

ROLE OF NPO'S/PBO'S IN FIGHTING MONEY LAUNDERING ACTIVITIES IN KENYA AND BEYOND

PRESENTED BY: CPA PAUL MUGWE
FORENSIC INVESTIGATOR- ASSET TRACING;
ETHICS AND ANTI-CORRUPTION COMMISSION

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Introduction



- UNODC estimates amount of money laundered globally in one year is 2 - 5% of global GDP, or \$800 billion - \$2 trillion in current US dollar.
- This has led to number of developments in the international financial system to deny criminals the illicit income through the three Fs - **F**inding, **F**reezing and **F**orfeiting of criminally derived income and assets.

Money Laundering Definition



- Money laundering is taking of criminal proceeds and disguising their illegal sources in order to use the funds to perform legal or illegal acts i.e. the process of making dirty money look clean
- The United Nations 2000 Convention Against Transnational Organized Crime, also known as the “Palermo Convention,” :
 - The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property knowing that it is derived from a criminal offense
 - The acquisition, possession or use of property, knowing at the time of its receipt that it was derived from a criminal offense or from participation in a crime.

Money laundering stages



Placement

- The physical disposal of cash or other assets derived from criminal activity
- The money launderer introduces the illicit proceeds into the financial system.

Layering

- Separation of illicit proceeds from source by layers of financial transactions intended to conceal the origin of the proceeds
- This involves converting the proceeds of the crime into another form and creating complex layers of financial transactions to disguise the source and ownership of funds

Integration

- Supplying apparent legitimacy to illicit wealth through the re-entry of the funds into the economy in what appears to be normal business or personal transactions
- Entails using laundered proceeds in seemingly normal transactions to create the perception of legitimacy

Money Laundering scheme

A TYPICAL MONEY LAUNDERING SCHEME



FATF Recommendations



- Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the G-7.
- Its mandate is “to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing, and the financing of proliferation and other related threats to the integrity of the international financial system”.
- FATF has 40 recommendations

Cont...



FATF relies on a strong global network of nine (9) FSRBs

- **APG:** Asia/Pacific Group on Money Laundering
- **CFATF:** Caribbean Financial Action Task Force
- **EAG:** Eurasian Group
- **ESAAMLG:** Eastern and Southern Africa Anti-Money Laundering Group
- **GABAC:** Task Force in Central Africa for Money Laundering
- **GAFISUD:** FATF on Money Laundering in South America
- **GIABA:** Inter-Governmental Action Group against Money Laundering in West Africa
- **MENAFATF:** Middle East and North Africa Financial Action Task Force
- **MONEYVAL:** Council of Europe Committee of Experts on the Evaluation of AML Measures and the Financing of Terrorism

FATF REC 8 Non-profit organisations



- Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse, including:
 - (a) by terrorist organisations posing as legitimate entities;
 - (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
 - (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

NGO ACT



- Non-Governmental Organization (NGO)

Defined in Section 2 of the NGO Act, as a private voluntary grouping of individuals, 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.

PBO ACT



- The PBO Act defines “public benefit organization” (**PBO**) in Section 5(1) means a voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, non-partisan, non-profit making and which is—
 - a) organised and operated locally, nationally or internationally,
 - b) engages in public benefit activities in any of the areas set out in the Sixth Schedule, and
 - c) registered as such by the Authority

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- Section 5(2) For greater certainty, a public benefit organization does not include;
 - a) a trade union within the meaning of the Labour Relations Act, 2007 (Cap. 233);
 - b) a public body established by or under any written law;
 - c) a political party within the meaning of the Political Parties Act, 2007(Cap. 7B);
 - d) a religious organization which is primarily devoted to religious teaching or worship;
 - e) a society within the meaning of the Societies Act (Cap. 108);
 - f) a co-operative society within the meaning of the Co-operative Societies Act (Cap. 469);
 - g) a Sacco society within the meaning of the Sacco Societies Act (Cap.490B);
 - h) a micro-finance institution within the meaning of the Micro-Finance Institutions Act, 2006 (No. 19 of 2006);
 - i) a community based organization whose objective include the direct benefit of its members.

POCAMLA



- An Act of Parliament to provide for the offence of money laundering and to introduce measures for combating the offence, to provide for the identification, tracing, freezing, seizure and confiscation of the proceeds of crime, and for connected purposes
- Reporting institution- means a financial institution and designated nonfinancial business and profession
- Designated non-financial businesses or professions among others include;

Cont...



- Accountants who are sole practitioners, partners or employees within professional firms through Institute of Certified Public Accountants of Kenya
- Non-governmental organisations through Non-Governmental Organizations Co-ordination Board

Offences under POCAMLA



1. Money laundering.
2. Assisting another to benefit from proceeds of crime
3. Acquisition, possession or use of proceeds of crime.
4. Failure to report suspicion regarding proceeds of crime.
5. Financial promotion of an offence.
6. Tipping off.
7. Misrepresentation.
8. Failure to comply with the provisions of this Act.

Cont...



- 10. Conveyance of monetary instruments to or from Kenya.
- 11. Misuse of information.
- 12. Failure to comply with order of court.

NGO's as "subjects at risk"

- NGOs are considered 'subjects at risk' in the ML framework, either as fronts for terrorist organisations that raise and transfer funds, or as legitimate enterprises that indirectly support the aims of terrorist organisations
- NGOs resist attempts to introduce binding rules on their financial transparency, since they consider them a threat to their independence and a limit on access to resources.
- The World Organization Against Torture (OMCT) have view that FATF rec, 8 is a new tool to unfairly and dangerously shrink civil society space.

NGO's as "subjects at risk"

- During UNHRC 40th Session, Institute for NGO Research, a non-governmental organization submitted a statement "The European Government-Funded NGO PFLP Network"
- The Popular Front for the Liberation of Palestine (PFLP) is a terrorist organization designated as such by the EU, Canada, the US, and Israel
- The EU and many European countries fund a network of organizations, some of which are directly affiliated with the PFLP, and others with a substantial presence of employees and officials linked to the PFLP

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Recommendations of the report

- The clear affiliation between NGOs and the PFLP requires immediate attention and concrete measures on the part of European funders, ensuring that funds do not go to groups affiliated with the PFLP or other terrorist entities.
- Following Denmark, Switzerland and the Netherlands, the EU, Sweden, Spain, Belgium, and other countries providing funding to PFLP-linked NGOs must launch independent investigations as to how such allocations were authorized. Reviews must be conducted in conjunction with national and international policing and security services as well as with Israeli counterparts.
- All ongoing funding to these NGOs must be frozen immediately until funders undertake independent reviews

PBOs role in fighting money laundering activities in Kenya and beyond



- Establishing corroboration with Law enforcement Agencies enforcing Anti-Money Laundering laws
- NGOs can be engaged as collectors of relevant information on illicit activities, and in developing standards and implementing anti-ML rules
- Whistle-blowing on Money laundering activities
- Public prosecution
- Publishing reports and articles on ML
- Advocating for transparency and supporting campaigns against money laundering in private and public sector
- Demonstrations and picketing

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- Placing mechanisms in place to vet donor funding
- Follow-up / pressure to institutions to implement reports by Auditor General and other Audit institutions e.g Transparency international

Example: NGOs in Bulgaria participated in the anti-money laundering measures act before it was passed to ensure that there was an alleviated regime for NGOs and an approach tailored to their specific characteristics

Accountants working with NPO/PBOs roles



1. Due diligence - identifying new clients & continued alertness
2. Record keeping
3. Systems and training
4. Under SAS 54, *Illegal Acts by Clients*-requires the auditor merely to be aware of the possibility that illegal acts with indirect effects on financial statements have taken place
5. Accountants are exposed to companies' financial records- Accountants should assist law enforcement by reporting money laundering

Examples



- Republic VS NLC Chairman and others (Compensation of Moi Portreiz Road)
- NYS1&2
- Kiambu County
- Migori County
- Samburu County



At the same time, we need to ensure that we do not impose regulatory requirements on the industry without the promise of real anti-money laundering and anti-terrorist funding benefits.

END

