



## PREVENTION OF THE FINANCING OF THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION IN ALGERIAN LAW AND INTERNATIONAL COMMITMENTS ISSUED IN THIS REGARD

DR. CHERIFA SOUMATI

Faculty of Law and Political Science, University of Khemis Miliana, Algeria

\* Corresponding author: [c.soumati@univ-dbkm.dz](mailto:c.soumati@univ-dbkm.dz)

Received: 03/02/2023; Accepted: 22/08/2023; Published: 15/09/ 2023

### Abstract

*Algeria has committed to participating in international efforts aimed at preventing the spread of armaments and combating terrorism, criminalizing the financing of the proliferation of weapons of mass destruction under Law 23-01 of February 7, 2023. This law was enacted in response to Security Council resolutions, particularly Resolution 1540 of 2004, and based on recommendations from the Financial Action Task Force, including Article 7 and Direct Outcome 11. This study focuses on legislative efforts in Algeria to prevent financing of the proliferation of weapons of mass destruction in light of the new Law 23-01 on preventing money laundering and terrorist financing for the year 2023, as well as Algeria's international obligations on this matter. These efforts may elevate Algeria's status among cooperating countries working to prevent and prohibit financing of weapons of mass destruction.*

**Keywords:** *terrorist financing, dangers, weapons of mass destruction, financial sector.*

### INTRODUCTION

Financing the proliferation of weapons of mass destruction is considered one of the most dangerous and threatening crimes to international peace and security, especially if such weapons fall into the hands of armed terrorist groups. These groups have declared their intent to seek access to radioactive materials and nuclear weapons and have attempted to use innovative methods and means to acquire more dangerous weapons and utilize them in their terrorist activities, including weapons that contain chemical, biological, radiation, or nuclear materials.

In light of technological progress and the expansion of legal and illegal commercial channels, including the Internet, it has become easier to obtain some of these weapons<sup>1</sup>. The United Nations considers the possibility of non-state actors, including terrorist groups, obtaining and using weapons of mass destruction as a serious threat to international peace and security<sup>2</sup>.

To thwart that, the Security Council, as one of the principal tools for ensuring international security and peace, has recognized the threat of terrorist utilizing weapons of mass destruction, which includes nuclear, biological, radiological, and chemical weapons, on numerous occasions. The Security Council's most poignant statement concerning this matter has been issued in Resolution (2004) 1540, wherein they affirmed that the spread of nuclear, biological, radiological, and chemical weapons, as well as their delivery systems, pose a risk to international peace and security. Subsequently, the issue was addressed, and recommendations were provided, which were adopted by the Financial Action Task Force (FATF). The FATF further incorporated these resolutions into the global standards aimed at combating the financing of terrorism and stopping money laundering, which included measures to prevent the proliferation of weapons of mass destruction since 2008. This move led to the addition of a new recommendation (Recommendation 7) aimed at ensuring the diligent and effective implementation of targeted financial sanctions which the United Nations Security Council demands countries to sign in an effort to hinder the proliferation of weapons of mass destruction. In the latest statement on the issue, as reflected in Resolution 2325 (2016), the Security Council once again urged the Members to strengthen their national systems to prohibit the proliferation of weapons, in compliance with Resolution (2004) 1540<sup>3</sup>.

~~~~~

In accordance with these significant international resolutions, Algeria has committed to participate in the international efforts to prevent and prohibit the proliferation of armaments and combat terrorism by criminalizing the funding of weapons of mass destruction under the Law 23-01 dated February 7, 2023, amended and supplemented by Law 05-01 on the prevention of money laundering and combating terrorist financing<sup>4</sup>. This Law was enacted based on the results and recommendations contained in the mutual evaluation report on anti-money laundering and the financing of terrorism measures for the Middle East and North Africa Financial<sup>5</sup> Action Task Force, following its on-site visit to Algeria during the period from July 24 to August 10, 2022, and expressed concerns about Algeria's non-compliance with Security Council Resolutions, in particular, Resolution 1540, the seventh recommendation, and the immediate outcome 11.

The importance of this topic lies in two aspects. Firstly, Algeria has tackled crime through a obligatory law unlike other states that have merely established instructions or guidelines for preventing money laundering and terrorist financing<sup>6</sup>. Secondly, the crime of financing Weapons of Mass Destruction is a novel concept in Algerian law, but it is also closely related to both the crimes of money laundering and terrorist financing. The returns from these offenses can be directed towards either money laundering or funding terrorism, including the funding of the spread of Weapons of Mass Destruction. In every situation, the financial system in the country plays an important role in preventing or facilitating these crimes.

Therefore, we consider it highly crucial to identify, evaluate, and comprehend the risks associated with financing the proliferation of weapons of mass destruction and manage them to establish a robust system for combatting money laundering and terrorist financing. The amendment introduced to Law 05-01 on the prevention of money laundering and terrorist financing under the new Law 23-01 entails several measures imposed on financial and non-financial institutions and professions to prevent threats, weaknesses, and risks associated with financing the proliferation of weapons of mass destruction, and promote awareness regarding them. Moreover, it stipulates preventive and regulatory requirements that the subject entities and supervisory bodies should adhere to, which multiplies the responsibility on the involved parties and intensifies the exerted efforts, mainly since any financial institution or profession engaged in financial transactions may contribute to financing the proliferation of weapons of mass destruction either knowingly or unknowingly, resulting in significant harm to itself, the security, and safety of the Algerian state and its financial system.

In line with the foregoing and its clarification, this study aims to address a problematic of utmost importance: How well has the Algerian legislature complied with the provisions of Law 23-01, and how has it aligned itself with international commitments aimed at preventing the financing of the spread of weapons of mass destruction and preventing terrorists from obtaining them?

To answer this problematic, we will use a descriptive and analytical methodology that is consistent with the nature of the subject matter, in order to describe and analyze it. Given that this matter is still relatively new in Algeria, as well as in most countries of the world, especially in Arab countries, the paucity (if not the complete absence) of references (books, articles) has been among the major difficulties that we faced in preparing this report, except for legal texts and relevant international documents.

## **2- Sources of commitment to implement provisions for combating the crime of financing the proliferation of weapons of mass destruction:**

The Algerian legislature included the crime of financing the proliferation of weapons of mass destruction in the list of money laundering and terrorism financing crimes. Consequently, it is now subject to sanctions and preventive and regulatory measures provided by Law 05-01, amended and supplemented to tackle crimes of money laundering and financing terrorism. In addition, the legislature has introduced new provisions, procedures, and organizations, making the fight against the proliferation and financing of weapons of mass destruction as important as combating crimes of money laundering and financing terrorism. Hence, all parties are responsible for combatting these crimes.

Examining the amendments to Law 23-01, which included various preventive and deterrent measures for financing the proliferation of weapons of mass destruction, it is evident that the

Algerian legislature has implemented texts consistent with international commitments, relating to the resolutions of the Security Council regarding the cessation, prevention, and combating of armaments, and the recommendations of the Financial Action Task Force in this matter.

### **2-1 Security Council Resolutions:**

It is worth mentioning the Security Council Resolutions of the United Nations regarding the prevention, suppression, and cessation of the proliferation of weapons of mass destruction and their financing. Specifically, Resolution 1540 (2004) and its subsequent resolutions, with a particular focus on Resolution 2325 (2016), which confirmed the commitments outlined in Resolution 1540 (2004). All countries were invited to redouble their efforts to achieve full implementation of Resolution 1540 (2004), with a specific focus on the areas where measures must be taken and reinforced<sup>7</sup>.

If we consult the content of Resolution 1540, we note that it calls on all countries to refrain from providing any type of support for non-state actors attempting to develop or possess nuclear, chemical, or biological weapons, or the means to transport them, including bypassing, manufacturing, possessing, transferring, converting, or using them, notably in terrorist activities. The resolution requests that all countries adopt and enforce effective and appropriate laws and take effective measures to prevent the proliferation of these weapons and means of transport to non-state actors, particularly for terrorist activities.

Furthermore, all countries, according to their national procedures, should adopt and implement effective and appropriate laws that prohibit non-state actors from producing, owning, or using nuclear, chemical, or biological weapons or delivery mechanisms, particularly for terrorist activities. They should also forbid any attempt to engage in any of the activities mentioned above, or to participate as a partner, assist, or finance these activities. All countries should establish effective measures to put in place local controls that aim to prevent the proliferation of nuclear, chemical, or biological weapons or delivery mechanisms, including the implementation of adequate controls on related materials.

The Security Council will take measures ranging from comprehensive economic and trade sanctions to more targeted measures, such as arms embargoes, travel bans, or restrictions on financial or trade transactions, in the event of noncompliance with these commitments<sup>8</sup>.

### **2-2 Special Standards of the Financial Action Task Force (FATF) Working Group**

The amendments approved by the Algerian legislature under Law No. 23-01 concerning the crime of financing the proliferation of weapons of mass destruction are consistent with the recommendations of the Financial Action Task Force (FATF) Working Group, particularly those outlined in Article 7 and Immediate Outcome No. 11. Recommendation 7 is exclusively dedicated to imposing targeted financial sanctions related to the proliferation of arms while emphasizing that financial institutions must adopt preventive measures to combat the flow of funds and other assets to parties involved in the proliferation of arms or accountable for it. Immediate Outcome No. 11 of the effectiveness results is focused on the need to prevent individuals and entities involved in financing the proliferation of weapons of mass destruction from collecting, transferring, or using funds. Additionally, there is a need to ensure that these sanctions are imposed immediately, pursuant to Security Council Resolution No. 1718 (2006), subsequent resolutions related to North Korea, and Resolution No. 2231 (2015) relevant to Iran<sup>9</sup>.

It is important to note that the significant and crucial amendments included in Law 23-01 with regard to the financing of the proliferation of weapons of mass destruction were all derived from the joint assessment report of the Financial Action Task Force. The report was conducted during the period from July 24th to August 10th, 2022, and highlighted Algeria's non-compliance with the resolutions of the Security Council, particularly Resolution 1540 and Recommendation 7 and Direct Outcome 11. The report also identified shortcomings in the national law and provided valuable guidelines to ensure the Algerian government complies with the revised recommendations of the Financial Action Task Force for the year 2022<sup>10</sup>.

### **2-1 Definition of the Crime of Financing the Proliferation of Weapons of Mass Destruction:**

~~~~~

In accordance with Article 34 bis 4 of Law 23-01, the Algerian legislature has referred the penalties applicable to the crime of financing the proliferation of weapons of mass destruction to the Algerian penal code, thereby recognizing that such financing constitutes a criminal offense that necessitates the enforcement of criminal penalties. However, the current penal code does not have any legal provisions concerning this type of crime. Nevertheless, it is expected to undergo amendment and supplementation in the near future, as the Algerian government's General Secretariat is analyzing a draft amendment to the penal code that aims to designate financing the proliferation of weapons of mass destruction as a terrorist act and specify the penalties for such crimes<sup>11</sup>. Until this amendment is implemented, it is not possible to provide details pertaining to the elements of this criminal activity or the penalties that apply to it, with the exception of the reference to the penalties applicable to legal person found to have committed crimes in financing arms, as stipulated in Article 18 bis of the penal code<sup>12</sup>.

The Algerian legislature defined financing the proliferation of weapons of mass destruction in Article 4 paragraph 4 of Law 23-01 as: **"...financing the proliferation of weapons of mass destruction," which entails, particularly nuclear, chemical, radiological, bacteriological, or biological weapons, through prohibited acts pursuant to United Nations Security Council Resolution 1540 (2004) and subsequent resolutions for the prevention, suppression, and cessation of the proliferation and financing of weapons of mass destruction."**

It should be noted that the Algerian legislature has failed to provide a clear and accurate definition of what is meant by financing the proliferation of weapons of mass destruction. Rather, it simply identifies the types of weapons that fall under this category and relies on Security Council decisions to clarify the intended meaning of this crime. The Algerian government has expressed its full commitment to comply with all international commitments relating to disarmament and non-proliferation, including Security Council Resolution 1540 (2004) and subsequent resolutions.

In this context, it is worth noting the common definitions of financing the spread of weapons of mass destruction that have been put forward by the Financial Action Task Force.

To begin with, let's refer to the 2008 FATF definition on financing the proliferation of weapons of mass destruction (WMDs) and its various forms in which this definition includes : **"the transfer and export of technologies, goods, software, services, and expertise that are capable of being used in programs related to nuclear, chemical, or biological weapons, including their delivery methods. This poses a great threat to international security, including ballistic weapons."**<sup>13</sup> This specific definition focuses solely on funding that is directed towards the technologies, information, structures, and facilities necessary for the production of nuclear weapons.

Afterwards, the 2010 FATF Financial Action Task Force report on combating the financing of WMD proliferation<sup>14</sup> presents another definition that highlights money as a critical funding instrument. It defines financing WMDs as **"any activity that provides funds or financial services that are used in whole or in part for the manufacture, acquisition, possession, development, export, shipment, brokerage, transit, transfer, storage, or use of nuclear, chemical, or biological weapons, their delivery systems, and related materials (including technologies and dual-use goods used for illicit activities) in violation of local laws or international requirements wherever applicable."**

However, the 2021 Financial Action Task Force report on evaluating the financing risks of proliferation and its mitigation defined the financing of weapons of mass destruction proliferation more broadly. It encompasses a range of financing activities, such as money, technology, and economic resources, and is defined as: **"The risk of collecting, moving and generating funds, other assets, and economic resources, or fully or partially financing individuals or entities, for the purposes of proliferating weapons of mass destruction and associated materials (including dual-use technologies and goods used for illegal purposes.)"**

The report refers to the proliferation of weapons of mass destruction as : **"the manufacturing, possession, ownership, development, export, cross-border transportation, brokering, storage, or use of nuclear, chemical, or biological weapons and related delivery systems and materials (including dual-use technologies and goods.)"**<sup>15</sup>

Regarding the financier of the proliferation of weapons of mass destruction, the specific term is used in the 2010 Financial Action Task Force (FATF) report on combating the financing of proliferation of weapons of mass destruction as **"an individual or group who takes advantage of official and unofficial sectors of the international financial system or engages in cash transactions in the trading of goods connected with the proliferation of weapons of mass destruction."**

### **3- Methods of financing the proliferation of weapons of mass destruction**

The financing of weapons of mass destruction is an extremely sensitive subject with a variety of facets, and encompasses an extensive assortment of illegal activities. Funding these weapons proceeds through numerous stages and involves monetary support for the development, production, and proliferation of nuclear, chemical, and biological weapons. These weapons pose a serious threat to international security.

#### **3-1 Stages of proliferation funding<sup>16</sup>**

The process of funding the proliferation of weapons of mass destruction includes three stages:

**The initial stage is gathering financial resources for armament programs:** financial resources are collected to cover costs within the country. Funding sources may come from a network of overseas commercial companies or proceeds from criminal activities abroad, such as money laundering, corruption, drug trafficking, and so on.

**Second stage: Money laundering:** This stage involves the transfer of assets into the international financial system. This often includes foreign currency exchange transactions for trade purposes. The methods used can range from simple to complex, including the use of natural correspondent banking channels or a complex network of supply agents and front companies.

**Third stage: Supply of materials and technologies:** This stage includes payments for the transportation and shipping of materials and technologies. A previous group of experts working for the United Nations has noted that Iran has used various supply methods, including the use of front companies to supply prohibited items and the use of the petrochemical sector to conceal the ultimate use of the elements supplied for their nuclear program<sup>17</sup>.

#### **3-2 - Methods used in financing the proliferation of weapons of mass destruction<sup>18</sup>**

Those involved in the proliferation of arms turn to a network of brokers and agents to purchase necessary goods and technology. These individuals operate in different countries and blend their legitimate and illegitimate businesses activities. This makes it difficult for authorities and regulatory agencies in different countries to discover these activities, as will be explained later.

In addition, the arms smugglers utilize transshipment points prior to the arrival of goods at their ultimate destination, where these points are used to rename the goods and conceal their path, and manipulate the original source and final destination of the shipment. Among the methods employed by perpetrators are, for example, concealment, where arms proliferation financiers restructure transactions and company activities to appear as legitimate business in a low-risk country, often a neighboring state of the sanctioned state. Moreover, arms proliferation financiers may utilize shell companies and facade companies, specifically those formed in countries with weak corporate formation systems, to conceal their identities, and offenders involved in illegitimate activities may use companies with complex hierarchies to mask ownership. Additionally, financiers may turn to direct dealings with international financial institutions; some of which have been discovered to hold correspondent bank accounts or relationships with foreign financial institutions. Correspondent banks conduct financial transactions on behalf of the sanctioned country, and enable it to access the broader international financial system.

In addition, the arms traffickers utilize transshipment points prior to the arrival of goods at their ultimate destination, where these points are used to rename the goods and conceal their path, and manipulate the original source and final destination of the shipment.

Among the methods employed by perpetrators are, for example, concealment, where arms proliferation financiers restructure transactions and company activities to appear as legitimate business in a low-risk country, often a neighboring state of the sanctioned state.



Moreover, arms proliferation financiers may utilize shell companies and facade companies, specifically those formed in countries with weak corporate formation systems, to conceal their identities, and offenders involved in illegitimate activities may use companies with complex hierarchies to mask ownership.

Additionally, financiers may turn to direct dealings with international financial institutions; some of which have been discovered to hold correspondent bank accounts or relationships with foreign financial institutions. Correspondent banks conduct financial transactions on behalf of the sanctioned country, and enable it to access the broader international financial system.

### **3- Preventing the financing of weapons of mass destruction proliferation:**

The Algerian Law 23-01 mandates a series of preventive measures to combat the proliferation of weapons of mass destruction by preventing their financing. The measures are directly influenced by the recommendations of the Financial Action Task Force (FATF), particularly in their revised versions for 2008 and 2022. Since these recommendations constitute an international standard, countries must implement them by adopting measures that are adapted to their unique circumstances.

#### **4-1 Responsibles assigned to Implementing Measures to Prevent Weapons of Mass Destruction Financing:**

The Algerian legislature obligates those who fall under its jurisdiction to implement a range of preventative measures in order to prevent money laundering, terrorist financing, and the spread of weapons of mass destruction. Those who are subject to this obligation, as set out in Article 4, Paragraph 4 of Law 23-01, include : "financial institutions, non-financial institutions, and professions that are required to undertake preventative measures, including reporting of any suspicions in line with this law, regulations, and instructions issued by controlling, supervisory, and/or oversight authorities."

##### **• Financial Institutions**

In accordance with Algerian law, a financial institution is any natural or legal person carrying out one or more of the following activities for commercial purposes on behalf and account of customers:

1. Receiving money and other deposits that are refundable,
2. Loans or advances,
3. Lease financing, except for financial lease related to consumer products,
4. Transfer of money or values.
5. Issuance of all means of payment and their management.
6. Providing guarantees and underwriting commitments.
7. Trading and dealing in cash markets, exchange markets, negotiable securities, and trading in futures and options.
8. Participating in the issuance of negotiable securities and providing associated financial services.
9. Individual and collective management of properties.
10. Keeping negotiable securities in cash or liquid form, or managing them on behalf of others.
11. Other operations for the investment and management of funds or money or their management on behalf of others.
12. Subscription to and utilization of life insurance and other investment-related materials related to insurance.
13. Disbursement of cash and foreign currency.

These institutions are obliged to apply prevention measures as part of efforts to prevent the proliferation of weapons of mass destruction. Nevertheless, some financial institutions may overlook the dangers and threats attached to funding armament proliferation and neglect to put forth adequate internal policies to address the issue. Inadvertently or knowingly, such institutions may play a role in the proliferation of armaments, causing harm to themselves and their country's financial system<sup>19</sup>. **Sectors of banks or money transfer service providers** are open to exploitation because the sponsors of proliferation require access to the international financial system in order

to execute the funding stages (particularly stages 2 and 3) involved in proliferation, and transfer service providers and similar services are specifically prone to exploitation<sup>20</sup>.

• **Non-financial institutions and liberal professions**

According to Algerian law, non-financial institutions and liberal professions refer to any natural or legal person engaged in activities other than those carried out by financial institutions, including regulated professions such as lawyers when they engage in financial transactions on behalf of their clients, as well as notaries, judicial officers, auctioneers, accounting experts, accountants, certified accountants, brokers, customs agents, brokers in stock market operations, real estate agents, service providers to companies, car sales agents, encumbrances and gaming operators, dealers in precious stones and metals, antique and art dealers, and individuals and legal entities who, in the course of their duties, provide consulting services or carry out operations that involve depositing, exchanging, investing, transferring, or any other movement of funds.

Therefore, the Algerian legislature has broadened the definition of non-financial institutions and professions to fully and comprehensively cover the prevention of money laundering, financing of terrorism, and financing of the proliferation of weapons of mass destruction, including service providers to companies and credit funds (including lawyers and extrajudicial notaries or any natural or legal person carrying out any movement of funds) that may be exploited to create façade and fictitious companies that enable disguising the persons or entities involved in the operations, as well as in the broader scope of non-financial sectors and liberal professions.

• **Service providers of virtual assets (and financial companies that provide virtual asset services)**

They were not included in the definition of "entities" under Algerian law, despite the fact that the national legislature adopted the term "virtual assets" for the first time in the new Law 23-01 and recognized it as a site for money laundering or financing. However, they were not obligated to take preventative measures, which is a consequential oversight that the legislature should rectify given that the providers of these services may be vulnerable to exploitation owing to the nature of virtual asset transactions, the potential for secrecy and cross-border operations, and the ability to enable quick payments. In fact, some evidence indicates that virtual assets have been used to collect money for weapons programs (the initial stage of proliferation financing)<sup>21</sup>.

**4-2 Content of prevention measures:**

In order to secure the Algerian financial system and raise awareness among financial institutions about the effective application of the risk-based approach and the corresponding financial penalties concerning financing the proliferation of weapons of mass destruction in accordance with United Nations Security Council resolutions, Law 23-01 has put in place a series of measures that are required of licensed entities to prevent the threats, weaknesses, and risks associated with proliferation financing, in addition to outlining the supervisory requirements that these authorized entities must adhere to.

**4-2-1 Identification, assessment, and understanding of money laundering, terrorist financing, and proliferation financing risks:**

Pursuant to the mutual assessment report on anti-money laundering and terrorist financing measures issued in May 2023, specifically in relation to recommendation No. 1, which concluded that Algeria has not complied with risk assessment and the risk-based approach<sup>22</sup>, the Algerian legislature, under Article 5 bis 2 of Law 23-01, is legally bound to take appropriate measures to identify, assess, and understand the risks of money laundering, terrorist financing, and proliferation financing to which they expose themselves, including those related to customers, including non-residents or non-geographic regions, products, services, operations, and distribution channels. They must consider all of the risk elements associated with them before determining the overall risk level and the appropriate type and level of measures to be implemented to reduce these risks.

These measures must be proportional to the nature and size of the subjects as well as the extent of their activities, and the assessments mentioned above must be documented, reviewed, and made available to the relevant authorities and supervisory bodies.

With this approach, the subjects are allowed to:

- Identify, assess, and comprehend the risks associated with money laundering, terrorist financing and proliferation of weapons of mass destruction and adopt measures to minimize their severity.
- Implement enhanced measures to manage and mitigate high-risk identifications.
- Use simplified procedures when assessing low-risk categorizations.

In addition, the Algerian legislature requires controlling and supervisory authorities of nonprofit associations and organizations to take a set of measures to implement a practical program using a risk-based approach.

The process of understanding, identifying, and assessing the risks associated with financing weapons of mass destruction is a complex process that requires continuous cooperation and coordination among the relevant authorities and supervisory bodies. As such, it is impossible to achieve satisfactory results without a clear and well-defined strategy. To this end, the Algerian legislature established the National Committee for the Assessment of Risks of Money Laundering, Terrorism Financing, and the Proliferation of Weapons of Mass Destruction two years prior to the adoption of Law 23-01, under Executive Decree No. 20-398 issued on December 26, 2020.<sup>23</sup> This Committee was later reaffirmed and reinforced by Law 23-01. Chaired by the Minister of Finance, the Committee is composed of high-level members and is supported by two sub-committees, one of which is the Anti-Money Laundering and Terrorism Financing Sub-Committee, chaired by a representative of the Ministry of Justice and comprising representatives of various sectors. The second sub-committee is for combating the financing of the proliferation of weapons of mass destruction, chaired by a representative from the Ministry of National Defense and representatives from various sectors.

It is pertinent to mention that our understanding, assessment, and identification of the risks involved in money laundering, terrorism financing, and financing the proliferation of weapons of mass destruction in Algeria, as well as enhancing the coordination and cooperation between the relevant authorities, is still at its nascent stage, given the recentness of the Law 23-01, which was passed on February 7, 2023. Thus, we are yet to receive multiple legal texts that will help regulate the assessment process, in addition to developing a guide that outlines its steps, stages, and methods, all of which are in line with the comparative legislation.

#### **4-2-2- Activating and enhancing preventive and regulatory measures:**

In accordance with the mutual assessment report on combating money laundering and terrorist financing, which rated Algeria as "partially compliant" and "non-compliant" in terms of complying with preventive and control measures, significant amendments have been made under Law 23-01 by the Algerian legislature to address the legal shortcomings identified in the report, with the aim of implementing and strengthening preventive strategies and meeting the international standards outlined in the forty recommendations and Security Council resolutions prohibiting the proliferation of armaments, while also considering the amendments as a mechanism for implementing a risk-based approach. These amendments can be summarized as follows:

- The parties are strictly obliged to implement programs that ensure internal control based on the risk-based approach, ensuring their implementation and considering the risks that may emerge while adopting these programs and the value of business activities and continual training of their employees. Through this commitment, they must fully comply with the internal control regulations illustrated in Recommendation 18 and its explanatory notes.
- Moreover, they must comply with the recommended vigilance duty as stated in Recommendation 17 and effectively implement accurate monitoring of their operations throughout the entire business cycle to ensure coherence and conformity in the information available about their customers and business practices and assess the risks involved.
- The identity of customers must be confirmed when there is suspicion of financing the proliferation of weapons of mass destruction that surpasses the regulatory ceilings. Parties must remain aware of the commercial status and the nature of the customer, whether long-term or casual, legal or natural. The customer's identity must be verified through reliable and independent sources for documents or information. Parties must carry out reasonable actions





to confirm the true beneficiaries' identities for the legal persons and maintain records and accounting books on physical or electronic media for future reference.

- The obligated parties, especially financial institutions, must adhere to standards that regulate correspondent banking and other similar relationships between subjects and foreign countries.
- A specific format must be formulated to cover the risks of electronic transactions resulting from the development of new products, business practices, and advanced technologies, requiring them to conduct this evaluation before launching it. This obligation is in response to Recommendation 15 and its explanatory note<sup>24</sup>.
- The obligated parties must notify the financial intelligence unit of any transaction or attempt to conduct a suspicious transaction suspected of being aimed at financing the proliferation of weapons of mass destruction. This commitment remains in effect even if the operation cannot be carried out, or after its completion. A new judgment is enacted that voids criminal prosecution for violating professional or banking secrecy due to good intentions or false witness, in order to encourage the reporting of suspicion and protect them from any legal action.
- Regulatory, supervisory, and control authorities have the duty to observe how much the subjects are complying with the requirements of prevention of money laundering, financing terrorism, and financing the proliferation of weapons of mass destruction. Additionally, it is necessary for supervisory and control authorities of non-profit associations and organizations need to step up their scrutiny on these institutions' non-acceptance of donations or financial support from unknown sources internally or externally, or from illegal sources, or from individuals or organizations proven to be involved in terrorist activities.

#### 4.2.3 Parallel Financial Investigation:

The Algerian legislature has pointed out the existence of parallel financial investigations in article 4, paragraph 21 of Law 23-01. This is an investigation that runs alongside criminal investigations for cases on money laundering, terrorist financing, or financing the proliferation of weapons of mass destruction. Its primary purpose is to:

A- Determining the scope of criminal networks or the risk of crime.

B - determining and uncovering the origins of criminal proceeds, money laundering, terrorism financing, and all types of assets and properties that can be seized or confiscated.

It should be noted that this type of investigation has been carried out in Algeria and has been entrusted to specific entities such as the specialized judicial police in financial crimes, the central office for combating corruption, as well as the financial intelligence unit. However, the mutual assessment report for 2023 considered that these bodies are not conducting sufficient parallel financial investigations, particularly in organized crimes that generate substantial revenues. This is because of many reasons, including the absence of a guideline that specifies cases or circumstances where parallel financial investigation should be pursued, the lack of awareness or training about the importance of tracing criminal proceeds through parallel financial investigation.

#### 4-2-4 Freezing and Seizure of Funds

Based on the results of the May 2023 Financial Action Task Force review, which concluded that the efficacy of Algeria's direct result 11 was "unfavorable," owing to a lack of legal regulation governing the execution of Security Council resolutions concerning the prevention of arms proliferation<sup>25</sup>, leading to confusion among supervisory and relevant bodies in accordance with Recommendation 7, the Algerian legislature established a legal foundation enabling competent authorities to freeze and seize funds and properties, doing so by inserting a paragraph into Article 18 bis 2, stating: **"While respecting the rights of third parties with good faith, the funds of persons, groups, and entities registered in the consolidated list of the sanctions committee in accordance with Security Council Resolution 1267 (1999), as well as the properties and funds of persons and entities listed on the targeted financial sanctions list related to funding Weapons of Mass Destruction, are to be immediately frozen/seized,"** thereby providing Algeria with a legal framework enabling the implementation of Security Council decisions related to preventing the proliferation of arms in the state as soon as they are issued by the Security Council.

For the purpose of implementing the provisions of this text, a committee has been established to monitor targeted international sanctions. The committee is charged with the responsibility of following up on the United Nations Security Council resolutions adopted under Article VII of the UN Charter and the implementation lists that result from their application. This committee operates under the supervision and monitoring of the ministry responsible for foreign affairs, and its composition, organization, and rules of procedure will be determined under the regulations at a later time.

### Conclusion:

The Financial Action Task Force has consistently listed Algeria among the nations cooperating in the battle against money laundering and funding of terrorism. Following the issue of the law relating to the prevention of terrorism funding and money laundering (Act 23-01), the country hopes to retain its status. Our findings indicate that Algeria is devoted to implementing the necessary steps to adhere to Security Council resolutions relevant to terrorism, financing, and proliferation of weapons of mass destruction. Algeria is seeking to execute various measures controlling supervisory authorities and those under supervision through effective by an amendment and supplementation to the Prevention of Money Laundering and Terrorist Financing Law of 2023.

Algeria has taken initial and constructive steps towards enhancing its understanding of the risks associated with the financing of weapons of mass destruction and its connection to money laundering and terrorist financing. These steps include the formation of committees and technical working groups aimed at collecting necessary data for risk assessment. While the national risk assessment process is still underway, Algeria remains cognizant of the urgent need to adhere to the resolutions passed by the United Nations Security Council on the prevention of the proliferation and financing of weapons of mass destruction.


Outlined below are some essential suggestions to amplify the role of Law 23-01 in deterring the crime of proliferation of weapons of mass destruction:

1. Moving quickly to amend the Penal Code by including a new provision that criminalizes the proliferation of weapons of mass destruction and stipulates corresponding sanctions that comply with international commitments.
2. Developing a manual guide for financial and non-financial institutions, as well as controlling and supervisory authorities, to assess risks and implement measures to prevent the proliferation of weapons of mass destruction, while also considering their impact on money laundering and terrorism financing prevention.
3. Creating an instructional guide that outlines the procedures, methods, bodies, and circumstances under which parallel financial investigations should be conducted.
4. Establishing and maintaining ongoing training and education programs for regulated bodies to raise awareness of the risks they face, particularly those related to terrorism financing, and requesting them to conduct regular self-evaluations of risks.
5. Intensifying training and awareness-raising workshops and other related activities, such as scientific symposiums, aimed at promoting understanding and practical implementation of Law 23-01.
6. Proposing the launch of a project to develop a smart surveillance program that can identify early-stage risks related to money laundering, terrorism financing, and weapons of mass destruction proliferation.

### REFERENCES

- 
- [1] *United Nations, Counter-Terrorism Office "Chemical, Biological, Radiological and Nuclear Terrorism" is available on the following website: <https://www.un.org/counterterrorism/ar/cct/chemical-biological-radiological-and-nuclear-terrorism>*
- [2] *Ibid*
- [3] *Ibid*

- [4] Law No. 23-01, dated February 7, 2023, amending and supplementing Law No. 05-01 of February 6, 2005, relating to the prevention of money laundering and terrorist financing, Official Journal of the Democratic People's Republic of Algeria No. 80, issued on February 8, 2023.
- [5] Mutual Assessment Report "Anti-Money Laundering and Counter-Financing of Terrorism Measures" Middle East and North Africa Financial Action Task Force - MENAFATF, issued in May 2023, p. 32. <https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/MENAFATF-MER-Algeria-2023-Arabic.pdf.coredownload.inline.pdf>
- [6] The Law 23-01 includes many amendments and supplements relating to various aspects covered by this law. However, in this study, we will focus on those related to the prevention of money laundering, terrorist financing, and proliferation financing of weapons of mass destruction. The project sets out the duties of those involved in the prevention of money laundering, terrorist financing, and proliferation financing of weapons of mass destruction, and their countermeasures, as well as requiring those subject to take appropriate measures and assessments to identify and assess the risks of money laundering and terrorist financing. However, it is worth noting briefly the most important other amendments related to the subject:
- General provisions axis, where some terminologies were reviewed, and new definitions were added.
  - Axis of detection, which clarified that the text obliges those subject to report to the specialized body every operation suspected to be related to funds obtained from an original crime or related to money laundering, and/or related to terrorist financing or the financing of proliferation of weapons of mass destruction.
  - Axis of International cooperation, where the legislature widened the field of international cooperation by enabling the specialized body to inform other state authorities that perform similar tasks about the information available to them concerning operations that appear to aim at money laundering or terrorist financing, which includes the financing of proliferation of weapons of mass destruction and the original crimes related to them.
  - Axis of Criminal provisions, where the criminal provisions in force in the law were reviewed, and new actions were criminalized.
- [7] It includes United Nations Security Council resolutions imposing targeted financial sanctions for the financing of proliferation of weapons of mass destruction: 1718 (2006) 1874 (2009) 2087 (2013) 2094 (2013) 2270 (2016) 2321 (2016) 2356 (2017)
- [8] Executive Office for Control and Proliferation "Manual guide for combating armament for designated financial and non-financial institutions and service providers of virtual asset" United Arab Emirates, available on the following website: <https://www.uaieec.gov.ae/API/Upload/DownloadFile?FileID=9320d554-89f7-4df6-805e-d353fd1803bb>, p.4.
- [9] Anti-Money Laundering and Counter-Terrorism Financing Unit "Manual guide for financial institutions on combating the proliferation of armament" Arab Republic of Egypt, available on the following website: <https://mlcu.org.eg/upload/uploadeditor/files/%D9%82%D9%88%D8%A7%D8%B5>, p.5
- [10] The International Standards on Combating Money Laundering and Financing of Terrorism, Recommendations of the Financial Action Task Force FATF. Updated version - March 2022 is available on the following website: <https://mlcu.org.eg/ar/1069/%D8>.
- [11] This was announced by the Algerian Minister of Justice on the occasion of discussing the draft amendment to Law 05-01 relating to the prevention of money laundering and terrorist financing on January 5, 2023, see the website: <http://www.majliselouma.dz/index.php/ar/2016-10-05-06-52-20/4524-2023-01-05-14-03-01>
- [12] Article 18 bis of the Algerian Penal Code stipulates the following: "The sanctions applicable to legal persons in criminal matters are as follows:
- 1- A fine equivalent to one or five times the maximum fine provided for in the law imposing the penalty on natural persons for the crime.
  - 2- One or more of the following supplementary penalties:
    - The dissolution of the legal person,
    - The closure of the establishment or one of its branches for a period not exceeding five (5) years,
    - The exclusion from public procurement for a period not exceeding five (5) years,
    - The prohibition of practicing one or more direct or indirect professional or social activities, permanently or for a period not exceeding five (5) years.
    - Seizure of the item used in committing the crime or resulting from it,
    - Publication and posting of the conviction sentence,
    - Placement under judicial custody for a period not exceeding five years, with custody focusing on the activity that led to the crime or that was committed during the crime.
- [13] Available at the following website: <https://www.fatf-gafi.org/media/fatf/documents/reports/Typologies%20Report%20on%20Proliferation%20Financing.p>
- [14] Available at the following website: <https://www.fatfgafi.org/publications/financingofproliferation/documents/combatingproliferationfinancingastatusreportonpolicydevelopment.andconsultation.html>

- 
- 
- [15] FATF, "Guide on Proliferation Financing Risk Assessment and Mitigation," June 2021, available at the following website: <https://www.fatfgafi.org/media/fatf/documents/reports/Guidance-Proliferation-Financing-Risk-Assessment-Mitigation.pdf>, p. 8.
- [16] Executive Office for control and Prohibition of Proliferation "Manual guide for Combatting Arms Control for Financial Institutions, Designated Non-Financial Businesses and Professions, and Virtual Asset Service Providers," United Arab Emirates, *Ibid*, p. 14.
- [17] United Nations, (2014), Final Report of the Panel of Experts Established Pursuant to Paragraphs 22-24 of Resolution 1929 (2010).
- [18] Anti-Money Laundering and Counter-Terrorism Financing Unit, "Manual guide for Financial Institutions on Combating Arms Proliferation," Arab Republic of Egypt, available at the following website: <https://mlcu.org.eg/upload/uploadeditor/files/%D9%82%D9%88%D8%A7%D8>, p. 7, 8.
- [19] Anti-Money Laundering and Counter-Terrorism Financing Unit, "Manual guide for Financial Institutions on Combating Arms Proliferation," Arab Republic of Egypt, available at the following website: <https://mlcu.org.eg/upload/uploadeditor/files/%D9%82%D9%88%D8%A7%D8>
- [20] Executive Office for control and Prohibition of Proliferation "Manual guide for Combatting Arms of Financial Institutions, Designated Non-Financial Businesses and Professions, and Virtual Asset Service Providers," United Arab Emirates, *ibid*
- [21] *Ibid*, p. 15.
- [22] It is worth noting that the mutual assessment report on Algeria's compliance with anti-money laundering and counter-terrorism financing measures issued in May 2023 considered that Algeria is not committed to implementing Recommendation 1 of the Financial Action Task Force recommendations, as it considered that the understanding of the risks of money laundering and terrorism financing is not unified. Enforcement authorities and the financial intelligence unit have a good understanding of the risks of money laundering and terrorism financing, while regulatory authorities for financial, business, and non-financial specific professions have poor understanding of these risks. Most of the private sector institutions have an inconsistent understanding of the risks, ranging from weak to medium, without any cooperation between authorities regarding combating the financing of the proliferation of weapons of mass destruction, resulting in a "low" level of effectiveness achieved by Algeria in the first direct result.
- [23] Executive Decree No. 20-398 dated December 26, 2023, establishing the National Committee for the Assessment of Risks of Money Laundering, Terrorism Financing and Financing the Proliferation of Weapons of Mass Destruction and defining its duties, organization and operation.
- [24] Sadrati Haroun & Sadrati Bahria, "Preventive Administrative Control of Money Laundering Crimes, Terrorism Financing, and Financing the Proliferation of Weapons of Mass Destruction from a Legal Perspective 23-01," *Journal of Humanities*, Vol. 23, No. 1, 2023, p. 1116.
- [25] Despite not having the legal basis for implementing Security Council resolutions aimed at preventing the arming, Algeria has executed a limited number of resolutions related to Security Council Resolution 1718. On the other hand, the intelligence cell has circulated some related resolutions to the institutions subject to the freeze measures. Also, without any legal basis or adopted mechanism, the cell froze the bank accounts of a company listed under the related resolutions related to the ban on financing the proliferation of arms (North Korea). However, the freezing was delayed by four months, indicating that targeted financial sanctions are not being applied without delay, and due to the lack of a legal basis, the Algerian authorities take no steps to identify and seize all relevant assets. Therefore, these sanctions remain merely dead letter.