An Annual Publication of Human Rights Awareness and Promotion Forum

HRAPF
HUMAN RIGHTS AWARENESS AND PROMOTION FORUM

THE HUMAN RIGHTS ADVOCATE

The impact of the Anti-Money Laundering Act, 2013 on the Right to Freedom of Association for Non Governmental Organisations In Uganda

8TH ISSUE, OCTOBER 2021

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TABLE OF CONTENTS

EDITOR'S NOTE

> **The Act introduced a new dynamic to the financial operation of institutions particularly Non-Governmental and Civil Society Organisations. money laundering.**

I am pleased to present to you the eighth issue of the Human Rights Advocate Magazine. The magazine is an annual publication of Human Rights Awareness and Promotion Forum (HRAPF). This magazine scrutinises particular laws and their effects on the human rights of marginalised persons in Uganda. Every issue is dedicated to analysing a particular law from different perspectives.

HRAPF is a non-partisan, independent, not for profit, non-Governmental organisation with an aim to raise awareness and defend the rights of marginalised groups in Uganda. HRAPF works for the promotion, realisation, protection and enforcement of human rights through human legal aid service provision, human rights awareness, research and advocacy, strategic litigation and community capacity enhancement. The vision of HRAPF is a society where the human rights of all persons, including marginalised persons and Most at Risk Populations are valued respected and protected.

The eighth issue of the magazine is dedicated to the Anti-Money Laundering Act, 2013 (AMLA) (as amended). This law was enacted to provide for the prohibition and prevention of money laundering and to establish the Financial Intelligence Authority (FIA), to combat money laundering activities, and impose duties on persons, institutions and businesses. The Act introduced a new dynamic to the financial operation of institutions particularly Non-Governmental and Civil Society Organisations. The Act imposes a duty on these institutions as accountable persons and a part of the fight against money laundering.

HRAPF decided to dedicate this issue of the Human Rights Advocate to the AMLA as recently publicised instances of enforcement of the Act have largely focused on civil society, particularly organisations working on democracy, civic education and protection of minorities. Enforcement of the AMLA also intensifies towards and during Uganda's electoral season with organisations that promote human rights, democracy and civic education targeted, bringing into question the utility of the Act – and its impact on the already narrowing civic space in the country.

The magazine features view points from various stakeholders including human rights lawyers and civil society actors who promote human rights in general as well as rights of the vulnerable and marginalised. The first article by Adrian Jjuuko and Albert Japheth Muhumuza gives an overview of the Act, and the implications of its different provisions on the right to freedom of association. It is followed by two analyses – the first one by an anonymous contributor who discusses what NGO should know about the AMLA and the steps they should take to avoid its worst implications, and the second one by Victor Makmot analyses the impact of the Act on NGOs. Jordan Tumwesigye then discusses why everyone should be worried about the AMLA. The publication concludes with a short commentary from Mercy Patricia Alum about the use of the FIA as a tool of oppression against Civil Society Organisations.

I hope this publication will be yet another tool in the struggle against laws that unduly restrict freedom of association in Uganda.

Dr. Adrian Jjuuko
Editor

FEATURE

Uganda's Anti-Money Laundering Act, 2013 (AMLA) and its (mis)alignment to International and Regional Standards Protecting Civic Space


Adrian Jjuuko* & Albert Japheth Muhumuza**

Introduction

The Anti-Money Laundering Act, 2013 (AMLA) has in the recent past been used by the state to restrict civic space in Uganda, with several Non-Governmental Organisations' financial operations suspended at the instance of the Financial Intelligence Authority, which enforces the AMLA. Civil Society is an important aspect of Uganda's economy and governance, employing many persons and aiding the Government in the delivery of essential services whilst holding them accountable for human rights violations and governance transgressions. Civil Society shapes ideology and lessens autocratic tendencies through fighting human rights abuses and providing means of redress for violations. Civil society also complements Government efforts through provision of social services and contributing to economic empowerment to the poor vulnerable. In this regard, Non-Governmental Organisations, which are a key component of civil society, are important partners in the development and governance of Uganda.

> **This law was enacted to provide for the prohibition and prevention of money laundering and to establish the Financial Intelligence Authority (FIA) to combat money laundering activities and impose duties on persons, institutions and businesses.**

Whereas some sectors of civil society are vulnerable to money laundering since they receive money from different sources, anti-money laundering laws have unfortunately been used more to silence critical voices among civil society than to fight money laundering. International human rights standards as well as Uganda's Constitution require that civil society organisations should be free to conduct their activities and should not be unduly restricted in their work. Therefore the use of the AMLA to restrict civic space violates international human rights standards on freedom of association as well as Uganda's Constitution. This articles gives a broad summary of the AMLA and points out specific provisions that are particularly problematic as regards civic space.

Background to the AMLA

Uganda has been identified as one of the most vulnerable countries to money laundering and terrorist financing.[1] It is vulnerable to being used as a passageway for resources to fund conflict and crime in the great lakes region[2] owing to the laxity in the financial sector and the selective prosecution

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1 TA Desta and J Cockayne, eds. *ISSP-CGCC Joint baseline study on anti-money laundering and countering the financing of terrorism in the IGAD Subregion* xi.
2 H Tuhairwe 'Implications of Uganda's Anti Money Laundering legal regime on the banking sector' (2016) 2(3) *Anti Money Laundering Journal of Africa* 15.

of corruption in the country.[3] Corruption particularly among the political class and Government technocrats is a common economic crime for which several laws and enforcement agencies have been created to combat.[4] To benefit from the proceeds of corruption, the proceeds have to be channelled through banks outside the country to legitimise the proceeds and hide the origin.[5] NGOs are one of the sectors that are vulnerable to misuse and abuse for money laundering and terrorism financing.

The vulnerability to money laundering rises from the fact that non-profit organisations rely on contributions from supporters of the organisation's cause and as such have access to and process large amounts of cash, regularly transmitting the funds between jurisdictions.[6] Before the Anti-Money Laundering Act was adopted, this state of affairs led to various entities concerned with money laundering including the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) to write to Uganda expressing their concern at the absence of laws on money laundering.[7] In response to this criticism, Uganda passed the Anti-Money Laundering Act in 2013,[8] which also established the Financial Intelligence Authority with the major aim of ensuring the implementation of the AMLA. The Act identifies NGOs as 'accountable persons.'[9]

Specifically for civil society, Uganda was in 2015 judged to be non-compliant with the Financial Action Task Force (FATF)'s Recommendation 8 on non-profit organisations, during the 2015 Mutual Evaluation process.[10] This meant that despite the new laws, Uganda had not put in place effective measures to control the risk of money laundering by non-profit organisations. FATF Recommendation 8 and its Interpretative Note require countries to review the activities, size and other relevant features of their NPO sector, and the adequacy of applicable laws and regulations.[11] At the time of Uganda's review, the iteration of the Recommendation characterised non-profit organisations as 'particularly vulnerable' to terrorism financing.[12] Uganda responded by passing a more restrictive law on Non-Governmental organisations - the Non-Governmental Organisations Act, 2016 which was expressly introduced partly to deal with money laundering,[13] and by amending the Anti-Money Laundering to make the law more effective.[14]

An overview of the AMLA

The AMLA provides for the prohibition and prevention of money laundering and the establishment of a Financial Intelligence Authority.[15] Whereas it is the main legislation aimed at the prevention of money laundering, other laws supplement it – including the Anti-Terrorism Act, 2002 (as amended), the Penal Code Act Cap 120, the Anti-Corruption Act, 2009, the Electronic Transactions Act, 2011, and the Non-Governmental Organisations Act , 2015.

The AMLA applies to all institutions that are susceptible to money laundering and NGOs are classified as one of these.[16]

The Act was intended

To provide for the prohibition and prevention of money laundering, the establishment of a Financial Intelligence Authority and a Financial Intelligence Authority Board in order to combat money laundering activities; to impose certain duties on institutions and other persons, businesses and professions who might be used for money laundering purposes; to make orders in relation to proceeds of crime and properties of offenders; to provide for international cooperation in investigations, prosecution and other legal processes of prohibiting and preventing money laundering; to designate money laundering as an extraditable offence; and to provide for other related matters'[17]

3 Human Rights Watch 'Letting the big fish swim: Failures to prosecute high level corruption in Uganda' (2013) https://www.hrw.org/report/2013/10/21/letting-big-fish-swim/failures-prosecute-high-level-corruption-uganda (accessed 22 April 2021).
4 Tuhairwe H (n 2 above).
5 Above.
6 S Bricknell 'Misuse of the non-profit sector for money laundering and terrorism financing' (2011) 424 *Trends & issues in crime and criminal justice*. https://www.aic.gov.au/publications/tandi/tandi424 (accessed 22 April 2021).
7 Desta & Cokayne, n 1 above.
8 Anti-Terrorism (Amendment) Act, 2015, and the Anti-Terrorism (Amendment) Acts, 2017.
9 These are persons upon whom the responsibility to comply is imposed in the Act. They are mentioned in Section 1 and listed in the second schedule of the Act with CSOs listed as 'Non-Governmental organisations, churches and other charitable organisations'.
10 ESAAMLG (2016) *Anti-money laundering and counter terrorist financing measures: Uganda*. Dar es Salaam: ESAAMLG, April 2016.
11 FATF (2012-2021), International standards on combating money laundering and the financing of terrorism & proliferation, FATF, Paris, France, www.fatf-gafi.org/recommendations.html (accessed 13 April 2021).
12 Human Security Collective 'Desk study on financial regulation drivers for current restrictions of civil society in Uganda' May 2017, 7.
13 See for example, 'Aronda brings law to whip NGOs' *The Observer*, 24 April 2015, http://www.observer.ug/news-headlines/37498-aronda-brings-law-to-whip-ngos (accessed 13 April 2021).
14 Anti-Money Laundering (Amendment) Act, 2017.
15 The Anti-Money Laundering Act, 2013 preamble.
16 Anti-Money Laundering Act, Section 1 and Second Schedule.
17 Anti-Money Laundering Act, 2013, Long title.

The Act was amended by the Anti-Money Laundering (Amendment) Act, 2017 whose aim was stated as

> **"To amend the Anti-Money Laundering Act, 2013, to harmonise the definitions used in the Act; to provide for the carrying out of risk assessments by accountable persons; to provide for the identification of customers and clients of accountable persons; to provide for procedures relating to suspicious transactions; to harmonise the record keeping requirements and exchange of information obligations with international practice; and for related matters."[18]**

The AMLA has 141 clauses that are divided into eight parts. **Part I** contains the preliminaries which include the definitions and jurisdictional provisions. **Part II** contains the criminalisation of money laundering and has a list of the actions that constitute money laundering. **Part III** contains sections 6-17 and places several obligations upon accountable persons. These obligations can be summarised as follows, the obligation to know your customer,[19] conduct continuous due diligence for both verification and identification,[20] maintain records, recording and reporting transactions and reporting of suspicious transactions.[21] **Part IV** contains sections 18 to 43 and establishes the Financial Intelligence Authority, the body that is responsible for enforcing the Act. **Part V** contains sections 44 to 104 and provides for the seizure, freezing, and forfeiture of assets in relation to money laundering. **Part VI** contains sections 105 to 115 and provides for international cooperation in terms of enforcement of the Act. **Part VII** contains sections 116 -137, and provides for the immunity of investigating officers who act in good faith,[22] and gives the Minister of Finance, Planning and Economic Development powers to make Regulations for the proper application of the Act.[23]

The amendment to the Act requires accountable persons to undertake risk assessments,[24] properly identify customers and clients,[25] and suspicious transactions,[26] and undertake record keeping,[27] among others.

Human rights standards on civic space

Civic space is about citizens and civil society organisations being able to organise, operate, participate and communicate without hindrance. In human rights law, the three rights that are at the centre of civic space are: freedom of association, freedom of assembly and freedom of expression. All these rights are interrelated. The right to freedom of association is the most relevant within the context of anti-money laundering.

The right to freedom of association is a fundamental right recognised in international human rights instruments. It protects the formation, joining and operation of organisations for different purposes. At the international level, article 22(1) of the International Covenant on Civil and Political Rights (ICCPR) protects the right of everyone to 'freedom of association with others', while at the regional level, the African Charter on Human and Peoples' Rights (African Charter) protects the right in Article 10(1). The right is not absolute. Article 22(2) of the ICCPR subjects the right to restrictions which are 'prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.' The African Charter subjects it to 'the rights of others, collective security, morality and common interest.' The limitations are the exception however and not the rule, and the African Commission on Human and People's Rights clarified in the case of *Media Rights Agenda and Others v Nigeria*[28] that the law referred to is international law and not national law. It continued that the limitations should 'never have as a consequence that the right itself becomes illusory.'[29]

18 The Anti-Money Laudering (Amendment) Act, 2017, long title.
19 Above, section 6 (1).
20 Above Section 6 (2 – 9 & 11 -14).
21 Above section 7, 8 and 9 respectively.
22 Section 140.
23 Section 141.
24 Anti-Money Laundering (Amendment) Act, Section 3.
25 Section 2.
26 Section 5.
27 Section 4.
28 (2000) AHRLR 2000 (ACHPR 1998).
29 Media Rights Agenda case above.

In its normative content, the right to freedom of association concerns freedom to form,[30] and join of groups for any purposes - 'ideological, religious, political, economic, social, cultural, sports or other purposes'.[31] In this regard, even organisations whose views may be contrary to the views of the majority are protected.[32] Non-Governmental Organisations are certainly covered among organisations that can be formed or joined and are protected.[33] The right also includes the freedom to operate freely without undue interference, including the right to open and operate bank accounts, and to obtain funds including from foreign sources.[34] It is an individual right that extends to a group of individuals.[35]

Uganda is a state party to the ICCPR and the African Charter. Freedom of association is protected in article 29(1) (e) of the Constitution which gives everyone the right to freedom of association 'which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.' The Non-Governmental Organisations Act 2015 (NGO Act) is aimed at inter alia establishing an administrative and regulatory framework within which organisations can conduct their affairs,[36] and is thus intended to enable rather than disable non-Governmental organisations' operations. So generally speaking, NGO work is legal work in Uganda and is protected.

Provisions of the AMLA that fail to meet standards regarding the protection of civic space in Uganda

The following provisions of the AMLA are of particular concern as far as freedom of association is concerned:

Failure to report as money laundering

Section 1 defines money laundering as the 'the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under section 3 of this Act.' The reference to section 3 widens the definition to include: conversion, transferring, transporting or transmitting property with knowledge or suspicion that property is proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the crime generating the proceeds to evade the legal consequences of their actions;[37]or concealment, disguising or impeding the establishment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property knowing or suspecting that such property to be the proceeds of crime;[38] or acquiring, possessing, using or administering property, knowing, at the time of receipt, that the property is the proceeds of crime;[39] or avoid the transaction reporting requirements provided for under Part III of the Act;[40] or assisting another to benefit from known proceeds of crime;[41] or using known proceeds of crime to facilitate the commission of a crime;[42] or participating in, associating with, conspiring to commit, attempting to commit, aiding and abetting, or facilitating and counselling the commission of any of the acts described in the section.[43] These are wide ranging actions that clearly define the acts that one has to commit to be found guilty of money laundering.

Section 3(d) on avoidance of the reporting requirements under the Act being itself money laundering is an area of concern for CSOs. The reporting requirements themselves are wide-ranging and they include reporting certain cash transactions,[44] and suspicious or unusual transactions.[45] This unfortunately counts as money laundering on its own despite not being money laundering as generally understood. Article 6 of the United Nations Convention against Transnational Organised Crime, 2001 (Parlemo Convention) does not include failure to report within the

30 This was stated as being at the core of the right in the case of *Sidiropoulos and others v. Greece*, 57/1997/841/1047 Para. 40 by the European Court of Human Rights, 10 July 1998.
31 Commonwealth Secretariat 'Best Practice: Freedom of Expression, Association and Assembly' 2003, 12.
32 In *Sidiropoulos & Others v. Greece*, , *n 30 above*, the European Court of Human Rights (ECtHR) found that the Macedonian minority could form an organisation in Turkey despite the majority's disapproval.
33 In *United Communist Party of Turkey v. Turkey*, the ECtHR found that political parties are indeed protected. On NGOs, the U.N. Human Rights Defenders Declaration recognises the right to 'form, join and participate in non-Governmental organisations, associations, or groups.'.
34 Maina Kiai 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association' A/HRC/23/39 24 April 2013, 4-6.
35 T Emerson 'Freedom of association and expression' 74 Yale Law Journal 4, 1964-1965, 4.
36 Non-Governmental Organisations Act, 2016, section 4(a).
37 Anti-Money Laundering Act, Section 3(a).
38 Above, Section 3(b).
39 Above, Section 3(c).
40 Above, Section 3(d).
41 Above, Section 3(e).
42 Above, Section 3(f).
43 Above, Section 3(f).
44 Above, Section 124.
45 Above, Section 125.

definition of money laundering. Therefore, including this within the definition of money laundering is problematic as many otherwise innocent NGOs may not be aware of the obligations or ignore them and this would be regarded as money laundering in its own right.

Onerous and expensive obligations on NGOs

The Act imposes a number of obligations on all accountable persons, including NGOs. NGOs as accountable persons are required to discharge all the obligations as stated under section 6 of the Act. These obligations include, the obligation to know your customer,[46] and conducting continuous due diligence for both verification and identification.[47] The role of due diligence is at all material times the role of the accountable person[48] although an accountable person may rely on a third party to conduct due diligence should all information required be available from a third party without delay.[49] Accountable persons have a duty to terminate transactions or not enter transactions with any entity that fails to meet standards set by the provisions of the Act.[50] Knowledge of failure to meet the set standards of the Act is gathered from the due diligence which an accountable person must conduct before and during a transaction. Additionally, there is an imposed duty to develop programs against money laundering and terrorist financing,[51] in particular, there must exist a policy against money laundering and a duty to maintain records for at least 10 years.[52] Section 8 places a duty on accountable persons to record and report cash transactions exceeding twenty million Ugandan shillings to the Financial Intelligence Authority. As such an NGO carrying out transactions of twenty million shillings and more has to report every such transaction to the Financial Intelligence Authority. Furthermore, accountable persons are to monitor and report suspicious transactions paying attention to large or unusual transactions made by a person whose identity has not been established.[53] This requires NGOs to be mindful of anonymous donors and report any proceeds they receive from such donors. Whereas this is an important provision, the possible outcome is that donors who wish to remain anonymous, may be exposed or decline to donate entirely. This would have a negative implication on the continued operations of NGOs.

NGOs have a duty to make information available to courts or other competent authorities.[54] However, there is no requirement for a court order to access confidential information, this is a provision subject to abuse. Upon the determination that an entity or person is involved in money laundering, accountable persons have a duty to refrain from doing business with such persons.[55] The provisions in this section are couched in mandatory terms as such they must be observed by all NGOs in their fundraising of resources. NGOs must investigate their donors to ensure that they are not under investigation or convicted of money laundering offences. Furthermore, funding that exceeds thirty million Uganda shillings or ten thousand United States dollars must always be reported to the Financial Intelligence Authority and identification information about the donor collected. Section 14 renders nugatory any agreement as to confidentiality between the NGOs and donors. The duties to know your customer, carry out due diligence, and make information available to the authorities are unaffected by any agreement as to confidentiality. These obligations may be crucial to prevent money laundering but applied to many NGOs, they would impose a huge burden on NGOs which would greatly increase their costs of operation, many of which may not be able to afford the cost of doing this. Few NGOs in Uganda have the capacity to fulfil such obligations. Whereas banks and other large commercial entities may be able to fulfil these obligations and have the resources to do so, many NGOs may not be able to afford this and yet these are mandatory obligations that make the NGOs liable to criminal penalties and freezing of their financial operations or hefty and crippling penalties.

Wide powers granted to the Financial Intelligence Authority

The Act establishes the Financial Intelligence Authority,[56] which is mandated to enforce compliance to the duties and obligations laid down in the Act. The Authority can sue and be sued in its own name but enjoys immunity for acts done in good faith. The Act clothes the authority with wide powers to receive, and process

46 n 18 above, section 6 (1).
47 Above Section 6 (2 – 9 & 11 -14).
48 Above Section 6 (22).
49 Above Section 6 (20-21).
50 Above Section 6(10 & 15).
51 Above Section 6(17).
52 Above Section 4.
53 n 37 above Section 9.
54 Above Section 11 (a).
55 Above Section 16.
56 Above Section 18.

information deemed relevant to money laundering, and act upon the information as well as impose administrative sanctions upon accountable persons that fail to meet the obligations imposed by the Act.[57] The authority can freeze accounts, and seize assets before, during, and after the investigation process.[58] Section 54 empowers an authorised officer to seize documents not listed in the search warrant and then rectify the search warrant to include the items seized later on. The authorised officer must believe on reasonable grounds that the document relates to the crime. This in itself defeats the purpose of a search warrant for besides granting lawful entry on to the premises, any document in the premises may be seized to develop a case against the suspect. As such the authorised officer need not have any evidence of suspicion whatsoever but only an open search warrant and this violates the right to a fair hearing and due process.[59]

Section 56 provides for a monitoring order which mandates financial institutions upon receipt of the order to provide transactional information on an account held by a particular person with the institution to an authorised officer[60] for a maximum period of three months. The organisation that is the subject of the order is not informed. So any NGO can at any time be the subject of such an order without its knowledge. [61] There are no limits as to how long property can be detained or account frozen and this violates the right to property.[62] The undetermined duration of detention or freezing and the ambiguity in the rationale for detention fail the test of being justifiable in a free and democratic society.[63]

Section 67 provides for emergency searches and seizures where upon reasonable grounds, an authorised officer suspects property to be tainted or it is necessary to prevent concealment, loss, or destruction or where the seizure is immediately necessary and requires the immediate exercise of this power without authority. Additionally, the provision authorises an authorised officer to seize any other property that they upon reasonable grounds believe to be tainted property or may be used as evidence. This provision grants wide unchecked power to make an entry onto any property, freeze and or seize property without authorisation. Additionally, the provision does not clearly define the parameters of what amounts to urgency leaving the process open to abuse.

Urgency may be claimed every time that there is a need to seize property and only later provide a sworn statement of information to the court. The provision provides no recourse to challenge the claimed urgency and is inconsistent with the right to property guaranteed under Article 26 of the Constitution. The Authority therefore has wide ranging powers to interfere with NGO operations in the guise of fighting money laundering. Indeed the arrest and detention of Nicholas Opiyo, the Executive Director of Chapter 4 Uganda and his subsequent charge with money laundering as well as the eventual dropping of the charges showed a misuse of the powers of the Authority for political persecution.[64] Many NGOs have had their accounts frozen on the orders of the Bureau without fair hearing.[65]

Susceptibility of the Financial Intelligence Authority to political oversight and pressure

Whereas the Act emphasises that the FIA shall be an independent body and not be subject to direction or control from any authority or person[66] the same section provides that the Minister of Finance, Planning and Economic Development shall provide policy guidance to the Board. The members of the FIA Board are appointed and removed by the same Minister.[67] It is therefore questionable whether the board can exercise any independence from the Minister who has the authority to appoint and remove any member of the board. Similarly, the Executive Director is also appointed by the Minister.[68] They can be removed on grounds of misconduct, incapacity or incompetence.[69] The FIA Board is therefore subject to the direction of the Minister who controls their appointment.

57 n 46 above, Sections 20, 21 and 21A.
58 n 6 above.
59 The Constitution of Uganda, 1995, Article 28.
60 n 37 above Section 57.
61 As above, Section 60.
62 n 59 above Article 26.
63 See *Charles Onyango Obbo and another V Attorney General*, Constitutional Appeal No. 2 of 2002.
64 See 'Uganda Drops Money Laundering Charges against Human Rights Lawyer' Voice of America, https://www.voanews.com/a/6226024.html (accessed 12 November 2021). Also see'3rd statement on the frivolous charges against Nicholas Opiyo' 'https://chapterfouruganda.org/articles/2020/12/24/3rd-statement-frivolous-charges-against-nicholas-opiyo (accessed 12 November 2021).
65 'CSOs condemn gov't for freezing NGO accounts' The Independent https://www.independent.co.ug/csos-condemn-govt-for-freezing-ngo-accounts/ (accessed 12 November 2021).
66 n 37 above, Section 22.
67 As above, Section 25 and 26.
68 As above, Section 28(1).
69 n 4 above.

- **Risk of confidentiality of NGO information**

Section 37 provides for the receipt of information from other agencies or authorities of another state with similar authority and for the Authorities' powers to collect information from any accountable person, commercially available database, stored database and any Government agency or law enforcement agency. Once again this provision gives the authority wide powers to collect data without the need for a court order as a check to misuse of authority. Additionally, any information that an accountable person shares with another accountable person is subject to this provision without any due regard to its confidentiality. Therefore any information that an NGO shares with a bank is subject to this provision. Section 38 of the Act provides for the sharing of information accessible by the Authority with similar institutions in other states. The prerequisites of sharing of this information are reasonable suspicion that information would be relevant to the investigation and or if there is a mutual agreement for the exchange of information.

- **Money laundering cases falling outside the political exception for extradition**

Section 113 makes offences under the Act extraditable offences in line with the Extradition Act Cap 117. However, extradition cannot be granted where the prosecution is based on discriminatory grounds such as race, sex, or status and on grounds of sovereignty, among other grounds. However upon refusal on any grounds so stated under the provision, the charges must then be brought against the person whose extradition has been requested and denied. Section 114 of the AMLA however provides that the crimes referred to in the Act shall not be regarded as political crimes. This is a blanket exclusion without sufficient explanation or parameters in stark contradiction with the provisions of the Extradition Act[70] that prohibits the extradition of a fugitive for crimes of a political nature. The provision further seems to suggest that allegations and prosecution of money laundering offences cannot be politically motivated. This assumption is misplaced as charges and investigations against NGOs especially those advocating for proper governance and human rights are usually politically motivated[71] based on their timing and the events leading up to the investigation.[72]

- **Heavy penalties and punishments**

Section 136 provides for penalties for the offences of money laundering. For a natural person this is imprisonment not exceeding 15 years or a fine of Two billion shillings or if it is a legal person such as an NGO Four billion shillings. Such a fine would cripple the operations of an NGO let alone shut down the NGO. In addition, the reputational damage would be devastating.[73]

- **Exparte proceedings violating the right to a fair hearing**

The provisions of the Act continuously provide for orders and warrants to be applied for exparte. This means that almost all actions do take place without the knowledge of the NGO and come as a surprise. Whereas the courts have shown reluctance about such proceedings, holding the view that each party should be able to test the merits of an application[74], the Act continuously provides for exparte proceedings. This is a violation of the right to a fair hearing as guaranteed under article 28 of the constitution and provides a lacuna that may be exploited by an authorised officer without the knowledge or challenge of the lawful owner. The exparte proceedings create an uncertain uncertain legal environment. The idea of secrecy in money laundering is understandable but it should not supersede the right to a fair hearing. The freezing of assets and conducting searches with or without a charge through exparte proceedings limits the right to a fair hearing unjustifiably.

Conclusion

The AMLA shrinks an already shrinking civic space for NGOs in Uganda. The enforcement of the AMLA not only frustrates the funding for NGOs but as well taints the image of the NGOs baselessly accused of money laundering. Whereas the war on money laundering and terrorism financing must be advanced, the laws and the restrictions these laws impose, must be justifiable in a free and democratic society. The AMLA does not meet this threshold. The AMLA creates a phenomenon of suspect entities to which NGOs, as accountable persons, belong. This negatively affects the operation of NGOs and other non-profit organisations to whom reputation matters a lot and is a major attraction for funding.

70 Extradition Act, Cap 117, Section 3.

71 'Financial Intelligence Authority investigates 14 NGOs over money laundering' the Nile Post 14 August 2019 https://nilepost.co.ug/2019/08/14/financial-intelligence-authority-investigates-14-ngos-over-money-laundering/.

72 'Uganda Charges leading lawyer for LGBT rights with money laundering' The Guardian 24 December 2020 https://www.theguardian.com/global-developement/2020/dec/24/uganda-charges-leading-lawyer-for-lgbt-rights-with-money-laundering-nicholas-opiyo.

73 n 6 above.

74 *Lukwago Erias v. Attorney General and another* Misc. Application No. 445 of 2013.

ANALYSIS

The Anti-Money Laundering Act, 2013 as Amended: What Civil Society Needs to Know and Do

Anonymous Contributor*

Introduction

The United Nations has been at the forefront of heightened measures to enhance national security and protect the life and property of persons. Over the last few years, the UN has come up with different strategies to empower individual member states in countering terrorism within their national jurisdictions while at the same time contributing to their collective responsibility to ensure that the world is safe. The initiative for countries to adopt Anti-Money Laundering (AML) and Counter-Terrorism Finance (CTF) laws and policies has been one of the most prominent approaches in this endeavour. This approach (use of AML/CTF legislation) to counter-terrorism is highly complimented by the work of the Financial Action Task Force (FATF) - an interGovernmental organisation founded in 1989.

Although its initial mandate was restricted to the detection and prevention of money laundering, it was expanded to include counter-terrorism financing roles in the wake of the 2001 terror attacks on the US. By virtual of it being a member state of the UN, Uganda is enjoined to follow the UN counter-terrorism recommendations including the adoption of relevant AML and CTF legislations. Similarly, although Uganda is not a member of FATF, it is obliged to follow its recommendations as a matter of international conformity. As such the AMLA as amended is a result of the Financial Action Task Force (FATF) recommendations to states to adopt laws to combat money laundering. These laws in and of themselves are relevant and of significant import in combating money laundering and terrorism financing.

However these laws, particularly in the Ugandan context were adopted in haste and under pressure in what may be termed as legislative panic and have some deficiencies that affect civic space. Be that as it may, the laws, particularly the AMLA are in force and applicable to Non-Government Organisations under Category 15 in the Second schedule of the Act. While the adoption of the AMLA is a critical step in the fight against money laundering, there is a growing concern that the enforcement of the law without due regard to due process and fundamental rights and freedoms has a devastating impact on the operations of civil society.[1] This article lays down the issues that CSOs should be aware of.

> **Be that as it may, the laws, particularly the AMLA are in force and applicable to Non-Government Organisations under Category 15 in the Second schedule of the Act.**

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1 Defender Protection Initiative (DPI), 'Policy brief on Anti-Money Laundering and Counter-terrorism financing (AML/CTF) laws: An examination of their impact on Civic-space in Uganda' June 2021 https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&-cad=rja&uact=8&ved=2ahUKEwiswae8_8jyAhUMyYUKHSmBBrwQFnoECAIQAQ&url=https%3A%2F%2Fdefendersprotection.org%2Fhome%2Fwp- 2021).2021).content%2Fuploads%2F2021%2F07%2FA-Policy-Brief-on-the-Impact-of-AMLCTF-Regulations-on-the-Civic-Space.pdf&usg=AOvVaw1LUSqKBUm9R5SHLZ3SnARb (accessed 4 April 2021).

Inconsistency with FATF Recommendations

There are a number of inconsistencies with the AMLA in relation to the FATF Recommendations. FATF Recommendation 8[2] is limited to counter-terrorism financing and does not include anti-money laundering or the related requirements. In Uganda, under the AMLA, NGOs are considered accountable persons and subject to the requirements that are related to counter-terrorism financing as well as anti-money laundering. This is the first inconsistency.

FATF Recommendation 8 emphasises focus on Non Profit Organisations (NPOs) that are engaged in raising or disbursing funds for charitable purposes since this is what makes NPOs particularly exposed to the risk of terrorism financing.[3] However item 15 in the Second Schedule in of the AMLA lists NGOs, churches and other charitable organisations without a specific reference to those primarily engaged in raising or disbursing funds as mentioned in the FATF definition of NPOs. This is a wide definition that encompasses all institutions considering all as accountable persons even though they are not engaged in raising or disbursing funds which goes far beyond the FATF standard. This is the second inconsistency.

FATF Recommendation 8 highlights five measures that states should take in regard to NPOs, that is, taking a risk based approach, sustained outreach to the NPO sector concerning terrorism financing issues, targeted risk-based supervision or monitoring of NPOs, effective information gathering and investigation, and effective capacity to respond to an international request for information. In application, FATF Recommendation 8 is not to apply indiscriminately to all NPOs, as it emphasises undertaking a risk assessment and taking a risk based approach in the implementation of the recommendation.[4] As such it is only NPOs that have been identified as being at a higher risk of money laundering abuse that should be subject to money laundering restrictions. In Uganda, the AMLA covers all NPOs without the use of the criterion laid out in the FATF Recommendations and methodology. This is a strategic deficiency that lands Uganda on the grey list of the FATF due to the lack of a systemic typology assessment for NPOs at risk of misuse for terrorism financing and anti-money laundering.[5] This is the third inconsistency.

Enforcement of the AMLA

The FATF which sets the international standards aimed at preventing global money laundering and terrorism financing, has tried to balance the need of limiting money laundering to Non Profit Organisations (NPOs) that may be exposed, with the need not to disrupt or discourage the legitimate activities of NPOs.[6] In this regard the FATF does not require all NGOs to be accountable persons except those considered to be at high risk and are vulnerable to being used as conduits for money laundering.[7] In effect this requires a focused, proportionate approach and enforcement based on risk assessment to be applied without disrupting the legitimate operations of other NGOs with minimal or no risk at all.[8]

In the enforcement of the AMLA, all NGOs are accountable persons thereby placing a heavy compliance burden on all NGOs and harming public trust in NGOs if they are regarded as requiring particular scrutiny. This informs the criticism that the AMLA is crippling the work of the NGOs/NPOs. For all intents and purposes, the law is a good law with good intentions if it is purposed at fighting money laundering which is evident in the Ugandan economy. However, the law has no good intentions if in practice it is putting NGOs as accountable persons. Having NGOs as accountable persons is only justifiable if classifying NGOs as accountable persons follows the proper FATF requirements. This involves following the risk based approach which demands the identification, assessment and development of proportionate measures to combat money laundering.[9] Some NGOs may be more vulnerable to money laundering than others and following the risk based approach would have only these NGOs as accountable persons and subject to the enforcement of the AMLA rather than all NGOs.

In the Ugandan context, NGOs represent minimal risk of money laundering. According to the 2016 Mutual Evaluation Report[10], Non-Profit Organisations should be excluded from the application of

2 FATF (2012-2021), International standards on combating money laundering and the financing of terrorism & proliferation, FATF, Paris, France, www.fatf-gafi.org/recommendations.html (accessed 4 April 2021).
3 As above.
4 Financial Action Task Force, 'Methodology for assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems' 2020. https://www.google.com/search?client=firefox-b-d&q=criterion+8.1+FATF. (accessed 16 June 2021).
5 Financial Action Task Force, 'Jurisdictions under Increased Monitoring - June 2021' https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-june-2021.html. (accessed 16 July 2021).
6 n 2above.
7 Financial Action Task Force (n 4 above).
8 As above.
9 As above. Criterion 8.1.
10 Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), 'Anti-money laundering and counter-terrorist financing

the AMLA and the requirements regulating the NPO sector do not deal with terrorism financing or the terrorism financing risk associated with the NPO sector. This conclusion can as well be drawn from the 2017 National Risk Assessment Report[11] that considered the money laundering risk posed by the NPO sector and concluded that there is medium-low risk, with the Financial Intelligence Authority fronting the removal of NGOs as accountable persons. This supports the argument of over-regulation, with the designation of NGOs with minimal to no risk of money laundering as accountable persons.

Beyond this, there is a human rights implication with NGOs, public trust, integrity and reputation damaged by the enforcement of the AMLA's burdensome provisions thereby interfering with the legitimate operation of NPOs. In 2021, Defenders Protection Initiative (DPI) conducted an assessment of the impact of the AMLA on civic space in Uganda and the findings reveal that there is overwhelming evidence to show that although the formulation of the AMLA is legitimate and necessary, its enforcement has been problematic with detrimental effects on the operations of civil society.[12] In the first place, the AMLA contains very ambiguous and overly broad terms. The broad terms especially those in relation to the definition of the offence of money laundering[13] have been used (abused) to criminalise the otherwise legitimate activities of NGOs and their leaders.

Still, within the law, enforcement bodies such as the Financial Intelligence Authority (FIA) are given wide discretional powers (often without judicial recourse) in respect to the enforcement of its provisions.[14] Secondly, it is a major finding of the study that in the last five years (2016-2021), AML/CTF legislation has been deployed against NGOs in a more arbitrary manner and in some cases in total disregard of fundamental rights and freedoms guaranteed in the Constitution.[15]

In the recent past, there has been heavy reliance on AML/CTF legislation to lay siege on NGOs involved in advocating for a free and fair electoral process and those investigating gross human rights violations.[16] The bank accounts of these NGOs were frozen, and others were given directions to provide their funding and financial information to the FIA. On most occasions this was done without adequate warning and without the option for NGOs having recourse to courts of law. Freezing of assets and bank accounts in the spirit of the provision is right, as it is preventative in nature and prevents the occurrence of an offence. On a balance of convenience, the freezing of accounts is reasonable. However the timing and use of the provision are what are questionable, particularly for NGOs demanding accountability.

Beyond this the unfreezing of the assets is at the discretion of the authority and this is usually after the major event has subsided. This may require the NGO to make compromises for purposes of getting their assets unfrozen, with the unfreezing often political. Even more absurd, there are several instances involving the arrest of individual leaders of

The AMLA in its current state is inconsistent with the intentions and purposes of the FATF in regards NPOs.

measures Uganda Mutual Evaluation Report' 2016. https://www.fia.go.ug/esaamlg-uganda-mutual-evaluation-report-2016. (accessed 16 June 2021).
11 Financial Intelligence Authority, 'Money Laundering and Terrorist Financing National Risk Assessment Report' 2017. https://www.fia.go.ug/money-laundering-and-terrorism-financing-national-risk-assessment-report. (accessed 16 June 2021).
12 Defenders Protection Initiative (n 1 above).
13 Anti-Money Laundering Act, 2013 (as amended) Sections 3 & 1 of the.
14 As above, Part V of the Act.
15 Defenders Protection Initiative (n 1 above).
16 As above.

NGOs on arguably trumped-up charges. Many of these leaders became victims of surveillance and protracted investigations only for the charges brought against them to be later dropped.[17]

Arguably the enforcement of the AMLA indiscriminately against all NGOs without recourse to a risk based approach and the use of focused and proportionate measures potentially amounts to violation of human rights. Without a typology for the enforcement of the AMLA, selective application of the law is a big possibility. A case in point, is that of the former Minister of Foreign Affairs Sam Kuteesa who is alleged to have received a bribe of USD 500,000 (five hundred United States dollars), but there has not been any swift application of the AMLA in this instance.[18] This laxity cannot be compared with NGOs on whom the AMLA has been enforced, the question is why the law is applied so swiftly with NGOs and not with other alleged offenders like the former Minister of Foreign Affairs. All this points towards a fault-finding approach by the FIA - the major agency responsible for the enforcement of AML/CTF legislation. Such an approach coupled with the arbitrary enforcement of AML/CTF legislation has had devastating consequences for civil society and especially those NGOs whose work involves advocacy for civil-political rights, good governance, human rights and accountability.

In the enforcement of the AMLA, the question has always been when is it applied and on whom. The fault lies with the selective and seasonal application of the law.

The Financial Intelligence Authority, Yay or Nay?

The FIA is established with particular objectives[19] among which are to enhance the identification of the proceeds of crime, ensure compliance with the Act, make information from accounting persons available to competent authorities and analyse, exchange and disseminate the information to the relevant institutions. In this regard, the FIA has achieved, as it has worked with relevant authorities, provided relevant supervision, and played the regulatory function. According to the recent statement by the FATF on Uganda there are only a few areas were Uganda is non-complaint[20], testament to the achievements of the FIA.

However there are shortcomings, particularly as regards enhancing public awareness and understanding of matters related to money laundering.[21] FATF Recommendation 8 requires that states undertake outreach and educational programmes to raise and deepen awareness among NPOs about potential vulnerabilities.[22] The Mutual Evaluation Report 2016 highlights that there is no terrorism financing risk assessment that has been done in the sector to determine which NPOs are vulnerable toterrorism financing risks and consistent with that, no guidance has been given to such NPOs on how to deal with the terrorism financing risks they are exposed to.[23] This is the fourth inconsistency.

17 As above. See also 'Uganda Drops Money Laundering Charges against Human Rights Lawyer' VoA News 14 September 2021.
18 'Oil: Kutesa was paid $ 500,000 bribe - US prosecutors' The Observer 21 November, 2017. https://observer.ug/news/headlines/56073-minister-sam-kutesa-was-paid-500-000-bribe-us-prosecutors.html. (accessed 16 June 2021).
19 n 13 above, section 19.
20 Financial Action Task Force, 'Jurisdictions under Increased Monitoring - June 2021' https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-june-2021.html. (accessed 16 June 2021).
21 n 13 above, section 19 (c).
22 Financial Action Task Force (n 4 above).
23 n 10 above.

The awareness gap is what NGO's have tried to fill by fundraising to create awareness in collaboration with the FIA. DPI has conducted awareness trainings across the country, simplified literature and conducted researches with the FIA. But still a lot of work has to be done. To the further credit of the FIA, the institution has been welcoming and receptive to policy papers.

The role of NGOs, what has been done, opportunities

FATF inspired laws have great influence on any country but these laws are largely unknown to the population. It is good for NGOs to push back on over-regulation of the sector, however, there is need to know what the problem is in order to find solutions. DPI has taken lead on creating awareness all over the country but there is need for further engagement by Civil Society Organisations. Furthermore, if the AMLA is unknown to the NGOs then it most probably is unknown to the donors, making it hard to fundraise. However, studies have been undertaken on the impact of FATF-inspired legislation to create awareness among the NGO community.[24]

In addition, several dialogues have been held with the FIA. These dialogues have enhanced the appreciation and knowledge of the regulator and the regulator's understanding the concerns of the victims of over-regulation. This has taken place at national and regional levels and has included the RDCs and police who sometimes scare NGOs under the umbrella of the AMLA referencing security concerns. Additionally, the FATF language and the AMLA have a lot of technical language that needs to be simplified. In this, several simplified materials have been developed such as videos and materials that simply the language mainly on what NGOs should know as accountable persons.

A technical working group for NPO's on FATF is in existence, this is the space CSOs dialogue with the FIA. DPI is as well a link to the global coalition on FATF where the UN Anti-terrorism Department is engaged on anti-money laundering and best practices shared with partners. Beyond this there is a regional platform for NGOs on money laundering task force in the East and Southern Africa under the theme of 'Do no harm in the implementation of the AMLA in the operations of NGO'. These are all avenues for NGOs to engage over the over-regulation brought about by the AMLA.

Takeaways, way forward

1. NGOs should join the campaign on the declassification of NGOs as accountable persons. The campaign is ongoing with a policy paper filed with the FIA already.
2. NGOs should identify the laws that restrict the operation of NGOs and join in proposing amendments, and filing petitions in that line. In this regard, research conducted should be utilised to support these endeavours.
3. NGOs should get involved and participate in the FATF processes. Getting involved helps to understand the processes and influence change within. Issues affecting NGOs can only be properly advanced and discussed by NGOs themselves.
4. NGOs should comply with the AMLA requirements, for as long as the law is still in force. Even were sources of funding are requested, there should be compliance. Further NGOs should employ risk sharing tactics were compliance may result in intrusion and violation of human rights.

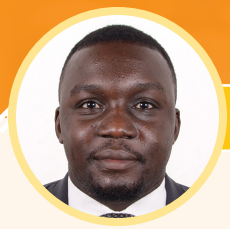
Conclusion

While the adoption of the AMLA is a critical step in the fight against money laundering, there is a growing concern that the enforcement of the law without due regard to due process and fundamental rights and freedoms is having a devastating impact on the operations of civil society. The AMLA in its current state is inconsistent with the intentions and purposes of the FATF as regards NPOs. Be that as it may, the law has good intentions and is critical in combatting money laundering, however, the selective and seasonal application of the law particularly on NGOs is a let-down and interferes with the legitimate operations of the NGO sector.

24 n 1 above, see also Defenders Protection Initiative, ' Policy Brief on the justification to declassify Non-Profit Organisations in Uganda from the list of accountable persons under the 2nd schedule to the AML-Act 2013 (as amended).

ANALYSIS

The impact of the Anti-Money Laundering Act on the activities of Civil Society Organisations in Uganda



By Victor P. Makmot*

Introduction

Civil Society Organisations (CSOs) serve as one of the primary ways that Government can be held accountable in a democratic society. This accountability is very important in young democracies like Uganda which have for years towed the line between democracy and dictatorship. Given the nature of their work, most Civil Society Organisations are non-profit and rely on external and foreign aid to carry out their programs and in some cases go ahead to engage in crowd funding so as to acquire the finances to do their work.

The movement of these sometimes large amounts of money from some known and other unknown sources from outside Uganda's territorial borders has over the years increased the risk of money laundering. The Anti-Money Laundering Act and the Financial Intelligence Authority have been put in place to safeguard the economy from the corrosive effects of money laundering and organised criminal enterprises as a whole. However, over the years this law has become a noose around the necks of the Civil Society Organisations. Organisations that are perceived as anti-Government or opposition leaning have been unfairly victimised with some being closed down, assets and accounts frozen and their employees and directors being slapped with charges of money laundering. All of this being in addition to the character assassination that comes along with prolonged and publicised trials. In light of this, this article intends to explore the concept of money laundering, the laws surrounding it in Uganda and how these laws have been used to stifle the participation of Civil Society Organisations in the ever shrinking political space in Uganda.

What is Money Laundering?

Money laundering is the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under Section 3 of the Act.1 Money laundering includes a series of multi specialised deals designed to disguise the source of financial assets so that these assets and funds can be used as if resulting from legitimate business operations.[2]

Money laundering is not a solitary act but a process that is accomplished through three basic steps that can be taken at the same time in the course of a single transaction but also appear in well separable forms; Placement, Layering and Integration.[3] Money laundering obstructs the original source of the illegal funds hence the money can be accessed legitimately and used freely by criminals.[4]

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1 The Anti-Money Laundering Act of Uganda 2013 Section 3.
2 SN Nabuuma, 'Critical Analysis of the Impact of the Anti-Money Laundering Act on Commercial Banks in Uganda' unpublished Master's thesis Kampala International University 2018.
3 Above.
4 Above, para 7.

Anti-money laundering efforts include laws, regulations and procedures intended to prevent criminals from disguising illegally obtained funds as legitimate income.[5] Uganda has the Anti-Money Laundering Act of 2013, amended in 2017 through the Anti-Money Laundering (Amendment) Act, 2017.[6] (Hereinafter referred to as AMLA). The Act aims 'primarily, at the prohibition and prevention of money laundering through combating money laundering activities. It seeks to do this by imposing certain duties on institutions and other persons who may be used for money laundering purposes. It also offers guidance on how to deal with exposure to potential money laundering activity.'[7] It is however important to this discussion to point out that under the Act, one of the accountable persons in incidents of money laundering are non-Governmental organisations and it goes without saying that this is inclusive of civil society organisations.

According to Kirunda, the provisions of the Anti-Money Laundering Act in Uganda may affect the work of non-Governmental organisations and this is something that the latter ought to prepare for.[8] Notably, Recommendation 8 of the Financial Action Task Force's 40 Recommendations is on non-profit organisations and it states that:

> **Countries should review the adequacy of laws and regulations that relate to non-profit 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"[9]**

The Legal Framework regulating Civil Society Organisations (CSOs) in Uganda.

Civil Society Organisations (CSOs) in Uganda operate under a multiplicity of laws including the Non-Governmental Organisations Act, 2016, The Companies Act, Act 1 of 2012, the Anti-Money Laundering Act 2013 amended by the Anti-Money Laundering (Amendment) Act 2017, the Public Order Management Act 2013, The Police Act Cap 303 and the Anti-Corruption Act, Act 6 of 2009, all requiring numerous operational reporting requirements.[10] Whereas it is true that NGOs and CSOs have often times been used as conduits for money laundering, it is not farfetched to infer that in Uganda's context, the interest in these organisations is more political and the Act is simply a means of keeping an eye on them by the State.

It is important to note that most CSOs in Uganda mainly rely on foreign funding and as a result have been branded as foreign agents by Government when challenging gaps or shortcomings in Government interventions, which undermines their credibility in the communities they operate in.[11] In Uganda's civic space, activists report that the regulation of the civil society sector is viewed from a security, rather

5 W Kenton, 'Anti Money Laundering (AML)' 2021 https://www.investopedia.com/terms/a/aml.asp (accessed 10 October 2021).
6 B Kalule, 'The Anti-Money Laundering Act 2013: new law, same old problems' 2015 https://www.lexology.com/library/detail.aspx-?g=a3ef1a1-ddd4c-4df8-8fc7-facea52451cb (accessed 10 October 2021).
7 The Anti-Money Laundering (Amendment) Act 2017.
8 R Kirunda, 'Understanding the Anti-Money Laundering Act, 2013: Implications on the Work of Civil Society and Non-Governmental Organisations' (August 27, 2014). SSRN: https://ssrn.com/abstract=2931658 or http://dx.doi.org/10.2139/ssrn.2931658 (accessed 10 October 2021).
9 Human Security Collective, 'Desk study on financial regulation drivers for current restrictions of civil society in Uganda' 2017 https://www.google.com/url=https://www.fatfplatform.org/assets/UGANDA_FATF_MER_FINALNPObriefing.pdf&usg. (accessed 10 October 2021).
10 Uganda National NGO Forum, 'Legal assessment of civil society including philanthropic organisations in Uganda: Analysing options for how to engage' https://africaphilanthropynetwork.org/legal-assessment-of-civil-society-including-philanthropic-organisations-in-uganda/ (accessed 16 OCtober 2021)
11 Above.

than a development, lens.[12] They voice concerns that organisations focused on good governance and accountability are perceived by the Government as being anti-Government, allied with the political opposition, and/or a threat to national security and sovereignty.[13]

For example, in October 2017 during a crackdown on dissent, Ugandan authorities froze Action Aid's bank accounts without due process. Activists believe the accounts were frozen because of civil society opposition to plans to remove presidential age limits.[14] In 2017, days before Igara West legislator Raphael Magyezi could table his private member's Bill that ultimately steered the scrapping of the constitutional age limits on presidential candidates, Louis Kasekende, then Deputy Governor of Bank of Uganda, wrote to the managing director of Standard Chartered Bank, ordering him to freeze accounts of Action Aid, a non-Governmental organisation (NGO).[15]

Altogether, the arm of Government in the activities of CSOs is far reaching. A more recent case is the halting of the activities of the Democratic Governance Facility (DGF) in Uganda. On January 2, 2021, President Yoweri Museveni directed the immediate suspension of the activities of the DGF, claiming that it subverted Government activities under the guise of "improving governance".

The Impact of the Anti-Money Laundering Act on the operation of Civil Society Organisations (CSOs)

The AMLA and accompanying regulations have been deemed to be oppressive in as far as civic space in Uganda is concerned. An Enabling Environment National Assessment (EENA) conducted by CIVICUS reported that anti-money laundering regulations in Uganda have hampered the ability of CSOs to receive funds, as they introduce more stringent requirements to document the sources and uses of funding.[16] It has been argued that the AMLA's enactment and application in as far as its scope extends to civil society organisations is politically driven and stifles the operation and effectiveness of these organisations. For instance, the Act and accompanying regulations require grant recipients to use Ugandan banks and allows the Government to freeze CSOs' bank accounts without due process. As reiterated above, the Act provides that NGOs are accountable persons. In the event that an NGO has a Board of Directors, these also will be treated as accountable persons in their own right.[17] The Act has been employed to carry out what have been perceived as political persecutions against CSOs and their directors.

A case in point is the most recent arrest of renowned human rights defender and Executive Director of Chapter Four, Nicholas Opiyo. He was charged with money laundering under Section 3 (c) of the Anti-Money Laundering Act. The Government alleged that Opiyo had received USD 340,000 through ABSA bank in the names of Chapter Four Uganda knowing that the said funds were proceeds of crime.[18] In a statement issued on their website, Chapter Four denied the veracity of the charges against their Executive Director and strongly condemned his arrest and continued detention. They stated that, "The bank account listed in the charge sheet is the organisational bank account belonging to Chapter Four Uganda, and not to Nicholas Opiyo. The funds mentioned in the charge sheet is a grant from one of Chapter Four's reputable recurring and long-standing donor who legally support Chapter Four's work of promoting and protecting human rights."[19] The ICNL also issued a statement on the matter in which it strongly condemned the misuse of anti-money laundering laws to violate the freedoms of CSOs. The statement read in part that, "ICNL notes that the (mis)use of anti-money laundering standards to clamp down on human rights defenders is a trend that is becoming more frequent in several countries."[20]

Furthermore, NGOs have expressed concerns that anti-money laundering laws and allegations of terrorism financing have become a new tool through which Government can control their activities.[21] For

12 World Movement for Democracy' 2020 https://www.movedemocracy.org/case-studies/uganda (accessed on 16 October 2021).
13 Above.
14 n 10 above, para 14.
15 'In the name of national security, or silencing civil society?' *Daily Monitor*, 6 December 2020 https://www.monitor.co.ug/uganda/magazines/people-power/in-the-name-of-national-security-or-silencing-civil-society--3220434?view=htmlamp. (accessed 6 October 2021).
16 Firmin et al 'Contested and under Pressure: A Snapshot of the Enabling Environment of Civil Society in 22 Countries' (2017) https://www.comminit.com/democracy-governance/content/contested-and-under-pressure-snapshot-enabling-environment-civil-society-22-countries (accessed 10 October 2021).
17 (Second Schedule of the Act).
18 Chapter Four Uganda, '3rd statement on the frivolous charges against Nicholas Opiyo' 2020 https://chapterfouruganda.org/articles/2020/12/24/3rd-statement-frivolous-charges-against-nicholas-opiyo. (accessed 10 October 2021).
19 Above.
20 International Center For Not- For- Profit, 'Statement of Support for Nicholas Opiyo, Executive Director of Chapter Four Uganda' https://www/icnl.org/Statement-of-Support-for-Nicholas-Opiyo (accessed on 10 October 2021).
21 National Television (NTV) 'Activists accuse Government of applying the law selectively to target NGOs' 11 February 2021 https://www.ntv.co.ug/ug/news/national/activists-accuse-govt-of-applying-the-law-selectively-to-target-ngos-3288406 (accessed 16 October 2021).

example in January 2021, The Independent reported that CSOs were asking the Government to clear bank accounts of NGOs that had been frozen for a month before the date of reporting: "The frozen accounts were of the National NGO Forum, a membership organisation with over 650 organisations and Uganda Women's Network (UWONET), an entity that brings together 20 Women's Rights Organisations and Nine individual activists. They were accused of money laundering and funding subversive activities.[22,23]

According to sources familiar with the standoff who spoke, on condition of anonymity, "since the NGOs didn't want the information known publicly such that they could negotiate with the State, the Financial Intelligence Authority (FIA) whose role is not only to monitor, investigate, and prevent money laundering in the country, but also to enforce Uganda's anti-money laundering laws and the monitoring of all financial transactions inside the country's borders, was moved to block the accounts after intelligence agencies claimed that the four organisations were bankrolling terrorism.[24] This seems to be a consequence of the Act which allows for the freezing of accounts and (or) seizure of property in the event that a CSO is in default of its obligations under the Act.

The Act also speaks to interactions with politically exposed persons. This imputes a burden on CSOs as accountable persons to know their clients. The main objective here is that accountable persons should know the people they are transacting for and with – do independent due diligence on all parties involved in the transaction. It has been submitted that the scope of the wording is too wide and allows room for potential abuse and political manipulation.[25] The Act also speaks to mutual legal assistance and this inadvertently forms a threat to CSO activity since they are largely dependent on foreign funding. For example, DGF has been deemed the biggest funder of Uganda's civil society; providing funding even to some Government agencies.

Conclusion

Whereas it may be difficult to ascertain whether the law, as drafted by its framers, was intended as a clamp down on the freedom of CSOs to operate independently, it is rather clear that it has in its operationalisation been applied to that effect and that such intrusions and infringements as occasioned under the Act have been largely politically motivated and state engineered. What is evident is that every time the State has been insecure of civil society interference and dissent regarding its activities, the AMLA has been the sledgehammer that it has used to pound CSOs into silence. It is indeed this kind of pattern in the State's behaviour that would justify the premise that the Act was indeed framed with the aim of muzzling CSOs. Consequently, the said belief may not be as farfetched as it may sound.

The Act aims 'primarily, at the prohibition and prevention of money laundering through combating money laundering activities. It seeks to do this by imposing certain duties on institutions and other persons who may be used for money laundering purposes.

22 'NGOs plead with Government over frozen bank accounts' *The Independent* 7 January 2021 https://www.independent.co.ug/ngos-plead-with-Government-over-frozen-bank-accounts/ (accessed 16 October 2021).
23 Also see International Center for Not- For- Profit, 'Uganda' 27 March 2021 https://www.icnl.org/resources/civic-freedom-monitor/uganda. (accessed 16 October 2021).
24 'In the name of national security, or silencing civil society?' *Daily Monitor*, 6 December 2020 https://www.monitor.co.ug/uganda/magazines/people-power/in-the-name-of-national-security-or-silencing-civil-society--3220434?view=htmlamp (accessed 16 October 2021).
25 Kirunda (n 8 above).

OPINION

Was Uganda Ready for The Financial Intelligence Authority or was it a matter of compliance with International Standards?

By Jordan Tumwesigye *

With the rise in terror activities and the financing of the same, different strategies have been developed to combat this. The United Nations to which Uganda is a member has come up with different strategies to empower individual member states to counter terrorism within their national jurisdictions. Among the strategies, was the adoption of Anti-Money Laundering and Counter-Terrorism Finance laws and policies. The Financial Action Task Force has the mandate to ensure that these laws are passed by the different UN member states and by implication, Uganda is under pressure to follow the UN counter-terrorism recommendations including the adoption of relevant anti-money laundering legislation.

By an Act of Parliament, the Anti-Money Laundering Act 2013 (AMLA), the Financial Intelligence Authority (FIA) was created. The FIA has the mandate to identify the proceeds of crime, ensure compliance with the AMLA, enhance public awareness and understanding of the matters related to money laundering to mention but a few.[1] The FIA is the enforcement organ of the AMLA, an Act that imposes several duties and obligations upon accountable persons such as Non-Governmental Organisations.[2] Over 170 countries around the world have adopted anti-money laundering and anti-terrorism financing legislation in the global fight against terrorism.

However, in many of these countries, including Uganda, the adoption of this anti-money laundering legislation and the enforcing mechanisms thereof were rather a coerced transfer of policy to developing countries[3] than a well-thought-out internal legislative process. First, the AMLA and thereby the FIA is not cost-effective, as it serves to produce high profile costs with few benefits.[4] In particular, a large number of Non-Governmental Organisations do not understand the scope and extent of their obligations under the AMLA.[5]In effect, they operate in complete darkness as no real engagement has been made by the FIA to raise awareness and understanding of matters related to money laundering. The FIA has therefore developed a selective approach to the enforcement of the AMLA and often targets NGOs that are vocal on the human rights of persons and civic engagement. Within the fault-finding approach, the FIA is given wide discretion to investigate, freeze, search and detain property[6] of accountable persons.

***Programs Officer, Centre for Health, Human Rights and Development.**

1 The Anti- Money Laundering Act, 2013 Section 19.
2 See the Second schedule to the Act, item 15.
3 J. C. Sharman, 'Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States' (2008) 3 *International Studies Quarterly* Vol. 52, 635-656.
4 Above.
5 Defenders Protection Initiative (DPI), 'Policy brief on Anti-Money Laundering and Counter-terrorism financing (AML/CTF) laws: An examination of their impact on Civic-space in Uganda' June 2021 https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiswae8_8jyAhUMyYUKHSmBBrwQFnoECAIQAQ&url=https%3A%2F%2Fdefendersprotection.org%2Fhome%2Fwp-content%2Fuploads%2F2021%2F07%2FA-Policy-Brief-on-the-Impact-of-AMLCTF-Regulations-on-the-Civic-Space.pdf&usg=AOvVaw1LUSqKBUm9R5SHLZ3SnARb (accessed 11August 2021).
6 See section 21 and Part V of the Anti-Money Laundering Act, 2013.

This unfettered discretion is often without any opportunity of due recourse to the courts of law and as such can be deployed arbitrarily.[7] This is attributable to the lack of a rational well thought out legislative process that would have restrained such unfettered discretion in the enforcement of the AMLA. The law was adopted through coercion and the threat of blacklisting of countries that do not adopt the policies as developed by the Financial Action Task Force (FATF).[8] A vivid example of coercion is portrayed by the statements of the Interim Executive Director to the Parliament on the adoption of the Anti-Terrorism Amendment Act to include terrorism financing. He highlighted the fact that Uganda is under immense pressure from the Eastern and Southern African Anti-money Laundering Group and the FATF to ensure that the Bill is passed into law within the timeframe set for Uganda.[9]

Secondly, in comparison with international human rights standards and rights guaranteed under the Constitution of Uganda, 1995, the enforcement of the AMLA violates a great number of rights in particular the right to association,[10] the right to liberty[11] and the right to privacy[12]. Once again this is attributed to the coerced adoption of the anti-money laundering and anti-terrorism financing legislation.

Whereas the AMLA is an important legislation in the fight against terrorism financing, the enforcement of the laws in relation to fundamental human rights has had a horrendous impact on the operation of civil society organisations. In the enforcement of the AMLA, the FIA is granted unfettered discretion which has been enforced against NGOs in a more arbitrary manner and in some cases in total disregard of fundamental rights and freedoms guaranteed in the Constitution.[13]

Particularly, leading up to the 2021 general elections, the legislation on anti-money laundering and anti-terrorism financing has been selectively enforced against NGOs involved in advocating for a free and fair electoral process.[14] The enforcement took the form of freezing accounts and directions to provide funding, and financial information to the FIA. In keeping up with the fault-finding approach, the enforcement was often carried out without prior, adequate warning for there to be any adequate recourse to the courts of law.[15] The enforcement is not limited to Organisations as there are some instances involving the arrest of individual leaders of NGOs on arguably trumped-up charges.[16] Many of these leaders became victims of surveillance and protracted investigations only for the charges brought against them to be later dropped.[17]

This possibility of the arbitrary enforcement of the AMLA rests solely on its adoption of anti-money laundering and anti-terrorism financing legislation without any due recourse to the social-economic environment of Uganda as a developing Country. The flexing of the authority of the Financial Action Task Force with threats of blacklisting elicited compliance and adoption of legislation without any rational thought as to application.[18] The forcible adoption of legislation has allowed for the use of broad terms particularly those in relation to the definitions which have been used and continue to be used to criminalise and frustrate the otherwise legitimate activities of NGOs and their leaders[19]. This is in complete disregard of FATF Recommendation 8 that encourages that states to ensure that the legitimate activities of NGOs are not interfered with.[20]

In principle, Uganda was not and still is not ready for a Financial Intelligence Authority, what is in application in Uganda is a result of a coercive and forceful international body in the Financial Action Task Force. The FIA has been abused and used as a political tool to further the aims of the Political class against Non-Governmental Organisations and what we have is a politically successful policy failure. For the FIA to fulfil its intended objectives, I recommend that the FIA should focus on empowering NGOs to comply with the provisions of the law instead of the current biased and selective enforcement of the law.

7 DPI (n 5 above).
8 Sharman (n 3 above)
9 Hansard Thursday, 18 June 2015.
10 The Constitution of Uganda, 1995. Article 29.
11 Above, Article 23.
12 Above, Article 27.
13 n 5 above.
14 n 5 above.
15 n 5 above.
16 Chapter Four Uganda, '3rd statement on the frivolous charges against Nicholas Opiyo' 2020 https://chapterfouruganda.org/articles/2020/12/24/3rd-statement-frivolous-charges-against-nicholas-opiyo (accessed 11August 2021).
17 n 5 above.
18 Sharman (n 3 above)
19 n 5 above
20 Financial Action Task Force 'International standards on combating money laundering and the financing of terrorism & proliferation. The FATF recommendations' (2012) https://cfatf-gafic.org/index.php/documents/fatf-40r/374-fatf-recommendation-8-non-profit-organisations (accessed 11August 2021).

COMMENTARY

Is The Financial Intelligence Authority The New Tool In The Arsenal Of Oppression Against NGOs?

Mercy Patricia Alum The author is a human rights lawyer

Ever since its genesis in 2014, Uganda's Financial Intelligence Authority (FIA) can be likened to a ferocious dog that spends most of its time asleep, but wakes up once in a while to bite whoever displeases its owner, after all, it must do some work to earn its daily bread. Established under the auspices of section 18 of the Anti-Money Laundering Act, 2013, the Financial Intelligence Authority's mandate is to combat money laundering, counter terrorism financing and proliferation. Sections 19 and 20 of the Anti-Money Laundering Act require the FIA to to identify proceeds of crime, ensure compliance with the Act, raise awareness on the Act and ensure information flow with other Governments in relation to money laundering. The Authority in achieving its mandate is authorised to obtain, process and analyse information, guide accountable persons both within and out of jurisdiction and offer training to accountable persons in relation to their duties and obligations.

Clearly, nothing in the above provisions mandates the FIA to particularly target organisations that advocate for democracy and other civil and political rights. It is therefore unfortunate that despite the numerous financial transactions that are overseen and routinely cleared by the Financial Intelligence Authority every month, the majority of the institutions that have here-to fallen into the sharp claws of the Financial Intelligence Authority happen to be Civil Society Organisations. Civil Society Organisations that work on thematic areas around civil and political rights are particularly vulnerable to these grave accusations of money laundering and financing terrorism.

The timing of the money laundering allegations against Civil Society Organisations is also peculiar. A quick scan into the recent actions taken by the Financial Intelligence Authority reveals that shortly before or during contentious political periods such as elections, major Civil Society Organisations that were considered to be political threats became subjects of investigations and actions by the Financial Intelligence Authority. During such times of political tension, the FIA conveniently claimed to have received intelligence about allegedly questionable transactions that these Civil Society Organisations were apparently engaged in, and this often marks the beginning of their woes.

> **The Financial Intelligence Authority's mandate as stipulated under sections 19 and 20 of the Anti-Money Laundering Act is to identify proceeds of crime, ensure compliance with the Act, raise awareness on the Act and ensure information flow with other Governments in relation to money laundering.**

Let us take the recent presidential and parliamentary elections of 2021 as a case study. During the run up to these elections, the FIA intensified investigations into the sources of funding of thirteen Civil Society Organisations including the Anti-Corruption Coalition, Citizen's Coalition for Electoral Democracy in Uganda, Democratic Governance Facility, Kick Corruption out of Uganda and others who work on civil and electoral rights. Still in 2020, just a few months shy of the presidential elections, four NGOs including Uganda National NGO Forum and The Uganda Women's Network (UWONET) again fell prey to similar circumstances on allegations that they were sponsoring terrorism. At the end of 2020, barely one month to the January 2021 elections, similar allegations of money laundering were also brought against the Executive Director of Chapter 4 Uganda, another Civil Society Organisation that advocates for civil and political rights.

Another underlying characteristic of these allegations against Civil Society Organisations is that they are often frivolous and flimsy to say the least. The Financial Intelligence Authority and the police do not bother to conduct proper investigations and collect tangible evidence. It is thus not surprising that these meritless allegations often end up being dismissed. Nevertheless, some damage will have already been done to the Civil Society Organisations by the time the cases are dismissed.

The independence of the Financial Intelligence Authority is also highly questionable. By virtue of section 22 of the Anti-Money Laundering Act, the Financial Intelligence Authority shall be independent in the performance of its functions and shall not be subjected to the direction, instruction or control of any person or Authority. However, it is no coincidence that the Civil Society Organisations that often fall prey to the Authority's insubstantial investigations also happen to be organisations that are critical of the ruling Government and its policies. This points to the fact that the Financial Intelligence Authority must be acting on the orders of some political "big fish" who feel politically threatened by the activities of these organisations.

The above circumstances inevitably lead one to question the merits of any allegations against Civil Society Organisations by the Financial Intelligence Authority. One is left wondering whether the Financial Intelligence Authority is not just another weapon created to stifle Uganda's civil and political rights movements.

In theory, the Anti-Money Laundering Act and the Financial Intelligence Authority have noble objectives and they could potentially play an important role to play in combatting the vice of money laundering in Uganda. However, this is undermined by the selective application of the law and the undue focus on Civil Society Organisations that work on democracy and other civil liberties. I would recommend that the Financial Intelligence Authority focuses its energies on combatting of actual money laundering transactions and allow Civil Society Organisations to do their work of advocating for civil liberties.

> **The Financial Intelligence Authority and the police do not bother to conduct proper investigations and collect tangible evidence.**

THE REPUBLIC OF UGANDA

THE ANTI-MONEY LAUNDERING (AMENDMENT) ACT, 2017

THE ANTI-MONEY LAUNDERING (AMENDMENT) ACT, 2017.

ARRANGEMENT OF SECTIONS

Section

THE ANTI-MONEY LAUNDERING (AMENDMENT) ACT, 2017

An Act to amend the Anti-Money Laundering Act, 2013, to harmonise the definitions used in the Act; to provide for the carrying out of risk assessments by accountable persons; to provide for the identification of customers and clients of accountable persons; to provide for procedures relating to suspicious transactions; to harmonise the record keeping requirements and exchange of information obligations with international practice; and for related matters.

DATE OF ASSENT: 13th May, 2017.

Date of Commencement: 26th May, 2017.

BE IT ENACTED by Parliament as follows:

1. Amendment of the Anti-Money Laundering Act, 2013.

The Anti-Money Laundering Act, 2013, in this Act referred to as the "principal Act" is amended in section 1—

a). by inserting immediately after the definition of "Authority" the following—

""bearer negotiable instruments" means monetary instruments in the form of a document such as traveler's checks and negotiable instruments, including checks, promissory notes and payment orders, that are issued to bearer, endorsed unconditionally or issued to a fictitious payee, or in another form that allows the transfer of the right upon delivery, and incomplete instruments including checks, promissory notes, and payment orders that are signed but have the payee's name crossed out or omitted;";

b). by substituting for the definition of "beneficial owner" the following—

""beneficial owner" means the natural person who ultimately owns or controls a customer or the natural person on whose behalf a transaction is conducted, and includes a natural person who exercises ultimate effective control over a legal person or legal arrangement;";

c). by inserting immediately after the definition of "court" the following—

""correspondent banking and other similar relationships" means the provision of banking or other similar services by one financial institution to another institution to enable the latter to provide services and products to its own customers;";

d). by inserting immediately after the definition of "document", the following—

" "Financial group" means a group that consists of a parent company or of any other type of legal person exercising control and coordinating functions over the rest of the group for the application of group supervision under the Core Principles, together with branches and/or subsidiaries that are subject to Anti Money Laundering or Countering the Financing of Terrorism policies and procedures at the group level;"

e). by inserting immediately after the definition of "gift caught by this Act", the following—

" "international organization" means an entity established by formal political agreement between a member State that has the status of an international treaty; its existence is recognised by law in its member country; and it is not treated as resident institutional unit of the countries in which they are located;"

f). by repealing the definition of "monetary instrument";

g). in the definition of "occasional transaction" by repealing the words "involving cash";

h). by substituting for the definition of "politically exposed person" the following—

" "politically exposed person" means—

a. an individual who is or has been entrusted with a prominent public function in Uganda or anothercountry, and includes a head of state or head of government, senior politician, senior government official, judicial or military official, senior executive of a state owned corporation, and important party officials; and

b. a person who is or has been entrusted with a prominent function by an international organization, and includes a member of senior management, director, deputy director or member of a board and includes a related person of the individual;";

i). by substituting for the definition of "proceeds" the following—

""proceeds" means any property or economic advantage derived from or obtained, directly or indirectly, through the commission of a crime, and includes property later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived from such property at any time after the commission of the crime;";

j). by inserting immediately after the definition of "record", the following—

" "related person" means an associate or close relative of the person"

k). by substituting for the definition of "shell bank" the following—

""shell bank" means a bank incorporated in a jurisdiction in which it has no physical presence and which is not affiliated with a regulated financial group that is subject to effective consolidated supervision;"

l). by inserting immediately after "shell bank" the following—

""supervisory authority" means a body that regulates or supervises any of the persons and businesses listed in paragraph 14 of the Second Schedule, and who, for the purposes of this Act, shall supervise those persons and businesses in matters relating to anti-money laundering and countering the financing of terrorism;";

m). by inserting immediately after the definition of "tainted property" the following—

" "terrorism financing" means the offence specified in the Anti-Terrorism Act, 2002;".

2. Replacement of section 6 of the principal Act.

The principal Act is amended by substituting for section 6 the following—

"6. Identification of clients, customers, other persons and other anti-money laundering measures.

(1) An accountable person who maintains an account for a client or customer shall maintain the account in the true name of the account holder, and shall not open or keep anonymous accounts or accounts which are in fictitious or incorrect names.

(2) An accountable person shall carry out due diligence measures in the following circumstances—

(a). before or during the course of opening an account for or establishing a business relationship with a customer;

(b). before carrying out an occasional transaction equal to or above the amount of five thousand currency points or its equivalent in foreign currency; whether conducted as a single transaction or several transactions that appear to be linked;

(c). before carrying out an occasional transaction that is a domestic or international wire transfer;

(d). whenever there is a suspicion of money laundering or terrorism financing;

(e). understand the ownership and control structure of the customer;

(f). whenever doubts exist about the veracity or adequacy of previously obtained customer identification data;

(g). take any other measures as may be specified by the Minister by regulation.

(3) An accountable person shall apply the following due diligence measures on a risk sensitive basis and shall take into account the outcome of a risk assessment—

(a). verify the identity of the client using reliable, independent source documents, data or information;

(b). identify and take reasonable measures to verify the identity of a beneficial owner;

(c). understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship to permit the accountable person to fulfil its obligations under this Act;

(d). another person is acting on behalf of the customer, identify and verify the identity of that other person, and verify that person's authority to act on behalf of the customer;

(e). take any other measures as may be specified by the Minister upon the advice of the Board and the Authority.

(4) An accountable person shall, in addition to the measures specified in subsection (3), undertake further customer due diligence measures to—

(a). verify the identity of a customer using reliable, independent source documents, data or information, such as passports, birth certificates, driver's licences, identity cards, national identification card, utility bills, bank statements, partnership contracts and incorporation papers or other identification documents prescribed by regulations made under this Act, in addition to documents providing convincing evidence of legal existence and powers of legal representatives;

(b). verify the identity of the beneficial owner of the account, in the case of legal persons and other arrangements, including taking reasonable measures to understand the ownership, control and structure of the customer obtaining information concerning provisions regulating the

power to bind the legal person and verifying that any person purporting to act on behalf of the customer is authorised, and to identify those persons; and

(c). conduct ongoing due diligence on all business relationships and scrutinise transactions undertaken throughout the course of the business relationship to ensure that the transactions are consistent with the accountable person's knowledge of the customer and the risk and business profile of the customer, and where necessary, the source of funds.

(5) An accountable person shall identify and verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting an occasional transaction.

(6) An accountable person may complete the verification of the customer or beneficial owners' identity after the establishment of the business relationship or carrying out of the occasional transaction provided that—

(a). the verification occurs as soon as reasonably practicable;

(b). the money laundering and terrorism financing risks are effectively managed; and

(c). delaying the verification is essential not to interrupt the normal conduct of business.

(7) In addition to customer due diligence measures, an accountable person shall implement appropriate risk management systems to determine whether a customer or beneficial owner is a politically exposed person and if so, apply the following additional measures—

(a). for a foreign politically exposed person, take reasonable measures to establish the source of wealth and funds;

(b). apply enhanced ongoing monitoring of the business relationship and obtain the approval of senior management before establishing or continuing a business relationship with such a person;

(c). for a domestic politically exposed person, and a person who is or has been entrusted with a prominent function by an international organization, apply the measures referred to in paragraph (a) where the risks of money laundering or terrorism financing are high.

(8) In relation to cross-border correspondent banking and other similar relationships, an accountable person shall, in addition to customer due diligence measures, apply the following measures—

(a). adequately identify and verify the respondent institution with which it conducts such a business relationship;

(b). gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information, the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action;

(c). assess the respondent institution's anti-money laundering and terrorism financing controls;

(d). document the respective responsibilities of the accountable person and the respondent institution;

(e). obtain written approval from the Central Bank before establishing a new correspondent financial institution relationship;

(f). obtain approval from senior management before establishing a new correspondent relationship;

(g). with respect to payable-through accounts, be satisfied that the respondent institution has verified the identity of and performed on-going due diligence on the customers having direct access to accounts of the correspondent and that the respondent bank is able to provide relevant customer identification data upon request to the correspondent bank.

(9) An accountable person shall apply the requirements under this section to cross-border correspondent banking and similar relationships established prior to the commencement of this Act.

(10) An accountable person shall not enter into, or continue, a correspondent banking relationship with a shell bank, or a respondent institution that is known to permit its accounts to be used by a shell bank.

(11) An accountable person shall implement specific and adequate measures to address the risks of money laundering and terrorism financing where the accountable person opens an account or establishes a business relationship or executes a transaction with a customer that is not physically present for the purpose of identification.

(12) An accountable person shall apply enhanced due diligence measures to business relationships and transactions with persons or financial institutions from or in countries identified by the Authority or the accountable person as high risk.

(13) An accountable person shall, as far as reasonably possible, examine the background and purpose of all complex, unusual large transactions and all unusual patterns of transactions which have no apparent economic or lawful purpose, document all information concerning those transactions and the identity of all parties involved in those transactions, and retain such records in accordance with this Act.

(14) Where the accountable person considers the risk of money laundering or terrorism financing is high, an accountable person shall apply enhanced customer due diligence measures, and shall increase the degree and nature of monitoring of the business relationship to determine whether those transactions or activities appear unusual or suspicious.

(15) An accountable person shall not, when unable to comply with the provisions of this section, open an account, commence a business relationship, or conduct the transaction, or shall terminate the business relationship, and make a suspicious transactions report in relation to the customer.

(16) An accountable person shall apply the provisions of this section to accounts and customers existing prior to the commencement of this Act and on the basis of materiality and risk, and shall conduct due diligence on such existing relationship at appropriate times, or as prescribed by supervisory authorities.

(17) An accountable person shall develop and implement programs for the prevention of money laundering and terrorism financing that are appropriate to the risks and the size of the accountable person's business and the programs shall include—

(a). internal policies, procedures, and controls to fulfil the obligations under this Act;

(b). appropriate compliance management arrangements;

(c). adequate screening procedures to ensure high standards when hiring employees;

(d). an employee training program to ensure that employees, managers and directors are kept informed of all the aspects of the anti-money laundering and combating terrorism financing requirements, new developments, money laundering and terrorism financing techniques, methods and trends, and concerning due diligence measures and suspicious transaction reporting;

(e). an independent audit function to test and verify compliance with and the effectiveness of the measures taken in accordance with the Act;

(f). mechanisms for sharing with other members of the financial group, information obtained under this section, and to protect the confidentiality and use of exchanged information.

(18) An accountable person shall apply the measures under this section to its branches and majority owned subsidiaries to the extent permissible by the laws of the host country where the subsidiary or branch is situated.

(19) Where the laws of the host country do not permit the proper implementation of the requirements under this Act, the accountable person shall implement additional measures, as appropriate, to manage the money laundering and terrorism financing risks and inform its supervisory authority.

(20) An accountable person may rely on a third party to perform elements of the due diligence process where the following conditions are satisfied—

(a). the accountable person immediately obtains all information required under this section;

(b). the accountable person is satisfied that copies of identification data and other relevant documentation relating to customer due diligence under this section shall be made available from the third party upon request and without delay; and

(c). the accountable person is satisfied that the third party is regulated, supervised or monitored for and has measures in place to comply with the requirements of this section.

(21) An accountable person who relies on a third party that is part of the same financial group as the accountable person may consider that the requirements are satisfied where—

(a). the group applies customer due diligence and recordkeeping requirements and applies internal controls and measures in accordance with the requirements of this Act;

(b). the implementation of the controls and measures referred to in paragraph (a) is supervised at a group level by a competent authority; and

(c). any higher country risk is adequately mitigated by the group's anti money laundering and combatting the financing of terrorism policies.

(22) For the avoidance of doubt, the responsibility for customer identification and verification shall at all times remain with the accountable person relying on the third party.

(23) An accountable person shall ensure that simplified or reduced customer due diligence measures permitted for customers resident in another country are limited to countries that are compliant with or which have effectively implemented the internationally accepted standards.

(24) An accountable person shall ensure that documents, data or information collected under the customer due diligence process are kept up to date and relevant by undertaking regular reviews of existing documents.

(25) An accountable person shall ensure that it has or establishes policies and procedures to address specific risks associated with non face-to-face business relationships.

(26) An accountable person shall pay special attention to business relationships with persons from or in countries which do not apply or insufficiently apply or observe internationally recognized anti-money laundering and combatting of terrorism requirements.

(27) A competent authority shall establish guidelines to assist accountable persons to implement and comply with the anti-money laundering and combatting of terrorism requirements under this Act.

(28) A competent authority shall provide feedback to all accountable persons reporting under this Act.

(29) An accountable person shall take reasonable measures to ascertain the purpose of any transaction in excess of five thousand currency points or of five thousand currency points in case of cash transactions and the origin and ultimate destination of the funds involved in the transaction."

3. Insertion of new section 6A.

The principal Act is amended by inserting immediately after section 6, the following—

"6A. Risk assessment.

(1) An accountable person shall take appropriate steps to identify, assess and monitor its money laundering and terrorism financing risks.

(2) An accountable person shall identify, assess and, take appropriate measures to manage and mitigate the money laundering or terrorism financing risks that may arise in relation to—

(a). the development of new products and new business

(b). practices; including new delivery mechanisms for products and services; and

(c). the use of new or developing technologies for both new and pre-existing products.

(3) The risk assessment under subsection (2) shall take place prior to the launch of the new product or business practice, or the use of a new or developing technology."

4. Replacement of section 7 of the principal Act.

The principal Act is amended by substituting for section 7 the following—

"7. Record-keeping

(1) An accountable person shall establish and maintain all necessary books and records relating to—

(a). the identity of a person obtained in accordance with customer due diligence measures;

(b). all transactions both domestic and international, carried out by it and correspondence relating to the transactions as is necessary to enable the transaction to be readily reconstructed at any time by the Authority or other competent authority, and the records shall contain such particulars as the Minister may, by regulations prescribe;

(c). all reports made to the Authority under this Act; including any accompanying documentation;

(d). any enquiries relating to money laundering and financing of terrorism made by the Authority.

(2) For the purposes of subsection (1), books and records include—

(a). (a) account files, business correspondence including the results of any analysis undertaken and copies of documents evidencing the identities of customers and beneficial owners obtained through customer due diligence measures or in accordance with the provisions in this Act;

(b). records on transactions and information obtained through customer due diligence measures, sufficient to reconstruct each individual transaction for both account holders and non-account holders including the amounts and types of currency involved, if any;

(c). any findings set out in writing in accordance with this Act and related transaction information.

(3) The books and records referred to in subsection (1) shall be kept for a minimum period of ten years from the date—

(a). on which the evidence of the identity of a person was obtained;

(b). of any transaction or correspondence;

(c). on which the account is closed or business relationship ceases, whichever is the later.

(4) The books and records established and maintained for purposes of subsection (1) shall—

(a). be sufficient to enable the transaction to be readily reconstructed at any time by the Authority or competent authority to provide, if necessary, evidence for the prosecution of any offence; and

(b). be maintained in a manner and form that will enable the accountable institution to comply immediately with requests for information from the law enforcement agencies or the Financial Intelligence Authority;

(5) Where any book or record is required to be kept under this Act, a copy of the book or record, with the appropriate backup and recovery procedures, shall be kept in a manner prescribed by the Minister by regulations.

(6) The records maintained under this section shall be made available, upon request, to the Authority, or to a competent authority for purposes of ensuring compliance with this Act and for purposes of an investigation or prosecution of an offence."

5. Replacement of section 9 of the principal Act.

The principal Act is amended by substituting for section 9 the following—

"9. Reporting of suspicious transactions.

(1) An accountable person shall report to the Authority if it suspects or has reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime or funds related or linked to or to be used for money laundering or terrorism financing, regardless of the value of the transaction.

(2) An accountable person shall make the report under section (1) without delay but not later than two working days from the date the suspicion was formed.

(3) The report under subregulation (1) shall be in the form prescribed by the Minister by regulations and shall be accompanied by any documents directly relevant to that suspicion and the grounds on which it is based.

(4) An accountable person, if requested by the Authority, shall give the Authority any relevant information or copies of documents or files, however and wherever stored, inside or outside their buildings, and within the time prescribed by the Authority.

(5) Advocates and other independent legal professionals and accountants are not required to report a transaction under this section if the relevant information was obtained in circumstances where they are subject to professional secrecy.

(6) An accountable person or its directors and employees shall not disclose to a customer or any other person the fact that a report under this section or related information will be, is being, or has been, submitted to the Authority or that a money laundering or terrorism financing investigation is being or has been carried out.

(7) Subsection (4), shall not preclude any disclosure or communication between and among directors and employees of the accountable person, in addition to advocates and competent authorities.

(8) Where a supervisory authority or an auditor of an accountable person suspects or has reasonable grounds to suspect that information in its possession concerning any transaction or attempted transaction may be—

(a). related to the commission of any offence under this Act or the offence of terrorism financing;

(b). relevant to an act preparatory to the offence of financing of terrorism;

(c). an indication of money laundering or the financing of terrorism, the supervisory authority or the auditor shall, as soon as practicable after forming that suspicion or receiving the information, but not later than two working days, report the transaction or attempted transaction to the Authority."

6. Insertion of new section 9A.

The principal Act is amended by inserting immediately after section 9 the following—

"9A. Protection of identity of persons and information in suspicious transaction reports.

A person shall not disclose any information that will identify or is likely to identify—

(a). any person who has handled a transaction in respect of which a suspicious transaction report has been made;

(b). any person who has made a suspicious transaction report; or

(c). any information contained in a suspicious transaction report or information provided pursuant to this Act; except for the purposes of—

(i). the investigation or prosecution of a person for an unlawful activity, a money laundering offence or an offence of financing of terrorism; or

(ii). the enforcement of this Act."

7. Replacement of section 10 of the principal Act.

The principal Act is amended by substituting for section 10 the following—

"10. Cross border movements of currency and negotiable bearer instruments.

(1) A person—

(a). entering or leaving the territory of Uganda and carrying cash or bearer negotiable instruments exceeding one thousand five hundred currency points or the equivalent value in a foreign currency; or

(b). arranging for the transfer of cash or bearer negotiable instruments exceeding one thousand five hundred currency points or the equivalent value in a foreign currency into or out of the territory of Uganda by mail, shipping service or any other means, shall declare that amount to the Uganda Revenue Authority in the manner prescribed by the Minister by regulations.

(2) The Uganda Revenue Authority may request additional information concerning the source and purpose of use of the cash or bearer negotiable instruments referred to in subsection (1).

(3) The customs department of the Uganda Revenue Authority shall, without delay, forward to the Authority any form completed under the requirements of this section.

(4) The Uganda Revenue Authority shall, in case of suspicion of money laundering or terrorism financing, or in the case of a false declaration or a failure to declare, seize the currency or bearer-negotiable instruments for a period not exceeding six months and shall immediately notify the Authority.

(5) The court may, on application by the Authority, extend the time beyond that prescribed in subsection (4) in respect of a seizure.

(6) The Authority shall, in consultation with the Uganda Revenue Authority, issue instructions and guidelines for the purposes of implementing the provisions of this section."

8. Amendment of section 13 of the principal Act.

Section 13 of the principal Act is amended by substituting for subsection (1) the following—

"(1) An accountable person who engages in electronic funds transfers shall obtain and include accurate originator information and

information relating to the recipient when carrying out electronic funds transfers and shall ensure that the information remains with the transfer order or related message throughout the payment chain.

(1)(a) A financial institution originating the wire transfer that is unable to obtain the information referred to in subsection (1) shall not execute the transfer."

9. Amendment of section 14 of the principal Act.

Section 14 of the principal Act, is amended—

(a). in subsection (1), by substituting for the word "no" occurring immediately after the words "confidentiality", the word "any";

(b). by inserting immediately after subsection (2), the following—

"(3) For the purposes of subsection (2), privileged communication means—

(a). confidential communication, whether oral or in writing, passing between an advocate in his or her professional capacity and another advocate in that capacity; or

(b). any communication made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c). any communication not made or brought into existence for the purpose of committing or furthering the commission of an illegal or wrongful act."

10. Amendment of section 19 of the principal Act.

Section 19 of the principal Act is amended by substituting for paragraph (e), the following—

"(e) exchange, spontaneously or upon request, any information with similar bodies of other countries that may be relevant for the processing or analyzing of information relating to money laundering or terrorism financing."

11. Amendment of section 20 of the principal Act.

Section 20 of the principal Act is amended in subsection (1)—

(a). in paragraph (a) by inserting the word "receive" immediately before the word "process";

(b). by substituting for paragraph (b), the following—

"(b) shall disseminate, either spontaneously or upon request, information and the results of its analysis to any relevant competent authority in Uganda and if the analysis and assessment shows that a money laundering offence, a terrorism financing offence or a crime has been, or is being committed, to send a copy of the referral or information to the relevant supervisory authority;"

12. Amendment of section 21 of the principal Act.

Section 21 of the principal Act is amended—

(a). (a) in subsection (1) by inserting immediately after paragraph (p), the following—

"(pa) impose administrative sanctions on an accountable person who fails to comply with directives, guidelines or requests issued by the Authority;

(pb) register accountable persons;

(pc)keep a register of accountable persons;

(pd) coordinate a national risk assessment on anti-money laundering and financing of terrorism.

(b). by inserting immediately after paragraph (q), the following—

"(r) to supervise, monitor and ensure compliance of this Act by all accountable persons in consultation with respective regulatory authorities."

13. Insertion of new section 21A.

The principal Act is amended by inserting immediately after section 21, the following new section—

"21A. Powers to enforce compliance.

(1) The enforcement of compliance with the provisions of this Act by an accountable person shall be the responsibility of the supervisory body of the accountable person.

(2) Where the accountable person has no supervisory body, it is the responsibility of the Authority to ensure that that accountable person complies with the provisions of this Act.

(3) The Authority or a supervisory body may direct any accountable person that has, without reasonable excuse, failed to comply in whole or in part with any obligations under this Act to comply.

(4) Where an accountable person fails to comply with a directive issued under subsection (3), the Authority or the supervisory body, may, upon application to a court, obtain an order against any or all of the officers or employees of that accountable person on such terms as the court deems necessary to enforce compliance with the Act.

(5) Subject to subsection (4) the court may order that should the accountable person or any officer or employee of the accountable person fail, without reasonable excuse, to comply with all or any of the provisions of the order, the accountable person or officer or employee shall pay a fine not exceeding one thousand eight hundred currency points, and may in addition pay an additional fine of one hundred and eighty currency point for each day that the failure to comply continues.

(6) A supervisory body, in exercising its powers under this section may—

(a). take any measures it considers necessary or expedient to meet its obligations as imposed by this Act or any other law, order, or directive made under this Act;

(b). require a reporting person supervised or regulated by it and to whom the provisions of this Act apply, to report on that accountable person's compliance with this Act or any other law, order, or directive under this Act, in the form and manner determined by the supervisory body;

(c). issue or amend any licence, registration, approval or authorisation that the supervisory body may issue or grant in accordance with any other law, to include the following conditions—

(i). a requirement for compliance with this Act; or

(ii). the continued availability of human, financial, technological and other resources to ensure compliance with this Act or any order or directive made under this Act.

(d). ascertain whether a person is fit and proper to hold office in a reporting institution taking into account any involvement, whether directly or indirectly by that person in any non-compliance with this Act, order, directive or Regulations made under this Act or in any

(e). money laundering activity.

(7) A supervisory body shall submit to the Authority, within such period and in such manner, as the Authority may in writing prescribe, a written report on any action taken against any reporting institution under this Act or any order, directive or regulations made under this Act.

(8) The Authority and every supervisory body shall coordinate the exercise of powers and performance of functions under this Act to ensure the consistent application of this Act."

14. Amendment of section 24 of the principal Act.

Section 24 of the principal Act, is amended in subsection (1)—

(a). (a) by substituting for paragraph (f) the following—

(f). subject to sections 28,30 and 32 appoint, remove and suspend the members of staff of the Authority in accordance with the Human Resource Manual;

(g). by inserting immediately after paragraph (f), the following—

(h). review and approve the budgetary estimates of the Authority;

(i). review and approve the strategic plan of the Authority; and

(j). consider the annual report of the Authority and report to the Minister on any matter appearing in or arising out of such a report.

15. Amendment of section 38 of the principal Act.

Section 38 of the principal Act is amended by inserting immediately after section 38, the following new section—

"38A. Exchange of information by competent authorities. Competent authorities may exchange information and provide international cooperation both upon request from and spontaneously to foreign counterparts in relation to possible or confirmed money laundering or terrorist financing and any related activity subject to the regulations made under this Act

16. Replacement of section 116 of the principal Act.

The principal Act is amended by substituting for section 116 the following—

"116. Offence of money laundering. A person who engages in any act of money laundering prohibited in section 3, commits an offence."

CROSS REFERENCES

- Anti-Money Laundering Act, 2013, Act No. 12 of 2013
- Anti-Terrorism Act, 2002, Act No. 14 of 2002
- Financial Institutions Act, 2004, Act No. 2 of 2004

ABOUT HRAPF

Background

Human Rights Awareness and Promotion Forum is a voluntary, not for profit, and non-partisan Non-Governmental Organisation. HRAPF works for the promotion, realisation, protection and enforcement of human rights through human rights awareness, research, advocacy and legal aid service provision, with a particular focus on minorities and disadvantaged groups. It was established in 2008 with a vision of improving the observance of human rights of marginalised persons in Uganda.

Vision

A society where the human rights of all persons including marginalised persons and Most at Risk Populations are valued, respected and protected.

Mission

To promote respect and protection of human rights of marginalised persons and Most at Risk Populations through enhanced access to justice, research and advocacy, legal and human rights awareness, capacity enhancement and strategic partnerships.

HRAPF Values

- Equality, Justice and Non-Discrimination
- Transparency, Integrity and Accountability
- Learning and Reflection
- Quality and Excellence
- Teamwork and Oneness
- Passion and Drive
- Networking and Collaboration

Legal Status

HRAPF is incorporated under the laws of Uganda as a company limited by guarantee.

HRAPF's Objectives

- To create awareness on the national, regional and international human rights regime.
- To promote access to justice for marginalised persons and Most at Risk Population groups.
- To undertake research and legal advocacy for the rights of marginalised persons and Most at Risk Population groups.
- To network and collaborate with key strategic partners, Government, communities and individuals at national, regional and international level.
- To enhance the capacity of marginalised groups, Most at Risk Populations and key stakeholders to participate effectively in the promotion and respect of the rights of marginalised persons.
- To maintain a strong and vibrant human rights organisation.

Our target constituencies

1. Lesbian, Gay, Bisexual and Transgender (LGBT) persons
2. Intersex Persons
3. Sex Workers
4. Women, girls and service providers in conflict with abortion laws
5. People who use drugs
6. People Living with HIV and TB (PLHIV/TB)
7. Poor women, children and the elderly with land justice issues
8. Refugees

Slogan

Taking Human Rights to all

The eighth issue of the magazine is dedicated to the Anti-Money Laundering Act, 2013 (as amended). This law was enacted to provide for the prohibition and prevention of money laundering and to establish the Financial Intelligence Authority (FIA) to combat money laundering activities and impose duties on persons, institutions and businesses.

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