

CURBING MONEY LAUNDERING AND TERRORISM FINANCING IN KENYA


A Review of Anti-Money Laundering Laws in
Kenya and the role of Civil Society in the
Financial Action Task Force (FATF) Process.



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List of Abbreviations

- **AML** – Anti-money Laundering
- **ACECA** – Anti Corruption and Economic Crimes Act
- **CBK** – Central Bank of Kenya
- **CFT** – Countering the Financing of Terrorism
- **CMA** – Capital Markets Authority
- **CSO** – Civil Society Organizations
- **ESAAMLG** – East and Southern African Anti- Money Laundering Group
- **EU** – European Union
- **FATF** – Financial Action Task Force
- **HMT** – Her Majesty’s Treasury
- **IRA** – Insurance Regulatory Authority
- **KRA** – Kenya Revenue Authority
- **ML/TF** – Money Laundering and Terrorist Financing
- **NGO** – Non-Governmental Organization
- **NPO** – Non-Profit Organization
- **OFAC** – Office of Foreign Assets Control
- **POCAMLA** –Proceeds of Crime and Anti-money Laundering Act
- **POTA** – Prevention of Terrorism Act
- **UN** – United Nations
- **UNSC** – United Nations Security Council

EXECUTIVE SUMMARY

This study is a review of pertinent legislation on Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) applicable in Kenya, including specific provisions relating to the role of CSOs in the Financial Action Task Force (FATF) Process.

The review also covers other regulatory guidelines developed by similar jurisdictions regionally and at a global level including the FATF standards and best practices. It identifies any gaps in Kenya's legislation and the implementation thereof that need to be addressed by Kenya, subsequent to the 2022 Mutual Evaluation Process. Further, this study entails analysis of international and regional legislations governing the FATF process and the Non-Profit Organizations (NPO) sector, Kenya's Proceeds of Crime and Anti-money Laundering Act 2009 (POCAMLA) and regulations issued thereunder, and their application to the NPO sector. The sector guidelines issued by supervisory bodies under the POCAMLA, relevant criminal legislation such as the Anti-Corruption and Economic Crimes and Prevention of Terrorism Acts, and a comparative analysis of applicable AML/CFT and NPO sector legislation in Uganda, Tanzania, Zambia, South Africa, Ghana, Nigeria, USA and the UK.

In this review, the terms Civil Society Organizations (CSOs), Non-Profit Organizations (NPOs) and Non-Governmental Organizations (NGOS) are used interchangeably depending on the jurisdiction and applicable legislation.

Findings

- i. CSOs play an important role in the FATF process as they are a critical component of a country's governance system because of their influence in the areas of peace, security, and justice.
- ii. CSOs can also provide support in the mutual evaluation process since they work in different sectors that are heavily affected by money laundering for example human

rights and human trafficking, governance, corruption, organized and transnational crimes, hence they can provide valuable insights and information to assessors.

- iii. CSOs and other NPOs are vulnerable to money laundering and terrorism financing risks, and accordingly the laws relating to NPOs need to have adequate measures to protect against these risks, as required by FATF Recommendation 8.

Recommendations

- i. Non-Governmental Organizations are included in the list of Non-Financial Business Professions 's designated as Reporting Institutions under the POCAMLA, as such, Kenya needs to ensure that NGOs are brought on board under the relevant authority as fully compliant institutions under POCAMLA, and that the FRC issues appropriate AML/CFT guidelines to guide compliance by the sector.
- ii. Noting that the NGO Co-ordination Board does not have oversight of all CSOs and NPOs operating in the country, it is imperative that the Public Benefits Organizations Act be operationalized as soon as possible so that the Public Benefit Organizations Authority can take over this role, and CSOs can play an important role in lobbying for a commencement date for the Act and the establishment of the Authority.

Upon the implementation of the PBO Act, POCAMLA will need to be amended to include all PBOs as reporting institutions and substitute the Public Benefit Organizations Regulatory Authority as the designated supervisory body.

- iii. It is important that NPOs are conversant with and comply with the applicable laws and best practices for NPOs as required by FATF Recommendation 8 and the FATF Best practices paper on combatting terrorist financing risks for NPOs.
- iv. The Kenya Government through the Financial Reporting Centre (FRC) should borrow from best practices in other jurisdictions such as Zambia and Ghana, and prioritize on state-based oversight as well as improve on its capacity to detect sophisticated threats to the sector’s activities. However, this should be accomplished using a risk-based approach as recommended by FATF Recommendation 8; since not all NPOs/CSOs are high risk.
- v. Capacity building initiatives and training of CSOs on the detection and prevention of terrorist financing risks in their sectors, and the putting in place of appropriate AML/CFT guidelines to guide the sector on compliance with the law in addition to the implementation of internal measures such as the appointment of a compliance officer, putting in place AML/CFT policies and procedures covering due diligence, training, transaction monitoring, suspicious activity reporting and sanctions screening.
- vi. Donor agencies should also work together with the government to address the lack of capacity, funding, training, and infrastructural support for CSOs, which should include appropriate guidance on the internal control measures outlined above.

1

Background

FATF mutual evaluations are in-depth country reports analysing the implementation and effectiveness of measures to combat money laundering and terrorist financing. Mutual evaluations are peer reviews, where members from different countries assess another country. A mutual evaluation report provides an in-depth description and analysis of a country's system for preventing criminal abuse of the financial system as well as focused recommendations to the country to further strengthen its system.

In 2011, the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) completed the first mutual evaluation on anti-money laundering and countering of terrorism financing for Kenya. With the last evaluation happening in March 2011, Kenya underwent an onsite visit in February 2022 to assess if the country's measures are working to protect against financial system abuse and a plenary meeting in September 2022.

Recommendation 8 of the 40 recommendations + 11 outcomes of the Financial Action Task Force (FATF) focuses on Non-Profit Organizations and outlines broadly standards for regulation of the nonprofit sector as a whole for greater transparency and accountability. Under Recommendation 8, countries are required to; review laws and regulations that relate to Non-Profit Organizations (NPOs) identified as being vulnerable to abuse and apply proportionate measures founded on the risk-based approach.

The NPOs or rather as referred to in this study as Civil Society Organisations are seen in the FATF standards as potential channels of money laundering and source for the financing of terrorism due to the capital flows. Governments are therefore required to protect the sector from abuse or misuse for financial malpractice by implementing legal regimes to address the same.

The previous requirements and standards set out in Recommendation 8 pointed out the NPO sector as particularly vulnerable and was highly contested and subjected to a revision as it had resulted in the over regulation of the sector. The new standards acknowledged that the entirety of the sector was not vulnerable to abuse but rather provided for the use of the risk-based approach for Anti-Money Laundering and Countering the Financing of Terrorism measures (AML/CFT). The implementation of the standards at the national level, however, have not always been risk-based, evident in the stifling of CSOs that has unduly disrupted their operations.

The Kenyan government in its efforts to combat money laundering and the financing of terrorism is party to treaties governing AML/CFT and is a member of international bodies governing money laundering and terrorist financing, such as the Financial Action Task Force (FATF) and its regional FATF-style body, the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). Kenya has also adopted various legal provisions in its jurisdiction that criminalizes money laundering and terrorist financing, including the Proceeds of Crime and Anti-Money Laundering Act 2009 (POCAMLA) and regulations issued thereunder, sector guidelines issued by supervisory bodies under the POCAMLA and other relevant criminal legislations such as the Anti-Corruption and Economic Crimes and Prevention of Terrorism Acts. These measures have however had unintended consequences that have resulted in operational barriers to the running of CSOs/NPOs.

1.1 Scope and Methodology

This study is a review of pertinent legislation on Anti-Money Laundering and Countering the financing of Terrorism (AML/CFT) which is applicable in Kenya, including specific provisions relating to the role of CSOs in the FATF Process. The aim is to identify any gaps in Kenya’s legislation and the implementation thereof that will need to be addressed by Kenya arising from the 2022 Mutual Evaluation Process.

1.2.1 Data Collection and Analysis

The study employed qualitative research method. All data was collected through desk review where relevant laws were reviewed. The laws included the following:

1. International and regional legislation governing the FATF process in Kenya.
2. Local legislation governing the FATF process in Kenya
3. Sector guidelines on Anti-Money Laundering and Countering Terrorism Financing (AML/CFT).
4. Related legislation (predicate offences)
5. Legislation governing the conduct of public officers.
6. Comparative analysis of AML/CFT guidelines governing the Non-Profit Organizations in similar jurisdictions.

The information collected was then analysed thematically and presented in the subsequent chapters of this report.

2 INTERNATIONAL AND REGIONAL LEGISLATIONS GOVERNING THE FATF PROCESS IN KENYA

2.1 International Guidelines

2.1.1 International Standards and Efforts

The global fight against money laundering and terrorist financing has gained momentum in recent years, largely due to the scale of the crimes associated with money laundering and the widespread social and economic harm they cause in the countries where such crime is rampant.

Due to the negative and far-reaching impact of money laundering on the financial system and of terrorism globally, countries have come together globally to ratify certain protocols and conventions which serve as cornerstones for a common approach to legislation and procedures to curb financial crimes globally. The standards and/or conventions comprise the following:

- Financial Action Task Force (FATF) recommendations – covering the offences of Money Laundering and Terrorist Financing.
- United Nations Conventions- covering Terrorism, Terrorist Financing, Drug Trafficking, Illicit Wildlife Trafficking, Corruption and other Organized Crimes.
- Guidelines issued by FATF style regional bodies and other institutions.

These standards criminalise Money Laundering and Terrorist Financing and recognise the link to related financial crimes including Trans-National Organized Crime. In this regard, countries are required to have appropriate legislation in place

with adequate safeguards to fight money laundering and terrorist financing, which must comply with the FATF recommendations and other protocols, which are summarized below.

2.1.1.1 Financial Action Task Force (FATF) Recommendations

The Financial Action Task Force (FATF) was set up following the G7 Summit in 1989¹ as the global standard setting body for Anti-money laundering compliance and Countering the Financing of Terrorism (AML/CFT), with a mandate of ensuring a co-ordinated global response to prevent organized crime, corruption and terrorism. In 2001, its mandate was expanded to include terrorism financing.²

FATF has come up with guidelines known as the FATF Recommendations³ which criminalize the offence of money laundering and terrorist financing and comprise various guidelines to prevent money laundering and terrorist financing.

The recommendations place critical importance on the role of banks and other financial institutions such as insurance companies, investments banks and fund managers, payment service providers; in the fight against ML/TF; and also extend the obligations to designated non-bank financial entities or professions (DNFBP's) such as casinos, real estate agencies, non-profit organizations which include CSOs, Non Governmental Organizations (NGOs) and Public Benefit Organizations (PBOs), lawyers, accountants, tax advisors etc who may deal with proceeds of crime or be otherwise exposed to money laundering and terrorist financing activity in the course of their business.

Under the FATF recommendations (the Recommendations), the key measures for fighting Money Laundering activity are:

¹ <https://www.fatf-gafi.org/about/historyofthefatf/>

² Anti terrorist financing efforts also include the proliferation of weapons of mass destruction, or proliferation financing

³ FATF recommendations 2012 updated March 2022

- i. Know Your Customer and Customer Due Diligence both at entry level and in on-going customer relationships (including establishment of beneficial owners for corporates), using a Risk based Approach⁴
- ii. Transaction Monitoring to detect suspicious activity
- iii. Watchlist Screening against FATF recommended sanctions lists – (UN, EU, HMT, OFAC)⁵ – to detect possible Terrorist and Terrorist Financing activity
- iv. Suspicious Activity Reporting by Reporting Institutions (Internal and Regulatory Reporting)⁶
- v. Training on AML Awareness for Reporting Institutions, Supervisory agencies, Law Enforcement and Judiciary
- vi. Record Keeping⁷
- vii. Sanctions/Penalties for Non-Compliance⁸

The FATF Recommendations were revised in March 2022 to incorporate amendments to Recommendation 24 and its Interpretive Note which require countries to prevent the misuse of legal persons for money laundering or terrorist financing and to ensure that there is adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons⁹.

4 The Risk based approach is explained in detail on page 2

5 The sanctions lists are data bases with information on known or suspect terrorists, politically exposed persons, and sanctioned countries which have been compiled by the UN, US Office of Foreign Assets Control (OFAC), Her Majesties Treasury (HMT- UK) and the European Union

6 Reporting Institutions are required under AML Legislation to report suspicious activity to the Financial Intelligence Unit and cash transactions over threshold limits usually set at \$10,000, as well as regulatory reports to the respective regulator as required by the regulatory guidelines. Additionally, internal suspicious activity reports e.g from bank branches, should be made to the AML Compliance Officer

7 The recommended archiving period for records under the FATF Recommendations is 7 years

8 The penalties are incorporated in AML Legislation and range from country sanctions, individual and corporate fines to prison terms and also include civil and criminal forfeiture of assets suspected to be proceeds of crime.

9 FATF Statement on R24 amendment March 2022 10 FATF Guidance on the risk based approach

a) Requirements for Country Compliance with the FATF Process

Countries globally are required to implement the measures in the FATF recommendations and UN conventions by incorporating them in their AML/CFT legislation and in specific legislation governing the various financial crimes indicated above.

The FATF process encompasses various actions that governments are required to take to comply with the FATF recommendations including the criminalization of money laundering and terrorist financing, as well as other predicate offences to money laundering such as corruption, illicit wildlife and drug trafficking etc. Countries are also required to set up institutional frameworks comprising Financial Intelligence Units, supervisory bodies, and reporting institutions to entrench country compliance in the various sectors designated by FATF as being high risk for money laundering and terrorist financing. Another critical component of the FATF process is law enforcement, which necessitates having the requisite laws in place, and relevant institutions and law enforcement agencies to enforce them. Countries are also expected to be part of regional FATF style bodies and international bodies such as the Egmont Group.¹⁰

b) Risk Based Approach under the FATF Recommendations

Under FATF Recommendation 1, countries are required to identify, assess, and understand the money laundering and terrorist financing risks for the country, and thereafter take action, including designating an authority (usually referred to as a Financial Intelligence Unit or Authority, or Financial Reporting Centre) or other mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, countries should apply a

¹⁰ <http://www.egmontgroup.org/> The Egmont group is the co-ordinating body for the international group of financial intelligence units (FIUs). It was formed to promote and enhance international cooperation in anti-money laundering and counter-terrorist financing efforts

risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified.

FATF has also issued various Guidance notes to assist designated institutions in the various sectors to comply with the recommendations and relevant legislation using a risk-based approach. These include guidance on Banking and Financial Services, New Payment Products and Services, Real Estate, Non-Profit Organizations, Legal Professionals, Insurance Sector and Casinos; among others¹⁰

c) Application to Non-Profit Organizations (NPOs) - FATF Recommendation 8

The FATF recognizes the vital role played by the NPO community in providing charitable services around the world, but notes however, that there are instances where CSOs can be used as conduits for money laundering and terrorism financing such as fundraising initiatives by CSOs which can be used to provide cover for the financing of terrorism. FATF recommendation 8 requires that the laws and regulations that govern CSOs or non-profit organizations be reviewed so that these organizations cannot be abused for the financing of terrorism.

FATF has adopted a functional definition of NPOs based on those activities and characteristics of an organization which put it at risk of terrorist abuse¹¹ Recommendation 8 is intended to apply only to those NPOs that pose the greatest risk of terrorist financing abuse; e.g, NPOs that control a significant portion of the financial resources of the sector or have a substantial share of the sector's international activities

¹¹ FATF defines an NPO as a legal person or arrangement or organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works".

d) Understanding the Risks: Risk based Approach for NPOs

Countries are required to take a targeted approach to implementing the measures called for in Recommendation 8, including oversight and regulatory mechanisms, based on an understanding of the diversity of the NPO sector and the terrorism risks faced by the domestic NPO sector. Not all NPOs are high risk, and some may represent little or no risk at all.

Recommendation 8 requires countries to undertake periodic domestic reviews of their entire NPO sector or have the capacity to obtain timely information on its activities, size and other relevant features, and review the adequacy of laws and regulations that relate to the portion of the NPO sector that can be abused for the financing of terrorism. In undertaking this review, countries should use all available sources of information in order to identify features and types of NPOs which, by virtue of their activities or characteristics, are at risk of being misused for terrorist financing.

In this regard, in June 2014, the FATF published a typologies report on the Risk of Terrorist Abuse in NonProfit Organizations¹² which analyzed 102 case studies submitted by 14 countries from across the globe. The Report gives an overview of the suspicious activity indicators for terrorist financing activity involving NPOs and highlights various risk factors which make NPOs vulnerable to terrorist risks.

Some of these factors are:

- a) The public trust and confidence they enjoy.
- b) Their reliance on goodwill and voluntary support, hence, may not be in a position to turn down donations.
- c) Their diversity, global presence and broad range of activities reaching all parts of society,
- d) Their ease of registration unlike corporate entities, which makes them attractive to criminals wishing to use them as fronts for terrorist activities.

¹² FATF Report risk-Terrorist-abuse-non-profits.html

- e) The complex financial operations they engage in, which often involve multiple donors.
- f) Inconsistent income and expenditure streams, making it difficult to identify suspicious transactions.
- g) Wide branch networks which make it difficult to monitor activity especially in conflict areas where there is little infrastructure, and frequent movement of money, goods and people to these areas.

The Report concluded that NPOs most at risk of abuse for terrorist financing are engaged in “service activities”, such as programs focused on providing housing, social services, education, or health care¹³.

In recognition of the need to mitigate these risks, in June 2015, FATF issued a Best Practices Paper on Combatting the Abuse of Non-Profit Organizations for Terrorist Financing,¹⁴ which sets out various best practice measures aimed at enabling NPOs to safeguard against the risk of terrorist financing when carrying out their operations and preventing the misuse of NPOs for the financing of terrorism¹⁵. These measures require NPOs to put in place good governance and strong financial management processes, including having robust internal and financial controls and risk management procedures.

Under the Paper, robust internal governance practices for NPOs are grouped into the following four categories:

1. Organizational integrity: NPOs should be registered in accordance with applicable laws and have appropriate governing documents e.g. articles of incorporation, a constitution, or bye laws which outline the objectives of the NPO, and provide for a governing board and Senior/Executive Management who ensure the establishment of appropriate

¹³ A detailed summary of the risks and suspicious activity indicators is appended hereto under Appendix B

¹⁴ FATF BPP-combating-abuse-non-profit-organizations.pdf

¹⁵ Though NPOs may face other risks relating to money laundering, fraud, corruption, and tax evasion, Recommendation 8 is only intended to address the risk of terrorist abuse; however risk mitigation measures to protect against other illicit finance threats, including money laundering, can be useful in mitigating terrorist financing risk- Please use font 8 for footnoting if possible,

internal policies and processes and play an oversight role to ensure the NPO complies with local laws and maintains a strong financial foundation.

2. Partner relationships: NPOs should carry out appropriate due diligence on those individuals and organizations that the NPO receives donations from, gives money to or works with closely before entering into relationships or agreements, for example, through appropriate selection criteria, verification of publicly available information, including domestic and UN sanctions lists, written agreements outlining the expectations and responsibilities of both parties, including provisions on the application of funds regular reporting, audits and on-site visits.
3. Financial accountability and transparency: Maintenance of strong financial controls mechanisms and procedures to prevent financial abuse and misuse of resources and donor funding e.g., putting in place an annual budget and processes to monitor the use of funds, adequate financial records of income, expenses, and all financial transactions, have clear programme goals and ensure that funds are applied as intended. Information about the activities carried out should be publicly available. They should also determine the sources of their income and establish criteria to determine whether donations should be accepted or declined.
4. Programme planning and monitoring: Establishment of internal controls and monitoring systems to ensure that funds and services are being used as intended, e.g. through clear statements on the purpose and scope of their activities, clearly identified beneficiary groups, maintenance of detailed budgets for each project with regular reports on related purchases and expenses. NPOs should also consider the risks of terrorist financing and put in place risk mitigation measures based on the risks, before undertaking projects that have processes to account for funds and services delivered and to trace funds, services, and equipment. Financial transactions

should be executed through the banking system, and where possible to maintain transparency of funds. Project performance should be monitored on a regular basis by verifying the existence of beneficiaries and ensuring the receipt of funds

e) Role of NPO Regulators

The NPO Regulators play a vital role in the monitoring of compliance by NPOs with measures aimed at reducing the terrorist financing and money laundering risks faced and are expected to create awareness within the NPO sector of the terrorist financing and money laundering risks NPOs face and implement a risk-based approach in dealing with NPOs.

2.1.1.2 UN Conventions on Terrorism, Terrorist Financing and other Financial Crimes

Various Resolutions have been passed by the UN criminalising various financial crimes as detailed below¹⁶:

1. The Vienna Convention, 1988 – against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
2. The Palermo Convention, 2000 - against Money Laundering and Transnational Organized Crime.
3. UN Convention Against Corruption (UNCAC) 2003
4. International Convention for the Suppression of the Financing of Terrorism (the SFT Convention, 1999)
5. Various UN Security Council Resolutions for the prevention of terrorism and terrorist financing, and imposition of targeted sanctions including the freezing of the assets of suspect/

¹⁶ Overview_of_UN_conventions_2013.pdf

known terrorists:

- 1267 (1999) and its successors 1363, 1390, 1452, and 1455
- 1373 (2001)
- 2178 (2014)
- 2462 (2019)

2.2 REGIONAL GUIDELINES/INITIATIVES

2.2.1 FATF Style Bodies

Regional FATF style bodies have been set up to oversee compliance with the FATF recommendations, by the jurisdictions in the region. These include the East and Southern African Anti-Money Laundering Group (ESAAMLG)¹⁷ under which Kenya falls, GIABA (Inter Governmental Action Group against Money Laundering in West Africa),¹⁸ MENAFATF¹⁹ for the Middle East and North African region and the Asia Pacific Group.²¹ The United States, United Kingdom and specific European countries also have their own regulatory bodies that oversee compliance with the FATF recommendations²⁰.

2.2.1.1. Eastern and Southern Anti-Money Laundering Group (ESAAMLG)

ESAAMLG ²³ is the regional oversight body for Eastern and Southern Africa and has the mandate to ensure that countries within its jurisdiction implement measures to combat money laundering, terrorist and proliferation financing. As part of its compliance oversight function, ESAAMLG carries out Mutual

¹⁷www.esaamlg.org

¹⁸ www.giaba.org

¹⁹ www.menafatf.org ²¹ www.apgml.org

²⁰ The US Department of Treasury and the Office of Foreign Assets Control (OFAC), Her Majesties Treasury (UK). The European Union also provides guidance to EU countries on compliance with international AML/CFT requirements ²³ <https://www.esaamlg.org/index.php/fatf>

Evaluation Assessments of its members to assess the compliance levels with FATF standards, and issues Mutual Assessment reports as well as Follow up Progress reports for follow up evaluations²¹.

ESAAMLG also carries out period assessment of the ML/TF risks and crime typologies, methods and trends in the region and has come up with detailed Typologies Reports on various predicate offences in East and Southern Africa²²

2.2.1.2 East African Community (EAC)

The East African Community (EAC) plays a pivotal role in ensuring that East African countries comply with various international conventions and protocols, including those governing the combatting of money laundering and terrorist financing. One of the EAC's priorities for the period 2022 – 2026 is strengthening regional peace, security, and good governance within its partner states²³, which are Kenya, Tanzania, Uganda, Rwanda, Burundi and South Sudan.

EAC's Anti-Money Laundering and Counter Financing of Terrorism initiatives are driven through the Peace and Security Sector whose main objective is to foster and maintain a conducive atmosphere that is a prerequisite to social and economic development through co-operation and consultations on issues pertaining to peace and security of the partner States²⁴.

Article 124 of the Treaty for the Establishment of the East African Community²⁵ recognizes the need for peace and security within the East African Partner States. In this regard, the EAC has formulated a Regional Strategy with framework and structures that address issues of Peace and Security and a practical implementation plan to anchor Peace and Security Sector activities, through interstate co-operation in addressing regional peace and security threats. The strategy covers collaboration on cross border crimes, auto

21A detailed overview of ESAAMLG's functions and Kenya's compliance status under the Mutual Evaluation process is appended hereto.

22 https://www.esaamlg.org/index.php/methods_trends

23 <https://www.eac.int/>

24 <https://www.eac.int/security>

25 The Treaty for the Establishment of the East Africa Community 2006 /1999

theft, drug trafficking, terrorism, money laundering and other crimes.

A Sectoral Council on Interstate Security²⁶ was also established to oversee the implementation of the regional strategy and enhance co-operation in the areas of co-operation in interstate security. Among the initiatives undertaken towards this end include the implementation of the UN Protocols on Illicit Drug Trafficking, Small Arms and Light weapons management programs, and co-operation in police matters. In addition, the EAC is in the process of developing comprehensive Anti-Money Laundering and Combating Terrorist Financing Policy and Procedures and guidelines which will guide the EAC in the identification and prevention of institutional money laundering and terrorist financing in East Africa, in line with the FATF Recommendations as implemented by the Eastern and Southern Anti-money Laundering Group (ESAAMLG). The policy and procedures will enable the EAC oversee compliance by its members and relevant institutions with their domestic AM/CFT legislation and international standards and obligations for AML/CFT. It is envisaged that the guidelines issued thereunder will be used as a standard handbook by these member countries to confirm compliance with the law, and by all stakeholders in the AML/CFT Compliance process.

2.2.1.3 Common Market for Eastern and Southern Arica (COMESA)

COMESA has also implemented a comprehensive AML/CFT programme to guide it's member states in complying with the FATF recommendations. The AML/CFT Initiative is spearheaded through COMESA's Maritime Security (MASE) programme which is funded by the European Union³⁰.

²⁶ For example, the EAC has initiated joint training programs for law enforcement agencies and other key stakeholders, social interaction, enhanced border surveillance and joint operations, and collective use of scientific crime management assets in order to enhance the fight against criminals and deny them safe havens in the EAC region ³⁰ The COMESA Maritime-Security-Programme Also see The-Maritime-Security-Programme

The program seeks to strengthen the capacity of the Eastern and Southern Africa and Indian Ocean (ESAIO) region to disrupt financial networks of pirates and their financiers, and address the economic effects of transnational crime; and extends to targeting any form of illicit financial flows through the implementation of an anti-money laundering program in line with Financial Action Task Force (FATF) international standards. The AML/CFT program aims to strengthen the entire anti-money laundering chain, from reporting entities, Financial Intelligence Units (FIUs), Law Enforcement Agencies (LEAs) and including senior government officials (policy makers). Both COMESA and EAC's initiatives complement the oversight role played by ESAAMLG for the region.

3

LOCAL LEGISLATION GOVERNING THE FATF PROCESS IN KENYA

3.1 The Proceeds of Crime and Money Laundering Act 2009 (POCAMLA) rev 2019

The POCAMLA²⁷ was enacted in 2009 and revised in 2012, 2017, 2018, 2019 and 2021²⁸. The Act criminalizes money laundering and defines proceeds of crime to include any Property or economic benefits a person would gain, directly or indirectly; as a result of an offence committed in Kenya or anywhere else, irrespective of whether committed before or after the commencement of the Act. The Act provides for various money laundering offences under Sections 3-12 including:

Acquiring, possession, and use of criminal proceeds.

- Concealing or transferring criminal proceeds to avoid prosecution.
- Assisting another to retain the proceeds of crime.
- Failure to disclose knowledge or suspicion of money laundering (to report suspicious activity)
- Tipping off

The Act provided for the establishment of the Financial Reporting Centre (FRC) and an AML Advisory Board and under sections 22 and 50 respectively. The FRC which was operationalized in 2012 provides oversight over Kenya's compliance with the FATF Recommendations and international protocols relating to Anti-money Laundering and Counter Financing of Terrorism, and reports to the AML Advisory Board.

²⁷ [proceeds-of-crime-and-anti-money-laundering-act-2009-revised-2016.html](#)

²⁸ [TheProceedofCrimeandAnti-MoneyLaundering_Amendment_Act_2021.pdf](#)

The Act provides for compliance by banks and other financial service providers which are referred to as Reporting Institutions (RIs) and include Banks, Insurance Companies, Micro Finance Institutions, Investment Banks, Forex Bureaus, Savings and Credit Co-operative Societies (Saccos), Money Transfer Agents, Electronic payments providers, etc.

The POCAMLA sets out various measures for combating ML, which are made mandatory for all financial service providers including Know Your Customer (KYC) and Customer Due Diligence (CDD), Transaction Monitoring, Sanction Screening, Suspicious Activity reporting, Record keeping etc.). The compliance requirements are also extended to designated non- bank financial entities or professions such as casinos, real estate agencies and other high value asset dealers, non-governmental organizations (NGOs), investment management firms, lawyers, accountants as these institutions may deal with proceeds of crime in the course of their business²⁹.

Under the POCAMLA (Schedule 1)³⁰, the Act also designates the regulators of these RIs as Supervisory Bodies (SBs); which include the Central Bank of Kenya, Insurance Regulatory Authority, Capital Markets Authority, NGO Co-ordination Board, Institute of Certified Public Accountants, Estate Agents Management Board, the Retirement Benefits Authority, the Kenya Revenue Authority, Betting Control and Licensing Board, the Sacco Regulatory Authority and the Law Society of Kenya. These SBs are tasked with the responsibility of ensuring compliance with the Act, by RIs falling under them.

Under Sections 44 – 46 of the Proceeds of Crime and Anti-money Laundering Act, Reporting Institutions have the following obligations:

²⁹ See definitions section "designated non-financial businesses or professions as amended by POCAMLA Amendment Act 2021 to include legal practitioners and savings and credit co-operative societies (Saccos)

³⁰ As amended by POCAMLA Amendment Act 2021 to include legal practitioners and savings and credit co-operative societies (Saccos)

- a) to monitor and report suspected money laundering activity.
- b) to verify customer identity.
- c) to establish and maintain customer records

The above provisions replicate the FATF standards and are the primary means of detecting and preventing money laundering and terrorist financing activity.

The Act has been revised over the years as follows:

- a) Proceeds of Crime and Anti-Money Laundering Act (Amendment) Act 2012 which revised the definition of monetary instruments and extended the definition of proceeds of crime to include any benefit derived from the commission of an offence.
- a) Proceeds of Crime and Anti-Money Laundering Act (Amendment) Act 2017 - which enhanced the Financial Reporting Centre's powers to impose civil monetary penalties and to take administrative action for non-compliance with the legislation. It also provided for the appointment of a substantive Director General, and expanded the staffing of the FRC to provide for more senior and middle level staff in all the departments including Compliance, Financial Intelligence and Analysis, ICT and HR.
- b) POCAMLA (Amendment Act) 2018 and 2019 which consolidated previous amendments
- c) Proceeds of Crime and Anti-Money Laundering Act (Amendment) Act 2021 which designated legal practitioners and savings and credit co-operative societies as reporting institutions. The Bill also designated the Law Society of Kenya and the Sacco Regulatory Authority as Supervisory Bodies for lawyers and Saccos' respectively.

3.2 The Proceeds of Crime and Money Laundering Regulations 2013 rev 2018

The POCAMLA Regulations were enacted in 2013³¹ and revised in 2018 to include Terrorist Financing Risks.³²The POCAMLA regulations have implemented the broader provisions of the POCAMLA in this regard by setting forth various requirements for customer due diligence under Part IV (Due Diligence Requirements) and Part V (Suspicious Activity Reporting).

Part IV (Reg 12-31) deals with Customer Due diligence (verification of a customer's identity) and the information institutions must obtain from natural persons, legal entities, partnerships, trusts etc. in order to verify their identity/legal status, residence and nature of business etc. The section also prohibits banks from dealings with shell companies/banks. Additionally, Regulation 11 prohibits persons from holding anonymous or fictitious accounts.

RIs are expected to carry out enhanced due diligence on high-risk customers, establish the ultimate beneficiaries of a transaction and the beneficial owners, in the case of a company. These provisions are also extended to life insurance businesses, politically exposed persons such as politicians and other public servants who are considered high risk by virtue of the positions they hold.

Reporting Institutions are also expected to carry out ongoing monitoring of transactions in their customers' accounts for the purpose of identifying any suspicious or unusual activity which could be linked to money laundering. RIs and SBs also have a statutory obligation to report suspicious activity under the Act to the Financial Crime Reporting Centre (FRC) ³³and RIs must also report all cash transactions over USD 10,000 (Ksh 1 million) to the Central Bank of Kenya. In this regard, the FRC has made available various templates for suspicious and cash transaction reporting for use by RIs³⁴.

31 [proceeds-of-crime-and-anti-money-laundering-regulations-2013.html](#)

32 [proceeds-of-crime-and-anti-money-laundering-Amendment-regulations-2018](#)

33 section 36

34 <http://www.frc.go.ke/downloads/category/3-templates-and-guides.html>

Amendments to POCAMLA Regulations (2013)

- The regulations were amended in 2018 to extend ML preventive measures to include terrorism financing, cybercrime and non-face-to-face business relationships (new technological innovations)³⁵
- Further amendments were made in 2019 to provide for a Committee to administer the Criminal Assets Recovery Fund³⁶.

3.2.1 Application to Non-Profit Organizations: Non-Governmental Organizations (NGOs), Civil Society Organizations and other NPOs

Under the POCAMLA, Non-Governmental Organizations are included in the list of designated non-financial business and professions (DNFBP's) designated as Reporting Institutions, and hence are required to comply with the due diligence and statutory reporting requirements under the Act and regulations including transaction monitoring and suspicious activity reporting. However, NGOs are yet to be fully brought on board as compliant institutions under the Act, though there are various government and donor funded initiatives to provide capacity building and awareness on their role and responsibilities under the Act, through training and sensitization campaigns. There are however no specific AML/CFT sector guidelines or regulations applicable to the NGO sector.

The NGO Co-ordination Board is designated as a supervisory body under Schedule 1 of POCAMLA.

Non-Profit Organizations currently fall under the NGO Co-ordination Act 1990³⁷ and the Public Benefit Organizations Act 2013 (PBO Act)³⁸ which is intended to create a new legal, regulatory, and institutional framework for non-profit organizations doing

35 http://kenyalaw.org/ki/fileadmin/pdfdownloads/LegalNotices/2018/LN142_2018.pdf

36 POCAMLA (Criminal Assets Recovery Fund) (Administration) Regulations, 2019

37 Non-GovernmentalOrganizationsCo-ordinationAct No19of1990pdf

38 PublicBenefitsOrganizationNo18of2013pdf

public benefit work in Kenya. The PBO Act establishes a Public Benefits Organization Regulatory Authority which will take over the functions of the NGO Coordination Board.

The PBO Act is intended to repeal the NGO Co-ordination Act 1990 and was passed by Parliament in December 2012 and gazetted in January 2013, however it is yet to be operationalized pending the setting of a commencement date by the Kenya Government. The NGO Act will therefore remain in effect until the PBO Act's official commencement.

Section 2 of the NGO Act, defines an “NGO” as “a private voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare, development, charity, or research in the areas inclusive of – but not restricted to – health, relief, agriculture, education, industry, and the supply of amenities and services”

The PBO Act defines a PBO as a voluntary membership or non-membership group of individuals or organizations, which is autonomous, non-partisan, and non-profit. It is locally, nationally, or internationally organized and engages in public benefit activities. The Act further defines an international NGO as an NGO originally registered outside of Kenya which operates within Kenya, under a certificate of registration issued under Section 10 of the Act.

The Act defines a “public benefit activity” as one that supports or promotes the public benefit by: enhancing or promoting legitimate economic, environmental, social, or cultural development; protecting the environment; or lobbying or advocating on issues of general public interest or the well-being of a group of individuals or organizations (PBO Act Sections 5(1) and 2(1))³⁹ PBOs do not include:

- Trade unions
- Public bodies Political parties

³⁹ Also see nonprofit-law-kenya

- Religious organizations
- Societies
- Co-operative societies
- Sacco societies
- Micro-finance institutions
- Community-based organizations whose objectives include the direct benefit of its members

3.3 Prevention of Terrorism Act 2012 and Regulations 2013 (POTA)

The Prevention of Terrorism Act⁴⁰ and Regulations (11-12)⁴¹ also provide for the screening of transactions to detect possible terrorist activity and the freezing of suspects bank accounts. This is in keeping with the various UN protocols issued in this regard⁴² There is also a provision for financial institutions and entities holding a suspect's property/accounts to make suspicious activity reports to the FRC in compliance with section 44 of the POCAMLA.

3.4 Mutual Legal Assistance Act, 2011

The Act⁴³ provides for mutual legal assistance to be given and received by Kenya by other countries in criminal investigations, prosecutions and judicial proceedings, and for connected purposes. According to the Act, requests for mutual legal assistance in criminal matters include, among others, identifying, freezing and tracing proceeds of crime. Where criminal proceedings are contemplated or pending in Kenya and a requesting state against the same person in respect of the same conduct, the states shall consider the appropriate venue for the proceedings to be taken in the interests of the proper administration of justice. In considering the appropriate venue for proceedings, account shall be taken of confiscation and proceeds of crime.

⁴⁰ [prevention-of-terrorism-act-2012.html](#)

⁴¹ [prevention-of-terrorism-regulations-2013.html](#)

⁴² [United Nations 1267 List \(1999\) unsc-1267-list.html](#)

[United Nations Security Council Resolution 1373 \(2001\) unsc-1373-list.html](#)

⁴³ [MutualLegalAssistanceAct36of2011.pdf](#) Also see the [Foreign Judgments Reciprocal Enforcement Act Cap43.pdf](#); [FugitiveOffendersPursuitActCap87.pdf](#)

4

SECTOR AML/CFT GUIDELINES IN KENYA

4.1 Sector Guidelines Issued By Selected Supervisory Authorities in Kenya

In order to enforce compliance with the Act, supervisory bodies have issued various guidelines on AML/CFT compliance; notably, the Central Bank of Kenya, Insurance Regulatory Authority, the Capital Markets Authority, the Kenya Revenue Authority among others.

1. Central Bank of Kenya (CBK)

CBK Guidelines on Anti-Money Laundering and Combating the Financing of Terrorism - CBK/PG/08⁴⁴

The guidelines require institutions to undertake a Money Laundering and Financing of Terrorism Risk Assessment to enable institutions to assess, monitor, manage and mitigate the risks associated with money laundering. These guidelines apply to banks, deposit taking microfinance institutions, mobile money providers, electronic payment providers including money transfer agents and digital credit providers, however they do not apply to non-deposit taking credit institutions which do not fall under the CBK supervision.⁴⁵ The guidelines also require that when a business relationship is being established, Customer Due Diligence (CDD) measures are to be undertaken by institutions with the following objectives:

- a) To identify the customer and verify that customer's identity using reliable, independent source documents, data or information.

⁴⁴ CBK Prudential Guidelines 2008 (Amended 2016)

⁴⁵ Digital credit providers are included under CBK supervision under the CBK Digital Credit Providers Regulations, 2021.

- b) To ascertain and understand the ownership and control structure of legal persons and legal arrangements by identifying and verifying the identity of the beneficial owners using reasonable measures.
- c) To ascertain and understand the nature of business that the customer expects to conduct with the institution concerned to determine what might be expected as the customer's normal activity levels in order to judge whether a transaction is or is not suspicious.
- d) No institution shall open and/or maintain anonymous accounts or accounts in fictitious names. All numbered accounts should undergo the same identification and verification process as regular accounts.
- e) Enhanced due diligence measures shall be applied to persons and entities that present a higher risk to the institution.
- f) Conduct ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including where necessary the source of funds.

CBK Guidance Note: Conducting Money Laundering/ Terrorism Financing Risk Assessment, 2018⁴⁶

The purpose of this Guidance Note is to ensure an institution's ML/TF risk assessment meets the following minimum requirements:

- Identifies and assesses the money laundering and terrorism financing risks that may be associated with the institution's unique combination of products and services, customers, geographic locations, delivery channels and other factors.
- Involves analysis of all available data to assess risks identified.

⁴⁶ Guidance Note on Money Laundering Risk Assessment

- Evaluates the institution's AML/CFT compliance program.
- Establishes the residual risk for the risk categories identified.
- Uses appropriate weights and scoring.
- Should be specific to the institution and commensurate with the nature and size of the bank's business.
- The risk assessment must be documented.
- Be subjected to internal review and approval by the board and management.
- The methodology followed to undertake the assessment be enumerated in a policy document.
- It is kept up to date i.e., CBK Prudential Guidelines requires institutions to update their risk assessment policies/programs at least every two years or after the occurrence of a significant event whichever comes earlier.

CBK Banking Circular No. 1 of 2016-Additional Guidelines on Large Cash Transactions⁴⁷

The circular requires institutions to obtain the following additional information when handling large cash transactions, in order to establish both the source and destination of the funds i.e., cash transactions equivalent to or exceeding \$10,000 (Ksh 1,000,000).

The source of the money being deposited or withdrawn over the counter

- Why the large cash deposit or withdrawal is necessary.
- Why the cash deposit or withdrawal cannot be made through electronic means
- Where the money will be taken right from the bank premises.
- What the money is going to be used for.
- The full identity of the direct or indirect beneficiaries of the money.

⁴⁷ Banking Circular No 1 of 2016 - Additional Guidelines on Large Cash Transactions

Where a customer is unable to provide this information or the facts given fail to support the rationale behind the transaction, the institution should immediately file a suspicious transaction report with the Financial Reporting Centre.

The National Payment System (Anti-Money Laundering Regulation for the Provision of Mobile Payment Services) Regulations, 2013⁴⁸

A Mobile Payment Service Provider or its agent shall meet the following requirements to reduce the risk of mobile payment products being used for money laundering or terrorist financing:

- a) Set transaction or payment account limits for monitoring purposes in order to minimize risk. Accounts exceeding a daily turnover of Ksh 100,000 and any personal account transacting more than Ksh 300,000 per week should be monitored.
- b) Take reasonable measures to satisfy itself as to the true identity of any customers by obtaining documents such as a birth certificate, passport, national identity card, a driver's license or other official means of identification as may be set forth in other regulation.
- c) Mobile payment accounts shall be opened using valid identification documents only. Multiple mobile payment accounts held by a single account holder present a higher risk and should be linked and keep records of the same.

These regulations apply to mobile network providers, banks and all financial services institutions, including money transfer agents, using mobile money platforms to offer financial services⁴⁹.

CBK Banking Circular No. 7 of 2012-Suspicious Transaction Reports⁵⁰

The purpose of this circular is to require all commercial banks, non-bank financial institutions and mortgage finance companies to forward all Suspicious Transaction Reports to the Financial Reporting Centre established under POCAMLA.

48 NPS Mobile Money AML Regulations.

49 Also see The-Money-Remittance-Regulations-2013.pdf

50 Banking Circular No 8 of 2012 - Suspicious Transaction Reports (STRs) 55 Banking Circular No 7 of 2012 - Suspicious Transaction Reports

CBK Banking Circular No. 8 of 2012-Suspicious Transaction Reports⁵⁵

The purpose of this circular is to require all Forex Bureaus to forward all Suspicious Transaction Reports to the Financial Reporting Centre established under POCAMLA.

CBK Banking Circular November 2017 – PIN Requirement for opening bank accounts.

This directive requires banks to obtain a Pin Certificate from tax paying customers when opening a bank account. The directive came into effect on 19th January 2016.

Note – The accounts of NGOs and CSOs are required to comply with the above guidelines where applicable and will be subject to scrutiny by banks and the CBK/FRC/KRA to ensure compliance

2. Kenya Revenue Authority (KRA)

Tax Procedures Act 2015 - PIN requirement for Bank Accounts and other legal Transactions⁵¹

KRA is now able to monitor tax payers bank accounts for tax compliance purposes, without a court order following the directive by CBK requiring all banks to ask for Personal Identification Numbers (KRA PIN) certificate when on boarding a customer. The directive was issued to reinforce the Tax Procedures Act of Kenya First Schedule which sets out the transactions for which a PIN is required pursuant to Section 12 of the Act. This will enable KRA to view tax payers bank account(s) from one platform and compare the same with the returns received. By the same token, a PIN is required for other transactions involving the legal profession as follows:

- a) Registration of titles and stamping of instruments.
- b) Registration of business names
- c) Registration of companies.

⁵¹ <https://eregulations.invest.go.ke/media/taxproceduresact29of2015.pdf>

- d) All contracts for the supply of goods and services to Government Ministries and public bodies.
- e) Opening accounts with Financial Institutions and Investment Banks.

Note -The income of certain Not-for-Profit Organizations that carry out specific types of activities is exempt from corporate tax. Unrelated business income is subject to tax under certain circumstances.

Under the PBO Act Second Schedule Para 1(a) PBOs are exempt from income tax in the following circumstances:

- a) income received from membership subscriptions and any donations or grants,
- b) income-producing activities where the income is wholly used to support the public benefit purposes for which the organization was established;
- c) tax on interest and dividends on investments and gains earned on assets or the sale of assets;
- d) stamp duty; and court fees

Due to these tax exemptions, NPOs will be attractive to criminals wishing to launder criminal proceeds by engaging in legitimate income generating activities which will be exempt from tax. The tax laws however, confer only limited tax benefits on corporate donors and on individual donors.

3. Capital Markets Authority

The Capital Markets Authority Guidelines on the Prevention of Money Laundering and Terrorism Financing⁵² in the Capital Markets provides that a market intermediary⁵³ shall not engage in any business transactions with a client who fails to provide

⁵² CMA Guidelines on the Prevention of Money Laundering in the Capital Markets
⁵³ A market intermediary means a person approved or licensed to transact business by the Capital Markets Authority. ⁵⁹ <https://www.nse.co.ke/next-document-library/rules-and-regulations.html?download=8119%3Adraft-final-nse-derivativehttps://www.nse.co.ke/next-document-library/rules-and-regulations.html?download=8119%3Adraft-final-nse-derivative-rulesrules>

evidence of their identity. A market intermediary shall not keep anonymous accounts or accounts in fictitious names of their clients. A collective investment scheme manager/market intermediary should verify the identity of a customer using reliable and independent sources, retain copies of all identity reference documents and conduct ongoing due diligence and scrutiny of customers' identity and their investment objectives throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the market intermediary's knowledge of the customer, its business and its risk profile.

If a customer fails these checks the market intermediary shall terminate such a relationship and consider lodging a suspicious transaction report with Financial Reporting Centre.

The Guidelines further provides that an Enhanced Due Diligence (EDD) should be carried out on transactions outside the ordinary course of business, or where there are substantial or material changes in the business relationship. In this regard, the Nairobi Stock Exchange has also issued rules⁵⁹ requiring its members/market intermediaries to comply with POCAMLA for Stock Exchange transactions.

4. Insurance Regulatory Authority (IRA)

The IRA Guidelines⁵⁴ for the Insurance Industry on implementation of the Proceeds of Crime and Anti-Money Laundering Act provides that:

- a) Insurance institutions should conduct due diligence of their customers before and after entering into business relationships and create and maintain a risk profile of the customer. They are also required to:
- b) Assess the characteristics of the required product, the purpose and nature of the proposed business relationship and any other relevant factors and decide

⁵⁴ [prudential-guidelines/guidelines-to-insurers?download=107:anti-money-laundering-guidelines](#)

whether or not to accept the business relationship, prior to the establishment of the relationship.

- c) Take reasonable steps to satisfy themselves as to the true identity of their customers or beneficiaries.
- d) If unable to satisfy itself on the identity of the customer or beneficiary, not to commence the business relationship or perform the transaction and should consider making a suspicious transaction report to the FRC as required under the Act.
- e) Pay special attention to all complex, unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose and should consider making a suspicious transaction report
- f) Not to keep anonymous accounts or accounts in obviously fictitious names.

The Board of directors are required to formulate policies on the information required from customers that will take into consideration the risk profile of customers.

5. Institute of Certified Public Accountants Kenya (ICPAK) and the Retirement Benefits Authority (RBA)

The ICPAK has issued AML Guidelines for Accountants in Kenya, which were launched in October 2020 and are under implementation⁵⁵. The Guidelines aim to facilitate compliance by ICPAK members with the POCAMLA and outlines various measures such as client due diligence, transparency in preparation of accounts and audits, suspicious activity reporting etc.

Pursuant to Section 55(3) of the Retirement Benefits Act, the Retirement Benefits Authority has drafted the Retirement Benefits (Anti- Money Laundering and Combating Financing of Terrorism) Guidelines⁵⁶ which require compliance by Investment and Asset/

⁵⁵ https://www.icpak.com/wp-content/uploads/2020/10/AML-Guidelines-for-Accountants-in-Kenya_Final.pdf

⁵⁶ <https://www.rba.go.ke/download/draft-anti-money-laundering-and-combating->

Fund managers with due diligence and other requirements under POCAMLA. The guidelines are currently under stakeholder participation stage. Both guidelines have similar provisions to the IRA and CMA guidelines.

4.2 SUPERVISORY AUTHORITIES THAT ARE YET TO ISSUE SECTOR AML GUIDELINES⁵⁷

1. NGOs Co-ordination Board – (NGOCB)

The NGOCB falls under the Ministry of Interior and Co-ordination of National Government and was designated as a supervisory authority under the POCAMLA, since the inception of the Act in 2009, however, is yet to issue sector guidelines to guide their members on compliance with the Act. The Board has however taken steps to sensitize its members on the compliance requirements under the POCAMLA by making a copy of the Act available on its website (but not the POCAMLA regulations), together with other relevant legislation such as the Prevention of Terrorism Act, the Public Finance Act and the Public Procurement and Assets Disposal Act, though there is no explanatory statement as to the designation of NGOs as reporting institution under POCAMLA or the need for them to comply with the requirements under the Act. Additionally, the NGO Post Registration guidelines issued in 2019⁵⁸ make no mention of NGOs compliance obligations under the POCAMLA. The NGOCB, however, issued a circular to its members in October 2021 requiring them to ensure that they only use regulated financial service providers for their financial transactions.⁵⁹

financing-of-terrorism/

⁵⁷ Under the FATF Guidance for Mutual Evaluations countries are allowed to adopt a risk based approach to compliance by the various sectors through a phased process and progress is monitored through the Mutual Evaluation assessments. Of priority are financial institutions which are at high risk of abuse for money laundering and terrorist financing. Under FATF Recommendation 8, not all NPOs are considered high risk. The FATF Best practices paper recommends that an understanding of the NPO risks is necessary for the 4th round of Evaluations FATF BPP-combating-abuse-non-profit-organizations.pdf pg 11 Also see Esaamlg MutualEvaluations

⁵⁸ NGOs-Comprehensive-Guidance-Booklet-Post-Registration-Services.pdf

⁵⁹ NGO Guidance on Use of Regulated Financial Services

2. Estate Agent Registration Board (EARB)

The EARB⁶⁰ was also designated as a supervisory body under the POCAMLA, since the inception of the Act in 2009, however, the Board is yet to issue sector guidelines to guide its members on compliance with the Act, or otherwise to sensitize members on the compliance requirements under the POCAMLA, e.g, by making a copy of the Act on its website with an explanatory statement.

3. The Betting Control and Licensing Board (BCLB)

The BCLB⁶¹ is designated as a supervisory body under the POCAMLA, however, the Board is yet to issue sector guidelines to guide its members on compliance with the Act, or otherwise to sensitize members on the compliance requirements under the POCAMLA, e.g, by making a copy of the Act on its website with an explanatory statement.

4. Savings and Credit Co-operative Societies (Saccos) Regulatory Authority (SASRA)⁶²

The POCAMLA was recently amended via the POCAMLA Amendment Act 2021 to designate Saccos' as reporting institutions within the meaning of financial institutions under POCAMLA⁶³. SASRA was also included in the list of the supervisory bodies under the First Schedule. This means that deposit taking Saccos' will be subject to comply with the various provisions concerning customer due diligence, reporting of suspicious activity and cash reporting of transactions over USD 10,000 as outlined above. The SASRA will also need to come up with sector guidelines to guide the sector in compliance with the law, which should also include non-deposit taking co-operative societies

⁶⁰ <https://estateagentsboard.or.ke/>

⁶¹ <https://bclb.go.ke/>

⁶² <https://www.sasra.go.ke/>

⁶³ The Proceeds of Crime and Anti-Money Laundering Amendment_Bill_2021.pdf

5. Law Society of Kenya (LSK)

Lawyers were designated as reporting institutions within the meaning of designated non-financial businesses and professionals, under the POCAMLA Amendment Act 2021.

The LSK was also included in the list of the supervisory bodies under the First Schedule. This means that legal practitioners will be subject to comply with the various provisions of POCAMLA as outlined above including the duty to report suspicious activity; however, the amended Act did not repeal Section 18 of POCAMLA 2009 which had exempted the advocate client relationship from the application of section 17 which removes all secrecy obligations in connection with the duty to report suspicious activity.

The LSK Code of Conduct 2017⁶⁴ provides for lawyers to comply with the AML Act in the operation of their client accounts and provides for instances where the Advocate Client Privilege does not apply. In 2019, the LSK also commissioned the drafting of self-regulatory AML/CFT guidelines for the Legal Profession in Kenya⁶⁵, which are available on the LSK website. The guidelines went through a stakeholder participation exercise in 2019 and 2020 but are yet to be implemented by the LSK.

⁶⁴ Lskcodeofstandardsprofessionalpracticeandethicalconductfinalversion.Pdf (section 117-120)

⁶⁵ LSK AML-CFT Guidelines FINAL Draft

5 RELATED LEGISLATION (PREDICATE OFFENCES)

The legislation highlighted in this section supports the law enforcement process under POCAMLA and criminalizes the various predicate offences indicated.

5.1 Anti-corruption and Economic Crimes Act 2003 (rev 2016) ⁶⁶

Corruption is a major predicate offence for money laundering in Kenya and investigations for corruption are usually carried out under both the Anti-Corruption and Economic Crimes Act (ACECA) and POCAMLA with particular reference to the preservation of the proceeds of crime. The relevant sections of the Act are outlined below:

- a) Suspects of economic crime are required to give statements of their property suspected to be proceeds of corruption (Section 26).
- b) Associates of persons suspected of economic crime may be required to give a statement concerning the suspect's property in their possession (Section 27).
- c) A person who deals with property that he believes or has reason to believe was acquired in the course of or as a result of corrupt conduct is guilty of an offence. This includes holding, receiving, concealing or using the property; or (b) enters into a transaction in relation to the property (Section 47).

Provides for forfeiture of unexplained assets suspected to be proceeds of corruption. Includes assets held in trust for the suspect or assets that were acquired from the suspect as a gift or loan with no adequate consideration (Section 55).

⁶⁶ <http://www.eacc.go.ke/wp-content/uploads/2018/06/aceca.pdf>

5.2 The Bribery Act 2016

The Act provides a framework for the prevention, investigation and punishment of bribery. The Anti-corruption and Economic Crimes Act, 2003 includes bribery as one of the forms of corruption however it focuses on graft within the public sector. The Bribery Act includes bribery in the private sector. The offence is committed when a person gives or receives a financial or other advantage in order to ensure the improper performance of a relevant function or activity.

The Act introduces 3 new concepts

- a) Private citizens' participation in the fight against bribery
- b) Transnational bribery;
- c) Matching the giver and the receiver of the bribe in terms of punishments; i.e both the solicitor and giver are punished

The Bribery Act involves private citizens in the fight against bribery by imposing an obligation on them to report instances of bribery. Private entities are also required to put in place adequate procedures to prevent and counter bribery. This is of particular relevance as many essential services are offered by the private sector. Under the Act a public officer, state officer or a person in a position of authority in a public or private sector who witnesses an act of bribery must report it to the Ethics and Anti-Corruption Commission. Failure to do so amounts to an offence that attracts imprisonment for up to ten years or to a fine not exceeding five million shillings.

5.3. The Kenya Narcotic Drugs and Psychotropic Substances (control) Act no 4 of 1994

Section 3 and 4 of the Act criminalizes cultivation, manufacture, distribution, possession, use and trafficking of drugs and psychotropic substances prohibited under the Act, Under Section

5 - The above offences attract penalties ranging from fines of up to Ksh 1 million or imprisonment to a term of up to 20 years.

5.4. The Wildlife Conservation and Management Act⁶⁷ and the Merchant Shipping Act⁶⁸

These Acts have similar provisions to the above legislation and criminalize Illicit Wildlife Trafficking and Piracy offences respectively.

5.5. Companies Act 2015

The Act and Regulations⁶⁹ do not make specific reference to the POCAMLA. However, Part II of the Act (sections 5-19), contains detailed procedures regarding the formation of companies and the particulars to be included in a memorandum and articles of a company, and the directors and shareholders of a company. These sections prescribe the documents that a company should accompany an application for registration of company as part of the due diligence requirements. The regulations also contain detailed provisions relating to the directors' eligibility, conduct of a company's business, filing of returns and the annual report, sale/transfer of shares etc.

Additionally, in 2019, the Companies Act 2015 was amended to introduce a mandatory requirement for Companies to submit beneficial ownership information to ensure transparency in corporate structures and financial transactions carried out by corporates. The Act and Beneficial Ownership Regulations 2020⁷⁰ define a "beneficial owner" as "the natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement." Persons who directly or indirectly hold more than 10% shares or have more than 10% voting rights, or have the right to appoint or remove a director of the company;

67 Wildlife Conservation and Management Act Cap_376_.pdf

68 Merchant Shipping Act No.204 of 2009.pdf

69 Companies-Regulations 2016.pdf; CompaniesActNo17of2015pdf;

70 The Companies (Beneficial%20Ownership Information) Regulation 2020.pdf

or exercise “significant influence or control” over a company’s affairs, (e.g., the Board, CEO, Finance Director etc.) are considered to be beneficial owners of the company.

The Regulations prescribe specific documentary requirements for companies to obtain from their Beneficial Owners, such as the full name, ID information, PIN, residential and business address etc. The Beneficial Ownership Information must be submitted to the Companies Registrar within 21 days and thereafter any changes must be submitted to the registrar within 14 days (public companies are exempted from the 14 day requirement). These provisions reinforce the requirements under the POCAMLA Regulations Part IV (Reg 12-31) dealing with Customer Due diligence and the information institutions from must obtain from legal entities, partnerships and trusts., and the prohibition against dealings with shell companies/banks, and the establishment of ultimate beneficiaries of a transaction (e.g., shareholders in the case of a company).

5.6. Computer Misuse and Cybercrime Act 2018

Cybercrime is a predicate offence for money laundering as computers can be misused to perpetrate fraud, and other crimes which generate substantial sums of money including cyber terrorism and terrorist related activities and can be used to launder the proceeds of crime through online banking and apps created for this purpose. The Act⁷¹ lists several offences under sections 14-46 and also provides for Law enforcement measures which include international co-operation and multi-lateral agency co-ordination investigations and evidence gathering.

5.7. Whistleblowers Protection Bill 2021

The Bill seeks to: ⁷²

- a. protect persons who disclose information relating to improper conduct in the public and private sectors; against victimization,

⁷¹ ComputerMisuseandCybercrimesActNo5of2018.pdf

⁷² TheWhistleblowerProtectionBill_2021.pdf

- b. facilitate the disclosure and investigation of significant and serious matters relating to public or private bodies, which an employee or any other person believes may be unlawful, dangerous to the public or prejudicial to the public interest;
- c. enhance ethics and integrity in public and private bodies, and among public officers
- d. promote public confidence in the administration of public and private bodies;
- e. enhance the mechanisms for promoting the administration of justice;
- f. provide a framework for public participation in preventing and combating improper conduct;
- g. reward persons who contribute to preventing and combating improper conduct

Improper Conduct has been categorized as including the following acts or omissions

- contravention of the law/criminal offence
- acts that endanger the life, health or safety of persons, or to the environment;
- gross mismanagement or misuse of public funds or assets;
- bribery, corruption or economic crimes as defined in the Anti-Corruption and Economic Crimes Act, 2003
- unfair discrimination and violations of human rights and fundamental freedoms
- Deliberate concealment of improper conduct or knowingly causing the commission of improper conduct

The Whistleblowers Protection law is expected to address the current challenges hindering the timely detection and investigation of money laundering and other high profile criminal activity as it seeks to protect to persons who disclose information about such activity, against victimization and the fear of intimidation and threats. The Bill, however, is yet to be passed by Parliament on account of lack of executive support/political goodwill as there

have been fears that it may expose public officers who may be suspected of involvement in improper conduct as defined under the Act⁷³

5.8. Witness Protection Act 2006

The non-availability of witnesses has been a key challenge to the law enforcement and adjudication process in Kenya. The Witness Protection Act ⁸⁰provides for the protection of witnesses in criminal cases and other proceedings and establishes a Witness Protection Agency (WPA) to oversee the administration of protective arrangements for witnesses. It also provides for the establishment of a Victims Compensation Fund to be administered by the WPA

5.9. Criminal and Civil Procedure Legislation

The legal framework created by the above legislation is reinforced by the provisions of the Penal Code,⁷⁴ Evidence Act,⁷⁵ and Criminal and Civil Procedure⁷⁶ legislation which provide the procedural framework for adjudicating the offences.

⁷³Also see A-Review-of-the-State-of-Whistleblower-Protection-and-Defamation-Laws-in-Kenya_TI-Kenya.pdf ⁸⁰ WitnessProtectionAct_No16of2006.pdf

⁷⁴ Penal Code

⁷⁵ EvidenceAct_Cap80.pdf

⁷⁶ Criminal Procedure Act CAP75; CivilProcedureAct.PDF

6

REGULATIONS GOVERNING THE CONDUCT OF PUBLIC OFFICERS

These Regulations reinforce the provisions of the ACECA and Bribery Act and are meant to monitor and curb corruption and abuse of public funds and other misconduct by public officers as well as private sector employees

6.1. Public Officer Ethics Act, 2003⁷⁷

The Act does not expressly address AML/CFT however, the Act requires Public Officers to carry out their duties efficiently, honestly and in a manner that maintains public confidence in the integrity of their office. The Act also prohibits public officers from using their office to improperly enrich themselves or others. If a public officer considers that anything required of him is a contravention of the Code of Conduct and Ethics or is otherwise improper or unethical, the officer is required to report the matter to an appropriate authority. The Act also requires public officers to submit a declaration of their income, assets and liabilities to the responsible Commission after every two years⁷⁸.

6.2. Leadership and Integrity Act, 2012⁸⁶

The Act does not expressly address AML/CFT, however, the Act requires a State officer to: -

- a) Carry out the duties of the office efficiently and honestly.
- b) Carry out the duties in a transparent and accountable manner.
- c) Keep accurate records and documents relating to the functions of the office; and
- d) Report truthfully on all matters of the organization which they represent.

⁷⁷ Public Officer Ethics Act 2003

⁷⁸ The NGO Co-ordination Board is a quasi government authority and hence its officers are subject to this legislation ⁸⁶ Leadership and Integrity Act 2012

The Act also prohibits a state officer from using the office to enrich himself unlawfully or wrongfully or herself or any other person. operate a bank account outside Kenya without the approval of the Commission.

6.3. Public Procurement and Asset Disposal Act, 2015⁷⁹ (PPAD)

The PPAD seeks to ensure that public procurement is carried out ethically and in a fair and transparent manner in accordance with the procedures set out under the Act. The Public Procurement Regulatory Authority formulated a Code of Ethics for Persons participating in Public Procurement & Disposal activities in Kenya. Although the Code does not expressly address AML/CFT⁸⁰ persons participating in tenders must sign and commit to the Code of Ethics, and ensure they comply with the bidding and tendering processes, and supply the right quantity and quality of the contracted item, at the stipulated times as per the contracts

6.4. Public Finance Management Act⁸¹

The Act requires the National and County Governments to monitor, evaluate and oversee the management of public finances in their respective entities by putting in place governance mechanisms for transparency and accountability with regard to the finances and assets of the entity, including regular audits of government assets.

6.5 Kenya's Compliance Status- Challenges and Gaps

Kenya has enacted AML/CFT and related Legislation which substantially meets the international standards, however, despite this impressive raft of legislation, implementation is not at full compliance rating under ESAMMLG Mutual Evaluations, as sectors such as the NGO/NPO sector, Legal practitioners, Casinos,

⁷⁹ Public Procurement and Asset Disposal Act 2015

⁸⁰ Public_Procurement_Code_of_Ethics_For_Procuring_Entities 2017pdf

⁸¹ Public Finance Act 2012

real estate, and savings and credit co-operative societies have not yet been brought under the FRC as compliant institutions despite being designated as reporting institutions i.e the FRC has not yet started monitoring them to ensure compliance, and they are not submitting statutory reports such as suspicious activity reports. This has largely been due to capacity and resource constraints on the part of FRC, which has led to delays in sectoral risk assessments and consequent failure to prioritize these sectors for compliance oversight.⁸²

Further, the majority of reporting institutions including small tier financial institutions are not fully compliant with the requirements under the Act, e.g they do not have robust compliance programmes in place with effective transaction monitoring systems, suspicious activity reporting processes or staff training programmes.

Additionally, Kenya has faced notable challenges in the enforcement of the POCAMLA. In particular, law enforcement has remained a key concern largely due to the slow pace of ML/TF investigations and closure of cases; with attendant low conviction rates, grand corruption in public office and the lack of political goodwill to effectively enforce the law, capacity and funding constraints affecting both law enforcement officers (LEA's) and judicial officers and lack of infrastructural support for LEA's, for example, modern investigative tools and equipment⁸³

There are also pending bills which are critical to law enforcement such as the Whistle Blowers Protection Bill, and the Public Benefits Organizations Act which is yet to be operationalized.

With particular reference to the NPO sector, while the NGO Co-ordination Board is designated as a supervisory agency under the POCAMLA, it has not put in place adequate measures to sensitize its members about money laundering and terrorist financing risks. Additionally, the NGOCB does not have oversight of all

⁸² It is however expected that with the completion of the National Risk Assessment, all designated sectors will be brought under the FRC

⁸³ A detailed overview of Kenya's compliance status under the Esamalg Mutual Evaluation Reports is appended hereto under Appendix C.

CSOs and NPOs operating in the country, hence majority of CSOs operating in Kenya have not put in place mitigatory measures to comply with the Act so as to safeguard themselves against money laundering and terrorist financing risks.

7 COMPARATIVE ANALYSIS OF AML/CFT GUIDELINES GOVERNING NPOS IN SIMILAR JURISDICTIONS⁸⁴

7.1 TANZANIA

NGO Regulatory Regime

The conduct and practice of NGOs in Tanzania is governed by the Non- Governmental Organizations Act of 2002⁸⁵ and the NGO Code of Conduct.⁸⁶ The National Council of NGOs⁸⁷ (NACONGO) is responsible for facilitating self-regulation and development of NGOs and overseeing the implementation of the NGOs Code of Conduct and regulations. The Tanzania Association of Non-Governmental Organizations⁸⁸ (TANGO) is the largest national umbrella organization serving the Tanzanian NGO community and was established in 1988 with the primary objectives of serving as a platform for information exchange for its members, building the organizational capacity of its members and performing lobbying and advocacy activities to create a conducive environment for the NGO sector, and promote important policy issues, amongst others.

AML Obligations

NGOs are not specifically designated as “Reporting Persons” under the Anti-Money Laundering Act of Tanzania, 2006 or the Anti- money Laundering and Proceeds of Crime Act Zanzibar⁸⁹ however, under the Non-Governmental Organizations (Financial

84 Also see [NGO_Legislation_East_Africa.pdf](#) and [global-ngo-law_trends3-3.pdf](#) for a comparative analyses of NGO regulations in East Africa and Africa

85 [Non-Government-Organization-Act-of-2002](#)

86 [Non-governmental-organizations-code-of-conduct](#)

87 National Council of NGOs ([nacongo.or.tz](#))

88 [http://www.tango.or.tz](#)

89 [https://www.fiu.go.tz/AMLA.pdf](#); [AMLPOCA.pdf](#) ([fiu.go.tz](#))

Transparency and Accountability) Regulations of 2018,⁹⁰ NGOs are required to make disclosure to the public, Registrar of NGOs and all other stakeholders regarding the sources, expenditure, purpose and activities of resources obtained from fundraising activities. In particular, they must disclose all funds raised in excess of Tshs.20 million (Ksh 1 million) within fourteen (14) days after completion of the fundraising activities (Regulation 13).

The Regulations seek to ensure that NGOs operate in an environment of financial accountability and transparency and develop programs which are geared to strengthening their institutional framework and sustainability. Under Regulation 14, NGOs are required to set up proper financial management and accountability processes to provide assurance that finances, procurement processes, asset management are well managed. The Regulations have also introduced measures to combat Money Laundering and Corruption to ensure that NGOs are not used as money laundering schemes or corruption fronts. Under Regulation 14 (n), NGOs are obliged to exercise zero tolerance on corruption, money laundering and other forms of substantive misuse of funds and take effective actions to hold persons or institutions responsible accountable.

7.2 UGANDA

NGO Regulatory Regime

The conduct and practice of NGOs in Uganda is governed by the Non-Governmental Organizations Act of 2016 and the NGO Regulations 2017.⁹¹ The National NGO Policy of 2010⁹² specifically recognized the important role played by Civil Society Organizations including Non-Governmental Organizations in service delivery at community level. The Poverty Eradication Action Plan (PEAP), also recognizes Civil Society as an important actor and influencer in the promotion of grass root democracy and acknowledges

⁹⁰ Financial Transparency and Accountability Regulations 2018

⁹¹ ngo-act-2016; ngo-regulations-2017

⁹² National NGO Policy 2010.pdf

the key role NGOs play in improving accountability of public institutions including Ministries, Departments and Agencies, and promoting demand for public services

The National Bureau of NGOs⁹³ is tasked with the implementation of the NGO Policy and is responsible for the registration and regulation of NGOs. The Bureau has the mandate to co-ordinate and oversee all NGO operations in the country so as to ensure their compliance with the law.

In this regard, the Bureau seeks to provide an enabling environment for the empowerment of the NGO sector so as to establish a vibrant and accountable NGO sector and enable the advancement and selftransformation of Ugandan citizens.

AML Obligations

NGOs are designated as accountable institutions under Uganda's AML Act 2013⁹⁴ together with churches⁹⁵ and charitable organizations, and hence are required to comply with due diligence and statutory reporting requirements under the Act and AML regulations 2015⁹⁶ including transaction monitoring and suspicious activity reporting, as well as the other relevant legislation as set out in the Financial Intelligence Authority (FIA) website.⁹⁷

However, NGOs are yet to be fully brought on board as compliant institutions under the Act though the Act has been included on the NGO Bureau website as part of the legislation applicable to NGOs. There have however been various government and donor funded initiatives (through the FIA), to provide NGOs with capacity building and awareness of their role and responsibilities under the Act, through training and sensitization campaigns.

⁹³ ngobureau.go.ug/~ngobureau/en

⁹⁴ [Anti-MoneyLaunderingAct2013.pdf](#)

⁹⁵ Unlike Kenya where religious organizations are not included in the definition of NGOs and PBOs and hence do not fall under the purview of the POCAMLA reporting and other due diligence requirements

⁹⁶ [The-Anti-Money-Laundering-Regulations-2015.pdf](#)

⁹⁷ <https://fia.go.ug/index.php/acts-regulations>

7.3 SOUTH AFRICA

NGO Regulatory Regime

Non-Profit Organizations in South Africa fall under the Non-Profit Organizations Act 1997 as amended in 2000.⁹⁸ However, it is not mandatory for NPOs to register under the NPO Act.

There are 4 categories of NPOs which are based on the regulatory regime the NPO is registered under:⁹⁹

- Voluntary associations established under common law
- Non-Profit trusts established for private benefit or for a charitable purpose and registered under the Trust Properties Control Act and common law
- Companies established for a public purpose and registered under the Companies Act 2008 (amended 2011)
- Non-profit Organizations registered as such under the NPO Act
- Public Benefit Organizations registered under the Income Tax Act 58 of 1962.

PBOs enjoy a broad range of tax benefits, including income tax exemption. the right to receive taxdeductible donations.

Depending on the Act under which they are registered, NPOs are regulated by the Department of Social Development (DSD) for voluntary associations (where applicable), the Companies and Intellectual Property Commission (CIPC) for companies, the Masters of the High Court for Trusts, and Directorate for Non-Profit Organizations under the DSD for NPOs and the South African Revenue Service (SARS) for Public Benefits Organizations. These institutions exercise regulatory oversight over NPOs, and ensure their compliance with applicable laws.

⁹⁸ <https://www.gov.za/documents/nonprofit-organizations-act>.

⁹⁹ Also see [laws-and-regulations-governing-NPOs-in-SA.pdf](#) and [nonprofit-law-south-africa](#)

AML/CFT Obligations

NPOs are not specifically designated as Reporting Institutions under the Financial Intelligence Centre Act 2001 (Amended 2017)¹⁰⁰ however, the Financial Intelligence Centre (FIC) issued a public compliance communication in January 2020¹⁰¹ on anti-money laundering and combating the financing of terrorism relating to non-profit organizations (NPOs). The publication aimed to create “awareness within the NPO sector around the vulnerabilities that NPOs face,” and sets out Financial Action Task Force (FATF) principles relating to NPOs.

The publication is applicable to South African NPOs that operate in and outside South Africa and to the 4 NPO regulators mentioned above. The publication obligates NPOs to notify the South African Police Services if they suspect they are being used for terrorist financing or money laundering purposes. They can also notify the FIC, via voluntary disclosure reports. The FIC also recommends that third parties dealing with NPOs should follow a riskbased approach in their transactions.

The publication recommends various measures that NPOs can put in place to manage their risks including:

- registering with relevant regulating authorities,
- documentation of their organization control structures,
- maintenance of up-to-date major donor and beneficiary information, including the beneficiaries use of the funds for the stated objectives, the financial capability of the donor, and the donor’s source of funds, transaction records, and fundraising processes.
- NPOs should also conduct inspections of beneficiaries to determine whether funding has been used for intended purposes.

¹⁰⁰ FIC Act with 2017 amendments.pdf

¹⁰¹ Nonprofitorganizationsfinalpublication.pdf

Measures that third parties should consider when dealing with NPOs include:

- Establishing business relationships or conducting transactions using a risk-based approach.
- Confirming the NPOs registration, and, if the NPO is not registered, gathering information from the public domain in order to understand the operations of the NPO.
- Requesting adequate information from NPOs regarding its founders, trustees, members, employees, authorized representation, and beneficiaries.

7.4 ZAMBIA

NGO Regulatory Regime

The conduct and practice of NGOs in Zambia is governed by the Non-Governmental Organizations Act of 2009 as amended in 2020¹⁰². The NGO Registration Board ¹⁰³ is tasked with the implementation of the NGO Act and is responsible for the registration and regulation of NGOs. The registration of NGOs is done through the Department of Registrar for Non-Governmental Organizations within the Ministry of Community Development and Social Services. The NGO Registration Board advises the Government on the activities of NGOs and their role in the development process and implements policy guidelines for harmonizing NGO activities to the national development plan for Zambia. There is also an NGO Council which has the mandate of regulating the conduct of NGOs and overseeing their operations in Zambia

AML Obligations

NGOs are designated as Reporting institutions under the Financial Intelligence Centre Act 2010¹⁰⁴ and are subject to comply with the provision of the Prohibition and Prevention of Money Laundering

¹⁰² Non-GovernmentalOrganizationsAct2009.pdf

¹⁰³ https://www.mcdss.gov.zm/?page_id=1990#

¹⁰⁴ FinancialIntelligenceCentreAct2010.pdf

Act 2001 as amended in 2010¹⁰⁵ with respect to due diligence and statutory reporting requirements including transaction monitoring and suspicious activity reporting, as well as to the provisions of the Anti - Terrorism Act No 21 of 2007 and the other relevant legislation in the AML/CFT Regulatory framework as set out in the Financial Intelligence Centre (FIC) website.¹⁰⁶

In this regard, section 7 of the NGO Co-ordination Act was amended in 2020 to extend the mandate of the Non-Governmental Organizations Registration Board to include the implementation of measures for monitoring the risk of the use of non-governmental organizations in financing of terrorism, proliferation or any other associated serious offence, in consultation with the Financial Intelligence Centre.¹⁰⁷

Additionally, following the National Risk Assessment in 2016, and MER in 2018, the FIC issued NPO Sector guidelines¹¹⁶ to assist NPOs in Countering the Financing of Terrorism.

The guidelines recognize that NPOs are strategic partners in the fight against Money Laundering/Terrorist Financing (ML/TF) and other criminal offences and highlight the vital role played by the NPO community in providing relief and support to those in need. The guidelines emphasize the need for the NPO community to promote transparency within their operations to prevent misuse of the sector by those wishing to support terrorist financing and terrorist organizations.

The purpose of the guidelines is to provide specific guidance for the NPO sector in Zambia on measures to detect and deter the financing of terrorism activities in compliance with the Act. The guidelines highlight the categories of risk/ abuse in the NPO sector, vulnerabilities of NPOs to TF, indicators of TF in the NPO sector, measures to prevent TF abuse in the NPO sector; including the reporting of suspicious activity. Other areas covered in the

105 Prohibition-and-prevention-of-money-laundering-act 2001; ProhibitionandPreventionofMoneyLaunderingAmendmentAct2010.pdf

106 <https://www.fic.gov.zm/aml-cft-framework>

107 Non-GovernmentalOrganizationAmendment Act 2020.pdf Also see CommitteeReport NGO Amendment Bill 2020Final.pdf 116 NPO Sector AMLCTF Guidelines Zambia

guidelines are high risk countries, prohibition against tipping off and the protection of persons/entities making reports.

7.5 GHANA

NGO Regulatory Regime¹⁰⁸

Under the National Policy for Strategic Partnership with NGOs 2004¹⁰⁹ the Government of Ghana seeks to forge a strategic partnership with NGOs in order to achieve its long-term development goals and acknowledges that NGOs play a complementary role in development because of their ability to mobilise funds, people and technical resources in support of national and community development, which provides them with a comparative advantage in articulating and responding to the needs of their target groups with relative speed and flexibility. This approach is reiterated in the NPO Policy 2020¹¹⁰ which aims to set out a framework that provides a congenial environment for the NPO sector by enhancing their capabilities and effectiveness in the areas of service delivery, advocacy and empowerment.

NGOs in Ghana are registered as companies limited by guarantee under the Companies Act of 2019 (Act 992), a company limited by guarantee may not lawfully be incorporated with the object of carrying on business for the purpose of making profits. Other examples of NPOs in Ghana are Community Based Organizations (CBOs) registered with the Metropolitan, Municipal and District Assemblies (county legislation).

Upon registration under the relevant Act, NPOs can then apply for licensing from the NPO Secretariat in the Ministry of Gender and Social Welfare¹¹¹, upon submission of the relevant registration documentation. This enables them to commence their operations.

108 Legal_and_Policy Framework_of NGOs_in_Ghanae

109 Draft National Policy NGOs revised 2004.doc

110 Final-Non-Profit-Organization-policy-2020.pdf

111 <https://npos.mogcsp.gov.gh/>

AML/CFT Obligations

NPOs are not specifically designated as accountable institutions in the AML Act 2020¹¹² however, section 30 of the Act provides that any person irrespective of whether they are an accountable institution or not is required to report suspicious activity relating to money laundering or terrorist financing to the FIC.

In this regard the NPO Secretariat has recognized that NPOs can be misused to raise and move funds, provide logistical support, encourage terrorist recruitment, or otherwise support the operations of terrorist organizations which can undermine donor confidence and jeopardize the integrity of NPOs. In order to protect NPOs from this risk, the NPO Secretariat has issued a Guidance Note on Terrorism Financing Red flags for NPOs to guide NPOs in identifying and reporting terrorism financing activity¹¹³ The guidance makes provision for suspicious activity reporting mechanisms and highlights various suspicious activity indicators relating to Donors, Beneficiaries Employees and Projects which should be reported.

Additionally, under the NPO Directive for the Management of NPOs the NPOs has adopted the best practices set out in FATF Best Practices paper and set out various due diligence measures for NPOs to take with regard to donor, beneficiary and employee relationships, as well as measures to ensure transparency and accountability in their operations and financial transactions.¹¹⁴ The NPOs has also made these guidelines publicly available on its website together with the AML Act and the FATF Recommendations 2012¹²⁴

¹¹² AML-Act-2020-Act-1044.pdf

¹¹³ Guidance-Note-on-Terrorism-Financing-Redflags-for-NPOs.pdf

¹¹⁴ Directives-for-the-Management-of-Non-Profit-Organizations-Operations-in-Ghana-2-1.pdf (pg 4-5) ¹²⁴ npos.mogcsp.gov.gh/resources-and-publications/

7.6 NIGERIA

NGO Regulatory Regime

Not-for-profit organizations in Nigeria include associations with incorporated trustees and companies limited by guarantee, un-incorporated associations, charitable trusts, co-operatives, friendly societies, political parties, and trade unions also exist. However, co-operatives, political parties, friendly societies, and trade unions are designated as mutual benefit organizations,¹¹⁵ hence do not meet the public benefit criteria.

Associations with incorporated trustees are registered under the Companies and Allied Matters Act (CAMA) 2020 with the objects of or the advancement of any purpose that is religious, educational, literary, scientific, social, for development, cultural, for sporting, or charitable (CAMA Section 825(1)(b)). A company limited by guarantee is also registered under the Companies and Allied Matters Act (CAMA) 2020 with the objective of promoting commerce, art, science, religion, sports, culture, education, research, charity, or other similar objects¹²⁶

CSOs/NGOs in Nigeria are prevalent in different sectors, and play a vital role in the promotion of human rights, democracy, good governance, corruption, peace and security, health, women's and children's rights, media rights, the freedom of expression and online rights, protection of the environment and fulfilment of development goals. CSOs ensure the government is held accountable to ensure the protection of these rights and the fulfilment of Millennium Development Goals and the Sustainable Development Goals (SDGs).

The Nigeria Network of NGOs (NNNGO)¹¹⁶ is a membership body for civil society organizations and facilitates effective advocacy on issues of poverty and other developmental issues. It has various capacity building programmes for NGOs and has also come up

¹¹⁵ A mutual-benefit nonprofit is a type of nonprofit corporation that works for the benefit of a select group of members rather than for the general public. Difference-between-nonprofit-and-mutual-benefit-corporation ¹²⁶ www.cof.org/country-notes/nonprofit-law-nigeria
¹¹⁶ <https://nnngo.org/>

with a comprehensive NGO Operating Manual to guide NGOs in their operational activities¹¹⁷.

There is no specific regulatory authority for NGOs; however, there is a proposed Bill which seeks to establish a Non-Governmental Regulatory Commission for the supervision Co-ordination and monitoring of NGO activities¹¹⁸.

Under the Bill, NGOs are required to register with the Commission every two years and provide comprehensive details of their proposed activities as well as information on all sources of funding and any other additional information that may be required. Projects identified by CSOs for implementation will require prior government approval. Individuals who violate the provisions of the law will face up to 18 months in prison or a substantial fine, and will be prohibited from holding office in an CSO for a period of 10 years¹¹⁹.

The Bill has been opposed by stakeholders due to its restrictive provisions, punitive measures and sweeping powers given to the Commission to register or deregister an NGO; which are seen as being intended to fetter the freedom of CSOs to operate, and which will reduce the contributions from civil society to the SDGs and silence those that speak out against corruption. Accordingly due to opposition and lobbying by stakeholders such as the NNNGO, the Bill has been pending since 2016¹²⁰

AML/CFT Obligations

NPOS in Nigeria are designated as reporting institutions and hence are subject to comply with the provisions of the Money Laundering (Prohibition) Act¹²¹, the Terrorism (Prevention) Act¹²² and relevant Regulations, however there are no specific

¹¹⁷ nnngo.org/nonprofit-operational-manual-2/

¹¹⁸ Nigeria-Ngo-Bill

¹¹⁹ There was a previous Bill in 2013 which sought to regulate donor funding to Voluntary Organizations which was not passed by Parliament. See [Nigeria_NGO_which_way_forward_Self-regulation_or_Government_Regulation](#) download

¹²⁰ Also see <https://www.civicus.org/index.php/fr/media/news/interviews/the-ngo-bill->

¹²¹ Nigeria Money Laundering Prohibition Act 2011

¹²² nfiu.gov.ng/tpa.pdf

sector AML/CFT guidelines for the NPO sector, as there is no supervisory authority charged with this responsibility though the NNGO has incorporated AML/CFT training in its capacity building programmes. Additionally, the NPO Operating manual has set out anti- money laundering measures for customer due diligence and cash transaction reporting¹²³ The Nigeria NFIU has however issued a series of guidance notes and typology reports which are publicly available on its website¹²⁴

7.7 UNITED KINGDOM

NGO Regulatory Regime

NPOs in the UK are registered as charities under the Charities Act 2011¹²⁵ by the Charity Commission (CC) of England and Wales which regulates and registers charities in England and Wales. The Commission also produces guidance for trustees on how they should meet their legal duties and responsibilities. The Commission is part of the civil service and is a non-ministerial government department. The Commission runs an online register of charities, which provides full information – including financial information about all registered charities. Charities with an income of more than £5,000 need to register. Charities with less income still need to abide by charity law () and in almost all cases, the Commission still acts as regulator.

The Commission investigates accusations of wrongdoing and has powers to:

- restrict transactions a charity may enter into
- appoint additional trustees
- ‘freeze’ a charity’s bank account
- suspend or remove a trustee
- appoint an interim manager
- make a referral for investigation to the police and other law enforcement agencies.

¹²³ nnngo.org/nonprofit-operational-manual-2/ pg 25

¹²⁴ nfiu.gov.ng/AdvisoryGuidance

¹²⁵ <https://www.legislation.gov.uk/ukpga/2011/25/contents/enacted>

AML/CFT Obligations

The Proceeds of Crime Act (POCA) 2002¹²⁶ created criminal penalties for certain regulated sectors, including NPOs, who fail to act upon their knowledge or suspicion of money laundering and terrorist financing activity.

The Charity Commission has established a small outreach team to raise awareness on issues such as fraud and abuse, including abuse by terrorist organizations, within several key charity sectors. The aim of the team is to provide effective and thorough engagement with stakeholders to enable charities (NPOs) to protect themselves from abuse.

The outreach team focuses on charities working in areas of highest risk such as Syria and Somalia, speaking at third party events, publicizing existing guidance, and creating new guidance as issues develop, issuing “alerts” on key issues such as due diligence on partner agencies, monitoring, sending funds internationally, counter terrorism legislation and requirements, aid convoys and sending staff and volunteers, information on how to donate to causes in high risk areas, e.g donations to registered charities that have experience providing humanitarian assistance in high risk, insecure and dangerous environments and which have ongoing relief operations in high risk countries, are preferable.

Information about NPOs is publicly available on the CC database with search tools that enable the general public to search for and access information related to the status, activities, finances and governing boards of NPOs. Some of these tools allow users to display information graphically in charts and tables, make connections between NPOs, and to access copies of governing documents, by-laws and financial statements. These tools help promote transparency and maintain public trust in the NPO sector. They also provide a means through which information can be shared internationally. Because the databases are public, international partners can access them to find information on NPOs that operate outside of their jurisdiction.

¹²⁶ Proceeds of Organized Crimes Act (POCA)

7.8 UNITED STATES

NGO Regulatory Regime

Non-profit organizations in the United States are monitored by the Internal Revenue Service under IRS Code Section 501(c)¹²⁷. The code determines an organization's eligibility for the non-profit organization status. To be eligible for NPO status, an organization must focus on a social cause, such as science, religion, research, or education. NPOs qualify for tax-exempt status in the United States, and they are not required to pay tax on the revenues they receive from donations. Examples of non-profit organizations include hospitals, foundations, universities, churches, mosques, and national charities.

AML/CFT Obligations

The US AML/CFT regulations are to be found in the Bank Secrecy Act and various guidelines issued by the Financial Crimes Enforcement Network (FinCEN) which is the financial intelligence unit of the United States), and related agencies such as the Treasury Department. The U.S. government does not view the charitable sector as presenting a uniform or unacceptably high risk of being used or exploited for money laundering, terrorist financing, or evasion of sanctions. The US Government supports the FATF risk-based approach to the implementation of AML/CFT financial controls and recognizes that not all NPOs are at risk. In particular, the U.S. Department of the Treasury recognizes the important role played by the charitable sector, especially during the COVID-19 pandemic, as it supports communities and provides life-saving assistance

The US Treasury and FinCen work with the private sector, including financial institutions and non-profit organizations, to provide guidance and clarification on AML/CFT and sanctions

¹²⁷ <https://www.irs.gov/> Also see corporatefinanceinstitute.com/npo-non-profit-organization/donations

obligations relevant to the charitable sector. In this regard, the United States engages in sustained dialogue with the US NPO sector, including charities, donors, and specific communities, such as the Muslim- American communities, among others and participates in community outreach events around the country on a regular basis.

The Government also provides a number of guidance materials, related to protecting the charitable sector from terrorist abuse and exploitation which are made available on the US Department of the Treasury's website. Examples are the US Treasury's matrix of common risk factors¹²⁸ and Anti-Terrorist Financing Guidelines.¹²⁹ The guidelines are voluntary recommendations aimed at assisting US charities (particularly those operating in higher risk regions.) implement appropriate compliance programmes which will enable them to identify and understand the risks that they should consider in their activities e.g., when disbursing funds or resources in high-risk areas and in the course of conducting their due diligence so as to adopt an effective risk-based approach with appropriate mitigatory measures.

The U.S. Department of the Treasury's and FinCEN also issued a joint fact sheet¹³⁰ to provide clarity to banks on how to apply a risk-based approach to charities and other non-profit organizations (NPOs). The joint fact sheet highlights the importance of ensuring that legitimate charities have access to financial services and can transmit funds through legitimate and transparent channels, especially during the current COVID-19 pandemic. Also, the joint fact sheet reminds banks to apply a risk-based approach to customer due diligence (CDD) requirements when developing the risk profiles of charities and other nonprofit organizations.

¹²⁸ US Treasury [terrorist-illicit-finance/charity_risk_matrix.pdf](#)

¹²⁹ US Treasury [terrorist-illicit-finance/guidelines_charities.pdf](#)

¹³⁰ Treasury and Fin Cen Charities fact sheet

CONCLUSION AND RECOMMENDATIONS

CSOs play an important role in the FATF process as they are a critical component of a country's governance system because of their influence in the areas of peace, security and justice. They can partner with the government, and the international community to deliver change. CSOs can also provide support in the Mutual evaluation process since they work in different sectors that are heavily affected by money laundering for example human rights and human trafficking, governance, and corruption, organized and transnational crimes, and hence can provide valuable insights and information to assessors. However, CSOs and other NPOs are vulnerable to money laundering and terrorism financing risks, and accordingly the laws relating to NPOs need to have adequate measures to protect against these risks, as required by FATF Recommendation 8. The above legislative review highlights various gaps in Kenya's legislation relating to CSOs, that Kenya needs to address so as to ensure that the regulatory framework governing CSOs is sufficiently robust to prevent the abuse of these organizations for the financing of terrorism.

The government of Kenya needs to ensure that NGOs are brought on board under the relevant authority as fully compliant institutions under the PBO Act, and that the FRC issues appropriate AML/CFT guidelines to guide compliance by the sector.

The Public Benefits Organizations Act should be operationalized as soon as possible so that the Public Benefit Organizations Authority can take over the role of overseeing all CSOs and NPOs so that the CSOs can play an important role in lobbying for a commencement date for the Act and the establishment of the Authority. Once this is accomplished, the POCAMLA will need to be amended in order to include all PBOs as reporting institutions and substitute the Public Benefit Organisations Regulatory Authority as the designated supervisory body.

All NPOs should be conversant with and comply with the applicable laws and best practises for NPOs as required by FATF Recommendation 8 and the FATF Best practices paper on

combatting terrorist financing risks for NPOs.

The Kenya Government and the FRC should borrow from best practices in other jurisdictions such as Zambia and Ghana, and prioritize on state-based oversight and improve on its capacity to detect sophisticated threats to the sector's activities. However, this should be accomplished using a risk based approach as recommended by FATF Recommendation 8; since not all NPO/CSOs are high risk. Such oversight would include capacity building initiatives and training of CSOs on the detection and prevention of terrorist financing risks in their sectors, and the putting in place of appropriate AML/CFT guidelines to guide the sector on compliance with the law. Such guidelines should incorporate the implementation of internal measures such as the appointment of a compliance officer, putting in place AML/CFT policies and procedures covering due diligence, training, transaction monitoring, suspicious activity reporting and sanctions screening.

Donor agencies should also work together with the government to address the lack of capacity (resources), funding, training and infrastructural support for CSOs, which should include appropriate guidance on the internal control measures outlined above.

APPENDIX A

LIST OF LEGISLATION

1. INTERNATIONAL LEGISLATION

- FATF 40 Recommendations 2012 (amended March 2022)
- FATF Guidance Risk based Approach
- FATF Typologies Report on the Risk of Terrorist Abuse in Non-Profit Organizations -2015
- FATF Best Practices Paper on Combatting the Abuse of Non-Profit Organizations for Terrorist Financing - 2014
- UN Conventions and UNSC Resolutions on Terrorism, Terrorist Financing, Targeted Sanctions, Proliferation Financing and other Predicate Offences
- Eastern and Southern African Anti-money Laundering Group Typology Reports and Mutual Evaluation Guidelines
- East African Community - AML/CFT Policy
- Common Market for Eastern and Southern Africa – AML/ CFT Guidance

2. LOCAL LEGISLATION

- The Proceeds of Crime and Money Laundering Act 2009 (POCAMLA)
- POCAMLA (Amendment) Act 2021
- Prevention of Terrorism Act 2012 and Regulations 2013 (POTA) as revised in 2012, 2017, and 2021 · Mutual Legal Assistance Act, 2011
- CBK Guideline on Anti-Money Laundering and Combating the Financing of Terrorism - CBK/PG/08
- CBK Guidance Note: Conducting Money Laundering/ Terrorism Financing Risk Assessment, 2018
- CBK Banking Circular No. 1 of 2016-Additional Guidelines on Large Cash Transactions
- The National Payment System (Anti-Money Laundering

Regulation for the Provision of Mobile Payment Services) Regulations, 2013

- CBK Banking Circular No. 7 of 2012-Suspicious Transaction Reports
- CBK Banking Circular No. 8 of 2012-Suspicious Transaction Reports
- CBK Banking Circular November 2017 – PIN Requirement for opening bank accounts.
- Tax Procedures Act 2015
- The Capital Markets Authority Guidelines for the Prevention of Money Laundering 2015
- The Insurance Regulatory Guidelines on the Implementation of POCAMLA - 2011
- Institute of Certified Public Accountants AML Guidelines for Accountants in Kenya 2020
- Retirement Benefits Authority Draft AML/CFT Guidelines -2020
- Law Society Code of Conduct 2017
- Law Society of Kenya AML/CFT Guidance 2019
- The Non -Governmental Organizations Co-ordination Act 1990
- Public Benefits Organization Act 2013
- Anti-corruption and Economic Crimes Act 2003 (rev 2016)
- Wildlife Management and Conservation Act (Rev 2009)
- Merchant Shipping Act 2009
- Narcotic Drugs and Psychotropic Substances (control) Act no 4 of 1994
- Companies Act 2015
- Companies Act (Beneficial Ownership Information) Regulations 2020
- Computer Misuse and Cybercrime Act 2018
- Witness Protection Act 2006
- Whistle Blowers Bill 2021
- Public Officer Ethics Act, 2003
- Leadership and Integrity Act, 2012
- Public Procurement and Asset Disposal Act, 2015

- Public Procurement Code of Ethics for Procuring Entities 2017
- Public Finance Management Act 2012
- Civil and Criminal Procedure Legislation Kenya

3. LEGISLATION IN SIMILAR JURISDICTIONS

Tanzania

Non- Governmental Organizations Act of 2002

NGO Code of Conduct 2008

Anti-Money Laundering Act of Tanzania, 2006.

Uganda

Non-Governmental Organizations Act of 2016

NGO Regulations 2017

AML Act Uganda 2013

South Africa

Non Profit Organizations Act 1997 as amended in 2000

Financial Intelligence Centre Act (FICA) 2001

Zambia

Non-Governmental Organizations Act of 2009 as amended in 2020

Financial Intelligence Centre Act 2010

Ghana

Companies Act of 2019 (Act 992)

Anti-Money Laundering Act, 2008

Nigeria

Companies and Allied Matters Act (CAMA) 2020

The Money Laundering (Prohibition) Act 2011 Nigeria

United Kingdom

Charities Act 2011

Proceeds of Crime Act 2002

USA

IRS Code Section 501(c)

Bank Secrecy Act 1970

APPENDIX B

ML/TF RISK FACTORS, TYPOLOGIES AND SUSPICIOUS ACTIVITY INDICATORS FOR NPOs¹³¹

Summary of ML/TF Risk Factors affecting NPOs

The abuse of NPOs for terrorist purposes may take a variety of different forms, especially given the diverse nature of the sector. The reputation, international reach and financial system of the NPOs can all provide opportunities for terrorists. An NPO's fund, facilities and name are vulnerable to exploitation for terrorist purposes. Although these are usually at great risk from influence outside the NPO, abuse can also happen from within the NPO or be carried out by someone connected to it. NPOs are vulnerable to terrorist financing and other criminal abuse for a number of reasons:

1. They enjoy high levels of public trust and confidence;
2. They often rely on goodwill and voluntary support in one form or another;
3. They are diverse in nature, involved in a broad range of activities and reaching all parts of society. Because of this reach, large numbers of people come into close contact with NPOs, including those who may abuse them, through their services, the use of their property and through their trustees and volunteers; iv. They are relatively easy to set up;
4. They have a global presence, including in conflict areas and/or where there is little infrastructure, and frequently move money, goods and people to these areas;
5. They often have complex financial operations including multiple donors;
6. They may have unpredictable and unusual income and expenditure streams, so suspicious transactions may be harder to identify;

¹³¹ FATF Report risk-terrorist-abuse-non-profits.html

7. They may have branches and/or projects that are not under the direct supervision or regular control of trustee management;
8. They are powerful vehicles for bringing people together for a common purpose and collective action, and may inadvertently provide a ready-made social network and platform of legitimacy for terrorists or terrorist sentiments;
9. Individuals supporting terrorist activity may claim to work for an NPO and trade on its good name and legitimacy in order to gain access to a region or community;
10. Terrorist activities may be hidden by or take place alongside additional, and otherwise legitimate, charitable activities;
11. In extreme cases, terrorists may try to set up an organization as a 'sham', promoted as charitable but whose sole purpose is really to raise funds or use its facilities or name to promote or coordinate inappropriate and unlawful activities.

Therefore, protecting the NPO sector from terrorist abuse is both a critical component of the global fight against terrorism and a necessary step to preserve the integrity of the NPO sector and donor community

Summary of ML/TF Typologies affecting the NPO Sector

There are five main categories of abuse or risk facing NPOs. These are not mutually exclusive categories:

1. The diversion of funds is a significant method of abuse, with actors inside the NPOs or external actors (such as foreign partners or third-party fundraisers) being responsible for the diversion to support terrorist entities at some point through the NPO operational or financial processes;
2. NPOs or their directing officials knowingly or unknowingly maintaining an affiliation with a terrorist entity which may

result in the NPOs being abused for multiple purposes, including general logistical support to the terrorist entity.

3. Support of recruitment efforts by terrorist entities.
4. Programming abuse in which the flow of resources and sources of funds are legitimate, but NPO programs are abused for terrorist financing and other illegal activity at the point of delivery.
5. False representations in which terrorist entities start “fake” NPOs or falsely represent themselves as the agents of “good works” in order to deceive donors into providing support. Well planned deceptions are difficult to penetrate with the resources available to NPOs, making state-based oversight and its capabilities a necessary element to detecting the most sophisticated threats to the sector’s activities.

Indicators of Terrorist Financing in the NPO Sector

The list below features some of the major indicators of terrorist financing in the NPO Sector and should be treated as a non-exhaustive guide:

1. Large, unexpected donations from unknown individuals, organizations or other sources new to the principals.
2. Donations subject to the condition that particular individuals or organizations with whom the NPO is unfamiliar are engaged to carry out work.
3. Donors dictating beneficiaries of the grant who are not known to the NPO.
4. Raising funds in the name of the organization which are then diverted and used for criminal and terrorism purposes.
5. The NPO being requested by third parties to allow funds to pass through its bank account.
6. Scholarships and training offered to youth by organizations or individuals from high-risk jurisdictions



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