.

The MER concluded with comprehensive remedial recommendations to assist the country to improve and strengthen its national AML/CFT regime.²³¹ ESAAMLG was mandated to monitor the country's progress and report such progress to the FATF plenary.

5.1.3. A slow start

On 13 October 2006, Namibia's FIU was established within the Bank of Namibia (BON). The bank allocated staff and resources to the FIU to develop the required legal framework and ensure that it functions.²³² On 5 May 2009, the Financial Intelligence Act, 3 of 2007 (FIA) came into force and declared the FIU an autonomous department within the BON and set out its mandate in line with the recommendations of the FATF.²³³

On 5 May 2009, POCA came into effect. The Act criminalises money laundering, human trafficking and the smuggling of migrants. Money laundering is criminalised in accordance with the requirements under the Palermo Convention and the predicate offences include all crimes which are punishable by imprisonment for a period of 12 months or more. The Act also establishes a comprehensive framework for the seizure, confiscation and forfeiture of proceeds and instrumentalities of crime.²³⁴

The Namibian Police Force and the Office of the Prosecutor General established new specialised units for the investigation and prosecution of money laundering cases.²³⁵ The BON solicited the support of international donor agencies to start joint multi-agency anti-money laundering training programmes in all the relevant sectors.²³⁶ However, from the government's point of view, the financing of terrorism remained a myth.

²³¹ Mutual Evaluation Report on Namibia (2007) at 90-98.

²³² ESAAMLG at 10 (2009) at 71.

²³³ Sections of FIA 2007.

²³⁴ Chapter 5 and 6 of POCA.

²³⁵ ESAAMLG at 10 (2009) at 73.

²³⁶ ESAAMLG at 10 (2009) at 73.

5.1.4. The ICRG Review Process

In February 2011, five years after the adoption of Namibia's MER, the FATF noted that although Namibia had committed to working with ESAAMLG in addressing its AML/CFT deficiencies, the country had not made sufficient progress. Namibia was listed as a jurisdiction with 'strategic AML/CFT deficiencies' and the country was referred to a targeted review by the FATF in terms of its ICRG process.²³⁷ This referral was the turning point in Namibia's efforts in establishing its CFT regime. It is therefore appropriate to pause and explain the nature of the process that followed.

In terms of the ICRG process, a country is called upon to develop an action plan to address its identified strategic deficiencies. The FATF, with the help of the FSRBs, closely monitors the implementation of this action plan and sets out specific timeframes for compliance.²³⁸ The ICRG reviews a country's progress tri-annually during its plenary sessions, which usually take place in February, June and October of every year.²³⁹ After every plenary session, an official statement is published on the FATF's website to alert the international community of the country's remaining AML/CFT deficiencies.²⁴⁰ If a country fails to make sufficient progress within the proposed timeframes, the country is 'blacklisted' as a non-cooperative jurisdiction. With this in mind, it is no surprise that in the next year, the government of Namibia rushed to implement measures that would 'tick the boxes' of compliance.

In May 2011, the Namibian authorities developed an action plan which received the country's highest political commitment and which was communicated to FATF in June 2011.²⁴¹ The required actions included: (i) adequately criminalising terrorist financing; (ii) establishing and

²³⁷ Improving Global AML/CFT Compliance: on-going process (24 June 2011) – Namibia available at www.fatf-gafi.org (accessed on 9 April 2016).

²³⁸ Improving Global AML/CFT Compliance: on-going process available at www.fatf-gafi.org (accessed on 1 October 2016).

²³⁹ FATF events calendar. Available at www.fatf-gafi.org (accessed on 1 October 2016).

²⁴⁰ FATF High-risk and non-cooperative jurisdictions publications. Available at www.fatf-gafi.org (accessed on 1 November 2016).

²⁴¹ Cabinet Decision No: 11/05 and 11/09.

implementing adequate procedures to identify and freeze terrorist assets; (iii) implementing an adequate AML/CFT supervisory programme with sufficient powers, (iv) ensuring a fully operational, independent and effective functioning FIU; (v) implementing effective, proportionate and dissuasive sanctions directed at non-compliance with the national AML/CFT requirements; and (vi) ratifying and implementing the TF Convention.²⁴²

On 26 April 2012, the Namibian parliament ratified the TF Convention and the UN published the depository notification on 18 October 2012.²⁴³ On 21 December 2012, just days before Christmas, during what would normally be considered a graveyard session, the country's parliament adopted both the Prevention and Combating of Terrorist Activities Act, 12 of 2012 (PACOTA) and a revised, Financial Intelligence Act, 13 of 2012. These laws form the foundation of Namibia's CFT regime.

The revised FIA renamed the FIU the Financial Intelligence Centre (FIC) and amended its administrative and operational structures to ensure the functional independence and autonomy of the FIC, as required under the FATF standards. The FIC was empowered as the primary monitoring and supervisory authority of AML/CFT measures for all financial institutions and DNFBP's. NAMFISA was designated as a supervisory authority for ensuring AML/CFT compliance by the non-bank financial institutions, and designated national authorities were appointed to regulate DNFBPs.²⁴⁴ Section 17 of the Act established the Anti-Money Laundering and Combating the Financing of Terrorism Council to advise the government on policies and measures to combat money laundering and terrorist financing.²⁴⁵

²⁴² Improving Global AML/CFT compliance: On-going process – Namibia at 24 June 2011.

²⁴³ United Nations Treaty Collection. Available at www.treaties.un.org (accessed on 1 October 2016).

²⁴⁴ Schedule 4 of FIA designates the Law Society of Namibia to regulate legal practitioners; the Estate Agents Board to regulate estate agents; the Public Accounts and Auditors Board to regulate accountants; the Casino Board to regulate casino houses. Other Regulators include the Namibian Stock Exchange and the Bank of Namibia.

²⁴⁵ Consists of heads of both public and private Institutions that play a crucial role in the AML/CFT regime. These include the Governor of the Bank of Namibia, the Ministers of Finance, Justice, Safety and Security; the Head of the Anti-Corruption Commission of Namibia; the Prosecutor-General and the President of the Bankers Association.

The FIA contains also detailed AML/CFT preventative measures that include the obligations for CDD, record keeping and the filing of STRs, as required under the FATF's Recommendations. Non-compliance with these measures may be sanctioned with a fine not exceeding N\$100 million or where the offence is attributable to a representative of the reporting institution, with such fine or imprisonment not exceeding 30 years or with both such fine and imprisonment.²⁴⁶ All money or value remitters and/or agents must be licensed or registered and are listed as accountable institutions that are subject to AML/CFT monitoring and supervision by the FIC.²⁴⁷

Section 34 of the FIA deals with electronic funds transfers, both domestic and international. In compliance with the FATF's Recommendation 16, it requires all reporting institutions that send and receive funds via wire transfers to include originator information in the electronic message or payment form accompanying the transfer, or that the sender and receiver be in a position to request the originator information from the originator institution.²⁴⁸ Section 36 of FIA requires the mandatory declaration of physical cross-border movement of cash or bearer negotiable instruments above a prescribed threshold.²⁴⁹ From 1 October 2016, the threshold amount has been set at N\$100 000 (regardless of the currency involved).²⁵⁰ Declaration obligations are imposed also on every person mailing or conveying any post which includes cash or negotiable instruments above the prescribed threshold.²⁵¹ Customs and Excise officers are empowered to stop, restrain and when necessary, confiscate currency or bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering.²⁵²

PACOTA was the first substantive anti-terror law enacted by Namibia. Parliamentary reports noted that opposition parties condemned the pace at which the anti-terror bill was being

²⁴⁶ Section 21(5); 22(6); 23(3); 24(3); 25(2); 26(4)-(5); 27(4); 33(5)-(6).

²⁴⁷ Schedule 1, Section 13.

²⁴⁸ Section 34(2).

²⁴⁹ The Customs and Excise Act No.20 of 1998 and the Currencies and Exchange Act No 9 of 1933 also provide cross border money courier reporting obligations.

²⁵⁰ Bank of Namibia. Media Release '*Declaration of cross border movement of cash and bearer negotiable instruments in terms of section 36 of the Financial Intelligence Act, 2012 (act no. 13 of 2012) as amended*' 3 October 2016. available at www.bon.na.

²⁵¹ Section 63 (3) of FIA.

²⁵² Section 37 of FIA.

rushed. A local newspaper quoted one of the opposition MPs' saying that 'this bill was brought here. It was tabled today, motivated today and I do not know how people would have been expected to read the 39 pages during the time spent by the Minister of Safety and Security standing and reading the statement motivating this particular bill'.²⁵³ The Act criminalised terrorism and the funding of terrorist activities; established a framework for complying with the obligations under the UNSC Resolutions 1267 and 1373; and established a judicial process for the freezing, seizure and confiscation of terrorist assets.

PACOTA was passed primarily to appease the FATF, but unfortunately it failed in its objective. Although it was commended as a significant step towards improving the national AML/CFT regime, it was found to have two key deficiencies.²⁵⁴

Firstly, the FATF found that PACOTA failed to criminalise terrorists financing adequately. The FATF objected to what was perceived as an 'exemption' to terrorism which was contained in Section 1(2) of the Act.²⁵⁵ In terms of this provision, 'any act committed during a struggle waged by people, including any action during an armed struggle, in the exercise or furtherance of their legitimate right to national liberation, self-determination and independence against colonialism or occupation or aggression or domination by alien or foreign forces in accordance with the principles of international law is not considered a terrorist activity'.²⁵⁶ Considering the country's history, particularly the fact that the South West Africa People's Organization (SWAPO), which is the leading political party in the country, was formerly perceived to be a terrorist organisation when it fought for the country's liberation and independence, one can understand why this clarification was included in the law.²⁵⁷ The FATF rejected it nonetheless.

²⁵³ Elvis Muraranganda. 'Anti-Terror Act Rushed' *Namibian Sun*. 31 May 2013.

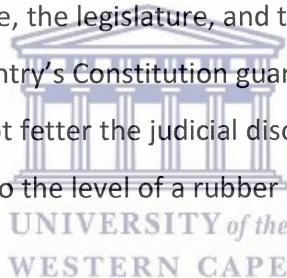
²⁵⁴ Improving Global AML/CFT compliance: On-going process – Namibia at 22 February 2013; 21 June 2013.

²⁵⁵ Letter by the FATF President to the Minister of Safety and Security. Ref: 201310icrg. Dated 31 October 2013.

²⁵⁶ Section 1 of PACOTA.

²⁵⁷ Annete Hübsche (2007) at page 2.

The second shortcoming of PACOTA related to the freezing, seizing and confiscation of terrorist assets as required by UNSC Resolutions 1267 and 1373. In terms of Section 24 of PACOTA, the High Court could, on the basis of an *ex parte* application by the Minister to a judge in camera, issue a freezing order concerning funds in respect of which there are reasonable grounds to believe that the funds are owned or controlled by or on behalf of a person or organisation listed by the UNSC, against whom Member States of the UN must take action in order to combat or prevent any terrorist activity. While the FATF accepts a judicial mechanism for the implementation of this Recommendation, it objected to the discretionary power that was vested in the judiciary upon being seized with an application to freeze terrorist assets. In terms of the FATF's standards, the freezing order is mandatory, and national courts have no discretion when dealing with these cases. Mandatory court orders are, however, incompatible with Namibia's judicial system. Namibia's government operates on the doctrine of separation of powers in terms of which the executive, the legislature, and the judiciary work independently.²⁵⁸ Article 78 of the country's Constitution guarantees judicial independence in decision making. The legislature cannot fetter the judicial discretion of the court by enacting a law that reduces the court's function to the level of a rubber stamp.



The national authorities were thus sent back to the drawing board to revise the law in order to address the remaining strategic deficiencies.²⁵⁹

5.1.5. Pressured Compliance

By the beginning of 2013, Namibia had addressed all its identified AML deficiencies and its only impediment to compliance were the gaps in the CFT regime. In its statement dated 21 June 2013, the FATF indicated that Namibia should continue to work on implementing its action plan to address the remaining deficiencies, 'including adequately criminalizing terrorist financing; and establishing and implementing adequate procedures to identify and freeze terrorist

²⁵⁸ Amoo and Skeffers 'Rule of law in Namibia' in Nico Horn and Anton Bösl (eds) *Human Rights and the Rule of Law in Namibia* (2008) at 21-22.

²⁵⁹ Improving Global AML/CFT compliance: On-going process – Namibia at 21 June 2013.

assets'.²⁶⁰ At this stage, Namibia had been under the ICRG review process for two years, and although the country had made significant improvements to its national AML/CFT framework, its action plan remained incomplete and the risk of being blacklisted loomed large.

A year later, In June 2014, the National Assembly was once again asked to pass an anti-terror law as a matter of urgency. This time it was acknowledged blatantly that the urgency was based on an upcoming FATF review of Namibia. Through an exaggeration of the FATF's powers, the country's lawmakers were threatened with the likelihood of 'international sanctions' should the law not be enacted immediately.²⁶¹ A second anti-terror law was thus passed without any parliamentary debate or consultation. The new law, now titled the Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 (PACOTPA), removed the provision on the exclusion of liberation movements and introduced an administrative asset freezing regime for terrorist assets.²⁶² Part 4 of the Act includes vesting law enforcement agencies with special investigative powers with regard to offences related to the financing of terrorism. These include the powers to search and seize property on suspicion that they are related to such offences and the powers to intercept communications and mail for the purpose of obtaining evidence.²⁶³ It also empowers law enforcement agencies to exchange information for international co-operation in TF cases.²⁶⁴ An unprecedented addition, at least for the African continent, was the inclusion of measures aimed at the prevention and combating the proliferation of weapons of mass destruction and the financing thereof.²⁶⁵ At the time, this was a fairly new and very technical subject but it was included in the law in order to comply with the revised FATF standards.²⁶⁶ The Minister of Safety and Security also published a full set of regulations to the Act on 16 September 2014.²⁶⁷

²⁶⁰ Improving Global AML/CFT compliance: On-going process – Namibia at 21 June 2013; 18 October 2013; 14 February 2014.

²⁶¹ Shinovene Immanue. 'Nam in sanction scare' in *Namibian*. 20 June 2014.

²⁶² Consequential amendments were also made to the FIA.

²⁶³ Section 38 and Section 40 of PACOTPA.

²⁶⁴ Section 43.

²⁶⁵ Section 3 of PACOTPA.

²⁶⁶ Bank of Namibia. Media Statement. 12 March 2015. Available at www.bon.na. (accessed on 1 October 2016).

²⁶⁷ Government Gazette No. 5560 of 14 September 2014.

In October 2014, the ICRG noted that Namibia's action plan was completed successfully, and in January 2015 the country was released from the ICRG review process.²⁶⁸

5.2. Other Mechanism in the CFT Regime

International co-operation in the sharing of information, investigation and prosecution of TF cases is facilitated through various pieces of legislation which are complemented by bilateral and multilateral arrangements. The International Co-operation in Criminal Matters Act 9 of 2000 facilitates the provision of evidence and the execution of sentences in criminal matters as well as the confiscation and transfer of proceeds of crime between Namibia and foreign states. The Extradition Act 11 of 1996 sets out the legal framework for executing extraditions of persons to and from Namibia. Namibia is also a party to the SADC Protocol on Extradition, 2002, which it ratified on 1 February 2007.²⁶⁹

Namibia is a member of the Egmont Group of Financial Intelligence Units.²⁷⁰ The Egmont Group is a formal network of FIUs with the main objective of stimulating international co-operation to combat all aspects of financial crime pro-actively and timeously. It enables FIUs to exchange information with counterparts across the world rapidly. This sharing of information allows for the quick identification of all assets acquired with proceeds of crime and ensures that such assets are removed from criminals and criminal enterprises.²⁷¹

The Namibian Police Force is a member of the International Criminal Police Organisation (ICPO INTERPOL) which provides for the widest possible mutual assistance among international police

²⁶⁸ Improving Global AML/CFT Compliance: on-going process (27 February 2015) – Namibia available at <http://www.fatf-gafi.org/> (accessed on 11 April 2016).

²⁶⁹ The SADC Protocol on Extradition, 2002 came into Force within SADC on 1 September 2006. Available at www.sadc.int/ (accessed on 1 October 2016).

²⁷⁰ Bank of Namibia Media Release. 7 July 2014 available at www.bon.na. (accessed on 1 October 2016).

²⁷¹ About the Egmont Group available at www.egmontgroup.org (accessed on 1 November 2016).

authorities.²⁷² The Namibian Police Force is also a member of the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO), which is a sub-regional police mechanism to promote, strengthen and perpetuate co-operation and foster joint strategies for the management of all forms of cross-border and related crimes with regional implications.²⁷³

Another important component of Namibia's CFT regime is section 21 of the Companies Act (2004) which requires that NPOs be registered. In Namibia, these companies, referred to as 'section 21 companies', are usually established with the objective of promoting religious, artistic, scientific, charitable, recreational and other cultural or social interests.²⁷⁴ They are incorporated as companies limited by guarantee and must have at least seven members and two directors, which may include foreigners.

5.3. Challenges of Namibia's Terrorist Financing Regime



Namibia has made significant improvements to its CFT regime and implementation and enforcement is ongoing. There are, however, some fundamental concerns regarding the legality of some mechanisms that have been established to comply with the FAT Recommendations. Concerns have also been raised about the functional shortcomings of these mechanisms in so far as they have an impact on the effectiveness of the regime.

5.3.1. Contentious Criminalisation

In criminalising terrorist financing, Namibia has adopted the broad, vague and patched-together definition of terrorist acts contained in the TF Convention. PACOTPA defines terrorist activity as:

²⁷² INTERPOL member countries available at www.interpol.int (accessed on 1 November 2016).

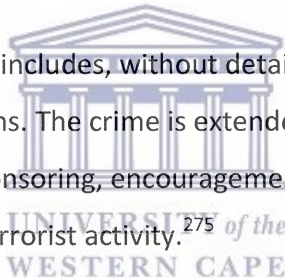
²⁷³ About SARPCCO available at www.sadc.int (accessed on 1 November 2016).

²⁷⁴ Mutual Evaluation Report on Namibia (2007) at 73.

‘any act committed by a person with the intention of instilling terror and which is a violation of the criminal laws of Namibia and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, or group of persons or which causes or may cause damage to public or private property, natural resources, the environment or cultural heritage and is calculated or intended to;

- (i) intimidate, instill fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles;
- (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency;
- (iii) create general insurrection in a State.’

The second part of the definition then includes, without detail, any offence committed in terms of a list of anti-terror conventions. The crime is extended to cover various ancillary offences, including the promotion, sponsoring, encouragement, contribution, incitement, attempt, threat and conspiracy, in a terrorist activity.²⁷⁵



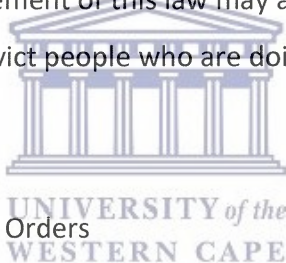
This wide-sweeping definition makes the prohibited conduct nearly impossible to pin down. Graham Hopwood argues that the broadness and vagueness of this definition may lead to the law being abused to suppress fundamental freedoms such as the right to freedom of speech and expression, which includes freedom of the press, and the right to hold peaceful protests or demonstrations.²⁷⁶ A second problem with the definition is that it incorporates offences under international conventions to which Namibia is not a party, for example, the International Convention for the Suppression of Terrorist Bombing (1997); the International Convention for the Suppression of Nuclear Terrorism (2005); and the International Convention against taking Hostages (1979). Assuming that there is a reason why the country

²⁷⁵ Section 1 ‘terrorist activity’.

²⁷⁶ Graham Hopwood. Rushed and Ill-Considered Namibia’s Anti-Terrorism Law (2015) Action to Access Information Namibia.

has not ratified these conventions, incorporating them into national legislation has defeated the act of non-ratification as these conventions now become part of the law of Namibia indirectly.²⁷⁷ Considering again the rushed process by which this law was passed, it is reasonable to assert that these issues were not decisively thought through in the process leading up to the enactment of the law. The country's former Attorney-General has acknowledged the definition is controversial, but said that the definition was foisted on Namibia and will not be amended out of fear of sanctions being imposed by the 'super powers'.²⁷⁸

This over-criminalisation may be constitutionally challenged for its vagueness and breadth, which makes it difficult, if not impossible, for ordinary citizens to know which types of conduct would incur criminal liability and because this uncertainty would violate the principle of legality. The actual enforcement of this law may also be difficult, as the offence may be misused to prosecute and convict people who are doing no more than exercising their constitutional rights.



5.3.2. Delayed and Arbitrary Freezing Orders

The domestic targeted financial sanctions regime is fraught with problems related to how the law will be implemented in practice. As stated above, Namibia uses an administrative procedure to freeze terrorist funds. In order to meet the 'without delay' requirement under Recommendation 6, PACOTPA prescribes that the freezing of terrorists and related assets shall be done through a notice in the national government gazette, within 48 hours of designation by the UNSC.²⁷⁹ The legal and institutional infrastructure to co-ordinate the receipt, processing and publication of a designation requires action by three different line ministries, namely, the Ministry of Foreign Affairs the Ministry of Safety and Security and the Ministry of Justice. This

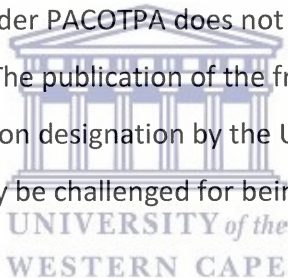
²⁷⁷ Article 144 of the Namibian Constitution.

²⁷⁸ Shinovene Immanuel. 'Terrorism law steps on rights' *the Namibian* 13 July 2015.

²⁷⁹ The Regulations define 'without delay' to mean within 48 hours.

bureaucratic requirement makes the 48-hour deadline unrealistic.²⁸⁰ In practice, freezing orders have not been published within the prescribed time, resulting in non-compliance with both the national law and the FATF's standards.²⁸¹

The second challenge to this administrative asset freezing regime is its blatant disregard for the principles of natural justice, particularly the *audi alteram partem* principle. Article 18 of the Namibian Constitution requires administrative bodies or officials to act fairly and reasonably and to comply with the requirements imposed upon them by common law and any relevant legislation. At common law, any decision by the administration which affects an individual's liberty, property or reputation, must comply with the principles of natural justice.²⁸² This includes the right of an affected person to be afforded an opportunity to make oral or written representations that should be taken into consideration by the administrator in making a decision. The asset freezing regime under PACOTPA does not envisage any *audi alteram partem* procedure for an affected person.²⁸³ The publication of the freezing order is mandatory and must be implemented immediately upon designation by the UNSC. It is thus incompatible with the requirements of article 18 and may be challenged for being unconstitutional.²⁸⁴



5.3.3. Safe Haven for Criminals.

Despite its well-rounded framework for international co-operation, Namibia has encountered several hurdles in fulfilling its obligations as regards acceding to extradition requests from foreign countries. The Extradition Act sets out a cumbersome procedure and places a heavy burden on the state and on the resources of the state to make its case for extradition. In 2006,

²⁸⁰ Section 21 and 22 of PACOTPA.

²⁸¹ Government Gazette No. 5821 (4 September 2015) freezing order for updates on 18 August 2015; Government Gazette No.

²⁸² *Ridge v Baldwin* [1964] AC 40 (HL); Collins Parker. 'Administrative law in Namibia, its current state, challenges, and proposals for law reform. *The Comparative and International Law Journal of Southern Africa*, Vol. 42, No. 1(March 2009) at 121.

²⁸³ Section 23 provides that the minister 'must' publish the freezing order.

²⁸⁴ Article 25(2) of the Namibian Constitution provides that; an aggrieved person who claims that a fundamental right guaranteed by the constitution has been infringed or threatened shall be entitled to approach a competent court to enforce or protect such right.

the country's Supreme Court noted that 'what is supposed to be a relatively simple and speedy procedure, because it is only an enquiry and not a trial where guilt or innocence play a part, inevitably develops into an all-out fight and the making of a last stand to attempt to avoid the consequences of criminal behaviour in another country'.²⁸⁵ The Court advised then already that the legislature should take steps to address the situation. However, nearly 20 years after the law entered into force, no amendments have been enacted and the country has only recorded one successful extradition.

Over the last decade the country has failed to extradite fugitives from justice to the United States, South Africa, Poland, Italy and India.²⁸⁶ These fugitives include suspected fraudsters, money launderers, murderers, paedophiles and a prominent figure of the Italian mafia. Apart from the legal and procedural challenges in the law, these cases demonstrate also the negligence and inexperience of national authorities in dealing with this fundamental component of international co-operation. An article published by the Mail and Guardian Centre for Investigative Journalism revealed how some of these wanted fugitives were closely connected to political elites and had managed to swindle national authorities into securing their lawful status and economic interests in the country.²⁸⁷ This trend may make the country a safe haven for TF offenders.

5.3.4. Vacuum of Trained Staff and Expertise

Namibia has a shortage of properly trained experts in the area of TF investigations, prosecutions and adjudication. At a recent conference of the Southern African Chief Justices' Forum (SACJF), Namibia's Chief Justice, Peter Shivute, remarked that the country's legal system

²⁸⁵ *S v Koch* (SA13/05) [2006] NASC 6 (29 November 2006) at par.83.

²⁸⁶ *Alexander v Minister of Justice and Others* (A 210/2007) [2008] NAHC 137 (5 June 2008); *Furic v The State* (CA 104/2014) [2014] NAHCMD 370 (27 November 2014); Paulus Ashipala 'SA vows Rademeyer will serve his jail time' *Namibian Sun* 1 October 2011; Roland Routh. 'Alleged paedophile seeks release on technicality' *New Era* 19 November 2014; Werner Menges 'Extradition Act sets bar too high' *The Namibian* 3 December 2014.

²⁸⁷ Tileni Mongundhi 'Fugitives hole up in Namibia' *Centre for Investigative Journalism (amaBhungane)* 7 February 2014.

was not ready to deal with organised crime. According to him the country's criminal justice system is unprepared and inadequately resourced to face the challenges posed by organised crime.²⁸⁸ The criminal justice system is already overburdened and may find it difficult to meet the demands of more sophisticated and complex crimes like TF.²⁸⁹ Specialised law enforcement units trained and specialised in the investigation and prosecution of terrorist financing have, at the time of writing, not been established. Such cases are most likely to be dealt with by officials who deal with money laundering and other economic crimes. Local media reports also claim that the authorities have no clear strategy for the investigation of these cases, which are ordinarily led by the national intelligence agency. The lack of a well-defined strategy could, therefore, result in a turf war amongst state agencies.²⁹⁰

5.3.5. Unregulated NPOs

Although NPO's in Namibia must be registered with the Registrar of Companies, they are not legally regulated or supervised.²⁹¹ Apart from the initial registration requirements, these companies operate independently, with no real monitoring or regulation of their activities. There are no available figures on the number of section 21 companies in existence in Namibia. The Registrar of Companies does not check whether NPOs have funds when registering them or where their funding originates.²⁹²

Another significant concern about the NPO sector is the ease at which these corporate vehicles can be created and dissolved and the absence of rules to ensure their accountability and transparency. The mushrooming of religious organisations in the country is a case in point.²⁹³ The Constitution provides for freedom of religion, and the government generally respects this

²⁸⁸ Elvira Hattingh. Regstel kan nie georganiseerde misdaad hokslaan *Republikein* 4 October 2016.

²⁸⁹ Werner Menges. Police and courts swamped by criminal cases *The Namibian* 6 February 2015.

²⁹⁰ Tileni Mongudhi. 'Namibia's mysterious 'unwanted' citizen' 25 September 2015.

²⁹¹ Mutual Evaluation Report on Namibia (2007) at 73.

²⁹² Mutual Evaluation Report on Namibia (2007) at 74.

²⁹³ More than 90 percent of Namibian citizens identify themselves as Christian. Other religions practised in the country include Islam, Judaism, Buddhism, and the Baha'i Faith. Practitioners of these faiths are predominantly immigrants, descendants of immigrants, or recent converts.

right in practice. There has, however, been an increasing trend in the advent of 'bogus churches', coupled with regular reports of the misappropriation of funds in these organisations.²⁹⁴ Some 'pastors' have been accused too of conducting 'sham marriages' between Namibian women and foreign nationals at a fee.²⁹⁵ These incidents demonstrate the vulnerabilities of the NPO sector, which may be exploited for criminal gain.

5.3.6. Invasive Police Powers

PACOTPA empowers the police to use specialised investigative techniques such as surveillance and the interception of communications or postal services, when dealing with suspected TF cases.²⁹⁶ According to Hopwood, these powers are potentially necessary but also sometimes problematic interventions by the state.²⁹⁷ Article 13 of Namibia's Constitution protects the individual's right to privacy of the home, correspondence and communication. Although section 40(4) of PACOTPA expressly limits police invasion of the right to privacy, in the interest of national security, public safety or the economic well-being of the country, the provision lacks the necessary procedural and judicial safeguards against the abuse of monitoring, surveillance and interception of private communications.²⁹⁸ These provisions were included also in the law without consulting civil society groups, the Ombudsman or ordinary citizens who may be affected by these invasive provisions.²⁹⁹ The admissibility of the evidence obtained through these techniques may be subject to constitutional challenges.

²⁹⁴ Michael Uugwanga. 'Fake churches concern CCN' *Informante* Thursday, January 28, 2016; *Tileni*"Church fleeced of half a million"*The Namibian*(4 June 2010);*Kisting Denver* "Pastor in court over N\$700 000". *The Namibian* 7 October 2011; *Mongudhi, Tileni*"Pastor found guilty of losing church money in scam' *The Namibian* 27 September 2010; *Selma Shipanga*. 'Church fraud exposed'. *The Namibian*. 27 April 2012.

²⁹⁵ Tileni Mongudhi. 'unholy marriages lead to Govt probe'. *The Namibian* 16 August 2013.

²⁹⁶ Section 40 of PACOTPA.

²⁹⁷ Graham Hopwood (2015) at 8.

²⁹⁸ United Nations Human Rights Committee Report on the International Convention on civil and political rights – Namibia 22 April 2016. Adopted by the Committee at its 11th Session (7-3 March 2016).

²⁹⁹ Graham Hopwood (2015) at 3.

5.4. Upcoming Review on Namibia's Compliance with the FATF Recommendations

As alluded to earlier, Namibia is scheduled to undergo another round of mutual evaluation. The next review will form part of the FATF's fourth round of mutual evaluations. For the fourth round, the FATF has adopted a new approach for assessing compliance. It consists of an integrated two-tier analysis of a country's compliance, evaluating both technical compliance and effectiveness.³⁰⁰

The technical assessment analyses the implementation of specific requirements of the FATF recommendations, including whether the country has adopted the necessary laws, established the competent authorities and put in place the required powers and procedures for a national AML/CFT system.³⁰¹ Ratings for technical compliance may range across four levels of compliance, namely; Compliant (where there are no shortcomings); largely compliant (there are only minor shortcomings; partially compliant (moderate shortcomings); and non-compliant (when there are major shortcomings).³⁰²

Assessing effectiveness is based on a fundamentally different approach as it evaluates whether the measures adopted for technical compliance are successful in producing the required outcomes. It requires a judgment as to whether the key objectives of an AML/CFT regime are being effectively met in practice.³⁰³ Ratings for effectiveness also range across four levels from; a high level of effectiveness; substantial level of effectiveness; moderate level of effectiveness and low level of effectiveness, vis-a-vis the FATF objectives.

Namibia will thus have to prove that it has complied with the requirements of the FATF's recommendations to establish a domestic CFT regime and demonstrate that the domestic regime operates effectively. Considering the above highlighted shortcomings within the

³⁰⁰ FATF. Methodology for Assessing Compliance with the FATF Recommendations and the effectiveness of AML/CFT systems.

³⁰¹ FATF Methodology (2013) at 11.

³⁰² FATF Methodology (2013) at 12.

³⁰³ FATF Methodology (2013) at 14.

national CFT regime, the next chapter will seek to identify risk-based recommendations that the country may address prior to the upcoming review in order to enhance the performance of its CFT regime and avoid possible blacklisting.



CHAPTER 6

RISK-BASED RECOMMENDATIONS AND CONCLUSION

6.1. Recommendations

The prevention, detection and combating of TF is an ambitious task. This paper has highlighted the complex nature of the mechanisms that make up an effective CFT regime. But there is no 'one size fits all approach', for every country should endeavour to develop a regime that suits its own risk and context. The FATF requires that countries apply a 'risk-based approach' to compliance.³⁰⁴ Countries are called upon to identify, assess and understand their national TF risks and adopt responses that are proportional and commensurate to such risks. Risk is assessed based on three factors: threats; vulnerabilities and consequences.³⁰⁵ The weaknesses in the national regime create areas of vulnerability that increase risk. The risk-based approach should serve as the foundation for resource allocation, identifying priority actions that the country must undertake to counter weaknesses, alleviate vulnerabilities and mitigate risk.³⁰⁶



This paper has highlighted some strategic shortcomings in Namibia's CFT regime. By prioritising resources and efforts to alleviate the vulnerabilities presented by such shortcomings, the country can improve the overall effectiveness of its national system.

6.1.1. Increase Awareness on Terrorist Financing

Namibia has made substantial progress in understanding the phenomenon of terrorism financing and in articulating and implementing the measures necessary to address it. But there is a need for increased awareness of the crime, its dimensions and the scope of the prohibited

³⁰⁴ FATF (2012) Recommendation 1.

³⁰⁵ FATF Guidance National Money Laundering and Terrorist Financing Risk Assessment February (2013) at 4.

³⁰⁶ FATF Guidance (2013) at 6.

conduct. National authorities should venture to raise awareness on the TF risks in both the public and private sectors. Regular dialogue should be conducted between the authorities, private sector and civil society organisations to facilitate the design and adoption of further regulatory mechanisms, aimed at enhancing the national CFT regime.

PACOTPA needs to be referred for public consultation with a view to ensuring that it complies with the Constitution. Hopwood suggests the adoption of a system of oversight and monitoring in the implementation of the law to prevent abuse of power.³⁰⁷ This system of oversight may be particularly important to ensure that the powers of interception and surveillance accorded to law enforcement are exercised within the perimeters of the law. The government needs also to consider ratifying all of the outstanding anti-terror Conventions, particularly those that have already been included under the scope of PACOTPA.

6.1.2. Investigation and Prosecution of Terrorist Financing Cases.

The national authorities should develop a strategy to identify, investigate, prosecute and, where appropriate, sanction the financing of terrorism. This includes appointing designated law enforcement and prosecutorial units to deal with TF cases. These units must be adequately staffed, resourced and financed in order to fulfil their mandate effectively. The authorities should also intensify the specialised training of persons engaged in TF cases including, law enforcement agencies, the prosecution service and the judiciary. The government can solicit the support of international partners such as the FATF, UNODC and INTERPOL to support and assist with capacity building opportunities.

6.1.3. Streamlining the /implementation of Targeted Financial Sanctions

The procedure for freezing terrorist related funds needs to be simplified. The administrative freezing regime should be revised to reduce the bureaucracy that causes delays in

³⁰⁷ Graham Hopwood (2015) at 10.

implementation. The national sanctions regime also should ensure, to the greatest extent possible, the full observance of an individual's rights to due process, including the right to be informed of the evidence against him and the right to be heard.

6.1.4. Strengthening Mechanisms for International Co-operation.

The Government of Namibia needs to review the law on extradition and develop a simplified process for facilitating extradition requests. National authorities should establish an effective system for communication and co-ordination in dealing with extradition requests and should introduce mechanisms to enhance their institutional capacity for effective international co-operation. The government should also take further steps to enter into extradition treaties with foreign countries to enlarge its scope of co-operation.

6.1.5. Monitoring and Supervision of NPO Sector

The authorities need to conduct outreach and raise awareness on the potential TF risks associated with NPOs. Mechanisms for monitoring and supervision of higher risk NPOs should be established to ensure that criminals do not infiltrate the sector. Authorities should have access to information pertaining to the management and financing of section 21 companies and should conduct regular risk assessments on the NPO sector.

6.2. Conclusion

Namibia is part of the global community and carries on an in the international responsibility to prevent, detect and suppress terrorism and its financing. The country has a national responsibility to ensure that its territory does not become a safe haven for terrorists or a safe transit for terrorist related funds. During the upcoming review of Namibia, the FATF will assess whether the country has done enough to secure its financial system from abuse by terrorists

and their financiers. The country must demonstrate that it has established a robust and effective CFT regime that operates optimally to counter the TF threats. Currently, the established CFT regime includes measures that raise legal, institutional and human rights issues that Namibia has not fully resolved. The country should therefore intensify its efforts, address its vulnerabilities and advance a stronger and more efficient regulatory regime, with due regard for human rights.



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