

ISSUE PAPER

DISPROPORTIONATE MEASURES & UNINTENDED CONSEQUENCES

Anti-Money Laundering
THE ANTI-MONEY LAUNDERING

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

Interpretation

Jurisdiction

PART II—CRIMINALISATION OF THE LAUNDERING

THE PROCEEDS OF CRIME

Prohibition of money laundering

*An analysis of legal and practice concerns on Uganda's
anti-money laundering law on NGOs*

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Chapter Four Uganda is an independent non-partisan, not-for-profit organization dedicated to the protection of civil liberties and promotion of human rights in Uganda.

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1. INTRODUCTION

In the recent Terrorism Financing Risk Assessment for the Non-Profit Organisations Sector in Uganda report published in May 2023, the Financial Intelligence Authority (FIA) rated Non-Governmental Organisations (NGOs), Community Based organisations (CBOs), charitable trusts, and Faith Based Organisations (FBOs) as low risk for Money Laundering (ML) and Terrorist Financing (TF).

However, organisations with links to high-insecurity jurisdictions, particularly those operating in areas bordering South Sudan and the Democratic Republic of Congo (DRC), and those operating Madrasas / Islamic Quran schools were considered to be more vulnerable to abuse.

Notwithstanding the low risk of most NGOs, the Anti-Money Laundering Act, 2013 (as amended) classifies NGOs in Uganda as ‘accountable persons’. This means that they are required to register and adhere to a broad and complex range of ML/TF legal obligations similar to those of banks and other financial institutions.

This exposes them to sanctions for failure to adhere to the law. The anti-money laundering and anti-terrorism laws have also been misapplied in Uganda to target organisations and individual human rights defenders in arbitrary freezing of bank accounts, arbitrary arrests, and spurious charges.

We hope this paper contributes to honest conversations on the need to end misapplication and misinterpretation of international anti-money laundering law standards in relation to the Financial Action Task Force (FATF) Recommendation 8. There is a need to de-classify Non-Profit Organisations (NPOs) from the list of accountable persons, end arbitrary freezing of bank accounts of organisations and civil society leaders, arbitrary arrests and spurious charges.

2. LEGAL AND INSTITUTIONAL FRAMEWORK

2.1. The Non-Governmental Organisations Act, 2016

The principal law regulating registration and operations of NGOs in Uganda is the NGO Act, 2016. The law requires organisation to comply with a number of obligations managed by other regulators, including the need to incorporate a company limited by guarantee at the Uganda Registration Services Bureau (URSB) and other obligations as provided under the law. These obligations include the requirement for organisations to register with the Financial Intelligence Authority (FIA) as provided under the Anti-Money Laundering Act, 2013 (as amended).

2.2. The Anti-Money Laundering Act, 2013 (as amended)

The principal legislation that provides for combating of money laundering is the Anti-Money Laundering Act, 2013. This law is relevant to NGOs because under the second schedule, it lists NGOs as ‘accountable persons’, which requires them to comply with a wide range of obligations. Beyond the primary regulator, the FIA, the law further empowers supervisory bodies, which include the NGO Bureau, to enforce anti-money laundering and countering of financing of terrorist (AML/CFT) compliance.

The law establishes sweeping legal obligations which organisations must follow to avoid severe sanctions. The obligations include –

- a) Register the organisation with the FIA and ensure returns are filed on an annual basis.
- b) Put in place an organisational policy to guide compliance with the law.
- c) Places an obligation on members, directors, employees and service providers of organisations to ensure the organisation does not knowingly receive illegitimate funds or property from proceeds of crimes.
- d) Establishes duties of the Money Laundering Control Officer (MLCO).
- e) Requires organisations not to open up or maintain anonymous or fictitious accounts under a false name.
- f) Establishes a detailed procedure of how to conduct Know Your Customer (KYC) / Customer Due Diligence (CDD), and Enhanced Due Diligence (EDD) procedures.
- g) Requires organisations to put in place measures and ensure monitoring and reporting of suspicious transactions.
- h) Requires all organisations to carry out ML/TF risk assessments regularly and take action to enable the organisation to address any identified gaps.
- i) Put in place measures to identify Politically Exposed Persons (PEPs) and procedure of engaging with such a person once identified.
- j) Requires organisations to ensure ongoing staff and management training on AML/CFT standards.

2.3. Anti-Terrorism laws and power to freeze bank accounts

The FIA derives its powers to freeze accounts from Section 17A of the Anti-Terrorism (Amendment) Act, 2015, which provides that;

“(1) The Financial Intelligence Authority may, cause the freezing or seizing of funds or property where it is satisfied that the funds are or the property is intended for terrorism activities.

(2) Where the Financial Intelligence Authority causes the freezing or seizing of funds or property under subsection (1), the Financial Intelligence Authority shall, immediately inform the Director of Public Prosecutions in any case not later than forty eight hours after the time of freezing or seizing.

(3) After receipt of the information under subsection (2), the Director of Public Prosecutions shall apply to court for an order freezing or seizing such funds or property and the court shall make a determination expeditiously.”

It is important to note that the law does not provide a timeline within which the freeze should be lifted if no case is filed in court by the Director of Public Prosecutions (DPP).

3. EMERGING CONCERNS AND IMPLICATIONS ON NGO ORGANIZING

3.1. Inconsistency with FATF Recommendation 8

The Anti-Money Laundering Act establishes a broad and complex set of legal obligations for all accountable persons in Uganda, including NGOs and other charities. The obligations that organisations are required to adhere to are similar to those reserved for banks and other financial institutions. Failure to adhere to the obligations exposes the organisations to over 20 criminal offences that attract severe sanctions, including a maximum fine of Ugx. 4,000,000,000 (Over USD 1m). NGO officers who are found liable face up to fifteen years in jail or a fine of up to Ugx. 2,000,000,000 (Over USD 500,000).

The Financial Action Task Force (FATF), the global money laundering and terrorist financing watchdog, has guided in Recommendation 8¹ that the above obligations should be reserved for Financial Institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs) which conduct transactions for clients or maintain business relationships with clients. Uganda's law is inconsistent with FATF Recommendation 8 in as far as it applies blanket disproportionate measures on all NPOs.

Under Recommendation 8, the FATF requires countries to periodically assess the TF risk posed to identified NPOs, put in place focused and proportionate risk-based measures to address identified TF risks, and end designation of all NPOs as reporting entities required to conduct customer due diligence. Any risks faced by NPOs are very low to warrant placing them in the same bracket with FIs and DNFBPs.²

In its 2022/2023 Report, the FIA noted the 'TF risk assessment of the NPO sector revealed that the TF risk of all NPOs identified in accordance with the definition of FATF was found to be low. The NPOs that were found to have a higher vulnerability to TF were also noted to have stronger mitigating measures that helped reduce their TF risk as well to low.'³ In view of this finding and conclusion, there is no basis for NGOs to be included in the second schedule as accountable persons

¹ Read more about FATF Recommendation 8 here.

<https://www.fatf-gafi.org/en/publications/Fatfrecommendations/protecting-non-profits-abuse-implementation-R8.html>

² For more, read this DPI Policy Brief on the justification to de-classify NPOs in Uganda from the list of accountable persons under the end schedule to the AML-Act 2013 (as amended).

<https://fatfplatform.org/assets/New-cover-NPO-Policy-Paper-by-DPI-.pdf>

³ Financial Intelligence Authority, Terrorism Financing Rights assessment for the Non-Profit Organisations Sector in Uganda, June 2022.

<https://www.fia.go.ug/sites/default/files/TERRORISM-FINANCING-RISK-ASSESSMENT-FOR-NON-PROFIT-ORGANISATIONS-IN-UGANDA.pdf>

3.2. Unintended Consequences: Freezing powers, arbitrary arrests

Over the past few years, Uganda has experienced a range of unintended consequences from its AML/CFT laws. For instance, the FIA has used the power to cause the freezing of bank accounts of a number of NPOs since the enactment of the law. In December 2020, the FIA froze the bank accounts of Uganda Women's Network (UWONET) and the Uganda National NGO Forum over allegations of "terrorism financing activities."

Chapter Four Uganda worked with partners to challenge the actions of the FIA. In the case of Uganda Women's Network and The Uganda National NGO Forum v Financial Intelligence Authority and Attorney General (Miscellaneous Cause No. 23 of 2021), High Court Judge Hon. Esta Nambayo determined that the freezing of bank accounts of the two organisations was "illegal, ultra vires and irregular." The court ruled that there must be proper basis or reasonable suspicion before the FIA can order for freeze of bank accounts and that the FIA "must be in position to present that information or circumstances to court, if called upon, for court to see that there was genuine cause for its actions."⁴

Incidents of arbitrary arrests and spurious charges have also been documented. In December 2020, Nicholas Opiyo, Founding Director of Chapter Four Uganda was arrested in Kampala along with three other lawyers as they collected evidence about the killings of opposition supporters ahead of the presidential elections. Nicholas was later charged with the offence of money laundering on allegations that he received USD 340,000 through a bank account registered in the name of Chapter Four, an NGO that he leads, with the full knowledge that the said funds were proceeds of criminal activity.

The spurious charges were later dropped by the DPP, citing lack of evidence. The said grant was from one Chapter Four's reputable, and recurring donors, who legally supports the organisation's human rights and litigation work.

The FATF has spoken out on the misapplication of anti-money laundering laws in oversight of NPOs.

"Any misapplication of the FATF Standards in a way that suppresses the legitimate activities of non-profit organisations or curtails the human rights of individuals is clearly a matter of grave concern and cannot be condoned in any way as part of the fight against money laundering and terrorist financing."

⁴ ULII, Link to the ruling of the case. <https://ulii.org/akn/ug/judgment/ughccd/2022/141/eng@2022-09-07>

⁵ Reuters, Special Report: How a little-known G7 task force unwittingly helps governments target critics, <https://www.reuters.com/business/finance/how-little-known-g7-task-force-unwittingly-helps-governments-target-critics-2021-08-05/>

4. CONCLUSION AND RECOMMENDATIONS

4.1. Conclusion

There is no doubt that all efforts must be put in place to combat ML/TF. This creates the need for the Anti-Money Laundering Act, 2013 (as amended) to provide for a legal framework to regulate high risk sectors such as financial institutions. This paper identifies two key concerns – inconsistency of Uganda’s AML law in as far as it includes NGOs in the same legal framework with financial institutions and the unintended consequences arising from arbitrary freezing of accounts and arrests.

6.2. Recommendations

To the Minister of Finance, Planning and Economic Development:

- In exercise of the mandate provided under Section 139(2)(b) of the Anti-Money Laundering Act, 2013, seek the approval of Parliament and issue a Statutory Instrument amending the second schedule by deleting category 15 from the list of accountable persons.

To the Parliament of Uganda:

- In exercise of Section 139(2)(b) of the Anti-Money Laundering Act, 2013, approve the amendment by the Minister to delete category 15 from the list of accountable persons provided in the second schedule.

To the Financial Intelligence Authority (FIA):

- In view of the justifications provided herein and the findings of the FIA, the Board of the FIA should advise the Minister of Finance, Planning and Economic Development to amend the second schedule of the Anti-Money Laundering Act, 2013 by deleting category 15 from the list of accountable persons.

To Civil Society Organisations / NGOs:

- Document experiences and challenges faced by organisations and individuals in their effort to comply with the complex and burdensome legal obligations in the Anti-Money Laundering Act, 2013.
- Continue to advocate for the second schedule of the Anti-Money Laundering Act, 2013 to be amended by deleting category 15 to align the law to FATF Recommendation 8.



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