GENERAL COMMENTS ON THE MONEY LAUNDERING (PREVENTION AND PROHIBITION) BILL

Prepared by Nigeria Network of NGOs on August, 2017

The Nigeria Network of NGOs (NNNGO) is pleased to provide general comments on the draft Money Laundering (Prevention and Prohibition) Bill (draft AML Bill) and how it complies with the FATF Recommendations[1]. NNNGO hereby expresses its concerns related to the burdensome provisions on non-profit organizations (NPOs) that seem contrary to international standards combating money laundering and terrorism financing and human rights conventions protecting freedom of association.

The draft AML Bill is contrary to the proportionate and targeted approach required by the revised Financial Action Task Force (FATF) standards[2] - Recommendation 8 and its Interpretative Note, and could discourage legitimate activities of Non-Profits Organisation (NPOs).

List of specific problematic provisions in the draft AML Bill are the following:

- Article 16 (1) prohibits receipt and payment in cash exceeding the "prescribed amount". The "prescribed amount" is not defined within the draft Bill and will be adopted under the regulation of the Attorney General (Art. 19(1)). This potentially creates a problem for NPOs in their fundraising efforts if the "prescribed amount" is regulated at a very low level.
- Article 16 (2) requires NPOs, as a part of DNFBP, to report certain transactions in cash to the oversight body ("Center"). Heavy fines are prescribed for not reporting such transactions.
- Article 17 requires banks (financial institutions) to report all transactions in the excess of the "prescribed amount" when the transfer occurs with country outside Nigeria.
- Article 24 (1) requires NPOs, as a part of DNFBP, to conduct due diligence on "customers" when concluding transactions above the "prescribed amount". An enhanced due diligence procedure is required for "high risk customers", which includes dealings with a foreign bank, cross-border transactions and non-residents. Heavy fines are prescribed for not conducting due diligence.
- Article 26 (1) requires NPOs, as a part of DNFBP, to devise and implement internal rules in relation to the AML obligations from this draft. Heavy fines are prescribed for not devising and implementing these internal rules.
- Article 28 (1) requires NPOs, as a part of DNFBP group, to devise and conduct internal training for employees in relation to the AML obligations from this draft. Heavy fines are prescribed for not devising and conducting this internal training.
- Article 35 establishes the Bureau for Money Laundering Control, which is to have an oversight over NPOs, as a part of DNFBP, in compliance with this Bill. It can impose administrative sanctions on NPOs for non compliance.

The draft AML Bill treats all non-profit entities (including NGOs) as DNFBP:

Following the current practice in the Nigerian legislation, and contrary to the FATF recommendations, the draft AML Bill continues to treat all NPOs (and NGOs), regardless of their purpose, size or scope of activity, as "Designated Non Financial Businesses or Professionals" (DNFBP) with full set of obligations and requirements for AML purposes[3]. As seen from the draft provisions, these include: reporting details of certain transactions above an unknown "prescribed amount"; conducting extensive check on natural and legal persons that NPOs deal with (donors, beneficiaries, etc.); developing internal rules and training for employees on the AML legal requirements, etc. NPOs can be heavily fined and even criminalized if they don't fulfil these obligations.

This approach is problematic from several perspectives:

1 THE DRAFT AML BILL GOES FAR BEYOND THE FATF STANDARDS:

The anti-money laundering (AML) obligations are a part of the FATF standards, namely the FATF Recommendations 10, 11, 20, 22, 23. However, FATF AML standards are not targeted at non profit organizations. FATF AML recommendations are explicitly targeted towards narrowly defined group of entities - country's financial institutions, money transfer services, casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries, accountants, trust and company service providers, also grouped as "Designated Non Financial Businesses or Professionals". The FATF recommendations do not include non-profit organizations in this group[4]. Further there is no concrete evidence or research that shows non profit sector is more vulnerable to AML abuse than, for example, all business entities. Such obligations are not suitable for NPOs because they prescribe provisions that are designed clearly for profit and professional entities (i.e. majority of provisions deal with "customers"). It is therefore unnecessary and worrying to see legal provisions on AML including in their scope civil society at large, as it clearly goes beyond the FATF standards.

2 THE DRAFT AML BILL IS CONTRARY TO THE PRINCIPLE OF TARGETED APPROACH:

The draft Law makes all provisions mandatory for all registered NPOs without distinction, as part of the DNFBPs. This is contrary to the targeted approach required by the FATF Recommendation 1 and 8. Such blanket inclusion of all NPOs as DNFBPs breaches the requirement of FATF's Recommendation 1 which asks governments to: "identify, assess, and understand the money laundering and terrorist financing risks for the country" and "based on that assessment...apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified." Contrary to that, the draft AML Bill approach towards NPOs is general and universal, not specific or risk-based. NPO size and types of activities are not analysed in order to justify these obligations. Moreover, the FATF risk based approach can be seen in the Recommendation 8, which refers to NPOs specifically, and requires that institutions should not view all NPOs as at risk[5].

3 THE DRAFT AML BILL IS CONTRARY TO THE PRINCIPLE OF PROPORTIONALITY:

The draft AML Bill sets high and disproportionate operational requirements as well as administrative sanctions, heavy monetary fines and criminal liabilities for all NPOs and their representatives. This is inconsistent with FATF standards according to which sanctions for violations should be effective, proportionate and dissuasive[6]. In addition, NPOs are subject to burdensome operational requirements with no distinction as to their size or capacity, as a part of DNFBPs. All NPOs will have to provide additional resources, space, technical conditions and ongoing professional training for their employees; have data maintenance, protection and storage procedure; determine the money laundering risks; identify the beneficiary owner of their "customers", etc. These operational requirements significantly put financial and operational burdens on the organizations, especially those NPOs facing little or no risk[7]. NPOs are not likely to be able to comply with them and this may not be the most effective way of ensuring compliance with AML standards.

[1]ECNL and NNNGO reviewed the version of the draft AML Bill available here: http://bit.ly/2jYwlAd
[2]Revisions made in June 2016 plenary session: http://www.fatf-gafi.org/publications/fatfgeneral/documents/plenary-outcomes-june-2016.html
[3]Definition of DNFBP within Article 55 includes NGOs and NPOs - pending confirmation.

4 THE DRAFT AML BILL IS CONTRARY TO THE PRINCIPLE OF PROPORTIONALITY:

Furthermore, FATF's fourth round of evaluations indicates that any blanket approach towards NPOs could be found as NOT effective, under the new FATF evaluation methodology on combating money laundering and terrorism financing compliance. The new methodology, which will also be applied in Nigeria by FATF evaluators, includes effectiveness assessment in addition to the assessment of the technical compatibility. During the process of effectiveness assessment the most important elements are the risk based approach and targeted measures applied to the NPO sector[8], as well as the non-obstruction of the legitimate activities of this sector. Therefore the inclusion of the additional obligations for all NPOs in the draft AML Bill without targeted, proportionate approach will decrease the likelihood of a positive evaluation for Nigeria under the new evaluation methodology by FATF/GIABA. This has already been shown in evaluation reports for evaluations undertaken during 2014, 2015 and 2016.

CONCLUSION

The draft AML Bill should be reviewed to make sure that it is brought in compliance with the FATF standards combating money laundering and terrorism financing, especially with the FATF Recommendation 10, 11, 20, 22, 23 on AML standards. Further, concerns of over-regulation of the NPO sector have been raised by the FATF, as it now requires from all countries to abstain from over-regulation that can place disproportionate burden on NPOs[9]. The Nigerian institutions, committed to the democratic values, which include a developed civil society as a key element, should follow this as well[10].

[4]See FATF Recommendations 10, 11, 20, 22, 23
[5]Most NPOs may face little, if any, risk of terrorist financing abuse and therefore any additional measures should be targeted only to those NPOs found at risk - Recommendation 8 Interpretative Note.
[6]Article 31 of the Best Practices Paper Combating the Abuse of Non Profit organizations (Recommendation 8)
[7]Article 24 of the Best Practices Paper Combating the Abuse of Non Profit organizations (Recommendation 8)
[8]FATF mutual evaluation reports under new methodology, http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate)
[9]Article 32 of the Best Practices Paper Combating the Abuse of Non Profit organizations (Recommendation 8)
[10]See President's address: http://www.vanguardngr.com/2016/05/nigeria-committed-democratic-principles-buhari-assures-intl-community/

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About NNNGO: The Nigeria Network of NGOs (NNNGO) is the first generic membership body for civil society organizations in Nigeria that facilitates effective advocacy on issues of poverty and other developmental issues. Established in 1992, NNNGO represents over 2400 organizations ranging from small groups working at the local level, to larger networks working at the national level.

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