



REPUBLIC OF NAMIBIA

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# DETAILED REPORT: NATIONAL MONEY LAUNDERING, TERRORIST AND PROLIFERATION FINANCING RISK ASSESSMENT

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PERIOD JAN' 2015 – DEC' 2019

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## ***DISCLAIMER***

*The National Money Laundering, Terrorist and Proliferation Financing (ML/TF/PF) Risk Assessment of Namibia has been conducted as a self-assessment by stakeholders involved in the combatting of such risks. Such was done primarily using tools developed and availed by international stakeholders. The ML and TF aspects were assessed using the tool from the World Bank Group while PF was assessed using the tool developed by RUSI. The role of the World Bank Group and RUSI were thus limited to the delivery of such tools and providing guidance on the effective use of such tools. Data, statistics and information used in completing the risk assessment was independently sourced locally and where need be, internationally, by the NRA project team. The findings and conclusions reflected herein are informed by analysis and assessments of such data and statistics.*

## **ACRONYMS**

AI	Accountable Institution as per Schedule 3 of the FIA
ACC	Anti-Corruption Commission
ADLA	Authorized Dealers in Foreign Exchange with Limited Authority
AgriBank	Agricultural Bank of Namibia
AML	Anti Money Laundering
AMLCFTCPF	Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation
AMLCFTCPF Council	Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation Council
BIA	Banking Institutions Act, 1998 (Act No 2 of 1998) as amended
BIPA	Business and Intellectual Property Authority (Registrar of companies)
BoN	Bank of Namibia
CA	Companies Act, 2004 (Act No. 28 of 2004) as amended
CBFERTS	Cross Border Foreign Exchange Transaction Reporting System
CCFAs	Customs Clearing and Forwarding Agents
CDD	Client/Customer Due Diligence
CID	Criminal Investigations Directorate
CTF	Combatting Terrorist Financing
CPA	Criminal Procedure Act, 1977 (Act No 51 of 1977) as amended
CPF	Combatting Proliferation Financing
CTRs	Cash Threshold Reports
DBN	Development Bank of Namibia
DNFBPs	Designated Non-Financial Institutions and Businesses and Professions
DPRK	Democratic People's Republic of Korea
EFT	Electronic Fund Transfer
EIF	Environmental Investment Fund
ESAAMLG	Eastern and Southern African Anti Money Laundering Group, of which the Government of the Republic of Namibia is a founding Member
FATF	Financial Action Task Force

FIA	Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended
FIAD	Financial Investigations and Analysis Division (within the FIC)
FIC	Financial Intelligence Centre
HKIA	Hosea Kutako International Airport
IFT	International Funds Transfers
IWT	Illegal Wildlife Trade
LEAs	Law Enforcement Authorities
MAWF	Ministry of Agriculture, Water and Forestry
MEFT	Ministry of Environment, Forestry and Tourism
MLA	Mutual Legal Assistance
MHISS	Ministry of Home Affairs, Immigration Safety and Security
MFMR	Ministries of Fisheries and Marine Resources
MME	Ministry of Mines and Energy
ML	Money Laundering
MoU	Memorandum of Understanding
MVTs	Money Value Transfers Services
NAD	Namibian Dollars
NAMFISA	Namibia Financial Institutions Supervisory Authority
NamPol	Namibian Police
NHE	National Housing Enterprises
NFIS	Namibia Financial Inclusion Survey, 2017
NBFIs	Non-Banking Financial Institutions
NPSB	Namibia Post Savings Bank
NRA	National Risk Assessment
NSA	Namibia Statistics Agency
NSX	Namibia Stock Exchange
OPG	Office of the Prosecutor General
PAN	Payments Association of Namibia
PF	Proliferation Financing
PRU/PRD	Protected Resources Unit/Division within the Namibian Police
UN	United Nations

UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
RI	Reporting Institution as per Schedule 3 of the FIA
RUSI	Royal United Services Institute
SADC	Southern African Development Community
SACU	Southern African Customs Union
STRs	Suspicious Transaction Reports
SVA	Sectoral Vulnerability Assessment
TBML	Trade Based Money Laundering
TSPs	Trust Service Providers
TF	Terrorism Financing
POCA	Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004) as amended
POCOTAA	Prevention and Combating of Terrorist Activities Act, 2012 (Act No. 12 of 2012)
POCOTPAA	Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014) as amended
PEPs	Politically Exposed Persons
VAs	Virtual Assets
VASPs	Virtual Asset Service Providers

## TABLE OF CONTENTS

<i>List of Figures/Charts</i>	12
<i>List of Tables</i>	15
<i>List of Case Studies</i>	19
<i>Currencies used in the report</i>	20
<i>Definition of key terms</i>	21
 <b><u>CHAPTER I: NRA INTRODUCTION AND BACKGROUND INFORMATION</u></b> <span style="float: right;"><b>27</b></span>	
<u>Chapter summary</u>	<u>28</u>
 <u>1. Namibia's NRA historical overview</u>	<u>29</u>
<u>1.1 The 2015/2016 NRA update</u>	<u>30</u>
<u>2. Objectives and importance of assessing ML/TF/PF risks</u>	<u>32</u>
<u>3. Summary of major ML/TF/PF observations</u>	<u>33</u>
<u>3.1 ML observations</u>	<u>33</u>
<u>3.2 TF observations</u>	<u>37</u>
<u>3.3 PF observations</u>	<u>38</u>
<u>3.4 Environmental crime observations</u>	<u>39</u>
<u>4. ML/TF/PF risk assessment approach and methodology</u>	<u>41</u>
<u>4.1 ML/TF/PF NRA overview</u>	<u>41</u>
<u>4.2 Interpreting risk assessment outcomes</u>	<u>43</u>
<u>4.3 Approach and technical analysis</u>	<u>43</u>
<u>4.4 Challenges</u>	<u>48</u>
<u>5. Economic considerations relevant for AML/CFT/CPF</u>	<u>48</u>
<u>6. The AML/CTF/CPF framework</u>	<u>50</u>
<u>6.1 The role of key stakeholders in the framework</u>	<u>51</u>
 <b><u>CHAPTER II: ML THREATS</u></b> <span style="float: right;"><b>56</b></span>	
<u>Chapter summary</u>	<u>57</u>
 <u>7. ML threats, key variables and relevant data</u>	<u>58</u>
<u>7.1 ML investigations and convictions</u>	<u>59</u>
<u>7.2 ML threat level: Financial impact of proceeds of crime</u>	<u>60</u>
<u>7.3 Financial value-based predicate offence consideration</u>	<u>63</u>

<u>7.4 Observed prevalence of ML predicate offences</u>	<u>64</u>
<u>7.5 Breakdown of major predicate offences</u>	<u>65</u>
<u>7.6 Sectoral origin of ML predicate offences</u>	<u>78</u>
<u>7.7 Cross border ML threats</u>	<u>83</u>
<u>7.8 Emerging ML threats</u>	<u>92</u>
<u>7.9 Trends, typologies and methodologies employed in ML</u>	<u>97</u>
 <b><u>CHAPTER III: NATIONAL ML VULNERABILITY</u></b>	<b><u>98</u></b>
<u>Chapter summary</u>	<u>99</u>
 <b><u>PART A: ASSESSING THE AML/CFT/CPF COMBATTING FRAMEWORK</u></b>	<b><u>100</u></b>
 <b><u>8. Consideration of variables that impact the AML/CFT/CPF framework</u></b>	<b><u>103</u></b>
<u>8.1 Quality of AML/CFT/CPF Policy and Strategy</u>	<u>105</u>
<u>8.2 Effectiveness of ML/TF/PF Crime Definition</u>	<u>106</u>
<u>8.3 Comprehensiveness of Asset Forfeiture Laws</u>	<u>108</u>
<u>8.4 Intelligence Gathering, Processing and overall AML/CFT/CPF Supervision</u>	<u>112</u>
<u>8.5 Capacity and Resources for Financial Crime Investigations</u>	<u>126</u>
<u>8.6 Integrity and Independence of Financial Crime Investigators</u>	<u>128</u>
<u>8.7 Capacity and resources for financial crime prosecutions</u>	<u>129</u>
<u>8.8 Integrity and Independence of Financial Crime Prosecutors</u>	<u>131</u>
<u>8.9 Capacity and Resources for Judicial Processes</u>	<u>132</u>
<u>8.10 Integrity and Independence of Judges</u>	<u>133</u>
<u>8.11 Quality of Border Controls</u>	<u>136</u>
<u>8.12 Comprehensiveness of Customs Regime on Cash and Similar Instruments</u>	<u>137</u>
<u>8.13 Effectiveness of Customs Controls on Cash and Similar Instruments</u>	<u>138</u>
<u>8.14 Effectiveness of Domestic Cooperation</u>	<u>143</u>
<u>8.15 Effectiveness of International Cooperation</u>	<u>145</u>
<u>8.16 Formalization Level of the Economy</u>	<u>149</u>
<u>8.17 Level of Financial Integrity</u>	<u>152</u>
<u>8.18 Effectiveness of tax enforcement</u>	<u>155</u>
<u>8.19 Availability of Independent Audit</u>	<u>157</u>
<u>8.20 Availability of Reliable Identification Infrastructure</u>	<u>160</u>
<u>8.21 Availability of Independent Information Sources</u>	<u>163</u>
<u>8.22 Availability and Access to Beneficial Ownership Information</u>	<u>166</u>

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**PART B: SECTORAL ML VULNERABILITY ANALYSIS** 175

<b>9. The Financial Sector</b>	<b>175</b>
<b>9.1 The Banking Sector</b>	<b>176</b>
<b>10. Non-Banking Financial Institutions (NBFI)</b>	<b>198</b>
<b>10.1 Short Term Insurance</b>	<b>200</b>
<b>10.2 Long Term Insurance</b>	<b>211</b>
<b>10.3 Securities sector</b>	<b>220</b>
<b>10.4 Microlending sector</b>	<b>233</b>
<b>10.5 Authorized Dealers in Foreign Exchange with Limited Authority (ADLAs)</b>	<b>239</b>
<b>10.6 Money Value Transfer Services (MVTs)</b>	<b>245</b>
<b>10.7 Lending sector</b>	<b>254</b>
 <b>11. Designated Non-Financial Businesses and Professions (DNFBPs)</b>	<b>262</b>
<b>11.1 Accountants</b>	<b>262</b>
<b>11.2 Auctioneers</b>	<b>268</b>
<b>11.3 Casinos</b>	<b>276</b>
<b>11.4 Customs Clearing and Forwarding Agents (CCFAs)</b>	<b>283</b>
<b>11.5 Dealers in Minerals (Precious Metals and Stones)</b>	<b>290</b>
<b>11.6 Dealers in Jewellery, Arts and Antiques (DJAAAs)</b>	<b>297</b>
<b>11.7 Dealers in Second Hand or Used Goods (DSHUG)</b>	<b>301</b>
<b>11.8 Legal Practitioners</b>	<b>308</b>
<b>11.9 Motor Vehicle Dealers</b>	<b>317</b>
<b>11.10 Real estate agents</b>	<b>322</b>
<b>11.11 Trust Service Providers (TSPs)</b>	<b>327</b>
<b>11.12 Non-Profit Organisations (NPOs)</b>	<b>331</b>
 <b>CHAPTER IV: FINANCIAL INCLUSION RISK</b>	<b>346</b>
<b>Chapter summary</b>	<b>347</b>
 <b>12. AML/CFT/CPF framework and Financial Inclusion</b>	<b>348</b>
<b>12.1 Government position on Financial Inclusion</b>	<b>349</b>
<b>12.2 Defining financial inclusion products</b>	<b>350</b>
<b>12.3 Key observations from the NFIS</b>	<b>351</b>
<b>12.4 Implementing financial inclusion services along with AML/CFT/CPF controls</b>	<b>355</b>

<u>12.5 ML/TF/PF risks in financial inclusion products</u>	<u>359</u>
<u>12.6 Recommendations to enhance financial inclusion</u>	<u>364</u>
 <b><u>CHAPTER V: TF RISK ASSESSMENT</u></b> <u>368</u>	
<u>Chapter summary</u>	<u>369</u>
<u>13. Domestic and international TF threats</u>	<u>370</u>
<u>13.1 Domestic TF threats</u>	<u>370</u>
<u>13.2 Regional TF threats</u>	<u>370</u>
<u>13.3 Summary of TF threat ratings</u>	<u>372</u>
<u>13.4 TF Vulnerability considerations</u>	<u>374</u>
<u>13.5 CFT combatting framework</u>	<u>385</u>
<u>13.6 Areas that contribute to TF vulnerability</u>	<u>387</u>
<u>13.7 Aggregating TF Threat and Vulnerability Outcomes</u>	<u>388</u>
 <b><u>CHAPTER VI: PF RISK</u></b> <u>390</u>	
<u>Chapter summary</u>	<u>391</u>
<u>14. UN suspicions of international CPF contraventions</u>	<u>392</u>
<u>14.1 Construction projects in the Ministry of Defence</u>	<u>392</u>
<u>14.2 Mining industry (Uranium Mine)</u>	<u>394</u>
<u>14.3 PF Threat and vulnerability rating</u>	<u>394</u>
<u>14.4 Overall PF risk assessment</u>	<u>400</u>
 <b><u>CHAPTER VII: ENVIRONMENTAL CRIME RISKS</u></b> <u>403</u>	
<u>Chapter summary</u>	<u>404</u>
<u>15. Background</u>	<u>405</u>
<u>15.1 Data and record keeping challenges</u>	<u>406</u>
<u>15.2 Threat assessment</u>	<u>407</u>
<u>15.3 Threat levels of each category of environmental crime</u>	<u>409</u>
<u>15.4 Vulnerability assessment</u>	<u>452</u>
 <b><u>APPENDICES</u></b> <u>518</u>	
<u>16. APPENDIX 1: LIST OF ML/TF/PF NRA PROJECT PARTICIPANTS</u>	<u>518</u>

<u>16.1 Government and government agencies</u>	<u>518</u>
<u>16.2 Regulatory and supervisory bodies</u>	<u>518</u>
<u>16.3 The prosecution and presiding officers (courts)</u>	<u>518</u>
<u>16.4 AML/CFT/CPF supervised institutions</u>	<u>519</u>
<u>16.5 Risk assessment methodologies employed</u>	<u>519</u>
<b><u>17. APPENDIX 2: ML TRENDS AND TYPOLOGIES: ENVIRONMENTAL CRIMES</u></b>	<b><u>520</u></b>
<u>17.1 Notable trends in forestry crimes</u>	<u>520</u>
<u>17.2 Illicit dealings in minerals and precious metals</u>	<u>521</u>
<b><u>18. APPENDIX 3: ACTION PLANS</u></b>	<b><u>524</u></b>
<u>18.1 LEAs (Namibian Police and the ACC)</u>	<u>524</u>
<u>18.2 Office of the Prosecutor General (OPG)</u>	<u>525</u>
<u>18.3 Supervisory bodies</u>	<u>526</u>
<u>18.4 The general AML/CFT/CPF framework</u>	<u>530</u>
<u>18.5 Enhancing domestic cooperation</u>	<u>533</u>
<u>18.6 Enhancing international cooperation</u>	<u>533</u>
<u>18.7 Environmental crimes</u>	<u>534</u>
<b><u>APPENDIX 4: ACTION PLANS TRACKING FORM</u></b>	<b><u>537</u></b>

**APPENDIX 5: FOUNDING AFFIDAVIT: BANK OF NAMIBIA VS SME BANK AND OTHERS**

*Available on the FIC website at: <https://www.fic.na/index.php?page=2020-nra>*

## ***List of Figures/Charts***

- Figure 1: Aggregated national ML risk level*
- Figure 2: Aggregated national TF risk level*
- Figure 3: Aggregated national PF risk level*
- Figure 3A: Overall risk assessment outcomes*
- Figure 4: Outline of the adopted ML/TF risk assessment approach*
- Figure 5: Outline of the NPO inherent TF risk assessment*
- Figure 6: Record of how complaints received by the ACC were processed*
- Figure 7: Summary of the types of corruption reports received by the ACC*
- Figure 8: Potential aggregated annual financial value from intelligence shared with the ACC annually*
- Figure 9: Status of investigations/cases referred by the ACC for prosecution, since inception*
- Figure 10: Intelligence reports related to potential tax offences disseminated by the FIC*
- Figure 11: Estimated financial values from potential tax related offences (FIC disseminations)*
- Figure 12: Sectoral origin of potential tax related offences (FIC)*
- Figure 13: Potential financial values from fraud related cases escalated by the FIC to various LEAs*
- Figure 14: Sectoral reporting behaviour of fraud related predicate offences (FIC)*
- Figure 14A: Fraud and other economic crime data as reported to the BoN*
- Figure 15: Potential financial values in STRs (NBFIs)*
- Figure 16: STR reporting patterns: Banking and NBFIs*
- Figure 17: Potential financial values in STRs (DNFBPs)*
- Figure 18: STR reporting patterns: DNFBPs*
- Figure 19: Foreign Direct Investments per country (Top 10 Countries)*
- Figure 20: Namibia's annual financial outflows (Top 10 countries)*
- Figure 21: Record of MLA engagements with different jurisdictions*
- Figure 21A: Record of intelligence sharing on ML investigations with foreign FIUs*
- Figure 22: Ratings of variables/factors that make up the national AML/CFT/CPF framework*
- Figure 22B: Priority ranking of national ML combatting framework components*
- Figure 23: Volume of reported STRs*
- Figure 24: Outcomes of sectoral ML vulnerability assessments: Financial Sector*
- Figure 25: Outcomes of sectoral ML vulnerability assessments: DNFBPs*
- Figure 26 Sectoral prioritization levels*

- Figure 26A: Bank branch network in 2019*
- Figure 26B: Fluctuations in banking sector funding*
- Figure 26C: Inherent and final product ML vulnerability levels: Banking sector*
- Figure 27: Inherent and final product ML vulnerability levels: Short term insurance sector*
- Figure 28: Inherent and final product ML vulnerability levels: Long term insurance sector*
- Figure 29: Inherent and final product ML vulnerability levels: Securities sector*
- Figure 30: Inherent and final product ML vulnerability levels: Microlending sector*
- Figure 31: Inherent and final product ML vulnerability levels: ADLAs sector*
- Figure 32: Inherent and final product ML vulnerability levels: MVTs sector*
- Figure 33: Inherent and final product ML vulnerability levels: Lending products*
- Figure 34: Inherent and final product ML vulnerability levels: Accounting sector*
- Figure 35: Inherent and final product ML vulnerability levels: Auctioneers sector*
- Figure 36: Inherent and final product ML vulnerability levels: Casino sector*
- Figure 37: Exports and imports of goods and services in billion NAD*
- Figure 38: ML vulnerability map: CCFAs*
- Figure 39: Inherent and final product ML vulnerability levels: CCFA sector*
- Figure 40: Inherent and final product ML vulnerability levels: Dealers in Minerals*
- Figure 41: Vulnerability map: Dealers in second hand (or used) goods*
- Figure 42: Inherent and final product ML vulnerability levels: Dealers in second hand (or used) goods*
- Figure 43: Inherent and final product ML vulnerability levels: Legal Practitioners sector*
- Figure 44: Inherent and final product ML vulnerability levels: Motor vehicle dealers sector*
- Figure 45: Inherent and final product ML vulnerability levels: Real estate agents sector*
- Figure 46: Inherent and final product ML vulnerability levels: TSPs*
- Figure 47: ML vulnerability map: NPOs*
- Figure 48: Inherent and final product ML vulnerability levels: NPO sector*
- Figure 49: Terrorism Index: Mozambique*
- Figure 50: Domestic and international TF threat assessment outcomes*
- Figure 51: Cross border remittances by NPOs*
- Figure 52: Overall TF risk assessment outcomes per NPO category*
- Figure 53: TF threat and vulnerability map*
- Figure 54: PF threat and vulnerability map*
- Figure 55: Overall risk assessment outcomes*
- Figure 56: Total number of environmental crime offences reported to NamPol*
- Figure 57: Distribution of Kiat P. angolensis and African Rosewood G. coleosperma*

*Figure 58: Ratios of targeted species: for all registered cases recorded in 2019*

*Figure 59 below shows the estimated number of African elephants in 2006 and in 2015.*

*Figure 60: Estimated number of rhinos by country in 2017*

*Figure 61: Distribution of Pangolins*

*Figure 62: Nationalities of sampled wildlife crime convicts*

*Figure 63: Countrywide distribution of all wildlife crime cases registered during 2019, related to any species or charge.*

*Figure 64: Number of poaching incidents in Africa, 2006-2019*

*Figure 65: Estimates of poached rhinos in Namibia, as per discovered carcasses*

*Figure 66: Estimates of poached elephants in Namibia, as per discovered carcasses*

*Figure 67: Live pangolin seized by Namibian authorities*

*Figure 68: Prices paid for rhino horns and elephant ivory (to poachers).*

*Figure 69: Trafficking flow map, elephant ivory (2014 – 2018*

*Figure 70: Share of reported national destination of ivory tusk seizures*

*Figure 71: Illegal raw ivory tusk price in China, 2015-2017 (US\$/kilogram)*

*Figure 72: Rhino horn seizures by volumes and weight in Asia*

*Figure 73: Reported jurisdictional destination of rhino horn seizures by weight, 2002-2019*

*Figure 74: Average wholesale prices of whole rhino horn observed in markets in Vietnam*

*Figure 75: General score of the prevalence of IUU in Namibia*

*Figure 76: The EU's IUU carding system is one such system recognised as a measure of IUU combatting effectiveness*

*Figure 77: Images of an excavated sand mining pit, northern Namibia*

*Figure 78: Images of an excavated sand mining pit near a homestead, northern Namibia*

*Figure 79: Summary of the vulnerability map ratings*

*Figure 80: Land under conservancies countrywide*

*Figure 81: Number of cases registered for elephant, rhino and pangolin poaching/trafficking*

*Figure 82: Number of suspects arrested for offences related to elephant, rhino or pangolin*

*Figure 83: Number of arrested persons for wildlife crimes for all species*

*Figure 84: Ratios of court case status related to high-value species recorded in 2019*

## **List of Tables**

*Table 1: Summary of ML threat assessment outcomes*

*Table 2: ML investigations, prosecutions and convictions*

*Table 3: Finalised and pending ML cases (OPG)*

*Table 4: ML financial values observed from STRs analysed and disseminated*

*Table 5: Value based ML threat rating*

*Table 6: Volume or prevalence-based outcomes of ML threat ratings per predicate offence*

*Table 7: Cases under investigation for potential tax related offences*

*Table 8: Bitcoin sales growth of one VA dealer*

*Table 9: Environmental crimes investigated by NamPol*

*Table 9A: Asset Recovery (Confiscations, Preservation and Forfeitures)*

*Table 11: Compliance monitoring and supervision coverage as at 30 June 2019*

*Table 11A: FIC's record of administrative sanctions for FIA non-compliance across sectors*

*Table 10: Comparison of total STRs received to STRs processed*

*Table 11: Compliance assessment coverage as at 30 June 2019*

*Table 12: Outcomes of NAMFISA's 2019 Sectoral Risk Assessment (SRA)*

*Table 12A: FIA compliance assessment activities*

*Table 12B: NAMFISA's AML/CFT/CPF training and awareness activities*

*Table 13: Number of NamPol investigations resulting from STRs/SARs shared by the FIC*

*Table 14: Data on attempted smuggling which was intercepted by customs authorities*

*Table 14A: Local and foreign shareholding in the banking sector*

*Table 15: FIC compliance assessment activities in the banking sector*

*Table 15A: FIC analysis and information sharing activities related to the SME Bank*

*Table 15B: FIC compliance supervision activities at SME Bank*

*Table 16: Number of administrative sanctions imposed in the banking sector*

*Table 17: Indication of STR prevalence in products of the banking sector*

*Table 18: Total assets per sector under NAMFISA supervision, 2013–2019 (NAD million)*

*Table 18.1: Number of entities supervised by NAMFISA as at 31 December 2019*

*Table 18.2: Short term insurance classes and gross premiums*

*Table 18.3: Statistics on licensing and registration applications – Short term insurance*

*Table 18.4: STR reporting behaviour of short-term insurance service providers*

*Table 18.5: Long term insurance classes and gross premiums*

*Table 18.5: Reporting behaviour of long-term insurance service providers*

*Table 18.6: Statistics on licensing and registration applications – Long term insurance*

*Table 19: Reporting behaviour of Long-term insurance service providers*

*Table 20: Total assets or size of the Securities Sector*

*Table 20A: Summary of NSX market set-up*

*Table 21: Classification of NAMFISA-licensed Institutions in Securities Sector*

*Table 21.1: Statistics on licensing and registration applications – Securities sector*

*Table 21.2: STR and SAR reporting behaviour of the Securities sector*

*Table 22: Total assets/loan book balance of the Microlending sector*

*Table 22.1: Statistics on licensing and registration applications - Microlenders*

*Table 22.2: STR and SAR reporting behaviour - Microlenders*

*Table 23: FIC's risk-based supervisory activities in the ADLAs sector*

*Table 23A: STR and SAR reporting behaviour of ADLAs*

*Table 24: FIC's risk-based supervisory activities in the MVTs sector*

*Table 24A: MVTs reporting behaviour*

*Table 25: FIC's risk-based supervisory activities in the Lending sector*

*Table 25A: Lending sector's reporting behaviour*

*Table 26: Breakdown of various agri-loan revenues*

*Table 27: FIC's risk-based supervisory activities in the Accountancy sector*

*Table 27A: Reporting behaviour of Accountants*

*Table 28: FIC's risk-based supervisory activities in the Auctioneers sector*

*Table 28A: Auctioneer reporting behaviour*

*Table 29: FIC's risk-based supervisory activities in the Casino sector*

*Table 29A: Casino reporting behaviour*

*Table 30: FIC's risk-based supervisory activities in the Dealers in Minerals sector*

*Table 31: Sectoral annual turnover/revenue*

*Table 32: FIC's risk-based supervisory activities in the DJAAs sector*

*Table 33: FIC's risk-based supervisory activities in the Legal Practitioners sector*

*Table 33A: Legal practitioner's reporting behaviour*

*Table 34: FIC's risk-based supervisory activities in the Motor vehicle dealers' sector*

*Table 34A: Record of all STRs and SARs reported by the sector*

*Table 35: FIC's risk-based supervisory activities in the Real estate agents' sector*

*Table 36: Real estate agents reporting behaviour*

*Table 37: Number and types of registered NPOs*

*Table 38: Minimum Standards for Residential Child Care Facilities*

*Table 39: Legal provisions guiding Section 21 Companies*

*Table 40: Legal provisions regulating NPOs registered in terms of the National Welfare Act*

*Table 40A: Volume of active BBA accounts over the years*

*Table 40B: Volume and value of e-money products*

*Table 41: Cases in which potential TF was investigated*

*Table 42: Record of attacks and targets in Mozambique*

*Table 43: Remittance outflows from Namibia to Mozambique*

*Table 44: Remittance inflows from Namibia to Mozambique*

*Table 45: Types of NPOs meeting the FATF definition in Namibia*

*Table 46: Outcomes of TF evidence (threat) evaluation in NPOs*

*Table 47: Outcomes of inherent TF vulnerability assessments*

*Table 48: Outcomes of TF mitigating measures' effectiveness assessments*

*Table 49: Summary of PF sectoral risk assessment outcomes*

*Table 50: Categories of environmental crimes*

*Table 51: Record of prosecutions, convictions and potential laundering cases*

*Table 52: Reported contraventions of the Forestry Act*

*Table 53: Forestry crimes threat ratings*

*Table 54: Wildlife poaching and trafficking crimes threat ratings*

*Table 55: Reported contraventions of the Marine Resources and Inland Fisheries Acts*

*Table 56: IUU fishing activities threat ratings*

*Table 57: Statistics on predicate offences related to illicit dealings in precious, semi-precious metals and stones recorded by MME*

*Table 58: Statistics on predicate offences related to illicit dealings in precious, semi-precious metals and stones, NamPol*

*Table 59: Illegal underground extracting activities' threat ratings*

*Table 60: Hazardous waste dumping and trafficking activities' threat ratings*

*Table 61: Priority levels in the vulnerability of certain combatting variables*

*Table 62: Type of data kept by various authorities*

*Table 63: Seizure and confiscations of proceeds of environmental crimes*

*Table 64: Summary of licensing and authorising systems for environmental resources*

*Table 65: Preventative and combatting authorities for each category of environmental crime*

*Table 66: STRs related to environmental crimes*

*Table 67: Criminal and civil sanctions on environmental crimes*

*Table 68: ML related charges advanced along with IWT predicate offences*

## **List of Case Studies**

- Case study 1 Alleged fishing sector corruption and potential ML*
- Case study 2 International cigarette smuggling through Namibia*
- Case study 3 Namibia's biggest cocaine smuggling bust*
- Case study 3A Potential Hawala related activities*
- Case study 3B Potential Hawala related activities*
- Case study 3C Potential Hawala related activities*
- Case study 3D Potential trafficking in persons*
- Case study 3E Potential trafficking in persons*
- Case study 4 Attempted cash smuggling through HKIA*
- Case study 5 Attempted heroin smuggling through HKIA*
- Case study 6 Rhino horns smuggled through HKIA*
- Case study 7 Church bank accounts abused to advance illicit transfers of proceeds*
- Case study 8 Church bank accounts used to transfer illicit proceeds to RSA*
- Case study 9 Funds meant for NPO purposes abused by NPO leader*
- Case study 10 Church leader potentially involved in criminal activities*
- Case study 11 Suspected contravention of UNSCR*
- Case study 12 Iranian shareholding in a Uranium mine pre and post UNSC sanctions*
- Case study 12A Prominent church leaders arrested and charged for IWT*
- Case Study 13 International cooperation in IWT*
- Case Study 14 International cooperation in IWT*
- Case study 15 Effective use of intelligence: Katutura CR 31/08/2016*

### ***Currencies used in the report***

*The Namibian Dollar, abbreviated as NAD is widely used within the document. Below is a list of annual average USD/NAD exchange rates<sup>1</sup> over the last years:*

*2020: USD 1.00 = NAD 15.64*

*2019: USD 1.00 = NAD 14.45*

*2018: USD 1.00 = NAD 13.23*

*2017: USD 1.00 = NAD 13.31*

*2016: USD 1.00 = NAD 14.71*

*2015: USD 1.00 = NAD 12.75*

*2014: USD 1.00 = NAD 10.84*

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<sup>1</sup> Source: Bank of Namibia (BoN).

## ***Definition of key terms<sup>2</sup>***

**Beneficial owner:** Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement (FATF Glossary).

**Business relationship:** means an arrangement between a client and an accountable or reporting institution for the purpose of concluding transactions on a regular basis.

**Competent authorities:** Competent authorities refers to all public authorities with designated responsibilities for combating ML, TF and PF activities. In particular, this includes the FIU (FIC); the authorities that have the function of investigating and/or prosecuting ML, associated predicate offences, TF and PF, and seizing/freezing and confiscating criminal assets; authorities receiving reports on cross-border transportation of currency; and authorities that have AML/CFT/CPF supervisory or monitoring responsibilities aimed at ensuring compliance by financial institutions and DNFBPs with AML/CFT/CPF requirements. SRBs are not regarded as competent authorities (FATF Glossary).

**Correspondent banking:** is the provision of banking services by one bank (the “correspondent bank”) to another bank (the “respondent bank”). Large international banks typically act as correspondents for thousands of other banks around the world. Respondent banks may be provided with a wide range of services, including cash management, international wire transfers, cheque clearing, payable-through accounts and foreign exchange services (FATF Glossary).

**Combatting:** ML threats are detected and disrupted, criminals are sanctioned and deprived of access to their illicit proceeds. TF and PF threats are detected and disrupted, those advancing terrorism and proliferation are deprived of resources and sanctioned, thereby contributing to the prevention of terrorism and proliferation activities. Combatting includes all efforts including policy, coordination and cooperation to mitigate ML/TF/PF risks (FATF Glossary).

**Consequence:** refers to the impact or harm that ML/TF/PF may cause and includes the effect of the underlying criminal, terrorist or proliferation activity on financial systems and institutions, as well as the economy and society generally. The consequences of ML/TF/PF may be short or long term in

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<sup>2</sup> Context within which key terms are used in this report.

*nature and also relate to populations, specific communities, the business environment, or national or international interests, as well as the reputation and attractiveness of a country's financial sector.*

**Customer due diligence:** means a process which involves establishing the identity of a client, the identity of the client's beneficial owners in respect of legal persons and monitoring all transactions of the client against the client's profile.

**Designated non-financial businesses and professions (DNFBPs):** These are business or professions within the AML/CFT/CPF framework which are not conventional financial institutions. DNFBPs include legal practitioners, real estate agents, casinos, motor vehicle dealerships, trust and company service providers, dealers in minerals or petroleum etc.

**Effectiveness:** For the purposes of the national risk assessment and as per the FATF Mutual Evaluation Methodology, effectiveness is defined as "the extent to which the defined outcomes are achieved" (FATF Glossary).

**Enhanced customer due diligence:** means doing more than the basic customer due diligence measures mentioned above and includes, amongst others, taking measures (as required by the AI/RI) to identify, as far as reasonably possible, the source of wealth/income, funds and any other assets of the client or beneficial owners whose activities may pose a risk of ML, TF or PF.

**Government:** herein unless otherwise stated refers to the Government of the Republic of Namibia

**Money laundering:** the illegal process of making proceeds of crime appear legitimate. Disguising such from its true criminal origin. The process of laundering money typically involves three steps: placement, layering, and integration. Placement puts the "illicit proceeds or money" into the legitimate financial system. Layering conceals the source of the money through a series of transactions and bookkeeping tricks. In the final step, integration, the now-laundered money is withdrawn from the legitimate account to be used for whatever purposes the criminals have in mind for it.

**Money or value transfer service (MVTs):** refers to financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network to which the MVTs provider belongs. Transactions performed by such services can involve one or more intermediaries and a final payment to a third party and may include any new payment methods. Sometimes these services have ties to particular geographic

*regions and are described using a variety of specific terms, including hawala, hundi, and fei-chen (FATF Glossary).*

**Monitoring:** includes - (a) the monitoring of transactions and activities carried out by the client to ensure that such transactions and activities are consistent with the knowledge that the accountable institution has of the client, the commercial or personal activities and risk profile of the client; (b) the enhanced monitoring of transactions and activities of identified high risk clients in order to timely identify suspicious transactions and activities; and (c) the screening of the name of a client or potential client, and the names involved in transactions, against the sanctions lists issued by the UNSC under Chapter VII of the United Nations Charter; for purposes of combating ML, TF and PF activities (FATF Glossary).

**Potential tax related offences:** refers to any conduct that amounts to contraventions of tax laws. These offenses include failures or omissions to declare and serious offences such as tax evasion or similar crimes. The FIC shares with the Ministry of Finance: Inland Revenue Department (IRD) reports or disclosures which may entail information/factors that can be considered by the IRD in establishing taxable income.

**Politically Exposed Persons (PEPs):** PEPs are individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of State-owned entities, important political party officials (FATF Glossary).

**Proceeds:** refers to any property derived from or obtained, directly or indirectly, through the commission of an offence (FATF Glossary).

**Proliferation activity:** means the manufacture, acquisition, possession, development, export, transhipment, brokering, transport, transfer, stockpiling, supply, sale or use of nuclear, ballistic, chemical, radiological or biological weapons or any other weapon capable of causing mass destruction, and their means, of delivery and related materials (including both technologies and dual-use goods used for non-legitimate purposes), including technology, goods, software, services or expertise, in contravention of this Act or, where applicable, international obligations derived from relevant Security Council Resolutions (PACOTPAA definition).

**Proliferation financing:** Proliferation financing is the provision, directly or indirectly, in or outside Namibia, of financial services or solicitation or collection of funds intending, knowing or having reasonable grounds to believe that such funds is to be used in whole or part, to carry out any proliferation activity, regardless of whether such funds or part thereof were actually used to commit a proliferation activity. In the PACOTPAA, “funds” include - (a) cash; (b) assets of every kind, including any financial interest that accrues to such assets; (c) real or personal property of any description, whether tangible or intangible, however acquired; (d) any interest in any real or personal property, however acquired, including legal documents or instruments in any form, electronic or digital, evidencing title to, or interest in such assets; (e) any type of financial resource, including cash or the currency of any State, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit or any other negotiable instrument in any form, including electronic or digital form; (f) any letter or document conferring or containing any evidence of rights or interest in respect of any security, including legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such security, amongst others.

**Reasonable measures:** means appropriate measures which are commensurate with the money laundering or terrorist financing risks (FATF Glossary).

**Risk:** Risk can be seen as a function of three factors: threat, vulnerability and consequence. An ML/TF/PF risk assessment is a product or process based on a methodology, agreed by those parties involved, that attempts to identify, analyse and understand ML/TF/PF risks and serves as a first step in addressing them (FATF Glossary).

**Self-regulatory body (SRB):** A SRB is a body that represents a profession (e.g. lawyers, notaries, other independent legal professionals or accountants), and which is made up of members from the profession, has a role in regulating the persons that are qualified to enter and who practise in the profession, and also performs certain supervisory or monitoring type of functions. Such bodies should enforce rules to ensure that high ethical and moral standards are maintained by those practising the profession (FATF Glossary).

**Supervisors:** refers to the designated competent authorities or non-public bodies with responsibilities aimed at ensuring compliance by financial institutions (“financial supervisors”) and/or DNFBPs with requirements to combat ML/TF/PF.

**Targeted financial sanctions:** means both asset freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities.

**Terrorist act:** any act committed by a person with the intention of instilling terror and which is a violation of the criminal laws of Namibia and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, or group of persons or which causes or may cause damage to public or private property, natural resources, the environment or cultural heritage and is calculated or intended to - (i) intimidate, instil fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; (iii) create general insurrection in a State; or (b) any act which constitutes an offence within the scope of, and as defined the various international treaties and conventions as listed under definition of terrorist activity of the PACOTPAA.

**Terrorist financing:** is availing of resources or support to individuals, groups involved in terrorist acts.

**Threat:** A threat is a person, group of people, object or activity with the potential to cause harm to, for example, the State, society, the economy, etc. In the ML/TF context this includes criminals, terrorist groups and their facilitators, their funds, as well as past, present and future ML or TF activities. Threat is described above as one of the factors related to risk, and typically it serves as an essential starting point in developing an understanding of ML/TF risk. For this reason, having an understanding of the environment in which predicate offences are committed and the proceeds of crime are generated to identify their nature (and if possible, the size or volume) is important in order to carry out (FATF Glossary).

**Virtual Asset:** A virtual asset is a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations (FATF Glossary).

**Virtual Asset Service Providers (VASPs):** VASPs means any natural or legal person who is not covered elsewhere under the Recommendations, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person: i) exchange between virtual assets and fiat currencies; ii) exchange between one or more forms of virtual assets;

*iii) transfer of virtual assets; iv) safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and v) participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset (FATF Glossary).*

**Vulnerabilities:** refers to factors, variables or controls that can be exploited by threats or that may support or facilitate its activities. In the ML/TF/PF risk assessment context, looking at vulnerabilities as distinct from threat means focusing on factors that represent weaknesses in AML/CFT/CPF systems or controls or certain features of a country. They may also include the features of a particular sector, a financial product or type of service that make them attractive for ML/TF/PF purposes (FATF Glossary).

# **CHAPTER I: NRA INTRODUCTION AND BACKGROUND INFORMATION**

## ***Chapter summary***

*Namibia is a United Nations (UN) Member State which has ratified various conventions aimed at combatting ML/TF/PF activities. Equally, Namibia is one of the founding Member States of ESAAMLG, which is a FATF-Style Regional Body (FSRB) for countries in eastern and Southern Africa. ESAAMLG is a regional body which coordinates ML/TF/PF combatting efforts in line with international standards. Government leads the implementation of combatting and prevention frameworks nationally to ensure ML/TF/PF risks are duly mitigated, whilst contributing to international combatting efforts.*

*The object of ML/TF/PF combatting and prevention frameworks is to ensure ML/TF/PF threats are timely detected and disrupted, criminals are sanctioned while depriving them of access to their illicit proceeds. The FATF Recommendations call for each country to periodically assess its own framework and ensure alignment of combatting policies, strategies and activities to risk exposure. Namibia commenced her first risk assessment in 2012, with follow up reviews conducted in 2015/2016. This report documents the latest update finalised in 2020 for the five-year period leading up to December 2019.*

*Effective risk assessment is essential in ensuring alignment of combatting policy and strategy. The risk assessment studies have over the years have been substantially carried out using the World Bank Group's risk assessment methodology, except for the 2015/2016 updates and the PF risk assessment in the 2015 to 2019 period. Key stakeholders of the combatting framework such as Government, the Offices of the Prosecutor General as well as the Judiciary, the Magistrates Commission, LEAs, AML supervised institutions, amongst others, actively participated in helping to assess national ML/TF/PF risks as part of the NRA project team. The participation of key stakeholders has been essential in ensuring fruitful NRA outcomes through the years.*

*This assessment rates Namibia's ML risk as Medium High, while TF and PF risks are rated Low and Lower Medium, respectively. This suggests reduced exposure to TF and PF threats*

*combined with effective functioning of frameworks designed to combat TF and PF while mitigating ML could be improved on.*

## **1. Namibia's NRA historical overview**

Namibia's ability to effectively play her role in combatting ML/TF/PF was subjected to a Mutual Evaluation against the FATF Recommendations<sup>3</sup> in 2007. This was the first ever AML/CFT/CPF assessment the country was subjected to and the outcomes of such were shared through a Mutual Evaluation report. In principle, such outcomes implied that there is significant room for improvement as the country was found to be non-compliant with most international AML/CFT/CPF standards and thus highly exposed to ML/TF/PF risks on both the domestic and international front.

The Government of the Republic of Namibia, consistent with the country's crime combatting policy in general and financial crimes in particular, have since taken progressive steps to ensure effective measures are implemented to mitigate such risks. While complying with international standards is essential as Namibia is part of the international community, Government equally appreciates the importance of a crime free society in the advancement of economic and developmental goals. In furtherance such Government position, Cabinet approved Namibia's first Anti Money Laundering and Combating the Financing of Terrorism (AML/CFT) Strategy in 2009<sup>4</sup> to help address shortcomings noted in the national combatting framework, as per the country's first Mutual Evaluation. At the time, PF was not incorporated in such framework. The Strategy was designed to enable the creation of a national framework which ensures Namibia effectively manages ML/TF risks and by so doing, complies with her international obligations to contribute to international combatting efforts.<sup>5</sup>

In terms of best practices, an essential starting point of implementing such Strategy is assessing and identifying vulnerable areas which could be exploited by ML/TF/PF threats. The outcomes of such assessment would then inform practical implementation such as prioritization of time and resources within combatting frameworks. In 2012, Namibia

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<sup>3</sup> The FATF recommendations are generally accepted as the International Standards on Anti Money Laundering and Combating the Financing of Terrorism and Proliferation. Countries' combatting and prevention frameworks are measured against these standards.

<sup>4</sup> Outcomes of this NRA exercise are being considered in the National Strategy and Policy update. The AML/CFT/CPF strategy can be accessed at: [https://esaamlg.org/reports/Namibia\\_AML\\_CFT\\_Strategy..pdf](https://esaamlg.org/reports/Namibia_AML_CFT_Strategy..pdf)

<sup>5</sup> Also referred to as the National AML/CFT/CPF Regime.

commenced with her first National AML/CFT<sup>6</sup> Risk Assessment to identify and assess risks the National AML/CFT system is exposed to. Amongst others, the NRA considered the findings from the FATF Mutual Evaluation<sup>7</sup> as well as all progress made in addressing these weaknesses to ensure that a holistic view of the Namibian AML/CFT system is portrayed. The outcomes of such NRA activity were published in 2012 and have since helped the combatting framework in various ways including:

- a) enhancing understanding of ML/TF risks in Namibia amongst stakeholders;
- b) encouraging and laying the foundation for adopting a risk based approach to AML/CFT, as envisaged in the amended FIA 2012<sup>8</sup>. LEAs, supervisory and supervised sectors now had guidance on threats and vulnerabilities to consider in combatting efforts; and
- c) enhancing the effectiveness of Namibia's national AML/CFT system particularly through improving compliance with the International AML/CFT standards and conventional best practices.<sup>9</sup>

The 2012 assessment scope was limited in that certain sectors could not be assessed owing to various factors. These include the NPO sector as well as the dealers in precious metals and stones. The 2012 assessment also failed to obtain relevant data and information that could be used to duly assess TBML as well as PF vulnerabilities and threats.

## **1.1 The 2015/2016 NRA update**

The 2015/2016 NRA update was primarily a continuation of the work done in the 2012 exercise as the update was limited to areas excluded from the earlier assessment, plus a review of TF risks.

In keeping with the 2012 NRA Action Plans, Namibia conducted an update of such NRA in 2015 and 2016 to gauge the effectiveness of combatting measures implemented since the issuance of the 2012 NRA outcomes. The 2015/2016 update was tailored to focus on ML

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<sup>6</sup> Note that PF was not assessed in all prior NRA exercises until in 2020.

<sup>7</sup> The detailed Mutual Evaluation report of Namibia is available on the ESAAMLG website.

<sup>8</sup> Note that prior to the 2012 FIA amendment, the legal framework was largely rules based and thus not in line with FATF Recommendations and international best practices.

<sup>9</sup> NRA observations in 2012 did not result in amendments to the national AML/CFT strategy adopted in 2009. Observations did not reveal anything that the initial strategy did not address. Note that the strategy was premised on responding to action plans or control recommendations emanating from the county's first FATF Mutual Evaluation exercise.

risks within Customs Clearing and Forwarding Agents (CCFAs) as key facilitators of international trade and cross border remittances as well as NPOs. Equally, TF risk was also reviewed primarily to understand the impact of the control framework created with the passing of the PACOTAA, post the 2012 NRA. Outcomes of the 2015/2016 update revealed that:

- a) CCFAs were vulnerable to financial crime abuse and thus unduly exposing the country to financial losses, mainly from potential TBML, related tax evasion and capital flight. The NRA team referred their earlier observations which revealed potential fraudulent activities to the relevant authorities who separately commenced investigations<sup>10</sup> while NRA reviews on the sector continued;
- b) There were minimal and inadequate prudential or other forms of supervision within the NPO sector domestically. Such has resulted in reduced sectoral controls, making the sector highly vulnerable for the advancement of proceed-gaining crimes (including ML), although the FATF recommendations on NPOs are premised on combatting TF through the sector; and
- c) TF risk assessment: The TF risk assessment outcome as per the 2012 NRA was rated Medium High risk. This was mainly due to the absence of a combatting framework at the time. Namibia started implementing a TF combatting framework post the 2012 NRA after the passing of the PACOTAA. Owing to the enhancements in TF combatting measures, the 2015/2016 NRA update revised the TF risk to Medium Low.

Given the above, the 2015/2016 NRA update further recommended that the FIA be amended to include both the CCFAs and NPO sectors under the AML/CFT/CPF compliance regime. In November 2019, the law was accordingly amended and both CCFAs and NPOs have since been designated as Accountable Institutions under the AML/CFT/CPF regime and are under the Compliance Monitoring and Supervision framework of the FIC. At the time of reporting, much of the earlier supervisory activities have been limited to AML/CFT/CPF training and awareness creation in both sectors.

AML/CFT/CPF NRA is a living process which is periodically updated and has proved to positively influence and impact policy in Namibia. Outcomes of the risk assessment avails “fundamental background information” needed to assist AML/CFT/CPF supervisors, LEAs,

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<sup>10</sup> This resulted in the investigation and prosecution of one of Namibia’s largest financial crime. This case is still pending in court at the time of reporting.

the prosecuting authorities, the Financial Intelligence Unit (FIU), financial institutions and all relevant stakeholders in contributing towards the effectiveness of the National AML/CFT/CPF system. Given the dynamic and ever-changing positions of domestic and international ML/TF/PF risks, all stakeholders in the combatting framework supervised are required to periodically renew their awareness of prevailing ML/TF/PF risks, trends and methods to ensure combatting frameworks are accordingly aligned. In furtherance of such, given the changing ML/TF risks, the NRA was again updated in 2020. The 2020 update includes components on environmental crimes<sup>11</sup> and PF risk assessments. These were not assessed in prior NRAs.

It is expected that Namibia's ML/TF/PF risk positions documented herein will again be reviewed and updated within five years from the time of this publication.

## **2. Objectives and importance of assessing ML/TF/PF risks**

Simply put, the objective of the NRA is to enhance understanding of ML/TF/PF risks Namibia is exposed in order to guide the efficient allocation of resources and mitigate those risks. In furtherance of such, this report builds on observations from the 2012 and 2016 NRA exercises, showing how the combatting framework has matured over years.

It is hoped that observations herein will form part of considerations aimed at assisting the Government, LEAs, supervisory bodies and the private sector in prioritizing and aligning combatting efforts. Within the public sector or at State level, outcomes of this risk assessment can guide authorities in making informed policy and strategic decisions as well as direct implementation efforts. In the private sector, objects of the NRA can be achieved by implementing and exercising risk-based procedures and internal controls. Consistent application of the risk-based approach in all combatting frameworks should help avail the AML/CFT/CPF Council and Government reasonable assurance that Namibia's combatting policies and strategies are risk-based and proportionate.

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<sup>11</sup> World Bank Group availed a recently developed environmental crime risk assessment methodology.

While risk-based combatting efforts are generally accepted as the most effective mechanism, such approach equally ensures Namibia's framework is aligned to international standards and best practices, in particular the FATF Recommendations.

### 3. Summary of major ML/TF/PF risk observations

This section presents a high level summary of the major observations and conclusions of the NRA. The national ML threat level is rated **High** based on key variables such as: a) the financial impact/prejudice of proceeds of crime; b) the prevalence rate of ML predicate offences and c) the cross border ML threat levels. The risk assessment outcomes reflected herein, like any other risk assessment is not static as it evolves along with relevant factors. There is thus a need for continuous risk assessment reviews and updates over time.

#### 3.1 ML observations

The national ML threat is rated High while ML vulnerability is rated Medium High. The aggregated national risk rating, as per figure 3 below is **Medium High**.

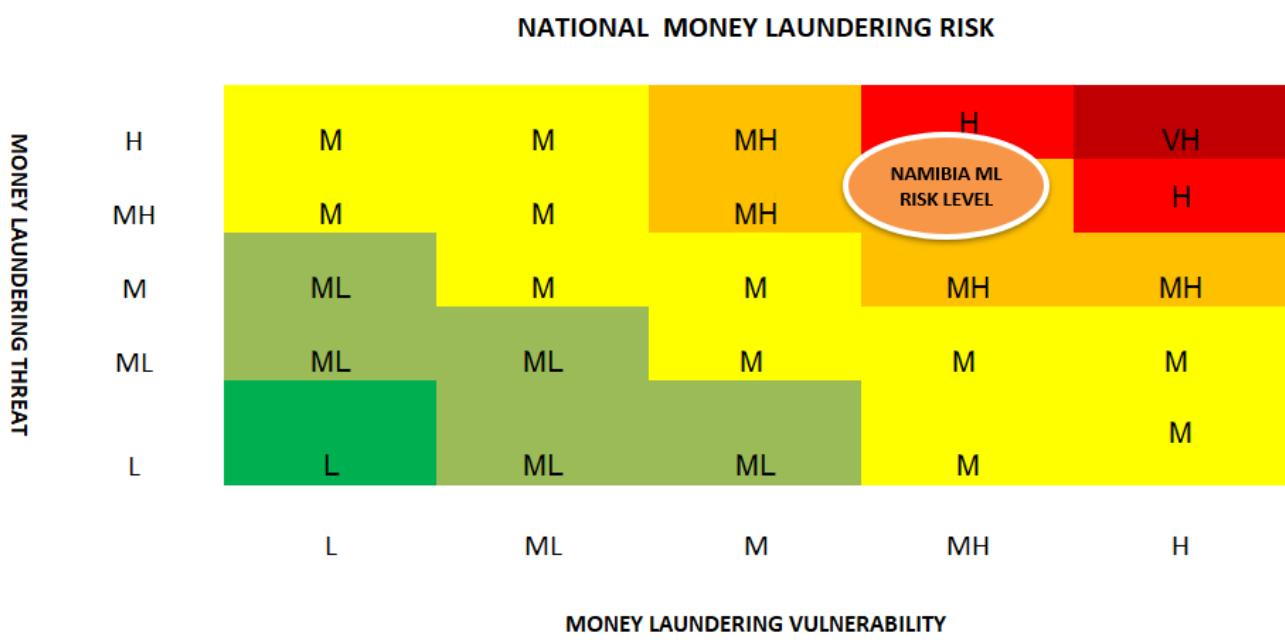


Figure 1: Aggregated national ML risk level

##### 3.1.1 ML Threats

The lack of adequate data undermines the ability to reliably estimate the financial value or impact of ML threats domestically. International best practices tend to suggest that such could amount to anything between 2 – 4% of annual GDP. Assuming a conservative estimate of 2% of GDP, this assessment conservatively estimates the financial value of criminal proceeds in 2019 at NAD 3.6 billion (2% of GDP at NAD 181 billion or USD 12.1 billion<sup>12</sup>). On this value alone, ML threat levels, in terms of financial values is considered **High**. Note that this assessment covers a period wherein major financial crimes, with ML elements, are suspected to have been committed and such cases are either in court or being investigated at the time of reporting. Notable examples include the TBML case wherein over NAD 3.6 billion is alleged to have been illicitly remitted out of the country, the SME Bank large scale fraud case wherein the State alleges fraudulent conduct which prejudiced depositors with over hundreds of millions, leading to the subsequent closure of the bank. Also worth noting is the so-called *Fishrot case*<sup>13</sup> wherein the State alleges large scale fraud and corruption may have led to the State losing over hundreds of millions through what may appear to be local and international organized crime syndicates within the fishing sector.

The most prevalent ML threats remained potential tax related offences<sup>14</sup>, fraud and corruption in terms of financial values. Potential tax related offences appear to be the most prevalent ML predicate offences. The most common types of corruption related cases observed are abuse of power, closely followed by procurement related irregularities (mostly public sector procurement or tender related).

If volumes of reported cases are to be considered, stock theft, environmental crimes and dealing in drugs or other prohibited substances are worth noting, as ML predicate offences. The prevalence of ML predicate offences, based on case volumes, was rated **Medium High**.

In considering cross border risks, the risk assessment rated ML threats from cross border activities **High**. In the major financial crime cases reported or discovered in the period under

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<sup>12</sup> Namibia Statistics Agency (NSA), Annual National Accounts, 2019. file:///F:/NRA%20Received%20Docs/Module%201%20Crime%20threats/ACC/Annual\_National\_Accounts\_2019.pdf and the World Bank estimations which placed Namibia's GDP at USD 12.37 billion US in 2019. <https://tradingeconomics.com/namibia/gdp>. Namibia's GDP for the five years leading up to December 2019 has fluctuated from as high as NAD 146 billion to as low as USD 143 billion in 2019 (Annual National Accounts, 2019).

<sup>13</sup> Pending in court at the time of reporting.

<sup>14</sup> Within the context of this report, tax related offences refer to the potential value that could have been generated. FIC disseminations often entail indications of revenue from where tax authorities could calculate taxable income and taxes due to the State. In such disseminations however, there are also indications of tax crimes such as tax evasions or attempts to evade taxes.

review (TBML case, SME Bank and the so-called *Fishrot* case), court records filed by the State suggests significant cross border remittances facilitated ML activities. ML threats suggest that countries such as the Republic of South Africa and the People's Republic of China with whom Namibia have significant trade relations feature prominently in most cases investigated by competent authorities, including STRs.

Banking services appear to be the most vulnerable to ML threats, primarily due to their prominent role in financial services and trade. This inherently enhances their exposure to ML threats. This is consistent with the 2012 and 2016 NRA observations reflecting shortcomings in the combatting framework. With NBFIs, the most financial values observed in ML reports emanate from Unit Trust Schemes, followed by Asset Management firms. These sectors naturally deal in significantly higher financial values, mostly in the form of various investment instruments.

In the DNFBPs space, Legal Practitioners, followed by Motor Vehicle Dealers and Trust and Company Service providers detected and reported the highest financial values in potential laundering activities over the five-year period leading to 2019. Overall, inadequate AML control frameworks within DNFBPs enhance ML vulnerabilities in such sectors.

### 3.1.2 *ML vulnerabilities*

Namibia's national ML vulnerability was rated **Medium High** (a score of 0.62 or 62%). This rating was informed by a combination of the national ML combatting ability (or framework) which was rated Medium High (0.56 or 56%) and the overall sectoral ML vulnerability which was rated Very High (0.8 or 80%). Generally, this suggests that while significant national AML combatting frameworks are reasonably in place, sectoral combatting effectiveness remains an area of concern. In terms of enhancing the combatting framework, several components require prioritization. Such include enhancement of the capacity and resources of financial crime investigators and prosecutors, FIU capacity to improve its intelligence gathering and processing, availability and access to databases such as the national identification and company registration (BIPA) platforms.

At sector level, NPOs present the highest ML vulnerability exposure, and were thus rated Very High (a score of 91%), followed closely by CCFAs and MVTs (both rated around 80%) nationally. MVTs, in as far as they refer to e-money issuers regulated by the BoN and supervised by the FIC have reasonably adequate AML/CFT/CPF measures in place which reduce their ML/TF/PF risk exposure. However, other value transfer service providers such as VASPs<sup>15</sup> are not currently subjected to any prudential and AML/CFT/CPF regulations. The current position of the BoN does not permit recognition of VAs<sup>16</sup> as a component of the formal financial system, hence, VAs are not within the AML/CFT/CPF nor prudential regulation space. Owing to the lack of such regulation for domestic VA operations, their inherent ML vulnerability naturally escalates the sectoral exposure of the MVTs sector.

CCFAs present a much higher ML risk exposure because of the lack of AML controls sectorally. The sector was recently added to the AML supervision space and thus AML awareness has only emerged in the sector.

ML vulnerability in the Auctioneering and Legal Practitioners sectors is rated Medium High (rated 64% and 63% respectively). Control shortcomings in both sectors is a significant challenge, although most law firms have in recent years made some notable improvements. The increase in financial crimes in recent years showing potential ML abuse of certain legal services have exposed the sectoral control weaknesses. Banks appear to detect and report the highest volumes and values of potential ML activities, through STRs, their vulnerability was rated just below the Medium High level (56%). Amongst all sectors nationally, banks have implemented relevant controls that reasonably reduce ML vulnerability. Having said that, Namibia experienced the failure of a bank, primarily owing to fraudulent conduct in the period under review. Depositors have lost their deposits entrusted to a bank and this has laid bare the direct impact of ML, as an eventuality of large-scale fraudulent conduct to ordinary members of the public.

Financial inclusion products such as the BBA and e-money services, in their current formats, were generally found to pose insignificant risks to the AML/CFT/CPF framework. It can thus be said that Namibia is managing such products prudently in as far as financial crime risk

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<sup>15</sup> Virtual Asset Service Providers

<sup>16</sup> Virtual Assets

exposure is concerned. Caution needs to be maintained to ensure they remain prudent but not over-regulated to undermine legitimate financial inclusion objectives nationally, as highlighted in the Financial Sector Strategy.

### 3.2 TF observations

There are no known terrorist activities domestically. Domestic TF was thus found to be non-existent. Minimal concerns however arise when considering cross border risks, given the country's trade relations and other factors which requires the remittance of funds from Namibia to other jurisdictions, some of whom, have active terrorist activities. The Southern African region in particular have for years enjoyed peace and stability. In recent years however, Mozambique has seen the rise of militias who have taken up arms against the State. They resemble terrorist activities, with claims that such could be possibly informed by *Jihadists* ideology. Namibia has trade relations with Mozambique and there are cross border remittances of funds between the two countries. Despite this, authorities are not aware of any domestic sympathisers to such terrorist activities.

Amongst the various types of NPOs, Faith Based Organisations appear to be highly vulnerable to TF activities, especially the ones involved in the cross-border remittance of funds. Figure 2 below shows the aggregated national TF rating.

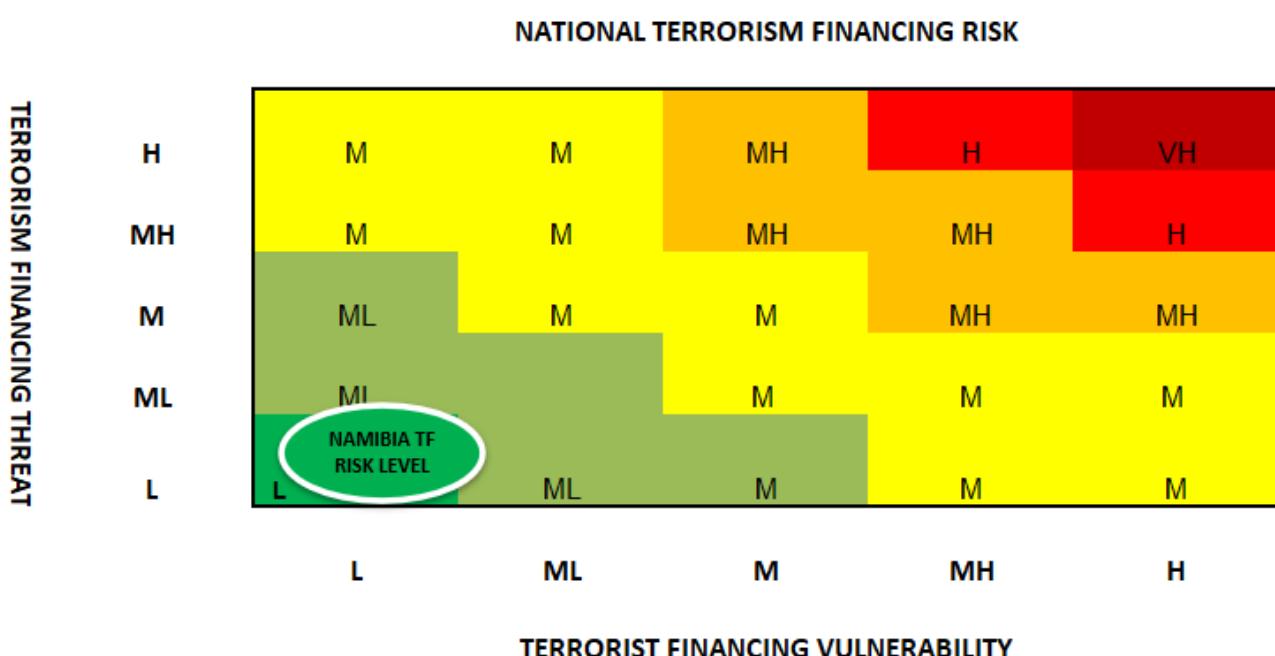


Figure 2: Aggregated national TF risk level

National TF vulnerability (or control effectiveness) was rated **0.7**, reflecting a **higher** level of combatting effectiveness. The overall TF threat rating is **0.3**. Considering both threat and vulnerability ratings, the national TF level is **Low**. This represents an improvement from the 2012 NRA finding which suggested a Medium High rating for TF. The 2012 observation was mainly informed by the lack of a combatting framework. Namibia, at the time of completing the said NRA had not passed the POCOTAA. The PACOTAA was promulgated in December 2012, a few months after the completion of the 2012 NRA.

### 3.3 PF observations

While the PF combatting framework (vulnerability) was deemed reasonably effective, incidents that led to the UN suspecting Namibia may have contravened UNSC Resolutions on PF inherently increased the national PF threat level. Namibia's national PF risk level is rated Medium Low (see figure 3 below).

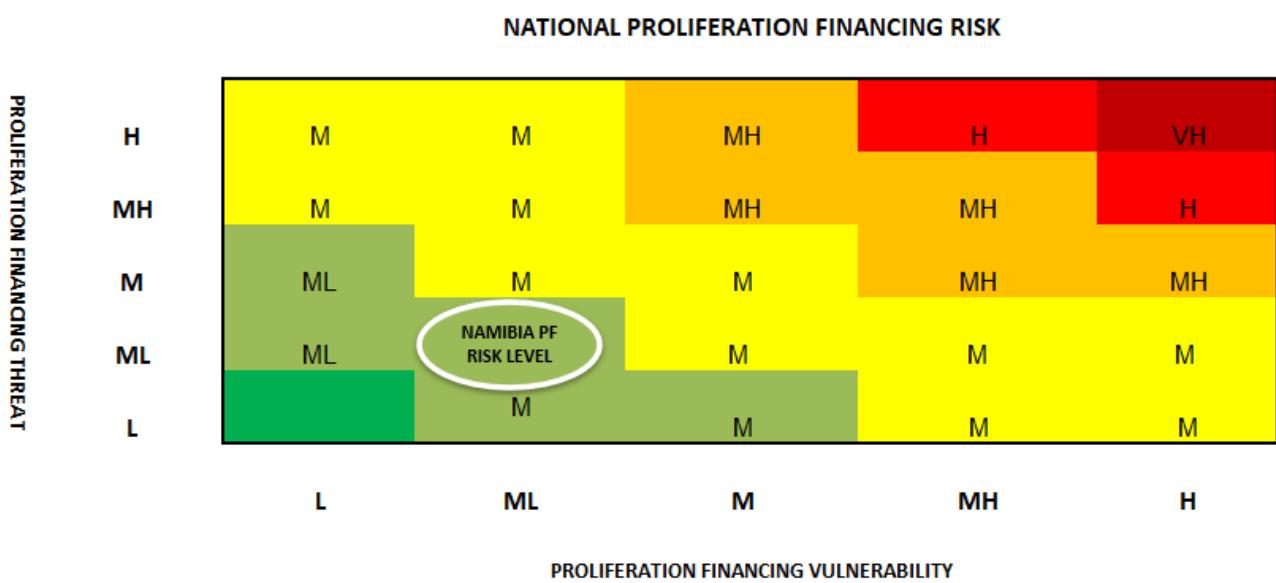


Figure 3: Aggregated national PF risk level

The Islamic Republic of Iran was at some point designated as a country contravening international conventions on weapons proliferation.<sup>17</sup> Namibia may have attracted the eyes

<sup>17</sup> "Between 2006 and 2010, the UNSC passed five resolutions imposing sanctions in relation to Iran in response to Iran's refusal to suspend its uranium enrichment program. On 20 July 2015, the UNSC adopted Resolution 2231, which endorsed the Joint Comprehensive Plan of

of the world with an arrangement that continuously allows the Iranian government shareholding in a local Uranium mine, whilst such contravenes relevant conventions. Though Iran reached an agreement with the UN which changed Iran's position and standing with the international community, the NRA reviewed the circumstances of such shareholding to assess the risk same may expose the country to. The control measures implemented at the mine exclude the Iranian shareholders from mine management, accessing any of the Uranium nor proceeds from such dividends. This has greatly reduced Namibia's risk of contravening relevant international conventions on PF.

In April 2009, the UNSC 1718 Committee designated a DPRK entity named KOMID for targeted sanctions, noting it to be the DPRK's primary arms dealer and main exporter of goods and equipment related to ballistic missiles and conventional weapons. Another DPRK entity, MOP was not designated by the UN, at the time. MOP was operating in Namibia for many years, primarily servicing Government construction contracts in the Ministry of Defence. The UN opined that MOP was operating as a front or for the benefit of the designated entity (KOMID), while Namibia knew or should have known and not permitted such. Namibia held a different view. In June 2016, the Namibian Government terminated all relationships with KOMID and MOP. Such resulted in the expulsion of entities and persons associated with same. Government commitment to ensure the country honours her international obligations has remained consistent in the period under review.

Other than the said cases, there has not been any other incidents known by authorities that resulted in notable engagements between Namibia and the UNSC, pertaining to Namibia's role in combatting PF, in the period under review. All indications suggest that the potential to advance PF is literally non-existent. However, risk assessments consider potential threats that may have exposed the country in the periods reviewed. Therefore, the suspected incidents of potential PF reflect how close Namibia came to being considered as having advanced PF activities.

### **3.4 Environmental crime observations**

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Action (JCPOA). The Resolution took effect on 16 January 2016. Under the Resolution, previous sanctions were terminated but measures that restrict certain activities were imposed. Australia implements United Nations Security Council (UNSC) sanctions by incorporating them into Australian law." Australian Government, Dept. of Foreign Affairs. <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/iran-sanctions-regime>

Environmental crimes were categorised as Forestry Crimes, wildlife poaching and trafficking, Illicit, Unreported and Unregulated (IUU) fishing activities, illegal underground extracting activities as well as illegal hazardous waste dumping and trafficking activities. Overall, the national ML risk emanating from environmental crimes is rated **Medium High**. No threats from domestic environmental crimes could be linked to TF and PF.

Observations suggest that minimal financial flows associated with environmental crimes occur in Namibia and such are limited to the funds used to pay poachers and other low-end participants in the illicit crime value chains. With the exception of fish, most environmental crime products such as timber, rhino horns, ivory and pangolin scales are often shipped to consumer jurisdictions in Asian countries such as Thailand, mainland China, Hong Kong, Vietnam etc. Trends in international environmental crime observations primarily suggest that although the predicate offences (such as poaching) occur in Africa, the significant financial flows from such illicit harvests occur in consumer jurisdictions where products sell at much higher values<sup>18</sup>. This is consistent with financial flow related observations in Namibia if observations herein are anything to go by. To a certain degree, this explains why most environmental crime charges brought before court in the five-year period leading to December 2019 did not result in ML convictions,<sup>19</sup> POCA related offences or similar financial crime charges accompanying convictions on the predicate offences.

While vulnerabilities are considered, the risk consideration of each category of environmental crime is significantly influenced by considerations around the occurrence and impact of each category of crime as shown in Figure 3A below. The assessment of illegal sand mining as well as hazardous waste dumping and trafficking could not be duly assessed owing to the lack of data.<sup>20</sup>

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<sup>18</sup> Commodity prices on the black market are very inconsistent and often shaped by the unique circumstances of each crime or situation. The black market Locally, rhino horns could be sold by poachers to traffickers or dealers for anything from USD 350.00 to USD 3,000.00 per kg. Consumers in Asian countries easily pay between USD 15,000.00 and USD 30,000.00 per kg, depending on demand, supply of horns in the market at the time of sales, whether such horn is processed or unprocessed, its age etc.

<sup>19</sup> In the reporting period, there is only one case wherein persons convicted of wildlife crimes (attempted to smuggle rhino horns and leopard skins via Hosea Kutako in March 2014) were also convicted of ML or POCA related charges.

<sup>20</sup> No authority appears to have data of such activities.

		RISK RANKING OF VARIOUS ENVIRONMENTAL CRIME TYPES			
		Potential impact upon occurrence			
		Minor	Moderate	Major	Severe
Likelihood of occurrence	Almost Certain	Medium	Wildlife poaching and trafficking		Extreme
	Likely	Low	Forestry Crimes		Extreme
	Possible	Low	Illegal underground extracting activities	Illegal fishing (IUU)	High
	Unlikely	Low	Hazardous waste dumping and trafficking	Medium	High

Figure 3A: Overall risk assessment outcomes

#### 4. ML/TF/PF risk assessment approach and methodology

The AML/CFT/CPF Council has always assigned the FIC responsibility of coordinating and managing the NRA activities over the years. The FIC, amongst others is also responsible for ensuring that the most suitable NRA methodology is adopted and such is appropriately employed in this exercise. Coordination also entails ensuring that relevant stakeholders duly participate in the exercise. All the stakeholders who were part of the NRA project are listed in Appendix 1 of this report.

##### 4.1 ML/TF/PF NRA overview

There are various means of assessing risks. In the AML/CFT/CPF sphere, it is generally accepted that threats and vulnerability analysis are core to the principle of assessing such risks. In ensuring that consistent application and consideration of relevant factors is undertaken, using risk assessment methodologies that are suited to a country's circumstances is essential.

Since the first assessment was carried out in 2012, Namibia has always employed the World Bank Group's risk assessment tool for ML and TF. The graph below avails a graphical presentation of the World Bank Group's ML and TF risk assessment methodology:

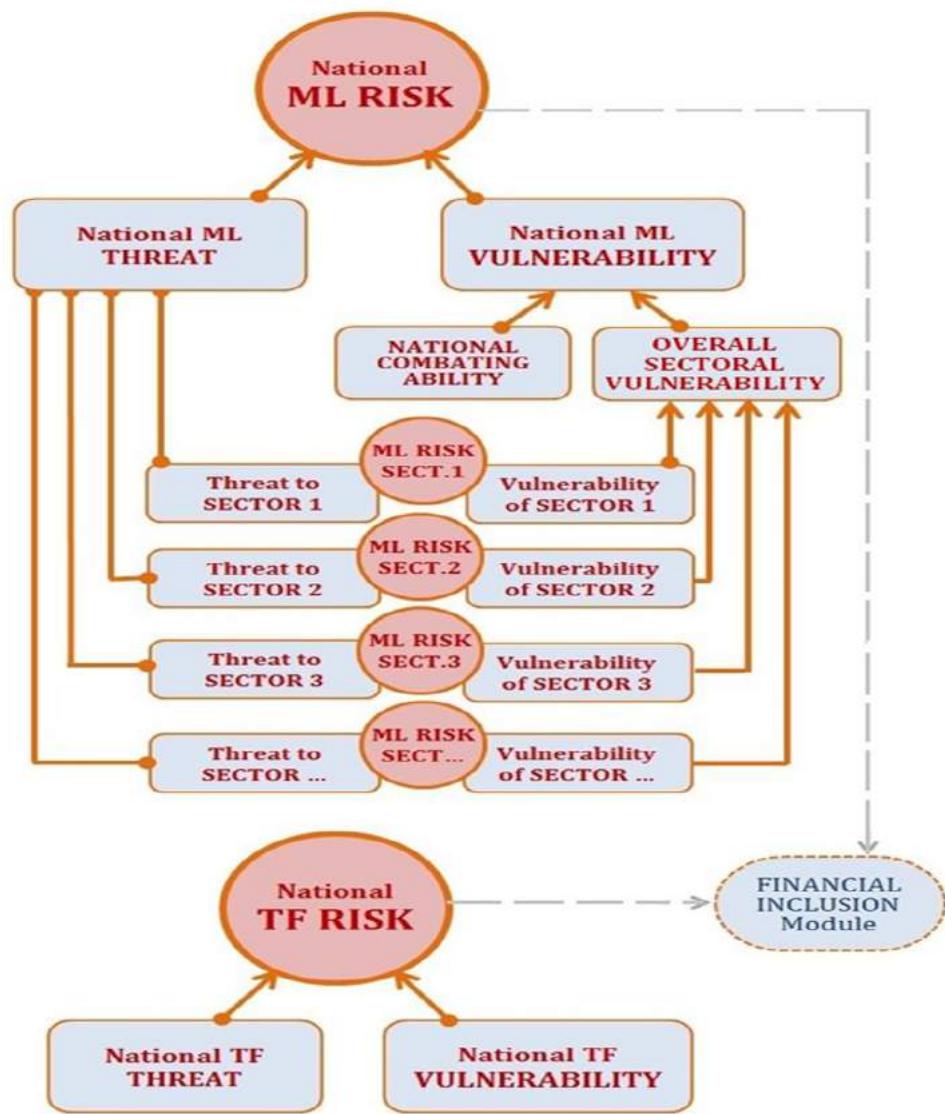


Figure 4: Outline of the adopted ML/TF risk assessment approach

Arriving at a risk position requires consideration and analysis of two key variables being threats on the one hand and vulnerabilities on the other. At sectoral level, all threats associated with a sector (including environmental crime) are considered along with the sectoral vulnerability level to arrive at a sectoral risk position. At national level, all sectoral threats are aggregated to arrive at a national threat level. The same is done with all sectoral and environmental crime vulnerability levels or scores. The aggregated national threat level

is considered along with the aggregated national vulnerability level to arrive at a national ML risk position. Financial inclusion analysis on the other hand is premised on assessing the ML/TF/PF risk levels that identified financial inclusion products and services are exposed to. The outcomes of such are considered at national risk level determination.

TF risk assessment is also premised on similar principles of establishing threats and vulnerabilities and then analysing such to establish a national TF risk level.

In the 2012 and 2016 NRA updates, the PF element, although required, was not assessed, mainly due to the lack of guidance or a methodology on how to assess such. In the 2020 NRA update however, Namibia used RUSI's PF risk assessment methodology. Overall, such methodology also primarily considers threats and vulnerabilities of PF.

## **4.2 Interpreting risk assessment outcomes**

Risk assessments are not meant to study and produce the most scientifically accurate position. They are a study that however needs to arrive at the most reasonable positions on risk, given relevant variables and considerations. In furtherance of this, the assessments are designed to effectively employ the most objective and logical assumptions derived from both qualitative and quantitative variables to understand patterns and trends. Thus, where the best evidence available suggests a particular trend or pattern, such trend or pattern can only be disregarded if convincing variables or evidence suggests otherwise.

## **4.3 Approach and technical analysis**

### **4.3.1 Data collection**

The NRA methodology is based on informed, expert judgment, informed by guided considerations of relevant variables as per the adopted methodology. Practical execution of the NRA in Namibia has always commenced with data collection and analysis to inform and facilitate sound judgment in NRA engagements. This judgment was applied in determining the most appropriate period over which data information should be collected. Though the NRA was premised on the five years leading to December 2019, the methodology allows a

certain degree of flexibility, when so required, (or as per the best evidence available) if circumstances are such that considering data outside of such period is necessary to discern relevant trends. Although they were very few, the NRA Working Group had to manage the application of data across assessment variables to mitigate the risk of arriving at inaccurate positions.

The methodology is not too rigid and this is essential for Namibia's circumstances if data and record keeping challenges highlighted in the 2012 and 2016 NRA assessment activities are anything to go by. Most prior action plans related to data and record keeping practices amongst various stakeholders were not duly acted on, resulting in minimal improvements in this area.<sup>21</sup>

#### **4.3.2 Determination of risk levels**

In establishing appropriate risk levels, threats and vulnerabilities were assessed as follows:

- a. **ML threat assessment:** Identifying and evaluating the origin, nature and volume of predicate offences for the period of the assessment. Also use such data to analyse the ML methods used and/or available in Namibia. Data sourced from various cases investigated by LEAs and prosecuted by the OPG was considered. Where such was inadequate or not available, the best evidence at hand, such as data from the FIC or other reliable sources was considered<sup>22</sup>;
- b. **TF threat assessments:** Identify and assess the methods used to raise/collect or move funds (resources) to support terrorist activities. Data sourced from various cases investigated by LEAs and prosecuted by the OPG, if any, were obtained and considered, along with other relevant information within the domains of other bodies such as the FIC. Given data inadequacies, the best evidence at hand was relied on to

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<sup>21</sup> With IWT, support from various NPOs has enabled authorities to create data and record keeping mechanisms. Various stakeholders, including the FIC now get weekly updates on IWT cases, arrests, confiscations etc., via email.

<sup>22</sup> World Bank Group guidance: Since this is not a statistical model, there are no strict conditions on having identical data collection periods that need to be applied to all indicators. The NRA Working Group was advised to focus on proceeds-generating crimes and to distinguish them from other crimes that may be categorized as similar. For example, within the drug offences category, focus on the drug offences that generally generate more substantial proceeds, such as drug trafficking. If an assessor combines all the drug-related crimes (including possession of small amounts) in the same row, the statistics may be misleading.

the extent possible<sup>23</sup>. Considerations were also made to establish the extent of internal and external terrorism threats; and

- c. **Vulnerability assessments:** Vulnerability assessments are premised on assessing AML/CFT controls. Sectoral and national control elements or variables of the AML/CFT system were identified and subjected to analysis to establish their effectiveness in mitigating ML and TF.

The RUSI PF risk assessment tool is premised on similar principles. Additional considerations for the PF risk assessment however entailed detailed sectoral assessments under the following broad categories: political and social factors, economic and technological factors, geographic and environmental factors, legal and institutional factors, as well as legal persons and legal arrangements that may exacerbate or mitigate PF threats.

#### **4.3.3 NPO TF risk assessment methodology**

The FATF, as per Recommendation 8 requires of countries to ensure NPOs are supervised in order to reduce TF risk exposure. The risk assessment activities conducted in 2016 reveal that the sector, domestically, is exposed to ML risks, perhaps more so than TF. FATF Recommendation 1 on the other hand requires of countries to not adopt blanket supervision of sectors for AML/CFT/CPF purposes. The Recommendation requires that countries only subject sectors to such supervision if risk exposures so require. It is in line with FATF Recommendation 1 that NPOs are supervised for ML/TF and PF purposes. In keeping with such, the NPOs were assessed in terms of their ML risk exposure and their exposure to TF abuse. Owing to the unique characteristics of NPO operations, a separate WBG TF risk assessment tool was used. The TF risk assessment methodology employed for NPOs is different from the national TF risk assessment approach adopted. Owing to the differences in assessment methodologies, ML and TF assessment outcomes, as noted herein are thus separately presented within the report.

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<sup>23</sup> World Bank Group guidance: Where a country cannot supply full data on one or more of the required indicators, and/or lacks the ability to collect this data during the assessment, the module should use the quantitative and qualitative information that is available to complete the indicators as completely as possible. In such cases, strengthening existing frameworks, or establishing new frameworks for future data collection, should form a key element in the country's action plan.

This section explains the methodology employed for assessing TF risks in NPOs.

The NPO TF risk assessment is premised on assessing the input and intermediate variables. Input variables required consideration of factors such as the number of TF/Terrorism Convictions, TF/Terrorism Prosecutions, TF/Terrorism Investigations, TF/Terrorism Intelligence and TF/Terrorism STRs and TF/Terrorism allegations in credible open sources. These are mainly threat related considerations. On the other hand, intermediate variables are higher-level factors which consider TF vulnerability by assessing the level of threats (from inputs variables).

TF vulnerability ratings are thus generated from an evaluation of the probability (rate at which) that actual TF threats<sup>24</sup> may exploit such. Factors such as TF typologies, proximity to active terrorist activities, NPO profiles, operational features, methods of remitting or sending funds etc., are essential in such considerations. The tool takes into account the NPOs that meet the FATF definition,<sup>25</sup> assesses the:

- indicators or evidence of those NPOs' exposure to abuse for TF;
- the inherent risk (exposure to active Terrorist threats); and
- quality of existing mitigating measures.

The below diagram reflects the factors that were considered in the assessment of inherent risk in the NPO sector.

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<sup>24</sup> As mentioned above, a threat is referred to as an activity, object, person or group of people, with the potential to cause harm. Threat is contingent on actors that possess both the capability and the intent to do harm.

<sup>25</sup> **FATF definition of a non-profit organisation:** A legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”.

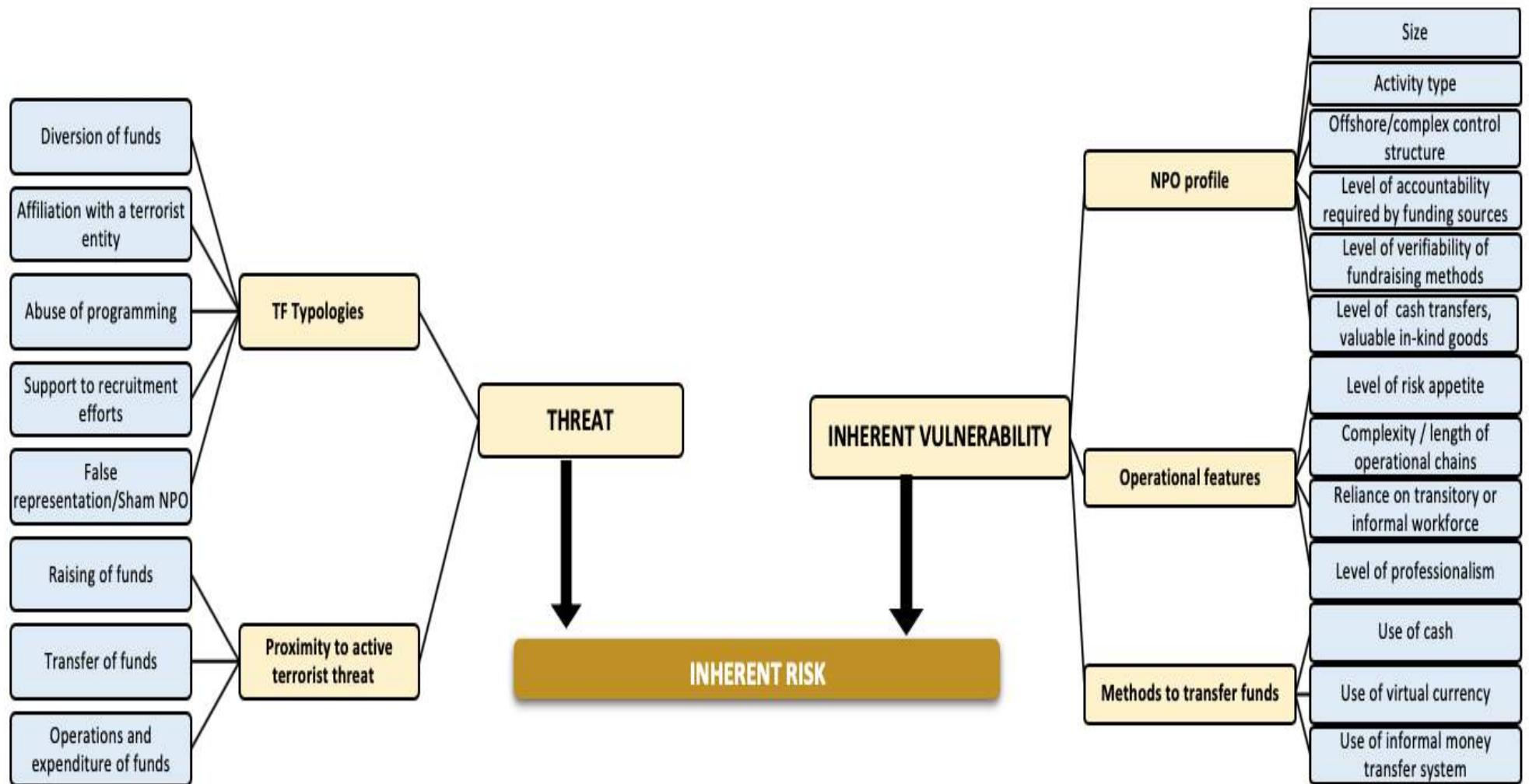


Figure 5: Outline of the NPO inherent TF risk assessment

## **4.4 Challenges**

The NRA encountered many challenges. The lack of data or incompatibilities and inadequacies of data hampered the assessment significantly. While data on major ML predicate offences such as fraud, corruption and tax evasion are scarce, inadequate and not comprehensive, no authority maintains data related to threats such as illicit forestry crimes, sand mining and hazardous waste dumping and trafficking activities. This hampers the ability to duly assess their occurrence, impact and potential illicit financial flows. To the extent possible, the NRA relied on alternative sources of information to fill gaps in the assessment.

Equally, cooperation from certain stakeholders could have been better. As this assessment is not the first of its kind, there was expectation that lessons on record keeping may have been learnt from the prior exercises, given the previous NRA Action Plans. The assessment scope was also limited in that certain sectors<sup>26</sup> recently added to the AML/CFT/CPF supervision framework were not at a level which could yield required assistance to the NRA.

## **5. Economic considerations relevant for AML/CFT/CPF**

Over the five years leading to 2019, Namibia's GDP<sup>27</sup> grew from NAD 146 billion in 2015 to NAD 181 billion<sup>28</sup> in 2019, with final consumption expenditure remaining the main contributor to GDP. The trade deficits recorded year-on-year reflect the country's position as a net importer of goods and services. Imports are naturally settled through cross border outflows. ML/TF/PF vulnerabilities in import related cross border remittances have surfaced with minor cases on the increase. If the State's case is anything to go by, Namibia's major TBML and tax evasion case,<sup>29</sup> with over NAD 3.6 billion alleged to have been illicitly remitted to Asia appears to have been perpetrated by importers creating fictitious import transactions. The remittances were destined to China, one of Namibia's main trade partners.

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<sup>26</sup> NPOs and CCFAs

<sup>27</sup> Gross Domestic Product at market prices. Namibia Statistics Agency (NSA), Annual National Accounts, 2019. file:///F:/NRA%20Received%20Docs/Module%201%20Crime%20threats/ACC/Annual\_National\_Accounts\_2019.pdf

<sup>28</sup> Namibia Statistics Agency (NSA), Annual National Accounts, 2019 and the World Bank estimations which placed Namibia's GDP at USD 12.37 billion US in 2019. <https://tradingeconomics.com/namibia/gdp>.

<sup>29</sup> still pending in court.

In nominal terms, the level of the domestic economy was estimated to be NAD 181.2 billion in the year 2019, showing a slight increase from the NAD 181.0 billion reported in 2018.<sup>30</sup> The domestic economy on the other hand saw a contraction of 1.6% compared to a growth of 1.1% in 2018, in real terms. The Annual National Accounts further suggest that the 2019 contractionary performance was mainly attributed to the primary industries that recorded declines in real value added of 8.9 percent. Similarly, contraction across the primary industries was observed, signaling declines in the real value added.

Namibia is part of the Southern African Customs Union (SACU)<sup>31</sup>, a Union which, amongst others contributes to Government revenue<sup>32</sup>. The Gross National Income recorded at NAD 176.2 billion in 2019 (representing a marginal increase of 0.4% from 2018) is mainly attributed to the net inflows in current transfers from SACU. In 2019, taxes still maintained their position as the major source of Government revenue with over 60% of Government income emanating from same. This assessment, as with the 2012 NRA indicates that potential tax related offences are some of the highest contributors to ML nationally.

Namibia's macro-economic policy credibility, which has largely been supported by participation in the Common Monetary Area (CMA) arrangement is essential for price stability through fiscal and monetary discipline. The close trading relations partly reflected through Namibia importing most of her goods and services from South Africa further speaks to the importance of the CMA to Namibia.

In terms of international standards, Namibia is not a regional financial center, although it has a reasonably advanced financial system. Some money laundering vulnerabilities appear to be exploited by threats emanating from Namibia trade corridors from both the regional and domestic criminal activities. In the main, falsification or misuse of identity documents, customs violations, trafficking of wildlife products, illegal drugs and stolen vehicles - are regional problems that affect Namibia. Organized crime groups involved in smuggling activities generally use Namibia as a transit point, particularly for goods destined for

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<sup>30</sup> NSA, Annual National Accounts, 2019.

<sup>31</sup> The Southern African Customs Union (SACU) is a customs union among five countries of Southern Africa: Botswana, Eswatini (formerly Swaziland), Lesotho, Namibia and South Africa. SACU offers access to a wider market for the export of goods from its member countries and to some degree services within which traders and investors can take advantage of economies of scale.:.

<sup>32</sup> SACU receipts which contributed about 30.8 percent of total Government revenue

neighboring countries. Namibian authorities believe the proceeds of these activities are laundered through Namibian financial institutions, but on a small scale.

While agriculture and forestry contracted in 2019, the fishing industry recorded growth of around 6.1%. Investigations by the ACC revealed widespread corruption, fraud and ML within the fishing industry, as per the State's pending case in the infamous *Fishrot* case. The case shows how operations of an international crime syndicate with links to Angolan and Icelandic fishing industries may have deprived Namibia of substantial revenue and related economic opportunities. Entities from European countries that have traditionally held interest in Namibia's fishing industry appear to have masterminded the corrupt conduct along with their Namibian counterparts.

Export Processing Zones (EPZ) avail tax exemptions, amongst other benefits to those involved in exporting activities. This is part of Government's efforts to encourage an increase in exports to help mitigate the perennial trade deficits observed over the years. Although not many, a few cases suggest financial crimes (e.g tax evasion) could be taking place through the abuse of EPZ facilities around the country.

## **6. The AML/CFT/CPF framework**

Namibia's AML/CFT/CPF framework is premised on key Government agencies, civil society and private sector stakeholders playing their role in prevention and combatting as per the relevant laws and regulations. Central to such laws are the:

- a. Prevention of Organised Crime Act 29/2004 (POCA) which criminalizes ML and explains conduct amounts to ML and the penalties thereof;
- b. Financial Intelligence Act 13/2012 (FIA) which are comprehensive measures to deter, detect and combat all forms of ML; and
- c. Prevention and Combating of Terrorism and Proliferation Activities Act (PACOTPAA) 12/2012 (as amended) which are measures to deter, detect, combat and criminalize funding and acts of terrorism activities.

It goes without saying that other relevant laws and their accompanying regulations etc., such as the Companies Act, various tax laws, laws relied on by LEAs and the prosecution such as

the Criminal Procedure Act, the Ant-Corruption Act, amongst others comprise the domestic AML/CFT/CPF framework.

## **6.1 The role of key stakeholders in the framework**

Although the FIC is designated as the central AML/CFT/CPF coordinating agency on behalf of Government, efforts to combat ML/TF/PF activities both nationally and internationally requires the input of various stakeholders. Key stakeholders in this regard includes Accountable and Reporting Institutions, Supervisory bodies, LEAs, Intelligence services, the Prosecution and Judiciary to mention a few. This section provides a brief presentation on the role such key stakeholders play in furtherance of Namibia's AML/CFT/CPF prevention and combatting objectives.

### **6.1.1 The Government of the Republic of Namibia**

Given the global threat to international peace, stability and democracy presented by Transnational Organized Crime, Terrorism and Proliferation, Namibia along with other jurisdictions in the international community, has been called upon to demonstrate zero tolerance to such crimes by fully and effectively complying with the obligations derived from relevant UN Conventions and Security Council Resolutions and do all that is necessary to prevent abuse of the domestic and international financial systems for purposes of such activities. Additionally, Governments globally committed themselves to be subjected to Peer-Reviews led by the FATF and its various Regional Bodies, to assess and publicly make known their levels of technical and effective compliance with said obligations.

The Government of the Republic of Namibia has over the years maintained a consistent zero tolerance for financial crimes. In line with National Policies and Strategies on combating organized crime and ML/TF/PF, has ratified and domesticated relevant UN and AU Conventions as well as mandatory UN Security Council Resolutions issued under Chapter VII of the UN Charter. Government's AML/CFT/CPF Preventative and Combating Policies, Laws and Implementation Frameworks are therefore aligned to obligations contained in these Conventions and Security Council resolutions as embodied in the FATF Recommendations.

The FATF Recommendations in turn provide the technical and effectiveness framework within which jurisdictions, including Namibia, should combat ML/TF and PF activities.

The Government remains committed to combatting financial crimes. In setting a legal framework to guide such efforts at national level, the passing of laws such as the FIA, POCA, PACOTPAA, amongst others, speaks to such commitment. Not only did government ensure the passing of laws as the establishment of various bodies such as the various Commercial Crime Units under NamPol, the FIC, ACC and specialised tax crimes unit reflect a strong will to effectively combat proceed-gaining crimes and thus ML.

### **6.1.2 The Financial Intelligence Centre and key international stakeholders**

The FIC, under the Policy making Arm of the Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation Council, is Government's main agency designated with the responsibility to coordinate Namibia's national AML/CFT/CPF efforts, including coordinating the execution of the National Risk Assessment exercise. Such is done in close collaboration with partner Agencies, Government Offices, Ministries and various other stakeholders.

Namibia is a UN Member State. Such position comes with a need to honour international conventions geared towards maintaining peace and stability. Such includes ensuring that world maintains effective financial systems through the implementation of key combatting mechanisms. International working relationships and engagements are key.

The FIC has signed various Memoranda of Understanding (MOU's) with international counterparts i.e other FIU's worldwide as well as global AML/CFT/CPF institutions. The MoUs helps in the timely sharing of information to advance investigations, amongst other benefits. These MoU's improve international co-operation and streamline information sharing processes, strengthening Namibia's capability to assist and also request assistance from international partners in combating crime. Some major platforms which contribute to such include the Egmont Group of FIUs; ESAAMLG membership; the FATF; the World Bank; the IMF; and the Alliance for Financial Inclusion. Relationships with the UNODC, OECD, amongst

others, enable such bodies to avail support and guidance which further enhances the national AML/CFT/CPF framework.

### **6.1.3 The Judiciary and Magistrates**

While prevention of ML/TF/PF activities is paramount, there are cases that eventually result in court. In such matters, the effectiveness of all ML/TF/PF combatting systems is reflected in outcomes of courts. It goes without saying that the outputs of the FIC (especially investigation support on related matters) are of little impact without the role of the Judiciary. Convictions and asset forfeitures can only be attained with sound judicial systems and processes. The role of Namibia's courts to ensure criminals are denied access to their ill-gained proceeds, convicted persons are held accountable while preventing the funding of terrorist and proliferation activities remains paramount to any effective AML/CFT/CPF system.

### **6.1.4 Office of the Prosecutor General (OPG)**

The Office of the Prosecutor General is a vital stakeholder in ML/TF/PF combatting activities. The OPG is primarily tasked with prosecution of ML/TF/PF and related matters submitted to it by LEAs and the FIC. It is also responsible for ensuring forfeiture of proceeds of crime using both criminal and civil routes.

### **6.1.5 Law Enforcement Authorities (NamPol and ACC)**

Law Enforcement Agencies closely work with the FIC to effectively combat ML/TF/PF activities through pro-active and reactive intelligence led investigations, prosecutions, asset identification, seizing, freezing and forfeitures (civil and criminal) by, amongst others:

- a. Sharing information spontaneously or upon request to initiate or enhance investigations, asset identification, seizing, freezing and forfeitures;
- b. Forming Law Enforcement Priority Case Task Forces to investigate strategic important ML/TF/PF cases; and
- c. Operating at a strategic level to enhance combating efforts and reduce relevant risks.

The mandate for corporation between FIC, local Law Enforcement Agencies, Competent Authorities and Foreign FIUs is provided for in the FIA (and other laws, MoUs etc.) and no prohibition is placed on the type of information that can be accessed and shared, provided it is in pursuit of ML/TF/PF activities. These are essential components of the AML/CFT/CPF framework.

#### **6.1.6 The Academia**

Academic stakeholders have also contributed to shaping the current AML/CFT/CPF framework. Other than professional guidance, publishing of articles which helped shape public opinion and educate the masses around crucial issues such as the scourge of corruption, the academia has also helped the country in crafting the current AML/CFT/CPF framework and policy.

#### **6.1.7 Regulatory and supervisory bodies**

Whilst there may be room for improvement in some of their operations, stakeholders such as the PAAB, NSX, BoN, NEAB, LSN, Diamond Board<sup>33</sup> are key prudential supervisory and regulatory bodies. Prudential supervision is essential in the combatting of ML/TF/PF activities. Sectors that have prudential supervisory bodies naturally have some of the basic frameworks or governance structures that reduce risk exposure.

Currently, only NAMFISA and the FIC are mandated AML/CFT/CPF supervisory responsibilities. NAMFISA supervises all institutions under its prudential sphere, for AML/CFT/CPF purposes. This includes insurance service providers, microlenders, securities sector and pension funds. On the other hand, the FIC supervises all other sectors that do not fall under the prudential supervision of NAMFISA. These include banks, non-banking financial institutions such as Bureau de Changes and DNFBPs.

#### **6.1.8 AML/CFT/CPF supervised institutions**

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<sup>33</sup> The Casino board is in place but is practically dormant in as far as executing its prudential functions to enhance AML objectives is concerned.

Supervised institutions are gatekeepers to the financial system and are thus a key component of the combatting framework. Supervised institutions play an essential role in national ML/TF/PF preventive and combatting efforts. Such institutions are required to implement controls such as adequate record keeping; conducting risk assessments and using outcomes of same to guide all other controls such as CDD/EDD, transaction monitoring and reporting etc. Although the responsibility to report suspicious transactions associated with ML/TF/PF applies to every person (including legal persons), most STRs and SARs that result in cases escalated by the FIC to LEAs emanate from supervised institutions.

Supervised bodies further have their sectoral self-regulatory bodies or voluntary associations such as the Bankers Association of Namibia (BAN) which help coordinate AML/CFT/CPF risk management efforts, amongst other objectives. The FIC relies on these bodies to help drive risk mitigation and enhance overall compliance.

#### **6.1.9 Members of the public**

Members of the public are some of the most crucial stakeholders as they are the users of the very financial system protected by the AML/CFT/CPF framework. The cooperation of members of the public and willingness to cooperate with supervised institutions in the latter's efforts to mitigate risks is invaluable to the financial system. Additionally, whistleblowing by members of the public has led to effective combatting activities, some of which have resulted in recovering assets for the State and prosecutions linked to ML.

#### **6.1.10 The Media**

The media is a key stakeholder in nation building and shaping public perception. Public perception is essential in combatting financial crimes. The public's perception about financial crimes determines the level of cooperation the public avails to the ML/TF/PF combatting framework. Whilst there is room for improvement in media reporting, the role the media has played in helping guide public perception has contributed to educating the public on their rights., the impact of financial crimes on the economy and financial system, as well as what role the public can play in combatting such.

## **CHAPTER II: ML THREAT ASSESSMENT**

## **Chapter summary**

*This section estimates the scale and nature of criminal activity, which generates proceeds of crime and the potential laundering thereof. The approach taken is to consider ML threats from predicate offences committed locally and abroad (with links to Namibia) based on the evaluation of collected data such as type, origin, nature of financial flows and involved sectors. With this approach, the national threat level of ML or proceed-generating crimes in Namibia is rated **High**. As per Table 1 below, the financial impact of proceeds of crime carries a much higher weight than other considerations such as occurrence levels. The financial impact of proceed-generating crimes or threats is rated High while the prevalence rate of ML predicate offences is rated Medium High. This informed the High rating of ML threats nationally.*

<b>ML threat variable</b>	<b>Variable weight</b>	<b>Risk rating</b>
Financial impact, losses or prejudice of proceeds of crime	+/- 65%	High
Prevalence of ML predicate offences	+/- 20%	Medium High
Cross border ML threat	+/- 15%	High
<b>Aggregated national ML threat level</b>		<b>High</b>

*Table 1: Summary of ML threat assessment outcomes*

*The 2012 NRA update found tax related offences, corruption/bribery, stock theft, motor vehicle theft and fraud to be the main proceed-generating crimes<sup>34</sup> . This assessment, having regard to data for the five-year period leading to December 2019 observed that the most significant ML threats still remain tax related offences, fraud and corruption. Other proceed generating crimes such as pyramid schemes and environmental crimes having grown in prevalence and prominence. There are also growing indications that virtual assets or currencies could grow as an avenue through which criminals launder funds. The TBML<sup>35</sup> risks emanating from illicit cross border remittances also remain significant in the period reviewed.*

*The risk assessment also observed that most ML threats in one way or the other are in most instances either invested in or laundered through banks, followed by Unit Trust Schemes and Asset Management related services. Other non-financial services highly vulnerable to ML threats include law firms and motor vehicle dealerships.*

<sup>34</sup> Using available crime statistics provided at the time (as identified by the various LEAs upon investigation).

<sup>35</sup> Including related crimes such as capital flight and tax evasion.

## **7. ML Threats, key variables and relevant data**

The objective of this module is to identify ML threats and understand those threats in terms of type of predicate offense, origin and sector. Such is further analysed to assess the impact of threats. The outcomes of such threat assessment are then considered to arrive at the most appropriate threat rating. In the midst of such analysis, the factors which inform such considerations are highlighted to help inform combatting policy and support implementation efforts.

Weight consideration of each ML threat variable is essential as variables which inform risks do not have the same impact on any bottom line, which could be social interests, businesses, economy, integrity of financial systems etc.<sup>36</sup> The key variables considered in the ML threat assessment are the financial impact or the potential prejudice of proceeds of crime, the prevalence rate (or occurrence rate/volumes) of ML predicate offences and the cross border threat of ML activities. In ensuring variables contribute a fair consideration to the overall ML threat analysis and rating, the financial impact or effect of financial prejudice of proceeds of crime carried a higher weight (65%) than the prevalence or occurrence rate of ML predicate offences (20%) and the cross border ML threat (15%).

ML threat is established by assuming that the laundering threat is a function of “proceeds of crimes”.<sup>37</sup> Reliable data related to proceeds of crime is thus essential. There is a lack of official information on the nature and extent of ML activities in Namibia. Reliable data such as volumes of ML cases under LEA investigation, related financial values is essential in helping to assess ML threats. This shortcoming was highlighted in the 2012 NRA report and has yet to be addressed by relevant authorities. The best evidence available, which informed most of the ML threat assessments was thus taken from a combination of accessible minimum data such as records of observed ML cases within LEAs, OPG and the FIC. This section explains how such minimum data, along with other qualitative variables were considered to assess ML threats.

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<sup>36</sup> For example, Country A may have very few known ML cases but such cases are large scale in financial impact (or prejudice to society) as the involved values are very high. On the other hand, Country B may have a very high volume of ML cases each with very minimal financial values/prejudice that even when aggregated do not lead to substantial losses suffered by Country A. In rating ML threats in such countries, the weight assigned to actual impact or values need to be duly considered, thus assigning the same weight for all variables is not always helpful in risk assessments.

<sup>37</sup> The NRA adopted an approach similar to that advanced in the FATF Recommendations.

In Namibia, risk assessments over the years continue to suggest that ML threats primarily emanate from predicate offences such as tax related offenses, fraud, TBML and corruption.

## 7.1 ML investigations and convictions

Table 2 below presents volumes of actual ML investigations conducted by the Namibian Police along with records of prosecutions and convictions. Overall, there seem to be an increase in the volume of ML cases investigated year-on-year. Resource limitations, coupled with the complexity of financial crimes, were cited as primary reasons that derail the ability to enhance turnaround periods or timely finalisation of cases under investigation. Naturally, this results in lower volumes of ML cases escalated by investigative authorities for prosecution.

Year	2015	2016	2017	2018	2019
Number of investigations conducted with an ML component	58	87	104	125	99
Number of ML prosecutions initiated	7	14	18	31	16
Number of convictions for ML	0	3	0	2	4

Table 2: ML investigations, prosecutions and convictions<sup>38</sup>

Improvements in ML convictions and the pace at which such cases are being finalised in courts has greatly improved since early 2019. Prior to that, Namibia had very few<sup>39</sup>, if any, ML convictions. Having said that, the total number of ML convictions are very low, when viewed with ML threats (as identified through STRs in Table 6 and total number of cases in Table 2 above). Although there appears a slight improvement in recent years, investigations and prosecutions are primarily characterized around predicate offences, with less focus on ML. The NRA found that this leads to ML only being appended as an additional charge in fewer cases, especially where self-laundering is obvious.

Resource constraints within prosecution remain the major stumbling block. Limited understanding of the AML framework, especially as far as ability to identify and advance ML charges is another primary concern. In the period 21 January 2019 to 16 June 2020, the OPG Head Office deliberately commenced an exercise to visit regional prosecution offices to review the processing of proceed generating crimes, amongst other activities. The Head

<sup>38</sup> Note that the data for prosecutions is only up to January 2019. Source: Namibian Police. No particular reason could be found to explain the drop in volume of cases recorded in 2019. Also note that not all ML cases escalated by LEAs result in prosecution.

<sup>39</sup> Statistics from the Namibian Police suggests that Namibia had only 3 convictions in 2015/16 and another 2 in 2017/18 plus 4 in 2018/2019.

Office identified existing cases in the regions wherein charges were limited to the predicate offences, while grounds existed for advancing additional ML charges. These regional visits improved the overall volume of ML prosecutions and convictions, as reflected in Table 3 below. Equally, outcomes of these visits suggest that regional prosecution teams may need improvements in terms of skills and resources to help identify and advance ML charges.

Period: 16 January 2019 – 16 June 2020	
Considerations	Numbers
Number of cases brought before court	62
Total ML convictions and sentencing	54
Cases from previous year ( <i>implies the 54 new cases were brought before court and prosecuted in the said period</i> )	8
ML cases pending in court as at June 2020	102

Table 3: Finalised and pending ML cases (OPG)

The total financial values in prejudice from the 54 ML convictions amounted to NAD 17,539,899.88 while only about NAD 3,427,825.20<sup>40</sup> was recovered at the conclusion of such cases (through court orders upon convictions). This excludes funds that may have been forfeited to the State in separate civil matters.

## 7.2 ML threat level: Financial impact of proceeds of crime

This section presents outcomes of analysis aimed at understanding the impact or financial prejudice of proceed-gaining crimes. The most reliable and relevant data could be used to estimate the financial value of ML is from STRs.

Owing to their very nature and characteristic as underworld activities that thrive on covert operations, proceed generating crimes and their financial impact are not easy to detect, thus impacting the ability to reliably estimate their proceeds. Various jurisdictional ML NRAs concur that it is difficult to establish the exact financial values of proceeds of criminal origin injected into the formal economic cycle globally.<sup>41</sup> A common approach adopted by experts tend to establish same by apportioning a percentage, usually of 2-5% of GDP to crimes that generate proceeds, with most of the assets destined to be laundered through the financial

<sup>40</sup> This excludes other assets such as Motor Vehicles, furniture, livestock etc., which were either forfeited to the State or returned to victims as per court order. All such are listed for each case but financial values could not be reliably estimated.

<sup>41</sup> Supplemented Latvian National money laundering/terrorism financing risk assessment report, 22 June 2018. [https://www.fid.gov.lv/images/Downloads/useful/ML\\_TF\\_ENG\\_FINAL.pdf](https://www.fid.gov.lv/images/Downloads/useful/ML_TF_ENG_FINAL.pdf).

sector in particular<sup>42</sup>. Researchers also indicate an upward trend in the values of capital of criminal origin channelled into the financial sectors of OECD member countries, with the proportion nearing an average of 2% of GDP per year and reaching 3.5% to 4% for certain countries.<sup>43</sup> Using this approach, and thus assuming a conservative average of 2% of GDP, this assessment estimates the financial value of criminal proceeds in 2019 at NAD 3.6 billion (assuming 2% of GDP at NAD 181 billion or USD 12.1 billion<sup>44</sup>).

Another method of estimating financial value of criminal proceeds deviates from the GDP based approach and considers known values associated with crimes. With this approach, studies consider detailed information sourced from criminal investigations, along with tax records and other government data sources. Such data is then analysed to help estimate sectoral values of proceeds of crime for the underground economy<sup>45</sup>.

As mentioned above, only STRs finalised by the FIC and disseminated<sup>46</sup> to LEAs and OPG were computed with such financial values for the NRA. The table below presents such estimated financial values sourced from STRs finalised within the FIC. It is essential to note that the FIC's investigation and analysis only yields intelligence and does not necessarily equate to proof of actual occurrence of a crime until such are confirmed or verified by relevant bodies such as LEAs or the OPG. Therefore, care needs to be taken in interpreting financial values from STRs because not all STRs result in actual cases which are eventually escalated for prosecution or result in actual due diligence to collect taxes. On the other hand, the number of ML cases (with their related financial values) finalised in court are very few and

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<sup>42</sup> Peter J. Quirk, "Macroeconomic Implications of Money Laundering", IMF, Monetary and Exchange Affairs Department, 1996; IMF "Financial System Abuse, Financial Crime and Money Laundering – Background paper", 2001, pieejams: <https://www.imf.org/external/np/ml/2001/eng/021201.pdf>; UNODC "Estimating Illicit Financial Flows Resulting From Drug Trafficking and Other Transnational Organized Crime" pieejams: UNODC 2011, [https://www.unodc.org/documents/data-and-analysis/Studies/Illicit\\_financial\\_flows\\_2011\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf).

<sup>43</sup> F. Schneider, "Turnover of organized crime and money laundering: some preliminary empirical findings", [www.urosario.edu.co/observatorio-de-lavado-de-activos/.../Schneider-\(2008\).pdf](http://www.urosario.edu.co/observatorio-de-lavado-de-activos/.../Schneider-(2008).pdf): In helping to guide estimations of ML impact on countries, the paper quantifies the turnover of organized crime (with the help of a MIMIC estimation procedure) for the years 1995 to 2006 for 20 highly developed OECD countries. The volume of turnover from organized crime was USD 270 billion in the year 1995 for these 20 OECD countries, rising to USD 614 billion in 2006. The worldwide turnover in organized crime had a value of USD 595 billion in 2001 and rose to USD 790 billion in 2006. These figures are very preliminary but clearly indicate the importance of the turnover of organized crime or the extent of money laundering. This is consistent with other studies suggesting escalation in Criminal proceed generating crimes over time. This trend appears to be similar in Namibia if the volume of reported ML cases, as contained herein, is anything to go by.

<sup>44</sup> Namibia Statistics Agency (NSA), Annual National Accounts, 2019. file:///F:/NRA%20Received%20Docs/Module%201%20Crime%20threats/ACC/Annual\_National\_Accounts\_2019.pdf and the World Bank estimations which placed Namibia's GDP at Market Prices around NAD 181 billion (USD 12.37 billion) in 2019 (<https://tradingeconomics.com/namibia/gdp>).

<sup>45</sup> Jack Boorman and Stefan Ingves, "Financial System Abuse, Financial Crime and Money Laundering", International Monetary Fund <https://www.imf.org/external/np/ml/2001/eng/021201.pdf>, 2001.

<sup>46</sup> This is not derived from the total number of STRs received by the FIC. It is limited to the financial values of all processed STRs wherein case files were opened, analysed and escalated to LEAs and the OPG for further consideration. This excludes STRs not finalised or set aside.

cannot be relied on to solely indicate the actual ML threat level<sup>47</sup>. From local observations, the assessment found that many cases do not amount to successful ML convictions in court owing to factors such as non-cooperating or poor witnesses, ineffective investigations, inadequate resources in LEAs or OPG, legal technicalities brought by accused persons before courts etc. All these further undermines the ability to truly ensure all proceed-gaining crimes are duly finalised and thus limits the extent to which the assessment can solely rely on court case finalisations as a measure of national ML threat level.

PREDICATE OFFENCES	2015	2016	2017	2018	2019	Est. financial value per predicate offence
	Amount (NAD)	Amount (NAD)	Amount (NAD)	Amount (NAD)	Amount (NAD)	
Potential tax related offences: cases disseminated to MoF	739,053,772.35	1,861,033,093.56	5,918,558,417.49	7,329,882,626.48	17,832,857,916.36	33,681,385,826.24
Potential corruption: cases disseminated to ACC	18,603,156.40	1,171,836.14	50,553,214.00	30,344,749.00	145,921,326.00	246,594,281.54
All types of Fraud cases	278,291,911.04	120,645,916.45	5,010,491,139.43	1,876,973,702.65	1,584,136,465.47	8,870,539,135.04
Environmental crimes except diamond & gold dealings (See Chapter VII)	1,151,419.68	136,960.00	774,556,328.83	177,379,871.40	5,256,874.23	958,481,454.14
Env. Crime: Diamond trafficking	-	-	-	-	138,576.56	138,576.56
Env. Crime: Gold trafficking	-	-	-	-	-	-
Trafficking in persons	-	-	-	-	16,650.00	16,650.00
Stock theft	1,151,419.68	-	2,789,000.00	4,500.00	-	3,944,919.68
Motor vehicle theft	-	-	-	-	-	-
Drugs (includes dealing and possession)	395,500.20	454,828.00	146,599.36	1,864,206.00	-	2,861,133.56
Pyramid schemes	-	-	-	-	67,039,858.04	67,039,858.04
Virtual Currencies	-	-	-	-	-	-
Cybercrimes	-	-	-	-	-	-
<b>Total</b>	<b>1,038,647,179.35</b>	<b>1,983,442,634.15</b>	<b>11,757,094,699.11</b>	<b>9,416,449,655.53</b>	<b>19,635,367,666.66</b>	<b>43,831,001,834.80</b>

Table 4: ML financial values observed from STRs analysed and disseminated<sup>48</sup>

A more helpful estimation of the total financial proceeds of crime would have emanated from a combination of various data, including aggregates of the actual financial values in all cases wherein LEAs and OPG find elements of ML. As emphasized in the 2012 NRA report, the LEAs and OPG are expected to maintain and avail relevant data of all such cases.

In rating the financial proceeds of crime, reliance could not be solely placed on the aggregated STR financial values, as such is not accompanied by other relevant data from

<sup>47</sup> If NRA methodologies worldwide are anything to go by, solely relying on a very low volume of ML convictions may not accurately reflect the actual ML threat position. This position is exacerbated in countries where ML convictions are few. From the FIC, ACC and NamPol, thousands of cases with potential ML elements have been forwarded for prosecution over the years. However, by August 2020, only 62 had been brought before court with ML convictions and sentencing occurring in 54 cases. All such convictions and sentencing occurred from January 2019 to 16 June 2020.

<sup>48</sup> Note that the potential tax offence related figures for 2019 are significantly higher than the annual averages primarily owing to disclosures related to the so-called *Fishrot* case, currently in court. There appears to be significant potential tax related offences in the matter.

competent authorities who investigate and finalise STRs disclosed to them. Other approaches of estimating financial values of proceed generating crimes therefore had to be considered. Although it has its shortcomings, the widely used GDP method was preferred. With this approach, the total annual proceeds of crime can be estimated to be around NAD 3.6 billion.<sup>49</sup> The annual proceeds of crime had to be considered along relevant factors to establish an appropriate threat rating to the economic system. Public sector expenditure is a significant driver of consumption locally. Therefore, annual proceeds of crime could be considered along with factors such as Government revenue and expenditure. In the said period, such spending fluctuated around NAD 65 billion, while revenue was closer to NAD 55 billion. There are many yardsticks that can be considered in this context, but with government expenditure amounting to 37.7% of GDP in 2019<sup>50</sup>, annual Ministerial expenditure budget allocation was assumed in this context. In this regard, with the exception of a few Government Ministries such as Health, Education, Transport, Finance, Defence, Safety and Security<sup>51</sup>, the NAD 3.6 billion annual estimate of proceeds of crime could sustain the average government Ministry annually. Given the size of the Namibian economy, it was thus concluded that the potential annual proceeds of crime estimated around NAD 3.6 billion is **High** in terms of ML threat level.

### 7.3 Financial value-based predicate offence considerations

Part of assessing the impact of ML threats entails assigning known financial values to each class of predicate offence and assessing such to arrive at appropriate threat levels. Table 5 below avails financial values per predicate offence as per intelligence information shared by the FIC with relevant authorities.

At NAD 33 billion, potential tax related offences (which includes potential revenue from which the Receiver could establish taxable income) appear to have the highest potential financial values on aggregate, over the five-year period. Fraud related disseminations also yield a high ML threat level. This suggests that if the financial variable is viewed in isolation, tax related offences and fraud potentially present the highest ML threats amongst all predicate offences, followed by corruption.

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<sup>49</sup> Assuming a conservative 2% rate of GDP which fluctuated around NAD 143 to 146 billion over the five years leading to 2019.

<sup>50</sup> Ministry of Finance, 2020-2021 Fiscal Strategy document

<sup>51</sup> These are the few Ministries allocated annual budgets in excess of NAD 3 billion annually.

PREDICATE OFFENCES	Est. financial value per predicate	Value based ML Threat Rating
Potential tax related offences: cases disseminated to MoF	33,681,385,826.24	High
Potential corruption: cases disseminated to ACC	246,594,281.54	Medium high
All types of fraud cases	8,870,539,135.04	High
All types of environmental crimes except diamond and gold related dealings (See Chapter VII)	958,481,454.14	Medium high
Env. Crime: Diamond trafficking (values that could be established)	138,576.56	Low
Env. Crime: Gold trafficking	-	Undetermined
Trafficking in persons	16,650.00	Low
Stock theft	3,944,919.68	Low
Motor vehicle theft	-	Undetermined
Drugs (includes dealing and possession)	2,861,133.56	Low
Pyramid schemes	67,039,858.04	Low
Virtual Currencies	-	
Cybercrimes	-	
<b>Total</b>	<b>43,831,001,834.80</b>	

Table 5: Value based ML threat rating<sup>52</sup>

#### 7.4 Observed prevalence of ML predicate offenses

This section looks at the prevalence or occurrence rate of identified ML predicate offences. Overall, there appears to be an increasing occurrence or frequency of such crimes over the five years leading to December 2019, as per table 6 below. Namibia recorded a total of 42,722 actual and potential ML or proceed-gaining crimes in such period.

Certain data and record keeping in various combatting authorities does not help to isolate all cases wherein actual ML may have occurred and this further undermines actual ML threat assessments. For example, there are cases emanating from suspects found in possession of prohibited items or substances and such are not always separated from cases that involve dealing in such prohibited substances or items. To the extent possible, assessments considered such challenges.

In rating the ML threat level of the predicate offences listed below, only the volume of cases reported were considered. The table below presents volume or prevalence-based outcomes of such threat ratings per predicate offence. Note that other factors including financial values, finalisation of ML investigations, convictions etc., are not considered for this specific variable.

<sup>52</sup> Financial values above NAD 1 billion were accorded a high rating. Values between NAD 100 million and NAD 999 million were accorded a medium rating while values below NAD 99 million were rated low.

PREDICATE OFFENCES	2015	2016	2017	2018	2019	Total No. of Cases	Threat Rating (Report Volumes)
Potential tax related offences: Min. of Finance (IRD) investigated cases	3	12	3	4	3	25	Low
Potential tax related offences: FIC disseminations to MoF	38	64	99	143	107	451	Medium
Potential corruption related crimes (ACC Annual Reports)	427	401	345	325	313	1,811	High
Fraud: Prevention of counterfeiting of currency Act	46	36	68	49	100	299	Medium
Fraud: Forgery and uttering	308	276	317	295	300	1,496	High
Fraud: All other types	2,177	2,118	2,049	2,149	2,487	10,980	Medium
Trafficking in persons	-	-	5	15	4	24	Low
Environmental crimes: IWT	364	498	383	654	587	2,486	Medium
Env. Crime: Diamond trafficking	1	-	1	-	-	2	Low
Env. Crime: Illegal possession of diamonds	4	1	9	35	9	58	Low
Env. Crime: Gold trafficking	-	1	-	-	1	2	Low
Env. Crime: Illegal possession of gold	1	1	-	-	1	3	Low
Env. Crime: Illicit Fishing (IUU)	8	10	8	2	2	30	Low
Env. Crime: Forestry crimes	4	6	12	8	5	35	Low
Env. Crime: Hazardous waste dumping and trafficking	-	-	-	-	-	-	Undetermined
Stock theft	2,446	2,578	2,705	2,791	2,642	13,162	High
Motor vehicle theft	392	440	383	367	385	1,967	Medium
Drugs (includes dealing and possession)	1,677	1,830	1,807	2,354	2,288	9,956	High
<b>TOTAL VOLUME OF CASES</b>	<b>7,896</b>	<b>8,272</b>	<b>8,194</b>	<b>9,191</b>	<b>9,234</b>	<b>42,787</b>	
<b>OVERALL THREAT RATING (REPORT VOLUMES)</b>							<b>Medium High</b>

Table 6: Volume or prevalence-based outcomes of ML threat ratings per predicate offence<sup>53</sup>

Crimes such as fraud, stock theft as well as drug dealing are highly prevalent. Fraud is the common underlying offence observed in most financial crimes particularly those linked to tax and corruption related offences. The aggregated total of all reports under high threat level predicate offences is 35,893 while the total reports under predicate offences rated low and medium amount to 6,829. In aggregating the combined ratings, the assessment rated the prevalence of ML threat as **Medium High**.

## 7.5 Breakdown of major predicate offences

The assessment analysed statistics relating to volumes and were available, financial values related to ML predicate offences<sup>54</sup> to understand the potential significance, impact and size of proceed-gaining or predicate offences in Namibia (including those committed abroad, with links to Namibia).

<sup>53</sup> Sources: NamPol (CID), Min. of Finance, FIC, ACC. Note: a). The first two rows show details of potential tax related offences. The very first row presents cases investigated by the Ministry of Finance (IRD) while the second row shows record of all STRs analysed by the FIC and escalated to the Ministry for further investigation; b). Third row shows corruption related cases as noted from ACC annual reports; c). All other cases from the fourth row were sourced from NamPol [Criminal Investigations Division (CID)] reflect the total number of cases reported and investigated. Ratings: High threat level: Above 5,000 cases; Medium threat level: 1,000 - 4,999 cases; and Low threat level: 0 - 999 cases.

<sup>54</sup> Includes data from STRs and SARs and actual cases from the ACC and NamPol.

In terms of the 2012 NRA, the main proceed-generating crimes<sup>55</sup> were tax related offences, corruption/bribery, stock theft, motor vehicle theft and fraud. This assessment, having regard to data for the five-year period leading to December 2019 suggests that these crimes remain the most prevalent, with environmental crimes having grown in prevalence and prominence. The 2015/2016 NRA update also found that TBML<sup>56</sup> emanating from illicit cross border remittances are quite significant.

This section provides detailed analysis on the major ML predicate offences such as potential tax related offences, fraud and corruption. The assessment found that the observations related to TBML as reflected in the 2015/2016 NRA update are still relevant. In terms of TBML, this report supplements the 2015/2016 outcomes with information which points to potential high risk corridors (jurisdictions from or to where ML risks may originate or destined)

### **7.5.1 Corruption**

All corruption related investigations are mainly conducted by the ACC. The Government of the republic of Namibia signed the UN Convention against Corruption (UNCAC) on 09 December 2003 and ratified same on 03 August 2004. The expectations of the UNCAC have been domesticated through the Anti-Corruption Act of 2003. Further, a comprehensive National Anti-Corruption Strategy was developed and implemented in line with Article 5 of UNCAC.<sup>57</sup> The latest was for the period 2016 to 2019, with its Action Plans reviewed and updated in 2020 for the period thereafter. The ACC coordinates all corruption combatting and prevention activities nationally.

Since inception, the ACC recorded a total of six thousand eight hundred forty-four (6,844) complaints. In the earlier years, a significant number of complaints were non-corruption related and such were either set aside or referred to relevant authorities. This has improved in recent years and about 50% of the complaints received by the ACC over the five years leading to 2019 were corruption related and met the standard to warrant further investigation.<sup>58</sup> It should however be noted that efforts are made to substantiate or enhance

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<sup>55</sup> Using available crime statistics provided at the time (as identified by the various LEAs upon investigation).

<sup>56</sup> Including related crimes such as capital flight and tax evasion

<sup>57</sup> Such was developed with the inputs of various stakeholders including civil society, FIU, OPG, LEAs, academia etc.

<sup>58</sup> The majority of non-pursuable complaints, which were set aside, were due to insufficient, vague or unsubstantiated information.

information as per complaints received and only when all else fail does the ACC set them aside. The chart below, as at 21 August 2020, presents a summary of how the ACC dealt with all complaints and corruption related matters brought before it.

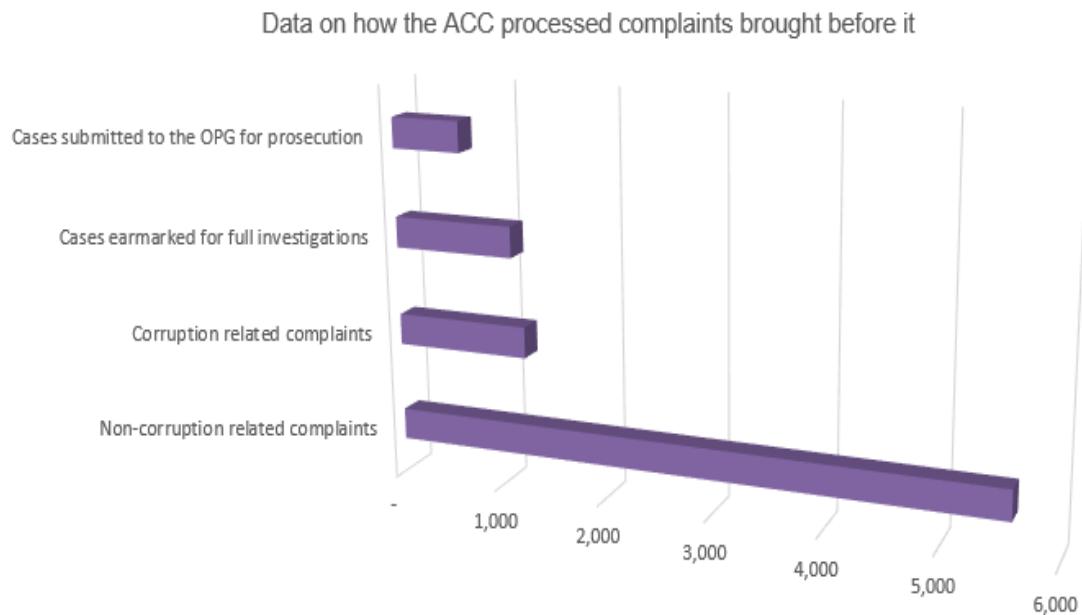


Figure 6: Record of how complaints received by the ACC were processed.

#### 7.5.1.1 Most reported types of corruption

Tables 4 and 6 above presents data on ML predicate offences, including corruption related offences over the last five years. As per the table below, the most common types of corruption related cases observed are abuse of power, closely followed by procurement related irregularities (mostly public sector procurement or tender related). Fraudulent conduct and recruitment related irregularities also appear quite common in the advancement of corruption, whether such usually amount to kickbacks or bribery is not clear from data at hand. The ACC explained that the trends in the chart below can be extrapolated to the entire populace of corruption related cases investigated.

## THE MOST REPORTED TYPES OF CORRUPTION

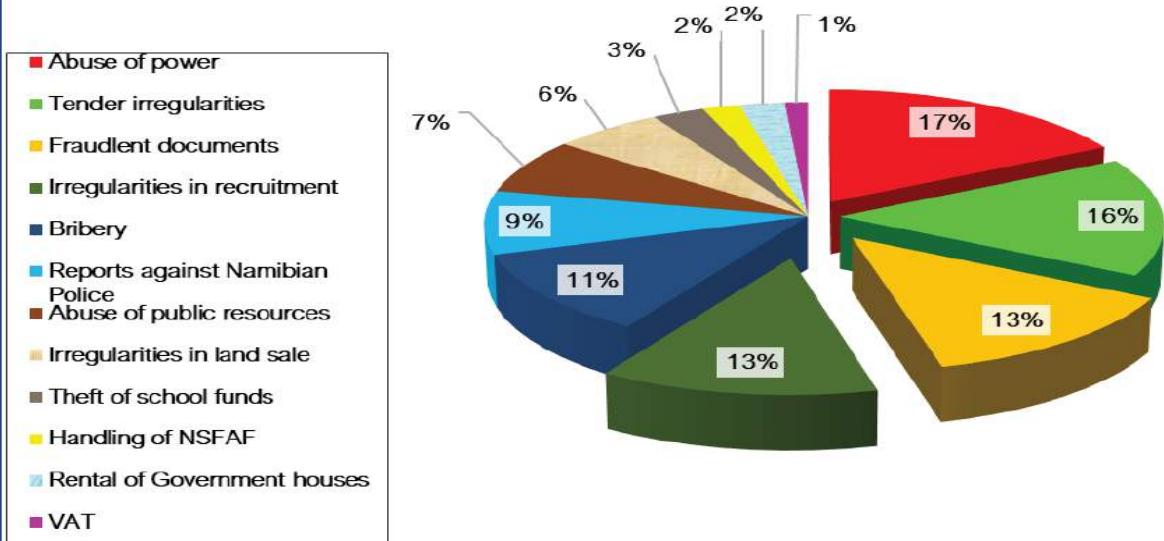


Figure 7: Summary of the types of corruption reports received by the ACC<sup>59</sup>

Table 6 above shows the volume of corruption related cases received by the ACC nationally. In the five-year period leading to December 2019, the FIC disseminated 24 corruption related reports to the ACC, with an average of around 4.8 reports shared annually. From such reports, the potential financial values annually fluctuated from as low as NAD 1.1 to as high as NAD 50 million until the significant escalation recorded in 2019. Such escalation is mainly attributed to the *Fishrot* matter, a large-scale fraud, corruption and ML case pending in court. From FIC disseminations, the potential total financial proceeds observed over the five years in corruption related activities aggregates to over NAD 246 million.

<sup>59</sup> Source: ACC 2018/19 AR

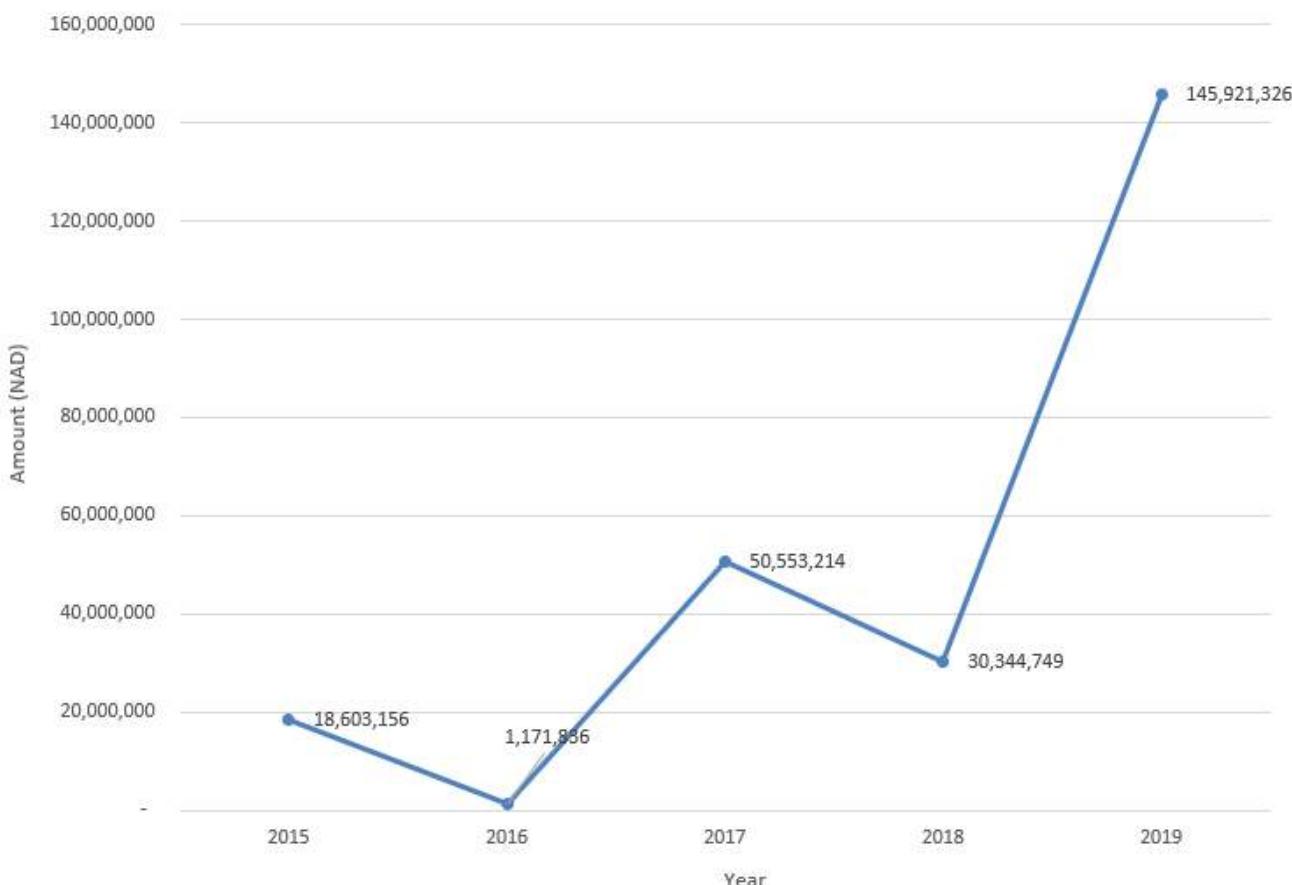


Figure 8: Potential aggregated annual financial value from intelligence shared with the ACC annually

### 7.5.1.2 Large Scale Corruption: The *Fishrot*<sup>60</sup> scandal

In terms of ML related cases with the highest financial impact or prejudice, the TBML and tax evasion case wherein the State alleges that over NAD 3.6 billion may have been illicitly remitted out of Namibia was potentially the largest ML case brought to court. The infamous *Fishrot* case, in terms of financial prejudice or losses is easily equal to or larger than the TBML case. The case study below presents a summary of some publicly reported<sup>61</sup> information on how the alleged corruption scandal may have been planned and executed.

<sup>60</sup> At the time of reporting, this case is pending in court.

<sup>61</sup> PG says NAD 170m paid to *Fishrot* accused. Werner Menges. 2020-12-01. [https://www.namibian.com.na/206806/archive-read/PG-says-N\\$170m-paid-to-Fishrot-accused](https://www.namibian.com.na/206806/archive-read/PG-says-N$170m-paid-to-Fishrot-accused)

Bribery allegations over-fishing rights rock Iceland and Namibia. Jon Henley Europe correspondent Jonh Enley., 15/11/2019. <https://www.theguardian.com/world/2019/nov/15/bribery-allegations-over-fishing-rights-rock-iceland-and-namibia>  
 Fishrot files reveal costly web of bribes from Iceland to Namibia. Amsterdam News. 11/21/2019. <http://amsterdamnews.com/news/2019/nov/21/fishrot-files-reveal-costly-web-bribes-iceland-nam/>  
 Namibia's 'Fishrot' scandal: from start to present. Dan Gibson., Jan. 6, 2020. <https://www.undercurrentnews.com/2020/01/06/namibias-fishrot-scandal-from-start-to-present/>

## **Case study 1**

### **Alleged fishing sector corruption and potential ML**

*An Icelandic fishing firm had some of its operations along the Moroccan coast where it was allocated catch and freeze at sea fishing quotas. In 2010 however, the fishing firm found itself without a catch and freeze at sea quota. Namibia is said to have a yearly total allowable catch of 350,000 tons for horse mackerel.*

*Sometime after 2010, the leaders of the Icelandic fishing firm met the son-in-law of Namibia's Minister of Fisheries at the time, reports suggest. Such meeting was to entice the 'well-connected' son-in-law to use his relations with those in power to secure horse mackerel fishing quotas for the fishing firm. It is further alleged that the son-in-law, acting as a representative of a group of well-established businessmen and cabinet Ministers (the cabal) requested a bribe. One of the former leaders of the fishing firm, who has since turned State witness in the case confirmed that such bribe was paid to the son-in-law, in cash, at a local hotel. This is said to have confirmed some form of agreement that the well-established cabal will, going forward, ensure the Icelandic fishing company is allocated fishing quotas.*

*It is alleged that bribes<sup>1</sup> amounting to hundreds of millions of Namibian Dollars were paid by the Icelandic fishing firm to the cabal who facilitated the awarding of quotas to the firm. Preference in allocation of fishing quotas is given to majority-owned Namibian companies. To circumvent this, it is alleged that the Icelandic firm took up minority shareholding in a locally registered firm with the majority of shares, on paper, being allocated to a Namibian firm. Preliminary investigations now suggest that co-owner was merely a front for the cabal as the fishing firm still controlled the company plus over 70% of the economic share.*

*It is alleged that Minister of Fisheries commenced re-allocation of horse mackerel fishing quotas around mid-2013, on the need to ensure effective stock management system minimise risks of exploitation of resources. Around that same time, the ministries of Namibia and Angola signed an agreement of cooperation on horse mackerel. In terms of such, Namibia was to donate a significant amount of its total quota to Angolan fishing firms, while entities such as Namsov were struggling to keep up as their fishing quota (allocation) was reduced by the Minister of Fisheries.*

*It now appears that the Angola quota was now assigned to the joint venture Namgomar Pesca, which appears to have been a front company for the cabal. It is alleged that as at that point, the modus operandi changed. Allegations suggest that annually, around 10,000 tons of the annual quota was assigned directly to the Icelandic fishing firm, without going through a middlemen, as previously done. The cabal then demanded for three-quarters of the price for the quota, with one quarter to be given to Namgomar, who would sell such to the Icelandic firm. Namgomar Pesca announced that it would be investing NAD 500m in an onshore processing site. While Namsov was collapsing, Fishcor<sup>1</sup> was awarded with a further 50,000t of quotas annually since 2018, leaving Fishcor with 16% of Namibia's total allowable catch. Following such, Fishcor constructed a new mackerel processing facility with a capacity of 70,000t, eventually completed in January 2019.*

*At the time of reporting, allegations suggest that profits from the sales of the quotas to the Icelandic firm were directed to offshore entities in Mauritius and Dubai, then rerouted back to Namibia through firms associated with the cabal. Prominent law firms, some of whom stand accused in the Fishrot matter, appear to have been used to channel funds to entities of the cabal.*

In combatting ML related to or originating from corruption offences, prosecutions are expected to result in convictions and asset forfeitures. The table below gives an indication of progress made in advancing finalization of corruption related cases nationally.

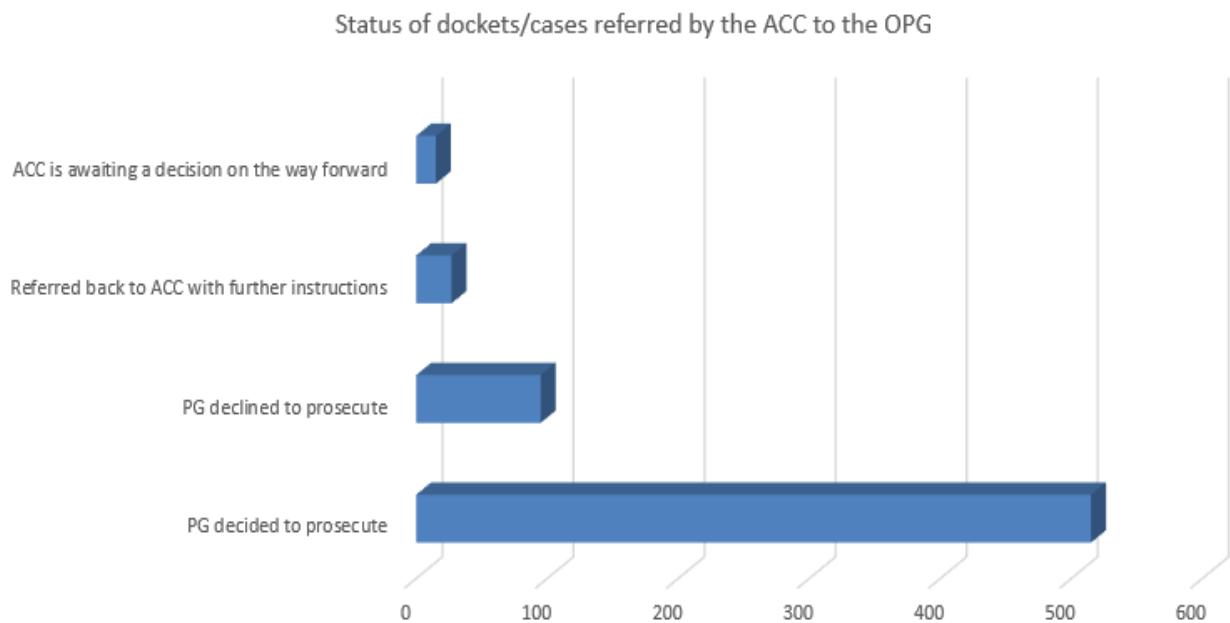


Figure 9: Status of investigations/cases referred by the ACC for prosecution, since inception

Since the ACC's inception, a total of three hundred seventy-four (374) cases<sup>62</sup> were finalized in courts. Two hundred and forty-six (246) cases were before court as at 21 August 2020. Overall, 79% of cases brought to court (by the ACC through the OPG) were finalised, with many such cases resulting in successful convictions.

#### **7.5.1.3 Relevant observations from the National Corruption Perception Survey**

The ACC<sup>63</sup> conducted a Corruption Perception Survey in May/June 2016 to gauge the public's perception of the prevalence of corruption, amongst other objectives. Public perception is essential in combatting crimes such as corruption as perceptions may have an influence on the confidence level that the public has in efforts dedicated to fight corruption. Reporting of corruption could, for example be one factor which may be undermined if the public does not have confidence in anti-corruption efforts nationally. With corruption being a proceed-generating crime, outcomes of the survey are essential within the context of assessing risks. The survey outcomes suggest that the general population has a fair understanding of what corruption entails and about 49% of the population are convinced that Government's anti-corruption performance is 'poor'. While corruption, especially bribery,

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<sup>62</sup> inclusive of cases wherein accused persons admitted guilt.

<sup>63</sup> In partnership with the Namibia University of Science and Technology (NUST).

usually involves two or more persons<sup>64</sup> (public officials or service providers and outside stakeholders on the other hand), the survey reveals that 22% of respondents felt that corruption is the normal way of doing things while 51.7% were of the view that corruption can be beneficial and can be used to access services faster. Although Namibia was perceived by many (45%) as winning the fight against corruption, the overwhelming majority (78%) were of the view that the level of corruption is generally very high in Namibia.<sup>65</sup>

### 7.5.2 Potential tax related offences

The Inland Revenue Department (IRD) within the Ministry of Finance is responsible for driving tax revenue collection. There are specialised tax investigation functions within IRD tasked with investigating and combatting potential tax related offences. As per the table below, the IRD had been investigating about 25 cases of potential tax evasion over the last five years, with five such cases being escalated to the OPG for prosecution. It is estimated that around NAD 13 million is the potential taxes that Government could have duly collected from such.

CASES UNDER INVESTIGATION FOR TAX RELATED OFFENCES							
Year	Number of cases detected or investigated	Number of cases prosecuted /referred for prosecution	Estimated financial values involved	Amount of proceeds seized or frozen	Amount of proceeds confiscated	Number of convictions (cases)	Number of persons convicted
2019	3	0	5,998,202.10	-	-	0	0
2018	4	3	3,789,271.63	1,200,993.78	1,200,993.78	0	0
2017	3	1	515,411.60	-	-	1	1
2016	12	1	165,857.98	-	-	0	0
2015	3	0	2,648,600.00	-	-	0	0
<b>Totals</b>	<b>25</b>	<b>5</b>	<b>13,117,343.31</b>	<b>1,200,993.78</b>	<b>1,200,993.78</b>	<b>1</b>	<b>1</b>

Table 7: Cases under investigation for potential tax related offences

When the FIC, through its investigations and analysis detects activities or transactions which reflect potential tax related offences, such are disseminated to the IRD for investigation. Figure 8 below presents a summary of the total intelligence reports related to potential tax offences disseminated.

<sup>64</sup> Usually, there is a corruptor(s) and corruptee. With bribes, there can be an offeror and an offeree.

<sup>65</sup> The role that key stakeholders play is essential. The survey equally revealed that the media is the most influential stakeholder in shaping public perceptions about corruption.

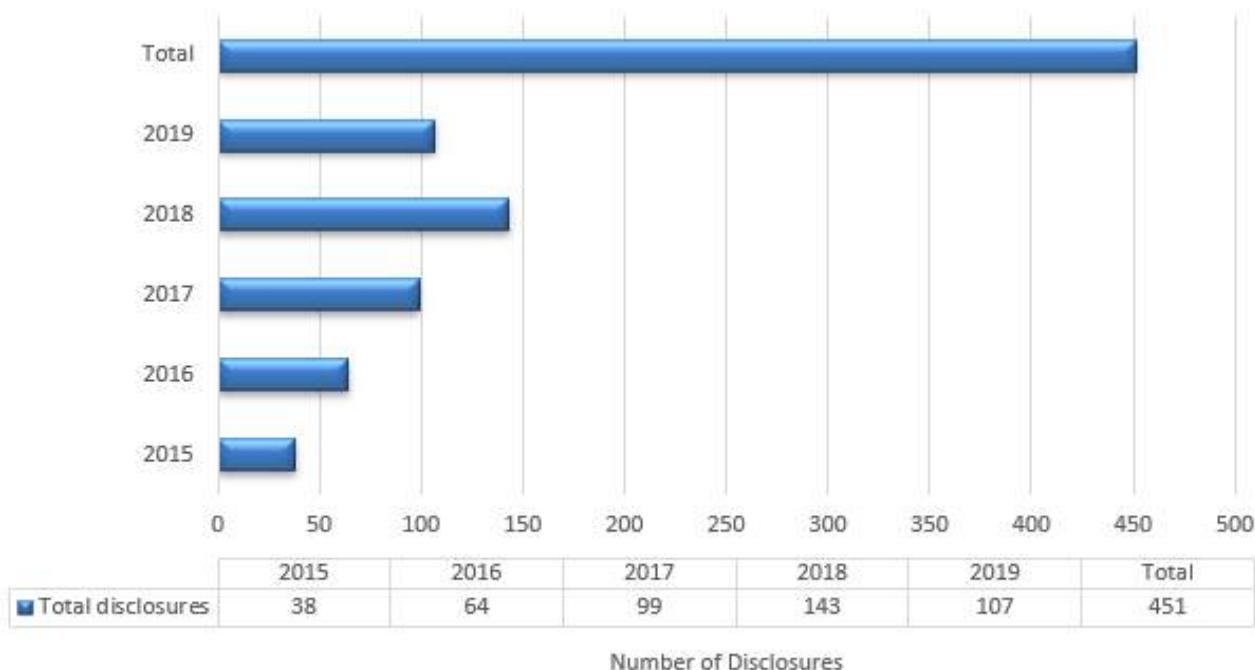


Figure 10: Intelligence reports related to potential tax offences disseminated by the FIC

In the period considered, the FIC disseminated 451 intelligence reports<sup>66</sup> to the IRD for further investigations, with 2018 recording the highest number of such disclosures. In terms of potential financial values detected in intelligence shared with the IRD, there appears to be an upward trend in financial values over the five years leading to December 2019. The total value from all such STR disclosures in the five-year period is in excess of NAD 33 billion.<sup>67</sup>

<sup>66</sup> As per Table 4 above.

<sup>67</sup> Note however that such value is not necessarily conclusive or final. FIC disclosures still require reviews from IRD, who, by virtue of having access to taxpayer records, are best placed to conclusively determine if there are tax related offences. Table 7 reflects data from the IRD on potential tax related offences.

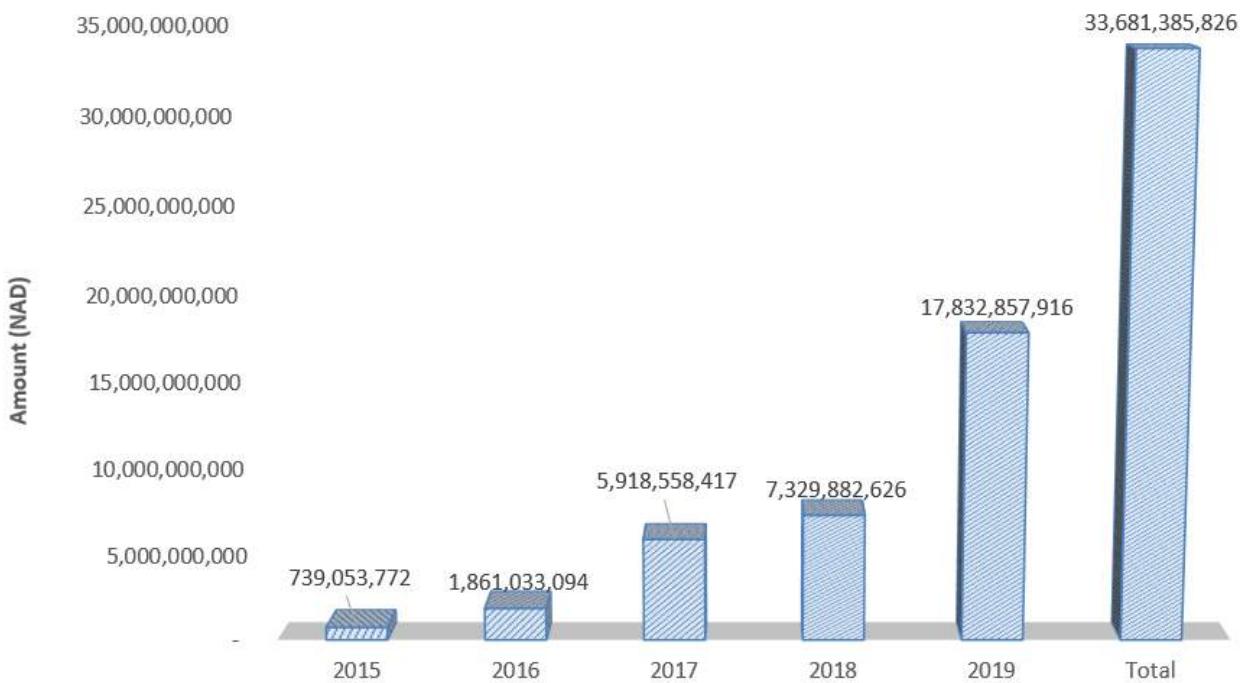


Figure 11: Estimated financial values from potential tax related offences (FIC disseminations)

### 7.5.3 Sectoral origin of potential tax related offences

While the chart below is limited to the five years leading to December 2019, the FIC received a total of 1,735 STRs related to potential tax related offences since the reporting obligations commenced in 2009. The data further suggests that the banking sector is most vulnerable to potential tax related offences as most reported cases (over 90%) are either detected from within, linked to or associated with the sector through facilitation of services.

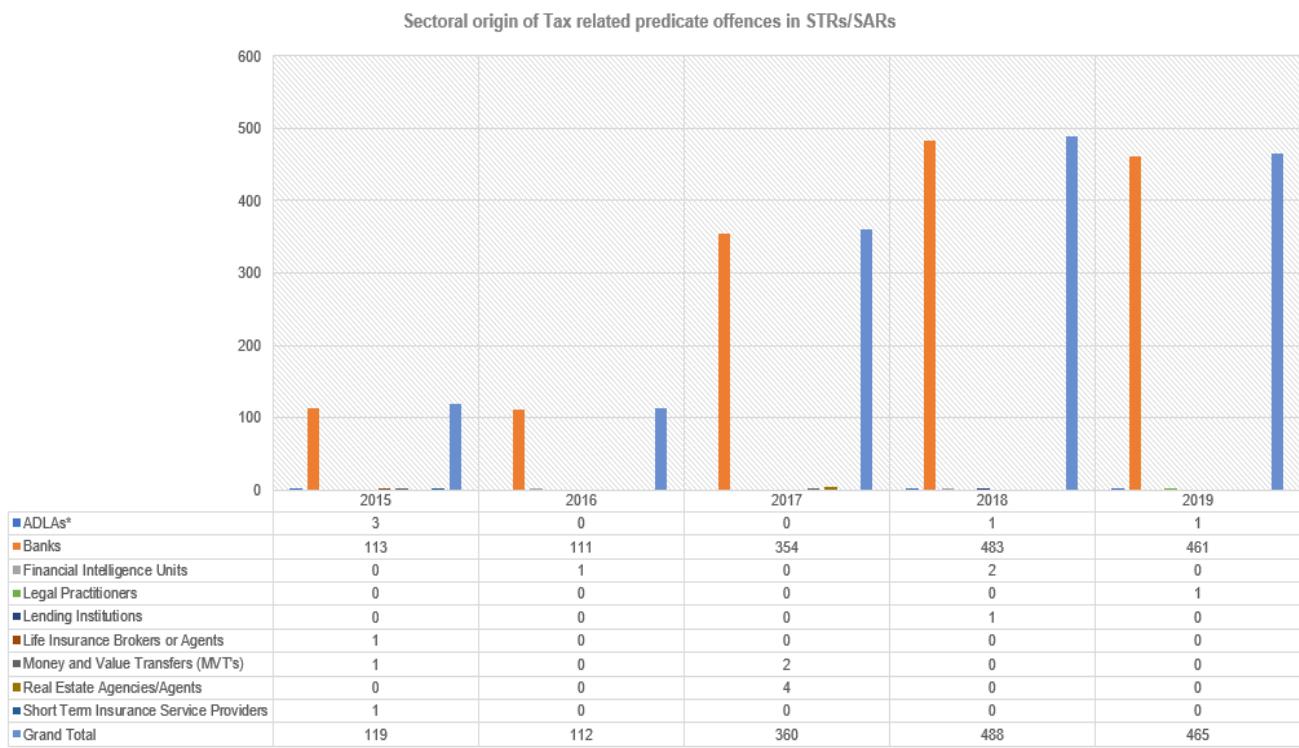


Figure 12: Sectoral origin of potential tax related offences (FIC)

#### 7.5.4 Fraud

Fraud as a crime (or conduct) is the most prevalent in almost all other types of predicate offences as there is usually an element of fraudulent conduct which enables or advances the commission of such crimes. Notable indicators from the 54 ML convictions locally suggest that fraud is prevalent in most ML cases, with the exception of cases such as housebreaking and theft.

The table below presents aggregated financial values observed in fraudulent offences as per finalised intelligence products disseminated by the FIC to various authorities. The disseminations with the highest financial impact (value) were shared with the OPG, Ministry of Finance and NamPol. Disseminations to the BoN mainly relate to potential contraventions of prudential legislations such as the Banking Institutions Act and the Exchange Control Rulings and Regulations, while disseminations to the ACC relate to potential corruption.

The table below reflects a summary of potential financial values related to cases escalated to relevant authorities. With the nature of specialised investigations under each authority, such helps indicate the potential financial values of each predicate offence, and thus impact

from resulting ML threat. The spike in financial values from reports escalated to the OPG in 2019 mainly stem from cases related to the TBML case<sup>68</sup> highlighted in the 2015/2016 NRA update.

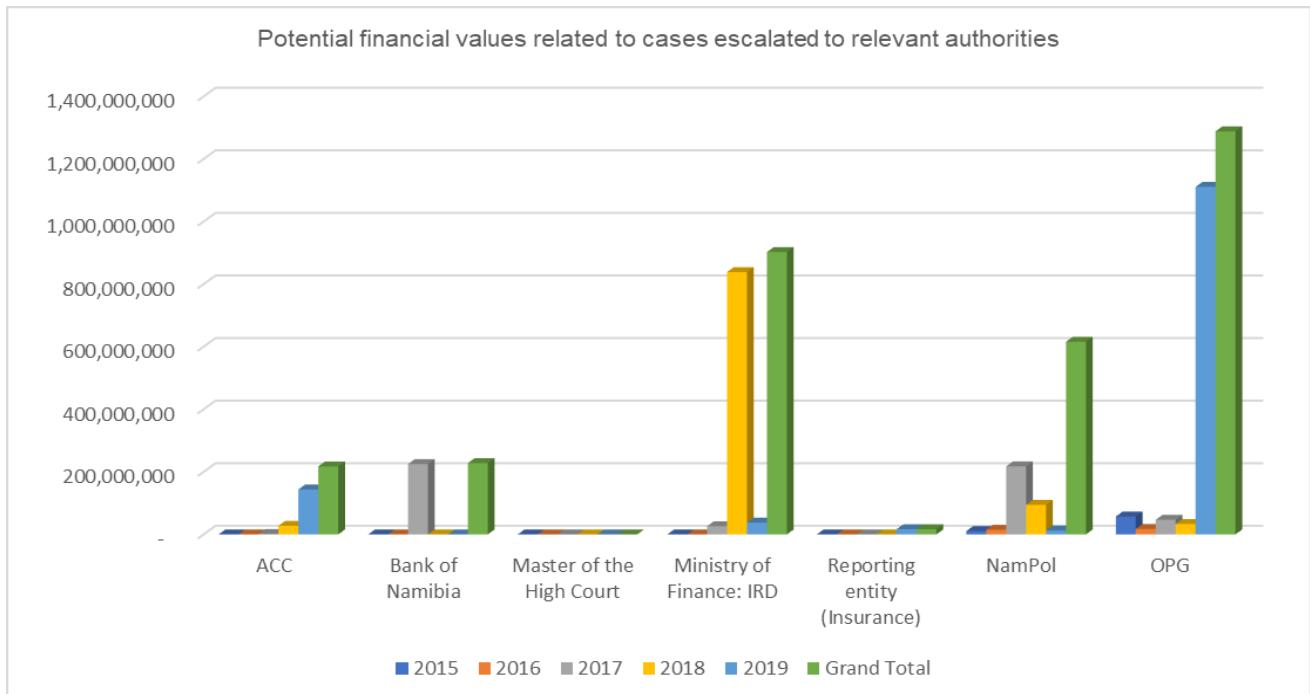


Figure 13: Potential financial values from fraud related cases escalated by the FIC to various LEAs

The table below presents a summary of how sectors reported fraud related predicate offences to the FIC. About 84% of all such reports originate from the banking sector while Insurance and Investment Brokers reported about 5% of such reports in the five-year period leading to December 2019.

<sup>68</sup> With over NAD 140 million linked to two subjects under investigation in 2019. The case had many STRs reflecting potential tax related offences escalated to the Ministry of Finance.

Fraud related STRs by Sectors						
	2015	2016	2017	2018	2019	Total
Accountant	0	0	0	0	0	1
ADLAs	0	0	0	0	1	3
Asset Management	0	0	0	0	0	1
Auctioneers	0	0	1	0	0	1
Banks	37	22	39	62	50	373
Casinos	0	0	0	0	1	1
Financial Intelligence Unit (FIU)	0	1	0	3	0	8
Individual Reporting Entity	1	1	2	1	4	11
Insurance/Investment Brokers	0	0	16	8	0	24
Legal Practitioners	0	0	1	0	2	3
Lending Institutions	1	0	0	1	0	2
Long Term Insurance Service Providers	0	0	0	0	0	2
Money and Value Transfer Service Providers	8	1	0	0	0	9
Motor Vehicle Dealerships	1	0	1	0	0	3
Regional Government	0	0	0	0	0	1
Short Term Insurance	0	0	0	0	1	1
Trust and Loan Company Services	0	0	0	0	1	1
Unit Trust Schemes	1	0	0	0	0	1
<b>Total</b>	<b>49</b>	<b>25</b>	<b>60</b>	<b>75</b>	<b>60</b>	<b>446</b>

Figure 14: Sectoral reporting behaviour of fraud related predicate offences (FIC)

The trend reflected above in terms of STR reporting is similar for SARs related to fraudulent predicate offences escalated to the FIC. Banks have always reported the highest volume of STRs and SARs related to potential fraudulent activities. Whilst STRs are processed by the FIC, banks are equally required to report fraud and other economic crime activities to the BoN. An understanding of such reporting behaviour can provide some insight on trends related to fraud and similar proceed generating threats. In 2019, the volumes and financial values pertaining to such activities decreased, as per Figure 14A below. The actual financial loss also decreased from NAD 37.0 million in 2018, to NAD 19.8 million in 2019. The banking sector reported that NAD 1.5 million was recovered, with further recoveries of NAD 1.0 million anticipated pending the successful conclusion of investigations. As a control measure, banks put in place systems and operational risk limits, as well as operational loss thresholds according to their risk appetite. Further losses are mitigated through insurance cover as required in terms of the Regulation on Minimum Insurance for Banking Institutions.<sup>69</sup>

<sup>69</sup> Determination on Minimum Insurance for Banking Institutions (BID-14).

*The incidence of fraud, the amounts involved, and the amounts lost all decreased during the period under review.*

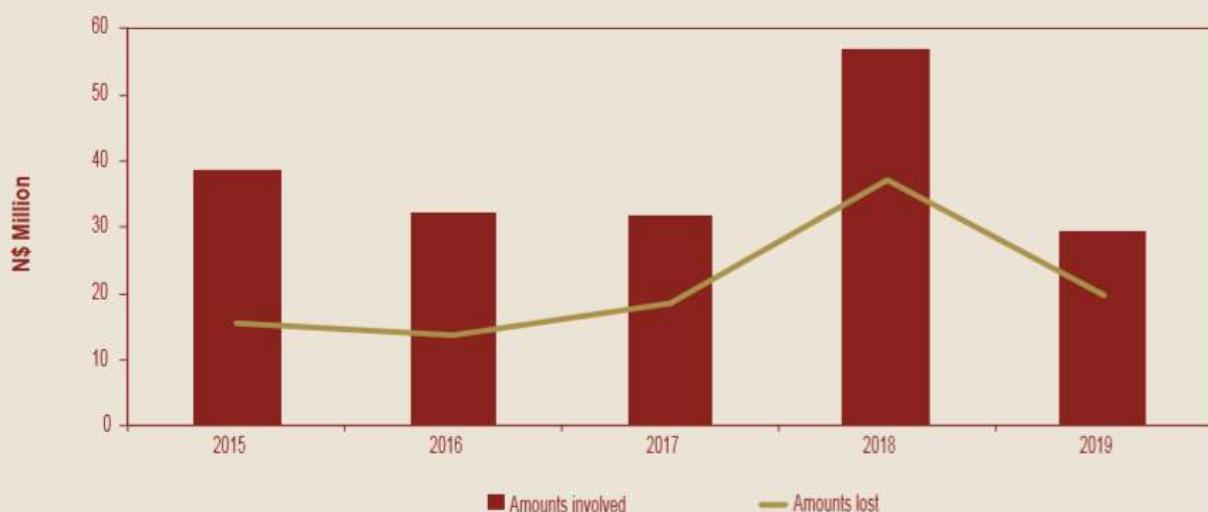


Figure 14A: Fraud and other economic crime data as reported to the BoN<sup>70</sup>

## 7.6 Sectoral origin of ML predicate offences

ML threats materialize into risks through exploitation of vulnerabilities or controls in various sectors. Considering the sectoral origin or destination of illicit proceeds enable an understanding of sectors or areas where the ML threats materialize. Information collated from reported STR data and FIC intelligence disseminations<sup>71</sup> to relevant authorities for the five years leading to December 2019 was relied on to understand sectoral ML vulnerability. Such data reflects the rate at which ML threats differently expose ML vulnerabilities in different sectors. Variances appear to suggest that the financial sector and banks in particular are comparatively highly exposed to ML risks than DNFBPs.

Other than STR volumes per sector, the NRA also considered financial values in all STRs reported to understand the potential ML impact in terms of financial values per sector. In this regard, the NRA could only rely on financial values as *reported* by sectors, from STRs cleansed by the FIC. Unlike other STR/SAR related statistics cited in this report, the FIC could not accurately and reliably link financial values to sectors from analysed STRs and intelligence disseminated.<sup>72</sup> The financial values in this sub-section are therefore only

<sup>70</sup> The 2019 BoN Annual Report. <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/3a/3af2b4ce-c0f2-4e99-9d68-dc64a7c1ecb4.pdf>

<sup>71</sup> Domestically, this was the best evidence available as other competent authorities could not avail sectoral origin data from cases in their domain.

<sup>72</sup> The ideal position is to use financial values from finalised cases under LEAs. Such are not available as mentioned above. Equally, the second most reliable option would be to use financial values from STRs disseminated by the FIC. Challenges were experienced compiling

intended to demonstrate trends and patterns in financial values from potential ML activities in sectors.

### **7.6.1 Banking and NBFIs sector**

The financial sector within the AML/CFT/CPF framework comprises of banks and NBFIs. The banking sector not only reported the highest volume of STRs associated with potential ML but also had the highest financial values associated with ML threats with over NAD 7.1 billion reported by the sector in the five years leading up to 2019. Banks are central to the functioning of economies and financial systems. Nationally, the banking sector records the highest financial values and report volumes associated with potential ML threats. This could be attributed to various factors, including the fact that banks appear to have the most matured AML/CFT/CPF control systems that can effectively detect reportable transactions. Equally, the banks' vulnerability could emanate from their clients and other stakeholders as all sectors and individuals make use of the banking system. Naturally, all financial transactions in the formal economy pass through or are processed via banking systems. The FIC's compliance monitoring and supervision activities<sup>73</sup>, suggest that AML/CFT/CPF controls in many other sectors, especially DNFBPs are below expectations and their extensive use of the banking sector, could inherently escalate the ML risk that banks are exposed to.

The table below shows that within NBFIs,<sup>74</sup> the most financial values observed in ML reports emanate from Unit Trust Schemes, followed by Asset Management firms.

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financial values for STRs per sector from disseminated intelligence reports due to the following reasons: In its current state, the goAML system is unable to link STRs to finalised cases; multiple STRs can be linked to a single case hence it becomes challenging to decide which sector to allocate involved financial values to (risk of duplication or understating same); a single STR reported by a sector, after its analysis often presents potential financial links to many other sectors; this again makes it challenging to reliably assign values to specific sectors when such financial values flow through different sectors (often changing financial values/amounts in such movements); often, a single case can have multiple disseminations to LEAs; a reported subject in a single STR can be linked to other STRs; and a single case can be linked to other cases (from other sectors) or form part of an investigative project undertaken by several other competent authorities (data could be scattered). Therefore, the financial values reflected in this sub-section are as detected and reported by sectors (for cleansed STRs but pre-finalization of FIC analysis). These excludes STRs not cleansed by the FIC. The data analysed is for the five-year period leading to December 2019.

<sup>73</sup> As per such assessment reports over the 5 years leading to December 2019.

<sup>74</sup> Note that this is without financial values for the banking sector as such.

**Estimated potential financial values (in NAD) in STRs: Non-Banking Financial Institutions (NBFIs)**

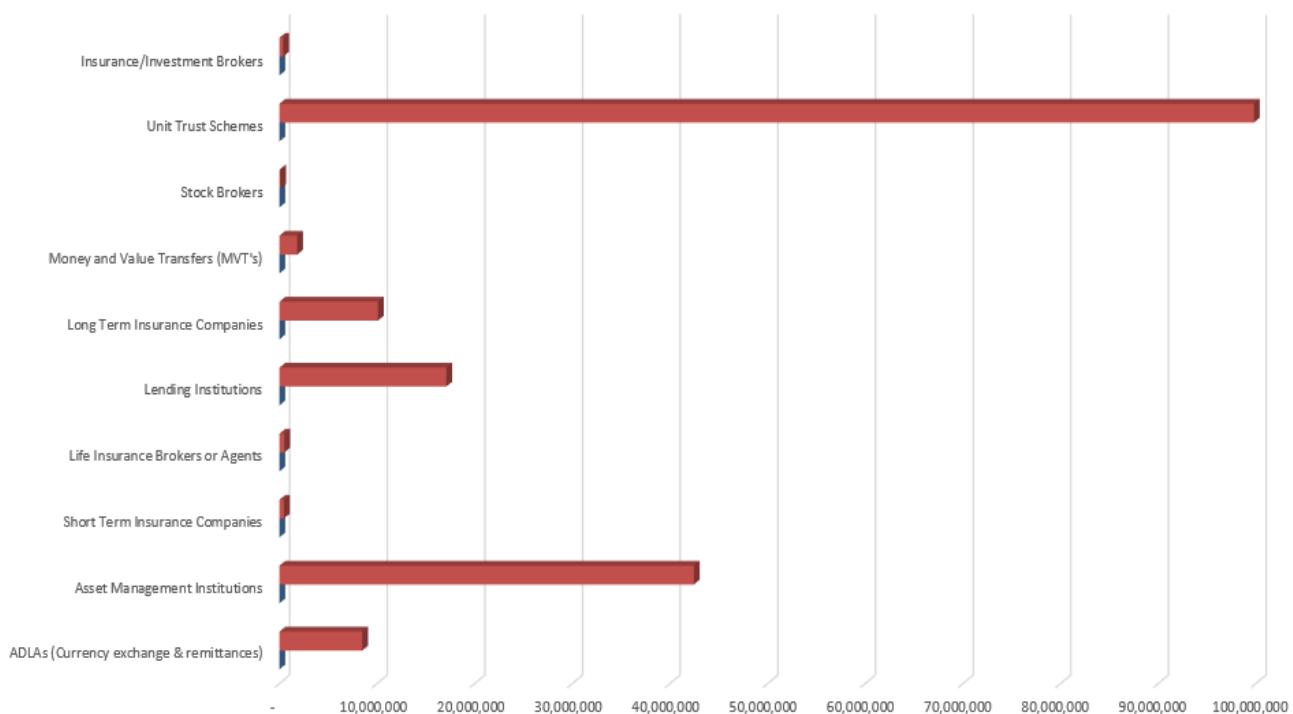


Figure 15: Potential financial values in STRs (NBFIs)<sup>75</sup>

The chart below shows that banks reported the highest volume of STRs, followed by ADLAs.

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<sup>75</sup> The various FIC publications (Monthly, quarterly and annual reports) show the annual reporting patterns of each sector. Such reports were summarized to understand overall reporting behaviour in the five years leading to December 2019.

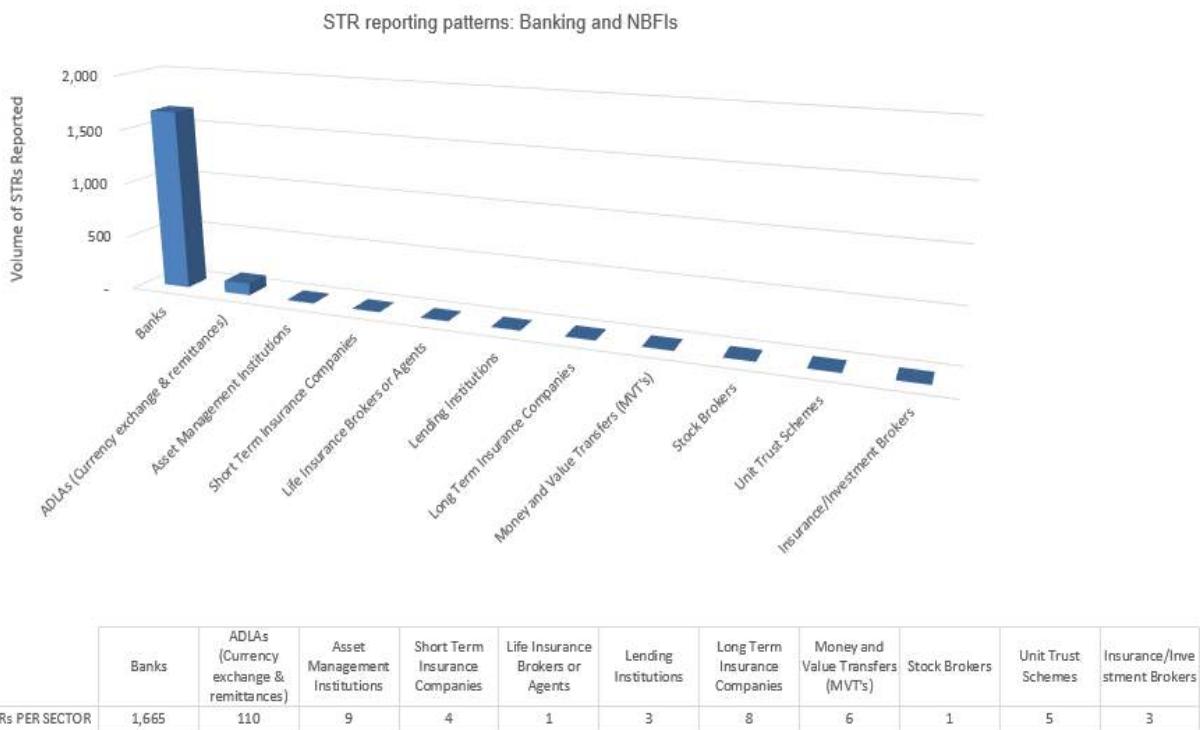


Figure 16: STR reporting patterns: Banking and NBFIs

### 7.6.2 DNFBPs

Figure 17 below shows patterns which indicate Legal Practitioners, followed by Motor Vehicle Dealers and Trust and Company Service providers detected and reported the highest financial values in potential laundering activities over the five-year period leading to 2019. Similar trends are noted in the volumes of STRs reported by DNFBPs in the same period (Figure 18). Overall, reports reflecting potential ML from legal practitioners and motor vehicle dealerships have increased in recent years. Cases such as the *Fishrot* also yielded a substantial volume of reports, showing enhanced ML vulnerabilities in these sectors.

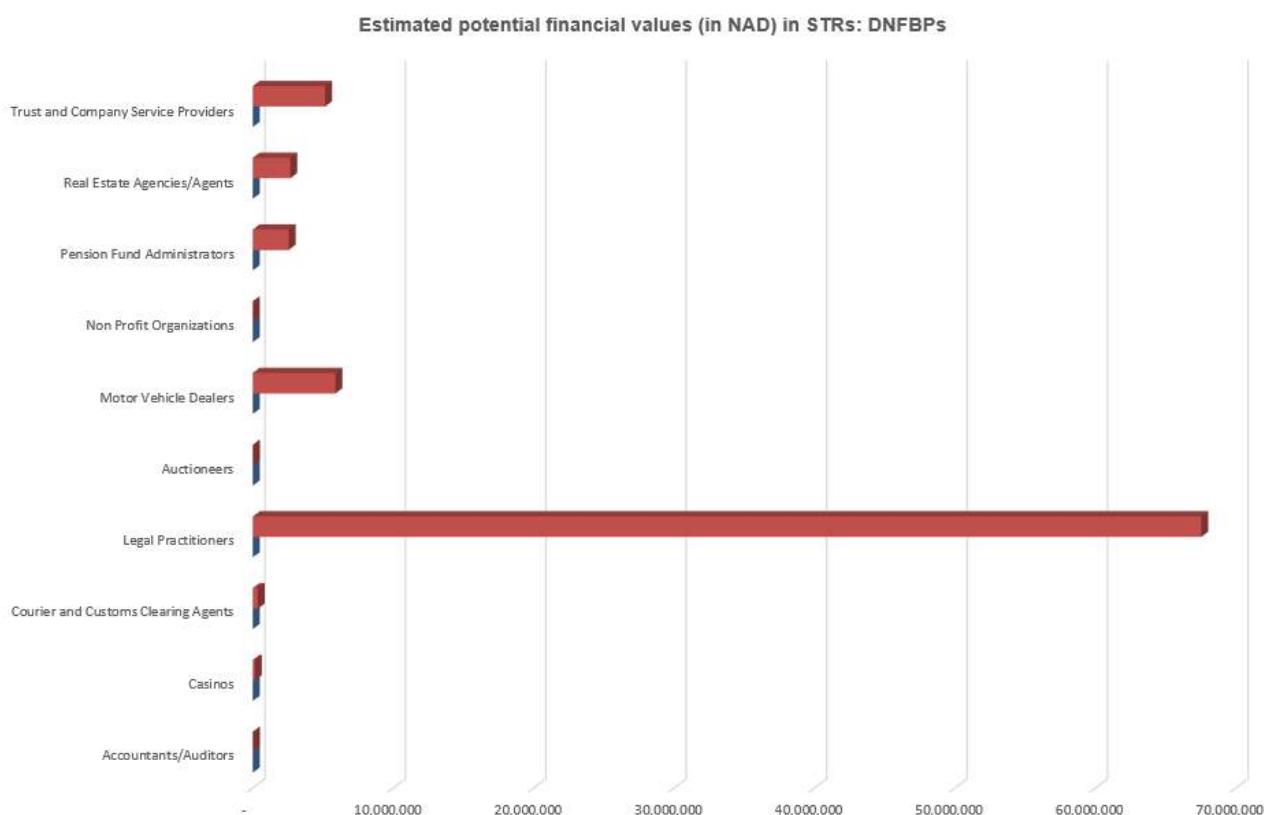


Figure 17: Potential financial values in STRs (DNFBPs)

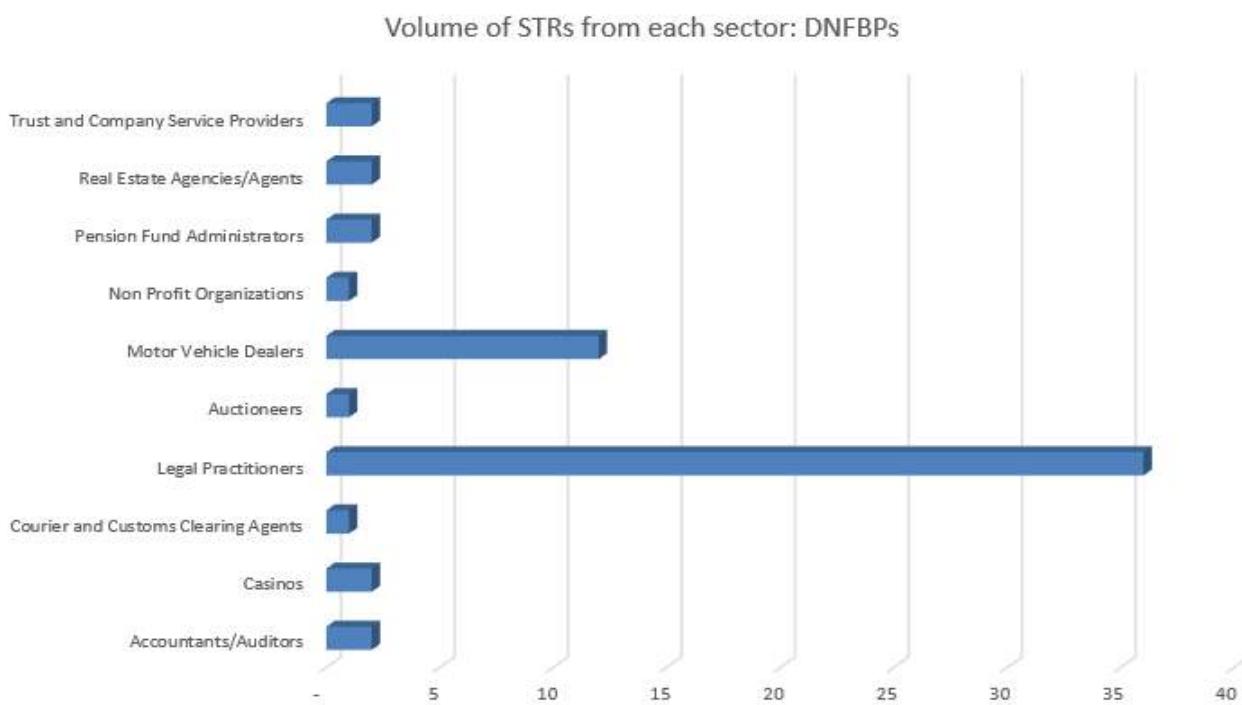


Figure 18: STR reporting patterns: DNFBPs

## **7.7 Cross border ML threats**

ML offences could be committed in a foreign jurisdiction and parts of the criminal activities impact or are transferred to Namibia. On the other hand, predicate offences could origin from within the country and parts thereof could be for the benefit of (or transferred) other jurisdictions.

This section avails outcomes of reviews related to cross border ML threats. Such is arrived at by considering the aggregated ML threat exposure emanating from both inward and outward ML related activities. Discussions also centre around Namibia's major trading corridors in an effort to establish the vulnerability of such to abuse by ML threats.

### **7.7.1 Namibia's major international trading corridors and FDIs**

Like most countries, the main data source of Namibia's financial inflows and outflows is the Balance of Payments records within the Banks of Namibia.<sup>76</sup> The table below shows that most of Namibia's Foreign Direct Investments (FDIs) can be traced to South Africa, China and Mauritius. China (38.7%) and South Africa (32.4%) account for most FDIs in Namibia, followed by Mauritius. The trade volumes or related financial flows between countries does not necessary imply that ML occurs in such trade relations based on such volumes of values. There may be vulnerabilities that arise which could be exploited by ML threats however, particularly in TBML.

Other considerations of vulnerabilities arising out of trade relations emanate from the level of AML controls in jurisdictions trading with Namibia. For example, in October 2019, Botswana and Zimbabwe were added to the FATF list of jurisdictions<sup>77</sup> with strategic AML/CFT/CPF deficiencies. Such jurisdictions have trade relations with Namibia.<sup>78</sup> There is inherent ML risk when trading with such FATF listed jurisdictions or any other high-risk jurisdictions. Care is

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<sup>76</sup> Balance of Payments was not used to measure illicit financial flows in the NRA. The data that collected in the Balance of Payments are used to understand the main financial flows involving Namibia and other countries. Such understanding is used along LEAs' records of jurisdictions linked to observed ML threats in order to determine the ML risk levels within the major corridors and support the overall assessment exercise.

<sup>77</sup> Source: <https://www.corporatefinancialweeklydigest.com/2019/10/articles/financial-markets/fatf-updates-list-of-aml-cft-deficient-jurisdictions/> and <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html>

<sup>78</sup> Albeit with lower annual trade financial flows than the ones listed in Figure 16 below.

needed, especially at sectoral level when considering payment or distribution channels associated with such jurisdictions.

Reliable inferences on the relationship between international trade corridors and potential ML can only be drawn if other information (such as statistics and analysis from LEAs) can show trends that suggest ML threats could be exploiting vulnerabilities in trade corridors.

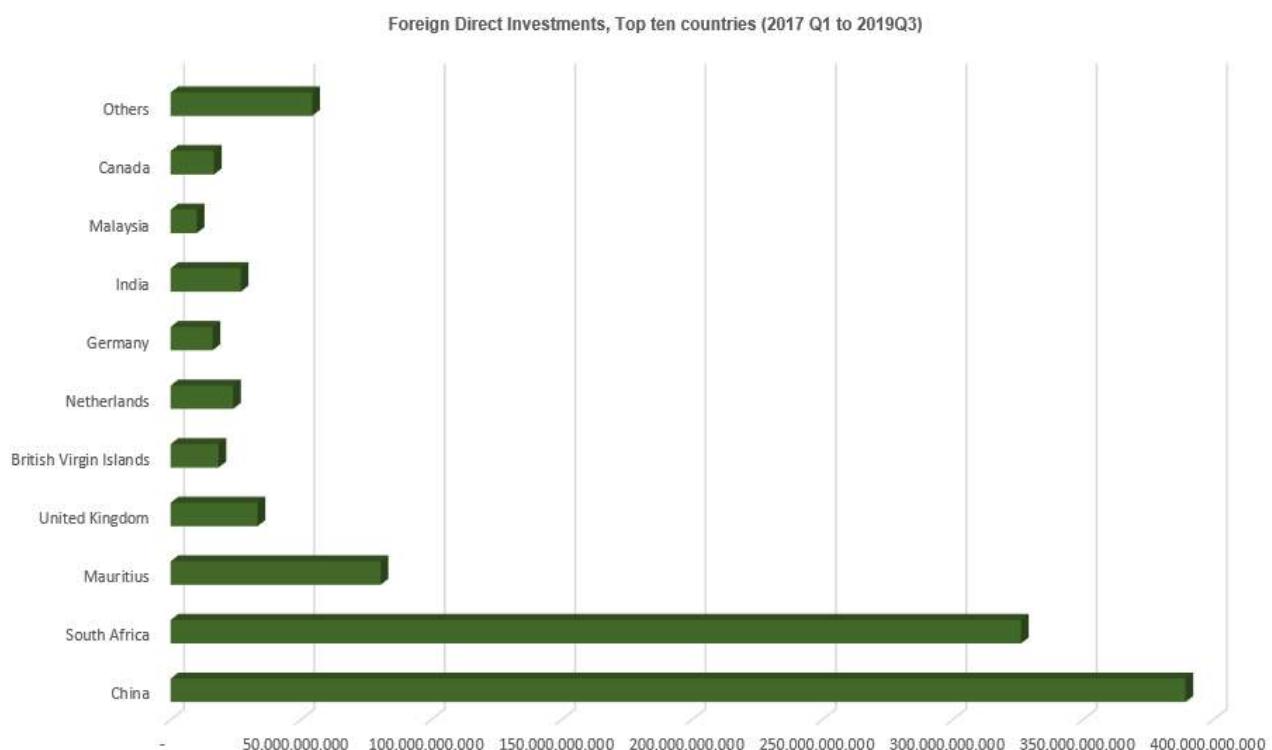


Figure 19: Foreign Direct Investments (Top ten Countries)<sup>79</sup>

The tables below further suggest that Namibia's financial outflows, related to trading in goods have occurred with South Africa, followed by China. Financial outflows related to trading in services are higher with countries such as the United States of America and China.

<sup>79</sup> From the First quarter of 2017 to the third quarter of 2019

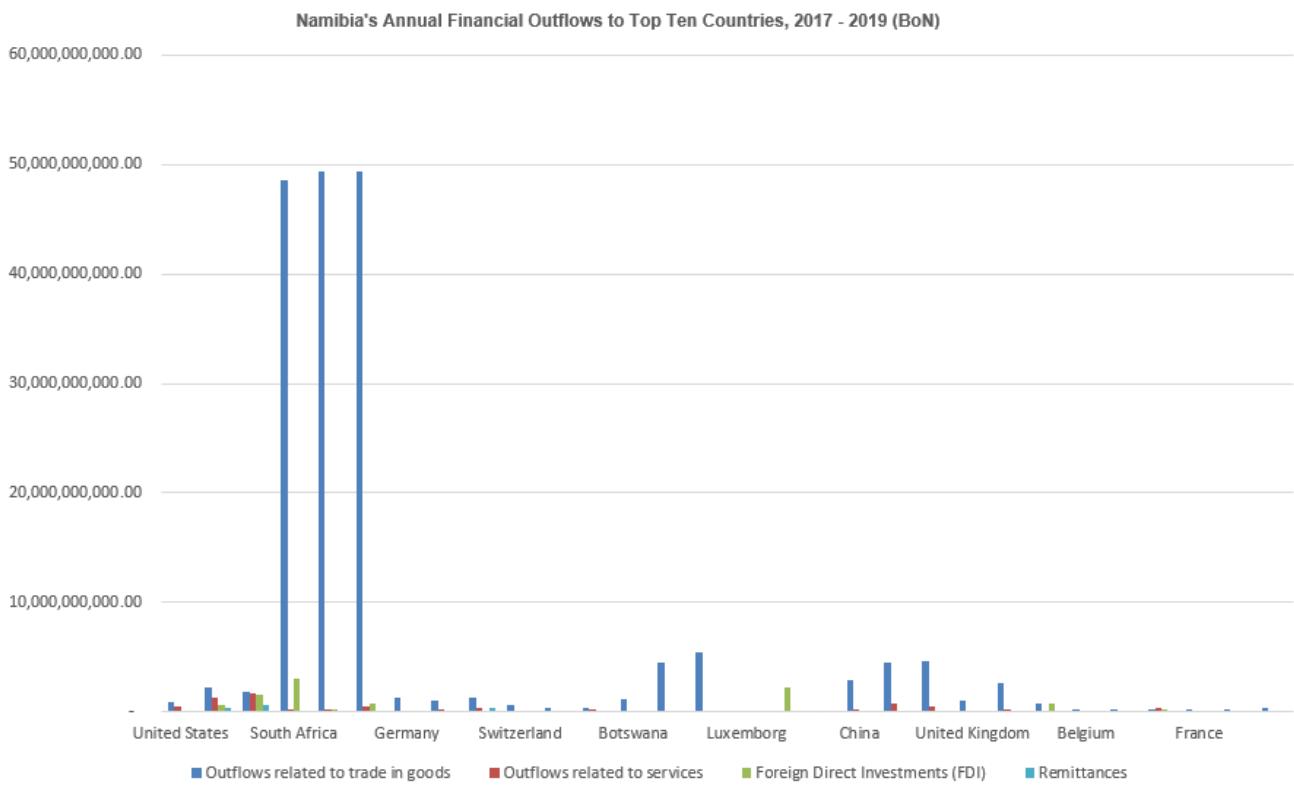


Figure 20: Namibia's annual financial outflows (Top ten countries)

### 7.7.2 Potential ML vulnerability from Namibia's trade corridors

Some ML offenses under investigation have shown to have elements beyond the borders of one jurisdiction. The exchange of data and information is mostly facilitated through Mutual Legal Assistance (MLA) requests between investigative authorities of the different jurisdictions. In this regard, domestic authorities send and receive information to relevant authorities in other jurisdictions in furtherance of combatting crimes.

Data from the Ministry of Justice on the volume of MLAs received and shared with different jurisdictions helps give indications around ML vulnerabilities emanating from engagements with other countries. The FIC also shares and receives intelligence for ML investigations and analysis with other jurisdictions on matters with links to such jurisdictions. In establishing potential ML vulnerability from Namibia's trade corridors, reliance was thus placed on records of FIC intelligence sharing and MLA exchanges. Information in Figure 21 and 21A below suggests that most intelligence was requested from and sent to South Africa, with countries such as the United States of America (USA) and Bangladesh also recording ML investigation related exchanges with the Namibian FIC. There appears to be some correlation between

the relatively higher volume of ML investigations (as per intelligence sharing and MLA records) and the trading values with countries such as South Africa and the USA. There are however some exceptions which deviate from such correlation. Trading between Namibia and Bangladesh may be minimal though there appears to be more engagements between both countries' FIUs on ML intelligence sharing and investigations. Also, LEAs indicated to have failed over the years to obtain any feedback from information requests send to Chinese authorities, although LEAs do not keep statistics thereof. The MLA engagements however suggests some information requests related to wildlife crimes with Hong Kong authorities. The FIC also indicated to have sent seven information requests to the Chinese FIU and no response was received for any such requests.<sup>80</sup> The general observation from NRA discussions suggests that Chinese authorities are not helpful in the sharing of investigative information. Overall, there are signs that ML in Namibia has elements of cross border links (both in terms of origins and destinations), but data inadequacies prevented an effective assessment to establish reliable conclusions on the ML threat level of jurisdictional laundering corridors.

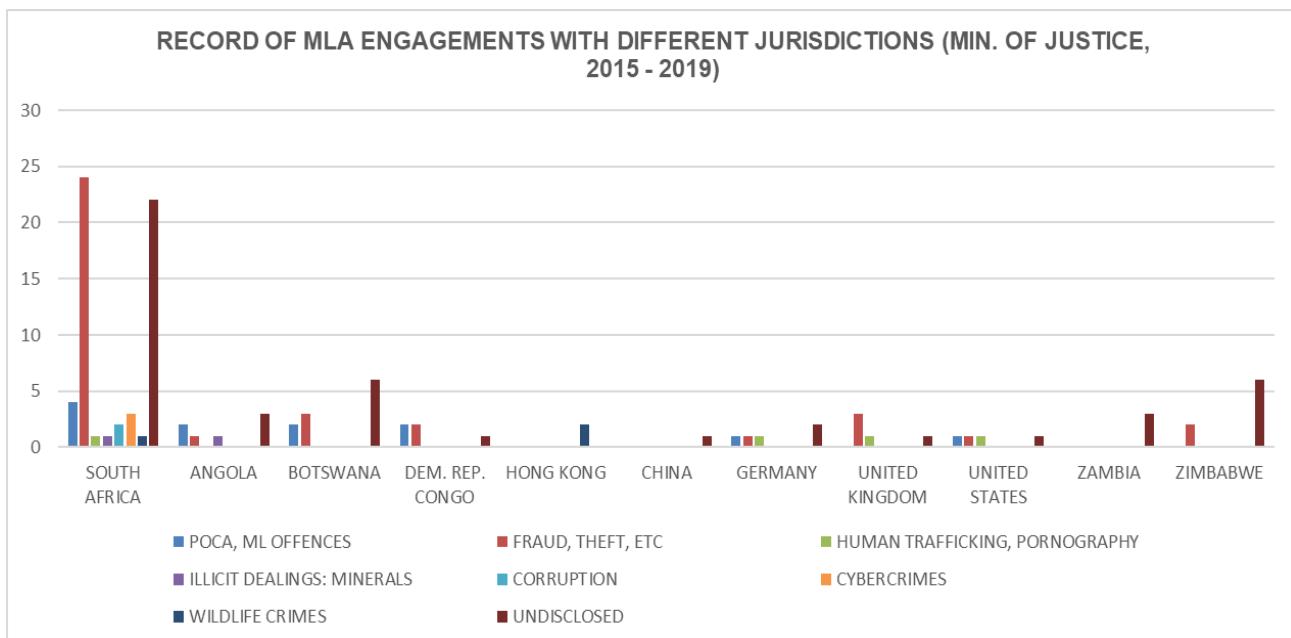


Figure 21: Record of MLA engagements with different jurisdictions<sup>81</sup>

<sup>80</sup> The FIC's seven information requests were sent on the following dates: 21-Aug-14; 25-Jun-15; 17-Jan-17; 25-Feb-19; 30-Apr-19; 3-May-19 and 17-Mar-20. Not even receipt of such requests was acknowledged. Also worth noting is that the FIC has not received information requests from Chinese authorities in the reporting period.

<sup>81</sup> Data sourced from Min. of Justice. Most other countries with engagements not more than 2 were omitted from the list, similarly with offenses which did not occur more than two times in the reporting period.

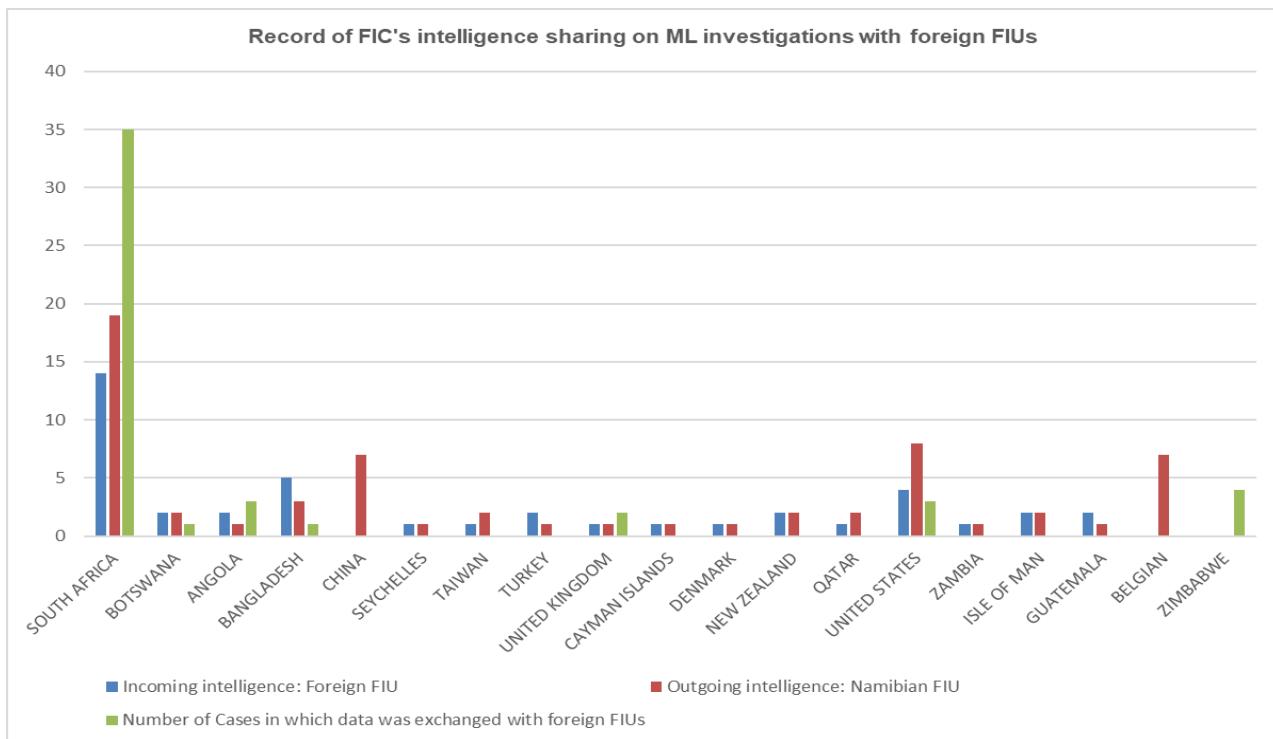


Figure 21A: Record of intelligence sharing on ML investigations with foreign FIUs.

### 7.7.2.1 Indications of cross border ML threat materialization

Cross border ML threats can be in the form of illicit cross border remittance of proceeds such as funds and contrabands. This section highlights a few known cases reflecting both cross border movements of potential illicit funds and contrabands.

#### a. Potential illicit cross border remittances of funds

This assessment covers a period wherein some of the country's largest or most significant financial crimes (with significant ML elements) are suspected to have been committed or brought to light.<sup>82</sup> All these major cases show significant cross border transfers mostly out of Namibia, usually with very little being remitted into Namibia if court records are anything to go by. With Namibia's context as a relatively smaller jurisdiction, the below cases show indications of how the country's relations to the international community may have been exploited by ML threats:

<sup>82</sup> Such cases are either in court or being investigated at the time of reporting.

- i. in one of the largest TBML and potential tax evasion case, the State alleges that over NAD 3.6 billion have been illicitly remitted out of the country. Court records suggests that most such funds were remitted to China, irregularly disguised as payments for imports. China, as per the above is one of Namibia's most significant trade partners;
- ii. with the failure of the SME Bank, court records suggest large scale fraudulent conduct which prejudiced depositors with over hundreds of millions, leading to the subsequent closure of the bank, owing to solvency concerns. Court records further suggests that the potential laundering of over NAD 200 million was through remittance of such funds to South Africa. Court records further suggest that when the funds reached a South African bank<sup>83</sup>, such funds were placed beyond the reach of bank liquidators and LEAs. South Africa, along with China, is one of Namibia's most significant trading partners. Most of Namibia's consumables are imported from South Africa; and
- iii. with the so-called *Fishrot* case, wherein the State alleges large scale domestic fraud and corruption may have led to the State losing hundreds of millions to local and international organized crime syndicates. Court records suggest that significant funds were remitted into and out of Namibia (to and from various destinations worldwide). Namibia's fishing sector is dominated by foreign owned fishing companies and vessels. This case appears to expose how ML threats from fraud and corruption may have exploited ML vulnerabilities in the local fishing sector's relations with subjects from foreign countries.

*b. Contraband<sup>84</sup> smuggling*

Namibia has, in the period under review recorded some large-scale contraband smuggling, amongst other incidences which may suggest vulnerability around cross border activities which could be exploited by ML threats.

There are many ways in which potential jurisdictional links from proceed-generating crimes may relate to domestic ML risks. In some cases, predicate offences could be committed in foreign jurisdictions, but the proceeds thereof laundered in Namibia. Cases at hand also show

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<sup>83</sup> Such South African bank has also in recent years closed down owing to liquidity concerns.

<sup>84</sup> Refers to goods that have been imported or exported illegally.

that proceeds of crime from offences committed locally can be laundered domestically, even if the proceeds are later transferred to other jurisdictions. In Case Study 2 below, the offence of cigarette smuggling may have been committed in Namibia with the failure to declare the contrabands but such contrabands appear to have been destined for South Africa, a key trading partner of Namibia.

### **Case study 2**

#### ***International cigarette smuggling through Namibia***

*In March 2016, two Zimbabwean truck drivers were found guilty of smuggling contraband cigarettes. The charges they were convicted of are: Contravening section 14(a), read with sections 1 and 91 of the Customs and Excise Act 20 of 1998 (non-declaration of goods entering Namibia as well as contravening Section 6(c), read with Sections 1, 10 and 11 (1) of the Prevention of Organised Crime, Act 29 of 2004, involving Money Laundering.*

*The two truck drivers were initially arrested in 2015 after the two trucks they were driving were found to have been carrying 1,130 boxes of cigarettes worth around NAD 11.3 million and the cigarettes were concealed in secret compartments of the trucks. These trucks are designed to transport liquified natural petroleum gas. In court, the two drivers both argued ignorance, indicating that their employers or the truck owners may have been the ones who planted such contrabands in the trucks without their knowledge. These are South African trucks that travelled through Namibia, potentially to South Africa. The prosecution led evidence which suggested that the cigarette contrabands were destined to South Africa, and Namibia was just a transit point and not the intended destination. It is suggested that such smuggling was arranged to presumably avoid paying taxes on such cigarettes.*

*Customs and Excise officers and the Namibian Police who investigated and eventually brought this matter to court indicated that members of the public tipped the officers on suspicious activities observed. These are relatively the less costly (cheaper cigarettes) competing with common cigarette brands sold in conventional markets in both Namibia and South Africa. The trucks were said to have originated from Zimbabwe.*

At times, what appears to be trading activities with known high risk jurisdictions often exposes the country to ML threats. Brazil, being one of the countries known for high rates of drug smuggling<sup>85</sup> is said to be the country from where Namibia's largest drug bust may have originated. The case study below summarizes widely reported aspects around such drug bust.

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<sup>85</sup> "Significant changes have taken place in Brazil's illicit drug market in the past decade, affecting the structure, profile, and modes of operation of organized crime groups. These changes reflect an evolution of global drug markets and the significant rise of drug consumption in Brazil. Due to Brazil's vast land borders with all three major production sources of cocaine—Colombia, Peru, and Bolivia—Brazil emerged over the past decade as a privileged transit point for cocaine smuggling to Europe through Central and West Africa. In 2011, more than half of the cocaine seized in Brazil came from Bolivia (54 percent), followed by Peru (38 percent), and Colombia (7.5 percent). Its long coastline facilitates easy access to the Atlantic Ocean, to Africa, and ultimately to the Iberian Peninsula. The linguistic and cultural ties with Portugal and Lusophone African countries also seem to advantage Brazilian drug traffickers: Portugal seizes more cocaine shipments originating in Brazil than Spain does, and the number of seizures is growing. This flow of cocaine through (and increasingly to) Brazil is the dominant factor affecting trends in drug use, drug trafficking, and illicit markets in this country." Source: <https://www.brookings.edu/wp-content/uploads/2016/07/Miraglia-Brazil-final.pdf>

### **Case study 3**

#### **Namibia's biggest cocaine smuggling bust**

*Police and customs officials at the Walvis Bay port had a container under surveillance since it arrived at the port earlier in June 2019, but was not immediately claimed, which aroused suspicion. Reports suggest that sniffer dogs were brought in, and they detected the presence of illicit substances inside the container. The State alleges that 412kg of cocaine was found in the said containers.*

*Two accused persons, who were allegedly the owners or importers of the container's cargo, were then summoned to open the container and the cocaine was found inside, packed in bond paper boxes.*

*The accused duo are also said to be business partners who established and registered what appears to be a legitimate business to generate an income. Court records suggests that the accused persons may have ordered the container with A4 printing papers through this business. One of the accused paid for the costs of this shipment and it appears the cargo may have been declared as papers to deceive customs authorities. However, when it arrived at the Walvis Bay harbour, it was searched and was allegedly found to have contained some cocaine powder apart from the A4 printing papers that were ordered.*

*It is alleged that the container was dispatched from Brazil via South Africa, with its end destination listed as Narraville at Walvis Bay. This is Namibia's biggest cocaine drug bust and one of the largest in Southern Africa, in terms of financial values.*

In consideration of all these factors, the risk assessment rated ML threats from cross border activities **High**. ML threats from known cases suggests that countries with which Namibia has significant trade relations appear to be most targeted for ML activities.

#### **7.7.3 Minor indications of potential Hawala related activities**

There are no confirmed cases of Hawala operations in Namibia. No reports could be obtained from LEAs indicating potential Hawala operations. The FIC has however noted very few incidences that may suggest potential Hawala related activities occurring. The funds involved in such incidences were quite negligible and insignificant<sup>86</sup>. Thus far, there has not been significant indications that may suggest notable trends of illicit financial flows (ML) related to Hawalas. With the few FIC analysed cases (see case studies 3A, 3B and 3C below), limited indications in such may suggest a few methodologies associated with potential illicit financial flows (or ML).<sup>87</sup>

<sup>86</sup> Care needs to be taken in interpretation of potential remitted funds amongst Hawala operators. Trends suggest that Hawalas in different countries only remit funds amongst each other to settle differences they may have periodically, while the Hawala operations themselves could be managing funds (from clients or users) much higher than the insignificant amounts remitted from one to another.

<sup>87</sup> Lack of significant indications and volume of cases to conclusively indicate the flow of illicit financial flows (or ML).

### **Potential Hawala related activities**

#### **Case study 3A**

*In November 2019, a Zambian national from Ndola in Zambia send funds to a certain Ms van Zyl based in Namibia.*

*The funds were said to be “pocket money”. The amount involved was USD 523.00. There did not seem to be a relationship between the sender and the receiver in Namibia. The funds were received locally through a money remitter (ADLA). This transaction seemed suspicious as Ms van Zyl was accompanied by someone who appeared to have a very keen interest in how she conducted the transaction. When asked about this person by ADLA frontline staff, she claimed that this was her colleague. What further enhanced the suspicion was the “colleague” taking all the money from her as soon as the transaction was concluded. It is suspected that this may have been a possible Hawala settlement of balances as the subjects were at some point suspected to be associated with such operations.*

#### **Case Study 3B**

*A female national who identified herself as an employee of a Windhoek based popular club and restaurant sent NAD 1,300.00 to a person in Msisi, Zambia. The club and restaurant are owned and managed by foreign nationals from Central and West Africa. The remittance triggered suspicion as the sender was accompanied by another unknown individual who completed the remittance form on behalf of the female employee and provided the funds to send. This occurred in December 2019 and was reported to the FIC as a potential Hawala operation. Many STRs with similar typologies, specially involving Asian business owners or prominent foreign employees using Namibian nationals to remit funds on their behalf have been reported to the FIC. Note that many Asian business owners do not make use of the formal financial/banking system. Some use such to a limited extent such as for employee salary payments only.*

#### **Case study 3C**

*Mrs Y is the daughter of Mr X and sister of Z, who are Ugandan nationals based in Namibia. Prior to 2019, there have been several STRs filed with the FIC showing that this family has been receiving money from Uganda. They seem to be receiving such in their individual capacity from the same source, at various intervals. The sum of all such funds amount to around NAD 132,596.00. In explaining the purposes of such funds, one of the family members indicated that they are planning on relocating from Namibia. Overall, given the suspicious nature of activities surrounding the remittances and collection of funds, this was also suspected to be a potential Hawala operation.*

Namibia has seen massive growth in Asian owned small to medium enterprise retail businesses. They mainly retail cellphones and related accessories, low value items such as clothing for low-income segments, amongst others. Many of these businesses do not make use of point-of-sale devices as they prefer payments in cash. They are not known to keep adequate<sup>88</sup> records of their financial transactions, with most not issuing receipts as proof of sales. Some that issue sales receipts overwhelmingly use handwritten receipts or invoices, with minimal assurances that such are duly maintained for reporting (e.g tax) purposes. Their reluctance to use formal financial services (e.g banking) raises questions around how they

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<sup>88</sup> For example as required by tax and relevant frameworks.

declare their taxes, if any, move their profits out of the country or pay for their trading inventory (stock) which is mainly imported from Asia.

Namibia does not have legal instruments that limit or regulate the amounts of cash that persons or businesses may have in their custody at any given time.<sup>89</sup> National Vulnerability and exposure to predicate offences such as tax evasion, capital flight, as well as dealing in illicit items and substances is enhanced by the absence of frameworks that regulate the custody and movement of cash outside the formal financial system. Additionally, LEAs also indicate that each time they raid premises of Asian-owned businesses, loads of cash is usually found but such is returned to its rightful owners unless there are offenses they can link same to. All these are vulnerabilities which enhance the presence of Hawala operations (with links to other countries) in Namibia.

## **7.8 Emerging ML threats**

Overall, an increase has been noted in ML predicate offences that relate to pyramid schemes and similar operations, Virtual Assets (VAs) as well as environmental crimes. Human trafficking related threats, though significantly highlighted as a growing concern globally, Namibia recorded a relatively low number of cases (threats) in this regard.

### **7.8.1 ML threats related to Pyramid schemes and VAs**

The NRA noted an increasing trend of complaints, potential contraventions of financial service laws and fraud related to pyramid schemes and to a lesser extend, VAs. VAs and pyramid schemes have grown significantly over the last few years and both LEAs as well as the FIC expect an increase in reports related to criminal activities in these sectors. Table 7A below generally shows financial values<sup>90</sup> in VAs and Pyramid schemes as reported through STRs over several years.

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<sup>89</sup> In the famous NAD 3.6 billion TBML case, one of the Chinese nationals accused of such illicit activities was accorded bail in excess of NAD 1 million. Through his lawyer, he requested that he be escorted by LEAs to his business premises in an area of Windhoek popularly known as China town to collect such funds and pay. Such was arranged and they collected bags of money, in excess of NAD 1.5 million, which LEAs counted to take custody of the bail money so required.

<sup>90</sup> Values as detected and reported by relevant institutions mainly in the banking sector.

Financial Values from reported STRs (NAD)		
Year	Pyramid Schemes	Virtual Assets
2010	200.00	-
2012	300,175.00	-
2013	-	-
2017	28,150.00	286,150.00
2018	335,800.00	1,520,459.00
2019	5,270,440.00	14,163,806.00
2020	2,362,140.00	7,763,781.00
<b>Total</b>	<b>8,296,905.00</b>	<b>23,734,196.00</b>

Table 7A: Financial values from reported STRs<sup>91</sup>

#### a. Virtual Assets (VAs)

While Table 7A above shows financial values as reported by the banking sector, citing potential contravention of relevant laws, no such STRs were disclosed by the FIC to relevant authorities in the reporting period.<sup>92</sup> It is for this reason that no financial values are reflected for VAs in Table 4, under section 7.2. VAs, though not prudentially regulated, nor supervised for AML/CFT/CPF domestically,<sup>93</sup> have no jurisdictional boundaries that limit their operations and the sector appears to be growing. The nature of VAs is that they thrive with or without regulatory involvement. Nationally, one of the largest VA services provider registered with the BIPA has voluntarily engaged the FIC for AML/CFT/CPF supervision and in such engagement shared their records with the FIC. From such records, the sales figures, as stated below for one of the largest VA facilitators may reflect a growing sector:

PERIOD	TOTAL BITCOIN SALES	COMMENTS
Year ended 2018	Over NAD 500,000.00	Setting up phase.
Year ended 2019	Over NAD 2,600,000.00	Growth said to have started mainly from July – December 2019 with regards to client sign ups on their website.
01 Jan – 06 Aug 2020	Over NAD 7,900,000.00	Biggest growth rate recorded has been this calendar year.
Total sales from opening to 06 August 2020	Over NAD 11,100,000.00	

Table 8: Bitcoin sales growth of one VA dealer

<sup>91</sup> Note that these values are only as reported by banks and not the financial values from FIC disclosures.

<sup>92</sup> Many STRs were set aside while others were categorised as low priority. At times when there is inadequate information that supports further analysis and investigations, reports can also be kept pending until there is justification to further pursue such.

<sup>93</sup> Revised Position on Cryptocurrencies, Bon. May 2018.

Source: <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/9a/9ab34d1a-07d7-45b3-859a-6e51814d690b.pdf>

### b. Pyramid schemes

Generally, pyramid schemes that appear to avail higher investment returns in shorter periods have been on the increase, with many such identified to have potentially contravened regulation frameworks such as the Banking Institutions Act or the Currencies and Exchanges Act. From reports at hand, those involved in pyramid schemes also appear to avail some VA related services or investment schemes premised on VAs, with Bitcoin appearing to be most prominent. It is on such potential contraventions that FIC intelligence disclosures were escalated to relevant regulatory bodies.

The NAD 67 million<sup>94</sup> attributed to pyramid schemes in 2019, as per Table 4, was aggregated from FIC analysis for the various reports received in prior years but only finalised and disclosed to relevant authorities in 2019.

#### 7.8.2 Environmental crimes

Overall, the table below suggests that environmental crimes have been escalating in recent years. The offenses described as contraventions of the Nature Conservation Ordinance Act mainly include the poaching of protected species (wildlife crimes).

Environmental crimes investigated: NamPol									
	2012	2013	2014	2015	2016	2017	2018	2019	TOTAL
Contravention of the Nature Conservation Ordinance Act	267	356	228	351	477	359	644	578	3,260
Contravention of the Forestry Act	5	3	2	4	6	12	8	5	45
Contravention of the Sea Fisheries Act	9	6	11	8	10	8	2	2	56
Contravention of the Fuel Research Institution and Coal Act	-	2	1	-	-	-	-	-	3
<b>TOTAL</b>	<b>282</b>	<b>367</b>	<b>245</b>	<b>364</b>	<b>498</b>	<b>383</b>	<b>654</b>	<b>587</b>	<b>3,380</b>

Table 9: Environmental crimes investigated by NamPol

Chapter VII of this report avails detailed threat and vulnerability considerations of the various categories of environmental crimes.

<sup>94</sup> This is the potential financial value from reported STRs, after FIC analysis and investigations. Note that these are STRs accumulated over the years prior to 2019, although disclosures were only made in such year. Financial values reported by sectors are usually lower than the final financial values reflected in disclosures as FIC analysis often realise additional values which reporting entities are not in a position to identify, at the point of reporting. This explains the variance between the NAD 8.2 million reported by entities as per Table 7A and the NAD 67 million disclosed by the FIC as per Table 4 in section 7.2.

### **7.8.3 ML threats from Trafficking in Persons (TIP)**

Observations relating to TIP are considered to the extent that they may contribute to ML or have elements of ML activities.

*"The TIP report, compiled by the United States Department of State, is the world's most comprehensive resource on governmental anti-trafficking efforts and reflects the U.S. Government's commitment to global leadership on this key human rights issue. A country's tier ranking reflects the State Department's assessment of that government's efforts during the reporting period to meet the minimum standards for the elimination of trafficking in persons established under the Trafficking Victims Protection Act of 2000. The Government of Namibia has been upgraded to a Tier 1 country in the 2020 TIP Report for fully meeting the minimum standards for the elimination of human trafficking. Namibia is the only country in Africa to achieve a Tier 1 ranking in 2020, joining 34 nations globally."*<sup>95</sup>

The TIP report further explained that the following efforts significantly contributed to such ranking of Namibia in 2020:<sup>96</sup>

- a. Implemented regulations for the Combatting of Trafficking in Persons Act of 2018;
- b. Significantly increased the number of prosecutions, convicted and sentenced one trafficker and trained front-line responders;
- c. Identified more victims, referred a higher percentage of identified victims to care and partially funded two NGO shelters that provided protective services for victims;
- d. Facilitated the voluntary participation of more victims with LEA investigations and provided victim witnesses with protective services;
- e. Held quarterly meetings of the national anti-trafficking coordination body; and
- f. Launched a nationwide awareness campaign in collaboration with an international organization, increased training of front-line responders to prevent trafficking, and continued to utilize the SADC regional data collection tool to gather and organize clear trafficking data.

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<sup>95</sup> U.S Embassy in Namibia. June 2020. <https://na.usembassy.gov/namibia-upgraded-to-tier-1-country-in-trafficking-in-persons-report/>

<sup>96</sup> U.S Embassy in Namibia. June 2020

As shown in Table 6 (section 7.4) above, LEAs investigated 24 cases related to TIP, in the reporting period. LEAs do not keep records related to the financial values (or associated ML values) observed in such cases. Thus far, there has not been significant indications that may suggest notable trends of illicit financial flows (ML) related to TIP. With the few FIC analysed cases (see case studies 3D and 3E below), only NAD 16,650.00<sup>97</sup> could be identified with little to no significant indications of methodologies that could conclusively be regarded as trends of potential illicit financial flows (or ML) associated with TIP. This potentially suggests LEA and FIC investigations may not be comprehensive enough to uncover related financial flows or there may simply not be financial flows associated with some reported cases.<sup>98</sup>

#### **Case study 3D (NPOs)**

*Mr B, a Congolese national is a religious leader in Namibia and a director of a local school. Investigations into some of his activities point to potential offences including rape, child abandonment, fraud, forgery, uttering and trafficking in persons.*

*Mr B's former wife, Mrs X, passed away some years ago. Prior to her death, Mrs X apparently inherited money from her former husband. At some point in her relationship with Mr B, he convinced her to go to Canada to become a pastor and she agreed to do so. In leaving for Canada, she left four of her young children in the care of Mr B, in Namibia.*

*While Mrs X was away, Mr B took the four children to South Africa under the pretext that they were going to study there. It appears, upon their arrival in South Africa, he left them there, taking their passports along with him. They were completely abandoned. It is further alleged that Mr. B trafficked five of his children, who are all under the age of 12 to London in the United Kingdom. The children are said to have been placed in a safe house by the British police. Apart from the charges of rape, abortion and human trafficking he faces in the Windhoek and Ondangwa magistrates' courts, he is further charged with assault with the intent to cause grievous bodily harm. It is alleged that Mr. B kidnapped one of his daughters and assaulted her mother.*

*Mr B owns a private school in northern Namibia. Such school receives subsidies from the Namibian government to the tune of NAD 1.6 million annually. At the point of reporting, it is not clear if he is using such funds as required by the Government. At the time of reporting, Mr B was arrested, charged and found guilty of fraud and four counts of employing foreign nationals without valid work permits. The investigation into allegations of alleged human trafficking, rape and incest were still ongoing at the time of reporting.*

#### **Case study 3E**

*This case involves a female student from a public school. She failed her final Grade 12 examinations and was looking for assistance to study at a university. Mr X, a Namibian national agreed to help her, supposedly in exchange for sexual favours. The suspect raped this young girl on multiple occasions causing her serious harm. At one point he also sent her to Turkey for prostitution purposes. The involved subject has been arrested and is still awaiting finalization of his trial.*

<sup>97</sup> see Table 4 in section 7.2 above.

<sup>98</sup> In some cases, persons appear to have been moved from one place to another, against their will (or misled) and end up participating in or being forced to participate in sexual activities, with no indications of any related financial flows.

## **7.9 Trends, typologies and methodologies employed in ML**

The FIC continues to issue trends, typologies and similar types of reports as part of its regulatory responsibilities to share outputs from strategic analysis in an effort to aid risk mitigation within the AML/CFT/CPF framework. Such reports are usually shared directly with relevant stakeholders or sectors under AML/CFT/CPF supervision. If suitable, some are published on the FIC website.<sup>99</sup>

To date, the FIC has published trends and typology reports on ML predicate offences such as fraud, corruption, potential tax offences, illicit gift remittances, ML associated with illegal wildlife trade etc. These reports complement and support the periodic NRA reports. It is essential for AML/CFT/CPF supervised institutions and other stakeholders to consider contents of such reports in their preventive and combative activities. With this NRA update, no material changes were noted in trends and typologies of major predicate offences as previously reported. Some red flags and typologies associated with illicit dealings in precious stones and metals are captured in Appendix 2 of this report.<sup>100</sup>

In an effort to serve awareness related objectives, Forewarning Reports on emerging ML trends are also published on the FIC website periodically. These are aimed at enhancing understanding of emerging financial crime trends as observed by the FIC.

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<sup>99</sup> The unintended consequences of revealing trends and typologies employed in advancing ML activities is the risk of unduly exposing AML/CFT/CPF vulnerabilities in combatting frameworks to potential future offenders. For this reason, the publication and dissemination of ML predicate offence trends and typologies is controlled. On the FIC website, such reports can be accessed under *Trends and Typologies Folder* @ <https://www.fic.na/index.php?page=fic-trends-and-typology-reports> as well as under *Publications (Sectors strategic feedback reports)* @ <https://www.fic.na/index.php?page=sectors-strategic-feedback-reports>.

<sup>100</sup> As such were not reported on in prior trends and typology reports.

# **CHAPTER III:**

# **NATIONAL ML**

# **VULNERABILITY**

## **Chapter summary**

As stated above, threat and national vulnerability are the two main factors impacting national ML/TF/PF risk. A key element of national vulnerability is the defense and reaction mechanisms available for combating ML/TF/PF. These defense mechanisms or AML/CFT/CPF control frameworks include laws, supervisory bodies, competent authorities etc. All these are assessed in the first part of this section to understand their level of effectiveness. The other component of national vulnerability emanates from the ML vulnerabilities of the various sectors that could potentially be abused by threats to advance ML/TF/PF.

Given the above, the national ML/TF/PF vulnerability is an aggregated consideration of the national combatting ability (framework) on the one hand and the sum of sectoral vulnerability on the other hand. It is determined by adding the overall ML/TF/PF vulnerability of the various sectors to the assessment outcome of national ability to combat ML. Therefore, if the ML vulnerability of a sector is assessed to be high, this naturally increases the overall ML vulnerability of the sectors, which in turn increases the national ML vulnerability. A country's ability to combat ML at a national level is determined, based on the ratings of the input variables. It implies that higher ratings of input variables increase national ML combatting ability, which in turn results in lower national ML vulnerability. Lower ratings for each variable have the opposite effect.

As reflected in Figure 22 below, Namibia's national ML vulnerability was rated **Medium High** (a score of 0.62 or 62%).<sup>101</sup> This stems from a combination of the National ML combatting ability which was rated Medium High (0.56 or 56%) and the overall sectoral ML vulnerability which was rated Very High (0.8 or 80%). Generally, this suggests that while significant national AML combatting frameworks are reasonably in place, sectoral combatting effectiveness remains an area of concern. Considerations which informed such ratings are detailed in this section.

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<sup>101</sup> For the sector vulnerability, the national ML vulnerability, and the overall sectoral ML vulnerability charts, a higher score implies a higher vulnerability to ML. Similarly, a higher overall sectoral ML vulnerability increases the national ML vulnerability of the country. On the other hand, for national ML combatting ability and intermediate variables that relate to ML combatting ability/AML controls (such as Quality of Criminal Investigation, Quality of Asset Forfeiture Framework, Quality of CDD Framework), a higher score indicates a higher ML combatting ability, which lowers the national ML vulnerability.

## PART A: ASSESSING THE AML/CFT/CPF COMBATTING FRAMEWORK

The AML/CFT/CPF combating framework is made of different variables or components such as laws, policies, LEAs, competent authorities, the supervised institutions, the private sector, the prosecution and courts. These are consistently assessed or tested to determine their contribution to the national combatting framework. Some components (e.g the effectiveness of the prosecution and courts/judiciary) may carry a higher weight or contribute significantly more to the effective functioning of the overall combatting framework than others. The vulnerability assessment tool is premised on such principles, amongst others. It is however essential to bear in mind that the different components of the combatting framework rely on one another and are therefore not viewed in isolation.

The assessment is based on assigning scores to combatting variables depending after having examined certain considerations. For example, the variable “*Effectiveness of ML Crime Definition*” assesses whether Namibia has in law defined ML offenses comprehensively, and whether it is possible to enforce the laws in place and obtain convictions on the basis of such definition. An aggregation of all the ratings assigned to the different variables amount to a position of the overall vulnerability to ML.

In rating the adequacy and/or effectiveness of each variable, rating levels that can be assigned are from 0.0 to 1.0.<sup>102</sup> Level 0.0 (or 0%) shows the lowest level of adequacy or effectiveness while 1.0 (or 100%) represents the highest possible level.<sup>103</sup>

Overall, the vulnerability assessment of the national AML/CFT/CPF framework suggests a **Medium High rating (0.62 or 62%)**, showing a reasonable level of combatting effectiveness. The NRA observed that certain variables or national ML combating ability factors such as the quality of national AML policy and strategy, the formalization level of the economy, ML crime definition scope in law, the comprehensiveness of asset forfeiture laws, integrity and

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<sup>102</sup>

Excellent	Close to Excellent	Very High	High	Medium High	Medium	Medium Low	Low	Very Low	Close to Nothing	Does not Exist
1.0 ■	0.9 ■	0.8 ■	0.7 ■	0.6 ■	0.5 ■	0.4 ■	0.3 ■	0.2 ■	0.1 ■	0.0 ■

<sup>103</sup> It implies that lower ratings of input variables increase national ML combating ability, which in turn results in higher national ML vulnerability. Higher ratings for each variable have the opposite effect.

independence of the prosecution, magistrates and judges, amongst others, were reasonably effective and significantly enhance the overall framework.

Other components require improvement to enhance the national combatting ability. Resource constraints is a factor which undermines effectiveness across most competent authorities, especially LEAs' ability to function effectively and the FIC's intelligence gathering and processing ability. This negatively affected overall considerations of the AML/CFT/CPF framework. In the same vein, the failure to keep records in a manner that can best enhance combatting abilities, across different stakeholders, does not help policy and strategic planning. This undermines overall combatting activities and escalates ML vulnerability levels.

The Ministry of Home Affairs and Immigration maintains adequate national identification data, that is availed to competent authorities (upon request). This enhances combatting abilities at law enforcement level but the failure to avail the private sector timely access to such databases undermines combatting amongst supervised institutions. BIPA on the other hand does not have adequate beneficial ownership information at hand, although significant efforts have been made to enhance the current database. At the time of reporting, BIPA's automated system geared to avail viewing access to the beneficial ownership information needs significant improvement to meaningfully align to AML/CFT/CPF expectations as per the FIA.

Figure 22A below presents outcomes of vulnerability levels across the national combatting framework.

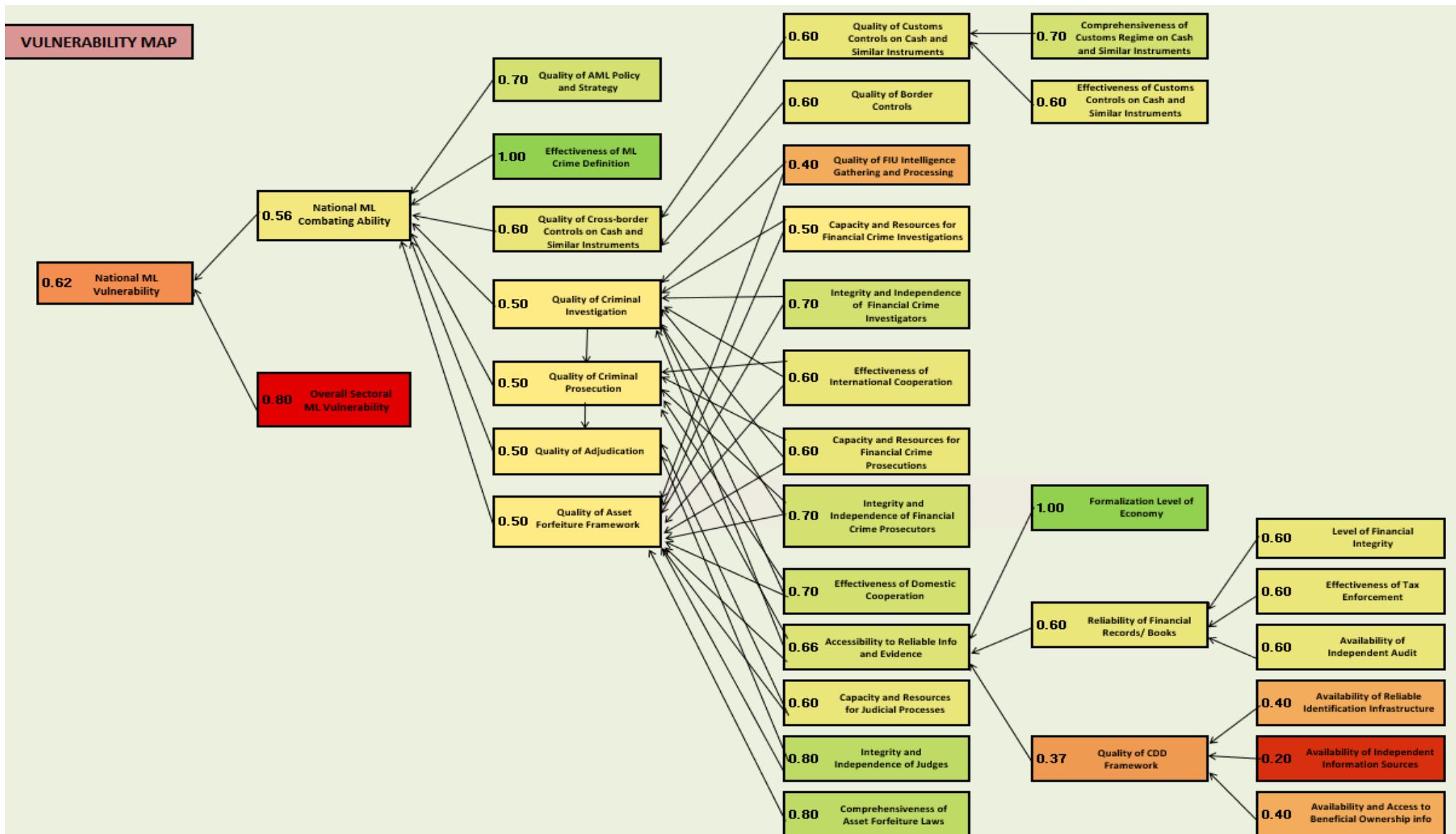


Figure 22A: Ratings of variables/factors that make up the national AML/CFT/CPF framework

## **8. Consideration of variables that impact the AML/CFT/CPF framework**

Figure 22B below lists components of the AML/CFT/CPF framework in terms of their prioritization. As mentioned above, the capacity and resource constraints of financial crime investigators and prosecutors, quality of FIU intelligence gathering and processing, availability and access to the national identification as well as company registration (BIPA) databases should be amongst components accorded higher prioritization in efforts to enhance the combatting framework.

PRIORITY RANKING FOR INPUT VARIABLES/NATIONAL ML COMBATING ABILITY FACTORS	PRIORITY RANKING
Quality of AML Policy and Strategy	
Effectiveness of ML Crime Definition	
Comprehensiveness of Asset Forfeiture Laws	
Intelligence Gathering, Processing and overall AML/CFT/CPF Supervision	3
Capacity and Resources for Financial Crime Investigations (incl. AF)	1
Integrity and Independence of Financial Crime Investigators (incl. AF)	
Capacity and Resources for Financial Crime Prosecutions (incl. AF)	2
Integrity and Independence of Financial Crime Prosecutors (incl. AF)	
Capacity and Resources for Judicial Processes (incl. AF)	6
Integrity and Independence of Judges (incl. AF)	
Quality of Border Controls	11
Comprehensiveness of Customs Regime on Cash and Similar Instruments	
Effectiveness of Customs Controls on Cash and Similar Instruments	8
Effectiveness of Domestic Cooperation	
Effectiveness of International Cooperation	7
Formalization Level of Economy	
Level of Financial Integrity	12
Effectiveness of Tax Enforcement	10
Availability of Independent Audit	12
Availability of Reliable Identification Infrastructure	4
Availability of Independent Information Sources	9
Availability and Access to Beneficial Ownership Information	4

Figure 22B: Priority ranking of national ML combatting framework components<sup>104</sup>

<sup>104</sup> The lower the ranking and darker the colour, the more priority the item has. There is no 5<sup>th</sup> ranking as two variables/components are accorded 4<sup>th</sup> ranking equally.

## **8.1 Quality of AML/CFT/CPF Policy and Strategy**

Namibia's national AML/CFT/CPF policy and strategy<sup>105</sup> is based on a firm understanding and appreciation of the current and evolving ML/TF/PF risks the country is exposed to. The NRA found significant indications that suggests the country has an effective Policy and Strategy. The political commitment and support at national level is the foundation on which all combatting measures are premised. Such commitment is reflected Government having passed the necessary laws (e.g POCA, PACOTPAA and FIA) which set the legal framework. The creation of designation of the AML/CFT/CPF Council<sup>106</sup> (along with the FIC) as a body that coordinates national AML/CFT/CPF efforts along with other stakeholders is a progressive step that further demonstrates political commitment and support. Council oversees the formulation, coordination and implementation of AML policies and strategies.

In furtherance of such, competent authorities such as the Namibian Police have dedicated ML/TF/PF combatting units. This section details all measures implemented across various components of the AML/CFT/CPF framework in line with the Policy and Strategy.

The Policy and Strategy are based on an up-to-date, formal, and comprehensive national ML risk assessment.<sup>107</sup> The first NRA was conducted in 2012 with relevant private and public sector participation. Such was followed up with updates in 2015/16 and sectoral ML/TF/PF risk assessments conducted in 2017, 2018 and 2019 respectively. Outcomes from such have been responded to, with the inclusion of CCFAs and NPOs into the FIA regulated sphere after the 2015/2016 NRA updates. The 2020 NRA outcomes are documented herein. Overall, risk assessments are a living process that is constantly updated, at times, in targeted sectors within the AML/CFT/CPF sphere. In supervision of entities under the AML/CFT/CPF sphere, the FIA adopts a risk-based approach through various sections. Financial Institutions and DNFBPs are required to undertake risk assessments and mitigate risks they are aware off. In particular, FIA sections 39(1), section 23 (risk clients) and section 24 (On-going and enhanced due diligence), along with different other FIA compliance guidance and directives issued.

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<sup>105</sup> [https://esaamlg.org/reports/Namibia\\_AML\\_CFT\\_Strategy..pdf](https://esaamlg.org/reports/Namibia_AML_CFT_Strategy..pdf)

<sup>106</sup> with its powers laid out in Part 3 of the FIA, sections 17 to 19.

<sup>107</sup> Both the AML/CFT/CPF Strategy and Policy are being revised and updated with outcomes of this NRA.

The AML/CFT/CPF supervised sectors' observation and submission are that the legal framework is covered extensively and is largely aligned to the FATF Recommendations, with the exception of a national PEP list. PEPs are high risk clients<sup>108</sup> and the NRA observations are that more should be done to help them identify PEPs. Despite the issuance of a PEP Guidance Note and Directive, the supervised sectors indicated that they would ideally appreciate the issuance of a national PEP list. The absence of this leaves sectors exposed as they will not always know whether a client meets the criteria of a PEP, with the exception of well-known personalities such as Ministers, and perhaps their close spouses. It is not easy to determine if a client meets the criteria for being associated to a PEP, unless there are media reports or the client confesses to being a PEP (which is not common). The way AML/CFT/CPF supervised entities were allegedly abused to advance potential ML by unknown PEPs, in the pending *Fishrot* case, is a typical example. The NRA recommends that considerations be made to determine additional measures (including issuing of a national PEP list) to help accountable and reporting institutions.<sup>109</sup>

With consideration of all factors stated above, the NRA rated the quality of AML/CFT/CPF policy and strategy **High**, or a score of 0.7 (or 70%) in terms of its impact and effectiveness (scores are out of 1.0, with 0.0 reflecting the lowest level of positive impact).

## 8.2 Effectiveness of ML/TF/PF Crime Definition

Definition of a crime in law can hinder or enhance combatting efforts. If the scope is limited, combatting efforts are similarly limited. It is essential that these financial crimes are appropriately described to ensure, amongst others, their scope coverage. The FATF Recommendations, amongst others, avail guidance that such crime definitions ought to be aligned to.

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<sup>108</sup> Section 1 of the FIA contains the following definitions, which affects the obligations of Accountable Institutions to take enhanced measures to manage and mitigate identified risks: "risk clients" means any person, natural or legal whose activities pose a risk for money laundering or financing of terrorism activities. The term PEP is not explicitly mentioned in the FIA, as a PEP is regarded as just another type of "risk client". In this regard, FIA section 1 defines a "risk client" as meaning "any person, natural or legal whose activities pose a risk for money laundering or financing of terrorism or proliferation activities; [definition of "risk clients" amended by Act 4 of 2014 to add the words "or proliferation"]". In furtherance to the above, PEPs are classified as high-risk clients in FIC Guidance Note 1 of 2019. This Guidance Note provides the country context on PEPs. In terms of the guidance note, Financial institution must consider PEPs as inherently high-risk. FIC Directive 02 of 2020, enclosed as - obliges Accountable and Reporting Institutions under the FIA, to regard PEP's as high-risk clients.

<sup>109</sup> The FIC is of the view that a Directive and Guidance Note was issued to assist in this regard. The FIC does not support the idea of drafting and publishing a PEPs list. It is of the view that each institution needs to identify its clients in terms of risks and adopt the relevant control measures as per risk assessment outcomes with consideration to the PEP Guidance and Directives.

### **8.2.1 ML crime definition**

Criminalization of ML is comprehensive as such is applicable to all the serious offenses, with a view to including the widest range of predicate offenses, including tax related offenses. ML is a separate offense in law and in practice. It also extends to self-laundering. The NRA found that the ML definition is comprehensive enough to ensure effective coverage of the crime and thus minimise ML risk exposure, in as far as coverage is concerned.

In terms of the FIA and POCA, there is a wide range of dissuasive penalties for ML offenses which are regarded as proportionate when compared to penalties for other serious offenses. The criminal penalties can be applied to both natural and legal persons and there are civil or administrative sanctions that can be applied to them. For example, Section 11 of POCA provides for penalties of ML offences (NAD 100 million or imprisonment not exceeding 30 years). The NRA concluded that the sanctions are dissuasive enough.

### **8.2.2 TF crime definition**

Domestically, terrorism funding definition entails availing of resources of any kind including funds, assets of financial services used in whole or in part for terrorist activity. The definition is wide enough to criminalise the commission of the offence outside Namibia while also criminalising the actions of foreign terrorist fighters in sections 13 and 15.<sup>110</sup> Additionally, the “funding of terrorism” is wide enough to include the financing of travel, especially if one keeps in mind all the other separate offences in sections 12, 13, 14, 15 and 18 of the PACOTPAA.

The NRA found that the TF sanction of a potential fine not exceeding NAD 100 million or the imprisonment for a period not exceeding 30 years (or both) is dissuasive to discourage potential offenders.

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<sup>110</sup> Taking into account the definition of foreign terrorist fighters as per UNSCR 2178.

### **8.2.3 PF crime definition**

In simple terms, “funding of proliferation” means the provision of funds, assets or financial services which are used, in whole or in part, for proliferation activity.

The PACOTPAA states that a person who by any means, in or outside Namibia, directly or indirectly, provides financial services or solicits or collects funds intending, knowing or having reasonable grounds to believe that such funds is to be used in whole or part, to carry out any proliferation activity, regardless of whether such funds or part thereof were actually used to commit a proliferation activity. The PACOTPAA, through sections 12, 13, 14 and 15 further extends the definition to enhance coverage in acts that could fall within the definition of the PF offence.

As with TF, the PF offence is liable to a fine not exceeding NAD 100 million or to imprisonment for a period not exceeding 30 years (or to both such fine and imprisonment) and such is regarded as dissuasive enough.

Domestically, Namibia has not recorded actual TF and PF activities, which would have tested the effectiveness of such crime definitions in terms of application or advancing of criminal charges.

Having regard to all of the above, it was concluded that the ML, TF and PF definitions are wide and adequately scoped to enhance effective combatting of all related activities, along with dissuasive sanctions. With such considerations, the essential criteria in the definitions are met and thus a rating of **Excellent** (a score of 1.0 or 100%) was assigned.

## **8.3 Comprehensiveness of Asset Forfeiture Laws**

### **8.3.1 Framework for freezing proceeds**

Asset forfeiture laws, which include measures to seize and freeze were found to be adequately comprehensive and rated **Very High** (or a score of 0.8 or 08%). This section

explains variables which were considered to arrive at such rating. Table 9A below presents a record of asset confiscations, preservations and forfeitures in the reporting period.<sup>111</sup>

Annual Asset Recovery Data (2016-2020)											
	2016		2017		2018		2019		2020		
	No. of Cases	Amount (NAD)									
Confiscations	1	14,000	0	-	0	-	0	-	2	379,080	
Preservations	15	11,883,760	9	23,143,481	9	23,918,852	7	3,689,424	3	18,097,199	
Forfeitures	16	22,936,253	9	2,352,186	5	5,083,238	9	2,665,904	4	1,871,562	

Table 9A: Asset Recovery (Confiscations, Preservation and Forfeitures)

Forfeiture laws should enable adequate scope coverage which will enhance competent authorities' ability to effectively identify and move to seize, freeze and forfeit assets which are considered proceeds or properties of crime. The definition of property<sup>112</sup> under the POCA does not attach a value to what type of property can represent proceeds of crime. As such, when read together with the "all crimes" approach; it means the ML offence extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime and that represents property so derived from proceeds of crime and includes property which is commingled with property that is proceeds of unlawful activity – that is, "the proceeds of proceeds".

The NRA was also convinced that Namibia has legislative measures that enable the confiscation of property of corresponding value, whether held by criminal defendants or by third parties. This is specifically provided for in sections 17(3) read with section 32 and section 21(3) of POCA, read with the definition of proceeds of unlawful activities as per section 1 of POCA. Section 20 of the POCA also clearly includes property both in possession of the defendant as well as property not in possession of the defendant; wherever it may be found, taking into account the definition of "instrumentality of an offence".

<sup>111</sup> The table indicates the number of cases and the amounts involved in confiscations, preservations and forfeitures as a result of Spontaneous Disclosures (SDs) disseminated to the OPG in the period 2016 to 2020. There were 43 Forfeitures and Preservations recorded. Source, OPG.

<sup>112</sup> Section 1 of POCA defines "property" as money or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any interest in the property and ALL proceeds from the property [NRA emphasis].

### **8.3.2 Asset forfeiture**

The following are amongst others, key provisions of the POCA which enhance overall comprehensiveness:

- a. *Section 1* defines proceeds of unlawful activities as well as the instrumentality of such offences;
- b. *Section 51* provides for the court to make a preservation order if it finds that on reasonable grounds, the property is the proceeds of unlawful activities or instrumentality of an offence;
- c. *Section 59* provides for the court to make a forfeiture order if it finds on a balance of probabilities that the properties are the proceeds of unlawful activities or instrumentality of offences; while
- d. *Sections 32* provides for confiscation orders in conviction-based asset forfeiture regime. These are money judgements against the defendant aimed at removing the benefit derived from a crime, this is done through the confiscation of corresponding value held by the criminal defendant or third parties.

### **8.3.3 Seizing and freezing**

In addition to the above, the POCA also avails measures to restraint the placement of proceeds beyond the State. Relevant authorities can rely on section 25 of POCA, anti-disposal orders (section 33 of POCA) and preservation orders (section 51 of POCA) to proactively carry out rapid provisional measures, such as seizing or freezing proceeds, to prevent the transfer or disposal of such proceeds. Also, Chapter 5 of POCA deals with conviction-based asset forfeitures and Chapter 6 deals with non-conviction-based asset forfeitures.

Section 63 of the POCA on the other hand provides for the innocent owner or bona fide third party's defence.

### **8.3.4 Seizing, freezing and forfeiting assets related to TF and PF**

The PACOTPAA provides a legal basis for the forfeiture of property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations.<sup>113</sup>

Sections 23 and 24 of the PACOTPAA provides for the procedure in terms of which persons and organisations that are designated on the UNSC's sanctions lists for terrorism and proliferation purposes are communicated to the Ministry of International Relations and Cooperation (MIRCO), who in turn must communicate same to the Minister of Safety and Security. The Minister of Safety and Security is then required to gazette (within 48 hours) a freezing order in respect of any funds, assets or economic resources owned or controlled directly or indirectly by the designated person or organisation, amongst others.

In terms of section 24 of PACOTPAA, the MIRCO must also circulate the same sanctions lists to the Director of the FIC, who must in turn circulate the lists to all accountable institutions, reporting institutions, supervisory bodies and regulatory bodies, as per the FIA Schedules, as well as to any other person, business, public body, office, Ministry, government institution or competent authority as the Director, considers appropriate. This serves as a *de facto* freeze, while the Minister of Safety and Security initiates the process of publishing the sanctions lists in the Government Gazette, together with his/her freezing order.

The gazetted freezing order remains in force until delisting by the UNSC.

In the same vein, section 34(3) of the PACOTPAA provides that for the prohibition of procuring, supplying, provision, import or export of certain weapons, arms and related materials, sanctioned items and technical advice, services, assistance and training.

Namibia follows an all-crimes approach with regard to ML. As such, TF (as a criminal offence) is a predicate offence for ML and so is PF. Therefore, if persons are charged with ML where the predicate offence is TF or PF, there is no reason why the same confiscation measures used for ML proceeds may also not apply in such a situation.

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<sup>113</sup> In this regard, see sections 38(1) and 38(3), as well as sections 23, 24 and 34(3) of the PACOTPAA.

### **8.3.5 The CPA**

Given that both PF and TF are criminalised, properties or items related to such can be seized as per the CPA.<sup>114</sup> The CPA<sup>114</sup> generally provides Police Officers with powers to seize assets or items used in a crime.

## **8.4 Intelligence Gathering, Processing and overall AML/CFT/CPF Supervision**

Overall, the quality of FIU intelligence gathering and processing is rated **Medium Low** (a score of 0.40 or 40%). Resource inadequacies largely impact ability to duly attend to most STRs received.

This section looks at the effectiveness of frameworks aimed at triggering and supporting ML and asset forfeiture investigations. FIU intelligence gathering and processing is premised on effectiveness of combative measures within supervised institutions. This view is best reflected in the notable increase in STR volumes with the commencement of supervisory activities in 2011 (as per Figure 23 below). The second part of this section avails an overview of AML/CFT/CPF supervisory frameworks and how such impact or contribute to the effectiveness of intelligence gathering and processing. This complements supervisory observations for specific sectors as stated in Part B, sections 9 to 11.

### **8.4.1 Data gathering, analysis and intelligence disseminations**

With this variable, the NRA considered inputs from various bodies making use of the FIC's outputs including the private sector, Namibian Police, ACC and NCIS. It was largely concluded that the FIC:

- a. has operational independence and autonomy, free from any undue political, government, or industry influence or interference to carry out its functions freely;
- b. has a reporting system (especially for STRs and SARs) which works effectively, including analysis and dissemination of information and intelligence;

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<sup>114</sup> Section 30 of the Criminal Procedure Act (along with section 20): Disposal by police official of article after seizure

- c. is able to disseminate, spontaneously and upon request, information and results of its analysis to relevant competent authorities, in most instances;
- d. has, in most instances, timely access to databases of other domestic agencies and commercial sources, and can obtain additional information from reporting entities for its analysis; and
- e. derives great benefit by virtue of being a member of the Egmont Group of FIUs.

The assessment also found areas that may need improvement. In the main, resources and capacity remain a challenge, as observed in the 2012 NRA. The FIC's Investigation and Analysis function is not adequately resourced and is often overwhelmed by the significant volumes of reports received. This results in limitations to duly process all STRs received. This trend is reflected in FIC monthly and quarterly reports. Table 12 below shows a significant increase in the number of STRs received by the FIC in the period January 2015 to December 2019. Overall, from the 4,969 STRs received, only 22.4% (or 1,112 STRs) were accorded "high priority" status and escalated for further analysis (case files opened). Similarly, from the 834 SARs received, only 38.32% (or 395 SARs) were accorded "high priority" status and escalated for further analysis (case files opened) resulting in a combined high priority rating for STRs/SARs of 31.30%. Considering that the FIC also received incoming information requests (both domestic and international) amounting to 403 in the period under review, attention had to be diverted to such requests, as they pertain active investigations. In this regard, almost all such requests were duly attended to, resulting in a 98.13% execution rate.

Cases escalated for further analysis have resulted in actionable intelligence being forwarded to relevant LEAs for further investigation. The risk based approach which enables prioritization<sup>115</sup> of incoming reports has unintended consequences of failure to investigate and analyse all incoming reports, as reflected in Table 10 below. The critical resource constraints mean that all reports received are cleansed and categorised in terms of prioritization but only 'high priority' reports result in case files being opened and further analysed. This challenge was constantly raised in prior risk assessment engagements and FIC reports. Over time, the volume of STRs not resulting in case files keeps increasing, owing to the constant growth in volumes of incoming reports, as per Table 10 below.

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<sup>115</sup> The FIC applies a risk-based approach in determining the level of prioritization assigned to a report. Factors taken into consideration in this regard include, but are not limited to: strategic, tactical and operational priorities of LEAs; known ML/TF/PF indicators; financial values involved in reported incidents; watch lists (PEP, sanction lists etc.); prior reports on same subject/entity; and duplicate/erroneous filing.

	2015			2016			2017		IRD/Is	2018			2019			Total			Grand Total
	STRs	SARs	IRD/Is	STRs	SARs	IRD/Is	STRs	SARs		STRs	SARs	IRD/Is	STRs	SARs	IRD/Is	STRs	SARs	IRD/Is	
Case Files Opened from Received Reports	173	22	48	218	55	89	287	61	61	254	81	98	180	102	99	1,112	321	395	1,828
Classified as Low Priority	340	45	1	492	70	-	950	90	-	1,064	172	2	966	128	1	3,812	505	4	4,321
Reports Set-Aside	2	1	-	13	2	4	17	-	-	7	2	-	6	3	-	45	8	4	57
Grand Total / Received reports	515	68	49	723	127	93	1,254	151	61	1,325	255	100	1,152	233	100	4,969	834	403	6,206
% of Reports escalated to LEAs	33.59%	32.35%	97.96%	30.15%	43.31%	95.70%	22.89%	40.40%	100.00%	19.17%	31.76%	98.00%	15.63%	43.78%	99.00%	22.38%	38.49%	98.01%	29.46%

Table 10: Data on reports received and processed within the FIC

Table 10 above shows that all incoming reports go through a rigorous process to determine its prioritization. Such process commences with an initial evaluation, followed by two reviews, before eventual decision-making on the correct categorization of such STR or SAR. STRs or SARs categorised as ‘low priority’ are not immediately prioritized. Those with higher priority levels result in case files being opened and being escalated for further analysis.

The extent to which the FIC’s housing within the BoN could be seen as compromising its independence and objectivity was considered in as far as how such position impacts overall ML/TF/PF risk mitigation. While the FIC explained that the BoN only avails administrative support and does not influence its functional or operational activities, the NRA project team was not entirely convinced. The NRA project team cautioned that if such independence is in any way undermined, the eventual prejudice to the country would be reflected in the FIC’s outputs and national combatting activities. Similarly, though this has happened across many other Government funded bodies (Ministries and agencies in years of reduced Government revenue), the reduction in the FIC’s budgetary allocations have, to a certain extent, limited its outputs.

The NRA observed that FIC staff security vetting or screening is undertaken upon recruitment and during the course of employment. This is commendable. However, the security briefings for staff members appear limited to new staff members and are not conducted periodically. This could be improved on.

The STR reporting system, with enhancements made over the years, works to the satisfaction of the FIC and reporting institutions, concluded the NRA. Such system however ought to be complemented by relevant databases, which at most should serve as data mining platforms. The mandatory reporting of CTRs, EFTs and IFTs that meet certain criteria commenced in January 2015.<sup>116</sup> The earlier years saw significant reporting irregularities, most of which have been addressed as the reporting systems within entities have matured and improved over the years.

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<sup>116</sup> Circular 3 of 2015 – Additional Reporting Obligations. This circular, issued as per the FIA, reflects reporting obligations while specifying the nature and type of transactions that meet criteria for reporting.

The FIC does not have direct access to the BoPCUS data<sup>117</sup> which would enhance analysis work. However, such BoPCUS information is furnished upon request.

The reporting framework has inadequacies relating to information from ‘cross border cash movement declarations.’ Such reports are manually processed and this presents its own set of challenges given the volumes of data the FIC deals with. The country largely depends on voluntary traveller declarations. The absence of mechanisms to properly avail all travellers with cash declaration forms undermines the effective functioning of cross border cash declarations. There is thus no assurance that Namibia or the FIC has adequate record of cash smuggled or legitimately moving into and out of the country, via the official points of entry. Such information should assist to enhance the quality of FIC outputs.

The LSN<sup>118</sup> has unique needs. It was indicated that FIC reports are mostly related to ML and FIC compliance/non-compliance matters, with little to no indications on trust bank account related contraventions in terms of the LPA<sup>119</sup> and relevant Rules. The LSN is therefore not convinced that the information received is always sufficient or related to the Rules and LPA.

#### **8.4.2 Compliance monitoring and supervision activities**

The FIA, as per section 9, recognises the FIC as Namibia’s FIU, tasked with coordinating all AML/CFT/CPF activities locally. The FIA, through that same section grants the FIC authority to conduct supervisory activities including coordinating the activities of the relevant supervisory bodies (e.g NAMFISA), supervised institutions involved in the AML/CFT/CPF. In furtherance of AML/CFT/CPF supervisory objectives, the FIC is empowered to supervise, monitor and enforce<sup>120</sup> compliance with the FIA, or any regulations, directives, determinations, notices or circulars issued in terms of the Act, by supervised institutions and give guidance to such institutions to combat ML/TF/PF.

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<sup>117</sup> In the custody of the BoN, Exchange Control Division.

<sup>118</sup> Law Society of Namibia.

<sup>119</sup> Legal Practitioner’s Act, 1995 (Act No. 15 of 1995).

<sup>120</sup> Includes powers to facilitate effective supervision and enforcement of the Act by supervisory bodies.

The FIC and NAMFISA's AML/CFT/CPF supervision activities are risk based. Supervisory policies, procedures and the framework is informed by an understanding of risks.<sup>121</sup> With such approach, the level of risk assigned to a sector, institution, product or service determines the nature and type of supervision activity employed at different times. The compliance supervision method of NAMFISA is similar to that of the FIC.

With compliance assessments,<sup>122</sup> onsite activities are mostly employed in higher risk sectors or institutions (including control reviews in products and services) while offsites are usually used to target lower risk institutions. Offsite assessments are also used to (a) track progress of control remediation activities after a compliance assessment (assessment feedback and follow-up sessions); (b) gauge risk mitigation levels, particularly in low to medium risk institutions, if offsite observations reflect poor risk mitigation, the supervisory body usually escalates such to onsite assessment activities to obtain much more reliable assurance on control effectiveness and (c) enhance overall supervisory coverage (lower risk entities are periodically subjected to offsite assessment activities which mainly entail asking institutions to explain their compliance controls, which are then considered and a way forward on compliance assurance is mapped for such institutions). With the exception of certain targeted activities, most conventional onsite assessments usually commence with some offsite activities which guide the supervisory bodies in the most suitable onsite assessment or approach to deploy.

Training or similar guidance activities are also availed in terms of the FIC's understanding of risk exposure. Many institutions are availed AML/CFT/CPF training after the compliance assessment activities when the FIC observes the need to undertake such. The issuance of sectoral guidance notes, trends and typology reports, forewarning reports etc., is also informed by an understanding of ML/TF/PF risks that sectors or institutions may be exposed to. Sectoral meetings are also shaped around the same risk consideration model. For example, the FIC has more frequent sectoral meetings with banks and ADLAs given their relatively higher ML/TF/PF exposure than most other sectors. The recent addition of NPOs

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<sup>121</sup> Whilst the 2012 NRA laid the foundation for risk based supervision, the supervisory risk assessments conducted in 2017/2018 served as the first detailed sectoral risk assessment activities, outcomes of which are currently relied on to guide supervisory framework. The FIC's three-year supervision strategy (2020 – 2022) is informed by outcomes of same.

<sup>122</sup> The FIC's RBA assessment methodology can be accessed via the following link: <https://www.fic.na/uploads/Publications/Information%20Booklets/FIA%20Compliance%20Assessment%20Methodology%20Updated%202019.pdf>

and CCFAs to the supervisory framework has naturally resulted in more extensive trainings and sectoral meetings to help enhance their understanding of AML/CFT/CPF obligations.

#### **8.4.2.1 The FIC**

Within the AML/CFT/CPF framework, the FIA avails the FIC and NAMFISA supervisory and oversight powers and responsibilities. While NAMFISA supervises institutions under its prudential space, the FIC supervises all other institutions.

Most intelligence gathering and processing originate from or are linked to supervised entities in the AML/CFT/CPF framework. As reflected in section 8.4.1 above, reporting of suspicious transactions in particular remains one of the most essential components of the domestic AML/CFT/CPF combatting framework. Institutions can only be relied on to detect and report suspicious activities and or transactions if they have implemented effective internal controls (comply with AML/CFT/CPF frameworks). Efforts geared towards ensuring effective risk mitigation have a bearing on the reporting behaviour across sectors.

The FIC has a duty to gain reasonable assurance that accountable and reporting institutions as identified in the FIA, have controls in place that minimise ML/TF/PF risks. This includes, amongst others, internal control processes that can detect suspicious activity and allow for timely reporting of same to the FIC. To gain such assurance, the FIC mainly conducts regular on-site and off-site assessment activities (examinations). Assessments are a significant supervisory activity which are undertaken annually. Their very nature enables an opportunity to identify specific AML/CFT/CPF challenges which individual institutions may be experiencing. Such assessments are followed by interventions such as institution specific guidance in the form of assessment reports and where need be, capacity building initiatives. When the need arises, enforcement considerations are also made. Other than the institution specific assessments, the FIC communicates compliance expectations in various ways including the issuing of sectoral Guidance Notes, Directives, Notices and Circulars. These are geared towards enhancing compliance behaviour which should, amongst others, result in enhanced quantity and quality of relevant ML/TF/PF reports as per the FIA.

The FIC's compliance monitoring and supervision activities have an impact on the quantity and quality of the reporting behaviour of supervised sectors. The FIC commenced active supervisory activities across the AML/CFT/CPF supervised institutions in 2011 with compliance assessments mainly picking up in early 2012. Such assessment activities, along with capacity building sessions and other supervisory activities have since been conducted annually, following a risk-based approach (see table 11 below). There appears to be a correlation between the quantity of STRs reported to the FIC and the enhanced supervisory activities which commenced in 2011, as shown in figure 23 below. Generally, there is a notable increase over time in STRs reported, with the exception of reductions in the periods 2013 to 2014 and 2015 to 2016. Reasons for such reductions in the volume of reported STRs are unknown. The FIC's compliance monitoring and supervision resources (staff) doubled in the years 2015/2016, which has further enhanced supervisory coverage, amongst other benefits. The investigation and analysis division has further indicated that there has been a great improvement in the quality of STRs reported over the years, with minimum room for improvement still observed in a few cases.<sup>123</sup>

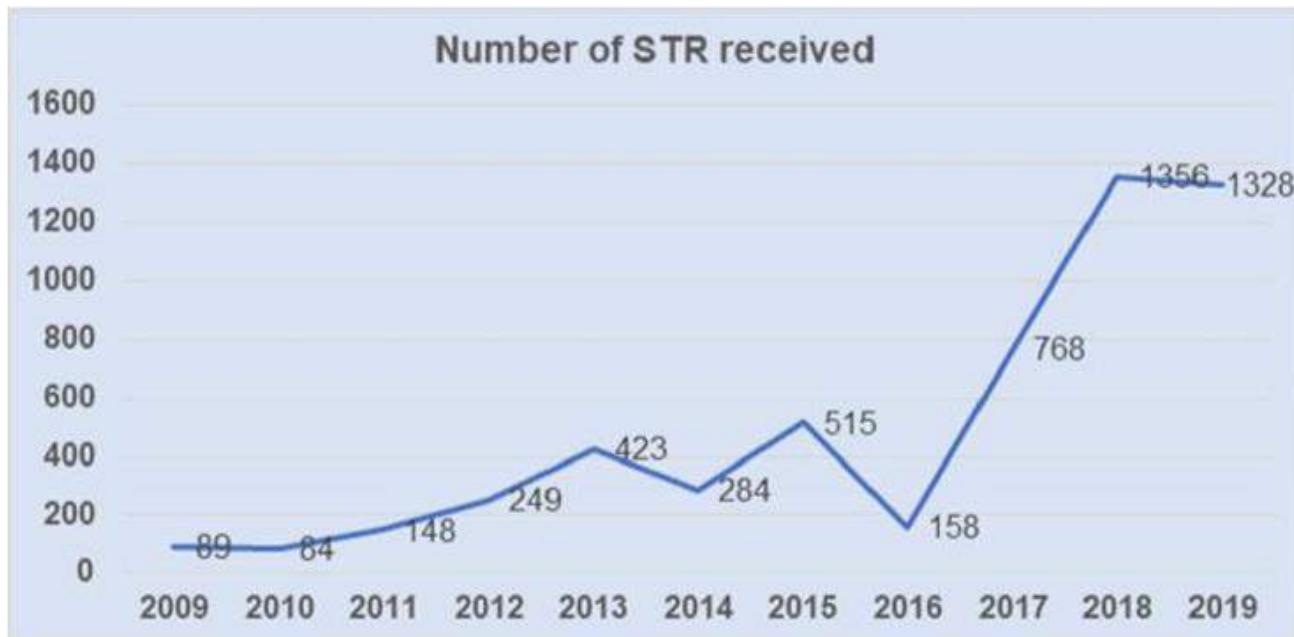


Figure 23: Volume of reported STRs<sup>124</sup>

<sup>123</sup> Overall, the overall number of referrals by the FIC's Investigative and Analysis division to the Supervision division citing poor quality of STRs has reduced.

<sup>124</sup> FIC Annual Report 2018/2019. Source:

[https://www.fic.na/uploads/Publications/AnnualReports/FIC%20Annual%20Report%202018-2019\\_Editorial%20Revision.pdf](https://www.fic.na/uploads/Publications/AnnualReports/FIC%20Annual%20Report%202018-2019_Editorial%20Revision.pdf)

Active compliance supervision of sectors normally commences with such sectors registering with the FIC. As at 30 June 2019, a total of 1,968 (one thousand, nine hundred and sixty-eight) accountable and reporting institutions were registered with the FIC, with some being under the direct supervision of NAMFISA.

In December 2019, the supervisory team comprised of nine staff members, which the NRA team found inadequate (given the current supervisory model, minus automated systems or technology), to ensure prudent supervisory coverage and thus effectiveness. In an effort to ensure adequate supervisory coverage, the minimum resources are deployed in terms of the sectoral and institutional risk exposure.

Table 11 below shows the FIC's risk based approach (RBA) supervision coverage in terms of compliance assessments activities (inspections) undertaken in the period leading up to mid-2019. Such RBA guides that, everything else being normal or equal, higher risk sectors such as banks are expected to be subjected to supervisory activities at least once annually. Depending on various factors such as emerging ML trends and threats, the medium to low risk sectors are subjected to reduced supervisory activities (in comparison to higher risk sectors). Objectives of periodic supervision plans often consider each sector's needs at the time, in order to best align supervision to areas most required. For example, 100% compliance assessment sectoral coverage is expected in the higher risk sectors. While such coverage is maintained, the need to at least gain assurance on the existence of basic compliance regimes in medium to lower risk sectors requires that such be subjected to some sort of assurance activity. This means that medium to lower risk sectors will in some years<sup>125</sup> appear to have higher supervisory coverage than the norm, as the supervisory framework matures. This was deemed necessary as the AML/CFT/CPF framework is still maturing and many institutions in medium to lower risk categories have insufficient understanding of AML/CFT/CPF obligations under the law.<sup>126</sup> This was the case with ADLAs, DPMS, MVTs and auctioneers as reflected in Table 11 below.<sup>127</sup>

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<sup>125</sup> When the supervisory object for a given period is enhancing supervisory coverage.

<sup>126</sup> It is however expected that as the AML/CFT/CPF framework matures over time and medium to low risk sectors (institutions) are developing an adequate understanding of risk exposure and comply in terms of such risk levels, supervisory activities would naturally be scaled down in such sectors.

<sup>127</sup> As the sectors were being engaged for the first time on AML/CFT/CPF obligations and how they should comply, it is essential to meet as many of them as possible to lay the foundation and help them understand expectations. Thereafter, as their compliance behaviour matures, the conventional selective engagement based on risk exposure can be duly implemented.

Sectors	FIC Registered Institutions	FIC Supervisory Risk Rating	No. of FIC institutions Assessed	Percentage Coverage	No. of onsite assessments	No. of offsite assessments	Trainings sessions
Accountants	30	Low	8	27%	1	7	4
ADLAs	11	Medium	11	100%	8	6	4
Auctioneers	20	Low	15	75%	10	15	10
Banks	12	High	12	100%	18	27	4
Casinos	10	Medium	5	50%	3	2	5
Customs Clearing and Forwarding Agents (CCFA)	191	High	8	4%	8	0	12
Dealers in Precious Metals and Stones (DPMS)	4	Low	4	100%	3	1	3
Legal Practitioners	223	Medium	164	74%	48	137	14
Lending Institutions	7	Medium	5	71%	2	4	8
Money and Value Transfer Service Providers (MVTs)	4	Low	3	75%	3	4	2
Motor Vehicle Dealers	101	High	68	67%	66	36	4
Non Profit Organisations (NPOs)	45	High	0	0%	0	0	56
Real Estate Agencies	785	Medium	102	13%	50	122	35
Trust and Company Service Providers (TCSPs)	5	Low	2	60%	2	0	0
Total	1448		407		222	361	161

Table 11: Compliance monitoring and supervision coverage as at 30 June 2019<sup>128</sup>

Despite the risk-based approach, the NRA team maintains that the resource levels are quite minimal and such impacts overall effectiveness. Efforts are required to further capacitate the supervisory team, especially with the use of automated mechanisms that enhance supervisory coverage and diligence.

The FIA, as per section 56 provides supervisory bodies with powers to administer sanctions on institutions for non-compliance with the Act. Over the years, the FIC has administered sanctions, with almost all such emanating from non-compliance observed in the compliance assessment activities. Table 11A below presents the FIC's record of administrative sanctions for FIA non-compliance across supervised sectors. Generally, such have usually been written cautions or administrative fines. Cautions are usually issued in terms of section 56 of the FIA. Such requires relevant institutions to commit to implement corrective measures to reduce risk exposure within a given period.<sup>129</sup> Fines on the other hand ranged from NAD 1 – 2 million in the reporting period. Only banks<sup>130</sup> were fined in 2015 for failing to honour FIC instructions to restrict to disbursement of funds as per section 42 of the FIA, pending investigations. All other

<sup>128</sup> FIC Supervisory Risk Rating is as per FIC's supervisory risk assessments conducted in 2018. After finalisation of this report, such supervisory risk ratings will be aligned with observations herein. FIC Registered Institutions refers to the total active and non-active AIs and RIs registered and supervised by the FIC as at 30 June 2019 and the figure (1448) of total institutions registered with the FIC excludes institutions under NAMFISA supervision. NPOs and CCFA were recently added to the AML/CFT/CPF supervisory framework and thus the initial supervisory measures in the early periods is to enhance their understanding of FIA obligations. As such understanding increases over the years, these sectors will be subjected to more intensive supervisory activities in terms of risk exposure.

<sup>129</sup> In less severe cases, a written warning is served on entities while in more serious cases, the relevant institutions signs an undertaking with the FIC Director to commit to implementing effective controls within a given period.

<sup>130</sup> At the time of issuing the report (outside the reporting period) however, other sectors, especially DNFBPs and NBFIs were subjected to fines.

institutions were cautioned for general AML/CFT/CPF control shortcomings such as inadequate CDD, risk assessments, record keeping, failures related for transactional monitoring systems, absence of clients screening mechanisms against the UNSC sanctions lists, amongst others.

	2015		2016		2017		2018		2019		2020	
Sectors	Fine	Caution	Fine	Caution	Fine	Caution	Fine	Caution	Fine	Caution	Fine	Caution
ADLAs	0	0	0	0	0	2	0	0	0	0	0	0
Asset Managers	0	0	0	0	0	1	0	0	0	0	0	0
Auctioneers	0	0	0	0	0	3	0	0	0	0	0	0
Banks	4	0	0	2	0	3	0	1	0	3	0	1
Casinos	0	0	0	0	0	0	0	1	0	0	0	0
Legal Practitioners	0	0	0	0	0	4	0	0	0	0	0	1
Lenders	0	0	0	0	0	0	0	1	0	0	0	1
Motor Vehicle Dealers	0	0	0	1	0	10	0	1	0	1	0	0
Real Estate Agents	0	0	0	0	0	5	0	3	0	0	0	0
<b>Total</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>28</b>	<b>0</b>	<b>7</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>3</b>

Table 11A: FIC's record of administrative sanctions for FIA non-compliance across sectors

At the time of reporting, no details of any FIA non-compliance administrative sanctions were published. The FIC explained that such position is taken after various factors are considered, per enforcement decision. In the main, it has been the FIC's view that publishing sanctions of key sectors such as banking, could have a negative impact on the integrity and stability of the financial system (and thus the economy) as banks are central to the effective functioning of such system. The NRA team concluded that this is contrary to the FATF<sup>131</sup> expectation that sanctions be dissuasive not only to the sanctioned institutions but to others as well. Such is only attained by publishing sanctions, as done by all other FIUs and regulatory bodies internationally. The NRA recommends that the FIC considers its position in this regard.

With criminal sanctions, as reflected in section 8.7, the FIC has record of sanctions executed for failures to comply with the FIA. While administrative sanctions have been taken, there is no record of the FIC, or any other relevant body referring any institution for criminal

<sup>131</sup> FATF Methodology, Page 10, paragraph 26. Sanctions – .... “In the effectiveness assessment, assessors should consider whether the sanctions applied in practice are effective at ensuring future compliance by the sanctioned institution; and dissuasive of non-compliance by others.”

prosecution, owing to failure to comply with AML/CFT/CPF obligations. The *Fishrot* and NAD 3.6 billion TBML cases are typical examples which by now should have seen relevant accountable institutions facing criminal charges for AML/CFT/CPF failures which enabled (willingly or negligently) the occurrence of the biggest financial crimes domestically.

#### **8.4.2.2 NAMFISA**

NAMFISA, established in terms of the NAMFISA Act,<sup>132</sup> has adequate supervisory powers to conduct onsite and offsite inspections and applies a risk-based approach to supervision. The supervisory powers are exercised effectively and impartially. In this regard, the intensity and frequency of supervision is informed by the level of the risks of ML/TF/PF in sectors under supervision.

In 2019, NAMFISA conducted Sectoral Risk Assessments (SRAs) on sectors under its AML/CFT/CPF supervision. The Risk Based Supervision (RBS) framework consisting of policies, procedures and manuals, as per FATF Recommendation 26 is premised on such SRA outcomes. Table 12 below is a summary of such outcomes. Higher risk services (and by extension entities offering such) are subjected to comparatively more extensive supervisory activities than the medium to lower risk rated services.

Industries	ML risk		TF risks		PF risks	
	Inherent risk rating	Residual risk rating	Inherent risk rating	Residual risk rating	Inherent risk rating	Residual risk rating
<b>Unit Trust Managers</b>	Medium-high	Medium-high	Medium-low	Medium-low	Medium-low	Medium-low
<b>Linked Investment Services Providers</b>	Medium-high	Medium-high	Medium-low	Medium-low	Medium-low	Medium-low
<b>Stockbrokers</b>	Medium-high	Medium-high	Medium-low	Medium-low	Medium-low	Medium-low
<b>Investment Managers</b>	Medium-low	Medium-low	Medium-low	Medium - low	Medium-low	Medium - low
<b>Top 52 Microlenders</b>	Low	Medium-low	Low	Medium - low	Low	Medium - low
<b>Unlisted Investment Managers &amp; Special Purpose Vehicles</b>	Low	Low	Low	Low	Low	Low

<sup>132</sup> 2001 (Act No.3 of 2001). The same Act prescribes the role of NAMFISA as a regulating body of NBFIs. NAMFISA is also designated as the national Supervisory Body for the non-banking financial institutions in terms of Schedule 2 of the FIA.

<b>Friendly Societies</b>	Low	Low	Medium-low	Medium-high	Low	Medium-high
<b>Long-term Insurance</b>	Medium-low	Medium-low	Medium-high	Medium-low	Medium-low	Medium-low
<b>Short-term Insurance</b>	Low	Low	Low	Low	Low	Low

Table 12: Outcomes of NAMFISA's 2019 Sectoral Risk Assessment (SRA)

	2016		2017		2018		2019		2020	
	On-Site	Off-Site								
Active Pension Funds	n/a	n/a								
Active Medical Aids	n/a	n/a								
Active Friendly Societies	0	0	0	0	0	0	0	0	0	0
Long-Term Insurance Service Providers	1	2	12	0	0	9	4	8	0	2
Short-Term Insurance Service Providers	2	10	6	0	0	0	3	4	0	1
Reinsurers for Long & Short-Term Insurance	0	0	1	0	0	1	0	0	0	0
Special Purpose Vehicles	0	0	0	0	1	3	0	0	0	2
Collective investment schemes	0	0	1	0	0	0	0	0	0	0
Unit Trust Management Companies	5	10	13	0	0	2	6	12	4	2
Investment Managers	7	10	7	1	0	4	0	0	0	0
Unlisted Investment Managers	0	0	1	0	1	3	2	0	0	0
Microlending	0	70	3	0	1	2	2	2	0	0
Stock Exchanges	0	0	0	0	0	0	0	0	0	0
Linked Investment Service Providers	0	0	0	0	0	1	1	0	0	0
Stockbrokers, including Sponsors	0	0	4	0	0	2	2	0	0	2

Table 12A: FIA compliance assessment activities

Sectors	2014	2015	2016	2017	2018	2019	2020
<b>Short-term Insurance</b>	1	1	2	3	4	1	2
<b>Long-term Insurance</b>	1	1	2	3	4	1	3
<b>Microlending</b>	1	5	1	3	3	1	4
<b>Unit Trust Schemes</b>	1	-	2	3	2	1	2
<b>Investment Management</b>	1	-	2	5	2	2	2
<b>Unlisted Investments</b>	1	-	1	5	4	2	3
<b>Special Purpose Vehicles</b>	1	-	1	4	3	1	2
<b>Stockbrokers</b>	-	-	-	2	2	1	2
<b>Stock Exchange</b>	-	-	-	2	2	1	2
<b>Friendly Societies</b>	-	-	-	2	2	1	2
<b>Total</b>	7	7	11	32	28	12	24

Table 12B: NAMFISA's AML/CFT/CPF training and awareness activities

As with most supervisor bodies, compliance assessments a key supervisory activity and outcomes thereof are documented along with guidance to help improve AML/CFT/CPF control shortcomings identified. Overall, NAMFISA's supervision has a direct impact on change in compliance behaviour of relevant sectors. This is reflected in improved compliance behaviour of many institutions and sectors in general. A significant part of this improvement

is reflected through the improvement in STR reporting behaviour over the years in sectors such as Unit Trust Managers (see Table 21A in section 10.3.5).

As a supervisory body, NAMFISA has the necessary enforcement powers to impose a range of appropriate administrative sanction as clearly stipulated under the FIA. There is a record of such sanctions taken in the past in respect of non-compliance with AML requirements in various sectors. The sanctions imposed by NAMFISA are considered proportionate and dissuasive to influence compliance behaviour amongst supervised institutions.

*Despite the above, the following vulnerabilities were noted:*

In terms of supervisory powers, the NRA found that although NAMFISA has adequate powers to supervise, monitor and enforce compliance in terms of section 35 of the FIA, the powers to impose financial sanctions are somehow limited. In this regard, the supervisory body can only impose financial sanctions once such financial sanctions are determined by the FIC. This means, on its own accord, NAMFISA cannot determine and impose financial sanctions. If the FIC failed to determine such financial sanctions (e.g on short-term insurers), NAMFISA will equally fail to impose same until the FIC determines such. This limitation arises out of section 56(3)(f) of the FIA and greatly undermines NAMFISA's ability to independently administer sanctions for FIA non-compliance.

Although NAMFISA has a dedicated AML unit with adequate knowledge and skills on AML/CFT/CPF supervision, it appears that the unit is not adequately staffed when compared to the number of entities supervised for ML/TF/PF purposes. Additionally, it is a general understanding that the AML unit has limited technical knowledge in some industries (such as insurance), which presents a challenge to effectively supervise, monitor and enforce compliance in such sectors. This hampers effectiveness and efficiency.

In summary, the NRA identified resource constraints, inadequate capacity (automated solutions), limited security screening of staff and potential FIU independence as challenges which hamper outputs. In the same vein, the fact that NAMFISA cannot administer sanctions for FIA non-compliance if such were not pre-determined by the FIC has in the past resulted in challenges for NAMFISA's ability to deal with non-compliance. Having regard to all of the

above, the NRA concluded that there is significant room for improvement in supervisory and oversight activities. Thus, a rating of **Medium Low** (a score of 0.4 or 40%) was assigned.

## **8.5 Capacity and Resources for Financial Crime Investigations<sup>133</sup>**

Overall, all indications are that despite a few setbacks, investigators of ML, associated predicate offenses as well as asset forfeiture are able to function, despite significant resource and capacity limitations which hamper overall effectiveness. The frameworks created to enhance LEAs' operations are worth noting. In terms of powers, the Namibian Police have a wide variety of search and seizure powers, investigative powers and tools under the Police Act,<sup>134</sup> and the Criminal Procedure Act, which they can make use of when investigating ML/TF/PF and associated predicate offences. In particular, section 14 of the Police Act, avails powers to search any premises, with or without a warrant and seize any documents in the course of investigating ML/ TF/PF and associated predicate offences.

The general power to compel production of information is contained in section 205 of the CPA<sup>135</sup> as amended, which provides that a judicial officer may issue a subpoena requiring any person who is likely to give material or relevant information as to any alleged offence to appear at a date and place in the subpoena and be examined by a public prosecutor. These are main provisions used to compel persons/entities to divulge information that may be subject to confidentiality, such as bank records.

The general powers to search for and seizure of articles are contained in section 20 and 21 of the CPA. The CPA also provides for exceptions where a search and seizure may take place without a warrant (section 22 of CPA). Articles which may be seized under these provisions include articles that may afford evidence of the commission or suspected commission of an offence. This can include information which is subject to confidentiality arrangements such as transaction records, identification information relating to a customer, accounting files, business correspondence and any other records relating to a customer which a financial institution may hold. Equally, the police have the power to search persons and any vessel under section 14 of the Police Act.

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<sup>133</sup> Including asset forfeiture.

<sup>134</sup> Police Act 1990 (Act No. 19 of 1990), as amended.

<sup>135</sup> Criminal Procedure Act, 1977 (Act no 51 of 1977), read with Section 179 of the same Act.

As TF and PF are also predicate offences for ML, sections 83, 87 and 88 of POCA also finds application as they provide for investigation measures for all such offences. Investigatory authorities are able to cooperate effectively with other domestic and international agencies, with the exception of a few jurisdictions which are said to be reluctant (or usually delay) to avail assistance when such is required for investigations locally.

The Namibian Police effectively utilize financial intelligence, primarily sourced from NCIS and other sources. Records however suggest that there is room for improvement as far as usage of intelligence from the FIC is concerned. As per Table 13 below (and Table 2 in section 7.1), the police are not able to get to most STRs/SARs received from the FIC. The table further suggests that the volume of STRs/SRAs shared by the FIC appears to be growing year-on-year at a rate much higher than the growth in actual police investigations emanating from STRs and SARs. This results in lesser cases being escalated for prosecution as reflected in Table 2 under section 7.1. The 2012 NRA concluded that resource inadequacies were a major concern for all LEAs, ultimately limiting police outputs. This has not changed, if the 2020 NRA assessment outcomes are anything to go by. Other than resource limitations, inadequacies relating to training and skills in dealing with specialised financial crimes (including asset forfeitures) are also cited as a major contributing factor that cause delays in case finalization, given the complex nature of financial crimes.

Number of investigations resulting from STR involving:	2015	2016	2017	2018	2019
ML	46	62	78	103	88
TF	1	0	0	6	7
PF	0	0	0	0	0
Other criminal offences	0	0	0	0	0
Total cases investigated	47	62	78	109	95
<b>Number of STRs shared with LEAs<sup>136</sup></b>	<b>515</b>	<b>723</b>	<b>1254</b>	<b>1325</b>	<b>1152</b>
<b>Number of SARs shared with LEAs<sup>137</sup></b>	<b>68</b>	<b>127</b>	<b>151</b>	<b>255</b>	<b>233</b>

Table 13: Number of NamPol investigations resulting from STRs/SARs shared by the FIC

The NRA concluded that the capacity and resources for financial crime investigations is **Medium** (a score of 0.5 or 50%).

<sup>136</sup> Over 99% are ML cases/suspicions.

<sup>137</sup> Over 99% are also ML cases/suspicions.

## **8.6 Integrity and Independence of Financial Crime Investigators<sup>138</sup>**

The NRA concluded that the integrity and independence of financial crime investigators is **High** (a score of 0.7 or 70%).

The NRA observed that despite a few incidences, generally ML and asset forfeiture investigators act freely and without undue influence. Overall, they display sufficient operational independence and autonomy. Below are some variables which were considered:

- a. The Namibian Police have safeguards in place to preserve the integrity of the investigators (in law and in practice): The Police Code of Ethics, is usually enforced by the Internal Investigative Unit to enhance integrity in the force. The ACC, as a stand-alone body has similar codes that guide their behaviour;
- b. Investigations into possible ML/TF/PF are instituted without interference, political or social pressure, corruption, intimidation, or abuse of office. Even investigations into allegations of ML offenses by powerful members of society and high-profile criminals are instituted and concluded in an objective and professional manner, without any interference. The pending *Fishrot* case could be said to be a major case in point wherein Cabinet Ministers (along with prominent businessmen) were arrested and charged. To this day, there are no indications of interference in the work of the LEAs. The same can be said about another case with high profile accused persons, the *Avid-Social Security Commission* fraud case concluded a few years ago. There were no indications of political interference from the investigations to its finalization in court;
- c. Asset forfeiture processes affecting powerful members of society and high-profile criminals are instituted and concluded in an objective and professional manner;
- d. The pace or outcome of ML investigations/asset forfeiture processes is not influenced by interference, political or social pressure, corruption, intimidation, or abuse of office; and

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<sup>138</sup> including asset forfeitures

- e. Asset forfeiture powers are used correctly, and the frozen and forfeited assets are managed with integrity.

These factors need to be considered in line with section 8.3 above on the comprehensiveness of Asset Forfeiture Laws which speaks to some frameworks that enhance the independence of financial crime investigators.

Within the Police, staff security vetting or screening is undertaken upon recruitment with little to no screening taking place during the course of employment. The NRA found that similar to the FIC, integrity enhancement related engagements with staff are undertaken when new staff members join the force (not conducted proactively on a periodic basis). Integrity compromises amongst existing staff members may not be easily detected and managed. This could have an impact on the overall integrity and thus outputs of the Namibian Police.

The NRA also concluded that other than having the Code of Ethics in the Police force and the internal investigations unit, there are minimal deliberate efforts made to enhance the level of integrity in the Namibian Police. For example, regular integrity related trainings, capacity building and other initiatives could be considered to enhance integrity as opposed to reliance on mostly reactive measures such as the work of the internal investigative unit (disciplinary measures).

## **8.7 Capacity and resources for financial crime prosecutions<sup>139</sup>**

All criminal prosecutions are executed by the OPG, including financial crimes. The only exceptions would arise when private prosecutions are considered when the OPG declines to prosecute, as in most other jurisdictions.

It can be said that capacity of the prosecution, including political will and commitment are adequate. With financial crime combatting, a significant amount of work is centred on asset forfeiture mechanisms. Generally, the Asset Forfeiture Unit within the OPG deals with Asset Recovery cases through evidence obtained by investigating authorities. Applications are

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<sup>139</sup> including asset forfeitures

generally brought in terms of the POCA. Resources and capacity remain a challenge amongst most competent authorities including the OPG.

Domestically, the various laws (POCA, PACOTPAA and CPA) ensure that such extends to (a) the proceeds and instrumentalities of ML and its predicate offenses, (b) profits derived from those offenses, and (c) property of corresponding value held by the criminal defendant or third parties. There are also mechanisms that provide the OPG with a legal basis to identify and trace the proceeds or property. See section 8.3 above on the comprehensiveness of asset forfeiture laws which speak to the various legal instruments at the OPG's disposal.

Measuring capacity and resources' effectiveness also needs to be informed by outputs that such are supposed to produce. Despite referrals from the LEAs and FIC, Namibia had less than ten ML convictions before 2019 (see Table 2, section 7.1). Improvements in ML convictions and the pace at which such cases are being finalised in courts has greatly improved since early 2019. By June 2020 over 102 cases with ML related charges were pending in court while the total ML convictions had grown to 54. The regional visits of the OPG, which resulted in such increased ML related prosecutions and convictions also suggests that there are capacity concerns in terms of expertise in regional prosecution teams, as explained in section 7.1. It is widely accepted that financial crimes, particularly with ML components can be complex and more could be done to help build capacity in advancing ML charges along with predicate offences.

Several cases show that institutions failed to comply with their AML/CFT/CPF obligations, thereby, availing a platform which may have aided the commission of such ML offences. Other than FIA administrative sanctions,<sup>140</sup> the NRA found that criminal charges have not been advanced against any institution for failure to play their part in mitigating any such laundering and related illicit activities as per the FIA and POCA<sup>141</sup> in particular. The NRA however found that the criminal sanctions provided for in the POCA are dissuasive if duly

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<sup>140</sup> The FIC has record of sanctions executed for failures to comply with the FIA. There is however no record of the FIC referring any supervised institution for criminal prosecution, for failure to comply with AML/CFT/CPF obligations. The *Fishrot* and NAD 3.6 billion TBML cases are typical examples which by now should have at a minimum seem relevant accountable institutions at a minimum criminally charged for AML/CFT/CPF failures.

<sup>141</sup> There are civil or administrative sanctions that can be applied to both. For example, Section 11 of POCA provides for penalties for ML offences. NAD 100 million or imprisonment not exceeding 30 years.

applied when the need arises. A reflection is thus required amongst relevant competent authorities (especially the FIC, OPG, ACC and Namibian Polices) to improve the status quo.

Having said that, the total number of ML convictions (case finalizations) when compared to ML threats (identified through STRs and total number of cases) does not seem commensurate. Whilst there are not ideal standards to use as a benchmark, the observations from various FATF Mutual Evaluations would suggest that there is a comparatively a low volume of ML cases successfully finalised in our courts. In consideration of all these factors, the capacity and resources for financial crime investigations was rated **Medium High** (a score of 0.6 or 60%).

## **8.8 Integrity and Independence of Financial Crime Prosecutors<sup>142</sup>**

A key factor in assessing integrity and independence of financial crime prosecutors is consideration of the volume and significance of incidences reflecting breaches or compromises in the integrity and independence of finance crime prosecutors. Prosecutors are professionals,<sup>143</sup> and are thus expected to act free from undue influence if they enjoy sufficient operational independence and autonomy (displaying high professional standards and act with integrity).

Apart from a few isolated cases,<sup>144</sup> there has not been adequate indications which may suggest that the integrity and independence of financial prosecutors is compromised.

There is no specific legislation passed to protect the integrity of prosecutors. Reliance is on the conventional laws that govern the conduct of civil servants. Amongst others, all civil servants, prosecutors included are required to declare their assets, financial and/or business interests annually to help mitigation of potential conflict of interest. There are structures within the OPG that respond to integrity breaches, when such are noted.

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<sup>142</sup> including asset forfeitures

<sup>143</sup> Their conduct is regulated by relevant Acts and Codes of Ethics.

<sup>144</sup> Two cases cited as examples: A public prosecutor stationed at Otjiwarongo Magistrate's Court, Johannes Nunuhub, was charged with fraud for having allegedly removed traffic fines of road offenders from the administrative system, in 2017. He was charged with six counts of fraud, corruption, theft by false pretence and using his position for gratification. (Source: <https://allafrica.com/stories/201706210877.html>) In another case, a Windhoek based prosecutor, Anthony Wilson was charged with ten counts ranging from theft of a charge sheet, corruptly using his office for personal gain, fraud by misrepresenting the magistrate and corruptly using false documents. The prosecution alleges that Wilson used his position, having access to police criminal dockets, to steal a charge sheet. It is further alleged that he withdrew criminal charges levelled against the person who he is accused of having conspired with. (Source: <https://kundana.com.na/posts/further-delay-in-fraud-case-of-ex-prosecutor>)

There are no known cases of political interference in the work of Prosecutors. Investigations and prosecutions into possible ML are instituted without interference, political or social pressure, corruption, intimidation, or abuse of office. Even prosecutions into allegations of ML offenses by powerful members of society and high-profile criminals are instituted and concluded in an objective and professional manner, without any interference. The *Fishrot* case could be said to be a major case in point wherein PEPs such as Cabinet Ministers (along with other prominent businessmen) were arrested and charged. To this day, there are no indications of interference in the work of the OPG. The same can be said about another case with high profile Accused persons (PEPs), the *Avid/Social Security Commission* fraud case concluded a few years ago. There were no indications of political interference from the investigations to its finalization in court.

Having regard to the above considerations, the integrity and independence of financial crime prosecutors was rated **High** (a score of 0.7 or 70%).

## **8.9 Capacity and Resources for Judicial Processes<sup>145</sup>**

This variable is premised on establishing whether Namibia has adequate capacity and resources to effectively undertake judicial processes for (1) cases relating to ML/TF/PF offenses and associated predicate offenses, including proceeds of foreign predicate offenses and (2) asset forfeitures.

Resource limitations are felt by the Judiciary and Magistrates Commission in the same manner as other public institutions. There was thus consensus that the Judiciary and the Magistrates Commission is not adequately structured, funded and staffed<sup>146</sup>. With structure in particular, there was a view that the country could do with specialised financial crime courts, which could aid in the timely finalization of cases, whilst ensuring presiding officers are able to specialise and thus build capacity in financial crimes. The NRA also observed that overall, the Judiciary is better served in terms of capacity and funding, as opposed to the Magistrates Commission. The NRA's observations are that the Magistrates Commission has resource

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<sup>145</sup> including asset forfeitures.

<sup>146</sup> With by persons with appropriate educational background, training and skills, including specialized training in regard to financial crimes (including ML and AF), financial products, and financial processes.

and capacity constraints which limits efficiency and effectiveness. Staff retention as far as magistrates are concerned needs improvement. The NRA analysis suggest that funding could be part of the contributing factors while the natural progression of professionals, emanating from growth also means magistrates are often leaving for greener pastures in the private sector while others are promoted to the Judiciary. This impacts the Commission negatively as the institution is constantly losing experienced magistrates, especially after such have been capacitated and have reached effective performance levels. This has been a noted challenge over the years.

The delays in finalization of cases brought before court, as per Table 2 in section 7.1 as well as section 15.4.25 (environmental crimes) remains a challenge. Periodical courts have helped to speed up finalization of cases when such were temporarily setup. The NRA is of the view that such courts or specialised courts need to be made permanent if Namibia is to enhance the rate at which financial crime cases are finalised. On the part of prosecution, there is need to employ more prosecutors (at least two per Magistrate or Judge) and ensure to have a Set down office for prosecution at each court. The low volume of finalised ML cases negatively impacts the overall (FIU, LEAs, Presiding Officers etc.) level of combatting effectiveness.

The NRA agreed that nationally, despite significant strides made in recent times, there is some room for improvement as far as resourcing of the Judiciary and Magistrates Commission are concerned. A **High** rating (a score of 0.7 or 70%) was assigned to the Judiciary while a **Medium** rating (a score of 0.5 or 50%) was deemed suitable for the Magistrates Commission. Therefore, an overall rating of **Medium High** (a score of 0.6 or 60%) was assigned.

## **8.10 Integrity and Independence of Judges<sup>147</sup>**

Assessments were also made as to whether Magistrates and Judges presiding over prosecutions for ML and associated offenses are able to function without fear or favor.

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<sup>147</sup> including when dealing with asset forfeitures.

The law established mechanisms for the monitoring and oversight of the conduct and performance of Magistrates and Judges. The conduct of presiding officers (Judges and Magistrates) during or in the advancement of effective judicial proceedings of any nature, in and outside the ambit of the court, is regulated by the relevant laws<sup>148</sup> and Codes of Conduct. In this regard, the conduct and performance of magistrates in dealing with cases brought before them is regulated. Additionally, Divisional Magistrates as administrative heads of magistrates within the administrative sub-divisions, conduct quality controls and evaluations on a quarterly basis. This is done to identify shortfalls and address same through training magistrates where such is needed and implement relevant measures to address any performance gaps observed. Equally, the interview engagements upon recruitment also enquire into the ethics of potential presiding officers. This helps maintain a certain level of ethical standards within the Magistrates Commission and Judiciary.

The Office of the Judiciary has pledged and is committed to Governments' efforts to promote good governance and has established an integrity committee that is mandated to deal with issues of integrity and educates all staff members in this regard. The Accounting Officer has equally signed an integrity pledge and all staff members have signed integrity pledges with the aim of fighting corruption, and to report such cases. The Office of the Judiciary has an integrity action plan that is reviewed annually. Such is essential in helping to maintain ethical standards.

General compliance with Namibian laws, Public Service Regulations, public service policies and procedures to create an environment that is free from corruption are also some essential standards presiding officers are expected to adhere to. A Magistrate takes an oath of office upon appointment and this involves commitment to uphold accepted levels of integrity. The Magistrates Commission and the Judicial Services Commission have further adopted the declaration of interest for magistrates and judges to declare statements of assets, liabilities, business and other material interests. This helps mitigate risks of potential conflict of interest but may not be adequate without other control measures such as the verification of declared interests. The NRA observed that more could be done, proactively, to enhance integrity levels

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<sup>148</sup> Magistrates Act 3 of 2003 as well as the Judicial Service Commission Act 18 of 1995 (along with their accompanying Regulations and other guidance documents issued in line with such laws) and the rules of ethical conduct in Namibia.

by supporting presiding officers (particularly magistrates) in their efforts to maintain high levels of integrity, by, amongst others, enhancing exposure to integrity related trainings etc.

The management of the magistracy consisting of the Chief Magistrate, Deputy Chief Magistrates. Divisional Magistrates and District Magistrates are empowered in terms of the Regulations 18<sup>149</sup> to report incidences of misconduct to the Magistrates Commission via the Office of the Chief Magistrate, for an investigation to be carried out. Failure to maintain integrity and professional standards in the execution of a judicial function would fall within the ambit of a misconduct of a serious nature. Although not specifically stated, or process in place, nothing bars a colleague from reporting failure to maintain integrity and professional standards.

- a. On the official website of the Office of the Judiciary, there is provision made for filing/lodging complaints against magistrates; and
- b. The office has provided the Bangalore Principles to each magistrate and sensitized magistrates through the judicial conference on principles of ethics for judicial officers.

Generally, only a few incidents<sup>150</sup> suggesting integrity breaches are known and such are few and insignificant to imply compromised levels of integrity across the board. Having said that, the Magistrates Commission has in recent times embarked on a number of misconduct investigations and proceedings, which were successfully prosecuted and magistrates found guilty were dismissed in terms of the Magistrates Act and Regulations.

Generally, there are indications that control mechanisms are in place to enhance and maintain ethical standards. There are also mechanisms to discourage undesirable conduct amongst Magistrates and Judges. A **Very High** (score of 0.8 or 80%) rating was judged to be a fairer reflection.

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<sup>149</sup> Regulations Regarding Magistrates, 2003. In particular, Regulations (A) – (H).

<sup>150</sup> In one case for example: Magistrate Liwena Walter Mikiti was charged on counts of fraud, alternatively theft, forgery and uttering of a forged document, and ML at the start of his trial before acting judge Eileen Rakow. He was accused of having defrauded an insurance company by falsely claiming that his car had been written off in an accident. He denied guilt when he went on trial in the Windhoek High Court in 2019.

(Source: <https://www.namibian.com.na/195824/archive-read/Magistrate-denies-insurance-fraud-charge>).

In another case: Melanie Theron, a former Oshakati magistrate was found guilty on 16 charges of corruption, (corruptly using her office or position for gratification, five counts of fraudulently concealing an offence - under the Anti-Corruption Act) acquitted on two charges and exonerated on two counts of corruption. The charges against the magistrate emanate from allegations of having solicited, accepted or agreed to accept a bribe in order to withdraw traffic tickets.

(Source: <https://neweralive.na/posts/ex-magistrate-guilty-of-corruption>)

## 8.11 Quality of Border Controls

This variable assesses whether the geographical circumstances and border control mechanisms of Namibia unduly exposes the country to the risk of smuggling prohibited items into or out of its borders. The quality of border controls is rated **Medium High** (a score of 0.6 or 60%). This section explains considerations which informed such rating.

Border controls at official entry and exit points are satisfactory. However, Namibia has porous borders which are not entirely cordoned or fenced off. These are exploited through illegal crossings, especially in the north and north eastern regions. Customs opined that people have always disregarded borders, moving easily in between countries, usually for socio-economic, cultural and other needs. In terms of common smuggling offences, the Oshikango border has experienced a large number of smuggling of cash over the years. On the other hand, the southern border, Trans Kalahari border (TKAL), Ariamsvlei and Noordoewer are known for smuggling of drugs.<sup>151</sup> All attempts to smuggle cash into or out of the country, when detected by Customs authorities are handed over to the Namibian Police for investigation. Below are statistics from Customs authorities showing attempts to smuggle contrabands, which were detected and intercepted since 2017.

Year	Point of seizure / Border post	Estimated value of contrabands seized (NAD)
2019	Windhoek-Okahandja Roadblock (Seizure coordinated by Customs)	865 boxes containing 156,908 pieces of Epiderm Creams and Betasol valued at NAD 1,493,171.00 were intercepted at the Windhoek-Okahandja Roadblock. The creams were smuggled into Namibia from Angola to South Africa.
	Ariamsvlei Border Post	58 parcels weighing 37,530kg, with a street value of NAD 1,125,900.00.
	Trans Kalahari Border Post	191 parcels weighing 97.49kg and with a street value of NAD 1,9 million.
	Rundu	Five bags of cannabis weighing 97,82kg with an estimated value of NAD 978,200.00.
	Ngoma border post	15.1 kgs o contraband and a street value of NAD 151,000.00
	Trans Kalahari Border Post	258 parcels weighing 61.37kg and with a street value of NAD 613 000.00.
	Noordoewer Border Post	Contraband weighing 8.46kg with a street value of NAD 84,600.00.

<sup>151</sup> Views from Customs Authorities, 2019 NRA data collection

	Hosea Kutako International Airport	30 cartridges bearing the complainant's trademarks (HP) with a declared value of NAD 2,597.40 was seized as counterfeit.
<b>2018</b>	Keetmanshoop	A contraband weighing 244kg with a street value of NAD 2.4 million.
	Trans Kalahari Border Post	21 packaged contrabands weighing 5.5kg and a street value of NAD 276,500.00.
	Trans Kalahari Border Post	4 bags (2 Skunks and 2 Cannabis) weighing 14.39kg and with a street value of NAD 724,500.00.
	Port of Walvis Bay	400 blocks of suspected cocaine weighing 412kg and hidden amongst printing paper (used as cover-load) with an estimated street value of NAD 206 million.
	Ariamsvlei Border Post	A contraband package weighing 64.4kg, with a street value of NAD 644,000.00.
	Port of Walvis Bay	1,300 cartons which contain twenty-six million (26,000,000) pieces of Co-trimoxazole tablets (medication), in units of 480mg, valued at USD 539,760.00 (NAD 7,474,657.95 million).
<b>2017</b>	Port of Walvis Bay	10 containers with a total of 7,912 cases containing 94,944 bottles of various counterfeits with a street value of NAD 19,721,401.00.

Table 14: Data on attempted smuggling activities intercepted by customs authorities

## 8.12 Comprehensiveness of Customs Regime on Cash and Similar Instruments

The Customs legal framework places an obligation on travellers to declare cash amounts (or similar instruments) they may be travelling with where such exceed a certain threshold.<sup>152</sup> Such declarations should be duly made on the formal declaration forms upon entry and exit. After such declarations are made, a receipt with an official stamp should be issued by Customs authorities. Such confirms declaration and verifies accuracy of the amount declared to customs.

The standard (risk measuring variable) requires that Namibian Customs authorities have a legal and regulatory framework that effectively informs all travellers entering and leaving the country about their AML/CFT/CPF related declaration or disclosure obligations and the consequences of any wrongdoing.<sup>153</sup> At present, the laws do not explicitly place an obligation on Customs authorities to notify all travellers to make declarations. There are hardly any

<sup>152</sup> sections 36 to 37 of the FIA and section 14 of the Customs and Excise Act.

<sup>153</sup> Should further allow Customs authorities to effectively detect and deter any unauthorized physical cross-border transportation of cash, bearer negotiable instruments and precious metals and stones.

visible notifications, displayed in prominent places at points of entry and exit to encourage persons to declare cash above certain prescribed thresholds. There is thus an over reliance on voluntary declarations by travellers, which the NRA deemed inadequate.

In terms of the FIA and the Customs and Excise Act<sup>154</sup>, Customs authorities have mechanisms to apply appropriate sanctions<sup>155</sup> for travellers or persons failing to declare or those making false declarations. Failure to declare or declaring false information is an offence in terms of the Customs and Excise Act and the FIA. Falsely declared items (including cash and similar instruments), can be forfeited to the State, as per the FIA. Additionally, the FIA prescribes that a fine not exceeding NAD 100 million or imprisonment for a period not exceeding 30 years (or both) be considered as sanctions for such failures. Given this, the NRA found that sanctions for Customs contraventions are relatively dissuasive.

This section does not deal with the questions of effectiveness or practical implementation of the Customs framework. It is restricted to assessing the comprehensiveness of the legal framework and the section below addresses effectiveness concerns. Customs authorities are stationed at every official point of entry and exit. The NRA found that there are sound legal frameworks in place to help enable effective Customs functions. The Comprehensiveness of such Customs Regime on Cash and Similar Instruments is thus rated **High** (a score of 0.7 or 70%).

### **8.13 Effectiveness of Customs Controls on Cash and Similar Instruments**

As mentioned above, the law does not explicitly provide for Customs authorities to ensure (through communications, notices etc.) that travellers are made aware of their responsibility to declare cash or similar instruments they may be carrying on them. The NRA concluded that in practice, there appears to be reliance on customers to volunteer information about cash (or similar instruments) they may be carrying.

There are hardly any visible communications (e.g notice boards or similar platforms at points of entry or exit) serving to remind travellers of their cash declaration responsibilities. Upon

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<sup>154</sup> FIA sections 36 and 37 and sections 90, 91, 93, 96 and 97 of the Customs and Excise Act.

<sup>155</sup> including confiscation of currency or bearer negotiable instruments, as well as precious metals and stones.

recording details of travellers, as per information declared, some Customs officials would at times enquire from the traveller if he or she has cash to declare. The current declaration form completed by travellers does not make provision for travellers to declare cash (or similar instruments) they may be carrying on them as per the FIA and Customs and Excise Act. Practically, as far as ensuring that all required cash declarations are made, the NRA concluded that significant reliance on voluntary declarations is ineffective.

Customs authorities have powers<sup>156</sup> to stop or restrain currency and bearer negotiable instruments that are suspected of contravening one or another law or proceeds of crime. In furtherance of same, an officer may in accordance with the relevant procedures detain any ship, vehicle, plant, material or goods at any place for the purpose of establishing whether such ship, vehicle, plant, material or goods (including currency) are liable to forfeiture to the State under the Customs and Excise Act. This can therefore enable effective detection of the physical cross-border transportation of currency and bearer negotiable instruments. Table 12 cited in section 8.1.2 above on data relating to attempted smuggling which was intercepted by Customs authorities reflects some success in the implementation of powers to stop, restrain and seize items.

There is significant reliance on physical screening of travellers. Some methods in use are non-intrusive while others are intrusive. Customs authorities however agreed that the current screening procedures and equipment, including human resources are not always adequate to ensure effective screening. Customs officers are also not trained on how to effectively conduct physical screening methods and how to interview or profile suspects. With the current capacity, Customs authorities rely on random or risk-based physical searches, to detect unauthorized or illegal transportation of cash (and similar instruments) by travellers. Customs authorities significantly rely on the screening mechanisms at the points of entry and such has proven helpful over the years as reflected in the case below:

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<sup>156</sup> section 14 and 98 of the Customs Act as well as section 36 and 37 of the FIA.

#### **Case study 4 Attempted cash smuggling through HKIA**

*In early December 2019, three Angolan ladies, attempting to travel to China through Namibia, were arrested after being found with undeclared cash amounting to NAD 2,299,480.44 at the Hosea Kutako International Airport.*

##### **Method of concealment**

*The discovery of the funds was triggered by the traveller screening machines that detected foreign objects on the body of one subject, as she passed through the screening platform. Thereafter, she and her travelling partners were subjected to a body search. The search found cash amounting to **NAD 2,299,480.44 on the bodies of the subjects**, concealed in underwear (adult diapers), bras and shoes. The money was in various currencies as per table below:*

	<b>Currency</b>	<b>USD</b>	<b>NAD Conversion</b>
Subject 1	<b>USD</b>	54,150.00	790,048.50
Subject 2	<b>USD</b>	45,400.00	662,386.00
	<b>EUR</b>	6,520.00	105,441.44
Subject 3	<b>USD</b>	50,550.00	737,524.50
	<b>NAD</b>	4,080.00	4,080.00
<b>Total</b>			<b>2,299,480.44</b>

##### **Investigation and Charges raised**

*The subjects were arrested and charged under section 36(1) of the FIA [read with Regulation 31(1)] and the Exchange Control Regulations. The cash was confiscated and remains in Police custody.*

*Investigations further revealed that the subjects entered Namibia by road via the Oshikango border post a few days prior to their attempted departure via the international airport. There is no record of declaration of fund upon entry into Namibia by the three subjects, however immigration record indicate that the subjects frequently visit Namibia from Angola.*

*Eventually, the three subjects pleaded guilty in December 2020. The three subjects were all given a fine of NAD 50,000.00 for contravening the FIA, and a fine of NAD 15,000.00 each for contravening the Exchange Control Act. A decision on whether the funds will be forfeited to the state is pending at the time of reporting.*

Collusion between border officials (LEAs, Customs, Airport officers etc) who are in positions to effect controls and criminals appear to be a key factor that undermines Customs effectiveness. For example, signs suggest in one incident that airport personnel and crew members could have been cooperating with an organized crime syndicate to smuggle drugs from Africa, via Namibia to Europe.<sup>157</sup>

<sup>157</sup> M. Amakali, "Mensah denies guilt in heroin case", Kundana, 22 November 2018, <https://kundana.com.na/posts/mensah-denies-guilt-in-heroin-case>

#### **Case study 5 Attempted heroin smuggling through HKIA**

*In 2018, a former cabin crew member was suspected of smuggling heroin on an Air Namibia flight from Hosea Kutako International Airport (Namibia) to Frankfurt, (Germany) concealed in the crew member's check-in luggage.*

*In court, the Namibian Police testified that a black suitcase was set aside and not cleared as it appeared to contain foreign substances in it, leading to the eventual seizure of the bag.*

*The suspicious substance was later confirmed to be heroin, hidden in the cabin attendant's check-in luggage of the national airline that was destined for Frankfurt. Initially, the Police could not easily determine who the suitcase belonged to. The accused later handed himself over to the police and was arrested after inspections revealed an extra bag hidden beneath piles of male clothes. The extra bag had 10 parcels of what is said to be heroin weighing about 10,270kg with the street value of NAD 500,000.00.*

Overall, the NRA concluded that when detected, Customs authorities are able to work with other competent authorities including the FIC and LEAs to ensure sanctions can be applied in terms of the FIA sections 36 and 37, as well as sections 90, 91, 93, 96 and 97 of the Customs and Excise Act.

The case study<sup>158</sup> below indicates one incident when Customs authorities, working with LEAs failed to detect contrabands of rhino horns smuggled through Namibia's biggest international Airport. Herein, there are again indications that the culprits may have colluded with LEA(s) to circumvent Customs controls.

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<sup>158</sup> The horn scam at Windhoek's airport, November 2016. Oxpeckers Reporters, J. Grobler. <https://oxpeckers.org/2016/12/the-horn-scam-at-windhoeks-airport/>

### **Case study 6**

#### **Rhino horns smuggled through HKIA**

A 28-year-old Chinese national was arrested at OR Tambo international airport in Johannesburg, en-route to Fazhou, China with 18 rhino horns in his luggage, weighing 43kg and valued at around **NAD 6.54 million**. The individual was in possession of a Namibian Visa which was issued to him for to explore business opportunities locally. It was confirmed that the individual arrived in Namibia two weeks prior to his departure. The Chinese national had passed through Customs at the Hosea Kutako International Airport with the rhino horns in the two suitcases he had checked in but was not intercepted. Upon checking-in his connection flight at OR Tambo International Airport however, South African authorities detected such Rhino Horns, arrested and charged him.

The Namibian police later arrested a police sergeant on a charge of obstructing justice. A replay of the digital footage stored in the machine showed that the suitcases were screened, and the horns could clearly be seen, according to a photograph released by the airports company. Although the Ministry of Environment, Forestry and Tourism (MEFT) could not confirm that the horns originated from Namibia's critically endangered black rhinos, this was widely assumed to be the case. The day before the Chinese national was arrested, the MET confirmed seven poaching cases in western Etosha during the week starting with the super-moon of November 14.

*It is not the first time that the Chinese syndicates attempted such brazen tactics: on March 24, 2014, three Chinese nationals were caught at the same airport scanner with 14 rhino horns and a leopard skin in the two bags they had checked in. All three and their syndicate leader, are currently serving 14 years in jail.*

With imports and exports of goods through containers (containerised cargo), busy ports such as Walvis Bay harbour only screens (open and verify or search) a few containers owing to limited resources. This is not unique to Namibia<sup>159</sup> as current resource constraints mean that if all cargo had to be duly screened, it would result in significant delays which may undermine international trade. Customs however explained that cargo, as well as travellers to and from high-risk jurisdictions are targeted for screening and other due diligence.

The NRA concluded that the current penalties for contravening the Customs and Excise Act are not dissuasive enough. Section 89 of the Act provides that upon conviction, persons guilty of less serious offences could be subjected to a fine not exceeding NAD 8,000.00 or to imprisonment for a period not exceeding two years (or both).<sup>160</sup> For serious offences, section 90 states that persons found guilty could be subjected to a fine not exceeding NAD 20,000.00 or to an amount equal to three times the value of the goods in respect of which such offence

<sup>159</sup> The FATF, in its publication dated 23 June 2006 on TBML indicated that generally, most Customs authorities only screen, verify less than 5% of all cargo that passes through their points of entry. Referenced in the 2016 NRA update of Namibia. <http://www.fatf-gafi.org/media/fatf/documents/reports/Trade%20Based%20Money%20Laundering.pdf>

<sup>160</sup> The section further provides that if a person who is convicted of the said offences, within a period of three years after the date upon which he or she was convicted of any offence contemplated in that subsection, shall in respect of such subsequent conviction be liable to a fine not exceeding NAD 16,000.00 or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment. The NRA equally felt that the sanctions provided in section 88 are not dissuasive enough.

was committed, whichever is the greater, or to imprisonment for a period not exceeding five years (or both such fine and imprisonment).

Customs authorities are stationed at every official point of entry and exit and are resourced to enable execution of their duties. The NRA however found that the limitations in such resources, coupled with inadequate training or capacity in terms of searches, traveller profiling etc., are some aspects limiting overall effectiveness. Herein, indications also suggest that collusion between officials at points of entry and exit with criminal syndicates may be contributing to ineffectiveness. Overall, the Effectiveness of Customs Controls on Cash and Similar Instruments is rated **Medium High** (a score of 0.6 or 60%).

## 8.14 Effectiveness of Domestic Cooperation

This section avails outcomes of analysis aimed at establishing whether, when required, the country's relevant AML/CFT/CPF agencies cooperate effectively and coordinate domestically with each other to combat ML/TF/PF activities. The NRA, after considering evidence availed concluded that competent authorities including the FIC, intelligence services, investigators of financial crime, asset forfeiture investigators, regulators, customs and tax authorities, and, when appropriate, the prosecutors of financial crime, meet regularly to share information and discuss joint initiatives.

At a high level, Namibia has the Security Commission established under Article 114 of the Constitution which, amongst others, helps to coordinate ML/TF/PF combatting efforts as per the PACOTPAA and the POCA. Tactical task forces are often created under the Security Commission to help operationalise the high-level security interests driven by the Security Commission.

As seen in numerous cases (herein below), investigative task forces enhance combatting effectiveness as efforts of different competent authorities and other stakeholders can be easily coordinated. The FIA,<sup>161</sup> the Police Act<sup>162</sup> and other relevant frameworks, mainly

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<sup>161</sup> section 61(1) and (3)

<sup>162</sup> Section 3 of the Police Act, amongst others avail the Minister and Inspector General powers to commit the Police Force to relevant crime combatting measures, amongst others.

through Memorandums of Understanding (MoUs) avail powers that enable the creation of task forces for combatting activities.

With wildlife crime investigations for example, a Ministerial Committee on Wildlife Protection and Law Enforcement, chaired by the Minister of Environment and Tourism, does exist. Such committee comprises all relevant line Ministries and Agencies responsible for combatting wildlife crimes, including bodies involved in the financial sector. This Committee is mainly responsible for formulating policies and directives aimed at ensuring a coordinated and effective mechanisms for combatting wildlife crimes and related predicate offences including ML. A Technical Committee (TC), comprising of Technical Advisors from the same relevant line Ministries and Agencies functions under the Ministerial Committee. The TC is operational and has functions to advice and refer operational matters to the Ministerial Committee for consideration. Such advise also includes proposals to effect or amend national combatting strategies, policies, directives, as well as existing relevant legislation and regulations.

There are similar Law Enforcement Priority Case Task Forces<sup>163</sup>, usually under the leadership of the Namibian Police, that investigate significant ML/TF/PF cases. Investigative task teams are often created on an ad-hoc basis, as and when the need arises usually to respond to significant cases requiring effective coordination amongst various combatting authorities. Some examples include the Task Force teams created to investigate large scale ML, fraud and corruption cases. A few examples of effective coordination can be seen through outputs of task teams in the following cases: a). the matter involving potential illicit cross border transfer of USD 400,000.00 from Mauritius by Mr. X; b). the VAT case wherein the Government potentially lost millions through fraudulent VAT refund claims; c). the TBML case<sup>164</sup> wherein NAD 3.6 billion may have been illicitly remitted to China; d). the *Fishrot* case also reflects extensive coordination amongst relevant authorities.

Through the various task teams, on-going formal and informal collaboration amongst competent authorities enhance effectiveness of investigations and case finalisation. Most of the operational task teams or committees meet when the need arises (i.e when cases at hand so require). The TC on combatting illicit financial flows meets monthly but the noted

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<sup>163</sup> There is the Integrated investigative Task Force comprising of various competent authorities. The MoU was signed by various competent authorities and such Task Force has so far assisted in many financial crime investigations.

<sup>164</sup> The TBML and Fishrot cases are both pending in court.

absenteeism shows limited commitment from stakeholders. Overall, the NRA identified areas that may need improvement. Such include the following:

- a. Reduced commitment towards domestic cooperation and coordination efforts. Absenteeism, failure to dedicate adequate resources to such coordination platforms etc.;
- b. Poor coordination of all AML combatting efforts: The private sector and BIPA, amongst others raised reservations around the effectiveness of coordinated efforts. Mainly, various combatting authorities, often working on the same case would request the same information, through different bodies, often too frequent and at times with unrealistic deadlines;
- c. Coordinating agencies could proactively meet to look at ways to enhance effectiveness (create/enhance operational frameworks) as opposed to only meeting when investigations should commence;
- d. Where need be, establish efficient platforms, arrangements, agreements etc., to create better working relationships between various agencies (including public and private sector); and
- e. Feedback and statistics would be helpful in ensuring that stakeholders understand where they may need to improve.

Overall, the effectiveness of domestic cooperation is rated **High** (a score of 0.7 or 70%).

## **8.15 Effectiveness of International Cooperation**

All countries are part of the international AML/CFT/CPF combatting framework. It is therefore essential that, when required, Namibia's relevant AML/CFT/CPF agencies cooperate effectively and coordinate international stakeholders to combat ML/TF/PF activities. The NRA observed that most foreign jurisdictions positively respond and Namibia equally strives to maintain such standard when so requested. There are obvious indications of late responses pertaining to requests of information. There are also a few exceptions cited by the LEAs such as China that have thus far not assisted with information requests related to investigations (see observations in section 7.7.2 above).

In Namibia, the police remain a key stakeholder in the process of Mutual Legal Assistance (MLAs) and there are budgetary provisions to perform such tasks. The coordinating authority

for MLAs in Namibia is the Ministry of Justice. MLAs are sought through diplomatic channels via the Justice Ministry.

### **8.15.1 Affiliations to international combatting bodies**

Sharing of data, information and intelligence relating to combatting activities requires that there are certain assurances which ensure the integrity of such shared information is not compromised. Largely, the NRA observed that domestic combatting authorities are associated or affiliated with international combatting bodies to enhance the ease with which they can partake in the sharing of information. These platforms enable rapid exchange of information on a formal and informal basis on cases involving asset identification, tracing, seizure, freezing and confiscation in various cases, ML predicate offences and ML. This section explains some key international affiliations and how they enhance international cooperation.

The ACC has powers to share information with similar agencies of other countries, as per section 3 (c) and (d) of the Anti-Corruption Act. Through section 3, the ACC has entered into numerous bilateral cooperation agreements with SADC member countries and other Anti-Corruption Agencies globally. The statistics on MLA information exchanges via the Ministry of Justice as per Figure 21 is for all LEAs including the ACC.<sup>165</sup>

The Namibian Police, under section 43 of the Police Act, may enter into agreements with the police force of a foreign State in regard to co-operation and mutual aid between the Force and the police force of that State. The Namibian Police Force, using section 43, have entered into numerous bilateral cooperation agreements with SADC and global Police Force Agencies. The Namibian Police is also a member of “SARPCCO”<sup>166</sup> and International Criminal Police Organization “ICPO INTERPOL” which provides the widest possible mutual assistance between criminal police authorities internationally. Additionally, the Namibian

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<sup>165</sup> In investigations of cases such as the *Fishrot* matter and the Omusati Regional Council corruption case (commonly known as *Omusati Community Toilets*), information exchange requests with foreign authorities occurred. While the Ministry of Justice mainly facilitates the exchange of information for investigations, the ACC at times works through the Ministry of International Relations and Cooperation, when such channel is deemed appropriate.

<sup>166</sup> The Southern African Regional Police Chiefs Cooperation Organization (SARPPCO). A platform for cooperation between all southern African Police Forces. The Southern African Development Community (SADC) uses the SARPPCO platforms to promote, strengthen and perpetuate co-operation and foster joint strategies for the management of all forms of cross border and related crimes with regional implications.

Police is also a member of ARINSA<sup>167</sup>. The Namibian Police have via these platforms exchanged information to advance combatting of financial crimes including ML investigations and asset forfeitures.

The OPG is a member of the African Prosecutor's Association (APA) as well as the International Association of Prosecutors (IAP). The APA focus on enhancing cooperation between prosecution agencies, LEAs and other authorities in Africa. It was established as a response to rising transnational criminal activities in Africa, which undermine not only development, but also good governance, stability and peace on the African continent.

The OPG is also a member of ARINSA and the International Association of Prosecutors (IAP). ARINSA's membership is similar to the description explained above for Namibian Police. The IAP was established in June 1995 at the United Nations offices in Vienna and was formally inaugurated in September 1996 at its first General Meeting in Budapest. The main impetus leading to its formation was the rapid growth in serious transnational crimes, particularly drug trafficking, ML and fraud. The need was perceived for greater international co-operation between prosecutors and for greater speed and efficiency in mutual assistance on cases.

Additionally, the FIC is a member of the Egmont Group of FIUs. The FIC, either spontaneously or upon request of Namibian LEAs or on behalf of foreign FIUs, also rapidly exchanges information with foreign FIUs (Egmont and non-Egmont Members) and Intelligence in advancement of ML combatting efforts.

The Directorate of Customs and Excise is a member of the World Customs Organization (WCO) and actively participates in the WCO's activities such as the Regional Intelligence Liaison Officer and Customs Enforcement Network (CEN). The exchange of intelligence at national, regional and international levels is a critical mechanism employed by the Customs and Excise Directorate, to create conditions for more efficient enforcement measures and controls to secure the optimum use of available resources. At the strategic level the WCO has incorporated the aim of intelligence exchange among all stakeholders, recognising the

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<sup>167</sup> The Asset Recovery Inter-Agency Network for Southern Africa (ARINSA) is an informal multi-agency network for participating countries, which uses the ARINSA platform to exchange information, model legislation and country laws in asset forfeiture, confiscation and money laundering. Information sharing and dissemination in asset forfeiture cases has always been known to be problematic due to its confidential nature. Exchanging information through diplomatic channels is a lengthy process and often leads to assets disappearing or being dissipated before law enforcement can take action to seize, freeze or confiscate them. Informal networks such as ARINSA have been found to be effective and efficient in tackling this problem.

contribution this objective has in furthering the protection of society, public health and safety. Therefore, in 1987, the first Regional Intelligence Liaison Office (RILO) was established with the intent of creating a Global Intelligence Network. Today the RILO network has grown to 11 offices covering different regions. The unique nature of the RILO network offers an added layer of information exchange to the already existing intelligence exchange taking place between the Secretariat and Member administrations at the strategic level. Each of the 11 RILO offices covers a number of WCO Member States and responds to their intelligence needs at the regional level.<sup>168</sup>

### **8.15.2 Areas that may need improvement**

When information is requested from domestic authorities, the NRA observed that at times, Namibia is not in a position to avail such timely, owing to inadequate record keeping and related challenges. For example, certain records at BIPA or the Deeds office may not be readily available. Resource constraints in domestic institutions at times means the limited capacity is dedicated to other domestic interests, thus availing limited commitment to foreign information requests.

The NRA however obtained assurance that when the correct procedures are followed by foreign jurisdictions, competent authorities are able to assist duly. Outside the conventional frameworks explained above, it was also indicated that Namibia is able to provide assistance in response to requests for cooperation made on the basis of Non-Conviction Based proceedings. This is enabled by relying on the International Criminal Matters Act.

Many countries with whom Namibia does not have MLA agreements or other guiding arrangements could be targeted by Ministry of Justice to enhance the pool of countries with whom competent authorities can easily share information. Countries known to be reluctant to share information such as China could be directly engaged at diplomatic level,<sup>169</sup> especially when such have significant trading activities with Namibia (higher risk).

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<sup>168</sup> The RILO network supports its WCO Member administrations by providing them operational support, designing and implementing target-oriented intelligence analysis projects and regional intelligence-led operations, facilitating mutual administrative assistance and promoting and maintaining regional co-operation with other law enforcement agencies and organizations.

<sup>169</sup> Through the Ministry of International Relations and Cooperation or/and the Ministry of Justice.

LEAs have to make use of formal procedures when dealing with international cooperation, in order to safeguard the integrity of shared information and ensure admissibility in court. Sharing of information regarding possible environmental crimes is regularly done informally, provided that the formal communique will follow soon thereafter. This is thought to be helpful in enhancing efficiency and timeliness amongst relevant stakeholders but is not the norm across competent authorities.

The NRA concluded that while the various competent authorities are affiliates of key international combatting bodies, the pace at which information is shared is not helpful and thus negatively impacts ML prosecutions, investigations and asset forfeiture efforts. In addition, some countries simply fail to cooperate with domestic requests for information. The legal framework and arrangements for sharing information is highly rated but the effective functioning of such frameworks (particularly in terms of timeliness) however could do with improvements. Considering all such factors, the Effectiveness of International Cooperation was rated **Medium High** (a score of 0.6 or 60%).

## 8.16 Formalization level of the economy

All the economic activities operating outside the recognised institutional framework are classified as informal economy operations. The 1993 International Labour Conference of Labour Statisticians defined the informal economy as “enterprises which typically operates at low level organisation, with little or no division between labour and capital as factors of production, expenditure for production is often not distinguished from household expenditure”.<sup>170</sup>

Businesses within the informal economy are relatively smaller in terms of output and employment, they tend to be labour intensive, use very little or no capital and skills, operate without proper business premises and mostly operate long working hours which exceed the minimum working hours as stipulated by the Labour Act. Their transacting volumes and values are often not adequately and properly accounted for in the national accounts of a country (e.g when computing GDP and related exercises). By their very nature, the size and

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<sup>170</sup> Namibia's Informal Economy: Possibilities for Trade Union Intervention. 2006 <http://www.streetnet.org.za/docs/research/2006/en/namibiareport.pdf#:~:text=The%20informal%20economy%20in%20Namibia%20In%20Namibia%2C%20the,economy%20workers%20are%20women%20%2870%20433%20or%2053%2C1%25%29>.

financial values flowing in the informal sector is not easy to estimate as a significant proportion of economic activities are traditionally cash-based and unrecorded.

Despite efforts by Government, civil society and the private sector to help formalise the economy to the extent possible, some types of businesses are most suited to thrive on the reduced regulation and limited formalities of informal sectors.<sup>171</sup> Such activities may, or may not, be illegal in and of themselves. Generally, laws and regulations requiring the formalization of economic activities are limited for various reasons, including the need to keep the informal economy as is, thus minimizing over regulation which could undermine the very existence of certain informal sectors. This is particularly true in most developing countries including Namibia.

The NRA observed that despite considered efforts, information infrastructure in Namibia (e.g automated access to the national identification and the BIPA database etc.) may not always be adequate to support transparency of the economy. The fact that the public and private sector does not have viewing access to such databases undermines formalization levels of the economy.

Adequate and accessible information infrastructure in a country generally enables ease with which financial services can be availed. Additionally, it enhances record keeping while encouraging financial inclusion owing to the reliance on independent information which naturally reduces CDD measures. All these would naturally enhance the formalization level of the economy. The Ministry of Home Affairs and BIPA are thus key stakeholders who could contribute. The Ministry could avail the public and private sector viewing access to the national identification database for sectors to use same in CDD measures and introduce more financial services which would (enhanced mobile banking, e-money etc) in turn advance formalization of the economy as more people not accessing financial services would have access. BIPA on the other hand could enhance formalization if their current automated infrastructure has adequate CDD data (including beneficial ownership data), and such access is enhanced to enable viewing of more data related to legal persons. In any economy, timely

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<sup>171</sup> The NRA concluded that the incentives prompting the transition from informal to formal economic activity do not outweigh the perceived benefits of remaining in the informal sector.

access to adequate data is essential in formalization efforts, much as it enhances the accuracy and speed with which CDD measures occur.

Financial crime risks are particularly higher in informal sectors or economies because combatting efforts have limited frameworks within such sectors to rely on. As mentioned above, records are not generally kept in informal economic activities, making it difficult for LEAs to access transaction and client information. Informal or unregistered economic activities further pose challenges for LEAs when they investigate and attempt to prosecute ML offences and trace proceeds of crime. Naturally, and in keeping with the WBG's guidance, the larger the informal economy, the lower the level of formalization of the economy.

Given that Namibia's informal economy is about 2.8% of GDP.<sup>172</sup> As per the WBG NRA methodology,<sup>173</sup> such falls within the 5% bracket of GDP, and is thus accepted that most of the economic activities are largely formalised. Therefore, the NRA methodology suggests that the formalization level of the economy is thus rated **Excellent** (a score of 0.1 or 100%). Note that this rating is premised within the context of how the economy may be exposed to ML/TF/PF risks, as per WBG methodology and not necessarily a suggestion that for all intents and purposes, the financial sector is 100% formalised. Some reports, depending on various considerations estimate the size of the informal sector around 10 – 15% of GDP.<sup>174</sup> This would still result in a reasonably Higher rating and place the national rating per this variable at a score of 0.8 or 80%.

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<sup>172</sup> Informal sector's size in relation to GDP: 5,016 / 181,234 = 2.8% [The amount of NAD 5,016 (billion) represent the value added of the informal sector; The amount of NAD 181,234 (billion) represents the GDP in 2019]. NSA, Annual National Accounts publication, 2019.

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Share of informal economy in country's GDP	Corresponding assessment rating for formalization of economy
Informal Economy ≤ 5%	(1.0) Excellent
5% < Informal Economy ≤ 10%	(0.9) Close to Excellent
10% < Informal Economy ≤ 15%	(0.8) High
15% < Informal Economy ≤ 20%	(0.7) High
20% < Informal Economy ≤ 25%	(0.6) Medium High
25% < Informal Economy ≤ 30%	(0.5) Medium
30% < Informal Economy ≤ 35%	(0.4) Medium Low
35% < Informal Economy ≤ 40%	(0.3) Low
40% < Informal Economy ≤ 50%	(0.2) Low
50% < Informal Economy ≤ 60%	(0.1) Very Low
Informal Economy >60%	(0.0) Extremely Low

<sup>174</sup> Is taxing Namibia's informal sector a priority? 2018-08-01. <https://neweralive.na/posts/is-taxing-namibias-informal-sector-a-priority>. There are not many studies undertaken on the size of the informal sector in Namibia. The informal sector in Namibia is an essential component of the economy as the sector is said to employ an estimated 150,000 people, contributing an estimated 12 percent to GDP.

## **8.17 Level of financial Integrity**

The level of financial integrity has an impact on ML/TF/PF risk exposure. Such level, within this context is measured by considering the quality of governance frameworks, business and professional ethics as well as tax transparency in the country. With the latter, the assumption is that if Namibia's tax framework provides for transparency of financial matters of citizens and residents, as well as the sharing of information by the tax authorities and LEAs (where appropriate), then the country's level of financial integrity is most likely enhanced.<sup>175</sup>

### **8.17.1 Governance frameworks, business and professional ethics**

Generally, the majority of law firms appear to be in compliance with conventional AML/CFT/CPF laws and tax obligations, although the pending *Fishrot* case shows how the sector is vulnerable to potential abuse, emanating from integrity breaches.

Financial sector regulatory and supervisory bodies such as the BoN, FIC and NAMFISA maintained that the level of financial integrity within the financial sector still encourages confidence, despite exceptions reflected in several cases which imply integrity breaches. The minimal cases of integrity breaches do not outweigh the overwhelming populace that maintain high business ethics and governance.

Banking institutions generally comply with the minimum corporate governance requirements as stipulated in the Determination on the Appointment, Duties and Responsibilities of Directors, Principal Officers and Executive Officers of Banking Institutions and Controlling Companies (BID-1). The necessary remedial measures are taken by the Department as provided for in the Act. Integrity breaches in the banking sector, which is central to the AML/CFT/CPF framework can severely impact the integrity of the national financial system. The BoN receives two fraud returns from commercial banks, namely the BIR190A and BIR190B. BIR190A is submitted on a quarterly basis to report fraud incidents which amount to NAD 10,000.00 or less. BIR190B is reported as and when a banking institution records a

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<sup>175</sup> This section needs to be considered along with section 7, dealing with ML threats and in particular, the sub-section on potential tax related offences 7.5.3.

fraud incident greater than NAD 10,000.00. In aggregate, the values recorded in both returns has not exceeded 2% of total qualifying capital, whether for individual banks or for the entire banking industry. The aggregate amount reported is usually lesser than the actual amount of funds that is lost due to fraud as some of that amount is usually recovered by the banking institutions. Thus, reported fraud incidents in the banking sector have so far been insignificant to impact integrity levels.

DNFBPs are comparatively challenging in assessing financial integrity levels owing to reduced, and in some cases, absence of prudential supervisory bodies. The LSN currently has about five pending matters related to integrity breaches. Various supervisory bodies<sup>176</sup> could not avail statistics on the number of failures of business and professional ethics (including sanctions imposed by supervisory authorities for such breaches). The FIC, as the AML/CFT/CPF supervisory body for all DNFBPs has observed notable governance failures that may impact integrity levels and similar to above observations, such breaches are not representative of the entire DNFBP sector.

On the other hand, DNFBPs' regulatory bodies may not be adequately experienced and capacitated to handle breaches of the code of conduct or ethics. Several sectors such as motor vehicle dealerships do not have prudential supervisory bodies while some supervisory bodies are not as actively involved in oversight, post-licensing of entities.

Generally, the NRA was convinced that the financial sector regulatory bodies such as the BoN (BoN) and the FIC may be adequately experienced and capacitated to deal with failures related to good governance in the banking sector. The SME Bank's failure however raises certain areas in supervision frameworks that could be enhanced.

### **8.17.2 Tax enforcement as a component of financial integrity**

The effectiveness of tax enforcement contributes to financial integrity. Domestically, potential tax related offences are said to be some of the most prevalent and high valued financial crimes. The tax framework in Namibia is premised on self-declaration of taxable income for

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<sup>176</sup> ICAN, FIC, Namibia Estate Agency Board, Receiver of Revenue and Law Society of Namibia. BoN aggregated its observations on integrity failures and explained that the values recorded in both returns have not exceeded 2% of total qualifying capital, whether for individual banks or for the entire banking industry.

individuals and businesses alike. With the recently launched online tax administration system, taxpayers are expected to submit traceable information that could reveal their real income and assets. Tax laws require natural and legal persons to provide comprehensive information about their income and assets to tax authorities.

Domestically, investigators can rely on financial records of the businesses to trace the money flow when investigating ML cases. This enhances overall financial integrity.

False tax declarations, submitting misleading financial records and existence of different books of accounts for tax purposes are considered serious financial crimes and there are sanctions available to deal with such crimes. Such sanctions are in the Income Tax Act, VAT Act and to a certain extent also in the FIA, especially when ML offences are present.

LEAs have access to information held by the tax authorities when they investigate ML/TF/PF offenses associated with a taxpayer. The EU Council in 2017 categorised Namibia as a country with a non-cooperative tax jurisdiction. Though temporary, Namibia may have earned such categorisation for not joining both the Global Forum on Transparency and Exchange of Information for Tax purposes as well as not signing, ratifying and participating in the OECD Multilateral Convention on Mutual Administrative Assistance on tax matters, amongst others. This position has since been rectified and sharing of tax information with international LEAs, in line with relevant laws, is permitted.<sup>177</sup>

While the relevant frameworks as reflected above (section 7.5.3) suggest that there may be systems that safeguard the level of financial integrity, the overwhelming cases of financial crimes, particularly potential tax related offences and fraud perpetrated in the financial sector suggests that the level of financial integrity is not where it should be. Given all the above considerations, the NRA assigned a **Medium High** rating (score of 0.6 or 60%) for the Level of financial integrity in Namibia.

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<sup>177</sup> Although in practice, Namibia denied having failed to avail tax information when such duly requested in terms of existing legal frameworks. The Villager Newspaper, 2007. <https://www.thevillager.com.na/articles/12207/namibia-not-black-listed-as-tax-haven-eu-ambassador/>

## **8.18 Effectiveness of tax enforcement<sup>178</sup>**

The NRA, as per WBG methodology considered the effectiveness and efficiency of tax enforcement in Namibia. Such consideration assessed whether the tax laws are enforced fully, fairly, and consistently, through regulatory enforcement such as tax inspections and criminal and civil litigation, in order to promote voluntary compliance with tax laws and to maintain public confidence in the integrity of the tax system. Compliance reviews by tax authorities are a major tool for tackling noncompliance with the tax laws.

Integrity of financial records is essential as such is the basis on which taxes are premised. This helps investigators to rely on financial records of businesses to trace the money flow when investigating ML cases. The NRA found that most, if not all businesses are subjected to conventional accounting and as such would have relevant records that AML/CFT/CPF combatting authorities can rely on. International transactions may be slightly difficult to trace.

Training and capacity to enhance understanding of complex financial transactions is required. However, other than resource constraints, LEAs and tax authorities have demonstrated acceptable experience to effectively execute investigations wherein financial integrity matters are raised (see observations in section 7.5.2). The delays in completion of cases are at times attributable to capacity and resource limitations.

The NRA also considered whether Namibia has a comprehensive legal framework, including the provision of adequate powers for obtaining information and an appropriate regime of sanctions to deter and penalize non-compliance with tax laws. The VAT Act, Income Tax Act, Customs and Excise Act and to a certain extent, other supporting Acts such as the Companies Act and the FIA assist in the overall tax legal framework. All these acts provide adequate powers for obtaining information and an appropriate regime of sanctions to deter and penalize non-compliance with tax laws. The legal framework generally avails all required powers to competent authorities.

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<sup>178</sup> This section needs to be considered along with ML threats emanating from potential tax related offences as per section 7.5.3 above.

Promoting voluntary tax declarations is essential for the effective functioning of tax regimes. Generally, the current tax enforcement framework appears to be working as taxpayers declare their income and taxes due voluntarily. The Receiver has many a times offered interest relief to defaulting taxpayers, in an effort to entice voluntary tax declaration and settlement. Much as this is essential, the NRA concluded that considerations such as more proactive campaigns to encourage tax collection and voluntary declarations of taxes may also improve current tax collection. Audit inspections are required for all returns that have a credit balance, and are thus, to a certain extent, limited to such incidences. Tax audits do not ensure adequate coverage, mainly owing to resource constraints. With NAMRA<sup>179</sup> being operationalized, it is expected that tax audit programs will be enhanced in terms of structure, funding and staffed by persons with appropriate training and skills. NAMRA also promises to ensure sufficient financial and especially technical expertise are on board to enhance effectiveness.

The independent functioning of tax authorities is essential. The NRA could not observe any indications that would suggest tax officials can perform their duties free from undue influence with sufficient operational independence and autonomy. Safeguards are in place to preserve the integrity of the tax officials (in law and in practice). Staff members of the Receiver of Revenue are public servants and thus subject to the general integrity policies and standards that applies to all public servants.

There have been cases where sanctions have been imposed on individuals and businesses for noncompliance with the tax laws.

As with the level of financial integrity, the overwhelming materialization of ML threats reflected through financial crimes and especially potential tax related offences (as per section 7.5.2 above), suggests room for improvement. Given the above considerations, the NRA assigned a **Medium High** rating (score of 0.6 or 60%) for the Level of financial integrity in Namibia.

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<sup>179</sup> Namibia Revenue Agency. This is Namibia's tax collection entity/parastatal. This function was previously assigned to a department within the Ministry of Finance. The entity is expected to enhance effective tax collection.

## **8.19 Availability of independent audits**

In the AML/CFT/CPF context, sound independent auditing practices increase financial transparency and ensure that proper and reliable accounting records as well as financial statements are available. This further ensures that entities are less vulnerable to abuse by criminals. The NRA found that generally, the availability of independent audits is **Medium High** (a score of 0.6 or 60%). The following are key indicators supporting such sound auditing practices:

### **8.19.1 Alignment to International Auditing Standards (IAS)**

Locally, audits are carried out in accordance with international practices and standards. Namibia is a member of the International Federation Accountants (IFAC) since 1997 under the ICAN.<sup>180</sup> Being an IFAC member, Namibia is expected to comply with all the IFAC accounting guidelines stipulated by the organization including the Statements of Members Obligation (SMO's). The SMOs requires the country commits to ensuring quality assurance, education standard for professional accountants, code of ethics, investigation and discipline. The SMOs thus serve as a framework for credible and high-quality professional accountancy focused on serving the public interest by adopting, or otherwise incorporating, and supporting implementation of international standards and maintaining adequate enforcement mechanisms to ensure the professional behaviour of their individual members.

ICAN has generally assumed a leadership role that has helped propel the Accounting profession. In addition to being a member of IFAC, ICAN is a founding member of the Pan African Federation of Accountants (PAFA).

Namibia adopted IFRS<sup>181</sup> in 2005. Before the adoption, Namibia was using the GAAP that was established by the South African Accounting Practices Board (APB). The GAAP is well reflected in the Companies Act,<sup>182</sup> which provides that the country shall comply with the statement of GAAP as adopted by the ICAN<sup>183</sup> in the content of required disclosure by any

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<sup>180</sup> Institute of Chartered Accountants of Namibia

<sup>181</sup> International Financial Reporting Standards

<sup>182</sup> Schedule 4, Section 5 of the Companies Act

<sup>183</sup> Sections 5 and 12 of the Companies Act states that the financial reporting frameworks to be applied are those applied by ICAN.

Namibian company. Accordingly, the ICAN determines what constitutes GAAP in Namibia. In respect of auditing standards, both the Companies Act and Public Accountants' and Auditors Act are silent as to any authority to set auditing standards. The alignment to international auditing standards, as domesticated through the Companies Act ensures auditing is conducted in terms of best practices and this enhances availability of independent audits. This creates more reliable information (e.g financial statements) which AML/CFT/CPF combatting frameworks can rely on.

The need for reporting entities to rotate their independent auditors/audit firms every few years is essential in maintaining audit objectivity over the long run. The Companies Act does not prescribe auditor rotation but such is generally recommended. Entities may rotate auditors as per their own internal policies. Most large entities voluntarily rotate independent auditors every 3 to 5 years. Reporting entities are required to appoint their independent auditors/audit firms periodically. This should happen every year, in between the Annual General Meetings (AGMs).<sup>184</sup> This ideally enables the company an opportunity to reconsider rotations or appointing of other auditors.

The alignment to international auditing obligations as domesticated in the Companies Act, along with the following considerations further support the view that Namibia has sound independent Audit:

- a. Both ICAN and the PAAB indicated that there are hardly any cases reflecting integrity breaches by independent auditors/audit firms over the past years. This suggests, in the absence of other evidence, that the level of integrity is sound, thus complying with the SMOs stated above;
- b. It is mandatory for reporting entities to evaluate the independent auditor's/audit firm's performance. The Companies Act, in section 283 lists persons who do not qualify to serve as independent auditors. The key principle in such reflects that only persons who are independent can be appointed as auditors of a company. To fulfil such provision, it is to be expected that companies review auditor independence;

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<sup>184</sup> Section 278 of the Companies Act

- c. The reporting entities are mandated to disclose professional fees paid for audit and non-audit services. From an accounting perspective, each entity prescribing to IFRS are required as per IAS1 to disclose how much they were charged for audit and non-audit fees separately as disclosures in the notes. Such disclosures would thus be in the financial statements. This enhances transparency and shows and can highlight potential indications of entity-auditor relationships wherein independence and objectivity may have been compromised;
- d. There is regular and effective engagement and communication between the independent auditors/audit firms and the audit committee of the organizations. In order to ensure fulfilment of auditor expectations as per the Companies Act, there has to be regular and effective communication. Entities listed on the Namibian Stock Exchange (NSX) are required to comply with the NamCode or King IV. Compliance to these governance frameworks is voluntary for non-listed entities. The NRA recommends that authorities create mechanisms to ensure entities comply with the NamCode. Such would greatly enhance accountability and governance frameworks and strengthen controls which may contribute to risk mitigation; and
- e. The NRA observed that there is open, timely and regular communication between reporting entities' supervisory authorities, independent auditors/audit firms, and the accounting profession as a whole on key risks and systemic issues that may have an impact on AML/CFT/CPF. This is mostly observed with financial sector supervisory bodies such as NAMFISA, the BoN and the FIC, plus the LSN to a certain extend. DNFBPs' supervisory bodies were not actively engaging auditors and the accounting profession in the advancement of AML/CFT/CPF measures.

A significant challenge arises from the national scope coverage of independent audits. Not all entities are legally required to be subjected to independent audits. Entities that are not Companies as per the Companies Act, are not legally required to. This includes Sole Proprietors<sup>185</sup>, Section 21 Companies, Close Corporations, some partnerships and other legal arrangements. In such cases, the availability of independent audits is not expected. Such entities thus have reduced control frameworks and therefore become inherently

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<sup>185</sup> Sole proprietors are not even required to avail an Accounting Officer's report.

vulnerable to conduct that advance ML/TF/PF abuse owing. Also, when ML/TF/PF investigations are undertaken in such entities, the limited or lack of independent audits often means that unlike Companies, there would be limited reliable information.

Overall, in terms of significance, the NRA could not establish the sectoral size (as far as financial values are concerned) of entities not legally subjected to independent audits as per the Companies Act. Conventionally, however, companies that are legally subjected to audits play the biggest role in the economy and are most prevalent in large or significant transactions nationally. Banks and all NBFIs for example are all companies incorporated as per the Companies Act and are subjected to independent audits.

## **8.20 Availability of Reliable Identification Infrastructure**

The availability of reliable identification infrastructure was rated **Medium Low** (a score of 0.4 or 40%). The NRA considered variables around comprehensiveness and integrity (reliability and security) of Namibia's national identification system. The integrity of the national system is generally effective and highly regarded. Secondly, there was a need to establish if such system avails a platform that enables the public and private sector prudent viewing access to identify and verify the identity of clients. This was found to be an area that requires improvement as the AML/CFT/CPF framework, CDD measures in particular, are premised on timely access to reliable independent sources for verification purposes.

Financial transparency, customer identification and verification processes are enhanced when AML/CFT/CPF regulated institutions are able to verify the identity of customers using reliable, independent source documents, data or information. Further, a good identification infrastructure prevents the use of illegitimate documents and false identities. Illegitimate documents and false identities hamper the ability to detect and investigate ML/TF/PF and trace the proceeds of crime. Namibia has an integrated system that encompasses both Civil Registration and Identity Management functions. This integrated system is the e-NPRS<sup>186</sup>. It allows the Ministry to effectively manage the vital event cycle from birth to death, including provision for legal identification. The system is integrated to ensure reconciliation of individual records and thus minimises errors, undue duplications etc.

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<sup>186</sup> electronic National Population Registration System

### **8.20.1 Effective issuing of national identification documents**

The overwhelming majority of the population in Namibia have national (or formal) identification documents. The Ministry of Home Affairs and Immigration<sup>187</sup> indicated 87.8% of the population had Namibian birth certificates while 1.5% had other non-Namibian birth certificates in 2016. The population of 87.7% would be eligible to obtaining a national identification after turning 16 years of age. The Ministry further state that 82.9% of the population had Namibian identification documents.<sup>188</sup> Being issued with national identification or passport documents is essential as these are some of the main requirements that permit access to financial and non-financial services such as banking, insurance, investments etc. The observation that most of the population have been issued formal identification documents is supported by the NSA<sup>189</sup>, as per their study which suggests that about 88.3% of the Namibian population make use of formal banking products and services, which require them to have some form of legitimate identification documents. The higher the number of people issued with formal identification documents, the more enhanced the AML/CFT/CPF combatting efforts are. This inherently reduces national risk vulnerability.

Whilst Namibia passes the first test of having a national identification system, which has enabled most of the population to be issued with identification documents, the next section considers other variables which impact national vulnerabilities emanating from the identification infrastructure. This includes the identification infrastructure's reliability, security and importantly, ability for the private and public sector to verify identification documents for CDD purposes.

### **8.20.2 Reliability, security and integrity of the national identification system**

Reliability and security of the national identification system should avail assurance that national identification documents cannot be easily duplicated, through illicit means. Equally, the infrastructure or system (which houses such identification data) should give assurance

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<sup>187</sup> The Namibia Inter-central Demographic Survey of 2016

<sup>188</sup> Within urban areas having the highest proportion of 88.9% compared to 76.2% in rural areas. This includes IDs that are cross referenced to birth, death certificates, passports etc.

<sup>189</sup> NFIS 2017, NSA

that its integrity is not compromised by unauthorised mechanisms that may gain access and perhaps illegitimately effect changes to same.

The NRA is convinced that the national identification infrastructure is secure and reliable. The system is based on the e-NPRS<sup>190</sup> application system which makes use of middleware technology to manage transactions. The application middleware and database management systems provide the assurance that transactions are correctly and completely transmitted, received, processed and stored in relevant databases. Records in key database tables contain SHA-2 cryptographic hashes of their fields that is used to test integrity. In terms of confidentiality, the NPRS is web based. Communication between the NPRS web application system and end-user systems are secured through SSL encryption technology. Similarly, web service communications are encrypted via SSL. Data within databases are encrypted and access to the database platforms are restricted to authorised personnel. Accountability is enhanced through the systems recording of logs and trails which can be used to trace changes made and persons responsible for same. This further enhances confidentiality and security of the national identification infrastructure.

There have been a few incidences suggesting attempts to breach the integrity of the national identification system under the custody of the Ministry of Home Affairs. There have been very few cases wherein some people are alleged to have typed up personal particulars on a normal A4 size paper, making colour copies thereof, editing and framing such to appear like a legitimately issued national identification card. There are two known cases wherein the Ministry was requested to verify two identification documents, allegedly from South Asia. Some Nigerian nationals were arrested for having these illegitimate identification cards. Many a times however, the Ministry of Home Affairs only becomes aware of actual or attempted conduct to produce identification documents when criminal cases are opened by the Namibian Police.

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<sup>190</sup> The Ministry's e-National Population Registration System

### **8.20.3 Legal impediments that restrict viewing access**

The Population Register is compiled and maintained in terms of section 2 of the Identification Act.<sup>191</sup> Section 14(1) of the Act creates blanket secrecy protection for all the information contained in the Register. Sub-section (2) of section 14 gives the Minister responsible for Home Affairs discretion to provide information to certain institutions; unfortunately, the interpretation of the said provision (as clarified by the Attorney General), excludes the sharing of information with the private sector. The AML/CFT/CPF sectors who require such viewing access to the Register thus are not availed access owing to this interpretation. LEAs, Customs, the FIC and the OPG are amongst key combatting authorities that have access to this database. Only the private sector is not granted viewing access at present.

The Ministry of Home Affairs assured the NRA that at the time of reporting, the Identification Act of 1996 will in due time be repealed by the Civil Registration and Identification Bill (CRIB), which is expected to be tabled in Parliament in 2021 (if the Ministry's plans are anything to go by). The CRIB, in its current draft, enables the Ministry to avail both private and public sector viewing access, subject to certain provisions set out therein. Whilst this reflects reasonable progress, the NRA had to consider the *status quo* in terms of potential impact on national ML/TF/PF risk vulnerability emanating from limitations the private sector's ability to effect identification verification. This enhances ML/TF/PF risk vulnerability at national level and undermines the private sector's ability to verify identification legitimacy.

## **8.21 Availability of Independent Information Sources**

CDD is an essential component of any AML/CFT/CPF framework. Independent information sources such as data from credit bureaus, details of previous banking relationships, accessibility to former employers and the availability of utility bills contain essential indications that enhance the quality of CDD. Such data be used to aid in understanding a clients' transactional patterns and commercial history. The NRA thus had to assesses the availability of independent and reliable sources of information nationally and access to such information or data sources.

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<sup>191</sup> Act No. 21 of 1996

Institutions which include a sample of employers, local authorities, mobile service providers and other relevant stakeholders were engaged to understand their position in terms of availability and sharing of such data or information, when so required for CDD purposes by entities in the AML/CFT/CPF sphere. The NRA, after analysis of all such relevant information rated the national availability emanating from independent information sources **Very Low** (a score of 0.2 or 20%).

### **8.21.1 Utility service providers**

This includes mobile service providers and local authorities. Data and information associated with utility bills is within the custody of relevant service providers. Such is usually kept for longer periods, mostly five years or longer. In addition to conventional utility bills data, some local authorities also administer bonds or home loans for mainly low to middle income clients who have acquired properties. For land sales, such records are also at hand. Despite the presence of such rich data which could enhance CDD, the overall observation is that such client information is not availed to institutions which may want to use same for CDD purposes. Client confidentiality was cited as the main reason for not sharing information for CDD purposes. A few local authorities also indicated that they do not receive such information requests to aid the AML/CFT/CPF framework but were uncertain whether client confidentiality laws would be compromised if such requests were to be considered. The inherent and thus unintended consequence of such is reduced quality of CDD within the private sector owing to data access limitations.

### **8.21.2 Banks**

Banks keep financial and identification records of clients. They are key financial sector stakeholders in the AML/CFT/CPF framework and their data would add much needed value to CDD efforts if duly shared with other stakeholders. Sharing client data or information for CDD purposes is not currently taking place. Client confidentiality was cited as the main reason for such position. When potential fraud or irregularities are suspected, the BoN explained that banks may share such relevant information as per the BIA, provided that such information is shared via BoN as the supervisory body (not directly with other banks or

stakeholders). The failure to share CDD information has unintended consequences that reduce the overall quality of CDD within the AML/CFT/CPF supervised entities.

### **8.21.3 Credit bureaus**

Financial sector entities are the most consumers of information held and shared by Credit bureaus. Credit bureaus obtain information about the financial behaviour or conduct of persons within the financial services framework. Previously, this was mainly limited to information of people who have poorly handled their financial obligations or failed to settle debts. This has however changed over the years as Credit bureaus now appear to obtain much more information about financial conduct, including overall history which may indicate positive financial conduct. Such information is shared with a bureau's subscribing clients. Availability of such information would also be very helpful for CDD purposes but the NRA found that such information is mainly used for credit worthiness checks or similar purposes. Some banking institutions indicated that they are exploring ways of making use of Credit bureau data in building financial profile information to help combat ML/TF/PF risks.

### **8.21.4 Employers**

It is generally accepted that employers are reluctant to share information about previous employees unless satisfactory reasons are advanced. If AML/CFT/CPF reasons are advanced, it was noted that employers do not deem such adequate to enable sharing of such information. The NRA also learnt that AML/CFT/CPF supervised entities hardly bother to request clients' employment history as they are more concerned with financial profile related information.

While the above suggests entities under AML/CFT/CPF supervision mainly do not have access independent data sources, competent authorities such as the Namibian Police can be granted such data or information, if such is requested in line with their duties, as per relevant laws.

## **8.22 Availability and Access to Beneficial Ownership Information**

The NRA in terms of this variable considered the effectiveness of AML/CFT/CPF measures implemented to prevent criminals from hiding their beneficial ownership in corporations, trusts or similar structures registered in or administered from within Namibia. In furtherance of this, considerations are firstly to determine availability, reliability and accuracy of relevant beneficial ownership information. This is followed by an assessment on accessibility of such information. Besides beneficial ownership, this variable also considers the availability and access to basic information as per relevant FATF Recommendations on the structure, management, control, of legal entities formed or registered in the country (including beneficial ownership information of legal arrangements formed or administered in or from the country).

### **8.22.1 Controls around the creation of legal persons**

Regulated businesses or professions (e.g., lawyers, notaries, or trust and company service providers) are required to form, register, or administer a legal entity or legal arrangement. At incorporation, all companies are required to provide information on shareholding, beneficial ownership and directorship. Section 181 of the Companies Act further provides that every company not later than one month after the end of its financial year lodges with the Registrar the Annual Return. The Annual Return is lodged with the Registrar as per CM23 form. The CM23 form has recently been amended to include a new section (Part C) wherein shareholders or nominee shareholders and, or beneficial ownership information is provided. Previously, such information was not adequately provided and thus there are many companies whose records at BIPA are incomplete. The information that is now requested includes: full names; identification number; residential, business and postal address; contact details (telephone number, mobile number and email address) as well as the type of shares, number of shares and the nominal value of the shares.

Further, section 120(2) of the Companies Act provides that any person may apply to a company for a copy of an extract from the register of members and the company must either furnish that copy or extract to the applicant at cost or any lesser amount which the company

may determine for every page of the required copy or extract or afford that person adequate facilities for making a copy or extract.

With regard to the Close Corporations, at registration, a Founding Statement (CC1) containing information on the members and membership interest, their contact details and information of the Accounting Officer is lodged with BIPA. Any changes that are made to the status of the Corporation including change in membership and membership interest are made with the Registrar by lodging an amended founding statement (CC2) form. With Close Corporations, most required data is thus with the BIPA.

### **8.22.2 Controls around the creation of legal arrangements such as trusts**

To address the vulnerabilities identified in prior NRAs and updates thereto, on ultimate beneficial ownership of legal arrangements, Namibia ascribed certain responsibilities in section 5 of the FIA, to the Master of the High Court (Master). As a point of departure, the Master must register all testamentary and *inter vivos* trusts<sup>192</sup> in the prescribed manner and form and ensure to keep up-to-date prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and *inter vivos* trusts. In so doing, the Master is placed in a position to avail founder, trustee, trust beneficiary and trust beneficial ownership information of all registered testamentary and *inter vivos* trusts to competent authorities upon request.

The FIA explicitly states that the Master may not register any trust without the information referred to above and the NRA observed that changes were made in trust registration procedures to implement this legal obligation. Since then, the Master ensures all required information is obtained before completion of registration.

The question of trusts registered before the FIA 2012 has remained a challenge since the Master has struggled to obtain all relevant information despite being empowered to take reasonable steps (including initiating efforts to result in sanctions) to obtain the information

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<sup>192</sup> These terms carry their ordinary meaning as follows: A trust created while an individual is still alive is an *inter vivos* trust, while one established upon the death of the individual is a testamentary trust.

referred to above.<sup>193</sup> The collection of all outstanding information for trusts (registered before the FIA 2012) has not happened at the required speed and some information is still outstanding within the office of the Master.

The FIA amendments stretch as far as regulating the Masters' relationship with institutions that engage or deal with trusts, to mitigate potential ML/TF/PF risks. In empowering the Master, the FIA provides that the Master is entitled to request such information from a relevant accountable or reporting institution and the institution must provide the Master with such information relating to trust banking accounts for purposes of monitoring or investigating the transaction activities or operations of any trust. Furthermore, accountable or reporting institutions which have business relationships with any trust are required to inform the Master and the FIC if such a trust is not registered with the Master. All these are measures aimed at ensuring that the Master has at its disposal, adequate information that can be used by reporting entities to conduct adequate CDD. Such information is also essential to LEAs in ML/TF/PF investigations.

Despite the comprehensive legal framework laid by the FIA section 5, the two main challenges noted with trusts are the lack of adequate information for trusts registered before the FIA 2012 and the lack of an automated system which can enable timely access to trust related information within the custody of the Master. CDD requires timely access to data sources so that effective monitoring can be executed without undue delays.

### **8.22.3 Accuracy of, and verification of beneficial ownership information**

The point of departure is whether accurate, adequate, and current beneficial ownership information can be accessed in a timely manner by supervised entities and competent authorities.

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<sup>193</sup> If a trust was registered with the Master of the High Court before section 5 of the FIA came into effect, the Master of the High Court must, within a period determined by the Centre, take reasonable steps to obtain the information referred to. The FIC, in terms of section 5 has issued a determination accordingly.

At the time of reporting, verification of the beneficial ownership is not as expected because the information within BIPA is not adequate (some information is inaccurate)<sup>194</sup> and the information cannot be accessed by competent authorities and other stakeholders in a timely manner. BIPA is currently undertaking a data cleansing exercise where information is being captured from the physical files onto the system. However, the transfer of shares or change of shareholders and or beneficial ownership is done by the company secretarial service providers of companies. BIPA is only informed on any changes that has taken place in that particular financial year of the company at the end of that financial year. The NRA observed that not all companies are complying with section 181 and lodging their annual returns (despite the amended CC7 and CM23 forms that should enable obtaining of such relevant data).<sup>195</sup> This further undermines AML/CFT/CPF objectives as the BIPA remains far from having the most accurate and complete set of data.

The lack of accurate and adequate beneficial ownership information is also due to historical shortcomings. Previously, there was no legal requirement that companies submit certain files and forms to provide BIPA with information on shareholding and beneficial ownership. The current BIPA access system is also a challenge in that it is not programmed in such a way that it accepts updates on the shareholding and beneficial ownership information. This then also has a direct impact on the time it takes for BIPA to provide information to supervised entities and competent authorities as physical files of companies need to be requested from the archives and copies thereof are provided instead of running a report on the system.

In short, owing to historical shortcomings, inadequate beneficial ownership information was requested or collected by BIPA. Whilst changes have been made to ensure missing data is availed to BIPA, the response rate is poor and BIPA is unable to build a more accurate and complete database of such information. While the automated system implemented to avail outside stakeholders viewing access for verification, the system falls short as it does not accept updates on the shareholding and beneficial ownership information.

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<sup>194</sup> The challenges of inaccuracy emanate from outdated company records at the company registrar owing to periodic submission failures by relevant persons and the fact that in the past, submission returns were not aligned to the FIA (FATF Recs), resulting in information inadequacies.

<sup>195</sup> It is the practice at this point that company secretarial service providers are required by BIPA to resubmit annual returns submitted and stamped as proof thereof as far back as 2012.

The above factors all suggest that legal frameworks (laws and regulations) are in place to enable relevant authorities (BIPA and the Master) to collect the much-needed beneficial ownership information and avail such in a timely manner to entities in the AML/CFT/CPF sphere. Practical implementation to adequately source such data and avail same remain unresolved. This enhances national ML/TF/PF vulnerability and the NRA thus assigned a rating of **Medium Low** (score of 0.4 or 40%).

## PART B: SECTORAL ML VULNERABILITY ANALYSIS

This section avails outcomes of ML vulnerability and risk assessments per sector. Similar controls are applicable to TF and PF. Figures 24 and 25 below presents outcomes of sectoral ML vulnerability assessments. Nationally, NPOs have the highest ML vulnerability exposure to ML threats (rated Very high at 0.91 or 91%). CCFAs also rated Very High (at 0.80 or 80%). NPOs and CCFAs present much higher ML exposure because of the lack of AML controls in such sectors. These sectors were added to the AML supervision space in late 2019 and thus AML awareness and control implementation is minimal.

MVTs, in as far as they refer to e-money issuers regulated by the BoN and supervised by the FIC have reasonably adequate AML measures in place and their risk exposure is much lower. However, they are value transfer service providers in the same sector as VAs. The current position of the BoN does not permit recognition of VAs as a component of the formal financial system, hence, VAs were not within the AML, nor prudential regulated space in the reporting period (2015 – 2019). Owing to the lack of such domestic regulation, VA operations are inherently highly vulnerable and this naturally escalates the sectoral exposure of the MVTs as per Figure 24 below.

ML vulnerability in the Real Estate Agents, Auctioneers and Legal Practitioners sectors is rated Medium High (as per figure 25 below). AML control shortcomings in these sectors remains a challenge, although some law firms have in recent years made notable improvements. Banks appear to detect and report the highest volumes and values of potential ML activities, through STRs and SARs. The banking sector's vulnerability was rated close to Medium High (about 56%). Nationally, banks have implemented controls that reasonably reduce ML vulnerability when compared to most other sectors. Having said that, Namibia experienced the failure of a bank in the reporting period, primarily owing to alleged fraudulent conduct by directors. Depositors have lost funds and this has laid bare the direct impact of ML (as an eventuality of large scale fraudulent conduct) to ordinary members of the public.

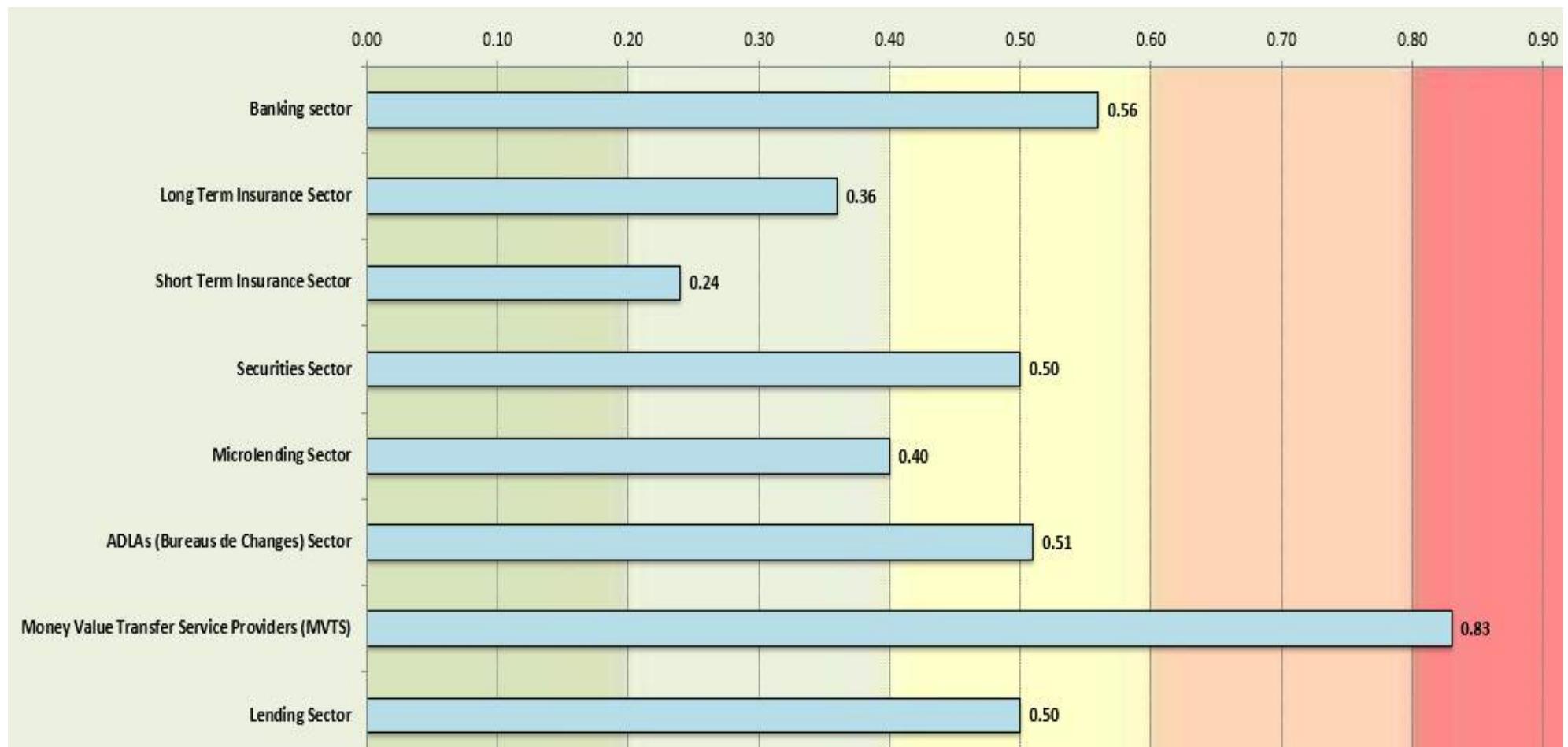


Figure 24: Outcomes of sectoral ML vulnerability assessments: Financial Sector

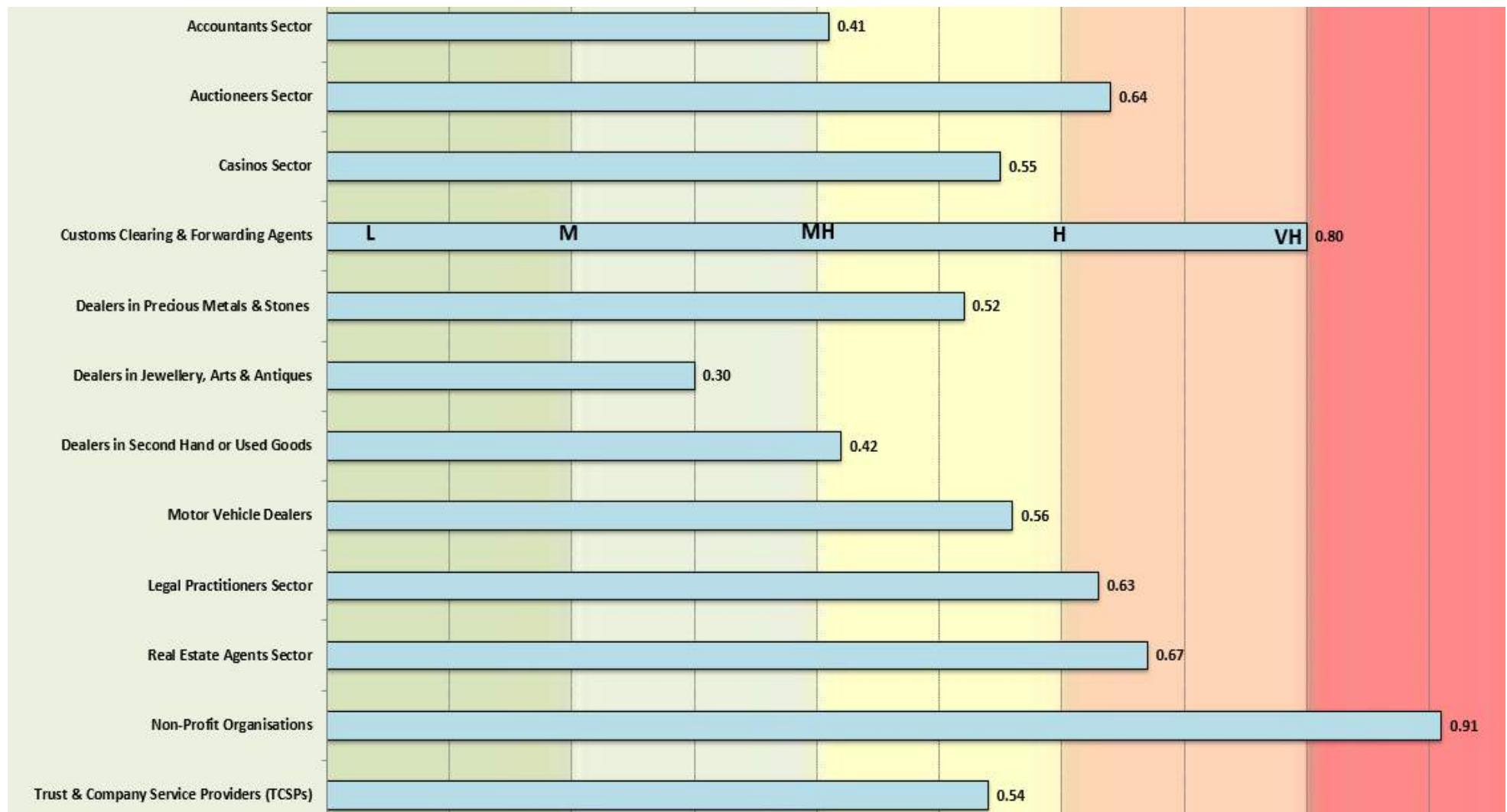


Figure 25: Outcomes of sectoral ML vulnerability assessments: DNFBPs

Based on the ML vulnerability levels reflected in figures 24 and 25 above, figure 26 below avails prioritization of sectors in terms of their ML vulnerabilities.

PRIORITY RANKING AMONG SECTORS - LAST CASE/SCENARIO	PRIORITY RANKING
Banking sector	4
Long Term Insurance Sector	17
Short Term Insurance Sector	
Securities Sector	8
Microlending Sector	15
ADLAs (Bureaus de Changes) Sector	12
Money Value Transfer Service Providers (MVTS)	3
Lending Sector	11
Accountants Sector	16
Auctioneers Sector	13
Casinos Sector	14
Customs Clearing & Forwarding Agents	2
Dealers in Precious Metals & Stones	9
Dealers in Jewellery, Arts & Antiques	
Dealers in Second Hand or Used Goods	18
Motor Vehicle Dealers	10
Legal Practitioners Sector	6
Real Estate Agents Sector	5
Non-Profit Organisations	1
Trust & Company Service Providers (TCSPs)	7

Figure 26 Sectoral prioritization levels

## **9. The Financial Sector**

The financial sector mainly comprises of banks and NBFIs. Banks, MVTs and ADLAs are supervised by the BoN for prudential purposes while the FIC remains the AML/CFT/CPF supervisory body of such sectors. NAMFISA on the other hand supervises NBFIs, which are: Unit Trust Managers; Stockbrokers; Investment Managers; Linked Investment Service Providers; Long term and Short-term Insurance service providers; Unlisted Investment Managers and Special Purpose Vehicles; Micro-lending institutions and Friendly societies.

Although an independent institution operationally, the FIC is a department within the BoN for administrative and support purposes. The BoN has other prudential supervisory and regulatory functions entrusted to other departments. In this regard, the Banking Supervision Department is entrusted with regulation and supervision of banks, Exchange Control Department supervises ADLAs while Payments Systems and Settlements Department supervises payment service providers such as MVTs.<sup>196</sup> The FIC supervises all these sectors for AML/CFT/CPF purposes. All these departments, including the FIC, coordinate and align their regulatory and supervision activities to ensure effective risk mitigation and efficiency. Activities such as drafting or amendment of laws, issuing of supervisory guidance documents etc., licensing<sup>197</sup> of entities, conducting compliance inspections or assessments are always planned and executed in consultation with all the supervisory departments. Inspections or compliance observations which are relevant to any of the regulatory departments are shared. This ensures due consideration of various regulatory interests and greatly enhances efficiency and effectiveness of both the prudential and AML/CFT/CPF supervisory framework.

NAMFISA reports to the FIC in terms of its AML/CFT/CPF supervisory responsibilities. At a strategic level, the FIC guides NAMFISA's operations and helps in different ways including the issuance of industry supervisory instruments etc. Section 9.1 below avails an overview of the banking sector while section 10 deals with NBFIs under NAMFISA supervision.

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<sup>196</sup> Excluding VAs

<sup>197</sup> all departments also avail inputs in consideration of license applications for banking, ADLA or MVT related services.

## **9.1 The Banking Sector**

Almost all finances flowing to and from various other sectors are at some point processed through or channelled through the banking system.<sup>198</sup> This makes the banking sector a crucial stakeholder in the AML/CFT/CPF framework.

The Banking Institutions Act (BIA), along with its regulations, determinations and other instruments govern banking activities ranging from market entry, governance and the manner in which banking business should be executed to safeguard depositor interests and maintain financial integrity. Only licensed banks operate in Namibia and no shell banks are permitted. The FIA, POCA and PACOTPAA on the other hand provide the framework within which AML/CFT/CPF measures are implemented in the sector.

Banks are subsidiaries incorporated under local holding companies whose beneficial owners are mostly foreign as reflected in Table 14A below. The BoN conducts adequate due diligence on all shareholders and directors in its consideration of issuing banking licenses. This helps avail the AML/CFT/CPF framework reasonable assurance on risk mitigation in banks. The links of local banks to foreign financial institutions has generally enhanced AML/CFT/CPF control frameworks as banks that are subsidiaries of foreign ownership are required by the foreign entities (and relevant foreign regulatory bodies) to ensure effective risk ML/TF/PF mitigation.<sup>199</sup>

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<sup>198</sup> See section 8.16 above. The informal economy (2.8% of GDP) is potentially carrying a significant portion which is excluded from banking services.

<sup>199</sup> Over the years, AML/CFT/CPF supervisory activities have shown this. Most banks having implemented AML/CFT/CPF measures way before Namibia's AML/CFT/CPF framework commenced in May 2009. Equally, other foreign regulatory bodies often engage the FIC to understand compliance behavior of local banks which are subsidiaries of entities in their jurisdictions.

Bank	Holding company in the Bank	Local shareholding (in holding company)	Foreign shareholding (in holding company)
First National Bank Namibia Limited	FirstRand Namibia Limited 100%	41.61%	58.39%
Bank BIC Namibia Limited	Bank BIC Holdings Namibia Limited 100%	0%	100%
Bank Windhoek Limited	Capricorn Group 100%	100%	0%
Letshego Bank Namibia Limited	Letshego Holdings Namibia Limited 100%	22%	78.00%
Nedbank Namibia Limited	NedNamibia Holdings Limited 100%	0%	100%
Trustco Bank Namibia Limited	Trustco Group Holdings (TGH) Limited 100%	63.4%	36.6%
Atlantico Europa SA	Atlantico Europa SGPS, SA (Portugal)	0%	100%
Standard Bank Namibia Limited	Standard Bank Namibia Holdings Limited	25.10%	74.90%

Table 14A: Local and foreign shareholding in the banking sector<sup>200</sup>

Since the 2012 NRA, four more<sup>201</sup> banks were licensed and commenced operations while two other banks are no longer in operation. The EBank<sup>202</sup> merged with one of the larger banks while the SME Bank closed shop owing to solvency challenges emanating from potential large-scale fraud. At the time of reporting, the banking sector comprised of eight banking institutions, made up of seven commercial banks and a branch of a foreign banking institution. This excludes non-commercial banks such as the DBN as well as the Agribank, which are creatures of statute and categorised as lending institutions in the AML/CFT/CPF framework.<sup>203</sup> The four large commercial banks<sup>204</sup> enjoy significant market share and have the largest clientele. These banks also have the largest footprint of branches countrywide. Figure 26A below indicates the commercial bank branch network nationally.

Description	2015	2016	2017	2018	2019
Branches	126	139	163	167	149
Agencies	68	61	62	64	82
Total	194	200	225	231	231

Figure 26A: Bank branch network in 2019<sup>205</sup>

<sup>200</sup> Source: BoN.

<sup>201</sup> Letshego Bank and Trustco Bank were in 2014; Banco Atlantico in 2015 and Bank BIC in 2016.

<sup>202</sup> The first locally licensed bank with strictly electronic banking systems, operations and services.

<sup>203</sup> These lending institutions are not under the prudential supervision of the BoN though supervised by the FIC for AML/CFT/CPF purposes.

<sup>204</sup> Standard Bank, Nedbank Namibia, Bank Windhoek and First National Bank Namibia.

<sup>205</sup> <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/3a/3af2b4ce-c0f2-4e99-9d68-dc64a7c1ecb4.pdf>

Services offered by commercial banks are listed and risk rated in Table 16 and Figure 26C of section 9.1.9. Investment banking activities are undertaken by the current commercial banks as there are no banks licensed to solely specialise in investment banking activities locally.<sup>206</sup>

The commercial banks are the primary mobilisers of funds from the public and the main sources of financing which support business operations and economic activities in Namibia.<sup>207</sup> The Commonwealth of Nations states that Namibia has a highly sophisticated and developed commercial banking sector, comparable with the best in Africa.<sup>208</sup>

The assets of the banking sector were valued at NAD 67 billion in 2012 when the first NRA activity was conducted, with clients estimated in excess of 1 million. By December 2019, the sector's asset base had grown to NAD 142 billion, with liabilities amounting to NAD 125 billion. The NSA reported that the sector contributed around 6% to GDP in that same year.<sup>209</sup> Over 70% of such assets emanate from loans and advances with residential mortgage loans amounting to NAD 40 billion.<sup>210</sup> This has generally been the trend over the years.

The operational functioning of local commercial banks is premised on banks' ability to raise funds (bank funding). Funding enables commercial banks to extend credit to clients. The sector experienced strong growth in funding from 2015 to 2019 when a marked deterioration in growth can be seen funding (see Figure 26B below). Deloitte<sup>211</sup> states that from late 2015 to around mid-2017, the banking sector experienced slow deposit growth, as well as increasingly expensive marginal funding costs and low liquidity. This placed banks under pressure which possibly only eased around mid-2017. Thereafter, the industry again became cash-flush and less of a market price-taker when it came to accessing funding, with 2019 reports indicating the highest ever use of the repurchase (repo) window at the central bank and the lowest levels of commercial bank liquidity in at least a decade.

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<sup>206</sup> [https://www.commonwealthofnations.org/sectors-namibia/business/banking\\_and\\_financial\\_services/](https://www.commonwealthofnations.org/sectors-namibia/business/banking_and_financial_services/)

<sup>207</sup> <https://www.bon.com.na/Bank/Banking-Supervision/The-Banking-System-in-Namibia/Aggregated-industry-returns.aspx>.

<sup>208</sup> Commonwealth of Nations: Source: [https://www.commonwealthofnations.org/sectors-namibia/business/banking\\_and\\_financial\\_services/](https://www.commonwealthofnations.org/sectors-namibia/business/banking_and_financial_services/)

<sup>209</sup> National Annual Accounts, 2019 (NSA). The following link presents the 2020 Aggregated Industry returns worth noting: <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/52/52454520-2333-4f3e-8fb2-aacc1a4713d4.pdf>

<sup>210</sup> BoN, 2019 Aggregated Industry Returns. <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/8d/8d610423-bceb-45e8-88b6-e02834aa334f.pdf>.

<sup>211</sup> <https://www2.deloitte.com/na/en/pages/finance/articles/Deloitte-Namibia-Namibia-Banking-Sector-Dynamics-2019.html>

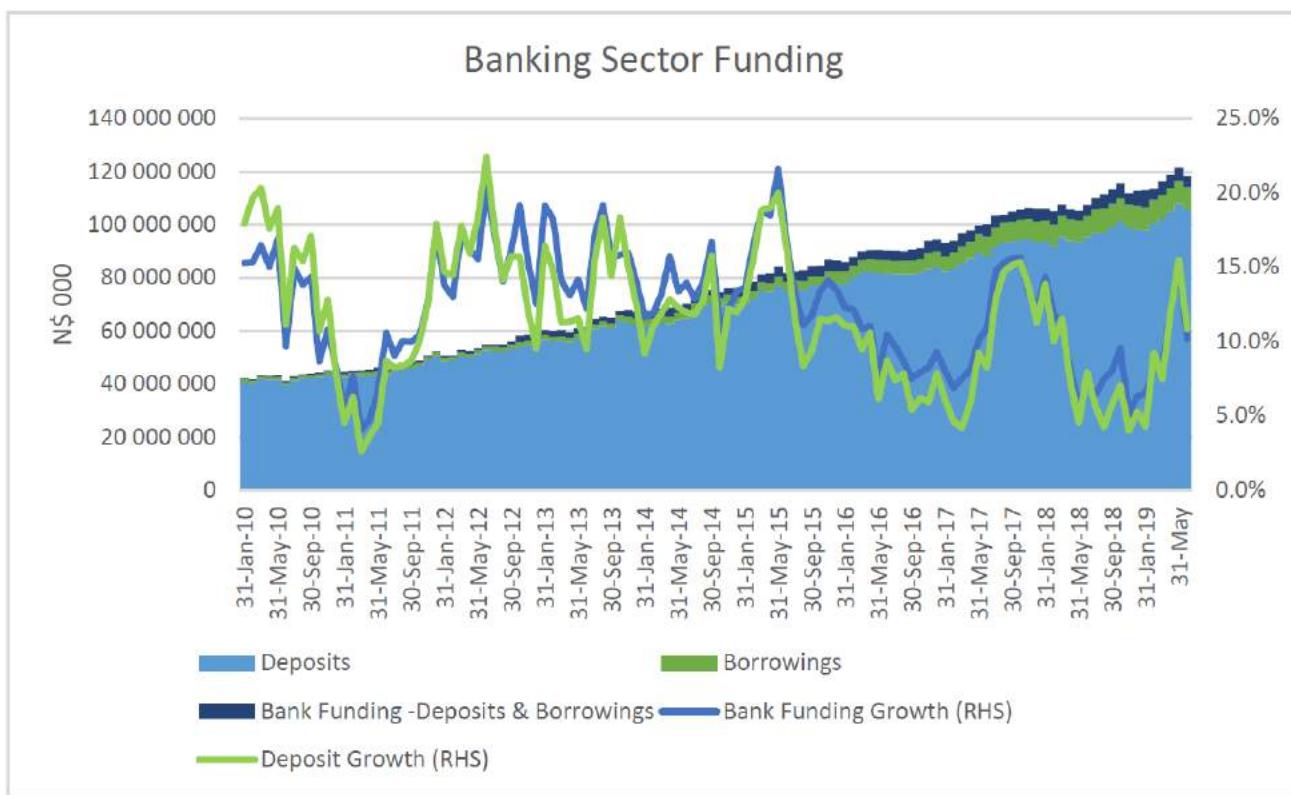


Figure 26B: Fluctuations in banking sector funding<sup>212</sup>

This section avails considerations made in rating key variables which informed vulnerability positions. In rating the adequacy and/or the effectiveness of each variable, rating levels assigned are from 0.0 to 1.0.<sup>213</sup> Level 0.0 shows the lowest level of adequacy or effectiveness (of a variable/control) and 1.0 representing the highest possible level.

The overall ML vulnerability rating of the banking sector is close to **Medium High** (a score of 0.56 or 56%) and the subsections below explain major considerations which inform such rating. This rating suggests banks have the highest ML vulnerability level in the financial sector, with the exception of MVTs whose vulnerability is exacerbated by VAs which are not regulated (see Figure 24 above).

#### 9.1.1 Availability and effectiveness of market entry controls

<sup>212</sup> <https://www2.deloitte.com/na/en/pages/finance/articles/Deloitte-Namibia-Namibia-Banking-Sector-Dynamics-2019.html> (BoN, Cirrus Securities)

<sup>213</sup>

Excellent	Close to Excellent	Very High	High	Medium High	Medium	Medium Low	Low	Very Low	Close to Nothing	Does not Exist
1.0	0.9	0.8	0.7	0.6	0.5	0.4	0.3	0.2	0.1	0.0

Banking license application and processing is guided by the BIA. The Banking Supervision Department within the BoN has issued Guidelines<sup>214</sup> which explains licensing requirements and process for the issuing of banking licenses.

The level of market entry controls, and relevant due diligence, while necessary for prudential purposes have a bearing on a sector's overall ability to comply with the AML obligations. Thus, effective market entry controls help to reduce ML vulnerability and ensures a higher level of compliance with AML requirements. As mentioned above, the BoN regulates and manages all market entry related controls. The market entry framework is found to be adequately comprehensive and practically effective to ensure licensing and related governance of banks is helpful to advancing AML efforts, primarily owing to the following key principles: the BoN, as an authoritative body has adequate powers and responsibilities to administer market entry, beneficial owners<sup>215</sup> are subjected to sufficient due diligence to gain assurance that they are fit and proper,<sup>216</sup> there are practical measures in place to ensure unlicensed banking activities are not permitted; presence of adequate mechanisms to ensure quality implementation of market entry controls for banks, including a sufficient number of well-trained and highly skilled personnel to screen, vet and approve all applications. Additionally, as the BIA requires of all applicants to demonstrate an ability to comply with relevant laws, including the FIA, the BoN gains assurance that applicants can comply with the AML framework,<sup>217</sup> as part of the license application consideration. In the reporting period, four banking license applicants failed to meet the minimum requirements and were not granted banking license.<sup>218</sup>

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<sup>214</sup> Guidelines on banking license application, accessible at: <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/fd/fd818dbc-bc92-44c2-9fbf-1dc5255804d6.pdf>

<sup>215</sup> Persons subject to fit and proper due diligence: Shareholders/those having a significant controlling interest in a bank, directors, those in senior/significant managerial positions, or holding a significant managerial position – Main fit and proper requirements: Criminal background checks, clearance b other regulatory bodies where relevant, appropriate educational and professional expertise or qualifications for directors and senior management. Management of risks related to potential and relevant conflict of interests. Such fit and proper tests are conducted upon licensing, periodically when so required by the BoN and when there is proposed change in directorship or senior management. It is further a requirement for all licensees to have adequate AML compliance controls in place, including compliance manuals and the appointment of well-qualified AML Compliance staff. The FIC vets the AML/CFT/CPF related controls upon licensing. The BoN would usually submit applicant's relevant information to the FIC for such vetting. Any licenses rejected on the basis of lack of fit and proper requirements.

<sup>216</sup> fit and proper test designed to prevent criminals or their associates from being granted a banking license, or having a significant controlling interest in a bank, or holding a significant managerial position.

<sup>217</sup> With regard to the AML/CFT/CPF context, applicants are required to demonstrate, through the availing of policies and procedure documents, how they would mitigate ML/TF/PF risks.

<sup>218</sup> Applicant A from Angola applied in 2015 and did not meet requirements; Applicant B (South African) and C (Namibian) applied in 2012 and 2013 respectively but also failed to meet licensing requirements. Applicant D from Mauritius also failed to meet banking license requirements in 2014.

With banks, provisional licenses are issued to applicants who meet requirements, requiring that such applicants set up operations which will be assessed to determine if such are indeed as expected, before the BoN considers issuing a final operational license. Through the close working relationship of the BoN and the FIC, pre-opening assessments are jointly undertaken to ensure the relevant controls are in place, prior to the issuing of final operational licenses. This practice ensures AML frameworks mitigate relevant risk exposure from commencement.

The NRA however also noted that when beneficial owners are foreign nationals, there are limited, reliable and independent information sources in use for verification of such owners' submitted information, including the source of funds to be invested in opening such banks. The market entry framework is comprehensive and the BoN has adequate capacity to effectively execute such framework. The market entry controls were thus rated **Close to excellent** (a score of 0.9 or 90%) in terms of the comprehensiveness and effectiveness.

#### *9.1.2 Level of market pressure to meet AML standards*

Cross-border correspondent banking relationships are essential in the banking sector. They however require that banks adhere to certain standards, including effective compliance with domestic and international AML frameworks. Banks stand to lose such relationships if the AML controls are not effective. Given the importance of the correspondent banking relationships, the NRA found that banks' management are sensitive to international and national AML-related reputational risks. There is thus significant market pressure to ensure compliance with AML frameworks. Observations from the FIC's compliance assessment activities suggest that banks have implemented effective measures in place to respond to such market pressures. Considering the above, the level of market pressure to meet AML standards was rated **Very High** (a score of 0.8 or 80%).

#### *9.1.3 Effectiveness of supervision and oversight activities*

The banking sector is supervised by the FIC for AML/CFT/CPF purposes while the BoN remains the prudential supervisor. Overall, the effectiveness of the banking supervision framework was rated **Medium High** (a score of 0.60 or 60%). Considerations below explain factors which informed such rating.

### 9.1.3.1 AML supervision

Section 8.4.2 above explains relevant AML/CFT/CPF supervision considerations worth noting. The FIC adopted a risk based supervisory approach, with 2012 and 2016 NRA outcomes guiding its supervisory activities. Periodically, risks are assessed and based on supervisory understanding of such risks, supervisory activities are aligned. For example, in an effort to better understand ML vulnerabilities, sectoral assessments were conducted in 2017/18, mainly to complement and update outcomes of prior NRA exercises such as the 2012 NRA exercise. For the banking sector, cross border remittances were observed as higher risk services. The FIC was able to update the risk profile of each bank and reassess its supervision strategy as per such updated profiles.<sup>219</sup> This naturally results in risk-based supervision plans being developed or amended and implemented periodically. Table 11 under section 8.4.2 shows an overall presentation of supervision across different sectors, reflecting supervisory prioritization in terms of risks. In such table, higher risk sectors such as banks are prioritized. Table 15 below avails a breakdown of the significant risk-based AML/CFT/CPF supervisory activities in the banking sector executed over the years:

	2015	2016	2017	2018	2019
Onsite compliance assessments	0	8	13	2	5
Offsite compliance assessments	0	0	2	17	0
Trainings facilitated by the FIC	0	0	2	0	2
Sectoral compliance meetings	4	4	4	4	4
Enforcement measures taken or referrals made	1	4	3	0	3

Table 15: FIC's risk-based supervisory activities in the banking sector

Given their standing as high risk institutions, banks are generally subjected to onsite assessment activities every year, and some, every second year. The FIC has subjected all banking institutions to both onsite and offsite assessments depending on the nature of each engagement and targeted risk areas. With frequency, higher risk entities such as the large four banks are assessed more frequently than others. Each large bank is assessed almost once every 12 to 24 months. With products and services, higher risk products such as cross border remittances have been assessed (or followed up on) each year since 2015. Guidance

<sup>219</sup> The supervision's own internal reviews and the risk assessment updates also found that the lack of monitoring (by the FIC), mainly owing to the lack of automated systems, hampers efficiency of supervision in a sector with overwhelming volumes of transactions.

notes, directives and typology reports etc., have been published on the FIC website to help enhance risk mitigation in higher risk products such as cross border remittances.

The sector indicated that FIC expectations are not always clear, especially with the adopted compliance assessment methodology. The banks maintain that the current methodology does not adequately reflect progress made by banks with implemented risk mitigation controls. The NRA also observed that the sector feels that the guidance availed by the supervisory body, especially with regards to noted non-compliance is not always practical. A typical example is compliance with Revised Directive 01 of 2016 which, amongst others requires banks to obtain information related to sources of funds of senders from outside the country, when such exceed NAD 499,999.99 per quarter. This Directive was issued in response to growing illicit cross border remittances from Namibia. Banks on the other hand feel such due diligence<sup>220</sup> is overboard and reliance should only be placed on information availed by correspondent banks (conventional swift message), and trust that such other bank has done the necessary due diligence.

#### *9.1.3.2 Winding up of the SME Bank: Potential fraud, laundering of proceeds from such and matters pertaining to prudential supervision*

##### *a. Banking prudential supervision activities*

Irregularities at the SME Bank presented a scenario wherein the regulatory body uncovered integrity and governance breaches and large-scale fraudulent conduct, which caused the eventual insolvency and subsequent winding up of the bank.

An illustration of the matters of hidden or manipulated information, which was uncovered by the regulator consisted, amongst others, of the following:

*The BoN discovered on various occasions the errors have occurred within the monthly reporting at the bank, due to operational losses not recorded on the capital returns and balance sheet projections that impacted capital and the BoN called for a new capital injection. The BoN implemented monthly engagements including the regular submission of*

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<sup>220</sup> with senders of funds who are not the bank's clients.

*management accounts when issues were observed in the reporting on Balance sheet and Credit Risk Returns regarding the loan book and Minimum Reserve Requirements, which necessitated the BoN to instruct SME Bank to appoint independent auditors to do an external review of their loan book reporting.*

*The statutory reporting in the form of returns were found to be inadequately reviewed for correctness prior to submission to the BoN, which made the BoN doubt the data integrity. During 2016, the BoN received inaccurate reports from the SME Bank relating to the daily liquid asset limits, liquidity cash-flow mismatches, the top 10 depositor's structures and local assets holdings. This inaccurate reporting on liquid assets resulted in non-compliance with minimum regulatory liquid assets and minimum local assets requirements. A subsequent on-site examination by the BoN carried out in September 2016, confirmed the misreporting even though the BoN communicated these non-compliance issues to the Board of SME Bank, instructing them to rectify the daily reporting on liquidity returns. The SME Bank further failed to report its exposure with the VBS Mutual Bank<sup>221</sup> in the Interbank Exposure Return (BIR-520) and the BIR-700 on the Determination of Minimum Local Assets Requirements (BID-7). This exposure stood at NAD 153.9 million as at 31 December 2016.*

Given the above, the full scale of what was wrong, manifested itself when the SME Bank started showing liquidity challenges and was unable to honour deposit demands. All these happened while the SME Bank had certain governance structures and policies, including audit committees and other internal controls in place. In hindsight, however, it appears these Board committees and other governance structures failed dismally in their roles and responsibilities as the first line of defence. This fraudulent conduct appeared to have occurred, particularly surrounding the loss of over NAD 200 million, which primarily led to the SME Bank's liquidation. The SME Bank was closed in 2017 after the NAD 200 million 'invested' with South African entities could not be returned, when so ordered as per section 56 of the BIA, by the BoN. Most of the funds were deposited into the Venda Building Society (VBS) Mutual Bank, which was placed under curatorship and is defunct at the time of reporting.

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<sup>221</sup> South African based bank.

Attached hereto is the founding affidavit of the SME Bank winding up application which avails detailed information on actions of the BoN.<sup>222</sup>

*b. AML/CFT/CPF activities*

Most of the investigative and analysis work undertaken by the FIC in the matter commenced subsequent to a meeting with the Banking Supervision Department of the BoN in October 2016. After such meeting, the FIC sourced information from the auditors of SME Bank, on a purported investment of NAD 196 million with the VBS Bank in South Africa (VBS).<sup>223</sup> Table 15A below summarises the FIC's investigative and information sharing activities related to the matter.

Date	Types of intelligence or information sharing	Observations/Intelligence shared
12 September 2016	Spontaneous Disclosure to Minister of Finance	Shows the investments by SME Bank with NPSB and how those funds were circulated (round-tripped). The disclosure was meant to enlighten the Minister of Finance of such developments.
03, 06, 10 & 18 October 2016 <sup>224</sup>	Requests for Information from BoN and FIC: RSA	To enhance FIC's investigations and analysis activities pertaining to the NAD 196 million investment. In particular, information related to Mamepe Capital, allegations of the supposed NAD 37 million paid back to SME Bank, confirmation of information around other South African entities that may have received funds of the SME Bank.
27 October 2016	Communication to the Inspector General	FIC requesting LEA considerations to set up a high-level investigative task team on the SME Bank matter.
08 November 2016	Spontaneous Disclosure to Namibian Police	With more information at hand, the disclosure was meant to officially inform the Namibian Police about irregularities at the SME Bank and other entities in South Africa that may be involved. In particular, information shared indicated that about NAD 200 million was transferred out of SME Bank's custody between 2015 to September 2016, NAD 185 million reportedly invested with VBS in South Africa, confirmation letter to the auditors about purported investment, alleged MoU between Mamepe Capital and SME Bank on the said investment and additional information on Mamepe Capital accounts held in South Africa confirming receipt of only R 20 million between January 2016 and October 2016.

<sup>222</sup> FIC Website: <https://www.fic.na/index.php?page=2020-nra>

<sup>223</sup> The intelligence received from auditors included account statements with the name Mamepe Capital (Pty) Limited calculated to an amount of NAD 196 million.

<sup>224</sup> Note the joint analysis with FIC:SA from 12 to 13 October 2016.

		The disclosure also suggested that MLA requests be considered to enable ease of sourcing more needed information for investigations.
14 December 2016	Spontaneous Disclosure to Namibian Police	As more information came to the FIC's attention, this disclosure shared observations on: the purported investments of NAD 196 and NAD 185 million, confirmation that no more than NAD 20 million was received into Mamepe Capital's account in the period reviewed, the NAD 10 million transfer to VBS from an FNB Namibia account, the NAD 37 million transferred from South Africa when inquiries were made on the alleged investment, additional payments of NAD 32.3 million made to a South African entity known as Asset Movement and Financial Services as well as NAD 5.3 million to Moody Blue Trade & Invest (Pty) Ltd.
19 January 2017	Spontaneous disclosure to the AML/CFT/CPF Council Chairperson	Briefed BoN Governor on all FIC observations at the time.
01 March 2017	Spontaneous disclosure to Minister of Finance	Briefed Minister on all FIC observations at the time.
17 & 27 March 2017 as well as 12 & 25 April 2017.	Additional request for information to FIC:SA	Request was regarding multiple payments to various accounts in South Africa and the subsequent confirmation thereof. The BoN lodged an official case with the Police by way of affidavits submitted by both the Directors of Banking Supervision and Exchange Control and Legal Service to advance the criminal case against the suspected individuals.
28 March 2017	Spontaneous disclosure to BoN	The disclosure was mainly on the following: Confirmation of EFT payments made from the SME Bank account as provided by BoN, reported 30,700 metric tons of Mono-ammonium Phosphate Map in bulk between 01 August 2016 and December 2016 from Rawfert Offshore S.A.L in LEBANON at a cost of USD 14,490,400.00 (NAD 200,753,000.00) and confirmation on VBS accounts with minimal balances. The BoN relayed the same information disclosed to Namibian Police to further the pursuit of the criminal matter against the individuals concerned.
29 March 2017	Spontaneous disclosure to Namibian Police	Sharing of additional information sourced from FIC: SA as per requests on the following dates: 17 & 27 March 2017 as well as 12 & 25 April 2017.
12 April 2017	Request for information from FIU Lebanon	Request for information pertaining to Mono-ammonium Phosphate Map reportedly paid for as highlighted above.
12 April 2017	Request for information from the FIU United Arab Emirates (UAE)	Request for information pertaining to payments to the jurisdiction.
24 April 2017	Spontaneous disclosures to the OPG	Four disclosures to the OPG Asset Forfeiture Unit pertaining to possible asset forfeiture application considerations.

12 May 2017 <sup>225</sup>	Request for information from the FIUs of the UAE and Malaysia	Second request for information pertaining to payments to the UAE and first information request to the Malaysian FIU.
27 July 2017	Spontaneous disclosures to OPG	The disclosure highlighted analysis of accounts which suggested that the beneficial owners of Mamepe Capital may have received NAD 31.8 million from 01 April 2015 to 31 June 2015, of the funds from the SME Bank. Observations also suggested that the VBS CEO may have received significant amounts of funds from the accounts of Mamepe Capital.
01 February 2018	Request for information from the FIU of Zimbabwe	Request for information pertaining to Zimbabwean nationals involved in the matter.
12 May 2018	Spontaneous disclosures to FIU Zimbabwe	The information disclosure was in respect of Zimbabwean nationals involved in the matter.
05 July 2018	Spontaneous disclosure to Namibian Police	Disclosure was in respect of Zimbabwean nationals involved in the matter.
05 July 2018	Spontaneous disclosure to BoN	Disclosure was in respect of Zimbabwean nationals involved in the matter.
14 March 2019	Request for information from the FIU of the DRC	Information requests pertaining to entity Moody Blue's directors and other subjects involved in the matter.
07 April 2020	Request for information from the FIU UAE	Follow ups with the UAE: Request for information pertaining to previous requests from the UAE FIU.

Table 15A: FIC analysis and information sharing activities related to the SME Bank

While the FIAD focused on the investigative and analysis activities around the alleged irregular investment, the SME Bank was subjected to AML/CFT/CPF supervisory activities along with other banks in the sector. Table 15B below summarizes such supervision activities, observations on FIA compliance and how such were dealt with.

Year	Nature of FIA compliance assurance activity	Observations/findings raised	Measures taken
2012	Pre-opening compliance assessment	Summary of findings where: absence of a ML/TF risk assessment, general control shortcomings around the AML/CFT transactional monitoring automated system and absence of an independent audit review.	Report was issued on 05 September and presented to the SME Bank management for remedial measures implementation.

<sup>225</sup> Note the Namibian delegation's RSA investigative visit from 14 to 20 May 2017.

2013	Follow-up review on the 2012 assessment. To assess effectiveness of remedial measures implemented.	<p>Progress made as per 2012 assessment observations:</p> <ul style="list-style-type: none"> <li>a. Absence of a risk assessment - progress was noted, however further improvements were required on the client risk scores and the SME Bank was required to include TF in its risk assessment;</li> <li>b. AML/CFT transaction monitoring automated systems – No progress. System was in the process of being developed;</li> <li>c. Independent Audit review - No progress observed.</li> </ul> <p>New observations raised in 2013:</p> <ul style="list-style-type: none"> <li>d. Client identification and verification – Controls relatively functional;</li> <li>e. Manual monitoring of suspicious and unusual transactions – the manual monitoring system was ineffective due to the large volume of transactions which resources could not duly review.</li> </ul>	Report issued on 25 April 2013 to SME Bank management with recommendations to take remedial measures
2016	Follow-up review on the 2013 assessment. To assess effectiveness of remedial measures implemented, with the SME Bank having recorded growth and being reasonably functional in most material aspects.	<p>Given the extensive growth in clients and transactions, the FIC could duly test the effective functioning of AML/CFT/CPF controls. Progress on control shortcomings previously raised was as follows:</p> <ul style="list-style-type: none"> <li>a. Inadequate progress made in controls relating to CDD;</li> <li>b. Inadequate risk assessment - No progress noted from 2013 observations;</li> <li>c. Ineffective account and transaction monitoring and reporting system – No progress was noted;</li> <li>d. Internal control failure – Failed measures related to effectiveness of honouring intervention orders as per the FIA.</li> </ul>	The report was issued in March 2016 to the board and management. Due to the repetitive nature and seriousness of non-compliance observed, the report was presented to the Board of Directors by the FIC Director. On the 5 <sup>th</sup> of July 2016, the FIC received the Board's written commitments on how they would address control shortcomings highlighted.

Table 15B: FIC compliance supervision activities at SME Bank

The NRA noted the efforts of the BoN and the FIC in the SME Bank matter as stated above. The NRA calls for regulatory and supervisory bodies to consider FATF Immediate Outcomes 1, 3 and 4 of the FATF Mutual Evaluation, as guidance, in designing corrective measures that would reduce the risk of future similar occurrences.

#### *9.1.4 Availability and Enforcement of Administrative Sanctions*

The FIA, as per section 56 provides supervisory bodies with powers to administer sanctions on institutions for non-compliance with the Act. Tables 15 (above) and 11A (in section 8.4.2.1) avails information on enforcement measures imposed for non-compliance in the sector. At the time of reporting, four more referrals from the sector were escalated to the Enforcement Committee for consideration.

More than 90% of all sanctions emanate from FIA non-compliance<sup>226</sup> observed in the compliance assessment activities. The sector indicated that the sanctions as per the FIA are generally dissuasive, given their severity. Details of the administrative sanctions for the banking sector are not published. The FIC explained that such position is taken after various factors are considered. Primarily, has been the FIC's view that publishing sanctions of the banking sector could have a negative impact on the integrity and stability of the financial system (and thus the economy) as banks are central to the effective functioning of such.<sup>227</sup> The NRA concluded that this is contrary to the FATF expectation that sanctions be dissuasive to not only the sanctioned institutions but others as well. This position is applied across all other sectors.

A challenge worth noting in the period under review is the pace at which enforcement measures were undertaken. The FIC takes a relatively longer period to finalise administrative sanctions after receipt of referrals. Some banks have to wait for several years to understand the nature and type of administrative enforcement they have been eventually subjected to, after notification of compliance assessment referrals for enforcement. The NRA learnt that the committee tasked with enforcement was formed in the later years, perhaps around 2015/16 and their meetings (to consider referrals) are not frequent enough to enhance effectiveness. This undermined the overall administration of effectiveness and dissuasiveness of sanctions in the said period.

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<sup>226</sup> Non-compliance referred for enforcement mainly relates to poor CDD and transaction monitoring and reporting systems.

<sup>227</sup> The FIA, as per section 56(14) avails the FIC Director powers to not publish information about sanctions issued when the need arises.

As reflected in sections 8.4.2 and 8.7, no institution has ever been referred for criminal prosecution for their AML/CFT/CPF failures, even when the State could prove and get convictions on ML.

Overall, the availability and enforcement of administrative sanctions was rated **Medium High** (a score of 0.6 or 60%).

#### *9.1.5 Integrity of bank staff*

Banks subject potential employees to vetting processes<sup>228</sup> before appointment. Usually, for executives, they need approval from the BoN before being appointed into influential positions. This is done to ensure that only staff members with high levels of integrity are appointed, while competency evaluations are also considered. This helps minimise the risk of integrity failures. In addition, the sector indicated that fraudulent activities involving staff are reported to the BoN, although some cases<sup>229</sup> might stand out in terms of significance, they do not overwhelmingly suggest a general poor level of integrity of staff across the sector.

Generally, the banks' internal compliance frameworks and policies are aligned to the confidentiality and expectations to safeguard persons acting in the interest of the FIA. Such considerations give assurance that there are appropriate mechanisms in place to protect bank staff against negative consequences resulting from reporting STRs, or other actions geared to enhance compliance with AML obligations. FIA compliance assessments relating to measures implemented to safeguard integrity levels of bank staff in the period reviewed suggest controls in this regard are reliable.

With all such considerations, the integrity levels of staff working in banks was rated **High** (a score of 0.7 or 70%).

#### *9.1.6 AML knowledge of bank's staff*

From a framework point of view, the FIA requires accountable and reporting institutions to ensure staff members are capacitated (in terms of training and other mechanisms) to execute

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<sup>228</sup> Mostly competency related evaluations plus criminal convictions, other integrity related evaluations, credit worthiness checks etc.

<sup>229</sup> *S v Manale* (CC 9/2018) [2019] NAHCMD 118 (25 April 2019) wherein an employee from one of the biggest banks was convicted of defrauding (on 147 counts) the bank of around NAD 5 million over a five-year period. An ML conviction was also added.

their AML duties effectively. All staff in areas of ML/TF/PF risk exposure are subjected to training. It was observed that all banks avail AML training when new staff members are employed and during the course of employment. In an effort to improve, banks should consider conducting gap analysis in specific knowledge areas and align training programs to address such gaps, as opposed to availing generic AML training. Overall, however, banking staff demonstrate the highest level of understanding core AML principles and their compliance obligations, across all sectors, if the FIC's supervisory engagements are anything to go by. If all control measures are functioning as expected, amongst the various indicators would be an ability to timely detect and ensure reporting of transactions to relevant authorities. This can only function if relevant staff, who must assess transactions (flagged transactions for STRs, SARs) have an acceptable level of understanding.<sup>230</sup> This observation is equally relevant to the considerations below on compliance systems as well as suspicious activity monitoring and reporting.

Considering all the above, this variable was rated **Very High** (a score of 0.8 or 80%).

#### *9.1.7 Effectiveness of compliance systems*

With the exception of one bank, the older and larger banks in terms of market share were previously foreign owned (in majority) and operated as branches or subsidiaries locally. Most banks implemented internal AML systems prior to the FIA coming into effect and the domestication of an AML system. For local banks that are subsidiaries of groups of financial institutions (often foreign), the group's expectations in terms of AML compliance were found to be quite high.<sup>231</sup> In the same vein, correspondent banks have always required that those they are dealing with not expose their operations unduly to ML risks. To sustain banking activities, local banks thus implemented control systems before the AML laws locally required same.

All banks have dedicated AML functions that are independent and their internal FIA compliance programs are aligned to their risk exposure. FIA compliance assessments suggest that despite there being room for improvement, these functions are reasonably

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<sup>230</sup> Observations in section 7.6 (in particular 7.6.1) shows banks detect and report the highest number of transactions.

<sup>231</sup> some international banks ease their obligations in consideration of the absence of risk for their foreign branches/subsidiaries to be sanctioned.

resourced and employ complex automated systems to complement human resources.<sup>232</sup> The designated AML compliance officers are at senior management level and this is helpful in driving AML efforts. The banks also have corrective measures geared to maintain high levels of integrity amongst staff members. Unlike most other sectors, AML frameworks within the banks are often subjected to independent internal audits which help avail management with assurance on the effective functioning of same. All these considerations reflect highly effective compliance systems. Observations from compliance assessment activities however reflects repeated non-compliance or poor controls in certain areas over the years. Across the sector, such include monitoring systems, customer due diligence and to a certain extent, AML risk assessment and management. Overall, there are reasonably effective operations within the compliance frameworks and thus a **High** rating (a score of 0.7 or 70%) was preferred.

#### *9.1.8 Effectiveness of suspicious activity monitoring and reporting*

Banks detect and report the highest volumes and financial values of possible ML transactions and activities. Other than the inherent vulnerability emanating from the fact that banks are the most used financial sector, their reporting behaviour suggests some controls related to suspicious activity monitoring and reporting are functional. Observations in section 7.6 reflect the banks' ability to detect and report transactions.

The lack of PEP lists nationally is seen as undermining the effective functioning of AML systems as not all persons who meet the definition of a PEP will be known by sectors under normal circumstances (See observations in section 8.1). FIA compliance assessment observations repeatedly show room for improvement around controls designed to detect and report suspicious activities. Most ML related sanctions which banks have been subjected to in the period include observed poor performance of such monitoring and reporting mechanisms.

Generally, banks' compliance frameworks are inherently exposed by poor AML controls from other sectors they provide financial services to. For example, when AML trust accounts at a

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<sup>232</sup> Usually, the organizational set ups are presented during application for banking license. If such is missing or not adequate, usually amongst the recommendations of the BoN and FIC are that there be compliance functions. In practice, it means for institutions as large as banks, they need to set up independent departments charged with compliance functions. The Banking Institutions Act provides that banks need to comply with all other laws before they can be accorded licenses. This provision is used by the BoN to ensure that relevant laws including the FIA are duly considered prior to issuing of licenses. The functioning of such structures is confirmed with FIA compliance assessments, which at times observe indications of resource inadequacies though this may not necessarily be the overall sectoral position.

law firm fail to detect ML suspicious behaviour, the banks have minimal chances of detecting suspicious behaviour as they naturally rely on the controls of the involved law firm. Same can be said with many other control weaknesses emanating from other sectors, especially DNFBPs. The presence of well-resourced compliance frameworks, while reasonably functional, have not helped to timely detect and combat significant economic crimes wherein proceeds from illicit activities appear to have been laundered. Two of Namibia's biggest financial crime cases, the famous *fishrot* case and the NAD 3.6 billion customs fraud case, both currently in court, may have resulted in laundering and tax evasion. The extensive abuse of various banking services in both cases is significant. Considering all such factors, the effectiveness of suspicious activity monitoring and reporting was therefore rated **Medium High** (a score of 0.6 or 60%).

#### 9.1.9 Product vulnerabilities

Tables 17 and 18 below lists the major products offered by banks which were subjected to ML vulnerability assessments. In the reporting period, STR reporting suggests deposits by legal persons and current accounts appear to have been most targeted by ML threats, followed by trade finance, international wire transfer services and retail deposits (Table 17). Vulnerability within trade finance is mostly escalated by the large financial values involved in such transactions. The non-face-to-face element of products such as deposits by legal persons, coupled with enhanced vulnerabilities of natural persons transacting through legal persons to advance ML appears to prominently escalate ML vulnerability. Many STRs filed by banks from retail deposits were mainly premised on large cash deposits which were not deemed in line with known client financial profiles. The mismatch with client financial profiles not only occurred in cash deposits but also in STRs associated with electronic transfers of funds when banks found such transfers (both in and outward remittances) to be out of the expected financial profile of clients.

STRs from current accounts and retail deposits by natural persons stems from the high volumes of transactions in such services which naturally increases the probability of occurrence of reportable transactions.<sup>233</sup> The high volume of STRs and financial values attributed to potential tax related offences as per sections 7.2, 7.3 and 7.6 also hail from these

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<sup>233</sup> This speaks to volumes and probabilities and does not necessarily mean existing ML vulnerabilities are lower in such products.

types of products. Trends in STRs suggest that small to medium sized business owners suspected of potential tax evasion would move business funds through their personal accounts or those of their associates and relatives, including family members.

Products such as private banking may not have attracted many STRs in the reporting period but most STRs emanating from such products usually have higher financial values attributed to them than STRs from other products. Private banking services are usually restricted to high value clients (those earning above NAD 800,000.00 annually), who inherently present a higher laundering risk than clients in lower income brackets. Many clients in the private banking space appear to have more than one source of income than clients making use of other products. These clients extensively make use of non-face-to-face provisions which further enhances ML vulnerabilities. ML vulnerability in trust and asset management services also appears to have been enhanced by the element of non-face-to-face use and high valued clients' preference to make use of trust and asset management services.

The use of cheques as payment instruments in the national payment system was discontinued in June 2019. To a large extent, this has reduced ML risks from such payment instruments.

Credit products for both small and large businesses appear to attract the least amount of STRs. The nature of such products does not create much room for laundering as clients are sourcing funds from banks and banks conduct credit worthiness checks before availing such credit facilities. Laundering with credit products could only occur if repayments are made with proceeds from illicit activities and such threats may not have been prominently detected in the period reviewed as per Table 17 (below).

STRs from international wire transfers appear slightly more than those from local wire transfers. An analysis of such STRs further suggests that many STRs from international wire transfers are associated to the significant trade corridors of Namibia (countries with whom Namibia has significant trading relations such as South Africa and China as per section 7.7).

The liquidity of financial products inherently attracts money launderers since it permits the rapid movement of money from one product to another, enabling the mixing of lawful and

illegitimate earnings and integrating them into the legitimate economy. Thus, if inferences between STR reporting and ML vulnerabilities can be drawn (as per Table 17 below), it can be assumed that liquid financial products are most susceptible to ML abuse, especially where such products permit the movement of higher financial values.

PRODUCT SPECIFIC INPUT VARIABLES		Private Banking	Retail Deposit	Deposit of legal persons	Micro Credit products	Credit product for Retail customer	Credit products for small and medium enterprises	Credit products for large businesses	Trade Finance	Current account	Wire transfers International	Wire transfers Local	Negotiable Instruments	Correspondent Banking	Electronic Banking
Total Value		High	Medium High	High	Medium High	Medium	Medium	Medium	High	High	Medium High	Medium High	Medium High	Medium	Medium High
Average Transaction Size		Medium	Medium	Medium High	Medium	Medium High	Medium High	Medium	Medium	Medium	Medium	Medium	Medium High	Medium	Medium High
Client Base Profile		Medium	Medium	Medium	Medium	Medium	Medium	Medium	Medium	Medium	Medium	Medium	Medium	Medium	High
Existence of Investment/Deposit Feature		Available & Prominent	Available	Available & Prominent	Available	Available	Available	Available	Available	Available	Available	Not available	Not available	Not available	Available & Prominent
Level of Cash Activity		Low	High	Medium High	Low	Medium	Medium High	Medium Low	Low	High	Does not exist	Does not exist	Low	Does not exist	Does not exist
Frequency of International Transactions		Medium High	Medium	Medium High	Does not exist	High	Low	Medium	High	Medium High	High	Does not exist	Low	Medium High	Low
Anonymous/Omnibus use of the product/service		Available	Available	Available	Not available	Not available	Not available	Not available	Not available	Available	Not available	Not available	Not available	Not available	Not available
Existence of ML typologies on the abuse of the product/service		Exists but Limited	Exists	Exists	Exists but Limited	Exists but Limited	Exists	Exists	Exists & Significant	Exists & Significant	Exists & Significant	Exists	Exists but Limited	Exists	Exists
Use of the product/service in fraud or tax evasion schemes		Exists	Exists	Exists	Exists but Limited	Exists but Limited	Exists but Limited	Exists but Limited	Exists	Exists	Exists	Exists	Exists but Limited	Does not exist	Exists & Significant
Difficulty in tracing the transaction records of the product/service		Easy to trace	Poorly identified depositors: Not easy	Poorly identified depositors: Not easy	Easy to trace	Easy to trace	Easy to trace	Easy to trace	Easy to trace	Easy to trace	Easy to trace	Easy to trace	Easy to trace	Easy to trace	Easy to trace
Non face to face use of the product/service		Available & Prominent	Available	Available	Not available	Not available	Not available	Not available	Available but limited	Available & Prominent	Available but limited	Available but limited	Not available	Not available	Not available
Others such as Delivery of the product/service through agents		Does not exist	Available	Available	Low	Does not exist	Does not exist	Does not exist	Does not exist	Does not exist	Does not exist	Does not exist	Does not exist	Does not exist	Does not exist
OVERALL FINAL PRODUCT RISK		Medium Low (0.49)	Medium (0.50)	Medium High (0.57)	Low (0.35)	Medium Low (0.45)	Medium Low (0.40)	Low (0.39)	Medium (0.53)	Medium High (0.56)	Medium (0.52)	Medium Low (0.46)	Low (0.37)	Medium Low (0.46)	Medium (0.54)
	No vulnerability	Minimum vulnerability (Low risk)	Considerably vulnerable (Medium)	Escalated vulnerability (Medium High)	Highly vulnerable (High risk)										

Table 16: Product specific ML vulnerability assessment outcomes

	ORIGIN OF ML STRs FROM PRODUCTS AND SERVICES: BANKING SECTOR													
	Private Banking	Retail deposits (deposits by natural persons)	Deposits of legal persons	Micro-credit products (small credits/loans availed by banks to persons)	Credit products for retail customers or natural persons	Credit products for small & medium sized businesses	Credit products for large businesses	Trade finance	Current accounts	Wire transfers: Locally & within the CMA	Wire transfers: Internationally (Outside the CMA)	Electronic banking	Negotiable instruments (Cheque etc, promissory notes)	Trust & Asset Management Services
2019	5	65	72	4	2	1	0	15	102	24	14	36	4	3
2018	12	137	144	10	11	3	0	39	186	31	21	77	20	3
2017	11	111	96	5	6	0	0	21	125	18	4	37	54	5
2016	3	33	348	3	4	0	3	26	92	2	35	20	45	12
2015	0	51	200	3	8	1	3	24	60	2	11	20	46	9

Table 17: Indication of STR prevalence in products of the banking sector<sup>234</sup>

<sup>234</sup> Notes: Private Banking: Mostly for exclusive clients, those with annual earnings above a certain threshold such as over NAD 800k annually; Trade finance: In this context, trade finance could include Letters of Credit (LCs), export finance and credit agencies, receivables and invoice finance, as well as bank guarantees. It is also known as supply chain and export finance; Negotiable instruments are documents which promise payment to the assignee (the person whom it is assigned to/given to) or a specified person; and includes operations related to custodial services and share certificates (nominee shareholding) etc.

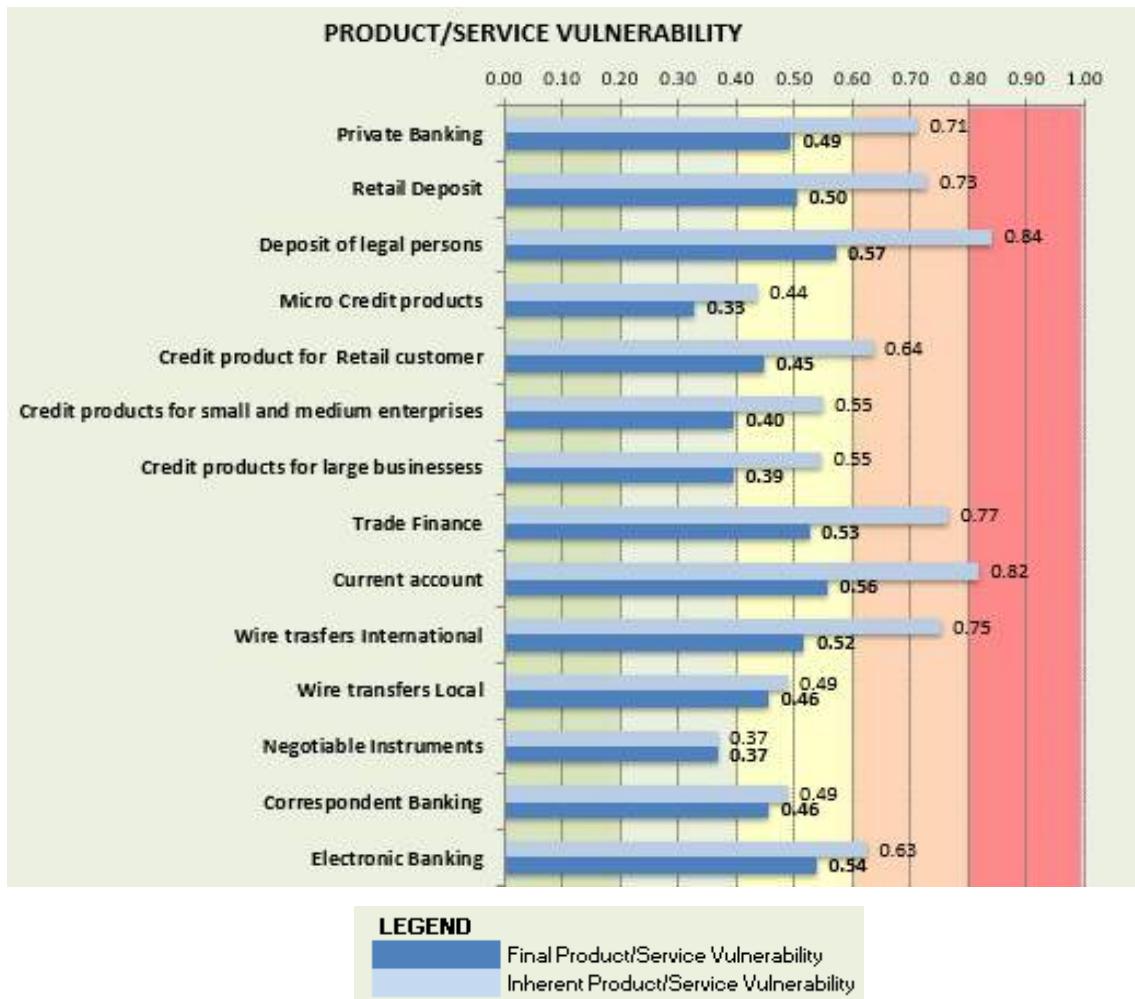


Figure 26C: Inherent and final product ML vulnerability levels: Banking sector

Figure 26C above presents a summary of the inherent ML vulnerability and the final vulnerability ratings for each product assessed. Within this context, inherent vulnerability refers to the natural vulnerability or exposure level of a product before consideration of relevant controls implemented to reduce ML risks. The Final vulnerability level on the other hand refers to the vulnerability level or exposure that remains after consideration of controls implemented.

Product vulnerability levels, as per Figure 26C above suggests that overall, controls implemented by banks appear to have reduced inherent ML risk levels. Such reduction is relative as the products which are inherently highly exposed to ML still have a higher vulnerability level than those with lower inherent ML vulnerability.

## **10. Non-Banking Financial Institutions (NBFI)**

NAMFISA's regulatory functions mainly include supervising the prudential operations of NBFIIs under its framework and to enhance compliance with the AML/CFT/CPF obligations in respect of all such NBFIIs as per the FIA. Such NBFIIs include insurance service providers, securities and microlending sectors. Other NBFIIs such as MVTs, Lending Institutions and ADLAs are supervised by the FIC for AML/CFT/CPF purposes<sup>235</sup>. They are thus excluded from NAMFISA supervision.

NAMFISA's 2020 Annual Report suggests that the NBFI sector under its supervision remained financially stable and continued to grow its asset base despite challenging economic conditions in the reporting period. Such assets grew by 9.0% during that reporting period to end at NAD 316.3 billion by 31 December 2019 (See Table 18 below)<sup>236</sup>. Primarily, such increase stems from the pension fund industry assets, where investment income appears to have driven such gains owing to improvements in equity market performance. Pension funds have always been considered to have very low ML vulnerability owing to the governance frameworks around such products and which primarily comprise of employer and employee contributions.

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<sup>235</sup> and by the BoN for prudential purposes.

<sup>236</sup> Namibia Statistics Agency (NSA), Annual National Accounts, 2019. file:///F:/NRA%20Received%20Docs/Module%201%20Crime%20threats/ACC/Annual\_National\_Accounts\_2019.pdf and the World Bank estimations which placed Namibia's GDP at NAD 181 billion or USD 12.37 billion in 2019 (<https://tradingeconomics.com/namibia/gdp>).

Total assets per industry sector	2013	2014	2015	2016	2017	2018	2019
Long-term insurance	36,424	40,224	44,746	47,554	53,934	56,640	60,244
Short-term insurance	3,461	4,749	5,587	5,769	6,233	6,540	6,830
Medical aid funds	1,002	1,162	1,360	1,445	1,772	1,933	2,028
Pension funds	105,267	119,569	133,089	137,462	152,885	158,528	173,427
Collective investment schemes*	33,389	33,469	38,935	39,609	47,483	52,252	60,291
Investment managers**	3,873	5,221	5,725	7,620	8,225 <sup>§</sup>	7,795	7,669
Friendly societies	n/a***	0.88	1.04	1.21	1.36	1.57	1.73
Microlenders	2,616	3,382	4,257	4,222	5,460	6,610	5,754
<b>TOTAL</b>	<b>186,032</b>	<b>207,777</b>	<b>233,700</b>	<b>243,682</b>	<b>275,994<sup>§</sup></b>	<b>290,300</b>	<b>316,254</b>

Table 18: Total assets per sector under NAMFISA supervision, 2013–2019 (NAD million)<sup>237</sup>

By December 2019, NAMFISA's licensed and supervised entities were 694 across 14 sectors, as listed in Table 18.1 below.

<sup>237</sup> NAMFISA Annual Report, 2020. Source:

[https://www.namfisa.com.na/wpcontent/uploads/2020/09/10269\\_Namfisa\\_Annual\\_Report\\_2020\\_WEB-010920201.pdf](https://www.namfisa.com.na/wpcontent/uploads/2020/09/10269_Namfisa_Annual_Report_2020_WEB-010920201.pdf). Note that the total assets value/loan book balance for Microlenders was later revised from NAD 5.8 billion to NAD 7.4 billion after receipt of all relevant information from the sector. See revised figures for Microlenders in Table 22, section 10.4 (Source: NAMFISA).

\* To avoid double counting, the collective investment scheme assets under management were adjusted by the sum of funds sourced from the following sectors: Pension funds, Long-term insurance, Short-term insurance and Medical aid funds.

\*\* Similar adjustments were affected on funds sourced from the following sectors: Pension funds, Long-term insurance, Short-term insurance, Medical aid funds and Unit trusts.

\*\*\* Financial data only available since 2014.

§ This figure has been restated from that in the 2019 Annual Report due to a reclassification of the data post publication of the Annual report 2019.

<b>Regulated financial institution or intermediary, by subsector</b>	<b>Number of entities per subsector, 31 December 2018</b>	<b>Number of entities per subsector, 31 December 2019</b>
Active pension funds	134 <sup>§</sup>	132
Active medical aid funds	10	9
Active friendly societies	1	1
Long-term insurance companies (Intermediaries)	16 (5,846)	16 (7,007)
Short-term insurance companies (Intermediaries)	15 (1,542)	15 (1,813)
Special purpose vehicles	17	19
Unit trust management companies	17	16
Investment managers	27	29
Unlisted investment managers	21	24
Microlenders	365	423
Reinsurers for long- and short-term insurance	1	1
Stock exchanges	1	1
Linked investment services providers	4	4
Stockbrokers, including sponsors	4	4
<b>TOTAL (INTERMEDIARIES)</b>	<b>633<sup>§</sup> (7,388)</b>	<b>694 (8,820)</b>

Table 18.1: Number of entities supervised by NAMFISA as at 31 December 2019<sup>238</sup>

## 10.1 Short term insurance

At the time of reporting, the total value of assets of the NBFIs regulated by NAMFISA amounts to **NAD 316.3 billion**, with short-term insurers accounting for **NAD 6.8 billion**<sup>239</sup> or 2% of such aggregate.

The term insurance generally describes any measure taken for protection against risk(s). In an insurance contract (“Contract”), one party, (the insured) pays a specified amount of

<sup>238</sup> Source: [https://www.namfisa.com.na/wp-content/uploads/2020/09/10269\\_Namfisa\\_Annual\\_Report\\_2020\\_WEB-010920201.pdf](https://www.namfisa.com.na/wp-content/uploads/2020/09/10269_Namfisa_Annual_Report_2020_WEB-010920201.pdf).

<sup>239</sup> NAMFISA Annual Report 2020 on page 118.

money, called a premium to another party (the insurer). The insurer, in turn agrees to payout the insured for specific future losses arising upon specific claimable events materializing. The losses covered are listed in the Contract, and the Contract is called an insurance policy. The recipient of any proceeds from the policy is called the beneficiary. The beneficiary can be the insured person or other person(s) designated by the insured. The insurance premium can be paid by the contracting party/policyholder or any third person.

Short-term Insurers are registered in terms of the Short-Term Insurance Act.<sup>240</sup> There are currently sixteen short-term insurers and one re-insurer registered in Namibia. As mentioned above, NAMFISA supervises this sector prudentially and for AML/CFT/CPF purposes. Supervisory observations in section 8.4.2 above are worth noting.

Short-term insurance is generally aimed at protecting the insured against losses, which may result from unforeseen events such as accidents, crime, floods, fires or illness.<sup>241</sup> Short-term insurance policies can be individual or group polices. Beneficiaries of insurance policies may be the policyholder or another nominated natural or legal person. Short-term insurers only insure the policyholder for the loss or damage in the event of certain risk(s) materializing. Thus, they do not allow beneficiaries. Short-term insurers may only issue, 'Domestic Policies' which means polices issued in Namibia and which are payable in Namibia, in the Namibian currency.<sup>242</sup>

Short-term insurance policies are often sold through insurance intermediaries being either insurance agents or insurance brokers as defined in the Short-Term Insurance Act. Insurance agents normally only represent one insurer and solicit business for that insurer, or performs any act relating to the issuing of policies or the collection of premiums in respect of such insurance business. This does not include an employee of an insurer unless such employee is paid purely on a commission basis. Brokers on the other hand represent a client and negotiate insurance business with one or more insurers on behalf of the client. Insurance intermediaries are generally remunerated by means of commission in monetary form, based on a percentage of the premium paid by the policy holder. Insurers may also have salaried

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<sup>240</sup> Act No. 4 of 1998 as amended.

<sup>241</sup> See NAMFISA Sectoral Risk Assessment Report.

<sup>242</sup> See NAMFISA Sectoral Risk Assessment Report.

employees acting as agents to solicit insurance business. Some short-term insurance products may also be sold online with no face-to-face interaction with the customer.<sup>243</sup>

Overall, the short-term insurance sector's ML vulnerability was considered **Very Low** (a score of 0.24 of 24%). The sub-sections below explain main considerations which inform such rating.

#### *10.1.1 Classes of Short term insurance services<sup>244</sup>*

In Namibia, the classes of short-term insurance business include: fire insurance, marine insurance, aviation insurance, vehicle insurance, co-insurance, guarantee insurance, personal insurance, as well as miscellaneous insurance policies that cover personal accidents, sickness, legal, credit, goods in transit, damage to property, railway rolling stock and expropriation and confiscation of property. Table 18.2 below shows that personal insurance accounts for about 38% of the sectors premiums.

<b>Insurance Class/Product</b>	<b>Gross written premiums</b>	<b>% share</b>
	<b>Amount in NAD '000</b>	
Aviation	2,638	0.29%
Marine	12,246	1.33%
Vehicles	188,251	20.37%
Personal	352,346	38.13%
Fire	162,632	17.60%
Guarantee	13,522	1.46%
Miscellaneous	192,431	20.82%
<b>Total Premiums Value</b>	<b>924,066</b>	

Table 18.2: Insurance classes and gross premiums

<sup>243</sup> See NAMFISA Sectoral Risk Assessment Report.

<sup>244</sup> See NAMFISA Sectoral Risk Assessment Report.

Short term insurance products are primarily designed to protect policyholders or related third parties against the risk of loss or damage of an uncertain event. Some insurers also offer Alternative Risk Transfer (ART) policies, i.e self-insurance in respect of any of the above classes of short-term insurance.<sup>245</sup>

#### *10.1.2 ML risks in the short-term insurance sector*

It is generally considered that short-term insurance products are not sufficiently flexible to be the first vehicle of choice for ML. However, due to the variety of services and investment vehicles offered by insurers, they may be used to conceal the source of money.<sup>246</sup>

The sector's vulnerability generally depends on factors such as the complexity and terms of the insurance contract, the nature of clients, products and services, distribution channels, methods of payment and the applicable contract law.<sup>247</sup>

The short-terms insurance sector's vulnerabilities also include the possibility of other financial related crimes perpetrated against the sector. Fraud through false claims present a significant threat to the industry. Criminals or money launderers may purchase insurance products with illicit funds, and through arson or other means submit illicit claims to recover part of their investment.<sup>248</sup>

In mitigation of the above, short term insurance service providers make use of loss adjusters to determine the reasonableness of the nature and extent of a significant claim, before payment thereof.

#### *10.1.3 Availability and effectiveness of market entry controls*

As mentioned above, the short-term insurance industry is regulated and supervised by NAMFISA. There are comprehensive market entry provisions and procedures for licensing at market entry. Such provisions are aligned to AML/CFT/CPF controls. An institution or

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<sup>245</sup> See NAMFISA Sectoral Risk Assessment Report.

<sup>246</sup> See NAMFISA Sectoral Risk Assessment Report.

<sup>247</sup> See NAMFISA Sectoral Risk Assessment Report.

<sup>248</sup> See NAMFISA Sectoral Risk Assessment Report.

applicant that does not meet all the licensing and registration (i.e fit and proper<sup>249</sup>) requirements is denied a license. However, the process is tedious because NAMFISA does not rely on fit and proper assessment (FAP) outcomes of other supervisory bodies such as BoN or international regulators such as the Financial Services Conduct Authority (“FSCA”) in South Africa. To address this, it is recommended that NAMFISA engages other regulatory bodies (e.g BoN) to find modalities as to how such reliance can happen. This requires understanding of the depth of fit and proper assessments conducted by other regulators and establishing whether such assessments satisfy NAMFISA’s market entry requirements. At present, the supervisory body’s fit and proper assessments<sup>250</sup>, covers the following aspects: beneficial owner identification, honesty and integrity (criminal record), competency, operational ability and financial soundness.

As part of the market entry due diligence, NAMFISA also assesses to determine the source or legitimacy of start-up capital. This is also undertaken whenever additional capital is injected to gain assurance that licensed entities are not introducing funds from illicit activities. Applicants not meeting licensing standards are not licensed. Persons not meeting fit and proper requirements are disqualified from having shares or assuming directorship roles. Table 18.3 below shows statistics on licensing and registration applications received and processed by NAMFISA, in the sector.

2017			2018			2019		
License/ Registration Applications	Approved	Rejected	License/ Registration Applications	Approved	Rejected	License/ Registration Applications	Approved	Rejected
2	2	0	0	0	0	1	0	1

Table 18.3: Statistics on licensing and registration applications – short term insurance<sup>251</sup>

In light of the above, the rating assigned to the variable on availability and effectiveness of market entry controls is rated **Very High** (a score of 0.8 or 80%).

<sup>249</sup> As with bank licensing, shareholders, director and senior executives or persons assigned key role by applicants are subjected to fit and proper due diligence. This applies to all sectors under NAMFISA supervision.

<sup>250</sup> As established in FAP Policy and Standard Operating Procedures determined in terms of FIA provisions.

<sup>251</sup> Reasons for declines and rejections can be summarized as follows: failure to submit outstanding and required information on or before the period granted; failure to comply with fitness and propriety requirements and Non-compliance with registration requirements in terms of relevant licensing legislation i.e Stock Exchanges Control Act, Microlending Act etc.

#### *10.1.4 Integrity of staff in short term insurance companies*

When recruiting staff, short-term insurance service providers require the potential employees to present a certificate of conduct<sup>252</sup> from the Namibian Police. As employers, they also conduct reference checks to satisfy themselves that the potential employees would align to integrity expectations within the insurance firm. Such checks are based on establishing if employee has any integrity breaches with previous employers, regulators etc., as well as competency evaluations.

There is a general perception that the staff in the short-term insurance industry are of high integrity, as per information by insurance service providers<sup>253</sup> and compliance assessment outcomes have not yielded anything that would contradict such position. However, a few integrity breaches were noted involving short-term insurance brokers working for more than one short-term insurer simultaneously. This has been confirmed by the Consumer Complaints Department of NAMFISA, implying that there may be a low level of integrity amongst short-term insurance agents. In light of the aforementioned, the integrity of staff in the sector is rated **High** (a score of 0.7 or 70%).

#### *10.1.5 AML knowledge of staff in insurance companies*

The majority of short-term insurers train their staff on AML/CFT/CPF obligations and internal rules, policies and procedures to ensure effective implementation of preventative measures. Therefore, the knowledge of insurance staff is relatively sound in respect of general AML knowledge and requirements. However, there is still room for improvement particularly in respect to tailored or role-based AML training. Although the ML product vulnerability is very low, CDD controls remain an area wherein room for improvement is needed. The AML knowledge of staff is thus rated **High** (a score of 0.7 or 70%).

#### *10.1.6 Effectiveness of compliance function*

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<sup>252</sup> Record which shows if a person has criminal convictions against him or her.

<sup>253</sup> Sourced during the NRA surveys

Observations from FIA compliance assessment activities over the years demonstrate that short-term insurers have AML/CFT/CPF Compliance Programs in place and have further designated Compliance Officers (at Senior Management level) to oversee implementation of AML/CFT/CPF Compliance frameworks internally. However, there is a need for improvement in the context of effective implementation of AML/CFT/CPF Compliance Programs. Through supervisory and monitoring interventions, NAMFISA identified gaps in what is outlined in the AML/CFT/CPF Compliance Programs and what is happening in practice. Though the need may exist in practice, the FIA does not extent the requirement to conduct a risk assessment to short term insurance service providers.<sup>254</sup> Additionally, implementation of AML/CFT/CPF programs in the short-term space is undermined by high staff turnover. The rate at which staff members in AML frameworks leave employment undermines consistent capacity building as institutions need to periodically recruit and build capacity of new staff members. This makes it challenging for short-term insurance service providers to effectively implement a risk-based approach. In light of all these considerations, this variable was rated **High** (a score of 0.7 or 70%).

#### *10.1.7 Effectiveness of suspicious activity monitoring and reporting*

ML vulnerability in the sector is generally low and under normal circumstances, this leads to low reportable transactions and activities. Table 18.4 below presents the sector's reporting behaviour in the reporting period.

Year	STRs	SARs
2019	2	2
2018	0	0
2017	1	0
2016	1	1
2015	1	2
<b>Total</b>	<b>5</b>	<b>5</b>

Table 18.4: STR reporting behaviour of short-term insurance service providers

The inherent nature of an insurance product is that of a contract to the benefit of a policyholder and related third parties against an uncertain future event. In order to ensure the necessary financial protection, a premium is calculated based on the client's risk profile. After

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<sup>254</sup> Short term insurance service providers are classified in the FIA as Reporting Institutions (RIs) while this requirement only applies to Accountable Institutions.

the client/policyholder agrees to the premium amount, either to be paid monthly or in the form of a lump-sum annually, these amounts are normally predictable and consistent. Consequently, making it easier for an insurer to detect any possible deviation on premium payments. It is thus generally accepted that conventional short-term insurance products are relatively low risk for ML.

There are usually no complex or unusual large transactions in respect of premium payments that may present the risk of ML.

It is the view of some members of the regulated populace that effectiveness of detecting suspicious activities and transactions, is dependent on the interpretation and understanding of the reporting obligation and what is seen as suspicious.

From FIA compliance assessment observations, the majority of short-term insurers have transaction monitoring controls in place that appear commensurate to the relatively lower ML product vulnerability levels. It is noted that inadequate CDD at times hinder the effective functioning of the monitoring systems. An aggregation of the sector's various FIA compliance assessment outcomes over the years suggests some room for improvement. The effectiveness of suspicious activity monitoring and reporting is rated **High** (a score of 0.7 or 70%).

#### *10.1.8 Level of market pressure to meet AML standards*

Many of the local short-term insurance firms are part of a bigger group of companies. Many such group of companies ensure that their affiliates and subsidiaries do not expose them to ML related risks. They thus exert pressure on subsidiaries to ensure effective ML/TF/PF risk mitigation. In practice, the group of companies define and set the group's ML risk tolerance levels. Subsidiaries of such group are then expected to align their risk tolerance accordingly. Also, foreign regulatory bodies under normal circumstances and as per FATF Recommendations exert pressure on group of companies to ensure their subsidiaries outside the home country do not expose the group to non-compliance risks.<sup>255</sup>

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<sup>255</sup> Similar to an element of group cross border relationship, which may exert pressure on short-term insurers in the group setup to ensure compliance with AML/CFT/CPF obligations. International funders, donors and other stakeholders put pressure on the holding company to

Given the potential consequences of that negative reputation can have on business, short-term insurers are sensitive to reputational risks associated with failure to adhere to AML/CFT/CPF obligations. This further encourages positive compliance behaviour. The level of market pressure to meet AML standards is rated **Very High** (a score of 0.8 or 80%).

#### *10.1.9 Vulnerability of short-term insurance products*

The short-term insurance products were grouped in terms of their nature of services and assessed under each variable. Various considerations resulted in the inherent and final vulnerability levels reflected in Figure 27 below:

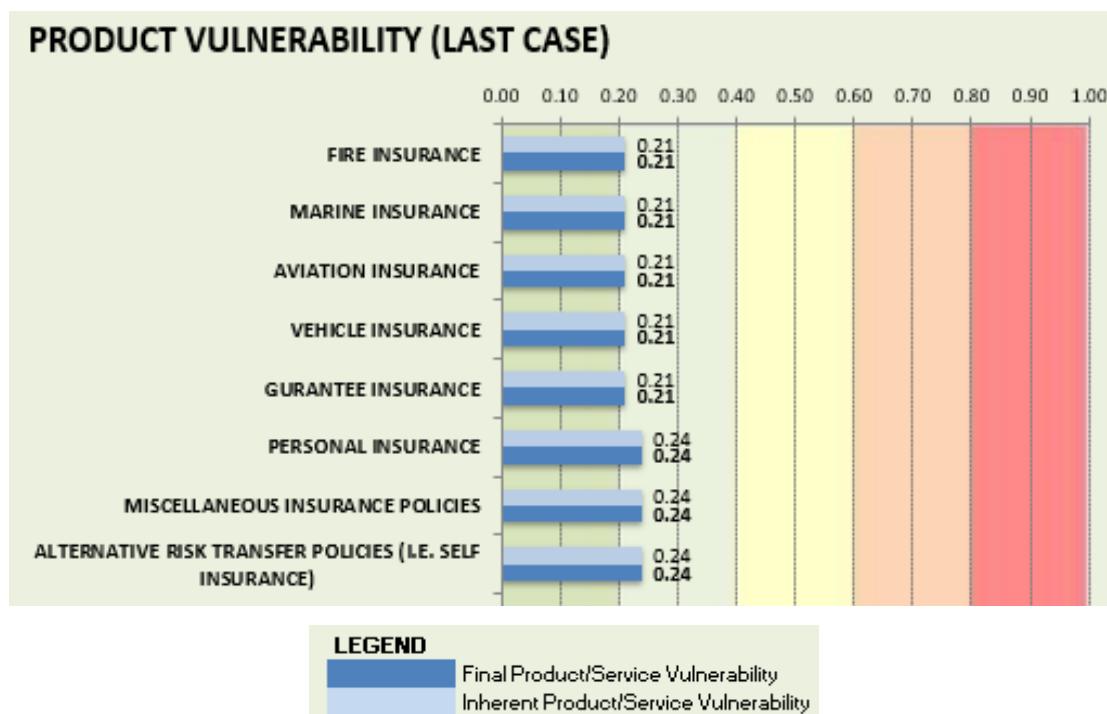


Figure 27: Inherent and final product ML vulnerability levels: Short-term insurance sector

The below considerations apply to all products listed in Figure 27 above.

a) *The use of brokers*

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make sure that there is a group AML compliance program that's applicable to all the subsidiaries. In light of the aforesaid, the market pressure is immense.

The majority of short-term insurers make use of insurance brokers. Insurance brokers in terms of FIA are not recognized as accountable or reporting institutions except when they are rendering investment advice. The use of insurance brokers could therefore exacerbate the ML vulnerability, as such brokers do not have AML/CFT/CPF obligations when they are not rendering investment advice. The use of insurance agents on the other hand poses less risk of ML because insurance agents are tied to the short-term insurers and adhere to the short-term insurers' internal rules, policies and procedures on mitigating the risk of ML. This variable is rated **Medium High** for the use of brokers.

b) *Client based profile (Medium)*

The majority of clients are either Namibians or South Africans who indemnify a risk located within Namibia. If a foreign national intends to take up a short-term insurance product, it is a requirement that such insured asset be based in Namibia and if premiums are to be paid by debit order, such person should have a bank account in Namibia. In addition to being present in Namibia, such a person should also have a bank account in Namibia. Foreign clients including PEPs are not prohibited from taking up insurance products in Namibia, provided the above-mentioned requirements are complied with. It is generally accepted by short-term insurers that being present in the country and having a local bank account from where funds will be directed to pay premiums mitigates inherently higher ML vulnerability associated with rendering financial services to non-Namibian clients. This is premised on the fact that banks have AML measures in place to mitigate ML. This variable was rated **Medium**.

c) *Availability of investment type policy*

It was noted that Alternative Risk Transfer (ART) policies and Cell Captive are investment type policies, which allow placement or investment of funds in the financial system. The investment feature of these products is a prominent feature of these products which renders these products vulnerable for ML. These products are very attractive to high net-worth clients. Although the products are available in the market, only a few short-term insurers offer these products. Other products under this category are Miscellaneous and Personal. This variable was considered **Available But Limited**.

*d) Level of cash activity*

The method of payment of short-term insurance premiums is either debit orders or EFTs. However, there are isolated instances when clients pay cash into short-term insurers' bank accounts<sup>256</sup>. This is however a rare event, and it only happens when a debit order was not honoured. It also happens when short-term insurance brokers collect premiums on behalf of insurers quarterly, bi-annually or annually. This variable was rated **Low**.

*e) Availability of cross border use of the product*

It is a general practice that an insured person should have a local bank account where premiums can be paid from and funds in terms of claims can be paid to. However, there are instances where cross border transactions are conducted. These include –

- When a Namibian citizen relocates to South Africa or any neighbouring country; and
- In the event of marine and aviation insurance, premiums can be paid from a foreign account and funds in respect of a claim can be paid to a foreign bank account.

This variable was rated **Low** because most of the cross border transactions are only in respect of two classes or products.<sup>257</sup>

*f. Anonymous use of the product and non-face-to-face options*

This feature does not exist because short-term insurers do not enter into business relationships with anonymous clients. All policyholders are identified and this greatly reduces ML risks. Anonymous use of the product **Does not exist** but the product does, in certain circumstances enable non-face-to-face client onboarding using electronic platforms. Non-face-to-face use of the product is relatively **Available**.

*g. The Existence of ML Typologies on the abuse of the product*

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<sup>256</sup> It is not prohibited and when clients are in a position to make payments in cash, they may do so.

<sup>257</sup> Such two classes of products do not amount to a consideration which will materially amend the overall rating.

Although the sector is not aware of any typologies, considering the nature of the products, there is a possibility that there are abuses taking place but not reported. This variable was rated **Exist but very limited**.

*h. Use of product in insurance fraud and tax related offenses*

Persons attempt to commit tax evasion and insurance fraud but actual materialization thereof is minimal. However, the aspect of whether it is significant or not is challenging to determine as there are no statistics on tax related offences in the short-term insurance space. This variable, though it is rated **Exist**, has minimal occurrence and thus impact.

*i. Difficulty in Tracing Transactions*

Transactions within the sector are **Easy to Trace** because all transactions are conducted through established banking systems with adequate paper trail. This reduces ML vulnerability.

## 10.2 Long-term insurance

The total value of assets managed by Long-term insurers amount to **NAD 60.1 billion**, which is 19% of the total assets under institutions supervised by NAMFISA. This amounts to about 33% of GDP<sup>258</sup>.

Like short-term insurers, Long-term insurers are registered in terms of the long-term Insurance Act, 1998.<sup>259</sup> There are sixteen long-term insurers registered and supervised by NAMFISA for prudential and AML/CFT/CPF purposes. AML/CFT/CPF supervisory observations in section 8.4.2 above are worth noting.

The classes of Long-term insurance<sup>260</sup> business in respect of which an insurer may be registered to carry on business in Namibia are disability insurance, fund insurance, funeral

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<sup>258</sup> in the period December 2019 which stood at NAD 181 billion.

<sup>259</sup> (Act No. 5 of 1998), as amended.

<sup>260</sup> Section 13 of the Long-term Insurance Act 5 of 1998.

insurance, health insurance, life insurance, and sinking fund insurance business.<sup>261</sup> Table 18.5 below shows the gross premiums for each class of Long-term insurance.

Insurance Class/Product	Gross written premiums	
	Amount in N\$ '000	% share
Risk	1,702,784	62.96%
Fund Risk	390,762	14.45%
Credit Life	225,740	8.35%
Funeral	66,558	2.46%
Life Annuities	7,999	0.30%
Individual Investments	203,431	7.52%
Fund Investments	107,315	3.97%
Income Drawdown	-	
<b>Total Premiums</b>	<b>2,704,589</b>	

Table 18.5: Long term insurance classes and gross premiums

Overall, the long-term insurance sector's ML vulnerability is considered **Medium Low** (a score of 0.36 of 36%). The subsections below explain primary considerations which resulted in this rating.

#### 10.2.1 Intermediaries

Long-term insurance policies are often sold through insurance agents and brokers<sup>262</sup> who, on behalf of one or more of the Long-term insurance companies (insurers) solicits insurance business or perform any act relating to the issuing of policies or the collection of premiums in respect of such insurance businesses. This does not include an employee of an insurer, unless such employee is paid purely on a commission basis.

An insurance agent who primarily acts on behalf of a single insurer is referred to as a "tied" agent and falls directly under the supervision of the Insurer. Insurance brokers primarily act on behalf of the customer and are deemed "independent" of the Insurer.

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<sup>261</sup> This means a contract, other than a **life policy**, in terms of which a person, in return for a premium, undertakes to provide one or more sums of money on a fixed or determinable future date as a policy benefit, and includes a reinsurance policy in respect of such a contract.

<sup>262</sup> As defined in the Long-term Insurance Act, 1998.

### *10.2.2 Availability and effectiveness of market entry controls*

The observations around market entry controls cited above for short-term insurance service providers are relevant for Long-term insurance service providers as well. Table 18.6 below shows industry statistics on licensing and registration applications received and processed by NAMFISA.

2017			2018			2019		
License/ Registration Applications	Approved	Rejected	License/ Registration Applications	Approved	Rejected	License/ Registration Applications	Approved	Rejected
0	0	0	2	2	0	1	1	0

Table 18.6: Statistics on licensing and registration applications – Long term insurance<sup>263</sup>

Overall, there are adequate and effective comprehensive market entry provisions and procedures for licensing administered by the relevant prudential functions within NAMFISA, as per supervisory risk assessment activities, FIA compliance assessment observations and NRA considerations. An institution or applicant that does not meet all the licensing and registration (i.e fit and proper) requirements is not granted access to the market. Considering all of the above, the availability and effectiveness of market entry controls were rated **Very High** (a score of 0.8 or 80%).

### *10.2.3 Integrity of staff in insurance companies*

The observations around integrity level of staff cited above for short term insurance service providers are relevant for Long-term insurance service providers as well.

As part of their recruitment process, most Long-term insurers require code of conduct certificates issued by the Namibian Police from potential employees prior to recruitment. Reference checks around competency are also conducted. These are some of the procedures that enhance the recruitment of staff with high levels of integrity. There is a

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<sup>263</sup> Reasons for declines and rejections can be summarized as follows: failure to submit outstanding and required information on or before the period granted; failure to comply with fitness and propriety requirements and Non-compliance with registration requirements in terms of relevant licensing legislation i.e. Stock Exchanges Control Act, Microlending Act etc.

general perception, informed by FIA compliance assessment observations and the views of the sector<sup>264</sup> that staff members in the Long-term insurance industry maintain a high level of integrity despite a few instances of integrity breaches noted. Overall, the integrity levels of staff members were regarded **High** (a score of 0.7 or 70%).

#### *10.2.4 AML knowledge of staff in insurance companies*

Most, if not all Long-term insurers do provide AML training to staff on a regular basis. Therefore, the knowledge of staff is relatively sound in respect to general AML obligations. This is based on observations from FIA compliance assessment activities over the years, amongst others. However, there is some room for improvement particularly in respect of tailored or role-based employee AML training. Given this, the variable is rated **High** (a score of 0.7 or 70%).

#### *10.2.5 Effectiveness of compliance function*

Supervisory observations over the years suggest that substantial improvement has been observed amongst various Long-term insurers in establishing a sound compliance function. Many of the insurers have comprehensive AML/CFT compliance programs in place and have designated compliance officers at management level. Entities have implemented controls to ensure CDD, record keeping, transaction monitoring and reporting as well as the auditing of such controls. While policy frameworks seem adequate, NAMFISA's observations suggests that practical implementation of such policies is an area that can be improved on. Controls relating to CDD and transaction monitoring are some areas that may need improvement. Overall, the effectiveness of compliance function was thus rated **High** (a score of 0.7 or 70%).

#### *10.2.6 Effectiveness of suspicious activity monitoring and reporting*

There are usually no complex or unusual transactions in respect of premium payments. ML risks are not as high in many of the products offered. This may explain the low reporting behavior by the Long-term insurance sector as per Table 18.7 below.

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<sup>264</sup> As per NRA survey questionnaires and Working Group discussions.

<b>Year</b>	<b>STRs</b>	<b>SARs</b>
2019	2	1
2018	2	0
2017	10	0
2016	2	0
2015	0	0
<b>Total</b>	<b>16</b>	<b>1</b>

Table 19: Reporting behavior of Long-term insurance service providers

Most Long-term insurers seem to have adequate monitoring controls, with some being manual and others being automated mechanisms.<sup>265</sup> However, the effective functioning of such systems is hampered by poor CDD measures. An aggregation of the sector's various FIA compliance assessment outcomes suggests some room for improvement in the timely detection and reporting of reportable transactions (especially transactions found during compliance assessment activities to be out of the financial profile of clients). The variable was thus rated **High** (a score of 0.7 or 70%).

#### *10.2.7 Level of market pressure to meet AML standards*

The larger Long-term insurance firms have cross-border relationships since they are subsidiaries of multinational firms. As a result, they are required to comply with Group level AML policies and relevant international AML standards.

Further, the need to mitigate against reputational risks emanating from compliance failures is significant in the sector. National and international stakeholders partly exert such pressure through various means. The level of market pressure to meet AML standards is thus rated **Very High** (a score of 0.8 or 80%).

#### *10.2.8 Product ML vulnerability considerations*

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<sup>265</sup> Observations from FIA compliance assessment activities of NAMFISA

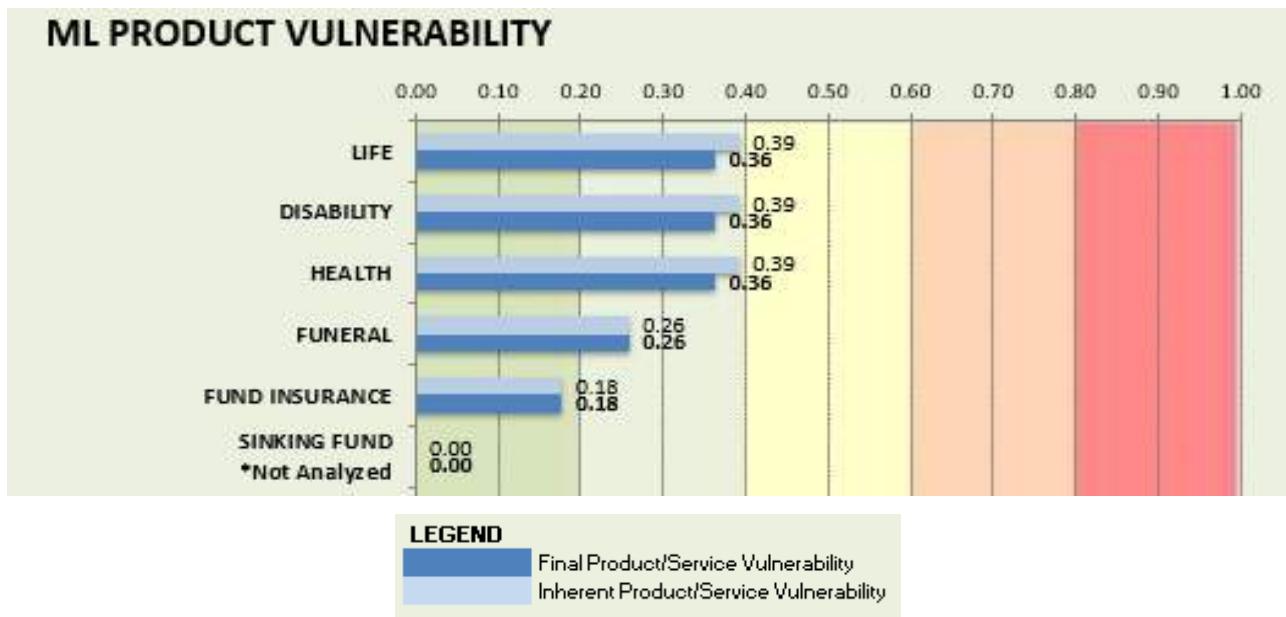


Figure 28: Inherent and final product ML vulnerability levels: Long-term insurance sector

The considerations raised below apply to all products listed and rated in Figure 28 above.

a) *Client base profile of long-term insurance products*

The profile or type of clients making use of a product has an impact on such product's ML vulnerability. Long-term Insurance products are relatively open to various types of clients, with the exception of the funeral product, which only allows for natural persons. The *fund insurance product* on the other hand is only designed for legal funds (i.e. friendly societies, pension fund organisations, medical aid funds, benefit funds and other specifically prescribed persons).

For the other insurance classes, any type of client (both natural and legal) that has a designated Namibian bank account is eligible to acquire a long-term insurance product. Therefore, it is common to find that PEPs, high net-worth clients, foreign clients, clients from jurisdictions considered to pose high ML risks also make use of long-term insurance products. Inherently, clients of such profile escalate ML vulnerability.<sup>266</sup> Corporate institutions also make use of long-term insurance products. These high-risk clients represent a small percentage of the overall client base.

<sup>266</sup> However, the high-risk clients represent a very small percentage of the overall client base.

The difficulty in identifying beneficial owners of a legal entity in a long-term insurance business relationship presents ML vulnerabilities of dealing with beneficial owners who could be advancing financial crimes as the source of funds used to pay for premiums may originate from unlawful activities. A **Medium** rating was thus set for the type of clients using long term insurance products.

*b) Savings and investment benefits of long-term insurance products*

Historically, the long-term insurance products were purely for managing risks, without the provision for savings or investments. Over time, the products developed and had attained investment-related features. Currently, a common feature in some life products is the option to include a savings benefit with such policy. The investment-related feature is only available in the Life Insurance class, Fund Insurance class and Sinking Fund. Investments or savings features may include the options for full and/or partial withdrawals at any time. The investments or savings components present an opportunity for withdrawal of funds with ease and this component is most vulnerable to launderers.

The product design and features may be attractive to criminals to hide their proceeds of unlawful activities. If a Life product allows payment of premiums from third parties or excessive payment of premiums, including cash payments (e.g into the bank account of insurer) or upfront payments, such product is vulnerable to abuse for ML purposes.

The Long-term insurance products are restricted by the LTIA for cross-border use, unless permitted by the Regulator through an exemption. The cross-border use of products are therefore only considered in exceptional cases. This helps reduce ML vulnerability of the products.

Having regard to all of the above, this variable is rated **Medium low**.

c) *Payment channels and level of cash activities*

Insurers opined that owing to the nature of a long-term insurance product, in that it requires a long-term commitment between a client and an insurer, the payments are primarily done via debit and stop orders. The level of cash deposits is therefore very low and normally only effected for payments in arrears.

d) *ML product specific vulnerability levels*

Long-term insurance policies are often sold through intermediaries and online. Intermediaries that have inadequate AML/CFT/CPF controls can expose the principal insurer to risks while online engagements can have a similar impact if CDD is not effective. Online sales represent non-face-to-face interaction with customers by insurers or their agents.<sup>267</sup> Long-term Insurance policies are available to both natural and legal persons. The prescribed insurance classes that can be sold by registered long-term insurers generated gross written premiums as presented in Table 18.5 above.<sup>268</sup>

e) *ML risk associated with long-term insurance products*

The product design and features may be attractive to criminals to hide their proceeds of unlawful activities. If a product allows payment of premiums from third parties<sup>269</sup> or excessive payment of premiums, including cash payments, such product is vulnerable to abuse for ML purposes.

Generally, a cash value policy<sup>270</sup> makes it possible for a withdrawal while the policyholder is alive. This is one of the product features that encourages criminals or money launderers to consider life insurance contracts, as it permits withdrawals while alive.

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<sup>267</sup> Ibis.

<sup>268</sup> Q4 of 2019 Long-term Insurance Consolidation Returns (NAMFISA).

<sup>269</sup> When the Policy holder and the person paying the premiums are different.

<sup>270</sup> A savings policy within the context of long-term insurance with the option to withdraw.

Generally, life products such as pure risk products where the benefit is only payable at the occurrence of an agreed insured event i.e. when death (demise) has occurred are considered low risk in terms of ML. These products are not attractive to criminals since they do not present the chance for a launderer to withdraw the benefit while alive. Therefore, this variable further reduces ML vulnerability of such products.

f) *Distribution channels of long-term insurance products*

As part of their business model, Long-term insurers primarily make use of intermediaries to sell their products to clients. The intermediaries come in the form of either insurance agents or insurance brokers. The use of insurance agents and insurance brokers by long-term insurers usually has an equal split in the sale of products, with the exception of the Funeral Insurance class that has more insurance agents and the Fund Insurance class with more insurance brokers.

Online sales of products are also available but are currently not used as frequently as intermediaries. Therefore, the non-face-to-face use of the long-term insurance products is available but limited.

The exceptions noted are merely due to the manner in which these classes on-board their clients through underwriting. Regarding the Life Insurance class, the policyholder/life assured is always known because there is a requirement to undergo a comprehensive medical examination before the Insurer accepts the clients risk transfer.<sup>271</sup> The Fund Insurance primarily on-boards registered medical aid funds and pension funds as their clients. Further, the practice is that all beneficiaries are identified together with their designated bank accounts prior to beneficiary payments. This ensures payments are made to the correct beneficiaries, further reducing fraud risks and thus ML vulnerabilities as prudent identification and transactional audit trails are ensured.

Identification and risk profiling of Policyholders may be a challenge when clients are solicited through insurance brokers. Currently, Long-term insurance brokers are not treated as

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<sup>271</sup> Particularly in “pure risk” life policies with the exception that *inter alia*, savings type life policies or accident cover policies that are not subjected to medical examination prior to underwriting.

independent AIs or RIIs<sup>272</sup>, making it discretionary to comply with the national AML/CFT/CPF combating measures. It has been observed<sup>273</sup> that policyholders solicited through Long-term insurance brokers are not always subjected to thorough CDD procedures at on-boarding. This presents a risk of on-boarding high-risk clients who may introduce proceeds of unlawful activities into the financial system through payment of premiums. This enhances ML vulnerabilities.

The sector also allows client non-face-to-face onboarding and interactions. This increases ML vulnerabilities.

### 10.3 Securities sector

The Namibian securities/capital markets continued to grow its assets despite challenging economic conditions in recent years. While the country's GDP stood at NAD 181 billion in December 2019, the capital markets asset base was around **NAD 68 billion**<sup>274</sup>. The overall capitalization of the companies listed on the Namibian Stock Exchange (NSX) amounted to about **NAD 1.94 trillion or USD 139 billion** in December 2019.<sup>275</sup> This makes the NSX the second largest stock exchange in Africa in terms of capitalization.<sup>276</sup> At the time of reporting, the industry is undergoing reforms which entail the introduction of a Central Securities Depository (CSD). Such will allow for electronic settlement of trades. This reform is expected to grow the market and improve liquidity. Table 20 below speaks to the asset values of the industry.

Total assets per industry	2018 (NAD)	2019 (NAD)
Investment Managers	164 billion	180 billion
Unit Trust Managers	63 billion	69.98 billion
Linked Investment Services Providers	705 million	13 billion
Unlisted Investment Managers	1.33 billion	1.76 billion

Table 20: Total assets or size of the Securities sector

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<sup>272</sup> In terms of Schedule 1 of FIA, only a person who carries on the business of rendering investment advice or investment brokering services are considered Accountable Institutions.

<sup>273</sup> NAMFISA supervisory observations from assessments and related activities.

<sup>274</sup> NAMFISA Annual Report 2020.

<sup>275</sup> Namibia Stock Exchange Annual Report 2019.

<sup>276</sup> Namibia Stock Exchange Annual Report 2019.

<b>Market Participants</b>	<b>Number of Participants/Type</b>
Stock Exchange	1 = Namibian Stock Exchange (NSX)
Operators/Participants	Stockbrokers = 4 Sponsors = 10
Listed Companies/Shares	Local Companies listed (local index) = 11 Overall index listed Companies (including JSE dual listed) = 32
	Development Capital Board =7 Equity Traded Funds = 11 Over-the-Counter unlisted public company = 1 (Agra)
Bonds Listed	Government Bonds State-owned Enterprises Commercial Banks Corporate Bonds

Table 20A: Summary of NSX market set-up<sup>277</sup>

There are six (6) main industries or institution types within the Securities sector, namely: stockbrokers, stock exchange, investment managers, unit trust managers, linked investment service providers and unlisted investment managers/special purpose vehicles. The table below shows the number of market participants and their industry classification:

<b>Type of Institution</b>	<b>Number of Institutions</b>	<b>Applicable licensing legislation</b>
Stockbrokers, including sponsors	4	Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); NSX rules and regulations
Stock Exchange	1	Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)
Investment Managers	29	Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)
Unit Trust Managers	16	Unit Trusts Control Act, 1981 (Act No. 54 of 1981)
Linked Investment Services Providers	4	Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)

<sup>277</sup> according to NSX Daily Reports and NSX website.

Unlisted Investment Managers	24	Regulation 13 of the Regulations issued under the Pensions Fund Act, 1956 (Act No. 24 of 1956)
Special Purpose Vehicles	19	Regulation 13 of the Regulations issued under the Pensions Fund Act, 1956 (Act No. 24 of 1956)

Table 21: Classification of NAMFISA-licensed institutions in securities sector

The sector is supervised by NAMFISA for AML/CFT/CPF purposes as described in section 8.4.2 of this report. The overall ML vulnerability of the securities sector is **Medium** (a score of 0.5 or 50%). Details below explain considerations which informed such rating.

#### 10.3.1 Availability and effectiveness of market entry controls

Table 21.1 below shows industry statistics on licensing and registration applications received and processed by NAMFISA.

2017			2018			2019		
License/ Registration Applications	Approved	Rejected	License/ Registration Applications	Approved	Rejected	License/ Registration Applications	Approved	Rejected
11	11	0	9	8	1	9	9	0

Table 21.1: Statistics on licensing and registration applications – Securities sector<sup>278</sup>

The securities sector is highly regulated and supervised by NAMFISA. There are comprehensive market entry provisions and procedures for licensing at market entry. An applicant that does not meet all the licensing and registration requirements is not licensed and this reduces ML/TF/PF vulnerabilities of the sector. NAMFISA conducts assessments to determine whether applicants meet the specific requirements and conditions for licensing of stockbrokers, investment managers, linked investment service providers and unit trust management companies in terms of applicable legislation.<sup>279</sup> Each of the institution types in the securities industry (capital markets) has its own prudential requirements in line with

<sup>278</sup> Reasons for declines and rejections can be summarized as follows: failure to submit outstanding and required information on or before the period granted; failure to comply with fitness and propriety requirements and Non-compliance with registration requirements in terms of relevant licensing legislation i.e. Stock Exchanges Control Act, Microlending Act etc.

<sup>279</sup> i.e. Stock Exchanges Control Act, Unit Trust Control Act.

applicable legislation. These separate legislations will be consolidated and harmonized in the soon to be promulgated Financial Institutions and Markets (FIM) Bill. NAMFISA also assesses source or legitimacy of start-up capital at market entry stage and as and when additional capital is invested or sourced.

For AML/CFT/CPF purposes, applicants' shareholders and directors are subjected to fitness and propriety assessments (FAP), similar to what is explained under short-term insurance above. Such assessments are continuously carried out as and when changes<sup>280</sup> occur and circumstances so require. The FAP criteria<sup>281</sup> covers evaluations around beneficial ownership identification, honesty and integrity (criminal record), competency, operational ability and financial soundness. An assessment to determine the legitimacy of start-up capital is also conducted at market entry stage and when additional capital is injected.

The licensing framework is comprehensive and NAMFISA has the infrastructure which has so far implemented such effectively. Additionally, the stock exchange also has requirements of which prospective members of the stock exchange are required to meet before they are admitted as members. In light of the aforementioned, the rating assigned for availability and effectiveness of entry controls is **Close to Excellent** (a score of 0.9 or 90%).

#### *10.3.2 Integrity of securities staff*

The staff of securities firms are generally considered to maintain a high level of integrity.<sup>282</sup> There are no indications that may suggest that staff members of securities firms have engaged in matters that compromise such high levels of integrity. Having said that, there are two known incidences wherein staff conduct may have compromised integrity. In both incidences, such staff were dismissed. There are a few known cases wherein staff detected potential suspicious behaviour. Such were duly reported to the FIC in the form of STRs or SARs. In light of these considerations, the integrity level of staff in the securities sector is rated as **High** (a score of 0.7 or 70%).

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<sup>280</sup> Changes in beneficial ownership and directors or key personnel.

<sup>281</sup> (as established in FAP Policy and Standard Operating Procedures).

<sup>282</sup> NSX as well as FIA compliance assessment observations.

#### *10.3.3 AML knowledge of securities staff*

Some staff members in the securities firms possess a good understanding of their AML duties and obligations and have a clear understanding of the consequences of non-compliance. However, recent compliance assessments conducted by NAMFISA revealed findings which may suggest that there is room for improvement in staff training in the sector. It was also noted that staff turnover was high, which hampers overall capacity. In light of the aforementioned, this variable was rated **High** (a score of 0.7 or 70%).

#### *10.3.4 Effectiveness of compliance function*

Securities firms have AML compliance programs and designated AML Compliance Officers at senior management level. Firms generally have AML/CFT/CPF compliance programs, procedures and policies, internal controls and such control frameworks are subjected to audits.<sup>283</sup> Some firms conduct risk assessments and apply a risk-based approach in their preventative measures. Despite this, supervisory activities have found poor risk mitigation which may suggest that a few security firms, notably, with poorly resourced compliance functions, did not implement compliance frameworks which are commensurate with the identified ML risk and the size of the firms. Worth noting, some firms' compliance functions are managed remotely by Compliance Officers stationed in foreign jurisdictions. The overall observation in such firms was that controls were not as effective and such undermines the effectiveness of their compliance functions.

The effectiveness of securities sector's compliance function was rated **High** (a score of 0.7 or 70%).

#### *10.3.5 Effectiveness of suspicious activity monitoring and reporting*

Securities firms implemented monitoring systems to monitor complex and unusual transactions and suspicious client behaviour. Unit trust managers appears to be the only entities filing STRs and SARs in the securities sector. The Unit trust management services

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<sup>283</sup> As per FIA compliance assessments.

are relatively vulnerable to potential ML activities owing to the ease with which persons can introduce proceeds (in the form of investments) and withdraw same. This potentially explains the higher STR reporting from such services.<sup>284</sup>

Year	Unit Trust Managers		Stock Exchange		Stock Brokers		Investment Management Firms	
	STRs	SARs	STRs	SARs	STRs	SARs	STRs	SARs
2019	12	0	1	1	0	0	0	0
2018	3	1	0	0	0	2	0	0
2017	4	0	0	1	0	0	0	0
2016	3	1	0	0	0	0	0	0
2015	2	0	0	0	0	0	0	0
<b>Total</b>	<b>24</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>

Table 21.2: STR and SAR reporting behaviour of the securities sector

Supervisory observations suggest that the larger securities firms have invested in automated tools which monitor transactions, mainly to enhance efficiency considering the high transactional volumes and size of their client base. While many controls are in place, the level of STR reporting is generally low, compared to other sectors. The quality of STRs/SARs requires improvement because the majority of STRs/SARs reported by securities firms were categorised as low priority.

Considering all these factors, the level of effectiveness of the securities sector's monitoring systems and reporting was rated **High** (a score of 0.7 or 70%).

#### *10.3.6 Level of market pressure to meet AML standards*

The securities sector is very sensitive to the reputational risks associated with AML and as a result, there is a high level of market pressure to comply with FIA obligations. Several institutions in the securities sector form part of multi-national financial groups which further increases pressure to meet AML standards. The level of market pressure to meet AML Standards is rated **Very High** (a score of 0.8 or 80%).

#### *10.3.7 ML product vulnerability*

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<sup>284</sup> Figure 29 further demonstrates the enhanced ML vulnerability of Unit Trust Management services in the sector.

This section presents outcomes of the ML vulnerability assessment of products within this sector. The overall ML product vulnerability suggests that unit trusts, LISPs and money market brokerages are more vulnerable to ML threats than other products as per Figure 29 below.

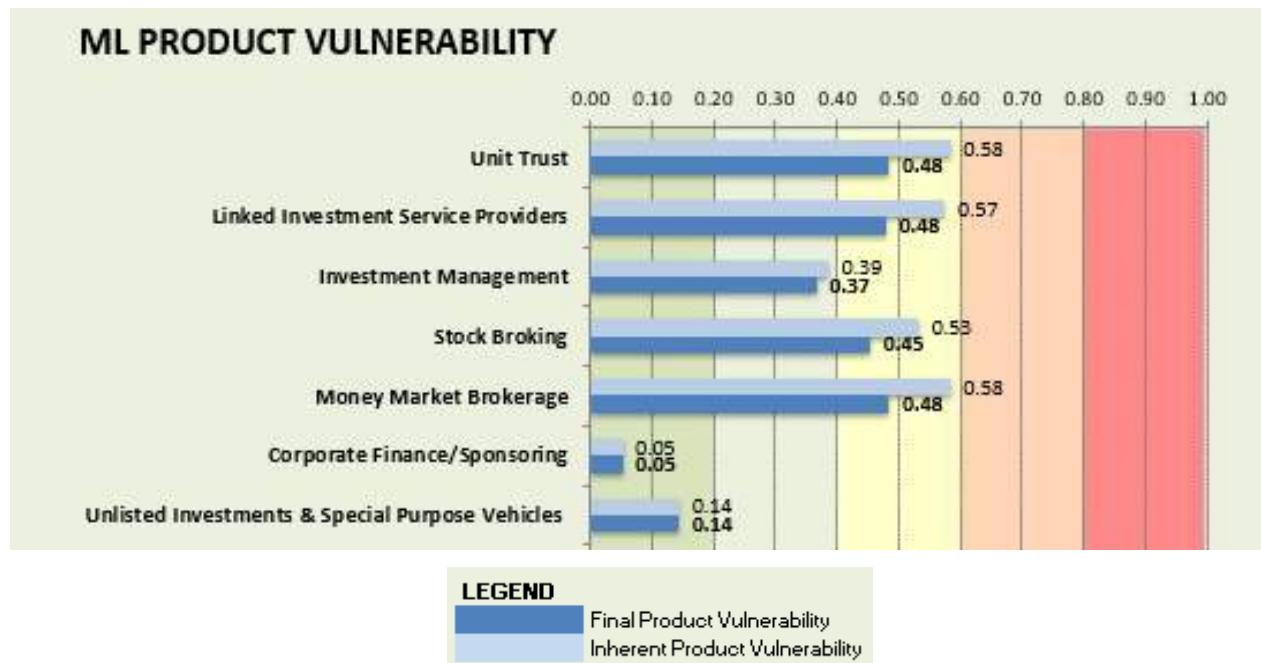


Figure 29: Inherent and final product ML vulnerability levels: Securities sector

#### a. Stockbroking or trading of shares

The trading of shares on the Namibian Stock Exchange (NSX) comprises of dual listed stocks on the local index and the Johannesburg Stock Exchange (JSE). The NSX had 50 securities listed as at 31 December 2019.<sup>285</sup> The overall comparative value traded on the NSX as at that period was NAD 8.872 billion, which represents a decline of 27% compared to the previous year.<sup>286</sup>

Stockbrokers primarily offer services such as stockbroking or trading in shares or securities on the stock exchange, money market brokerage and corporate finance. On the other hand, some ancillary services include unit trust investments, investment management, wealth management, estate and retirement planning as well as insurance brokerage services.

<sup>285</sup> Namibia Stock Exchange Annual Report 2019.

<sup>286</sup> Namibia Stock Exchange Annual Report 2019.

There is relatively a moderate level of complexity and diversity pertaining investments on the NSX in securities. Such was rated **Medium** while the client base profile was also rated **Medium**. Overall, the clientele mainly consists of retail clients that pose a low risk to ML with a very low percentage of domestic PEPs and high net worth clients who pose a high risk of ML.

Investment in stocks is predominantly long-term. Stocks are associated with a low level of liquidity that is rated **Medium Low**. The level of international transactions was rated **Medium** as the majority of the clients are locals with a few non-resident clients.

Even though the securities on the NSX are dual listed. Anonymous use of securities is **Not Available** and there is a limited number of typologies on the abuse of securities domestically.

The use of securities in market manipulation, insider trading and securities fraud exists and is limited while the transactions are easily traceable. This enhances ML risk mitigation. The non-face-to-face use of equities is **Available but Limited** and the use of cash is **Low**.

*b. Money market brokerage*

The money market investments make up 64% of the assets within collective investments scheme under management, per asset class.<sup>287</sup> The complexity and diversity of investments in the money market was rated **Medium High**.

The client base profile was rated **Low** because the clientele mainly consists of retail clients that pose a low risk of ML with a very low percentage of PEPs and high net worth clients who pose a higher risk of ML.

Investments in money markets is predominantly short-term. There is a high level of liquidity in money markets which resulted in a rating of **Medium High**. On the other hand, the level of international transactions is low because the majority of the clients are local.

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<sup>287</sup> Namibia Stock Exchange Annual Report 2019.

Anonymous use of money market investments is not available and there is a limited number of typologies on the abuse of investments in the money market. The use of money market investments in market manipulation, insider trading and securities fraud **Exists but is Limited**, while the transactions are easily traceable. Traceability of transactions and records enhances ML risk mitigation and thus reduces ML vulnerability.

The non-face-to-face use of money market investments is **Available but is Limited** and the use of cash is **Low** as movements of funds in money markets is mainly through EFTs.

*c. Corporate finance*

Corporate finance is a service provided by stockbrokers for listing requirements in return for a professional fee. Corporate finance is not regarded as complex product within the ML combatting framework and the client base only comprises of institutional clients.

There are no investment features in corporate finance and the level of international transactions is low. The anonymous use of the product is **not available** and there are no typologies on the abuse of the product. Lack of anonymity greatly reduces ML vulnerability as potential launderers can be identified.

Market manipulation, insider trading and securities fraud **Exists but are Limited** while the transactions can be easily traced. The non-face to face use of the product is **Available but Limited** and the use of cash is non-existent. All these factors contribute towards reducing product ML vulnerability to lower levels.

*d. Unit trusts*

The total assets under management of the unit trust industry is over NAD 69 billion. This represents a significant portion of the securities sector. The complexity and diversity of investments in the unit trust market is rated **Medium Low**. For ML vulnerability consideration purposes, there is a low level of complexity as unit trusts offer a chance to buy unit portfolios in listed securities (equity and bonds).

Unit trust managers offer an opportunity to invest in unit portfolios (collective investment) according to investment objectives, time horizon, and the risk appetite of investors. Each fund or unit portfolio is a combination of financial assets or securities i.e bonds, treasury bills, equities, preference shares, property shares, derivatives, etc. Investors and prospective investors may use any of the available banking channels to invest. There are different types of unit trust schemes, including but not limited to international or global funds, real estate or property funds, balanced or stable funds, equity funds, money market funds and fixed-income (bond) funds.

There is a low percentage of domestic PEPs, high net worth individuals and clients from high risk jurisdictions in the region who invest in the unit trust industry, the majority of clients are locals or domiciled in Namibia. The client base variable was thus rated **Medium**.

Investments in the unit trust industry can either be short-term or long-term. However, most unit trust managers allow investment withdrawals within 48 hours. This suggests that investments in the unit trust industry are highly liquid. Therefore, liquidity is rated **High** in terms of ML vulnerability.

The level of international transactions is **Low** as most clients are locals. Anonymous use of unit trust investments is not available. These factors suggest a reduced ML vulnerability and exposure.

Domestically, there are typologies or indications of abuse of the unit trust investments for possible ML purposes, specifically in the “*Fishrot*” case which suggests complex movements of funds within the financial sector, through various products. Market manipulation, insider trading and securities fraud **Exists but are Limited** while transactions in the unit trust industry can be easily traced as banking channels are used for purposes of investment and disinvestment.

The non-face-to-face option is available within unit trust products, further aggravating ML vulnerability. The use of cash is **Low** as investments or transactions in the unit trust industry are mainly performed through EFTs.

e. *Linked investment services providers (LISPs)*

The total assets under management of the LISP industry exceeds NAD 13 billion as at December 2019. LISPs essentially offer unit trust based products hence there are many similarities, as described above for unit trusts.

LISPs primarily offer packaged investment products of different companies, distributes and administers a broad range of unit trust based investments with the primary purpose of providing investors with access from a single point of view, to various investment products. A LISP can be compared to a “financial supermarket” that offers investors a wide choice of investments under one roof. LISPs buy and sell units in collective investment schemes on the clients’ instructions, either directly or via a life insurance product. Essentially, it is a financial product targeting wealthy investors or high net worth investors.

The complexity and diversity of investments is rated **Medium** due to the diversification platform offered by LISPs. The client base variable was also rated **Medium** considering that LISPs target wealthy and high net-worth investors. There is a relatively low percentage of domestic PEPs while the majority of clients are locals. The level of international transactions is also low because of the overwhelming local majority in terms of clients.

As noted with unit trusts above, investment withdrawals can be done within 48 hours which renders these investments highly liquid. Liquidity was thus rated **High**.

Anonymous use of investments is not available and this greatly reduces ML vulnerability. There are some typologies or indications on the abuse of LISPs to advance ML. The non-face-to-face use of the product is available and such inherently escalates ML vulnerability.

Market manipulation, insider trading and securities fraud **Exist but are Limited**, while the transactions can be easily traced as banking channels are used for investment and disinvestment purposes. The use of cash is **Low** on the other hand is quite low as investments or transactions are mainly performed through EFTs.

*f. Investment managers*

The total assets under management of the investment managers was NAD 180 billion<sup>288</sup>, which represents one of the biggest sectors, when compared to the entire NBFI and the banking sector.

Investment managers or asset managers offer investment portfolio management services in listed securities or any investment of which listed securities form part. Investment Managers have one overriding goal, which is to substantially grow clients' investment portfolio.

Investment managers, as part of portfolio management services, give access to investments in either equity (listed), bonds or more liquid investments such as call investments. Investments or assets may be invested locally, regionally or offshore depending on investment mandate and applicable regulations. Clients of an investment manager typically include institutional investors (i.e. pension funds, medical aid funds, insurance companies, unit trust management companies), State-owned enterprises or funds, trusts, wealthy or high net worth individuals) and corporate companies seeking to meet medium to long-term investment objectives.

The complexity and diversity of investments in the investment management services is rated **Medium Low** due to the low level of complexity as investment managers offer portfolio investments in listed securities (equity, bonds and call investments).

The client base variable was rated **Low** as it was noted that nearly half of the assets under management are sourced from pension funds, while the rest mainly originate from retail investors such as insurance companies and unit trust funds.

There is a low percentage of domestic PEPs, high net worth individuals and clients from high risk jurisdictions in the sector. This inherently reduces ML vulnerability. The majority of clients are locals or domiciled in Namibia. This local majority also means that there are lower volumes of international transactions. However, investment managers invest assets in foreign securities specifically in neighbouring South Africa which has the biggest capital market or

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<sup>288</sup> This industry, in terms of financial size, is quite significant as Namibia's GDP in 2019 was around NAD 180 billion.

stock exchange in Africa. It is a norm that investments are usually held with long-term investment objectives. Most of these investments or trades are performed through the local NSX which offers dual (JSE/NSX) listed securities, hence the **Low** rating. Anonymity is **Not Available** and there are no typologies or indications on the abuse of the industry for possible ML purposes.

In comparison to other products which are highly liquid such as unit trusts, redemption of investments takes longer due to the size of assets or funds. Therefore, liquidity is rated **Medium high**.

Market manipulation, insider trading and securities fraud is considered **Non-Existent** and the transactions in the industry can be easily traced as banking channels are used for investment and disinvestment.

The non-face-to-face use of the product is not available as most of the clients are institutional investors, hence a formal approach is used such as face-to-face presentations on investment portfolio performance and offerings. With movements of funds in the sector, the use of cash is considered **Non-Existent** as investments or transactions in the investment management industry are performed through EFTs.

*g. Unlisted Investment Managers (UIMs) and Special Purpose Vehicles (SPVs)*

UIMs primarily exist to render portfolio management services and co-invest in unlisted investments. Unlisted investments are pension fund mandatory investments in companies not listed on any stock exchange as prescribed in Regulation 13 of the Regulations issued under the Pensions Fund Act.<sup>289</sup> These are investments that take the form of a prescribed equity or debt capital in a company incorporated in Namibia, but exclude assets such as credit balances, bonds including debentures (issued by Government, Local Authorities, Regional Councils, State Owned Enterprises and corporates) and property.

Unlisted investments are major components that create alternative asset classes for investments of pension funds' assets. Regulation 13(5) compels pension funds to invest a

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<sup>289</sup> No. 24 of 1956, as amended.

minimum of 1.75% and a maximum of 3.5% of the market value of its total assets in unlisted investments. Pension funds must invest in unlisted investments through SPVs, subject to co-investment by the UIMs. In other words, UIMs should also invest along with the pension funds. SPVs can also source investment from investors other than pension funds. As most funds moving within this space are pension funds, there is reduced ML vulnerability. ML could only occur, in very remote instances if pension funds so invested in ventures are redeemed or repaid with proceeds of crime. The NRA however found that is not common as it would require significant collusion amongst the various stakeholders such as UIMs, SPVs and other related parties to allow introduction of illicit proceeds within this space.

#### 10.4 Microlending sector

The microlending sector's asset base stood at **NAD 7.4 billion** while the country's GDP was NAD 181 billion<sup>290</sup> as at 31 December 2019.<sup>291</sup>

Total assets (loan book balance)	2018	2019
Term Lenders	NAD 6,407,930,000	NAD 7,395,954,755
Pay-day Lenders	NAD 125,681,000	NAD 83,943,598
Total	NAD 6,533,496,000	NAD 7,479,898,353 <sup>292</sup>

Table 22: Total assets/loan book balance of the microlending sector

The number of clients as at the 4<sup>th</sup> quarter of 2019 for term lenders was 180,803 while those of pay-day lenders was 49,880.

Microlending businesses mainly provide unsecured short-term loans to consumers who are full time employees (salaried clients). The microlender is generally not concerned about individual clients' purpose of borrowing. They generally grant loans to any employed consumer as long as such person qualifies for the loan after credit worthiness tests are performed. Basic ML risk assessments are also undertaken as part of the entire due diligence process.

<sup>290</sup> NSA, National Accounts, 2019.

<sup>291</sup> NAMFISA Annual Report 2020.

<sup>292</sup> This is the revised and correct figure after all sectoral information was received and revised. The total assets value/loan book balance of NAD 5.74 billion as stated for Microlenders in Table 18 was incomplete and therefore revised to NAD 7,479,898,353.

In Namibia, a general distinction is made between two types of microlenders being payday lenders and term-lenders. The main distinction between payday lenders and term-lenders is based on the maximum finance charges allowed as well as the repayment periods.

A microloan is a product that is attractive to consumers who need cash without waiting for longer periods. A microloan can be granted within a few hours from the time of applying for it. The most common type of microloan has a repayment period of 30 days. For various reasons, supervisory observations suggest that consumers often end up taking additional loans upon the settlement of prior loans (almost immediately thereafter). This gives payday loans similar characteristics to recurring overdraft facilities offered by banks.

Microlenders have inherent controls in place in terms of customer identification. The nature of the business is such that customer identification and verification of documents is one of the inherent requirements owing to the credit risk of borrowers. Similarly, obtaining information pertaining to the source of income and proof thereof for verification (in the form of payslips and bank statements), employment details and credit history are all inherent requirements for a microloan. Some make use of credit bureaus to assess the financial history of clients.

Payday lenders generally grant loans that must be repaid within a minimum of thirty days and maximum period of five months of receiving the loan as agreed upon by the lender and the consumer. This is usually at a once off finance charge which may not exceed 30% of the loan amount disbursed to the consumer.

Term lenders on the other hand may grant loans repayable within a minimum of six months and maximum of sixty months, which attracts an annual finance charge not exceeding twice the prevailing prime rates as determined by the BoN.

Term lenders largely offer loans to borrowers whose employers are willing to enter into agreements for the installments on the loans to be deducted from their employees' salaries (payroll deduction/deduction at source). These employers are mostly the Government, State Owned Enterprises and other large corporates. Some Term lenders also collect installments via cash payments, EFT payments via internet banking and debit orders to banks via the third-party payment systems in addition to salary deductions.

There is no minimum amount prescribed to be borrowed, but the maximum amount that a microlender is allowed to disburse is NAD 100,000.00 at the highest allowed finance charges for microlenders set at the prime rate times 2 per annum for term lenders and 30% once off for pay-day lenders. However, a moneylender may disburse any amount exceeding NAD 100,000.00, but such loans must be reported to NAMFISA in terms of the Usury Act.<sup>293</sup>

As mentioned above, NAMFISA is the prudential and AML/CFT/CPF supervisory body of microlenders. AML/CFT/CPF observations related to supervision in section 8.4.2 above are worth noting.

The overall ML vulnerability level of the microlending sector is rated **Medium Low** (a score of 0.4 or 40%). The sections below explain considerations which support this rating.

#### *10.4.1 Availability and effectiveness of market entry controls*

Table 22.1 below shows industry statistics on licensing and registration applications received and processed by NAMFISA.

2017			2018			2019		
License/ Registration Applications	Approved	Rejected	License/ Registration Applications	Approved	Rejected	License/ Registration Applications	Approved	Rejected
76	64	12	64	58	6	83	62	21

Table 22.1: Statistics on licensing and registration applications - Microlenders<sup>294</sup>

The microlending sector is highly regulated and supervised by NAMFISA. There are comprehensive market entry provisions and procedures for licensing at market entry. All controls required to enhance AML/CFT/CPF such as fit and proper, company registrations, ability to comply with relevant laws etc., are duly assessed prior to licensing. Competence evaluations are limited to assessing the expertise (experience and academic) of directors or

<sup>293</sup> Usury Act 73 of 1968 as amended

<sup>294</sup> Reasons for declines and rejections can be summarized as follows: failure to submit outstanding and required information on or before the period granted; failure to comply with fitness and propriety requirements and Non-compliance with registration requirements in terms of relevant licensing legislation i.e. Stock Exchanges Control Act, Microlending Act etc.

executive management while fitness and probity evaluations include consideration of criminal records or other integrity beaches. An institution or applicant that does not meet all the licensing and registration (i.e fit and proper) requirements is not granted a license by NAMFISA. Additionally, NAMFISA has all controls in place to ensure effective implementation of market entry controls. In light of all these factors, the rating assigned to for availability and effectiveness of entry controls is **Very High** (a score of 0.8 or 80%).

#### *10.4.2 Integrity level of microlending staff*

Some form of vetting (e.g prior employer integrity checks) is undertaken by entities when employing staff. All information at hand (e.g supervisory observations) suggests that the staff of microlending firms are generally regarded as individuals of high integrity. The integrity of staff in the microlending sector was thus rated **High** (a score of 0.7 or 70%).

#### *10.4.3 AML knowledge of microlending staff*

Some staff in the microlending firms possess a fair understanding of their AML duties, obligations and have a clear understanding of the consequences of non-compliance. Recent inspections conducted by NAMFISA revealed findings of inadequate staff training in the microlending firms. Overall, the level of AML knowledge was rated **Medium** (a score of 0.5 or 50%).

#### *10.4.4 Effectiveness of compliance function*

The majority of microlending firms do not have adequate AML compliance programs and designated AML Compliance Officers at senior management level.<sup>295</sup> Some firms, mainly the firms that form part of large conglomerates are adequately resourced. However, the effectiveness of the compliance measures industry-wide has significant room for improvement, if supervisory observations are anything to go by. Controls around CDD and relevant record keeping, which further impacts monitoring and reporting of transactions, are some aspects that require improvement. Therefore, the overall effectiveness of the microlending sector's compliance function was rated **Medium Low** (a score of 0.4 or 40%).

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<sup>295</sup> FIA compliance assessment observations

#### *10.4.5 Effectiveness of suspicious activity monitoring and reporting*

The above-mentioned AML control shortcomings have a significant impact on ability to detect and report suspicious activities as per the FIA. Most microlending firms employ manual systems to monitor unusual transactions and suspicious client behaviour. The majority of microlending firms use the FIC's GoAML system to screen clients against the UN sanctions lists at on-boarding. This is mainly helpful for TF and PF. The sector has only reported two SARs in the reporting period. Compared to other sectors, this may be quite low but it is reasonable given the relatively lower ML vulnerability of services. The two STRs reported were also set aside mainly due to the lower financial values and some inadequacies in grounds for suspicion.

<b>Year</b>	<b>STRs</b>	<b>SARs</b>
2019	0	0
2018	0	2
2017	0	0
2016	0	0
2015	0	0
<b>Total</b>	<b>0</b>	<b>2</b>

Table 22.2: STR and SAR reporting behaviour - Microlenders

The effectiveness of the microlending sector's monitoring systems and reporting of STRs is rated **Medium High** (a score of 0.6 or 60%).

#### *10.4.6 Consideration of ML product vulnerability*

The total number of registered microlending firms stood at 424 as at 31 December 2019. The total loan book of the sector at such date was NAD 5.8 billion, compared to NAD 6.5 billion the previous year.

The average pay-day loan was NAD 2,064 and the average term loan was NAD 25,865 as at the end of December 2019 which are evidently low amounts.

The level of cash activity in microlending firms is rated **Low** as cash repayments are relatively low. Equally, the complexity and diversity of microlending is rated **Low**, mainly due to the low level of impact on the financial sector and economy as a whole.

Overall, the clientele mainly consists of salaried employees that pose a **Very Low** risk of ML with a very low percentage of domestic PEPs and high net worth clients who pose a higher risk of ML. Microlending firms do not make use of agents to solicit clients. This further reduces vulnerability and was rated **Low**.

The level of cash activity in microlending firms is rated **Medium** as the clientele are not limited to specific methods of repaying loans. This leaves room for using highly vulnerable payment options such as cash in the repayment of loans. The level of international transactions is **Non-Existent** because all clients are locals or permanent resident clients. Microlending firms do not disburse loans cross border, a factor that inherently reduces ML vulnerability.

Anonymous use of microlending firms is **Not Available** as all clients are required to visit the microlending firms in person (face-to-face) in order to apply for a loan. Microlending firms compel their clients to visit their premises to apply for loans. This reduces ML vulnerability. The traceability of transactions is relatively easy as microlending firms identify and know their clients very well, mainly for credit management purposes. The firms also keep evidence of all transactions to enhance their ability to collect repayments should a client default.

There is a limited number of typologies on the abuse of microlending in general, hence such were deemed to **Exist but are Limited**.

The use of microlending services in fraud may exist and is limited while the transactions are easily traceable. Microlending firms are not highly vulnerable for abuse in potential tax related offences or fraud schemes by clients unless risks could arise from loan repayments with proceeds of crime. The rating assigned for use of these products in such ML predicate offences was thus **Existing but Limited**.

Figure 30 below suggests that although AML controls may have been implemented to reduce inherent ML vulnerability, the final product vulnerability level remains unchanged. This

suggests that implemented AML controls may not be adequate to reduce residual vulnerability levels.

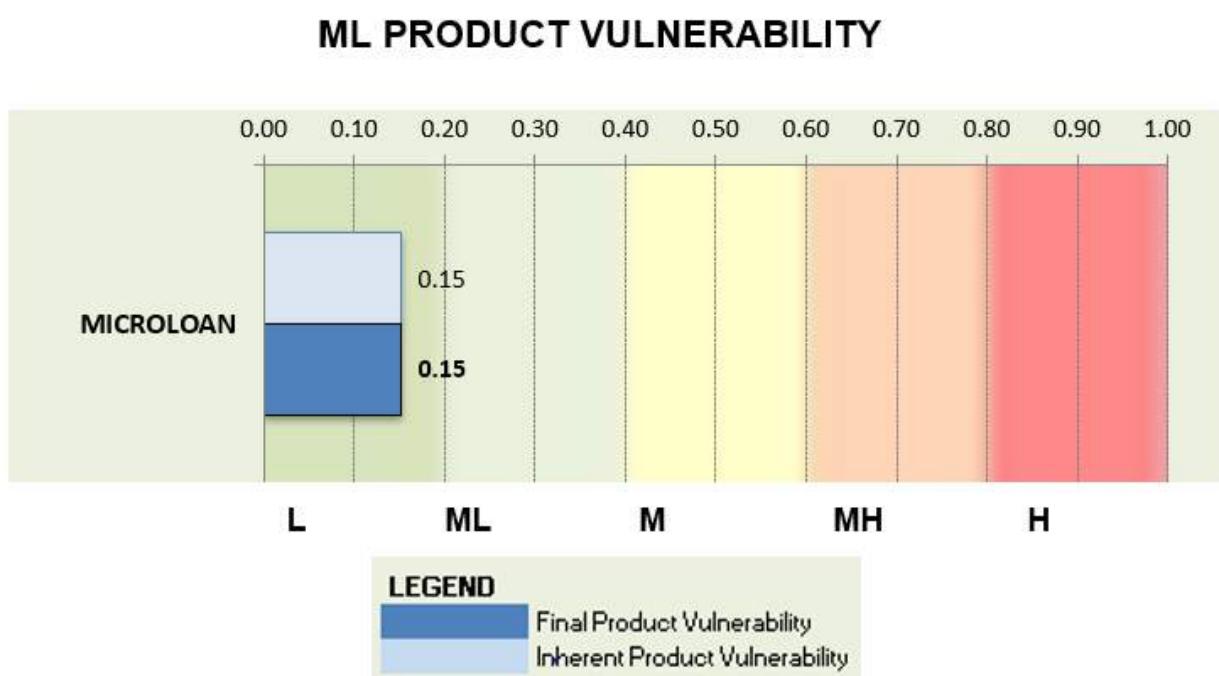


Figure 30: Inherent and final product ML vulnerability levels: Microlending sector

## 10.5 Authorized Dealers in Foreign Exchange with Limited Authority (ADLAs)

ADLAs are often referred to as Money Service Businesses (MSBs) in the AML/CFT space. They specialise in cross border remittances (wire transfers) and currency exchange services. Unlike banks<sup>296</sup> that facilitate all types of cross border remittances, ADLAs are only authorised to facilitate cross border remittances for clients who are natural persons (excluding legal persons) relating to travel, family maintenance and similar purposes. Trade related remittances such as payments between businesses, etc., can only be facilitated by banks.

In the reporting period, the sector comprised of eight licensed entities. The combined value of assets in the sector is around **NAD 40 million** in 2019.<sup>297</sup>

<sup>296</sup> Banks are licensed by the BoN as Authorized Dealers in Foreign Exchange, without limitations (NRA emphasis).

<sup>297</sup> Source: Compiled from ADLAs Annual Financial Statements from BoN (Exchange Control Department). Namibia's GDP of NAD 181 billion in 2019 suggests that this sector is relatively minor.

The overall ML vulnerability rating of the sector is **Medium** (a score of 0.51 or 51%). This section presents vulnerability assessment outcomes from core variables which informed the rating.

#### *10.5.1 Availability and effectiveness of entry controls*

The function to license and approve the operation of ADLAs is delegated to the Exchange Control Department within the BoN in terms of the current legal framework.<sup>298</sup> The Regulations<sup>299</sup> further stipulate, amongst others, that no person other than an Authorized Dealer, shall deal in foreign exchange.

The Committee on Payment and Settlement Systems (CPSS) of the Bank for International Settlements (BIS), visited Namibia in February 2014.<sup>300</sup> Such visit was used to conduct a review of the cross-border remittance market on the basis of the General Principles for International Remittance Services. The BIS recommended that the BoN considers reviewing its licensing procedures for Remittance Service Providers as well as the procedures for the authorization of new products, services, partnerships, agents and similar. Findings of the BIS suggest that the procedures in place at the time were not clear enough to – or understood by market players. Notably, the same study also found that industry representatives recognized the availability of the BoN to support them in the process of obtaining licenses and authorization. The stakeholders further acknowledged the cooperative approach of the BoN as a regulator, which is very helpful in the licensing process.

In response to the above, the BoN revised the ADLA licensing framework, resulting in the issuance of revised Standard Operating Procedures.<sup>301</sup> The revised licensing framework, amongst others ensures only applicants that demonstrate an ability to execute such functions are licensed.<sup>302</sup> The persons associated with such applicants are subjected to fit and proper assessments. Such assessments are limited to shareholders, directors and executive

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<sup>298</sup> in terms of Section 9 of the Currencies and Exchanges Act, Act 9 of 1933, the Policy Guidelines on Appointment of ADLAs and regulation 22E of the Exchange Control Regulations, 1961.

<sup>299</sup> Regulation 2 of the Exchange Control Regulations, 1961 hereinafter referred to as “the Exchange Control Regulations”.

<sup>300</sup> Source: The report on the review of the market for remittances in Namibia on the basis of the CPSS-world bank general principles for international remittance services, May 2014 (Pages 3 and 4).

<sup>301</sup> In 2014/2015. Licensing requirements are published on the BoN website and can be accessed via: <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/e0/e0fddbcf-191c-41f5-95e1-4c06826c7523.pdf>.

<sup>302</sup> The areas to be covered during the assessment process include evaluations on: Liquidity: Minimum on-hand capital; Company registration and its purpose; Due diligence on involved parties; Business plan; Reporting obligations; Ability to comply with the FIA and PACOTPAA, where applicable, any national interest considerations.

management or those who would assume significant management responsibilities. In terms of competence, they are expected to demonstrate relevant expertise through previous experience or academic qualifications. They should equally demonstrate sound levels of integrity by showing licensing authorities that they have no criminal record (police clearance) or have not been found to have breached integrity standards by other competent authorities.

With regards to implementing AML/CFT/CPF compliance frameworks, applicants are required to demonstrate, through the availing of policies and procedure documents, how they would mitigate risks. Provisional licenses are issued for applicants who meet requirements, requiring such applicants to set up operations which will be assessed to determine if such are indeed as expected, before the issuing of a final operational license. Through the close working relationship of the BoN and the FIC, pre-opening assessments are jointly undertaken to ensure the relevant controls are in place, prior to the issuing of final licenses. This practice ensures AML frameworks mitigate relevant risk exposure from commencement.

In terms of the operational framework, the NRA found that the Exchange Control Department within the BoN has the necessary mechanisms and resources to effectively execute and manage market entry controls, to the extent that such mitigates ML risk exposure.

The availability and effectiveness of entry controls was rated **Close to Excellent** (a score of 0.9 or 90%).

#### *10.5.2 Effectiveness of supervision and oversight activities*

AML/CFT/CPF supervisory observations in section 8.4.2 above are worth noting.

The BoN is responsible for prudential supervision and oversight while the FIC is responsible for AML supervision only. The FIA sufficiently grants the FIC powers and responsibilities to effectively carry out such responsibilities. The sectoral coverage in terms of assessments, trainings and other relevant activities indicate that AML supervision is relatively adequate to suggest sufficient oversight has been applied over the sector. Table 23 below avails a summary of all AML oversight and supervision activities in the sector over the period under review.

<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total</b>
On-Site Compliance assessments	4	1	3	2	1	11
Off-Site Compliance assessments	4	0	0	2	3	9
Trainings facilitated by the FIC	0	0	0	0	4	4
Sectoral compliance meetings	0	0	0	0	1	1
Enforcement measures taken or referrals made	0	0	2	0	0	2

Table 23: FIC's risk-based supervisory activities in the ADLAs sector

A few areas however need improvements. The sector maintains that the FIC should consider more sectoral meetings or similar engagements that can enable a coordinated and consistent approach to combatting mechanisms at sectoral level. The FIC is equally expected to issue reports or communications on emerging ML trends, typologies and challenges related to the sector. While the sector only has about eight institutions, the FIC had over 1,200 other institutions that are to be supervised. In terms of prioritization, this at times reveals supervisory resource constraints as the FIC only had 9 supervisory staff members with no use of automated mechanisms to enhance overall supervision. Accordingly, a rating of **High** (a score of 0.7 or 70%) was deemed appropriate.

#### *10.5.3 Integrity of staff in the sector*

The NRA could not come across information which may suggest that the levels of integrity in the sector could enhance ML risks. Most pre-employment vetting activities were competency based, with minimal proof of extensive vetting on integrity levels of prospective employees. Integrity levels appeared limited to due diligence with former employers or similar stakeholders.<sup>303</sup> Staff training, policies on code of conduct and staff rotation are in place to assist with maintaining acceptable levels of staff integrity in the sector. The NRA thus rated integrity of staff as **High** (0.7 or 70%).

#### *10.5.4 AML knowledge of staff in the sector*

The staff have all been trained and proof was presented of refresher training occurring periodically, in most entities. Supervisory observations suggests staff generally have an

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<sup>303</sup> There was no indication that police clearance records are sought prior to employment.

adequate understanding of risk exposure and how to mitigate same. There is however a need for more communication and engagements between the FIC and the industry, particularly with sector-specific guidance on emerging trends and typologies to ensure the sector remains abreast. For these reasons, there is assurance the AML knowledge is reasonably adequate to enhance effective risk mitigation and was thus rated **High** (a score of 0.7 or 70%).

#### *10.5.5 Effectiveness of compliance functions at institutional level*

All entities in the sector have dedicated compliance functions, usually dedicated to an AML compliance officer at management level, who works with one or two other assistants in advancing AML internally. They conventionally have automated screening systems, usually built into the cross-border remittance systems that assist with screening against various UNSC lists while most monitoring to detect potential ML suspicious is done manually. The compliance assessments found compliance functions reasonably resourced and to a certain extend effective. The areas that need improvements generally relate to the effectiveness of suspicious activity monitoring and reporting, as stated below.<sup>304</sup> Effective customer due diligence amongst others has a bearing on effective reporting and timely escalating of reports to regulated sectors. For these reasons, a rating of **Medium High** (a score of 0.6 or 60%) was assigned for this variable.

#### *10.5.6 Effectiveness of suspicious activity monitoring and reporting*

This variable is informed and impacted by the variable on compliance function effectiveness highlighted above. The measure of effective compliance systems lies in its ability to combat. Combatting at institutional level lies in the overall ability to timely detect and report value adding reports. Findings from FIA compliance assessments over the years indicate that there is room for improvement in detecting and reporting suspicious transactions and activities. Mainly, compliance assessments hardly found justification for failure to detect and timely report certain transactions which appear suspicious or out of the expected financial profile of clients. The STRs reported by the sector as captured in Table 23A below are only exceeding

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<sup>304</sup> FIA compliance assessment reports.

by the banking sector, although the financial values involved are relatively lower (see Figure 16 above<sup>305</sup>). This suggests some level of effectiveness.

Year	STRs	SARs
2019	118	8
2018	329	11
2017	115	3
2016	89	5
2015	89	11
Total	<b>740</b>	<b>38</b>

Table 23A: STR and SAR reporting behaviour of ADLAs

The sector also indicated that the lack of a PEP list (to assist with monitoring mechanisms), undermines the effectiveness of detecting and reporting unusual and suspicious transactions when PEPs are involved. This partly impacts effective monitoring and reporting of suspicious transactions or activities. The FIC is thus requested to come up with a PEP list and share same with the sector. The total number of PEPs who make use of ADLA services is however very low. Effectiveness of suspicious activity monitoring and reporting was thus rated **Medium High** (a score of 0.6 or 60%).

#### 10.5.7 Inherent vulnerability of products in the sector

The sector mainly avails two services being currency exchanges and cross-border remittances. The more effective and comprehensive the AML controls, the lower the final vulnerability level of the product.



Figure 31: Inherent and final product ML vulnerability levels: ADLAs sector

<sup>305</sup> Wherein case files were opened: Escalated for FIC analysis and investigation.

*Currency exchanges:* Product inherent vulnerability of currency exchanges was rated Medium (0.56 or 56%) while its final product vulnerability was rated at 0.48, still within the Medium range. Amongst others, reflections suggest that although the volumes and values of involved transactions are low, the levels of cash activities of currency exchanges are high. Anonymous use, as well as non-face-to-face use of the product are not possible with this product and this reduces ML risks. The client base profile was also assessed to be medium as the typical high risk clients do not make much use of this product.

*Cross-border remittances:* Inherently, this product was rated Medium High (a score of 0.65). The final product vulnerability reduced to the medium (a score of 0.53 or 53%). Partly, although the volumes and values of transactions involved are high, the levels of cash activities are low, minimising the risk. The anonymous use of the product as well as non-face-to-face use of the product are not currently available and this further reduces ML risks to an extent. The client base profile was also assessed to be medium as the product is not used by the average high risk clients.

## **10.6 Money Value Transfer Services (MVTS)<sup>306</sup>**

E-money issuers are licensed by the BoN as per the provisions of the Payments System Management Act, 2003.<sup>307</sup> The NRA identified such two e-money issuers licensed by the BoN and are under the bank's prudential supervision, along with the Payments Association of Namibia. Such institutions are also under FIC supervision for AML purposes. Although banks also offer e-money products, they are not part of the conventional AML/CFT/CPF definition of MVTS as such only refers to entities whose sole or major business is to avail e-money services. When dealing with MVTS, the risk assessment is therefore only limited to the two e-money issuers licensed by the BoN and in so far as known information permits, the one local Virtual Assets (VAs) dealer. The current position<sup>308</sup> of the BoN does not permit

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<sup>306</sup> FATF definition of MVTS: "refers to financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network to which the MVTS provider belongs. Transactions performed by such services can involve one or more intermediaries and a final payment to a third party and may include any new payment methods. Sometimes these services have ties to particular geographic regions and are described using a variety of specific terms, including *hawala*, *hundi*, and *fei-chen*."

<sup>307</sup> Act No.18 of 2003.

<sup>308</sup> Revised Position on Cryptocurrencies, BoN. May 2018. Source:

<https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/9a/9ab34d1a-07d7-45b3-859a-6e51814d690b.pdf>

recognition of VAs as a component of the formal financial system,<sup>309</sup> hence, VAs are not within the AML/CFT/CPF nor prudential supervision space. Their consideration within the NRA is to enable some form of understanding of potential ML risk exposure.

One local entity<sup>310</sup> which facilitates the buying and selling of VAs (bitcoin in particular) has engaged the FIC and shared information about its operations voluntarily, in an effort to demonstrate the relevant AML control measures it has in place. From the FIC's analysis, the entity appears to operate like an agent or broker which buys and sells VAs to its clients. They appear to be conducting KYC/CDD as they showed how they identify all their clients. The FIC advised on general AML/CFT/CPF risk mitigation measures the entity could consider, in addition to what the entity had in place. VAs remain outside the prudential and AML supervisory sphere in Namibia at the time of reporting. Thus, the only information known about the domestic VA space, considered herein, was obtained from the said entity as per records voluntarily availed to the FIC (such as Table 8 in section 7.8.1 above).

Reference to "MVTs" in this section thus refers to all three stakeholders including the VA service provider. When specific reference is made to e-money issuers, such is limited to the entities licensed by the BoN, excluding VA service providers.

Overall, the ML vulnerability of the sector was assessed to be **Very High** (a score of 0.83 or 83%). This sector thus carries the high ML vulnerability nationally. E-money products licensed and supervised by the BoN, in terms of supervisory ML vulnerability assessments carried out by the FIC in recent years have implemented reasonably effective controls. The Very High rating cited above was automatically generated given the ratings assigned for VAs. Unless relevant information is known about VA operations domestically, supervisory authorities (and the NRA) have no assurance that AML controls are implemented and are operating effectively. Thus, the lack of knowledge on operational factors and controls within the VA space have negatively impacted overall risk assessment outcomes for the sector.

#### *10.6.1 Comprehensiveness of the AML legal framework*

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<sup>309</sup> Virtual Assets (VAs) are not recognized as payment instruments nor currencies in Namibia.

<sup>310</sup> although there are many masquerading as Virtual asset dealers or agents in one form or the other.

The comprehensiveness of the prudential framework has an impact on the level of AML effectiveness. All factors and considerations raised herein pertaining to the comprehensiveness of the national AML framework applies to this sector as well. The aspects explained here pertain to the unique circumstances of the MVTS, given the position taken on VAs<sup>311</sup>.

The prudential and AML legal framework<sup>312</sup> were generally found to be comprehensive for e-money issuers. VAs on the other hand are not subjected to any form of prudential, nor AML regulation domestically. Their growth locally and internationally suggests that if laundering, potential tax related offences, illicit cross border remittances or any other forms of financial crimes are taking place in that space, such may remain outside of the AML supervisory framework until a position is taken that enables supervisory oversight and due diligence.

Having the above in mind, the assessment found a rating of **Medium High** (a score of 0.6 or 60%) to be appropriate in reflecting comprehensive control measures with e-money products on the one hand and the lack of any such controls within the VA space. This trend is consistent in the other assessment variables below, for this sector.

#### *10.6.2 Effectiveness of supervision and oversight activities*

Observations around supervisory matters raised in section 8.4.2 apply for MVTs as well.

The FIC<sup>313</sup> is the supervisory body of e-money issuers for AML/CFT/CFT purposes, while the BoN remains the prudential licensing and supervisory body. As VAs are not recognized as payment instruments nor currencies, they are not subjected to any form of AML/CFT/CPF, nor prudential supervision at the time of reporting. Only e-money issuers have thus been supervised for AML purposes and such supervision activities are summarised in the table below:

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<sup>311</sup> E-Money Issuers are part of the AML framework while VAs are not recognized and thus not part of such framework. At the tie of reporting, engagements have however commenced between various supervisory bodies to consider regulating the VA space, if outcomes of various assessments so require.

<sup>312</sup> As per section 8.4.2 above.

<sup>313</sup> FIC is the only AML/CFT/CPF supervisory body other than NAMFISA.

<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total</b>
On-Site Compliance assessments	0	0	1	2	0	3
Off-Site Compliance assessments	0	0	0	3	0	3
Trainings facilitated by the FIC	0	0	0	0	0	0
Sectoral compliance meetings	0	0	0	0	0	0
Enforcement measures taken or referrals made	0	0	0	0	0	0

Table 24: FIC's risk-based supervisory activities in the MVTS sector

Other than the enhanced ML vulnerability emanating from VAs (which are not supervised), all the other services in the sector have always been considered to have low ML vulnerability. The service providers have always had basic controls in place that respond to such ML vulnerability and the financial values in such transactions are generally low. With mobile money remittances for example, transactions were limited to NAD 5,000.00 per sender per day, in the reporting period. Other MVT services are premised on paying for utilities such as airtime, data, water and electricity etc. FIA compliance assessment activities and other supervisory observations have not led to administrative or criminal enforcement considerations for non-compliance in the reporting period. The basic AML/CFT/CPF controls required to address observed low ML vulnerability in services other than VAs were deemed prudent.

Supervision of e-money issuers is accorded a Very High rating (0.8 or 80%) owing to the supervisory activities that have taken place in that space. VAs on the other hand are not subjected to any supervisory activities and the rating is thus Zero or Non-existent (score of 0.0 or 0%). The overall or sectoral level of effectiveness of supervision and oversight activities was thus assigned a Medium rating (score of 0.5 or 50%).

#### *10.6.3 Availability and effectiveness of entry controls*

As mentioned above, e-money issuers in Namibia are prudentially licensed and regulated by the BoN, as per the Payment Systems Management Act. E-Money issuers are required to formally notify the BoN, at least three months before they launch such operations. Such is necessary to ensure e-money operations are in line and comply with the relevant standards

of issuing e-money, as per the regulatory framework.<sup>314</sup> The process towards licensing requires such prospective e-money issuers to formally apply to the bank for authorisation, by submitting applications that must include all documents, data, or other information as prescribed in the PSMA E-Money Guidelines.<sup>315</sup> The Licensing process, as with banking and ADLAs is premised on the BoN subjecting the application to due diligence measures to determine if it is satisfied with applicants' proposals. Such also includes fit and proper assessments of beneficial owners as well as indications of how the applicant plans to management risks, including ML/TF/PF risks. Applications are forwarded to the FIC for inputs relating to AML/CFT/CPF controls. The licensing due diligence process and requirements for fit and proper are similar to those described for banks (in section 9.1.1) and ADLA (in section 10.5.1) applications.

When licensed, e-money issuers are not permitted to deviate from such approved nature or character of products or e-money services. Section 9.5.1 of PSD-3<sup>316</sup> requires that e-money issuers first notify the Bank of any intentions they may have to make significant changes to the scope or nature of the e-money services provided. The BoN has a specialized department that manages licensing and authorization.

There are adequate and effective market entry controls which minimize the risk of licensing e-money issuers that will unduly compromise AML/CFT/CPF objectives. However, VAs remain outside the prudential and AML supervisory sphere, hence there is no supervision nor, regulation of any kind that VA dealers are subjected to. The ML risk emanating from potential criminals operating within the VA space could not be assessed and the lack of entry controls leaves the sector vulnerable to persons ML abuse.

A Very High rating (0.8 of 80%) was allocated for the level of e-money market entry effectiveness while acknowledging that there are no entry controls within the VA space. The overall rating was thus reduced to **Medium** (a score of 0.5 or 50%)

#### *10.6.4 Integrity of staff*

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<sup>314</sup> Determinations: PSD-3, section 9.1.1.

<sup>315</sup> Determinations: PSD-3, section 9.2.1.

<sup>316</sup> Refers to regulations issued by the BoN in terms of relevant laws.

Staff members within e-money issuers are considered to maintain a high level of integrity. The NRA could not find significant cases of integrity breaches that would suggest otherwise. While the integrity of staff members in e-money institutions were rated Very High (08. or 80%), assessments could not be duly conducted with all relevant VA service providers. An overall rating of **Medium** (0.5 or 50%) was reached for this variable.

#### *10.6.5 AML knowledge of staff*

Table 24 shows that no training was conducted by the FIC in the sector, in the reporting period. The entities have over the years trained their staff members on AML obligations. This has helped enhance overall understanding and staff members of e-money issuers are considered<sup>317</sup> to have a reasonably good understanding of AML, compared to prior years. This improvement is mainly attributed to enhanced supervisory activities over the years. Accordingly, a rating of Medium High (score of 0.6 or 60%) was assigned for e-money issuers. While the known VA service provider appears to have AML controls in place and demonstrates how the entity is voluntarily complying with the FIA, the AML knowledge of all other unknown service providers in the VA space remains challenging to estimate. For this reason, the overall rating was rated **Medium Low** (score of 0.4 or 40%).

#### *10.6.6 Effectiveness of compliance function (Organization)*

Overall, e-money issuers have internal compliance regimes at institutional level which includes appointment of AML compliance officers at management level, AML internal controls, policies and procedures and such are subjected to audit reviews periodically. FIA compliance assessments avail assurance on the functional effectiveness of such controls within e-money issuers. The recent compliance assessment reports in the sector indicate an improvement in compliance behavior (compared to prior years). Such improvements, though minor, are mainly in KYC and CDD controls. Also, the ML risk appears generally low and thus implemented compliance controls are commensurate to such risk levels. E-money issuers were thus rated High (a score of 0.7 or 70%), in terms of internal compliance function effectiveness. Given the position taken, VAs are not required to have AML controls in place. However, the current and known VA service provider has on various occasions presented its

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<sup>317</sup> As per FIA compliance assessments.

own AML controls to the FIC which it has voluntarily implemented. The FIC has not tested such to gain assurance on its level of effectiveness, nor does one entity's controls represent the sectoral position. The rating of sector was thus set at **Medium Low** (0.4 or 40%).

#### *10.6.7 Effectiveness of suspicious activity monitoring and reporting*

The ability to detect and report STRs is one component reflective of an effective AML compliance regime in an institution. The sector's services at most entail processing very low financial value transactions and are not the typical services commonly observed in ML trends locally. The sector regards its services as very low risk and regard the control measures as aligned to such level of risk. In the absence of any indications that may suggest higher risk exposure and thus create an expectation that controls be commensurate to same, the current suspicious activity monitoring and reporting controls were deemed reasonably effective and rated Medium High (a score of 0.6 or 60%). MVTS' reporting behaviour is reflected in Table 24A below.

<b>Year</b>	<b>STRs</b>	<b>SARs</b>
2019	1	0
2018	0	0
2017	3	1
2016	7	3
2015	16	3
<b>Total</b>	<b>27</b>	<b>7</b>

Table 24A: MVTS reporting behaviour <sup>318</sup>

The VA space deals in much higher financial values and is in a space which is not domestically unregulated with almost no assurance that relevant service providers have effective controls in place to minimise frequency and impact of ML activities. For this reason, the sectoral rating for suspicious activity monitoring and reporting controls was reduced to **Low** (score of 0.3 or 30%).

#### *10.6.8 Inherent vulnerability of products in the sector*

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<sup>318</sup> No reports were received from VA service providers.

E-money issuers generally provide payment platforms or channels for paying certain products and services including utilities such as electricity, airtime etc. Virtual assets or units on the other hand can be either used as currency to buy goods and services. They can also be used as assets by users who invest funds in such units in anticipation that their market value would increase.

The turnover in comparison to other sectors regulated by the FIC for this sector was assessed to be low. In recent times, VAs however appear to be growing locally with increases in the number of people masquerading as VA service providers. The one entity known to the FIC had total sales of over NAD 500,000.00 in 2018, barely a few months after opening and such sales had grown to over NAD 2.6 million<sup>319</sup> by the end of 2019 (See Table 8 in section 7.8.1 above).

It is worth stating that these are mostly low value transactions which avail a platform for retailing utilities such as electricity, data and airtime. The primary client base of e-money issuers was assessed to be low risk. No record of high risk clients (such as PEPs) making significant use of such products could be found. The lack of such record does not however mean that high risk clients do not make use of such services. Some high risk clients (e.g in the private banking space who make extensive use of electronic or mobile money services) could be making use of these products but they mostly access these channels through their bank accounts which are subjected to adequate CDD.

VA services are considered inherently high risk as supervisory bodies have no idea of the risk level of clients in the virtual space, nor are there financial limits that persons can transact in virtually. The non-jurisdictional limits of virtual units further escalate ML risk exposure as clients from high risk countries could enhance domestic ML vulnerabilities.

The higher the volume of cash activities, the higher the inherent risk of a service to potential ML. For e-money issuers, the level of cash activities was rated low as the entities deal with low value transactions and most of them are transferred from bank accounts via EFTs to wallets or e-money channels. VAs are acquired through cash (which can be handed over the

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<sup>319</sup> And over NAD 11 million by August 2020.

service provider) and direct transfers from a client's account to the account of a service provider. VAs thus present a much higher risk in terms of propensity to deal with cash.

Transaction records are generally easier to trace within the e-money space and the products do not permit for dealings with anonymous persons. This reduces the vulnerability of e-money issuers to ML. VA transactions operate on various platforms including the blockchain. Anonymity is significant and one of the cornerstones of blockchain transactions. Non-face-to-face engagements are also the order of the day on the blockchain. All these features escalate ML vulnerability of VAs.

Although there are no local publications of typologies showing how ML and TF/PF threats could exploit vulnerabilities in the VA space, there are many such examples internationally.

Overall, while e-money services' ML vulnerability is rated **Very Low** (0.22 or 22%), the vulnerability levels for VAs is rate **Very High** (0.83 or 83%). See figure 32 below:

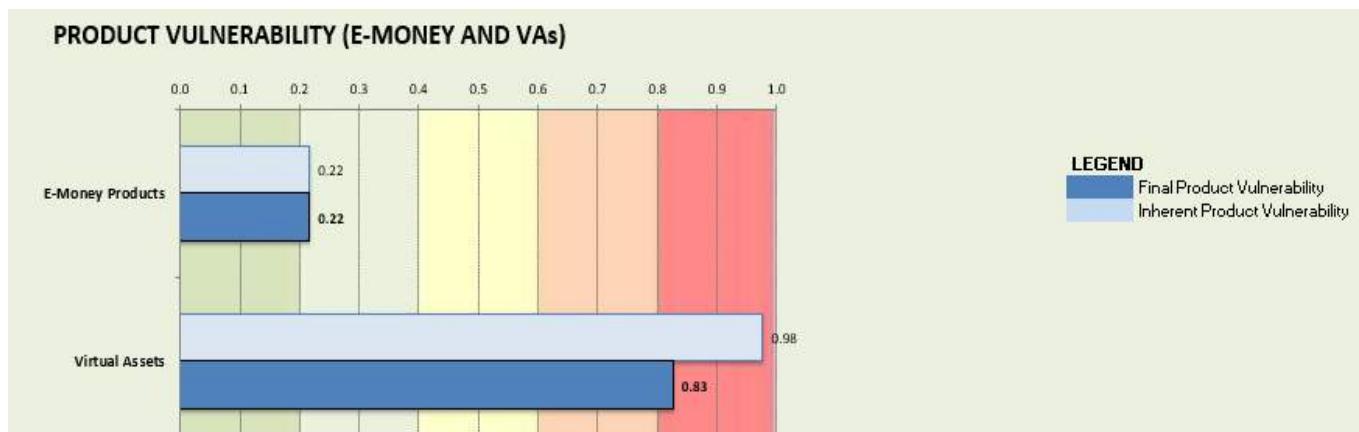


Figure 32: Inherent and final product ML vulnerability levels: MVTS sector

## 10.7 Lending sector

The sector comprises five key institutions offering various lending services, usually specialised areas such as agricultural, mortgage, corporate finance, small and medium enterprises as well as environmental aspect related lending services.<sup>320</sup> Data collected from the sector and various annual reports places the average asset size of a lending institution in the period under review at NAD 1,769,158,301.50 while the total annual value of loans (sales) amounts to **NAD 4,254,548,426**. Namibia's GDP in 2019 was NAD 181 billion.

Overall, the sectors' inherent vulnerability to ML was rated **Medium** (a score of 0.5 or 50%). This analysis, like any other risk assessment is not static as it evolves along with relevant factors. There is thus a need for a continuous update on the outcomes as reflected herein.

### 10.7.1 Effectiveness of supervision and oversight activities

The supervisory observations stated in section 8.4.2 are relevant for this sector as well.

Year	2015	2016	2017	2018	2019	Total
On-Site Compliance assessments	1	1	3	1	1	7
Off-Site Compliance assessments	1	1	2	1	1	6
Trainings facilitated by the FIC	0	0	0	1	1	2
Sectoral compliance meetings	0	0	0	0	1	1
Enforcement measures taken or referrals made	0	1	0	1	0	2

Table 25: FIC's risk-based supervisory activities in the Lending sector

With the exception of one, all lending institutions in the sector are creatures of statute. The specialised banks do not provide services within the sphere of the BIA and are thus not under the supervision of the BoN for prudential purposes. The lending institution which is not a creature of statute is under the prudential supervision of NAMFISA while the FIC supervises such entity for AML purposes.

<sup>320</sup> The entities are Agricultural BoN, the EIF, First Capital Fund, NHE and the DBN.

The FIC has limited sectoral engagements with lending institutions, as the supervisory approach appears to prefer individual entity-FIC engagement, mostly through assessments. Sectoral engagements are deemed necessary to ensure sectoral alignment and consistency in AML combatting frameworks across the sector. Additionally, the sector feels that the FIC as a supervisory body could do well to enhance its understanding of the various lending products. Overall, resource limitations are deemed as contributing factors to supervisory effectiveness. Having regard to all factors herein, supervision and oversight activities are considered relatively **High** (a score of 0.7 or 70%), in terms of contribution to ML combatting.

#### *10.7.2 Availability and effectiveness of entry controls*

State owned lending institutions in the sector are established through an Act of Parliament. With the exception of the private entity under NAMFISA's prudential supervision, the other institutions are not subjected to fit and proper assessments, nor required to be licensed with a prudential regulator. The privately owned institution is registered as a trust with the Masters of the High Court. In terms of such registration, the beneficial owners (including trustees/directors) are subjected to fit and proper assessment as required.

Entry controls or licensing requirements are limited. Institutions rely on their internal vetting processes to which management, directors and general staff are subjected to.<sup>321</sup> The unintended consequences of parastatals appear to be minimal market entry controls which respond to conventional AML frameworks. Although the relevant government Ministries does the due diligence in identifying as well as appointing directors and executive management, such diligence is not at the level of AML standards, for example, as done in the banking or NBFI sector. Overall, the availability and effectiveness of entry controls were thus rated **Medium** (0.5 or 50%).

#### *10.7.3 Integrity of staff*

AML/CFT/CPF supervisory observations suggest that staff members maintain a high level of integrity and there are controls to reduce the risk of integrity breaches such as conflict of interest declarations. Further, other controls such as reference checks conducted during staff

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<sup>321</sup> Such include background and employee reference checks, ITC checks for credit worthiness and psychometric tests.

recruitment and internal controls such as the codes of conduct are also relied on. Integrity of staff was thus rated **Very High** (a score of 0.8 or 80%).

#### *10.7.4 AML knowledge of staff*

The overall view from compliance assessment activities is that policies on staff training and general FIA awareness, as per FIA section 39(5), are in place. There is however a need for periodic refresher training and awareness engagements within institutions. More engagements with the FIC as supervisor to deliberate and give guidance on mitigating emerging ML trends are required. Table 25 above shows that the FIC only availed training sessions on two occasions in the sector while the entities are responsible for training their staff members overall. Data on such internal training was not availed but the overall AML/CFT/CPF understanding of relevant staff members in the sector reflects capacity building efficiency. The general knowledge of staff was regarded a **Very High** (a score of 0.8 or 80%).

#### *10.7.5 Effectiveness of compliance function in the organization*

In terms of compliance assessment activities, the sector has a 100% supervision coverage by the FIC as all institutions have been duly subjected to such in recent years. Institutions in the sector have implemented compliance arrangements which include appointment of AML compliance officers, implementing AML internal controls, policies and procedures, which are periodically audited, in addition to supervisory assessments. Institutions in the sector generally have dedicated compliance departments which coordinate all AML compliance activities.

With the exception of controls such as CDD and adequacy of AML programs, the FIC has repeatedly noted control failures which are not addressed year-on-year, as per annual FIA compliance assessment activities. The controls that entities struggle to effectively implement include risk assessments, transaction monitoring and reporting as well as sanctions screening against UNSC sanctions lists. There is a need to effectively remedy such non-compliance observations and ensure risk mitigation. At the time of reporting, two of the five institutions in the sector have been sanctioned (including fines) for FIA non-compliance.

Despite these shortcomings, the FIC has in recent years observed maturing of the sector's AML controls, which has contributed to enhanced overall compliance behaviour. Challenges such as basic KYC failure are not common in compliance assessments. In terms of overall level of effectiveness of the compliance functions within organizations, a rating of **Medium High** (0.6 or 60%) was assigned.

#### *10.7.6 Effectiveness of suspicious activity monitoring and reporting*

The level of monitoring and reporting effectiveness was rated **Medium** (a score of 0.5 or 50%). The findings above on the effectiveness of the compliance function have a bearing on the effectiveness of suspicious activity monitoring and reporting. The effective functioning of monitoring and reporting controls remains a challenge, as systems employed are not effective in detecting reportable transactions. This is the most common finding in FIA compliance assessment activities in the sector and undermines overall effectiveness. At the time of reporting, the sector had only detected and reported thirteen STRs as per table 25A below.

Year	STRs	SARs
2019	5	0
2018	3	0
2017	3	0
2016	1	0
2015	1	0
Total	<b>13</b>	<b>0</b>

Table 25A: Lending sector's reporting behaviour

#### *10.7.7 Inherent vulnerability of products in the sector*

Figure 33 below shows how control measures implemented in the sector have reduced the inherent ML vulnerability of lending products.



Figure 33: Inherent and final product ML vulnerability levels: Lending products

The lending products in the sector include loans for housing, agriculture, mortgage<sup>322</sup>, small and medium enterprises and environmental related purposes. Common controls within the loan products which reduce ML risk vulnerability include the fact that clients need to be identified and there is thus no anonymous use of the products, nor is non-face-to-face usage permitted. Such are mainly to minimise credit risks but inherently assist in ML risk mitigation. In most of these loan products, ML typologies exist that show how the products are abused in fraudulent and tax crime schemes. Some typologies of this nature are however from international sources.

#### a. Housing loans

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<sup>322</sup> Excluding mortgage financing offered by banking institutions as such are covered under the SVA of the banking sector. Only the National Housing Enterprises (NHE) and First Capital Housing Fund (FCHF), which offers mortgage house financing for low and medium income clients is included in the Lending sector.

In the sector, this refers to housing loans advanced by two different lending institutions, other than those advanced by the commercial banks. This product caters for loans to the low to medium income sector of the population (mostly employees). High income earners (private banking clients), business personalities, PEPs also make use of this product. The average annual turnover on this product is NAD 250,274,816.50.

The method of repayment in this sector is via monthly debit orders. It is very rare that a client would make use of cash to repay a loan, though it does happen. Though limited, cash payments inherently enhance ML vulnerability. In addition to that, the product is only available to local residents and as such no international payments are expected. Hence, the level of cash activity in this product was rated low, while the frequency of international transaction is non-existent. The risk of earlier settlement of loans in the sector was rated inherently low, due to the low rate at which earlier loan redemptions occur in the sector. In the same vein, transactions are quite easy to trace as record keeping is generally effective. Record availability is essential for CDD purposes. Having regard to all above considerations, vulnerability rating for housing loans was considered **Low** (0.27 or 27%).

#### *b. Small and Medium Enterprises Loans*

These are loans advanced to domestic<sup>323</sup> small and medium business enterprises to promote and support development projects including procurement funding, small-scale business or industrial projects and private ventures, excluding loans advanced by commercial banks. Examples are loans advanced by the DBN. The total turnover in 2019 was estimated at over NAD 10 billion. It was noted that the level of cash usage by businesses or clients making use of these loans is quite high<sup>324</sup>. Cash payments are not prohibited. Some businesses that secure loans are in cash intensive industries. The Namibian economy is cash intensive. It is thus accepted that the level of cash activity associated with this product is relatively high and this inherently enhances ML vulnerability. The frequency of international transactions was rated medium. Transactions are fairly easy to trace owing to the sound record keeping mechanisms in place, except for cash payments. In view of the foregoing, the overall vulnerability level of the product was rated **Medium Low** (0.48 or 48%).

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<sup>323</sup> State owned entities in the lending sector are created to advance loans to domestic enterprises. Some entities could have foreign shareholding or directorship but would need significant domestic ownership to qualify.

<sup>324</sup> As indicated by the data collected from the sector.

*c. Corporate financing*

These are loans granted to assist businesses to start or expand existing operations, other than those advanced by commercial banking institutions. The total assets associated with this product in 2019 is NAD 8,962,423,150. The client base profile for this product was rated very high risk because clients making use of this product are legal persons whose beneficial owners (owners and directors) are high net-worth individuals and PEPs. Many beneficial owners are predominantly local, with some being in partnership with foreign stakeholders. This product's level of cash activity and frequency of international transactions were rated medium. The earlier settlement of loans also occurs, for example, tenders were allocated to an entity during an existing relationship and prior payments were made with proceeds from such. Based on the above, a **Medium** rating (0.50 or 50%) was assigned.

*d. Environmental Investment Fund loans*

These are loans offered for business enterprises that advance environmentally friendly causes. The institution which administers this fund was created through an Act of Parliament. The total turnover in 2019 was NAD 530,057.81 which is quite low, when compared to the turnover of other financial institutions in the market.

The client base profile is made up of only local residents. Records also suggest that the client base in the sector exclude domestic and international PEPs, high net worth individuals as well as non-resident clients particularly from high-risk jurisdictions making use of their products. The client base profile is thus very low risk. All loan repayments are done via EFT and no cash repayments are allowed, hence the level of cash availability is non-existent. The fund does not lend to foreigners, as such, no international transactions exist. Further, the fund makes no use of agents. The earlier settlement of loans is not a common occurrence. This further reduces the of ML risk even. The assessment also concluded that the institution administering these loans has challenges finding records for CDD or other combating purposes as they still rely on a manual record keeping systems. The ML vulnerability of these environmental loans was thus rated **Low** (a score of 0.23 or 23%).

e. *Agricultural loans*

These are loans advanced for agricultural activities by the Agricultural BoN<sup>325</sup>. The table below suggest that most funds disbursed for agricultural purposes are directed in the areas of farm purchases, followed by investments in livestock.

Type of loan	Loan Revenue in 2019 (NAD)
Livestock purchasing loans (Small loans)	454,127,911.47
Farming purchase loans (Large loans)	992,895,087.50
Vehicle Tractor Loan (Medium Loans)	88,074,085.88
Infrastructure and implements (Large loans)	115,276,882.10

Table 26: Breakdown of various agri-loan revenues

The loans are mostly repaid via debit orders. It was also noted that some farmers make monthly cash payments from the proceeds of farming activities, and as such, the level of cash activity was relatively higher than other loan products (rated medium). Unlike other loans discussed above, international transactions do exist, partly because of farmers who are based abroad or local farmers' transactions with foreign based stakeholders. Many farms locally are owned by absent, foreign landlords, as a result of Namibia's colonial land regime. Significant cross border transactions in this space are sometimes related to such foreign landlords but such are not mainly from loans, except when payments are made to such farmers as they sell their land/farms. On the other hand, the earlier settlement of loans can enhance ML vulnerability if sources of funds are not duly understood. Earlier settlement of agri-loans was rated low as it is not a trend in the reporting period. Based on the foregoing, the product's ML vulnerability was rated between **Low** and **Medium Low** (score of 0.36 or 36%).

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<sup>325</sup> In line with the Agricultural Bank of Namibia Act 5 of 2003.

## **11. Designated Non-Financial Businesses and Professions (DNFBPs)**

### **11.1 Accountants**

The sector comprises of about fifty-four entities registered with the PAAB.<sup>326</sup> There are however also other bodies such as the Institute of Chartered Accountants of Namibia (ICAN), Namibia Institute of Professional Accountants (NIPA) and South African Institute of Business Accountants (SAIBA) who register Accountants based on attaining of certain professional qualifying criteria. These bodies are prudential self-regulatory bodies and have much more members. The members of these bodies normally operate their businesses as sole proprietors or partnerships. From data obtained as part of this exercise, it is estimated that the sector records turnover of over **NAD 330 million** annually.<sup>327</sup>

Not all accountancy services are covered under the FIA. Only accountants availing certain services that are vulnerable to ML/TF and PF are Accountable Institutions and are expected to play their part in mitigating ML risks. Such specific services include the management of client money, securities, bank or securities accounts or other assets; facilitating or sourcing contributions for the creation, operation or management of legal persons or arrangements; the creation, operation or management of legal persons or legal and commercial arrangements; the buying and selling of business entities, or parts thereof; as well as buying and selling of legal rights. ML vulnerability assessment was thus only limited to such services in the accounting profession. Such accountants are supervised by the FIC for AML purposes. Table 27 below presents a summary of the FIC's risk based supervision activities in the sector, in the period under review. Observations on supervisory authority, mandate and practices as raised in section 8.4.2 are relevant for accountants as well.

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<sup>326</sup> PAAB is the professional regulatory body in terms of the Public Accountants and Auditors' Act, 1951.

<sup>327</sup> Based on NRA submissions received.

<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total</b>
On-Site Compliance assessments	0	0	1	0	0	1
Off-Site Compliance assessments <sup>328</sup>	0	0	4	0	0	4
Trainings facilitated by the FIC	0	0	0	0	3	3
Sectoral compliance meetings	0	0	0	0	0	0
Enforcement measures taken or referrals made	0	0	0	0	0	0

Table 27: FIC's risk-based supervisory activities in the Accountancy sector

The overall ML vulnerability of the sector was assessed to be **Medium Low** (a score of 0.41 or 41%). The following sub sections present considerations which informed the rating.

#### *11.1.1 Availability and effectiveness of entry controls*

There are many stakeholders availing accountancy services nationally. Different requirements exist under each professional body (affiliation). Consistently however, professional certification and requirements are the basis for the entry controls to this sector. There are however other stakeholders who operate as bookkeepers and accounting officers who are either not registered with any professional body or do not need to register. The extent to which such informal or non-registered accountants avail some of the high risk services is minimal at sectoral level as it appears most of the high risk services, especially to larger entities (clients), are sourced from registered accounting firms.

Most requirements for registering as an accountant with professional bodies are primarily focused on ensuring applicants are duly qualified and competent with less regard for AML measures. For example, the requirement to ensure applicants to a professional accounting body avail certificates of clearance from the police is not prevalent in the sector. Within the AML framework, this is essential and lays the foundation for integrity due diligence.

Given the above, entry controls were rated **Medium High** (a score of 0.6 or 60%).

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<sup>328</sup> Section 8.4.2 above explains when offsite assessment activities are deployed. For this and many other lower risk sectors, offsites were mainly used to gauge risk mitigation levels.

#### *11.1.2 Integrity level of staff*

Staff members of accounting firms maintain a high level of integrity. Integrity is one of the core values of a professional in this sector. The International Code of Ethics for Professional Accountants (including International Independence Standards) sets out fundamental principles of ethics for professional accountants. Such reflect the profession's recognition of its public interest responsibility. "These principles establish the standard of behavior expected of a professional accountant. The fundamental principles are: integrity, objectivity, professional competence and due care, confidentiality, and professional behavior." Professional accounting bodies appear to be guided by these standards in licensing and regulating conduct of members. Accounting firms also appear to ensure that staff, especially professional staff maintain high levels of integrity. The rate of known integrity failure is low.

The challenge remains with informal accountants who are not under any prudential regulation as their integrity levels are not under any supervision or regulation. It must however be said that the volume of informal accountants is very low. More could be done to ensure clearance certificates or similar LEA clearances are obtained and professionals' conduct is periodically assessed against such standards to ensure they maintain high levels of integrity, in addition to the current measures administered by the relevant regulatory bodies. Accordingly, a **High** rating (score of 0.7 or 70%) was assigned for integrity levels of staff.

#### *11.1.3 AML knowledge of staff*

Staff members in this sector are considered to have a moderate understanding of their AML obligations, as per FIA compliance assessment observations. There are indications that more could be done to enhance understanding through awareness and trainings. Table 27 above suggests that the FIC only availed three training sessions to staff in the sector, in the reporting period. Such excludes training sessions that institutions avail to their employees.<sup>329</sup> Given all these considerations, the level of AML knowledge was rated **Medium** (a score of 0.5 or 50%).

#### *11.1.4 Effectiveness of compliance function (organization)*

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<sup>329</sup> Such data could not be obtained.

FIA compliance assessment findings, sectoral views and other observations informed this variable. Most institutions do not have dedicated compliance functions but usually have one or two persons entrusted with ensuring compliance with AML laws. It was generally concluded that such persons often have limited understanding of the FIA and their general AML obligations. Accordingly, a rating of **Medium** (a score of 0.5 or 50%) was assigned.

#### *11.1.5 Effectiveness of suspicious activity monitoring and reporting*

Table 27A below shows very low reporting levels in the reporting period.

Year	STRs	SARs
2019	0	0
2018	0	0
2017	0	1
2016	0	0
2015	0	0
<b>Total</b>	<b>0</b>	<b>1</b>

Table 27A: Reporting behaviour of Accountants

Reporting of STRs and SARs is one essential indicator of an effective AML compliance regime. Effective control mechanisms should help the sector detect suspicious behaviour amongst its clients and enable timely reporting of same to the FIC. Commensurate with the assumed low level of risk, the sector's STR and SAR reporting behaviour is generally low. Given the factors around limited AML knowledge, which impacts the ability to implement effective compliance and monitoring systems, this variable was rated **Medium** (a score of 0.5 or 50%).

#### *11.1.6 Product vulnerability*

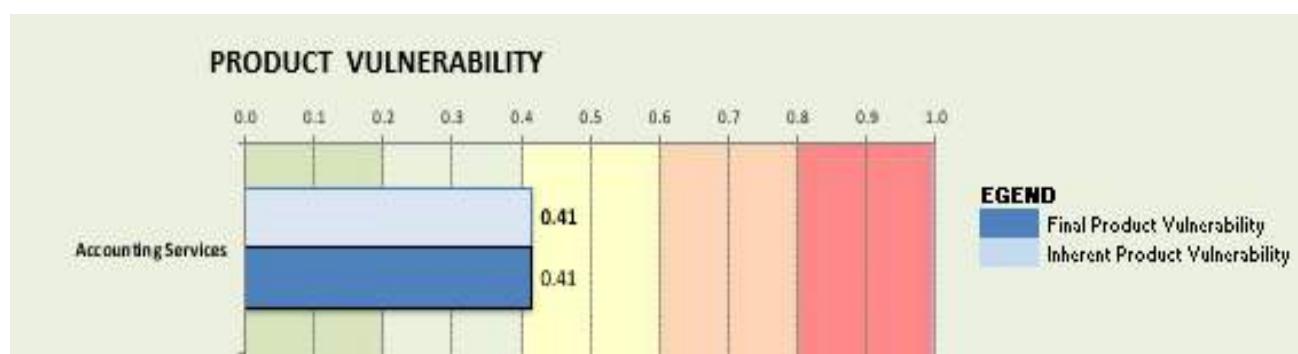


Figure 34: Inherent and final product ML vulnerability levels: Accounting sector

Firms in this sector provide accounting and related company secretarial services. Only some services offered by accountants are highly vulnerable to ML and thus only such were subjected to reviews to determine their ML vulnerability. Such include the management of client money, securities, bank or securities accounts or other assets; facilitating or sourcing contributions for the creation, operation or management of legal persons or arrangements; the creation, operation or management of legal persons or legal and commercial arrangements; the buying and selling of business entities, or parts thereof; as well as buying and selling of legal rights.<sup>330</sup> The aggregated rating of the ML vulnerability for such accountancy services was rated **Medium Low** (a score of 0.41 or 41%).<sup>331</sup>

The management of client money, securities, bank or securities accounts or other assets appears to present an inherently higher ML vulnerability to the sector. This is because some accountants are directly involved in helping to manage the proceeds or funds of clients and such funds could, if due diligence is not adequately executed, originate from illicit activities. Overall, the FIA compliance assessment observations in the sector suggests that accountants need to do more to enhance their understanding of the AML framework and implement relevant controls to mitigate ML risks.

ML vulnerabilities can be exploited through the facilitation or sourcing of contributions for the creation, operation or management of legal persons or arrangements. In terms of the FIA, accountants are expected to ensure that proceeds sourced to fund such ventures, start-ups or serve as contributions by beneficial owners do not originate from illicit activities. The collection of proceeds or funds to fund business activities generally present a higher inherent ML vulnerability to accountants that avail such services. There were not many controls observed to suggest that inherent ML vulnerabilities are sufficiently reduced. There is reliance on banks to conduct all due diligence as such funds are usually moved through banking channels.

The creation, operation, management of legal persons or legal arrangements as well as buying and selling of business entities or parts thereof, including the selling of legal rights can

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<sup>330</sup> Observations related to company secretarial services reflected under the product vulnerability analysis of Legal Practitioners (as per section 11.8.6) within this report are worth noting.

<sup>331</sup> This product/service rating is similar to the overall sectoral ML vulnerability rating.

be susceptible to ML activities. ML vulnerability in such services occurs when the necessary due diligence is not duly undertaken to manage risks of unfit beneficial owners (shareholders, members, directors etc.) who may want to access legal persons or arrangements and abuse such vehicles in advancing ML activities. As alleged in the *Fishrot* case and many others, launderers would often take ownership of legal persons and arrangements or through proxies manage such vehicles through which they can channel or launder proceeds. The NRA and FIC supervisory activities did not find indications that accountants (and company secretarial service providers) consistently obtain customer financial profile information for purposes of AML. The vulnerability thus remains reasonably high.

Many entities that transact in high financial values nationally make use of registered accountants. High value clients and PEPs also make use of these services directly or through legal persons (entities) and arrangements (trusts) and this inherently escalates ML vulnerability. The small to medium sized businesses usually make use of unregistered accountants in some circumstances and such inherently escalates ML vulnerability of the sector, although this is insignificant in terms of volumes and values at sectoral level. Overall, the client base of the sector is rated Medium in terms of ML risk exposure.

Accountants generally do not deal with cash, although their clients could be involved in cash intensive operations. For laundering to occur with cash proceeds, accountants would have to be complicit or supportive of efforts to advance laundering of cash. Generally, the level of cash activities was rated Low, thus presenting lower ML vulnerability to the sector.

Overall, transaction records are easy to trace within the sector. It is also obvious that the nature of services offered by accountants do not provide for anonymous provision of such. Clients who access accountancy services can be identified, unless agents or proxies are used to hide true beneficiaries or principles.

Although there are no local publications of typologies showing the abuse of accountancy services, there are cases internationally and STRs which show how accountancy services can be abused for ML purposes. This naturally enhances inherent ML vulnerability level.

Assurance services, though not part of designated services in terms of Schedule 1 of the FIA could be susceptible to ML abuse. The sector plays a key role in the preparation of records on which authorities and other stakeholders rely. Investors, regulators, tax authorities etc., also rely on accounting records for key decisions. If abused, such creates a platform to mislead investors, regulators, tax authorities in the advancement of financial crimes including tax evasion.

## 11.2 Auctioneers

The annual revenue of the sector in the years 2017 and 2018 was estimated at **NAD 5.675 billion**.<sup>332</sup> About half of that represents the annual sectoral auction revenues. Such figure may place the sector between the medium to high ranking sectors, on financial values, amongst DNFBPs but is very low when compared to banks and NBFIs within the AML framework. Auctioneers, like all other DNFBPs are supervised by the FIC for AML purposes. The FIC had nineteen auctioneers registered for AML/CFT/CPF supervision purposes at the time of reporting as per Table 28 below.

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<sup>332</sup> This was sourced through responses from the sector. Note the country's GDP of around NAD 181 billion in 2019.

Auctioneers	Type of goods auction				FIC registration Yes/No
	Livestock	Second Hand Goods	Vehicles	Non-moveable Properties	
1. Namboer Auctioneers cc	✓	✓	✓	✓	Yes
2. Pro-Ex Auctioneers		✓	✓	✓	Yes
3. Aucor Namibia (Pty) Ltd		✓	✓	✓	Yes
4. Oshakati Livestock Centre cc	✓				Yes
5. Golden Eagle Auctioneer				✓	Yes
6. Auction Dynamix cc	✓	✓	✓	✓	Yes
7. Karoo Ochse Namibia (Pty) Ltd	✓				Yes
8. Windhoek Livestock Auctioneers	✓			✓	Yes
9. Blaauwberg Auctioneers cc	✓				Yes
10. Agra Ltd	✓	✓	✓	✓	Yes
11. Auction King		✓	✓	✓	Yes
12. Peters Property Service				✓	Yes
13. Namibia Livestock Auctioneers (Pty) Ltd	✓	✓	✓	✓	Yes
14. Bay Auctioneers		✓	✓		Yes
15. Ingo Business ConneXions (IBXNam)		✓	✓	✓	Yes
16. Allied Auctions cc	✓	✓	✓		Yes
17. Autoworld Trade Centre (Pty) Ltd			✓		Yes
18. Gateway Properties & Auctioneers (Pty) Ltd				✓	Yes
19. Ministry Of Works and Transport (Government Garage)			✓	✓	✓
					Yes

Table 28: List of auctioneers and the type of goods they auction

Table 28A below summarises all AML/CFT/CPF supervision activities the sector has been subjected to.

Year	2015	2016	2017	2018	2019	Total
On-Site Compliance assessments	3	0	8	1	0	12
Off-Site Compliance assessments	0	1	1	2	2	6
Trainings facilitated by the FIC	0	0	0	0	3	3
Sectoral compliance meetings	0	0	0	0	1	1
Enforcement measures taken or referrals made	0	2	3	0	0	5

Table 28A: FIC's risk-based supervisory activities in the Auctioneers sector

It is suspected that there could be some auctioneers, possibly located in far remote areas, that may not yet have registered with the FIC. These may be smaller auctioneering firms, usually owner operated and not known to the FIC. Most of them appear to facilitate the auctioning of second-hand or used goods while some facilitate livestock auctions. They often service markets or areas not attended to by established mainstream auctioneers. The sector is relatively easy to enter if one is to operate informally. This encourages entry by mostly

smaller firms which appear to be largely non-compliant with the AML framework. These smaller, unknown entities are generally considered insignificant in terms of transactional volumes and values they may be trading in. Efforts are continuously made to identify and include them in the AML/CFT/CPF supervisory framework but more should be done in this regard.

The overall ML vulnerability rating of the sector is **Medium High** (a score of 0.64 or 64%). The considerations below explain factors that informed such rating.

#### *11.2.1 Availability and effectiveness of entry controls*

There are different types of auctioneers. The major ones include those specializing in the auctioneering of motor vehicles, non-moveable property, livestock and loose goods. The Livestock Auctioneers are subjected to strict entry control processes by the Namibian Meat Board and the Directorate of Veterinary Services in the Ministry of Agriculture with the aim of preventing animal theft and not necessarily for combatting ML, although some controls may be helpful.

The Directorate of Veterinary Services and Livestock Agents Brokers and Transporters Association (LABTA) are responsible for the registration of livestock auctioneers, while the Namibian Estate Agent's Board (NEAB) is responsible for the registration of Estate Agents (those who would auction non-moveable properties). Prospective auctioneers therefore register with such relevant regulatory body as per the services that they wish to provide. Generally, there are minimal requirements that applicants need to comply with to be licensed to avail auctioneering services. The most essential AML component not included in the licensing due diligence is failure to duly assess fit and proper standing or positions of beneficial owners.

Primarily, it is fair to conclude that only livestock and non-moveable property auctioneering services are subjected to sound prudential regulation. It is the FIC's view that the absence of prudential sectoral supervisory bodies for all kinds of auctioneers to enforce prudential requirements presents greater ML vulnerabilities to the sector as a whole.

A **Medium** rating (a score of 0.5 or 50%) was accordingly assigned for the effectiveness of entry controls.

#### *11.2.2 Integrity of staff*

The FIC has assurance<sup>333</sup> that the average large and higher risk auctioneering firms have the necessary staff training programs, policies on code of conduct and staff rotation initiatives in place to assist with maintaining high levels of staff integrity in the sector. Additionally, these auctioneers undertake competency background checks on their agents as part of the recruitment process. However, there has been records of integrity breaches within the auctioneering sector and such relevant persons have been subjected to relevant disciplinary procedures in accordance with auctioneering firms' policies. Statistics on such were however not available. The smaller auctioneering firms operating in remote areas have at most not been accessed, nor supervised by the FIC. The FIC is thus not able to duly speak to integrity levels in such smaller firms. These smaller, unknown entities are generally considered insignificant in terms of transactional volumes and values they may be trading in. Having regard to all these factors, a **High** rating (a score of 0.7 or 70%) was allocated.

#### *11.2.3 AML knowledge of staff*

The AML knowledge of auctioneer staff is considered Medium in the larger firms and almost non-existent in smaller ones. Not all AML compliance officers have been trained on FIA compliance and how to execute their AML obligations. Also, most of the smaller auctioneers do not attend FIC/Auctioneer sectoral engagement sessions and this does not help build understanding of the AML framework. Accordingly, a **Low** rating (score of 0.3 or 30%) was allocated for AML knowledge of staff.

#### *11.2.4 Effectiveness of compliance function (organization)*

The large auctioneer firms have AML compliance officers at management level and AML controls in place. The majority of such auctioneer firms have been subjected to compliance assessment activities and there is reasonable assurance that AML controls are functioning.

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<sup>333</sup> From compliance assessment and other supervisory engagements.

There appears to be progress in compliance levels over the years. On the other hand, there is no assurance that compliance functions are effective in smaller auctioneers mainly owing to poor understanding of AML obligations. Room for improvement is in areas such as knowledge of AML obligations, UNSC sanctions screening, client and transactional monitoring as well as reporting of CTRs, STRs and SARs.

The absence of a PEP list (to assist with monitoring mechanisms) inherently impacts the effectiveness of detecting and reporting unusual and suspicious transactions. The effectiveness of compliance functions was rated **Medium Low** (a score of 0.4 or 40%).

#### *11.2.5 Effectiveness of suspicious activity monitoring and reporting*

Although most large auctioneering firms are aware of suspicious transaction reporting procedures and obligations, it was observed that many auctioneering firms, especially smaller ones in the regions may not be aware of their reporting obligations. The FIC observed that the STRs and SARs received from the sector are usually submitted by a few established industry players, primarily those with higher ML vulnerability.<sup>334</sup>

Year	STRs	SARs
2019	2	4
2018	2	1
2017	6	0
2016	3	0
2015	1	0
<b>Total</b>	<b>14</b>	<b>5</b>

Table 28B: Auctioneer reporting behaviour

Generally, the larger auctioneers have implemented monitoring systems which enhances detecting and reporting of SARs and STRs. Most monitoring systems are not automated. They based on human interventions or manual monitoring of transacting behavior and comparing such to customer profiles, to detect reportable transactions. Other than commitment to comply, the AML knowledge of compliance officers appear to be the difference between overall AML controls within larger and smaller firms. The general lack of CDD and EDD in smaller firms contribute to their inability to effectively detect and report

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<sup>334</sup> partly owing to higher market share in transactional volumes and values.

suspicious transactions. There is a need to enhance the overall quality of STRs from the sector and this can emanate from effective CDD and EDD activities. Having regard to all of these, the effectiveness of suspicious activity monitoring and reporting was rated **Medium Low** (a score of 0.4 or 40%).

#### *11.2.6 Product vulnerability*

The sector generally provides for livestock auctioneering, most utilised by the farming sector plus the auctioneering of loose goods. Loose goods are usually used or second hand goods which have either been repossessed or availed for auctioning by respective owners. The auctioneering of moveable properties refers to vehicles and non-moveable properties include residential, commercial and industrial type of properties. In most cases, individual property owners would avail their properties to be sold via auctions while financial institutions (e.g banks and insurance firms<sup>335</sup>) also significantly refer properties for auction sales. Discussions below focus on auctioneering services as a whole.

Auctioneering services are inherently vulnerable to ML threats. These services provide an easier platform through which proceeds from illicit activities can be laundered or integrated in the financial system with minimum due diligence. Below are some typical suspicions noted from STRs showing how criminals could potentially be abusing auctioneering services:

- taking advantage of a highly cash intensive environment to exchange ill-gotten proceeds/cash for high value items (bidding to buy goods at auctions); and
- criminals requesting unsuspecting auctioneers to facilitate the auctioning or disposal of their high value items (acquired with proceeds of crime or from crime). Once a transaction is completed, proceeds of such a transaction are transferred via Electronic Fund Transfers or other means to the criminal's bank accounts and presented as legitimate earnings.

Auctioneering services, especially vehicle, commercial and residential property auctions attract high net worth bidders (clients) including domestic and international PEPs. Many PEPs and high net worth individuals are also involved in farming operations, and this inherently

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<sup>335</sup> Banks usually refer repossessed properties for auction while insurance firms also refer items or properties in their possession (e.g written-off) for auction.

enhances ML vulnerability when such persons participate in framing or livestock related auctions. The auctioneering of loose goods, which are often low value items such as household goods often do not attract high value clients, nor do they attract high financial values. This inherently reduces ML vulnerability but the extensive use of cash at loose goods auctions inherently enhance ML vulnerability if CDD is not duly undertaken. The general view is that amounts at loose goods auctions are smaller with the average transactions ranging from NAD 50.00 – NAD 3,000.00. With vehicle and property auctions, average transaction values could be as low as NAD 10,000.00 and as high as several millions, depending on the nature and type of properties on auction. The use of cash tends to inherently escalate ML vulnerability. Most livestock and property auctioneers deal more with EFT payments and lesser cash, usually owing to the high financial values of transactions they process. Generally, the lower the rate of cash usage, the lower the ML vulnerability inherently.

Most moveable and non-moveable properties sold through auctions are overwhelmingly funded through hire purchases (e.g vehicles) and mortgage bonds. This reduces ML vulnerability considerably as AML due diligence is undertaken by financing institutions which are part of the AML framework. The requirement for bidders to pay deposit payments at auctions inherently escalates ML vulnerability when due diligence is not adequately undertaken. Auctioneers indicated that clients do at times pay deposits in cash and auctioneers are expected to conduct the necessary CDD in line with ML exposure. Given the overall inadequate level of CDD measures<sup>336</sup> in several auctioneering firms, there is enhanced ML vulnerability owing to some of the considerations stated above.

The non-face-to-face and anonymous use of auctioneering service is not prevalent. These factors reduce inherent ML vulnerability as clients would be present at auctions and can be identified. It must be said that even without adequately identifying customers as per the AML framework, there is some form of identification that takes place before most auctions commence. Such basic bidder identification has always been in place, mostly for auctioneer control purposes, prior to the FIA coming into operation.

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<sup>336</sup> Generally, KYC and CDD measures are undertaken for bidders prior to commencement of auctions, as part of the auction registration process. Auctioneers are required, like all other Accountable Institutions, to obtain information around the financial profiles of clients and most established auctioneers comply while the smaller auctioneers do not consistently and effectively execute CDD.

It is easier to trace transactional records as record keeping is adequate, more so with livestock and property auctioneers as their records of livestock can be traced back to data kept by relevant authorities such as the Ministry of Agriculture, Deeds office or NATIs<sup>337</sup>.

The NRA could not rule out possibilities that Auctioneering services could be abused to advance potential tax related offences, fraud, corruption and other financial crimes, but there is no indication that such services have been used in furtherance of such crimes. There are unproven allegations and reports that some public officials in positions of power corruptly accept bribes through receiving livestock (which is moved from one farm to another), which they later auction to gain finances. This is said to be the preferred method of laundering as it is not easy to trace or detect and if true, may escalate livestock auctioneering vulnerability to ML. Typologies showing abuse of the sector are available and prominent internationally, with a few cases locally.

Having considered all of the above, livestock auctions appear to be more vulnerable to ML risks than loose goods auctions as per Figure 35 below.



Figure 35: Inherent and final product ML vulnerability levels: Auctioneers sector

<sup>337</sup> NATIs the authority with which vehicles are registered.

### 11.3 Casinos

Casinos are licensed in terms of the Casinos and Gambling Houses Act.<sup>338</sup> Seven casino licenses were granted by the Casino Board as at December 2019. All casinos are locally owned and operated within the country's large hotel establishments. There is no indication of online gambling activities availed by the seven casinos domestically, although practically, persons can independently participate in online gambling activities that may be availed by foreign service providers. Online gambling activities might therefore be taking place if clients transact from their bank accounts or different platforms, especially if financial service providers are unable to detect and limit such.<sup>339</sup> ML vulnerabilities in this regard are not understood by supervisory bodies and efforts need to be made to understand the extend of such practices, if any. Though the legal framework in the period of reporting did not speak to online gambling activities, the new Gaming and Entertainment Control Act<sup>340</sup> (which was not in operation in the period reviewed) would provide a legal framework that would prudentially regulate online gambling activities when it is operationalised.<sup>341</sup>

The Casino Board is mandated to supervise casino operations prudentially but such has not actively taken place. The Board is not adequately resourced to execute administrative matters as per the current legal framework. As per the FIA however, casinos are supervised by the FIC for AML purposes. All casinos have been subjected to active supervisory activities including onsite and offsite compliance assessment activities as well as training and awareness creation engagements by the FIC. The supervisory framework is explained in section 8.4.2 above. Table 29 below presents a summary of all such activities.

Year	2015	2016	2017	2018	2019	Total
On-Site Compliance assessments	1	2	1	1	1	6
Off-Site Compliance assessments	0	0	1	0	0	1
Trainings facilitated by the FIC	0	0	0	1	0	1
Sectoral compliance meetings	0	0	0	0	1	1
Enforcement measures taken or referrals made <sup>342</sup>	0	0	3	0	0	3

<sup>338</sup> Act 32 of 1994.

<sup>339</sup> In terms of Exchange Control Regulations (Regulations pertaining to cross border remittances) which prohibit all forms of offshore gambling activities.

<sup>340</sup> Act 13 of 2018.

<sup>341</sup> In terms of the new Act, a person may not engage in or make available an online game, except as authorised in terms of the new Act. The Act further provides prudential mechanisms around such.

<sup>342</sup> These are referrals from compliance supervision for enforcement consideration owing to FIA non-compliance. In summary, the enforcement measures were mainly written warnings which resulted in auctioneers taking remedial measures.

Table 29: FIC's risk-based supervisory activities in the Casino sector

The total assets under management of the casino sector were estimated to be around **NAD 242 million**. When compared to the assets in other DNFBPs, such sectoral asset value ranks the sector between the low and medium ratings.

Casino services are inherently vulnerable or susceptible to potential ML abuse due to the following factors, amongst others:

- i. Apart from the FIC's role as the AML supervisory body, the industry does not have an active regulatory body to monitor their activities prudentially, Compliance behaviour is thus not enforced to a level that encourages AML efforts;
- ii. The industry is exposed to a variety of clients that may possess or potentially launder proceeds from illicit activities. High risk clients make use of casino services;
- iii. Casinos are cash intensive businesses with inherently reduced customer due diligence controls; and
- iv. Casinos offer various financial services (e.g foreign exchange and cash ins and cash outs).

Overall, the sector's ML vulnerability rating was said to be **Medium** (a score of 0.55 or 55%). The sections below highlight considerations which inform such rating.

The most significant control weakness observed was the effectiveness of entry controls due to laws and regulations which are not aligned to the AML framework. These laws were passed prior to the creation of Namibia's AML/CFT/CPF framework. Some challenges which cut across sectors includes the absence of a national PEP list and the unavailability of independent sources to verify identities and ultimate beneficial owners etc. These could improve the quality of CDD controls implemented and as a consequence thereof could also enhance STR reporting.

### *11.3.1 Availability and effectiveness of market entry controls*

Casinos are licensed and regulated by the Gaming Control Division in the Ministry of Environment and Tourism, in terms of the Casinos and Gambling Houses Act<sup>343</sup>. At the time of reporting, efforts to repeal and replace the current Act have commenced. The new law, if enacted in current format, will help AML/CFT/CPF combatting efforts as it is aligned to the FIA and provides comprehensive legal framework for online gambling activities not previously catered for.

The current Act, despite a few shortcomings in the AML/CFT/CPF sphere makes provision for licensing, supervision and control of casinos as well as gambling houses. Additionally, it makes further provision for the establishment of a Casino Board and provides for matters connected therewith and incidental thereto. Sections 25 to 31 of the Act further makes provision for the issuing of “Certificates of Approval” which permits persons working in casinos. This further enhances the effectiveness of relevant controls and can positively impact AML compliance. Further, when granting such approval, the Minister considers the applicant’s financial background, character, reputation and whether he/she has committed any offenses before granting the certificate.

It was also noted that the Ministry does not undertake competence assessments (e.g experience and qualifications) of directors and senior management of casinos. The current due diligence pertaining to applicant’s financial background, character, reputation falls short of the conventional AML/CFT/CPF standards regarding fit and proper. For example, while it is a norm with other licensing authorities to request for Certificates of Conduct, the Casino Board does not require such upon licensing. This was not observed to be actively happening although the application form makes provision for screening applicants with regards to their criminal records. The NRA found that a casino license which was issued to one dealer was voluntarily surrendered by the holder in May 2011 when their business was unsustainable (decline in revenues). Overall, only aspects related to the verification of potential criminal behaviour of key persons associated with casinos, remains a concern. The licensing is largely helpful to the AML/CFT/CPF framework and was thus rated **Medium Low** (a score of 0.4 or 40%).

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<sup>343</sup> 32 of 1994

### *11.3.2 Integrity level of staff*

Overall, staff training, policies on code of conduct and staff rotation are in place to assist with maintaining integrity levels of staff in the sector. Additionally, casinos undertake background checks on their employees as part of their staff recruitment process. The Ministry also vets key employees registered under each casino. As part of this exercise, casinos indicated to have recorded incidents of integrity breaches and have subjected such employees to internal disciplinary measures. Considering all variables, the integrity level of staff was thus rated **Medium High** (a score of 0.6 or 60%).

### *11.3.3 AML knowledge of staff*

The AML knowledge of casino staff is considered reasonably high, especially amongst the AML Compliance Officers. All AML Compliance Officers have been trained<sup>344</sup> and usually attend periodic FIC/Casino sectoral engagement sessions where detailed discussions around ML risk management assists in addressing sectoral compliance challenges. The sector's commitment and willingness to resolve AML/CFT/CPF challenges has enhanced overall compliance. Accordingly, a rating of **Medium High** (a score of 0.6 or 60%), was assigned.

### *11.3.4 Effectiveness of compliance function in the organization*

Over the years, progress in implementing compliance functions has been observed through various supervisory activities. Earlier observations (2012 – 2015) showed poor understanding of the AML framework and their obligations, which naturally resulted in the absence of or inadequacy of AML compliance programs. At the time of reporting, all casinos have appointed AML Compliance Officers at management level and have also implemented compliance programs. The compliance programs have led to the implementation of policies and procedures, risk assessments, client due diligence, record keeping, monitoring and reporting, amongst others. Supervisory observations also suggest that controls related to risk

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<sup>344</sup> Basic FIA compliance training and how staff should execute their part (in terms of CDD, monitoring, risk assessments etc.) in ensuring compliance with the law.

assessments as well as monitoring and reporting require most enhancements at the time of reporting.

The sector indicated that more supervisory work still needs to be conducted through the established sectoral forums to primarily focus on a few challenges that persists. The absence of a national PEP list (which could assist with monitoring mechanisms) undermines the effectiveness of detecting and reporting unusual and suspicious transactions. The sector thus calls for supervisory authorities to issue a PEP list and share same with the sector. The effectiveness of compliance functions within Casinos was thus rated **Medium High** (a score of 0.6 or 60%).

#### *11.3.5 Availability and effectiveness of suspicious activity monitoring controls*

The first STRs from the sector were reported in 2016, a while after AML/CFT/CPF supervisory activities have commenced<sup>345</sup> (as per Table 29A below). While the ML vulnerability is rated around the Medium range, the reporting volumes overall are low and could be enhanced.<sup>346</sup>

Year	STRs	SARs
2019	5	0
2018	2	0
2017	9	1
2016	3	0
2015	0	0
<b>Total</b>	<b>19</b>	<b>1</b>

Table 29A: Casino reporting behaviour

Usefulness of reports is essential. Most of the STRs from the sector have been categorized as ‘low priority’, primarily due to poor quality (e.g poor justification of suspicions). In some cases, reports are assigned a lower priority due to lower financial values involved. Continued efforts (such as one-on-one guidance) are made by the FIC to ensure casinos refine their monitoring and reporting controls in order to enhance reporting quality. A **Medium High** (score of 0.6 or 60%) rating was thus assigned for this variable.

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<sup>345</sup> Active AML/CFT/CPF supervisory activities in the sector commenced in 2012/13 and this is the time institutions started building compliance frameworks. See context in section 8.4.2.

<sup>346</sup> If FIC observations from compliance assessment activities are anything to go by.

### *11.3.6 Product vulnerability*

The casino sector avails two different types of services. Albeit very similar, the Slot Machine and Table Betting services are different and pose distinct ML vulnerabilities.

Casino services attract foreign clients from all over the world. Without reliable identification infrastructure, there is a possibility that such clients could be linked to complex and opaque legal structures internationally. The FIC has identified that such services attract high net worth individuals, including domestic and international PEPs. The client base thus presents a higher ML risk to casinos.

There is no indication that the slot machines and tables have been used to advance financial crimes such as potential tax related offences and fraud. Additionally, these services are only available to natural persons. The non-face-to-face usage of casino services is not available for both slot machines and table betting services. These factors reduce inherent ML vulnerability.

The use of cash is permitted in both slot machines and table betting. This inherently enhance ML vulnerability.

The final product vulnerability for Slot Machines and Table Betting have been generally reduced by AML control measures implemented. Figure 36 below suggests that overall, Table Betting carries a slightly higher ML risk compared to Slot Machines.



Figure 36: Inherent and final product ML vulnerability levels: Casino sector

#### 11.3.6.1 *Growth in gambling houses and sports betting activities*

The FIC is the AML/CFT/CPF supervisory body for all betting and related gaming activities. FIA Schedule 3, Item 3 states that persons that provide services of a gambling house, totalisator or bookmaker are reporting institutions that have legal obligations to comply with the FIA. Their main responsibilities are similar to those of accountable institutions. Primarily, gambling houses and sports betting service providers are expected to duly implement FIA compliance programs that ensure client identification and monitoring of clients' transacting behaviour. This places them in a position to contribute to combatting efforts, mainly through detecting and reporting suspicious activities to authorities.

Gambling houses are considered to have a very low ML vulnerability exposure and have for years not been subjected to AML supervision activities domestically. Sport betting activities on the other hand have not been in the market until about five years ago. Over the last five years, sports betting activities has been on the increase in Namibia. These services are mostly availed by sports betting firms that operate through gambling houses. At the time of reporting, the NRA identified about five major sports betting service providers that operate through gambling houses across the country. The betting client appears to share similar characteristics to the clients involved in gambling activities. The NRA found that in most cases, sports betting service providers have agreements with gambling house owners that enable the latter to place or locate their services within the premises of gambling houses. Some of the large industry players have betting terminals located in more than 20 locations. Sports betting was observed to be most prevalent in Windhoek, Walvis Bay, Swakopmund

and a few betting facilities were observed in some northern towns such as Oshakati, Ondangwa, Rundu and Katima Mulilo.

This risk assessment also found that most betting clients transact in transactions lower than the minimum CDD identification threshold of NAD 5,000.00. The average transaction is between NAD 5.00 to NAD 500.00 per client, daily. The volumes are however very high at certain times of the month, similar to non-sport gambling activities. Generally, on pay days, the larger betting entities (in popular locations) could process funds in excess of NAD 25,000.00 daily while small-to-medium sized entities process much lesser than that, depending on the location of the betting services and the type of sporting activities occurring around such periods. Betting on outcomes from sports activities such as the English Premier League and Spanish La Liga (soccer leagues) is quite popular. In a good month, the popular or larger sports betting entities can facilitate betting activities valued between NAD 500,000.00 to NAD 800,000.00.

The NRA also noted that some of the larger firms avail the betting services via online platforms. However, for such to occur, the client is expected to first visit the betting terminals to be identified and enable creation of an online account or portal from which to bet online. From the betting houses engaged, it also appears that funds needed to be deposited or paid at the terminals or within the gambling house, which will then enable loading of same onto the clients' online portal or account.

#### **11.4 Customs Clearing and Forwarding Agents (CCFAs)**

The sector was first assessed for ML vulnerability in the 2015/16 NRA. Section 1.1 of this report avails a high-level summary of ML vulnerability observations from the 2015/16 NRA update.

CCFAs facilitate the import and export of goods and services. As per Figure 37 below, the value of imported goods increased to NAD 76.8 billion in 2019 compared to NAD 74.8 billion recorded in 2018.<sup>347</sup> Services imported on the other hand increased to NAD 8.4 billion in 2019 from NAD 7.8 billion in 2018. The export value of goods in 2019 was NAD 56.4 billion while

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<sup>347</sup> NSA, Annual Accounts 2019.

the value of services exported stood at NAD 7.7 billion in 2019. This avails some indication of the size of the financial values facilitated by services of CCFAs.

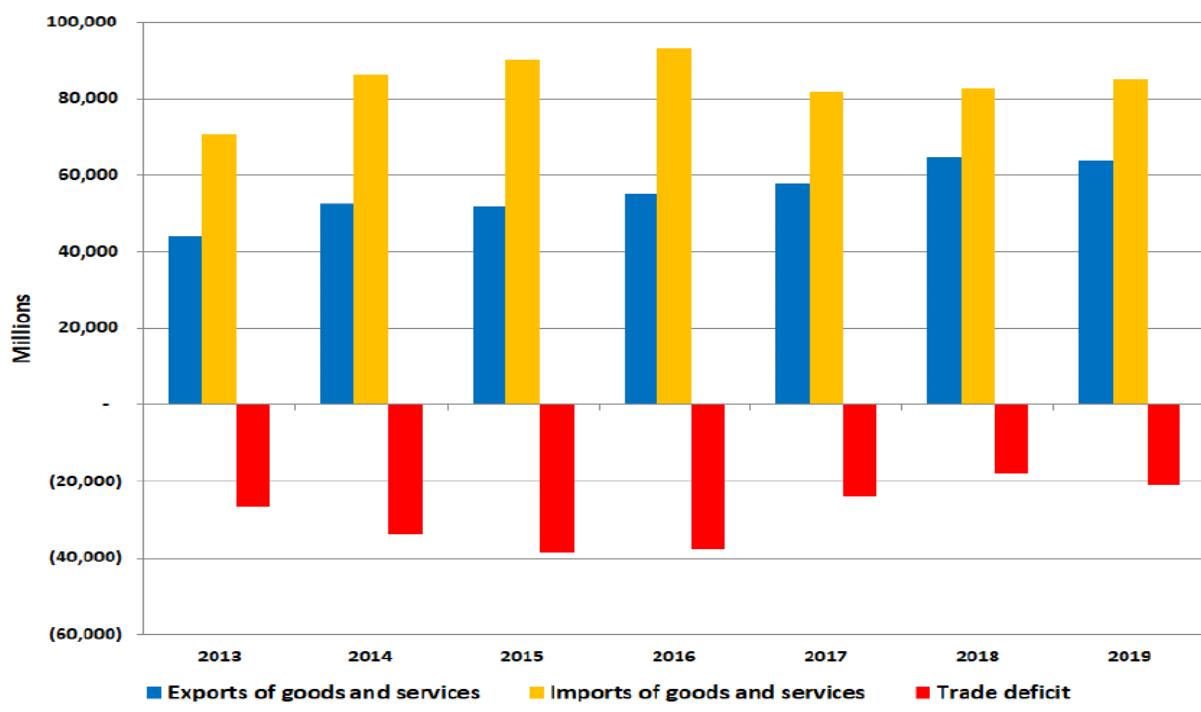


Figure 37: Exports and imports of goods and services in billion NAD<sup>348</sup>

The 2016 NRA update assessed ML and TF risks within cross border remittances, amongst others. Cross border remittances were found to be highly exposed to TBML, capital flight and potential tax related offences. Owing to the significant ML vulnerabilities observed with customs clearing processes, the FIA was amended in November 2019 to include CCFAs as Accountable Institutions with AML combatting obligations. AML supervision of the sector could thus only commence in such period.<sup>349</sup> In the period reviewed, AML compliance is relatively new to the sector and measures implemented by CCFAs in terms of the FIA are still maturing. Most AML control weaknesses reflected in the 2016 NRA update are thus still relevant. Services thus remain inherently vulnerable to potential ML abuse. The FIC has conducted FIA compliance training sessions across the sector nationally. At the time of reporting, a draft sectoral AML guidance note has been prepared with inputs from such sectoral engagements and could be finalised in due course.

<sup>348</sup> NSA, Annual Accounts 2019.

<sup>349</sup> The country was under COVID-19 related lockdowns from the first quarter of 2020. This limited commencement of extensive AML awareness raising and other essential supervisory activities in both CCFAs and NPOs until October 2020.

Overall, the sectoral ML vulnerability rating of this sector was rated **Very High** (a score of 0.80 or 80%). The vulnerability map below presents assessment outcomes as at December 2019. These outcomes informed such sectoral risk rating.

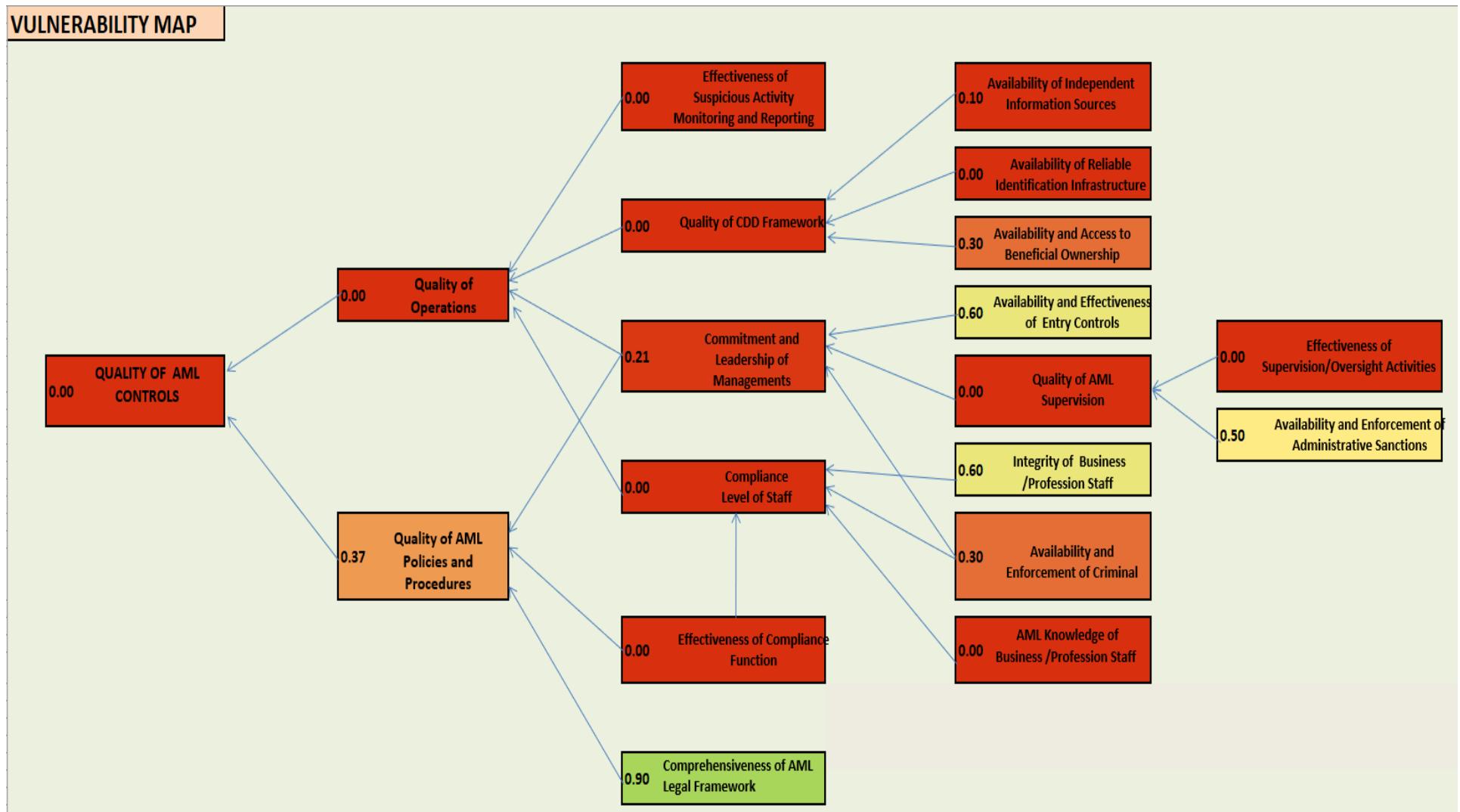


Figure 38: ML vulnerability map: CCFAs

#### *11.4.1 Effectiveness of supervision and oversight activities*

Much of what is captured in section 8.4.2 on FIC's supervision mandate and effective implementation thereof applies here. At the time of presenting this report, not much supervisory activities have been undertaken by the FIC. Given that the sector's AML supervision only commenced in November 2019, the sector's AML supervision effectiveness did not exist as at December 2019. A **Zero** rating was thus assigned.

#### *11.4.2 Availability and effectiveness of entry controls*

Namibia is a member of the Southern African Customs Union (SACU). Customs regulations and practices are aligned to the SACU framework which in turn is aligned to most international best practices on customs operations.

CCFAs are licensed and regulated by the Ministry of Finance: Customs and Excise Directorate<sup>350</sup>, in terms of the Customs and Excise Act, 1998<sup>351</sup>. This Act regulates market entry through the licensing and supervision of CCFAs prudentially. The Act further provides for the establishment of a CCFA Board which will execute matters related therewith and incidental thereto. The licensing process includes subjecting applicants to an extensive due diligence process which includes competence assessment tests, meeting bond/financial guarantee requirements, verification and vetting, as well as character or conduct related requirements.

There was however a moratorium placed on the licensing of CCFAs until 2018. Newly licensing requirements were implemented in 2020. The effectiveness of such requirements will be reviewed in future assessments.

The existing market entry due diligence framework, in as far as its effectiveness to duly contribute to AML combatting was rated **Medium High** (a score of 0.6 or 60%).

#### *11.4.3 Integrity levels of staff*

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<sup>350</sup> At the time of reporting, Customs operations have been placed under the recently established Namibian Revenue Agency (NamRA).

<sup>351</sup> (Act no. 20 of 1998).

Staff training, policies on code of conduct and staff rotation are in place to assist with maintaining acceptable integrity levels of staff in the sector. Additionally, CCFAs undertake background checks on their agents as part of the recruitment process. The Ministry also vets and approves all agents registered under each CCFA. These factors enhance AML control effectiveness.

CCFAs have recorded incidents of integrity breaches and have had to subject relevant employees to remedial measures in accordance with their company policies. AML supervisory activities have barely commenced in the sector with most work being dedicated to training and awareness. The FIC, as AML supervisory body, at the time of reporting have not undertaken sufficient assessment activities to understand the level of staff integrity in the sector. Overall, a **Medium High** (a score of 0.6 or 60%) rating was assigned.

#### *11.4.4 AML knowledge of staff*

At the time of reporting, the FIA had just been amended to include the sector in the AML framework. The sector has barely any understanding of the AML obligations, although a few larger firms appear to have commenced activities to enhance their understanding and implement relevant controls. Not all CCFAs attended the few FIA compliance awareness sessions availed while the FIA appears to have planned more awareness creation initiatives to be undertaken in the short to medium term. Although a few of the larger firms have a reasonable understanding, such is not representative of the entire sector. Accordingly, a **Zero** rating was assigned for this sector, suggesting that there is no understanding of the AML obligations.

#### *11.4.5 Effectiveness of compliance function (at organizational level)*

As mentioned above, there are hardly any control measures implemented at the time of reporting. Accordingly, compliance functions **do not exist**.

#### *11.4.6 Effectiveness of suspicious activity monitoring and reporting*

Given the absence of AML controls in the sector, suspicious activity monitoring and reporting **does not exist**.

#### *11.4.7 Product vulnerability*

The nature of CCFA services is such that it is used by local and foreign clients from all over the world. The risk thus exists that some clients could originate from jurisdictions without reliable identification infrastructures. Chances of availing services to such clients exist and at times when they are linked to complex and opaque legal structures internationally, CCFAAs are unable to duly identify or verify such clients' identities. Further, the sector attracts high net worth individuals including domestic and international PEPs as well as clients obtained through introduced businesses. Given that no client screening is conducted, there is also a possibility that clients with criminal records or integrity breaches make use of CCFA services. Additionally, the non-face-to-face use of CCFA services owing to jurisdictional distances further enhances vulnerability. The client base of the sector thus generally appears to expose the sector inherently to higher risks of ML.

It was further observed that the use of cash is prevalent especially with smaller CCFAAs that may not have alternative payment facilities/channels.<sup>352</sup> The level of cash was estimated to be between 30 - 40% of all monies handled by the sector. The higher the usage of cash, the higher the ML inherent vulnerability.

Lastly, the prevalence of TBML typologies within customs and international trade frameworks locally and internationally suggests that these services are highly vulnerable to ML.

Accordingly, the Final Product Vulnerability and the Inherent Product Vulnerability for various Clearing and Forwarding services remain unchanged, as there were no known AML controls implemented (see figure 39 below). Control frameworks mature over time and it is anticipated that with the sector now under AML/CFT/CPF supervision, control effectiveness could mature over time.

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<sup>352</sup> Cash is sometimes used to pay for CCFA service fees. In some cases, although minimal with current observations, it is also paid into the bank accounts of CCFAAs, and the CCFAAs facilitate such cross border remittance on behalf of the client. Banks would not be in a position to understand potential ML risks of initial importers who are making use of bank accounts of CCFAAs.



Figure 39: Inherent and final product ML vulnerability levels: CCFA sector

With the commencement of sectoral AML supervisory activities, which should result in the implementation of AML controls at institutional level, the residual risk of clearing and forwarding services could reduce in future.

## 11.5 Dealers in Minerals (Precious Metals and Stones)

Observations in this section have a bearing on environmental crimes related to the underground extraction sector as detailed in section 15.3.4 under Chapter VII herein.

The mining sector has generally made significant contributions<sup>353</sup> to Namibia's GDP despite reductions in value added by the sector in recent years. The 2019 Annual Accounts suggests that the real value added of the mining and quarrying sector contracted by 11.1 percent in 2019 compared to a growth of 16.1 percent recorded in 2018. The decline in the sector was reflected in all the subsectors, Diamond, Uranium and Metal ores that contracted by 17.7 percent, 4.4 percent and 0.1 percent, respectively. In 2019, the real value added of the Diamond mining subsector dropped by 17.7 percent compared to a robust growth of 15.1 percent in 2018. The contraction was mainly due to the maintenance of the main mining vessel used by a key stakeholder. Uranium was not spared either. The real value added for Uranium subsector also declined by 4.4 percent in 2019, compared to a strong growth of 33.4 percent registered in 2018. This poor performance is reflected in the low production of uranium due to the decline in spot prices during the period under review. Similarly, the Metal

<sup>353</sup> Mining sector is part of the Primary Industries which includes Manufacturing as well as Agriculture, forestry and fishing. The Primary Industries accounted for about 16.4% of GDP in 2019.

ores subsector registered a decline 0.1 percent in 2019 compared to an increase of 0.8 percent noted in the previous year. This decline was mainly reflected in the low production of zinc and gold.

Dealers in minerals are licensed by the Ministry of Mines and Energy. The Ministry is the sole issuer of mining, prospecting and related activities and remains responsible for prudential regulation. The FIC supervises the sector for AML/CFT/CPF purposes. The table below shows the AML supervisory activities which the sector has been exposed to. The supervisory efforts thus far have been limited to awareness and training related engagements. More could be done to enhance AML monitoring through offsite and onsite reviews, relative to ML vulnerability.

	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Onsite compliance assessments	0	0	0	0	0
Offsite compliance assessments	0	0	0	0	0
Trainings facilitated by the FIC	0	0	0	0	1
Sectoral compliance meetings	0	0	0	0	2
Enforcement measures taken or referrals made	0	0	0	0	0

Table 30: FIC's risk-based supervisory activities in the Dealers in minerals sector

Overall, the sector's vulnerability to ML abuse was rated **Medium** (a score of 0.52 or 52%). Considerations below explain key observations which informed such rating.

#### *11.5.1 Availability and effectiveness of entry controls*

The NRA found that there are relatively effective entry controls implemented by the Ministry of Mines and Energy. The minerals sectors are prudentially supervised by the Directorate of Diamond Affairs, Directorate of Mines and the Directorate of Petroleum Affairs. Section 3 of the Minerals (prospecting and mining) Act<sup>354</sup> prohibits persons to carry on any reconnaissance operations, prospecting or mining operations in, on or under any land in Namibia without a license duly issued by the Ministry in terms of this Act. The fit and proper assessments for applicants applying for different types of licenses are incorporated into the application process. Overall, the licensing process was found effective to enhance AML risk mitigation with minor areas for improvements. The Ministry indicated that controls such as

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<sup>354</sup> Act No 33 of 1992

sanctions screening of beneficial owners are not implemented. The availability and effectiveness of entry controls was thus rated **Very High** (a score of 0.8 or 80%).

#### *11.5.2 Integrity levels of staff*

Given the sensitivity of the sector to control failures, entities have invested in extensive controls to minimize the occurrence of illicit activities such as theft of minerals. While the Ministry vets beneficial owners, mines and other stakeholders vet all their staff members. This inherently reduces ML vulnerabilities as the measures geared to enhance integrity are expected to manage risk exposure, if implemented duly. This variable was rated **Very High** (a score of 0.80 or 80%).

#### *11.5.3 AML knowledge of staff*

The FIA requires dealers in minerals to ensure staff members understand their FIA obligations and are in positions to administer relevant controls aimed at managing ML risks. The sector indicated that not all staff are aware of their responsibilities in terms of the FIA. More FIA awareness or training is required. This variable was thus rated **Medium High** (a score of 0.6 or 60%).

#### *11.5.4 Effectiveness of compliance function (Organization)*

The sector remains of the view that compliance functions are effective. Such is also driven by international best practices, which are essential for the existence of dealers in minerals. For example, when mining outputs are sold, usually in other jurisdictions, the selling process entails significant customer due diligence and compliance with international best practices to mitigate ML risks.

The sector has not reported suspicious transactions or activities to the FIC, while the FIC's engagements with compliance functions suggests that their understanding of AML frameworks and FIA obligations is limited. Considering all such factors, the variable was rated **Medium** (a score of 0.50 or 50%).

### 11.5.5 Effectiveness of suspicious activity monitoring and reporting

The dealers in minerals engage in high value transactions. The sector has monitoring systems in place, commensurate to their nature and size of business, as well as risk exposure.<sup>355</sup> The lack of any suspicious activity or transactions reported to the FIC is said to be due to the lack of any suspicious activities noted. The FIC is of the view that owing to the limited AML knowledge of relevant staff, the compliance function and monitoring systems are not duly implemented. This variable was therefore rated **Low** (a score of 0.30 or 30%).

### 11.5.6 Product vulnerability

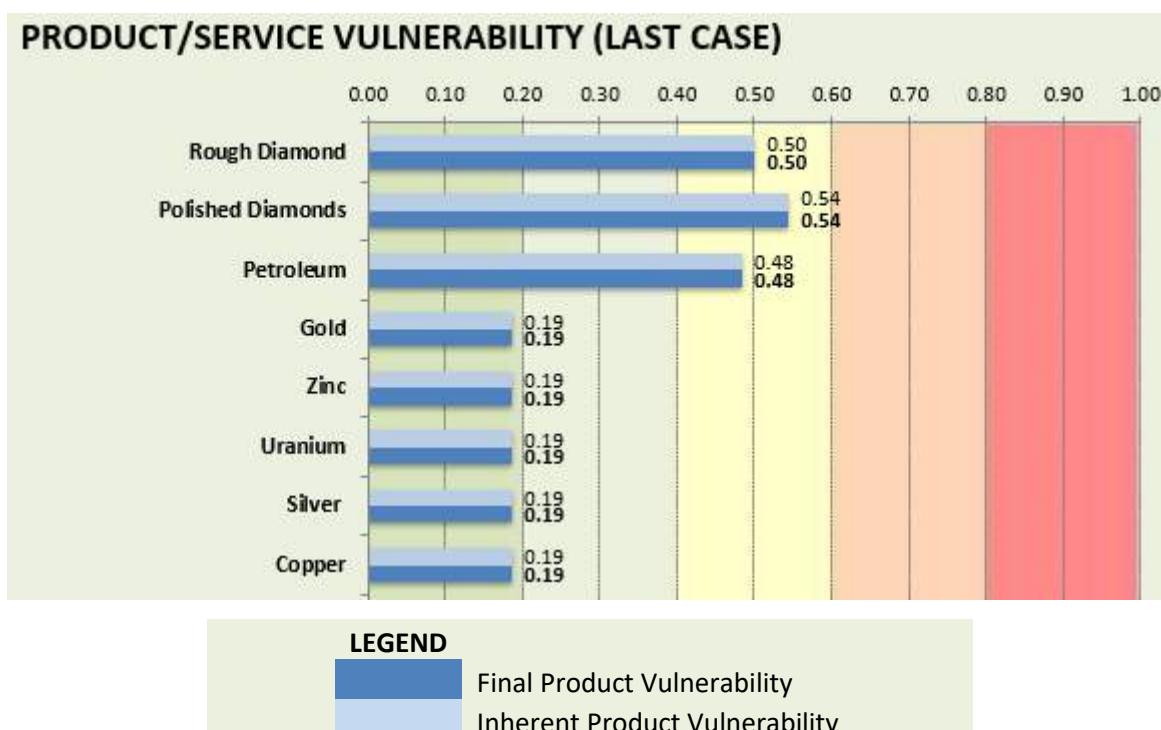


Figure 40: Inherent and final product ML vulnerability levels: Dealers in minerals

#### a. Rough diamonds

Diamond dealers are supplied rough diamonds by the Namibia Diamond Trading Company (NDTC). NDTC mainly supplies rough diamonds to its sightholders and the Namib Desert Diamonds (Pty) Ltd (NAMDIA). The sightholders purchase these rough diamonds for polishing. They are not permitted to sell rough diamonds locally. Thus, their local market is

<sup>355</sup> through supervisory observations including sectoral ML risk assessment activities undertaken in 2017/18 by the FIC.

restricted to polished diamonds. Due to the lack of machinery and equipment to polish various types of rough diamonds locally, they export some rough diamonds mainly to their mother companies for polishing abroad.

Rough diamonds are sold to known international clients from countries such as Dubai, India, China and Belgium. The ML risk in this product may occur when the dealers sell their diamonds to clients whose source of funds are unknown. The client base for this product was rated Low as all clients are known diamond buyers or dealers. The strict international requirements and controls within the industry such as the Kimberly process of which Namibia is a participating State reduces the ML risk in the sector.

The non-face-to-face transacting in the industry occurs but is limited. The use of cash does not exist as all payments are made electronically. Sales are sometimes made through agents, but this is rare. Dealers in minerals have systems that captures transactional records duly and thus records can be easily traced. These factors reduce the ML vulnerability of rough diamonds.

ML typologies on the abuse of this product exist globally and locally as per Table 57 and 58 under environmental crimes. The use of this product in fraud or potential tax related offences exists. Strict controls around their mining, processing and trading however reduces the frequency or likelihood with which threats can undermine known vulnerabilities. Consequently, the inherent ML vulnerability of rough diamonds was rated **Medium** (a score of 0.50 or 50%).

#### *b. Polished diamonds*

Dealers in diamonds purchase polished diamonds from NDTC. A few dealers are permitted to sell a limited number of their polished diamonds locally. Like rough diamonds, polished diamonds are mostly exported to the dealers' mother companies or group companies who then sell such to end users. Such minimum local diamond sales presents relative ML risk which could emanate from related illicit activities.

The other factors cited above with regards to the sales and customer due diligence of rough diamonds are similar for polished diamonds as well. The difference is in the vulnerability ratings for each such factor. For example, buyers or clients of polished diamonds present a much higher risk than buyers of rough diamonds. Additionally, while agents are limited in the buying of rough diamonds, there are even more agents involved in the buying of polished diamonds as these are mostly sold to end users or stakeholders much closer to the end users. Owing to such increased ML exposure, the ML vulnerability of polished diamonds was rated **Medium** (a score of 0.54 or 54%).

*c. Petroleum products*

Petroleum products are imported from various jurisdictions. Some products are sold locally while others are exported to countries such as Zambia, Zimbabwe, Botswana, Angola and the Democratic Republic of Congo. This product is exported to clients that have long-term relationships with the dealers in petroleum. The client base for this product was rated Low risk. The local sales are of low value and meant for domestic consumption. Additionally, this product is exported to low-risk jurisdictions with international clients paying electronically for such products. The level of cash activities was also rated Low. The use of agents exists but is rare. In most instances, trading is amongst parties with long-term business relationships. This reduces the ML risk as the clients are always known.

Dealers in petroleum products have systems in place to record and keep transactional records, making it easy to maintain and trace records. ML typologies on the abuse of this product exists globally. The use of this product in fraud or potential tax related offences exists but cases are limited locally. The ML vulnerability for Petroleum was rated **Medium** (a score of 0.48 or 48%).

*d. Gold*

This product is extracted in Namibia and exported to South Africa for refinery, thereafter, it is exported to Canada and the United States of America for sale to consumer markets. Exports are mainly to the mother companies of the local extracting entities in Namibia, who sell such internationally. Given that local dealers do not sell gold to the end-users, the ML vulnerability to threats is relatively low.

ML typologies on the abuse of this product exists globally. The local ML vulnerability for Gold was rated **Very Low** (a score of 0.19 or 19%).

e. *Zinc*

Similar to gold, this product is extracted in Namibia and exported to Glencore in Switzerland for sale. Transactions are intercompany. No local sales occur thus reducing ML vulnerability emanating from this sector. All consumers, as is the norm in the minerals trading industry are mostly known. All transactional payments are made electronically, with no cash transactions. The ML vulnerability for Zinc locally was therefore rated **Very Low** (a score of 0.19 or 19%).

f. *Uranium*

With uranium, the highest known risk is abuse in the advancement of PF as the commodity is used in weapons proliferation activities. While this section is limited to ML, Chapter VI avails a detailed presentation on domestic risk of uranium abuse to advance PF.

Ore is extracted in Namibia, it is exported to China, or alternatively to France, Canada, and the USA as yellow cake for further enrichment, before eventual sale of the final product. The client base for this product was rated low, as sales transactions are always intercompany sales. There are no cash transactions. Clients are always known to the seller. Anonymous use or procurement of this product is not available as it is a highly regulated mineral. The product is only sold to countries that are party to the *Additional Protocol and Safeguards Agreement*. All uranium exports are approved by the MME subject to Government safety and security protocols and regulation. Namibia reports all the export of source materials to the International Atomic Energy Agency (IAEA) for verifications. The IAEA inspectors conduct compliance inspections annually. Such are undertaken to review extracted volumes, origins and disposition of uranium, including tracing such to the end users. This is done to gain assurance that it was used for the intended lawful purposes. Given all these control mechanisms, the ML vulnerability for Uranium was rated **Very Low** (a score of 0.19 or 19%).

*g. Copper*

Like the other minerals cited above, this product is sold and exported to IX metals in Switzerland. The client base was rated Low risk as they are all known by exporters and all transactional payments are made electronically. Globally, there are ML typologies reflecting the abuse of this product but there are no significant incidences locally. Accordingly, the local ML vulnerability for copper was rated **Very Low** (a score of 0.19 or 19%).

*h. Silver*

Silver is not directly extracted underground. It is a by-product of gold and zinc, which is extracted through the refinery process of such metals.

In terms of ML vulnerability considerations, silver is not different from the above-mentioned minerals. Similar to gold, it is refined in South Africa and exported to the mother companies in Canada or the USA. It is sold to the end users from such countries. The client base for this product was rated Low risk as the intercompany transactions are relatively low risk until the mineral is sold to known dealers in the value chain who usually sell to end users. The end users of the product are always unknown to the local exporter. The ML vulnerability for silver was rated **Very Low** (a score of 0.19 or 19%) owing to the absence of local dealings in the mineral.

## 11.6 Dealers in Jewellery, Arts and Antiques (DJAAAs)

The number of Dealers in Jewellery and Antiques (DJAAAs) is estimated to be more than fifty countrywide. This sector is relatively small and dominated by sole practitioners. As per Figure 31 below, the sector appears to generate revenues in excess of NAD 80 million annually.

Years	2015	2016	2017	2018	2019
NAD Values	88 million	97 million	104 million	102 million	89 million

Table 31: Sectoral annual turnover/revenue<sup>356</sup>

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<sup>356</sup> NRA data gathering. Figures were compiled from sales data of institutions that participated in the NRA exercise.

This sector does not have a prudential regulator or supervisory body. The sector is supervised by the FIC for AML/CFT/CPF purposes, as per supervisory mandate and procedures stated in section 8.4.2. Table 32 below presents a summary of the AML/CFT/CPF supervisory activities in the sector.

	2015	2016	2017	2018	2019
Onsite compliance assessments	0	0	0	1	0
Offsite compliance assessments	0	0	3	1	0
Trainings facilitated by the FIC	0	0	0	0	0
Sectoral compliance meetings	0	0	0	0	0
Enforcement measures taken or referrals made <sup>357</sup>	0	0	0	1	0

Table 32: FIC's risk-based supervisory activities in the DJAAs sector

Overall, the sector's ML vulnerability was rated **Low** (a score of 0.30 or 30%). The rating was informed by assessment outcomes of various variables. The major outcomes are detailed below.

#### *11.6.1 Availability and effectiveness of entry controls*

DJAAs do not have a prudential regulator, or body that licenses entities entering the sector. There are no market entry controls. Any person that wishes to enter the sector freely enters such. The availability and effectiveness of entry controls was thus rated **Zero** as such controls do not exist.

#### *11.6.2 Integrity level of staff*

Given that many of the entities in the sector are relatively small businesses, employing not more than ten staff members, there are no vetting procedures that staff are subjected to. Staff members are mostly either salespersons or involved in procurement of goods. Minimum vetting takes place as the owners consider their business low risk to financial crimes or less vulnerable to integrity breaches. In addition, there were no indications or known cases of

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<sup>357</sup> The enforcement considered was a final written warning to force an institution which disputed being part of the regulatory framework and did not want to cooperate with any other supervisory outreach activities, including helping the FIC understand its transactions in order to have an understanding of threshold values.

staffs' involvement in illegal activities or colluding with criminals. This variable was rated **Medium** (a score of 0.50 or 50%).

#### *11.6.3 AML knowledge of staff*

The FIA requires DJAAs to train staff members or ensure staff understand their FIA obligations and responsibilities. The sector indicated that not all staff are aware of their responsibilities in terms of the FIA. The FIC is also of the view that significant training or awareness activities are required to enhance understanding of FIA obligations in the sector. The AML knowledge of staff was rated **Medium Low** (a score of 0.40 or 40%).

#### *11.6.4 Effectiveness of compliance function (organization)*

Most of DJAAs are sole practitioners and employ less than ten staff members. Given the relatively small and owner managed characteristics of entities in the sector, the owners are usually the appointed AML compliance officers and are responsible for implementing FIA compliance controls. The FIC's observations suggests that the ML risk is very low, and in line with such, there are reduced efforts to implement effective compliance functions. Despite the low risk, FIA compliance assessment outcomes also suggests that CDD is not adequately undertaken, especially when clients purchase items of high financial value. Considering the above mentioned, the effectiveness of the compliance function was rated **Medium** (a score of 0.50 or 50%).

#### *11.6.5 Effectiveness of suspicious activity monitoring and reporting*

The sector, at entity level does not experience high volumes of transactions. The DJAA sector employs manual systems for transaction monitoring. This is deemed commensurate to their ML vulnerability, nature and size of business activities. The sector has not reported any suspicious activity or transaction to the FIC. Non-reporting of suspicious transactions and activities may indicate ineffectiveness of the monitoring systems, if there were reportable transactions which the sector could not detect and timely report. FIA compliance assessment outcomes also suggests that CDD is not adequately undertaken and such could hinder

effectiveness of reporting systems. This variable was rated **Medium High** (a score of 0.60 or 60%).

#### *11.6.6 Product vulnerability*

The sector is of the view that it is relatively small, with low financial value transactions at most times. The ML/TF/PF risk is thus considered very low. This section presents ML vulnerability levels for the two main products of the sector.

##### *a. Dealing in Jewellery*

Over 95% of the sales transactions of jewellery range are between NAD 10.00 to NAD 10,000. This supports the view that the sector deals in low value transactions. This product is sold only to natural persons and usually, such persons visit the shops in person. There are no indications that the sector sells to bulk buyers either as most buyers appear to be end users or consumers. There is hardly any use of agents in the sector as well. All these factors reduce inherent ML vulnerability while the extensive use of cash can be seen as having the opposite effect. Most of the larger traders indicated however that despite the use of cash, such is minimal as most clients use other methods of payment. Overall, the sector estimated that the use of cash, amongst the formal traders is between 10 to 20% while such might be higher amongst informal traders.

Dealers in jewellery have systems that capture transactional records and such records can be easily trace if required. This enhances overall ML combating ability.

Though there may not be some locally, there are ML typologies on the abuse of this product internationally and such shows vulnerabilities which can be exploited. On the other hand, the none face to face use of the product (e.g online sales) is available but not used by most dealers. Non face to face sales are inherently vulnerable to ML abuse. Overall, the product's ML vulnerability level was thus rated **Low** (a score of 0.30 or 30%).

*b. Dealing in Arts and Antiques*

The ML vulnerability of Arts and Antiques was rated **Very Low** (a score of 0.23 or 23%). Most considerations raised above for Jewellery are similar for Arts and Antiques. Amongst others, factors which reduce ML vulnerability of the product include the fact that it is only sold to clients who are natural persons (mostly end users or consumers). Most transactions are cash based and below the current CDD threshold of NAD 5,000.00. These factors greatly reduce inherent ML vulnerability.

The use of agents exists but is very limited. Agents would usually be the shop owners when they sell on behalf of the owner or the artist (producers of art). Most traders in Antiques or Arts are informal traders with minimal record keeping systems. There is thus a difficulty in tracing transactional records, for customer due diligence or should the need arise in combatting efforts. While the risk is minimal, poor record keeping is not helpful in combatting activities.

Further, there are ML typologies showing the abuse of this products in other jurisdictions. None face to face use of the product is available but not to all shops, some shops are selling their products online.

## **11.7 Dealers in Second Hand or Used Goods (DSHUG)**

Dealers in second hand (or used) goods are licensed by the Ministry of Safety and Security. The sector's operations are regulated by the legal framework emanating from the Namibian Second Hand Goods Act.<sup>358</sup> The objective of the Act is to regulate the business of dealers in second hand goods, scrap metals and pawnbrokers as well as to provide for incidental matters related thereto. The Act states that all dealers must register to be licensed and such license is valid for three years.

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<sup>358</sup> Act 23 of 1998 [The Ministry of Safety and Security is mandated to license second-hand dealers and pawnbrokers].

The sector comprises of sixty-four licensed entities, with a combined financial asset of around **NAD 26 million** for second hand (or used) goods and around **NAD 1 million** for pawnbroker services for the period 2015 to 2019.

The overall ML vulnerability rating of the sector is **Medium Low** (a score of 0.42 or 42%). Mainly, the lack of supervisory activities contributes significantly to this rating as the sector has not been engaged to ensure the implementation of relevant AML controls. Given the nature of second hand (or used) goods dealerships and the relatively smaller financial values involved, per average transaction, it is expected that the ML vulnerability level will significantly reduce should the sector be subjected to commensurate supervisory activities. The outcomes of core principles assessed are summarized below.

#### *11.7.1 Effectiveness of supervision and oversight activities*

Section 8.4.2 herein explains the FIC's AML risk based supervisory approach.

In terms of Schedule 3 of the FIA, persons that carry on the business of second hand (or used) goods are reporting institutions and thus part of the AML/CFT/CPF framework, under FIC supervision. The FIC, through the risk based approach dedicates time and resources to sectors in terms of their ML/TF/PF risk exposure. The limited supervisory resources means that some sectors, especially low risk sectors, would be subjected to limited supervisory activities. This is one such sector which has not been subjected to any supervisory activities since inception, owing to the supervisory assumption of the low ML/TF/PF risk level of the sector.

The sector could not demonstrate any understanding of its AML/CFT/CPF obligations, with most institutions only hearing of the FIC and the FIA for the first time during the 2020 NRA engagements. Despite the general low-risk assumption which informs the level of supervisory activities which the sector is subjected to, more needs to be done to enhance understanding and build some AML/CFT/CPF frameworks which can help mitigate risks, whenever such occur, at institutional level.

The Namibian Second Hand Goods Act provides for the regulation of the business of dealers in secondhand (or used) goods and scrap metals, auctioneers as well as pawnbrokers. Other than licensing, there were minimal indications that some form of prudential supervision and

monitoring occurs in order to ensure compliance with the Act. The Namibian Police do conduct *ad-hoc* inspections infrequently, mostly when crime combatting so requires. No records could be availed which reflects the level of compliance with he said Act, other than the licensing related aspects. The NRA could thus not verify or get assurance that unlicensed dealers are not operating illicitly.

Accordingly, a rating of **Low** (a score of 0.3 of 30%) was assigned.

#### *11.7.2 Availability and effectiveness of market entry controls*

There is a comprehensive legal framework for the licensing and registration of dealers in secondhand (or used) goods and scrap metals, auctioneers as well as pawnbrokers administered by the Ministry of Safety and Security. Some key licensing and registration requirements which are equally helpful to AML/CFT/CPF objectives include:

- Applicant should be registered with the Registrar of Companies (BIPA), in terms of the Companies Act, or Close Corporations Act, for those indicating to be such entities. Other arrangements such as partnerships, associations are also licensed and are required to avail relevant proof that brings such arrangements into existence. The Ministry of Safety and Security should satisfy itself that the applicant has provided relevant entity incorporation documents, indicating that the business is registered to carry out second hand (or used) goods, pawnshop etc., as per the nature of business activities that needs licensing;
- Beneficial owners are duly identified including their address and contact details. This business is also limited to persons in possession of a Namibian Identity documents. This is essential in assurance that; and
- Fitness and proprietary diligence include efforts to establish if beneficial owners have not been convicted of crimes or other relevant offences, amongst others.

When the Namibian Police are satisfied that the applicant has met the above, a certificate in line with section 4 of the Act is granted to such applicant. The abovementioned measures show that there are comprehensive market entry controls as provided for by the Namibian Second Hand Goods Act.

The Inspector-General of the Namibian Police has powers in terms of the said Act to withdraw the operating license of a dealer if he or she is satisfied that the dealer or pawnbroker to whom such certificate has been granted has refused or failed to comply with any condition of such certificate.

In light of the above, the rating assigned to the variable on availability and effectiveness of entry controls was **High** (a score of 0.7 or 70%).

#### *11.7.3 Integrity of staff*

The sector indicated that codes of conduct, policies and procedures as well as staff rotation mechanisms are in place to assist in maintaining integrity of staff members, at institutional level in some of the bigger entities. As noted from licensing procedures, executive management or associated persons are subjected to fit and proper assessments which is helpful for AML/CFT/CPF objectives. A rating of **High** (a score of 0.7 or 70%) was allocated to this variable.

#### *11.7.4 AML knowledge of staff*

Generally, AML training awareness has not taken place in this sector as required, hence most staff members do not have the required AML knowledge. Areas of improvement include enhanced AML training awareness programs for compliance officer for the entire sector. The expectation is that compliance officers will then further escalate such awareness to staff members of their respective institutions. Sectoral engagements with the FIC are also required to keep the industry updated on emerging risks and typologies, while ensuring a consistent AML combatting model is adopted throughout the sector. Given the lack of AML knowledge in the sector, a rating of **Very Low** (score of 0.2 or 20%) was assigned.

#### *11.7.5 Effectiveness of compliance function at organizational level*

Owing to the stated lack of AML knowledge, relevant management do not have the require understanding to implement AML compliance functions at institutional level. A **Very Low** rating (score of 0.2 or 20%) was thus assigned.

#### *11.7.6 Effectiveness of suspicious activity monitoring and reporting*

There is no compliance department and officer in place. However, as a consequence of the above-mentioned control deficiencies, the effectiveness of detecting and reporting suspicious or reportable transactions is undermined. This variable was thus rated **Very Low** (a score of 0.2 or 20%).

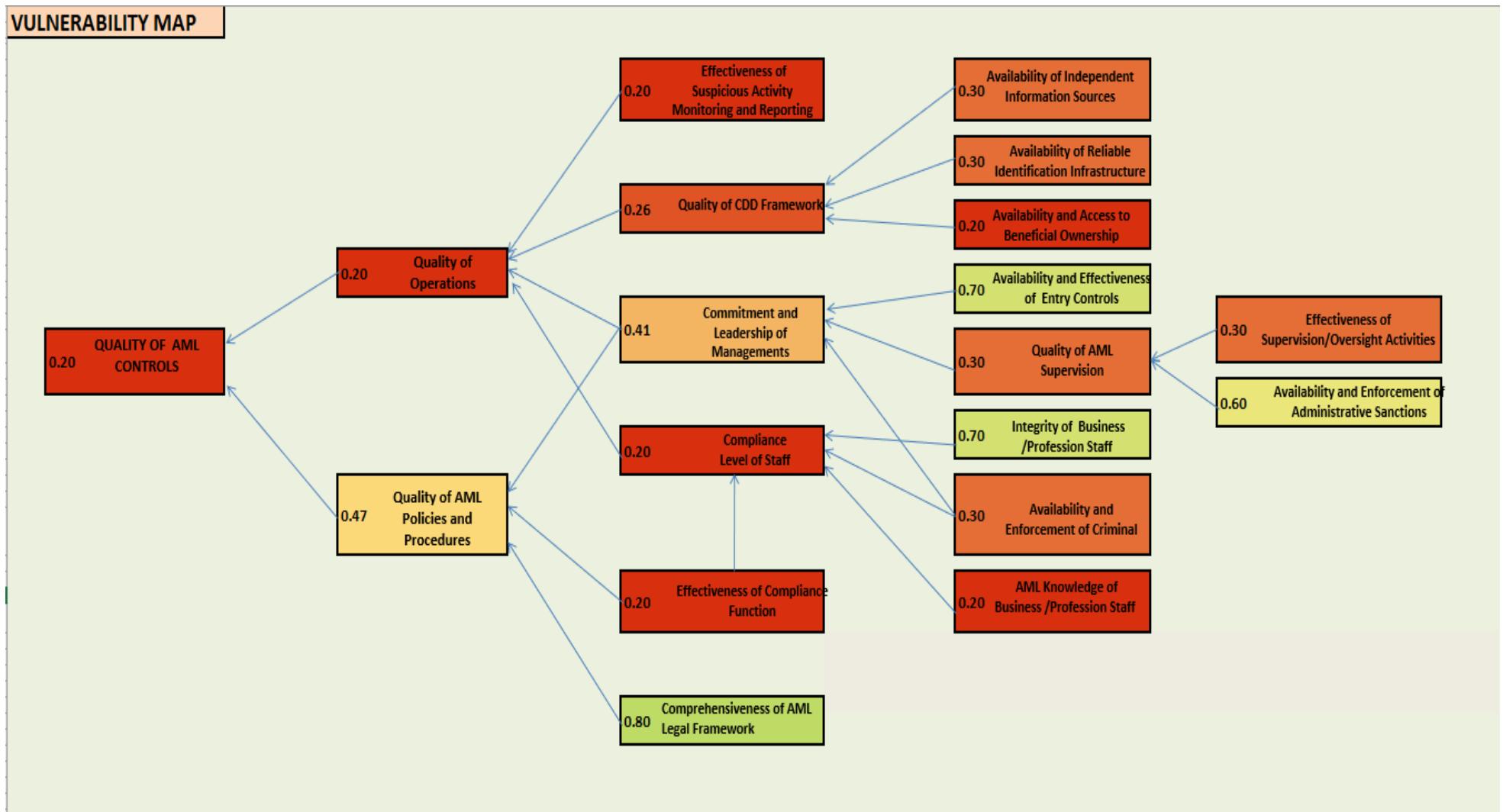


Figure 41: Vulnerability map: Dealers in second hand (or used) goods

### 11.7.7 Product vulnerability

The sector's services are limited to sales of second hand (or used) goods and pawn services. The product vulnerability, as per Chart below, shows both the inherent vulnerability scores and the final vulnerability. The inherent vulnerability levels remain unchanged at final (residual) vulnerability level as there are no controls implemented to reduce such.

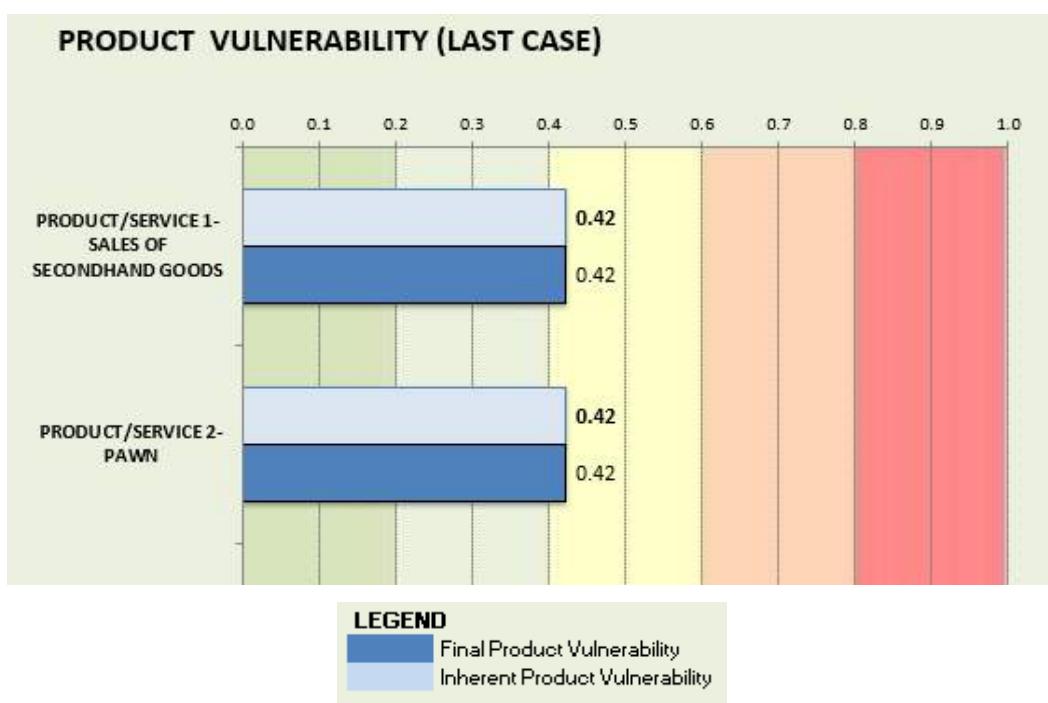


Figure 42: Inherent and final product ML vulnerability levels: Dealers in second hand (or used) goods sector

#### a. Sale of second hand (or used) goods

This product was rated as inherently **Medium Low** (0.42 or 42%) in terms of ML vulnerability. Such remained unchanged as there are hardly any AML controls to reduce final ML vulnerability levels. Several factors contributed to these ratings. The volume of transactions and financial values involved are generally low. This reduces risks. The cash usage in the sector is extensive. Such inherently increases ML vulnerability. Further, the industry does not make use of agents in its dealings, nor is it involved in international transactions. This naturally reduces ML vulnerability of the product. The client base profile was also assessed

to be low. As the product does not attract high risk clients such as high net worth clients or PEPs.

*b. Pawnbroker services*

If the necessary due diligence is not effective, items or properties pledged or pawned could be proceeds of crime which criminals can present to access finances. Another threat could also emanate from criminals using proceeds of crime to pay for (or redeem) such pledges or pawns. This product was rated inherently **Medium Low** (0.42 or 42%) in terms of ML vulnerability. Such remained unchanged as there are hardly any AML controls to reduce final ML vulnerability levels. The observations above for Sale of second hand (or used) goods applies here as well.

## **11.8 Legal practitioners**

The sector comprises of about one hundred and seventy-nine law firms or entities registered with the Law Society of Namibia (LSN). At the time of reporting, about one hundred and sixty-three firms operate with Fidelity Fund Certificates (FFCs) and sixteen are exempted from having such certificates.<sup>359</sup> Annually, law firms record about **NAD 6 billion** annually in revenues from various services.<sup>360</sup> The LSN licenses or approves applications by entities that apply to practice as law firms with trust accounts (FFCs).

Not all legal services are part of the AML framework. Schedule 1 (specifically Item 1) of the FIA limits such to only firms that avail services which are vulnerable to ML such as: the buying and selling of real estate for cash or otherwise; managing of client money, securities, bank or securities accounts or other assets; facilitating or sourcing contributions for the creation, operation or management of legal persons or arrangements; creation, operation or management of legal persons or legal and commercial arrangements; buying and selling of business entities, or parts thereof; as well as buying and selling of legal rights. Additionally, Item 4 of the Schedule further expands FIA compliance obligations to law firms that avail specific trust and company services primarily relating to the creation of legal persons or acting

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<sup>359</sup> No legal practitioner or person employed or supervised by that legal practitioner may receive or hold funds or property belonging to any person unless the legal practitioner concerned is in possession of a Fidelity Fund Certificate.

<sup>360</sup> As per data gathered from law firms for the NRA.

on behalf of such persons in varying capacities, amongst others. Amongst such services, conveyancing activities attract the highest level of ML vulnerability. The FIC's supervisory risk assessment<sup>361</sup> found over forty legal practitioners availing conveyancing services. The forty practitioners are amongst the inherently high risk institutions subjected to extensive AML/CFT/CPF risk based supervision as explained in section 8.4.2 above.

While the LSN remains the prudential supervisory body, the FIC is assigned AML supervision responsibilities of the sector as per the FIA. Table 33 below presents a summary of the FIC's supervisory activities in the sector.

<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total</b>
On-Site Compliance assessments	2	9	19	10	23	63
Off-Site Compliance assessments	0	153 <sup>362</sup>	18	4	7	182
Trainings facilitated by the FIC	0	0	1	0	5	6
Sectoral compliance meetings	0	0	0	0	1	1
Enforcement measures taken or referrals made	0	31	3	1	0	35

Table 33: FIC's risk-based supervisory activities in the Legal Practitioners sector

Overall, the ML vulnerability of the sector was assessed to be **Medium High** (a score of 0.63 or 63%). Considerations below avail an outline of factors which informed such rating.

#### *11.8.1 Availability and effectiveness of market entry controls*

The LSN prudentially authorizes applicants who apply to practice or operate law firms, in terms of the Legal Practitioners Act. Amongst other requirements, only persons who are admitted as legal practitioners may access the market and practice law. Supervisory controls were deemed effective to ensure only persons duly licensed to practice enter the market.

Most of the requirements guiding approval of applications to open law firms are premised around academic and experience as competencies to practice law. There is reliance on the oath taken by lawyers when admitted, as a means to gain assurance that such person is fit

<sup>361</sup> The supervisory sectoral risk assessments (SVAs) were carried out in 2017/18.

<sup>362</sup> AML/CFT/CPF supervisory activities commenced in that year, hence the need for risk assessments was essential. In an effort to gain an understanding of ML/TF/PF inherent and residual risk exposure at entity and sectoral level (including ensuring adequate supervisory sectoral coverage), almost all legal practitioners were subjected to offsite assessment activities. Such understanding informed supervisory activities thereafter.

and proper. This falls short of AML fit and proper standards such as gaining assurance that applicants are not convicts, have no integrity failures which may expose the sector to ML risks, amongst others. The current fitness and probity considerations or assessments of beneficial owners or administrators/managers of law firms thus fall short of domestic and international AML requirements on fit and proper. There is an expectation that the LSN conducts such fit and probity due diligence upon considering applications and when the LSN renews FFCs on an annual basis, as per section 35(15) of the FIA. This is the most significant control shortcoming observed and the FIC is expected to ensure the LSN avails assurance that it duly complies with section 35(15). Overall, market entry controls are deemed reasonably effective and as such, an overall rating of **Very High** (a score of 0.8 or 80%) was assigned was allocated for the availability and effectiveness of market entry controls.

#### *11.8.2 Integrity of staff*

Staff members and Managers (including professional staff) of law firms are considered to have a high level of integrity. The LSN has some records of integrity failures or breaches, it has dealt with. There has been many reports of prominent law firms and lawyers engaging in, or supporting persons participating in financial crime activities. The famous *Fishrot* case shows how certain law firms, knowingly or otherwise, may have assisted in the creation of entities (companies and trusts), which were used to launder funds and commit other financial crimes. In the same case, it has come to the fore that law firms went beyond the mere creation of vehicles used in the advancement of such financial crimes. Services of some law firms or lawyers may have been abused to advance such financial crimes. Preliminary observations, which may be proved otherwise, further suggest that such law firms and lawyers may have knowingly facilitated laundering activities knowingly or otherwise. Other than such major cases, there are not many indications that sectorally suggest staff members' integrity level is below expected ML combatting standards. Having considered these factors, a rating of **Medium High** (a score of 0.6 or 60%) was set for this variable.

#### *11.8.3 AML knowledge of staff*

Lawyers, as professionals and relevant staff members within law firms are generally considered to have a Medium to Low understanding AML obligations as per the FIA. Some

compliance assessment findings from FIC inspections suggest that some law firms either lack adequate knowledge of their AML obligations or simply do not prioritize AML compliance. Accordingly, the level of AML knowledge of staff was rated **Medium** (a score of 0.5 or 50%). Sectoral engagements between the FIC, law firms and the LSN are encouraged to deliberate and enhance awareness.

#### *11.8.4 Effectiveness of compliance function (organization)*

From FIC supervisory observations, the NRA could conclude that overall, most law firms providing designated services have, at a minimum, appointed AML Compliance Officers at management level, have implemented AML compliance programs and do conduct CDD measures. Challenges noted relate to absence or poor risk assessments, controls around beneficial ownership CDD<sup>363</sup>, transaction monitoring and reporting as well as the need to ensure their internal AML frameworks are subjected to audits.

Amongst others, the FIA compliance assessment findings<sup>364</sup> in the sector over the years helped inform observations on the level of effectiveness of the compliance functions within law firms. As mentioned above, compliance functions are not as effective as they should be. There have been some improvements as reflected in the high number of STRs reported by the sector in recent years, especially in the larger law firms. This speaks to some level of effectiveness of compliance frameworks. Other than the limited AML knowledge, there are some indications that many law firms do not prioritise FIA compliance. Amongst other indicators, some law firms appear to have copied (or adopted FIA compliance programs) from other entities as such control programs are not aligned to actual controls implemented, some programs are not aligned to ML risks that law firms are exposed to. The sector indicated that in most cases, the persons assigned AML compliance officer responsibilities (as per the FIA) are usually also involved in the profession. Such compliance officers are thus often pre-occupied with professional matters such as court related responsibilities. This was said to explain why administrative aspects such as FIA compliance might not always be prioritised

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<sup>363</sup> Beneficial ownership identification is limited to significant shareholding and control: The AML/CFT/CPF framework requires that beneficial ownership identification be limited to natural persons who exercise effective control over a legal person or trust. Such effective control amounts to shareholding or voting rights in excess of 20%. Exceptions are only if such persons with less than 20% shareholding or voting rights receives a large percentage of the declared dividends. Most legal practitioners have challenges identifying beneficial owners in clients who are trusts and legal persons. Note that the FIC issued Guidance Note No.1 of 2015 to help in this regard. Importantly, training is availed when so requested while one-on-one guidance is availed in post-compliance assessment engagements such as the exit meetings.

<sup>364</sup> Table 33 above suggests that law firms are one of the sectors mostly subjected to FIA compliance assessment activities owing to their higher ML vulnerability.

in all law firms. Having regard to all these factors, the NRA deemed a rating of **Medium Low** (a score of 0.4 or 40%) as appropriate for the level of compliance function effectiveness.

#### *11.8.5 Effectiveness of suspicious activity monitoring and reporting*

The ability to timely detect and report STRs and SARs to the FIC is premised on the level of AML control effectiveness. Effective control measures should enhance a law firm's ability to timely detect and report suspicious transactions or behaviour as per the FIA. Table 33A below shows a spike in STR reporting behaviour in 2019. Some of these STRs relate to the *Fishrot* case and were only reported after widespread media publications around the alleged illicit activities. Effective monitoring and reporting systems are premised on ensuring timely disclosures to safeguard against risks of proceeds being placed beyond the reach of LEAs.

Year	STRs	SARs
2019	19	2
2018	11	3
2017	8	1
2016	3	1
2015	7	1
<b>Total</b>	<b>48</b>	<b>8</b>

Table 33A: Legal practitioner's reporting behaviour

The FIC holds the view that the sector is reporting much lower volumes than expected. Many unreported transactions are detected during FIA compliance assessment activities in the sector. CDD and EDD inadequacies significantly contribute to such failures. The sector's ML risk exposure demands enhanced and effective control systems. Other than reporting quantities, the quality of reports from the sector also leaves a lot to be desired. Some are set aside due to poor grounds for suspicion. Considering of all of these factors, the effectiveness of suspicious activity monitoring and reporting was rated **Medium Low** (a score of 0.4 or 40%).

#### *11.8.6 Product vulnerability*

As mentioned above, only services such as conveyancing, managing of client money and the creations of legal arrangements including the management thereof, are designated in the FIA

as they are highly vulnerable to ML abuse. This section details factors which impact the ML vulnerability of services offered in the sector.

*a. General vulnerability of designated legal services*



Figure 43: Inherent and final product ML vulnerability levels: Legal practitioners' sector

The average company secretarial service providers mainly render the following services: secretarial work relating to the Companies and the minutes relating thereto; name changes of Companies; conversion of Close Corporations to Companies or vice versa; the appointment of new or additional directors and resignation of current directors; issuing of share certificates; lodging of annual returns with BIPA at the end of a financial year; registration of Special Resolutions; the amendment of Auditors and the financial year end; attending to the allotment of shares; and attending to the transfer of Member's Interest in Close Corporations and Shares in Companies. Some law firms avail several of these services. As per above, the residual or final product vulnerability of company secretarial services is rated 0.57, reflecting some effectiveness that reduces inherent vulnerability levels

initially rated 0.60. These ML vulnerability ratings are quite similar to company secretarial services offered by Accountants and TSPs.

The level of cash usage usually has a bearing on inherent ML risks as launderers often need to introduce cash into financial systems to advance laundering thereof. The level of cash usage in the sector was assessed to be Low as most payments for different services are affected via EFT.

Generally, law firms keep records and thus transactions are relatively easier to trace for CDD and LEAs. Owing to poor CDD in most law firms, such records may not always be effective enough in ML combatting.

There is no ability to deal with clients anonymously for most services as clients need to be identified, upon file opening or commencing with consultations. The risk may lie with non-face-to-face clients who are represented by other parties, especially if such is done to deliberately undermine AML controls within law firms. There are many instances when legal services or the creation of legal persons is done on behalf of persons who do not engage the law firm directly (they do such through proxies or agents). With foreign based clients, this at times undermines client due diligence efforts. The risk of servicing clients who are not known or are represented by proxies always escalate ML vulnerability.

The world is currently said to be in *Industry 4.0* which refers to a new phase in the *Industrial Revolution* that is premised on interconnectivity, automation, machine learning and real-time data. Manual and paper-based administration is becoming limited or inadequate for certain services in the commercial space. Despite the massive technological advantages, this is presenting its own administrative and compliance challenges. The legal service, like most other professions, is forced to deal with or accept many non-face-to-face transactions or engagements over time. The sector indicated that such are present but very limited at present. Generally, the more non-face-to-face engagements a sector is exposed to, the more such sector is exposed to ML vulnerabilities.

There are significant indications of abuse of legal services to advance potential tax related offences and other financial crimes such as fraud and corruption. Fraud and corruption are significant ML threats domestically.

*b. ML vulnerabilities of shelf (or shell) companies*

Most company secretarial service providers have registered dormant entities in advance. Such dormant entities are sold to clients. Locally, these entities are commonly referred to as shelf companies. A shelf company allows a client (buyer of such company) to immediately assume ownership and directorship of an entity and commence trading or operations without having to go through the time-consuming process of incorporating a new Namibian entity. The principle is avoidance of going through the rigorous and time-consuming process of company registration. The practice is that sellers of such shelf companies would revert back to BIPA to communicate details about the company's new ownership, and in the process ensure that accurate and adequate beneficial ownership details are availed to BIPA.

Some shelf companies are already registered for Value Added Tax, employees' tax and other regulatory requirements while others might simply be incorporated with no further registration. What makes shelf companies attractive to potential ML abuse is the timeliness within which launderers would have access to an instrument (company) through which to move funds, transact or commit other acts. The vulnerability is enhanced by the fact that beneficial owners of dormant entities (or such newly acquired shelf companies) are able to open bank accounts and transact through such bank accounts. Usually, banks do not concern themselves (at least at the point of account opening) with the need to establish whether the business attempting to open a bank account has actively commenced trading activities. This inherently enhances ML vulnerabilities of shelf companies.

The practice is that CDD information of new beneficial owners is communicated to BIPA, who in turn would update their records accordingly. Some of the larger, established firms might adequately conduct CDD but overall, FIC observations<sup>365</sup> suggests that not all entities duly

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<sup>365</sup> From FIA compliance assessment activities. The adequacy, accuracy and timeliness of obtaining such beneficial ownership information can be undermined in the process of soliciting same from buyers and escalating same to BIPA.

conduct CDD as per the FIA. The reduced CDD requirements make shelf companies attractive to launderers.

Other concerns observed by the FIC include the failure by some entities to maintain CDD records for the minimum five-year period. Many a times, entities availing shelf companies failed to duly conduct CDD when complex ownership structures are proposed, particularly when foreign ownership was involved.

Some sectors in the AML/CFT/CPF space cited challenges in identifying shelf companies as stated in section 8.22. The anonymity associated with shell (or shelf) companies and the deliberate efforts by criminals to avoid regulatory scrutiny can make AML/CFT/CPF compliance challenging. Accordingly, compliance functions are required to be familiar with characteristics that indicate when a shell company may be used to advance ML. STRs reflecting potential ML activities associated with shelf companies commonly showed the following trends or red flags:

- Difficulties in obtaining information about the originators or beneficiaries of transactions or transfers;
- Shelf companies often exhibit transactional activity inconsistent with its business profile, including unusually high volumes of transactions or sporadic bursts of transactions;
- Payments that have no clear or stated purpose or that do not involve any discernible goods or services;
- Multiple high-value transfers between known shelf companies;
- Payments that are only identifiable via reference to a contract or invoice;
- Transactions involving goods and services that do not match the profile of the companies sending or receiving them;
- Transactions that involve two separate companies registered to the same address or companies that provide only the address of their registered agent;
- A single company sending wire transfers to an unusually large number of beneficiaries; and
- Transactions that frequently involve beneficiaries in high-risk jurisdictions or off-shore financial destinations.

Overall, the product rating of **Medium** or close to **Medium High** (0.57 or 57%) for company secretarial services (as per figure 43) is a fair reflection of ML vulnerabilities associated with shelf companies as well.

## 11.9 Motor Vehicle Dealers

Data from NATIs suggests that the sector comprises of about 520 entities. Only 111 entities however registered with the FIC for AML supervision and monitoring purposes, at the time of reporting. Some entities may have ceased operations but are still on the NATIs system. The sector consists of different dealerships such as new vehicle dealerships<sup>366</sup>, used vehicles dealerships, traders in earth moving equipment and agricultural tractors, as well as car rental businesses that at some point dispose of their used vehicles.

Year	2015	2016	2017	2018	2019	Total
On-Site Compliance assessments	0	0	1	2	0	3
Off-Site Compliance assessments	0	0	0	3	0	3
Trainings facilitated by the FIC	0	0	0	0	0	0
Sectoral compliance meetings	0	0	0	0	0	0
Enforcement measures taken or referrals made	0	0	0	0	0	0

Table 34: FIC's risk-based supervisory activities in the Motor vehicle dealers' sector

ML mainly occurs if AML controls are undermined to enable the buying of vehicles using proceeds of crime, especially with the use of cash. On average, the total revenue generated through this sector is around **NAD 4 billion** per annum, with most of such revenues collected by a few large vehicle dealerships.

Overall, the ML vulnerability of the sector was assessed to be **Medium** (a score of 0.56 or 56%).

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<sup>366</sup> Many new vehicle dealerships also have used vehicle sales functions.

#### *11.9.1 Availability and effectiveness of entry controls*

Motor vehicle Dealerships in Namibia do not have any legal or prudential licensing and registration requirements specific to the sector. Thus, entities in this sector only register formal businesses (close corporations, companies etc) with the BIPA and start operations as a trader or dealership in motor vehicles. It is also worth noting that nothing prevents a natural person or other arrangements from trading in motor vehicles as a sole proprietor/trader or without incorporating some form of legal or juristic person. The sector indicated however that the motor vehicle franchisees in the sector are subjected to specific requirements of which some require fit and probity of the management of these entities by the parent companies abroad. This is mostly the case with international motor vehicle dealerships that avail franchises to the domestic market. Their standards, helpful as they be, are not aligned to AML market entry related controls. The lack of a prudential regulating and licensing body leaves the sector exposed to ML as beneficial owners who may want to abuse motor vehicle dealerships as avenues for laundering can freely enter the market. Availability and effectiveness of entry controls have little to no entry controls. Accordingly, a rating of **Close to Nothing** (score of 0.1 or 10%) was allocated.

#### *11.9.2 Integrity of staff*

There are no indications which may suggest significant integrity failures sectorally. Staff members in the sector are generally regarded to maintain an acceptable level of integrity. The level of staff integrity was thus rated **Medium High** (a score of 0.6 or 60%).

#### *11.9.3 AML knowledge of staff*

The sector considers FIA provisions as significantly technical and generally called for more training and awareness to staff members. This has greatly improved over the years, especially in the larger motor vehicle dealerships, if FIA compliance assessment outcomes are anything to go by. Accordingly, the AML knowledge of staff was rated **Medium** (a score of 0.5 or 50%).

#### *11.9.4 Effectiveness of compliance function (organization)*

FIA compliance assessment observations, amongst others, suggests that there is significant room for improvement. CDD (especially when dealing with trusts and legal persons<sup>367</sup>) is not adequately executed within the sector, particularly amongst the small to medium sized entities, who are in majority. The larger entities, though in minority, deal with higher sales volumes and values.

Although the limited AML knowledge amongst relevant staff is a factor, staff turnover in key compliance roles within dealerships was cited as a key concern in ensuring compliance frameworks at entity level are maintained satisfactorily. The level of effectiveness of compliance functions in the sector was rated **Medium** (a score of 0.5 or 50%).

#### *11.9.5 Effectiveness of suspicious activity monitoring and reporting*

Suspicious activity monitoring and reporting systems are implemented to contribute to combatting efforts by ensuring suspicious transactions and activities are timely detected and reported to the FIC as per the FIA. The sector has been reporting STRs and SARs. However, observations from FIA compliance assessments indicate that systems are not as effective as expected. Many a times, the assessments find transactions that should have been detected and reported, or in some instances, reported late. The *Fishrot* case is a typical example. Many of the people accused in that case are alleged to have used proceeds from suspected fraudulent and corrupt activities to acquire vehicles. Motor vehicle dealerships failed to conduct EDD, to enable detecting and reporting of transacting behaviour of high risk clients when such seemed out of the expected financial profiles.<sup>368</sup>

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<sup>367</sup> The AML/CFT/CPF framework requires that beneficial ownership identification be limited to natural persons who exercise effective control over a legal person or trust. Such effective control amounts to shareholding or voting rights in excess of 20%. Exceptions are only if such persons with less than 20% shareholding or voting rights receives a large percentage of the declared dividends. Most motor vehicle dealers simply obtain company incorporate or registration details, whilst others simply note or record the company/trust names they are dealing with. Note that the FIC issued Guidance Note No.1 of 2015 to help in this regard. Importantly, training is availed when so requested while one-on-one guidance is availed in post-compliance assessment engagements such as the exit meetings.

<sup>368</sup> Almost all such accused persons bought from new vehicle dealerships, usually making large deposit payments. In some cases, they would buy via hire purchases and then settle after a certain period. The poor CDD observed in such transactions of high risk persons are worth noting.

Year	STRs	SARs
2019	9	0
2018	13	1
2017	5	0
2016	7	0
2015	5	0
<b>Total</b>	<b>39</b>	<b>1</b>

Table 34A: Motor vehicle dealers' reporting behaviour

The poor CDD measures partly contribute to ineffective monitoring and reporting systems. With all these considerations at hand, effectiveness of systems designed to ensure suspicious activity monitoring and reporting was rated **Medium** (a score of 0.5 or 50%).

#### 11.9.6 Product vulnerability

Generally, the sales arrangements of vehicles is essentially the same for both new and used vehicles. From an AML/CFT/CPF perspective, the difference lies in the overall observation around the controls implemented by dealers in new and used vehicles. New vehicle dealerships have implemented more formalised and relatively structured governance frameworks compared to used vehicle dealerships overall. Controls, especially in the larger, new vehicle dealerships are comparatively more effective than controls in used vehicle dealerships. This contributes to enhanced internal control and risk management frameworks in new vehicle dealerships. This does not however suggest that controls in new vehicle dealerships are operating as expected.

In considering ML vulnerability, market share related factors equally avail essential guidance. In this regard, the average new vehicle dealership is responsible for retailing much higher financial values than the average used vehicle dealership. Higher financial values inherently increase ML exposure (vulnerability)<sup>369</sup> while implemented controls reduce such vulnerabilities. The general conclusion on vulnerability levels suggests that used vehicle dealerships are more vulnerable to ML than new vehicle dealerships. Their combined sectoral vulnerability remains as stated in Figure 44 below.

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<sup>369</sup> For example, in the *Fishrot* case, preliminary investigations and FIA compliance assessment activities of the FIC suggest that accused persons may have used proceed from alleged offences to acquire new vehicles, and the new vehicle dealerships failed to detect such, despite behaviour which was not in line with financial profiles (with some being PEPs).

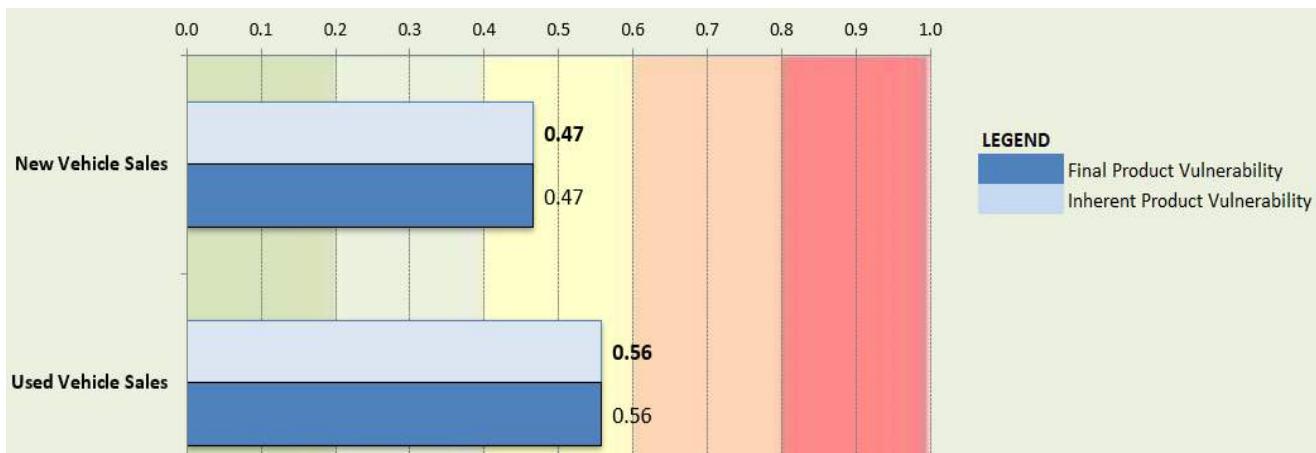


Figure 44: Inherent and final product ML vulnerability levels: Motor vehicle dealers' sector

In terms of product ML vulnerability, the sale of new vehicles was rated Medium Low (a score of 0.47 or 47%) while that of used vehicles was rated around Medium (0.56 or 56%).

Motor vehicle dealerships partly deal in cash. With the law requiring buyers pay a minimum deposit of 10% on each vehicle acquired through hire purchase (mostly bank financed), there has been an increase in cash activities in the sector. Generally, the level of cash activities is regarded Medium Low.

The need to maintain adequate records of transactions is essential in any AML framework. Effective record keeping helps with CDD and monitoring controls. Such records also aid LEA's combatting efforts. Transaction records are relatively easy to trace and this enhances effectiveness.

Generally, selling of products to anonymous clients escalates the risk of ML. Motor vehicle ownership needs to be registered with the Roads Authority of Namibia. Therefore, entities in the sector are not able to sell vehicles to anonymous clients. Anonymity in sales is thus not possible and this enhances ML combatting efforts, thus reduces ML vulnerability of the product. On the other hand, the products are also highly attractive to high networth clients and PEPs. This inherently escalates risk exposure.

There are cases indicating that illicit proceeds from crime are used to acquire vehicles. In many ML cases concluded before court, it is often found that convicted persons acquired vehicles with proceeds from illicit activities. Cases locally also show that prevalent ML threats

such as potential tax related offences and fraud generate proceeds later used to acquire motor vehicles.

## 11.10 Real estate agents

Operations of real estate agents are regulated in terms of the Real Estate Agents Act.<sup>370</sup> The Act provides for the establishment of an Estate Agents Board and an Estate Agents Fidelity Fund through which estate agency operations are regulated prudentially. The sector is supervised by the FIC for AML purposes and comprises of over 380 agencies with over 700 agents registered with the Namibia Estate Agents Board (NEAB) as at December 2019. Section 8.4.2 herein explains the FIC's supervisory framework which applies to all sectors.

	2015	2016	2017	2018	2019
Onsite compliance assessments	3	0	16	25	4
Onsite compliance assessments	0	0	66	30	14
Trainings facilitated by the FIC	0	0	8	7	24
Sectoral compliance meetings	0	0	0	0	1
Enforcement measures taken or referrals made	0	0	5	3	0

Table 35: FIC's risk-based supervisory activities in the Real estate agents sector

Observations<sup>371</sup> suggest that the industry facilitates real estate transactions worth over **NAD 2 billion** annually. Most such revenues are funded by banks and other financial service providers with little cash usage in the sector.

The sector's ML vulnerability was rated **Medium High** (a score of 0.67 or 67%). Considerations below explain variables which informed such rating.

### 11.10.1 Availability and effectiveness of entry controls

NEAB is the regulatory board that grants Fidelity Fund Certificates (FFC) required for operating as real estate agents. The FFC is renewable annually. The due diligence conducted to enable licensing of agents does not include assessing the fitness and probity of persons applying for FFCs. Fit and proper assessments are essential to minimize risks of persons

<sup>370</sup> Act No. 112 of 1976.

<sup>371</sup> NRA data collection.

with lower levels of integrity or criminals and their associates from becoming beneficial owners or holding controlling interest in estate agencies. Improvements are thus required if the current sectoral entry controls are to be aligned to the AML framework. Considering these factors, the availability and effectiveness level of entry controls was rated **Medium High** (a score of 0.6 or 60%).

#### 11.10.2 *Integrity of staff*

Many agencies in the sector are small to medium sized entities that employ less than five agents. There are not many frameworks observed that safeguard staff from potential exposure to launders or other criminals in the sector. Generally, no vetting procedures are conducted on staff to gauge their level of integrity. There are known cases, although limited, showing how agents may have abused real estate agency services to advance ML or other financial crimes. Generally, it can however be said that integrity breaches in the sector are relatively minimal and the integrity levels of staff is regarded acceptable and rated **Medium** (a score of 0.50 or 50%).

#### 11.10.3 *AML knowledge of staff*

The FIA requires accountable and reporting institutions to train staff on their AML responsibilities. As indicated above, the sector is dominated by small to medium sized entities, often owner operated entities. The owners, or their immediate subordinates are often entrusted with leading AML compliance functions. Their AML knowledge is thus essential in this regard. The NRA also found that AML knowledge is generally minimal in staff who are in remote areas (or those far from the city and major towns). This may partly suggest that AML supervisory efforts are limited to the city or major towns. It can also be attributed to the fact that the larger agencies are located in the city and major towns, leaving the outside markets to smaller firms. All FIA compliance assessments further suggest that larger agencies have, to a certain extent, reasonably a better understanding of AML expectations.

The commitment of real estate agents to comply with the FIA is also worth noting. Although the FIC constantly avails AML training, only a few agencies usually attend such. The FIC sectoral engagements where AML obligations are discussed are also poorly attended by the

sector. At most, the larger firms remain the most commitment to all AML related engagements. Considering all these, the level of AML knowledge is rated **Medium** (a score of 0.5 or 50%).

#### 11.10.4 *Effectiveness of compliance function*

The observations raised above largely impact the effectiveness of the internal compliance function as well as effectiveness of suspicious activity monitoring and reporting (in the section below). The sector is convinced that its compliance functions are commensurate to ML risks. FIA compliance assessment outcomes however suggest that compliance functions, especially in small to medium sized firms have significant room for improvement, especially in effective CDD execution. While identification of natural persons was greatly improved, identification of beneficial owners<sup>372</sup> requires improvement. Most legal practitioners have challenges identifying beneficial owners in clients who are trusts and legal persons. In an effort to enhance risk mitigation, the FIC issued Guidance Note No.1 of 2015. Importantly, training is availed when so requested while one-on-one guidance is availed in post-compliance assessment engagements such as the exit meetings.

Having regard to all of the above, the effectiveness of compliance functions is thus rated **Medium** (a score of 0.5 or 50%).

#### 11.10.5 *Effectiveness of suspicious activity monitoring and reporting*

Real estate agents are expected to deploy transaction monitoring systems that can detect suspicious behavior and ensure timely reporting of same to the FIC. As mentioned above, most larger agencies appear to have more effective compliance functions and thus better suspicious activity monitoring and reporting than small to medium sized agencies. Table 36 below suggests the sector reports more SARs than STRs. This is mainly because transactions reported are often not completed (attempted transactions). Many a times, the SARs emanate from clients either refusing (or hesitating) to explain financial due diligence related matters. In other cases, clients simply cancel deals due to enhanced due diligence

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<sup>372</sup> The AML/CFT/CPF framework requires that beneficial ownership identification be limited to natural persons who exercise effective control over a legal person or trust. Such effective control amounts to shareholding or voting rights in excess of 20%. Exceptions are only if such persons with less than 20% shareholding or voting rights receives a large percentage of the declared dividends.

measures undertaken by agents. Whenever agents found such conduct suspicious, despite deal cancellation, they would often report SARs.

	<b>CTRs</b>	<b>SARs</b>	<b>STRs</b>
2015	0	0	0
2016	1	1	0
2017	4	7	8
2018	1	41	1
2019	2	12	0
<b>Total</b>	<b>8</b>	<b>61</b>	<b>9</b>

Table 36: Real estate agents reporting behavior

Real estate agents do not have automated transaction monitoring systems. They mostly rely on manual systems or human interventions. Though the sector facilitates high value transactions, the volume of such transactions is often very low. Manual monitoring systems are used and deemed commensurate to the ML risk exposure. FIA compliance assessment outcomes however suggest that monitoring systems are not effectively detecting and reporting suspicious transactions or activities. Considering all relevant factors, suspicious activity monitoring and reporting is rated **Medium** (a score of 0.50 or 50%).

#### 11.10.6 *Product vulnerability*

Although the FIA only lists the buying and selling of real estate under services regulated in the national AML framework, the NRA assessed ML vulnerability of other products offered by real estate agents such as property rentals and body corporate management. Figure 45 below presents outcomes of the inherent and final vulnerability ratings for each such product. Accordingly, although ML threats may occur in property rentals and body corporate managements, the overall risk is low. Only the buying and selling of properties present a significantly higher risk [with a final risk rating of **Medium High** (0.67 or 67%)].

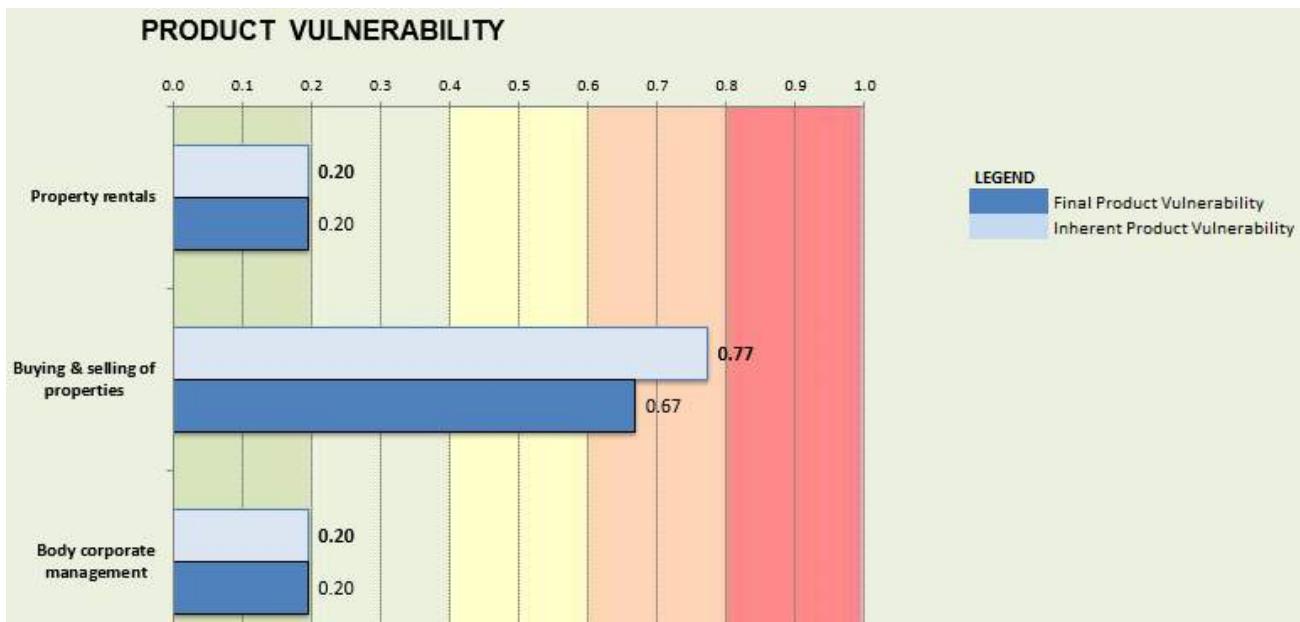


Figure 45: Inherent and final product ML vulnerability levels: Real estate agents sector

#### a. *Buying and selling of properties*

The final ML vulnerability level for buying and selling properties was rated Medium High (a score of 0.67 or 67%). This is the largest segment or product real estate agents are involved in, with rentals and body corporate being comparatively smaller in terms of transactional values. As alleged by the state in the *Fishrot* case, high net-worth clients and PEPs are attracted to property sales and extensively make use of real estate agents. There are extensive reports domestically and internationally suggesting that most launderers invest in real estate at some point. All these factors, amongst others escalate overall product ML vulnerability.

Generally, the level of cash usage is quite low and there is no anonymity in the buying and selling of properties as property transfers require that ownership be registered to specified persons. Importantly, all property transfers domestically are regulated and records thereof kept by not only estate agents but by authorities such as the Deeds Office. These considerations reduce ML vulnerability.

*b. Rentals and body corporate arrangements*

Generally, rentals and body corporate management arrangements are premised on lower financial values paid monthly (usually by lessees), through agencies to the lessor. There is no anonymity in rentals and body corporate operations as all parties need to be identified. Equally, there are usually no other third parties used as real estate agents act as facilitators between lessors and lessees (as well as in body corporate arrangements). Also, the overall use of cash is limited. All these factors reduce ML vulnerabilities. Often, the lease or body corporate contracts ensure some information about the involved parties is obtained and there is usually reliable record keeping by agents that can further help limit ML vulnerabilities. The final ML vulnerability rating for rentals and body corporate arrangements is Very Low (a score of 0.2 or 20%).

### **11.11 Trust Service Providers (TSPs)<sup>373</sup>**

The service of creating and managing of trusts and trust moneys is availed by Trust Managers, Accountants, Private Companies, Close Corporations, Banks and other registered institutions that are prudentially regulated and comply with strict entry control requirements.<sup>374</sup> Under this section, only trust creation and management services are considered. Conventional company secretarial services<sup>375</sup> are considered under legal practitioners and accountants above.

Total assets under the management of TSPs was estimated to be around **NAD 2 billion**.<sup>376</sup> TSPs and Accountants availing trust creation and administration are supervised by the FIC for AML/CFT/CPF purposes while the Master of the High Court is entrusted with prudential registration and regulation of TSPs. Section 8.4.2 above speaks to the FIC's supervision framework, which also applies to TSPs.

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<sup>373</sup> This is restricted to trust administration, excluding company secretarial services.

<sup>374</sup> Accountants (section 11.1) and Legal Practitioners (section 11.8).

<sup>375</sup> The average company secretarial service providers render secretarial work relating to Companies and Close Corporations including incorporation and amendments thereto. Legal practitioners and Accountants avail most of these services.

<sup>376</sup> As per NRA data collection.

Overall, the sectoral ML vulnerability for the creation and management of trusts was rated **Medium** (a score of 0.54 or 54%). The sections below explain considerations which inform such rating.

#### 11.11.1 *Availability and effectiveness of entry controls*

In terms of the Trust Moneys Protection Act,<sup>377</sup> the Master of the High Court is appointed as the regulatory authority over trustees and trust assets (including money). The Act obliges all such service providers to lodge all trust deeds with the Master of the Hight Court. As mentioned above, Trust Managers, Accountants, Private Companies, Close Corporations, Banks and other registered institutions offering these services are prudentially regulated and comply with strict entry control requirements. Some TSPs are supervised while others are not. Those not supervised tend to be more vulnerable to potential ML abuse in as far as creation and administration of trusts is concerned.<sup>378</sup>

There are no clear requirements with regards to licensing, competence and professional requirements, as well as beneficial owner's fit and proper considerations by the Master of the High Court. Considering all these, the rating assigned for market entry controls was **Medium High** (a score of 0.6 or 60%).

#### 11.11.2 *Integrity of staff*

The nature of trust administration is such that the TSPs have limited responsibilities after registration thereof. Mainly, TSPs simply register such establishes the relationship between the trustees and the administrators. TSPs therefore remain out of the trust administration (with minimal involvement, if any) largely as trustees and administrators assume their responsibilities in the trust. There have been some public cases of misconduct and integrity breaches observed in the creation of trust and company service providers. Some of the observed professionals involved in such activities include lawyers that have since been de-registered by the LSN. A rating of **Medium High** (a score of 0.6 or 60%) was assigned for the integrity level of staff.

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<sup>377</sup> (Act No. 34 of 1934).

<sup>378</sup> Refers to trusts outside the sphere and management of Accountants, Legal Practitioners and TSPs.

#### **11.11.3 AML knowledge of staff**

Most staff members appear to have been trained and refresher trainings do take place periodically within the sector. There is however a need for more sectoral engagements between the FIC and the industry on general AML compliance related matters and deliberation on challenges faced by the sector. The FIC's view, based on supervisory due diligence however suggests that there is room for improvement in enhancing understanding of AML obligations amongst relevant staff members. A **Medium High** (a score of 0.6 or 60%) rating was thus assigned.

#### **11.11.4 Effectiveness of compliance function (organization)**

The sector is of the view that the compliance functions are well resourced and capacitated to implement effective compliance systems. The poor reporting level of STRs and SARs may indicate that the compliance function is ineffective across the sector, although the sector is of the view that ML vulnerability is relatively low. Obtaining of relevant CDD<sup>379</sup> and escalating the process to EDD was generally seen as a control shortcoming that needs improvement. Client identification, though such entails much data collection by TSPs falls short of obtaining financial profile and transacting information. A **Medium** rating (a score of 0.5 or 50%) was assigned.

#### **11.11.5 Effectiveness of suspicious activity monitoring and reporting**

The sector has not reported any STRs or SARs in the period reviewed. The overall control shortcomings around the AML function in the sector as cited above generally impacts suspicious activity monitoring and reporting effectiveness. It is widely accepted that the lack of a PEP list (to assist with monitoring mechanisms) also undermines the effectiveness of detecting and reporting systems. PEPs make extensive use of hiding assets or moving proceeds through trusts, as reflected in many financial crime cases under investigation. The effectiveness of monitoring and reporting systems was thus rated **Medium** (a score of 0.5 or 50%).

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<sup>379</sup> Identifying foreign beneficial owners is one such challenge.

#### 11.11.6 General vulnerabilities of trust registrations and administration

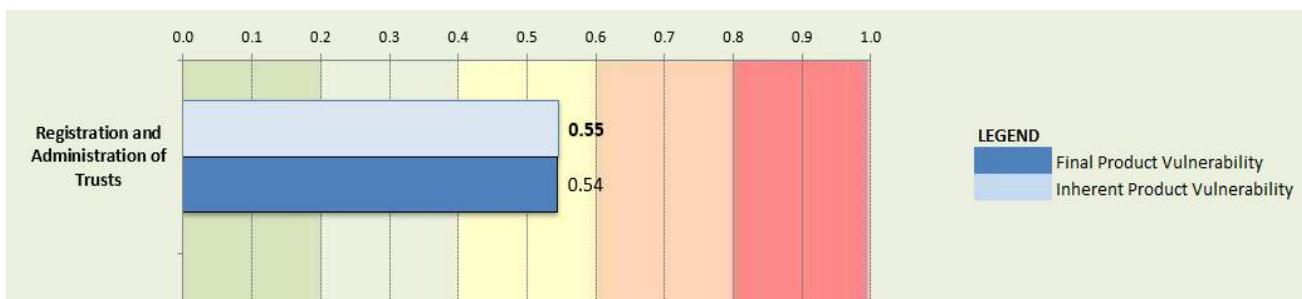


Figure 46: Inherent and final product ML vulnerability levels: TSPs services

Overall, the inherent ML vulnerability for creating and managing trusts was rated **Medium** (0.55 or 55%). After consideration of the various control measures implemented, the final or residual vulnerability level was slightly reduced to 0.54 or 54%, which is still within the Medium range.

Generally, the creation and management of trusts is inherently vulnerable to ML abuse. Various factors enhance such vulnerability. By their very nature, trust services attract high net-worth individuals and PEPs who prefer to place their assets under trusts or conduct business via trusts. Domestically, trust services are extensively used by clients from foreign jurisdictions. The CDD measures on foreign clients in many sectors is generally not adequate. The possibility of serving clients who are linked to complex and opaque legal structures internationally is quite high. These factors further escalate ML vulnerability of trusts.

Other than lodging of trusts with the Masters of the High Court, there is no other registration requirement for trusts. They are hence deemed as private arrangements and their existence is not a matter of public record. They are therefore ideal for use as secrecy vehicles by launderers due to their ability to separate legal from beneficial ownership. These considerations make trusts vulnerable to those seeking to distance and disguise their connection with property used for or generated from crimes.

There are many typologies and local cases (mostly in STRs and active LEA investigations) showing how trusts are abused to advance financial crimes such as tax related offences, fraud and corruption.

The sector does not deal with cash, therefore the cash activity within the sector does not exist. The use of agents in the sector does exist as clients are at times referred or introduced by third parties. It is very difficult to use its services anonymously or for anonymous activities as persons need to be identified. However, it is also common that a true beneficiary can have another person create a trust on their behalf and their involvement would never be disclosed to the trust and company service providers. The non-face-to-face use of the product is available but limited.

## **11.12 Non-Profit Organisations (NPOs)**

As mentioned above, the November 2019 amendments to the FIA included NPOs under the FIA as Accountable Institutions. NPOs, although included in the international AML/CFT/CPF framework for TF related risks (as per FATF Recommendation 8) were also found to have been significantly exposed to ML activities domestically as per the 2016 NRA updates. The 2016 and subsequent NRA updates availed some cases showing how ML threats are exploiting the sector. In addition to 2016 NRA observations, section 11.12.3 presents a few more cases showing how ML threats are exposing ML vulnerabilities while two other cases under section 15.3.2.5 cite prominent church leaders<sup>380</sup> arrested and charged for potential involvement in illicit wildlife crimes. The increasing number of proceed-generating crimes linked to NPOs in recent years, along with the known lack of AML/CFT/CPF controls in the sector enhance vulnerabilities.

Section 8.4.2 above explains the FIC's supervisory framework, which also applies to NPOs.

### **11.12.1      *Number of NPOs in Namibia***

As at the end of 2017, any person could choose to register an NPO under various bodies. The setting up of Residential Child Care Facilities (RCCF) requires alignment to the regulations administered by the Ministry of Gender Equality and Child Welfare (MGECW). Welfare Organisations (WOs) are registered under the Ministry of Health and Social Services. Non-Profit or Section 21 Companies, are incorporated in line with Section 21 of the

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<sup>380</sup> and reflects how churches could be abused as vehicles to advance ML.

Companies Act, while Non-Profit Trusts are administered under the Master of the High Court. Voluntary Associations (VA) on the other hand do not fall under any line ministry or authority. A Voluntary Association is merely a group of people who meet and form an organisation around a common purpose, such as promoting non-violence or helping children. There are no requirements currently other than having a written constitution which explains the purpose of the group and how it will work.

According to BIPA, there were 1,456 Section 21 companies registered as at the end of 2017. The MGECW, on the other side has registered 22 Residential Children and Safety homes and 464 WOs as at the end of 2017. These organisations vary from churches and church centres, children's homes and safety homes, culture and recreation establishments, those involved in law and advocacy, political and cultural causes, as well as medical and educational causes.

Some of the organisations are prudentially regulated by the above-mentioned bodies/line Ministries while some are non-regulated. The regulations/standards differ from one regulating body to the other. The majority of the charity organizations receive donations from local and international sources. Over 50% get funding from donors, especially the RCCF, Section 21 Companies and WOs. Owing to NPOs receiving significant funds from international stakeholders (cross border funds remittances), NPOs are inherently vulnerable to advancing TF or being abused for ML purposes.

With a **Very High** ML vulnerability rating of **0.91 or 91%**, NPOs are the most vulnerable sector to ML threats in Namibia in the period reviewed. Note however that the overall ML risk of the sector is not as high, given that ML threats associated with the sector are much lower in terms of prevalence rate (occurrence) and financial values. The escalated ML vulnerability level mainly stems from the absence of any AML controls NPOs. Faith Based Organisations (FBOs) in particular appear to have the highest level of ML vulnerability in the advancement of ML and related financial crimes, if STRs are anything to go by. The lack of any form of supervision, absence of due diligence pertaining to those introducing funds in the NPO space (e.g donors), amongst others, are some of the factors contributing to high vulnerability. It is expected that such high vulnerability would reduce over time with the commencement of AML

supervisory activities since November 2019. Figure 42 below avails ML vulnerability outcomes in the sector.

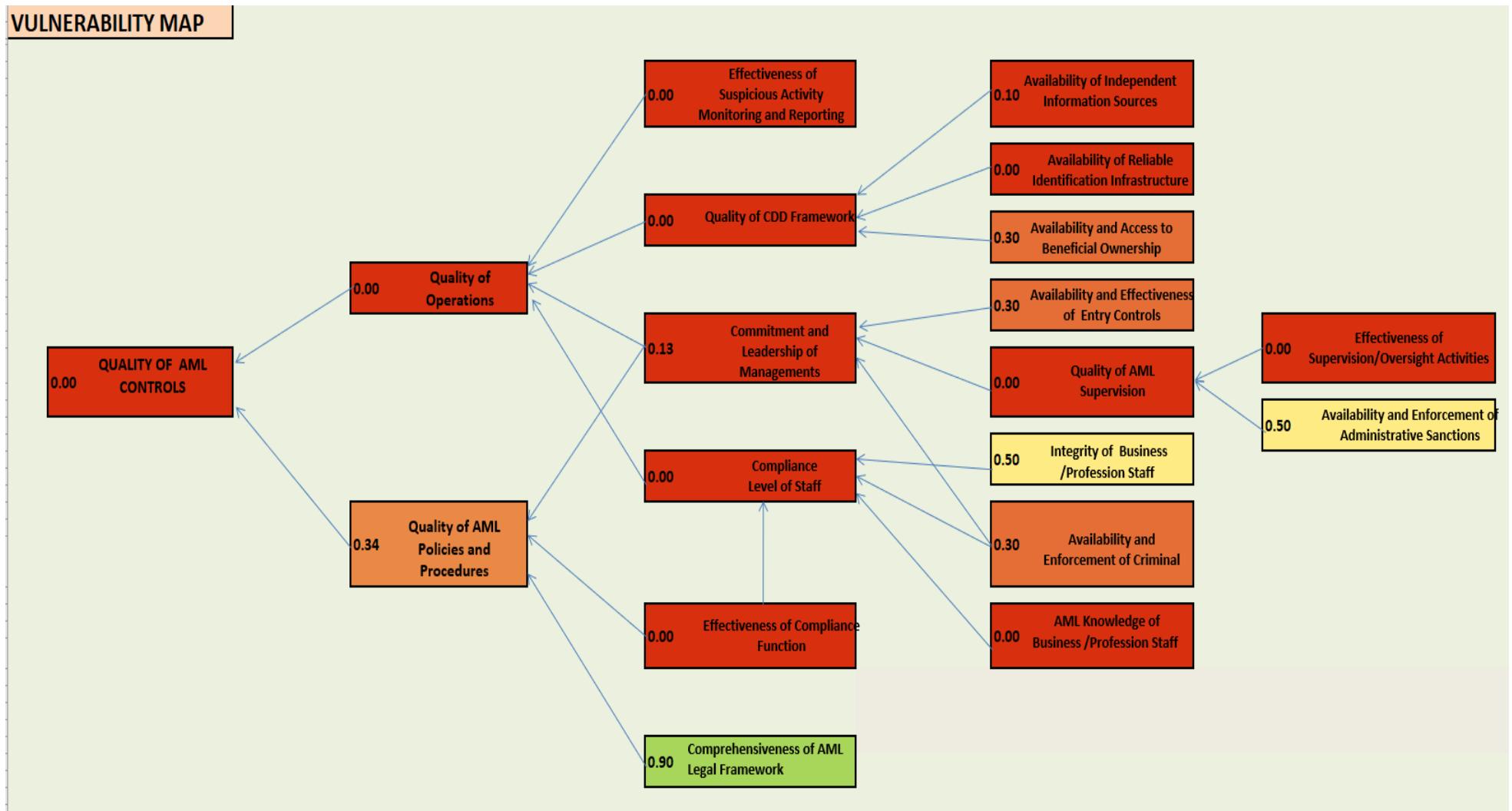


Figure 47: ML vulnerability map: NPOs

**11.12.2 Number and types of NPOs registered in Namibia (August 2016)**

Activities/ Objective	Number	Legal framework	Type	Registering Authority/Regulator
Churches and Church centers	628	Companies Act	Section 21 Companies	BIPA
Culture and recreation Radio, Entertainment and other recreational type	23	Companies Act	Section 21 Companies	BIPA
Law, advocacy and politics	19	Companies Act	Section 21 Companies	BIPA
Various (Cultural causes, Medical causes, Educational causes etc.)	786	Companies Act	Section 21 Companies	BIPA
Residential Child Facilities	22	Minimum Standards for Residential Childcare Facilities	Residential Child Facilities	Ministry of Gender Equality and Child Welfare
Various Welfare Organisations	464	Various causes (Children homes, Social welfare e.tc.)	Welfare Organisation	Ministry of Health and Social Services
Voluntary Association (VAs)	Unknown <sup>381</sup>	None	Voluntary Association	None
<b>Total</b>	<b>1,942</b>			

Table 37: Number and types of registered NPOs

**11.12.3 Effectiveness of AML supervision and oversight activities**

The NRA found that most prudential supervisory bodies in the sector appear to limit their supervisory scope to licensing and registration, with minimal monitoring and supervisory activities.

Much of what is captured in section 8.4.2 on FIC's supervision mandate and effective implementation thereof applies here. At the time of reporting, not much supervisory activities

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<sup>381</sup> The FIC could not determine this number due to the absence of a regulatory frameworks around VAs currently.

have been undertaken by the FIC on the NPO sector. Given that the sector's AML supervision only commenced in November 2019, the sector's AML supervision effectiveness did not exist as at December 2019.<sup>382</sup> A **Zero** rating was thus assigned. Ongoing AML/CFT/CPF supervisory activities will be adjusted to ML vulnerabilities in terms of institutions, types of services, financial transacting activities etc., in the sector over time.

#### 11.12.4 *Availability and effectiveness of entry controls*

The effectiveness of due diligence measures conducted by relevant authorities before granting applicants approval to commence NPO operations was rated **Low** (a score of 0.3 or 30%). Many NPOs, especially FBOs who are most vulnerable have limited entry requirements, if any. This section explains considerations which inform such.

For AML purposes, access to enter should be preceded by some approval or licensing processes. Some Ministries do subject prospective NPOs to due diligence processes before granting them approval to commence their activities. The licensing process should ideally include subjecting applicants to an extensive due diligence process which evaluates competence of key personnel of an NPO as well as their character or conduct. The latter would be aimed at ensuring that relevant key persons or promoters of NPOs are fit and proper, thus minimising risks of such persons exposing the sector to ML abuse. If the investigated cases involving NPOs are anything to go by, it appears that key persons<sup>383</sup> (especially those managing NPOs) are involved in advancing most of the offences.

In an effort to assess AML/CFT/CPF combatting effectiveness of entry requirements, the NRA considered the adequacy of the current legal and regulatory framework in the NPO sector. Below is a presentation of such outcomes for the major categories of NPOs.

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<sup>382</sup> Note that COVID-19 related preventive measures (lockdown) derailed commencement of supervisory activities around awareness and training of FIA obligations until October 2020.

<sup>383</sup> Although promoters, owners and managers of such NPOs are identified by prudential regulators or licensing bodies, such identification falls short of beneficial ownership due diligence measures as per the FATF Recommendations.

11.12.5 *Under the RCCF's Minimum Standards*<sup>384</sup>

AML control variable	Relevant legal requirements
Formation, Capacity, Powers and Objects	<ul style="list-style-type: none"> <li>a) The organisation responsible for the RCCF must be registered as a WO with the responsible Ministry. This is currently the Ministry of Health and Social Services in terms of Section 19(1) of the National Welfare Act, 1965 (Act No.79 of 1965).</li> <li>b) RCCFs must also be registered with the MGECW, as required by Section 42 of the Children's Act 1960 (Act No. 33 of 1960).</li> </ul>
Administration:	<p>The organisation or association wishing to establish and operate a RCCF must have a file (updated regularly) which provides detailed background information about itself on the following:</p> <ul style="list-style-type: none"> <li>a) evidence of the good standing and reputation of the organisation or association that would warrant placement of children in their care;</li> <li>b) information outlining the constitution, policy, management and regulatory arrangements, and structure of the organisation or association. It should also provide evidence of when and how the organisation or association was formed, its expertise and area(s) of competence;</li> <li>c) financial records for the last 2 years (or since the organisation or association was formed if this is shorter). These records should include an overview of available funding and capital of the organisation or association;</li> <li>d) In the case of foreign (non-Namibian registered) organisations, evidence must be provided to show that all necessary authorisation to operate in Namibia are in place and documented.</li> </ul>
Transparency and accountability	<ul style="list-style-type: none"> <li>a) The RCCF has an updated strategic plan and annual work plans which are submitted to the responsible Ministry regularly;</li> <li>b) The RCCF produces an annual report including an audited financial report (audited by an external accountant) that is sent to the responsible Ministry and donors.</li> </ul>

Table 38: Minimum Standards for Residential Child Care Facilities

<sup>384</sup> Minimum Standards for Residential Child Care Facilities in Namibia, March 2009.

11.12.6      *Section 21 Companies*<sup>385</sup>

AML control variable	Relevant legal requirements
Formation, Capacity, Powers and Objects	A non-profit association incorporated under Section 21 must state its object in its Memorandum of Association.
Administration	<ul style="list-style-type: none"> <li>a) On incorporation of a company, notice of the registered office and of the postal address must be given to the Registrar;</li> <li>b) A company must not issue or send to any person in Namibia any trade catalogue, trade circular or business letter bearing the company's name unless the directors' names or initials are displayed;</li> <li>c) Every company must have at least one director who has not been convicted of theft, fraud, forgery or uttering a forged document, perjury, an offence under any law for the prevention of corruption, or any offence whether in Namibia or elsewhere.</li> </ul>
Transparency and accountability	<ul style="list-style-type: none"> <li>a) A company must, at every annual general meeting, appoint an auditor or auditors;</li> <li>b) Every company must keep, in the official language, accounting records which are fairly necessary to present the state of affairs and business of the company and to explain the transactions and financial position of the trade or business of the company; and</li> <li>c) The directors of a Section 21 Company must, in respect of every financial year of the company, prepare annual audited financial statements and must present them before the annual general meeting of the company. In terms of section 9 of the Companies Act, Section 90 of the Act requires a public or State-owned company, upon its incorporation, and each year at its annual general meeting, to appoint an auditor.</li> </ul>

Table 39: Legal provisions guiding Section 21 Companies

<sup>385</sup> Namibian Companies Act, 2004 (Act No.28 of 2004)

11.12.7 *Non-Profit Organisations registered as WOs as per The National Welfare Act 79 of 1965*<sup>386</sup>

AML control variable	Relevant legal requirements
Formation, Capacity, Powers and Objects	<ul style="list-style-type: none"> <li>a) For WO that wishes to commence operations which include deriving funds wholly or partly from the State or from a local authority or from contributions collected from the public, such organisation should be registered as such and authorised, and issued with a certificate to collect funds;</li> <li>b) A Welfare Organisation<sup>387</sup> (WO) may collect contributions in Namibia during the period specified in a certificate issued to it by an officer.</li> </ul>
Administration:	<ul style="list-style-type: none"> <li>a) Section 21 WO shall be registered under the Companies Act and governed in accordance with a written constitution;</li> <li>b) Welfare organisations are required to select a managing committee, comprising of not less than seven members. <ul style="list-style-type: none"> <li>i. Such committee shall keep such books, accounts and registers and from time to time furnish such reports and returns as may be prescribed; and</li> <li>ii. The reports and returns shall be furnished to the board and the board shall deal therewith in such manner as may be prescribed;</li> </ul> </li> <li>c) Every person who collects contributions for a registered WO, shall have in his possession and shall produce for inspection at the request of any person specially authorised thereto by a local authority or by the registrar, or of any person from whom he collects contributions, a document of authority in the prescribed form, granted to him by such person or body as may be prescribed in relation to the particular type of organisation, or a distinctive badge approved by the board.</li> </ul>
Transparency and accountability	<ul style="list-style-type: none"> <li>a) The Minister may appoint an officer in the public service (an inspecting officer) who may generally or in respect of any particular case and in consultation with the board: <ul style="list-style-type: none"> <li>i. inspect any aspect of the affairs or activities of such WO and examine all documents relating thereto; and</li> <li>ii. examine and audit the books, accounts and other documents relating to the financial affairs of such WO.</li> </ul> </li> </ul>

386 Social Welfare (1965) - National Welfare Act 79 of 1965 (annotated).

387 which is registered or deemed to be registered under the Companies Act and which is precluded by the provisions of section 18A thereof from collecting contributions in Namibia.

	b) The Minister may, after consultation with the board, by order in writing under his hand, direct any person holding or having the control of any money, securities or other property representing contributions collected contrary to the provisions of the Act, to retain possession or control thereof until the Minister has made a further order in regard thereto.
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Table 40: Legal provisions regulating NPOs registered in terms of the National Welfare Act

#### 11.12.8 *Integrity levels of staff*

With FBOs and most other NPOs, there are no controls implemented to ensure only persons with high levels of integrity are involved in NPO operations. There is largely trust and faith that persons involved are of good character. Usually, most leaders of NPOs recruit or appoint persons whom they trust or believe have high levels of integrity. There were no indications of deliberate measures implemented to safeguard against integrity failures generally in most NPOs.

Many NPOs indicated that they have limited incidents of integrity breaches. The larger, established NPOs have recorded some integrity failures and have had to subject some employees to remedial measures in accordance with their internal policies. AML supervisory activities have barely commenced in the sector with most work being dedicated to training and awareness. The FIC, as AML supervisory body, at the time of reporting have not undertaken sufficient assessment activities to understand the level of staff integrity in the sector. Overall, a **Medium** (a score of 0.5 or 50%) rating was assigned.

#### 11.12.9 *AML knowledge of staff*

The sector has barely any understanding of AML obligations. Not all NPOs attend the few FIA compliance awareness sessions availed. It should however be noted that the FIC planned more awareness creation initiatives to be undertaken in the short to medium term. Accordingly, a **Zero** rating was assigned for this sector, suggesting that there is little to no understanding of AML obligations.

#### 11.12.10 *Effectiveness of compliance function (at organizational level)*

As mentioned above, there are hardly any control measures implemented at the time of reporting. Accordingly, compliance functions **do not exist**.

#### *11.12.11 Effectiveness of suspicious activity monitoring and reporting*

Given the absence of AML controls in the sector, suspicious activity monitoring and reporting **does not exist**.

#### *11.12.12 Vulnerability of various NPO services*

Overall, FBOs were found to be most vulnerable to ML related activities. The ease with which persons can introduce funds to FBOs, given the minimum (or limited) CDD largely contributes to this vulnerability. Further, the poor and often inadequate record keeping (especially in smaller FBOs) as well as lack of accountability and transparency in some NPOs also escalate ML vulnerability. The NRA also found that a significant amount of FBOs have little to no governance structures and the majority do not produce any financial reports. With the exception of a few, not many demonstrated governance and accountability mechanisms. This further makes FBOs attractive to launderers.

NPO services are exposed to local and foreign persons (associates, members etc.). As far as donations or contributions are concerned, NPOs often attract funds or gifts from foreign persons, some of whom could originate from high risk jurisdictions<sup>388</sup>. Chances of receiving funds from high risk persons thus exist. NPOs also tend to attract high net worth individuals including PEPs. Chances that persons with criminal records or low levels of integrity breaches make use of NPO services are inherently high. Additionally, the non-face-to-face engagements of mostly foreign based donors (perhaps owing to jurisdictional distances) further enhances ML vulnerability. The sector also indicated that at times, members or persons associated with FBOs would often prefer to avail donations anonymously, mainly in the interest of faith-based or similar objectives. Sincere as such may be, anonymity by its very nature enhances ML vulnerability. In a few STRs, it appears FBOs involved in ML activities often end up remitting funds back to criminal syndicates, or the transactions of FBO

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<sup>388</sup> Other than being part of criminal syndicates, some donors could be part of complex and opaque legal structures internationally, or as seen in some cases, could be from countries where national identification frameworks are not reliable.

leaders may mislead banks into assurances that funds or transactions are associated with legitimate FBO activities. This is conduct which disguises the true origin of funds. With donations, anonymous donors (which is common with FBOs) enhance the sector's inherent vulnerability to ML. Given the current absence or minimal CDD of donors, the NRA concluded that NPOs are unable to duly identify or verify such clients' identities.

It was further observed that the use of cash is most prevalent in FBOs (especially the smaller FBOs) that may not have alternative payment facilities/channels. Some FBOs do not make use of conventional financial facilities such as bank accounts. Many such either do not collect significant amounts of money or are in the far remote areas with limited access to banks and other financial services. Overall, the level of cash was estimated to be very low amongst most NPOs except for some FBOs. Generally, the higher the usage of cash, the higher the inherent ML vulnerability.

The prevalence of local ML typologies or cases showing how NPOs (in particular FBOs) are abused to advance ML, suggests that the services are vulnerable to ML. The more such typologies or cases occur, the higher the consideration of ML vulnerability. With most NPO services, there are known ML typologies internationally but not domestically.

NPOs specializing in research and scientific related activities (including civil society organisations) often have governance and accountability structures. NPOs in this stream obtain funding, donations or membership contributions based on the ability to demonstrate some form of governance frameworks. With most being Section 21 companies, they are naturally expected to comply with relevant governance provisions as per the Companies Act. These governance frameworks ensure sources of funds and destinations are known or can be readily established while record keeping is reliable. The NRA also observed that the membership or key stakeholders of many such organisations are often professionals or bodies that tend to appreciate the value of governance structures. Most of their resources, as far as the NRA could establish, are channeled towards research and scientific causes. These considerations, to a certain degree, reduces vulnerabilities to ML.

Sports and recreational bodies are mostly funded by contributions of members, supporters or associates. The general view is that ML vulnerabilities are low owing to the low financial values from such contributions.

Assessment outcomes suggest that sports and recreation organisations have the lowest ML vulnerability (at 0.3 or 30%), followed by civil society, research and scientific organisations (at 0.41 or 41%). FBOs on the other hand appear to have the highest ML vulnerability at 0.91 or 91%. Overall, with regard to the currently implemented *general controls* in place, the Final Product Vulnerability and the Inherent Product Vulnerability for various NPO services remain unchanged, as there were no known *AML controls* implemented (see figure 48 below). It must however be stated that some governance frameworks observed in some NPOs such as civil society, research and scientific organisations do, to acertain extent, help reduce ML vulneraiblities. The implementataion of AML control frameworks and supervision recently commenced. Such would mature over time and naturally enhance overall risk mitigation. This woud naturally reduce the current high inherent ML vulnerability levels in the sector.

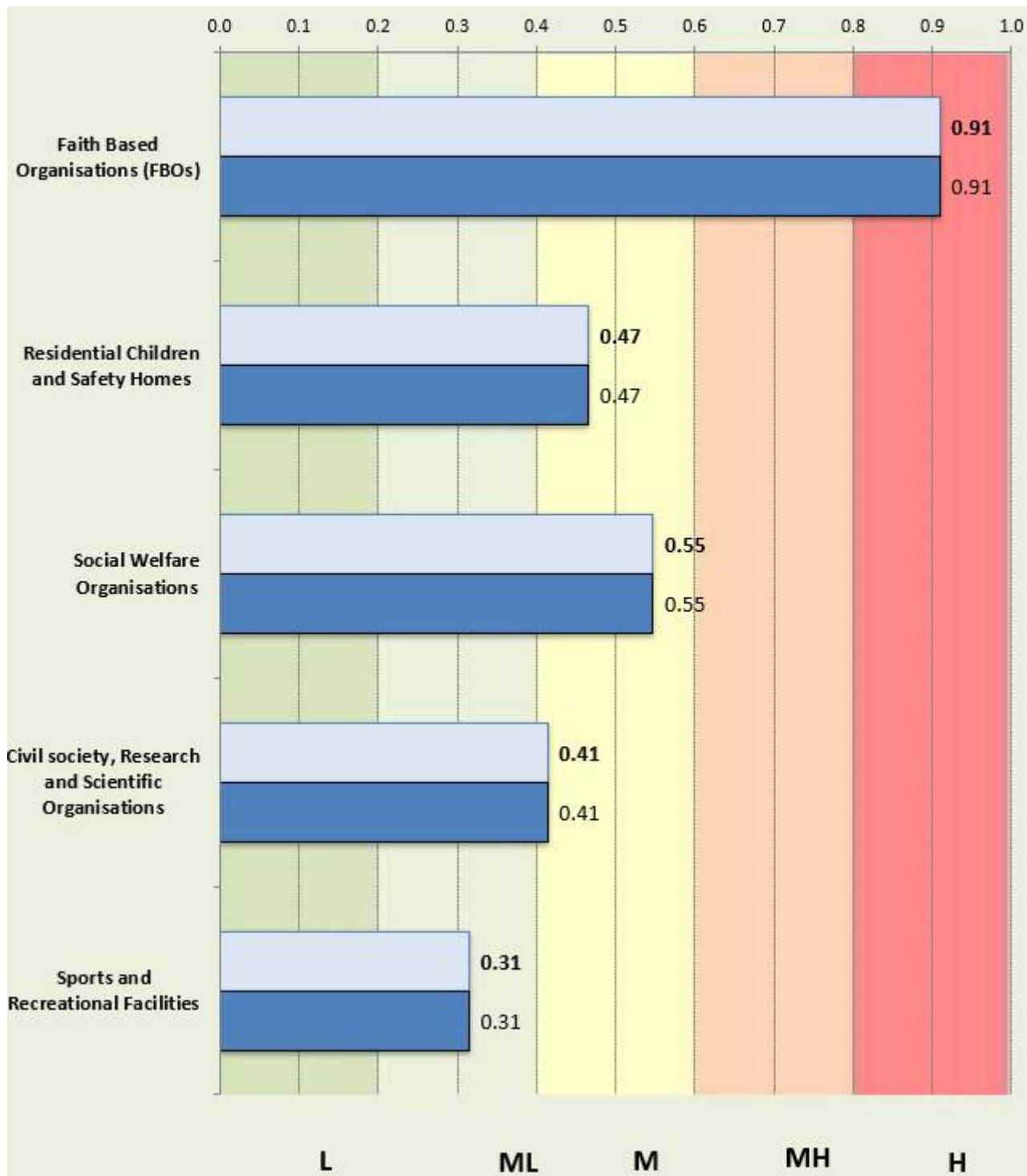


Figure 48: Inherent and final product ML vulnerability levels: NPO sector

#### 11.12.13 *Criminal investigations reflecting abuse of NPO services*

The following are some cases investigated by authorities reflecting potential abuse of NPOs to advance ML.

**Case study 7**  
**Church bank accounts abused to advance illicit transfers of proceeds**

*Swift transfer from the UK amounting to USD 100,000.00 was received into the bank account of a local church. It was indicated that such funds were a charitable donation. The subject was based in the UK before he passed on. He identified himself as a legitimate diamond broker or dealer.*

*Investigations reveal that the USD 100,000.00 was from an initial amount of £450,000.00 he received from two brothers in Azerbaijan. It was suspected that these funds were linked to illicit dealings in diamonds and cocaine, some of which may have originated from Barbados. The relationship between the church/its leaders and the payee of such funds is unknown. The church withdrew most of the funds in cash and it is suspected that the church handed over such cash to criminal representatives based locally. The church, from records at hand was left with NAD 54 684.00 in its bank account, which may have been its commission/reward for facilitating potential ML.*

**Case study 8**  
**Church bank accounts used to transfer illicit proceeds to RSA**

*A pastor and his wife were arrested on charges of fraud and ML. Criminal charges suggest that payments and subsequent withdrawals made into the church's bank account seem inconsistent with expected church business. It appears that funds received by the local church were immediately remitted or transferred to other accounts in the Republic of South Africa. Adverse reporting which suggests potential criminal activity by the church leaders in the local press led to investigations into the church's financial affairs, leading to the pastor and his wife being charged accordingly. It appears that funds from illicit activities may have been channelled through the church to disguise such from its illicit origins. The total amount involved was NAD 400,000.00, in the period 2013 to 2019, structured in smaller bank deposits.*

**Case study 9**  
**Funds meant for NPO purposes abused by NPO leader**

*The case involves a residential child facility (an unregistered NPO). The promoter, owner or manager of such NPO solicited NAD 80,000.00 from one of the embassies based in Namibia for the welfare activities of the NPO. Being the owner, the funds were deposited into the suspect's personal bank account as the NPO did not have its own active bank account. It was expected that the funds would be used for the NPO's legitimate welfare activities. Investigations suggest that the suspect may have spent the money on his/her personal expenses and not for welfare or charitable purposes. The case is pending in court at the time of reporting.*

**Case study 10**  
**Church leader potentially involved in criminal activities**

*Another case investigated is that of a church prophet who may have been involved in potential Rhino poaching activities. Multiple deposits paid into the prophet's personal bank account were referenced as "tithe" and "seed". Funds paid into personal bank account could either be from church members or potentially from criminal activities. Other than involvement in poaching, tax evasion and ML are potential additional offences. A total of NAD 5,707,150.19 was remitted into such church leader's bank account from 2013 to 2019.*

# **CHAPTER IV: FINANCIAL INCLUSION RISK**

### ***Chapter summary***

*It is a given that the due diligence or controls required in availing financial services and products, as per the AML/CFT/CPF framework can unintentionally minimize access to or usage of such products or services.*

*Financial inclusion products such as the Basic Bank Account or the various e-money products are aimed at enabling access to financial services to as many people as possible. Through the financial sector strategy, Government's position suggests that availing access to financial products and services fosters inclusivity in economic growth and prosperity nationally. In furtherance of financial inclusivity, financial products are introduced with minimal due diligence or controls in order to enable the ease with which people can make use of such financial products. The unintended consequence of such products not being effectively implemented is an increased ML/TF/PF vulnerability to the entire financial system. The object of assessing financial inclusion products as part of the NRA is to help understand the level of ML exposure which emanate from such products and if need be, enable revisit of relevant policy or implementation positions.*

*The two financial inclusion products assessed were found to be duly implemented and did not therefore escalate ML/TF/PF vulnerability in the period under reporting. In this chapter, the risk assessment avails outcomes of considerations which support such finding.*

## 12. AML/CFT/CPF framework and Financial Inclusion

Given its earlier focus on higher-income or developed countries, the FATF, by its own admission, took financial inclusion concerns for granted in its membership as financial access in developed countries were around 88% in high income countries.<sup>389</sup> The growing membership, partly owing to the establishment of FSRBs around the world, saw the rise in FATF member countries who could be classified as developing countries. Only 42% of the population in such developing countries had financial access.<sup>390</sup> Adopting AML/CFT<sup>391</sup> measures in the absence of a risk based framework (RBA), would further undermine financial inclusion in developing countries. The large size of the informal sector and more frequent use of unregulated channels to transfer money in many developing countries made it more difficult to effectively monitor and prevent illicit financial behavior.

According to the FATF, “informal, unregulated and undocumented financial services and a pervasive cash economy can generate significant ML/TF risks and negatively affect AML/CFT preventive, detection and investigation/prosecution efforts.”<sup>392</sup> Lower levels of supervisory capacity also made it more difficult for developing countries to adopt the FATF standards. A 2008 study by the FIRST Initiative, found that the introduction of AML/CFT controls adversely impacted access to and usage of financial services in five developing countries (Indonesia, Kenya, Mexico, Pakistan, and South Africa).<sup>393</sup> Similarly, a 2011 IMF study concluded that compliance with the AML/CFT standards was low and that such compliance was correlated with the countries’ economic development.<sup>394</sup>

The FATF sought to address this challenge in its 2008 Guidance on *Capacity Building for Mutual Evaluations and Implementation of the FATF Standards Within Low Capacity Countries*.<sup>395</sup> The combination of low supervisory capacity and large informal economies in

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<sup>389</sup> Pisa, M. 2018. Does the Financial Action Task Force (FATF) Help or Hinder Financial Inclusion? A Study of FATF Mutual Evaluation Reports. CGD Policy Paper, 143. May 2019 [Source: <https://www.cgdev.org/sites/default/files/does-financial-action-task-force-fatf-help-or-hinder-financial-inclusion-study-fatf.pdf>].

<sup>390</sup> Pisa, 2018.

<sup>391</sup> Wording presented as per source. Note that PF was not included.

<sup>392</sup> FATF. FATF Guidance: Anti-money laundering and terrorist financing measures and Financial Inclusion. FATF. Paris. 2011.

<sup>393</sup> 21 Bester, H., D. Chamberlain, L. de Koker, C. Hougaard, R. Short, A. Smith, and R. Walker. Implementing FATF Standards In Developing Countries And Financial Inclusion: Findings And Guidelines. The FIRST Initiative. Washington, D.C. May 2008. For more on the FIRST Initiative see: <https://www.firstinitiative.org/>.

<sup>394</sup> Yepes, Concepcion Verdugo. Compliance with the AML/CFT International Standard: Lessons from a CrossCountry Analysis. IMF Working Paper 11/177. International Monetary Fund: Washington, DC, p. 6. 2011.

<sup>395</sup> FATF. Guidance On Capacity Building For Mutual Evaluations And Implementation Of The FATF Standards Within Low Capacity Countries. FATF: Paris. February 29, 2008.

many developing countries raised the risk that efforts to implement AML/CFT rules in such countries would further push legitimate financial activity out of the formal financial sector into the informal cash economy, or prevent it from entering in the first place, resulting in financial exclusion that made it harder to monitor transactions.<sup>396</sup> While financial inclusion objectives as explained above have far reaching economic and developmental benefits for a country, the AML/CFT framework stands to benefit from ensuring that financial activities are channelled through the formal sector, making it easier for relevant authorities such as the FIC, Tax Authorities and other LEAs to monitor. Namibia, in complying with the FATF Recommendations repealed the FIA, 2007 and replaced such with the FIA 2012 which is risk based. The country has enabled flexible and simplified AML/CFT measures around products such as e-money and the Basic Bank Account to enhance the ease with which such services can be accessed and used by consumers.

The subsections below explain significant elements of how the domestic AML/CFT/CPF framework is aligned to the RBA as per FATF Recommendations in view of advancing financial inclusion objectives.

## 12.1 Government position on Financial Inclusion

The Government, through the Namibia Financial Sector Strategy (NFSS)<sup>397</sup> has singled out financial inclusion as a pre-requisite for ensuring inclusivity in economic growth and prosperity. It is the only viable means to ensure the marginalised segments of society are included in the benefits emanating from financial services. Financial inclusion refers to availing of financial services and products to all sectors of the population at an affordable rate or cost.<sup>398</sup> The key is availability and affordability of such, as these financial services play a

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<sup>396</sup> In addition to growing awareness within the FATF that financial exclusion could increase ML/TF risks, there was also growing pressure from outside actors concerned about how AML/CFT rules were affecting efforts to expand financial access, including the G-20, which in 2010 highlighted the importance of financial inclusion in its Leaders' Communique and created the Global Partnership for Financial Inclusion (GPFI) to carry forward work on the topic. The first public indication of a shift in thinking within the FATF came in 2009 in a speech by FATF President Paul Vlaanderen in which he emphasized that "the pursuit of financial inclusion and the pursuit of an effective AML/CFT regime are complementary; they are by no means conflicting financial sector policy objectives." [Source: Pisa, 2018]. In 2012, the FATF Ministers, who are responsible for setting the organization's mandate, stated that financial exclusion represented "a real risk to achieving effective implementation" and that "many countries – particularly those with capacity constraints – continue to face legitimate challenges in achieving effective implementation of the FATF Recommendations." The framing of financial integrity and financial inclusion as complementary aims would serve as the foundation of the FATF's approach from 2011 onward, first in its guidance on Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion (which was further updated in 2013), then in its Recommendations, which the organization revised in 2012 to establish the RBA as the "essential foundation" of a country's AML/CFT framework, and finally in its Mutual Evaluation methodology, which it revised in 2013 to increase the focus placed on the effectiveness of a country's AML/CFT framework.

<sup>397</sup> Namibia Financial Sector Strategy 2011-2021.

<sup>398</sup> Namibia Financial Inclusion Survey (NFIS). 2017. Namibia Statistics Agency (NSA). [https://d3rp5jatom3eyn.cloudfront.net/cms/assets/documents/NFIS\\_2017\\_Report.pdf](https://d3rp5jatom3eyn.cloudfront.net/cms/assets/documents/NFIS_2017_Report.pdf). The NSA has over the years conducted Financial Inclusion Surveys with the first one finalised in 2004, followed by the second one in 2007. The last survey was conducted in 2017.

pivotal role in combatting poverty and contributing to inclusive economic growth. The extension of *payments*, *savings*, *insurance* and *credit* to the poor and financially disadvantaged at an affordable cost is unanimously considered as the basics of access to formal financial services.<sup>399</sup> This position is in line with the World Bank (2008)<sup>400</sup> which identified four key indicators to determine an individual or household's access to finance, being - transaction banking, savings, credit and insurance. The *usage*<sup>401</sup>, *accessibility*<sup>402</sup>, *affordability*, *convenience*, *timeliness*, *adequacy*, and *product knowledge* are factors emphasized by many authors in describing financial inclusion.<sup>403</sup> This suggests Namibia's position on financial inclusion, as reflected in the NFSS and NFIS is aligned to international standards on financial inclusion.

Whilst Government and the financial sector encourage efforts that enhance financial inclusion, the unintended consequences of a poorly implemented AML/CFT/CPF framework can undermine all such noble objectives. This is because by their nature, the Customer Due Diligence measures provided for in AML/CFT/CPF frameworks can create barriers to customer's ability to access and use financial services. The NRA activity assessed the ML and TF risks arising from both existing and emerging or new financial products.

## 12.2 Defining financial inclusion products

Banking, insurance, investment management firms, lending institutions etc., all provide financial products and services. However, not all products and services provided by such service providers fall under the scope of Financial Inclusion for purposes of assessing their inclusion objects and maintaining compliance with AML/CFT/CPF measures. Such is only limited to the Basic Bank Account (BBA) and money or value remittance services (e.g e-money). This is informed by the following criteria derived from the World Bank which provides that such product should:

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<sup>399</sup> ABDULKAREEM, Hauwah K. K., International Journal of Research in Management, Economics and Commerce, ISSN2250-057X, Impact Factor: 6.384, Volume 09, Issue 6, June 2019, Page 30-40. Source: [https://indusedu.org/pdfs/IJRMEC/IJRMEC\\_3465\\_11736.pdf](https://indusedu.org/pdfs/IJRMEC/IJRMEC_3465_11736.pdf)

<sup>400</sup> ABDULKAREEM, 2019.

<sup>401</sup> Usage of financial service in financial inclusion refers to the regularity, duration and frequency of use of financial services including the combination of services used by individuals. Frequency of use, mode of access and purpose of use are factors considered in examining active usage. Usage is determined by both supply side – accessibility, affordability and service adequacy - and demand side factors - convenience, timeliness and literacy. Source: ABDULKAREEM, 2019.

<sup>402</sup> Access to financial services: relates to the availability of financial services from formal financial service providers which is largely based on the conditions for opening and using a bank such as financial institutions' proximity to the people and the associated costs of operating a bank account. Lack of access to financial service is a major factor responsible for persistent income inequality and slower growth. Source: ABDULKAREEM, 2019.

<sup>403</sup> Aro-Gordon, S. (2016, November 18-19). Effectiveness of financial inclusion strategy in Nigeria. Paper presented at the Second International Conference on Inclusive Economic Growth and Sustainable Development, Mysuru, India.

- a. be aimed towards disadvantaged groups of society to create access to finance products;
- b. have a low ML/TF risk level;
- c. be exempted or is intended (planned) for exemption from AML/CTF/CPF controls.

In terms of the above criteria, the two main financial inclusion products identified are the BBA and the various e-money products. All banks are directed through regulation<sup>404</sup> to avail at least one product that has the features of a BBA, to low-income earners.

### **12.3 Key observations from the NFIS**

Enhancing financial inclusion is one of the key pillars of the NFSS. Inclusion is further enhanced by income earned by the eligible population. The most eligible Namibians mainly earn income through salaries or wages from private companies (17.3%). This is followed by salary or wages from government or parastatals (10.3%) and the government old age pension (9.9%). As reported in 2011, the most adults in the eligible population (525,185) earn up to NAD 1,000.00 per month, reported at 36.0%. Observations suggest that 62.5% of income earners receive their income as hard cash, while 37.1% receive income through a bank account and only 1.4% (20,568) reported receiving income through bank wallets.<sup>405</sup>

The NFSS set the target for Namibia to reduce the level of financial exclusion from the baseline level of 51% in 2007 to 26% by 2021.<sup>406</sup> By studying the distribution of households and eligible population,<sup>407</sup> NFIS observations suggests that progress has been made in this regard. While the rate of financial inclusion was at 69% or 1,245,997 adults in 2011,<sup>408</sup> the 2017 study found that such had grown to about 78% or 1,457,919 Namibian adults. Further, 72.6% of this financially included population are formally accessing such services with the majority of them having access to commercial banks while others are served by NBFIs. The informal financial mechanisms were found to only cater to about 23.9% of the population.

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<sup>404</sup> PSD-5 issued by the BoN.

<sup>405</sup> NFIS, 2017.

<sup>406</sup> At the time of reporting, such progress has not yet been measured in 2021. The 2017 NFIS observations are thus relied on.

<sup>407</sup> Individuals who are 16 years and older who lived in Namibia six months prior to the survey. This is the current minimum age legally allowed for any individual to make use of formal financial products in their own capacity. Namibia's eligible population was estimated to be 1,457,919 people, living in 573,932 households. About 53% of the eligible population resides in urban areas compared to 47% residing in rural areas. This trend is contrary to what was observed in 2011, with 42% living in urban areas and 58% in rural areas. The NFIS also found that the majority of the eligible population remains female, at 52.5% and that secondary education was reported as the highest level of education, at 54.8%, while tertiary education was at 8.3%. The level of education has bearing on financial inclusion.

<sup>408</sup> The NFIS (2017) further indicates that financial inclusion was at about 49 in 2007.

### **12.3.1 Role of the private sector**

For a long time, the local banking sector has been made up of mainly four large banks<sup>409</sup> although several smaller banks have recently entered the market. The four largest banks held about 98.9% of total assets of the banking industry by the end of 2017<sup>410</sup>. This indicates that recent bank entry has not yet translated into significant impact on concentration, given that small banks have struggled to gain market share amid the dominance of the large banks.

A study on user fees and charges undertaken in 2010 by the BoN and NAMFISA indicated that the banking industry in Namibia is associated with high fees and charges.<sup>411</sup> Stakeholders, especially the BoN, led efforts to reduce costs of financial services. Interventions such as the issued Standards on Cash Deposit Fees are a typical example of regulatory measures aimed at reducing financial service costs. The Standards removed all cash deposit fees charged by banking institutions to all individual accounts and accounts belonging to businesses with a turnover of NAD 1 million or less. This became effective on 31 March 2015. Furthermore, innovation and the emergence of mobile financial services (e-money) in recent years has greatly enhanced financial services usage and access.

The banking and NBFIs have positively responded and contributed to the country's financial inclusion agenda with the industry associations and institutions serving on working groups in developing financial inclusion policies, strategies and guidelines as outlined in the NFIS. Moreover, all major commercial banks have since opened lending divisions that specifically target Small and Medium Enterprises (SMEs). In addition to the commercial banks, Namibia has four other banking or specialized financial institutions<sup>412</sup> that do not fall under the regulatory powers of the central bank (BoN). These are thus autonomous government-owned entities that provide a specific range of financial products to very specific target populations.

The NPSB has the most extensive branch system of all financial institutions and extends deeper into rural areas than the commercial banks.<sup>413</sup> NPSB targets low income earners in

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<sup>409</sup> First National Bank Namibia, Standard Bank Namibia, Bank Windhoek and Nedbank Namibia.

<sup>410</sup> According to BoN 2017 annual report. The 2017 asset values are preferred to give context of the NFIS observations relevant for such period.

<sup>411</sup> NFIS, 2017.

<sup>412</sup> AgriBank, DBN, NPSB and NHE.

<sup>413</sup> In addition to the savings accounts, NPSB also offers money transfer services, payment services for insurance and pension payments, account payment services for telephone and municipal bills, salary and wage services, deposits and withdrawals, collection services for selected loans [e.g. National Housing Enterprise (NHE)] and premium collection for various companies.

unbanked or under-banked regions and provides tax-free interest rates. Over the years, the NPSB introduced SmartCard technology to make its service delivery more efficient and cost effective. The SmartCard was launched in 2006 and by the first quarter of 2018 the NPSB indicated that they have issued well over 500,000 SmartCards.

### **12.3.2 The uptake of financial services/products<sup>414</sup>**

Banking is central to financial inclusion as most financial services are either availed by banks or through channels of banks. The domestic banking landscape is mainly driven by savings products and services, remittances and transactions. The NFIS found that 67.9% (989,288) of the adult population have bank accounts while 22.0% (320,522) reported having a smart card account. The mainly reported advantages of having accounts were safety of money from theft (66.8%), ease of remitting (47.5%) and safety of remitting services (42.3%). Those that do not have bank accounts mainly reasoned that it is because they do not have money to save in accounts (59.6%).

#### **a. Savings**

About 80.5% (or 1.2 million adults) of the eligible population save, across all forms of savings. Saving through formal mechanisms has decreased from 63% in 2011 to 60% in 2017, while informal savings have slightly increased from 1% (reported in 2011) to 2.9% (reported in 2017). More females (42.7%) save money compared to males (37.8%).

#### **b. Credits and borrowing**

The proportion of adults who borrow money (across all forms of borrowing) is 42.1% (613,625), indicating a 10% increase from 32% reported in 2011. However, more than half of the eligible population reported not borrowing money (57.8%), with a vast majority (95.1%) reasoning that it is because they fear debt. Those who borrow, mostly do so for reasons including food (41.6%), clothing (18.3%) and housing (7.4%) amongst others. On choosing a credit or loan product, Namibians mainly consider that the product has low fees and charges (38.7%).

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<sup>414</sup> NFIS, 2017.

### **c. Insurance**

In general, the uptake of insurance is low in Namibia, reported at 30.1% (438,386) across all insurance forms, of which only 0.1% (1,027) are informally insured, while 30.0% are formally insured. 69.9% of the adults do not have any insurance products or services, and the majority stated that it is because they cannot afford to.

### **d. Remittances**

While there are large proportions of males and females who indicated that they had no remitting products in the six months preceding the survey, at 50.7% and 47.5% respectively, the results show that for those that remit, the most reported means of remitting is formal remittance products, reported at 37.8%.

### **e. Microfinancing**

The large commercial banks have microfinancing products tailored for SMEs. Additionally, Namibia has four banking or specialized financial institutions that do not fall under the regulatory powers of the BoN. These are autonomous government-owned entities that provide a specific range of financial products to specific segments of the population. The AgriBank specialises in agricultural loans while NPSB avails microloans to SMEs. The DBN avails conventional business and development project related loans. The DBN avails loans tailored for SMEs with relatively reduced collateral expectations.

Availing collateral or security (in the form of assets) for loans remains the main barrier to SMEs accessing microfinance. Many SMEs do not have the desired credit or financial history, let alone assets. To this, Government has introduced a Credit Guarantee Scheme that aims at assisting SMEs with viable ideas but lack collateral to access funding from lending institutions. This facility is being operationalized by the DBN. Inadequate equity financing or venture capital funding nationally is also seen as a major challenge. In response to this, the Government is looking into operationalizing a government-backed Venture Capital Fund to assist SMEs that have the potential for scalability and are growth oriented.

Many SMEs lack capacity in terms of knowledge and skills to run their businesses sustainably. This further undermines their chances of accessing microfinances. To this, Government has introduced a Mentoring and Coaching programme for SMEs and this is currently being operationalized by the DBN.

There is a general feeling that microfinance loans (from state owned entities) are offered at much higher interest rates compared to loans offered by banking institutions. The NRA could not find adequate data on microfinancing activities in Namibia as it relates to contribution to financial inclusion. The BoN<sup>415</sup> is currently developing an initiative to enhance the collection of supply-side financial inclusion data. This will ensure a more comprehensive and frequent collection of data from institutions in the microfinancing sphere.

Overall, most challenges that undermine access to microfinancing emanate from factors outside the conventional AML/CFT/CPF framework.

#### **12.4 Implementing financial inclusion services along with AML/CFT/CPF controls**

The FIA<sup>416</sup> requires all accountable institutions to conduct ML/TF/PF risk assessments to understand risks they could be exposed to in relation to their products, services, payment channels, clients etc. They should then develop relevant control measures to address such risks. As mentioned above in section 8.4.2, financial services in banking and NBFIs are prudentially regulated by the BoN and NAMFISA. When applying for license to enter such markets (or avail such services), applicants are required to demonstrate to relevant supervisory bodies how they would deploy such controls to mitigate relevant risks. This ensures ML/TF/PF risks are duly considered and necessary measures implemented.

The said control measures, if not duly administered by relevant supervisory bodies may hinder the development and introduction of financial inclusion products (risk of over regulation). In cases of low risk products (e.g low financial values, funds emanating from bank accounts already subjected to CDD etc), the FIC is able to permit informal explanations of how relevant risks are to be mitigated without requiring formalised and detailed risk

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<sup>415</sup> in collaboration with the Alliance for Financial Inclusion (AFI)

<sup>416</sup> as per section 39(1).

assessments at licensing application stage.<sup>417</sup> This flexibility, if duly administered, encourages the development and introduction of products which may enhance financial inclusion.

#### **12.4.1 Simplified CDD and financial inclusion**

Allowing simplified CDD when risks are low is in line with the FIA and advances financial inclusion. If persons eligible to access financial products and services do not meet CDD expectations, they are at risk of not being granted access to such financial services. Therefore, the nature, extend and level of CDD that clients are subjected to has a significant bearing on financial inclusion.

As mentioned above, the point of departure in the prudent implementation of AML/CFT/CPF measures that duly enables financial inclusion is conducting ML/TF/PF risk assessment which duly considers risks in terms of products, services, payment channels, clients<sup>418</sup>. Such would give institutions an overview of relevant risk levels and enable due implementation of simplified CDD. The AML/CFT/CPF regime provides for tiered or simplified CDD measures which enhance financial inclusion as follows:

- a. **CDD threshold of NAD 5,000.00 for single transactions<sup>419</sup>:** For transactions below this threshold, minimum or simplified CDD is permitted. Regulation 4(3) clarifies that an institution is not required to establish the identity of a person with whom it has no business relationship and who is concluding a single cash transaction of an amount which is less than the amount prescribed. Most e-money products licensed over the years are cognisant of this threshold for single transactions. In advancing application of this provision, the FIC further issued Guidance Note No 3 of 2015 on customer identification and record keeping<sup>420</sup>;

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<sup>417</sup> As done with NBFIs and banking license applications (see market entry controls in banks and NBFIs under Part B, sections 9.1 to 10.6), the licensing procedures require applicants to engage the relevant departments within the BoN, who, after explaining prudential licensing regulations refer such applicants to the Fic who explain AML/CFT requirements. The pre-opening FIA compliance assessments or others conducted subsequent to the commencement of licensed activities can be relied on to gain assurance on effective risk mitigation.

<sup>418</sup> FIA section 23(1) states that institutions must have appropriate risk management and monitoring systems in place to identify clients or beneficial owners whose activities may pose a risk of money laundering, financing of terrorism, or both.

<sup>419</sup> As per FIA Regulation 4(1). Except for casinos and gambling houses whose single transaction identification threshold is NAD 25,000.00. Please see Government Notice of 07 May 2009, No. 4256 (FICD 3), in paragraph 8.4 as source of the CDD thresholds.

<sup>420</sup> Available on the FIC website:

<https://www.fic.na/uploads/Publications/Guidance%20Notes/2015%20Guidance%20Notes/Guidance%20Note%20No%2003%20of%202015%20on%20Customer%20Identification%20and%20Keeping%20of%20Records.pdf>.

**b. Flexibility of identification through different identification sources:** FIA regulation 6(1) provides that for citizens and residents<sup>421</sup>, a national identification document, passport or birth certificate<sup>422</sup> may be used to identify clients. Supervisory observations suggest that such are being duly implemented across various products, including BBAs and e-money. This encourages financial inclusion to a great extent but will further enhance such inclusion if the private sector is availed verification access to the national identification database in the custody of the Ministry of Home Affairs and Immigration as explained in section 8.20;

**c. FIA Regulation 5(8) permits institutions to rely on CDD measures undertaken by third parties** if they have assurance that such third parties have relevant controls in place.<sup>423</sup> FIC supervisory activities suggests that this control measure is being implemented reasonably well in the banking and NBFIs;

**d. Beneficial ownership identification limited to significant shareholding and control:** The AML/CFT/CPF framework requires that beneficial ownership identification be limited to natural persons who exercise effective control over a legal person or trust. Such effective control amounts to shareholding or voting rights in excess of 20%. Exceptions are only if such persons with less than 20% shareholding or voting rights receives a large percentage of the declared dividends. Thus, under normal circumstances, persons whose shareholding or voting rights is less than the 20% are not required to be identified and this further reduces due diligence requirements which may hinder financial inclusion. The FIC issued Guidance Note No. 01 of 2015<sup>424</sup> on identification and verification of beneficial ownership to help understanding in this regard. Overall, the FIC has assurance that most banks and NBFIs duly adhere to this requirement. DNFBPs on the other hand have not demonstrated adequate CDD measures in this regard overall. Challenges that arise,

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<sup>421</sup> For non-citizens and residents, passports, identification document or birth certificate (listed in the order of preference). For refugees or persons protected in terms of section 16 of the Namibia Refugee (Recognition and Control) Act, 1999 (Act No. 2 of 1999), a travel document issued in lieu of a national passport to such refugee as contemplated under the United Nations Convention Relating to the Status of Refugees of 28 July 1951 may be used (source: FIA Regulations).

<sup>422</sup> Identification documents listed in the order of preference.

<sup>423</sup> The institution relying on controls of another must take reasonable steps to - (a) obtain the identification information of the client; (b) satisfy itself that copies of the identification data and other relevant documentation relating to the client identification requirements will be made available by the third party institution without delay, upon request; and (c) satisfy itself that the third party institution is regulated and supervised or monitored or has measures in place for compliance with CDD and record keeping requirements. FIA Regulation 5(9) further provides for measures related to institutions that may be part of a group of companies relying on controls of one another.

<sup>424</sup> Available on the FIC website:

<https://www.fic.na/uploads/Publications/Guidance%20Notes/2015%20Guidance%20Notes/Guidance%20Note%20No%2001%20of%202015%20on%20Beneficial%20Ownership%20Identification.pdf>.

which could hinder financial inclusion, emanate from limited information at BIPA for verification purposes as stated in section 8.22 herein;

- e. **Commencement of business relationship before verifying the identity of a client,**<sup>425</sup> (or take any preparatory steps to such commencement) provided identification verification is done as soon as practically possible and prior to such client receiving any benefit from such transaction. Though helpful for AML/CFT purposes, the fact that transacting is limited in such cases does not advance financial inclusion objectives. FIA compliance observations suggests that entities (especially non-banks), that have not duly embedded effective RBAs in their AML/CFT frameworks often face challenges in deploying the right level of CDD that ensure risk mitigation without undermining financial inclusion;
- f. **FIA<sup>426</sup> discourages complete de-risking and account closures as a first alternative in CDD failures:** Accounts or business relationships established prior to the commencement of the FIA, or any such other accounts not subjected to adequate CDD are quite common in the AML/CFT framework, particularly in banking and NBFIs. Institutions may not simply de-risk, close accounts or cease availing financial services to clients on the basis of inadequate CDD. The regulations require institutions to take reasonable steps which are commensurate with the ML/TF/PF risk. If such steps fail, institutions should immediately give written notice to the FIC explaining, amongst others: such impracticability or impossibility; the alternative measures or steps used to identify or verify such clients; and the proposed way forward and potential implications of such proposed measures, if any.<sup>427</sup>

In practice, since the issuance of the 2017 FIC Guidance Note<sup>428</sup>, banks periodically assess the risks emanating from accounts not subjected to adequate CDD and report to the FIC measures taken to reduce risk exposure. Banks however also hold the view that certain FIC conduct does not encourage the RBA in advancement of RBA. For example,

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<sup>425</sup> FIA Regulation 5(3). Other conditions include ensuring the normal conduct of business is not interrupted and the ML/TF/PF risks are effectively managed.

<sup>426</sup> Sections 22(2) and (3) of the FIA 2012, along with Regulation 5(2). Section 22(2) of the FIA provides that if an Accountable or Reporting Institution is unable, within a reasonable period to establish to its reasonable satisfaction, the identity of any person as required, it may not conclude any further transaction in the course of that business relationship and must immediately file a suspicious activity report. This should be considered with section 22(3) which further guides that when the identity of the person referred to in section 22 (2) is subsequently established, further transactions may only be concluded after the FIC has been informed of the identity of that person.

<sup>427</sup> As per FIC Guidance Note No 1 of 2017 on "Understanding de-risking, its impact and relevant FIC guidance".

<sup>428</sup> Available on the FIC website:

<https://www.fic.na/uploads/Publications/Guidance%20Notes/2017%20Guidance%20Notes/Guidance%20Note%20No%2001%20of%202017%20on%20De-risking.pdf>.

they hold the view that FIA compliance assessment observations often raise exception with such accounts not duly identified, while the FIC maintains that if risks are high, the reasonable steps taken ought to be cognisant of such risks. In the same vein, when STRs or SARs are reported by banks, they indicate that the FIC does not always avail feedback which can help inform their RBA with regards to clients wherein inadequate CDD is noted. Many a times, the filing of STRs and SARs without adequate ‘grounds for suspicion’ limits the extent to which some reports can yield value-adding outcomes, which the FIC can use to avail useful guidance. These differences appear unresolved at the time of reporting.

Almost all CDD related measures explained above (especially the last two) will benefit from private sector verification access to the national identification database and other independent sources as stated in sections 8.20, 8.21 and 8.22 herein. Access to such data sources will enable independent and reliable verification of CDD information and such will greatly advance financial inclusion much as it will help ML/TF/PF risk mitigation. The sections below explain how specific financial inclusion products have been deployed in line with the AML/CFT framework described herein.

## **12.5 ML/TF/PF risks in financial inclusion products**

In the NFIS studies, many other financial products and services were considered in evaluating the level of financial inclusion. Many such other products though accessed by the eligible population are not necessarily, by regulation and design, deliberately meant to encourage financial inclusion. They contribute to financial inclusion as reflected in the NFIS and herein but their inclusivity impact is shaped around the manner in which they are implemented, at the discretion of service providers. As mentioned above, the main products and services that fall under the scope of financial inclusion, for purposes of assessing their inclusion objectives and maintaining compliance with AML/CFT/CPF measures are the Basic Bank Account (BBA) and money or value remittance services (e.g e-money). With duly simplified CDD measures, such products’ accessibility and usage could be enhanced without exposing them to ML/TF/PF vulnerabilities.

TF and PF threats within the BBA and e-money products have not been observed locally. The sections below thus predominantly focus on ML related risks in financial inclusion products.

### 12.5.1 The BBA

The introduction of the BBA with minimal charges in 2015, aimed at benefiting low-income earners enhanced progress towards financial inclusion. All commercial banks have introduced the account meeting the set standards and the number of BBAs have increased to 188,089 by December 2017.<sup>429</sup> The BoN promulgated the Determination on the Standards for a BBA and Cash Deposit Fees within the National Payment System<sup>430</sup> in December 2019. Data, as per Table 40A below suggests growth in the total number of BBA accounts annually.

Year	Volume (number of BBA accounts)
2019	Data not available
2020	192,610
2021 (April)	251,969

Table 40A: Volume of active BBA accounts over the years<sup>431</sup>

Domestically, the current AML/CFT/CPF framework provides that for all single transactions in excess of NAD 4,999.99, relevant CDD needs to be conducted. In simple terms, transactions with financial values above that threshold should trigger CDD measures, which at times would have the unintended consequence of undermining the client's ability to make use of certain financial services.

The BBA Regulations<sup>432</sup> provide that each person earning NAD 30,300.00 or less, annually, is entitled to make use of such a bank account which attracts reduced banking costs, amongst other benefits. The NAD 30,300.00 annual earnings suggest that the BBA is restricted to persons earning NAD 2,525.00 or less, monthly. The Regulations also give banks discretion to offer a BBA to individuals who earn above the said income threshold.

<sup>429</sup> NFIS, 2017.

<sup>430</sup> PSD-5.

<sup>431</sup> Source: BoN, PSSD.

<sup>432</sup> PSD 5, section 9.10.

On the basis of the monthly income, the expected total monthly earnings are below the NAD 4,999.99 threshold and thus the simplified CDD conducted upon account opening is adequate to satisfy AML/CFT/CPF expectations. The BBA Regulations<sup>433</sup> further provides that if the clients' transacting behaviour in any way falls of the low risk profile, the bank should immediately effect ML/TF/PF risk mitigation measures. The financial value threshold greatly reduces risk exposure while it appears that there is no threshold based on the volume of transactions that can be undertaken in a given period (for BBAs). Inherently, an unlimited frequency of transactions could certainly increase the ML/TF/PF risk exposure of the product.

Anonymous use of the product is not possible and this further reduces risk exposure. Simplified CDD means clients are identified at onboarding or account opening and this ensures no anonymity. The BBA is not restricted to Namibian citizens and inherently, there may be additional ML/TF/PF risk if it proves challenging to collect (if need be, verify) satisfactory information about non-residents or non-citizen customers in the country.

TF and PF concerns are also addressed with the fact that simplified CDD does not exclude screening of BBA account holders against UNSC designated lists, which banks subject all their customers to. This is important as BBAs also enable clients to conduct cross border remittances which are inherently high risk for TF and PF.

There are very few cases wherein BBAs may have been abused to advance financial crimes. Such cases are insignificant in occurrence and financial values, thus impact.

The measuring criteria, as reflected in above discussions suggests that the primary area that does not conform to expected AML/CFT/CPF standards is the lack of limitations on transactional volumes on the BBA, in a given period. Availability of the product to non-citizens is another challenge, although it is appreciated that these collectively may not outweigh the benefits accruing from availing the product in its current format. The few financial crime cases, with comparatively smaller amounts were also noted as part of the analysis but deemed insignificant. It is important to note that conditions within the BBA are mandatory and banks may only amend or deviate from such upon prior approval from the BoN. This ensures the

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<sup>433</sup> PSD-5, section 9.10.

control measures as per Regulations remain and the BoN usually consults with the FIC when requests which have an AML/CFT/CPF impact are to be made.

The NRA, with regard to all factors discussed above concluded that although there are a few ML/TF/PF vulnerabilities, the other controls around the BBA compensate for the challenges. It was thus concluded that this is a **Low** risk product which does not pose significant ML/TF/PF exposure to the financial system, in its current format.

### 12.5.2 E-money Products

E-money services are part MVTs discussed in section 10.6 above, thus considerations in such section are worth considering. This section however speaks to elements around e-money products designed to enhance financial inclusion.

There has been growth in the volume of e-money transactions and financial values over the years, as per Table 40B below.

	Volume of transactions ('000)	Value (NAD Million)
2016	880	9,773
2018	14,038	23,916
2019	14,833	28,403
2020	41,210	65,905

Table 40B: Volume and value of e-money products<sup>434</sup>

Domestically, e-money service providers are not permitted to facilitate the sending of funds from unidentified sources/clients. The norm is that clients are identified<sup>435</sup> before being permitted to transact on the e-money platform. For clients subjected to the required CDD measures as per the FIA, there are financial threshold values in excess of the NAD 4,999.99 CDD threshold. Some threshold values are higher for funds that can be stored in a wallet at a time (e.g NAD 20,000.00) but not per single transaction send/received. The sector indicated that there are no specific limits on the number of transactions clients can undertake, however

<sup>434</sup> Source: BoN, PSSD

<sup>435</sup> Simplified CDD implies that for lower risk rated customers, no verification of the source of funds and/or the residential address is obtained. Some entities indicated that they ascertain KYC information / register cell-phone numbers.

if the transaction value limit is reached, then the systems do not permit additional transactions.

The Regulations provide that e-money issuers are subjected to transaction and balance limits as prescribed by the FIC.<sup>436</sup> In this regard, financial values per transaction are as per the above-mentioned threshold in cases where CDD was not simplified. Financial value thresholds are usually shared with the BoN and the FIC for approval, before implementation. This greatly reduces risks as such regulatory bodies consider risk exposure in their approval considerations.

Citizens of a country inherently present lower ML/TF/PF risks than non-citizens as the identification and usually other related information of the former can be confirmed and verified with ease. Having said that, e-money products are not restricted to Namibian citizens and inherently, there may be additional ML/TF/PF risks if it proves challenging to collect (and if need be, verify) satisfactory information about non-residents or non-citizen customers. While the product can be used by all persons in Namibia, the ML/TF/PF risks are reduced by the lack of cross border remittances from e-money products.

The e-money business model is naturally premised on availing non-face-to-face services, which inherently escalates ML/TF/PF risk levels. With some service providers, non-face-to-face account opening is not possible while some have such feature. The entities that carry out CDD measures indicated that upon on-boarding, customer identification is done, proof of address and source of funds information are obtained. Service providers who do not undertake face-to-face identification, although relying on technology, are naturally exposed to higher risks than others.<sup>437</sup>

Generally, the facilities' ability to immediately avail funds makes it attractive to fraudsters who have shown to use the product in fraudulent scams aimed at depriving vulnerable citizens.

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<sup>436</sup> PSD-3, section 11.1.5.

<sup>437</sup> The possibility of non-face-to-face account opening could increase ML/TF risk if there are no accompanying risk mitigation measures in place. For the initial CDD – when first using the financial inclusion product – some providers have allowed non-face-to-face account openings (e.g., through video); or they have allowed non-face-to-face account opening (even without video, etc.) because the provider already has information on the customer through some previous registration (e.g., through the purchase of a SIM card for a mobile phone); or the provider is able to verify the customer's identity by relying on an identification infrastructure. Regulators will have to determine whether providers are seeking to implement such provisions and evaluate the risks accordingly, based on local circumstances and conditions.

Controls implemented by e-money issuers are required (as per PSD-3<sup>438</sup> and the FIA<sup>439</sup>) to be risk based. Therefore, e-money issuers and their agents periodically conduct ML/TF/PF risk assessments designed controls aligned to observed risks. The FIC gains assurance through compliance assessments on how they are mitigating such risks. E-money issuers that wish to provide regional cross-border e-money or remittance services are only permitted to do so with written approval from the BoN. In ensuring sound controls remain in place, e-money issuers can only amend the nature and scope of e-money services if such are duly approved by the BoN. The 2017 NFIS suggests only 1.4 percent (20,568) of respondents indicated to be receiving their income through bank wallets. This may have grown slightly since, but it remains a relatively low number of persons when viewed from a national perspective. Naturally, the ML/TF/PF impact on the e-money product is reduced by the comparatively lower usage. The discussions herein show that areas that escalate ML/TF/PF risks in the e-money space. The use of the product by non-Namibian nationals and the lack of limitations on the volume of transactions could inherently escalate ML/TF/PF vulnerability. However, other control mechanisms around the product compensate for these shortcomings.

The most significant concern stems from the facilities' attractiveness to abuse by criminals who appreciate the ease and pace at which e-money avails funds. There is a notable number of cases wherein e-money products may have been abused to further fraudulent scams. The fact that the e-money product requires prior approval from both the BoN and the FIC before commencing business, and when making any changes in the nature of existing products, encourages effective risk management. Overall, the ML/TF/PF risk emanating from e-money products was thus rated as **Medium Low**.

## 12.6 Recommendations to enhance financial inclusion

Recommendations herein are only from an AML/CFT/CPF perspective. Such would help ease the extent to which AML/CFT/CPF measures are implemented and thereby enhance opportunities that may lead to the introduction of new products or enhancement of existing ones to advance financial inclusion.

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<sup>438</sup> PSD-3, section 12.1.

<sup>439</sup> FIA sections 24 and 39.

- a. **Increasing the current CDD threshold for single transactions** from NAD 5,000.00 could help enhance financial inclusion. This threshold came into operation along with the commencement of the AML/CFT/CPF regime more than ten years ago. Although the threshold has helped in ensuring prudent CDD over the years, there is no study or similar reference within the domestic AML/CFT/CPF regime which substantiates or explains how such threshold was determined. If the risk based implementation of the FATF Recommendations is followed, this assessment<sup>440</sup> is of the view that such threshold should be aligned to the maturity of the AML/CFT/CPF regime.<sup>441</sup> Equally, the threshold is significantly below the FATF Recommendation threshold of USD 15,000.00<sup>442</sup>. To mitigate relevant risks, studies (risk assessments) need to be undertaken and outcomes thereof duly consulted on, to arrive at a prudent threshold level(s). Increasing the threshold has the potential to support enhancement of the nature, values, volumes and types of financial services rendered under the BBA and e-money platforms, as well as other products;
- b. Enable **identification of mobile number users**: Failure to identify mobile number users has fostered anonymity locally, particularly with prepaid mobile services. Identification reduces anonymity and thus reduces inherent ML/TF/PF risk exposure. Many countries around the world identify mobile number users, usually upon acquisition or purchasing of such mobile numbers. At the time of reporting, relevant authorities have commenced efforts to lay the framework which will guide identification of mobile number users. Various financial services, especially in the e-money space can greatly benefit reduced or simplified CDD measures that will emanate from serving a population of mobile number users who are identified;
- c. **Create regulatory frameworks that encourage reliable e-KYC or similar non-face-to-face identification**, to respond to the growth in innovations and global digitisation. Many products are launched around the world, which can be accessed and used without clients physically engaging service providers to undergo regulatory due diligence (before access). Although the FIC has seen several presentations of

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<sup>440</sup> Financial inclusion working group of the NRA and the NRA project team.

<sup>441</sup> Especially enhancement in controls in the private sector, regulators etc.

<sup>442</sup> FATF Rec 10, Sub-item 10.2(b): Carrying out occasional transactions above the applicable designated threshold (USD/EUR 15 000), including situations where the transaction is carried out in a single operation or in several operations that appear to be linked.

service providers who are venturing in this space, such have not fully taken the industry by storm, as observed in other countries that Namibia could learn from. Non-face-to-face client engagements suggests reduced investments in brick and mortar operations (and staff). This reduces overhead costs of financial services<sup>443</sup> providers and if duly implemented can reduce costs of financial products and services. A regulatory framework which fosters non-face-to-face, end-to-end provision of services can only be realised through a coordinated approach amongst relevant regulatory authorities. The e-money space in particular would greatly benefit from such, as most of their current services are non-face-to-face. This can result in the provision of more financial services which can be availed with relative ease;

- d. **Avail private sector verification access to the Ministry of Home Affairs national identification, BIPA and other<sup>444</sup> independent/reliable databases for CDD purposes:** This could impact the ease of implementing all CDD related controls recommended herein. Such access would enable the private sector access to verify information and could lead to the development of products which make use of such data to verify client identify and consequently reduce the need for face-to-face engagements with clients for verification purposes. See observations in section 8.20. Similarly, regulatory bodies and relevant authorities are urged to ensure the BIPA<sup>445</sup> obtains all required<sup>446</sup> information around companies and beneficial owners and such should be readily availed, preferably through automated platforms to the private sector. While this can enhance financial inclusion for natural persons, it can also enhance access to microfinancing as beneficial ownership CDD of SMEs would be simplified;
- e. **Enhance AML/CFT/CPF supervision (RegTech) through automation:** As reflected in section 8.4.2 herein, the AML/CFT/CPF supervisory resources are limited and this hinders the level of overall supervisory effectiveness. When assurance is not gained on the effective risk mitigation controls within sectors,

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<sup>443</sup> Note the observations above, as per NFIS, which observed through a study by NAMFISA and the BoN that higher service fees hampered financial inclusion in Namibia.

<sup>444</sup> As per section 8.21. Others include municipal, credit bureaus, mobile telecommunication client databases etc.

<sup>445</sup> See observations in section 8.22.

<sup>446</sup> Requirements around companies and close corporations as per the FIA section 4.

supervisory bodies do not have grounds to advance and encourage simplified CDD measures. Implementing automation will enable the supervisory bodies to conduct more reliable and effective monitoring activities on lower risk products and thus enable such sectors to proceed with tiered or simplified due diligence with minimal supervisory interventions. This would enhance supervisory coverage to identify opportunities where controls could be further simplified or tiered, to enhance financial inclusion;

f. **Embrace and deploy technology such as blockchain to enhance transparency:**

Enhanced transparency helps combat fraud, corruption and tax evasion which are the major ML predicate offences highlighted in Chapter II, herein. For many, blockchain is synonymous with Bitcoin - but its potential for international development goes far beyond cryptocurrency. It is no secret that financial crimes that thrive on poor transparency are prominent in some of the world's less economically developed countries. Globally, innovators are looking to apply blockchain to provide, amongst others, transparency and accountability in financial transactions. Owing to its reliability, blockchain is being used in many areas including electronic medical records, land deeds etc. This technology is likely to disrupt the status quo in everything from how people do business to creating new business opportunities at the bottom of the pyramid;<sup>447</sup>

g. **Enhanced financial literacy or awareness around simplified CDD of financial inclusion products:** If the eligible population is aware of services they could access with minimum ease (CDD), it could enhance their consideration of using such. When people start using products for the first time, they naturally need access information about the use of such products. However, since the nature of financial products is always changing, there is a need to ensure users are kept up to date with all such changes, especially those that relate to the use of such products.

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<sup>447</sup> *Disperse* is a social enterprise that launched last year with a blockchain-based distribution solution. The company seeks to accelerate aid funding distribution and provide transparency in how funds are spent using blockchain. *BitPesa*, *Banqu* and *UCash* are scaling similar concepts in Kenya, Indonesia and India.

# **CHAPTER V: TF RISK ASSESSMENT**

## **Chapter Summary**

*TF risk was assessed by aggregating outcomes of threat and vulnerability considerations. While TF threats are primarily concerned with activities or persons that can resource or finance terrorist activities, TF vulnerabilities speak to the control frameworks designed to ensure that threats are prevented from supporting terrorist activities through financing or resourcing same.*

*As a UN Member State, Namibia has obligations to prevent and combat all forms of terrorism and terrorist financing activities nationally and internationally. Domestically, there are no known terrorist activities in Namibia, thus domestic funding of terrorist activities remains non-existent. Internationally however, there are other jurisdictions with active terrorist activities. Namibian entities and persons that engage in, trade or remit funds (or other resources) to other stakeholders in other jurisdictions inherently increase the risk of the country being party to or availing a platform through which terrorist activities are resourced. This chapter details considerations which inform the level of risk that the country is exposed to.*

*National TF vulnerability (or combatting effectiveness) was rated **Highly Effective** (a score of 0.7 or 70%). The TF threat rating on the other hand is Low or minimal (a score of 0.3 or 30%). The overall TF risk rating for the period reviewed is thus Low.*

*Although the overall TF risk is quite Low, detailed analysis herein suggests that an area of concern could be cross border threats from persons (within Namibia) that may be sympathetic to terrorist groups or related ideologies beyond the borders of Namibia. In terms of sectors which are most vulnerable to TF, FBOs and related activities are more exposed to potential abuse. Historically, the Southern African region has not had active terrorist activities. This has changed over the last decade, with recent attacks in Mozambique being classified by the international community as terrorism. Inherently, these attacks have escalated TF risks of neighbouring countries that enjoy trade and similar relations with Mozambique, Namibia included.*

## **13. Domestic and international TF threats**

Namibia's prior NRA outcomes maintain that the absence of domestic terrorist activities renders local TF risks almost non-existent. TF risks however arise with cross border or foreign jurisdiction considerations given trade relations and other factors which result in remittance of funds and other items from Namibia. This section builds on observations from the 2012 and 2016 NRA activities.

### **13.1 Domestic TF threats**

There are no known terrorist activities domestically. This greatly reduces the TF threat level as such would naturally only arise out of cross border movement of funds (including other resources) to jurisdictions with potential or active terrorist activities. Domestically, LEAs shared a few cases that may have pointed to potential TF activities but preliminary investigations, did not yield actual TF. It is for this reason that no prosecutions, asset freezing<sup>448</sup> or such other relative combatting measures as per PACOTPAA were ever initiated. The table below avails record of the few instances in which preliminary TF related investigations were undertaken to confirm if there may have been merit in observed suspicions over the years.

YEAR	2015	2016	2017	2018	2019
Number of investigations conducted involving TF component	1	0	0	6	7
Number of TF prosecutions initiated	0	0	0	0	0
Number of convictions for TF	0	0	0	0	0

Table 41: Cases in which potential TF was investigated

### **13.2 Regional TF threats**

The Southern African region did not have any active terrorist activities until recent years. The last few years has seen a slight increase in terrorist activities in Mozambique however, with an escalation in attacks recorded over the few months leading to November 2020. Some reports suggest that parts of coastal land extending from Mocímboa to Macomia in the south

<sup>448</sup> There were no TF activities hence the need to consider freezing, Seizure and Confiscation of TF related Assets Pursuant to UNSCR 1267 or 1373 did not arise.

is de facto controlled by the Al Shabab<sup>449</sup> group, which rose to prominence in Mozambique at the end of 2017. Terrorism Index in Mozambique increased to 6.40 in 2019 from 5.54 in 2018, as per Figure 49 below.<sup>450</sup> Such increase in terrorism is consistent with the Global Terrorism Index's publication which shows that 41% of total ISIL-related deaths in 2019 occurred in sub-Saharan Africa, thus showing a shift in ISIL-related attacks away from the Middle East (to regions such as sub-Saharan Africa).<sup>451</sup>

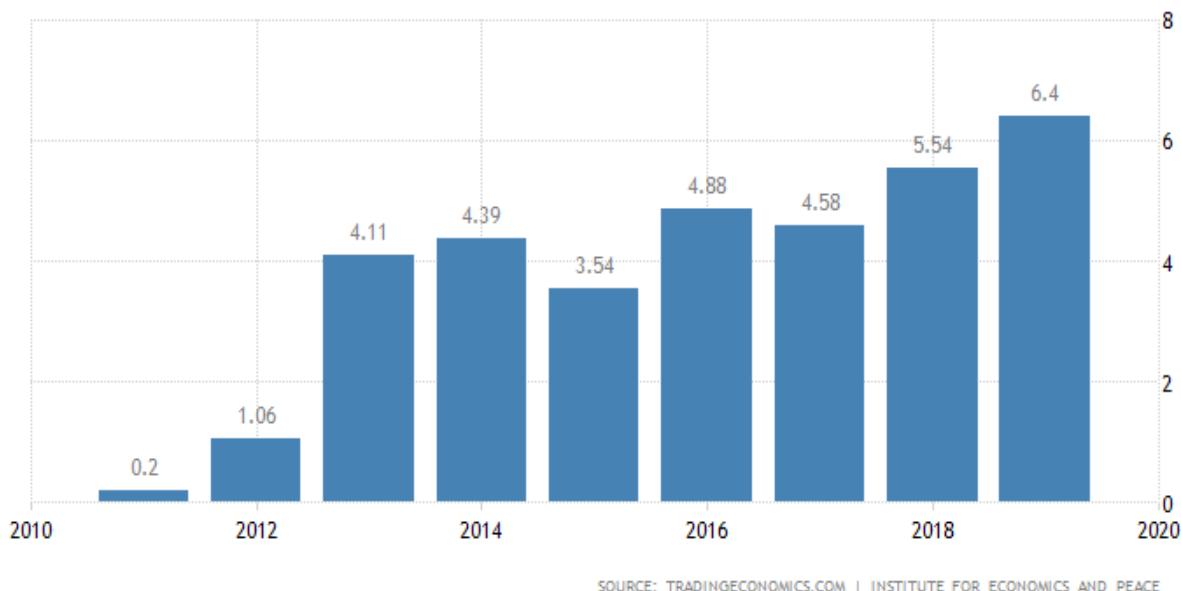


Figure 49: Terrorism Index: Mozambique

The NRA found that the situation in Mozambique has inherently escalated TF levels regionally owing to the trade relationships which countries have with Mozambique and financial flows related to same. Until such time that credible reports avail information on how terrorists in Mozambique have been financing their attacks and undermining peace in that country, these attacks suggest that countries with ties (or engagements) to Mozambique<sup>452</sup> are at risk of providing platforms that are exploited to advance terrorism in that country. Such potential and the severity of such attacks, as reflected in the table below, suggests that all

<sup>449</sup> an African branch of the well-known Al Qaeda, one of the largest terrorist organizations of all times. The mail and Guardian, 30 November 2020. <https://mg.co.za/africa/2020-11-30-al-shababs-terror-in-mozambique/>

<sup>450</sup> With 0 being low or non-existent and 10 reflecting the highest level of terrorism). Source: Trade Economics. <https://tradingeconomics.com/mozambique/terrorism-index#:~:text=Terrorism%20Index%20in%20Mozambique%20increased%20to%205.54%20in,an%20a%20record%20low%20of%200%20in%202005.>

<sup>451</sup> Global Terrorism Index. <https://www.visionofhumanity.org/wp-content/uploads/2020/11/GTI-2020-Briefing.pdf>

<sup>452</sup> (especially neighbouring countries including Namibia).

stakeholders especially neighbouring countries should ensure terrorists are not granted means to resource their attacks.

### Most frequent attack targets in Mozambique

(2013 to 2017)

Target	Attacks	Killed	Injured	Hostages
Private citizens	49	34	120	17
Business	19	3	11	20
Political parties	16	16	6	4
Government	16	12	10	2
Police	13	26	24	0
Transportation	11	3	30	0
Military	9	14	27	0
Educational institution	3	3	4	0
Journalists & Media	2	5	1	0
Utilities	1	2	0	0

Table 42: Record of attacks and targets in Mozambique<sup>453</sup>

### 13.3 Summary of TF threat ratings

The table below presents outcomes of TF threat ratings. The overall TF rating is **0.3**, reflecting a **Low** TF threat level. Although minimal, the outcomes further suggest that an area of concern could be cross border threats from persons that may be sympathetic to terrorist groups or related ideologies beyond the borders of Namibia. The assessment in this regard is concerned with the potential of persons using local financial systems or other mechanisms to advance or support terrorist activities outside the country. Such variable was thus rated 0.7, reflecting a Higher level of TF threat. The need to thus guard against sympathisers remitting or channelling resources from Namibia to jurisdictions with active terrorist activities is worth noting.

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<sup>453</sup> World Data.info. <https://www.worlddata.info/africa/mozambique/terrorism.php>

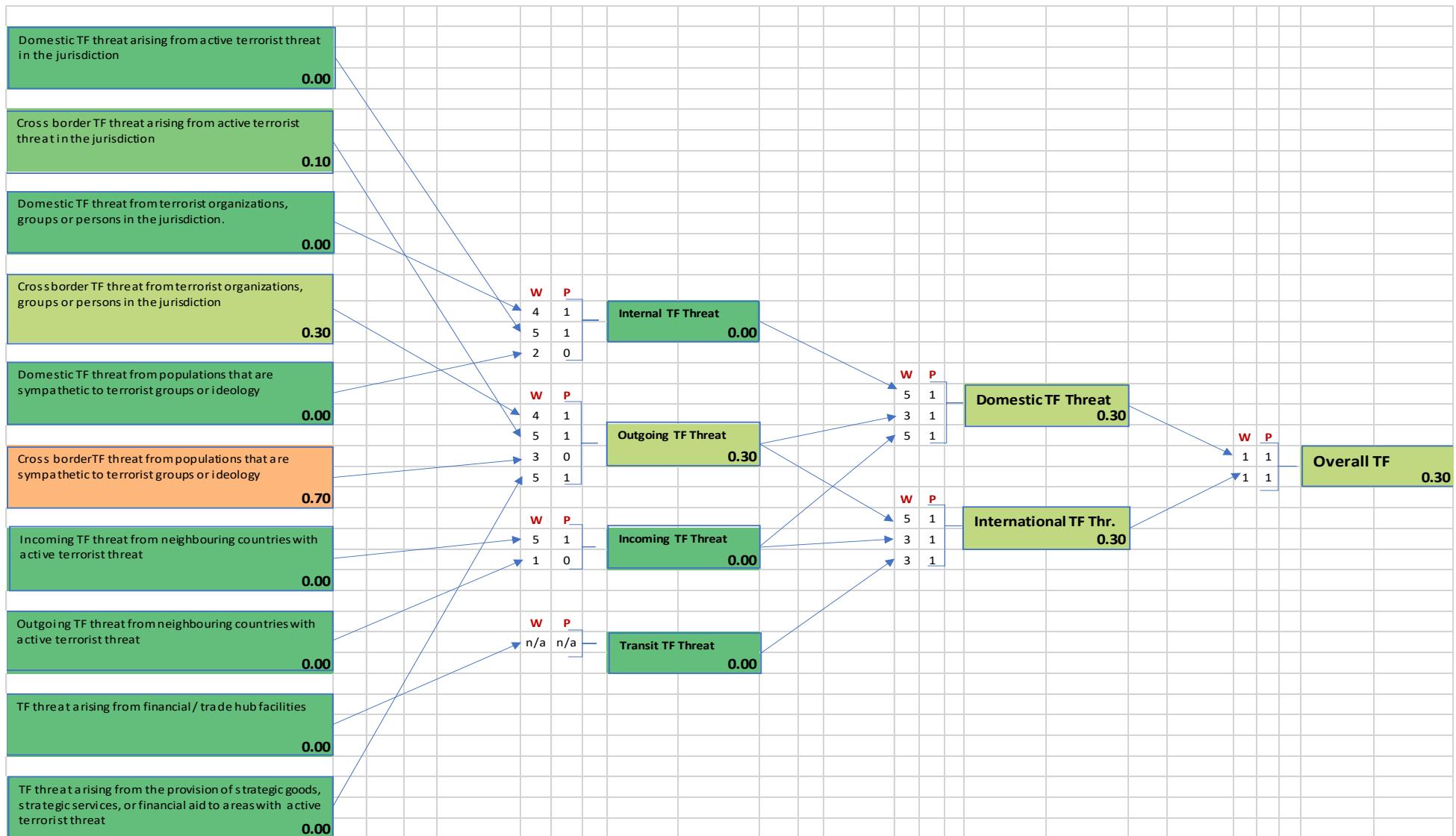


Figure 50: Domestic and international TF threat assessment outcomes

## **13.4 TF Vulnerability considerations**

### **13.4.1 TF vulnerabilities from trade relations and remittances**

Namibia has trade relations with all SADC members including Mozambique. Such trade will naturally be accompanied by movement of funds between trading countries (or businesses in such countries).

Other than trade related financial flows, there are financial flows between citizens of both Namibia and Mozambique for various reasons. In this regard, data from the BoN<sup>454</sup> further suggests that financial flows, classified as gifts, maintenance or travel related remittances flow from Namibia to Mozambique and vice versa. In 2019, local ADLAs received a total of NAD 289,231.23 and remitted NAD 363,535.28 as per BOPCUS data. In the same year, banks remitted over NAD 25 million and received in excess of NAD 70 million as presented in Tables 43 and 44 below.

Naturally, any country's exposure to potential TF can emanate from funds sent to a jurisdiction with active terrorist threats, provided such funds end up within the custody of those said to be advancing terrorist activities. Those advancing TF would usually disguise such remittances as trade related or related to gifts, travel or similar use by natural persons. Banks and ADLAs dealing in cross border remittances with Mozambique or any other jurisdiction with potential terrorist threats should employ enhanced CDD and care commensurate to TF risk exposure. The NRA thus considered financial flows between Namibia and Mozambique as presented in the tables below.

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<sup>454</sup> The Exchange Control department (BOPCUS data)

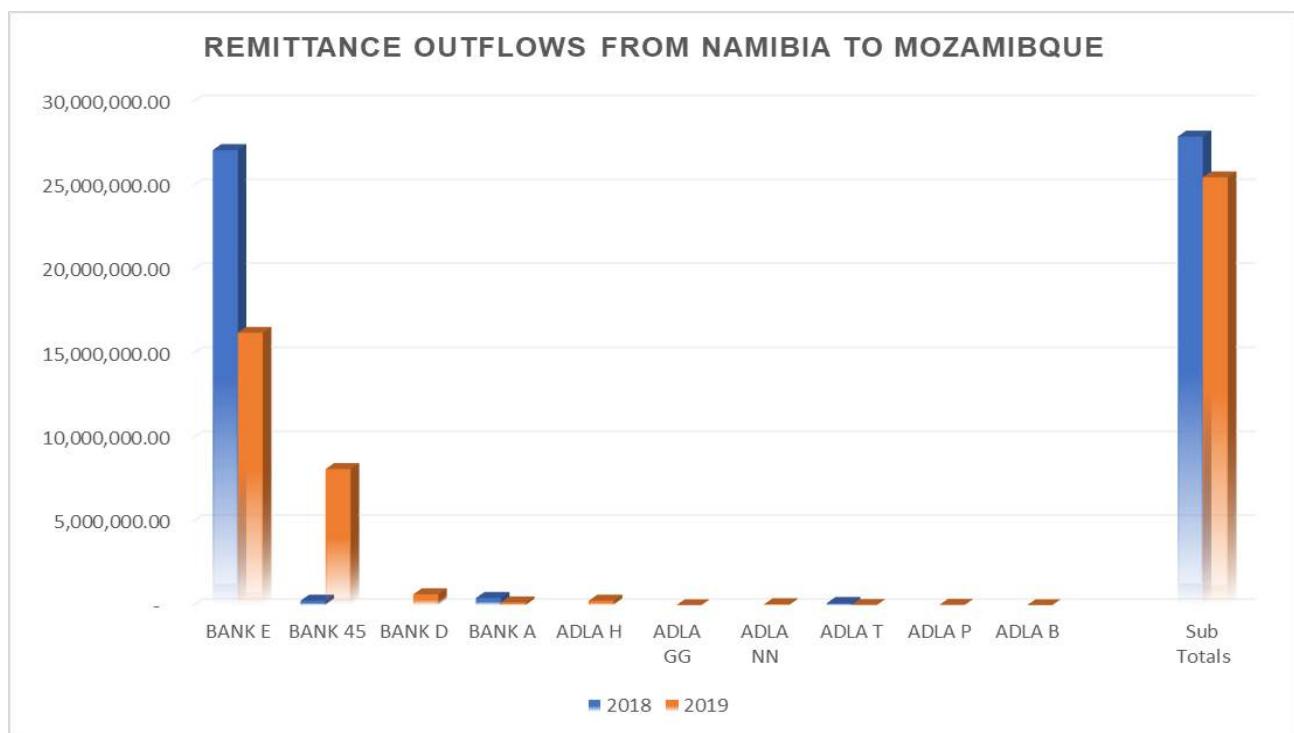


Table 43: Remittance outflows from Namibia to Mozambique

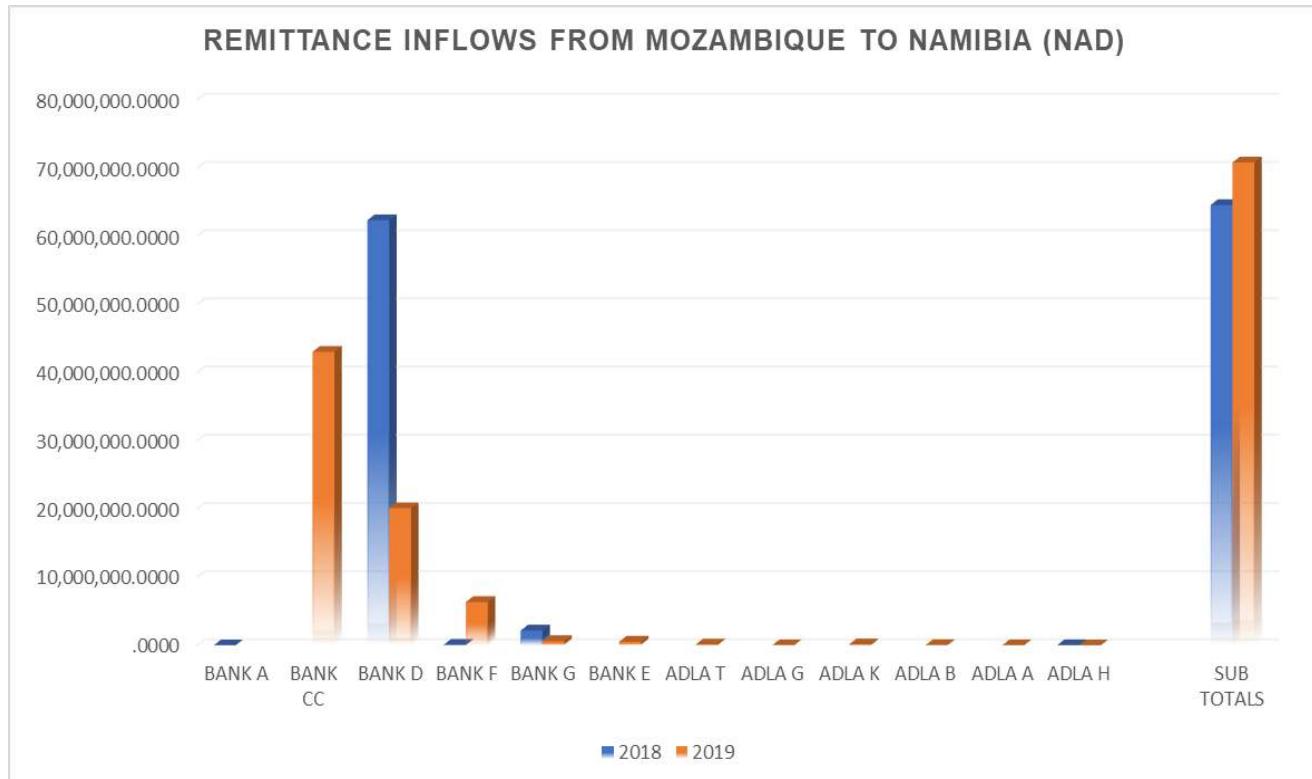


Table 44: Remittance inflows from Namibia to Mozambique

### **13.4.2 NPO Sector: TF threat and vulnerability assessment**

This section deals with NPOs' exposure to TF threats. The FATF has issued guidance that assists countries in their implementation of Recommendation 8 on NPOs,<sup>455</sup> in line with Recommendation 1 and the risk-based approach. It is essential that a risk based approach is adopted to ensure the compliance expectations, while adhered to, does not undermine a country's obligations to respecting the freedom of association, assembly, expression, religion or belief, and international humanitarian law. In furtherance of this, this assessment was further aimed at enabling an identification of NPOs which fall within the scope of the FATF definition of a NPO as per Recommendation 8 (NPOs exposed to TF). It is generally accepted that if outcomes of risk assessments are duly implemented as per FATF Recommendations and a country's appreciation of risks, financial institutions, donors, Government and all other stakeholders can be effectively guided on their engagements with NPOs.

A separate NPO TF risk assessment tool was used to assess the NPO sector and outcomes thereof are documented herein.

#### **13.4.2.1 Cross border remittances within the NPO space**

NPOs have access to considerable sources of funds. NPOs enjoy public trust and are thus inherently subjected to reduced or limited due diligence by regulators, banks, amongst others (in comparison to other sectors). This inherently escalates their TF vulnerability.

Domestically, Namibia does not have known terrorist activities and thus local TF risks are almost non-existent. Terrorist activities are however occurring in some parts of the world. Some NPOs have a global presence that may have links to high risk jurisdictions. The assessment found that NPOs which are inherently vulnerable to TF risks are those that are involved in cross border operations and cross border remittance of funds, especially when such operations and remittances are linked to high-risk jurisdictions. For these reasons,

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<sup>455</sup> FATF Recommendation 8: "Countries should review the adequacy of laws and regulations that relate to nonprofit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse, including: a) by terrorist organisations posing as legitimate entities; (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations."

despite the absence of domestic terrorist activities, understanding the transactional behaviour of NPOs involved in cross border remittances is essential. Figure 46 below presents a summary of cross border remittances by NPOs from 2017 to 2018, per jurisdiction.

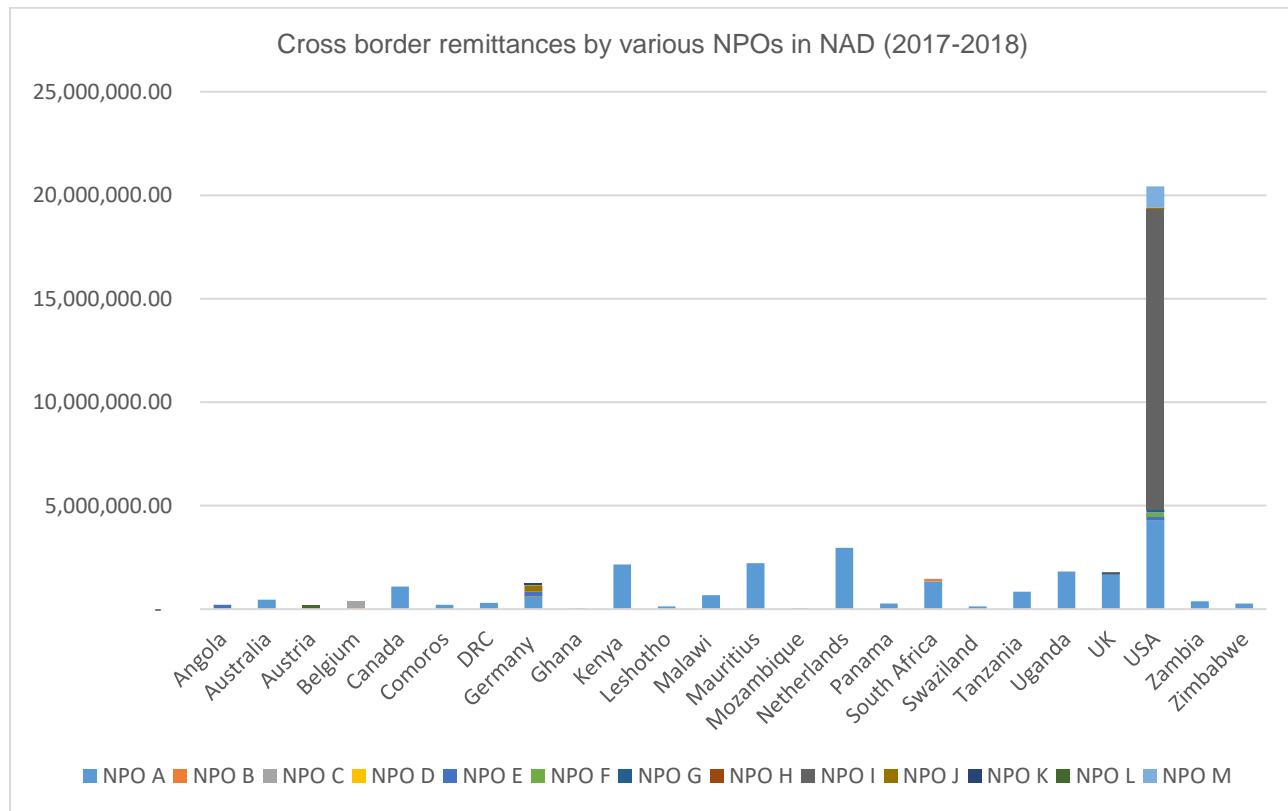


Figure 51: Cross border remittances by NPOs

### 13.4.2.2 Assessing NPO TF risk exposure

The TF risk assessment identified the following six major categories of NPOs as meeting the FATF definition of an NPOs (NPOs are inherently vulnerable to TF). See Table 45 below.

NO.	NPO CATEGORY	DESCRIPTION
01	Section 21 Companies	These are entities incorporated in terms of Section 21 of the Companies Act.
02	Faith Based Organisations (FBOs)	Includes Faith Based Organisations (FBOs).
03	Other Welfare Organisations	Mostly organisations which are involved in humanitarian activities.
04	Residential Children and Safety Homes	These are mostly facilities that accommodate the homeless (mostly the so-called 'street kids').

05	Research and Scientific Organisations	These are non-profit organisations created to advance research, studies or similar goals.
06	Sports and Recreational Facilities	These are also non-profit organisations created to advance sport related interests.

Table 45: Types of NPOs meeting the FATF definition in Namibia

Each NPO category's level of TF risk differs depending on the nature of operations and various other factors. Figure 52 below avails outcomes of such assessment. On the vertical axis, the more effective mitigating or control measures are in a category, the higher its score. The opposite is applied on the horizontal axis which speaks to inherent risks. The more vulnerable the NPO category is, the higher its rating on the horizontal axis.

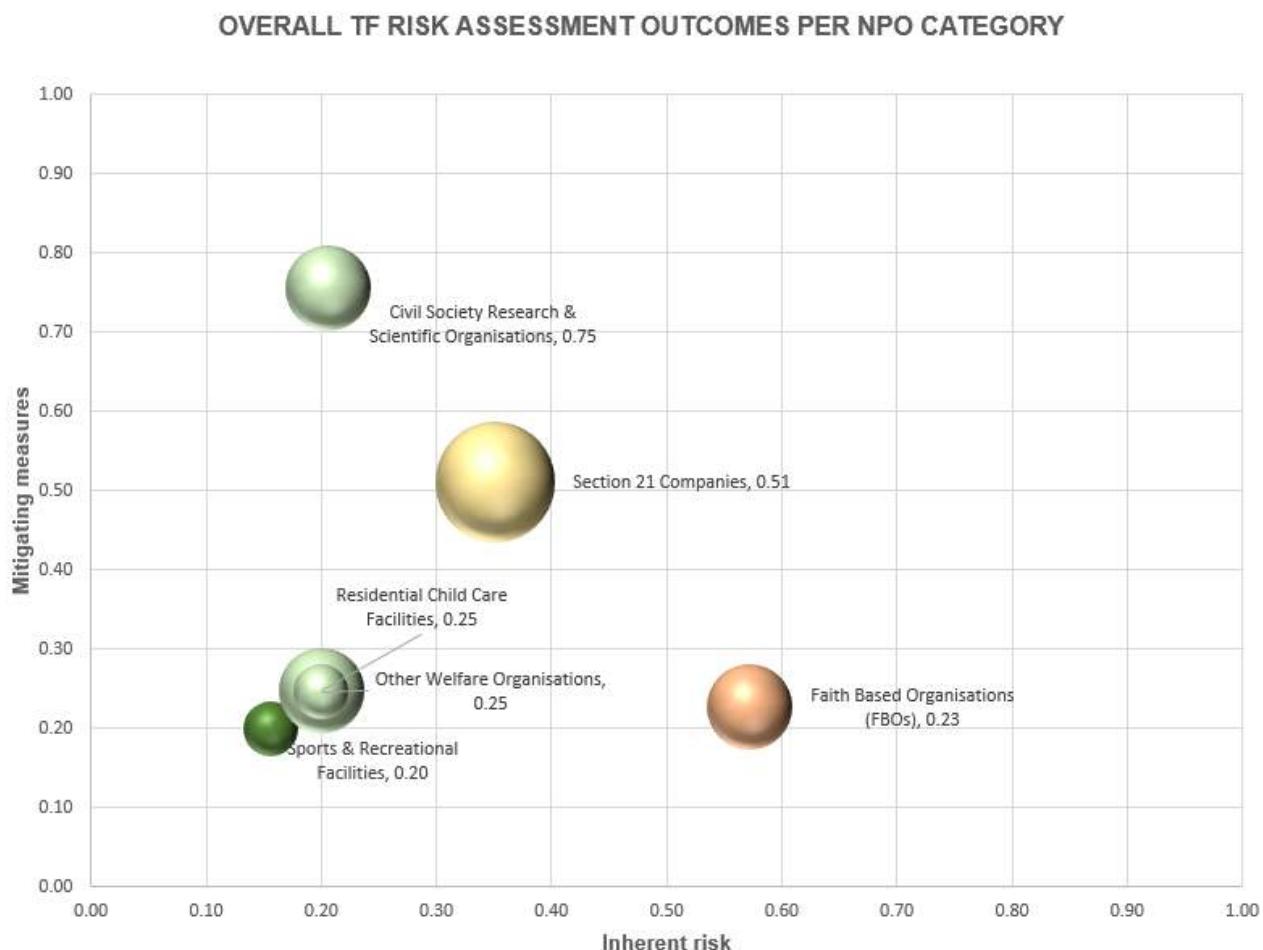


Figure 52: Overall TF risk assessment outcomes per NPO category

*a. Section 21 Companies*

Section 21 Companies also appear to be inherently vulnerable to TF activities. Such vulnerability mainly stems from their involvement in cross border remittances, amongst other factors, without any sanctions screening taking place. In terms of the overall implementation of governance controls however, Section 21 Companies appear to have implemented more effective controls than all other NPO categories. These NPOs are regulated in terms of the Companies Act and in terms of such Act, are required to implement certain governance frameworks, including the preparation of Annual Financial Statements. These measures enhance transparency overall and thus reduces risks of abuse to advance TF activities. Section 21 Companies' overall TF threat level was rated **Low** (0.35 or 35%) while the TF inherent vulnerability was rated **Medium** (0.52 or 52%).

*b. FBOs*

Overall, the TF threat level was rated **Medium** (0.57 or 57%) while the TF inherent vulnerability was rated **Very High** (0.97 or 97%). Generally, FBOs appear to be most vulnerable to TF abuse, amongst all NPOs.

The absence of basic financial controls, governance and transparency in most FBOs contribute to this exposure. Apart from a few self-regulating bodies or those registered in terms of Section 21 of the Companies Act, there are no regulators of FBOs. Market entry requirements are almost non-existent and FBOs are at liberty to decide whether to have financial reporting as such is not required. Many do not have governance structures in place. The extent to which self-regulatory bodies are able to influence or coerce their member/associate FBOs to implement governance frameworks is not certain as many FBOs have not obliged to execute instructions or guidance from such bodies. It was observed that in the main, FBOs' association to such bodies is to enhance their faith based interests and operations.

The fact that FBOs are involvement in cross border remittances largely enhances their overall vulnerability to TF abuse as funds could emanate from or be directed to high risk jurisdictions.

The majority of the Namibian population appear to subscribe to Christianity, making this the largest FBO sub-category in the NPO space, in terms of memberships. The NRA observed that FBOs consist of a wide range and type as some are large and well established with own sources of revenue while others rely on donor funding. Smaller FBOs mainly rely on contributions or donations by members.

With regard to evidence of actual TF threats, there are six cases (under investigation) showing potential TF wherein FBOs are allegedly involved. Such are pending and not yet finalised.<sup>456</sup> Based on the foregoing, TF threats appear to be more prevalent in FBOs, although such indications are yet to be proven in court, than in any other NPO category.

*c. Residential Child Care Organisations (RCCOs)*

This category mainly consists of organisations involved in humanitarian activities specializing in child-care services. They are expected to register with the Social Services Department within the Ministry of Health and Social Services. The NRA could not find any formalities these NPOs need to comply with to help mitigation of TF risks. These organisations are generally small and operate informally except the larger NPOs. The larger, more established ones have slightly more formal governance and management systems in place. Overall, the smaller NPOs are most vulnerable to TF activities. With consideration of all variables, the TF threat level was rated **Very Low** risk (0.20 or 20%) while the TF inherent vulnerability was also rated **Medium High** (0.63 or 63%).

*d. Other Welfare Organisations (WOs)*

The TF threat level in Other WOs was rated **Low** (0.20 or 20%) while the inherent vulnerability was also rated **Medium High** (0.63 or 63%). This is similar to the ratings for RCCOs above.

Like RCCOs, this category mainly consists of organisations involved in humanitarian activities ranging from health, education, social and other welfare services or operations. With the exception of NPOs involved in education related services, many others are under the

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<sup>456</sup> As per statistics received from LEAs

supervision of the Ministry of Health and Social Services. The NRA could not find any formalities they need to comply with which help with mitigation of TF risks. These organisations are generally small and operate informally, except for the few larger NPOs. The larger, more established ones have more formalized management systems in place. The NRA thus found that smaller NPOs in this category are most vulnerable to TF than the larger firms with governance and control measures in place.

*e. Civil Society, Research and Scientific Organisations*

In terms of size, this sector is smaller than other NPO categories. Many organisations in this category are formally set up in terms of Section 21 of the Companies Act. Civil Society, Research and Scientific Organisations appear to be more structured with prudent governance and transparency frameworks than most other NPOs. Many governance and control frameworks cited for Section 21 Companies above are also present in this category of NPOs. These are institutions mostly associated with professionalism and governance is usually an essential component of all such bodies. The level of governance often has an impact on the number of professionals who would want to associate with such Research and Scientific Organisations. Such governance measures ensure these NPOs have financial management policies and processes in place that enhance accountability. For example, financial reporting in terms of the Companies Act appears a norm in this type of NPOs. This is also essential as members, associates, funders or donors of such bodies usually have an expectation that sound governance practices are in place to ensure resources are used for the intended purposes.

The TF threat level in Civil Society, Research and Scientific Organisations was rated **Low** (0.23 or 23%) while the inherent vulnerability was rated **Very Low** (0.15 or 15%).

*f. Sports and Recreational Organisations*

Many sports and recreational organisations are also Section 21 Companies under the companies Act. Governance frameworks explained above within Section 21 Companies also apply to sports bodies that are incorporated in terms of such Act. However, there are also smaller sports bodies that operate informally or without being registered in terms of the said

Act. In such entities, governance frameworks are typically non-existent. Despite the reduced controls in some sports and recreational organisations, this category of NPOs was found to be the least vulnerable to TF activities amongst all NPOs. Though most rely on donations,<sup>457</sup> the level of TF threats targeting sports bodies to advance their causes was rated Very Low. Internationally, there are not many typologies that reflect TF abuse through sporting and recreational activities.

The TF threat level in Sports and Recreational Organisations was rated **Very Low** (0.16 or 16%) while the inherent vulnerability was also rated **Very Low** (0.16 or 16%).

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<sup>457</sup> Except for professional sports organisations that at times rely on sponsorships and other incomes from sporting activities.

No	Input variables	Assessment	Rating	Assessment	Rating	Assessment	Rating	Assessment	Rating	Assessment	Rating	Assessment	Rating
		Section 21 Companies		Faith Based Organisations (FBOs)		Residential Children and Safety Homes		Other Welfare Organisations		Civil Society, Research & Scientific Organisations		Sports & Recreational Organisations	
1	Number of TF/Terrorism Convictions	Does not exist	0.0	Low	0.2	Does not exist	0.0	Does not exist	0.0	Does not exist	0.0	Does not exist	0.0
2	Number of TF/Terrorism Prosecutions	Does not exist	0.0	Low	0.2	Does not exist	0.0	Does not exist	0.0	Does not exist	0.0	Does not exist	0.0
3	Number of TF/Terrorism Investigations	Low	0.2	Low	0.2	Does not exist	0.0	Low	0.2	Does not exist	0.0	Does not exist	0.0
4	Number of TF/Terrorism Intelligence	Low	0.2	Low	0.2	Does not exist	0.0	Does not exist	0.0	Does not exist	0.0	Does not exist	0.0
5	Number of TF/Terrorism STRs	Low	0.2	Low	0.2	Does not exist	0.0	Does not exist	0.0	Does not exist	0.0	Does not exist	0.0
6	Number of TF/Terrorism Allegations in credible open sources	Low	0.2	Low	0.2	Does not exist	0.0	Does not exist	0.0	Does not exist	0.0	Does not exist	0.0

Table 46: Outcomes of TF evidence (threat) evaluation in NPOs

No	Intermediary variables	Inherent risk		Assessment	Rating	Assessment	Rating	Assessment	Rating	Assessment	Rating	Assessment	Rating
		Input variables		Section 21 Companies		Faith Based Organisations (FBOs)		Residential Child Care Facilities		Other Welfare Organisations		Civil Society, Research & Scientific Organisations	
1	Threat	TF Typologies	Diversion of funds	High	1.0	High	1.0	Low	0.2	Low	0.2	Does not exist	0.0
2			Affiliation with a terrorist entity	Low	0.2	Low	0.2	Low	0.2	Low	0.2	Low	0.2
3			Abuse of programming	Low	0.2	High	1.0	Low	0.2	Low	0.2	Medium	0.5
4			Support to recruitment efforts	Low	0.2	Low	0.2	Low	0.2	Low	0.2	Medium	0.5
5			False representation/Sham NPO	Low	0.2	Low	0.2	Low	0.2	Low	0.2	Low	0.2
6		Proximity to active terrorist threat	Collection of funds	Medium	0.5	Low	0.2	Low	0.2	Low	0.2	Medium	0.5
7			Transfer of funds	Medium	0.5	Medium	0.5	Low	0.2	Low	0.2	Low	0.2
8			Expenditure of funds	Low	0.2	High	1.0	Low	0.2	Low	0.2	Low	0.2
1	Inherent vulnerability	NPO Profile	Size	Large	1.0	Medium	0.5	Small	0.2	Medium	0.5	Medium	0.5
2			Activity type	Service	1.0	Service	1.0	Service	1.0	Service	1.0	Expressive	0.0
3			Offshore/complex control structure	Medium	0.5	Medium	0.5	Low	0.2	Low	0.2	Low	0.2
4			Level of accountability required by funding sources	High	0.0	Low	1.0	Low	1.0	Low	1.0	Medium	0.5
5			Level of verifiability of fundraising methods	Medium	0.5	Low	1.0	Medium	0.5	Medium	0.5	High	0.0
6			Level of cash transfers, valuable in-kind goods	Medium	0.5	High	1.0	Low	0.2	Low	0.2	Medium	0.5
7		Operational features	Level of risk appetite	High	1.0	High	1.0	High	1.0	High	1.0	Low	0.2
8			Complexity / length of operational chains	Medium	0.5	High	1.0	Low	0.2	Low	0.2	Low	0.2
9			Reliance on transitory or informal workforce	Low	0.2	High	1.0	Low	0.2	Low	0.2	Low	0.2
10			Level of professionalism	Medium	0.5	Low	1.0	Low	1.0	Low	1.0	High	0.0
11		Methods to transfer funds	Use of cash	High	1.0	High	1.0	Low	0.2	Low	0.2	Low	0.2
12			Use of virtual currency	Medium	0.5	Low	0.2	Does not exist	0.0	Does not exist	0.0	Low	0.2
13			Use of informal money transfer system	Low	0.2	Medium	0.5	Low	0.2	Low	0.2	Low	0.2

Table 47: Outcomes of inherent TF vulnerability assessments

No	Intermediary Variables	Mitigating measures	ASSESSMENT RATING	RATING	ASSESSMENT RATING	RATING	ASSESSMENT RATING	RATING	ASSESSMENT RATING	RATING	ASSESSMENT RATING	RATING	ASSESSMENT RATING	RATING
		GENERAL INPUT VARIABLES	Section 21 Companies		Faith Based Organisations (FBOs)		Residential Child Care Facilities		Other Welfare Organisations		Civil society, Research & Scientific Organisations		Sports & Recreational Organisations	
1	Government measures	Quality of outreach and education	Medium	0.5	Low	0.2	Low	0.2	Low	0.2	Low	0.2	Low	0.2
2		Quality of NPO policies	Medium	0.5	Low	0.2	Low	0.2	Low	0.2	Medium	0.5	Low	0.2
3		Scope of registration of FATF NPOs	Medium	0.5	Low	0.2	Low	0.2	Low	0.2	Low	0.2	Low	0.2
4		Availability and accessibility of accurate NPO information	High	1.0	Low	0.2	Low	0.2	Low	0.2	High	1.0	Low	0.2
5		Avoiding disruption of NPO activities	Medium	0.5	Low	0.2	Medium	0.5	Medium	0.5	High	1.0	Low	0.2
6	NPO measures	Quality of Governance	High	1.0	Low	0.2	Low	0.2	Low	0.2	High	1.0	Low	0.2
7		Quality of Financial management	Medium	0.5	Low	0.2	Low	0.2	Low	0.2	High	1.0	Low	0.2
8		Quality of Project management	Low	0.2	Medium	0.5	Low	0.2	Low	0.2	High	1.0	Low	0.2
9		Quality of staff vetting and oversight	Low	0.2	Low	0.2	Low	0.2	Low	0.2	Medium	0.5	Low	0.2
10		Level of commitment to ethics and transparency	Medium	0.5	Low	0.2	Low	0.2	Low	0.2	Medium	0.5	Low	0.2
11		Level of self-regulation (incl. implementation)	Medium	0.5	Low	0.2	Low	0.2	Low	0.2	Low	0.2	Low	0.2

Table 48: Outcomes of TF mitigating measures' effectiveness assessments

### 13.5 CTF combatting framework

Assessing TF vulnerability is premised on reviewing the effectiveness level of the TF combatting framework nationally. Such framework comprises CTF laws, Government commitment reflect through functioning policy, strategy, agencies and bodies dedicated to combatting efforts etc.

The TF risk assessment outcome as per the 2012 NRA was rated **Medium High**. This was mainly due to the absence of a combatting framework at the time. Namibia started implementing a TF combatting framework post the 2012 NRA after the passing of the PACOTAA. Owing to the enhancements in TF combatting measures, the 2015/2016 NRA update revised the TF risk to **Medium Low**. This report builds on such prior work on TF risk assessment.

The following are key features of Namibia's TF and PF combatting framework, adopted after the 2012 NRA which have since enhanced the effectiveness of both TF and PF combatting framework:<sup>458</sup>

- a. *Criminalization of terrorism, TF and PF:* This is essential as it sets the tone and impacts TF/PF combatting policy. Terrorism and Proliferation activities as well as the financing thereof are defined in section 1 and criminalized in section 2 of the PACOTPAA on the basis of the relevant Conventions. The law further provides that TF/PF offences extend to any funds or other assets including if such are from legitimate or illegitimate sources. Generally, PACOTPAA is aligned to international best practices and avail combatting authorities adequate powers to enhance combatting efforts;
- b. *Proscription:* The National Security Commission is the body with statutory responsibilities in terms of the PACOTPAA to propose persons or entities to the 1267/1989 Committee for designation; and for proposing persons or entities to the 1988 Committee for designation;

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<sup>458</sup> in line with FATF Recommendations 5 and 6:

- c. *Evidentiary standard for proscription:* In Namibia, the evidentiary standard applied in terms of the PACOTPAA is that reasonable grounds must exist, for a person to be proscribed and designated. Proposals for designations are not conditional upon the existence of a criminal proceeding as per Section 44, read with Section 46 and Regulation 11 of the PACOTPAA. The entire sections 44 and 46 as well as Regulation 11 indicate that in Namibia's TF/PF legislative environment, proposals for designation are not conditional upon the existence of a criminal proceeding;
- d. *Processing ex parte proscriptions:* The proscription process in terms of the various UNSC Resolutions including 1373 is *ex parte* and the proscribed individual is only informed after the proscription of the fact that s/he has been proscribed and the reason for proscription, as per section 33(6) and Section 46(10) of the PACOTPAA;
- e. *Ability to implement targeted financial sanctions without delays:* In terms of Regulation 1 of the PACOTPAA, the terms “without delay” has been defined as within 48 hours. Namibia’s legislative authority for implementing and enforcing targeted financial sanctions (i.e. freezing regime) is set out, amongst others, in sections 22, 23, 24, 25 and 45, read with Regulation 2 and 3 of the PACOTPAA<sup>459</sup>. These same provisions provide for the identification of competent authorities to implement financial sanctions;
- f. *Identifying targets for designation (including authority to collect information to aid such identification):* Namibia has legislation for identifying targets for designation based on the designation criteria set out in UNSCR 1373. Section 33 of PACOTPAA which deals with 1373 requests received from another country on designation of persons, highlights the designation criteria. Further, competent authorities (FIC and the Namibian Police) have legal authority and procedures or mechanisms to collect or solicit information to identify persons and entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation. The FIC has access to a wide range of information and authority to collect same in terms of Section 1 read with 31 and 61 of the FIA. Section 39 of the PACOTPAA is used by the Namibian Police in an effort to identify such persons and entities. In addition to the above, the Namibian Police have a wide variety of powers to search and seize

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<sup>459</sup> Section 25, read with Section 24 and Regulation 2 of the PACOTPAA that acts as a *de facto* freeze, while the Minister of Safety and Security prepares to gazette the freezing order within 48 hours. The process is *ex parte*, without prior notice.

including section 14 of the Police Act, section 20, 21, 22 and 205 of the Criminal Procedure Act, 1977; and

- g. *Border controls on strategic goods:* There are scanners at all national points of entry and exit. Such helps in ensuring that goods which are of strategic importance to TF (and PF) can be detected at points of entry and exit to ensure that they are subjected to relevant due diligence. The current legal framework provides that weapons can only be permitted to pass through our borders if accompanied by duly issued permits and authority. In the same vein, the import or export of certain chemicals require permits from authorities such as the Ministry of Agriculture.

### **13.6 Areas that contribute to TF vulnerability**

Overall CFT supervision of NPOs, as a newly added sector to the CFT framework needs to be effective.

Some of the areas that need improvement in the CTF and CPF framework, as raised within the national ML vulnerability assessment (sections 8.20 to 8.22) include availability of reliable identification infrastructure, independent information sources as well as availability and access to beneficial ownership information. Availability of such sources is essential in CDD measures as they avail information verification platforms that accountable and reporting institutions can rely on.

Both the FIC and NAMFISA, as the sole AML/CFT/CPF supervisory bodies have noted that most sectors, especially DNFBPs,<sup>460</sup> do not ensure their clients are subjected to effective screening against the designated UNSC sanctions lists at all times. This presents a significant risk as persons designated as advancing TF/PF related activities could operate undetected within such sectors or be availed services in contravention of the FIA and PACOTPAA (and by extension international conventions). On the other hand, most financial sector institutions are observed to have automated systems that assist in the client screening processes.

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<sup>460</sup> This is noted despite the FIC having availed a free UN sanctions screening tool which may be used by sectors

In discussions with LEAs, it was indicated that although specialised investigative units have been established to combat these specialised financial crimes, it was concluded that relevant authorities could do with more capacity. In particular, specialised training related to terrorism and proliferation investigations as well as other combatting activities (given that TF and PF are relatively new within the domestic policing framework) is required. The aspect of being understaffed or less resourced remains a challenge for all TF and PF combatting authorities nationwide. The absence of actual TF/PF cases consequently suggests that combatting capacity has not been tested in terms of practical effectiveness.

LEAs further indicated that at times, requests for information from authorities in other jurisdictions are often not attended to, or in some cases responses are not timely. In the same vein, the lack of MLA arrangements with some countries further limits the ability to source information from such countries when combatting efforts so require. It was thus requested that the Ministry of Justice and MIRCO consider various alternatives which can enhance current challenges.

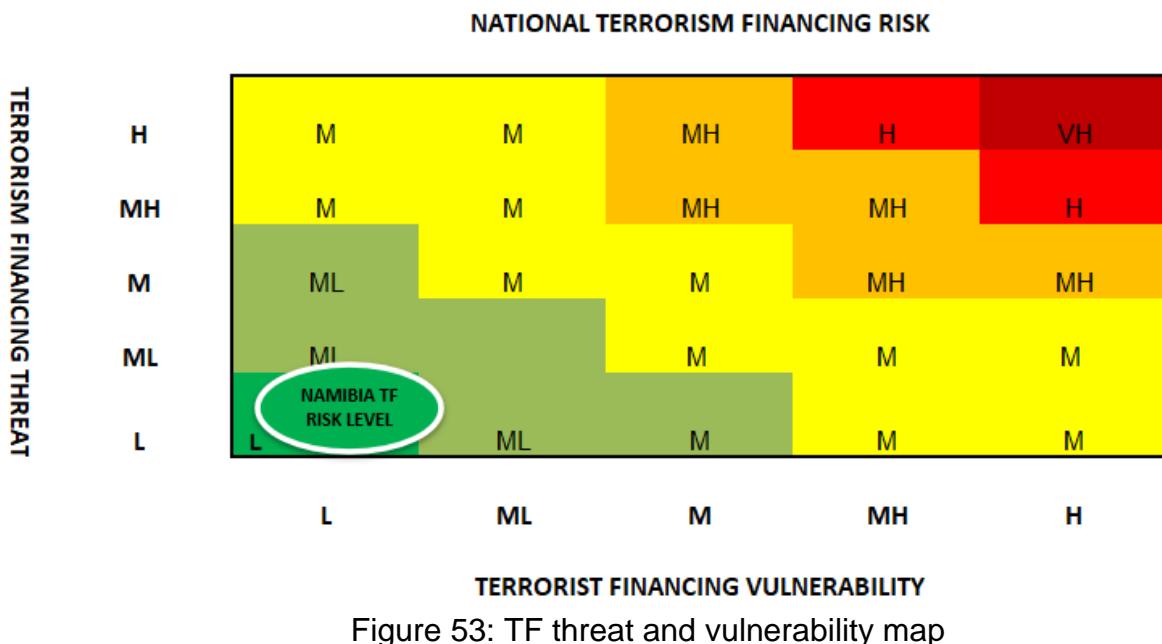
Considering all of the above, the TF vulnerability level was assigned a rating of 0.68, signalling a relatively **Higher** level of effectiveness.

### **13.7 Aggregating TF Threat and Vulnerability Outcomes**

National TF vulnerability (or combatting effectiveness) was rated 0.7, reflecting a **Higher** level of combatting effectiveness. The overall TF threat rating is 0.3, suggesting a **Low** threat level.

The relatively high level of combatting effectiveness suggests that there is some capacity that currently responds to or manages the potential TF risk exposure. The overall improvement from the risk position of Medium Low rated in the 2016 NRA update is mainly attributed to the maturity (over time, as per CFT supervisory bodies) in sectoral TF combatting measures which the assessment found to have greatly reduced the sectoral TF vulnerability. DNFBPs of course remain an exception but their inability to facilitate cross border remittances does not escalate the risk significantly. Since the PACOTAA was passed in December 2012, combatting frameworks, particularly sanctions screening systems in existence have matured while there has been an overall increase in implemented screening systems in most sectors.

The improvements were mostly noted in financial service providers who facilitate cross border remittances.



# **CHAPTER VI: PF RISK ASSESSMENT**

## **Chapter Summary**

*While those suspected of advancing terrorism can appear to raise comparatively lower amounts, the trend around the world suggests that persons and countries suspected of involvement in potential proliferation activities often involve in large scale operations that yield higher or more valuable proceeds. The weapons which proliferators aim to produce are naturally costly or resources intensive and those advancing proliferation are known to target sectors known to provide high returns in shorter turnaround times.*

*Preventing financial flows from reaching those who are said to be advancing or supporting the proliferation of weapons of mass destruction (WMD) is in the interests of maintaining world order, peace and stability. Namibia, being a Member State of the UN has ratified relevant UN Conventions on Proliferation.<sup>461</sup> Such ratifications, amongst others, create combatting and prevention obligations which Namibia is expected to comply with. Government has implemented combatting frameworks to ensure the country can duly play its part in making the world a safer place. This assessment reviewed such frameworks to determine their level of effectiveness in combatting PF and ensuring Namibia complies with her international obligations. In the same vein, the assessment also considered potential Proliferation related threats that Namibia is exposed to. Having regard to all PF vulnerabilities and threats, the assessment concluded that the combatting framework is relatively effective, resulting in a **Medium Low** PF risk rating.*

*Having said the above, it is worth noting that the UN suspected Namibia of having supported PF activities of the DPRK by availing certain persons access to conduct business in the construction industry in Namibia. The Namibian Government not only denied such but went further to terminate all engagements with such persons from the DPRK and expelled them from the country. On the other hand, the Islamic Republic of Iran was at some point listed by the UN as presenting proliferation threats, while the country has, for many years, held shares in a local uranium mine. All these aspects are considered along with the relevant UNSC Resolutions in assessing Namibia's PF combatting framework.*

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<sup>461</sup> Because of the importance of countering these illicit financial flows, several United Nations Security Council Resolutions (UNSCRs) impose international legal obligations related to proliferation financing (PF): UNSCR 1540 on the non-proliferation of WMDs, UNSCR 2231 on the implementation of the Joint Comprehensive Plan of Action related to Iran, and the expanded requirements of UNSCRs related to North Korea.

## **14. UN suspicions of international CPF contraventions**

Establishing whether a country or person has contravened international laws aimed at combatting proliferation is a responsibility of the United Nations (UN). The United Nations Security Council (UNSC) plays an important role in this regard. The UN's interpretation of suspected contraventions, based on available evidence, is what could determine whether a country has failed to honour its obligations. In the period reviewed, Namibia was accused of having failed to honour her international obligations by supporting PF. This chapter considers information related to such accusation and other relevant factors such as the effectiveness of Namibia's combatting framework and PF vulnerability to assess the risk of PF.

### **14.1 Construction projects in the Ministry of Defence**

In April 2009, the UNSC 1718 Committee designated a DPRK entity named KOMID<sup>462</sup> for targeted sanctions, noting it to be the DPRK's primary arms dealer and main exporter of goods and equipment related to ballistic missiles and conventional weapons. Another DPRK entity, commonly known as MOP<sup>463</sup>, was operating in Namibia for many years, primarily servicing Government contracts in the Ministry of Defence. Unlike KOMID, MOP was not designated under any UNSC Resolution at the time.

The UN opined that MOP was operating as a front or for the benefit of the designated entity (KOMID), while Namibia knew or should have known and not permitted such. Case Study 11 below reflects the UN's<sup>464</sup> understanding of how Namibia was at risk of contravening her international obligations on CPF.

In June 2016, the Namibian Government issued a public statement communicating termination of all relationships with KOMID and MOP for as long as the UNSC sanctions against the DPRK were in place.

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<sup>462</sup> Korea Mining Development Trading Corporation.

<sup>463</sup> Mansudae Overseas Project Architectural and Technical Services (Pty) Ltd.

<sup>464</sup> Contents in the case study are quoted from the note by the President of the Security Council, S/2016/157, 24 February 2016. Reissued for technical reasons on 18 April 2016. [16-00683\*] (E) 210416. Available at: [https://www.un.org/ga/search/view\\_doc.asp?symbol=S/2016/157](https://www.un.org/ga/search/view_doc.asp?symbol=S/2016/157)

## **Case study 11**

### **Suspected contravention of UNSC: KOMID/MANSUDEA**

*UN Panel of Experts states, amongst others: “KOMID reportedly conducted business activities in Namibia until at least early 2015, including through the construction of a munitions factory at Leopard Valley, in the Windhoek area, in cooperation with, or using the alias of, Mansudae Overseas Project Group companies.*

*Namibia informed the Panel (UN Panel of Experts) that it had contracts with the DPRK concerning arms and related materiel before 2005. One covered the construction of the Windhoek munitions factory from 2002 to 2005, involving a subsidiary of Mansudae. Namibia also confirmed that it had received training and technical assistance relating to arms, but stated that, given United Nations sanctions, the relevant experts had returned to the Democratic People’s Republic of Korea.*

*Namibia confirmed that Mansudae was involved in several military construction projects, including the military academy and the ongoing construction of the headquarters of the Ministry of Defence. Namibia further denied. It denied knowledge of links between Mansudae and KOMID. However, satellite imagery shows that construction at the military base at Leopard Valley was continuing in September 2014 (see annex 71). The Mansudae company brochure also advertised the 2010 contract with the Ministry of Defence for the construction of facilities at Leopard Valley.*

*The UN Panel confirmed that as at August 2015, workers from the DPRK were undertaking construction activities at another military base in Suiderhof.*

#### ***Alleged failure to expel designated persons, or those fronting for designated entities ...***

*The expectation in terms of the various UN Resolutions in this regard is that persons designated by the UN as advancing TF or PF should be expelled from countries wherein they could be operating from. In total, 11 of the 15 nationals of the DPRK designated by the United States Department of the Treasury in January and November 2015 had been affiliated with or acted on behalf of KOMID. The designations included three individuals linked to KOMID activities in Myanmar and one individual and entity for their activities in Egypt. The Ambassador of the DPRK to Myanmar, Kim Sok Chol, was designated for operating as a KOMID facilitator. At the time of writing, the Panel had no indication that he had been removed from his position.*

*Of the 11 individuals, Mr. Kim Kwang Yon and Mr. Kil Jong Hun were listed as KOMID representatives in Namibia (see S/2015/131, para. 187). Namibia confirmed their diplomatic accreditation until early 2015 but stated in July that it had terminated their diplomatic status and requested their recall (see annex 100). Namibia denied knowledge of their links to KOMID but said that it had added them to an “immigration stop list” following their designation.*

*Mr. Kim and Mr. Kil were originally accredited to the country’s embassy in Pretoria, South Africa, as Second Secretary and Third Secretary, respectively. Nevertheless, travel records since 2012 reveal that they spent most of their time in Windhoek, leaving Namibia approximately every two months for periods between a week and a month. Namibian travel records also show no entry or exit records for them since December 2014. The embassy opened a personal bank account for Mr. Kil, to which Mr. Kim also was given access.”*

## 14.2 Mining industry (Uranium Mine)<sup>465</sup>

Given that the Islamic Republic of Iran was at some point listed by the UN<sup>466</sup>, reports suggest Namibia may have attracted the eyes of the world with an arrangement that continuously allows the Iranian government shareholding in a local Uranium mine. Whilst previously listed for suspected involvement in the proliferation of weapons, a 2015 nuclear deal with Iran resulted in the delisting of the country by the UN after UN inspectors were satisfied that Iran had complied with its part of the landmark nuclear deal.

### Case study 12

#### *Iranian shareholding in a Uranium mine pre and post UNSC sanctions ...*

*As reported in the local media , a key Iranian entity, said to have been established by the Iranian government holds a 15% stake in a local Uranium mine. Reports further suggest that the entity's shareholding was initially held by the Iranian government and thereafter transferred to the entity in the 90s. IFIC in 1997. Other shareholders in the Uranium mine include Rio Tinto as well as the Namibian and South African governments.*

*The lifting of UN sanctions against Iran a few years ago did not have an impact on the adopted position which restricted the Iranian entity from any uranium product off-take rights. This was built into the arrangement to minimize the risk of Iran directly benefitting from the uranium produce of the mine, to align with UN obligations. Iranian shareholder also has no involvement in the management of the mine whatsoever, has no access to associated technology, and did not have access to its dividend payments.*

*This reduces the Iranian entity to passive shareholding with no benefits, nor involvement.*

## 14.3 PF Threat and vulnerability rating

PF threats are activities or events which can exploit control frameworks created to mitigate PF risks while PF vulnerabilities refers to any control shortcomings within the PF control

<sup>465</sup> Rössing reviews Iranian shareholding after lifting of sanctions. 2016-01-26. <https://neweralive.na/posts/rossing-reviews-iranian-shareholding-lifting-sanctions>.

<sup>466</sup> "Between 2006 and 2010, the UNSC passed five resolutions imposing sanctions in relation to Iran in response to Iran's refusal to suspend its uranium enrichment program. On 20 July 2015, the UNSC adopted Resolution 2231, which endorsed the Joint Comprehensive Plan of Action (JCPOA). The Resolution took effect on 16 January 2016. Under the Resolution, previous sanctions were terminated but measures that restrict certain activities were imposed. Australia implements United Nations Security Council (UNSC) sanctions by incorporating them into Australian law." Australian Government, Dept. of Foreign Affairs. <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/iran-sanctions-regime>

framework which can be exploited by PF threats. Assessing PF vulnerability is premised on reviewing effectiveness of combatting frameworks. The combatting framework discussed in sections 8 and 13.5 above under TF vulnerabilities is relevant for National PF risk mitigation. Those observations are thus considered in this regard, to the extent that they apply to CPF.

In keeping with the RUSI PF Risk Assessment Tool employed for the PF risk assessment exercise, national vulnerabilities are assessed under the following broad categories: political and social factors, economic and technological factors, geographic and environmental factors, legal and institutional factors, as well as legal persons and legal arrangements that may exacerbate or mitigate a threat.<sup>467</sup> NRA analysis were guided to arrive at risk positions and the table below avails an outline of how PF risk conclusions were rated.

This section is based on Case Study 12 presented above. Subsequent to formal enquiries by the UN, the FIC, upon request<sup>468</sup> to explain the footprints that designated persons may have left in the financial services sectors found the following, which may further point to potential CPF control vulnerabilities:

#### **14.3.1 Construction sector**

This is not a sector under the conventional AML/CFT/CPF sphere but appears to have been the sector which availed both KOMID and MOP construction projects to execute. The known projects are all from the public sector, mainly from the Ministry of Defence, as alleged by the UN. The overarching conclusion of the NRA is that if UNSC designated entities are permitted into the country, their presence and operations are bound to expose CPF vulnerabilities in various sectors within the PF combatting framework.

Being outside the conventional AML/CFT/CPF framework also means the sector is far removed from related compliance obligations and thus had no capacity to conduct the

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<sup>467</sup> NRA analysis were guided to arrive at risk positions and the table below avails an outline of how PF risk conclusions were rated.

2.1 - 3 High risk
1.1 - 2.09 Medium risk
0 - 1.09 Low risk

<sup>468</sup> From MIRCO and Office of the President to understand the local footprint in the financial services sector of suspected designated persons.

necessary due diligence to reduce risks of contravening UN conventions. The inherent risks are always high for sectors availing products and services targeted by PF entities, especially if such sectors are outside the conventional AML/CFT/CPF framework.

The PF threats were considered in terms of products and services, volume of activity customers, distribution channels, jurisdictions that have engagements with Namibian etc. The actual threats cited in the case studies have been terminated. The NRA thus assessed potential of PF threats re-occurring as Low (score of 1.2). Given the sector's lack of AML/CFT/CPF controls, and operating without a CPF supervisory body, the vulnerability exposure is naturally increased. The sector is open to PF exploitation as there are no screening mechanisms. Vulnerability rating was thus set at the Highest level of 3. Consequently, the overall residual risk was set at **Medium** (rating score of 1.4).

#### **14.3.2 Mining sector**

Like the construction sector, this sector is outside the AML/CFT/CPF sphere in terms of having legal obligations to conduct certain due diligence measures as per the FIA and PACOTPAA. Uranium - which Namibia has in abundance is one such product listed by the UN as highly sought by proliferators. The control measures implemented at the mine which excluded the Iranian shareholders from the mine management, accessing any of the Uranium, nor proceeds from such dividends have greatly reduced Namibia's risk of contravening relevant conventions on PF, at the time when Iran was designated by the UN. It should be noted that shareholding of the said Uranium mine started pre-independence and has continued ever since. Upon Iran's eventual designation by the UN, Namibia implemented measures that prevented Iran from benefitting from the mine when such designation occurred.

Products directly related to procurement or creation of sensitive goods such as Uranium are a high risk. Namibia is rich with such minerals which proliferators could be attracted to and such inherently escalates PF vulnerability levels. Although supervised by the Ministry of Mines and Energy, the NRA observed that no screening against UN sanctions lists takes place when applicants for mining rights are subjected to due diligence. Given the sector's

lack of AML/CFT/CPF controls and operating without a CPF supervisory body, the vulnerability exposure is further increased.

The PF threat level for the sector was rated Low (a score of 1.0) while the vulnerability was rated Medium (a score of 2.0). Therefore, the overall rating was concluded as **Medium** (a score of 1.50).

#### **14.3.3 Banking sector**

MOP had three bank accounts at a local bank for several years which was only terminated in September 2016, the bank closed such accounts to cease all business relationships with MOP. Whilst the UN was convinced that MOP was fronting for KOMID and Namibia was not aware of such (at least until UN notification), accountable institutions could not reasonably be expected to take certain combatting measures in the absence of information that could highlight the institutions that may be fronting on behalf of designated entities. This presents a risk any other UN Member State could have found itself in, unless there are indications or links that may reasonably suggest that an entity could be fronting for a designated person. The banking sector did communicate with authorities including the Namibian Police, the BoN and the FIC when reports of MOP's potential fronting for KOMID emerged. Such engagements usually occurred when decisions to terminate business relationships or de-risk were considered.

There were indications that MOP may have resorted to using other entities as payment recipients after the closure of their bank accounts, at least until their contracts with Government were terminated and their eventual expulsion from Namibia shortly thereafter. Although this was part of their winding down of operations, the fact that MOP could still operate by using other entities to front on its behalf as far as receiving payment could have been regarded contrary to Namibia's commitment to the various UN conventions, if the UN's interpretations, per written communications to Namibia in this matter are anything to go by.

In the case of the Uranium mine with Iranian shareholding, it is known that dividends were at some point paid into a banking account and the Iranian shareholders have not been able to access such since their listing. Assessment of the banking sector needs to be viewed along

with observations raised above which suggests that the banking sector largely has controls (e.g sanctions screening) in place and are subjected to AML/CFT/CPF supervision. These are factors which reduce inherent PF risk exposure. Banking is a key industry, thus AML/CFT/CPF shortcomings present severe security and reputational impacts to the sector.

In consideration of all these factors, the assessment concluded that the potential control weaknesses in the banking sector showed some PF vulnerabilities, while acknowledging the swiftness with which banks were able to act, upon detecting potential fronting for designated entities.

The PF threat was rated Medium (a score of 2.00), mainly because banking services are key targeted by threats to move funds to where they are needed in the advancement of proliferation. The assessment agreed that the controls which banks have in place reduce PF vulnerability levels of their products and services. Vulnerability level was thus rated Medium (a score of 1.00). Overall, the assessment thus rated the banking PF risk level as **Medium** (rating score of 1.38).

#### **14.3.4 ADLAs (*Bureau de Changes*)**

The FIC observed after the closure of the bank accounts of MOP, that MOP's employees may have been using ADLAs to remit funds offshore. Given the manner in which such remittances appeared structured and the financial values, such could have been funds remitted on behalf of the business and may not necessarily employee salaries.

Assessment of ADLAs' PF combatting measures thus needs to be considered with the understanding that the sector largely has controls (e.g sanctions screening) in place and is subjected to AML/CFT/CPF supervision. These are factors which reduce inherent PF risk exposure.

The PF threat level for the sector was rated Medium (a score of 1.60) while the vulnerability was rated Low (a score of 1.0). The overall rating was thus concluded as **Medium** (a score of 1.33).

#### **14.3.5 Short term insurance sector**

on 20 July 2016, the UN Panel of Experts engaged an international insurance firm within subsidiaries in Namibia, through its head offices in South Africa, to understand its relations with MOP. MOP had short-term insurance products for its construction projects with such firm since 2013. The short-term insurance was required as cover (risk mitigation) for ongoing construction projects. This was thus a requirement for construction projects they were involved in. The insurance firm committed to revisit its relationship with MOP after the expiration of an existing insurance contract that was due to expire in February 2017.

Overall, the assessment thus concluded that the short-term insurance sector's PF vulnerability is Low, slightly similar to the banks but reduced owing to the lesser transactional volumes and values observed in the insurance sector (as per Case Studies).

The PF threat level for the sector was rated Medium (a score of 1.40) while the vulnerability was rated Low (a score of 1.0). Therefore, the overall rating was concluded as **Low** (a score of 1.05).

#### **14.3.6 DNFBPs**

DNFBPs found to have had engagements with the MOP and include TSPs, Legal practitioners and Accountants. TSPs, especially those involved in the creation of persons and arrangements are essential gate keepers of the AML/CFT/CPF system.

TSPs were found to have availed company registration and other related secretarial services throughout the operations of both KOMID and MOP. DNFBPs such as legal practitioners, accountants and auditors who availed, mostly consulting or assurance services to KOMID and MOP failed to detect that KOMID was involved in proliferation and that MOP was fronting for KOMID, as alleged by the UN. Reports that circulated at the time around MOP potentially being a front for KOMID were not found to have reached, nor dissuaded the DNFBP sector from availing services in contraventions of UN conventions.

Unlike the banks, no DNFBP proactively engaged any of the authorities regarding the risk exposure presented by KOMID or MOP. The DNFBPs only acted when engaged by the FIC about the potential risk of dealing with UNSC designated entities.

The PF threat level for the sector was rated Medium (a score of 1.80) while the vulnerability was rated Low (a score of 1.5). Therefore, the overall rating was concluded as **Medium** (a score of 1.16).

#### **14.3.7 Customs authorities**

Some of the nationals from the DPRK who had come to work on the construction projects in Namibia appeared to have been remitting funds (through ADLAs) on behalf of MOP, if FIC analysis is anything to go by. Customs Authorities also stopped some MOP employees who were attempting to smuggle cash out of the country, at the Hosea Kutako International Airport. Given such effective customs measures, relevant authorities such as the FIC and LEAs were able to effect timely interventions.

### **14.4 Overall PF risk assessment**

#### **14.4.1 Sectoral PF risk ratings**

It is essential to keep in mind that while the Case studies (11 to 12) cited herein may have occurred up to June 2016 (when Government communicated to have terminated all activities with KOMID and MOP), there has not been any indication of similar potential risks that Namibia has been exposed to, nor any indications that Namibia may have acted in any manner that contravenes her international obligations.<sup>469</sup> Thus the actual PF threat level has inherently reduced over the years. Figure 49 below presents a consolidated summary of the PF risks at sectoral level informed by the discussions above.

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<sup>469</sup> The cases are thus used as they fall within the five-year period leading to December 2019.

Sector	Risk Rating
<b>Financial Institutions</b>	<b>1.25</b>
Banking	1.38
Short term insurance	1.05
Money transfer services (ADLAs)	1.33
<b>Designated Non-Financial Businesses and Professions</b>	<b>1.16</b>
TCSPs, Legal Practitioners, Accountants and Auditors	1.16
<b>Other High Risk Sectors</b>	<b>1.45</b>
Construction	1.40
Mining	1.50

Table 49: Summary of PF sectoral risk assessment outcomes

#### 14.4.2 National PF Threats and Vulnerability level

Considering above mentioned discussions (as per guidance of the RUSI PF risk assessment methodology), if the above sectoral risks were aggregated, the average rating would be a **Medium Low** rating (a score of 1.28).<sup>470</sup>

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<sup>470</sup> Using the RUSI PF Risk Assessment Tool:  $(1.25 + 1.16 + 1.45 / 3 \text{ sectors} = 1.28)$ . Using the score, the final rating is premised on the following score categories: From 2.1 – 3 = **High risk**; from 1.1 - 2.09 = **Medium**; while a score from 0 - 1.09 = **Low**.

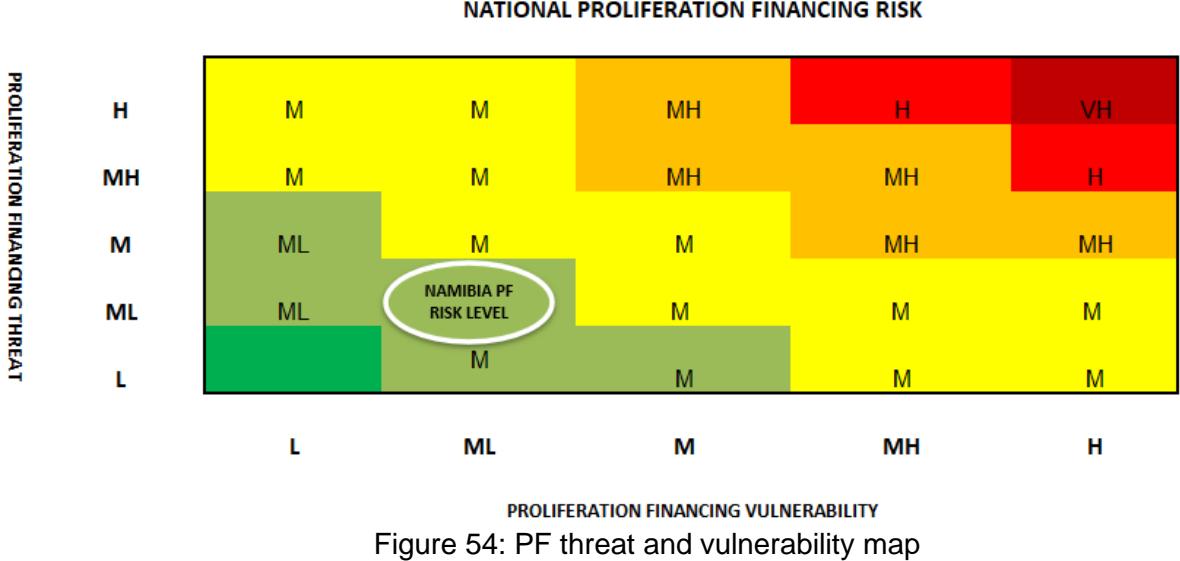


Figure 54: PF threat and vulnerability map

# **CHAPTER VII:**

# **ENVIRONMENTAL**

# **CRIME RISKS**

## Chapter Summary

*Wildlife crimes, which include poaching, related trafficking and illicit dealings in proceeds from such activities are the highest amongst the various categories of environmental crimes. The rate at which forestry crimes (e.g illicit timber harvesting and trafficking) have occurred in recent years has escalated the frequency with which threats from such crimes can be laundered. Namibia is often used as a conduit for illicit timber trafficking, with timber harvests from land locked neighbouring countries (Zambia, the DRC and Angola) often shipped via Walvis Bay. It is however noted that potential ML activities mainly occur in consumer jurisdictions in Asia, with less significant financial flows observed locally (usually to pay for poachers and low-end participants in the illicit value chains). While the prominent fishrot case appears to expose potential illicit fishing and laundering by PEPs and their associates, not many other significant industry threats could be identified in the fishing sector. With mining, reviews of the extractive sector also yielded minimal threats or cases with significant financial flows. The rise in frequency of illicit sand mining activities is however worth noting.*

*In aggregating all categories of environmental crime ML risk levels in Namibia, the national risk level of such crimes is rated **Medium High**. No threats from domestic environmental crimes could be linked to TF or PF.*

		RISK RANKING OF VARIOUS ENVIRONMENTAL CRIME TYPES			
		Potential impact upon occurrence			
		Minor	Moderate	Major	Severe
Likelihood of occurrence	Almost Certain	Medium	Wildlife poaching and trafficking		Extreme
	Likely	Low	Medium	Forestry Crimes	Extreme
	Possible	Low	Illegal underground extracting activities		High
	Unlikely	Low	Low	Hazardous waste dumping and trafficking Illegal fishing (IUU)	High

Figure 55: Overall risk assessment outcomes

## 15. Background

The methodology applied in assessing environmental crime risks is similar to the one employed in the primary ML risk assessment, as explained in section 4 of Chapter I. The assessment method is based on the premise that – for threats to occur (or materialize), there are vulnerabilities (within preventative controls) that are exploited by such threats. The risk assessment is premised on assessing the levels of environmental crime threats and relevant control vulnerabilities for each category of crime.

In evaluating the levels of environmental crime threats, efforts are made to establish a typology of the criminal activities in the country and identifying their extent (in terms of occurrence and likelihood) as well as impact (especially financial). As explained above, vulnerability assessments are done by evaluating the effectiveness of current controls (laws, preventive practices, combatting efforts, capacity of preventive authorities etc.) to reduce both the occurrence and impact of threats. Outcomes of vulnerability and threat assessments are aggregated to arrive at risk levels for each type of environmental crime.<sup>471</sup> The overall environmental crime risk assessment outcomes are also incorporated into the aggregated assessment outcomes to establish national risk levels.<sup>472</sup>

While the list of environmental crimes is broad, this exercise is limited to major crimes which have the potential to significantly impact the ML/TF/PF framework. In this regard, financial flows related to such crimes are essential in establishing the potential for ML emanating from such. Illegal possession of environmental products or species, though an offence, is only considered to the extent that such possession is thought to have been for trafficking or dealing purposes. Possession for consumption might not always present ML risks. Environmental crimes are grouped and assessed as per the following main categories:

<b>Categories of environmental crimes</b>	<b>Major sub-categories of crime</b>
<b>Forestry crimes</b>	mainly include illegal logging, harvesting, possession, importing, exporting and dealing in proceeds from such illicit activities etc.
<b>Wildlife crimes</b>	includes poaching and trafficking of wildlife and wildlife products (protected species and products). For this assessment, this is

<sup>471</sup> In terms of the World Bank Group's Environmental Crime Risk Assessment tool.

<sup>472</sup> The aggregated environmental crime vulnerability rating is added to the national vulnerability outcomes. The same is done with the aggregated environmental threat assessment outcome.

	restricted to rhino, elephant and pangolin poaching and trafficking.
<b>Illicit, Unreported and Unregulated fishing activities (IUU)</b>	includes all fishing and related financial dealings associated with such fishing activities
<b>Illegal underground extracting activities</b>	includes illegal sand mining, illegal extracting of and dealing in precious stones, semi-precious stones, raw and processed minerals etc.
<b>Illegal hazardous waste dumping and trafficking</b>	includes soil, air, water pollution for gain. Also speaks to illegal waste dumping, trafficking or pollution, where entities engage in such illegal activities to avoid expenditure which comes with prudent disposal or management of waste.

Table 50: Categories of environmental crimes

Owing to the absence of any links or financial flows associated to TF and PF in the period reviewed, observations herein are limited to ML.

### 15.1 Data and record keeping challenges

Data and information relied on was primarily sourced from investigations, prosecutions and other public sources. As noted in the ML Threat Analysis section (Chapter I, section 4.4) of this report, relevant authorities do not always maintain data in a manner which is helpful to risk assessments of this nature. Equally, there is no consistency in the type and nature of data kept by various authorities (LEAs, government ministries etc.) involved in combatting environmental crimes, to enable comparisons and other considerations consistently.<sup>473</sup> For example, the MEFT indicated that there is no central database or record of all illegal hazardous waste dumping and trafficking incidences in Namibia. A few of the major local authorities are expected to keep records of illegal hazardous waste dumping, trafficking and pollution incidences<sup>474</sup> in their localities but such does not appear to be happening. Threat assessments for this particular offence could thus not be adequately assessed.

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<sup>473</sup> Information such as financial values involved in cases was not maintained from cases reported at NamPol. Offences are not specific enough. For example, the data lists offences simply in terms of the Act contravened and does not specify the type of crime or specific legal provisions contravened. No information on links to potential ML or tax evasion. Some ministries have inadequate records on the nature and type of administrative measures taken to deal with contraventions over the years.

<sup>474</sup> including financial flows related to waste dumping for gains.

The data inadequacy resulted in some gaps in the assessment and thus hampered prudent risk assessment in certain areas. The minimum data and information which was adequate, complete and consistent with the risk assessment methodology was duly considered. To the extent possible, data and information on certain variables from reliable sources (e.g international stakeholders) was considered to fill some of the gaps in information. Interviews with subject matter experts also helped guide considerations where adequate or comprehensive data was not available.

Given these challenges, which have re-occurred in all prior risk assessment activities, the need to ensure a streamlined, comprehensive and consistent data or record keeping system, at national level, to support effective analysis of crime threats is essential.<sup>475</sup>

## 15.2 Threat assessment

In assessing threats, information such as STRs filed, investigations, prosecutions, convictions, MLA information requests, administrative sanctions, links to potential ML, potential tax evasions, financial values observed in cases, seizures etc., guide such considerations. In the reporting period, ML related charges were not always advanced along with charges related to the environmental crime predicate offences. It is therefore not surprising that in such period, the State only has one case in which it succeeded to obtain ML convictions emanating from environmental crimes.<sup>476</sup>

Table 51 below avails a consolidated summary of data<sup>477</sup> on environmental crime prosecutions and convictions. Record of investigations is in Table 9, section 7.8.2. Data on investigations, prosecutions and convictions is not kept in a manner that enables classification into the specific environmental crime categories cited in Table 50 above.<sup>478</sup> This hinders the ability to specifically identify the occurrences and impact of each crime category.

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<sup>475</sup> The development of the Namibian Wildlife Crime Database was initiated in 2019.

<sup>476</sup> Chinese nationals, one of them being a local businessman, attempted to smuggle rhino horns and leopard skins via Hosea Kutako International Airport in March 2014.

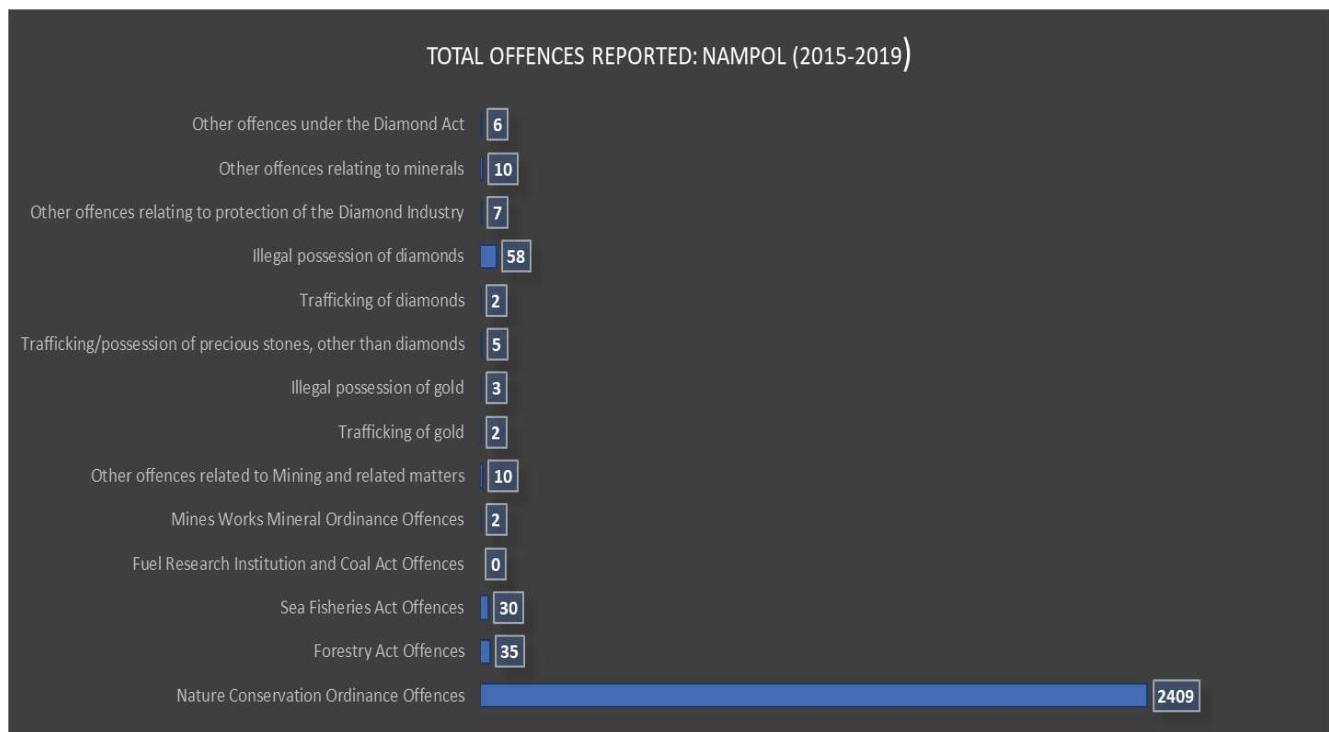
<sup>477</sup> Data on prosecutions and investigations was sourced from the OPG.

<sup>478</sup> Apart from categorisation, involved financial flows are not always known. Crimes such as 'game hunting for the pot' may not necessarily have ML components or financial flows to advance purposes of ML risk assessments. Such crimes are however still included in these data, further reducing the value that the data adds to an ML risk assessment.

	2015	2016	2017	2018	2019
Number of criminal <b>prosecutions</b> for environmental crimes and offenses.	417 <sup>479</sup>	423	561	496	514
Number of criminal <b>convictions</b> (and convicted persons) for environmental crimes and offenses.	198 <sup>480</sup>	215	268 <sup>481</sup>	239	283
Number of cases in which <b>proceeds</b> from environmental crimes were <b>laundered</b> (ML charges advanced, but cases not yet finalised in court).	0	01- case of racketeering	0	02- cases of ML 01- case of racketeering	07- cases of ML

Table 51: Record of prosecutions, convictions and potential laundering cases

The offenses described as contraventions of the Nature Conservation Ordinance No 4 of 1975 (and the Controlled Wildlife Products and Trade Act, Act No 9 of 2008) mainly include the poaching, illegal possession of and dealing in protected species and products (primarily wildlife). In terms of figure 56 below, these types of offences have the highest occurrence or frequency rate nationally.



<sup>479</sup> All these (2015 – 2019) are prosecutions relating to hunting of specially protected game; Illegal possession of Wildlife products; Illegal hunting of protected species, amongst others.

<sup>480</sup> Convicted persons include the following nationalities: Namibians (most convictions), Zambians, Angolans, Chinese, Batswana, Zimbabweans, Russians. Plus 4 more persons convicted for diamond related violations that same year (2015).

<sup>481</sup> Plus 2 more persons convicted for diamond related violations that same year (2017).

Figure 56: Total number of environmental crime offences reported to NamPol

### 15.3 Threat levels of each category of environmental crime

#### 15.3.1 Forestry crimes (FC)

These would be offences which contravene the Forestry Crime Act 12 of 2001. The major crime in this regard is illegal logging or harvesting of timber products. Forestry crimes also include the illegal possession, processing, exporting, importing, supplying, selling, consumption, as well as corruption and fraud linked to Forestry Crimes. Considerations herein are limited to the illicit commercial harvesting of various trees (timber) and excludes other illicit activities with minimal financial proceeds such as harvesting for household wood consumption.

The forests of Namibia occur mainly in the deep Kalahari sands, in the north-central and north-eastern parts of the country and cover less than 10% of Namibian land. Namibia's forests can be described as dry, semi-open to open woodlands (Nott, 2014).<sup>482</sup> The two Kavango regions have the highest wood volumes, amounting to about 34% of Namibia's standing stock of wood. A 2016 study<sup>483</sup> estimates the wood volume for *Kiaat Pterocarpus angolensis (Kiaat)* in the Kavango regions varies between 11 and 19 m<sup>3</sup>/ha. *Kiaat* trees are targeted by illegal loggers since the wood is a valuable timber species but it is light enough that it can be felled and processed using basic equipment and can also be transported more easily than the heavier Zambezi Teak logs.

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<sup>482</sup> A Critical Assessment of the Economic and Environmental Sustainability of the Namibian Indigenous Forest/ Timber Industry, Literature review report, Nott, K., 2014. TRAFFIC East/Southern Africa (TESA) project (ESA164.00). [http://the-eis.com/elibrary/sites/default/files/downloads/literature/A%20critical%20assessment%20of%20the%20economic%20and%20environmental%20sustainability%20of%20the%20Namibian%20indigenous%20forest\\_timber%20industry.pdf](http://the-eis.com/elibrary/sites/default/files/downloads/literature/A%20critical%20assessment%20of%20the%20economic%20and%20environmental%20sustainability%20of%20the%20Namibian%20indigenous%20forest_timber%20industry.pdf)

<sup>483</sup> A critical assessment of the economic and environmental sustainability of the Namibian indigenous forest/timber industry with reference to Zambia and Angola Nott, K., Nott A., Newton D. 2021. TRAFFIC/SASSCAL. file:///F:/NRA%20Received%20Docs/Env%20Crimes/Env%20crimes%20draft%20report/Great%20report%20namibia-timber-2020-final-vweb.pdf

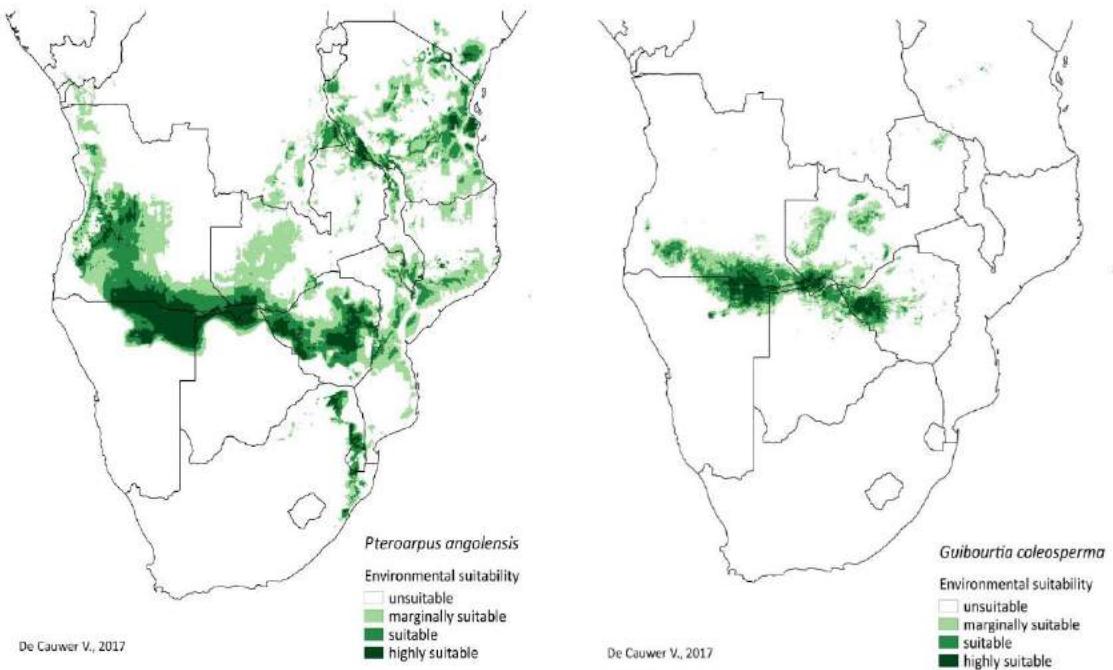


Figure 57: Distribution of *Kiaat* *P. angolensis* (left) and African Rosewood *G. coleosperma* (right)<sup>484</sup>

Financial flows related to timber harvests (payments for the timber and not consumer level) are thus said to be significantly higher in the north and north-eastern regions where traffickers usually buy such from dealers (or harvesters such as farm owners) and ship such to Asia through Walvis Bay. Actual financial data on such trade could not be obtained.

#### a. Minimal data on local timber harvests and trafficking

The first forest resource assessments were done over a two-year period (1997–1998) for two areas in Namibia. Such assessment found that the illegal logging in 1997 was estimated at 21,929 m<sup>3</sup>.<sup>485</sup> The assessment could not find more recent resource counts to determine a more recent estimate of illegal logging activities.

Availability of statistics on production, consumption and trade of wood products in Namibia is scanty and to a large extent non-existent.<sup>486</sup> No reliable data was availed to indicate the total

<sup>484</sup> A Critical Assessment of the Economic and Environmental Sustainability of the Namibian Indigenous Forest/ Timber Industry, Literature review report, Nott, K., 2014. TRAFFIC East/Southern Africa (TESA) project (ESA164.00).

<sup>485</sup> A critical assessment of the economic and environmental sustainability of the Namibian indigenous forest/timber industry with reference to Zambia and Angola Nott, K., Nott A., Newton D. 2021. TRAFFIC/SASSCAL.

<sup>486</sup> Chakanga, M. (2003). Timber trade and timber industries in Namibia. Ministry of Environment and Tourism, Directorate of Forestry. Unpublished report. In Mendelsohn, J., el Obeid, S. (2005), Forests and woodlands of Namibia. Research and Information Services of Namibia. Windhoek, Namibia., also indicates that no data for the amount of timber harvested in Namibia since 1990 is available.

amount of wood removed or the total volume of wood for which permits have been issued. Other similar studies have also encountered similar data challenges. In the FAO (2010) Country Report on Namibia, it is reflected that no detailed data is available on the amount of wood removed.<sup>487</sup> Thus, minimal reliable data is at hand to shed light on authorised timber harvests and estimated volumes (and values) of unauthorised timber harvests over the years. This hinders the risk assessment's ability to effectively estimate illicit financial flows, related to timber harvesting and their impact.

*b. Local timber harvesting: Historical perspective*

Information at hand suggests that the colonial policy of forest exploitation started in the 1930s in the Tsumeb and Grootfontein areas when Namibia was governed by the then South African government. For example, in 1926, about 42,000 m<sup>3</sup> were harvested.<sup>488</sup> The first permit to cut 1,000 trees in Kavango is said to have been issued in 1933 and it is thought that during this time there was already illegal harvesting of timber taking place. By 1972, 28,000 m<sup>3</sup> of timber were cut while it is said that from the early 1970s to the late 1980s, the liberation struggle activities, especially in north and north-eastern Namibia prevented the implementation of forestry development activities.<sup>489</sup> By the early 1990s, timber harvesting had declined. In 1990, 8,850 m<sup>3</sup> of timber were processed by the three sawmills in Katima Mulilo, Rundu and Tsumkwe. These three sawmills remained operational until 2003.

*c. Potential financial value of timber harvesting in Namibia*

The completion of the forest resource inventory enabled a set of preliminary forest resource accounts to be developed for the whole country. The total woody volume for Namibia in 2004 was estimated to be 257 million m<sup>3</sup> with a value of forest use in 2014 estimated at around NAD 1.2 billion and a contribution of 3% to GDP. Namibia's standing forest assets were estimated to have a value of NAD 19 billion in 2004/05.<sup>490</sup>

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<sup>487</sup> FAO (2010). Global Forest Resources Assessment 2010: Country Report Namibia. Rome, Italy. 41 pp.

<sup>488</sup> A Critical Assessment of the Economic and Environmental Sustainability of the Namibian Indigenous Forest/ Timber Industry, Literature review report, Nott, K., 2014. TRAFFIC. East/Southern Africa (TESA) project (ESA164.00).

<sup>489</sup> Figures of total amounts harvested during the colonial period are not available.

<sup>490</sup> A Critical Assessment of the Economic and Environmental Sustainability of the Namibian Indigenous Forest/ Timber Industry, Literature review report, Nott, K., 2014. TRAFFIC. East/Southern Africa (TESA) project (ESA164.00).

#### *d. Namibia: Conduit for timber transportation*

Not all timber seen on trucks locally, or confiscated, seized by LEAs or loaded at the harbour in Walvis Bay is sourced from local forests in Namibia. Namibia is used as a conduit for timber harvested in Angola, the Democratic Republic of Congo (DRC) and Zambia. Most of the timber being exported through the Walvis Bay harbour comes from neighbouring countries such as Angola, Zambia and the DRC.<sup>491</sup> Studies show that from Zambia, 6,081 m<sup>3</sup> of *Kiaat*, 7,336 m<sup>3</sup> of *Zambezi Teak* and 19,247 m<sup>3</sup> of African Rosewood was exported via Namibia between 2010 and 2016. From Angola, 20,047 m<sup>3</sup> of *Kiaat*, 1,131 m<sup>3</sup> of *Zambezi Teak* and 282 m<sup>3</sup> of African Rosewood was exported via Namibia between 2010 and 2016. In total, 32,664 m<sup>3</sup> of Zambian timber and 21,460 m<sup>3</sup> of Angolan timber was exported via Namibia during this period. During 2015 and 2016, a total of 29,190 m<sup>3</sup> of *Mukula* mostly from the DRC, was transported through Namibia for export to China. These quantities are thought to be conservative estimates considering the extent of illegal consignments apprehended at roadblocks within the country.

Local LEAs indicate that generally, when they review the permits accompanying such timber movements (at roadblocks or customs), they often find that permits or supporting documents are irregular. Many a times, truck drivers carry significant cash that they attempt to bribe officers with. A significant challenge in combatting is the absence of a reliable mechanism (which should be always accessible) to aid verification of legality or authenticity of permits and other supporting documents presented by truck drivers moving timber.

In April 2017, the Government of Zambia suspended the export of logs of any timber species, including *Mukula*. The quantities of in-transit timber through Namibia should thus have decreased drastically. No studies could be obtained to support such assumption or reflect potential changes in timber shipment volumes after such suspension.

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<sup>491</sup> A critical assessment of the economic and environmental sustainability of the Namibian indigenous forest/timber industry with reference to Zambia and Angola Nott, K., Nott A., Newton D. 2021. TRAFFIC/SASSCAL. *The original focus of the project was on the timber trade within Namibia (*Kiaat Pterocarpus angolensis* in particular) but it became evident early in the study that the cross-border timber trade and in-transit timber formed a significant part of the Namibian profile.*

e. *Market for timber*

Most of Namibia's commercial timber harvests are not for local consumption as Namibia is a net importer of industrial wood and wood products. Due to the limited timber resources in Namibia, all timber used to build and furnish modern houses is imported, mostly from South Africa and is either pine or processed chipboard. Both of these timber products are cheaper than indigenously sourced timber. In 2003, Namibia imported 25,210 tons of wood products.<sup>492</sup>

China is the most significant export market for indigenous natural hardwood timber. Although overall demand for timber from African sources is increasing, the dynamics of China's timber requirements are very much driven by market conditions and therefore fluctuates from year to year. There is congruence between illegal timber and illegal wildlife trade in terms of process, geography and solutions (Nott., et al, 2021).

In 2014, China's traded forest products with Africa, that were valued at about USD 2.9 billion represented a large increase from previous years. Although this trade represented only 13.6% of China's total tropical hardwood logs and lumber requirements, it not only comprised a large proportion of Africa's total timber production but also reflects an increasing demand for timber products from African countries, such as Mozambique and the DRC, to supply China's expanding tertiary processing and export industries. Zhang Ke and Shen Wei (2017) also notes that the trade is unsustainable and impacts negatively on local ecosystems.<sup>493</sup>

f. *Legitimate timber harvests*

In the first two months of 2019, the MAWF indicated that 75,000 tonnes of timber were exported from Namibia. Given that timber is sold at an average price of NAD 5,000.00 per cubic metre, it is fair to estimate that the approximate value of 75,000 tonnes may be over NAD 93.7 million.<sup>494</sup> In May 2019, a joint report of the MET<sup>495</sup> and the MAWF revealed that

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<sup>492</sup> A critical assessment of the economic and environmental sustainability of the Namibian indigenous forest/timber industry with reference to Zambia and Angola Nott, K., Nott A., Newton D. 2021. TRAFFIC/SASSCAL

<sup>493</sup> ZHANG Ke and SHEN Wei (2017). Tracking the Mozambican Tropical Hardwood Trade in China. Insert reference – Bulletin?

<sup>494</sup> New Era Newspaper, 17 June 2019. N\$94m worth of timber exported in first two months of 2019... No policy for timber harvesters to plant trees. <https://neweralive.na/posts/n94m-worth-of-timber-exported-in-first-two-months-of-2019-no-policy-for-timber-harvesters-to-plant-trees>

<sup>495</sup> Refers to the Ministry of Environment and Tourism prior to Forestry directorate being annexed to the Ministry a few years ago.

10,000 blocks of hardwood from northern Namibia had been exported to China and Vietnam since November 2018. The report revealed the impact of illegal logging in the affected regions, including information on the smuggling of wildlife products to China, the possible extinction of some tree species, and the disruption and destruction of wildlife habitats.<sup>496</sup> Similarly, it was also revealed that aside from issuing permits, the MAWF conducted few inspections and monitoring was close to non-existent. The lack of resources, especially vehicles, was said to be one of the main reasons for failure to duly monitor logging activities.

*g. Prevalence and impact of losses from forestry crimes*

<b>Environmental crime offences/cases reported: NamPol</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total</b>
Forestry Act Offences	4	6	12	8	5	35

Table 52: Reported contraventions of the Forestry Act<sup>497</sup>

Although Table 52 above lists the number of forestry crime offences over the years, the assessment could not find data that reliably estimates the illicit financial values or proceeds associated with such. A few sporadic data sources revealed some information but not comprehensive enough.<sup>498</sup> The risk rating was thus reached based on discussions herein.

Continently, there is a general view that Africa's forestry sector is under-regulated, with a leading United Kingdom think tank, *Chatham House*, estimating that in most forested countries in Africa, about 80% to 100% of all tree harvests could be illegal.<sup>499</sup>

The MET and MAWF<sup>500</sup> indicated that timber exports were only recorded from 22 trucks in 2015 but had reached 208 truckloads in just the two-month period of January to February 2019. This is despite a ban on timber harvesting in place since November 2018. The Ministries, in their joint report also recommended that the moratorium on commercial timber harvesting "should be continued, indefinitely". It was estimated that by then, Namibia may have lost around NAD 24 million in "cheap" timber exports per year.<sup>501</sup>

<sup>496</sup> Source: <https://conservationaction.co.za/resources/reports/depleting-natural-capital/>

<sup>497</sup> Cases reported to the Namibian Police.

<sup>498</sup> No one source has adequate and comprehensive data. A few studies or reports would measure harvests in cubic meters while others would measure in truckloads etc. Some would have data on forest harvests without financial values, while the financial values cited by others could not be corroborated sufficiently.

<sup>499</sup> The human cost of Africa's illegal logging industry, July 2018. <https://enactafrica.org/enact-observer/the-human-cost-of-africas-illegal-logging-industry>

<sup>500</sup> Source: <https://conservationaction.co.za/resources/reports/depleting-natural-capital/>

<sup>501</sup> Source: <https://conservationaction.co.za/resources/reports/depleting-natural-capital/>

In December 2018, observations by the Legal Assistance Centre (LAC) and forensic investigation specialists suggest that Namibia had lost an average of 72,900 hectares of forest (woodland) per year between 1990 and 2000, amounting to between 700,000 and 800,000 of woodland loss over the 10 years. The loss escalated after that because in the space of five years, between 2000 and 2005, Namibia had lost over 1.1 million hectares of forest cover.<sup>502</sup>

Amongst several sustainability considerations noted, there is no programme in place that compels timber harvesting persons to plant trees to replace what they have harvested, thereby bringing into question the sustainability of the timber industry.

Appendix 2 of this report avails a list of some of the most common notable trends in forestry crimes.

Having regard to all of the above, the assessment rated forestry crimes, as predicate offences to ML as follows:

<b>Category of Environmental Crime/Offence</b>	<b>Likelihood of Crime Occuring</b>	<b>Impact of Crime</b>	<b>Overall Threat</b>
Forestry Crimes	Likely	Major	High

Table 53: Forestry crimes threat ratings

### **15.3.2 Wildlife poaching and trafficking**

These crimes include poaching, the use of prohibited hunting equipment, taking of restricted prey, violation of seasonal restrictions, illegal possession of wildlife, illegal processing of wildlife, illegal export, illegal import, illicit supply and sale, illegal consumption, corruption linked to illegal wildlife trade (IWT) and fraud linked to IWT. With the exception of one case of attempted trafficking of wildlife products in March 2014, there has not been other ML or

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<sup>502</sup> Source: <https://conservationaction.co.za/resources/reports/depleting-natural-capital/>  
415

similar illicit financial flow related charges advanced in courts emanating from environmental crimes in the five-year period of 2015 to 2019 (see Tables 63 and 67).<sup>503</sup>

### 15.3.2.1 Targeted species

The assessment herein is limited to the poaching of high value species such as rhinos for their horns, elephants for their tusks and pangolins (often for their skin and meat). These are considered some of the major protected species and products. STR information within the domains of the FIC also suggest that some of the most significant financial values in wildlife crimes are linked to rhinos, elephants and pangolins (and their products). Rhinos currently represent the most valuable and sought-after wildlife crime target in Namibia.<sup>504</sup> Pangolin on the other hand is by far the most-targeted high-value species. They are often trafficked alive. Figure 58 below shows the ratio of wildlife crime cases registered with the Namibian Police in 2019<sup>505</sup>, with pangolin related offences appearing most significant amongst the high value protected species. Rhino<sup>506</sup> and elephant poaching or horn trafficking cases make up a significant percentage of cases registered, amongst high value protected species.<sup>507</sup> LEAs indicated that they rarely link a seizure of horns or ivory to a particular carcass. Antelope poaching, though the highest in terms of occurrence (as per Figure 58) is mainly “for the pot” and include a great variety of species, from dik-dik to eland.<sup>508</sup> These poaching activities are usually not associated with significant ML activities.

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<sup>503</sup> Except for the one case in which four Chinese nationals attempted to smuggle 14 rhino horns and a leopard skin through Hosea Kutako International Airport in March 2014, with convictions in that case being finalised in 2016. This is the only environmental crime case in the reporting period wherein POCA or ML related charges were advanced and successfully prosecuted to gain convictions.

<sup>504</sup> Combating Wildlife Crime in Namibia Annual Report, 2019.

<sup>505</sup> LEAs indicate that such trend has not generally changed much in other years.

<sup>506</sup> both black and white rhinos species combined.

<sup>507</sup> many of these cases are pre-emptive cases wherein criminals were intercepted by police prior to execution. Many a times, animals could have thus been saved with such pre-emptive measures.

<sup>508</sup> Combating Wildlife Crime in Namibia Annual Report, 2019.

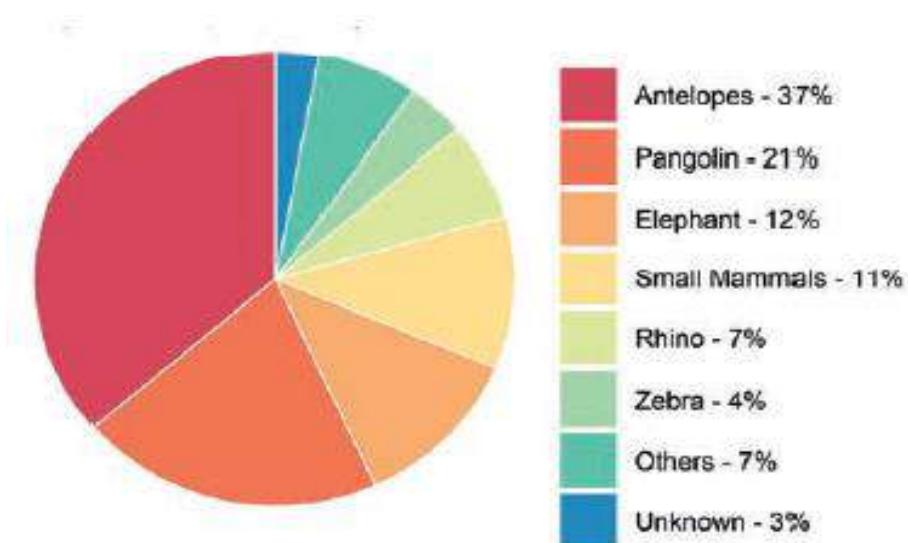


Figure 58: Ratios of targeted species: for all registered cases recorded in 2019<sup>509</sup>

### 15.3.2.2 Population of African elephants, rhinos and pangolins

The population of African rhinos is much less than that of African elephants. Also, rhinos are far more concentrated geographically, compared to elephants. For every remaining African rhino (about 25,000 of them), there are about 20 African elephants, and while it takes five countries to comprise three-quarters of the remaining elephants, 75 per cent of the remaining rhinos are found in one country only (South Africa).<sup>510</sup> This includes 18,067 white rhinos (86% of which are found in South Africa) and 5,495 black rhinos (37% of which are found in South Africa and 34% in Namibia) as of 2017. Figure 59 below shows the estimated number of African elephants in 2006 and in 2015 while figure 60 speaks to the rhino population.

<sup>509</sup> Combatting Wildlife Crime in Namibia Annual Report, 2019. Ratios are calculated using the number of cases registered per category, not the number of individual animals involved.

<sup>510</sup> South Africa has been so successful in breeding rhinos that it has managed to export 538 live rhinos since 2014, feeding growing wild and captive populations in other countries. Drought and poaching have caused South Africa's rhino population to decline since 2012, however, driving down the overall continental population.

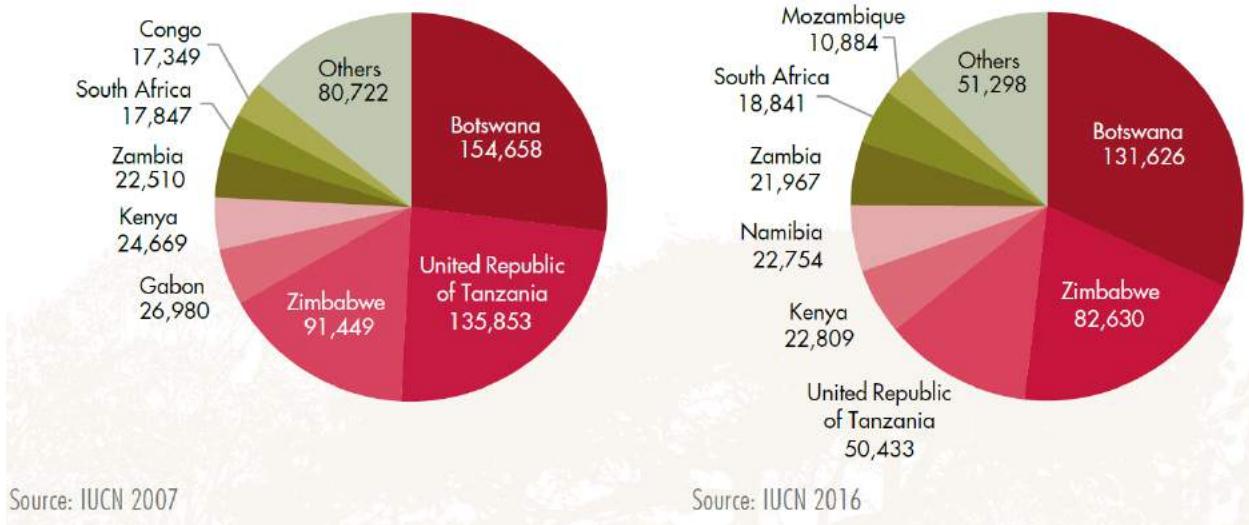


Figure 59 below shows the estimated number of African elephants in 2006 and in 2015.

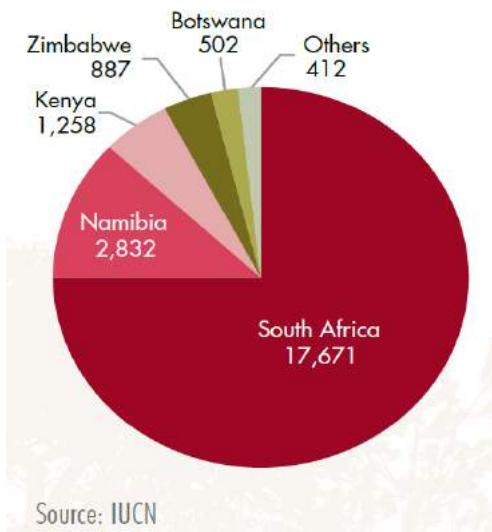


Figure 60: Estimated number of rhinos by country in 2017

Pangolins are seldom seen in the wild and are very hard to raise in captivity but remain the most trafficked wild animal in Namibia and the world.<sup>511</sup> No studies reliably estimate the population of pangolins. It is thus unclear how many pangolins are left in the wild.<sup>512</sup> What is however known is that there are eight species of pangolins worldwide. Four of such are found in Asia, particularly in China and other countries such as Sudan, India and the Philippines. The four African species being the ground pangolin, giant pangolin, white-bellied and black-

<sup>511</sup> African Wildlife Foundation. <https://www.awf.org/wildlife-conservation/pangolin>; Wild Aid, <https://wildaid.org/programs/pangolins/> and Combatting Wildlife Crime in Namibia Annual Report, 2019.

<sup>512</sup> Reuters, September 2016. Don't catch them all, warn Pangolin protectionists. <https://www.reuters.com/article/us-wildlife-cites-pangolin-idUSKCN11L1PU>. Ingram D.J, 2019 (Phys.Org). <https://phys.org/news/2019-02-african-pangolins-meat-yearwhy.html>

bellied are listed as vulnerable while the Asian pangolins are listed by the IUCN<sup>513</sup> as critically endangered. All species face declining populations because of illegal trade. Continentally, pangolins are dispersed throughout Southern, Central and East Africa, as per the map below (figure 61). In 2016, CITES voted to ban the commercial trade in pangolins.



Figure 61: Distribution of Pangolins

#### 15.3.2.3 Trends in poaching and IWT

##### a. Cross border nature of wildlife crimes

Wildlife crimes are cross border in nature and are hardly restricted to a single jurisdiction. Wildlife products, as seen in many countries, including Namibia, are trafficked through various jurisdictions. This therefore requires some consideration of the cross-border nature of such crimes.

LEAs explained that wildlife crime offenders can be segregated in two categories, with one being the predicate offence of animal poaching, including dehorning, while the other includes

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<sup>513</sup> International Union for Conservation of Nature.

trafficking and dealing (buying and selling) in wildlife products. At times, when locals and citizens from other countries are intercepted in their trafficking of prohibited products, it is usually to move products to buyers or agents who represent syndicates along the criminal value chain. A study by TRAFFIC<sup>514</sup> on wildlife crimes in Namibia found that most offenders were non-Namibian, with 25 foreigners convicted from a sample of 45.<sup>515</sup> The most were Zambians (16) followed by Angolans (5). Namibian offenders from the sample were 20 (Figure 62 below). Namibia's porous borders<sup>516</sup> with Angola, Botswana, Zambia and Zimbabwe are often exploited in wildlife crimes. In such study, Zambia and China were also revealed as notable destinations of wildlife products intercepted by LEAs.

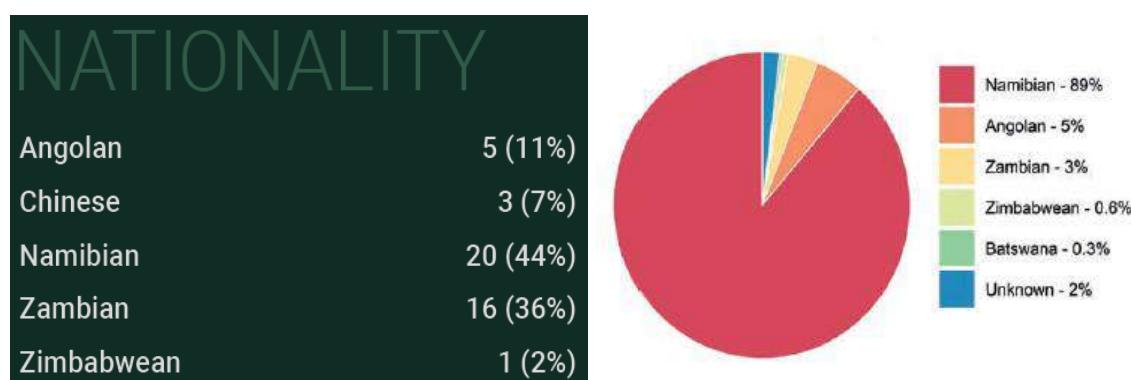


Figure 62: Nationalities of sampled wildlife crime convicts<sup>517</sup>

In 2019 for example, only 12 elephants are estimated to have been poached in Namibia while ivory seizures and LEA interceptions of ivory trafficking could suggest higher poaching volumes. This again demonstrates that the amount of ivory seized locally does not necessarily imply that such emanate from elephants poached in Namibia. Significant ivory trafficking activities intercepted by LEAs shows that Namibia is often used as a conduit or a destination wherein foreign ivory is sold to local syndicates, who often enable cross border shipment thereof.

#### b. *Regional distribution of wildlife crimes in Namibia*

<sup>514</sup> Prinsloo, D., Riley-Smith, S., Newton, D. (2021). Trading Years for Wildlife: An investigation into wildlife crime from the perspectives of offenders in Namibia. Cambridge, UK. Note however that this study was limited to a sample size of 45 wildlife crime convicted persons across various correctional facilities nationwide.

<sup>515</sup> Out of 80 persons who were imprisoned for these crimes at this time.

<sup>516</sup> Absence of geographical/natural barriers along border.

<sup>517</sup> Figure on the left was sourced from Prinsloo, et al. (2021) and figure on the right from Combating Wildlife Crime in Namibia Annual Report, 2019. With the latter, in some cases, the nationality of a suspect has not yet been entered into the database and is thus listed as unknown. This data is made of records of arrested persons.

The map<sup>518</sup> in figure 63 below shows the total number of wildlife crime cases registered during 2019, related to any species (or wildlife crime charges). The highest incidence of wildlife crimes is in the central, eastern and north-eastern parts of Namibia,<sup>519</sup> with the highest number of incidents being recorded in the Otjozondjupa region. The relatively lower wildlife densities and fewer high-value species in southern Namibia explain the low prevalence rate of wildlife crimes in such areas.

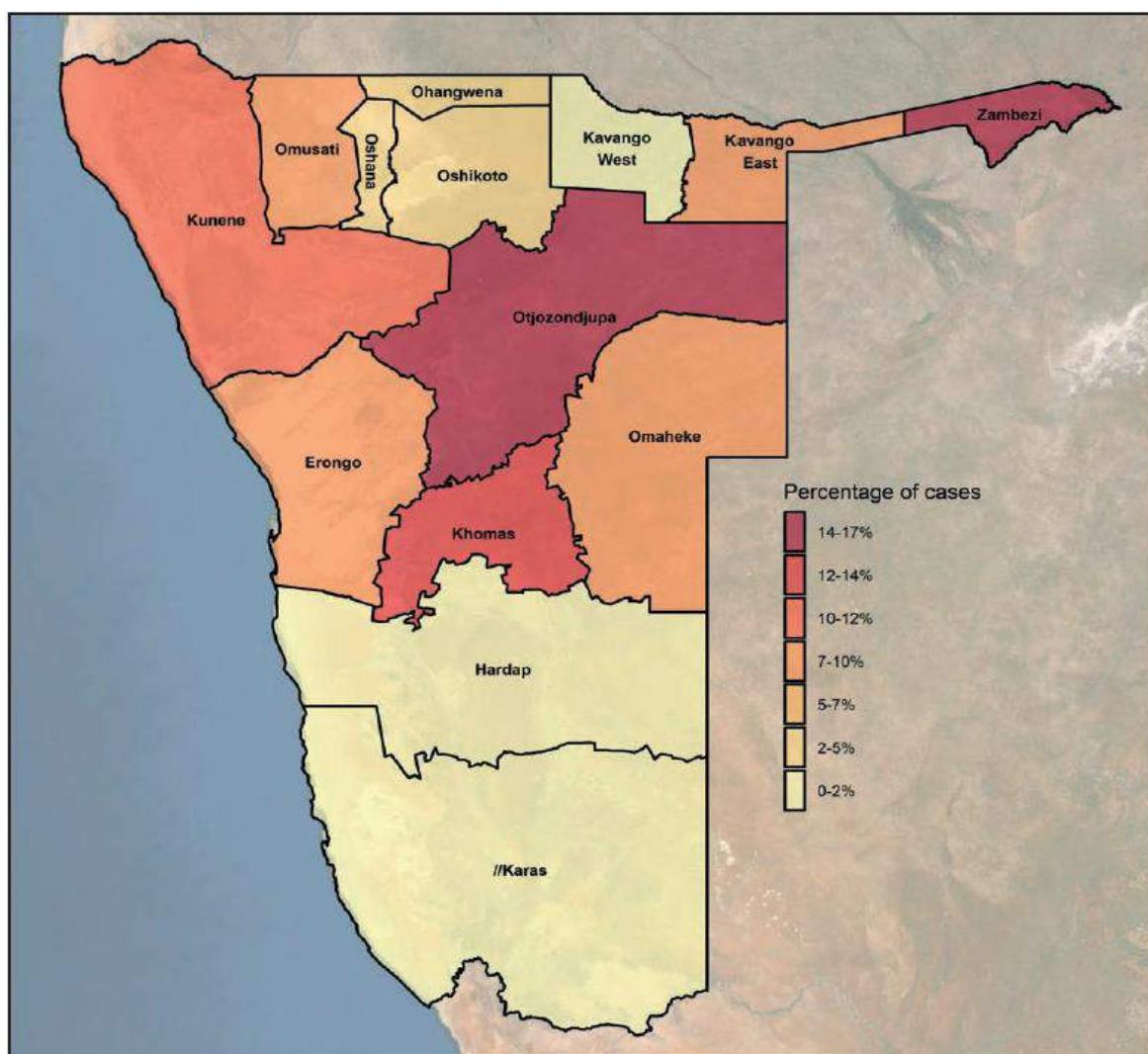


Figure 63: Countrywide distribution of all wildlife crime cases registered during 2019, related to any species or charge.

<sup>518</sup> The map indicates the regions in which cases were registered, not necessarily where the crime was committed.

<sup>519</sup> Combating Wildlife Crime in Namibia Annual Report, 2019. Cases are generally registered at the police station nearest to the place of arrest, which may be in another region than where an incident occurred.

It can be concluded that regional proximity to areas with protected species such as conservancies appear to have the highest number of wildlife crimes reported. All other factors being equal, potential ML activities associated with wildlife crimes (especially IWT), could be higher in the central, eastern and north-eastern parts of Namibia. The north-western region of Kunene, perhaps owing to its proximity to the Etosha National Park, amongst others, enhances its risk exposure to potential ML activities.

### c. Overall decline in rhino and elephant poaching activities

Internationally, recent observations suggest a decline in poaching of both elephants and rhinos (see figure 64 below).<sup>520</sup> Consumer markets also tend to show a decline in such periods. For ivory, a downward trend since 2011 can be seen in the best available indicators of poaching, smuggling and price. A similar, but more recent trend can be seen with rhino poaching and prices, although seizures of rhino horns have continuously risen in recent years. A 2019 surge in very large seizures of both commodities may be related to the unloading of stocks in response to declining prices.<sup>521</sup>

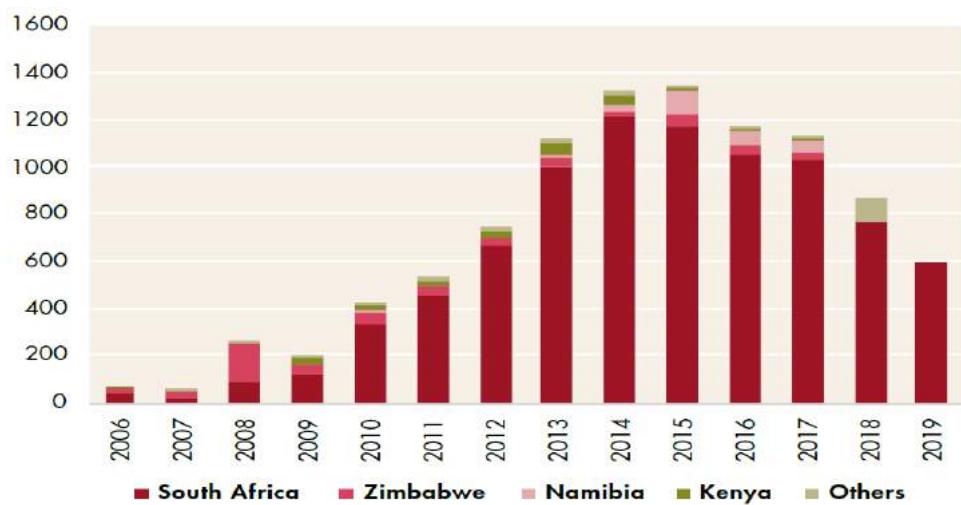


Figure 64: Number of poaching incidents in Africa, 2006-2019

Domestically, there has been an overall reduction in the estimated number of rhinos poached, as per carcasses discovered (see figure 65 below), since 2015. While there may be

<sup>520</sup> World Wildlife Crime Report 2020, file:///F:/NRA%20Received%20Docs/Env%20Crimes/Env%20crimes%20draft%20report/WWLC20\_Chapter\_3\_Elephant\_and\_Rhino.pdf  
<sup>521</sup> World Wildlife Crime Report 2020.

undiscovered carcasses, it is believed that pre-emptive arrests<sup>522</sup> and other improvements in law enforcement have led to a general reduction in rhino poaching activities in Namibia, in recent years.

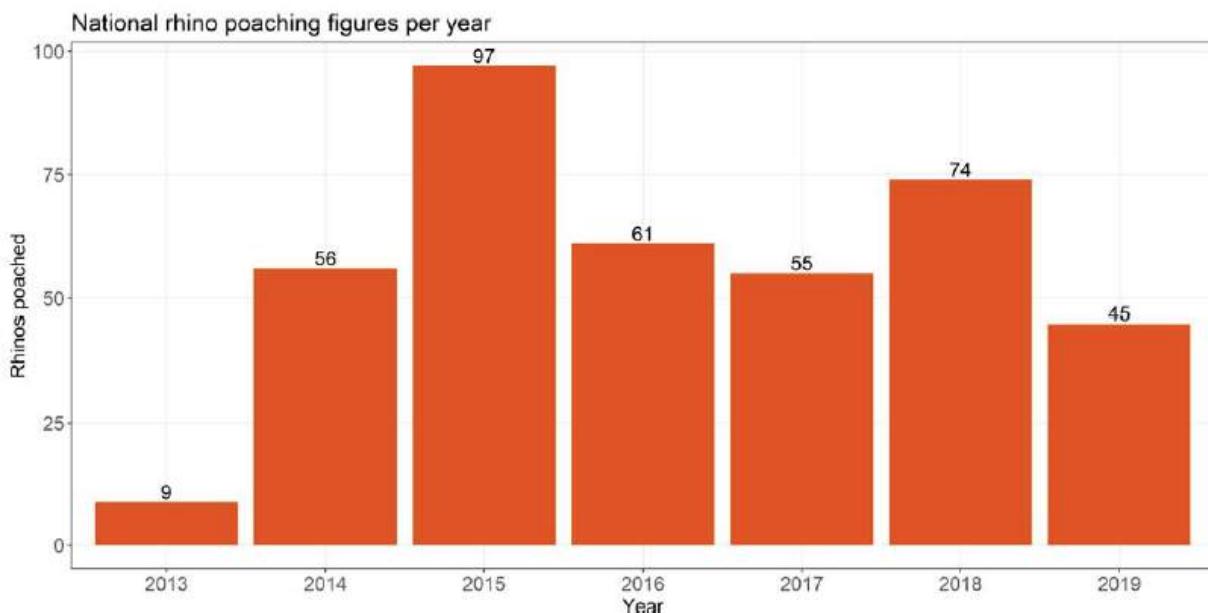
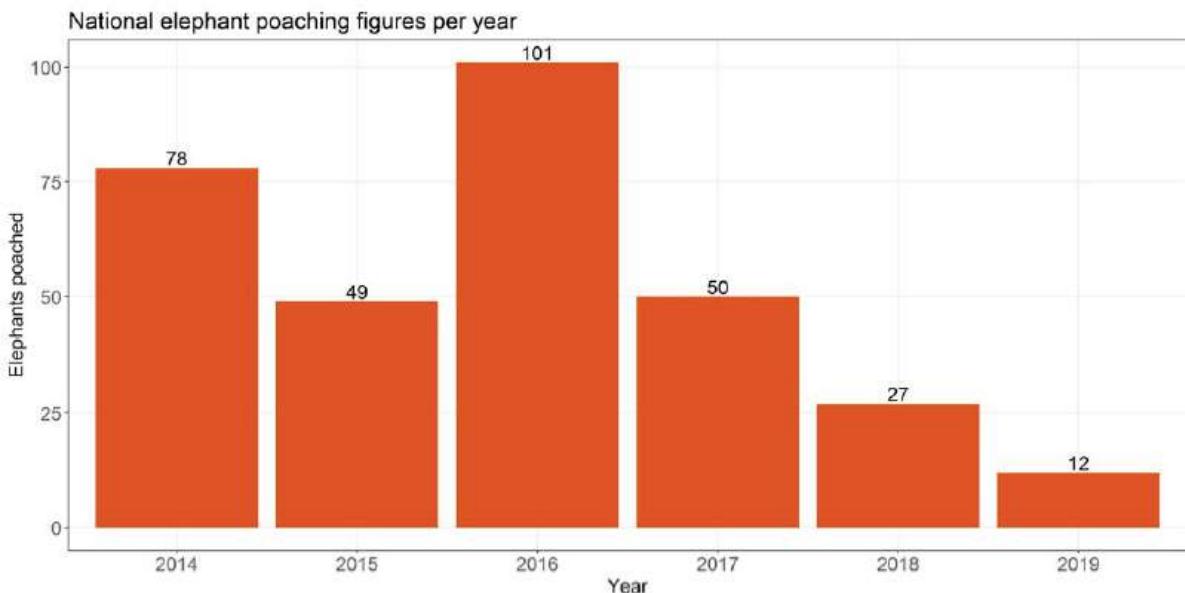


Figure 65: Estimates of poached rhinos in Namibia, as per discovered carcasses (2013-2019)

Figure 66 below also suggests a notable decline in the number of poached elephants in Namibia, as per discovered carcasses since 2014.



<sup>522</sup> Pre-emptive arrests are those arrests where poachers are arrested while planning or attempting to poach a rhino, but have not yet killed a rhino. Pre-emptive arrests made up close to 62% of all arrests related to rhino during 2019. Suspects in pre-emptive arrests are charged with conspiracy to poach rhino (also known as intent to poach).

Figure 66: Estimates of poached elephants in Namibia, as per discovered carcasses (2014-2019)

d. *Pangolin poaching and trafficking*

China appears to be one of the largest consumers of pangolin. Although pangolins are a protected species in China<sup>523</sup>, there is a thriving black market for pangolin meat and scales. The scales are in high demand for use in traditional Chinese medicine. People believe the scales cure arthritis and cancer, promote breast-feeding for lactating mothers, improve poor circulation, amongst others.<sup>524</sup> In Africa, pangolin is mainly poached for meat consumption.

There are varying observations around the number of pangolins poached globally. The African Wildlife Foundation indicate that poachers kill as many as 2.7 million African pangolins every year.<sup>525</sup> This is overly high when compared to the WWF's estimation that more than 1 million pangolins were trafficked in a decade, thus averaging around 100,000 poaching incidents annually.<sup>526</sup> Wild Aid<sup>527</sup> on the other hand suggests that up to 200,000 pangolins are taken from the wild every year across Africa and Asia.<sup>528</sup> The IUCN SSC Pangolin Specialist Group estimated that more than 500,000 pangolins have been trafficked globally between October 2016 and August 2019,<sup>529</sup> a statistic used at the CITES CoP18.

In Namibia, arrests related to pangolin trafficking have increased by about 33% in 2019, while seizures have increased by about 43%.<sup>530</sup> Combatting authorities are of the view that the sharp increase in pangolin trafficking in recent years is a response to the growing international trade or demand. Authorities also opine that an IWT awareness and reward scheme implemented in recent years has been effective in raising awareness of pangolin trafficking in Namibia and has facilitated a number of arrests. Live pangolins make up close to 40% of all pangolins seized in Namibia,<sup>531</sup> whereas, most dead pangolins are seized as dried pangolin skins. Only a small number of complete pangolin carcasses have been seized. In

<sup>523</sup> One of the largest consuming market of Pangolins, along with countries such as Vietnam and Cambodia.

<sup>524</sup> Conciatore, J. 2019. <https://www.awf.org/blog/27-million-pangolins-are-poached-every-year-scales-and-meat>

<sup>525</sup> Conciatore, J. 2019.

<sup>526</sup> though this number may be conservative given the volume of recent pangolin scale seizures. Source: WWF. <https://www.worldwildlife.org/stories/the-fight-to-stop-pangolin-extinction>

<sup>527</sup> Wild Aid, <https://wildaid.org/programs/pangolins/>

<sup>528</sup> Position similar to the estimation that 195,000 pangolins have been trafficked in 2019 for their scales alone by Grein, G. 2020. <https://www.worldwildlife.org/stories/the-fight-to-stop-pangolin-extinction>.

<sup>529</sup> Between the CITES Conference of Parties (COP) CoP17 and CoP18. Parker, K. August 2019. <https://www.pangolinsg.org/2019/08/28/world-governments-re-affirm-commitments-to-pangolins-at-cites-cop18/>

<sup>530</sup> Combating Wildlife Crime in Namibia Annual Report, 2019.

<sup>531</sup> Live pangolins that have been seized are rehabilitated and released back into the wild at secure sites

2018 and 2019, LEAs seized 25 and 49 live pangolins respectively. This is lower than 61 and 74 dead pangolins seized in the years 2018 and 2019 respectively. Figure 67 below shows the number of live pangolins seized in 2018 and 2019.

During periods of extreme drought, pangolins become increasingly day-active, leading to unusually high numbers of pangolin sightings and incorrect assumptions regarding their abundance. This may also lead to increases in incidental<sup>532</sup> pangolin poaching.

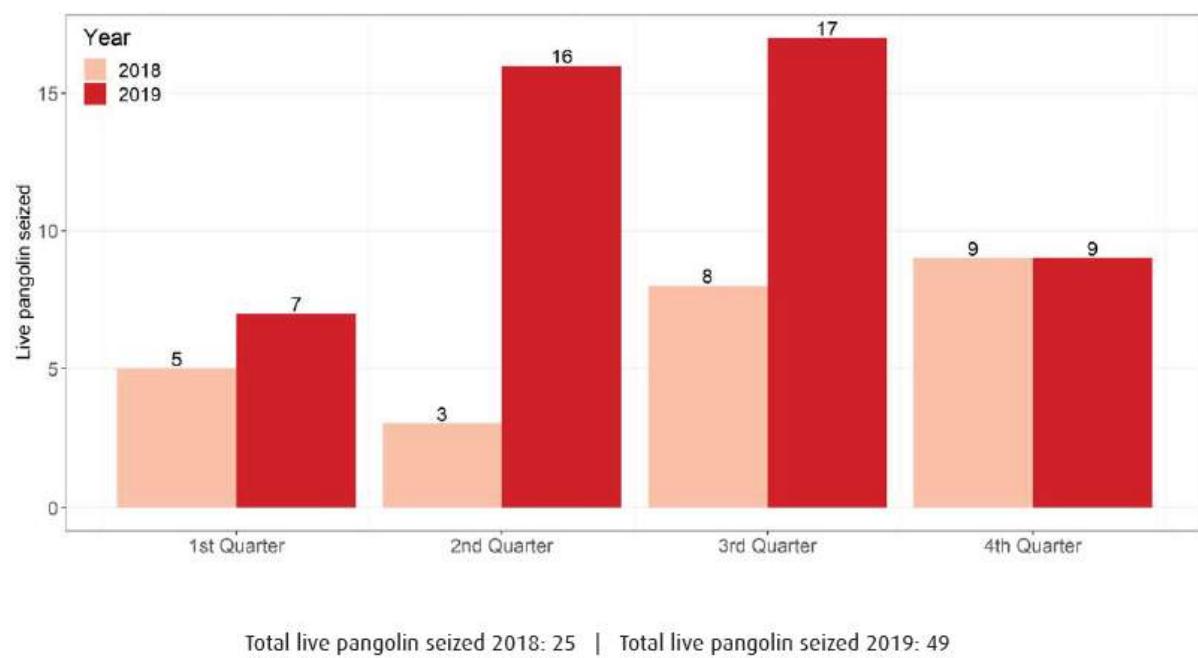


Figure 67: Live pangolin seized by Namibian authorities

#### 15.3.2.4 Associated laundering and financial flows

Measuring the impacts of environmental crimes in areas such as conservation, food security, tourism, etc., is documented in various other studies. The ML/TF/PF risk assessment focuses on financial flows related to such crimes, primarily the laundering of proceeds from IWT in consumer jurisdictions. All studies at hand suggest that significant financial flows occur in consumer jurisdictions. The money usually paid to poachers or syndicates involved at ground level (for the poaching, dehorning, scaling, local trafficking of products from the wild to international traffickers) is insignificant and negligible (see figure 68 below) when compared

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<sup>532</sup> Said to be unplanned poaching. Poaching which is undertaken because the opportunity arises with the species coming in sight.

to prices paid in consumer countries.<sup>533</sup> Records of MLA engagements with different jurisdictions reflect only three wildlife crime related engagements. All such three information requests were sent to Hong Kong authorities.

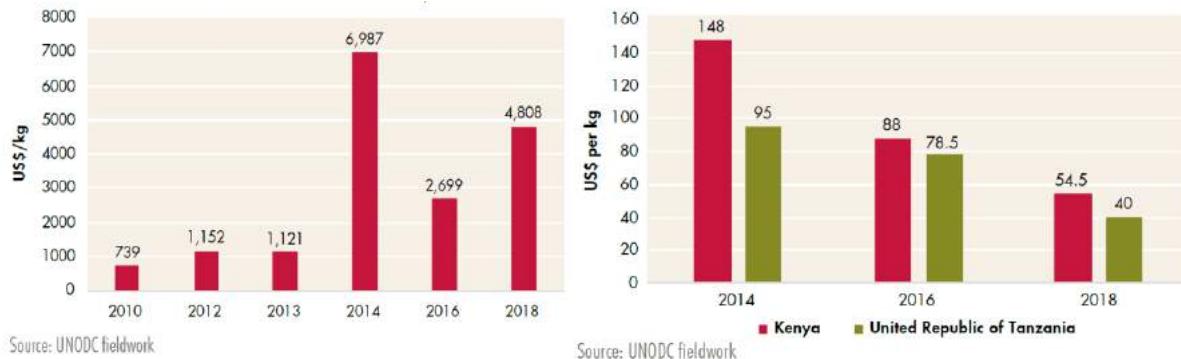


Figure 68: On the left: prices paid for rhino horns to poachers.<sup>534</sup> On the right, prices paid for elephant ivory (to poachers).<sup>535</sup>

Environmental crimes have the potential to reverse socio-economic gains from conservancies. Namibia has 86 conservancies registered by the MEFT, covering around 20% of the country and more than 40% of the country is under some degree of conservation management.<sup>536</sup> The widespread use of community conservancies in Namibia, where communities take responsibility for the conservation and management of natural resources,<sup>537</sup> has mostly proved to be a successful approach. Communities within these conservancies receive many benefits such as employment and empowerment in rural areas. The surge in tourism and consumptive wildlife use (conservation hunting) has led to a substantial increase in the total cash income and in-kind benefits generated in conservancies from less than NAD 1 million (USD 192,215) in 1998 to more than NAD 147 million (USD 11,669,900) in 2018.<sup>538</sup>

<sup>533</sup> Observations from the Wildlife Crimes Trends and Typology Report issued by the FIC in 2017 speak to this aspect. <https://www.fic.na/uploads/TrendsandTypologies/FICTrendsandTypologyReports/Namibias%20Wildlife%20Poaching%20and%20related%20Money%20Laundering%20Typology%20Report.pdf>

<sup>534</sup> In East and Southern Africa, 2010-2018.

<sup>535</sup> In Kenya and United Republic of Tanzania, 2014-2018.

<sup>536</sup> Prinsloo et al., (2021).

<sup>537</sup> but must comply with conservation regulations.

<sup>538</sup> Prinsloo et al. (2021).

### a. Ivory trafficking

Namibia does not have direct flights to key wildlife trafficking destinations in Asia such as China and Vietnam. LEAs concur that information from most trafficking interceptions suggests that wildlife products are mostly moved from Namibia to neighbouring countries (e.g by road or air) where they are trafficked to consumer destinations, mostly in Asia.



Source: UNODC World WISE Database. \*The year 2018 is based on partial data.

Figure 69: Trafficking flow map, elephant ivory (2014 – 2018).<sup>539</sup>

An average of around 100 to 200 tons of ivory had been entering the Asian consumer market annually since 2007. Based on World WISE records of some 1,262 African elephant tusk seizures<sup>540</sup> between 2005-2017, China and South-East Asia were the destination of 90 per cent of these shipments by weight (see Figure 70 below). However, some of the countries listed as destinations in World WISE for illicit ivory shipments are highly likely to be transit countries.

<sup>539</sup> African elephant tusks and rhinoceros horns file:///F:/NRA%20Received%20Docs/Env%20Crimes/Env%20crimes%20draft%20report/WWLC20\_Chapter\_3\_Elephant\_and\_Rhino.pdf  
<sup>540</sup> where an alleged destination was known.

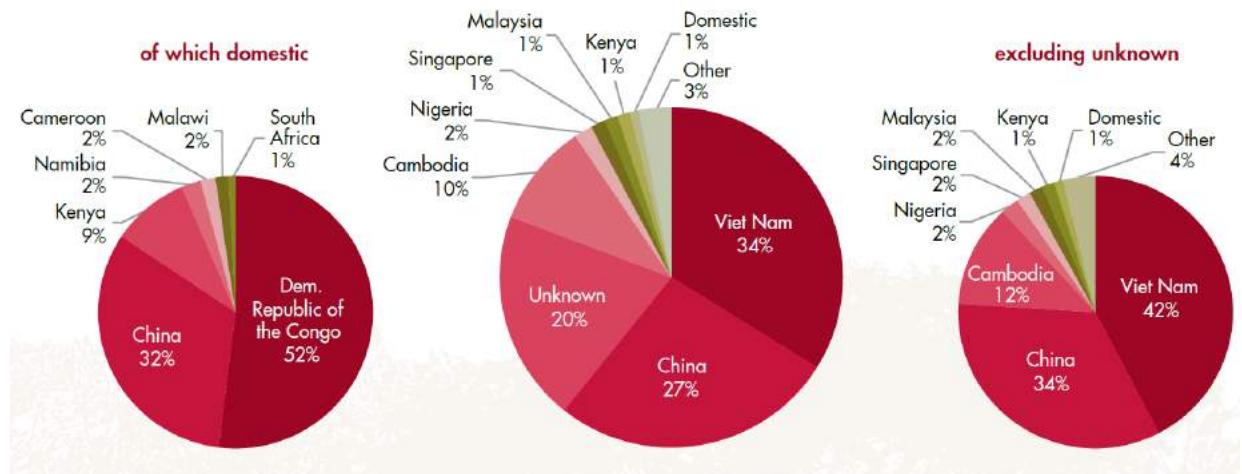


Figure 70: Share of reported national destination of ivory tusk seizures (total reported seizures 104 tons), 2015-2019<sup>37</sup>

### b. Financial values of ivory

Numerous reports on Asian consumer markets have indicated a decline in the price of illicit raw ivory tusks after 2014. This trend parallels the decline in prices paid in Africa. Based on observational studies, prices in China almost tripled between 2010 and 2014, only to drop below their 2010 levels by 2018 (see Figure 71 below). This declining trend was also reflected in price data gathered by the Chinese police in 50 law enforcement operations between 2015 and 2017. These trends in China were paralleled by a decline seen by the Wildlife Justice Commission in 22 undercover price quotations in Viet Nam. Ivory is a durable good, so unless the market continued to expand, at some point supply would exceed demand. Amongst others, such declines help explain the overall reduction in elephant poaching activities in African in similar periods. In Namibia, elephant poaching activities declined from 101 in 2016 to only 12 in 2019 (see figure 66 above). Such declines, everything being equal, are expected to have reduced threats of ML emanating from ‘new’ poaching activities, as the trade in consumer jurisdictions may have been supplied by stockpiles or other sources.

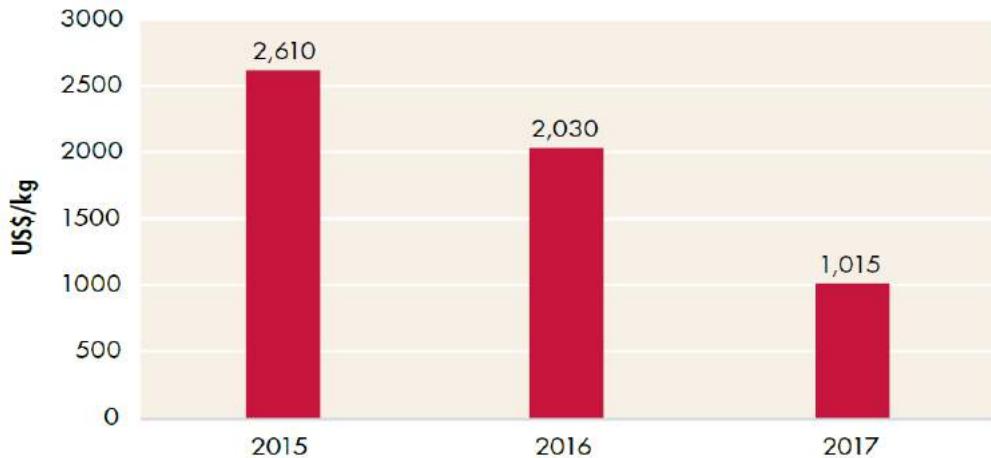


Figure 71: Illegal raw ivory tusk price in China, 2015-2017 (US\$/kilogram)

### c. Rhino horn trafficking

Because rhino horn is relatively portable and value intensive, the vast majority is trafficked by air in luggage and personal carry-on (sometimes wrapped in tinfoil) and is seized at airports with a relatively large number of seizures involving arrests.

Like ivory, rhino horns are mostly trafficked to consumer countries in Asia such as Viet Nam and China. There is an increasing trend in the number and weight of rhino horns seized, from 16 seizures in 2008 to 105 in 2017 (Figure 72). This trend stands in contrast to the declining number of poaching incidents and suggests enhanced enforcement may have resulted in a higher share of the illicit flow being captured or that some of the horn being seized is flowing from either public or private stockpiles.



Figure 72: Rhino horn seizures by volumes and weight in Asia.

In the period 2014 to 2019, where the final destination was known, more than three-quarters of the weight of seized horn was destined for Viet Nam and China (Figure 73). Many of the seizures made in South Africa were domestic and the intended destination of such seizures was unknown. Similarly, Namibian authorities have concurred that for many seizures, it is not always easy to determine destination if suspects do not avail such information during investigations.

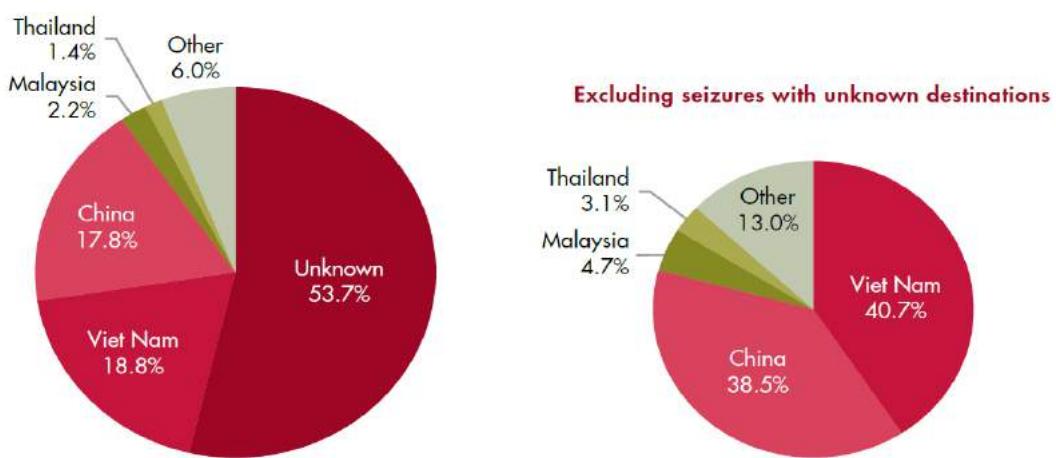


Figure 73: Reported jurisdictional destination of rhino horn seizures by weight, 2002-2019

Despite the above-mentioned indications of declines, it is too soon to confirm a permanent reduction in the rhino horn market. Similar to ivory, declines in new supply (poaching) seem to be teamed with declines in price in the destination markets. Unlike ivory, rhino horn seizures show a clear and consistent upward trend. This could be due to improvements in the rate of interdiction or a genuine increase in the flows. If the flow has increased while poaching incidences decreased, this could suggest that the new supply volumes could be coming from existing stocks. Many of these stockpiles are in private hands and can be sold in some range States. Sellers may be motivated by declining prices and possibly declining interest. Domestically, other than the stockpiles held by the authorities, it is not clear how much rhino horn stockpiles are in private hands.

#### *d. Financial values of rhino horn*

Measuring the prices of illicit goods on the black market has its own challenges. There are thus varying observations around pricing levels of illicit goods. As the price of ivory in consumer countries has declined in recent years, the price of rhino horns also appears to have declined as reflected in figure 74 below. Some studies<sup>541</sup> indicate that the price can be as high as USD 100,000.00 per kg, while others suggest such to be in the range of USD 15,000.00 to USD 30,000.00 per kg, depending on various factors. Domestically, the values associated with rhino horn poaching and trafficking activities, as per LEA information, is far below such levels.



Source: Wildlife Justice Commission<sup>11</sup>

'n' refers to the number of market observations in each year factored into this average price

Figure 74: Average wholesale prices of whole rhino horn observed in markets in Vietnam, 2015-2017

#### *e. Pangolin*

In South Africa, authorities indicated that 46.8 tons of pangolin scales were intercepted in 2017, *en route* from Africa to Asia with 23 tons leaving Africa in 2018. The South African police suggested that the market price for pangolin has risen from around R 9,000.00 in 2009 to R 400,000.00 per live animal in 2017.<sup>542</sup> Namibian authorities concurred that the trends in

<sup>541</sup> Rhino Rest: Rhinoceros in the Safari, Source: <https://www.rhinorest.com/rhino-horn-price/>

<sup>542</sup> Venter, Z. 2019. <https://www.iol.co.za/saturday-star/man-arrested-for-alleged-sale-of-pangolin-28440750>. It should however be noted that these are the prices charged by traffickers and dealers in consumer markets in Asia. The local illicit dealers or poachers would often

pangolin prices are similar domestically, for such periods, although it should be noted that pricing in each illicit deal is different (depending on various factors).

Data from seized pangolin in South Africa suggests that the bulk of the trade is not in scales but live pangolins. This differs from local observations where the seizures of dead pangolins appear much higher than that of live pangolins.

In June 2020, China increased protection for the native Chinese Pangolin to the highest level, which closed an important loophole for consumption of the species in-country. Additionally, the Chinese government no longer allows the use of pangolin scales in traditional medicine. This could be helpful given that an estimated 195,000 pangolins were trafficked in 2019 for their scales alone.<sup>543</sup>

A 2016 study<sup>544</sup> in mainland China found that the average price of processed pangolin scales in wholesale markets was USD 534.00 (or ±USD 138/kg<sup>545</sup>), while that of raw scales was USD 501.00 (or ±USD 155/kg). Processed scales were slightly more expensive than raw scales due to the additional cost of processing. Observations further suggest that retail shops only offered processed scales for sale, with an average price of USD 984.00 (±USD 303/kg), seemingly higher than wholesale markets. When compared to the prices from TRAFFIC's<sup>546</sup> 2006/2007 surveys, where processed scales were selling for USD 132/kg at wholesale markets and USD 160/kg at retail markets, the 2016 prices have increased almost four-fold at wholesale markets and six-fold at retail markets.

ML trends and methods related to wildlife crimes as documented in the FIC publication<sup>547</sup> are still considered relevant and have not changed materially. Further, the NRA advises that ML

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sell for much lesser than that to the traffickers. Information sourced from Warrant officer Willem Pretorius of the stock and endangered species unit.

<sup>543</sup> Source: <https://www.worldwildlife.org/species/pangolin>

<sup>544</sup> Xu L, Guan J, Lau W and Xiao Y. September 2016. An Overview of Pangolin Trade in China. <https://www.traffic.org/site/assets/files/10569/pangolin-trade-in-china.pdf>.

<sup>545</sup> There are eight different pangolin species, which vary in size from 12 inches (30.5 centimeters) to 39 inches (99 cm) long. They weigh from about 3.5 lbs. (1.6 kilograms) to 73 lbs. (33 kg). A pangolin's scales make up 15 percent of its weight, according to the African Wildlife Foundation. Source: <https://www.livescience.com/57200-facts-about-pangolins.html>

<sup>546</sup> TRAFFIC, a United Kingdom Charity organisation, works on five continents towards the shared goal of reducing the pressure of unsustainable trade on natural biodiversity

<sup>547</sup>

<https://www.fic.na/uploads/TrendsandTypologies/FICTrendsandTypologyReports/Namibias%20Wildlife%20Poaching%20and%20related%20Money%20Laundering%20Typology%20Report.pdf>

trends and methodologies in the FATF publication<sup>548</sup> on ML and IWT are relevant for consideration by preventive authorities, the private sector and AML/CFT/CPF supervisory bodies locally.

#### *15.3.2.5 Notable involvement of church leaders in IWT*

There has been growing reports of prominent church leaders' involvement in IWT. While not much information could be found to suggest that the bank accounts or other financial platforms of churches could be abused to advance laundering, indications suggest that risks of such abuse are quite high, given the ease with which prominent church leaders could move funds through the bank accounts of churches. The two cases<sup>549</sup> below occurred within a year and are pending in court at the time of reporting:

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<sup>548</sup> FATF REPORT Money Laundering and the Illegal Wildlife Trade. June 2020. file:///F:/NRA%20Received%20Docs/Env%20Crimes/Env%20crimes%20draft%20report/Money-laundering-and-illegal-wildlife-trade.pdf.

<sup>549</sup> The Namibian newspaper: 03/05/2021. <https://www.namibian.com.na/101332/read/Another-pastor-in-court-over-wildlife-crime> and See case: *Babi v S* (HC-MD-CRI-APP-CAL-2020/00092) [2020] NAHCMD 540 (26 November 2020).

## **Case Study 12A**

### **Prominent church leader arrested and charged for IWT, May 2021**

*Pastor Alfons Tjikuru of the Enlightened Christian Gathering (ECG) at Otjiwarongo, which is led by the controversial 'prophet' Shepherd Bushiri, and Police Officer Michael Muronga, as well as Herman Paulus were arrested on 13 March 2021 after they were allegedly found in possession of rhino horn. The trio was arrested at Onayena in the Oshikoto region while violating the Covid-19 curfew by travelling on a public road during curfew hours. They were apprehended at around 02h15 after the police received a tip-off that the suspects were in possession of prohibited material. Muronga is a member of the police's Crime Prevention Unit. According to court records, Paulus, who is also facing other charges of contravening the Controlled Wildlife Products and Trade Act, impersonated a police officer during the said arrest. The State alleges that the suspects initially pretended to be on duty at the Oshivelo roadblock but were intercepted and taken to the police station where a search was conducted. The rhino horn was said to have been discovered in a black bag in the boot of the vehicle.*

*The value of the rhino horn is unknown. The case has been postponed to 19 July 2021 for further investigations.*

*The very same person named as Paulus and another, Petrus lipinge, Ludwig Nangolo and an Angolan resident, Fortunato José Queta, were allegedly found in possession of 33 rhino horns in 2019. Queta,*

*Paulus, lipinge and Nangolo are now facing charges of dealing in or possessing controlled wildlife products, amongst other charges. The state is alleging the housebreaking took place at Outjo in August 2019, where the men stole 33 rhino horns. The horns, valued at nearly NAD 5 million, belonged to an Outjo area lodge owner who had rhinos at his private game reserve dehorned in an effort to protect them against poaching.*

### **Prophet arrested and charged for IWT, May 2020**

*Prophet Jackson Babi, a well-known Windhoek based prophet and founder of a popular church was arrested and charged along with a police officer attached to the Very Important Persons Protection (VIPP) Directorate was amongst seven suspects arrested for poaching and trading in wildlife contraband in May 2020. They remain behind bars at the time of reporting and are charged in connection with the poaching of two rhinos at a farm in the Gobabis district. The prophet is also facing charges of possession of a hunting rifle and ammunition without a licence in a case in the Windhoek Magistrate's Court. The dead rhinos with their horns hacked off were discovered and follow up investigations led PRU Detectives to Otjiwarongo where an undercover operation was conducted. The VIPP police officer from Windhoek and three of his accomplices were arrested when they attempted to sell the freshly cut rhino horns to one of the undercover officers. Information garnered from the first set of suspects in Otjiwarongo led detectives to the house of Prophet Babi in the Kleine Kuppe neighbourhood of Windhoek where two more rhino horns, a hunting rifle with ammunition were discovered and subsequently confiscated.*

*Four suspects among whom the two persons suspected of being responsible for shooting the rhinos near Gobabis were arrested. The two persons accused of poaching were at the house to hand over the horns to Prophet Babi and another accomplice.*

*Detectives were able to directly link the two sets of rhino horn confiscated in Otjiwarongo and Windhoek along with the firearm and ammunition to the poaching incident on the farm near Gobabis. Prophet Babi and one Ananias Ananias are alleged to have attempted to offer a police officer NAD 13,000.00 to make the charges against Babi in the poaching case disappear.*

#### *15.3.2.6 ML threats to the financial system*

Financial flows associated with the IWT considerations presented above are essential in establishing appropriate ML threat levels. The financial flows related to wildlife crimes are two-fold, with one side being the funds used to finance the execution of poaching activities and the other referring to financial flows associated with trading or dealing in illicit wildlife products. The former often occurs in jurisdictions where wildlife crimes are committed while significant financial flows often occur in the consumer jurisdictions where wildlife products are brought to the market.

The financial flows within Namibia and other jurisdictions where the poaching predicate offences are committed are said to be minimal. LEAs indicated that poaching is often carried out by opportunistic poachers or organised poachers who are part of organised criminal syndicates. At times, criminal syndicates would contract independent poachers to source wildlife products for the syndicates. Opportunistic poachers are those who poach, with the hope of taking advantage of the existence of buyers or a market. Opportunistic poachers mostly attract the least amounts of money as they often have products in their possession that they need to get rid of. They need the off-takers or traffickers of such wildlife products who have access to consumer markets. Many of the arrested opportunistic poachers often have a very basic or low level of formal education and do not seem to appreciate or understand the comparatively high financial values of the products they are arrested for. Quite often, they deal in cash and there is minimal direct laundering of such proceeds in the financial system.

Organised crime syndicates are made up of persons who have other types of businesses, many of whom appear to use proceeds from such businesses to fund IWT activities. At times, LEAs also found that persons with legitimate businesses would take advantage of opportunities to profit from IWT by buying valuable wildlife products from opportunistic poachers and selling such to traffickers. They often co-mingle their proceeds from IWT with what may appear as legitimate funds from other business activities, making it difficult for AML/CFT/CPF supervised institutions to detect and report laundering of such proceeds. The few STRs on IWT emanating from supervised institutions were in most cases detected late, possibly owing to reliance on adverse media reports linking clients of such institutions to IWT.

Many such reports which are informed by media coverage, often reach the FIC late (usually after funds would have been placed beyond LEAs). Overall, ML threats from IWT are not always detected timely by AML/CFT/CPF supervised institutions. This may not be unique to Namibia. A publication by the FATF also observed that in many countries, institutions under AML/CFT/CPF supervision had challenges detecting IWT related suspicions.<sup>550</sup> With the exception of one case of attempted trafficking of wildlife products in March 2014, there has not been other ML or similar illicit financial flow related convictions emanating from environmental crimes in the five-year period of 2015 to 2019 (see Tables 63 and 67 in this report).<sup>551</sup> Table 68 shows that there has been improvements in advancing ML related charges along with IWT predicate offences in 2020.

With significant financial flows occurring in consumer jurisdictions, not much is expected from domestic financial institutions except for cases when funds associated with IWT, flow between various persons within Namibia or in cross border remittances. There are hardly any STRs or criminal cases showing such IWT cross border financial flows.

The trends and typologies as well as red flags and indicators of IWT are similar to those captured in the 2017 FIC report<sup>552</sup> on wildlife crimes.

Having regard to all of the above, the assessment rated the ML predicate offences of wildlife crimes as follows:

Category of Environmental Crime/Offence	Likelihood of Crime Occuring	Impact of Crime	Overall Threat
Wildlife poaching and trafficking	Almost Certain	Major	Extreme

Table 54: Wildlife poaching and trafficking crimes threat ratings

<sup>550</sup> FATF REPORT Money Laundering and the Illegal Wildlife Trade. June 2020.

<sup>551</sup> Except for the one case in which four Chinese nationals attempted to smuggle 14 rhino horns and a leopard skin through Hosea Kutako International Airport in March 2014, with convictions in that case being finalised in 2016. This is the only environmental crime case in the reporting period wherein POCA or ML related charges were advanced and successfully prosecuted to gain convictions.

<sup>552</sup> Trends and Typology report issued in 2017. <https://www.fic.na/uploads/TrendsandTypologies/FICTrendsandTypologyReports/ML%20Trends%20and%20Typologies%20Report%20n%20Gift%20Remittances%20No%2003%20of%202017.pdf>

### 15.3.3 Illicit Unreported and Unregulated (IUU) fishing

The concept of IUU fishing includes all illicit fishing activities such as exporting or importing of fish from such activities, dealing in proceeds from same, fraud and corruption linked to IUU fishing, amongst others.

In assessing threats, information from actual criminal cases and other sources such as STRs need to be considered. The lack of adequate and comprehensive IUU fishing data limits the effective assessment of threats emanating from IUU. Domestically, there are not many known significant local ML threats<sup>553</sup> that emanated from the fishing sector apart from the famous *fishrot* case, which is in court at the time of reporting (see Case Study 1). Table 55 below shows the number of IUU fishing offences reported to NamPol over the years.

Environmental crime offences/cases reported: NamPol	2015	2016	2017	2018	2019	Total
Offences: Marine Resources and Inland Fisheries Acts	8	10	8	2	2	30

Table 55: Reported contraventions of the Marine Resources and Inland Fisheries Acts<sup>554</sup>

Consideration of other reliable sources on IUU related to Namibia stemmed from the lack of adequate and comprehensive data on IUU fishing activities cited above. On such source is the IUU Fishing Index,<sup>555</sup> which, as per its 2018 report, provides a measure of the degree to which States are exposed to, and effectively combat IUU fishing. Such Index provides an IUU fishing score for all coastal States of between 1 and 5, with 1 reflecting the best possible control measures and 5 being the worst.<sup>556</sup> The Index allows countries to be benchmarked against each other and assessed for their vulnerability, prevalence and response to IUU fishing activities. Figure 75 below reflects the prevalence of IUU related threats in Namibia as per the Index. The overall score of 1.00 shows that Namibia's threat level of IUU is very

<sup>553</sup> The NRA was not availed with data of threats (e.g actual ML criminal cases) by relevant authorities.

<sup>554</sup> Marine Resources Act offences far exceed Inland Fisheries Act offences in terms of volumes and financial values.

<sup>555</sup> The Index has been developed by Poseidon Aquatic Resource Management Ltd., a fisheries and aquaculture consultancy company working globally, and the Global Initiative Against Transnational Organized Crime, a Geneva-based NGO network of experts working on human rights, democracy, governance, and development issues where organized crime has become increasingly pertinent. Source: <https://iuufishingindex.net/about>

<sup>556</sup> The IUU fishing scores for countries contained in the Index are not a proxy for volumes and values of IUU fish catch. They represent a standardized performance score related to the 40 indicators included in the Index. The scores therefore represent a measure of vulnerability, prevalence and response, across different State responsibilities. The IUU fishing country scores cannot, and should not, be used with any algorithm to generate estimated volumes and values of IUU fish catch for different countries.

low (the lowest possible score for coastal States<sup>557</sup>). The subsections that follow explain the three key elements which informed such rating for Namibia.

General score by prevalence <b>1.00</b>	
Related indicators	
Carded' under the EU IUU Regulation	<b>1.0</b>
Identified' by NOAA for IUU fishing	<b>1.0</b>
Mentions of IUU fishing in media reports	<b>1.0</b>

Figure 75: General score of the prevalence of IUU in Namibia

a. *The European Union's (EU) IUU regulation and carding system*

This is the EU's procedure for identifying non-cooperating third countries in the fight against IUU fishing (the “carding process”). Under the IUU Regulation, non-EU countries identified as having inadequate measures in place to prevent and deter such activities may be issued with a formal warning (yellow card) to improve. If such yellow carded countries fail to do so, they face having their fish banned from the EU market (red card) among other measures.<sup>558</sup> In terms of the EU carding system, Namibia has a very low (1.0) prevalence rate of IUU and is not carded. All such lower ratings inherently suggest lower ML threat exposure to the financial system.

<sup>557</sup> Only landlocked countries could be rated scores lower than 1, in terms of the Index. Also note that this Index score was set prior to the famous *Fishrot* case coming to the fore.

<sup>558</sup> IUU Watch: <http://www.iuuwatch.eu/map-of-eu-carding-decisions/>

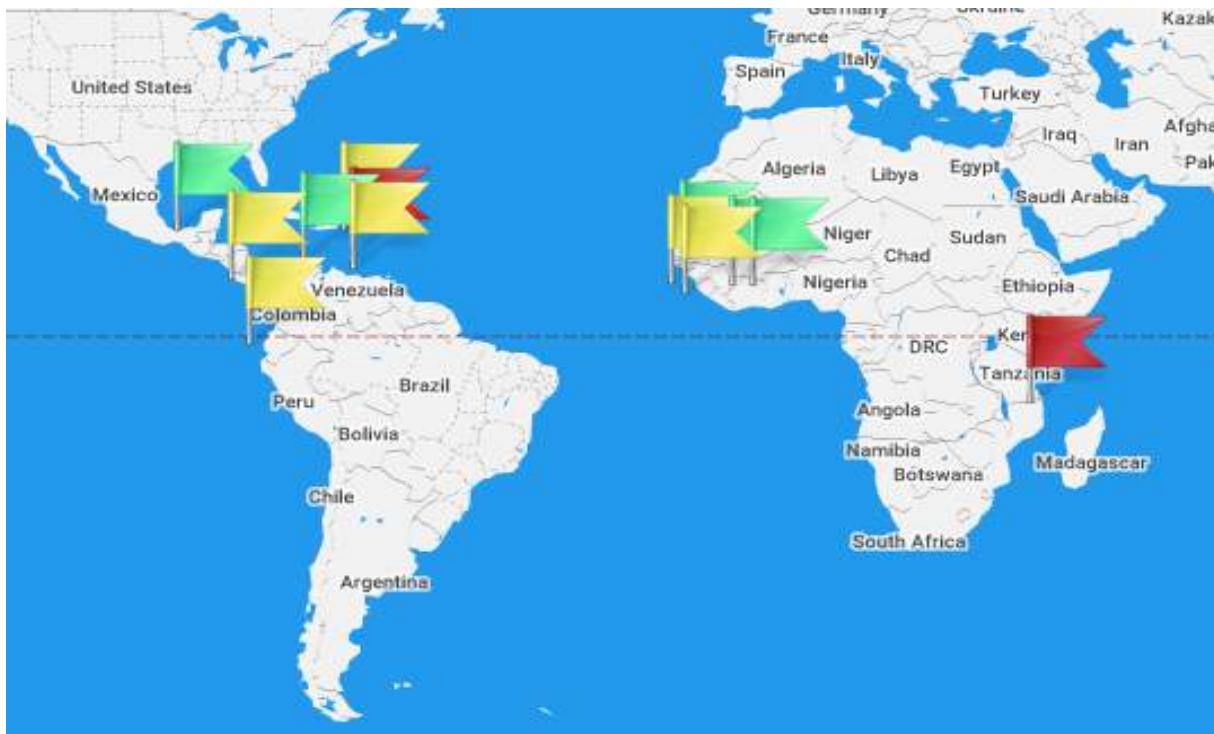


Figure 76: The EU’s IUU carding system (yellow, red and green cards) is one such system recognised as a measure of IUU combatting effectiveness.<sup>559</sup>

#### *b. Identification by NOAA for IUU fishing*

The National Oceanic and Atmospheric Administration (NOAA) is an agency of the United States Federal Government responsible for, amongst others, monitoring climate and the environment, as well as taking steps to preserve such. NOAA keeps records on IUU and other environmental crimes. Records from such are considered in helping to establish IUU threats and vulnerabilities. At the time of publishing, Namibia had not been identified by NOAA as a country with a high prevalence rate of IUU fishing activities.

#### *c. Mentions of IUU in media reports*

The Index also draws on other assessments of IUU fishing and media reports for indicators of prevalence, which can be considered ‘general’, as they cover a range of State responsibilities. In this regard, perhaps owing to limited or insignificant reports on IUU at the time of this risk assessment<sup>560</sup>, Namibia was rated 1.0. Given the significance of the so-called

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<sup>559</sup> Map shows ‘red and yellow’ carding and ‘green’ delisting of third countries by the EU since the IUU Regulation entered into force in 2010. Source: <http://www.iuuwatch.eu/map-of-eu-carding-decisions/>

<sup>560</sup> Study was undertaken in 2018.

*fishrot* scandal, which was uncovered and reported on, after the publication of the IUU Index, adjustments are considered herein. The assessment, having regard to the significance of the alleged corrupt activities at the highest level in government (as per *fishrot* case), which may have potentially resulted in hundreds of millions of dollars in losses, increases the rating per this variable from 1.0 to anything between 2.0 and 2.5<sup>561</sup>. The corrupt activities in the fishing sector could be systemic, if more information suggesting such, comes to the fore. Such would naturally require a revisiting of all ratings herein.

*d. Namibia's global ranking in IUU prevalence*

The IUU global total score aggregated (averaged) across all State responsibilities and types of indicators is 2.29. Individual country scores, aggregated across all indicator responsibilities and types, range from 3.93 for China (the worst-performing country) to 1.43 for Belgium (the best-performing country). China, Indonesia, Russia and Cambodia all feature among the ten worst-performing countries for two out of three indicator types. Namibia's country score is 2.18, a rating which is below the global IUU average. This suggests that although the prevalence of IUU threats in Namibia are very low (at 1.00), the vulnerabilities (control shortcomings) may be higher, thus increasing the overall country rating to 2.18, which is still below the global aggregate of 2.29. Considerations around preventive measures should be considered with the MFMR's indication that IUU fishing activities usually occur around Namibia's maritime borders when patrol crafts are not present or in port. Resource limitations impact consistent availability of such assets in preventive measures.

*e. Financial flows associated with IUU*

While national IUU financial values could not be established reliably, the United States and the EU estimate that such accounts for nearly USD 23 billion worth of seafood yearly, worldwide.

As the most prominent investors in the domestic fishing sector are foreign entities, and given that most fishing harvests are exported, it is a given that most financial flows or proceeds

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<sup>561</sup> As the *fishrot* case is in court at the time of reporting. The true extent of suspected illicit activities and prejudice suffered is not yet fully established and thus an exact estimation might not be easy to determine.

from the sector are occurring in other jurisdictions. Government's local beneficiation policies on the other hand requires that considerable proceeds are paid to local stakeholders or invested locally (e.g to build factories or in the form of local dividend payments etc).

When IUU has occurred and proceeds thereof laundered locally, detection of such activities by AML/CFT/CPF supervised institutions has been a challenge. As the *fishrot* case have shown, such supervised institutions have failed to timely detect and report (to the FIC or LEAs) ML associated with IUU activities domestically. Most reports received by the FIC from institutions related to the *fishrot* case were detected after the widespread media coverage of the case in late 2019. This suggests that supervised institutions have thus far not succeeded in timely detecting ML associated with or emanating from IUU. Apart from the *fishrot* case, there are not many significant IUU criminal cases or STRs, which would help demonstrate occurrence levels of such threats. The table below shows a summary of the IUU threat rating in terms of occurrence and impact.

<b>Category of Environmental Crime/Offence</b>	<b>Likelihood of Crime Occuring</b>	<b>Impact of Crime</b>	<b>Overall Threat</b>
Illicit Unreported and Unregulated (IUU) Fishing Activities	Possible	Major	<b>High</b>

Table 56: IUU fishing activities threat ratings

#### **15.3.4 Illegal underground extracting activities**

##### *a. Trends in illegal underground extracting activities*

Illegal underground extracting activities include illegal mining or extracting, illegal mining practices for gain, illegal trade of mining products, fraud linked to extraction or mining and corruption linked to extraction or mining activities. In recent years, an increase in illegal sand mining activities have caught the attention of authorities.

Table 57 below avails information on the typical predicate offences of illicit dealings in precious, semi-precious metals and stones as well as associated ML cases escalated to

NamPol for further investigations,<sup>562</sup> in the period under review. The brief descriptions of each case avails indications of trends and methods employed in executing such crimes as well as indications of potential ML.

<b>Case Date</b>	<b>Case Status (<i>Pending investigations, referred to prosecution, set aside etc</i>)</b>	<b>Type of Offence(s)</b>	<b>Total Amount and Assets Involved</b>
Jan-19	This matter was referred by MME to NamPol for investigation.	Illegal dealing in Diamonds. Falsification of MME official document and Kimberly Certificate to lure the unsuspecting victim. May have contravened the Diamond Act, 13 of 1999 section 31, 32, 33, 34 and 36.	USD 2,000.00
Jul-2019	This was a notice to MME to provide information to the NamPol in terms of section 87 and 88 of POCA.	May have contravened the money laundering provisions, section 4,5 and 6 of organized crime Act, 29 of 2004 (POCA).	Not disclosed
May-19	This was a notice to MME to provide information to the NamPol in terms of section 87 and 88 of POCA.	May have contravened the money laundering provisions PCA section 4,5 and 6 of organized crime Act, 29 of 2004 (POCA).	Not disclosed
Oct-17	This matter was referred to ACC and was also investigated internally. However, MME has completed this investigation and has invoked the provision of State Finance Act, by approaching The Government Attorney to institute civil claims against the suspected individuals. To date, MME has successfully persuaded this matter and 99% of the current and former staff members who have designed a scam to defraud government, have either paid back and/or made arrangements to pay back the State money. This process was achieved through the court, as most of the suspected staffs had used the services of the lawyers to oppose the matter.	Theft, Fraud, Misuse of Office, corruption, embezzlement by internal staff members of money generated from EPLs applications, Oil and gas license application and Diamond fees, royalty's payment.	NAD 1,025,386.93
Jan-18	This matter is still under police investigation.	Suspected smuggling of Beryllium from Angola into Namibia through ungaZETTED points, disGuisinG of minerals (Beryllium with blue sodalites) at the Buitepost, Botswana/Namibia border post to mislead unsuspecting or rather lack of skills (in that specific area) by customer officials in identifying different types of minerals.	Assets: Confiscated minerals - 20 tons Beryllium and 10 tons Blue sodalinte

<sup>562</sup> Obtained from the MMME. Records of cases or offences in the years after December 2019 were omitted.

Nov-19	This matter was jointly investigated by both MME and NamPol.	Suspected illegal Diamond mining in Tsumkwe area. Investigation could not find evidence pointing to illegal mining Activities in the said area.	Not known
Jun-20	This matter was jointly investigated by MME, NCIS, Defence-Intelligence, NAMPOL-Intelligence and PRU. NB: This matter was reported twice to MME. On the first instance, MME and PRU dispatched a team to investigate the allegation and nothing substantial could be found.  Secondly, another intelligence came through pointing to XXX's activities in the area. An investigation team of senior officials were put together by NamPol to investigate the activities of XXX in Tsumkwe. The investigation report was forwarded to NamPol.	Suspected illegal Diamond mining in Tsumkwe area linked to XXX.	Not known
Oct-18	This matter was referred to NamPol for investigation.	Illegal Dealing in Diamonds. Falsification of MME official documents/Kimberley Process certificate (KPC) to lure the victim. May have contravened the Diamond Act, 13 of 1999 section 31, 32, 33, 34 and 36. This activity mostly involves foreign nationals (in most cases Germany, USA and Netherlands nationals) attempting to buy diamonds from Namibians or People pretending to be Namibians.	Not disclosed
Sep-17	This matter was referred to NamPol for investigation.	Suspected Diamond Dealings/ Falsification of MME official documents to lure the victim. May have contravened the Diamond Act, 13 of 1999 section 31, 32, 33, 34 and 36. his activities involves foreign nationals attempting to buy diamonds from Namibians or People pretending to be Namibians whatever the case may be.	Amount not disclosed
Oct-20	This matter was referred to ACC for investigation. The matter is also being investigated internally as it involves the Ministry's staff members.	Allegation was made against the MD for XX who is a wholesaler and is also suspected to be acting as a retailer. May have contravened the certain provisions of the Petroleum Act as well as Anti-Corruption Act. Alleged to have bribed certain staff members of the MME.	About NAD 70, 000.00

Mar-20	This matter was referred to NamPol for investigations. The matter is also sanctioned to be investigated internally as it is alleged to have staff member involvement. MME is investigating this matter in accordance with the Public services staff rules/code of conduct.	Allegation was made by a Serbian National that he was swindled out of money by people he believes to be working for the MME. A number of documents presented to MME showed that the documents and stamps used on those documents were illegitimate (fake). This matter is pending our investigation to verify the allegation and to determine if staff members were involved. According to the allegations made, all this money was paid in an attempt for this complainant to obtain mineral licenses, both precious and semi-precious metals. May have contravened the provisions of Mineral (Prospecting and Mining) act, 33 of 1992 and that of the prevention of the organized crime Act.	The Complaint claim to have lost about NAD 4.8 million.
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Table 57: Statistics on predicate offences related to illicit dealings in precious, semi-precious metals and stones recorded by MME

In addition to the above cases, there are other offences investigated by NamPol related to the extracting sector. Table 58 below suggests that illegal possession of diamonds seem to be the most prevalent offence as per NamPol reports.

<b>Environmental crime offences/cases reported: NamPol</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total</b>
Fuel Research Institution and Coal Act Offences	-	-	-	-	-	<b>0</b>
Mines Works Mineral Ordinance Offences	-	1	-	-	1	<b>2</b>
Other offences related to Mining and related matters	1	4	4	-	1	<b>10</b>
Trafficking of gold	-	1	-	-	1	<b>2</b>
Illegal possession of gold	1	1	-	-	1	<b>3</b>
Trafficking/possession of precious stones, other than diamonds	3	1	-	-	1	<b>5</b>
Trafficking of diamonds	1	-	1	-	-	<b>2</b>
Illegal possession of diamonds	4	1	9	35	9	<b>58</b>
Other offences relating to protection of the Diamond Industry	2	2	-	3	-	<b>7</b>
Other offences relating to minerals	1	3	2	4	-	<b>10</b>
Other offences under the Diamond Act	2	1	2	-	1	<b>6</b>
<b>Total Cases Reported</b>	<b>15</b>	<b>15</b>	<b>18</b>	<b>42</b>	<b>15</b>	<b>105</b>

Table 58: Statistics on predicate offences related to illicit dealings in precious, semi-precious metals and stones, NamPol.<sup>563</sup>

<sup>563</sup> Cases recorded in Table 56 are included in Table 57 as such are from the national database of NamPol.

*b. Financial flows and potential laundering mechanisms*

Information at hand suggests that in most cases observed locally, financial flows associated with illicit dealings in petroleum, precious, semi-precious metals and stones appear to be largely cash based. These could be low-end persons within illicit dealings. Sophisticated launderers in precious metals appear to make use of conventional financial services to move funds. Such launderers or syndicates (especially diamonds dealers) move funds through financial systems but make use of various schemes to hide the illicit origin. Some of these schemes, although legitimate industry practices, can be abused to disguise the intention or purpose of such transactions, in furtherance of laundering, tax evasion, transfer pricing etc. Amongst others, schemes structured to reflect as advance payments, return shipments and 'fork' transactions are commonly employed to circumvent AML/CFT/CPF controls within financial institutions.

With advance payments, it is an accepted practice to transfer funds as an 'advance payment' for precious metals or stones. These are payments usually conducted without sending the precious metals or stones. In many cases, the advance payment is later returned back to the customer or dealer of such stones. These transactions may be used to send back money from a third party. Financial institutions may not always be in a position to find such transactions suspicious.

Another accepted practice which enhances ML vulnerability is the 'return of shipments' (partial or hole). In such practice, stones are sent to the customer for his review and in case the customer is not satisfied with the stones he will send some or all the stones back to the dealer. This in many cases would be accompanied with a return of funds already paid. Financial institutions financing these trades or simply facilitating the transfers may not always be aware that the funds need to be returned from the same party to which the funds were initially transferred to and also with the same value.

### **Memo transactions in the Diamond trade**

*The diamond industry is known to commonly use Memo transactions. This entails the lending of a diamond or a mix of diamonds to others in the diamond industry so that they may have the opportunity to sell them. Usually in such arrangement, the conditions of the loan are specified, including for how long the diamond will be lent, the price of the diamond, and the terms of remittance to the owner if the diamond is sold. The vendor who has the diamond "on memo" may sell the diamond at a mark-up and then pay the owner in the time and amount specified by the memo. Sometimes the vendor that has the diamond "on memo" may lend it to another vendor on another memo.*

*Some issues have arisen in the industry around the use of memos, including fraud. There have also been questions around who is responsible for reporting the sale of the diamond under ML reporting requirements (the owner or the seller). In addition, there have been cases in which the diamonds on memo could have been easily misused to advance ML. These vulnerabilities are linked to possible variation of the prices of the diamonds evaluated, over or undervalued, and to the possibility of fraud committed by the consignee. For example, a potential buyer may review a parcel of diamonds and select some of the stones while returning the unsold diamonds to the consignor. The original shipment may occur at a certain stated value while the unsold return is made at another value (potentially over or undervalued). This flexible gap of value is common and may not be considered unusual or suspicious by the financial institution. But, it may also be abused for ML purposes. The difference in price also raises the question whether the stones returned were all included in the shipment in the beginning. It has to be noted that the percentage of returns of polished diamonds is high.*

*Consignment transactions may be considered in some instances to be high-risk deals with stricter rules for financing by the banks. In certain cases that involve familiar and reliable diamond dealer account holders, some do transfer funds or accept funds as advance payment without any document agreement (save for a statement by the diamond dealer account holder), and then monitor the advance payment. The bank may be limited in the ability to verify that the financial transactions correspond to the terms of the memo and the value of the diamonds. The other risk linked to memo transactions is the possibility for fraud, when the consignee does not return the diamonds consigned.*

Fork transactions are transactions where funds are sent or received to or from other parties than those appearing in the documents as the customer or the supplier. This presents a higher threat of laundering.

The value of diamonds fluctuates over time. *Date of sale vs date of payment value* fluctuations can also be exploited to advance laundering activities. In some instances, the diamond value on the *date of sale* would be different to the value on the *date of payment*. These different values associated with the same set of diamonds can at times be abused in dealings to advance ML. While conducting a transaction, the diamond dealer and his customer<sup>564</sup> would usually negotiate the terms of the deal including terms of payment. In most

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<sup>564</sup> (who may also be a diamond dealer)

cases, the diamonds will be provided close to the date of the sale and before the payment is received.

It is important that precious metal sales transactions are reported as per AML/CFT/CPF obligations, when they meet reporting criteria.<sup>565</sup> The need to report transactions above prescribed thresholds is one essential reporting requirement that could avail records of sales for regulatory reviews. FIC records suggest that dealers in precious metals and stones hardly report any cash transactions above the threshold, nor do they file STRs. With the exception of jewellery dealers, mineral dealers and brokers of stones and metals are not known to trade in cash. The low STR reporting trend could be attributed to various factors including poor CDD frameworks or the mere lack of cash transactions cited within domestic mineral trades/dealings. In many cases, the form of payment determines the AML/CFT/CPF duties by relevant institutions. It may be the case that the KYC and reporting duties is conducted long after the transaction took place and the diamonds have been delivered to the customer. Since, diamonds are a form of currency and may be used themselves for ML/TF/PF purposes, this creates a vulnerability which ML/TF/PF threats may exploit (before the delayed KYC process occurs).

Appendix 2 (section 17.2) of this report presents various red flags and indicators of illicit dealings and associated financial flows, mainly for the diamond industry. These could be helpful for AML/CFT/CPF supervised institutions availing services to dealers in precious metals and stones. It is assumed that the trends could be similar for illicit dealings in other precious stones, metals and petroleum products.

#### *c. Illegal sand mining activities*

The lack of adequate data on illicit sand mining activities in Namibia hindered the assessment's ability to reliably estimate threat levels from such activities.

Illicit sand mining is usually perpetrated by contractors who supply such sand to the construction industry. The environmental and ecological impact of illegal sand mining

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<sup>565</sup> In terms of the FIA, CDD measures apply to all dealers in precious metals and stones when they engage in any transaction with a customer equal to or above the designated threshold of NAD 5,000.00. The same applies to such dealers with regards to reporting duties should they detect suspicious transactions (FIA, section 33) or reporting threshold for cash transactions (section 32).

activities, especially in northern Namibia are self-evident. Sand mining is a proceed generating crime, whose proceeds can be laundered in the financial system. The challenge in assessing local ML and related financial flows lies in the lack of reliable data related to sand mining.



Figure 77: Images of an excavated sand mining pit, northern Namibia



Figure 78: Images of an excavated sand mining pit near a homestead, northern Namibia

Notable trends and information from the MEFT suggest that sand-miners usually seek permission from community members and village headmen to undertake sand mining activities. This is despite the Environmental Management Act, Act No 7 of 2007 stipulating

that prior authorisation be obtained from the MEFT and the Environmental Commissioner. If recent media reports are anything to go by, the MEFT's directive<sup>566</sup> to halt all illegal sand-mining activities has not reached impoverished rural communities. In December 2018, three girls, aged 11, 13 and 15, 'drowned' in sandpits left behind by illegal sand miners, after fetching water at Omusheshe village, in northern Namibia.<sup>567</sup>

Other than the obvious environmental and ecological damages observed, the NRA could not find adequate records to help estimate financial values of illicit sand mining activities as a whole. At an operational level, the NRA observed that sand is sold to the construction industry in tons or cubic meters. The market prices differ, depending on various factors such as volumes and hauling distance. In some parts of northern Namibia, market prices for sand could be in the range between NAD 1,300.00 to NAD 1,600.00 per 10m<sup>3</sup> truck while others sell for around NAD 240.00 per ton. In central regions such as Khomas, 10m<sup>3</sup> of sand could cost between NAD 1,700.00 and NAD 2,400.00. The price is influenced by factors such as the hauling distance and fuel prices.

Proceeds from illicit sand mining activities are treated like any other income from construction or supply related activities and co-mingled. The co-mingling of proceeds from legitimate and illicit sources was identified as a key challenge in detecting potential laundering activities in the financial system.

#### *d. Establishing threat levels*

Social, environmental and other ecological impacts are severe for unregulated, illicit sand or mineral mining activities. This section will however focus on the occurrence and potential laundering impact of illicit financial flows related to such activities.

In terms of occurrence of the extractive industry's predicate offences, illicit sand mining activities<sup>568</sup> are more frequent, particularly in northern Namibia and the Khomas region. These are areas with high concentrations of construction activities, with such sand being essential for construction activities. The occurrence of illicit precious metals and mineral

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<sup>566</sup> (issued in May 2018)

<sup>567</sup> Source: <https://conservationaction.co.za/resources/reports/depleting-natural-capital/>

<sup>568</sup> As per indications from the MEFT and reports in the media. July 2016 report: <https://www.met.gov.na/news/157/illegal-sand-miners-to-face-music>; August 2020 report: <https://www.namibiansun.com/news/illegal-sand-miners-warned2020-08-12/>

extractions is comparatively less frequent than illicit sand mining, despite financial values being higher in dealings related to metals and minerals. It was also observed that the Illicit dealings and possession of precious metals and stones appear more frequent than the offences of illegal mining or extraction activities.

The assessment could not find comprehensive data on illicit financial flows associated with the dealings in minerals and metals as well as sand mining. With the minimal information at hand, the overall laundering threat from illicit extractive activities is rated Medium. See Table 59 below.

Category of Environmental Crime/Offence	Likelihood of Crime Occuring	Impact of Crime	Overall Threat
Illegal Underground Extracting Activities	Possible	Moderate	Medium

Table 59: Illegal underground extracting activities' threat ratings

### 15.3.5 Hazardous waste dumping and trafficking

Hazardous waste dumping and trafficking includes illegal dumping or disposal, illegal trade of waste or polluting products, fraud linked to waste or pollution, corruption linked to waste or pollution etc. The MEFT confirmed that Namibia does not have a centralised register or similar national database of illegal hazardous dumping, including waste and trafficking or pollution activities. Local authorities, especially the larger municipal councils are expected to keep records of such data but such was not at hand for this assessment. Local authorities usually manage illicit waste dumping activities in their areas but it seems as though recordkeeping of such activities, especially when such is being undertaken for gain, is not maintained. The assessment could therefore not adequately assess the ML threat emanating from hazardous waste dumping and trafficking.

Given the lack of data, considerations which informed the threat rating were based on the "lay-men's" observation, understanding and appreciation of such threats domestically. The assessment was of the collective view that generally, domestic waste dumping, trafficking and pollution activities for gain is very minimal, despite the potentially severe environmental impact. Authorities who are part of the NRA team could not indicate awareness of such cases.

Nor is there information on related financial flows. The table below summarises the overall rating, with the minimal information at hand.

Category of Environmental Crime/Offence	Likelihood of Crime Occuring	Impact of Crime	Overall Threat
Hazardous waste dumping and trafficking	Possible	Moderate	<b>Medium</b>

Table 60: Hazardous waste dumping and trafficking activities' threat ratings

## 15.4 Vulnerability assessment

Namibia is the first African country to incorporate protection of the environment into its constitution. The Namibian Government avails people living in communal areas the opportunity to manage their natural resources through the creation of communal conservancies. These combined efforts of conservancies, the Government, NPOs and other entities have helped restore populations of lions, cheetahs, black rhinos, zebras and other native wildlife to the world's richest dry land. Through initiatives, such as ecotourism, restoration has generated sustainable income for their communities.<sup>569</sup> Table 61 below suggests that in terms of priority, the capacity of criminal law enforcement, the prosecution and judiciary, the FIC as well as control of corruption are key variables that may need to be addressed in combatting environmental crimes.

No	GENERAL INPUT VARIABLES	CURRENT RATING	DISRUPTIVE IMPACT ON COMBATING ABILITY		PRIORITY RANKING
			Score Difference	% Difference	
1	Data Collection, Risk Analysis and Assessment	0.50	0.00	0.4%	13
2	Capacity of the Designated Authority	0.60	0.01	2.1%	8
3	Definition of ENV Breaches and Crimes	0.80	0.00	0.0%	
4	Admin or Civil Sanctions	0.50	0.01	0.9%	11
5	Criminal Sanctions	0.70	0.00	0.0%	
6	ENV Crime Asset Recovery and Management	0.30	0.00	0.0%	
7	Control of Corruption	0.50	0.06	7.9%	3
8	Domestic Cooperation	0.70	0.00	0.0%	
9	NPOs	0.80	0.00	0.0%	
10	International Cooperation	0.60	0.02	3.2%	6
11	Geographic Factors	0.60	0.00	0.2%	14
12	Public Awareness	0.60	0.00	0.7%	12
13	Capacity of the customs and border authorities	0.60	0.02	2.6%	7
14	Incentives and Protection for Reporting	0.40	0.01	1.3%	10
15	Support from Intelligence Agency	0.70	0.00	0.0%	
16	Capacity of Preventive Authorities	0.60	0.01	2.1%	8
17	STR Reporting	0.50	0.02	3.3%	5
18	Capacity of FIU	0.50	0.05	6.6%	4
19	Capacity of Criminal Law Enforcement	0.50	0.20	28.6%	1
20	Legal protection for Law Enforcement	0.70	0.00	0.0%	
21	Access s to Expert Analysis	0.70	0.00	0.0%	
22	Legal Protection for Prosecutors / Judges	0.70	0.00	0.0%	
23	Capacity of Prosec & Judiciary	0.60	0.10	14.3%	2

Table 61: Priority levels in the vulnerability of certain combatting variables

<sup>569</sup> WWF: <https://www.worldwildlife.org/places/namibia>

Figure 79 below avails a presentation of outcomes of the vulnerability assessment of environmental crimes, which informed the priority ratings cited above.

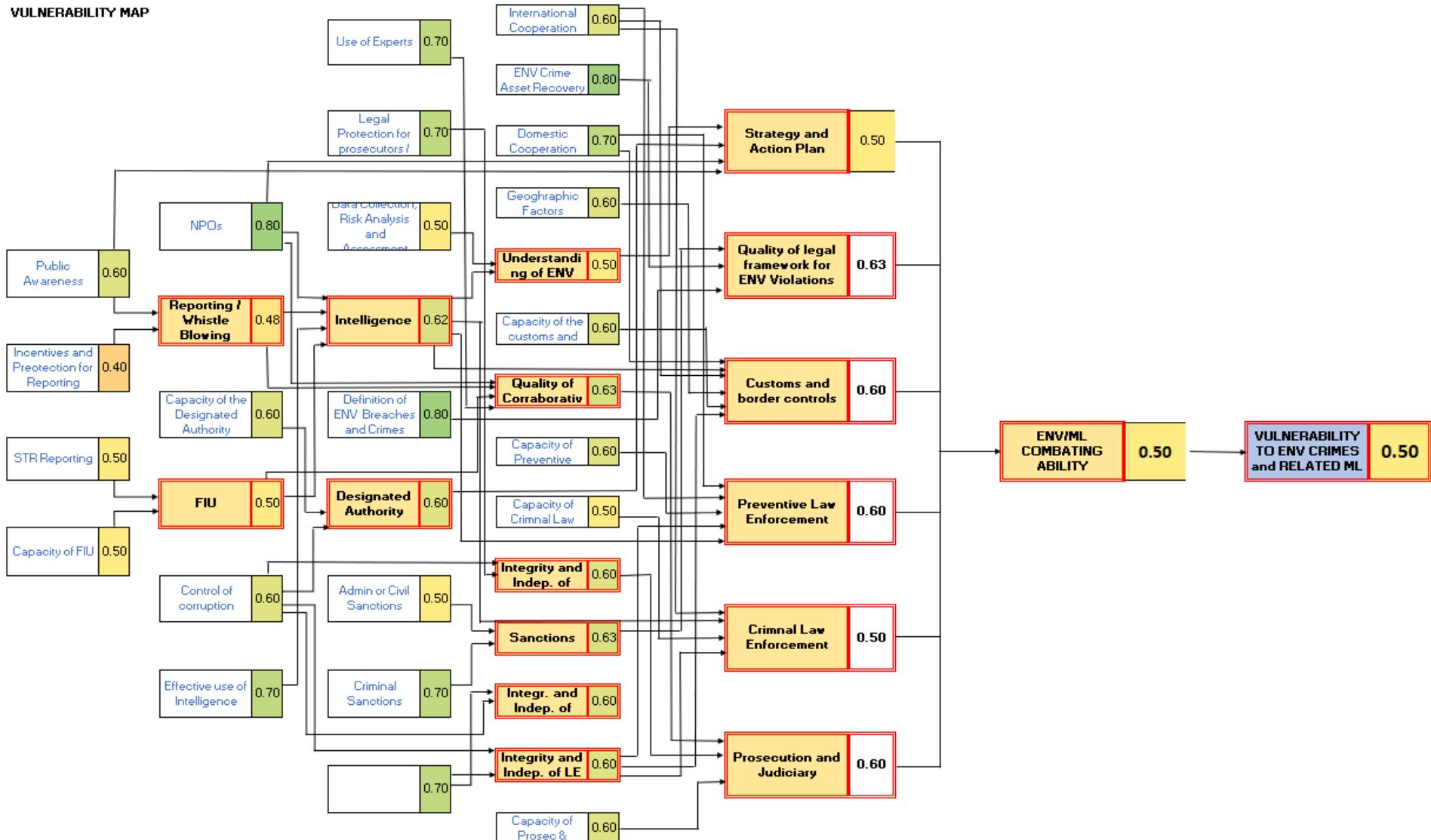


Figure 79: Summary of the vulnerability map ratings

The following subsections present relevant considerations of vulnerabilities within the environmental crime combatting framework. Selected variables of such framework are used as measurable factors.

#### **15.4.1 Data collection, risk analysis and assessment**

Data and statistics guide operational and tactical combatting activities while such also helps shape strategy and policy efforts in the combatting sphere. In combatting environmental crimes, relevant authorities maintain data and statistics on matters relevant to the effectiveness and efficiency of such domestic combat systems. This section considers the comprehensiveness and value-added by such data and statistics. Table 62 below summarises the type of data and statistics kept by respective combatting and preventive authorities charged with such.

Type of data and statistics	Are there systematic processes for the collection/maintenance of data/statistics?	Relevant authority
Cases of violations of environmental laws; investigations, prosecutions, convictions and sanctions	Yes	PRU, Min. of Environment and Tourism, Min of Mines and Energy as well as Min. of Fisheries and Marine Resources
Property frozen, seized and confiscated	Yes	Office of the Prosecutor General
STRs related to environmental crimes	Yes	FIC
Mutual Legal Assistance and other international requests for co-operations made and received	Yes	Min. of Justice and to a certain extend the FIC in matters it is involved in.

Table 62: Type of data kept by various authorities

Combatting authorities such as LEAs are relatively satisfied that the nature and type of data maintained on environmental crimes adequately assists and guides their approaches towards investigative tactics, manpower/resource deployment, identifying of hotspots, routes, targeted awareness and preventative activities.

Stakeholders are expected to have uniformed and consistent protocols for measuring environmental crimes-related data to facilitate the exchange and the aggregation of data from different agencies at the regional and national levels. Environmental crime data maintained by the MEFT, the PRU, which is mostly related to wildlife crimes is consistently structured to advance their unique combatting efforts. On a weekly basis, the PRU shares data on wildlife crimes data<sup>570</sup> on criminal activities and relevant combatting efforts for that week. On the other hand, data kept by other authorities such as the MFMR on the one hand and the MME on the other is not consistent to the data maintained by the MEFT and PRU. Consistent consideration of such data is thus challenging.

Overall, improvements can be made in harmonizing the identified minor differences in data maintenance between the relevant Ministries. Such harmonization could enhance strategic activities including national aggregation, assessment and other related environmental crime activities. Additionally, record keeping of all administrative and civil sanctions imposed by the various ministries is an essential component that informs risk analysis and assessment.

The adequacy and effectiveness observations relating to customs and border controls cited in several sections, particularly 8.11 to 8.13 of this report are relevant for environmental crimes as well. The challenges with cross border related controls (on data and statistics) as reflected in such sections also have a similar impact on environmental crimes.

As reflected in the section 15.1 above, data collection, risk analysis and assessment is not occurring consistently. Many a times, inadequacies and inconsistencies in the nature and type of data maintained across various authorities is an impediment. For offences such as forestry crimes, illegal sand mining and hazardous waste dumping, trafficking and polluting, there is no database nationally that records or tracks the occurrence, related financial flows (if any) and impact of all such activities. Strategic planning and combatting effectiveness assessments are thus impaired to the extent that such data is not at hand.

Overall, the degree to which relevant authorities maintain comprehensive data and statistics on matters relevant to the effectiveness and efficiency of domestic systems to combat environmental crimes was assessed as **Medium** (a score of 0.5 or 50%).

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<sup>570</sup> Such data is usually compiled by the Intelligence and Investigation Unit, Ministry of Environment, Forestry and Tourism and the PRU.

## **15.4.2 Capacity of designated authorities**

This variable looks at the various authorities tasked with leading the coordination and implementation of a national strategy to combat each category of environmental crimes. Each authority's capacity to execute its combatting mandate is assessed. Each category of environmental crime to which Namibia is exposed has a designated authority coordinating the development of national combatting mechanisms and strategy as described below:

### *a. Forestry crimes*

Recently, Forestry related combatting efforts were move from the MAWF to the MET. The Ministry which develops combatting strategies and has at its disposal, mechanisms to enforce preventative measures is thus the MEFT. The Forest Act 12 of 2001 as amended by Forest Amendment Act 13 of 2005 is the primary law which empowers the MEFT to assume the responsibility of coordinating all efforts to manage forests, forest produce and to provide for the protection of the environment. The Forestry Directorate and Wildlife Protection Service under MEFT, with its Investigation and Intelligence Unit (IIU) is mandated to investigate any such contraventions, along with the Namibian Police.

Section 43 (2) of the Forest Act provide authorised officers powers to demand the production of a licence or an authority from a person believed to be committing a prohibited act or is in possession of an item for which a licence or authority is required. Officers further have search and seizure powers to, without a warrant, enter and inspect any land or premises, including vehicles, in which an activity licensed under this Act is conducted or suspected to be conducted. Where an authorised officer has reasonable grounds to believe that an offence under this Act has been committed, he or she may, without a warrant seize an article which is the subject matter of the offence or which has been used in committing the offence as per section 43(3) of the Forest Act. Such powers go as far as enabling officers to arrest a person who is reasonably suspected of having committed any offence under this Act and who the authorised officer reasonably believes will not respond to a summons to appear in court for trial. Section 43(4) further avails officers powers similar to those accorded to peace officers as per Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

*b. Wildlife poaching and trafficking*

The MEFT is the custodian of wildlife legislations. The Controlled Wildlife Products and Trade Act, enacted to provide for the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other related matters is one of the primary laws which designates the powers of the Ministry for combatting environmental crimes. The Ministry has regulatory and investigative capabilities and responsibilities in combatting such transgressions under the Directorate of Wildlife and Parks<sup>571</sup>. The Ministry, along with other line Ministries such as MHISS (as NAMPOL's line Ministry) and other relevant stakeholders are responsible for developing national strategies to combat wildlife poaching and trafficking activities.

Tracing the origin of ivory has become a challenge. Ivory seizures in Namibia's border regions remain at significant levels. During 2019, 116 individual tusks, as well as numerous tusk pieces were seized in Namibia. The seizures represent at least 58 dead elephants (the number may be much higher – poachers often try to sell individual tusks to reduce risk or divide profits; single-tusk elephants also occur). Only 12 elephants are estimated to have been poached in Namibia in 2019 and the origin of much of the ivory remains uncertain. This is mainly due to capacity issues including testing DNA facilities.

Similar to elephant ivory and carcass matching tracing activities, tracing the destination of rhino horns has also been a challenge. The case of the Outjo rhino horn theft highlighted the speed with which horns are moved out of Namibia. Within days of the horns being stolen, some were sold in Angola and could not be recovered. The whereabouts of the remaining horns are unknown. The horns of poached rhinos are generally trafficked with similar urgency. The rate of horn seizures compared to arrests in poaching cases thus remains low. Improving capacity in terms of search efforts at strategic border points may increase success.<sup>572</sup> Increased incentives for suspects to disclose the whereabouts of carcasses or true sources of horns may also be effective.

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<sup>571</sup> specifically the Wildlife Protection Service with its Investigation and Intelligence Unit.

<sup>572</sup> Combating Wildlife Crime in Namibia Annual Report 2019.

*c. IUU fishing activities*

The MFMR is the custodian of the Fisheries and Marine Resource legislations and regulations. The MFMR has developed its National Plan of Action to combat Illicit, Unreported and Unregulated (IUU) fishing in 2007. At its disposal, the MFMR has Fisheries Inspectors tasked with enforcing regulatory requirements. Part III of the Marine Resources Act lists the functions and powers of Fisheries Inspectors. Section 5 of the Act states that a Fisheries Inspector may, at any time and without a warrant - board any vessel and inspect such vessel, enter any premises, vehicle etc., in which marine resources or any fishing gear are kept or are being transported for the sake of executing their work in terms of this Act. They have wide ranging powers to stop vehicles, interview persons or ask questions for the purpose of carrying out routine checks for marine resources. If they suspect that offence has been committed, they have powers to order the master of any vessel in furtherance of their duties.

The MFMR relies on two patrol vessels, two patrol aircrafts, two research vessels and these tools are complimented by the use of a Vessel Monitoring System (VMS) used for monitoring Namibian licensed fishing vessels whilst the Automatic Identification System (AIS) monitors all vessels passing through Namibia's Exclusive Economic Zone (EEZ)<sup>573</sup>. Trends suggest that the Ministry independently investigates suspected breaches before communicating and coordinating with other LEAs.

The Inland Fisheries Resources Act 1 of 2003 provide for the conservation and protection of aquatic ecosystems and the sustainable development of inland fisheries resources while the Marine Resources Act 27 of 2000 provides for the conservation of the marine ecosystem and the responsible utilization, conservation, protection and promotion of marine resources on a sustainable basis. These are some primary laws which designate the MFMR as the custodian of fisheries and marine resources while also providing the MFMR with the necessary powers to combat relevant environmental crimes.

*d. underground extracting sectors*

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<sup>573</sup> Every sovereign State has an EEZ, an area of ocean adjacent to their shores in which they have special rights regarding the exploration and use of marine resources.

The Minerals (Prospecting and Mining) Act 33 of 1992 as amended by the Minerals (Prospecting and Mining) Amendment Act 8 of 2008 provides for the reconnaissance, prospecting and mining of, and the exercise of control over minerals in Namibia. The Act designates the Minister of Mines and Energy as well as the Mining Commissioner with certain powers to discharge responsibilities which include the prevention and combatting of environmental crimes related to underground extracting sectors. Amongst key powers that enhance preventative capacity, section 5 of Part III provides the Commissioner and officers powers to enter any land or place where any reconnaissance operations, prospecting operations or mining operations have been, are or are to be carried on. They may further inspect or seize any items in furtherance of their duties. The Commissioner or officers may make such investigations and inquiries as may be necessary to determine whether the provisions of the Act or any term and condition, direction or order determined, given or made under the Act is being complied with. In the same vein, the general powers and duties of the Petroleum Commissioner and Chief Inspector are reflected in Part II of the Petroleum (Exploration and Production) Act 2 of 1991, as amended. Sections 3 and 4 reads similar to this.

The Petroleum (Exploration and Production) Act 2 of 1991, as amended, governs the reconnaissance, exploration, production and disposal of petroleum products. The MME and Commissioner for Petroleum Affairs are accorded relevant environmental crime prevention and combatting powers and responsibilities in terms of the Act.

All the above-mentioned laws<sup>574</sup> state that the MME is the custodian of underground extracting activities related to precious stones, minerals, petroleum etc. The MME also has Inspectors with regulatory and investigative capabilities and responsibilities in combatting relevant environmental crimes or transgressions. Diamond Inspectors for example have powers similar to that of peace officers as per the Criminal Procedure Act, when conducting their duties related to aspects such as suspects questioning, search and seizure powers etc. The MME, as the leading agent, along with other Ministries and stakeholders are responsible for developing national strategies to prevent and combat transgressions of underground extracting regulations.

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<sup>574</sup> Including other laws such as the Diamond Act 13 of 1999 are the primary laws that designate the MME as custodian of the country's mineral resources.

The MEFT, and in particular the Environmental Commissioner are responsible for combatting illegal sand mining activities.

*e. Hazardous waste dumping and trafficking*

The Hazardous Substances Ordinance 14 of 1974 as amended by the Atomic Energy and Radiation Protection Act 5 of 2005 designates relevant authorities and accords them powers to manage hazardous waste dumping and trafficking. The Environmental Management Act is another key law which sets the tone for promoting the sustainable management of the environment and the use of natural resources by establishing principles for decision making on matters affecting the environment. The MEFT is the custodian of legislation related to hazardous waste management in safeguarding the environment. The dumping and trafficking of hazardous waste is prohibited by law. The MEFT leads engagements to develop national combatting strategies and monitors implementation of same. On the other hand, the Environmental Commissioner enforces regulatory requirements and investigates any contraventions related to hazardous waste dumping and trafficking in conjunction with the NamPol. The MEFT, as the national coordinator of relevant combatting mechanisms led efforts to craft the National Solid Waste Management Strategy<sup>575</sup>. Such strategy guides Namibia's efforts in this regard.

The Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981, as amended, designates the Ministry of Works, Transport and Communication (MWTC) as the custodian responsible for coordinating the development of a national strategy to combat relevant environmental crimes.

The Namibian Police, as the primary LEA in the country with investigative capabilities under the Criminal Investigations Directorate is mandated to enforce and investigate any contraventions related to Forestry crimes, wildlife poaching and trafficking, IUU, as well as hazardous waste dumping and trafficking. Relevant authorities such as the Environmental Commissioner, Minerals or Fisheries Inspectors may conduct preliminary investigations but would ultimately hand over such investigations to the Namibian police.

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<sup>575</sup> National Solid Waste Management Strategy, 2017. [https://www.met.gov.na/files/downloads/43e\\_NSWM%20Strategy.pdf](https://www.met.gov.na/files/downloads/43e_NSWM%20Strategy.pdf)

A high-level interagency committee was created in 2015 to oversee the formulation, coordination and implementation of strategies relating to all environmental crimes, along with related financial flows. It has since become dormant over the last few years. At inception, the said committee comprised of key stakeholders such as LEAs, Customs authorities, treasury, FIC, ACC and relevant NGOs. Had this committee actively operated, it could have enabled a platform through which environmental crime combatting bodies duly coordinate combatting efforts.

In terms of operational capacity and independence, designated authorities have the independence and freedom to make decisions, conduct analysis and facilitate coordinated actions with other authorities to combat environmental crimes. Section 8.5 above speaks to the capacity and resources of financial crime investigators. The conclusions reached in section 8.5 are relevant to LEAs charged with environmental crime investigations. Overall, capacity and resources remain a challenge for LEAs in combatting environmental crimes, ML and all other predicate offences. The MFMR specifically requires improvements in capacity building and upgrading of the existing equipment (e.g patrol vessels) to enable adequate and effective performance.

Section 8.6 above raises observations around the integrity and independence of financial crime investigators. Although minor integrity breaches may have been observed in a few incidences over the reporting period, the general view is that such are quite few and insignificant. Therefore, it is concluded that environmental crime investigators generally conduct their activities freely and without undue influence, displaying sufficient operational independence and autonomy.

The observations in section 8.14 relating to domestic cooperation and section 8.15 related to international cooperation apply to environmental crimes as well. With government ministries playing such key roles in combatting efforts, it is worth noting that some Ministries, such as the MEFT and MFMR have agreements with regional and international organizations including the FAO. The MFMR also cooperates with other Regional and International Member Coastal States in terms of various MoUs.

Having regard to all considerations herein, the capacity of designated authorities was rated **Medium High** (a score of 0.6 or 60%).

### **15.4.3 Definition of environmental crime breaches**

Legal definitions of crimes guide and impact the effectiveness of combating frameworks. Internationally<sup>576</sup>, environmental crimes are generally defined to be inclusive of all illegal activities harming the environment and which allow persons to benefit from the exploitation, damage, theft or trade of such protected natural resources. With this position as a yardstick, it is generally accepted that Namibia has adequately defined conduct which amounts to environmental crimes for each of the major categories of environmental crimes and a **Very High** (a score of 0.8 or 80%) rating was deemed appropriate. The section below lists the various legal frameworks that define offences or prohibited conduct.

#### *a. Forestry Crimes, Wildlife poaching and Trafficking*

The Controlled Wildlife Products and Trade Act as amended, Forest Act, as well as the Nature Conservation Ordinance as amended, amongst others, define conduct which constitute environmental crimes within the fauna and flora space. The fauna and flora environmental crime definitions are also aligned to CITES conventions. The MEFT is the primary custodian of these laws and has frameworks in place to combat relevant crimes. Under Namibian legislation, the laws and penalties regarding the conspiracy to commit an offence (in this case rhino poaching) are applied in the same manner as if the perpetrator had committed the actual offence.

#### *b. IUU fishing activities*

MFMR is the custodian of various fisheries and marine resource related legislations and policies (Regulatory framework). The Marine Resources Act 27 of 2000 as amended, adequately defines environmental crimes in the marine resources sphere. With growing

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<sup>576</sup> These definitions are generally influenced by international obligations (CITES, the Convention on Biological Diversity, etc.) and should be reflected fully and accurately in legislation (World Bank Risk Assessment Guidance, 2019). Guidance can also be found in various platforms including the EIA:

ENVIRONMENTAL CRIME: A threat to our future, EIA, October 2008,  
[https://www.unodc.org/documents/NGO/EIA\\_Ecocrime\\_report\\_0908\\_final\\_draft\\_low.pdf](https://www.unodc.org/documents/NGO/EIA_Ecocrime_report_0908_final_draft_low.pdf).

aquaculture activities over the years, the Aquaculture Act 18 of 2002 also defines related environmental crimes. Having said this, the failure to implement, comply with or domesticate CITES conventions on marine resources remains an area that could potentially enhance vulnerabilities and thus undermine compliance with certain international obligations aimed at enhancing both national and international combatting efforts. This is despite Namibia having acceded to CITES on 18 December 1990 and to the Convention on Biological Diversity on 20 May 2014.

*c. Hazardous waste dumping and trafficking*

The Environmental Management Act is regarded as the primary law which defines conduct amounting to offences in this category of crime. Other laws such as the Hazardous Substances Ordinance 14 of 1974, Atomic Energy and Radiation Protection Act 5 of 2005, Atmospheric Pollution Prevention Ordinance 11 of 1976, Biosafety Act 7 of 2006, Soil Conservation Act 76 of 1969, Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981, amongst others, help define conduct which falls within the hazardous dumping and trafficking category. With hazardous substances, the Minister may cause certain substances to be classified under Group I or Group II as hazardous substances<sup>577</sup>. Upon such classification, the treatment and disposal of such substances by any person needs to be in line with the said law. This sets the tone for the management of hazardous waste dumping and trafficking nationally.

Local authorities' environmental safeguarding efforts have also been enhanced through the issuance of regulations such as the Solid and Hazardous Waste Management Regulations<sup>578</sup>.

*d. Underground extracting sectors*

Primarily, the Minerals (Prospecting and Mining) Act 33 of 1992, Diamond Act 13 of 1999, Petroleum (Exploration and Production) Act 2 of 1991 amongst others define environmental crimes within the underground extracting spheres. These laws describe conduct which

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<sup>577</sup> As per section 3 of the Hazardous Substances Ordinance 14 of 1974.

<sup>578</sup> The Council of the Municipality of Walvis Bay has, after consultation with the Minister of Regional and Local Government, Housing and Rural Development, under section 94(1) of the Local Authorities Act, 1992 (Act No. 23 of 1992), made the regulations. Accessible at: <https://www.lac.org.na/laws/2011/4727.pdf>. Also see the Windhoek Municipality: Waste Management Regulations: Local Authorities Act, 1992 (4650) at: <http://www.windhoekcc.org.na/pdf/infrastructure/SWMRegulations.pdf>

amount to violations related to exploring and prospecting, mining, dealing, possession etc. Overall, Namibia has defined environmental crimes in various laws to the extent that such definitions help to effectively identify environmental crimes and duly enhance the domestic combatting ability while enhancing mobilization of international cooperation.

e. *Illegal sand mining activities*

Sand mining is a listed activity in terms of the Environmental Management Act, which may only be undertaken after having obtained an environmental clearance certificate from the Environmental Commissioner in the MEFT.

Illegal sand mining results in open excavated pits which present a risk to people, animals and biodiversity, besides other environmental implications. It is for this reason that Environmental Impact Assessments need to be undertaken and outcomes thereof considered in the decision to grant environmental clearance certificates. Importantly, sand miners who follow due process are required to excavate pits in a manner that causes the least environmental impact.

The escalating illegal sand mining operations have in recent years gained the attention of the Environmental Commissioner and the MEFT. The MEFT and the Commissioner have increased momentum in combatting illegal sand mining activities, with worrying trends being observed in the northern regions of Namibia. In such regions, trends appear to suggest that sand miners are simply paying or negotiating with land custodians (community members) or village headmen without applying for environmental clearance certificates from the authorities.<sup>579</sup> Sand mining is a lucrative business as such sand is supplied to the construction industry. Naturally, the proceeds from illegal sand mining activities, like any other illicit activity, can be laundered in the financial system.

#### **15.4.4 Administrative or civil sanctions**

Overall, Namibia's regulatory and legal framework provides for civil and administrative sanctions for environmental law violations. Observations also reflect that punitive measures imposed are not always deemed proportionate, effective and dissuasive. The lack of adequate records to demonstrate identified offences and how such were dealt with

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<sup>579</sup> July 2016 report: <https://www.met.gov.na/news/157/illegal-sand-miners-to-face-music>

administratively also speaks to implementation challenges. Table 67<sup>580</sup> avails record of how courts dealt with civil sanctions emanating from environmental crimes in the reporting period. Overall, the effectiveness of administrative and civil sanctions is rated **Medium** (a score of 0.5 or 50%).

Other than the FIA and POCA<sup>581</sup>, the various environmental crime laws cited above, while defining criminal conduct equally provide for administrative sanctions for such crimes, regardless of whether such are committed by legal, natural persons or other types of arrangements. The subsections below avail a brief presentation of some of the few administrative sanctions.

#### *a. Forestry crimes*

Several sections of the Nature Conservation Ordinance and the Forest Act allow for various administrative sanctions. Part VII of the Forest Act deals with offences and enforcements. Officers have a host of powers to enable effective discharge of administrative sanctions.

Certain powers which enable the Minister to revoke authority or permits granted when the Forest Act is contravened. Despite this, no records were obtained indicating the exercise of such powers. The NRA found that persons permitted or licensed to harvest forests are often the ones guilty of harvesting beyond such authorisation. A typical example is section 34 of the Forest Act which avails powers to officers to deal with suspensions and cancellation of licences when officers believe that contraventions have or are about to be committed by persons licensed to undertake certain activities as per the Act, including illicit harvesting of forests. Another example is section 19 which states that the Minister has powers to revoke or suspend a notice which declared a community forest where the management authority of a community forest has failed to comply with an agreement made under section 15. The Minister may order the management authority to comply with that agreement, restore any area of the community forest to the condition required by that agreement and where necessary, order the management authority to compensate a person who has suffered loss caused by deviation from that agreement.

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<sup>580</sup> While Table 63 avails some records on forfeitures.

<sup>581</sup> Generally, sanctions related to ML offences (whether associated to environmental crimes or other types) are provided for in the FIA and the POCA. Such adequately provide for administrative, civil and criminal sanctions.

*b. Wildlife poaching and trafficking*

Within the wildlife poaching and trafficking space, the Controlled Wildlife Products and Trade Act and the Nature Conservation Ordinance avails various administrative sanctions for violations. Some penalties include compensation, forfeitures, restitution and exclusion from licensing. Section 7 of the Act<sup>582</sup> provide inspectors with powers to seize<sup>583</sup> any item, object or living animal, plant etc., in the advancement of the Act. Section 8 on the other hand provides the inspectors with forfeiture powers of such seized items, with special provisions availed to enable returning of living animals and plants to their countries of origin or release of same in an appropriate place in Namibia. In practice, NPOs have shown expertise in restoring, rehabilitating, treating and reintroducing of fauna and flora (e.g previously seized) into their natural habitat, and when necessary, disposal of same.

With other environmental offenses, an Environmental Officer has powers in terms of section 20 of the Environmental Management Act to issue compliance order(s) to any person whom the Officer has reason to believe has contravened relevant provisions of such Act.

*c. IUU fishing activities*

Section 52(1) of the Marine Resources Act provides for some administrative sanctions. Section 52(5) of this Act, while providing for financial penalties to deal with violations equally state that any fine imposed upon conviction under this section shall be recoverable as if it were a civil judgement. This enhances administration of civil penal provisions. The MFMR's concerns around administrative sanctions as per the Marine Resources Act suggest that administrative sanctions may not be dissuasive enough to discourage some offences<sup>584</sup>.

*d. Underground extracting sectors*

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<sup>582</sup> Section 5 of the same law lists prohibited conduct and provides for sanctions accordingly.

<sup>583</sup> Subject to subsection (2) the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

<sup>584</sup> illicit fishing: The fisheries administrative penalties range from NAD 300.00 to NAD 2,000,000.00 depending on the severity of the offence. The MFMR indicated that such are not always deterrent.

The Diamond Act is a key legal instrument relied on given the prominence of diamond mining and illicit dealings locally. Amongst a host of administrative sanctions, section 25 of such Act avails the Minister powers to effect suspension and cancellation of licences owing to contraventions of the Act. Section 66 avails various administrative sanctions to Diamonds Inspectors including powers to search and seize when need be. The Minerals (Prospecting and Mining) Act 33 of 1992 also avails the Minister and Mining Commissioner numerous administrative sanctions to employ in order to enforce compliance.

Illicit sand mining which has been on the increase, although extractive by nature is under the regulation of the Environmental Commissioner in the MEFT. In the 2016 financial year, the MEFT issued several compliance orders to companies that were in direct contravention of the Environmental Management Act, through illegal sand mining activities. Such companies were operating without environmental clearance certificates. The non-compliant companies were La Mer, the developers of the Swakopmund Waterfront; Sand Works; MTB Bricks and Sand; Kunene Building Supplies and Fkarstens. The latter two were quarrying illegally south of Windhoek.<sup>585</sup> Other than the Compliance Orders, the MEFT explained that the current legal framework does not accord them powers to issue punitive administrative powers, with punitive measures only restricted to convictions in courts.

At the time of reporting, new sand and gravel extraction regulations were being developed under the Environmental Management Act. Once adopted, the regulations will implement stricter measures and procedures, as well as ensure that culprits are punished accordingly.<sup>586</sup> Such will also avail the Ministry authority to issue administrative sanctions. Large local authorities such as the City of Windhoek have policies<sup>587</sup> designed to advance sustainable sand mining. In terms of such policies, prospective sand minders are required to meet certain requirements before requests or applications to mine sand can be considered. These policies also stipulate administrative sanctions for violations.

e. *Hazardous waste dumping and trafficking*

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<sup>585</sup> <https://www.met.gov.na/news/157/illegal-sand-miners-to-face-music>

<sup>586</sup> <https://www.namibian.com.na/100773/read/New-sand-mining-regulations-in-the-works>

<sup>587</sup> <http://www.windhoekcc.org.na/pdf/busi/CoW%20Sand%20Mining%20Policy%20-%20Final%20Policy.pdf>

Section 30 of the Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 avails the Executive Director in the MWTC administrative powers to discharge sanctions accordingly. Additionally, the section also avails relevant sanctions in terms of penalties that can be imposed administratively and by a court upon conviction.

The Atomic Energy and Radiation Protection Act 5 of 2005 also provides for administrative penalties under section 40. Such include fines ranging from NAD 8,000.00 to NAD 200,000.00, depending on the severity and nature of the offence.

In terms of the scope of environmental crime combatting laws<sup>588</sup>, there is general satisfaction that relevant laws apply to all types of persons (natural, juristic and other arrangements) in as far as their conduct may have resulted in or contributed to environmental crimes. Data from various Ministries reflecting the effective discharge of administrative and civil sanctions was limited and not conclusive. Some Ministries do not appear to keep any such records at all. The minimal information at hand pertaining to administrative sanctions suggest that effective implementation and record keeping thereof remains a challenge. Such limitations hindered the ability to adequately assess the efficiency and effectiveness of implementation of administrative sanctions availed by various laws.

#### **15.4.5 Criminal sanctions**

Generally, most of Namibia's laws provide for proportionate and dissuasive criminal sanctions for environmental crimes, with the exception of a few laws identified herein. Environmental crime prevention and combatting laws include a wide range of criminal sanctions that can be applied to persons convicted of breaches of environmental laws. Environmental crimes are also predicate offences of ML by virtue of section 6 of the POCA.<sup>589</sup> With the exception of one case of attempted trafficking of wildlife products in March 2014, there has not been ML or similar illicit financial flow related convictions related to environmental crimes in the five-

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<sup>588</sup> Section 7 of POCA applies to offences committed by corporations and it specifies that where an offence under section 4, 5 or 6 is committed by a body of persons, whether corporate or incorporate, every person who, at the time of the commission of the offence acted in an official capacity for or on behalf of that body of persons, whether as a director, manager, secretary or other similar office, or was purporting to act in that capacity, commits that offence.

<sup>589</sup> Section 6 provides that any person who acquires, uses, has possession of, or brings into, or takes out of, Namibia, property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities commits the offence of money laundering. In most wildlife crime cases the accused persons acquire, try to take out and into Namibia proceeds of unlawful activities e.g elephant tusks, rhino horns etc.

year period of 2015 to 2019 (see Tables 63 and 67).<sup>590</sup> Table 68 however suggests that LEAs increasingly advanced ML related charges along with IWT charges brought before courts.

Notable challenges include the very low number of ML predicate offenses brought to court relating to environmental crimes despite the POCA<sup>591</sup> creating a platform through which such can be brought to court. Having regard to all the above, the effectiveness of criminal sanctions is rated **High** (a score of 0.7 or 70%). Below is a summary of the major environmental crimes and criminal sanctions for same.

*a. Forestry crimes*

Various provisions in the Forest Act describe conduct which amounts to forestry offences as per the Act. Logging (including the harvesting, trafficking or dealing in same) can only be done after following the necessary procedures provided for in the Act. Part VII of the Act focuses on offences relating to sections 21(5), 22(1) or (6), 23(1), 24(2), 33(2) or 40 of the Act and details powers of Forestry Officers in enforcing compliance with the Act. Section 45 provides a host of sanctions for violations with the highest such sanction being a fine not exceeding NAD 12,000.00 or to imprisonment for a period not exceeding three years or both, while section 46 avails additional penalties not provided for in section 45.

*b. Wildlife poaching and trafficking*

The Controlled Wildlife Products and Trade Act and Nature Conservation Ordinance stipulate various criminal sanctions. Section 5 of the Act for example lists conduct which is prohibited and equally states that contraventions, upon conviction, can lead to a fine not exceeding NAD 200,000.00 or to imprisonment for a period not exceeding 20 years or both. Section 5(3) of the same Act avails courts further discretion to impose additional (or more) dissuasive sanctions when circumstances so require.

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<sup>590</sup> Except for the one case in which four Chinese nationals attempted to smuggle 14 rhino horns and a leopard skin through Hosea Kutako International Airport in March 2014, with convictions in that case being finalised in 2016. This is the only environmental crime case in the reporting period wherein POCA or ML related charges were advanced and successfully prosecuted to gain convictions.

<sup>591</sup> The wide coverage of sections 4, 5 and 6 of the POCA include proceeds derived from any unlawful activity including environmental crimes. Section 7 of the POCA further enhances scope to ensure persons who acted in an official capacity on behalf of corporations or other entities can be liable.

Penalties in respect of the Nature Conservation Ordinance as well as the Controlled Wildlife Products and Trade Act, are considered proportionate and dissuasive following the recent amendments. With such amendments, contravention of section 26(1) of the Ordinance now attracts a fine not exceeding NAD 25,000,000.00 or to imprisonment for a period not exceeding 25 years, or both such fine and such imprisonment, where such offence relates to the hunting of any elephant or rhinoceros. Similarly, where the offence relates to the hunting of any other specially protected game, a fine not exceeding NAD 10,000,000.00 or imprisonment for a period not exceeding 10 years, or to both. If the person so convicted has been previously convicted of an offence referred to above, he or she is liable to a fine not exceeding NAD 50,000,000.00 or to imprisonment for a period not exceeding 40 years, or to both. The law is also responsive to observed trends in IWT. For example, given the increase in foreign nationals' involvement in such crimes, the amendments further state that [in section 87(2)] courts that convict such foreign nationals under the Ordinance shall, by order, declare such foreign nationals prohibited immigrants.

c. *IUU fishing activities*

Part IX of the Marine Resources Act details conduct which is considered a violation in terms of the Act and further avails penalties pursuant to such violations. The highest possible fine for violations as provided for in Part IX is NAD 2,000,000.00. The act also directs that upon convictions for violations brought under the Act, courts shall cause an enquiry into and determine the monetary value of any advantage or potential advantage which convicted persons has or could have gained in consequence of that offence (section 53). Accordingly, courts may impose a fine equal to three times the value so determined, which fine may be recovered as a civil judgement. Section 54 of the Act further avails courts powers to issue forfeiture orders as well as cancel or suspend any licence or other authorization issued to persons so convicted.

Similar provisions also exist for aquaculture related operations. Section 39 of the Aquaculture Act 18 of 2002 describes conduct which amounts to an offense while section 40 avails penalties for such offences. The penalties for offences as prescribed under section 40(1) (a),

(b) and (2) are however said to be minimal and not dissuasive for certain offences which may be severe.<sup>592</sup>

*d. Underground extracting sectors*

The Minerals (Prospecting and Mining) Act as amended by the Minerals (Prospecting and Mining) Amendment Act 8 of 2008 provides for conduct which amount to offences<sup>593</sup> and penalties for such. Offences related to dealing in or possession of high value minerals are captured in section 104. Given the potential benefits that can be illicitly derived from high value minerals, the fines (not exceeding NAD 50,000.00) and imprisonment (not exceeding three years) provided for in sections such as 103, 104 and 133<sup>594</sup> may not always be adequately dissuasive and proportionate.<sup>595</sup> This however needs to be considered with the forfeiture orders that can still be sanctioned by courts upon convicted persons as per section 136.

The Diamond Act 13 of 1999<sup>596</sup>, specifically Part VI criminalizes specific conduct while Part XI speaks to the designation of diamond inspectors, and the search and seizure powers of such inspectors. Other combatting mechanisms such as forfeiture mechanisms and jurisdiction of courts in respect of sanctions are contained in Part XII. For less severe offenses, a fine not exceeding NAD 100,000.00 or imprisonment for a period not exceeding two years or both are prescribed in Part VI. Other offences deemed severe attract a fine of NAD 1,000,000.00 or imprisonment for a period not exceeding twenty years or both. With illicit possession of unpolished diamonds, the Act further empowers the Minister to prescribe further penalties. These should be considered along with the relevant regulations<sup>597</sup> on the diamond sector.

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<sup>592</sup> Fine not exceeding NAD 4,000.00 or imprisonment for a period not exceeding twelve months or to both such fine and imprisonment; or a fine not exceeding NAD 8,000.00 or imprisonment not exceeding two years or to both such fine and imprisonment. Subsection 2 provides that a person who commits a subsequent offence under this Act is on conviction liable to a penalty not less than NAD 10,000.00 in addition to any other penalty which may be imposed in respect of that offence.

<sup>593</sup> Particularly sections 103 and 104 of the Act.

<sup>594</sup> These are miscellaneous offences for which fine not exceeding NAD 8,000 or to imprisonment for a period not exceeding 12 months or both, are provided under section 133.

<sup>595</sup> Contraventions of provisions in section 3 call for a fine not exceeding NAD 100,000.00 or to imprisonment for a period not exceeding five years or to both. This is higher than the sanctions catered for in sections 103 and 104.

<sup>596</sup> A common crime is often theft or illicit possession of diamonds. Theft of diamonds is defined in section 74 of the Diamonds Act as follows: Any person who steals any diamond the property of or in the lawful possession of another person, shall be guilty of an offence and on conviction be liable to a fine not exceeding NAD 1,000,000.00 or imprisonment for a period not exceeding twenty years or both.

<sup>597</sup> Regulations relating to the Search of Employees and Visitors in Diamond Areas as per Government Notice 51 of 1950 provides for all persons to be searched and refusal to subject to such searches can result in a criminal conviction. The regulations further provide that person convicted of such offences shall be liable to a fine not exceeding two hundred and fifty pounds or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

The Petroleum (Exploration and Production) Act 2 of 1991, as amended by subsequent Amendments governs the reconnaissance, exploration, production and disposal of petroleum products. PART XI (in addition to section 9 in Part IV<sup>598</sup>) provides for conduct which violates the Act and relevant sanctions<sup>599</sup>.

For illicit sand mining activities, the Environmental Management Act provides for a fine of up to NAD 500,000.00 or imprisonment of up to five years or both. The MEFT is drafting regulations which are expected to avail more dissuasive sanctions for illegal sand mining activities.

*e. Hazardous waste dumping and trafficking*

Conduct which amounts to offences as per the Hazardous Substances Ordinance<sup>600</sup> are detailed in various sections of the Ordinance, with penalties and other related sanctions such as forfeiture measures captured in sections 20 to 22. However, it was observed that such penalties and sanctions in terms of Section 19 of the Hazardous Substance Ordinance, may not always be adequately dissuasive without other measures beyond the Act.

Environmental Management Act provides for various offences under the relevant sections including Part V and VIII. While section 20 of such Act gives environmental officers powers to issue compliance orders to any person who contravenes the Act, if such persons refuse to comply with such orders, without good reason, such persons commit offences. These offenses are liable on conviction to a fine not exceeding NAD 500,000.00 or to imprisonment for a period not exceeding 25 years or both.<sup>601</sup> Section 53 further focuses on the scope of the type of persons who could be liable for offences as it explains that by a body corporate and jurisdiction director, member, trustee, manager or other similar officer of the body corporate; or any person who was purporting to act in the capacity.

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<sup>598</sup> General penalties in section 9: a fine not exceeding NAD 100,000.00 or to imprisonment for a period not exceeding five years.

<sup>599</sup> For miscellaneous offences, the sanction is a fine not exceeding NAD 20,000.00 or to imprisonment for a period not exceeding five years or both.

<sup>600</sup> as amended by the Atomic Energy and Radiation Protection Act of 2005.

<sup>601</sup> This should be viewed along with provisions of section 54 which avails courts powers to issue forfeiture orders and further cause and enquiry into, and assess the monetary value of any advantage gained or likely to be gained by a person in consequence of environmental crime offences and impose on such person a fine to a maximum equal to the monetary value so assessed or, in default of payment of the fine, to imprisonment for a period not exceeding one year.

The Biosafety Act 7 of 2006 in section 47 deals with offences and competent court orders for biosafety related violations. Section 48 avails courts powers to render forfeiture orders when such is successfully applied for by the prosecution. Section 40 of the Atomic Energy and Radiation Protection Act on the other hand provides for imprisonment for a period not exceeding 10 years or to both such fines and imprisonment for offences under the Act. Section 41 avails guidance on criminal proceedings to help in the administration of such offences.

The Atmospheric Pollution Prevention Ordinance 11 of 1976, as per section 43(1) stipulate actions which are in violation of provisions that safeguard the atmosphere. For first time offenders, the penalty is a fine not exceeding NAD 1,000.00 or imprisonment for a period not exceeding one year. For second time or subsequent offenders, such fine not in excess of NAD 2,000.00 or imprisonment for a period not exceeding two years. Such penalties, though slightly enhanced to improve dissuasiveness in section 43(2) are not deemed adequately proportionate to effectively dissuade.

Section 30 of the Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 as amended, avails relevant sanctions that can be imposed by a court upon conviction for environmental crimes as per the Act. Depending on the sections contravened, the fines range from NAD 40,000.00 to NAD 1,000,000.00 and include or can be accompanied by imprisonment for a period not exceeding 25 years.

Various information in section 15.3<sup>602</sup> (threat assessment) show record of environmental crimes detected and processed over the years.

#### **15.4.6 Environmental crime asset recovery and management**

Core elements of Namibia's asset recovery and management framework are reflected in the National Vulnerability module in section 8.3, Chapter III of this document. Overall, asset forfeiture laws, which include measures to seize and freeze were found to be adequately

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<sup>602</sup> In particular tables 51, 52, 55, 58, 59 and figures 56, 65, 66, 67 amongst others.

comprehensive and rated **Very High** (or a score of 0.8 or 08%). This section explains variables which were considered to arrive at such rating.

The Asset Forfeiture Unit within the OPG deals with asset recovery cases through evidence obtained by investigating authorities, in terms of the POCA. In practice, assets are generally managed in accordance with relevant Court Orders. Most commonly, assets are placed in the custody of the police or investigating authorities pending finalization of the asset recovery proceedings (either conviction-based or non-conviction based). The police are then required to retain the value of the properties as best as possible ensuring that the properties are taken care of. Once forfeited to the State, assets are either sold on auction and the proceeds of the sales paid to the Criminal Asset Recovery Fund or may be dealt with in accordance with the directions of the Criminal Asset Recovery Committee. For example, a house was forfeited to the State and subsequently donated to the Ministry of Gender and Child Welfare.<sup>603</sup>

Depreciable assets are managed in a way that would preserve their value,<sup>604</sup> i.e., they may be sold pending finalization of the proceedings and the money (value) is kept in an interest-bearing account. In other instances, properties may be placed under curatorship or in the custody of the owners to operate, pending finalization of the proceedings. It is notable that in such instances, the Court Order specifically prohibits dissipation of such properties. In these instances, the police do routine check-ups on such properties.

There is political will and commitment to have effective asset recovery frameworks reflected through the creation of a dedicated team of asset recovery and management members within the OPG and the Namibian Police. It is also felt that the OPG and country's membership to various prosecution and asset recovery bodies at regional and international level have been quite helpful. More could however be done to enhance the asset recovery structures through resourcing (both human and financial).

Namibia's assets forfeiture framework explained above applies to all unlawful activities including environmental crimes and ML offences related thereto. Below is a summary of the

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<sup>603</sup> OPG

<sup>604</sup> Vehicles are mostly kept at government and or investigative authorities' garages (premises). Money is kept in the criminal asset recovery fund (bank account). Other movable properties are kept in the custody of the investigative authorities.

major asset forfeiture measures which are specifically provided for in various environmental crime combatting laws.

a. *Forestry crimes*

Forest Act states in section 43(5) that an article seized under subsection (3) shall be dealt with and disposed of in the same way as an article which was seized under Chapter 2 of the CPA. Further, an authorised officer who acts under such subsection shall, subject to necessary changes comply with that Chapter.<sup>605</sup>

b. *Wildlife poaching and trafficking*

With wildlife poaching and trafficking related offences, forfeiture is also regulated as per the CPA<sup>606</sup> and is thus similar to the position cited under Forestry Crimes above.

Section 8(2) of the Controlled Wildlife Products and Trade Act states that if the item seized is a living plant or animal, the inspector may return such animal to its country of origin or release that plant or animal in an appropriate place in Namibia<sup>607</sup> or deal therewith it in any manner conducive to the well-being thereof, regardless of any rights in that thing that has not been conclusively determined.<sup>608</sup> The Act further provides that anything forfeited to the State must, if circumstances permit, be returned to the country of export or origin of the specimen as appropriate. Any cost incurred in relation thereto may be recovered from any person convicted of an offence under this Act if the offence relates to the specimen concerned. The Act further states that seized items may be deposited in an appropriate institution, collection or museum or otherwise disposed of in a manner that benefits conservation.

The PRU and MEFT indicated that overall, the majority of asset seizures in wildlife crime cases are vehicles. During 2018 and 2019 a total of 52 vehicles were confiscated during

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<sup>605</sup> The provisions of the CPA, relating to the seizure and the forfeiting to the State of a thing relating to an offence, by a police officer or peace officer including provisions relating to the forfeiture, handling and storage of anything seized under that Act, as well as the provisions relating to rights of third parties when anything is declared forfeited, is applicable to anything seized under this Act and a reference in that Act to a peace officer or police officer is construed as a reference to an inspector.

<sup>606</sup> section 8 of the Controlled Wildlife Products and Trade Act 9 of 2008.

<sup>607</sup> NPOs, various government Ministries help with the reintroduction of seized or confiscated animals or plants, and, when necessary, in the disposal of such property. In Namibia, NPOs have shown expertise in restoring, rehabilitating, treating and reintroducing of fauna and flora (e.g previously seized) into their natural habitat.

<sup>608</sup> This subsection does not affect a claim of compensation for an unlawful seizure or disposal.

wildlife crime investigations. These vehicles were either used in the commission of the offences (instrumentalities) or are suspected to have been purchased with proceeds of wildlife crimes. Wildlife products such as rhino horns, ivory, pangolin as well as predator skins are also seized on a regular basis.

c. *IUU fishing activities*

Marine Resources Act, particularly section 54 to 55 deal with the forfeiture and custody of relevant assets associated with contraventions of the Act. Section 54 gives courts powers to order that any marine resource, fishing gear, vessel, vehicle or item in respect of which an offence was committed or which was used in connection with the commission thereof, to be forfeited to the State. In cases where the marine resources, or such other item have been released under section 55(4), courts may order the amount guaranteed in respect of the value thereof under that section to be forfeited to the State. Any marine resource, vessel, vehicle, fishing gear or item forfeited to the State under this section shall be dealt with or disposed of in such manner as the Minister may direct.

Where an accused person who is in custody in respect of an offence under the Marine Resources Act escapes from custody, or absconds, the court before which the matter is pending may order any such vessel or vehicle or any other property seized to be forfeited to the State. Where the vessel or any of such property has been released under section 55(4), courts may also order the amount guaranteed under that section in respect of the value thereof and of any fine, to be forfeited to the State. In an effort to ensure that the rights of *bona fide* third parties are safeguarded, forfeiture orders made (as per above) in respect of any vessel, vehicle, fishing gear or item shall not affect the rights of *bona fide* third parties.<sup>609</sup> Courts that grant such orders may inquire into the rights so claimed by innocent third parties.

The Marine Resources Act further provides that any vessel seized as per the Act shall be taken to a Namibian port as the Executive Director (ED) may direct and any perishable item seized may be sold or destroyed on order of the ED, and the proceeds if any, retained in

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<sup>609</sup> in the case of a vessel, is the holder of an unsatisfied mortgage bond registered over the vessel; or has sold the vessel, the vehicle, the fishing gear or the item in question to the convicted person in pursuance.

place of the item. Any item not sold, destroyed or released as per the Act, including all proceeds, guarantees and payments received in respect of any item shall be held as the court may direct pending the conclusion of any proceedings. Where the OPG determines that no prosecution is likely to be brought, the court may order the disposition of anything held as per the Act, to any person who appears entitled thereto or its forfeiture to the State if no such person is identified.

*d. Hazardous waste dumping and trafficking*

Section 54 of the Environmental Management Act explains the forfeiture framework for contraventions under the law. The Act states that a court convicting a person of an offence under this Act may, in addition to any penalty imposed in respect of that offence order that any item used for the purpose of or in connection with the commission of the offence be forfeited to the State. Similarly, such court should summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by that person in consequence of that offence and impose on that person a fine to a maximum equal to the monetary value so assessed or, in default of payment of the fine, to imprisonment for a period not exceeding one year. The Act also provides that section 35 of the CPA applies in certain circumstances mentioned under section 54 of the Act.

Money received as payment of a penalty following a conviction in terms of the Environmental Management Act, or the proceeds from the sale of anything declared forfeited<sup>610</sup> following a conviction in terms of the Act, or any fee payable in terms of this Act, must be paid into the Fund.<sup>611</sup>

*e. Underground extracting sectors*

Section 136 of the Minerals (Prospecting and Mining) Act as amended and relevant provisions of the CPA create the forfeiture framework for the extracting sectors. Other than what is provided for in the CPA, the Act states that if a person is convicted of an offence (under this Act), the court which has convicted the person may, in addition to any other

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<sup>610</sup> in terms of section 35 of the CPA.

<sup>611</sup> Environmental Investment Fund of Namibia established by section 2 of the Environmental Investment Fund of Namibia Act, 2001 (Act No. 13 of 2001).

penalty imposed or any forfeiture ordered under any other law, order any mineral or group of minerals won or mined in the course of the commission of such offence be forfeited to the State. In the event of any such mineral or group of minerals having been sold or otherwise disposed of, an amount equal to the proceeds of the sale or the market value of such mineral or group of minerals, as determined by the court, be paid by such person for the benefit of the State Revenue Fund.

Other Acts such as the Diamond Act also specify certain forfeiture provisions relevant to specific environmental crimes. Section 77(2) of the Diamond Act provides means for the protection of innocent third parties in asset forfeitures and related measures.

Overall, the various laws cited above (along with the POCA sections 1, 32,<sup>612</sup> 51 and 59) explain how the asset forfeiture framework extend to the proceeds and instrumentalities of ML and its predicate offenses, profits derived from those offenses, and property of corresponding value held by the criminal defendants or relevant third parties.<sup>613</sup>

Table 63 below avails some statistics on the seizure and confiscation of proceeds of environmental crimes and related offenses. With the exception of one case of attempted trafficking of wildlife products in March 2014, there has not been ML or similar illicit financial flow related convictions in courts related to environmental crimes in the five-year period of 2015 to 2019.<sup>614</sup>

	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Seizures, forfeitures and confiscations related to environmental crimes (mostly seized as part of police investigations)	Over NAD 95,000.00	Over NAD 65,000.00 plus 2 vehicles	Over NAD 140,000.00 plus 2 vehicles	Over NAD 2 million plus 13 vehicles	Over NAD 2,2 million plus 17- vehicles
Confiscation of <b>laundered proceeds</b> of environmental crimes.	NONE	NONE	NONE	NONE	NONE

<sup>612</sup> Sections 32 provides for confiscation orders in conviction- based asset forfeiture regime. These are money judgements against the defendant aimed at removing the benefit derived from a crime, this is done through the confiscation of corresponding value held by the criminal defendant or third parties.

<sup>613</sup> The said laws also provide authorities with a legal basis to identify and trace the proceeds or property.

<sup>614</sup> Except for the one case in which four Chinese nationals attempted to smuggle 14 rhino horns and a leopard skin through Hosea Kutako International Airport in March 2014, with convictions in that case being finalised in 2016. This is the only environmental crime case in the reporting period wherein POCA or ML related charges were advanced and successfully prosecuted to gain convictions. Table 68 however suggests that LEAs increasingly advanced ML related charges along with IWT charges brought before courts.

Table 63: Seizure and confiscations of proceeds of environmental crimes

#### 15.4.7 Control of corruption (and bribery)

Environmental crimes are known to flourish when there is systemic corruption in a country. All prior NRA findings since 2012 have consistently concluded that corruption (along with tax evasions and fraud) is a significant ML predicate offence nationally.

The ACC, established in terms of the Anti-Corruption Act is tasked with coordinating all corruption combatting activities nationally. Observations about corruption combatting activities in Namibia as reflected in section 7.5.1 and other relevant sections in Chapter III of this document are relevant to environmental crimes as well.

Namibia has reasonably effective processes in place to identify, investigate and prosecute corruption, along with an environment which discourages persons from engaging in corrupt behaviour. The overall effectiveness of such anti-corruption framework is rated **Medium High** (a score of 0.6 or 60%). All corruption related offences are dealt with in terms of the Anti-Corruption Act.

A few laws such as the Diamonds Act and the Forestry Act have sections that explicitly prohibits conduct which amounts to corruption or bribery. With the latter, section 45(6) prohibits conduct which includes officers receiving bribes or undue benefits to undermine compliance with the Act or advance prohibited acts. Persons guilty of such (including both corruptor and corruptee) commit an offence and can be liable to a fine not more than NAD 8,000.00 or imprisonment for a period not more than two years or both. Section 75 of the Diamonds Act further deals with acts which amount to attempts, conspiracy, aiding and inducing another person to commit offences under the Diamonds Act. The section criminalises actual and attempted corrupt activities relating to diamonds while section 77(1) deals with paying of bribes to Namibian Police officers involved in enforcing the Diamond Act and prescribes forfeiture powers accordingly.

Authorisation to acquire fishing rights or fishing quotas have for years been marred by allegations of corruption, most of which could not be proven. The so-called *Fishrot* case, currently pending in court is not only one of Namibia's biggest financial crime case before

court, but it is the biggest environmental crime case as well. In this case, Cabinet Ministers and their associates are suspected to have corruptly and illicitly benefitted from the country's marine resources. The State alleges that corruption was at the core of the illicit operation to unduly award fishing rights to entities associated to the criminal syndicate. The accused persons have since been criminally charged and arrested. This demonstrates political will and commitment to combat corruption, even when such is suspected to have occurred at the highest level in Government.

The mechanisms employed by relevant authorities for licensing, permitting and authorising access (e.g mining exploration licensing processes) to environmental resources, if not adequately regulated, present opportunities for abuse. Mainly, such process can be open to corrupt conduct in the approving or availing of access to resources. For example, having automated systems to process applications, with minimal human intervention means there are less persons involved in the process, who can be targeted for bribery attempts to unduly influence applications for access to environmental resources. Table 64 below presents a summary of licensing and authorising systems for some of the major environmental resources.

	<b>Forestry permits or authorisation</b>	<b>Wildlife and related concessions</b>	<b>Fishing rights and related concessions</b>	<b>Underground extracting sectors</b>
Is the current system of licensing (exploitation, trade, exports) /controlling environmental resources transparent and applied consistently and fairly?	Yes	Yes	Yes	Yes
Are permits for the exploitation of natural resources (mining, logging, fishing, hunting etc) susceptible to abuse?	Possibly	Possibly	Possibly	Possibly
Are facilitation payments required before permits are granted?	No	No	No	No
Is this process automated or manual?	Manual process	Manual process	Manual process	Manual process

Table 64: Summary of licensing and authorising systems for environmental resources

The role of civil society in combatting crime is essential. In Namibia, civil society is relatively active in raising corruption related issues related to environmental crimes. However, resource constraints within civil society, secrecy or confidentiality around explorative rights and concessions etc., are some of the concerns raised which undermine civil society's ability to effectively play its role in advocating for fair, transparent and effective processes which prevent corruption related matters.

Asset declarations of public officials can be helpful in minimizing conflict of interests and to a certain extent, corrupt activities. This can enhance transparency and trust. Observations by the Institute of Public Policy and Research (IPPR)<sup>615</sup> suggests that government is increasing its willingness to establish an interest declaration system. Despite all these efforts, many problems remain unaddressed to ensure key public service officials and those in positions of influence duly declare their interests. The only area of government which has notable provisions for asset declarations in the law is Parliament. There are no other known frameworks to ensure effective asset declarations and controls over conflicting interests in most public service spheres, including those charged with administering the allocation of natural resource explorations, exclusive rights and concessions. This is an area that may need significant improvements.

As the national corruption combatting authority, calls to enhance capacity and allocate more resources to the ACC remain prevalent. The ACC, through its own admissions has always indicated that it needs more capacity both in terms of employing additional staff members and training existing staff members. There are also notable control weaknesses in the export/import processes cited in section 7.7<sup>616</sup> and various sections on customs related measures throughout Chapter III of this report which are relevant for this variable (corruption).

#### **15.4.8 Domestic cooperation**

Domestic cooperation in this regard considers the effectiveness with which Namibia's relevant agencies cooperate and coordinate domestically with each other, at policy, strategic

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<sup>615</sup> Institute of Public Policy and Research, 08/12/2016: <https://namibia.hss.de/news/detail/nothing-to-disclose-shortcomings-of-asset-declarations-news522/>

<sup>616</sup> The section also details statistics on the number of investigations, the number of prosecutions and number of convictions for corruption for the five-year period covered in the NRA. More could however be done to maintain and where need be, avail statistics about corruption related to environmental offenses (bribery allowing/attempting to allow perpetrators to escape prosecution or conviction).

and operational levels, to combat environmental crimes and related ML. Observations in section 8.14 on the Effectiveness of Domestic Cooperation under Chapter III of this report apply to environmental crimes as well. The matters under this section are unique to environmental crimes.

A Ministerial Committee on Wildlife Protection and Law Enforcement<sup>617</sup> chaired by the Minister of Environment, Forestry and Tourism does exist and it involves all the line Ministries and Agencies responsible for combatting wildlife crimes in all its diversity, including the financial flows related thereto. The Minister of Home Affairs, Immigration, Safety and Security and the Inspector General of the Police form part of such Ministerial Committee, whilst the Deputy Inspector General of Police responsible for Operations, the Directorate Head for Crime Prevention, the Divisional Heads for Protected Resources, National Operations and Crime Intelligence form part of the Technical Committee. Other key stakeholders such as the relevant line Ministries such as the MEFT, the FIC and wildlife crime combatting NPOs are part of the Committee as well.

This Committee is responsible for formulating policies and directives to ensure a coordinated and effective manner to combat wildlife crimes (all fauna and flora) and related ML. A Technical Committee, consisting of Technical Advisors from the same line Ministries and Agencies, involved at operational level, also exists. Such is tasked with the function to advice on and refer operational matters and challenges to the Ministerial Committee for discussion, evaluation and guidance in the form of strategies, policies and directives. When the need arises, such Technical Committee proposes amendments to existing legislation in the interests of combatting wildlife crimes.

Through such coordination, joint committees and structures have been established to exchange intelligence and information. The Multi-Agency Task Team, code named ‘Blue Rhino’, enhances wildlife combatting activities through effective sharing of data, information and intelligence. The combatting objective is to investigate and dismantle Wildlife Crime Syndicates nationally and those with international links. Blue Rhino, which consists of Detectives, data-intelligence and Financial Analysts, Legal Advisors, other expertise and Resource Persons have been formed with the financial assistance of International and local

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<sup>617</sup> The Ministerial Committee on Wildlife Protection and Law Enforcement also shares and establishes joint strategies at the policy level.

Funding Partners (NPOs). Prosecutors of financial crime are usually only involved when so requested. The FIC, NCIS, regulators, customs and tax authorities, rarely form part of these Multi-Agency Task Teams, though required as core members of such task team. This is an area that could be improved on.

The legality of such joint combatting task teams is backed by domestic legal frameworks, International and Regional Wildlife Protocols as well as relevant Conventions of which Namibia is party to or ratified. It is further backed by Cabinet decisions as well as directives and strategies from the Ministerial Committee on Wildlife Protection and Law Enforcement.

Much as there has been success with such task teams, there is still room for improvement in enhancing efficiency at operational level, such as minimizing delays in gathering and sharing crucial operational and tactical data. At times, resource constraints hamper efficiency and effectiveness of investigations.

Prior to the creation of the current coordinated domestic operations, each stakeholder worked in isolation with minimal cooperation. This created unnecessary tensions and mistrust amongst combatting agencies. It also caused delays in investigations and prosecutions.

Overall, all signs suggest that the growth in the prosecutions and convictions related to IWT speaks to the strengths of Namibia's domestic cooperation amongst various stakeholders. Evidence of this lies in the fact that there was no poaching of rhinos in communal conservancies for two and a half years, including all of 2019, despite rhino poaching initially beginning in conservancies in 2013. The increased anti-poaching efforts and the full cooperation of conservancies and their residents who repeatedly intervene even before poaching has occurred is notable. Countrywide, 45 rhinos were poached in 2019, a reduction from the 74 in 2018 (over 100 were poached in 2015). Carcasses of 12 poached elephants were found in the north-eastern parts of Namibia in 2019, which is the lowest number since 2014 (including conservancies and National Parks). It seems that ivory trafficking from neighbouring countries is a bigger problem than local elephant poaching, with 116 tusks seized in 2019, in the Zambezi Region. Authorities also seized 123 pangolins in various locations throughout Namibia (49 of which were alive, rehabilitated and released).<sup>618</sup> Despite

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<sup>618</sup> It is difficult to tell where the pangolins were caught, as poachers are usually apprehended trying to sell them in urban areas far from the capture location.

these declines in poaching activities, combatting authorities caution that there is no room for complacency as poaching appears to be shifting from protected areas and conservancies to freehold land.<sup>619</sup>

Having regard to all of the above, the effectiveness of domestic cooperation in combatting environmental crimes is rated **High** (a score of 0.7 or 70%).

#### **15.4.9 Non-Profit Organizations (NPOs)**

NPOs play an important role in combatting environmental crimes. The extent to which environmental crime combatting NPOs maintain relevant data, including how such data supports the gathering of intelligence on environmental violations and is being used in combatting<sup>620</sup> has a bearing on effectiveness of such efforts. Cooperation with NPOs helps combatting efforts in various ways. In 2017, the FIC obtained data and information from various sources including local NPOs to produce a typologies report on rhino and elephant poaching.

Locally, there are no policies or interferences in the work of NPOs who contribute to combatting environmental crimes. NPOs specialized in the protection of the environment have been able to deploy resources, maintain helpful databases, including funding, needed to carry out their functions, free from any undue political, governmental, industrial influence or interference.

Information gathered by NPOs aid strategic and operational activities of LEAs in general. Typical intelligence gathering is a complex and sensitive process where specific procedures and guidelines should be embarked upon if LEAs are to make meaningful use of such. For these reasons, NPO's in Namibia do not have the legal mandate to gather or disseminate intelligence regarding criminal activities which could be useful to LEAs. The LEAs also indicate that NPOs should be discouraged from venturing into that domain. It is perhaps for this reason that there are no national statistics on cases initiated on the basis of information/intelligence coming from NPOs. Having said that, all stakeholders agree that the role of NPOs remain essential in helping to resource capacity of combatting authorities in

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<sup>619</sup> Community Conservation Namibia, February 2021: <https://communityconservationnamibia.com/the-big-issues/combatting-wildlife-crime>

<sup>620</sup> Investigations, prosecutions, arrest, follow-up of the enforcement of the sentence, management of the seizure or animals or plants.

gathering of intelligence and information. Further, many NPOs have vast experience in wildlife conservation, research as well as local and international legislations on environmental crimes. They equally have international networks which domestic LEAs rely on. Often, NPOs facilitate informal cooperation with foreign environmental crime combatting agencies, through their counterparts in other countries. All these are unique benefits which LEAs gain from working with NPOs.

The Namibia Nature Foundation (NNF) is one of Namibia's leading conservation and sustainable development organisations. The NNF promotes sustainable development, the conservation of biological diversity and natural ecosystems as well as the wise and ethical use of natural resources.<sup>621</sup> Like the NNF, NPOs such as TRAFFIC, the Legal Assistance Centre, Save the Rhino Trust and World Wildlife Fund (WWF), amongst others, have consistently supported combatting efforts including anti-poaching, investigations and prosecutions with funding and other means. The Rooikat Trust supports dedicated State prosecutors for wildlife crime cases with funding from Wildcat Foundation in addition to its involvement in other environmental combatting activities.

The Combating Wildlife Crime in Namibia and Kavango Zambezi Area Project (CWCP) is a multi-country, multi-partner initiative being implemented by a Consortium of 14 organisations, with WWF in Namibia providing the lead management and co-ordination role. The project is fostering improved knowledge on wildlife crime dynamics and impacts, and enhanced sharing of related information and data among LEAs, civil society and the private sector within and among countries in the region.

Amongst other efforts, the establishment of more than 80 communal conservancies is credited for contributing to the tripling of the country's elephant population between 1995 and 2017.<sup>622</sup> This success has been the result of a strong commitment by the Namibian government in partnership with local communities, NGOs and the other stakeholders. NPOs have played a key role not only in resourcing but in guiding the management of conservancies.

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<sup>621</sup> NNF website: <https://www.nnf.org.na/>

<sup>622</sup> US Embassy in Namibia: <https://na.usembassy.gov/lnl-combatting-wildlife-trafficking-grant/>

Being a party to legal proceedings can at times help in combatting activities. In some countries NPOs are often parties to legal proceedings in their cause to help combatting activities. In Namibia, NPOs or any other parties can only become civil parties or plaintiffs in environmental or other criminal cases (join court proceedings) if they have a direct or substantial interest in matters before courts.<sup>623</sup> Article 18 and 25(2) of the Constitution provides this platform to aggrieved persons. This means the person seeking redress must have a substantial interest in the matters before court. Persons, including NPOs, must thus be personally affected to be permitted to be party to legal proceedings. In the absence of legal standing (locus), there has not been the typical ‘class action suits’ permitted locally.

Having regard to the above considerations, the extent to which NPOs associated with environmental crime combatting are enabled to meaningfully contribute to such cause is rated **Very High** (a score of 0.8 or 80%).

#### **15.4.10 International cooperation**

Namibia renders and requests international cooperation in all crime combatting matters including environmental crimes and related ML and associated predicate offenses. Analysis from section 8.15 of Chapter III on Effectiveness of International Cooperation apply to environmental crimes, to the extent possible.

Namibia has a broad legal basis and mechanisms in place for providing assistance, including authority under international and regional conventions, MLAs, or other agreements and reciprocity. The country has entered into multilateral, bilateral agreements and MoUs on combatting environmental crimes. Being part of the African Prosecutors Association, the Arinsa framework, SADC Protocol on Environmental Management for Sustainable Development, amongst others, avails platforms which enables the ease with which international cooperation and information sharing takes place in a manner that enhances combatting efforts. In the same vein, the ability to use helpful laws such as the International Criminal Matters Act, amongst others, enhances Namibia’s international cooperation in all criminal matters.

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<sup>623</sup> A party only has locus standi or legal standing if they have a direct and substantial interest in relevant matters before court. Namibian law on legal standing is set out in common law principles. See the case of *Uffindell t/a Aloe Hunting Safaris v Government of Namibia and Others* 2009 (2) NR 670 (HC) and *The Prosecutor-General v Miguel* (HC-MD-CIV-MOT-GEN-2017/00076) [2017] NAHCMD.

LEAs make use of formal information sharing procedures when dealing with international cooperation to ensure its admissibility when intended for use as evidence and in respect of the sovereignty and laws of the countries involved. In practice however, local investigators indicated that with some countries, relationships have advanced to such a level that information sharing can at times occur informally, while awaiting finalization of formal diplomatic requests which often require much time to finalise. Combatting authorities all agree that Namibia's membership, ratification or subscription to frameworks such as CITES, UNTOC,<sup>624</sup> InterPol, amongst others,<sup>625</sup> greatly help environmental crime combatting ability internationally.

The constant engagements with international stakeholders in environmental crime combatting spheres have led to the creation of defined channels and processes to enable cooperation on environmental crime cases with other countries. This includes enabling platforms for the formation of joint investigative teams with other jurisdictions when so required.

Case study 6, cited in section 8.13, has certain elements reflecting exemplary international cooperation between Namibian and South African authorities. The case in question deals with a Chinese national who had smuggled 18 rhino horns via the Hosea Kutako international Airport (HKIA) and was intercepted, arrested and charged upon checking into his connecting flight at O.R Tambo International Airport in South Africa. Namibia and South African authorities thus had to cooperate in this matter. Through evidence at hand and with the cooperation of South African authorities, Namibian authorities compiled a case docket for the illegal exportation of rhino horns. The OPG issued a certificate for prosecution and a Namibian Warrant of Arrest was issued against the Chinese national. Through the MLA section of the Ministry of Justice and Interpol, an International Warrant for Apprehension or 'Red Notice' was issued for the Chinese national and forwarded to the South African authorities. Upon receipt of the Red Notice, the South African authorities revealed that the Chinese individual, had, in the meantime, pleaded guilty in court and was sentenced to imprisonment with the option of a fine. His legal representative paid such fine and he was

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<sup>624</sup> United Nations Convention against Transnational Organized Crime

<sup>625</sup> Convention on Biological Diversity; Convention Concerning the Protection of the World Cultural and Natural Heritage; Regional networks such as Wildlife Crime Working group/Egmont.

released from custody. The authorities however further informed that they were still in possession of the Chinese national's passport, which he was scheduled to collect in a few days' time before his intended departure to China. The plan was to arrest him upon collection of his passport, in view of the Red Notice from Namibia. Unfortunately, a few days thereafter, the South African authorities discovered that the said Chinese national had left South Africa with a passport bearing another identity. This Chinese national is now wanted globally on an Interpol Red Notice for apprehension and is still at large.

### **Case Study 13**

#### ***International cooperation in IWT***

*In June 2013, an accused, Mr. Mike Banza, alias Francis Kasongo, a Zambian national, was arrested together with four other accused persons for dealing in, and possession of controlled wildlife products comprising thirty-seven (37) elephant tusks in the Zambezi Region. In February 2015, Mr. Banza escaped from custody by breaking out of the police holding cells, together with several other inmates. An International Warrant (Interpol Red Notice) for his arrest was issued and circulated on the Interpol wanted website. The Botswana authorities then arrested an individual for wildlife offences, only to later discover it was the wanted man, Mr Banza. The authorities noticed Namibian authorities that they have arrested him, and extradition proceedings commenced. Mr Banza is currently serving a four- year sentence in Botswana for wildlife crime offences.*

### **Case Study 14**

#### ***International cooperation in IWT***

*In the early morning hours of 01 January 2019, four Namibians were travelling along the main road leading to Grootfontein. They were intercepted by the Blue Rhino Task Team. Police found, in their possession, several items associated with Rhino poaching, including a 375-caliber hunting rifle with ammunition. The firearm, hidden under the vehicle was registered in the name of one of the arrestees. All of them were charged for Conspiracy to poach Rhinos. During the investigative interviews, the firearm owner revealed that he was involved in the poaching of two Rhinos in Botswana a few weeks ago and that the same firearm found with them was used in such poaching activity. The Namibian authorities relayed this information to their Batswana counterparts. The Batswana authorities confirmed the poaching of two Rhinos in the area described by the Namibian arrestee.*

*Arrangements were made through Interpol and the authorities of the two countries for the facilitation of MLA. Botswana Police Detectives and Forensic Analysts visited Namibia to interact with Namibian Police Detectives regarding the case and evidence at hand. They were afforded the opportunity to, jointly with Namibian Forensic experts, examine the ballistic evidence they retrieved from the poached Rhinos in Botswana, with the hunting rifle confiscated in Namibia. A match was found. Through the MLA, they also obtained further statements to enhance their case in Botswana.*

Largely, international cooperation is said to have challenges often arising from cases where involved suspects could be from non-cooperative jurisdictions. Naturally, countries with whom Namibia does not have MLAs or MoUs also find it challenging to assist when the need arises. Other than MLAs and MoUs, some jurisdictions are not part of the international criminal global combatting networks (e.g Arinsa, CITES etc) and the most challenges arise when such countries are expected to play their part. LEAs agreed that many Asian countries involved in the trafficking and consumption of some protected African species are often non-cooperative when engaged. This observation was also raised in the ESAAMLG special typologies report on wildlife crimes.<sup>626</sup>

Having regard to all matters raised herein, the Effectiveness of International Cooperation was rated **Medium High** (a score of 0.6 or 60%), having considered all of the above factors.

#### 15.4.11 Geographical factors

The geography of a country (vastness, nature or type of borders, difficulties in accessing some parts of the territories etc.) impacts the ability of its authorities to effectively prevent and combat environmental crimes. The assessment found that to a large extent, combatting authorities have adapted their policies, strategies and operations to the geographical factors of Namibia, resulting in a variable rating of **Medium High** (a score of 0.6 or 60%).

A typical example demonstrating how authorities have adapted combatting frameworks to the country's geographical factors is the geographic-centric combating efforts in the Kavango and Zambezi regions under the CWCP. Wildlife crimes in the Kavango and Zambezi regions are heightened by the regions' proximity to neighbouring countries. The porous borders shared by Namibia with countries such as Botswana, Zambia, Zimbabwe and Angola are easily crossed by wildlife criminals (most of whom from neighbouring countries) to advance wildlife crimes in the border regions of Namibia. The free movement of people living along the borders in such regions, between countries, mainly owing to porous borders and minimal border patrols are exploited by transnational wildlife crime trafficking and trading syndicates.

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<sup>626</sup> ESAAMLG. <https://www.esaamlg.org/reports/TYPOLOGIES-REPORT-ON-THE-WILDLIFE-CRIMES-AND-RELATED-ML..pdf>

The combined and coordinated efforts of all CWCP<sup>627</sup> stakeholders seek to counter growing threats from transnational wildlife crimes to globally important populations of rhinos and elephants found in those regions of Namibia and project sites in the Kavango Zambezi Trans-frontier Conservation Area (KAZA). The presence of military personnel in conservancy areas of such regions to assist with surveillance and monitoring activities further speaks to the risk-based deployment of combatting efforts.

Despite geographically responding to high-risk areas, resource constraints remain a challenge. Public authorities in charge of the preservation of environmental resources are not adequately resourced to effectively safeguard the protected resources taking into account geographical factors (especially the vastness of targeted areas, porous borders, fish stocks and volumes of fishing vessels etc.). Resource inadequacy is not always centred around additional staff members. Combatting stakeholders agree that the use of technology, specialized equipment or systems to determine patrol routes, checkpoints along main trade routes (roads, rivers, natural sites etc.), the use of drones, X-ray machines, K9 units, periodic training of LEAs, etc., could help greatly.

Wildlife habitats and forests are patrolled by forestry officials, specialised units of the police and the army. The national maritime areas are patrolled by the navy while fisheries inspectors mostly dedicate their efforts to oversight and monitoring of fishing activities. The relevant authorities (inspectors) in the MME do the same in prospecting and extracting industries. Patrols are usually on a needs basis when responding to observed risks or tip offs. The common approach with all patrols is to, on a risk assessment basis, approach persons found in patrolled or targeted areas, understand if they have authority to be in such areas (or authority to be conducting activities they are busy with) and if need be, inspect or search persons, boats, vehicles, etc., in an effort to detect potential environmental crime breaches. Seizures and arrests do happen if persons are found in possession of protected species or suspected hunting equipment in contravention of relevant laws.

Public authorities have defined management standards for the conservation and exploitation of environmental resources. For example, with fishing, only persons who are authorised to fish should undertake such activities and such should be limited to the volume and specific

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<sup>627</sup> The CWCP works along Namibia's porous borders with Zambia, Zimbabwe and Angola.

species so authorised, in any given period. This same approach is replicated across different sectors such as the harvesting of forestry products and hunting. The various laws cited herein guide the management of protected species and the environment.

The work of NPOs is not limited to LEAs' investigative and prosecutorial activities. The legal framework and government policy allows NPOs with the necessary capacity to manage parks or contribute in various means to the preservation of environmental resources in Namibia. Conservancies have proven to be one of the most effective ways of managing wildlife. With the help of NPOs, government has led efforts to ensure adequate management of wildlife through conservancies to an extent that over 20% of Namibia's land is under conservancies. The map in figure 80 below illustrates that community conservation, combined with State protected areas and tourism concession areas create large-connected areas with intact habitats where wildlife can move safely and freely. Privately owned conservancies on farmland account for 6.1% of Namibia. The total land available to wildlife is around 45.6% of Namibia.<sup>628</sup>

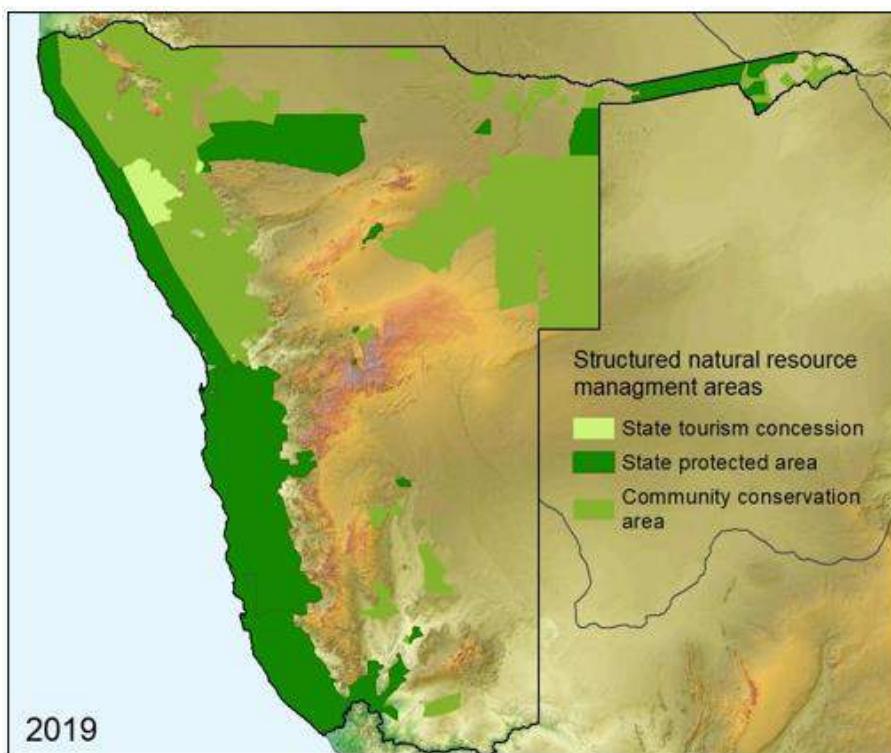


Figure 80: Land under conservancies countrywide<sup>629</sup>

<sup>628</sup> <https://communityconservationnamibia.com/facts-and-figures>

<sup>629</sup> Cited from <https://communityconservationnamibia.com/facts-and-figures>. 86 conservancies cover 20.2% of Namibia's land; 43 community forests cover 10.3% of Namibia's land, but overlap with conservancies by 84%; With the one community association in a national

#### **15.4.12 Public awareness (about environmental crimes)**

The degree to which the public is aware of environmental crime matters and is involved in the broader management or oversight of natural resources generally impacts the effectiveness of combatting activities. With regard to such public awareness, the assessment rated Namibia **Medium High** (a score of 0.6 or 60%).

The assessment found that generally, the public is aware of environmental crimes and conduct which amounts to such crimes. The fact that environmental crimes are published in the media is helpful and members of the public are encouraged to report environmental crimes through various platforms. Communities living around protected areas such as conservancies appear to have a better understanding in this regard. This can be attributed to public awareness activities which target such areas. Having said that, it was also evident that fewer members of the public have an appreciation and understanding of the actual impact that environmental crimes have on the environment, and other socio-economic impacts.

Ministries such as the environment and forestry, mines and energy, fishing and marine resources are all known to hold public consultations over resource use. This greatly helps inform enhance transparency and public awareness. The MEFT in particular holds regular engagements with communities and such are usually targeted to those who are affected (e.g those around conservancy areas or living near protected species). Other ministries could learn from the MEFT.

Despite a few instances suggesting illicit activities, the overall conclusion suggests that authorities administering environmental resources are transparent in their management of such resources. The publication of procedures and decision-making processes such as those followed in issuing fishing or mining/exploration rights is often helpful. Most, if not all such processes are formally documented in government gazettes. Members of the public or those with vested interests have the right to access such published records which demonstrate processes followed, as well as decisions made to award parties rights to harvest fishing, forestry products or mining and exploration rights, amongst others.

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park, the total area of land under communal management in Namibia is 21.9%; National parks and State-owned tourism concessions cover 17.6% of Namibia; The total land under gazetted conservation management in Namibia is 39.5%

Pangolins are currently considered the most-trafficked wild animals on earth. The pangolin trade has also exploded in Namibia, with over 400 suspects arrested on charges related to pangolin poaching or trafficking over the eight years leading to December 2019. Almost 40 percent of these were arrested in 2019 alone, suggesting an increase of more than 33 percent from 2018. An awareness campaign and reward scheme initiated by the Namibian Chamber of Environment has helped to enhance public awareness and sensitization to the plight of the pangolin. Such enhanced awareness has led to many community tip-offs that led to arrests. Such were duly rewarded as per the reward scheme. Unfortunately, awareness and reward schemes can have unwanted consequences by spreading knowledge of the illegal value of wildlife.<sup>630</sup> Indications that the scheme is being abused and is stimulating poaching, are being scrutinised. New ways to counter this problematic trade are being explored by the MEFT as per the 2019 Wildlife Crime Combatting report.

An area that could be enhanced is perhaps the use of new technologies to improve access to information relating to combatting efforts. For example, most people may not access the daily newspapers but may have access to mobile phone devices which could be used to reach them. Also, a significant part of Namibia's population lives in rural areas, in closer proximity to protected fauna and flora than in urban areas. More could be done to enhance awareness in such areas.

#### **15.4.13 Capacity of the borders and customs forces**

In assessing the effectiveness of the capacity of borders and customs forces, considerations are made as to whether such are effectively participating in the fight against environmental crimes. Observations raised in sections 8.11 to 8.13 of Chapter III, around customs and border controls are relevant to environmental crimes as well.

LEAs (specifically borders and customs forces) at points of entry and exit (ports, airports, routes) are aware of, and are trained in detecting and responding to environmental crimes. There are however challenges around the adequacy of resources at their disposal. In particular, the inadequacy of customs officials, limitations in the use of advanced detective

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<sup>630</sup> Combatting Wildlife Crime in Namibia Annual Report, 2019.

technology and other tools, inadequate use of sniffer dogs, reduced capacity or skill in combatting complex border or customs smuggling activities, amongst others.

Overall, authorities have demonstrated an ability to inspect consignments suspected of containing illegal environmental products and to seize as well as to confiscate these consignments accordingly. The Customs and Excise Act, and the CPA<sup>631</sup> avail authorities adequate seizing and confiscation powers. Some environmental crime laws such as the Controlled Wildlife Products and Trade Act<sup>632</sup> provides that a customs officer, police officer or nature conservator may exercise any power conferred upon an Inspector in terms of such Act, in addition to any other powers vesting in such officer by any other law. This provision gives powers to customs authorities and police at borders to undertake environmental crime combatting activities that would have otherwise been undertaken by an inspector. Cases cited in sections 8.11 to 8.13 avail some examples.

When the need arises, the customs forces participate in or initiate (e.g when detection is made at points of entry/exit) multidisciplinary law enforcement operations targeting environmental crimes.

The FIC has on numerous occasions trained customs officials on their functions in relation to the FIA and combatting ML. The desired systematic information exchange between the FIC and customs forces has however not reached the required maturity level at this point. Having said that, customs forces do exchange information with the Namibian Police and foreign<sup>633</sup> counterparts.

Another area that could be enhanced include implementation of effective systems and procedures for managing, storing, auditing and disposing of confiscated environmental products. Customs forces also collect and keep information on schemes and patterns of crime trafficking activities, including environmental crimes. Statistics on seizures related to environmental crimes are however not at hand although some cases are reflected in sections 8.11 to 8.13.

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<sup>631</sup> (for police at borders).

<sup>632</sup> [section 6(3)]

<sup>633</sup> Within the framework of bilateral agreements or MoUs, specifically focused on combatting environmental crimes.

Given the porous borders which are not adequately manned, nor always patrolled, it is a given that current resources deployed may not always be adequate to control the porous borders of the country such as the north and north eastern regions. These porous borders do not help in mitigating smuggling or trafficking of environmental products.

Having regard to all relevant factors in sections 8.11 to 8.13 and above, the capacity of the borders and customs forces in combatting environmental crimes is rated **Medium High** (a score of 0.6 or 60%).

#### **15.4.14 Incentives and protection for reporting**

The creation of frameworks to protect witnesses and whistleblowers of environmental violations is essential in combatting efforts. Effective mechanisms or programs that protect witnesses and whistleblowers encourage them to come forward to assist LEAs and prosecutorial authorities.<sup>634</sup>

Namibia has not yet enacted a comprehensive legal framework that establishes witnesses and whistleblowers' protection, thereby encouraging whistleblowing in general. At the time of reporting, the Whistleblower Protections Act 10 of 2017 was enacted by Parliament but has not yet come into force. Pending this crucial piece of legislation coming into force, the country relies on a few safeguards for witnesses, whistleblowers and information they may disclose to authorities. Such safeguards are not contained in a single comprehensive legal instrument but in various laws. The Anti-Corruption Act, as per section 52 provides for the protection of informers.<sup>635</sup> This section may at times cause the witness or whistleblower to be reluctant to disclose information knowing that the court may compel the State to disclose their identity. The section also deals with the treatment of information from informers. Section 98 of the POCA provides for hearings that may be in closed doors. Such helps preserve the identity of witnesses while sections 45 and 50 of the FIA also provides for protection of informers.

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<sup>634</sup> These measures might include anything from allowing witnesses to testify from a remote location through video-conferencing technology to physically relocating them to an undisclosed location and the possibility of testimony under covert identity (the actual identity is kept secret in an original procedure kept in the safe and undisclosed).

<sup>635</sup> Subject to the provisions of sub-section 2.

Section 153 of the CPA explains circumstances under which criminal proceedings shall not take place in open court, primarily to protect witnesses and whistleblowers when the need arises. Additionally, section 185 of the CPA avails protection for witnesses if the PG is of the view that their safety may be undermined or may be prevented from giving evidence or that he or she may be intimidated (or if such protection is in the interest of justice). The PG may, by way of affidavit, place such information before a judge in chambers and apply to that judge for an order that the witness be placed under protection pending the proceedings in question.

When there was a need, witness and whistleblower protection mechanisms have been implemented with judicial and other public authorities engaged in law enforcement and intelligence, prison administration, public housing, health and social security services, among others. There is no designated department or agency that coordinates the protection of witnesses on a continuous basis, at least until the Whistleblower Protection Act comes into force. There are no standard operating proceedings for the protection of whistleblowers and witnesses among the various stakeholders. There are however terms of references or guidelines put in place guiding the actions of various agencies when the need arises.

There is no dedicated system to effectively manage considerations for allowances and reimbursement of expenses of witnesses and whistleblowers. This does not always help in combatting efforts as witnesses and whistleblowers may be reluctant to use their own resources (funds), let alone the lack of any individual reward system.

Namibia relies on plea bargaining arrangements (when so required) to consider partial sentence remission of witnesses or whistleblowers with judicial and other public authorities engaged in law enforcement when the need arises.

Practical implementation of incentives that encourage witnesses and whistleblowing is hindered by the limited resources availed for such purposes. Financial resources geared towards witnesses' relocation, change of identity, financial needs etc., are not always budgeted for.<sup>636</sup> This does not however mean that incentive measures have not at some point been implemented. There are some measures that have been implemented from time to time, though sporadic. LEAs and preventive authorities are for example convinced that the

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<sup>636</sup>The OPG is a key stakeholder in the safeguarding and advancing of witnesses and whistleblowers' interests, in the advancement of cases brought by the State. This guidance was availed by the OPG.

awareness and reward scheme implemented has been effective in raising awareness of pangolin trafficking in Namibia and has facilitated a number of arrests in 2019.<sup>637</sup>

Namibia's witness and whistleblowers' protection framework is expected to improve on the observed shortcomings if, and when the Whistleblowers Protection Act comes into effect. The framework, in its current format has significant challenges in terms of the measuring criteria applied herein. Such framework is thus currently rated **Medium Low** (a score of 0.4 or 40%).

#### **15.4.15 Effective use of intelligence**

The effective use of intelligence<sup>638</sup> can enhance combatting of crime. Effective use of intelligence should inform strategies and policies at regional, national and international levels; guide day-to-day tactical decisions of frontline combatting staff and inform the development of operational plans. All these efforts are necessary to disrupt and investigate environmental criminal activities. LEAs and in particular the PRU follows an established set of protocols and rules in the gathering, processing and effective use of intelligence. Detectives in the PRU are constantly trained in performing such tasks. The current intelligence gathering and usage framework covers collection, evaluation, analysis, dissemination, and eventual use thereof. The framework includes safe storage and intelligence sharing with agencies beyond domestic LEAs.

Intelligence is also frequently employed in covert techniques such as controlled deliveries, tracking, undercover agents and covert searches. Case study 15 below shows a typical example of the PRU's use of intelligence to intercept attempted rhino horn sales. Combatting authorities are also guided not to undermine the constitutional rights of subjects in the deployment of covert operations. This is essential in ensuring outcomes from such operations remain usable and can add value in criminal and civil proceedings as well as any other subsequent processes. Supervisory authorities within the PRU, like any other force, are expected to ensure that their teams are equipped<sup>639</sup> to make effective use of intelligence and execute covert operations.

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<sup>637</sup> Combating Wildlife Crime in Namibia Annual Report, 2019.

<sup>638</sup> Speaks to the overall effectiveness of how Namibia gathers, collates, analyses and dissemination of information on environmental crimes (wildlife, forestry, marine resources, underground minerals etc.). This is separate to and broader than the intelligence provided by the FIC.

<sup>639</sup> Including ensuring that the right to privacy of an individual is respected at all times. Usually, LEAs seek Judicial or Prosecutorial authorization to conduct certain activities and applying certain techniques.

### **Case Study 15**

#### ***Effective use of intelligence: Katutura CR 31/08/2016***

*On the morning of 16 June 2016, a covert operation was conducted after information was received about a certain individual who was in possession of Rhino horns, which he wanted to sell. During the operation, an under-cover police agent engaged with the seller at a local fuel service station in the Northern Industrial Area, close to China Town in Windhoek. After the Agent confirmed the authenticity of the products, he gave the re-arranged signal and the back-up team arrived. During the search of the suspect's vehicle, a black Mercedes Benz, four rhino horns were found.*

*When interrogated, the suspect said that the products did belong to him but to his friend who is a businessman. He was allowed to call his friend and to inform him (friend) that the deal was done.*

*His friend arrived at the crime scene in his private vehicle. Both suspects were then arrested and the Mercedes Benz seized. After several attempts, they finally got bail of NAD 50,000.00 each, while the vehicle still remains in custody. They are charged with contravention of the Controlled Wildlife Products and Trade Act as well as possession and or dealing in controlled wildlife products. A parallel financial investigation was also instituted. The case has been transferred from the Magistrates Court to the Regional Court for plea and trial. Both accused persons are Namibian males.*

Over the years, the PRU has ensured that officers are accorded specialized training from accredited institutions which covers all aspects of the Intelligence cycle. The Blue Rhino special operation is one such specialised task team which relies on intelligence for most of its interceptions.

Other than the FIC, intelligence is also received and shared through bodies such as Interpol, SARPCCO, Joint Permanent Commissions and Police or Intelligence Attachés attached to Embassies or Permanent Missions.

There is also collation of intelligence and information to produce typology reports which are often shared. A typical example is the FIC issued Wildlife Crimes Typology report shared with various combatting stakeholders.

Overall, it is largely accepted that intelligence usage in disrupting environmental crimes adds value and is relatively effective. Such is thus rated **High** (a score of 0.7 or 70%).

#### **15.4.16 Capacity of Preventive Authorities**

The response to organized environmental crime activities requires resourcing or capacity that is commensurate to the threats posed by environmental crimes. Capacity herein refers to the legal functions and the practical means allocated to agencies and stakeholders to prevent or combat environmental crimes. Table 65 below lists the preventative and combatting authorities for each category of environmental crime.

<b>Environmental crime</b>	<b>Name of preventative authorities, stakeholders</b>
Forestry crimes	MEFT, in particular the Department of Natural Resource Management along with the Namibian Police, Ministry of Defence, relevant NPOs etc.
Wildlife poaching and trafficking	
Illicit fishing	MFMR and Ministry of Defence
Underground extracting sectors	MME and the Namibian Police
Hazardous waste dumping and trafficking	MEFT, in particular the Department of Environmental Affairs.

Table 65: Preventative and combatting authorities for each category of environmental crime

There are specific provisions enacted through various laws which empower preventative authorities to impose certain preventive measures. Section 15.4.2 of this report avails additional information on the legal powers and mandates of such preventive and combatting authorities.

The most consistent challenge raised by all stakeholders is resource inadequacies in line with the level of environmental crime vulnerabilities (a mismatch between resources at hand and actual crime risks). Other territorial characteristics such as vastness of land or sea that needs to be monitored and patrolled is not always duly covered owing to limited resources.<sup>640</sup> Overall, most authorities and NPOs concur that resources in terms of employing more staff members might not always be possible. However, considerations to effectively train current staff and the use of technology to enhance coverage could go a long way to help mitigate risk exposure.

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<sup>640</sup> For example, the MEFT indicated that a shortage of vehicles, inadequate camping equipment and limited financial resources to ensure effective field patrols constrain the Ministry in combatting fauna and flora related crimes. If not duly addressed, the situation may lead to dissatisfaction amongst field staff and an increased risk of 'inside jobs', where officials turn to criminal activity.

Communities, especially those living in areas near conservancies of protected species play a key role in helping to mitigate risks of environmental crimes. The challenge lies in helping community members appreciate that conserving the environment and its protected species far outweighs any other individual interests derived from illicit activities by some. Authorities share this view and engage with communities to raise awareness of the impact of environmental crime threats. Most public awareness in this regard happens in the fauna and flora space, where community conservancies play a significant role in safeguarding protected species.

Government's decision to enable the creation of conservancies in 1996<sup>641</sup> empowered rural communities through communal conservancies, particularly women and enhanced rural economic development based on wildlife. In 2019, the contribution to net national income was around NAD 933 million, and the total contribution from 1990 amounts to NAD 9.743 billion.<sup>642</sup> This is a notable contribution to the growth of the national economy and national development goals. These are some macro level impacts. The box below presents a few practical examples of micro level benefits accruing to communities. It is a given that enhanced community buy-in and cooperation enhances crime combatting effectiveness.

#### ***Direct communal benefits***

*Communities that have control over wildlife do, under normal circumstances reap the benefits from such. Through social benefit payments, amongst others, conservancies actively contribute to rural development. In the Zambezi region for example, several conservancies have paid for the installation of electricity transformers. With electricity at hand, businesses have started to emerge in the area, including the benefit of lights which enable children to study at night, shops with refrigeration which enable longer storage of food etc.*

*For some, the individual sums they receive may only amount to a few hundred dollars, or perhaps equivalent to the price of a goat, but such cash is essential. In the Nyae Nyae Conservancy, the Ju/'hoan San people traditionally lived from hunter gathering but conservation income has created a local cash economy. The annual cash pay-out by the conservancy makes it possible for people to supplement their diet with mealie meal (maize) and to buy clothes for themselves and their children, enabling them to go to school.*

<sup>641</sup> through an amendment to the Nature Conservation Act of 1975.

<sup>642</sup> <https://communityconservationnamibia.com/the-big-issues/benefits>

Some customary norms often conflict with environmental laws and this can be a challenge if not duly addressed. Safeguarding of most fauna and flora is not always in line with certain customary norms. Unregulated game hunting for consumption and killing of leopards for their skins etc., are typical examples of customary norms which are in conflict with environmental laws. In the local conservancies, meat sourced from conservation hunting is a major benefit to conservancy members, who are often situated in areas where there are no shops, and people have little, if any income at all. By distributing meat in such communities, conservancies demonstrate that poaching is socially unacceptable because meat is fairly distributed and poaching for the pot is therefore seen as stealing from others in the community. Through public awareness activities, mostly direct engagements with communities living within or near conservancies, the MEFT and NPOs help communities understand and appreciate why the law protects such species for the greater good of the community and the country at large.

With the fishing sector, recreational fishing, when done within the parameters of the law, is permitted as a means of direct benefits for the community. Other than recreational fishing, the MFMR's policy of issuing fishing rights considers availing such to entities that demonstrate direct social benefits. Over the years, this has resulted in fishing rights holders availing interests such as part ownership, profit sharing or some other benefits including to identified communities or marginalised groups of society. Decisions on granting of mining licenses also include considerations of direct communal or social benefits. The effectiveness of communal and social benefits in the fishing and mining sectors, in as far as helping communities understand and appreciate how lawful extraction activities benefit them, could not be readily established.

Over the years, a lot of effort was made to ensure preventative authorities are developing specific expertise which can enhance preventative effectiveness. In the wildlife crime prevention space, the MEFT has trained staff members in specialised areas relevant for the combatting efforts they are assigned to. Rhino and elephant poaching has a significant impact on conservation goals. Overall, figures 65 and 66 shows a general decline in elephant and rhino poaching activities, while the overall police interceptions of attempted pangolin trafficking increased in 2019 from the lower volumes noted in 2018 (see figure 67). There are

thus mixed results in crimes of priority species such as elephant, rhino and pangolin related offences.

The assessment could not reliably establish the nature and type of methods used by law enforcement bodies to assess monitoring systems implemented by the reporting entities to comply with their obligations in relation to environmental crimes. In the fishing sector, reliance is placed on inspections, reports on fishing activities (harvesting volumes) by fishing entities etc. Mining companies also self-report while relevant officers from the MME conduct inspections and review records to gain assurance that reported mining activities are accurate and are executed in line with authorisation from the MME. Generally, various Ministries indicated that limited resources often means that inspectors are unable to duly carry out their duties. Many a times, inspectors are selective in the type of monitoring exercises they undertake, depending on resource availability. The risk based approach of targeting high risk areas has limitations if it is unable to ensure adequate coverage all high risk areas (let alone enable due surveillance and monitoring on low-to-medium risk areas).

Generally, the overall concern which impacts effectiveness of preventative authorities is resource constraints. The current capacity to combat environmental crime activities has some room for improvement and is rated **Medium High** (a score of 0.6 or 60%).

#### **15.4.17 Filing Suspicious Transaction Reports (STRs)**

The working relationship between investigating authorities, which includes the sharing of information and intelligence between the FIC and relevant LEAs is essential in combatting environmental crimes. Observations in section 8.4 on the quality of FIU intelligence gathering and processing need to be considered along with views in this section.

Over the years, the FIC has received (and at times self-generated) reports that contain elements of potential environmental crime violations and related ML. Such reports are usually shared with the PRU or relevant other authorities as need be. In operational activities, the PRU also requests of the FIC to help with intelligence gathering and processing, especially where such relates to financial flows and potential ML. The exchange of intelligence and

information with the FIC relating to potential environmental crime is best demonstrated through statistics in Table 66 below.

	Total No. of STRs related to environmental crimes	Total No. of IRDs related to environmental crimes	No. of IRDs from Law Enforcement	No. of STRs from the PRU	Source of STRs			
					Banking sector & other financial institutions	DNFBPs & NPOs	Members of the public	Self-generated within the FIC
2019	2	15	15	0	2	0	0	0
2018	6	5	5	0	5	1	0	0
2017	4	1	1	0	4	0	0	0
2016	2	14	14	0	2	0	0	0
2015	1	3	3	0	0	1	0	0

Table 66: STRs related to environmental crimes

The total number of STRs and IRDs transmitted annually have never exceeded 6 and 15 reports respectively. To understand alignment between investigation of predicate offences and financial flows, it is helpful to compare such to the PRU investigations of high value species. The total number of rhino poaching or horn trafficking incidents investigated by the PRU have fluctuated from as low as 45 to as high as 97 annually. Elephant poaching and ivory trafficking related offences in the same period fluctuated from as low as 12 and as high as 101. In 2018 and 2019, LEAs seized 25 and 49 live pangolins respectively. This is lower than 61 and 74 dead pangolins seized in the years 2018 and 2019 respectively. On these figures alone (excluding other environmental crimes), it is fair to suggest that more environmental crimes are investigated by the PRU while minimum STRs and IRDs flow between the FIC and the PRU. If it is accepted that PRU investigations, without FIC inputs duly include parallel financial investigations for each offence, then the investigative framework is reasonably effective. However, given the absence of ML charges advanced in prosecution of environmental crimes (see Tables 63 and 67), there may be a need for authorities to relook their coordination of financial flow and criminal asset related investigations in environmental crimes.

It is necessary for the FIC to share feedback on ML threats with supervised sectors such as banks, who appear to report most of the STRs related to environmental crimes. Feedback reports should help entities identify emerging trends that highlight or flag suspicious activities, amongst other benefits. Though the FIC avails feedback to reporting entities on ML trends,

only one feedback report appears to have been issued on environmental crimes. More could be done in this area to provide reliable, accurate, and up-to-date information, feedback, guidelines, awareness-raising to reporting entities to help them better understand their exposure to environmental crimes and related ML risks.

Another area that needs improvement is widening the scope of the nature and type of environmental crime reports escalated to the FIC. Since inception, reports escalated to the FIC have been mainly related to flora and fauna (wildlife). In recent years, some reports have come to the fore in extracting sectors and illicit fishing. Environmental crime categories such as hazardous waste trafficking (including dumping) as well as illicit sand mining are also profit driven and appear to place profits or gains above environmental interests. The risk remains that gains or proceeds from such activities could be laundered through the financial system. With illegal sand mining which has been on the increase, more could be done to ensure STRs related to same are duly reported. The FIC or other relevant bodies could do with targeted community awareness activities, engagements with the environmental commissioner etc., to ensure relevant stakeholders escalate reports to the FIC. Similarly, the FIC can proactively target the known cases of illicit mining activities (for example, as per records of the commissioner) and consider generating reports on potential laundering of proceeds.

Poor AML/CFT/CPF controls in dealers in petroleum products, precious, semi-precious metals and stones undermine the ability to duly detect and report STRs. Overall, FIC observations suggest that most small to medium sized institutions in such extractive industries have not implemented robust AML/CFT/CPF measures, except for the major larger institutions. Diamond dealers and brokers for example are not accustomed to performing KYC or CDD procedures as the industry is fairly closed to a certain number of persons, involved in the business, who generally know each other. It is difficult for a new and unknown individual to get involved in the trade of diamonds without being referred or introduced by an already established dealer. In these cases, identification and cross-referencing of information may be used but such is not mandatory.

The PRU, as the primary consumer of FIC's intelligence disclosures on environmental crimes holds the view that the speed or timeliness with which some information is processed and eventually shared could be enhanced. It is essential that intelligence shared is timely but

factors such as resource constraints (within FIC and PRU) equally derails the pace of finalising intelligence processing. There is generally a satisfactory level of effectiveness in FIC information gathering and sharing, despite resource constraints clearly hampering effectiveness. The detecting and reporting of STRs related to environmental offences is rated **Medium** (a score of 0.5 or 50%).

#### **15.4.18 Capacity of the FIU**

As per its mandate, the analytical capabilities of the FIC are used for the detection, analysis and dissemination of financial intelligence and information on environmental crimes and related ML/TF/PF.<sup>643</sup> Such are further used to support the investigation of these crimes, including asset forfeiture investigations. Observations in sections 8.4 and 15.4.17 above, relating to STR processing and disclosures are significant to the assessment of the FIC's capacity.

The resource constraints of the FIC are well documented in sections 8.4 and various other sections herein. The PRU, as primary stakeholder of environmental crime related information exchange suggests that FIC considers assigning a dedicated staff or resources to environmental crime related matters. If possible, such staff member could be seconded to the Blue Rhino Task Team or work closely with the Team. This would enhance timeliness, build expertise in such dedicated staff and ultimately enhance outputs.

Having regard to the matters raised herein and various other sections related to the FIC's capacity, the assessment rates this variable **Medium** (a score of 0.5 or 50%).

#### **15.4.19 Capacity of criminal law enforcement**

Sections 8.5 to 8.6 in Chapter III deals with Capacity and Resources of Financial Crime Investigators as well as matters related to their levels of Integrity and Independence. Observations raised in such sections also apply here.

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<sup>643</sup> Observations in section 8.4 on the quality of FIU intelligence gathering and processing apply here as well.

The PRU is a dedicated agency tasked with coordinating and investigating environmental crimes in Namibia. The PRU comprises skilled detectives and investigators. Although they are availed refresher training periodically, they opined that more frequent specialized training is needed to keep up with the ever-changing and complex tactics employed by organized criminal syndicates involved in environmental crimes.

In addition to the capacity of the PRU, a joint multi-agency task team comprising of the police, data and intelligence gatherers, financial analysts, legal advisors, NPOs and other international funding partners have been formed. The mandate of such task team is to investigate and dismantle wildlife crime syndicates nationally and those with international links.

The Combatting Wildlife Crime Annual Report<sup>644</sup> suggests that urgent cases and follow-up investigations expose the known resource limitations amongst LEAs. In this regard, the high rate of new wildlife crime cases threatens to draw attention and resources away from ongoing investigations into complex cases. On average, a new wildlife crime case was registered somewhere in Namibia each day during 2019.<sup>645</sup> Nearly half of them were related to high-value species, thus requiring prioritization. Attempts to deal as quickly as possible with new cases as they arise results in more resources being applied to 'fresh' cases than to older, often extremely complex cases which are yet to be resolved. Such allocation of time and financial resources enables rapid successes in many cases but unintentionally slows the rate of success in intricate follow-up investigations (with older cases). It is thus important to ensure that sufficient resources are made available to enable effective, ongoing follow-up investigations while newer cases get the attention they deserve.

The statistics in figure 81<sup>646</sup> show criminal cases registered during the said periods, which were related to either elephants, rhinos or pangolin, registered anywhere in Namibia. While such refers to registered cases, statistics in figures 82<sup>647</sup> and 83 show the number of suspects arrested on charges related to wildlife crime offences. Table 67 suggests that on average,

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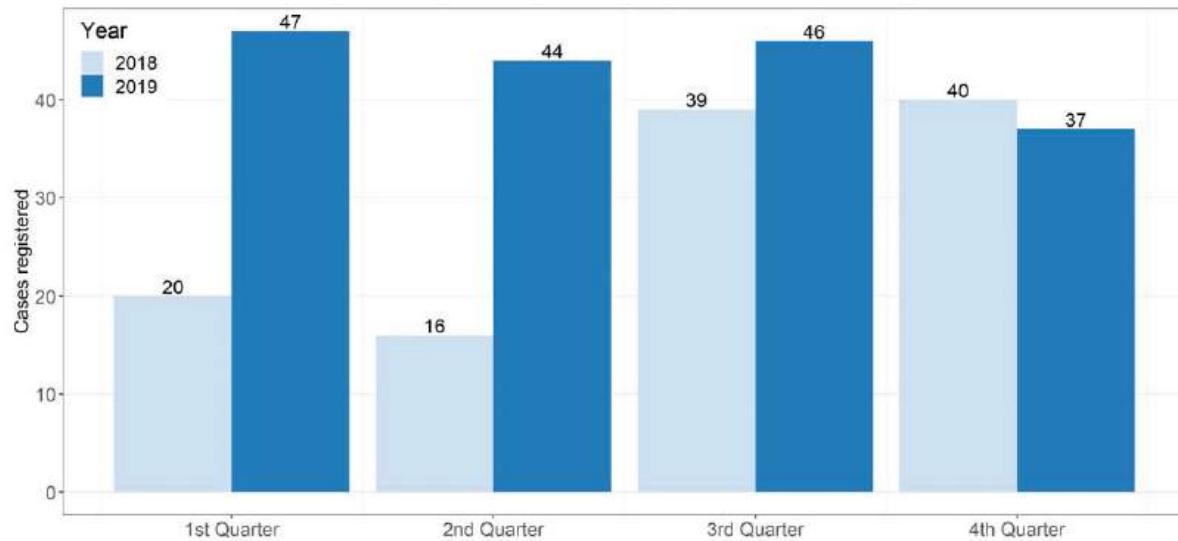
<sup>644</sup> Combatting Wildlife Crime in Namibia Annual Report, 2019.

<sup>645</sup> Combatting Wildlife Crime in Namibia Annual Report, 2019.

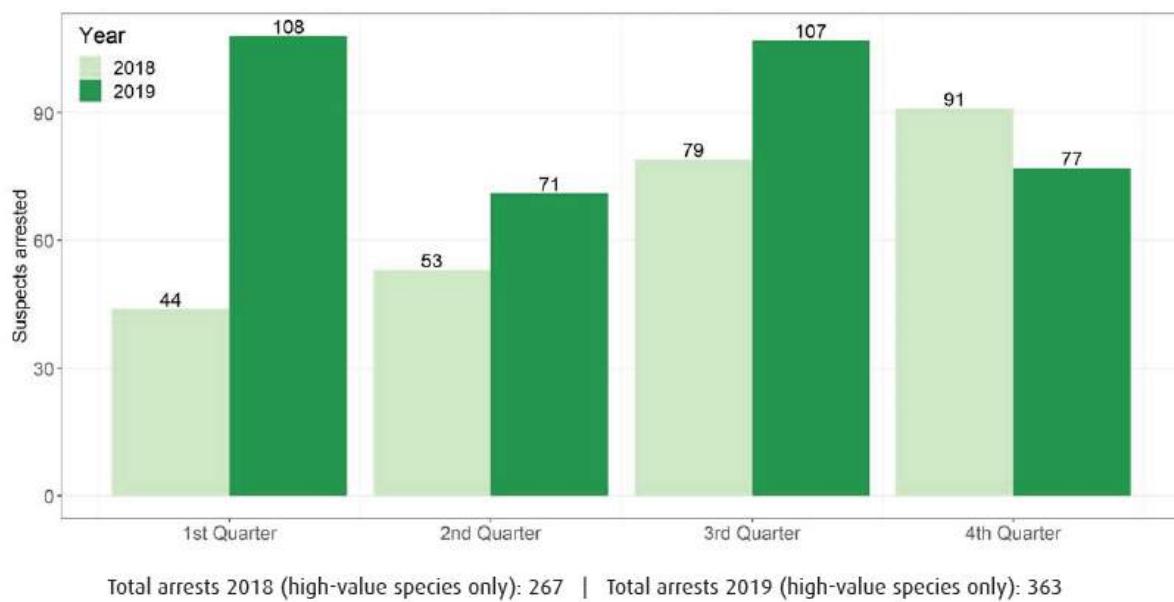
<sup>646</sup> Combatting Wildlife Crime in Namibia Annual Report, 2019.

<sup>647</sup> Combatting Wildlife Crime in Namibia Annual Report, 2019.

each case finalised in court had an average of one person charged and convicted in the period reviewed. Though a single case can have more than one suspect arrested, LEAs explained that overall, the general trend reflecting declining numbers of arrests in line with declining volumes of cases, may be a sign of enhanced combatting activities, other factors being equal.



Total cases registered 2018 (high-value species only): 115 | Total cases registered 2019 (high-value species only): 174  
 Figure 81: Number of cases registered for elephant, rhino and pangolin poaching/trafficking<sup>648</sup>



<sup>648</sup> Infringements include both actual poaching and the intent to poach, trafficking (i.e. trading) of controlled wildlife products, possession of controlled wildlife products, other infringements such as possession of illegal firearms and unlawfully entering a protected area. Cases noted herein do not always include arrests.

Figure 82: Number of suspects arrested for offences related to elephant, rhino or pangolin<sup>649</sup>

The decision to prolong Blue Rhino operations speaks to its level of success. Operation Blue Rhino was initiated on 31 July 2018, for an initial period of three months, which was extended several times. The success of the operation was again reinforced at the beginning of May 2019 by NamPol's Inspector General through the extension of Operation Blue Rhino for one more year to 30 April 2020. Figure 83 below suggests an increasing number of environmental crime suspects arrested over the years. This general increasing trend however includes all other wildlife crimes.

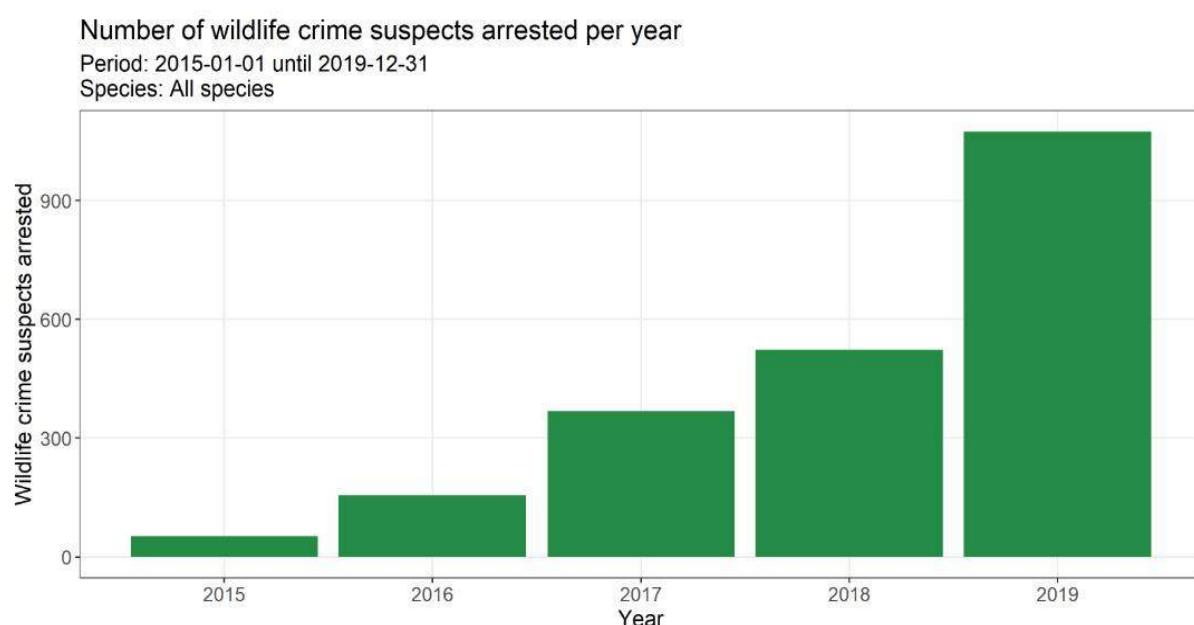


Figure 83: Number of arrested persons for wildlife crimes for all species.

Like all other stakeholders, the overwhelming challenge of the Namibian Police remains resource limitations. With wildlife crime combatting, it is generally accepted that the police's combined efforts with funding partners and other NPOs have reasonably enhanced effectiveness. The other concern is absence of ML, POCA contraventions or similar financial flow related charges advanced along with environmental crime predicate offences in the reporting period. With the exception of one case of attempted trafficking of wildlife products in March 2014, there has not been ML or similar illicit financial flow related convictions in

<sup>649</sup> Such infringements are limited to offences associated with elephant, rhino or pangolin offences registered anywhere in Namibia during the said period. Infringements include both actual poaching and the intent to poach, trafficking, trading of controlled wildlife products, possession of controlled wildlife products, and other infringements such as possession of illegal firearms and unlawfully entering a protected area.

courts emanating from environmental crimes in the five-year period of 2015 to 2019 (see Tables 63 and 67).<sup>650</sup> This can be either due to the lack of significant financial flows occurring domestically<sup>651</sup> or could reflect an unfortunate trend by LEAs, including the FIC, to ensure parallel investigations of both the predicate offences and associated financial flows<sup>652</sup>. While the predicate offences' investigative activities appear reasonably effective, the financial flows (including asset sources of suspects) undermine the overall effectiveness consideration. Financial considerations carry a significant weight. The supply of species such as rhino horns, ivory and pangolin in consumer jurisdictions is influenced by the related financial gains of suppliers in these syndicates. Often, and especially with organized crime syndicates, the poaching and trafficking operations are well resourced to circumvent authorities (rangers, conservancies controls, police, customs etc). Thus, unless adequate focus and attention is directed towards combatting financial flows in environmental crimes, the criminal syndicates will always be in a position to finance and resource poaching and trafficking activities. Having regard to all such factors, the capacity of criminal law enforcement related to environmental crimes is rated **Medium** (a score of 0.5 or 50%).

#### 15.4.20 Use of experts

Generally, combatting authorities involved in environmental crimes and ML cases have access to experts to support investigations and prosecutions.

Namibia is currently developing an animal DNA component in the DNA section of the Criminal Forensic Laboratory. Authorities are yet to develop an animal database and repatriate data from the animal DNA laboratory in South Africa where Namibia's animal data is currently housed. In the midst of all these, the need to consider employing more staff at the forensic laboratory also remains essential in effective service delivery.

As with other crimes, the Namibian Police have established processes and procedures on *how, when* and *why* an expert will be employed for investigation or prosecution purposes (as

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<sup>650</sup> Except for the one case in which four Chinese nationals attempted to smuggle 14 rhino horns and a leopard skin through Hosea Kutako International Airport in March 2014, with convictions in that case being finalised in 2016. This is the only environmental crime case in the reporting period wherein POCA or ML related charges were advanced and successfully prosecuted to gain convictions.

<sup>651</sup> This suggests funds are only moving in consumer jurisdictions, primarily in Asia.

<sup>652</sup> Often, financial flows related to a particular poaching, dealing, trafficking or similar predicate offence might not reflect how such involved persons may have gained all of their wealth. Investigations are often limited to financial flows of such offences without an adequate overall review of the suspects' wealth or asset base.

per the CPA and other relevant laws). In practice, environmental crime combatting authorities make use of crime scene experts, cellphone or similar related technical experts, computer data/information extraction and analysis experts, financial analysis experts, forensic (e.g ballistics, DNA) experts etc. Given the importance of experts in investigations and prosecutions, authorities have always had budgetary provisions to fund the sourcing of such experts, though at times limited. NPOs, especially those involved in wildlife crime combating, have also assisted with funding in this regard. Certain investigations could do with increased use of experts such as DNA and Ballistics.

Resource allocation to combatting authorities need to be considered along with all other national priorities. Given the dire need and volume of environmental crime cases, more could be done to develop and thus increase inhouse expertise in such key areas. Inhouse expertise would eventually reduce financial burdens from insourcing and importantly fast-track completion of environmental crime investigations.

The use of experts in combatting environmental crimes is rated **High** (a score of 0.7 or 70%).

#### **15.4.21 Legal protection for prosecutors, judges**

Like all other crime prosecution frameworks, the need to safeguard the integrity and independence of prosecutors and judges is essential. Sections 8.8 and 8.10 raise general observations around such frameworks. Such observations also apply to environmental crimes.

There are no known environmental crime cases (or other significant non-environmental crime cases) which may suggest that the integrity and independence of financial prosecutors and judges is compromised. The framework which protects prosecutors and judges against integrity breaches is rated **High** (a score of 0.7 or 70%).

#### **15.4.22 Legal protection for law enforcement and customs**

Overall, the assessment could not find indications which may suggest LEAs dedicated to combatting environmental crimes and customs authorities do not act with the necessary level

of integrity. Indications suggest that despite a few minor exceptions, the overall level of integrity amongst environmental crime investigators is at a level that advances their combatting mandate.

There are many cases in which PRU investigators were approached and offered bribes by wildlife crime offenders (or their associates, relatives). In such cases, investigators arranged with the ACC to set up covert operations leading to the apprehension and charging of such persons in line with the Anti-Corruption Act. Below are a few case studies worth noting:

#### **Case study 16**

##### **Windhoek CR 93/06/2020 (S v Y and Another)**

*The accused person, Mr Y (a church leader or pastor) was arrested with several other persons for charges ranging from poaching of two rhinos; conspiracy to commit rhino poaching; possession of rhino horns, firearms and ammunition and several contraventions of the POCA. These relate to the suspected poaching of two rhinos in May 2020 and dealing in such four rhino horns.*

*Mr Y and his co-accused were refused bail. It is alleged that through another individual, Mr Y attempted to bribe a member of the Blue Rhino Task Team to testify in such a manner that would enable Mr Y to satisfy the standards for bail, in exchange for money. A joint covert operation between the Blue Rhino Task Team and the ACC was conducted which led to charges of bribery of a public officer (sections 34 and 38 of the Anti-Corruption Act) being brought against Mr Y and the other person through whom the bribery was made.*

#### **Case study 17**

##### **Otjiwarongo CR 69.12.2008 (S v Mr X and others)**

*In December 2018, the brother of a suspect arrested for charges of conspiracy to poach rhinos attempted to bribe a member of the Blue Rhino Task Team to "make the case docket disappear" in exchange for money. A joint covert operation was arranged by the Blue Rhino Task Team and the ACC leading to charges of bribery of a public officer being brought against the suspects.*

### **Case study 18**

#### **Tsumeb CR 102.01.2019 (S v B)**

*On 22 January 2018, at about 20H40, in Tsumeb, a suspect, Mr B was arrested after he attempted to bribe a Blue Rhino Task Team member. Mr B's uncle and twin brother were in custody. The two were charged with being in possession of an unlicensed firearm and ammunitions that were associated with potential rhino poaching. Mr B approached and proposed to the Blue Rhino Task Team member (who was investigating the case) to arrange for the release of his brother and uncle on bail.*

Observations in section 8.6 are worth noting and apply to the entire spectrum of peace officers especially the Namibian Police. The framework geared towards safeguarding the integrity of combatting authorities charged with combatting environmental crimes are reasonably functional. This variable was therefore rated **High** (a score of 0.7 or 70%).<sup>653</sup>

#### **15.4.23 Capacity of prosecutors and the judiciary**

Namibia does not have specialised environmental crime courts. Thus, the environmental crimes can be brought before any competent court. Outputs of prosecutorial and judicial services help reflect on the effective functioning and capacity of such services. Whilst acknowledging the challenges of prolonged criminal and civil proceedings, the assessment concluded that overall, prosecutorial and judicial services involved in environmental crimes and associated predicate offenses (e.g ML) are reasonably satisfactory. Table 67 below avails a summary of criminal and civil sanctions related to environmental crime offences in the period 2017 to 2019. With the exception of one case of attempted trafficking of wildlife products in March 2014, there has not been other ML or similar illicit financial flow related convictions in courts emanating from environmental crimes in the five-year period of 2015 to 2019 (see Tables 63 and 67).<sup>654</sup>

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<sup>653</sup> Note that while section 8.6 deals with the entire NamPol's economic crime combating units, this specific section only deals with the PRU. This variable, for the PRU, is rated slightly higher than the rating in section 8.6 which was rated Medium High or 0.6. The only difference lies in the lack of data or information brought forward (or uncovered) indicating that there have been integrity breaches within the PRU. If anything, the PRU brought forth cases showing higher integrity level demonstrated by staff and this made the difference. Having said that, all other shortcomings raised in section 8.6 apply to the PRU as well.

<sup>654</sup> Except for the one case in which four Chinese nationals attempted to smuggle 14 rhino horns and a leopard skin through Hosea Kutako International Airport in March 2014, with convictions in that case being finalised in 2016. This is the only environmental crime case in the reporting period wherein POCA or ML related charges were advanced and successfully prosecuted to gain convictions.

CRIMINAL AND CIVIL SANCTIONS ON ENVIRONMENTAL CRIME CONVICTIONS (2016 - 2019)										
YEAR	NATIONALITY OF CONVICTS				ANIMAL PRODUCTS INVOLVED	EST. VALUE (NAD) (OPG)	OFFENCE(S) / LAWS CONTRAVENED	OUTCOMES/POSITION		
	NAMIBIAN	CHINESE	BATSWANA	ZAMBIAN				CRIMINAL SANCTIONS/SENTENCE		CIVIL SANCTION
2019				1	6 pieces of Ivory	3,074.55	Controlled Wildlife & Trade Act section 4(1) (b)	2 years imprisonment or NAD 35,000.00 fine. Convict declared a prohibited immigrant.		Vehicle and 6 ivory pieces forfeited to state
2018	1				1 Oryx	4,000.00	Contravention of the Natural Ordinance Act. Illegal transportation game	12 months imprisonment or NAD 7,000.00 fine		Vehicle forfeited to state
					1 Warthog	3,000.00				
2018	1				10x elephant Tusks		Controlled Wildlife & Trade Act section 4(1) (b)	5 years imprisonment or NAD 50,000.00 fine		10 tusks, four cellphones & vehicle forfeited to the state
2018	1			1	10 pieces of Ivory, 81.98kg	107,001.89	Entry at port other than at a port of entry, possession and dealing in protected wildlife products	Sanction for the various charges: 8 years imprisonment or NAD 100,000.00 fine; 6 months imprisonment of NAD 2,000.00 fine plus 2 years imprisonment		Vehicle and 10 ivory pieces forfeited to state
2017	2				Buffalo	50,000.00	Controlled Wildlife & Trade Act section 4(1) (b) and 30(1)(a). Hunting of huntable game.	Accused 1 was sentenced to: 2 years imprisonment or NAD 50,000.00 fine		Fire-arm & vehicle forfeited to the state Accused 2 remains at large. His case was separated from Accused 1 in terms of section 157 of the CPA
2017			1		1 Pangolin	50,000.00	Controlled Wildlife & Trade Act section 4(1) (b): Possession of controlled products	2 years imprisonment or NAD 60,000.00 fine, plus an addition of 1 year imprisonment suspended for 5 years on usual conditions. Accused declared prohibited immigrant.		Vehicle forfeited to the state.
2016		4			14 rhino horns and 1 leopard skin		C/Sect 4(1)(e) read with schedule 1 of the Controlled Wildlife Products and Trade Act 9 of 2008 and as read with section 18 of The Riotous Assemblies Act No. 15 of 1956. Unlawful exportation of Controlled Wildlife Products: 14 rhino horns at Hosea Kutako international Airport. Contravening C/Sect 4, 5 and 6 of the POCA. Offence was committed in March 2014.	On appeal (2016), three of the accused were convicted for C/Sect 4, 5 and 6 of the POCA. All four appellants were each sentenced to twenty (20) years imprisonment of which five (5) years was suspended for a period of five (5) years on condition that the appellants are not convicted of the offences referred to in section 4, 5 and 6 of the POCA, committed during the period of suspension.		
2016				1	8 Elephant tusks and six live bullets		Controlled Wildlife & Trade Act section 4(1) (b): Possession of controlled products and live bullets.	Sentenced to 3 years imprisonment		Vehicle forfeited to the state.

Table 67: Criminal and civil sanctions on environmental crimes

In recent years, authorities appeared to have heeded the call and more ML or POCA related charges associated with IWT predicate offences, are advanced in criminal proceedings. Table 68 below<sup>655</sup> shows that LEAs are including ML related charges. The challenge lies with ensuring convictions on such charges.

<b>Case ref no and date (for 2020 only)</b>	<b>Species</b>	<b>Predicate offences as per charge sheet (mainly the Contravention of the Nature Conservation Ordinance 4 of 1975)<sup>656</sup></b>	<b>ML related or POCA charges as per charge sheet</b>
CR03/09/2020 - 09/09/2020	Pangolin	illegal dealing and possession of controlled wildlife plus immigration related contraventions for non-Namibian.	POCA sec 4: Disguising unlawful origin of property.
CR102/08/2020 – 31/08/2020	Rhino poaching conspiracy	illegal hunting of protected game, attempt to induce another to commit offences, etc.	POCA sec 5 and 6. Assisting another to benefit from unlawful activities as well as acquisitions, use or possession of unlawful activities.
CR45/08/2020 – 06/08/2020	Rhino poaching	illegal hunting of protected game, attempt to induce another to commit offences, possession of controlled wildlife product etc.	POCA sec 6. acquisition, use or possession of unlawful activities.
CR02/07/2020 – 19/07/2020	Rhino poaching	Illegal possession, dealing of controlled wildlife products.	POCA sec 4, 5 and 6. Disguising unlawful possession of property, assisting another to benefit from unlawful activities as well as acquisitions, use or possession of unlawful activities.
CR33/03/2020 – 27/03/2020	Rhino and Leopard poaching	Illegal entry to game park, hunting, possession and dealing in protected game products etc.	POCA sec 6. Acquisition, use or possession of unlawful activities.
CR51/02/2020 – 18/02/2020	Rhino poaching	Illegal entry to game park, hunting, possession and dealing in protected or controlled wildlife (game products) etc.	POCA sec 4 and 6. Disguising unlawful possession of property. Acquisition, use or possession of unlawful activities.
CR73/01/2020 – 01/10/2020	Rhino poaching	Illegal possession and dealing in controlled wildlife.	POCA sec 4: Disguising unlawful origin of property.

Table 68: ML related charges advanced along with IWT predicate offences

Many cases in courts are still pending at the time of reporting, thus contributing to the reduced volume of finalised matters before court as per Table 67 above. The subsections below reflect

<sup>655</sup> Limited to Rhino horn, pangolin, elephant tusk related cases in 2020 only. The PRU also advanced ML related charges to IWT in 2018 and 2019 but such have not yet resulted in ML convictions. Source PRU, June 2021.

<sup>656</sup> (as amended by Act 3 of 2017).

the prolonged or delayed finalization of court cases as well as impacts of same on the overall environmental crime combatting regime.

a. *Finalization of pending cases in court*

The pace at which pending court cases are finalised remains a challenge not only for environmental crimes but for all other matters brought before courts nationally. The capacity of the judicial system to effectively and timely deal with all registered cases is often stretched.<sup>657</sup> Sensitive cases, including all those related to rhinos, must be submitted to the PG's Office. Securing legal representation for the accused often causes postponements. Laboratory results from ballistics and DNA analyses also take time. These factors can lead to lengthy prosecution delays. It therefore takes years for complex cases to be finalised. While administrative activities can be aligned and to a certain extent enhanced to improve efficiencies, no significant efficiencies can be attained without an increase in resources. Such could be deployed in not only availing more courts but ensuring that there are dedicated or specialised prosecutors and judges for priority crimes. Figure 84 below shows that finalization of high-value environmental crime cases in courts are usually prolonged, with only 11% of such cases finalised in 2019.

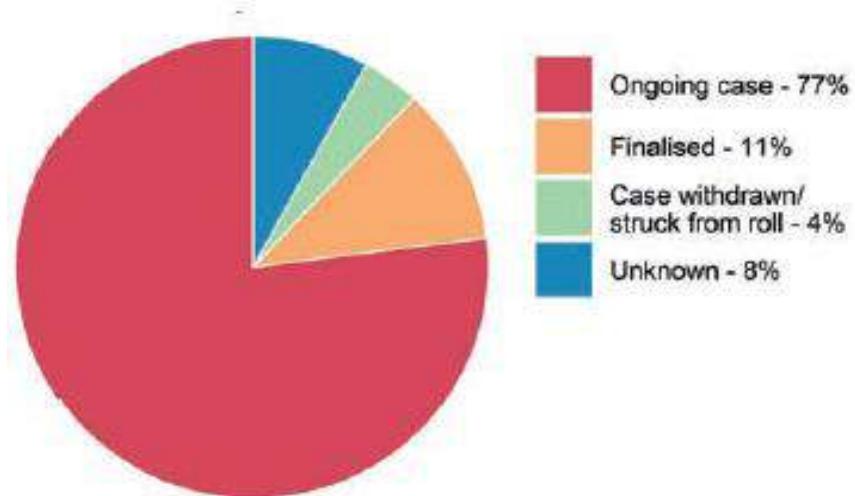


Figure 84: Ratios of court case status related to high-value species recorded in 2019<sup>658</sup>

<sup>657</sup> file:///F:/NRA%20Received%20Docs/Env%20Crimes/MET\_Annual-Report\_Wildlife-Crime\_2019\_Final-Print\_re4-online\_200323s.pdf

<sup>658</sup> Combating Wildlife Crime in Namibia Annual Report, 2019 (the high value species are pangolins, elephants and rhino as well as their products).

Authorities indicate that a variety of initiatives are being undertaken to ensure more efficient finalisation of cases. One such initiative was the establishment of an environmental crime unit within the OPG in 2019 to enhance successful prosecutions. The unit consists of seasoned prosecutors and is reinforced through targeted investments. The Blue Rhino Task Team actively collaborates with this unit within the OPG and with individual prosecutors to strengthen and fast-track cases. Lately, this is leading to more convictions and attaining of appropriate sanctions in courts. It is an important step in combatting complex and often organized environmental crimes.

*b. Increasing risks of repeat offenders in environmental crimes*

Other than delays in finalization, the pace at which environmental crime cases are finalised in court is bringing forth many challenges. Many persons formally charged with environmental crimes and released on bail pending finalisation of their cases tend to resort to committing more such crimes. The 2019 Annual Report on Combatting of Wildlife Crimes suggest that the number of repeat offenders involved in environmental crimes in Namibia appears significant. International rates of recidivism<sup>659</sup> may range from 40% to over 70%, depending on the type of offence and various other factors. Suspects committing a new crime while out on bail may make up about 10 percent of all crimes committed. In 2019, a reasonable number of suspects arrested for wildlife crimes in Namibia were on bail for previous offenses at the time of rearrest.

Amongst measures that can be considered, is maintaining detailed statistics on recidivism in Namibia. This can assist to counter bail applications of suspects or accused persons who are bound to reoffend if granted bail. This will further strengthen initiatives undertaken in 2019 to sensitise the judiciary on the seriousness of environmental crimes, its negative impacts, as well as the high value losses incurred nationally from losses of protected environmental products.

Having regard to all considerations in this and other relevant sections in Chapter III, the capacity of prosecution services and the judiciary to duly process and finalize environmental crime cases is rated **Medium High** (a score of 0.6 or 60%).

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<sup>659</sup> convicted criminals who re-offend.

## **APPENDICES**

### **16. APPENDIX 1: LIST OF ML/TF/PF NRA PROJECT PARTICIPANTS**

#### **16.1 Government and relevant agencies**

Ministry of Justice

Ministry of Home Affairs and Immigration

Ministry of Finance

Ministry of Safety and Security

Ministry of International Relations

Ministry of Mines and Energy

Ministry of Environment, Forestry and Tourism

The Anti-Corruption Commission

The Namibian Police

#### **16.2 Regulatory and supervisory bodies**

Financial Intelligence Centre (NRA coordinating agency)

BoN

NAMFISA

Namibia Estate Agents Board

Law Society of Namibia

Public Accountants' and Auditors' Board

Namibia Stock Exchange

Casino Board

#### **16.3 The prosecution and presiding officers (courts)**

Office of the Prosecutor General

Office of the Judiciary

Magistrates Commission

## **16.4 AML/CFT/CPF supervised institutions**

### **16.4.1 Financial sector**

Banking Sector  
Insurance sector  
Securities/Investment management sector  
Microlending sector  
Authorized Dealers in Foreign Exchange with Limited Authority  
Lending sector

### **16.4.2 DNFBPs sector**

Accountants  
Auctioneers  
Casinos  
CCFAs  
Dealers in Precious Metals and Stones (DPMS)  
Dealers in Jewellery, Arts and Antiques  
Dealers in Second Hand Goods  
Motor Vehicle Dealers  
Non-Profit Organisations  
Legal Practitioners  
Real estate agents  
Sport betting service providers  
Trust and Company Service Providers

## **16.5 Risk assessment methodologies employed**

16.5.1 Risk assessment methodologies were sourced from:

- a. World Bank Group (WBG) for ML/TF and environmental crime risk assessments; and

- b. The Royal United Service Institute (RUSI) for the PF risk assessment.

## **17. APPENDIX 2: ML TRENDS AND TYPOLOGIES: ENVIRONMENTAL CRIMES**

### **17.1 Notable trends in Forestry Crimes<sup>660</sup>**

- a. Persons and entities suspected of involvement in other criminal activities such as illicit trafficking or dealing in prohibited substances, other wildlife crimes etc., are most likely also participating in forestry crimes. Syndicates are profit driven and do not limit their operations to a single type of crime;
- b. Entities involved in imports and exports are inherently higher risk entities as consumption is in foreign countries;
- c. Movements of timber from countries such as Zambia, that has banned timber exports inherently carry higher risks if such is in our jurisdiction;
- d. Preference to ship or move timber via routes with fewer monitoring facilities (e.g routes known for reduced LEA presence);
- e. Illicit harvesting is often perpetrated by those who have legitimate permits or authority to harvest timber. This usually occurs through harvesting more than the approved volumes or in areas that such persons are not authorised to do so;
- f. Incorrectly issued, amended permits or such with inconsistencies or other irregularities in their appearance. Especially when such are accompanying logs destined for the export market;
- g. Changes in financial profiles of persons supplying timber: usually, there are significantly larger deposits recorded in the bank accounts of persons trading in timber;
- h. Farmers and communities in high timber prevalence areas such as the Kavango and Zambezi regions are inherently high risk as they are the target of criminal syndicates dealing in timber; and
- i. Transacting behaviour between persons who are in two different sectors. For example, a villager or farmer receiving funds from an import or export company or other commercial dealers.

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<sup>660</sup> The FIC's trends and typology report on wildlife crimes avails observation of trends, most of which are similar to, or remain relevant in forestry crimes. The report can be accessed at:  
<https://www.fic.na/uploads/TrendsandTypologies/FICTrendsandTypologyReports/Namibias%20Wildlife%20Poaching%20and%20related%20Money%20Laundering%20Typology%20Report.pdf>

## **17.2 ILLICIT DEALINGS IN THE MINERALS AND PRECIOUS METALS**

*Customer-related red flags and indicators (Mostly financial institutions)*

- a. The client transacting activity does not match KYC, for example: Actual trade volumes are significantly larger than the expected volume. Customers and/or suppliers of the customer do not correspond to the stage of the trade initially declared;
- b. Diamond dealer (or other metals) is not familiar with trade practices;
- c. Diamond dealer (or other metals) maintains high level of secrecy;
- d. Diamond dealer conducting activity in a branch not specializing in diamonds (where such branches exist), or preferring to work with staff who are not specialists in such area or staff who understand his/her transacting behaviour; and
- e. Frequent changes in company name and contact details.

*Red flags and indicators relating to the use of missing/suspicious/falsified documents*

- a. KP certificate<sup>661</sup> (or similar permit for other metals) is or seems to be tempered with or forged;
- b. Long validity of a KP certificate or similar other authority (or permit);
- c. Transfers of funds or an attempt to transfer funds through a diamond (or other dealer) company's account without producing appropriate documentation;
- d. Diamond (or other type of dealer) claims funds received or transferred are an advanced payment without producing any appropriate export or import invoice to support it;
- e. Transfers between a diamond company (or other dealer) and a private account that are reported to the financial institution as diamond (or other relevant metals/petroleum) transactions, without presenting appropriate documentation;
- f. Invoice presented by the diamond dealer (or other dealer) appears to the financial institution as unreliable or illicit (fake).

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<sup>661</sup> The Kimberley Process (KP) is a multilateral trade regime established in 2003 with the goal of preventing the flow of conflict diamonds. The core of this regime is the Kimberley Process Certification Scheme (KPCS) under which States implement safeguards on shipments of rough diamonds and certify them as "conflict free".

*Red flags and indicators related to the use of third parties*

- a. Customer consults a third party while conducting transactions;
- b. Receiving or transferring funds for import or export activity to (or from) entities (either an individual or a legal entity) that are not known to be involved in the trade of diamonds or such other metals;
- c. Return of an advanced payment from a third party;
- d. Receiving or transferring funds for import or export where the ordering customer or beneficiary is a Money Services Business (MSB);
- e. Use of third parties to deposit funds into single or multiple diamond (or other) dealers' accounts;
- f. Name of sender in the payment transfer to the diamond (or other metal) dealer is not the importer or buyer (mainly rough and polished trade);
- g. Name of receiver in the payment from the diamond (or other metal) dealer is not the exporter or supplier;
- h. A single bank account with multiple deposit handlers (retail and wholesale).

*Red flags and indicators relating to trade practices*

- a. Profit is unlikely with respect to the investment of a diamond (or other metal) dealer;
- b. Diamonds (or other relevant metals) originate from a country where there is limited production or no diamond mines at all;
- c. Trade in large volumes conducted with countries which are not part of the "diamond pipeline" (or other relevant metals in question);
- d. An increase of the volume of the activity in a diamond (or other metal) dealer's account despite a significant decrease in the industry-wide volumes;
- e. Selling or buying diamonds (or other metals) between two local companies through an intermediary located abroad (lack of business justification, uncertainty as to actual passage of goods between the companies);
- f. Volume of purchases and/or imports that grossly exceed the expected sales amount;
- g. Sale of gold bars, coins, and loose diamonds from a jewellery store (retail);

- h. Payments related to the appearance of rare or unique diamonds in the international market outside of known trading procedures (e.g. Argyle's rare pink diamond appearing in the international marketplace outside of the annual tender process). This to the best knowledge of the financial institution;
- i. A single bank account is used by multiple businesses.

*Red flags and indicators related to transactions/financing of diamond trade*

- a. Unusual forms of payment in the diamond (or other metals) trade. For example, use of travellers' cheques (all stages according to the accepted forms of payments);
- b. Date of payment not customary in the trade, [e.g. receiving/sending funds for a diamond deal conducted a very long time ago (outside accepted payment terms)]. In some cases, a customer paying upfront where the customary payment date is within a 120-days term;
- c. Financial activity is inconsistent with practices in the diamond (or other metals) trade. For example:
  - Foreign currency deposits followed by currency conversion and cash withdrawal in local currency;
  - Cheque deposits (or EFTs) followed by immediate cash withdrawals in slightly lower amounts (possible use of the diamond dealer account for cheques discounting);
  - Transfers of foreign currency and/or foreign currency cheque deposits, followed by currency conversion and immediate withdrawal from the account (possible use of the diamond dealer account for exchange services).
- d. No economic rationale for transactions involving an individual or company in the diamond industry;
- e. Deposits immediately followed by withdrawals, atypical of practices in the diamond trade, including but not limited to: Circular transaction related to import/export of diamonds. Circular transactions related to local trade (between local bank accounts). Circular financial transactions between a diamond company's (or other metals) account and the private account of the company's shareholder/director, without business or economic reason. High turnover of funds through an account with a low end of day balance;
- f. Deposits or transfers to a diamond (or other metals) dealer's account from foreign companies followed by immediate transfer of similar amounts to another jurisdiction;

- g. Immediately after a diamond (or other metals) dealer's related account is opened, high volume and high-value account activity is observed;
- h. Transactions between accounts of different companies which are affiliated with the same customer, particularly to or from Free Trade Zones or countries with tax leniencies (may be an indication of transfer pricing or trade mispricing);
- i. Open export is settled by offsetting to, and receiving payment from, a third party;
- j. Open export is settled abroad by offset in front of the importer;
- k. Settling an open export invoice with unrelated companies that engage in diamonds and not through value.

## **18. APPENDIX 3: ACTION PLANS**

The following are recommended as Action Plans to address shortcomings in combatting financial crimes. Progress in implementing such actions will be tracked every 12 months, for the three years starting 2022, as per the form attached on the last page of the NRA report.

### **18.1 LEAs (Namibian Police and the ACC)**

- a. ***Resource constraints:*** The NRA recommends that Cabinet considers resourcing the financial crime investigation units with the aim of ensuring they are able to duly conduct investigations of financial crimes brought before them. In particular, there is a need to ensure NamPol duly attends to ML predicate offence disclosures from bodies such as the FIC. The State is deprived of opportunities to confiscate assets, criminally charge suspects etc.
- b. ***Enhancing data and record keeping:*** Over the next three-year period, it is recommended that LEAs develop or enhance current data and record keeping mechanisms that can enable ease with which to measure or estimate financial crimes. As emphasized in all NRA reports since 2012, LEAs are expected to keep and avail data that can help establish the:
  - *financial value of proceeds from crime*, in cases wherein ML elements are observed. Such data should be kept for both detected/reported cases and the finalised cases escalated for prosecution consideration;

- *origin of ML threats*: data that helps demonstrate the financial or non-financial sectors from where ML threats originate or are being exploited to advance such crimes. This is essential to help identify vulnerable sectors or services and would enable policy and strategic interventions accordingly;
- *cross border flows of funds* related to all ML cases under investigation: reliable inferences on the relationship between international trade corridors and potential ML can only be drawn from understanding trends in local cases investigated and the jurisdictions such cases are linked to;

Record keeping as per the above mentioned should ideally be kept of all financial crimes reported and all cases escalated for prosecution consideration.

- c. ***Integrity of financial crime investigators:*** Staff screening or vetting during the course of employment and not only upon recruitment of members to NamPol;
- d. ***Automation of certain operations:*** Most of NamPol's operations are still manually operated. Where possible, studies could be done to find areas within NamPol operations that could benefit from some form of automation. Resources would never be adequate to address all challenges faced. This could commence by undertaking benchmark studies in other countries where automation is employed to see how some domestic LEA operations could be enhanced.

## 18.2 Office of the Prosecutor General (OPG)

In order to help ease the pressure on the current prosecution team, the following Actions need to be considered:

- a. ***Building expert capacity amongst financial crime prosecutions (including asset forfeitures):*** The NRA found that more could be done to enhance the capacity, skills etc., of prosecutors in general, in identifying ML offences in cases before them and strategies of who they can advance such cases in courts. More specialised capacity is required in the regions; and

- b. **Resource allocation:** Capacity in terms of number of financial crime prosecutors remains a challenge for years. In terms of number of prosecutors and capacity building of current prosecutors. Specialized financial crime and asset forfeiture prosecutors are required.
- c. **Automation of certain operations:** Where possible, studies could be done to find areas within the OPG which are still manually operated to in an effort to consider efficiencies that could emanate from automation. Many a times, resources would never be adequate to address all challenges faced. This could commence by undertaking benchmark studies in other countries where automation is employed to see how some domestic operations could be enhanced.

Through the Ministry of Justice as a key stakeholder:

- d. **Enhance national prioritization of ML/TF/PF cases:** The overall effectiveness of an AML/CFT/CPF framework is premised on the national system's ability to effectively prosecute and finalise such cases, including asset forfeiture. Despite the recent increase in volumes of ML convictions and asset forfeitures, the overall numbers of such cases, when compared to international standards<sup>662</sup> or the high volume of ML cases reported, still reflect that Namibia has a long way to go in enhancing its overall combatting effectiveness. The NRA, after consideration of various factors found that key stakeholders such as the Ministry of Justice, along with the Office of the Judiciary, Magistrates Commission and Office of the Prosecutor General are expected to find ways to enable the prioritization of ML/TF/PF cases. Given the current backlog of cases within our courts, it is recommended that specialised ML/TF/PF courts, or similar arrangements, be considered to enable such prioritization.

### **18.3 Supervisory/Regulatory Bodies**

In the implementation of the below, the FIC is expected to exercise oversight to the extent possible, track progress and periodically report on action plan implementation to the AML/CFT/CPF Council.

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<sup>662</sup> Comparing the overall reports to total convictions and cases wherein asset forfeitures are occurring as done with FATF Mutual Evaluations.

- a. **FIC independence:** The extent to which the FIC's housing within the BoN could be seen as compromising its independence and objectivity was considered in as far as how such position impacts overall ML/TF/PF risk mitigation. While the FIC explained that the BoN only avails administrative support and does not influence its functional or operational activities, the NRA project team was not entirely convinced. The NRA project team cautioned that if such independence is in any way undermined, the eventual prejudice to the country would be reflected in the FIC's outputs. Conventional FIU independence is also premised on resourcing. Relevant stakeholders (The BoN/Min. of Finance) are required to ensure resource allocation of the FIU does not hamper its functional and operational independence at all times. The NRA recommends that the FIC or BoN, periodically avail reports or similar information which demonstrates non-interference with FIU work activities;
- b. **Resource constraints and automation considerations:** Current supervisory capacity is not adequate and needs to be enhanced. The FIC and NAMFISA supervisory teams of barely twenty staff members, operating without the use of automated mechanisms (RegTech), will have challenges duly supervising over 2,000 registered institutions<sup>663</sup>. Automation or various forms of RegTech will always be handy given the overall scarcity of resources to increase human capacity;
- c. **Due monitoring of low risk services, sectors and institutions:** In supporting a RBA, the supervisory bodies are required to have, amongst others, mechanisms that receive and process data for monitoring purposes, especially with DNFBPs<sup>664</sup>. This is not currently happening. Most attention is rightly dedicated to higher risk sectors and services with minimal attention dedicated to the medium to lower risk sectors;
- d. **More FIA compliance based sectoral engagements** with DNFBPs to enhance FIA compliance. In the period under review, some entities engaged the FIC for the first time. Some sectors called for their prudential supervisory bodies to be involved in such engagements. For example, the TSPs would appreciate forums with the FIC and the Ministry of Justice (Master of the High Court). Banks called for FIAD and Exchange Control, etc., to join FIC/BAN meetings;

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<sup>663</sup> Close to 2,000 entities were registered at the time of reporting.

<sup>664</sup> World Bank Group Recommendation which was accepted by NRA project team.

- e. ***Enhanced FIA public awareness:*** Many sectors requested that more be done in terms of enhancing general FIA compliance awareness with members of the public. This is expected to enhance the public's appreciation of ML/TF/PF and thus lessen engagements with supervised entities in terms of CDD;
- f. ***Enhance compliance with the NamCode or King IV:*** The NRA recommends that authorities (especially the various supervisory and regulatory bodies) create mechanisms to ensure entities comply with the NamCode or King IV. Such would greatly enhance accountability and governance frameworks. These frameworks strengthen controls which contribute to risk management;
- g. ***Consider publishing sector specific ML typology and similar type of reports*** on many of the medium to higher risk services, especially in DNFBPs;
- h. Ensure more ***sector specific AML compliance guidance*** is issued and duly workshopped/shared to enhance understanding. Some existing guidance on the FIC website need to be updated;
- i. ***Managing cross border remittance risks:*** cross border remittances remain a significant risk and import related remittances are high nationally. The following are required:
  - ***Reconciling customs records of imports and exports with relevant financial transactions*** processed by financial institutions and CCFAs. At the time of reporting, the National Single Window Project has yet to be implemented, which could help in this regard. Until such time, there is thus no platform or mechanism that reconciles customs data to financial transactions in an effort to help combat TBML and related criminal activities; and
  - The supervisory bodies need to ***review banking sector's usage of the Asycuda access to reconcile payments before and after remittance (with advance payments):*** at present, such access may not be adequately used by banks although access and training was granted by Customs Authorities. Some banks cited security concerns as primary reasons for not adequately making use of such access;

j. Other than NPOs and CCFAs, enhance ***supervisory coverage in DNFBPs***. For example:

- ML risks that may emanate from ***online gambling activities*** are not understood by supervisory bodies and efforts need to be made to understand the extend of such practices and if need be, deploy corrective measures;
- There are relatively ***small auctioneering firms***, possibly operate in far remote areas, that are not yet registered with the FIC. They are usually owner operated and appear to service markets or areas not attended to by established mainstream auctioneers.

More should be done to identify unsupervised entities and include them in the AML/CFT/CPF supervisory framework. Supervisory bodies can explore other sectors such as used motor vehicle dealers not part of the framework.

k. Enhance DNFBP market entry controls, especially ***fit and proper due diligence***:

Enhance working activities with bodies such as the Casino board, NEAB, PAAB, iCAN, LSN etc., to ensure that current fit and proper considerations or due diligence of their licensed professionals or businesses do not fall short of domestic and international AML/CFT/CPF requirements. There is an expectation that the supervisory bodies conduct such fit and probity due diligence upon application and, for law firms, when the LSN renews FFCs on an annual basis as per section 35(15) of the FIA. The FIC should ensure relevant bodies understand market entry controls from an AML/CFT/CPF perspective and drive efforts to enhance their relevant market entry requirements and due diligence. It would be helpful if the envisaged FIA amendments or subsequent regulation updates would avail more clarity in this regard;

l. ***Envisaged FIA amendments*** be duly considered, especially powers to enable supervisory bodies such as NAMFISA to independently enforce FIA compliance without approval from the FIC);

m. ***Periodic risk assessment in emerging (highly exposed services) or sectors newly added to the AML/CFT/CPF framework***: Given that NPOs and CCFAs were recently added to the AML/CFT/CPF framework, their current ML/TF/PF risk exposure is naturally high. There is a need to review their ML/TF/PF risk exposure in 2-3 years after finalization

of this NRA to determine control maturity levels at the time and align risk based supervisory framework accordingly. Such review may include gaming (especially online), emerging sports betting and other betting activities, growth in VAs and VASPs as well as any other services or sectors that may be added to the AML/CFT/CPF framework post finalization of the NRA;

n. Consideration of ***publishing sanctions related to non-compliance*** with AML/CFT/CPF controls: while sanctions administered may be dissuasive to sanctioned entities, the FIC is urged to consider whether the sanctions applied and not published can be dissuasive of non-compliance by others. The interests of not publishing sanctions need to be weighed against the expectation or measuring standard to sanctions as per FATF expectations<sup>665</sup>;

- o. ***Enhance data and record keeping in supervised sectors:*** Supervised sectors are expected to maintain data key variables which enhance understanding of ML/TF/PF vulnerabilities. For example, fraud is a significant ML predicate offense but the insurance sector could not avail data on false or fraudulent insurance claims<sup>666</sup> received in the period. Equally, statistics on internal employee integrity breaches (fraud or other economic activities) which may help explain levels of employee integrity levels are not available; and
- p. The BoN and other regulators ensure timely implementation of ***remedial measures to mitigate potential of future bank failures*** such as the SME Bank case.

#### **18.4 The general AML/CFT/CPF framework**

In the implementation of the below, the FIC is expected to exercise oversight to the extent possible, track progress and periodically report on action plan implementation to the AML/CFT/CPF Council. The Ministry of Finance and AML/CFT/CPF Council to drive the following efforts:

- a. ***Consider additional resourcing and automation of FIAD operations to enhance its investigation and analytical impact in the AML/CFT/CPF framework:*** Current

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<sup>665</sup> Revised FATF Methodology, 2018, Page 10. Par. 26 on Sanctions.

<sup>666</sup> NAMFISA only receives stats on actual claims honoured (which excludes fraudulent claims).

resources and size of the FIU does not enable effective processing of received reports as reflected in section 8.4.2.1. The need to enhance current resources and automate some of the manually intensive processes will greatly improve overall FIU efficiency;

- b. **Consider availing the FIC investigative powers in ML/TF/PF activities:** Given the poor rate at which ML investigations are finalised and prosecuted, leading in lower convictions and asset forfeitures as stated in section 7.1, amongst others, the NRA called for considerations (reviews or studies) to be determine feasibly and potential effectiveness of this option in overall combatting activities;
- c. Undertake a study to **assess the impact of the absence of a framework to guide and regulate the holding and movement of physical cash** in the custody of persons at any given time as per section 7.7.3 herein.<sup>667</sup> National Vulnerability and exposure to predicate offences such as corruption, tax evasion, capital flight, as well as dealing in illicit items and substances is enhanced by the absence of frameworks that regulate the custody and movement of cash outside the formal financial system;
- d. More needs to be done to **help supervised entities identify PEPs.** Sectors have called for the publication of a national PEPs list to be drafted and updated by supervisory bodies periodically. Entities for example cited the so-called *Fishrot* case wherein persons who are closely associated with PEPs could not be identified by sectors, and they were potentially key players in advancing ML activities. Supervisory bodies though opine that such would not be suitable. More capacity building and other efforts are required to ensure supervised entities can duly identify PEPs;
- e. Ensure **availing access to databases** such as the national identification database for CDD purposes;
- e. Ensure **BIPA** collects all data related to entities registered and *avails such timely*. If all required data, as per the FIA is at hand, such should be timely availed to all AML/CFT/CPF stakeholders to enhance CDD and other prevention and combatting efforts;

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<sup>667</sup> In the famous NAD 3.6 billion TBML case, one of the Chinese nationals accused of such illicit activities was accorded bail in excess of NAD 1 million. Through his lawyer, he requested that he be escorted by LEAs to his business premises in an area of Windhoek popularly known as China town to collect such funds and pay. Such was arranged and they collected bags of money, in excess of NAD 1.5 million, which LEAs counted to take custody of the bail money so required.

- f. ***Proactively tackle emerging ML risks:*** emerging risks such as pyramid schemes, risks within the VA space, trafficking in humans and environmental crimes are generally on the increase. The AML/CFT/CPF framework needs to proactively consider efforts to minimise potential ML/TF/PF risk exposure from such predicate offences. Combatting framework, especially LEA, FIAD, OPG are required to prioritize and take measures to directly target potential illicit financial flows from such offences;
- g. ***Cross border cash declarations:*** The reporting framework has inadequacies relating to information from 'cross border cash movement declarations.' Such reports are manually administered and this presents its own set of challenges given the volumes of data the FIC deals with. The country largely depends on voluntary traveller declarations. The absence of mechanisms to properly avail all travellers with cash declaration forms undermines the effective functioning of cross border cash declarations. There is thus no assurance that Namibia or the FIC has adequate record of cash smuggled or legitimately moving into and out of the country, via the official points of entry. Such information should assist to enhance the quality of FIC outputs.

It is recommended that more public awareness be created around cross border declarations at points of entry and exit. Importantly, the declaration form should be amended to ensure provision is made for such or another form need to be handed to all travellers mandatorily to ensure they are reminded to declare (as done with other countries);

- h. ***Resource and capacity building:*** Customs Authorities are under resourced in terms of number of staff and skills required to effectively implement FIA obligations. Although training has been availed, it is felt that may not be adequate.

## **18.5 Enhancing domestic cooperation**

In the implementation of the below, the FIC is expected to exercise oversight to the extent possible, track progress and periodically report on action plan implementation to the AML/CFT/CPF Council.

- a. ***Track and enhance stakeholder commitment*** towards domestic cooperation and coordination efforts. Absenteeism, failure to dedicate adequate resources to such coordination platforms etc. Encourage NamPol or similar body to track activities that reflect commitment such as attendance, timely submission of requested data etc.;
- b. ***Poor coordination*** of all AML combatting efforts: The private sector and BIPA, amongst others raised reservations around the effectiveness of coordinated efforts. Mainly, various combatting authorities, often working on the same case would request the same information, through different bodies, often too frequent and at times with unrealistic timelines;
- c. ***Lack of proactive measures in domestic cooperation***: Coordinating agencies could proactively meet to look at ways to enhance effectiveness (create/enhance operational frameworks) as opposed to only meeting when investigations should commence;
- d. ***Enhance working relationships, especially with private sector***: Where need be, establish efficient platforms, arrangements, agreements etc., to create better working relationships between various agencies (including from the public and private sector); and
- e. ***Lack of feedback and statistics***: Feedback and statistics would be helpful in ensuring that stakeholders understand where they may need to improve.

## 18.6 Enhancing international cooperation

- a. ***Poor assistance by other jurisdictions***: The role of Interpol is often helpful but not in all cases. Key trading partners are not always helpful when so required by LEAs to avail data or information for investigations. The People's Rep. of China was said to avail minimum help throughout the years. It is rare that requests amount to any assistance, with most requests not even replied to. The USA on the other hand was said to aggressively advance its interests in crime combatting measures (when information is needed) while availing minimum assistance when so requested by local LEAs. For example, when US authorities require assistance of the local LEAs, such is availed timely as they (mostly through their embassy and other locally based stakeholders) would pressure local

authorities through constant engagements<sup>668</sup> to ensure such assistance is rendered timely. Such US authorities, when requested by local LEAs to assist could be applying such pressure to their US counterparts but there are hardly any tangible results to reflect that assistance is rendered to local LEAs as requested.

- b. ***Increasing the number of countries with whom Namibia has MLAs:*** The country also needs to enter in more MLAs with many other countries with whom Namibia does not enjoy such. Cases often arise with links to countries with whom Namibia does not have MLAs and this becomes challenging to get assistance.

## 18.7 Environmental crimes

Environmental crimes, like all other predicate offences, present risks of proceeds being used to advance ML/TF and PF and thus undermine the integrity of the financial system. The sectors under AML/CFT/CPF supervision are required, as per the FIA, to take cognizance of observations herein and employ the necessary risk management measures. In the same vein, relevant preventive and combatting authorities are expected to duly consider the outcomes of this assessment, in particular the remedial measures and where need be, make the necessary alignments to mitigate the occurrence and impact of environmental crimes.

- a. ***Asset declarations:*** There are no frameworks to ensure effective asset declarations and controls over conflicting interest in most public service spheres, including those charged with administering the allocation of resource explorations, exclusive rights and concessions. The NRA Recommends that the Office of the Prime Minister, Public Service Commission or similar body considers enacting an asset declaration framework which should be consistently implemented across the public service;
- b. ***Enhanced feedback and awareness on environmental crime risks in supervised sectors:*** More could be done in this area to provide reliable, accurate, and up-to-date information, feedback, guidelines, awareness-raising to reporting entities to help them better understand their exposure to environmental crimes and related ML risks;

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<sup>668</sup> E.g through visits, emails, phone calls etc., in some instances to higher authorities to pressure ground level staff to assist US authorities timely.

c. **Namibian Wildlife Crime Database:** The development of the Namibian Wildlife Crime Database was initiated in 2019. This powerful data management and analysis tool will ideally become the repository for all Namibian wildlife crime data. It will enable the analysis of a range of impacts and trends over time.<sup>669</sup> Crime distribution, impacts on individual species, nationality of suspects, prevalence of particular categories of crime etc., can all be carefully analysed. This ensures that criminal activity is tracked over time (days, months, years), space (towns, regions, countries) and category (species, poaching, trade, possession etc). The database also enables consistent wildlife crime reporting and availing of adequate data for exercises such as risk assessments.

d. **Lack of STRs on certain types of environmental crimes:** Another area that needs improvement is widening the scope of the nature and type of environmental crime reports escalated to the FIC. Over the years, reports escalated to the FIC have been limited to flora and fauna (wildlife). Environmental crime categories such as hazardous waste dumping and trafficking as well as illicit sand mining also appear to place profits or gains above environmental interests. The risk remains that gains or proceeds from such activities could be laundered through the financial system.

With illegal sand mining activities being on the increase, more could be done to ensure STRs related to such industry are duly reported. The FIC could do with targeted public awareness activities, engagements with the environmental commissioner etc., to ensure identification of illegal miners while also helping stakeholders to identify and escalate reports to the FIC. Similarly, LEAs should proactively target the sand mining areas to identify violations and request the FIC to conduct the necessary financial analysis of such activities;

e. **ML and financial flow related investigations and charges:** Relevant authorities need to relook their investigative and prosecutorial framework to ensure charges related to illicit financial flows and ML accompany predicate offence related charges in proceedings. The lack of such financial related charges in high value gaining offences leaves a lot to be desired;

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<sup>669</sup> Combatting Wildlife Crime in Namibia Annual Report, 2019.

f. Relevant authorities are encouraged to ***enhance controls that mitigate the occurrence and impact of Forestry crimes***, with particular emphasis on the following:

- Ensuring timber harvesting persons implement management plans to help restore lost trees (e.g replanting felled trees);
- Resourcing Forestry Officials to undertake more monitoring activities and ensure compliance with the law;
- Creating a reliable mechanism that LEAs (at police roadblocks, customs during onsite visits etc) can use to verify authenticity and accuracy of permits presented by truck drivers moving timber. Such can be an online platform or similar, which LEAs can log in to verify;
- Implement a system for report-back requirements per the timber harvesting permits issued. This can enable some form of reconciliation, especially if Forestry Officials can be dispatched to gain assurance that harvests undertaken were in terms of approval granted;<sup>670</sup>
- There is also a need for all harvest permit data to be collated and summarised in a format that can be easily shared and used to inform management decisions, risk assessment activities of this nature etc.

g. ***Sharing of information:*** There is a need both for the public sector to share additional information with AML/CFT/CPF supervised institutions, including feedback on STRs filed, and for institutions to review whether current internal controls against ML from the illegal wildlife are in line with identified risks;

h. ***Public-Private Partnerships:*** Collaboration between the public and private sector is essential in identifying and disrupting financial flows linked to environmental crimes. There has been some limited interaction between the public sector and financial institutions on following the financial flows related to such crimes locally.

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<sup>670</sup> In 2015 Namibia gazetted new forest regulations and in 2016 the new permit books were printed and issued to the regional offices. An aspect of the new permits raised is that they are susceptible to misuse due to the lack of a report-back system.

## **APPENDIX 4: ACTION PLANS ANNUAL TRACKING FORM**