



THE KINGDOM OF LESOTHO

**ANTI-MONEY LAUNDERING AND COMBATING THE
FINANCING OF TERRORISM REGIME**



NATIONAL STRATEGY

JANUARY 2010

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PART I-PRELIMINARY

1. INTRODUCTION

1. The AML/CFT strategic plan seeks to indicate clearly how Lesotho intends to implement measures to combat money laundering and financing of terrorism in line with internationally acclaimed standards. The strategy seeks to consolidate the Financial Action Task Force Forty Recommendations and Nine Special Recommendations on Terrorist Financing through legislation and other legally binding measures with the ultimate result of confiscating all proceeds of serious crimes.

1.1 BACKGROUND

1.1.1 Money laundering as a global problem:

2. It has been some time since the International Community made some concerted efforts in fighting money laundering (ML). It was realized that international and regional coordination was needed in order to effectively fight the pandemic. In effectively combating ML a need for legislation countering it was identified. Nonetheless, it later transpired that legislation alone was not sufficient, and that the financial sector and law enforcement agencies had to be brought on board as they all played significant roles in combating money laundering.

3. Several attempts have been made at defining money laundering by the International Community and instruments thereto. The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention) has defined money laundering as concealing the true origin or nature of property, knowing it to be derived from commission of an offence. The Vienna Convention however, limited the definition to the proceeds from drug trafficking alone. The definition has since been expanded by the UN Convention against Transnational Organized Crime (2000) (Palermo Convention). It now covers a wide range of predicate offences to include other serious crimes. Simply put, money laundering has been defined as a process whereby proceeds of a criminal activity are disguised to conceal their illicit origins. By so doing criminals introduce their dirty money in the financial sector, a factor which enables them to avoid prosecution, conviction and confiscation of their criminal proceeds.

1.1.2 Terrorist Financing as a Global Problem:

4. The United Nations has made some attempts at fighting terrorism and ultimately the financing of it. The *UN Convention for the Suppression of the Financing of Terrorism (1999)* provides that a person commits a crime if he/she unlawfully and willingly collects funds with the intention/knowledge that they are going to be used to finance an act *inter alia*, intended to cause death or serious bodily harm to a civilian. Simply put, financing of terrorism is defined as financial support of any form, of terrorism or those who encourage, plan or engage in terrorist acts.

5. In financing of terrorism, the origin of the funds is immaterial, whether they are from legitimate sources or otherwise. Whilst financing of terrorism is a relatively simple concept, the international community has experienced problems in defining terrorism itself, and hence no definition will be ventured forth.

1.1.3 Linking Money Laundering and Financing of Terrorism:

6. Money laundering and financing of terrorism have similar features in as far as concealment of sources of money, and intended use are concerned. Money launderers conceal the origin of proceeds by using the legitimate channels so that the money is reflected as legitimate money in the end. The financiers of terrorism conceal the origin of their funds, whether legal or otherwise to ensure continuity of financing of the terrorism acts. The end result for these persons is the same, which is a reward. Money launderers get to use the money as legitimate sources in the market and the terrorist financiers are able to carry finance strategies or attacks. It is important to note that money laundering can be a predicate offence to financing of terrorism, as money used can also be illicit gains.

1.1.4 Importance of taking action

7. It is important for governments to take action against money laundering and financing of terrorism. Money laundering permits criminals to benefit from their criminal activities thus, making crime an attractive option. It also facilitates corruption and ultimately the accumulation of

economic and financial power by criminal organizations which are likely to end up undermining national economies.

8. Money laundering knows no boundaries, it is transnational in nature, and so is financing of terrorism. With the globalization of the world markets, the world is now a village, and the different types of financial institutions are affected. All countries have to take action against them for effective regimes.

1.1.5 The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)

9. In realizing the growing problem of money laundering, the Organization for Economic Co-operation and Development (OECD) at its Economic Summit by the Heads of States of the G-7 nations in 1989, founded the Financial Action Task Force (FATF). Its mandate was amongst others to, “assess the results of cooperation already undertaken in order to prevent the utilization of the banking system and financial institutions for the purpose of money laundering and to consider additional preventive measures including the adaptation of the legal and regulatory systems, so as to enhance multilateral judicial assistance”.

10. Since the founding of the FATF, regional organizations have been founded, referred to as FATF-Styled Regional Bodies (FSRBs). They are under the supervision and guidance of the FATF in fighting money laundering and financing of terrorism.

11. ESAAMLG is one such FSRB. It was founded in August, 1999 in Arusha, Tanzania. In the meetings convened by ESAAMLG, it became clear that member countries were not moving with a desirable pace in adopting and implementing their AML/CFT regimes. As one of the recommendations of the FATF in AML/CFT, all countries are to criminalize money laundering and financing of terrorism. It became important therefore, that member countries draw their respective strategies for fighting money laundering and terrorist financing. Member countries are expected to report on the progress made in that regard.

PART II-Lesotho's Vision, Mission and Strategic Objectives

2. VISION STATEMENT

12. A strong and dynamic Anti-Money Laundering and Combating the Financing of Terrorism Regime committed to eradicating money laundering, terrorist financing and proceeds of crime in Lesotho

3. MISSION STATEMENT

13. To deploy concerted effort, nationally, bilaterally, regionally and internationally to combat money laundering, terrorist financing and proceeds of crime.

4. STRATEGIC OBJECTIVES

14. The following strategic objectives will further be described in the implementation matrix attached herein as schedule 1.

- I. National co-operation
- II. Comprehensive, Effective Legislation
- III. Effective Enforcement Structure & Resources
- IV. Effective International and regional Co-operation
- V. Effective Regulation of Accountable Institutions
- VI. Enhance awareness and appreciation of AML/CFT
- VII. Assessing money laundering and terrorist financing risks and vulnerabilities

5. STRATEGY TO ACHIEVE THE STRATEGIC OBJECTIVES

5.1. National co-operation

5.1.1 Establish National Co-ordination Committee

15. It is intended that an interagency committee¹ should be established to comprise relevant agencies to AML/CFT chaired and coordinated by the

¹ The interagency committee shall comprise: Finance and Development planning, Justice Law and Constitutional Affairs, Home Affairs and Public Safety, Foreign Affairs and International Relations, Central Bank of Lesotho, Financial Intelligence Unit, Police Service, Directorate on Corruption and Economic Offences, Lesotho Revenue Authority and such other agencies as the Minister may deem relevant.

Ministry of Finance and Development Planning. A memorandum of understanding should be drawn to define the mandate of the interagency cooperation. In some instances a service level agreement may be a prerequisite.

5.1.2 Purpose and Function of the National Coordination Committee

16. The committee should serve as a forum to discuss AML/CFT issues. This will enable policy makers, the Financial Intelligence Unit, law enforcement agencies and supervisors and other competent authorities to have effective mechanisms in place which facilitate co-operation and coordination domestically with each other concerning the development and implementation of policies and activities to combat serious crimes, money laundering and terrorist financing.

5.1.3 Expected output

17 Effective mechanisms in place to facilitate cooperation and coordination of AML/CFT activities.

5.2. Comprehensive and effective legislation

5.2.1. Criminalisation of money laundering and financing of terrorism

18. Developing Effective Legislation to criminalize money laundering and financing of terrorism and confiscate all proceeds of crime. The legislation should respond to international conventions and instruments.

19. Parliament of Lesotho passed the Money Laundering and Proceeds of Crime Act No.4 of 2008. The Act responds to Financial Action Task Force 40 + 9 Recommendations. The implementation of the Act will however need drafting of rules and regulations and provision of technical assistance, which the United States Treasury is currently providing.

20. The other challenge will be providing resources to implementing institutions as well as, harmonization of the Act with already existing pieces of legislations relevant to AML/CFT. Legislation relevant will have to be identified and accordingly harmonized.

5.2.2. Expected output

21. Comprehensive legal frame work on AML/CFT regime.

5.3. Effective Enforcement Structure & Resources

22. Effective Enforcement through which reports will be processed and investigations, prosecutions as well as confiscation of suspected proceeds money laundering, terrorist financing be undertaken.

23. The Objective here is to process reports through intelligence after which investigations into suspected money laundering or terrorist financing will be undertaken and lead to successful prosecution. The enforcement structure should also be able to respond to international requests.

24 The structures to be employed for effective enforcement are the Financial Intelligence Unit and the Anti-Money Laundering Authority. The following are mandates of these institutions:

5.3.1. The Financial Intelligence Unit

25. The mandate of the financial intelligence unit is spelt out in the Act², in addition however, the FIU will be expected to perform the following:-

- (a) Ensure commitment to confidentiality, this should culminate into:-
 - (i) customers not being approached unless crime is suspected;
 - (ii) source of intelligence being protected; and
 - (iii) all information not relevant to ongoing investigations to be destroyed as soon as possible.

- (b) Ensure commitment to financial sector by providing:-
 - (i) feedback; and
 - (ii) training.

- (c) Ensure domestic interagency links.

5.3.2. The Anti-Money Laundering Authority

26. The Act mandates the Directorate on Corruption and Economic Offences to setup the Anti-Money Laundering Authority. Over and above investigative powers it has the Authority is expected to play a major role in facilitating mutual legal assistance from foreign states.

² The Money Laundering and Proceeds of Crime Act No. 4 of 2008

27. The Enforcement agencies should be well equipped with personnel and systems resources.

28. The following human resources may be vital:-

- (i) Financial investigators;
- (ii) forensic auditors; and
- (iii) specialised prosecutors on commercial crimes.

5.3.3 Expected output

29. (i) Dissemination of reports;
(ii) Law enforcement cooperation; and
(iii) Successful prosecutions and confiscations.

5.4 Effective International and Regional Co-operation

30. Money laundering and terrorist financing are transnational in nature. Lesotho has therefore taken effort in joining the international community to fight against these crimes through ratifying international instruments relevant to AML/CFT.

31. Lesotho shall continue to uphold the international call to keep on domesticating the international instruments relevant to AML/CFT.

5.4.1. There should be co-operation between:-

32. (i) Governments through Legal Treaties;
(ii) Enforcement agencies through exchange of information and Provision of assistance;
(iii) Financial Intelligence Units through memorandum of understanding;
(iv) Lesotho should also apply for Egmont Group membership; and
(v) Where necessary and in the best interest of Lesotho, International and Regional Groups membership with the objective of fighting transnational crimes should be promoted.

5.4.2 Expected output

33. (i) Timely and improved access to information;
(ii) Admission to Egmont group; and
(iii) Smooth investigations.

5.5. Effective Regulation of Accountable Institutions Sector

5.5.1. Ensure compliance by accountable institutions with the obligations imposed by the Act

5.5.2 Mechanisms for effective compliance should be through:-

34. (i) Definition of the sector;
- (ii) Assessment of the maturity of the sector; and
- (iii) Effective regulation of the sector.

5.5.3 Expected output

35. Understanding and compliance with obligations imposed by Money Laundering and Proceeds of Crime Act and any other legislation relating to it as well as, flexibility of the definition of the sector.

5.6 Enhance awareness and appreciation of AML/CFT

36. The money laundering and terrorist financing are new phenomena in our jurisdiction. Members of the public may have little knowledge about the dangers it may pose on the socioeconomic of the country. Thus unless the public is well informed, it becomes difficult for law enforcement agencies to detect money laundering or terrorist financing criminals. Therefore, it is intended that the general populace be sensitised on the dangers of money laundering and financing of terrorism using all possible avenues available. It is believed that an informed public will be able to work closely with law enforcement agencies by reporting suspected money laundering or financing of terrorism activities in their communities.

5.6.1 Expected output

37. (i) A well informed civil society; and
- (ii) Willingness to report money laundering and terrorist financing activities.

5.7 Assessing money laundering and terrorist financing risks and vulnerabilities

38. This objective seeks to undertake a national money laundering and terrorist financing exercise by identifying risks, threats, or vulnerabilities across various areas and sectors and to develop key priority actions to respond to those risks or vulnerabilities.

39. The achievement of this objective is expected among others to be informed by the mutual evaluation reports.

40. A standard template shall be attached and divided into:-
- (i) Prevailing crime type;
 - (ii) Institutional framework (Legal, Judicial and Law Enforcement Agencies);
 - (iii) Economic and Geographical Environment; and
 - (iv) Accountable Institutions (Financial and Non-Financial Bodies or Professions).

6.7.1 Expected output

41. An institutionalised Anti-Money Laundering and Combating the Financing of Terrorism Regime.

SCHEDULE 1 (paragraph 14)

LESOTHO'S AML/CFT IMPLEMENTATION MATRIX

OBJECTIVE	STRATEGIC ACTION	INDICATOR	MEANS OF VERIFICATION	MAIN ACTOR	Challenges/Risks	REQUIREMENT
National co-operation	<ul style="list-style-type: none"> - Establish the National Inter agency committee comprising: Finance and Development planning, Justice Law and Constitutional Affairs, Home Affairs and Public Safety, Foreign Affair and International relations, Central Bank of Lesotho and Lesotho Revenue Authority. - define the mandate of the committee 	<ul style="list-style-type: none"> -Existence of the committee -implementation of the mandate 	<ul style="list-style-type: none"> -Memorandum of Understanding - Service Level Agreement 	<ul style="list-style-type: none"> -AMLA -FIU -relevant agencies 	<ul style="list-style-type: none"> - Lack of coordination at a higher management level -Lack of MOUs³ 	Working group to develop memorandum
Comprehensive	- criminalise money	-implementation	-Acts and	-AMLA	- Lack of effective	-Implement MLPC

NOTE

³ The MOU will be a tool to facilitate cooperation and sharing of information between and amongst relevant Government agencies in the fight against money laundering and terrorist financing in Lesotho

and Effective Legislation	laundrying & terrorist financing - confiscate proceeds of crime	of measures to combat money laundrying & terrorist financing -Criminal Asset Recovery Fund established	regulations in place -disbursement of funds	-FIU -High Court -AMLA	implementation of legislation - Lack of financial and human resources.	Act by 1 st of April 2009
Effective Enforcement Structure & Resources	-Process intelligence -investigate upon reasonable commission of crime -Prosecute suspects -Respond to international requests	-Dissemination of information -investigations complete -Charge sheet drawn -Existence of mechanisms to facilitate requests	reports Prosecution convictions -reports made	-FIU -LEAs -DPP -AMLA -DPP	FIU - Absence of FIU - -Lack of admissibility of electronic data as evidence in the courts of law - Capacity building both financial and human LEAs - Capacity building , both financial and human - Lack of necessary infrastructure - Lack of access to banks for availability of financial records on investigations.	Technical Assistance to facilitate FIU setup Amendment of law of evidence

					<p>-</p> <p>DPP</p> <ul style="list-style-type: none"> - capacity building for both financial and human resources. - Lack of infrastructure <p>AMLA</p> <ul style="list-style-type: none"> - Lack of capacity building for both financial and human resources - Lack of necessary infrastructure 	
Effective International and Regional Co-operation	<p>- ratification of international & Regional instruments</p> <p>-cooperation amongst:-</p> <ul style="list-style-type: none"> • governments • Law enforcement • FIUs 	<p>-domestication of international instruments</p> <p>-Legal Treaties developed</p> <p>-Existence of Mutual Legal Assistance</p> <p>-Memorandum of Understanding</p>	<p>- implementation</p> <p>-</p> <p>- Mutual Legal Assistance Act in place</p> <p>- Application for Egmont Group</p>	<p>-Foreign Affairs</p> <p>-AMLA</p> <p>-DPP</p> <p>-AMLA</p> <p>-FIU</p>	<p>-Lack of Mutual Legal Assistance legislation</p>	<p>-Coordinate with DPP's office to draft the mutual legal assistance Bill</p> <p>FIU to facilitate information sharing</p>

		in place	Membership			
Effective Regulation of Accountable Institutions	<ul style="list-style-type: none"> - Define Accountable institutions into categories - monitor compliance 	<ul style="list-style-type: none"> - categorisation of financial and non-financial bodies and professions - regulated sector 	<ul style="list-style-type: none"> - reports 	<ul style="list-style-type: none"> -Supervisory bodies -FIU 	<ul style="list-style-type: none"> - Lack of Supervisory bodies - Cash based economy - Lack of paper trails on investigation of financial crimes - Lack of national IDs 	<ul style="list-style-type: none"> -Make an inventory of accountable institutions to determine supervisory mechanisms
Enhance awareness and appreciation of AML/CFT	<ul style="list-style-type: none"> - develop outreach programmes 	<ul style="list-style-type: none"> Implication of money laundering and terrorist financing well understood 	<ul style="list-style-type: none"> - awareness campaigns held 	<ul style="list-style-type: none"> -AMLA 	<ul style="list-style-type: none"> - Capacity building both human and financial to conduct awareness campaign 	<ul style="list-style-type: none"> Secure funding for these activities.
Assessing money laundering and terrorist financing risks and vulnerabilities	<ul style="list-style-type: none"> - Undertake mutual evaluation -undertake periodic exercise to identify & assess risks, threats and vulnerabilities 	<ul style="list-style-type: none"> -mutual evaluation report finalised 	<ul style="list-style-type: none"> -periodic reports with recommendations 	<ul style="list-style-type: none"> -FIU -AMLA 	<ul style="list-style-type: none"> - Lack of implementation of above strategies may lead to a negative evaluation outcome 	<ul style="list-style-type: none"> Need to implement recommendations informed by this strategy, the DSI and Mutual Evaluation Report

List of acronyms

AMLA-Anti-Money Laundering Authority

AML/CFT-Anti-Money Laundering and Combating the Financing of terrorism

DCEO-Directorate on Corruption and Economic Offences

DPP- Director of Public Prosecutions

DSI-Development Strategy Implementation

FIU-Financial Intelligence Unit

LEA-Law Enforcement Agencies

MLPC- Money Laundering and Proceeds of Crime Act

MOU-Memorandum of Understanding

SLA-Service Level Agreement