



FATF REQUIREMENTS ON CRIMINALISATION OF MONEY LAUNDERING AND TERRORISM FINANCING

Atuweni-tupochile Agbermodji

AML/CFT Adviser – UNODC Regional Office for East Africa

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PRESENTATION OUTLINE

- **Background to international standards.**
- **International standards**
 - UN conventions
 - UN Security Council Resolutions
 - FATF Recommendations
- **Questions and Discussion**

HOW IT STARTED

- **In the 1980's governments around the world started to put in place money laundering laws, mostly to deal with drug trafficking.**
- **Soon became evident that domestic legislation wasn't sufficient.**
 - Financial systems became more integrated. Criminals moved proceeds around.
 - Took advantage of countries that had no or little ML regulation.
- **International response led to;**
 - 1988 UN Convention against Illicit Traffic in Narcotic drugs and Psychotropic Substances.
 - Mentioned money laundering but only in the context of drug trafficking.
 - Required countries to ensure that those involved in this trade don't benefit from the proceeds of crime.
 - Soon the international community realized that criminals had started laundering proceeds of other crimes and these need to be covered.
- **United Nations Convention against Transnational Organized Crime (2000)**

UNITED NATIONNS



UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (2000)

Key provisions this Convention in relation to ML

○ **Criminalized ML**

- Make ML to serious predicate offences
- Make ML applicable to legal persons
- Make ML applicable when committed within or outside a given state.
- Widened the scope of ML to include
 - Conversion or transfer
 - Concealment or disguising
 - Acquisition or possession
 - Participation, association, conspiracy.

○ **Established measures to combat ML**

- Supervising and regulating financial institutions.
- Cooperation among law enforcement agencies.
- Suspicious transactions to be reported.

UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (2000)

- **Confiscate proceeds of crime**

- Powers to identify, trace, freeze or seize and confiscate
- Proceeds of crime or property of corresponding value
- Property realized from proceeds of crime or intermingled with legitimate property.
- Sharing of confiscated property with other states

- **Use of special investigative techniques- state can enter into agreements**

- Controlled delivery
- Surveillance
- Wire tapping

- **International cooperation**

- Searches and seizures
- Questioning of witnesses
- Confiscation of proceeds of crime
- Extradition

OFFICIAL DEFINITION OF TERRORISM FINANCING

- **Internationally criminalized and defined in the United Nations Convention For the Suppression of Financing of Terrorism (1999).**
- Any person commits an offence within the meaning of this Convention if that person by any means directly or indirectly, unlawfully, willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used to carry out:

OFFICIAL DEFINITION OF TERRORISM FINANCING

- An act which constitutes an offence within the scope of and as defined in one of the treaties in the annex to the Convention (See slide 9 and 10).
- Any other act intended to cause death or bodily injury to a civilian, or any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an organisation to do or to abstain from doing any act.

TERRORISM FINANCING CONVENTIONS

- **Conventions to which TF applies include;**
 - Convention for the Suppression of Unlawful Seizure of Aircrafts. (1970)
 - Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. (1971)
 - Convention on the Prevention and Punishment of Crimes against Internationally Protected persons, including Diplomatic Agents. (1973)
 - International Convention against the taking of Hostages. (1979)
 - Convention on the Physical Protection of Nuclear Material. (1980)

TERRORISM FINANCING CONVENTIONS

- **Conventions to which TF applies include;**
 - Protocol for the Suppression of Unlawful Acts of Violence at Airports, Serving Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. (1988)
 - Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. (1988)
 - Protocol for the Suppression of Unlawful Act against the Safety of Fixed Platforms located on the Continental Shelf. (1988)
 - International Convention for the Suppression of Terrorist Bombings. (1997)
 - Convention on the making of Plastic Explosives for the purposes of Detention (1991)

TERRORISM FINANCING

- TF to extend to financing travel of those going to plan terrorist act
- TF to extend to legitimate and illegitimate property.
- TF offences don't require that
 - Funds were used in a terrorist act
 - Be linked to a specific terrorist act.
- Intent and knowledge to commit TF can be inferred from objective factual circumstances.
- TF offences and sanctions should apply to legal persons.
- TF to apply whether accused is alleged to have committed offence in same country or different country to where terrorist organisation is located.

TERRORISM FINANCING

- **TF can fund a wide range of activities (act of Terrorism) such as;**
 - General harm and injury to civilians.
 - Serious damage to property.
 - Cause serious risk to health and safety of the public.
 - Use of firearms or explosives.
 - Releasing into the environment or distributing hazardous, radio-active substance, harmful chemical, microbial or biological agent and toxins.
 - Disrupting computer or communication systems, banking, financial, utility, transportation or other essential services.
 - Disrupting provision of essential emergency services such as police, defence or medical.
 - Piracy

UN SECURITY COUNCIL RESOLUTIONS

- UNSCR have a binding force under Chapter 7 of the UN charter.
- UNSCR 1267 (and successor resolutions) – Imposed indefinite assets freeze on the Taliban and Al-Qaida and established the 1267 Sanctions committee.
- UNSCR 1988 (and successor resolutions) split the sanctions committee so that
 - 1267 deals only with designations of Al Qaida
 - 1988 deals with designations of Taliban and threats related to Afghanistan.
- UNSCR 1373 (and successor resolutions)- requiring countries to identify and designate persons as terrorist in line with the requirements of UNSCR 1373
- UNSCR 1718 and 1783 (and their successor resolutions) requiring countries to implement targeted financial sanction on state or individuals involved in the proliferation of WMDs

FINANCIAL ACTION TASK FORCE



FINANCIAL ACTION TASK FORCE

- Intergovernmental body Formed in 1989 by the G7 heads of state , European Commission and 8 other countries.
 - It sets standards and promotes effective implementation of legal, regulatory and operational measures for combating ML/TF
- 1990 came up with 40 Recommendations to deal with ML
- 2001, the mission of FATF was widened to include TF, and they came up with 8 Special recommendations to deal with TF.
- 2004 FATF published 40 + 9 Recommendation on ML and TF.
- 2012 Revised to 40 Recommendations on ML and TF

FATF 40 RECOMMENDATIONS

- **Have 6 key sections.**

- AML Policies and coordination
- Money laundering and confiscation
- TF and Financing of Proliferation
- Preventative measures
- Transparency and beneficial ownership of legal persons and arrangements.
- Powers and responsibilities of competent authorities and other institutional measures.
- International cooperation.



FATF ENFORCING COMPLIANCE

- Conducts mutual evaluations of its member states
 - Non-member countries are evaluated through their FATF-style regional body.
 - For Uganda, this is the East and Southern Africa Anti-Money Laundering Group (ESAAMLG)
- Evaluations look at
 - Technical compliance – Does the country have all the laws to address ML/TF and proliferation
 - Effectiveness- In practice, how effective are the laws? How are they being applied? What is the result?
- Not having adequate laws and a low level of effectiveness can lead to a country being under review by the FATF.
- This affects the country's correspondent banking relationships and ability to conduct international trade and attract foreign investment.



THANK YOU