



FINANCIAL ACTION TASK FORCE (FATF)'S AML/CFT STANDARDS:

**An Analysis of Compliance and
Effectiveness Status of Assessed
Countries under the 4th Round and its
FSRB Equivalent.**



**Global South
Dialogue on
Economic Crime**

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1. Overview of project and parameters of research.

This section sets out an overview of the research project, the research questions and summary of findings.

Project Overview

Determining salient factors that affect the compliance trajectory of countries is critical in facilitating their improved effectiveness and compliance with the FATF's standards. This is achieved by examining secondary data generated by the relevant standard setting/assessment bodies. Data relied on include;

- Analysis of Mutual Evaluations conducted by the FATF and other Assessment Bodies under the 4th Round & Equivalents (Data for 30th April 2020, 99 jurisdictions). This document presents relevant data on the compliance and effectiveness levels attained by 99 countries regarding the FATF standards. Additionally, it presents findings on the effect of assessment body composition on compliance and effectiveness levels of countries.
- Global Performance on Technical Compliance and Effectiveness (GIABA).
- 99 Countries Evaluated: Performance on Technical Compliance & Performance on Immediate Outcomes (4th round ratings)¹. This document examined the performance of 99 countries, specifically GIABA countries.

Data generated are read alongside the FATF's Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems and the Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations (Updated February 2019). Additionally, the Mutual Evaluation Report of countries are also studied to facilitate improved contextual understanding of the assigned ratings.

Research Questions

Critical to this study are five research questions:

1. Examining quantitative data, which countries have demonstrated greater or weaker compliance with the FATF's standards, and why?
2. What recommendations and immediate outcomes have countries shown greater propensity to comply with?
3. Do variances in outcomes exist in relation to ratings of countries with regards to connected recommendations and immediate outcomes. If yes, what factors explain this disparity?
4. To what extent can the assessment body and assessor expert composition affect the compliance outcome of countries?
5. To what extent does the FATF methodology affect compliance assessments?

Examination of Key Terms

Terms critical to this report are explained below.

¹ 4th round ratings (2020). Consolidated table of assessment ratings. Retrieved from <https://www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.xlsx>

FATF Member Countries/Strategically Important Countries

This report distinguishes FATF Member countries from non-FATF member countries. The former usually refers to developed countries that are classed as strategically important by the FATF. Various factors determine this classification, including the size of a country's gross domestic product, the size of its banking, insurance and securities sectors in relation to the country's population.² The FATF also considers the impact of the country's global financial system, including the extent of openness of the country's financial sector and its interaction with international markets. The FATF also assesses the country's commitment to combatting AML/CFT and its adherence to international financial sector standards. When countries are deemed to meet these standards, the FATF would grant membership status to that country.

Implementation and Compliance

The terms implementation and compliance are used interchangeably, however, they are significantly different. Implementation refers to the transplantation of standards into domestic law and the measures geared at domesticating international recommendation. Compliance transcends implementation and refers to an actor's behavioural conformity to specific recommendations.³ For example, whilst a state may introduce national laws and regulations on AML/CFT, it cannot be assumed that the resulting governing document complies with the international standards. Understanding the concept of compliance drivers is critical in constructing the design of recommendations to ensure proactive compliance. These concepts are crucial themes within this report and are key to understanding why countries comply.

Effectiveness

There are varying perspectives on the concept of 'effectiveness' within international law. It may relate to whether an international law attains its objectives⁴ or the perspective of behavioural improvements in targeted actors. The FATF sees effectiveness assessment as the former, given its definition of the term as 'the extent to which the defined outcomes are achieved'⁵, which is the stance of this report.

Standards/Recommendations

Additionally, the terms 'standards' and 'recommendations' are used interchangeably in reference to the FATF recommendations.

² FATF, 'FATF Membership Policy' (FATF) < <https://www.fatf-gafi.org/about/membersandobservers/fatfmembershippolicy.html> > accessed 1 August 2020.

³ Roger Fisher, *Improving Compliance with International Law* (University Press of Virginia, 1981); Benedict Kingsbury, *The Concept of Compliance as a Function of Competing Conceptions of International Law* [1998] 10 Mich. J. Int'l 345

⁴ Edith Brown Weiss and Harold K. Jacobson, *Compliance with the International Environmental Accords* [1995] 119 Global Governance 119, 123.

⁵ FATF, 'Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems' (FATF, 2012) < <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf> > accessed 14 August 2020

Research Methods

This research interrogates salient factors that affect countries' FATF compliance and effectiveness levels. It adopts a mixture of quantitative and doctrinal methods to assess its findings and draw conclusions. For instance, secondary empirical data is utilized in evaluating current compliance level of countries to the FATF recommendations alongside the level of effectiveness attained. Secondary data analysed is built on the mutual evaluation report of countries sourced from the 4th round ratings.⁶ The research questions allow for analysis of the secondary data, supported by doctrinal research.

Empirical data is utilized in evaluating current compliance level of countries to the FATF recommendations. This involves secondary data re-coding of the FATF assigned compliance levels (from non-compliant to compliant ranked 0-4) to countries on each of the 40 recommendations. The data is gathered from an examination and analysis of different mutual evaluations report and follow-up reports.

Report Findings

Finding 1: Cross Country Analysis on FATF Compliance Levels

This report finds that the five most compliant jurisdictions are Bermuda, Spain, the United Kingdom, Saudi Arabia and Macao, China. Of these countries, only two (Bermuda and Macao, China) are not full FATF members but associate members. It contends that significant correlations exist amongst these highly compliant countries. Firstly, they all conducted comprehensive risk assessments, which amplified their understanding of ML/TF risk they face. They all facilitated significant improvement on AML/CFT national coordination and cooperation and heightened transparency of beneficial ownership registry. Underlining the remarkable compliance trajectory of these countries is their existent pre-conditions for effective regulation.

The least compliant countries are Vanatu, Uganda, Mauritania, Botswana and Haiti. None of these countries are FATF member countries. Rather they are member countries of FSRBs. Their belated acquaintance with the FATF standards has largely undermined their compliance prospects. These counties all conducted weak risk assessments, which affected their ability to understand and address their ML/TF risks. Largely, they had weak pre-conditions for effective regulation.

Noting the compliance discrepancy between FATF and FSRB members, this report illustrates that the former is better able to comply as they were critical to the formation of the FATF standards and are therefore more acquainted with them. Additionally, they possess sturdy preconditions for effective regulation and prioritize compliance. More fundamentally, whilst the FATF countries are standard makers, the FSRBs are usually 'standard takers.' Indeed, transplantation across these sets of countries are usually ill-fitted and weak, thereby hindering compliance.

Examining the GIABA countries, Ghana ranks the highest, followed by Burkina Faso, Cabo Verde, Mali and then Senegal. This report finds that asides from Ghana, all the

⁶ Ibid 4th round ratings

other GIABA countries displayed bare understanding of the ML/TF risk they face, a limitation with far-reaching implications, including the destabilisation of national coordination and cooperation.

Finding 2: Recommendations Most and Least Compliant With.

This report finds that countries are most compliant with are recommendations 9 on financial secrecy laws, 9 on tipping-off and confidentiality, 30 on responsibilities of law enforcement and investigative authorities, 20 on reporting of suspicious transactions and 11 on record keeping.

The recommendations countries are least compliant with are recommendation 24 on transparency and beneficial ownership of legal persons, followed by recommendations 22 on designated non-financial business and professionals: customer due diligence. Countries also record poor compliance on recommendation 1 on assessing risk and applying a risk-based approach, recommendation 25 on transparency and beneficial ownership of legal arrangements and recommendations 28 on regulation and supervision of DNFBPs.

Finding 3: Countries Effectiveness on Immediate Outcomes

This report finds that countries are most effective to three key Immediate Outcomes (IOs), Immediate Outcome 9 (terrorist financing investigations and prosecution),⁷ 2 (International cooperation),⁸ and 6 (financial intelligence).⁹ Countries rank least effective to IOs 4 (preventive measures),¹⁰ 5 (legal persons and arrangements),¹¹ and 7 (money laundering investigations and prosecutions).¹²

Finding 4: Countries Technical Compliance Vis-à-vis Related Immediate Outcomes

This report establishes that countries are complying with the FATF recommendations but are not necessarily effective on related IOs. The existent disparity is due to various factors, including; timing of countries' FATF standards adoption, lack of preconditions for effective regulation, data scarcity and lack of understanding of risk.

However, there are outliers, countries where their technical compliance align with their effectiveness. Bermuda, United Kingdom and Spain are examples of these countries.

⁷ FATF, 'Methodology for Assessing Technical Compliance with the FATF Recommendations and Effectiveness of AML/CFT Systems' (FATF, 2019) < <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%202022%20Feb%202013.pdf>> accessed 10 August 2020. See Immediate Outcome 9

⁸ Ibid. See Immediate Outcome 2

⁹ Ibid. See Immediate Outcome 6

¹⁰ Ibid. See Immediate Outcome 4

¹¹ Ibid. Immediate Outcome 5

¹² Ibid. Immediate Outcome 7

Additionally, the United States of America is a prime example of a country performing poorly on technical compliance but exceeding expectations on related effectiveness.

Finding 5: FATF Methodology's Impact on Assessment.

This report submits that the FATF methodology has evolved. However, it still creates interpretative loopholes that can impact assessors' technical and effectiveness ratings of assessed countries. Consequently, the assessors' subjectivity colours their interpretation, and consequently, assessment reports may be unreliable.

Finding 6: Analysis by Assessment Bodies

This report discusses how assessors' composition of review bodies may influence the compliance outcomes of evaluated countries. It first reviews the assessment bodies and finds that the APG has conducted the highest level of assessments, followed by the FATF and MoneyVal. Thereafter, the CFATF and GAFILAT followed by others. It also examines the compliance and effectiveness outcomes with regards to each assessment body. It finds that, in comparison to other assessment bodies, the FATF has recorded the highest effectiveness and compliance ratings. Most particularly, it examines the assessment composition of assessment bodies that evaluated the most and least compliant countries. It, however, highlights the difficulties in robust comparison given the inherent disparity across evaluation cycles, language, and training and assessor selection.

Finding 7: Analysis by Evaluation Cycles

This report finds that the more evaluation cycles that countries go through, the more compliant they are. This is evidenced by the fact that three of the most compliant countries; Bermuda, Spain and the UK have undergone 4 mutual evaluation cycles. Macao, China, has gone through three evaluation cycles. Additionally, the least most compliant countries have only gone through two or three cycles of evaluation. Mauritania, Uganda and Botswana have gone through two cycles, and Vanatu has gone through three. However, Haiti's classification as one of the least compliant countries even with 4 mutual evaluations indicate that more evaluations does not necessarily translate to heightened compliance.

1. Cross-Country Analysis of Compliance with the FATF 40 Recommendations.

Countries compliance with each of the FATF recommendations as documented in their MERs and follow-up reports were codified into numerical data on 99 countries.¹³

¹³ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020); IFC, 'Bermuda: Ownership Register Will Be Accessible to Public' (IFC, July 2020) <<https://www.ifcreview.com/news/2020/july/bermuda-ownership-register-will-be-accessible-to-public/>> accessed 10 August 2020

Compliance by these countries with the FATF's recommendations ranges from 35.63% to 91.88%. An examination of the data reveals the five most compliant and least compliant countries, which this study examines.¹⁴ The AML/CFT compliance data derived on these countries span 2018-2020 and reveal that Bermuda ranks highest as the most compliant country with 91.88% compliance and a weighted score of 147 of 160. Bermuda is closely followed by Spain, the United Kingdom, China and then Saudi Arabia. Saudi Arabia has an overall compliance of 84.38%, with a weighted score of 135 of 160. The weakest frameworks are those of Vanatu, Mauritania, Uganda, Haiti and Botswana. With 35.63% compliant levels and a weighted score of 57, Botswana is the least compliant country. An inquiry into these startling statistics unveils the factors that determine the compliance trajectory of these countries.

Most Compliant FATF Countries

Bermuda

As stated, Bermuda is the highest compliant country with an overall percentage of 91.88% and a weighted score of 147 of 160.¹⁵ With regards to specific FATF recommendations, Bermuda was ranked as compliant with 28 recommendations, largely compliant with 11 and partially compliant on 1 recommendation.¹⁶ On record, there is no recommendation that Bermuda was not ranked as non-compliant with.

Its high-ranking compliance is attributed to its thorough national risk assessments¹⁷, which facilitated a profound understanding of the ML/TF risks it faces at the national and institutional levels. Additionally, there is thorough knowledge of the risks involved in national cooperation and supervision of relevant institutions. Consequently, appropriate structures are instituted for comprehensive customer due diligence, record-keeping and internal controls. Risks measures have also been introduced to facilitate compliance by legal persons, law enforcement and investigative authorities. Furthermore, the country had an understanding of the ML/TF risks posed by emerging industries such as Casino Gaming and FinTech Businesses. This is indeed commendable at a time where crime is going digital.

The country's 2017 risks assessment reports were disseminated to regulated entities and circulated online to access all interest parties. This move facilitated transparency and synchronised the agenda of relevant bodies to address the risks identified. Indeed, this was not a one-off, static circulation. Rather the country's supervisory authorities communicated any increased risk-rating to all stakeholders to facilitate coordination amongst them. This was reported as a longstanding feature of the country's information exchange framework.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶CFATF, 'Anti-Money Laundering and Counter-Terrorist Financing Measures – Bermuda, Mutual Evaluation Report, January 2020' (CFATF, January 2020) < <https://www.cfatf-gafic.org/documents/4th-round-meval-reports/13596-bermuda-4th-round-mer/file> > accessed 10 July 2020.

¹⁷ Ibid. Bermuda has had three national risks assessments. Two focusing on ML risk, in 2013 and 2017. One on TF risk in 2016.

Bermuda's understanding of the risks it faces triggered its reaction to various recommendations. For instance, legislations were amended to address issues such as beneficial ownership requirements. Regulated financial institutions, trust service providers (TSP) and corporate service providers (CSP)¹⁸, alongside other designated non-financial business and professionals (DNFBP), are required to conduct CDD on all customers. These institutions are also required to maintain an updated beneficial ownership record and are properly supervised. Since 2017, major financial institutions, especially banks, have adopted sturdy preventative measures by standardising both enterprise and business relationships alongside facilitating sustained training for relevant personnel. These steps have culminated in Bermuda's positioning as the most compliant country.

The 13-mark difference in the weighted score, however, indicates that Bermuda does have some shortcomings. The real estate industry is struggling as not all companies have imbibed the practice of filing the Suspicious Activity Reports (SARs) even with the outreaches done to facilitate these. Till date, the funds retained and recovered through criminal investigations are considered low especially given Bermuda's recognised international financial centre status. This is primarily due to the inability to obtain a restraint order prior to a charge being laid. More surprising is that irrespective of the country's existent platform for international cooperation through mutual legal assistance and other avenues, Bermuda has barely sought international cooperation on cross-border ML. Additionally, the country's competent authorities, such as the immigration and Customs staff have limited targeted trainings.

The shortcomings in Bermuda's compliance reveal that even with seemingly stellar compliance, the country has serious deficiencies.

Spain

Spain is ranked 2nd highest country in compliance with an overall percentage of 88.75% and a weighted score of 142 of 160.¹⁹ Regarding specific FATF recommendations, Spain was ranked as fully compliant with 25 recommendations, largely compliant with 12 and partially compliant with 3 recommendations.²⁰ On record, there is no recommendation that Spain was considered not compliant with.

Spain's stellar compliance is attributed to a wide range of factors and pre-meditated steps. Primarily, the country's 2014 MER, which reported the country's shortcomings, orchestrated major compliance strides.²¹ Consequently, the country undertook a thorough and internally consistent risk assessment of its ML/TF vulnerabilities. The

¹⁸ Ibid. CSPs licensed since 2017

¹⁹ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020); FATF, 'Spain: Follow-Up Assessments' (FATF, 2019) < <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/Follow-Up-Assessment-Spain-2019.pdf> > accessed 11 August 2020.

²⁰ FATF, 'Spain: Follow-Up Assessments' (FATF, 2019) < <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/Follow-Up-Assessment-Spain-2019.pdf> > accessed 11 August 2020.

²¹ FATF, 'Spain: Mutual Evaluation Report' (FATF, 2014) < <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Spain-2014.pdf> > accessed 11 August 2020.

result was shared with the private sector in 2019 to facilitate a collaborative AML/CFT fight. The country has also strengthened its strategy for combatting ML/TF, a move that included the amendment and adoption of new regulations and strategies. One critical strategy was Spain's publication of its 2019 National Strategy against Terrorism which includes a focus on combatting TF and the financing of the proliferation of weapons of mass destruction. Additionally, Spain created a National Registry of Foundations alongside a Centralised Body for the Prevention of ML/TF of the Council of Companies, Land and Personal Property Registrars (CRAB). These critical steps on terror funding and charities which were in reaction to its 2014 MERs has occasioned improved technical compliance in these areas.

Spain has taken further steps. For instance, since 2017, it has applied the EU Wire Transfer Regulations (2015/847), which facilitates information transparency on payments from origination to destination. Spain's banking sector, its strongest financial sector, is now ranked as the most compliant. Yet, the country still recognises the risk posed by Money or Value Transfer Services (MVTs) given its transactions volumes. Consequently, sectoral controls have been introduced. Training and supervisory frameworks have been instituted for gatekeepers, including lawyers and real estate agents to ensure continued risk understanding and mitigation. Regulators have also clamped down on the jewellery market, carrying out at least 6 inspections within a short period, resulting in sanctions totalling EUR 360,000.²² Heightened interaction between the regulators and the market has improved risk identification and mitigation in this area.

The 18-mark difference in weighted score, however, evidences some minor shortcomings. The shortcomings are large with regards to the gatekeepers, lawyers to be precise, who, although they are classed as moderately important by the assessment team, are critical in the fight against financial crime. The General Council of Lawyers reports the existence of 154, 583 lawyers in Spain. However, only 400 firms and individual lawyers were actively performing the FATF requirements, indicating a gap in gatekeeping compliance. There are concerns that this position is actually incorrect, as within each law firm, some of which have up to 900 lawyers that perform the FATF activities. Therefore, there are doubts about the actual number of uninvolved lawyers.

United Kingdom (UK)

The UK is ranked 3rd highest with 88.13% compliance and a weighted score of 141.²³ The UK was ranked as fully compliant with 23 recommendations, largely compliant with 15 and partially compliant with 2 recommendations.²⁴ On record, there is no recommendation that the UK was considered as not compliant with to a certain degree.²⁵

²² Ibid.

²³ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

²⁴ FATF, 'United Kingdom: Mutual Evaluation Report' (FATF, December 2018) <<https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>> accessed 12 August 2020.

²⁵ Ibid.

The UK's highly rated compliance is largely attributed to its robust understanding of its ML/TF risks, as reflected in its public national risk assessments. In line with identified risks, the UK proactively investigates, prosecutes and convicts a range of TF activity. The country plays a pivotal role in designating terrorist at the UN and EU level alongside promoting the effective global implementation of proliferation related targeted financial sanctions (TFS). This is achieved mainly through its instituted public/private partnership on TF matters. One key mechanism used to facilitate this is the Joint Money Laundering Intelligence Task Force (JMLIT) that allows for public/private information sharing on AML/CFT issues.²⁶ This has aided the UK's aggressive fight against ML, culminating in 7900 investigations, 2000 prosecutions, and 1400 convictions annually.²⁷ Competent authorities involved in investigations and convictions are strongly reliant on statistical analysis. Although there are questions about whether the statistics on convictions reflect the UK's risks profile.

Overall, the UK has witnessed remarkable compliance with the FATF recommendations, albeit with minor shortcomings. There has been a significant improvement in its AML/CFT national coordination and co-operation. Financial institutions and DNFBPs are also subject to comprehensive AML/CFT supervision and are required to conduct customer due diligence and maintain an easily accessible registry of beneficial owners. The central public registers, however, suffer from minor shortcomings. Firstly, it is yet to be fully populated. Secondly, the register is unverified and hence, falls short on accuracy leading to its questionable reliability.

Additionally, the UK has deliberately limited the role of its Financial Intelligence Unit in undertaking operational and strategic analysis of received suspicious activity reports (SARs). This has occasioned questions on whether the SAR data is utilised systematically and holistically to provide investigators with adequate support. It is for these reasons that the UK has a 19-mark difference in weighted score.

Macao, China

Macao, China is the 4th highest-ranking country with 86.25% compliance and a weighted score of 138 of 160.²⁸ Of the 40 FATF recommendations, Macao was ranked as fully compliant with 22 recommendations, largely compliant with 12, partially compliant with 2 and non-compliant with 1 recommendation.²⁹

Following the 2015 NRA, Macao, China has built a strong understanding of its national risk assessment, culminating in a multi-agency level for AML/CFT on specific issues or operational areas. The existing multi-agency allows for coordination on policy, plans and strategies on combatting financial crimes. For instance, connected authorities can

²⁶ The SWIFT Institute, 'Five Years of Growth in Public-Private Financial Information-Sharing Partnerships to Tackle Crime' (*The SWIFT Institute*, 20 August 2020) < <https://swiftinstitute.org/news/five-years-of-growth-in-public-private-financial-information-sharing-partnerships-to-tackle-crime/> > accessed 30 August 2020.

²⁷ FATF, 'United Kingdom: Mutual Evaluation Report' (*FATF*, December 2018) <<https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>> accessed 12 August 2020.

²⁸ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

²⁹ APG, 'Macao, China: Mutual Evaluation Report' (*APG*, December 2019) < <https://www.fatf-gafi.org/media/fatf/content/images/APG-Mutual-Evaluation-Report-Macao-China-2017.pdf> > accessed 12 August 2020.

access and utilise a range of intelligence-rich information such as STRs. The use of such reports is adjudged to be consistent with the country's exposure to foreign risk. Indeed, it is contended that the Financial Intelligence Office's utilisation of the intelligence reports results in a high number of disseminated STRs for investigations.

Macao, China, also has an elevated understanding of the terrorist financing risks involved with charities. Although assessed as low, the country continues to monitor the risks of charities in association with countries where there is high risk of terrorism. Every quarter, the authorities review data of inflows and outflows and still, besides three STRs that were originally flagged for reviews, there is no record of any charities being suspected of funding terrorism.

Financial institutions, DNFBPs and other relevant sectors are subject to AML/CFT supervision with resources allocated on a risk-based approach. Thorough risk-based supervision undertaken in two critical sectors – the gaming sector³⁰ and the financial sector³¹ has catalysed improved compliance. Additionally, Macao has heightened the transparency of verifiable beneficial ownership through the use of notaries prior to registration through the Commercial and Movable Property Registry database.

Macao, China however recorded a 22-mark difference in weighted score which is symptomatic of the shortcomings inherent in its compliance trajectory.³² For instance, with the exception of notaries and accountants, implementation is quite conceptual with other DNFBPs as supervision is not fully risk-based, comprehensive or consistent. Additionally, beneficial ownership information of legal persons is hardly available on a timely basis. Additionally, the country suffers a lack of cross-border disclosure system which is a major intelligence gap for a country exposed to high-risk from its massive influx of visitors and cash-intensive businesses, especially casinos and high-value dealers. This is somewhat mitigated by the reporting threshold in the gaming sector. Another shortcoming is the mixed understanding by authorities on the major risks related to foreign proceeds, cross-border movements and corruption. This, coupled with the limited prosecutorial resources or evidence, provides some explanations for why there are currently only 5 money laundering convictions. Rather confiscations are still pedestrian – as only cash/currency are usually confiscated. This is also the case with terrorist financing as no assets have been frozen in this regard irrespective of the risk it poses. Indeed, these limitations are symptomatic of deficiencies in Macao's terrorist financing offence. The fundamental shortcoming is that the financing of terrorism is not directly linked with specific terrorist act that is not specifically criminalised, rather it is criminalised through reliance on rules of interpretation. These shortcomings underscore the marked difference in compliance.

Saudi Arabia

Saudi Arabia is ranked fifth highest compliant jurisdiction with 84.38% compliance and a weighted score of 135.³³ Saudi Arabia was ranked fully compliant with 19

³⁰ Ibid. Gaming Inspection and Coordination Bureau (DICJ) supervised gaming sector

³¹ Ibid. Monetary Authority of Macao (AMCM)

³² Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

³³ Ibid.

recommendations, largely compliant with 17 and partially compliant with 4 recommendations.³⁴ On record, there is no recommendation that Saudi Arabia was not compliant with to a certain degree.³⁵

Saudi Arabia's remarkable compliance is largely attributable to its good understanding of its ML/TF risks, a status derived from its thorough national risk assessment. Consequently, the country has made remarkable strides in facilitating intensive supervision of higher-risk sectors. One notable strength that Saudi Arabia possesses is its inter-agency policy coordination and cooperation. It has also responded effectively to the dynamic terrorism threats it faces. For instance, it has established a legal framework and co-ordination process for implementing UN targeted financial sanctions (TFS) on terrorism without delay. This is supported by the country's active stance against terrorist financing which it combats by engaging in investigations and trainings backed by the necessary political will. Routine terrorism-related investigations usually lead to the uncovering of terrorist financing issues and convictions.

In Saudi Arabia, supervisory bodies engage in substantial awareness programmes to ensure that regulated entities such as banks, securities and financing companies understand their AML/CFT obligations alongside the ML/TF risks they encounter. Consequently, Saudi Arabia has instituted strong preventative AML/CFT measures within these sectors. For these reasons, the country has achieved remarkable compliance levels.

The 25-mark difference in weighted score is, however, symptomatic of the country's compliance shortcomings. For instance, on proliferation financing, the mechanisms to implement TFS and prevent sanctions evasion are weak. Investigations are reactive and usually do not prosecute individuals involved in larger or professional ML activities. Investigations, particularly regarding complex ML cases, are still weak given the unsophisticated financial analysis presented by the FIU. Findings indicate that FIU's analysis are usually based on information gathered from available databases. Saudi Arabia is engaged in the confiscation of proceeds of crime, albeit with great difficulty due to the inconsistencies in tracing, confiscation and repatriation of funds. Consequently, domestic confiscation, through increasing, is still low. The FIU failings alongside the confiscation shortcomings have largely contributed to Saudi Arabia's inability to effectively seek international co-operation from other countries to pursue money laundering and the proceeds of crime.

Correlations Between Highly Compliant Countries

³⁴ FATF, 'Kingdom of Saudi Arabia: 1st Enhanced Follow-Up Report & Technical Compliance Re-Rating' (FATF, January 2020) <<https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Follow-Up-Report-Saudi-Arabia-2020.pdf>> accessed 20 August 2020; FATF, 'Kingdom of Saudi Arabia: Mutual Evaluation Report' (FATF, September 2020) < <https://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER-Saudi-Arabia-2018.pdf>> accessed 10 August 2020.

³⁵ FATF, 'Kingdom of Saudi Arabia: 1st Enhanced Follow-Up Report & Technical Compliance Re-Rating' (FATF, January 2020) <<https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Follow-Up-Report-Saudi-Arabia-2020.pdf>> accessed 20 August 2020

The 5 most compliant countries are not monotonously full FATF member countries. Of the 5, 3 are FATF full members (Spain, UK and Saudi Arabia). Whilst the UK was one of the initiators of the FATF by 1989, Spain was a founding member in 1990.³⁶ Saudi Arabia was, however an associate member through its membership of the Gulf Cooperation Council (GCC) and the Middle East and North Africa Financial Action Task Force (MENAFATF).³⁷ However, since June 2019, Saudi Arabia became the first Arab country to obtain full FATF membership.³⁸ Bermuda and Macao, China are, however associate members. Bermuda is a member of the Caribbean Financial Action Task Force (CFATF) which was established in 1990.³⁹ And Macao, China, became a member of the Asia/Pacific Group on Money Laundering (APG) in 2001.⁴⁰ With the exception of Macao, China, a common denominator amongst these countries is their early start in getting acquainted with the FATF recommendations, which has undoubtedly played a key role in facilitating their compliance.

Significant correlations run across these highly compliant countries. One key strength noted is their compliance with recommendation 1. These countries had all conducted comprehensive risk assessment, which amplified their understanding of the ML/TF risk they face and enabled targeted decisions on resource designation to high-risk areas. Additionally, the outcomes of the risk assessments have facilitated significant improvement on AML/CFT national coordination and cooperation. Moreover, there is improved compliance on the transparency of the beneficial ownership registry.

The existing correlations also cut across the deficiencies. For instance, there is limited international cooperation on money laundering and terrorist financing. This is particularly central to Bermuda and Saudi Arabia. Saudi Arabia has barely sought international cooperation on cross-border terrorist financing. This is, however not the situation in the United Kingdom. DNFBPs compliance is another critical area. With Macao, China, implementation is still conceptual with other DNFBPs as supervision is not yet fully risk-based, comprehensive or consistent. In Bermuda, real estate companies are still struggling with suspicious transactions reporting. This condition reverberates in the United Kingdom where beneficial ownership within DNFBPs where

³⁶ FATF, 'History of the FATF' (*FATF*) < <https://www.fatf-gafi.org/about/historyofthefatf/> > accessed 15 August 2020.

³⁷ FATF, 'Middle East and North Africa Financial Action Task Force (*MENAFATF*)' < <http://www.fatf-gafi.org/pages/menafatf.html> > accessed 17 August 2020.

³⁸ The Embassy of the Kingdom of Saudi Arabia, 'Saudi Arabia Obtains Full Membership of the Financial Action Task Force (FATF)' (*The Embassy of the Kingdom of Saudi Arabia*, June 21 2019) < [https://www.saudiembassy.net/news/saudi-arabia-obtains-full-membership-financial-action-task-force-fatf#:~:text=The%20Financial%20Action%20Task%20Force%20\(FATF\)%20plenary%20meeting%2C%20which,to%20obtain%20membership%20in%20FATF.>](https://www.saudiembassy.net/news/saudi-arabia-obtains-full-membership-financial-action-task-force-fatf#:~:text=The%20Financial%20Action%20Task%20Force%20(FATF)%20plenary%20meeting%2C%20which,to%20obtain%20membership%20in%20FATF.>) accessed 1 September 2020.; Vivian Nereim, 'Saudi Arabia Becomes Full Member of Money-Laundering Watchdog' (*Bloomberg*, 22 June 2019) < <https://www.bloomberg.com/news/articles/2019-06-22/saudi-arabia-becomes-full-member-of-money-laundering-watchdog> > accessed 5 September 2020.; Arab News, 'Saudi Arabia becomes first Arab country to be granted full FATF membership' (*Arab News*, 18 November 2020) < <https://www.arabnews.com/node/1514241/saudi-arabia> > accessed 2 September 2020.

³⁹ CFATF, 'CFATF Overview' (*CFATF*) < <https://www.cfatf-gafic.org/index.php/home/cfatf-overview> > accessed 3 August 2020.

⁴⁰ APG, 'Members and Observers: Macao, China' (*APG*) < <http://www.apgml.org/members-and-observers/members/details.aspx?m=fded343f-c299-4409-9cfc-0a97d89b6485> > accessed 3 September 2020.

central registers are still yet to be populated, information is unverifiable and of questionable reliability.

These correlations indicate that highly compliant countries have shown a determined willingness to comply, backed by pre-conditions for effective regulations.

Least Compliant Countries

Vanuatu

Vanuatu is ranked 95th of the 99 jurisdictions examined.⁴¹ This country was ranked 48.75% compliant with the FATF recommendations and had a weighted score of 78. Vanuatu was rated fully compliant with only 1 recommendation, largely compliant with 9 and partially compliant with 17 recommendations.⁴² The country is non-compliant with 12 recommendations.

Vanuatu's rating is attributable to its apathetic approach to addressing ML/TF. The authorities are yet to conclude its National Risk Assessment (NRA) at the time of assessment. However, its draft documentation showed a biased focus on ML and its predicate offences to the exclusion of TF and legal persons. This significant challenge is worsened by the absence of comprehensive statistics on matters critical to building a robust AML/CFT framework. Indicating that the current framework is not built on reliable statistics. The implication is that the authorities have bare understanding of the ML risks they face. Consequently, Vanuatu has no central coordinating body or AML/CFT policy informed by ML/TF risks. Neither is there a risk-resource prioritisation strategy for targeted action on ML/TF. These shortcomings severely restrict national cooperation and co-ordination amongst operational agencies. More fundamental, understanding these illicit crimes and their risks is lacking amongst the relevant authorities.

The legal frameworks are also deficient, most particularly some existing legislations. For instance, the country's Proceeds of Crime Amendment Act (POCAA) No. 27 of 2014, amended the definition of 'serious offence' to exclude offences sanctionable by more than 12 months' imprisonment. The danger with this amendment is that it now excludes a majority of the FATF designated categories of predicate offences, which undermines the country's compliance ability. The country is also yet to criminalise tax offences, illicit arms trafficking, piracy of products, insider trading and market manipulation as predicate offences for ML. Additionally, there are no legislations on proliferation financing sanctions.⁴³ More so, the preventative measures does not cover

⁴¹ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

⁴² APG, '3rd Follow-Up Report: Mutual Evaluation of Vanuatu' (APG, September 2018) < <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/APG-3rd-Follow-Up%20Report-Vanuatu-2018.pdf>> accessed 10 September 2010

⁴³ FATF, 'Methodology for Assessing Technical Compliance with the FATF Recommendations and Effectiveness of AML/CFT Systems' (FATF, 2019) < <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>> accessed 10 August 2020. Recommendation 7.

all the relevant FATF recommendations comprehensively. Where laws are absent or deficiently designed, implementation is deficient and gaming of the law becomes commonplace, with the ability to make Vanuatu an international hub for financial crime.

Vanuatu's compliance is largely undermined by operational challenges and lack of understanding. Vanuatu's authorities are yet to fully understand the role of its Financial Intelligence Unit. Therefore, besides the police authorities and do not utilize intelligence information for critical investigations or prosecutions. Enforcement agencies are yet to investigate or prosecute any money laundering case despite the criminalisation of the offence since 2002. This indicates a lack of awareness and expertise on money laundering issues alongside the lack of internal procedures and policies. This is also the case with regards to combatting terrorist financing. The country currently has no policy, procedures or mechanisms to identify, prioritise and handle TF cases. Information about beneficial information is also difficult to obtain.

The weighted score of 78, however, indicates some positive compliance. Vanuatu has proved to have adequate legal provisions governing the Financial Intelligence Unit's power, functions, and operations. This FIU develops and disseminates quality financial intelligence. Whilst more has to be done to facilitate its increased use, this is a mark of progress. The TF legislative framework adjudged consistent with international standards. Additionally, commercial banks and some international banks have critical understanding of the ML/TF risk they face and have implemented a risk-based approach. However, DNFBP sectors have not displayed the same level of understanding or application of risk-based procedures a situation largely attributable to the lack of supervisory resources and direction.

Underlining the deficiencies present in Vanuatu is the country's lack of pre-conditions for effective AML/CFT regulation. There is a lack of political commitment, inadequate financial and human resources, lack of capability and technical skill in enforcement and regulatory authorities, and the lack of national cooperation amongst relevant institutions. Therefore, implementation and compliance have become overly challenging.

Mauritania

Mauritania is ranked 96th of the 99 jurisdictions examined.⁴⁴ This country was rated 45.00% compliant with the FATF recommendations and recorded a weighted score of 72.⁴⁵ Mauritania was not ranked fully compliant with any recommendation. It was,

⁴⁴ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

⁴⁵ Ibid.

however, rated largely compliant with 5 recommendations and partially compliant with 22.⁴⁶ The country is non-compliant with 13 recommendations.⁴⁷

Mauritania does not have an appreciable understanding of its ML/TF risks, and its general policies are not coordinated amongst all entities, thereby limiting consistency. Additionally, the country has no central authority responsible for instituting policies aimed at combating ML/TF. This undermined attempts at combatting ML/TF at all levels within the relevant entities. The effect is evident with regards to the deficient implementation of the TFS. For instance, to date, the appropriate authorities have failed to designate terrorists in line with the requirements of the Security Council resolutions. So also, there are deficiencies regarding the implementation of the Security Council resolution related to combating the financing of proliferation.

Rife in Mauritania lacks expertise in combatting ML/TF. For instance, the Financial Information Analysis Commission (CANIF) is unable to perform its analytics function to aid ML/TF investigations as it is understaffed with unqualified employees, and the commission is largely under-resourced. Additionally, the country has ineffective international cooperation measures due to the absence of laid out procedures. Consequently, even when dealing with transborder crimes, no initiations for international cooperation were made. Primarily, the country is still unable to identify ML crimes, or their predicate offences given the lack of experience and expertise. Furthermore, some DNFBPs sectors remain unorganised and failed to meet the AML/CFT requirements due to the absence of authority specific supervision.

To facilitate its compliance, the country has now made legal amendments to address certain critical issues. One is the law adopted to cure the ills regarding criminalisation for TF.⁴⁸ More fundamentally, the country has commenced a steep but deliberate journey towards beneficial ownership transparency. However, much more has to be done to ensure improved compliance.

Uganda

Uganda is ranked 97th of the 99 jurisdictions examined.⁴⁹ This country was rated 42.50% compliant with the FATF recommendations and recorded a weighted score of 68.⁵⁰ Uganda is fully compliant with 4 recommendations. It was however ranked largely compliant with only 1 recommendation and partially compliant with 15.⁵¹ The country is non-compliant with 15 recommendations.

⁴⁶ MENAFATF, '1st Enhanced Follow-Up Report for the Islamic Republic of Mauritania: TC Re-Rating Request' (MENAFATF, April 2019) < <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/MENAFATF-Follow-up-Report-Mauritania.pdf> > accessed 4 August 2020; MENAFATF, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Islamic Republic of Mauritania Mutual Evaluation Report' (MENAFATF, May 2018) < <http://www.fatf-gafi.org/media/fatf/content/images/Mutual-Evaluation-Report-Mauritania-2018.pdf> > accessed 4 August 2020.

⁴⁷ Ibid.

⁴⁸ Ibid. law No. (15/2006)

⁴⁹ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

⁵⁰ Ibid.

⁵¹ ESAAMG, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Uganda. Technical Compliance Re-Rating' (ESAAMG, September 2018) < <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/ESAAMG-FUR-Uganda-2018.pdf> > accessed 10 August 2018.

Uganda's rating is attributable to its lackadaisical approach to addressing ML/TF. The authorities have not conducted a National Risk Assessment (NRA) and have bare understanding of the ML risks they face. For this reason, financial institutions, remittance providers and DNFBP do not adequately apply AML/CFT preventive measures that are in line with the risk they face. Additionally, the legal framework for transparency and authorities retainership of beneficial ownership information is weak. The deficiency in the NRA is also reflected in the few cases investigated by law enforcement agencies, the lack of prosecution or confiscation on ML. Significant weaknesses also exist in combatting corruption, abuse of public resources, fraud, gold and wildlife products smuggling and tax evasion which is a substantial risk to the country's AML/CFT risks. Underlying these shortcomings is the presence of a weak supervisory regime and frail laws on the appointment of AML supervisors. This issue is exacerbated by the lack of coordination and cooperation between regulatory bodies, especially between law enforcement agencies and the office of prosecution.

Interestingly, irrespective of the NRA shortcomings, Uganda's authorities have a good understanding of the risks relating to terrorism. As a result, cooperation and coordination on anti-terrorism measures are well organised. This is however not the case with terrorist financing risks. The authorities have adopted a reactive approach – albeit belatedly. Assessors have reported the criminalisation of the offence of terrorist financing being passed at the time of assessment – yet even at this time, it was inappropriately done. In the absence of requisite data on TF and the feeble CTF regime, measures taken cannot be commensurate to the risks posed. Indeed the risks is heightened by the country's internal terrorist group⁵² and its proximity to Somalia where a renounced terrorist group – Al-Shabaab is based.

Haiti

Haiti is ranked 98th of the 99 jurisdictions examined.⁵³ This country was rated 40% compliant with the FATF recommendations and had a weighted score of 64.⁵⁴ Haiti was ranked as not fully compliant with any recommendation.⁵⁵ It was, however, largely compliant with 2 recommendations and partially compliant with 20. The country is non-compliant with 18 recommendations.

Haiti is yet to conduct an NRA, for this reason, Haiti is unable to comprehend or mitigate its ML/TF risks. Interestingly, some primary law enforcement authorities, alongside large financial institutions, have operational knowledge of the ML/TF threats and vulnerabilities that affect the country. Whilst the authorities have requested for the World Bank's assistance with risks assessment, no concrete plans have been made

⁵² Ibid - the Lord's Resistance Army designated internally in Uganda or by the UN Security Council as terrorist groups.

⁵³ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

⁵⁴ Ibid.

⁵⁵ CFATF, 'Republic of Haiti – Mutual Evaluation Report. Anti-Money Laundering and Counter-Terrorist Financing Measures' (CFATF, July 2019) < <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/CFATF-Mutual-Evaluation-Republic-of-Haiti-2019%20.pdf> > accessed 7 August 2020.

to this effect. The lack of risk understanding is further undermined by limited coordination amongst relevant agencies. For instance, an AML committee was established for policy coordination in 2001, yet to date, it has limited considerable output in terms of policies or measures. It is also non-inclusive as crucial government officials are excluded from the deliberation processes which is indicating of a knowledge and expertise gap. This shows that there is no responsive committee dealing with national cooperation and coordination at an operation or policy level.

The effect of limited risks understanding is far-reaching. For instance, in 2018, Haiti had not recorded any successful prosecutions and conviction for money laundering in 5 years (2014-2018). This is large because the investigative authorities are reactive rather than proactive, which will entail them acting on investigations. Such a situation is attributable to a myriad of factors, including weak legislation, lack of resources, and training that affect investigations and law enforcement. Another implication is the absence of legal provisions mandating the retention of BO information. Hence, even when these records are kept, they are concerns that they are inaccurate or not easily accessible in time-bound instances.⁵⁶ More so, the law on confiscation is unsupported by policy, therefore confiscation is not pursued as a policy objective. However, this is not all bad news, as some competent authorities⁵⁷ have demonstrated significant awareness of drug trafficking and the need to trace, identify and confiscate the proceeds of such crimes. However, more confiscations would be imperative to meet the risks posed.

The country's Central Financial Intelligence Unit (UCREF) is still conducting its functions at minimal capacity as it has limited access to accurate databases by other intelligence agencies and DNFBPs. More so, this unit lacks the human and financial resources to facilitate robust supervision, operational or strategic analysis. These shortcomings are reverberated across other relevant authorities such as the Bureau of Economic Affairs (BAFE) and the Anti-corruption Unit (ULCC).

Haiti's authorities have not engaged in international cooperation simply because they are unaware of the critical importance. Unsurprisingly, these authorities are not requesting or sharing information with foreign counterparts on ML/TF issues such as identification, tracing and recovering the proceeds of crime. MERs also reveal that the relevant authorities had a very limited understanding of extradition processes.

Botswana

Botswana is the least compliant of the 99 jurisdictions examined.⁵⁸ This country was rated 35.63% compliant with the FATF recommendations and had a weighted score of 57. Botswana was ranked as not fully compliant with any recommendation. It was, however, largely compliant with 2 recommendations and partially compliant with

⁵⁶ Ibid - Kept with the company registry at the Ministry of Commerce and Industry (MCI)

⁵⁷ Ibid - BAFE, Bureau of Special Funds Administration Office (BAFOS), Control of Narcotics Crime Brigade (BLTS) and the PPO

⁵⁸ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

14.⁵⁹The country is non-compliant with 23 recommendations. Due to its shortcomings, Botswana was listed as a ‘Jurisdiction with Strategic Deficiencies’⁶⁰ in October 2019. The February 2020 review maintained that Botswana still needs increased monitoring.⁶¹

Botswana commenced its first comprehensive NRA in 2017 with the aim of developing an AML/CFT National Strategy to facilitate the implementation of AML/CFT measures. Consequently, there is currently no common understanding of the ML/TF risks by national authorities. Competent authorities are still yet to develop an appreciation of their responsibilities neither do they have the necessary capacity to deal with ML/TF challenges. For instance, the Bank of Botswana is considered to have a limited understanding of the AML/CFT recommendations, which has hindered its supervisory abilities. In response, regulated financial institutions have demonstrated varied understanding of ML/TF risks, with only large foreign-owned banks demonstrating improved understating of ML/TF risks. Additionally, the Non-Bank Financial Institutions Regulatory Authority (NBFIRA) has only demonstrated an emerging understanding of its AML/CFT supervisory role albeit with limited implementation. Therefore, whilst these authorities cooperate and coordinate well, shared understanding amongst the authorities and stakeholders is critical to facilitating compliance.

A critical issue is the unstandardized legal framework. The legal framework for money laundering has major deficiencies due to the omission of predicate offences and the absence of essential elements to the offence of ML. Deficiencies also riddle the legal framework for terrorist financing due to the non-criminalisation of individual terrorist. The current penalties are not proportionate and do not cover legal persons. These shortcomings are largely attributable to the fact that the competent authorities have varied understanding of the TF offences and risks. Botswana, however, has a sound legal framework for the confiscation of proceeds of crime. However, implementation is weak as the focus is diverted to the investigation and prosecution of predicate offences. There is also a gap in the beneficial ownership framework. It does mandate identifying and verifying legal persons and legal arrangements required to obtain and retain information on beneficial owners. Additionally, although the country has a legal framework that facilitates international cooperation in mutual legal assistance and extradition which has been used in a few cases, this system is undermined by the non-criminalisation of certain predicate offences – thereby hindering international cooperation.

In light of these shortcomings, Botswana is currently on the FATF’s list of Jurisdictions with Strategic Deficiencies’. For this reason, Botswana has made a high-level political commitment to strengthen the effectiveness of its AML/CFT regime and address any technical deficiencies. This includes working towards adopting a risk-based AML/CFT

⁵⁹ ESAAMG, ‘Anti-Money Laundering and Counter-Terrorist Financing Measures: Botswana – 1st Enhanced Follow-Up Report & Technical Compliance RE-Rating’ (ESAAMG, April 2019) < <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/ESSAMLG-Follow-Up-Report-Botswana-2019.pdf> > accessed 18 August 2020.

⁶⁰ FATF, ‘Improving Global AML/CFT Compliance: On-Going Process – 18 October 2019’ (FATF, October 2019) < <http://www.fatf-gafi.org/countries/d-i/iceland/documents/fatf-compliance-october-2019.html> > accessed 19 September 2020.

⁶¹ FATF, ‘Jurisdictions under Increased Monitoring – 21 February 2020’ (FATF, February 2020) < <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html> > accessed 19 September 2020.

supervisory manual for financial sector supervisors and implementing an electronic STR filing system among FIs and certain DNFBPs. To improve its compliance and get off this list, Botswana is advised to address its strategic deficiencies highlighted above. Additionally, the country is also to address risks associated with non-profit organisations, implement a risk-based AML/CFT supervisory manual and implementing strategy, improve its FIU's capacity and also implement targeted financial sanctions measures related to terrorist financing and proliferation financing.

Correlations between Least Compliant Countries

One noticeable connection between all least compliant countries is that none of them are FATF members. Rather, they are all members of a FATF-style regional body.⁶² Vanuatu is a member of the Asia/Pacific Group on Money Laundering (APG). Mauritania is a member of the Middle East and North Africa Financial Action Task Force (MENAFATF), and Haiti is a member of the Caribbean Financial Action Task Force (CFATF). Uganda and Botswana are members of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). Their associate membership through these FATF-style bodies indicates their belated acquaintance with the FATF recommendations as these style-bodies acceded to their positions between 1990 - 2004.⁶³ Indeed, this suggests that these countries would be less able to comply with the FATF recommendations.

There are various correlations across the least compliant countries. The absence of a comprehensive national risk assessment has catalysed limited understating of the ML/TF risk faced by these countries. This is a general theme across all five countries examined, especially Uganda, Mauritania and Haiti. For this reason, general policies and strategies are not coordinated or consistent. Additionally, these countries lack the necessary pre-conditions for effective regulation, such as strong legal frameworks and resources – human and financial. The legal framework is particularly weak, particularly in relation to ensuring transparency and retainership of beneficial ownership information – this is particularly so in Vanuatu, Botswana, Uganda and Mauritania. There are also lapses in the regulation of DNFBPs, which facilitate gaming of the law, thereby posing ML/TF risks. The absence of resources is also crucial. For instance, countries lack the expertise needed to combat ML/TF. Financial Intelligence Units and regulatory institutions are operating at sub-optimal levels as they do not have the

⁶² GIABA, 'Brief on the Global AML/CFT Network: The Financial Action Task Force and FATF Style Regional Bodies' (GIABA) <<https://www.giaba.org/static/doc/Brief%20on%20the%20Global%20AML-CFT%20Network.pdf>> accessed 7 September 2020.

⁶³MENAFATF, 'Overview' (MENAFATF) <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwju0Oyn8dHqAhViTxUIHR_uAIkQFjADegQIAhAB&url=http%3A%2F%2Fwww.menafatf.org%2Fabout&usg=AOvVaw2Ci3s1y7CkaBef0w47Hwhw> accessed 20 July 2020. ESAAMLG 1999 and became an associate member in 2010, see FATF, 'Eastern and Southern Africa Anti-Money Laundering Group' (ESAAMLG) <<https://www.fatf-gafi.org/pages/easternandsouthernafrikaanti-moneylaunderinggroupesaamlg.html>> accessed 4 August 2020; CFATF established in 1990 – see Anti-Money Laundering Forum, 'Financial Action Task Force (FATF)' <<https://www.anti-moneylaundering.org/FATF.aspx>> accessed 5 August 2020; APG, established in 1997, see Comply Advantage, 'The Asia Pacific Group (APG)' (Comply Advantage) <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiy_n12l8tHqAhWZTBUIHXMwDYQQFjAEegQIExAB&url=https%3A%2F%2Fcomplyadvantage.com%2Fknowledgebase%2Fasia-pacific-group%2F&usg=AOvVaw0fpS086k3Y7b0AM2Umiq9S> accessed 4 August 2020.

financial or human resources to facilitate supervisory oversight, compliance or intelligence gathering. Whilst banks do engage in compliance and submits STRs, this is not the case with other regulated entities in these countries.

The ML/TF vulnerabilities or risk posed by non-profit organisations is still largely vague within the examined countries, indicating that these risks cannot be properly mitigated if not understood. Additionally, international cooperation aimed at facilitating financial intelligence exchange or information request through mutual assistance is strained as countries lack the requisite capacity, resources and political will to engage in such exercises. Indeed, addressing these vulnerabilities is critical to improving the AML/CFT compliance of these countries.

GIABA Countries: Where They Rank.

Five GIABA countries are examined to determine where they rank in relation to their AML/CFT compliance. The countries examined are Ghana, Burkina Faso, Cabo Verde, Mali, Senegal.

Ghana

Ghana is ranked 20th of the 99 jurisdictions examined.⁶⁴ This country was rated 78.12% compliant with the FATF recommendations and has a weighted score of 125. Ghana was fully compliant with 14 recommendations, largely compliant with 18 and partially compliant with 7. Ghana was not compliant with 1 recommendation. Due to its shortcomings, Ghana was listed as a 'Jurisdiction with Strategic Deficiencies'⁶⁵ in October 2019. The FATF's February 2020 review maintained that Ghana still needs increased monitoring.⁶⁶

Ghana was appraised as the highest compliant GIABA country. It has carried out a comprehensive risk assessment that has facilitated a sound understanding of most

⁶⁴ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

⁶⁵ FATF, 'Jurisdictions under Increased Monitoring – 21 February 2020' (FATF, February 2020) <<https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html>> accessed 19 September 2020.

⁶⁶ Ibid.

ML/TF risks it faces. This exercise has helped Ghana prioritise and allocate resources to the risks identified. More so, it has facilitated a stronger AML/CFT coordination mechanism that is inclusive of all relevant competent authorities. Such coordination has led to improved supervisory engagement with the private sector. For this reason, banks now have a good understanding of the ML/TF risks they face, with larger banks proactively mitigating these risks. This understanding is, however, not reflective within DNFBPs and other financial institutions. For instance, the supervision of the insurance and securities sectors is not adequately risk-based. It is reported that the supervisory methodologies employed by the Securities and Exchange Commission and the National Insurance Commission are biased towards prudential indicators. Therefore, there is the overall inability to provide all-inclusive information on the ML risks within individual securities and insurance institutions. Consequently, the implementation of preventative measures remains weak. Indeed, more robust risk-based AML/CFT controls are required to ensure that AML/CFT measures are applied across the financial sector otherwise, the overall AML/CFT regime in Ghana risk being undermined.

Ghana's legal framework has facilitated a heightened response to ML/TF. For instance, Ghana has a strong institutional structure for investigating and prosecuting ML, alongside facilitating the seizure and confiscation of criminal proceeds. It has also established dedicated Financial and Economic Crimes Courts to expediently handle economic and financial crime matters. The country has also established a legal framework for implementing targeted financial sanctions regarding terrorist financing and proliferation financing. However, there is limited understanding of the risks associated with proliferation financing amongst competent authorities. Therefore, implementation is weak.

Certain strides are remarkable. For instance, Ghana's Financial Intelligence Centre (FIC) is central to generating financial intelligence critical to initiating investigations and facilitating enforcement. However, a significant increase in the use of financial intelligence is crucial for the early detection of ML/TF cases. Additionally, competent authorities can obtain accurate, adequate and up-to-date information on all types of legal persons created in Ghana. Beneficial ownership information on legal persons and arrangements are also largely available, especially banks. There is increased compliance by DNFBPs with customer due diligence measures. The country has also instituted preventative measures on wire transfers and third-party reliance, leading to the re-rating of the country's compliance with these recommendations. Ghana also takes a collaborative and proactive approach to international cooperation, including mutual legal assistance on request.

Ghana suffers from multiple compliance shortcoming. It is yet to conduct a comprehensive review of its non-profit organisation sector to curb TF through NPOs. Consequently, NPOs are not properly regulated therefore making them vulnerable to financial crime. More so, Ghana does not actively follow a policy of pursuing confiscation of criminal proceeds. Beneficial information on foreign legal persons is also not readily available, and accessibility is subject to bottlenecks. Critical to this is the absence of an express requirement for financial institutions to maintain beneficiary information and include such information on cross border wire transfers. For Ghana to facilitate its delisting, it definitely has to address its shortcomings.

Burkina Faso

Burkina Faso is ranked 52nd of the 99 jurisdictions examined.⁶⁷ This country was rated 71.25% compliant with the FATF recommendations and had a weighted score of 114.⁶⁸ Burkina Faso was ranked fully compliant with 9 recommendations, largely compliant with 17 and partially compliant with 13.⁶⁹ Burkina Faso was appraised non-compliant with 1 recommendation.⁷⁰

Following Burkina Faso's national risk assessment, the country now has some understanding of its ML/TF risks, albeit superficially. The risks assessments uncovered the main sources of financial crime as tax and excise fraud, public funds embezzlement, illicit drug embezzlement, gold-related and wildlife crimes. This assessment has been disseminated through meetings with stakeholders, including financial institutions, insurance companies, charities and private sector institutions. This allows for coordination amongst these institutions.

There are numerous risks to AML/CFT compliance in Burkina Faso. Terrorism is a recognised high-risk due to the porous and unchecked land borders, a situation that facilitates easy trafficking of drugs and weapons. This risk is still heightened. Additionally, the gold mining industry has suffered severe loss due to mismanagement and corruption. Between 2005 and 2015, it is estimated that \$1 billion was lost in this sector. Fraud, extortion and currency counterfeiting are still ranked as high risks. One critical risk identified is that brought on by the country's vast informal sector, which is predominantly cash-based. As of 2017, only 22.15% of the estimated population had bank accounts. With over 75% unbanked population, there is limited ability to adequately trace financial funds. Additionally, DNFBPs, especially the real estate and transport sectors, alongside hotels and gambling activities, pose high risk due to the limited understanding and implementation of the AML/CFT obligations. The lack of supervision also hindered compliance. It is indeed imperative for an assessment of the extent of the risks in DNFBPs for improved understanding.

Underpinning the risks in Burkina Faso is the lack of an adequate supervisory mechanism, which currently is somewhat superficial. Indeed there is a need to develop a supervisory framework and empower regulators to prevent and combat ML/TF on a risk-sensitive basis.

⁶⁷ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

⁶⁸ Ibid.

⁶⁹ Ibid.; GIABA, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Burkina Faso- Mutual Evaluation Report' (GIABA, May 2019) <https://www.giaba.org/media/f/1091_ENG%20%20Final%20MER%20of%20Burkina%20Faso%20rev71619.pdf> accessed 10 August 2020.

⁷⁰ GIABA, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Burkina Faso- Mutual Evaluation Report' (GIABA, May 2019) <https://www.giaba.org/media/f/1091_ENG%20%20Final%20MER%20of%20Burkina%20Faso%20rev71619.pdf> accessed 10 August 2020.

Cabo Verde

Cabo Verde is ranked 54th of the 99 jurisdictions examined.⁷¹ This country was rated 70.63% compliant with the FATF recommendations and had a weighted score of 113.⁷² Cabo Verde was rated fully compliant with 9 recommendations, largely compliant with 15 and partially compliant with 16.⁷³ There is no recommendation that Cabo Verde was not compliant with.

Cabo Verde has undertaken a comprehensive risk assessment of money laundering risks which highlights its main vulnerabilities. Yet, its response to highlighted vulnerabilities is inadequate. This is evident within various sectors. For instance, the methodology and approach adopted for addressing risks within DNFBPs (especially real estates, precious metal and stone dealers and other high value goods) and NPOs remains inadequate irrespective of the shared information on risks within representative authorities. Consequently, understating ML/TF risks is still startlingly low among operators in the DNFBP and NPO sectors. This indicates that supervisors are ill-equipped to develop the necessary framework to combat ML/TF on a risk-sensitive basis. Therefore, it is unsurprising to find that those who participated in the risk assessment did not have uniform information or commitment to AML/CFT risks.

There are also other risks identified with limited mitigation strategies in place. For instance, the dependence on cash transactions that hinders tracking or investigations is largely unaddressed. With regards to terrorist financing, Cabo Verde has not conducted a thorough risk assessment. Financial Institutions were recorded to have limited knowledge of the UN Sanctions List. In the case of DNFBPs, they had no knowledge, which means that terrorist financing could be facilitated unflagged by the listed terrorist. The country also lacks a national strategy for combatting the financing of terrorism. Additionally, the number of existent NPOs are unknown, thereby hindering AML/CFT supervision. More so, NPOs are largely unaware of the regulatory framework.

These shortcomings are further heightened by the limited cooperation between the FIU and other relevant authorities. It is recorded that the FIU's ability to gather financial information as most DNFBPs lack internal AML/CFT mechanisms. Where institutions submit suspicious transaction reports (STRs) there is no feedback on the process, neither are there templates to ensure consistency. Consequently, most DNFBPs, including institutions with foreign affiliations, do not understand their AML/CFT obligations, neither do they submit STRs to the FIU.

⁷¹ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

⁷² Ibid.

⁷³ GIABA, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Cabo Verde - Mutual Evaluation Report' (GIABA, 2019) https://www.giaba.org/media/f/1096_ENG%20Final%20MER%20of%20Cabo%20Verde%20May%202019%20rev8519.pdf> accessed 3 August 2020.

On the positive side, the legal and regulatory framework overseeing AML/CFT supervision have a wide range of administrative, pecuniary and criminal sanctions. Cabo Verde has prosecuted and convicted offenders for third party and self-laundering. More so, financial institutions have demonstrated improved awareness of and apply a number of critical FATF recommendations, such as customer due diligence, record keeping and transaction monitoring. Financial institutions have also started clamping in on ML/TF risks through politically exposed persons, electronic transfers and correspondent banking. These progressive steps explain why Cabo Verde is ranked 54th with an overall positive outlook.

Mali

Mali is ranked 73rd of the 99 jurisdictions examined.⁷⁴ This country was rated 65% compliant with the FATF recommendations and had a weighted score of 104.⁷⁵ Mali was appraised as fully compliant with 6 recommendations, largely compliant with 15 and partially compliant with 16.⁷⁶ Mali was not compliant with 3 recommendations.⁷⁷

Mali's national risk assessment was in its preparation process in October 2018 at the time of its mutual evaluation on-site visits. However, an assessment of its draft report indicated that the relevant authorities had a moderate understanding of the country's ML/TF risks.

Even though moderate, financial institutions, including banks, have a good understanding of their AML/CFT obligations and have instituted due diligence measures in line with their risk assessments. More so, they have actively engaged their staff in training and file STRs with FIUs. A critical underlying factor with the banking sector is strong regulatory institutions that understand the sectoral risks.⁷⁸ However, this positive outlook does not reverberate across all sectors. For instance, although the insurance and capital market regulators have a supervisory structure in place, there is the absence of an appropriate methodology and supervisory tools to ensure risk-based AML/CFT supervision. Money transfer services and foreign exchange dealers have limited knowledge of AML/CFT – a situation that has occasioned weak implementation by stakeholders. This is worsened by the absence of a designated AML/CFT oversight authority for the DNFBP sector

⁷⁴ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

⁷⁵ Ibid.

⁷⁶ GIABA, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Mali- Mutual Evaluation Report' (GIABA, November 2019) <<https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GIABA-Mutual-Evaluation-Mali-2019.pdf>> accessed 30 August 2020.

⁷⁷ Ibid.

⁷⁸ Ibid. For instance, BCEAO, Banking Commission and the Ministry of Finance.

Mali has significant TF risk due to in-country and sub-regional terrorist groups. Consequently an intelligence coordination framework was instituted to facilitate information and intelligence sharing on terrorism. The shortcoming of this framework is its exclusion of the FIU which limits holistic cooperation on TF. Additionally, Mali is yet to criminalise the financing of individual terrorist and terrorist groups. Addressing this is critical to combatting terrorism in its entirety.

There are shortcomings with Mali's AML/CFT strategy. For instance, Mali has yet to update its 2013-2015 AML/CFT strategy, neither have institutional measures been implemented. Its national policy approach to combatting ML/TF, spearheaded by the Inter-Ministerial Committee (IMF), lacks inclusiveness. This facilitates silos-policy and implementation strategies by stakeholders, including law enforcement officers, which is detrimental to the holistic fight against money laundering. The FIU received and analysed STRs mainly from banks, given that other reporting entities were not compliant with reporting obligations and therefore filed limited STRs. Ultimately, this has significantly reduced the number of prosecutions for ML/TF. Specialised courts instituted to try ML cases handle mainly predicate offences, yet the number of prosecuted cases is still low. More so, there are concerns that investigative prosecutorial and judicial authorities within these courts lack the requisite training to ensure effective ML/ investigation and prosecutions.

There are, however, notable strengths to Mali's technical compliance. Most notable is its legal frameworks on critical issues. Mali has a fairly satisfactory legal framework for the freezing, seizure and confiscation of criminal assets, including instrumentalities used and intended to be used in money laundering and predicate offences. More significant is its satisfactory legal framework for mutual legal assistance, international cooperation and extradition. The legal framework has facilitated the operationalisation of the country's FIU, which proactively requests information from foreign counterparts to combat ML/TF. However, these strengths are undermined by the country's weaknesses especially lack strategy and data. Indeed more, has to be done to improve Mali's compliance.

Senegal

Senegal is ranked 87th of the 99 jurisdictions examined.⁷⁹ This country was rated 57.50% compliant with the FATF recommendations and has a weighted score of 92.⁸⁰ Senegal was appraised as fully compliant with 5 recommendations, largely compliant with 9 and partially compliant with 19. ⁸¹Senegal was = not compliant with 7 recommendation.⁸²

⁷⁹ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

⁸⁰ *ibid*

⁸¹GIABA, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Senegal- Mutual Evaluation Report' (GIABA, November 2018) <
https://www.giaba.org/media/f/1099_ENG%20%20Final%20MER%20Senegal%20May%202019%20Rev82219.pdf> accessed 9 August 2020.

⁸² *Ibid*.

In 2017, Senegal undertook a comprehensive risk assessment of money laundering risks, highlighting its main vulnerabilities and solidified its understanding of its risks. This exposed the fact that Senegal's financial system is exposed to high ML risks due to the cash-based system, size of the informal sector, lack of a legal and organisational mechanism for obtaining beneficial ownership information and lack of a supervisory authority for DNFBPs. The country's proximity to terrorist ridden countries has occasioned high terrorist financing risk.

The country's risk assessment report has facilitated supervisory coordination and national cooperation on AML/CFT issues. However, the institutions all have varying levels of understating of the existent risks. For clarity, The Central Bank of West African States (BCEAO), the UMOA Banking Commission, the Regional Council of Public Savings and Capital Markets (CREPMF), the Inter-African Conference of Insurance Markets (CIMA) and the Ministry of Finance are responsible for AML/CFT regulation and supervision. Compared with the insurance and securities regulators, banking regulators have a more enhanced understanding of the AML/CFT risks and engage more frequently in inspections. This makes it difficult for enhanced collaboration or comparisons between the relevant sectoral regulators.

A comparison between financial institutions and DNFBPs unveils the weaknesses inherent with the DNFBPs and its regulation. Unlike banks that have good understanding of their AML/CFT risks and obligations, other non-banking institutions and DNFBPs do not have the same level of understanding. Even with good risks understanding in the banking sector, there are deficiencies in the application of the customer due diligence measures which is predominantly due to the challenges with the collection of beneficial ownership. This lapse is even direr within DNFBPs. Additionally, in comparison to DNFBPs, financial institutions are more involved in the submission of STRs. This shortcoming is largely attributable to supervisory shortcomings. Although inspections of financial institutions are regularly conducted, this is not the case with DNFBPs where inspections are almost non-existent. This is largely because most DNFBPs have no designated supervisory authority to oversee the implementation of the AML/CFT requirements.

Indeed the Senegalese authorities are determined to strengthen their fight against ML. Consequently, some recommendations have been made. For instance, assessors have recommended that Senegal should domesticate Directive No. 02/2015/CM/UEMOA on the fight against ML/TF in the Member States of the West African Economic and Monetary Union (UEMOA) and adapt its AML/CFT legal framework to the FATF Recommendations. This recommendation is based on the understanding that the current AML/CFT regime is not updated to comply with relevant international standards. More so, critical mechanisms such as the risk-based approach are yet to be implemented. Practically, FIUs are recommended to engage the private sector in filing more detailed reports to facilitate improved use of these reports by the judiciary. Adoption of these recommendations are critical to improved compliance ratings.

An examination of the compliance pattern of these countries indicates that, with the exception of Ghana, the other countries have a bare understanding of the risk they face given the incomprehensive risk assessment undertaken. The implications are far-reaching as it destabilises national coordination, resource allocation and targeted cooperation.

Critical weaknesses are noticeable in the area of TF regulation and sanctions related thereto.⁸³ Thus, since TF was added to the FATF recommendations, GIABA countries are yet to comprehend and implement these requirements for compliance purposes. Weakness is also noted in recommendation 10 (CDD), thus bolstering the argument about the absence of capacity to effectively address the requirements of this recommendation.⁸⁴ Countries also contend with recommendations relating to the additional measures for specific customer control,⁸⁵ indicating the pervasive nature of corruption and ineptitude in West African financial regulatory institutions. Regarding Recommendation 14 ('money or value transfer services'), it is doubtful that the vast efforts required to identify, register and monitor these services are likely to be an immediate priority.

Compliance Trajectory of Countries: FATF Countries v. FATF-Styled Member Countries

Examining the five most compliant and least compliant countries, one noticeable thread is that three of the most compliant countries are FATF-Countries and can be classed as developed countries. These are Spain, the United Kingdom and Saudi Arabia. Macao, China is a FATF-Styled regional member country with the Asia/Pacific Group on Money Laundering (APG). Bermuda is a member of the Caribbean Financial Action Task Force (CFATF). However, the least compliant countries are all FATF-Styled regional member countries.

Hence, it begs the question. Why are FATF member countries seemingly more compliant than non-FATF member countries? It is critical to note that FATF standards were formulated by the G7 countries, more particularly Switzerland, the United Kingdom and the United States. Consequently, all countries, irrespective of their member status, were mandated to domesticate and implement the FATF recommendations. Such implementation occurred through a process of legal

⁸³ See FATF Recommendation 5, 6, 7 and 8, The FATF Recommendations, 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation' (*The FATF Recommendations*, February 2012) <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/fatf_recommendations.pdf> accessed 20 April 2015.

⁸⁴ KPMG, 'Global Anti-Money Laundering Survey 2011, How Banks Are Facing up to the Challenge' (KPMG, 2011) <<https://www.kpmg.com/UK/en/IssuesAndInsights/ArticlesPublications/Documents/PDF/Advisory/global-aml-survey-2011-main-report.pdf>> accessed 2 June 2015. Highlighting this, the KPMG report noted that 'some countries in Africa have no national identify system and no proper verification documentation'; Hennie Bester, Doubell Chamberlain, Louis de Koker, Christine Hougaard, Rayn Short, Anja Smith and Richard Walker, 'Implementing FATF Standards in Developing Countries and Financial Inclusion: Findings and Guidelines' (*First Initiative*, 2008) <http://cenfri.org/documents/AML/AML_CFT%20and%20Financial%20Inclusion.pdf> accessed 10 May 2015.

⁸⁵ FATF, 'FATF Recommendation 12, 13, 14, 15 and 16' (FATF, 2012) <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>> accessed 10 February 2017.

transplantation. Legal transplantation involves the diffusion of global policies locally.⁸⁶ Arguably, there has been a diffusion of the AML/CFT regime amongst 'weak states' driven by discursive power-based mechanism, a combination of direct coercion, mimicry and competition.⁸⁷ Legal transplantation manifest in 'weaker countries' mimicking the laws and implementation strategies of developed countries.

Consequently, Sharman argues that weaker countries adopt laws and implementation strategies for two distinct but interrelated reasons: to replicate recorded successes of pioneering countries and as a mere symbolic exercise to avoid a penalty or receive associated benefits.⁸⁸ However, transplantation has its implications, mainly being that they are non-contextual. What is usually noticed is that when laws are transplanted the host jurisdiction will understand it differently because of cultural differences and distance between the originator and host jurisdiction. Thus, the interpretation of a rule within a different context would at best be subjective, given the insensitivity of the originator to the cultural dissimilarities of the host jurisdiction.⁸⁹ Consequently, the crucial element of the meaning of the rule may not survive the journey from one legal system to another, thereby hindering compliance.

FATF member countries have complied more effectively as the FATF recommendations are not foreign to their terrain. However, this is not the case with FATF-styled regional bodies. The timeline of ascension to membership is central to this. Spain and the United Kingdom became members of the FATF in the late 90s – now they are going through their third or fourth mutual evaluations, whereas the least compliant countries only became members of the FSRBs post-2001. Whilst membership is not necessarily a catalyst for improved compliance, it can be deduced that early ascension allowed the UK and Spain to understand the FATF standards better and faster. The lapse of time before the ascension of the least compliant countries to the position of associate membership no doubt hindered their ability to adapt to the standards, transplant them and improve their compliance.

Additionally, by virtue of having more at stake, having an AML/CFT framework that is consistent with the international standards is a bigger priority for the FATF member countries than for the least compliant countries. Saudi Arabia and Macao, China's compliance explain this. This is attributable to their financial sector size and interlinkage of these financial sectors with other financial sectors within and outside their region. For this reason, the highest compliant countries are subject to scrutiny by other jurisdictions and groupings like the OECD and G7. Consequently, it becomes a political matter to adopt the AML/CFT laws and ensure conducive environment compliance. In contrast, the least compliant countries have a more contained and smaller financial sector. Consequently, these countries consider that they have other

⁸⁶ Jason C Sharman, 'Power and Policy Diffusion: Anti-Money Laundering in Developing States' [2008] 52 (3) *International Studies Quarterly* 635, 636.

⁸⁷ This is in line with Daniel W. Drezner's, *All Politics is Global: Explaining International Regulatory Regime* (Princeton: Princeton University Press, 2007) 5, 75.

⁸⁸ Jason C Sharman, 'Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States' [2008] 52 (3) *International Studies Quarterly* 635, 647. It helps to reassure policy makers that they are in sync with shared value. It is a mere symbolic exercise driven by the fear of losing social acceptance. Organizations shape their policies through the desire of national regulators not to be seen as backward, substandard or derelict in their duties. See Anne-Marie Slaughter, *A New World Order* (Princeton University Press 2004) 6.

⁸⁹ Pierre Legrand, 'The Impossibility of "Legal Transplants"' [1997] 4 *Maastricht J. Eur. & Comp.L* 111, 115.

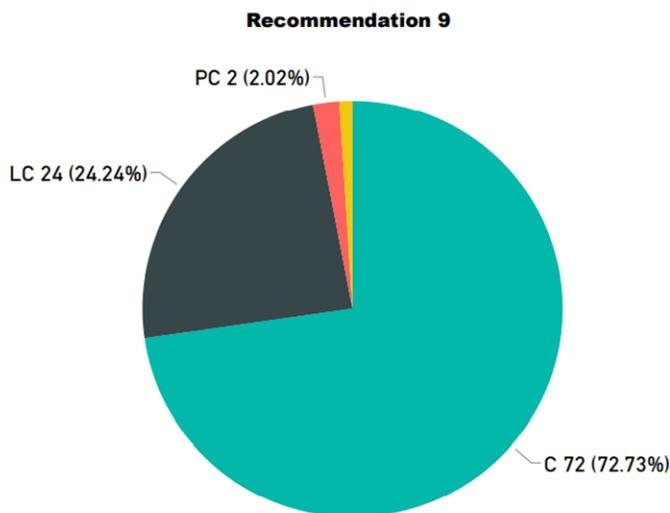
pressing issues to focus on, and an established AML/CFT framework is not considered pressing.

Two critical issues that cannot be ignored are corruption and the country agenda. Corruption is a rife issue amongst the least compliant countries and stifles the growth of sturdy institutions. Whilst corruption also is widespread within the highest compliant countries, these countries have been more proactive in combatting these illicit crimes. More so, FATF member countries have an agenda to build reputable institutions to facilitate cross-border information exchanges, an agenda that is not firmly on the table of least compliant countries. For this reason, FATF countries alongside Bermuda and Saudi Arabia have opted for higher compliance standards, which has included stricter legislative and enforcement measures.

2. Analysis by FATF Recommendations

Most Compliant Recommendations

Recommendation 9: Financial Institution Secrecy Laws.

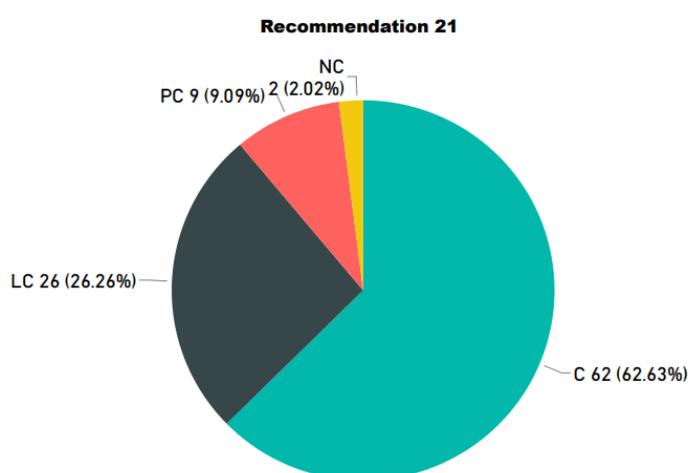


An analysis of the MERs conducted by the FATF and other assessment bodies illustrates that recommendation 9 receives the highest level of compliance from the 99 countries evaluated. The pie chart on this recommendation illustrates that collectively, 72 countries representing 72.73% of countries evaluated attained full compliance with recommendation 9. 24 countries, representing 24.24% are largely compliant, and two countries representing 2.02% record partial compliance with recommendation 9. These findings imply that laws are instituted to circumvent financial secrecy by financial institutions, thereby ensuring that existing secrecy laws do not inhibit the

implementation of the FATF recommendations.⁹⁰ Indeed, this allows financial institutions to engage effectively with customer due diligence, financial intelligence exchange, mutual legal assistance and extradition.

Underlying this recommendation is the need for legal drafting, which simplifies the extent to which countries can comply with the recommendation. However, the 2020 Financial Secrecy Index by the Tax Justice Network has shown that countries struggle with adhering with the secrecy regulatory standards. This is largely because they compete to provide secrecy facilities.⁹¹ Indeed, this report is quite ironic, particularly in light of the MER compliance trajectory on this recommendation.

Recommendation 21: Tipping-off and Confidentiality.

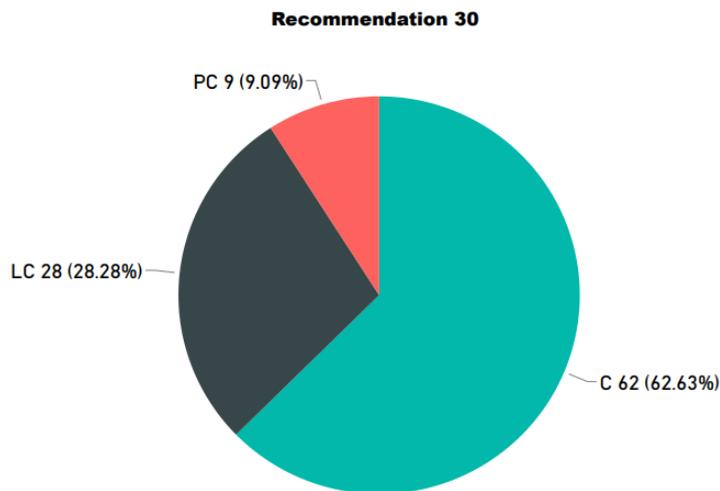


Recommendation 21 records the second highest compliance from countries. Collectively, 62 countries representing 62.63% of countries evaluated attained full compliance with this recommendation. 26 countries representing 26.26% were largely compliant, 9 countries representing 9.09% recorded partial compliance, and 2 countries representing 2.02% were non-compliant. These findings imply that most countries have instituted laws that protect financial institutions, officers and employees from tipping off or breaching their legal confidentiality requirements to curtail financial crime. Additionally, it reflects that structures are in place to forestall these gatekeepers from ‘tipping off’ on suspected transactions reported to the FIU. Indeed, most countries complied with this legal recommendation which required legal drafting. Indeed, just a few countries faced minor shortcomings with compliance.

⁹⁰ IMF and World Bank, ‘Anti-Money laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward’ (IMF, World Bank, August 2015) < <https://www.imf.org/external/np/pp/eng/2005/083105.pdf> > accessed 1 August 2020.

⁹¹ Tax Justice Network, ‘Financial Secrecy Index 2020: Methodology’ (Tax Justice Network, 2020) < <https://fsi.taxjustice.net/PDF/FSI-Methodology.pdf> > accessed 10 September 2020.

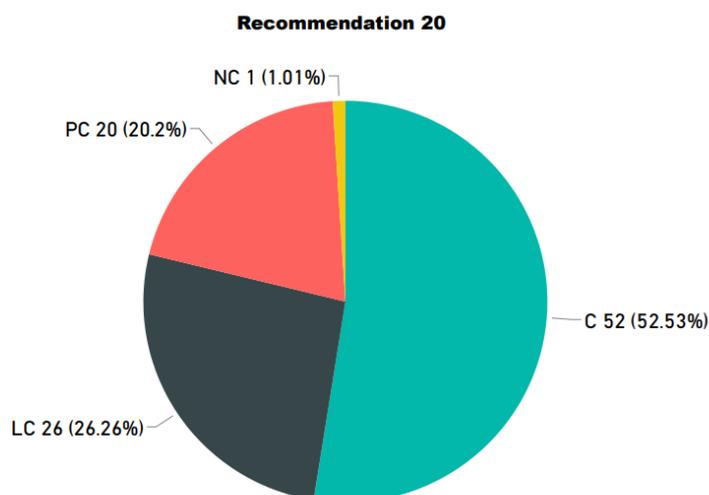
Recommendation 30: Responsibilities of Law Enforcement and Investigative Authorities.



An analysis on Recommendation 30 reveals that 62 countries representing 62.63% attained full compliance with this recommendation. 28 countries representing 28.28% were largely compliant, while 9 representing 9.09% are partially compliant. These findings imply that frameworks exist to proactively investigate terrorist financing, money laundering and its predicate offences both within a jurisdiction or across borders. It does not necessarily require legal drafting but rather political will pushing for working frameworks that allow for proactive parallel financial investigations with regards to requisite financial crimes. In requiring that competent authorities have responsibility for tracing and initiating actions to freeze and seize properties, a step that requires an expansion of regulatory duties may require some legislative or regulatory amendment. Impressively, countries have made good attempts at compliance.

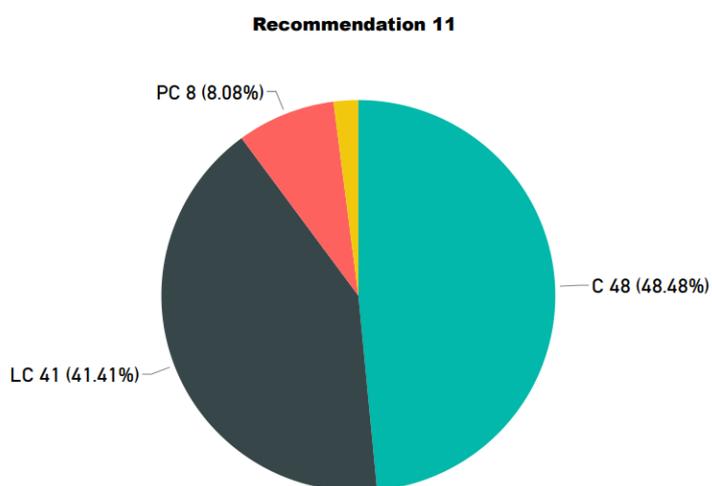
Nevertheless, the shortfall in full compliance indicates that some countries still have some compliance shortcomings. As part of the measure in combating money laundering and associated predicate offences and terrorist financing, countries are beginning to set up specific anti-graft agencies saddled with the sole responsibility to pursue the investigation of any related ML/TF offences. These steps would enable them to comply better with these recommendations.

Recommendation 20: Reporting of Suspicious Transactions.



An examination of FAFT recommendation 20 shows that 52 countries representing 52.53% are fully compliant with this recommendation. In contrast, 26 countries representing 26.26% are largely compliant with this recommendation. Also, 20.2% of the FAFT countries are partially compliant with this recommendation 1 country is non-compliant. This statistic implies that most countries are compliant with this recommendation which requires legislation to ensure that financial institutions are able to promptly report suspicious criminal activity. Indeed, the legal drafting process allows for improved compliance by countries. Whilst moderately easier to comply with, in the absence of a political will or external pressures, countries may not comply – a situation evidenced by the fact that 1 country is non-compliant and 20% are only partially compliant.

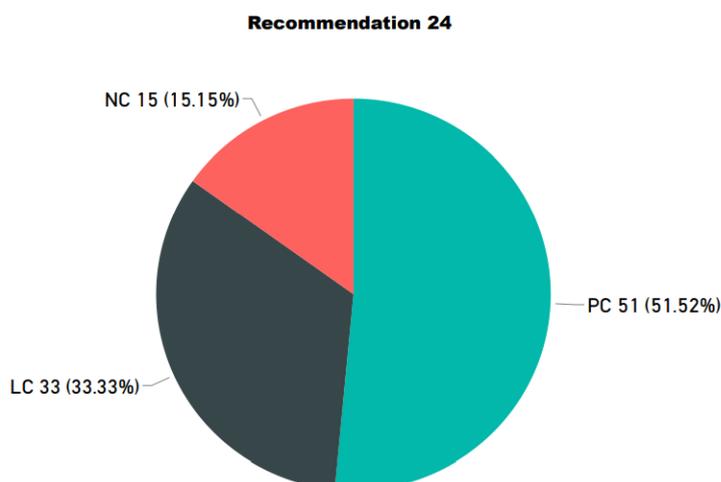
Recommendation 11: Record keeping



With regards to FAFT recommendation 11, 48 countries, which represent 48.48% of countries, are compliant with this recommendation. 41 countries representing 41.41% are largely compliant with this recommendation. 8 countries representing 8.08% are partially compliant. These statistics imply that most countries have instituted laws mandating record keeping by financial institutions for at least 5 years and ensuring that competent authorities have data access where appropriate. Most importantly, financial institutions have imbibed practices to ensure good record-keeping of all records obtained through customer due diligence measures. Indeed, given the durability of this recommendation, ease of implementation alongside the legislative drafting required, countries are able to comply better with this recommendation.

Least Compliant Recommendation

Recommendation 24: Transparency and Beneficial Ownership of Legal Persons.



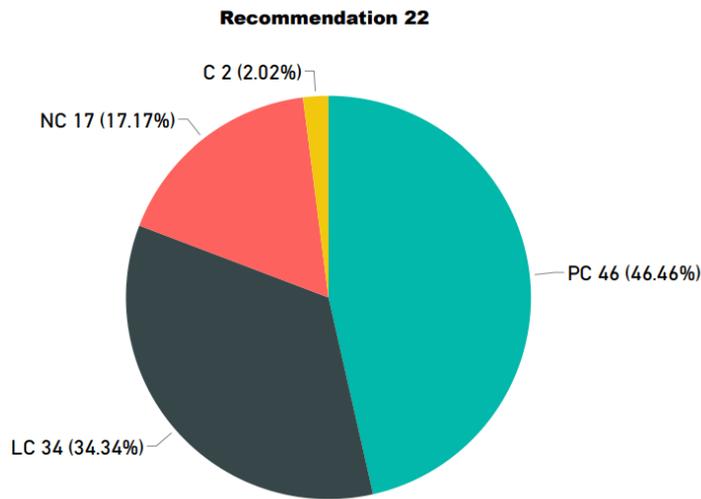
The FAFT analysis showed that countries are least compliant with recommendation 24. Based on the available analysis, no country is fully compliant. However, 33 countries representing 33.33% of all countries are largely compliant, 51 countries representing 51.52% were partially compliant, and 15 countries representing 15.15% recorded non-compliance with this recommendation. This implication is there are major shortcomings in applying this recommendation. These shortcomings are largely attributable to the complexities associated with ensuring transparency in beneficial ownership – hence, facilitating accurate or timely information as required by the recommendation is almost impossible for most countries.⁹² However, the UK's progress in creating the first public register of beneficial owners of companies has demonstrated the feasibility of compliance with this recommendation.⁹³ With the

⁹²FATF and Egmont Group, 'Concealment of Beneficial Ownership'(FATF, Egmont Group, July 2018) < https://www.egmontgroup.org/sites/default/files/filedepot/Concealment_of_BO/FATF-Egmont-Concealment-beneficial-ownership.pdf > accessed 10 January 2021.

⁹³ Global Witness, 'Learning the lessons from the UK's public beneficial ownership register' (Global Witness, October 2017) < <https://www.openownership.org/uploads/learning-the-lessons.pdf> > accessed 10 January 2021.

improved presence of pre-conditions for effective regulations, other failing countries may become more compliant in the near future.

Recommendation 22: Designated Non-financial Businesses and Professions (DNFBPS): Customer Due Diligence



The next recommendation that countries are second-least compliant to is recommendation 22. This recommendation mandates effective supervision by casinos, real estate agents, dealers in precious metals and stones, lawyers, and trust and company service providers, to ensure that their businesses do not aid ML/TF. This recognizes that money launderers and terror funders exploit other lucrative and less regulated or licensed avenues to transfer illicit funds.⁹⁴ Even with its highlighted risks, statistics reveal that only 2 countries representing 2.02% are compliant with this recommendation and 34 countries representing 34.34% are largely compliant. 46 countries are partially compliant, while 17 countries representing 17.17% are non-compliant in facilitating customer due diligence.

These shortcomings are illuminated by the different regulatory approaches adopted by countries. For instance, South Africa suffers from discrepancies in its supposed casino regulation⁹⁵ which stifles its compliance. In Nigeria, casino regulation is relatively recent, accounting for the huge number of unlicensed casinos that are unchecked for compliance. Contrariwise, in Kenya and Zimbabwe, gambling is encouraged; however, its regulation is growing due to internal conflicts.⁹⁶

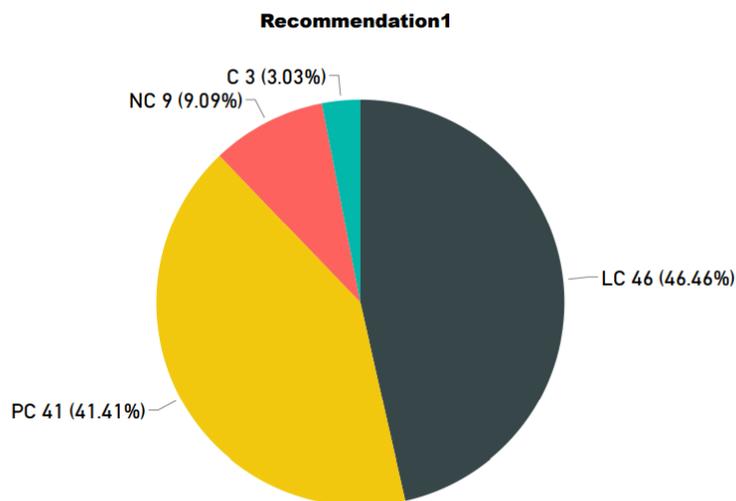
⁹⁴ Jan Mcmillen, 'Online Gambling: Challenges to National Sovereignty and Regulation' [2000] 18 (4) Prometheus 391 – 410. Casinos are lucrative in Africa and have continued to grow at healthy rates – see PwC page 9, 'Raising the stakes in Africa Gambling Outlook: 2014 – 2018 South Africa • Nigeria • Kenya (PwC, 3rd Annual Edition, November 2014) <http://www.pwc.co.za/en_ZA/za/assets/pdf/gambling-outlook-2014.pdf> accessed 10 July 2020.

⁹⁵ Professor Sphiwe Nzimande, Dr. Stephen Louw, Mr Clement Mannya, Ms Adheera Bodasing, Ms Astrid Ludin, 'Review of the South African Gambling Industry and its Regulation, a report prepared by the Gambling Review Commission – Final Report submitted to the Minister of Trade and Industry' (September 2010).

⁹⁶ Tonderayi Mukeredzi, 'Young Zimbabweans Warming up to Gambling' (*AfricaRenewal Online*) <<http://www.un.org/africarenewal/web-features/young-zimbabweans-warming-gambling>> accessed 10 July 2020.

These belated reactions are particularly worrisome because they relate to actions and procedures, which require the identification of customers both domestically and across borders. This illustrates the need for more determined action on the side of non-financial sector regulators and supervisors.

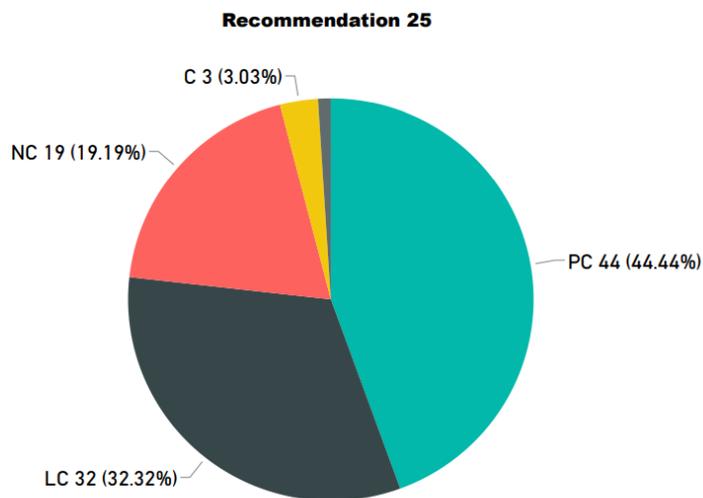
Recommendation 1: Assessing Risks and Applying a Risk-Based Approach.



Statistics show that only 3 countries are compliant with FAFT recommendation 1, while 46 countries are largely compliant. 41 countries are partially compliant, and 9 countries are non-compliant with this recommendation. These findings imply that a range of minor to major shortcomings in implementing this recommendation across countries. Various issues abound. Countries have difficulties in understanding the risk-based process. This situation exposes the technical difficulty and resource intensity involved in the process of risk and resource prioritization across the varying sectors of each country. The complexity is largely challenging for most countries and has triggered their compliance deficit. Furthermore, countries arguably need more time to familiarise with the requisite recommendations. Additionally, countries are concerned about publicly expressing their risk, especially when it is detrimental to their reputation.

Based on the aforementioned, countries level of risk assessment is poor, and these countries are yet to put in place, necessary resources and implementing measures to prevent or mitigate risks.

Recommendation 25: Transparency and Beneficial Ownership of Legal Arrangements.

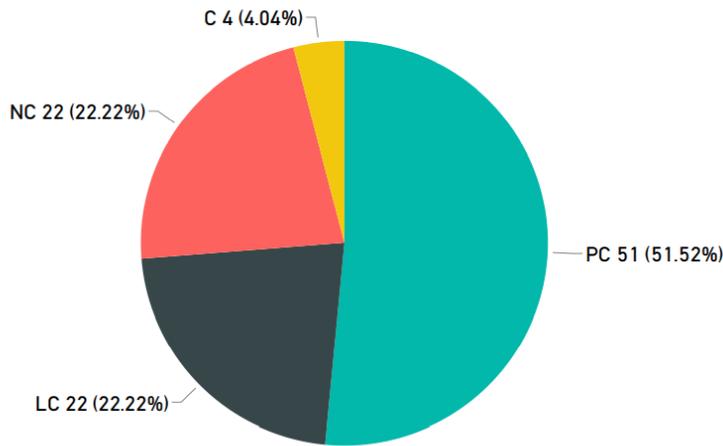


Only 3 countries are compliant with recommendation 25. However, 32 countries representing 32.32% are largely compliant, 44 countries representing 44.44% are partially compliant and 19 countries representing 19.19% are non-compliant. These statistics imply that countries are not fully compliant on issues of transparency relating to information and beneficial ownership of legal arrangements.

Indeed it is paradoxical that compliance with this recommendation is low given that beneficial ownership can only thrive where there is ample financial secrecy. Yet statistics reveal that recommendation 9 on financial institution secrecy laws is ranked as the recommendation most complied with.

Recommendation 28: Regulation and Supervision of DNFBPS.

Recommendation 28



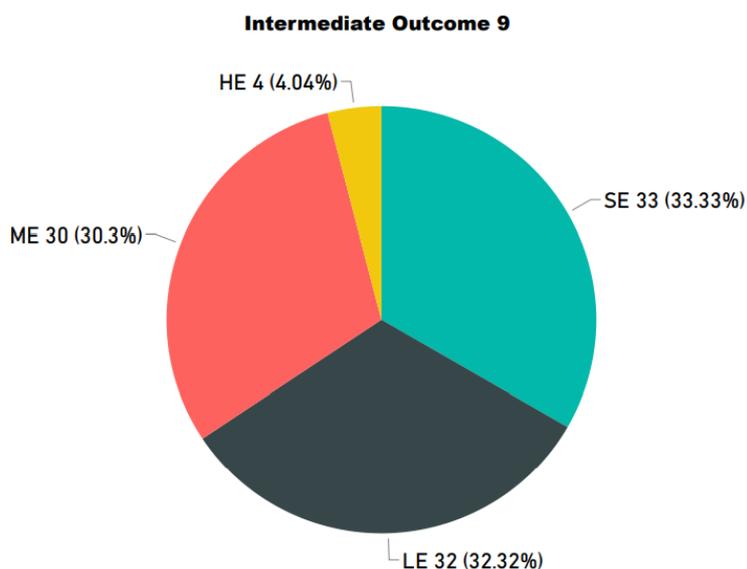
Statistics show that only 4 countries are compliant with this recommendation representing 4.04%. However, 22 countries are largely compliant with this recommendation. 51 countries are partially compliant, while 22 countries are noncompliant. The implication of this is that countries have shortcomings in regulating and supervising designated non-financial businesses and professions such as casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries, and other independent legal professional and accountants.

Another FAFT recommendation that falls short of compliance by countries is recommendation 28, which stipulates the regulation and supervision of designated non-financial businesses and professions. From the findings, it is evident that countries do not enforce the licensing of casinos, and authorities do not take the necessary legal or regulatory measures to prevent criminals or the associates from holding a significant or controlling interest, or holding a management function, or being an operator of a casino. Also, casinos are not fully supervised for compliance with AML/CFT requirements.

3. Analysis by Immediate Outcomes

This section examines how effective countries are with the FATF's Immediate Outcomes. Examining each immediate outcome, this section explains why countries are more or less meeting each immediate outcome.

Immediate Outcome 9 (4): Terrorist financing offences and activities are investigated and persons who finance terrorism are prosecuted and subject to effective, proportionate and dissuasive sanctions.

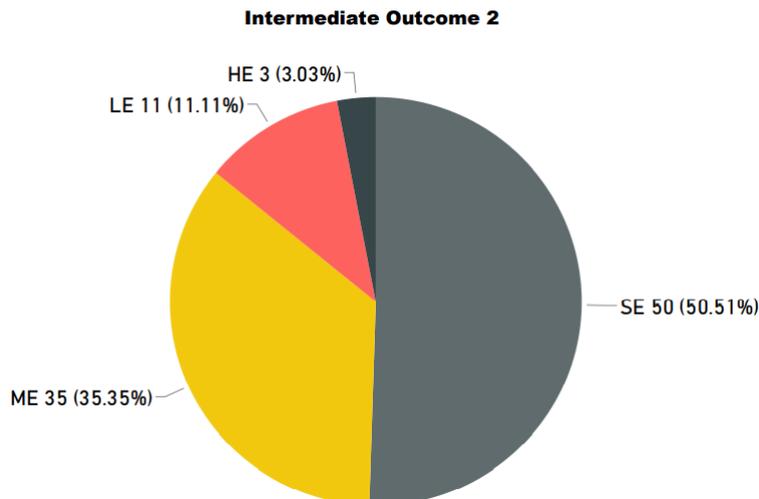


The immediate outcome 9 shows that 4 countries representing 4.04% have high level of effectiveness, that is, the immediate outcome is achieved to a very large extent with minor improvement needed. Also, 33 countries representing 33.33% have a substantial level of effectiveness, that is, the immediate outcome is achieved to a large extent with moderate improvements needed. 30 countries representing 30.3% are ranked as a moderate level of effectiveness, that is, the immediate outcome is achieved to some extent with major improvements needed. 32 countries representing 32.32% have low level of effectiveness. Implying that the immediate outcome is not achieved or achieved to a negligible extent with fundamental improvements needed.

Countries are more compliant with the immediate outcome 9, which implies that terrorist financing activities are investigated, offenders are successfully prosecuted, and courts apply effective, proportionate and dissuasive sanctions to those convicted. However, with 32 of these countries, this is not necessarily the case due to varying factors, such as data shortage, inability to implement this immediate outcome or lack of necessary preconditions for effectiveness such as frameworks for compliance.

This outcome relates primarily to recommendation 5, 30, 31 and 39, and also elements of Recommendations 1, 2, 15, 32, 37 and 40.

Immediate Outcome 2 (3): International co-operation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets.

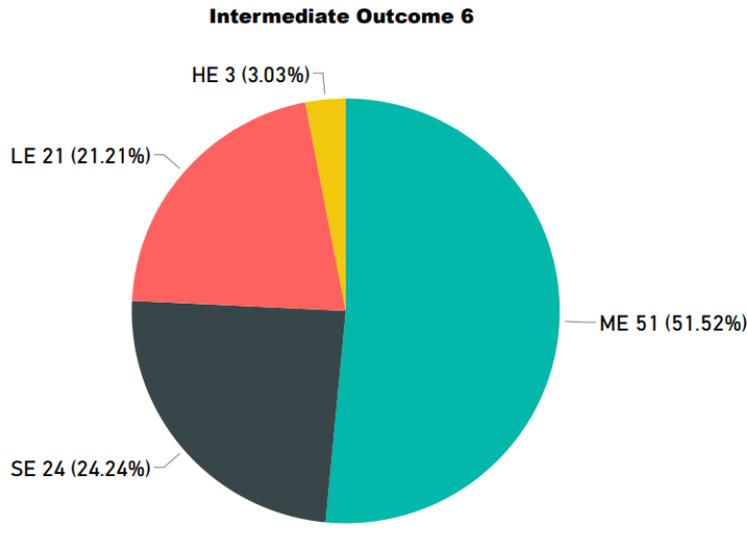


The statistics show that under immediate outcome 2, 3 countries representing 3.03% have high level of effectiveness, that is, the immediate outcome is achieved to a very large extent with minor improvement needed. Also, 50 countries representing 51.51% have a substantial level of effectiveness, that is, the immediate outcome is achieved to a large extent with moderate improvements needed. 35 countries representing 35.35% are ranked as a moderate level of effectiveness, that is, the immediate outcome is achieved to some extent with major improvements needed. 11 countries representing 11.11% have a low level of effectiveness. Implying that, the immediate outcome is not achieved or achieved to a negligible extent with fundamental improvements needed.

As indicated by the statistics above, some countries exhibit a degree of effectiveness with immediate outcome 2. The implication is that more countries provide constructive and timely information or assistance when requested by other countries. Such assistance could range from locating and extraditing criminals and identify, freeze, seize, confiscate and share assets and provide information (including evidence, financial intelligence, supervisory and beneficial ownership information) related to money laundering, terrorist financing or associated predicate offences. Furthermore, countries rated more effective are more prone to documenting their steps towards effectiveness, which is not the case with non-compliant countries.

This outcome relates primarily to Recommendations 36 - 40 and also elements of Recommendations 9, 15, 24, 25 and 32.

Immediate Outcome 6 (3): Financial intelligence and all other relevant information are appropriately used by competent authorities for money laundering and terrorist financing investigations.

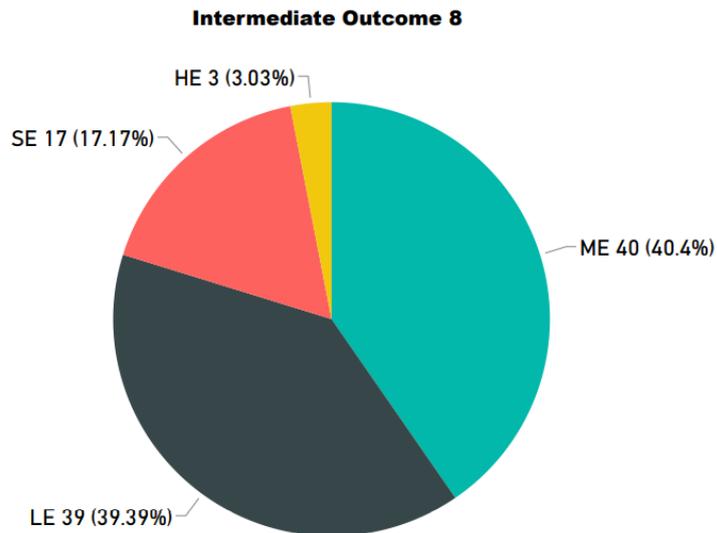


Immediate outcome 6 shows that 3 countries representing 3.03% have high level of effectiveness, that is, the immediate outcome is achieved to a very large extent with minor improvement needed. Also, 24 countries representing 24.24% have a substantial level of effectiveness, that is, the immediate outcome is achieved to a large extent with moderate improvements needed. 51 countries representing 51.52% are ranked as a moderate level of effectiveness, that is, the immediate outcome is achieved to some extent with major improvements needed. 21 countries representing 21.21% have a low level of effectiveness. Implying that the immediate outcome is not achieved or achieved to a negligible extent with fundamental improvements needed. Based on the statistics above, some countries are compliant with the immediate outcome requiring minor to moderate improvements.

The reason for effectiveness is that there is evidence that a wide variety of financial intelligence and other relevant information is collected and used by competent authorities to investigate money laundering, associated predicate offences and terrorist financing to deliver reliable, accurate, and up-to-date information and the competent authorities have the resources and skills to use the information to conduct their analysis and financial investigations, to identify and trace the assets, and to develop operational analysis. However, this is not the case with 21 countries that have achieved a low level of effectiveness, a feat attributable to data scarcity, capacity challenges and absence of preconditions for effectiveness.

This outcome relates primarily to Recommendations 29 to 32 and also elements of Recommendations 1, 2, 4, 8, 9, 15, 34 and 40.

Immediate Outcome 8 (3): Proceeds and instrumentalities of crime are confiscated.

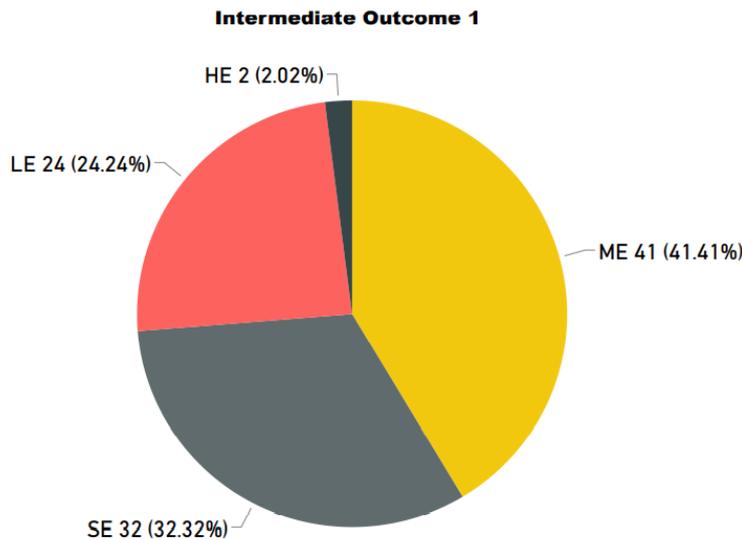


The statistics show that with regards to immediate outcome 8, 3 countries representing 3.03% have a high level of effectiveness. The immediate outcome is achieved to a very large extent with minor improvement needed. Also, 17 countries representing 17.17% have a substantial level of effectiveness, that is, the immediate outcome is achieved to a large extent with moderate improvements needed. 40 countries representing 40.4% are ranked as a moderate level of effectiveness, that is, the immediate outcome is achieved to some extent with major improvements needed. 39 countries representing 39.39%, have low level of effectiveness. Implying that, the immediate outcome is not achieved or achieved to a negligible extent with fundamental improvements needed.

The statistics above show that a number of countries are compliant with immediate outcome 8 with some level of improvement needed. From the outcome, criminals are deprived (through timely use of provisional and confiscation measures) of the proceeds and instrumentalities of their crimes (both domestic and foreign) or of property of equivalent value. Confiscation includes proceeds recovered through criminal, civil or administrative processes; confiscation arising from false cross-border disclosures or declarations; and restitution to victims (through court proceedings). The country manages seized or confiscated assets, and repatriates or shares confiscated assets with other countries. Ultimately, this makes crime unprofitable and reduces both predicate crimes and money laundering across countries. Indeed, this level of effectiveness is only strongly present in 3 countries, whereas 39 countries record low effectiveness, indicating problems with technical compliance alongside lack of political will or the necessary frameworks to ensure effectiveness, an issue that is widespread across various countries.

This outcome relates primarily to Recommendations 1, 4, 32 and also elements of Recommendations 15, 30, 31, 37, 38, and 40.

Immediate Outcome 1 (2): Money laundering and terrorist financing risks are understood and, where appropriate, actions co-ordinated domestically to combat money laundering and the financing of terrorism and proliferation.

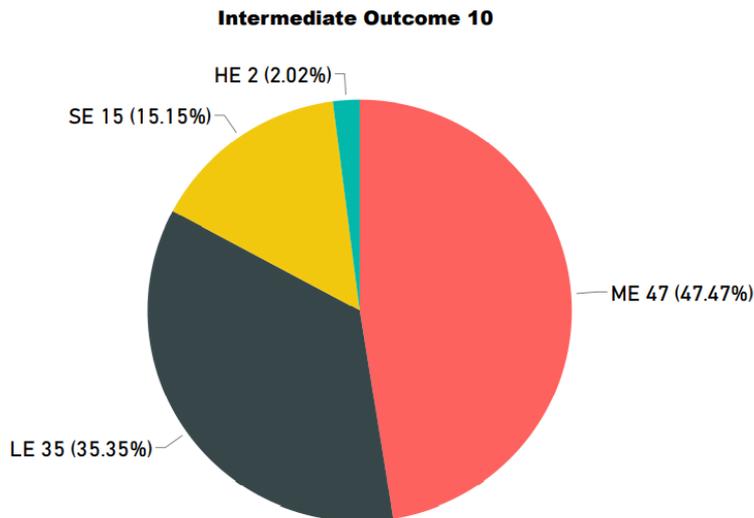


The statistics show that under immediate outcome 1, 2 countries representing 2.02% have high level of effectiveness, that is, the immediate outcome is achieved to a very large extent with minor improvement needed. Also, 32 countries representing 32.32% have substantial level of effectiveness, that is, the immediate outcome is achieved to a large extent with moderate improvements needed. 41 countries representing 41.41% are ranked as a moderate level of effectiveness, that is, the immediate outcome is achieved to some extent with major improvements needed. 24 countries representing 24.24% have low level of effectiveness. Implying that, the immediate outcome is not achieved or achieved to a negligible extent with fundamental improvements needed.

The statistics above indicate that whilst some countries have some degree of effectiveness to this immediate outcome, improvement is still needed. The implication of this outcome is that only a few countries, to a certain degree, can properly identify, assess and understand their money laundering and terrorist financing risks, and co-ordinates domestically to put in place actions to mitigate these risks. This includes the involvement of competent authorities and other relevant authorities; using a wide range of reliable information sources; using the assessment(s) of risks as a basis for developing and prioritising AML/CFT policies and activities; and communicating and implementing those policies and activities in a co-ordinated way across appropriate channels. With 24 countries listed, effectiveness remains a challenge largely due to the uncoordinated frameworks for ensuring coordinated efforts to combat financial crime.

This outcome relates primarily to Recommendations 1, 2, 33 and 34, and also elements of R.15.

Immediate Outcome 10 (2): Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector.

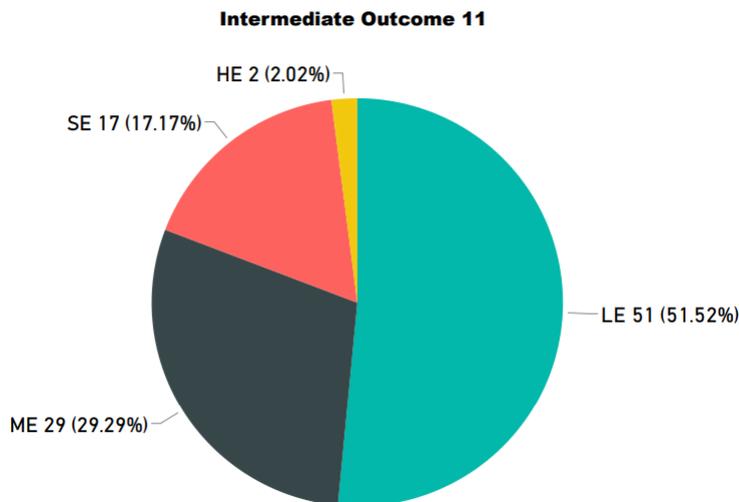


The statistics show that with regards to immediate outcome 10, 2 countries representing 2.20% have high level of effectiveness, that is, the immediate outcome is achieved to a very large extent with minor improvement needed. Also, 15 countries representing 15.15% have substantial level of effectiveness, that is, the immediate outcome is achieved to a large extent with moderate improvements needed. 47 countries representing 47.47% are ranked as a moderate level of effectiveness, that is, the immediate outcome is achieved to some extent with major improvements needed. 35 countries representing 35.35%, have low level of effectiveness. Implying that, the immediate outcome is not achieved or achieved to a negligible extent with fundamental improvements needed.

The statistics above show that, only a few countries have some degree of effectiveness with immediate outcome 10. On the other hand, other countries need major to fundamental improvements. Terrorists, terrorist organisations and terrorist support networks have not been fully identified and deprived of the resources and means to finance or support terrorist activities and organisations. This includes improper implementation of targeted financial sanctions against persons and entities designated by the United Nations Security Council and under applicable national or regional sanctions regimes. Countries have no full understanding of the terrorist financing risks and take appropriate and proportionate actions to mitigate those risks, including measures that prevent the raising and moving of funds through entities or methods at greatest risk of being misused by terrorists. These challenges have largely undermined their effectiveness.

This outcome relates primarily to Recommendations 1, 4, 6 and 8, and also elements of Recommendations 14, 15, 16, 30 to 32, 37, 38 and 40.

Immediate Outcome 11 (2): Persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the relevant UNSCRs.



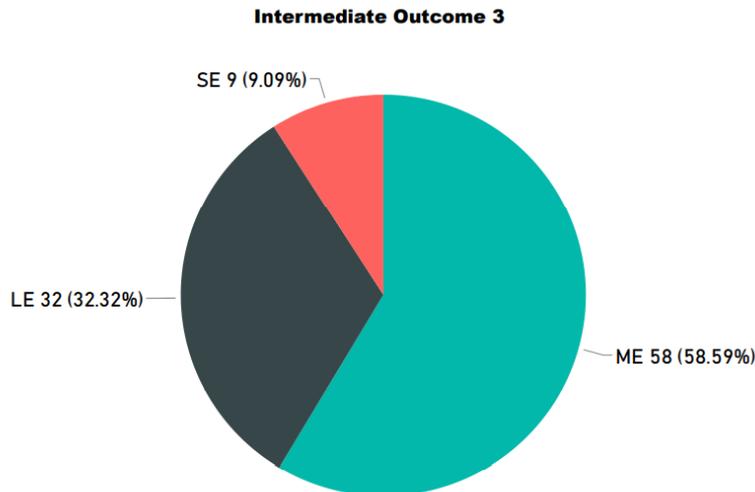
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The statistics show that under immediate outcome 11, 2 countries representing 2.02% have high level of effectiveness, that is, the immediate outcome is achieved to a very large extent with minor improvement needed. Also, 15 countries representing 15.15% have substantial level of effectiveness, that is, the immediate outcome is achieved to a large extent with moderate improvements needed. 47 countries representing 47.47% are ranked as a moderate level of effectiveness, that is, the immediate outcome is achieved to some extent with major improvements needed. 35 countries representing 35.35% have low level of effectiveness. Implying that, the immediate outcome is not achieved or achieved to a negligible extent with fundamental improvements needed.

Few countries have some degree of effectiveness with regards to immediate outcome 11. A reason for low effectiveness is the fact that persons and entities designated by the United Nations Security Council Resolutions (UNSCRs) on the proliferation of weapons of mass destruction (WMD) have not been fully identified, deprived of resources, and prevented from raising, moving, and using funds or other assets for the financing of proliferation. Targeted financial sanctions are not fully and properly implemented without delay; monitored for compliance and there is no adequate co-operation and coordination between the relevant authorities to prevent sanctions from being evaded and develop and implement policies and activities to combat the financing of proliferation of WMD. Addressing these challenges will improve the level of effectiveness of this outcome.

This outcome relates to Recommendation 7 and elements of Recommendations 2 and 15.

Immediate Outcome 3(0): Supervisors appropriately supervise, monitor and regulate financial institutions, DNFBPs and VASPs for compliance with AML/CFT requirements commensurate with their risks.

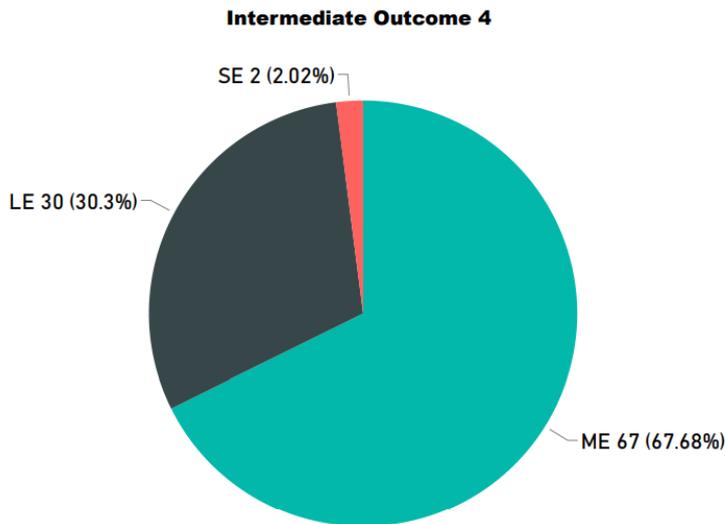


The statistics show that under immediate outcome 3, no country is considered to have attained a high level of effectiveness. On the other hand, 9 countries representing 9.09% have substantial level of effectiveness, that is, the immediate outcome is achieved to a large extent with moderate improvements needed. 58 countries representing 58.59% are ranked as a moderate level of effectiveness, that is, the immediate outcome is achieved to some extent with major improvements needed. 32 countries representing 32.32% have low level of effectiveness. Implying that, the immediate outcome is not achieved or achieved to a negligible extent with fundamental improvements needed.

Immediate outcome 3 has very low effectiveness amongst countries. The reason for this is most countries have not been effective in preventing criminals and their associates from holding, or being the beneficial owner of, a significant or controlling interest or a management function in financial institutions, DNFBPs or VASPs; and countries have not been prompt in identifying, remedying, and sanctioning, where appropriate, violations of AML/CFT requirements or failings in money laundering and terrorist financing risk management.

This outcome relates primarily to Recommendations 14, 15, 26 to 28, 34 and 35, and also elements of Recommendations 1 and 40.

Immediate Outcome 4(0): Financial institutions, DNFBPs and VASPs adequately apply AML/CFT preventive measures commensurate with their risks, and report suspicious transactions



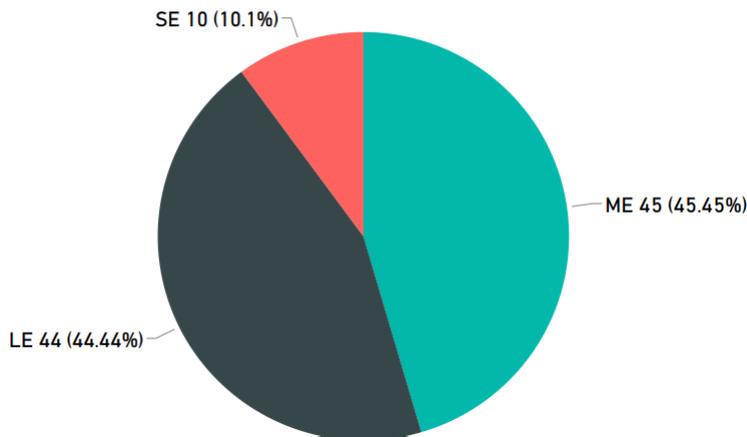
The statistics show that under immediate outcome 4, no country attained a high level of effectiveness. On the other hand, 2 countries representing 2.02% have substantial level of effectiveness, that is, the immediate outcome is achieved to a large extent with moderate improvements needed. 67 countries representing 67.68% are ranked as a moderate level of effectiveness, that is, the immediate outcome is achieved to some extent with major improvements needed. 30 countries representing 30.3% have low level of effectiveness. Implying that, the immediate outcome is not achieved or achieved to a negligible extent with fundamental improvements needed.

Countries require fundamental improvements to ensure their effectiveness with immediate outcome 4. The reason for this is that at the time of assessments, financial institutions, DNFBPs and VASPs did not understand the nature and level of their money laundering and terrorist financing risks. Furthermore, they failed to develop and apply AML/CFT policies (including groupwide policies), internal controls, and programmes to adequately mitigate those risks. They also failed to apply appropriate CDD measures to identify and verify the identity of their customers (including the beneficial owners) and conduct ongoing monitoring. Consequently, they could not adequately detect and report suspicious transactions, thereby limiting their technical compliance and in effect, their effectiveness levels. These ultimately prevent the reduction in money laundering and terrorist financing activity within these entities.

This outcome relates primarily to Recommendations 9 to 23, and also elements of Recommendations 1, 6 and 29.

Immediate Outcome 5(0): Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.

Intermediate Outcome 5



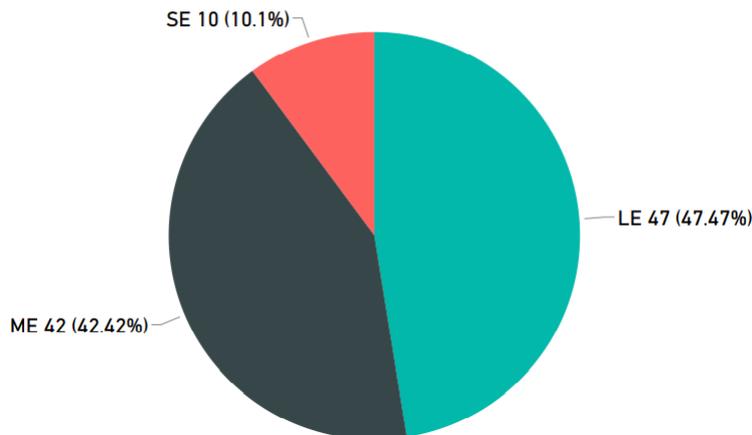
Under immediate outcome 5, no country attained a high level of effectiveness. On the other hand, 10 countries representing 10.1% have substantial level of effectiveness, that is, the immediate outcome is achieved to a large extent with moderate improvements needed. 45 countries representing 45.45% are ranked as a moderate level of effectiveness, that is, the immediate outcome is achieved to some extent with major improvements needed. 44 countries representing 44.44% have low level of effectiveness. Implying that, the immediate outcome is not achieved or achieved to a negligible extent with fundamental improvements needed.

Countries suffered to attain effective with immediate outcome 5. This is attributable to a number of factors, including the absence of measures to prevent legal persons and arrangements from being used for criminal purposes. Additionally, various countries lacked the necessary transparency framework to curtail financial crime, most especially a framework for beneficial ownership information. Consequently, the ability of countries to attain high effectiveness is largely limited.

This outcome relates primarily to Recommendations 24 and 25, and also elements of Recommendations 1, 10, 37 and 40.

Immediate Outcome 7(0): Money laundering offences and activities are investigated, and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions.

Intermediate Outcome 7



The statistics show that immediate outcome 7 has no country attained a high level of effectiveness. On the other hand, 10 countries representing 10.1% have substantial level of effectiveness, that is, the immediate outcome is achieved to a large extent with moderate improvements needed. 42 countries representing 42.42% are ranked as moderate level of effectiveness, that is, the immediate outcome is achieved to some extent with major improvements needed. 32 countries representing 47.47% have low level of effectiveness. Implying that, the immediate outcome is not achieved or achieved to a negligible extent with fundamental improvements needed.

The reasons immediate outcome 7 has the lowest level of effectiveness are that money laundering activity and major proceeds-generating offences are not adequately investigated; offenders are unsuccessfully prosecuted; and the courts apply ineffective, disproportionate sanctions to those convicted. Furthermore, countries lack the ability to pursue parallel financial investigations and cases where the associated predicate offences occur outside the country and investigating and prosecuting stand-alone money laundering offences. Core to the limitation is that component parts of the systems (investigation, prosecution, conviction, and sanctions) are unable to function coherently to mitigate the money laundering risks.

This outcome relates primarily to Recommendations 3, 30 and 31, and also elements of Recommendations 1, 2, 15, 32, 37, 39 and 40.

4. Examining the Disparity between the Technical Compliance and Effectiveness across Countries.

An examination of the disparity between technical compliance and effectiveness is critical in highlighting the relationship between these compliance drivers. Flowing from the previous sections, this section will examine the Immediate Outcomes (IOs) in

descending order, from the IO where countries attain the highest level of effectiveness to the IOs where countries attain the lowest level of effectiveness. Each IO would be examined alongside relevant recommendations.

Immediate Outcome 9

As stated, only 4 countries attained high level of effectiveness to IO 9 and 33 countries attained substantial effectiveness. Conversely, 30 countries recorded moderate effectiveness and 32 countries recorded low effectiveness – indicating that in total, 62 countries need major, fundamental improvements. Examining the effectiveness attainment in relation to relevant technical compliance shows some extent of correlation, albeit with most countries performing better on technical compliance levels. For instance, with regards to recommendation 5 on terrorist financing offence, 78 countries are classed as largely compliant or fully compliant. Only 18 countries are partially compliant, and 3 countries are non-compliant. Also recommendation 30 on law enforcement and investigative authorities, 62 countries are fully compliant, and 38 are largely compliant. Only 9 countries are partially compliant. No country is non-compliant with this recommendation. Additionally, with regards to recommendation 31 on powers of law enforcement authorities, 34 countries are fully compliant, and 50 are largely compliant. This pattern is similarly evident with regards to recommendation 39 on extradition, where 62 countries are classed as largely compliant, and 24 countries are fully compliant. Only 12 countries are partially compliant, and 1 country classed as NC. The numbers indicate that effectiveness may indeed follow the trajectory of technical compliance as more countries are technically compliant, yet, fail to achieve the effectiveness standard required.

Immediate Outcome 2

At least 53 countries record high or substantial effectiveness to IO 2. However, 35 countries record moderate effectiveness, and 11 attain low effectiveness. Regarding this IO 2, there is limited disparity with the technical compliance attainment of countries compared to the effectiveness levels. However, again, countries perform better on technical compliance. For instance, with regards to recommendation 36 on international instruments, at least 81 countries are either largely compliant or fully compliant. 17 countries record partial compliance, and only 1 country records non-compliance.

Additionally, with recommendation 37 on mutual legal assistance, at least 85 countries are either fully compliant or largely compliant. Specifically, 72 countries are largely compliant, and 13 countries are fully compliant. More so, 13 countries attain partial compliance and only 1 country records non-compliance. A similar trajectory is seen in relation to recommendation 38 on mutual legal assistance: freezing and confiscation, recommendation 39 on extradition and recommendation 40 on other forms of international cooperation. With each of these recommendations, countries perform quite well, recording significant compliance level with them. Similar to IO 9, countries perform better on technical compliance levels than on their effectiveness levels.

Immediate Outcome 6

As stated, 3 countries record high effectiveness on IO 6, and 24 countries record substantial effectiveness. Conversely, 51 countries record moderate effectiveness, and 21 records low effectiveness, therefore needing major to fundamental improvements. An examination of related technical compliance levels reveals a strong disparity between technical compliance and effectiveness levels. For instance, on recommendation 29 on financial intelligence units, 40 countries are fully compliant, and 41 are largely compliant. Only 16 countries are partially compliant, and 2 record non-compliance. On recommendation 30 (the responsibilities of law enforcement and investigative authorities) 62 countries have attained full compliance, and 28 are largely compliant. No country recorded non-compliance and 9 countries are partially compliant. With regards to recommendation 31 (the powers of law enforcement and investigative authorities), the same trajectory is seen, with 50 countries attaining largely compliant and 34 countries recording full compliance. Countries compliance with recommendation 32 (cash couriers), is weak in comparison with the earlier discussed recommendation – however, it is still impressive with 48 countries tagged as largely compliant and 15 countries attaining full compliant.

An evident thread is that countries are attaining high compliance level on the relevant recommendations, particularly regarding recommendations 29, 30 and 31. However, their effectiveness or substantial effectiveness is low, with most countries attaining moderate or low effectiveness.

Immediate Outcome 8

With regards to IO on the confiscation of proceeds and instrumentalities of crime, only 3 countries attain high level of effectiveness and 17 attain substantial effectiveness, needing only minor to moderate effectiveness. However, 40 countries achieve moderate effectiveness, and 39 have low level of effectiveness. In comparison, an examination of the technical compliance shows that countries perform better on the FATF recommendations than on the IOs. For instance, on recommendation 4 (confiscation and provisional measures) 32 countries are fully compliant, and 54 countries are largely compliant. Only 13 countries are partially compliant. No country is non-compliant. On recommendation 32 (cash couriers), 15 countries are fully compliant and 48 are largely compliant. However, a significant number of countries are partially compliant or non-compliant (36 in total), indicating that countries are still grappling with attaining adequate compliance with this recommendation. This deficit provides a possible explanation on why 40 countries are recorded as moderately effective, and 39 are classed as moderately effective, needing major to fundamental improvements. This shortcoming is also reflected in recommendation 1 on national risk assessment, where 3 countries are fully compliant, and 46 are largely compliant. However, 41 countries are partially compliant, and 9 are still non-compliant. Indeed, the deficit in effectiveness indicates that countries are indeed, still struggling with their technical compliance, a shortcoming reflected in their effectiveness.

Immediate Outcome 1

As stated, only 2 countries have attained a high level of effectiveness on IO 1 (money laundering and terrorist financing risks) with 32 countries recording substantial effectiveness. 41 countries attained moderate effectiveness, and 2 attained low effectiveness, thereby needing fundamental to major improvements. Indeed, this spread is not at all surprising given the pattern noted in related technical compliance. For instance, with regards to recommendation 1 on RBA, only 3 countries attained full compliance and 46 countries attained largely compliant levels. 41 countries were partially compliant, and 9 were non-compliant. This shows a poor understanding of risk across quite a number of countries.

Furthermore, with recommendation 2 on national cooperation and coordination, 64 countries are fully compliant to largely compliant – with 20 countries ranked as full compliance. However, 9 countries are non-compliant, and 41 countries are partially compliant. Such shortcoming is indicative of limited national cooperation and coordination across 50 countries. For this reason, a large number of countries have only attained moderate to low effectiveness. Similarly, on recommendation 33 (statistics), 19 countries have attained full compliance, and 37 countries are ranked as largely compliant. However, 4 countries are non-compliant, and 39 are partially compliant. This shows that quite a number of countries lack relevant statistics on money laundering and terrorist financing. 37 countries are, however, largely compliant, and 19 are fully compliant. Lastly, on recommendation 34 (guidance and feedback), 18 countries are fully compliant, and 43 are largely compliant. Indicating that within these countries, competent authorities and supervisors have established guidelines and provide feedback that assists financial institutions and NDFBP in applying national measures to combat ML/TF. 18 countries are, however only partially compliant, and 3 are non-compliant.

Immediate Outcome 10

The IO 10 on the prevention of terrorists, terrorist organisations and terrorist financiers from raising, moving and using funds, including from abusing the shows that only 2 countries attained high level of effectiveness with 15 countries achieving substantial effectiveness. 47 countries attained moderate effectiveness, and 35 attained low effectiveness needing fundamental to major improvements. Indeed, effectiveness is somewhat weaker than technical compliance, albeit, to a limited extent. For instance, with regards to recommendation 1 on RBA, only 3 countries achieve full compliance, 46 achieve LC. In total, 50 countries achieve between NC to PC. A similar picture is seen with regards to recommendation 6 on targeted financial sanctions related to terrorism and terrorist financing, where 9 countries are fully compliant, and 35 are largely compliant. However, 43 countries are partially compliant, and 12 are non-compliant. The non-profit organisation recommendation 8 shows a similar thread. 45 countries are partially compliant, and 23 are non-compliant. Only 5 countries are fully compliant, and 26 are largely compliant.

Immediate Outcome 11

Regarding IO 11 (the prevention of terrorists, terrorist organisations and terrorist financiers from raising, moving and using funds), only 2 countries attained high effectiveness, with 15 countries achieving substantial effectiveness. 47 countries attained moderate effectiveness, and 35 attained low effectiveness needing

fundamental to major improvements. Indeed, effectiveness is somewhat weaker than technical compliance. For instance, on recommendation 7 (targeted financial sanctions related to proliferation), only 8 countries are fully compliant, and 22 are largely compliant. However, 38 countries are non-compliant, and 31 countries are partially compliant. A similar thread is noticed with recommendation 2 (national cooperation and coordination) where 20 countries attain full compliance and 42 records largely compliant. However, this high record is not noticed across all countries as 9 countries are non-compliant and 41 are partially compliant. These statistics indicate that although countries are attaining technical compliance, their effectiveness fulfilment is still lacking.

Immediate Outcome 3

IO3, centred on the AML/CFT risk-based supervision, monitoring and regulation of financial institutions, DNFBPs and VASPs, unfortunately, had no country record high effectiveness. 9 countries record substantial effectiveness. However, 58 countries record moderate effectiveness and 32 records low effectiveness, indicating the need for major to fundamental improvements. An examination of the related recommendations shows that more countries do impressively better on their technical compliance than effectiveness levels. For instance, with recommendation 14 on money or value transfer services, 36 countries attained full compliance, 39 are classed as largely compliant. 4 are non-compliant, and 20 are partially compliant. A similar thread is noticed with recommendation 15 (new technologies), 31 countries are fully compliant, and 30 are largely compliant. However, 10 are non-compliant, and 28 are partially compliant. Also, with recommendation 27 (powers of supervision), 37 countries are fully compliant, and 51 are largely compliant. Just 1 country is non-compliant, and 10 countries are partially compliant. On recommendation 18 (guidance and feedback), only 18 countries record full compliance. However, 43 countries are largely compliant, 3 are non-compliant, and 18 are partially compliant. This pattern is noticed with regards to other relevant recommendations, which are 26, 28 and 35. This shows that, although some countries are attaining full compliance on the FATF recommendations, none of them has attained high effectiveness.

Immediate Outcome 4

An examination of country's effectiveness with IO 4 (Financial institutions, DNFBPs and VASPs adequately apply AML/CFT preventive measures commensurate with their risks and report suspicious transactions) reveals that no country is highly effective. Only 2 countries record substantial record of effectiveness needing only moderate improvements. However, 67 countries attain a moderate level of effectiveness, and 30 attain low effectiveness, indicating that majority of the countries examined need major to fundamental improvements. This outcome is related to 15 outcomes, 5 which are examined here will show that more countries are evidently performing better on their technical compliance than on their effectiveness levels. For instance, with recommendation 9 (financial secrecy laws), 72 countries are fully compliant, and 24 are largely compliant. Only 1 country is non-compliant, and 2 are

partially compliant. Similarly, with recommendation 11 (record keeping), 48 countries are fully compliant, and 41 are largely compliant. Again, only 2 countries are non-compliant, and 8 are partially compliant. Furthermore, with recommendation 13 (correspondent banking), 34 countries are fully compliant, and 32 are largely compliant. 27 countries are partially compliant, and 6 are non-compliant. With recommendation 20 (reporting of suspicious transactions), 52 countries are fully compliant, and 26 are largely compliant. Again, only 1 country is non-compliant, and 20 are partially compliant. Lastly, with recommendation 21 (tipping off and confidentiality), 62 countries are fully compliant, and 26 are largely compliant. However, 9 countries are partially compliant, and 2 are non-compliant. These statistics reveal that the effectiveness of countries to IO 4 is weaker than their technical compliance levels.

Immediate Outcome 5

Statistics on IO 5 (Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments) reveal that only 10 countries are substantially effective, and no country is highly effective. 45 countries are, however, moderately effectiveness, and 44 countries record low effectiveness. Unsurprisingly, most countries also rank lowly on the relevant technical compliance. For instance, with recommendation 24 (transparency and beneficial ownership of legal persons), no country is fully compliant, and 33 countries are largely compliant. However, 51 countries are partially compliant, and 15 countries are non-compliant. Similarly, with recommendation 25 (transparency and beneficial ownership of legal arrangements), only 3 countries are fully compliant, and 32 are largely compliant. Quite a number of countries, totalling 44 are partially compliant, and 19 are non-compliant.

Immediate Outcome 7

With IO 7 (Money laundering offences and activities are investigated, and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions), no country attained high compliance, and only 10 attained substantial effectiveness. 42 countries recorded moderate effectiveness, and 32 recorded low effectiveness. A consideration of the relevant recommendations shows that countries have performed significantly better on their technical compliance levels in comparison with IOs. With recommendation 3 (money laundering offence), 28 countries are fully compliant, and 62 are largely compliant. On record, just 1 is non-compliant, and 9 countries are partially compliant. There is even better performance on recommendation 30 (responsibilities of law enforcement and investigative authorities), where 62 countries are fully compliant, and 28 are largely compliant. Impressively, no country is non-compliant. However, 9 countries are partially compliant. Lastly, with recommendation 31 (Powers of law enforcement and investigative authorities), 34 countries are fully compliant, and 50 are largely compliant. Only 1 country is non-compliant, and 14 are

partially compliant. Indeed, this shows that most countries that have attained some level of technical compliance with relevant recommendations, they have struggled on effectiveness.

Factors that explain the disparity between Technical Compliance and Effectiveness.

A noticeable trend is that more countries are complying better with the FATF recommendations but are not necessarily effective to immediate outcomes. The existent disparity is due to a number of factors.

Firstly, timing has been critical to facilitating technical compliance in comparison to effectiveness. This is largely because the 40 recommendations were introduced in 1990 compared to the 11 IOs introduced in 2013.⁹⁷ Hence countries have had more time to get acquainted with the former. More so, it can be argued that countries need more time for technical compliance to translate to effectiveness. However, the question then becomes, how much time is sufficient? In 2013, when the FATF introduced the IOs, the position was that review of effectiveness will take place 5 years post-mutual evaluations. From the assessments above, countries are struggling to catch up. It begs the question, is 5 years enough or are countries simply rubber-stamping technical compliance (in the sense of transplanting laws or introducing institutions to conform with the FATF standards) by the letter of the law whilst ignoring real avenues for compliance and effectiveness?

These questions lead us to the second point on transplantation in the absence of pre-conditions for effective compliance. Certain preconditions are critical for compliance. For instance, strong legal frameworks, political will, strong and independent regulatory supervision amongst others. These factors are absent, (particularly in developing economies) even with transplanted laws. Technical compliance is likely to fall short on critical points, which will then translate to shortcomings on effectiveness. This point is noted by the Basel Institute of Governance, which finds that supervision is ineffective across various countries due to the limited regulatory powers, focus on criminal prosecution with limited consideration for civil or administrative powers, limited resources and poor coordination.⁹⁸

Thirdly, lack of data. With assessing technical compliance, the FATF clarifies that countries are adjudged on the data, laws and information they possess. With developing countries, data/information deficit, technical compliance is not necessarily accurate, a situation that affects the effectiveness of countries.

Lastly, lack of understanding with regards the risk countries face. Statistics reveal that quite many countries struggle with undergoing the risk-based approach, limiting their ability to carry out a thorough risk-resource allocation. Where risk allocations are uncertain, it undermines the eventual effectiveness ratings of countries.

⁹⁷FATF, 'Remarks at the RUSI meeting on the Financial Action Task Force Strategic Review' (FATF, 2019<<https://www.fatf-gafi.org/publications/fatfgeneral/documents/rusi-fatf-strategic-review.html>> accessed 7 September 2020).

⁹⁸ Basel Institute of Governance, 'Basel AML Index: 9th Public Edition: Ranking Money Laundering and Terrorist Financing Risks Around the World' (July 2020)

Outliers: Countries where Technical Compliance and Effectiveness Levels Align

Data examined shows that whilst countries have generally attained average level of technical compliance, the problematic issue is with the effectiveness of their measures. Some countries, which indeed are outliers, have had their effectiveness level align with their technical compliance. This section will consider three countries and two of their IOs in line with the relevant recommendations.

Bermuda

On IO 1, Bermuda is rated highly effective. Similarly, on the relevant recommendations, the country has scored highly. With recommendation 1 (applying risk and risk-based approach), Bermuda ranks fully compliant. This is also the case with recommendation 2 (national cooperation and coordination) and recommendation 33 (statistics). On recommendation 34 (Guidance and feedback), Bermuda performs slightly less than excellent in its ranking as largely compliant. Nevertheless, there is an overall semblance of technical compliance matching the effectiveness levels.

Additionally, with regards IO 6, Bermuda is ranked as substantially effective. On relevant recommendations, the country performs excellently well. The country is ranked fully compliant on recommendation 29 (financial intelligence units), 30 (responsibility of law enforcement and investigative authorities) and 31 (powers of law enforcement and investigative authorities). However, on recommendation 32 (cash couriers), the country is partially compliant. This ranking largely contributes to the country's substantial-effectiveness record.

United Kingdom

The United Kingdom has a similar standing with Bermuda with regards to its technical compliance levels aligning with its effectiveness levels. With IO 1, the UK is ranked as highly effective. On three relevant recommendations, the country is ranked as fully compliant. These are on recommendation 2 (national cooperation and coordination), recommendation 33 (statistics) and recommendation 34 (guidance and feedback). On recommendation 1 (apply risk and risk-based approach), the UK is, however ranked as largely compliant. However, a clear pattern is the synchronisation of technical compliance and effectiveness.

With regards IO 10, a similar pattern is evident. The UK is ranked as highly effective. This privileged rating is evident across relevant recommendations. For instance, the UK is fully compliant on recommendation 4 (confiscation and provisional measures) and recommendation 8 (non-profit organisations). It is also largely compliant on recommendation 1 (applying risk and risk-based approach) and recommendation 6 (targeted financial sanctions related to terrorism and terrorist financing). The UK's highly ranked technical compliance is instrumental in its high effectiveness ratings.

Spain

On IO 1, Spain is rated as substantially effective. Similarly, on the relevant recommendations, the country has scored highly albeit even better. With recommendation 1 (applying risk and risk-based approach), Spain ranks as fully compliant. This is also the case with recommendation 2 (national cooperation and coordination), recommendation 33 (statistics) and recommendation 34 (Guidance and feedback). Irrespective of the slight disparity between technical compliance and effectiveness levels, there is an overall semblance between the statistical figures.

Additionally, with regards IO 6, Spain is ranked as highly effective. On relevant recommendations, the country performs excellently well. The country is ranked fully compliant on recommendation 29 (financial intelligence units), 30 (responsibility of law enforcement and investigative authorities), 31 (powers of law enforcement and investigative authorities) and recommendation 32 (cash couriers).

Case Study: Where A Country Performs Poorly on Technical Compliance but Highly on Effectiveness

The United States of America is a prime example of this peculiar situation. Records indicate that the country performs poorly on some FATF recommendations but records high effectiveness levels. Hence, this section will consider 4 IOs where the USA was rated as highly effective.

On IO 8, the USA is rated as highly effective. However, an analysis of the relevant recommendations challenges this IO outcome. For instance on recommendation 1, the USA is ranked as partially compliant and on recommendation 4 – the country is ranked as largely compliant. The country is only fully compliant on recommendation 32. Indeed, these statistics are inadequate to culminate in a high effective rating, particularly in comparison to the countries examined above.

Similarly, on IO 9, the USA is also rated as highly effective. This may be considered reasonable given that on recommendation 9 and 30, the country is fully compliant. However, on recommendations 31 and 39, the country is rated as largely compliant, an indication that it falls short of full compliance, therefore calling its effectiveness ratings into question.

The USA's IO 10 highly effective rating also demonstrates a similar thread. On recommendation 1, the country ranks as partially compliant. Whilst on recommendations 4, 6 and 8, the country ranks as largely compliant. Again, where the country falls short on these critical recommendations, it is indeed questionable.

Also, with IO 11, the USA records high effectiveness however relevant recommendations paint a different picture. On recommendations 2, the country is fully compliant. However, on recommendation 7 and 15, the country is ranked as largely compliant. Whilst the effectiveness rating seemingly conveys a message of a fully compliant technical compliance, this is not the case.

5. Examination of the FATF's Methodology and its impact on Compliance

An examination of the FATF methodology reveals the opportunities for interpretative loopholes which can impact on the assessor's technical and effectiveness rating of countries assessed.

The FATF's methodology was designed by the FATF alongside the IMF, the World Bank and the FATF-Style Regional Bodies (FSRBs), and the IMF's executive Board endorsed it in 2004. The FATF methodology is designed for assessors to evaluate each country on their compliance with the FATF recommendations and immediate outcomes. For each of the FATF 40 recommendation and immediate outcome, the methodology outlines the criteria against which assessors may determine whether a country is compliant or effective. The methodology, which facilitates an assessment of technical compliance and effectiveness, presents an integrated analysis of the extent of a country's ability to maintain a sturdy AML/CFT system. More particularly, it assists assessors in identifying systems and mechanisms developed by countries with different legal, regulatory and financial frameworks to implement effective AML/CFT systems.

Historically, FATF's country assessments focused on technical implementation only. This involved a desk-based assessment of the building blocks of an AML/CFT systems, including the relevant and institutional framework of the jurisdiction coupled with the powers and procedures of competent authorities. However, with continuous high-level, complex money laundering and terrorist financing incidences, the FATF enhanced its methodology to include a focus on effectiveness. This includes an in-country assessment of the extent to which countries achieve set outcomes that are fundamental to a functional and effective AML/CFT system with expected results based on the ML/TF risk profile of the jurisdiction.⁹⁹

The strategy that synchronises technical and effectiveness compliance shed light on countries that had previously ranked highly on technical compliance but failed on effectiveness. Such countries, including Ghana,¹⁰⁰ were listed as countries with strategic deficiencies requiring increased monitoring.¹⁰¹ So far, the effectiveness introduction has been deemed to be working¹⁰² as countries are now realising the coercive powers that accompany mutual assessments. However, it also highlights countries like the US, which poorly on technical compliance but highly on effectiveness.

⁹⁹APG, 'Mutual Evaluations' (APG) < <http://www.apgml.org/mutual-evaluations/page.aspx?p=a901712a-54e4-4b3b-a146-046aefca6534> > accessed 4 September 2020.

¹⁰⁰ GIABA, 'First Enhanced Follow-Up Report and Technical Compliance Re-Rating: Ghana – Mutual Evaluation Report' (GIABA, June 2018) < https://www.giaba.org/media/f/1067_ENG%20-%20Revised%20Post%20Plenary%20FUR%20Ghana%20-%20June%202018.pdf > accessed 3 September 2020; GIABA, 'Resume Analytique' (GIABA) < https://www.giaba.org/media/f/1061_FRE%20-%20Final%20R%C3%A9sum%C3%A9%20Analytique%20E.M%20Ghana%20-%202018.pdf > accessed 6 September 2020.

¹⁰¹ FATF, 'Jurisdictions under Increased Monitoring – 21 February 2020' (FATF, February 2020) < <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html> > accessed 19 September 2020.

¹⁰² Ibid.

The FATF methodology has been seen to guide the AML/CFT strategy. For instance, with the fourth round of Mutual Evaluations, a noticeable shift identified is the concentration on non-banking remittances, payment organizations, money exchanges and the insurance sectors as opposed to just the banking and financial sectors.¹⁰³

The FATF methodology recognises that countries may indeed misrepresent their compliance and/or effectiveness to assessors in trying to highlight their best features. Therefore, whilst the Methodology concedes that assessors should not conduct an independent national risk assessment, it calls for assessors to not accept a country's risk assessment as correct. Hence, it beacons on assessors to consider

*'the rigor of the processes and procedures employed; and the internal consistency of the assessment (i.e. whether the conclusions are reasonable given the information and analysis used)'.*¹⁰⁴

More so, the FATF methodology mandates that in relevant situations, assessors should also validate the reliability of information sources on a country's risks to identify any differences warranting further investigations. However, such validation would not be considered necessary where the assessors consider that the country's risk assessment is reasonable.

However impressive the FATF Methodology is, there are concerns. For instance, the FATF methodology presents the illusion that its benchmarking processes are supposed to highlight the best practice attainable by countries. Indicating a purpose focused on fostering creativity and encouraging improvements whilst giving countries the opportunity to learn from each other.¹⁰⁵ The implication, however, is that states are urged to emulate these standards, failing which they would face enforcement sanctions. The benchmarking process, which is a ground for sanctioning countries, is however not infallible.

Firstly, the FATF assessment reports may be unreliable. For instance, monitoring and measurement of compliance is done through mutual evaluations, self-assessment surveys and progress reports¹⁰⁶ carried out by FATF staff in agreement with related FIs and criminal justice agencies. The ratings produced from this technical exercise are however generalized, whilst giving the impression of democratic standard setting. For example, in India as with most countries, only about three financial institutions are assessed along with several regulatory bodies. In a country with over 93 commercial banks, an assessment of only three FIs cannot be reflective of actual compliance levels. It is immaterial that an examination of regulatory bodies, criminal justice

¹⁰³ FATF, 'Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations' (FATF, October 2019) < <https://www.fatf-gafi.org/publications/mutualevaluations/documents/4th-round-procedures.html> > accessed 5 September 2020.

¹⁰⁴ FATF, 'Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems' (FATF, October 2019) < <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf> > accessed 4 September 2020.

¹⁰⁵ John Williams, Cheryl Brown, Anita Springer, 'Overcoming Benchmarking Reluctance: A Literature Review' [2012] 19 (2) *Benchmarking: An International Journal* pp 255 -276.

¹⁰⁶ Kern Alexander, Rahul Dhumale, John Eatwell, *Global Governance and International Standard Setting* (OUP 2006) 71.

agencies and relevant ministries are also carried out, as a 'clear picture' can only be obtained directly from financial institutions, which serve as first point of call, providing information to other bodies. Listing a country based on an unrepresentative assessment of the true position of compliance levels is unsatisfactory. Lombardo asserts that the judgment of performance is strictly formal, assessing the legal implementation of the standard does not adequately reflect the de facto attainment of the policy goals contained in the standard.¹⁰⁷

Secondly, the subjective nature of information collection by assessors is also problematic. For instance, with risk assessment, the methodology guides that assessors should 'focus on high-level issues, not fine details and should take a *common-sense approach* as to whether the results are reasonable'. This guide, however facilitates a subjective approach by assessors who may not be representative of the national risk assessment of countries. Additionally, the FATF methodology has an open and closed perception-based index that asks specific questions linked to industry experience instead of simply measuring the perception of money laundering in a particular country. However, the variance in such reports as the Basel AML Index 2015 and the FATF NCCT 2015 list demonstrates the difficulty of subjective criteria.¹⁰⁸ For instance, whilst the FATF list Algeria, Ecuador and Myanmar as countries with strategic AML/CFT deficiencies and high risk, Basel AML Index only list Myanmar as one of the top 10 highest risk countries.

Additionally, whilst the FATF MER-derived statistics of China list it as one of the most compliant countries, the Basel AML Index classifies China as a country with high risk.¹⁰⁹ The result is that key institutions in certain jurisdictions may stretch information on effectiveness to meet the policy objectives of the most renowned standard setter.¹¹⁰ Countries in the lower regions of the ranking would be the most likely to engage in these sharp practices to avoid associated financial stigma and reputational damage, indicating existent information asymmetry.

Thirdly, the language of assessors is critical in undermining compliance assessments. The FATF methodology is written in English. In non-English native countries, assessments have to be translated to a foreign language, and assessments may indeed occur in a foreign language. In translation, material understanding may be lost. The critical issue with this is that it affects the comparability of results but most importantly, it may undermine the actual compliance levels of countries.

This report submits that the FATF methodology has evolved. However, it still creates interpretative loopholes that can impact assessors' technical and effectiveness ratings of assessed countries. Consequently, the assessors' subjectivity colours 'their interpretation and consequently hinder compliance assessments.

¹⁰⁷ Dean Lombardo, *Benchmarking: An Adviser's Guide to Client Engagement Model* (Lulu.com, 2013).

¹⁰⁸ International Centre for Asset Recovery, 'Basel AML Index 2015 Report', <https://index.baselgovernance.org/sites/index/documents/Basel_AML_Index_Report_2015.pdf> accessed 14 August 2020; Thomson Reuters, 'Country Risk Ranking' (Thomas Reuters) <<https://risk.thomsonreuters.com/products/thomson-reuters-country-risk-ranking>> accessed 14 August 2020

¹⁰⁹ Ibid.

¹¹⁰ Wendy Nelson Espeland and Michael Sauder, 'Rankings and Reactivity: How Public Measures Recreate Social Worlds' [2007] 113 (1) American Journal of Sociology 1. 28.

6. Analysis by Assessment Bodies

This section scrutinizes whether the composition of assessment bodies affect the compliance outcomes of countries.

Composition of Assessment Bodies.

Assessments of countries are usually carried out by secretariat staff and FATF member country assessors¹¹¹ or, in particular cases, a composition approved by the FATF President.¹¹²In joint evaluations, assessment teams include assessors from FATF and relevant FSRB countries supported by the secretariat. For some FATF evaluations, the Secretariat, with the assessed country's consent, may invite an expert from an FSRB country or the IMF/World Bank to join the assessment team. In total, assessment teams usually consist of five to six experts comprising of at least, one legal, one financial and one law enforcement expert. Assessor experts are drawn from a range of institutions such as financial intelligence units, departments of justice, securities regulatory bodies, revenue agencies and international financial institutions amongst others. The assessment team is supported by members of the FATF secretariat.

Assessor selection is dependent on a variety of factors, including;

- a. Relevant operational and assessment experience
- b. Language of the evaluation
- c. Nature of legal system (civil or common law) and institutional framework, and
- d. Knowledge of specific characteristics of the jurisdictions (economic and financial sector composition, geographical factors, trading or cultural links).

Assessors are expected to be knowledgeable about the FATF standards and methodology for assessment and trained on the mutual evaluation process. This is because, they are expected to conduct a fully collaborative evaluation, albeit leading on their area of expertise. Assessments are usually desk-based for a period of six months prior to onsite visits. During onsite visits, assessors spend 10 days in the country, assessing select private and public sector offices for technical compliance levels, and more recently, the effectiveness of their AML/CFT regime.¹¹³ These in-country assessments are based on prior research at the secretariat, using information from relevant institutions on the reviewed countries.

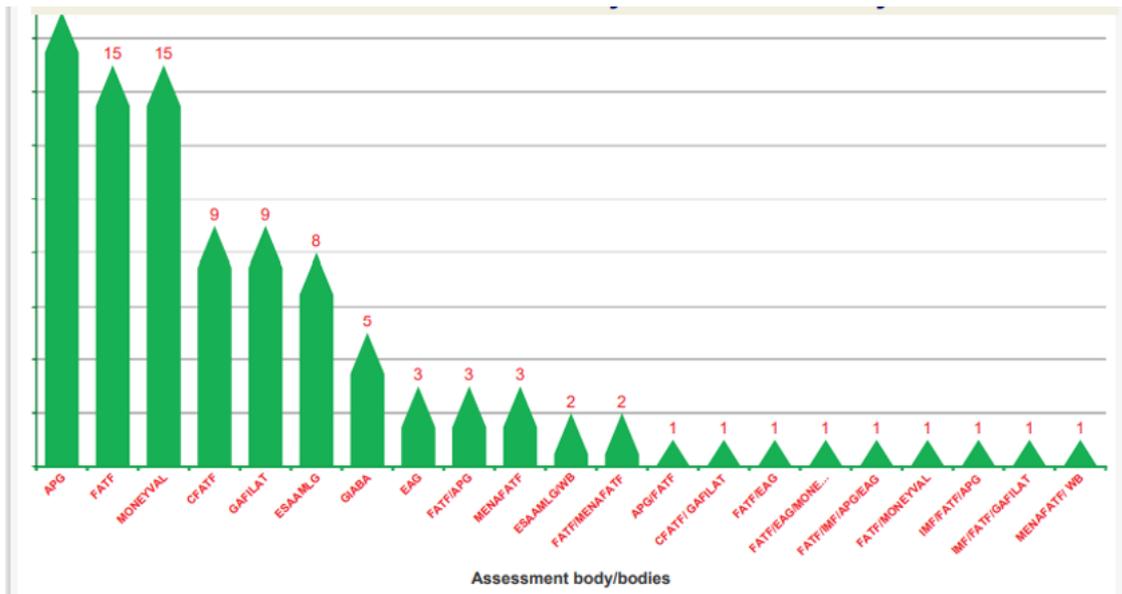
Analysis by Number of Evaluations by Assessment Bodies/Joint Assessors.

Analysis by Assessment Bodies/Joint Assessors

¹¹¹ FATF, 'Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations' (FATF, October 2013) <<http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF-4th-Round-Procedures.pdf>> accessed 1 September 2020.

¹¹² Ibid.

¹¹³ FATF, 'Mutual Evaluations' (FATF) <[http://www.fatf-gafi.org/publications/mutualevaluations/more/more-about-mutual-evaluations.html?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/more/more-about-mutual-evaluations.html?hf=10&b=0&s=desc(fatf_releasedate))> accessed 01 September 2020.



So far, a review of assessment bodies based on the 2012 -2013 standards revealed that APG had the highest number of assessments at 17. Followed by FATF and MONEYVAL with a total of 15 assessments each. Two FSRBs, CFATF AND GAFILAT had a total of 9 assessments each. This was followed by ESAAMLG with 8 and GIABA with 5. EAG, FATF/APG (a joint assessment), MENAFATF had 3 assessment each. Two joint assessments followed with the ESAAMLG/WB and FATF/MENAFATF recording a total of 2 assessments each. On the other side of the extreme, the following assessment bodies (APG/FATF, CFATF/GAFILAT, FATF/EAG/MONEYVAL, FATF/IMF/APG/EAG, FATF/MONEYVAL, IMF/FATF/APG, IMF/FATF/IGAFILAT, AND MENAFATF/WB) which conducted joint assessments had 1 assessment each.

Analysis by Effectiveness Ratings by Assessment Bodies

Total High Effectiveness ('HE') ratings by Assessment Body/Bodies

FATF 7	FATF/APG 5	FATF/MONEYVAL 3	FATF/EAG/MONEYVAL 2	CFATF 1	GAFILAT 1	APG 0
APG/FATF 0	CFATF/GAFILAT 0	EAG 0	ESAAMLG 0	ESAAMLG/WB 0	FATF/EAG 0	FATF/IMF/APG/EAG 0
FATF/MENAFATF 0	GIABA 0	IMF/FATF/APG 0	IMF/FATF/GAFILAT 0	MENAFATF 0	MENAFATF/WB 0	MONEYVAL 0

NB: Please, note that the data is based on the evaluations conducted by each body or bodies with regard to its membership in the case of FSRBs/FATF

Statistics from the 2012-2013 standards show that FATF has a total of 7 high effectiveness, which is the highest total effectiveness by a rating assessment body. The second highest rating by assessments bodies are jointly by the FATF and FSRBs, with the FATF/APG having a total of 5. This is followed by FATF/MONEYVAL with a total of 3 and FATF/EAG/MONEYVAL with a total of 2 while FSRBs - CFATF AND GAFILAT had done 1 assessment each.

On the other hand, APG and MONEYVAL, alongside other joint assessors (APG/FATF, CFATF/GAFILAT, EAG, ESAAMLG, ESAAMLG/WB, FATF/EAG, FATF/MENAFATF, GIABA, IMF/FATF/APG, IMF/FATF/GAFILAT, MENAFATF, MENAFATF/WB) had the lowest number of high effectiveness with 0.

Analysis by Technical Compliance

An analysis of the assessment body's level of compliance shows that FATF has the highest total number of compliant with a total of 167 total compliant followed by MONEYVAL with 133. Other FSRBs - GAFILAT, APG, and CFATF have 105, 99 and 95 total compliant, respectively. On the contrary, the assessment bodies with the least number of compliant are joint assessors - MENAFATF/WB with total compliant of 9 while FATF/EAG/MONEYVAL and FATF/IMF/APG/EAG have 7 each. This was followed by MENAFATF who had 6, and IMF/FATF/GAFILAT with a total compliant of 5.

Assessment Expert Composition by Most Compliant Countries.

Of the top 5 most compliant countries, three are evaluated by the FATF, the APG and CFATF evaluated one country each. Interestingly, the CFATF's evaluated country (Bermuda) ranks as the overall compliant jurisdiction. Bermuda was evaluated by a six-member assessment team comprised of regional financial, legal and law

enforcement experts.¹¹⁴ Additionally, the two mission-lead staff were of CFATF secretariat.¹¹⁵ The FATF assessed Spain and the United Kingdom.¹¹⁶ Spain's assessment team comprised of FATF member countries experts alongside IMF experts.¹¹⁷ The United Kingdom's assessment team mirrors Spain's with the exception of the involvement of international financial institutions.¹¹⁸ Macao, China, the fourth highest compliant country, was assessed by the APG with representative experts from FATF and FSRB.¹¹⁹ Finally, Saudi Arabia was assessed by the FATF with legal, financial and law enforcement experts from FATF member countries.¹²⁰

¹¹⁴ Elisabeth Lees, Office of the Director of Public Prosecutions, Cayman Islands (Legal Expert). Donolia Cuffy, Financial Services Commission, Montserrat (Financial Expert), Dwayne Baker, Financial Intelligence Agency, Turks and Caicos Islands (Law Enforcement Expert), Charles Virgill, Central Bank of Bahamas (Financial Expert)

¹¹⁵ Dawne Spicer, Executive Director, CFATF Secretariat (Mission Leader), Deputy Executive Director, CFATF Secretariat (Co-Mission Leader), Report review: Mrs Vyana Sharma, Ministry of Attorney General and Legal Affairs, Trinidad and Tobago and Matthew Shannon, APG Secretariat & FATF Secretariat.

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¹¹⁷ Maud Bökkerink, Dutch Central Bank (DNB), Kingdom of the Netherlands (Financial expert, Nicolas Choules-Burbidge, Office of the Superintendent of Financial Institutions, Canada (Financial expert); Paul DerGarabedian, Office of Terrorist Financing and Financial Crimes, Department of the Treasury, United States (Financial intelligence unit (FIU)/law enforcement expert); Esteban Fullin, GAFISUD Secretariat (legal expert); Sylvie Jaubert, TRACFIN, France (FIU/law enforcement expert); Davide Quattrocchi, Guardia di Finanza, Italy (law enforcement/legal expert); Nadine Schwarz, Legal Department, IMF (legal expert); Rick McDonell, Tom Neylan and Valerie Schilling of the FATF Secretariat. The report was reviewed by: António Folgado, Ministry of Justice (Portugal); John Ringguth (MONEYVAL Secretariat); and Golo Trauzettel, Federal Financial Supervisory Authority (BaFin) (Germany).

¹¹⁸ Ms Havva Börekci Şahan, MASAK (FIU of Turkey) (FIU expert), Mr. Damian Brennan, Central Bank of Ireland (financial expert), Mr. Jimmy Everitt, The Swedish Companies Registration Office (SCRO) (legal expert), Mr. Nikolas Hecht, Federal Ministry of Justice and for Consumer Protection of Germany (legal expert), Ms. Anthea Li Suk Kwan, Department of Justice, Hong Kong, China (legal expert), and Mr. Scott Rembrandt, United States Department of Treasury (financial expert) with the support of Ms. Valerie Schilling, Ms. Shana Krishnan and Ms. Liz Owen, Policy Analysts, FATF Secretariat. The report was reviewed by: Mr. Claude LeFrançois, Department of Justice of Canada; Mr. Phineas R. Moloto, Financial Intelligence Centre of South Africa; and Mr. Tomoki Tanemura, Ministry of Finance of Japan.

¹¹⁹ Ms Patrícia Godinho Silva, Legal Advisor - Litigation Department, Legal Centre, Portuguese Securities Markets Commission (CMVM), Portugal (legal expert), Ms Rachel Vaughan, Assistant Director for Asia/Africa, Office of Global Affairs, Terrorist Financing and Financial Crimes, U.S. Department of Treasury, United States (legal expert), Mr Alistair Sands, Director, Strategic Intelligence, Australian Transaction Reports and Analysis Centre (AUSTRAC), Australia (FIU expert), Mr Foo Wei Min, Deputy Superintendent of Police, Royal Malaysian Police, Malaysia and Group of International Finance Centre Supervisors (GIFCS) representative (law enforcement expert), Mr Andrew Holmes, Team Leader Financial Integrity, Department of Internal Affairs, New Zealand (financial expert), Mr Alvin Bermido, Bank Officer/Financial Investigator, Anti-Money Laundering Council Secretariat, Philippines (financial expert), The assessment process was led and supported by Mr Lindsay Chan, Director, Mutual Evaluations and Ms Marnie Campbell, Deputy Director, Mutual Evaluations, both of the APG secretariat. The report was reviewed by the FATF secretariat, IMF and Md. Rokon-Uz-Zaman, Deputy Director Bangladesh Financial Intelligence Unit (BFIU), Bangladesh.

¹²⁰ Ms. Rand Gharndoke, Anti Money Laundering & Counter Terrorist Financing Unit, Jordan (legal expert); Mr. Amr S. Rashed, Egyptian Money Laundering and Terrorist Financing Combating Unit, Egypt (law enforcement expert); Ms. Kate Eyerman, Department of the Treasury, United States (legal expert); Mr. Thomas Mathew, Reserve Bank of India, India (financial expert), Mr. Qipeng Xu, People's Bank of China, China (financial expert), Mr. Alastair Bland, Canada Revenue Agency, Canada (law enforcement expert); Mr. Tom Neylan, Mr. Neil Everitt, and Mr. Francesco Positano, FATF Secretariat; Mr. Sofiene Marouane and Ms. Shatha Ismaeel, MENAFATF Secretariat; The report was reviewed by: Mr. Anders Worren (Ministry of Justice and Public Security, Norway); Nicola Muccioli (Agenzia Di Informazione Finanziaria, San Marino); Mr. Charles Nugent-Young (Department of Home Affairs, Australia); and Mr. Abdelrahman Al-Akhras (Financial Follow-up Unit, Palestinian Authority).

Assessment Expert Composition by Least Compliant Countries.

Of the top 5 least compliant countries, none of them were evaluated by the FATF, IMF or World Bank. Vanuatu's evaluation was done by the APG. Uganda and Botswana were evaluated by the ESAAMG. Haiti by CFATF and Mauritania by MENAFATF. Vanuatu was evaluated by a team of assessors drawn from China's Department of Justice, Papua New Guinea's Office of the Prosecutor, New Zealand's regulatory bank's officer, a US Department of Treasury officer amongst other secretariat members.¹²¹ These experts are representative of APG's regional body members. Uganda and Botswana were evaluated by ESAAMG. Botswana ranked as the least compliant country. Assessors evaluated both countries from regulatory institutions within the region.¹²² This trend is noticeable within Mauritania as well, however, this was subject to further review by an IMF regional advisor.¹²³ Haiti was evaluated by CFATF, albeit with experts representing non-member countries, including Ivory Coast and Spain, subject to review by the FATF secretariat.¹²⁴

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¹²⁴ Romain Ouattara, Legal Expert Cote d'Ivoire, Marc Richard, Financial Expert, Rafael Guisasola, Financial Expert, Christophe Vidal, Law Enforcement Expert, Pedro Harry, Law Enforcement Advisor Misson Leader (CFATF Secretariat), Roger Hernandez, Financial Advisor Co-Misson Leader (CFATF Secretariat), Report

Assessment Expert Composition by GIABA Countries.

Ghana, Burkina Faso, Cabo Verde, Mali and Senegal are assessed by GIABA. For instance, Burkina Faso's assessor experts are drawn from the region, including Senegal, Guinea, Mali and Cote d' Ivoire, supported by the GIABA secretariat.¹²⁵ This thread is noted in Cabo Verde¹²⁶ and Mali¹²⁷, and Senegal.¹²⁸

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¹²⁸ Mohamed Lamine CONTE, Director of Banking Supervision at the Central Bank of the Republic of Guinea (Financial Expert.); Ali IDI, Secretary General, Niger-FIU (Financial Expert); Jean Abossuwe ANADE, Chief Police Commissioner, Director of Financial Intelligence at the Togo-FIU (Law Enforcement/Operational Expert); Cyprien DABIRE, Magistrate, Head of the Department of Legal and Institutional Affairs at the Burkina Faso-FIU (Legal Expert);

o Fulgence Leba DIECKET, Magistrate, Head, First Cabinet, Ministry of Justice of the Republic of C.te d'Ivoire (Legal Expert). The team was supported by the GIABA Secretariat represented by Dr. 'Buno NDUKA, Director of Projects and Programmes; Beno.t Djaha KONAN, Law Enforcement Officer; Gina WOOD, Legal Officer; Karnon LOFIGUE, Programme Officer and Yacuba SESAY, Translator/Interpreter. The report was reviewed by: Robert TONDE (Operational Expert), Technical Advisor to the Minister of Economy, Finance and Development of Burkina Faso; and Cyriaque .douard DOSSA (Legal Expert), Magistrate, Ministry of Justice, Benin Republic.

Effect of Composition on Countries Compliance Outcomes.

An evaluation of the mutual evaluation reports by the relevant assessment bodies illustrates that the most established assessment body, FATF had recorded 167 compliance ratings, the highest attained by any assessment body. More so, of the top 5 countries, the FATF assessed 3 of them. Of the least compliant countries, the FATF assessed none of them. Conversely, FSRBs have assessed a lower number of countries. Yet, its assessed countries record lower compliance and effectiveness. Unsurprisingly, the 5 least compliant countries were assessed by FSRBs. This therefore begs the question, does the assessment body and its expert composition affect the compliance outcomes of countries?

What Likely Factors Can Explain Assessment Body/ Expert Composition Effect on Countries' Assessment Outcome?

A variety of factors may explain the assessment outcomes disparity.

Firstly, the experience of the assessment bodies. The FATF has conducted more MERs, therefore, have cultivated a stronger understanding of the assessment countries, the contextual issues paramount within assessed countries, and countries' compliance capabilities. This experience, which involves deep understanding of the FATF recommendations and methodologies, span at least 30 years – translates into benefits for this body. For instance, whilst the responses required by the FATF from countries are fact-based as regards the law in place to combat ML/TF, countries are also required to state the result of their risk assessments to guide the process. This is not a factual exercise and countries struggle to carry out risk assessments. Countries that cannot carry out a comprehensive risk assessment may misinform the FATF about their true risk position. Furthermore, even when countries are aware of the risk they face, they are often unwilling to share this information. In such circumstances where countries may engage in a hostile manner, experience prevails as FATF assessors are better able to close the information asymmetry gaps and assess confidently in comparison to FSRB assessors.

Secondly, the disparity in assessment cycles mystifies comparison based on assessment outcomes. As this document has demonstrated, countries are in different assessment cycles and assessors are equally in different assessment cycles. One cycle of mutual evaluation is completed before the next, which affects the compliance outcomes of countries. This is largely because almost every cycle comes with changes in the standards that need new understanding of the process. What is then noticed is that countries with higher compliance outcomes would usually have gone through more cycles of evaluations and have becomes more familiar with the process. Additionally, they would have been followed up on their shortcomings and had the opportunity to address highlighted shortcomings. Coincidentally, these are usually more advanced countries that have strong documentation processes for the FATF to act on in determining the compliance ratings of countries.

Thirdly, assessment training and selection. Arguably, the training quality determines the quality of assessors. The nature of training is arguably standardized as across

assessment bodies, the syllabus is the same. Additionally, FSRBs hosts training with presence from the FATF secretariat. Training usually hold over a 5-day period. During training, assessors are acquainted with the theoretical and practical aspects of the FATF recommendations, methodology, and assessment processes. They are trained on the requirements of the mutual evaluation reports, report drafting, interview conducting process etc. Assessors then engage in group-based simulation exercises. Not every trained assessor engages in assessment as the assessment body have the privilege of picking potentially (most qualified) well trained experts and paring them with experienced assessors to engage in assessments. Merit requires the selection of the most qualified assessors who are knowledgeable on the elements of the methodology, analytically capable and competent. However, human element cannot be ruled out – as such, the selection of experts may not be the best or most qualified, a factor that can affect compliance outcomes, particularly for FSRBs.

Fourthly, assessment language. The primary assessment language is English, however non-English speaking countries are equally assessed. This is somewhat problematic because translation comes with grammatical, syntactical and rhetorical problems. It would be overly simplistic to assume that this challenge is addressed by hiring French speaking assessors, as such solution risks undermining the possibility of deficiencies in translation, especially with lack of a proficiency translator. For instance, names of laws, such as '*La loi 'informatique et Libertés du 6 janvier 1978,'*' is often translated into 'the Data Protection Law'.¹²⁹ There are different shades to the meaning and historical context of the law that may get lost in translation. This indicates that knowing the historical context, audience and specialised terms is critical to appropriate appraisal in French or any other non-English assessment.

Underlining these factors are two critical issues, the governance and the resource availability to assessment bodies. The FATF methodology is the only common threat between these institutions. The governance of assessment bodies is distinctive as each body is structured differently in terms of the mandate, resources, staffing capacity, and nature (for instance, the AEG is independent whilst the APG is intergovernmental) of the institution.

7. Analysis by Timeline

This section analyses the most and least compliant countries already identified on the basis of the number of the mutual evaluations they have undergone. In essence, it examines whether countries that have gone through more evaluations are more likely to attain a higher number of compliance.

¹²⁹Mary McArthur, 'The Challenges of Translating Into French' (Venga) < <https://www.vengaglobal.com/blog/challenges-translating-french/> > accessed 10 September 2020.

Most Compliant Countries

Bermuda

Bermuda has passed through 4 rounds of evaluation and has the highest compliant country with an overall percentage of 91.88% and a weighted score of 147 of 160.¹³⁰ With regards to specific FATF recommendations, Bermuda is compliant with 28 recommendations and records no non-compliance.

Bermuda underwent a 3rd Round Mutual Evaluation in 2008 and since then, its AML/CFT framework has undergone significant changes which has strengthened the overall regime. There has been significant improvement to the country's AML/CFT technical compliance status since the last mutual evaluation exercise conducted in 2008. This has been demonstrated by the enactment and amendment of several key pieces of legislation. There has also been the implementation of several policy initiatives. Notable is the amendment of the Proceeds of Crime Act 1997 (through the enactment of the Proceeds of Crime (Miscellaneous) (No. 4) 2018 Act) which formally identified the National Anti-Money Laundering Committee (NAMLC) as the entity responsible for coordinating activities to cyclically identify, assess and understand Bermuda's ML and TF risks. As previously noted, Bermuda has undertaken three national risk assessment (NRA) exercises. The organization and coordination of these NRAs has been led by the NAMLC and carried out by various working groups.¹³¹

The effectiveness of the measures to mitigate the risks are however limited by the recent implementation of some of the measures, particularly within the DNFBPs sectors. However, it should be noted that there were factors that mitigated the inherent risks in these sectors even before they were brought into scope, such as the non-acceptance of cash by most of the dealers in precious metals and stones (DPMS); real estate purchases subject to statutory immigration controls; the vetting of all beneficial owners (BOs) of legal persons by the BMA; a moderate corporate register; the limited number of PTCs not managed by licensed TSPs or CSPs, and the fact that there were only two (2) small unregistered lending institutions.

The main technical compliance strengths are in the areas of understanding ML and TF risks at the national and institutional levels, national cooperation and coordination, customer due diligence, record keeping, internal controls, legal persons and arrangements, criminalisation of ML and TF and the responsibilities of law enforcement and investigative authorities. There were amendments to legislation immediately prior to the onsite to address matters such as the enhancement of beneficial ownership requirements and the registration of PTCs as Non-Licensed Persons (NLPs). TSPs act as trustees on behalf of approximately 90% of the 317 PTCs registered in Bermuda and have been subject to licensing and AML/CFT control since 2008. PTCs have been subject to Bermuda's Exchange Control regime since

¹³⁰ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020); IFC, 'Bermuda: Ownership Register will be Accessible to Public' (IFC, July 2020) <<https://www.ifcreview.com/news/2020/july/bermuda-ownership-register-will-be-accessible-to-public/>> accessed 4 August 2020.

¹³¹ CFATF, 'Anti-money laundering and counter-terrorist financing measures – Bermuda, Fourth Round Mutual Evaluation Report' (CFATF, 2020) <<https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/CFATF-Mutual-Evaluation-Report-Bermuda-2020.pdf>> accessed 9 September 2020.

inception. TSPs who act as trustees on their behalf have also been subject to licensing and AML/CFT control since 2008. Ten percent (10%) of the PTCs were found to be managing their underlying trusts in-house and the BMA requires them to register under the AML/CFT framework as NLPs. These mitigating factors were in place prior to the legislative amendments, however, the effectiveness of the actual amendments themselves to further mitigate ML/TF/PF risks could not be determined at this early stage. Despite the solid responsibilities and authority given to law enforcement and investigative authorities, there are low levels of restraint and recovery of funds utilized in illicit activities particularly considering Bermuda's status as an IFC and its exposure to ML risks. The low restraints are primarily because restraints can only be obtained immediately prior to a charge being laid.¹³²

Spain

Spain has passed through 4 rounds of evaluations and currently ranked 2nd highest country in terms of compliance with an overall percentage of 88.75% and a weighted score of 142 of 160.¹³³ As earlier stated, Spain is fully compliant with 25 recommendations.¹³⁴ On record, there is no recommendation that Spain is not compliant with.

The overall picture is positive in Spain, but improvement is needed in a few key areas. Spain's laws and regulations are technically compliant, or largely compliant, with most of the FATF Recommendations, although there are deficiencies in some areas, most notably regarding targeted financial sanctions and wire transfers. In terms of effectiveness, Spain performs well in some areas, including financial intelligence and confiscation. Spain demonstrates a high level of understanding of its ML/TF risks informed by a wide variety of good quality risk assessments from several sources, although these have not been brought together in a single national risk assessment (which is not a deficiency). Spain has developed a sound AML/CFT strategy, using its understanding of the ML/TF risks to inform both its policy and operational objectives and activities. The Commission for the Prevention of Money Laundering and Monetary Offences (the Commission) is the main coordination mechanism for developing and coordinating Spain's AML/CFT policies. Specific mechanisms are in place to facilitate operational coordination among Spain's very complex structure of law enforcement agencies (LEAs), but operational coordination in this area is challenging. Some improvement is needed to enhance cooperation between export control authorities and AML/CFT authorities such as SEPBLAC.¹³⁵

¹³² *ibid*

¹³³ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020); FATF, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Spain – Follow-Up Assessment' (FATF, 2019) <<http://www.fatf-gafi.org/media/fatf/documents/reports/fur/Follow-Up-Assessment-Spain-2019.pdf>> accessed 6 September 2020.

¹³⁴ FATF, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Spain – Follow-Up Assessment' (FATF, 2019) <<http://www.fatf-gafi.org/media/fatf/documents/reports/fur/Follow-Up-Assessment-Spain-2019.pdf>> accessed 6 September 2020.

¹³⁵ FATF, 'Anti-money Laundering and Counter-Terrorist Financing Measures – Spain – Mutual Evaluation Report' (FATF, December 2014) <www.fatf-gafi.org/topics/mutualevaluations/documents/mer-spain-2014.html> accessed 4 September 2020.

Spanish authorities are strongly focused on pursuing money laundering, both as a principal activity or activity related to another offence. A number of different types of money laundering cases have been prosecuted, including when it involves third party money laundering, self-laundering, or the laundering of domestic or foreign predicates.

Spain has had proven success in disabling criminal enterprises and organised criminal groups by identifying and shutting down their complex money laundering networks of national and international companies. However, the relatively low level of sanctions actually imposed for money laundering offences is a weakness, as is the limited capacity to handle complex ML cases in the judicial system in a timely fashion. SEPBLAC is a strong financial intelligence unit (FIU), and the authorities make good use of financial intelligence when investigating crimes and tracing assets. Its analysis can also be leveraged in its role as AML/CFT supervisor. Spanish authorities aggressively pursue confiscation of the proceeds of crime using a comprehensive framework of criminal, civil, and administrative procedures. Confiscation is a key goal of investigators and prosecutors. Spain takes provisional measures at the earliest possible stage, against all types of assets, to preserve them for confiscation. It should be noted that the value of assets such as properties and companies is often significantly depleted by the time of their confiscation for reasons such as the fall in real estate prices. Spain also repatriates and shares frozen/seized assets with other countries, something which is particularly easy to do in the EU context.¹³⁶

Spain faces high risks from terrorism and terrorist financing but has a good understanding of those risks. The national counter-terrorism strategy is focused on disrupting and dismantling terrorist organisations, with a specific focus on the threats to Spain posed by ETA and Islamist terrorist groups. This strategy has worked, particularly against ETA, whose financing and support networks have been effectively shut down. Spain has also had some success disrupting outbound financing destined for Islamist terrorist groups in the Maghreb. Spain is one of the most active countries in Europe for terrorism prosecutions, with the highest numbers of individuals in court proceedings for terrorism offences. Spain has obtained numerous convictions for terrorist financing activity pursuant to its offences of membership in a terrorist organisation and collaboration with a terrorist group. A new stand-alone terrorist financing offence was added to Spain's Penal Code in 2010, enabling terrorist financing activity to be pursued separate from any other collaboration, involvement, or membership in a terrorist organisation. No convictions have yet been obtained under this offence, but prosecutions are currently underway. The level of sanctions is acceptable on its face, but in practice, prison sentences being levied against terrorist financiers are low. However, Spain's implementation of targeted financial sanctions relating to terrorism suffers from serious technical and practical deficiencies. The EU regulations through which TFS are applied in Spain use procedures that impose an unacceptable delay in transposing new designated entities into EU sanctions lists. Spain has recently implemented additional domestic legislation aimed at addressing these gaps, but the new mechanism is not yet tested. Another practical concern is Spain's failure to propose or make any designations pursuant to the UN resolutions, such as when a prosecution in Spain is not possible in appropriate circumstances. Similar underlying problems affect TFS regarding proliferation but are partly mitigated by additional EU measures. Aside from these problems, implementation of TFS by the

¹³⁶ *ibid*

private sector and supervision for compliance with these requirements is generally satisfactory.

Spain has a strong system of AML/CFT supervision in the financial sectors. As the main AML/CFT supervisor, SEPBLAC has a sophisticated approach to risk analysis, which drives both the risk assessment process and the supervisory approach. The Bank of Spain has improved its engagement with the AML/CFT supervisory regime. The prudential supervisors of the insurance and securities sectors take a primarily rules-based approach to their supervision. In some parts of the DNFBP sector, establishing AML/ CFT supervision proportionate to the risks is a work in progress, particularly for lawyers, auditors, and tax advisers, and the real estate sectors. Coordination between supervisors in Spain generally works well and is particularly strong between SEPBLAC and the Bank of Spain. However, SEPBLAC will need substantial additional resources to extend AML/CFT supervision to all DNFBP sectors and ensure adequate oversight of high-risk sectors.

United Kingdom

The UK has also passed through 4 rounds of evaluations and is ranked 3rd highest with 88.13% compliance and a weighted score of 141.¹³⁷ As earlier stated, the UK is fully compliant with 23 recommendations.¹³⁸ On record, there is no recommendation that the UK is not compliant with to a certain degree.¹³⁹

The UK has a robust understanding of its ML/TF risks which is reflected in its public national risk assessments (NRAs). National AML/CFT policies, strategies, and activities seek to address the risks identified in the NRAs. National co-ordination and co-operation on AML/CFT issues at both the policy and operational levels has improved significantly since the last evaluation.

The UK has implemented an AML/CFT system that is effective in many respects. Particularly good results are being achieved in the areas of investigation and prosecution of ML/TF, confiscation, the implementation of targeted financial sanctions related to terrorism and proliferation, protecting the non-profit sector from terrorist abuse, understanding the ML/TF risks facing the country, preventing misuse of legal structures and co-operating domestically and internationally to address them. However, major improvements are needed to strengthen supervision and implementation of preventive measures and ensure that financial intelligence is fully exploited. In terms of technical compliance, the legal framework is particularly strong with only two areas in need of significant improvements—measures related to correspondent banking and the UKFIU. The UK has significantly strengthened its AML/CFT framework since its last evaluation, particularly in relation to operational co-ordination among law enforcement agencies, stronger investigative tools, mechanisms to facilitate public/private information sharing, and the creation of an

¹³⁷ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

¹³⁸ FATF, 'Anti-Money Laundering and Counter-Terrorist Financing Measures – United Kingdom' (FATF, December 2018) < <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>> accessed 18 September 2020.

¹³⁹ Ibid.

authority to address inconsistencies in the supervision of lawyers and accountants. One important issue which is outstanding from the previous assessment is the need to enhance the resources and capabilities available to the UKFIU.¹⁴⁰

Macao, China

Macao, China has passed through 3 rounds of evaluations and is the 4th highest ranking country with 86.25% compliance.¹⁴¹ Of the 40 FATF recommendations, Macao is fully compliant with 22 recommendations.¹⁴²

Following the last APG mutual evaluation in 2006, Macao, China's AML/CFT regime has undergone major reforms. Macao, China has completed numerous thematic assessments on gaming, NPOs, alternative remittance systems, and cross-border controls. In 2015 Macao, China completed its first NRA. It has a yearly AML/CFT strategic plan that serves as its main policy to address ML/TF risk. In 2016, Macao, China amended all sectoral AML/CFT enforceable instruments for all FIs, DNFBPs and other Macao, China designated sectors to address requirements on risk assessments and to include some additional requirements. It also introduced a new Asset Freezing Law for TF and PF to add to Macao, China's previous framework for targeted financial sanctions. Macao, China is either compliant or largely compliant with 37 of the 40 FATF Recommendations. It has prepared amendments to its ML and TF laws, and a cross-border declaration system is proposed. On effectiveness, it has made substantial progress on international cooperation, supervision, use of financial intelligence, targeted financial sanctions for TF and PF, and the transparency of legal persons and arrangements. In recent years, Macao, China has focused its attention on junket promoters. The number of licensed junket promoters has decreased from 225 in 2011 to 125 in 2016, reflecting market forces, enhanced market entry requirements, and greater enforcement of AML/CFT measures.¹⁴³

Major or fundamental improvements, however, are needed in the understanding of ML risks, ML investigations and prosecutions, and implementation of AML/CFT requirements in DNFBPs, aside from the concessionaires/sub-concessionaires, financial sector, and notaries. Proposed amendments to the TF law will address the deficiencies in R.5 and IO.9.¹⁴⁴

Least compliant countries

¹⁴⁰ Ibid.

¹⁴¹ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

¹⁴² FATF, APG, EAG, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: People's Republic of China – Mutual Evaluation Report' (FATF, APG, EAG, April 2019) < <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-China-2019.pdf>; <https://www.fatf-gafi.org/media/fatf/content/images/APG-Mutual-Evaluation-Report-Macao-China-2017.pdf> > accessed 1 September 2020.

¹⁴³ APG, 'Anti-money laundering and counter-terrorist financing measures – Macao, China, Fourth Round Mutual Evaluation Report' (APG, December 2017) < <https://www.fatf-gafi.org/media/fatf/content/images/APG-Mutual-Evaluation-Report-Macao-China-2017.pdf> > accessed 5 September 2020.

¹⁴⁴ *ibid*

Vanuatu

Vanuatu has passed through 3 rounds of evaluations and is ranked 95th of the 99 jurisdictions examined.¹⁴⁵ This country is 48.75% compliant with the FATF recommendations and has a weighted score of 78. Vanuatu is fully compliant with only 1 recommendation.¹⁴⁶ The country is non-compliant with 12 recommendations.

Vanuatu has increased its levels of technical compliance with the FATF standards since the 2006 mutual evaluation in some areas, particularly for responsibilities of LEAs, record keeping, politically exposed persons (PEPs), correspondent banking, new technologies, reporting of suspicious transaction reports (STRs), FIU and cash couriers. However, compliance remains at the NC or PC level across the majority of the 40 Recommendations, with deficiencies remaining in respect of a significant number of preventive measures, regulation and supervision of financial institutions and DNFBPs, powers of LEAs and investigative authorities, statistics, guidance and feedback, sanctions and international cooperation. In terms of effectiveness, though some measures are in place, overall, Vanuatu has achieved only low levels of effectiveness across all the Immediate Outcomes. In most areas a significant factor affecting effectiveness is the absence of policy and operational priorities and inadequate training and resources allocated to AML and CFT issues.¹⁴⁷

Mauritania

Mauritania has passed through 2 rounds of evaluations and is ranked 96th of the 99 jurisdictions examined.¹⁴⁸ This country is 45.00% compliant with the FATF recommendations and has a weighted score of 72.¹⁴⁹ Mauritania is not fully compliant with any recommendation.¹⁵⁰ The country is non-compliant with 13 recommendations.¹⁵¹

In the first round of the evaluation process Mauritania was subjected to in 2006, the Mauritanian authorities implemented several measures which strengthened the legal framework of the AML/CFT system, thus leading to a noticeable progress. One of the most important measures taken was the issuance of several laws and their

¹⁴⁵ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

¹⁴⁶ APG, '3rd Follow-Up Report – Mutual Evaluation of Vanuatu' (APG, September 2018) < <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/APG-3rd-Follow-Up%20Report-Vanuatu-2018.pdf> > accessed 8 September 2020.

¹⁴⁷ APG, 'Anti-money laundering and counter-terrorist financing measures - Vanuatu, Mutual Evaluation Report' (APG, September 2015) < <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsr/APG-Mutual-Evaluation-Report-Vanuatu-2015.pdf>> accessed 5 September 2020.

¹⁴⁸ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

¹⁴⁹ Ibid.

¹⁵⁰ MENAFATF, '1st Enhanced Follow-Up Report for The Islamic Republic of Mauritania – TC Re-Rating Request' (MENAFATF, April 2019) < <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/MENAFATF-Follow-up-Report-Mauritania.pdf> > accessed 5 September 2020; MENAFATF, 'Anti-Money Laundering and Counter-Terrorist Financing Measures – Islamic Republic of Mauritania – Mutual Evaluation Report' (MENAFATF, May 2018) < <http://www.fatf-gafi.org/media/fatf/content/images/Mutual-Evaluation-Report-Mauritania-2018.pdf>> accessed 7 September 2020.

¹⁵¹ Ibid.

amendments, particularly the amendments made to the AML/CFT law No. 2005/048, in addition to the amendments made to the anti-terrorism regime in 2010, and - in the middle of 2016, which resulted in addressing many deficiencies related to the criminalization of TF and the implementation of the SC resolutions regarding the combating of terrorist financing.¹⁵²

Mauritania introduced many institutional reforms to a number of sectors concerned with combating ML/TF, by promoting the role of CANIF and the role of the authorities in supervising FIs and strengthening the law enforcement agencies sectors; however, there are still many deficiencies relating to technical compliance, and the level of effectiveness of Mauritanian regime is still low, mainly due to the failure to conduct the national ML/TF risk assessment. Some other reasons include the fact that legal amendments were only made recently and the lack of a mechanism for the enhancement of cooperation and coordination between the entities concerned with the combating process, which negatively affects the measures implemented by the country.¹⁵³

The ML or TF risks are not understood, and the general policies are not coordinated among all the entities so as to be appropriately consistent. Mauritania has no central authority in charge of combating ML/TF in terms of policies, which adversely affected the effectiveness of the combating measures at many levels, including understanding risks by all the entities. The effectiveness of implementing the targeted financial sanctions (TFS), according to the Security Council resolutions is considered deficient at the level of all the entities, due to substantial deficiencies in the technical compliance, which significantly affects the implementation of the resolutions by the concerned entities, and due to the failure of Mauritania to designate terrorist persons according to the requirements imposed on it by virtue of the SC resolutions. The same applies to the implementation of SC resolutions related to combating the financing of proliferation where many substantial deficiencies affected the compliance of Mauritania with such resolutions. Mauritania has ineffective international cooperation measures and has no procedures that would enhance the effectiveness of responding to international cooperation requests promptly and appropriately; in addition, no requests for international cooperation were made, particularly in view of several crimes considered by nature transnational crimes. The Financial Information Analysis Commission (CANIF) is not performing its main functions and nor is it submitting any analysis that would help investigation authorities carry out their task; in particular, the CANIF lacks the electronic analytical tools that could assist it in carrying out its task, and it has no qualified human resources to conduct its work appropriately whether through operational or strategic analysis. In addition, it is unable to perform the operation of identifying complex money laundering offences and to provide other entities with information on risks.¹⁵⁴

Botswana

¹⁵² MENAFATF, 'Anti-Money Laundering and Counter-Terrorist Financing Measures – Islamic Republic of Mauritania – Mutual Evaluation Report' (MENAFATF, May 2018) < <http://www.fatf-gafi.org/media/fatf/content/images/Mutual-Evaluation-Report-Mauritania-2018.pdf>> accessed 7 September 2020.

¹⁵³ *ibid*

¹⁵⁴ *ibid*

Botswana has passed through 2 rounds of evaluation and is the least compliant of the 99 jurisdictions examined.¹⁵⁵ This country is 35.63% compliant with the FATF recommendations and has a weighted score of 57. Botswana is not fully compliant with any recommendation. It is, however largely compliant with 2 recommendations and partially compliant with 14.¹⁵⁶ The country is non-compliant with 23 recommendations. Due to its shortcomings, Botswana was listed as a 'Jurisdiction with Strategic Deficiencies'¹⁵⁷ in October 2019. The February 2020 review maintained that Botswana still needs increased monitoring.¹⁵⁸

Botswana has since its last ME implemented some of the recommended actions to address the deficiencies identified through implementation programmes and passage of laws to improve both the technical compliance and effectiveness of its AML/CFT regime. Most notably, Botswana has set up an operational financial intelligence unit which appears well-structured and resourced to fulfil its core mandate of receipt of STRs, analysis, and dissemination of financial intelligence. However, there are still outstanding material deficiencies, and, in general, the AML/CFT regime is still young to have any meaningful impact on effectiveness. Although the coming into force of the PICA (2014), FI Act (2009), and the Counter Terrorism Act (CTA) (2014) have strengthened the AML/CFT regime of Botswana, in terms of technical compliance there are still deficiencies which are not addressed by the new laws and prevalence of weak institutional capacity to effectively implement the new laws.

The offence of ML has not been criminalised consistent with the Vienna and Palermo Conventions, and not all predicate offences to the offence of ML are criminalised. Furthermore, the offence of TF has not been criminalised consistent with the TF Convention. The regulations to implement the UNSCRs relating to targeted financial sanctions and proliferation have not been issued. The enactment of the PICA has strengthened the confiscation regime of Botswana. However, the authorities have not effectively used the provisions to identify and confiscate proceeds of crime relating to ML. This could be due to limited attention being paid to parallel financial investigations on predicate offences posing high ML risk owing to inadequate institutional capacity. The FI Act provides for AML/CFT obligations to FIs and DNFBPs which were not part of the Botswana AML/CFT system before. FIs have taken some steps to implement them, while the DNFBP sector is yet to implement the measures due to lack of understanding of the measures and monitoring by their supervisors. However, the FI Act has major deficiencies arising from limited scope of the obligations and absence of risk-based requirements. The reporting entities have demonstrated a varied understanding and application of the obligations under the FI Act. As a result, there are major gaps relating to technical compliance and effectiveness.

¹⁵⁵ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020).

¹⁵⁶ ESAAMG, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Botswana – 1st Enhanced Follow-Up Report & Technical Compliance Re-Rating' (ESAAMG, April 2019) < <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/ESSAMLG-Follow-Up-Report-Botswana-2019.pdf> > accessed 9 September 2020.

¹⁵⁷ FATF, 'Improving Global AML/CFT Compliance: On-going Process – 18 October 2019' (FATF, October 2019) < <http://www.fatf-gafi.org/countries/d-i/iceland/documents/fatf-compliance-october-2019.html> > accessed 19 September 2019.

¹⁵⁸ FATF, 'Jurisdictions under Increased Monitoring – 21 February 2020' (FATF, February 2020) < <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html> > accessed 15 September 2020.

The FI Act designates AML/CFT supervisory bodies for all FIs and DNFBPs (except for dealers in precious metals, which are uncovered entities). The supervisors do not apply RBA when conducting their inspections. In addition, the supervisors demonstrated little or no understanding of ML/TF risks prevalent in their regulated entities. There is inadequate capacity across the board to supervise and monitor compliance by their regulated entities. The primary legislation setting out filing of suspicious transactions reports (STRs) relating to any criminal activity and financing of terrorism is the FI Act. There is, however an obligation under the Banking Act, which requires banks licensed by BoB to file STRs when they suspect the funds to be money laundering. The BoB has issued a letter instructing all banks to send STRs to the FIA only. In practice, all FIs file STRs with the FIA only, and no copies of the same are sent to the BoB. Furthermore, not all reporting entities are reporting and filing STRs, with a major concern being the DNFBP sector, due to limited awareness of their reporting obligations monitoring. In order to enhance the AML/CFT systems of Botswana, the authorities need to focus on improving national cooperation; filing of STRs (particularly by the non-bank financial institutions and DNFBPs sectors), receipt and analysis of a wide range of information; dissemination of financial intelligence and other information and its use to initiate investigations or in on-going investigations; prosecutions and confiscations of proceeds relating to ML and TF; implementation of preventive measures and supervision; and transparency of beneficial ownership of legal persons and overall understanding of the ML/TF risks at national level.¹⁵⁹

Haiti

Despite passing through 4 rounds of evaluations, Haiti is not fully compliant with any recommendation¹⁶⁰ and is ranked 98th of the 99 jurisdictions examined.¹⁶¹ This country is 40% compliant with the FATF recommendations and has a weighted score of 64.¹⁶² It is, however largely compliant with 2 recommendations and partially compliant with 20. The country is non-compliant with 18 recommendations.

Haiti has enacted and amended several of its AML/CFT laws and measures aimed at remedying the deficiencies that were identified in the 3rd Round Mutual Evaluation process. Despite the progress, significant deficiencies identified in the 3rd round mutual evaluation process remain outstanding and were considered during this report. The jurisdiction's AML/CFT framework remains inadequate and requires much work

¹⁵⁹ ESAAMLG 'Anti-money laundering and counter-terrorist financing measures – Botswana - Mutual Evaluation Report' (ESAAMLG, May 2017) < <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/ESAAMLG-MER-Botswana-2017.pdf> > accessed 3 September 2020.

¹⁶⁰ CFATF, 'Republic of Haiti Anti-Money Laundering and Counter-Terrorist Financing Measures– Mutual Evaluation Report.' (CFATF, July 2019) < <https://www.cfatf-gafic.org/documents/4th-round-meval-reports/11839-haiti-4th-round-mer> > accessed 6 September 2020.

¹⁶¹ Analysis of Mutual Evaluations Conducted by the FATF and Other Assessment Bodies under the 4th Round & Equivalents' (99 Jurisdictions, Data for 30th April 2020)

¹⁶² Ibid.

to bring it to a level of compliance that is acceptable with the global standards despite the efforts made the authorities.¹⁶³

As a result of the deficiencies identified in technical compliance, coupled with factors such as lack of resources, legislative weakness, and lack of training, competent authorities are not sufficiently achieving the high-level objectives; whereby the financial system and the broader economy are protected from the threats of ML/TF. Further, the lack of identification and assessment of ML/TF risks has a cascading effect on the AML/CFT system and the level at which acceptable levels of outcomes are achieved. Further, LEAs and prosecutorial authorities are not conducting investigations and prosecuting ML/TF cases that are commensurate with the perceived ML/TF risks, neither are confiscation results commensurate with perceived ML/TF risks. Moreover, there is no risk-based supervision of FIs and DNFBPs. The lack of effectiveness in the regime has seen Haiti achieving a low level of effectiveness in all eleven (11) Immediate Outcomes (IOs).¹⁶⁴

8. Caveats

There are limitations associated with the general applicability of this study. Firstly, the FATF data quality can be questioned given the subjectivity of data coupled with the fact that data is gathered from national regulatory institutions in countries that suffer from regulatory capture. Subjectivity may result in data interpretation in a manner that make certain countries appear compliant. Secondly, due to resource constraints, as regards finances and human capacity, intelligence and data supplied by these regulatory bodies may not reflect the accurate compliance level with the regulatory standards. Additionally, not all countries are at the same stage of evaluation, resulting in difficulties in undertaking a meaningful cross-country comparison.

¹⁶³ CFATF, 'Anti-money laundering and counter-terrorist financing measures: Republic of Haiti' (CFATF, July 2019) < <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/CFATF-Mutual-Evaluation-Republic-of-Haiti-2019%20.pdf> > accessed 5 September 2020.

¹⁶⁴ *ibid*

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