

ENSURING THE IMPLEMENTATION OF AML/CFT MEASURES WHILE SAFEGUARDING CIVIC SPACE

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SHERATON KAMPALA

Introduction

*This report is as a result of the Breakfast meeting organized by Defenders Protection Initiative (DPI) under the theme “**Ensuring the implementation of AML/CFT measures while safeguarding civic space**” at Hotel Sheraton on 11th Feb 2021 with attendees from different CSOs, Media practitioners and the FIA.*



Presenters

- 1 Yona Wanjala, the Executive Director, Defenders Protection Initiative
- 2 Xavier Ejoyi, the Executive Director, Action Aid Uganda
- 3 Asubo Sydney, the Executive Director, Financial Intelligence Authority Uganda
- 4 Margaret Ssekaggya, the Executive Director, Human Rights Centre Uganda

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List of Abbreviations

AML Anti Money Laundering

CSOs Civil Society Organizations

CTF Country Terrorism Financing

DPI Defenders Protection Initiative

DPOs Not for Profit Organizations

DPP Director of Public Prosecution

ED Executive Director

FATF Financial Action Task Force

FIA Financial Intelligence Authority

NGOs Non-Governmental Organizations

URA Uganda Revenue Authority

The opening prayer

It was led by Mr. Albert Kakuru of the Kick Corruption Out of Uganda and then a video on AML/CFT was shown.

Presentation 1

Opening remarks



Name of the presenter: Mr. Yona Wanjala.

Organization: Defenders Protection Initiative (DPI)

Title: Executive Director

He started by greeting everyone in the room and welcomed them to the very brief and crucial meeting focusing on the regulator of the sector on the

application of Anti money laundering and terrorism financing to the NGO sector. He then thanked the ED of Financial Intelligence Authority Mr. Asubo Sydney for honoring the invitation. He again thanked Mr. Ejoyi Xavier the Executive Director of Action Aid Uganda and Madam Margaret Ssekaggya the Executive Director of Human right Centre Uganda for making time to attend the Breakfast meeting.

He noted that the world is faced with serious offences in relation to terrorism and one of the drivers is money laundering which drove the Financial Action Task Force (FATF) in 1989 to come up with standards and set the guidelines with 40 recommendations. He added that recommendation 8 highlights that, governments will come up with measures to protect the CSOs sector from being abused or misused and misled by some elements for terrorism. He highlighted an example of orphanages masquerading to assist people yet they are abusing people's rights and said it is the role of the government to regulate NGOs not to divert money to support terrorism activities. Also, he mentioned the whistleblowing mandate of all NGO actors and said in case any one senses any act they are obliged to report to the authorities.

He also submitted that sometimes regulators have overregulated the sector and we are witnessing accounts being frozen, certificates being withdrawn and arrests being made and yet there is little knowledge of the existence of a regulatory body among the civil society actors. It's against that background that the National NGO FATF working group was formed which operates on a principle of everything begins with dialogue and it comprises of 10-member organizations and these include; Defenders Protection Initiative, Human Rights Center-Uganda, United Religious Institute (URI), Anti-Corruption Coalition Uganda (ACCU), chapter 4, National Non-Governmental Organizations Forum (NNGO Forum), Human Rights Promotion and Awareness Forum (HRAPF), National Coalition for Human Rights Defenders Uganda (NCHRDs), Global Rights Alert, among others.

Key achievements of the coalition are as follows;

- A number of awareness creation campaigns and trainings have been carried out within all the regions in Uganda
- The coalition has organized meetings with the regulators like the Financial Intelligence authority.
- It is also running a research to find out opinions and evidence on whether NGOs should be included as accounting persons in Uganda and another research is on the impact of money laundering and counter terrorism regulations on civic space.
- DPI is also a member of the global coalition for NPOs developing protocols on implementation of regulation 8.

He concluded by urging the attendees to share their fears and actively participate in the discussion so that civic space is saved.

Second Presentation.

Sharing experiences and fears of NGOs in implementation of AML/CTF regulations



Name of a presenter: Xavier Ejoy.

Organization. Action Aid.

Position. Executive Director

He started by saying that everyone needed to seriously reflect on their roles and the key issues of money laundering and terrorism financing and put across fears, expectations and concerns that everyone might have. He said that Action Uganda has gone through experiences like other NGOs in the arena.

He put right that there is a risk in the country relating to money laundering and terrorism and the country loses significant resources that are hard to quantify. He also said that the regulations against fighting money laundering is the first progressive step but issues on how regulations are implemented need to be looked into.

He also said he doesn't support the fact that regulators are looking at NGOs as accountable persons and this has to be looked into. The citizens and civic organizations have a role in fighting money laundering and terrorism because much as we have the international institutions, citizens also have a role in the fight.

He defined civic space as the space where everyone needs to communicate or act without fear as stipulated in the United Nations Declaration of Human rights and other charters to which Uganda is a signatory. In Uganda this is under threat and the citizens are not able to express their views.

The context of CSOs in Uganda. He pointed out that we are having a serious challenge relating to democracy seeing the rule by law versus rule of law where the former is using the laws to advance a specific agenda rather than the latter of using laws to define order. There is restriction of civic actions through the Public Order Management act and so on and aspects of the regulations are partly enhancing rights but mostly limiting them.

He added that there is hostility from the state institutions, hostile surveillance on leaders of the CSO sector, arrests based on allegations like blackmail, NGOs as agents promoting the western world agenda, funding opposition political parties etc. and that is the hostile environment CSOs work in Uganda especially Organizations working in areas of governance and rule of law which destructs their (NGO) focus on the mandate of serving people.

NGOs operate under difficult circumstances of looking for money to pay salaries, rent and other things under strict strings from donors and regulators that we report to. So, whenever there is destruction from regulators it affects the operations. *On one hand as civil society is keen in implementing measures of money laundering and terrorism, we are also concerned when it comes to protecting civic space.*

Key highlights from the presentation.

He highlighted a few points as follows;

- There is limited awareness of anti-money laundering regulations and citizens need to know what the law is and what is expected from them. He added that even among the elite there is little knowledge about the AML/CFT laws.
- Secondly, there is need to reflect on the question of rule by law vs rule of law and it is the biggest concern because we have seen sieges, accounts frozen and then property taken for 3 years and police has not released any reports on investigations and neither have they returned computers. Even after the frozen accounts are eventually opened the question is where is the accountability of those affected and especially if they have been falsely accused.

- Another dimension is the compliance burden. We find ourselves caught with multiple compliance centers, the burden of reporting to many authorities sometimes surpasses the pursuance of our mandates.
- There is need to understand the meaning of not for profit and the uniqueness needs to be looked into and appreciated by the regulators. There is need to differentiate NGOs from other sectors like casinos and banks whose trade is money. Robust awareness needs to be provided to citizens.

He wound up by thanking DPI for the meeting and said there needs genuine dialogue on implementation of anti-money laundering laws based on trust and collective goal so that “we are scratching where it is itching”. He asked for trust and genuine expressions during the dialogue.

Third Presentation:

How FIA and NGOs can collaborate to safeguard civic space



Name of the presenter. Sydney Asubo

Organization. Financial Intelligence Authority

Title. Executive Director.

He started by thanking DPI for organizing the workshop and everyone for attending the workshop. He arranged a paper to address the number of issues including;

Defining the relationship between a regulator and the regulated entities i.e. FIA and the NGOs, and explaining whether there is overregulation or not? He said that there is no over regulation though it is perceived that way.

He said that the regulator enforces the law and the regulated entities have to comply and when they fall short, the regulator advises and depending on the nature of non-compliance, there are penalties including sanctions. In FIA's case the approach taken is that while there are many cases of non-compliance, the FIA first educates before enforcement of penalties in the law because it is known that penalizing entities does not bear fruits. However, the question FIA is grappling with is when should they determine that educating or awareness creation about the law is done and FIA can commence to implement the law.

Mr. Asubo added that there is a misconception that FIA is applying a lot of powers to freeze accounts but it's not true. There are situations that would call for a freeze and FIA has not frozen in fact FIA has frozen only 5% of the actors whose accounts needed freezing. There is no time frame provided in the act on how long FIA should freeze so it lies in the hands of the regulator. Those who have the power to freeze accounts in anti-money laundering put a time frame and the shortest is between 9 hours to 6 months. CSOs who feel that power has been over used to freeze their accounts can permitted by law to proceed to court. The power to freeze bank accounts is in the Anti-Terrorism amendment act 2015 and FIA has used it sparingly because it has been applied only 5 times in the 6 years of FIA existence and given that Uganda has many cases of terrorism and money laundering then 5 times are few. Under sec 17 cap A of the act, the FIA is given power to freeze bank accounts where it is satisfied, FIA is supposed to satisfy its self on the basis to why bank accounts are frozen. If proven that funds are likely to be used to finance terrorism then FIA would proceed to freeze them, and within 48 hours FIA reports to the DPP and then the DPP shall also apply the second Bank account freeze. The initial bank account freeze made by the regulator remains operational until court decides.

While the decision to freeze an account is made by one body the duty to defend is done by other entities. Secondly the time frame on how long the accounts should be frozen is not controlled by the regulator, for example if the DPP delays to proceed with the case to court it's not on FIA. Anti - Terrorism (Amendment) Act, 2015 Section 17A Sub section 3 says that the issue can proceed to court

but the only disadvantage is that the time to proceed to court is determined by the DPP.

The initial proposal that FIA made to parliament was that the power to freeze accounts should be granted to the IGP and within 48 hours the matters should go to court but parliament refused and determined that the DPP filed objections on the suggestion. The timeframe of 48 hours within which the DPP should file the cases was removed given the fact that they are always busy and having many backlogs.

Mr. Asubo also mentioned that there is limited knowledge on AML/CFT and there is need for continuous outreach as the FIA has dedicated 3 years to narrow the knowledge gap and have started with the financial sector. The FIA has so far conducted many awareness creation out reaches to respective accounting persons and most of those reached have filed their returns before the deadline. He added that there is however confusion of reporting of suspicious large cash transaction reports. The law says that you can only file large reports not for yourself but on behalf of others. It is much easy for banks, insurance companies because they have powers to hold money for others.

He answered the question on whether NGOs should be considered as accountable persons and said the Financial Action Task Force produced a list of entities that should be accountable persons and NGOs are not in the category. However, the FATF gave options to every country to expand the list depending on the need and in 2001 NGOs were included including, Faith Based organizations and others. He urged the National NGOs FATF Working Group to persuade and provide evidence to the management of FIA so that steps (engaging the BoD, Minister and Parliament) are followed to ascertain the removal of NGOs on the list of accountable persons.

He asked the National NGOs FATF Working Group to take on a Risk Assessment study to determine which kind of NGOs are more susceptible to risks of money laundering and terrorism and put in place measures to address the risks and spare the low risk NGOs from being on the list of accounting persons.

He also encouraged everyone to get familiar with the Recommendation 8 of the FATF guidelines. He said the assessment that was done in sub-Saharan Africa

said that there is a high risk of terrorism and the money laundering and FIA has been tasked in 2 years to investigate the high risks of terrorism in the country. While there is a belief that there is overregulation in the country, the reverse is what we are accused of elsewhere.

Mr. Asubo drew a distinction between breeches and attraction of administrative penalties, it appears that conclusions have been made that civic space for NGOs is shrinking which is not true. He said that evidence is not there to argue that civic space is shrinking and if it is shrinking it is not because of FIA regulation. He mentioned that when the bank accounts of Action Aid Uganda were frozen in 2016-17, it was done by the central bank and whoever knows the real history of the case should be able to appreciate the FIA on how the matter was handled. On the question of the political context on how the laws are being applied, he said it is natural that if it is a period of political contestations everything has to be related to politics and most actions by actors are perceived as being political. He added that the answer to the question on whether the FATF regulations are being passed to satisfy the political agenda is a No. Uganda is already being accused as a country for not implementing the FATF guidelines and 10 out of 11 recommendations from the last national evaluation are not being followed and thus been given by end of May 2022 to address all the issues to be taken off the global grey list.

He concluded that there is limited awareness, there is significant knowledge gaps and there is need for continuous outreach to all stakeholders to aid the implementation of and compliance to FATF guidelines in Uganda.

Questions, comments & answers.

First set of questions

- 1 In relation to enforcement of Recommendation 8 and its modification in 2016 requiring the authorities to take proportionate and focused measures in the risk assessment, would like to find out the proportion the FIA takes and why has it taken too long to conduct another risk assessment in regards to NPOs.

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- 2 In relation to section 17, how does FIA satisfy its self that some funds are used for terrorism financing taking into account justice and fairness?
 - 3 Is there room for a multi-stakeholder dialogue bringing together all these actors like NPOs and other institutions to have a mutual understanding and how the regulator is held accountable in terms of enforcing these regulations?

Responses from Asubo Sydney

- 1 The question of proportionality only applies when the risk assessment has been done to determine high, medium and low risk so that more resources can be applied in high risk areas. Because resources can never be enough and in this case, there has been a delay to carry out the Risk Assessment but better late than never. Although Uganda had the anti-terrorism act as far back as 2002, we didn't have terrorism financing component until 2015 that terrorism was penalized in line with the international congregation against financing terrorism, so it is a very recent legislation. Also, it's only since 2013 that money laundering was criminalized in Uganda. He added that it has not taken long just because of the recent nature of legislation, creation of the FIA, lack of awareness of different parties including the state institutions. People have been prosecuted and bank accounts have been frozen and the proportionality doesn't apply only on the number of cases FIA has handled, number of accounts frozen, it applies in the context of risk assessment.
- 2 The question of satisfaction is subjected to test. The courts have attempted to guide and the key question is the test of reasonableness. The test is that the FIA must be satisfied and then proceed to the DPP. The one time that a case went up to court, the court was satisfied on the way FIA applied the test of satisfying itself. It really depends on judgement of the decision makers at any one time because you might have two individuals looking at the same set of facts and arriving at different decisions.
- 3 If there is a question of the law being unfair and needs to be amended that's ok but in terms of dialogue, we could discuss about how to

understand reasons of non-compliance. And when you call FIA for such dialogues the Executive Director or deputy always attend as long as the FIA are informed in time.

Second set of Questions

- 1 Saying that you dwell on intelligence does the FIA crosscheck the intelligence before reaching to the purpose, like the matter of Chapter 4 when intelligence said that Chapter 4 had got money from a wrong source, also the recent DGF case what happens?
- 2 FIA's denial of political influence on regulation is far from real, you can't separate politics from legislation. Also, let's agree that we are operating in fear and capture of government institutions, and it is certain that the FIA are not exempting from that.
- 3 The NGO bureau is operating without the BoD and that is a fear, why are the relevant government institutions undermined?
- 4 Why has the army become a state in a state, they are in every corner and if you have the army everywhere my fear is what do we do to help institutions when they are under a threat of capture?

Responses from Asubo Sydney

- 1 There are many reasons why the FIA don't freeze some bank accounts and freeze others based on evidence from intelligence but bottom line is that FIA applies the law reasonably and sparingly. FIA has the obligation to satisfy its self with the evidence.
- 2 The issues of Chapter 4 are in court and different stakeholders play different roles as you know e.g. the DPP. When it comes to court there has to be evidence and FIS are an interested party wanting to see the outcomes.
- 3 On the issue of politics and the law, politics informs the law and laws are made to address the mistreatment. When it comes to application of the law and whether politics plays a part the answer is yes because one of the decisions the DPP has to make whether to prosecute the case or not is for

the public good. The DPP can say that while there is evidence to arrest, for the public good, the culprit may not be arrested. For example, a woman in South Africa was arrested for causing death of someone who defiled her daughter. So, she was accused for murder and shortly the charges were dropped because of public interest. It however depends on the context. So, politics and the law are inseparable but it depends on the context.

- 4 About capture of government institutions and the role of the army in the parliament goes beyond today's discussion.

Third set of Questions

- 1 When taking decisions to freeze bank accounts do you put in mind the suffering of people who are being supported by NGOs?
- 2 We understand that Uganda is on the grey list, who is holding the country for being on the grey list from reaching the compliance list? is it the NPOs, or it is the state?
- 3 Most times when we hear from FIA it's when NGOs have had a problem, is it that the NGOs are the most non-compliant accounting persons?

Responses from Asubo Sydney

- 1 In criminology when you make a decision there will always be inconveniences on parties who are not necessarily perpetrators of the situation. Are you going to say that because children will suffer, we should not penalize entities that fail to comply? These are discomforts that come with the process of applying criminal justice. But as mentioned 95% of the cases calling for penalization FIA has not penalized. Once bank accounts are frozen you can apply to get money to take care of salaries, rent, URA and so on. Once money laundering is suspected, the accounts have to be frozen.
- 2 No, Uganda has never been on the black list its only North Korea and Iran but we have been on the grey list. On who is responsible, the state is responsible for enforcing the standards although there are certain outcomes whose achievements are as a result of the private sector but the

commitment of government is committed to carry out a risk assessment and address risk assessment areas. The government is responsible for the position we are in but when it comes to getting off the grey list it's the state and other stakeholders including NPOs.

- 3 NPOs are not the problem child of FATF regulations. Just because the other accounting persons like banks and forex bureaus don't make news but they have also been penalized. Some have complained like the banks. FIA has issued penalties but they are confidential and they don't make news. People who tend to deal in advocacy tend to bring out their issues loudly than those not in advocacy. The accounts that were most frozen are for business entities and NPOs are not the problem child.

Final recommendations from presenters

Xavier Ejoyi

- 1 The conversation has been useful, important to note is that there are concerns about the measures that we are taking as a country and we need to ensure that risk assessment is done and completed. As a country we need to ensure that we are using and not abusing the legislation. We need to reflect internally as a nation and ensure to see that the law is enforced in a way that is fair.
- 2 Xavier was surprised to learn that some key stakeholders, law enforcement agencies and accountable persons still have a gap in awareness of the AML/CFT law and regulations. If key stake holders are not aware about the legislation, how can you even think about implementing it in its fullness? The recommendation of raising awareness is still standing and needs to be advanced to enhance compliance in the country rather than waiting to fault find and catch people in fault but enhance knowledge on how laundering and terrorism financing costs a country.

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- 3 In the interest of the mandate NGOs are having that directly ties on people's lives should they be treated as accountable persons? The DPP and the authorities need to serve in the name of justice. The clear gap is related to timelines which are not favorable and that's a serious matter that needs to be addressed for the FIA and Director of Public Prosecution to act timely to resolve matters.
 - 4 The fact that Uganda is on the grey watch list, if the risk assessment is completed it will give Uganda a good ground to determine whether we are overzealous or whether we are not attending to the risk profile of risks.

Yona Wanjala, DPI

- 1 NGO's should not lose hope, the national risk assessment of NPOs exercise is ongoing and there are 3 NPOs on the working group that is DPI, Chapter 4 and HURINET. In line with the discussions here we need to actively participate in the risk assessment and in the interviews when we are visited in respective offices.
- 2 On multi-stakeholder engagements, DPI and other members of the National FATF working group have organized several engagements with several stakeholders, have invited other entities like banks, RDCs, regional DPCs because they also sometimes misinterpret these legislations.
- 3 On whether NPOs should be accountable persons, he said he would persuade Mr. Asubo with a researched evidence-based report and also work as a team between the NGOs and the FIA
- 4 He urged everyone to visit the website "[know your country](#)" or the [FATF Website](#) to have a deeper understanding of the FATF Statement on AML Strategic Deficiencies for Uganda.

Asubo Sydney (FIA)

- 1 On fault finding, that's not true and that's why the FIA want to first educate before implementation of the laws, in some sectors the knowledge gap is so severe and you can't even begin to think about implementing. Knowledge gaps are not by design but because of the recent nature of

legislation and five years from now Uganda will be better and if there is still not, FIA will have failed in its mandate.

- 2 The issue of timeline, you can't arrive at justice without passing through the law, and If you have an objection state it and it will go to the superiors it takes advocacy about timelines.
- 3 The working group is small and has only 3 NPOs, normally it should be 10-15 members who should be equally represented with ministry of internal affairs, NGOs, finance and security. Within the next few weeks, FIA should have a draft report from the risk assessment report.

He concluded by saying that FATF has set international standards to be followed by all member countries in combating AML/CFT and if the standards are appropriately implemented following a risk-based approach, the country can be removed off the grey list. He added that FIA is committed to continue conducting risk assessments to help the country to know its risk levels and make informed decisions in mitigating the risk appropriately.

Closing remarks:



Name of presenter: Margaret Ssekaggya

Organization: Human Rights Centre Uganda

Title: Executive Director

She thanked the panelists and said that the expectations of the state are not only to make laws but it should play a role to protect, fulfil and

promote laws. The fact that we are talking about knowledge gaps, it has to be disseminated considering the role of the state to ensure that citizenry understand the law.

She also requested that when regulators use digression it should be used judiciously and administered in a manner that won't have adverse effects on people.

NGOs applaud the amendments that are going to be made and are very welcome but the issue of politics and civic space is intermingled because as cases come in there is too much pressure and that's why people interpret it as shrinking civic spaces. How shall we ensure that the image of Organizations affected is cleared because many times even when accounts are unfrozen, no one comes to clear the air. I request FIA and Mr. Asubo the Executive Director to be accountable and contribute in clearing names and building names of NGOs. When we do well please say it and correct us where we have gone wrong other than freezing the accounts and being punitive in nature.

Conclusion

Overall, participants appreciated the meeting and promised for continued collaboration and strong partnerships amongst NPOs and the authority to prevent AML/CTF keeping in mind the importance of protecting civic space

Photos Gallery

