



FIRST ROUND MUTUAL EVALUATIONS - POST EVALUATION PROGRESS REPORT OF TANZANIA

Covering the period August 2016 – July 2017

ESAAMLG (2017), First Round Mutual Evaluation - Post Evaluation Progress Report of Tanzania on Anti-Money Laundering and Counter-Terrorist Financing Measures.

POST EVALUATION PROGRESS REPORT OF TANZANIA

A. INTRODUCTION:

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:

Table 1: Ratings of compliance with Core and Key Recommendations

Core Recommendation	1	5	10	13	SR - II	SR - IV
Rating	NC	NC	NC	NC	NC	NC

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

Table 2: Ratings of compliance with Non-Core and Non-Key recommendations

Non-Core & Non-Key Recommendations	2	4	6	7	8	9	11	12	14	15	16	17	18	19	20	21
Rating	NC	PC	NC	NC	NC	NC	NC	NC	PC	NC	NC	NC	PC	C	C	

21	22	24	25	27	28	29	30	31	32	33	34	37	38	39
NC	NC	NC	PC	LC	PC	NC	PC	PC	NC	NC	PC	NC	PC	PC

Special Recommendations	VI	VII	VIII	IX
Rating	NC	NC	NC	NC

B. Progress Overview

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

2. 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 (both in Tanzania mainland and Zanzibar) . 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”.

5. On the 7th 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.
6. 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 .
7. 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.
8. On the 24th 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.

C. General Comments

8. Looking at the submissions made by the authorities for this reporting period, the reviewers are of the view that the authorities have substantially addressed the outstanding deficiencies. The authorities have made progress in amending section 60 of the Economic and Organised Crime Control Act (Cap. 200) to provide for the confiscation of property of corresponding value and issued Anti-Money Laundering (Cross-Border Declaration of Currency and Bearer Negotiable Instruments) Regulations, 2016 but little progress on other outstanding issues. *[The assessors' recommendations which were pending from the last progress report and not addressed by the authorities in the current report are also indicated in the analysis below]*

D. Analysis of Progress

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

SR. II.1

11. The assessors had recommended that the authorities ratify all the relevant UN Conventions and Protocols which are annexes to the TF Convention. The authorities 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 was written in the Swahili language and therefore the contents could not be ascertained 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 the IMO was acknowledging 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, to confirm that the ratification instrument had been deposited with the UN. Sufficient progress was registered on this issue, however for completeness, the authorities were required to provide confirmation of ratification from the UN and a translation of the letter written in Swahili language.

R. 3.1

12. The United Republic of Tanzania passed an amendment to s. 60 of the Economic and Organised Crime Control Act, (Cap.200) on the 24th of June 2016 to provide for confiscation of property of corresponding value under section (5). The authorities provided a copy of the amendment and sufficient progress was noted.

R 3.7(b)

14. The recommendation by assessors for the United Republic of Tanzania to provide for civil forfeiture is still not addressed. In the progress report for the current period, the authorities gave the same response as they had given in 2016, however the response does not address the issue at hand. The authorities still cite the amendment which was made to s. 60 of the Economic and Organised Crime Control Act (Cap. 200), which provides for confiscation of property of corresponding value and not 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 3rd 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.

BUILDING BLOCK V – INTERNATIONAL COOPERATION

V Mutual legal Assistance (R. 36 and SR. V)

R. 36

16. The authorities 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 the current progress report 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 3rd September 2017, the authorities 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.

Criterion 36.3

17. 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 manner and without undue delays. The authorities still cite 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. The authorities should still explain the progress they have made in addressing this deficiency. The authorities have therefore not made any progress in this regard and are encouraged to have processes and procedures in place to ensure that MLA requests are executed in a timely manner and without delay. The jurisdiction needs to address this issue. The previous explanation by Authorities was that, the Office of the Attorney General was 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 had drafted proposed regulations which were to be discussed by Stakeholders before they are vetted by the Attorney General and submitted to the Minister for signature. At the face to face meeting of the 3rd 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 the regulations. The reviewers noted that the United Republic of Tanzania has not made any progress to address this deficiency which they indicated will be addressed by the regulations which the authorities hope will be done by the March 2018 meeting of the Task Force Senior Officials.

R. 37- (MLA on confiscation and freezing)

18. 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 the current progress report did not provide any comments to the recommendations made by the assessors relating to R. 37. The authorities mention in relation to R. 32.2 that there is now an Asset Forfeiture Unit in the DPP’s Office but again it is not clear whether it is established in terms of a statute or it is an administrative one. The authorities confirmed that, the Asset Recovery and Forfeiture Section has been established administratively.

SR. VIII- NPOs

19. The assessors made a number of recommendations on the NPO sector. The authorities in the current 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. It is not clear why the authorities are referring to these laws as they were in place when Tanzania was evaluated in 2009 and were not aligned to deal with the AML as the AML Act had been enacted in 2006. There is no indication by the authorities of any subsequent law which was enacted to implement the provisions in any of the two NPO acts to provide for TF under the requirements of SR. VIII. The Authorities explained, reference was made to the provisions of NGO Act as they provide the framework to register and regulate activities carried out by NGOs. In particular, the provisions of section 11 that provide for compulsory registration of NGOs; section 14 which gives power to the Non-Governmental Organization Board to refuse registration of an NGO that is carrying out its activities contrary to the laws, including POTA that criminalize financing of Terrorism. However, the Authorities conceded and indicated that the laws relating to NGOs will be reviewed in line with the assessors’ 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 3rd September 2017, the authorities indicated that this is work in progress and that if they opt to report in March 2018, they will give an update on the progress then.

SR. IX- Cross border declaration and disclosure of currency & BNI

20. The assessors had recommended that the authorities should as soon as possible develop the appropriate legal framework to implement the requirements under SRIX. The authorities had earlier reported that the requirements for implementation of SR. IX were still in draft form (Draft Cross Border Declaration of Currency and Bearer Negotiable Instruments Regulations), therefore they had not yet made any progress in addressing the recommendation by the assessors. At the face to face meeting of the 3rd of September 2017, the authorities provided a copy of the relevant of the now promulgated Regulations and the issue is considered complete. Sufficient progress noted.

RECOMMENDATIONS

The Plenary commend the authorities with the progress made thus far, but recommend that the jurisdiction speedily addresses the outstanding issues. Tanzania must continue to report annually. However, should all outstanding action items be complied with by the next Task Force meeting in April 2018, Tanzania is welcome to submit its next progress report.