



**FIRST ROUND MUTUAL EVALUATIONS - POST EVALUATION PROGRESS  
REPORT OF TANZANIA**

**Covering the period August 2017 – July 2018**

## UNITED REPUBLIC OF TANZANIA

### A. BRIEF BACKGROUND:

1. The United Republic of Tanzania was evaluated by the ESAAMLG with the World Bank as an observer in 2009. The onsite took place from 26 January 2009 to 7 February 2009. The Mutual Evaluation Report (MER) was discussed and adopted by the Council of Ministers in August 2010. The Mutual Evaluation (ME) exercise set out its findings on the FATF Core and Key, and on Non-Core and Non-Key Recommendations as illustrated in the tables below:

Ratings of compliance with core and key recommendations

<b>Core Recommendation</b>	1	5	10	13	SR - II	SR - IV
<b>Rating</b>	NC	NC	NC	NC	NC	NC

<b>Key Recommendation</b>	3	23	26	35	36	40	SR-I	SR-III	SR-V
<b>Rating</b>	NC	NC	NC	PC	PC	PC	NC	NC	NC

Ratings of compliance with non-core and non-key recommendations

<b>Non- core &amp; Non-key recommendations</b>	2	4	6	7	8	9	11	12	14	15	16	17	18	19	20
<b>Rating</b>	NC	PC	NC	NC	NC	NC	NC	NC	PC	NC	NC	NC	PC	C	C

Continuation:

21	22	24	25	27	28	29	30	31	32	33	34	37	38	39	V I	VII	VIII	IX
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N	N	N	PC	L	P	N	P	P	N	N	P	N	P	P	N	NC	NC	NC
C	C	C		C	C	C	C	C	C	C	C	C	C	C	C			

**B. Progress Overview**

2. Review Group A reviewers have looked at the progress report of the United Republic of Tanzania to determine whether the United Republic of Tanzania has made sufficient progress to warrant discussion of the report by Review Group “A”.

**Summary of progress in Tanzania’s AML/CFT legislative framework**

3. The Reviewers observed that since the adoption of the MER, the United Republic of Tanzania has made a lot of progress in improving the legal framework to its AML/CFT regime. In January 2010, the offence of money laundering was criminalized in Zanzibar through the enactment of the Anti-Money Laundering and Proceeds of Crime Act, No. 10. This Act has since been amended through the Miscellaneous Amendment Acts, No. 12 of 2011 and No. 2 of 2012, respectively. The amendments have enabled the Financial Intelligence Unit to be also recognized in Zanzibar as a national center for receiving suspicious transaction reports, analysis and dissemination of reports to law enforcement agencies. The case of the *Republic vs Shabaan Morris Gama and three others*; Criminal Case No. 269 of 2010 decided in the Supreme/Appeals Court of Tanzania has clarified the application of the Prevention of Terrorism Act by holding that it was applicable throughout the United Republic of Tanzania. The United Republic of Tanzania has since issued the Prevention of Terrorism Regulations 2011 and the Prevention of Terrorism (General) Regulations 2014. The latter, has strengthened procedures of implementing the UN Security Council Special Resolutions in Tanzania. The Anti-Money Laundering Act, Cap 423 was amended in February and July 2012, and further in April 2013, through the Written Laws (Miscellaneous Amendments), No. 1 of 2013, which strengthens the definition of “terrorist financing”.
4. On the 7<sup>th</sup> of September 2012, the United Republic of Tanzania issued the

Anti-Money Laundering Regulations, 2012. The regulations addressed several weaknesses identified by the assessors on the United Republic of Tanzania's preventive measures.

5. The United Republic of Tanzania further introduced miscellaneous amendments to various pieces of legislation, including the Proceeds of Crime Act, Prevention of Terrorism Act, Economic and Organised Crime Control Act, Drugs and Prevention of Illicit Traffic in Drugs Act and the Evidence Act through the enactment of the Written Laws (Miscellaneous Amendments) Act, (No. 2), 2012 .
6. The FIU reported on signing MoUs on exchange of information with the Republics of Malawi, Namibia, South Africa, Kenya, Uganda, Zambia and the UK's FIUs which is a remarkable progress.
7. On the 24<sup>th</sup> of June 2016, the Authorities amended section 60 of the Economic and Organized Crime Control Act (Cap.200) to provide for confiscation of property of corresponding value, and issued Anti-Money Laundering (Cross-Border Declaration of Currency and Bearer Negotiable Instruments) Regulations, 2016.
8. On 7<sup>th</sup> June 2018, the Authorities passed the Written Laws (Miscellaneous Amendments)(No. 2) Act, 2018. A variety of Acts were amended through this Act and of significance are the: Criminal Procedure Act (CAP 20); Mutual Legal Assistance in Criminal Matters Act; and Proceeds of Crime Act.

### **C. General Comments**

9. At the previous review of Tanzania in Zanzibar (September 2017), the Reviewers had noted the progress which had been made by Tanzania in amending section 60 of the Economic and Organised Crime Control Act (Cap. 200) and issuing of Anti-Money Laundering (Cross-Border Declaration of Currency and Bearer Negotiable Instruments) Regulations, 2016.
10. However, the Reviewers did not note sufficient progress in addressing deficiencies relating to the following Core and Key Recommendations: R. 3.1 – provisions allowing civil asset forfeiture; R. 36 – case management system/statistics relating to MLA and execution of MLA requests in a timely manner and without undue delay; and SR. II – confirmation of the ratification

of the remaining annex convention to the TF Convention; and in respect of the following Non-Core and Non-Key Recommendations: R. 37 – absence of formal arrangements to coordinate seizure and confiscation actions with foreign countries; and SR. VIII – Absence of necessary TF requirements on the NPO sector.

11. Almost all of these outstanding deficiencies have still not been addressed under the current review period, with the exception of requirements under R. 37 which are now reasonably covered by the amendments to the Mutual Legal Assistance in Criminal Matters Act under the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2018.
12. During the face-to-face meetings the Authorities indicated that the Attorney-General's Office is being restructured and the DPP has taken over certain responsibilities, hence the delay in curing the deficiencies with regard to Rec 36. With regard to the other remaining deficiencies the Authorities indicated that they are preparing for their upcoming mutual evaluation and that there are a lot of amendments, that could not be covered by the Written Laws (Miscellaneous Amendments)(No. 2) Act, 2018, that will be pushed through Parliament before 2019.

### **Building Block 1: Legal Framework – Criminalisation of ML & TF, Provisional Measures (Forfeiture/confiscation and Freezing of Assets)**

#### **SR. II.1**

13. The assessors had recommended that the authorities should ratify all the relevant UN Conventions and Protocols which are annexes to the TF Convention. The authorities previously reported that they have now ratified all UN conventions/protocols which are annexes to the Convention on TF with the last one being the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*. The authorities confirmed that the Protocol for the Suppression of Unlawful acts against the Safety of fixed Platforms located on the continental shelf has been ratified by the Tanzanian parliament. The authorities provided the Secretariat with the letter written by the Tanzania High Commission, which letter is written in the Swahili language and the reviewers could not ascertain its contents as it was

not in the official language of ESAAMLG. The authorities also provided a letter from International Maritime Organization (IMO) in terms of which letter the IMO acknowledged receipt of the United Republic of Tanzania's Note Verbale forwarding an instrument of accession to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 it being confirmation that the ratification instrument has been deposited with the UN.

14. For the sake of completeness, the authorities were required to provide the Reviewers with confirmation of ratification from the UN and a translation of the letter written in Swahili language, which has NOT been done.

- Sufficient Progress Cannot Be Noted

**R 3.7(b)**

15. The recommendation by assessors for the United Republic of Tanzania to provide for civil forfeiture is still not addressed.
16. In the September 2017 progress report the authorities gave the same response as they had given in 2016, however such response does not address the issue at hand. The authorities still cite the amendment which was made to s60 of the Economic and Organised Crime Control Act (Cap. 200), which provides for confiscation of property of corresponding value and civil confiscation. These are two different processes, with the former either relying on a civil forfeiture order or an order issued independently where circumstances are such that it is clear that the proceeds of crime can no longer be recovered in their original state requiring for an order of forfeiture of property of corresponding value to be issued. During the face to face meeting of the 3<sup>rd</sup> of September 2017 the authorities conceded that the issue is not addressed and they are factoring it in the proposed amendments which they hope will be tabled before Parliament in November 2017.
17. The Authorities has still not address this deficiency under the current period of review. The current progress report still reflects the provisions on property of corresponding value which the authorities agreed during the last review did not address the recommendation by the assessors to have civil forfeiture provisions.

- Sufficient Progress Not Noted

## **BUILDING BLOCK V – INTERNATIONAL COOPERATION**

### **V. Mutual Legal Assistance (R. 36 and SR. V)**

#### **R. 36**

18. The authorities previously indicated that they maintain statistics of requests received for MLA, the nature of the requests, the number of requests responded to, the time taken to respond to the requests, the number of requests acceded to and the number of requests rejected, etc. The authorities in their progress report submitted for the September 2017 meeting, at page 103 indicate that MLA statistics database is yet to be established and that they require technical assistance to come up with a system that will ensure speedy execution of MLA requests and for creating a database to generate statistics. However, during the face to face meeting of the 3<sup>rd</sup> September 2017 the authorities to the contrary indicated to the reviewers that they maintain statistics. It was then resolved that the authorities should provide proof to show that they are keeping statistics.
19. Under the current period of review, the authorities again submitted that they still have not created a data base on cases of MLA.

- Sufficient Progress Not Noted

QUESTION TO AUTHORITIES: What exactly is the position with case management relating to MLA cases since you keep on changing your position in this regard?

#### **Criterion 36.3**

20. The authorities have still not complied with the recommendation by the assessors to have in place proper procedures to ensure that MLA requests are executed in a timely way and without undue delays.
21. The authorities cited the Government Clients Service Charter as having a mechanism for this requirement, whereas in the last discussions with the

authorities in Maputo, Mozambique in 2013 it was agreed between the Reviewers and the Authorities that the Charter does not have such a requirement for MLA purposes.

22. The authorities previously indicated that the Office of the Attorney General is developing Regulations under AMLA Act to clarify the procedures on execution of request and ensure request is executed in a timely manner. The Technical Committee in the Office of the Attorney General has drafted proposed regulations which will be discussed by Stakeholders before they are vetted by the Attorney General and submitted to the Minister for signature.
23. At the face to face meeting of the 3<sup>rd</sup> September 2017, when requested to give an update on the regulations the authorities reported that they had not been able to finalize the regulations due to some legal technicalities identified by the Minister resulting in having to go back to the drawing board, particularly with regard to legislative amendments which are to be made to the Mutual Assistance in Criminal Matters Act, 1991 to provide legislative footing for regulations.
24. The authorities, for the period under review, did not provide any updates on this criterion. However, it has to be noted that the Mutual Legal Assistance on Criminal Matters Act was recently amended, but did not see any clauses addressing issues of timelines to respond to requests.

- Sufficient Progress Not Noted

**R. 37- (MLA on confiscation and freezing)**

25. The assessors had recommended that the authorities amend POCA to ensure that mutual legal assistance can be provided in relation to confiscation, freezing or seizure of instrumentalities intended to be used in the commission of the ML, FT or other predicate offences that are not covered and that the definition of “tainted property” covers property of corresponding value. The assessors had also recommended that the authorities put in place formal arrangements to coordinate seizure and confiscation actions with foreign countries and that they establish an Asset Forfeiture Unit. The authorities in their previous report mentioned, in relation to R. 32.2, that there is now an Asset Forfeiture Unit in the DPP’s Office, and confirmed that the Asset



Recovery and Forfeiture Section has been established administratively.

26. For the period under review, although the authorities have not indicated it in their progress report in respect of deficiencies relating to putting in place formal arrangements to coordinate seizure and confiscation actions with foreign countries, the newly enacted Written Laws (Miscellaneous Amendments)(No. 2) Act, 2018, under ss. 45 and 46 now seem to be addressing these deficiencies. S. 45 which repealed and replaced s. 32 of the Mutual Assistance in Criminal Matters Act now provides for process of registration of foreign forfeiture orders made in respect of a foreign serious offence against property that is reasonably believed to be located in Tanzania. The same applies to a foreign pecuniary penalty order, as well as foreign orders relating to provisional measures against property reasonably believed to be located in Tanzania. The order once granted by the High Court will have the same effect as that of a domestic order issued in terms of the Proceeds of Crime Act.
27. S. 46, which repealed and replaced s. 35 of the Mutual Assistance in Criminal Matters Act, now provides for requests for information gathering orders upon request by a foreign country which will have commenced investigations on a foreign serious offence where there is reasonable believe that there is information on the property in Tanzania or on any other information relevant to the investigation or proceedings in the foreign country.
28. However, the amendments do not seem to cover sharing of the forfeited assets or proceeds of any other serious offence located in Tanzania but have a dual jurisdiction effect, upon request of the other country.

- Sufficient Progress Noted

#### **SR. VIII- NPOs**

29. The assessors made a number of recommendations on the NPO sector. The authorities in their previous progress report have made reference to the NGO Act 24/2002 as amended by an Act to Amend Written Laws – No. 11 Act, 2005 in response to the recommendations made by the assessors. However, these laws were in place when Tanzania was evaluated in 2009 and were not aligned to deal with the AML as the AML Act was only enacted in 2006. No

subsequent laws were enacted to implement the provisions in any of the two NPO Acts to provide for ML/TF under the requirements of SR. VIII. The authorities should be asked to explain the relevancy of the provisions they cite under this SR to the regulation of NPOs relating to TF. The Authorities acceded that the laws relating to NGO will be reviewed in line with recommendations and appropriate amendments will be made. This is work in progress and timelines are critical. There has been no change with regard to this recommendation and at the face to face meeting of the 3<sup>rd</sup> September 2017 the authorities indicated that this is work in progress.

30. For the period under review the Authorities have not provided any new updates on this recommendation by the assessors and SR. VIII is not appearing in the current progress report submitted by the authorities.

- Sufficient Progress Not Noted

#### **RECOMMENDATION**

31. It is recommended that Tanzania reports back on the outstanding deficiencies at the next Task Force Meeting in April 2019.