

# THE IMPLICATIONS OF FATF-INSPIRED AML/CFT MEASURES ON NPOs IN GHANA

By Douglas Quartey<sup>1</sup>

## 1. Overview of AML/CFT Measures

Money laundering and terrorist financing are financial crimes that have attracted global attention since the 9/11 attacks. Money laundering, defined as the process by which proceeds from a criminal activity are disguised to conceal their illicit origin or the act of assisting any person who is involved in such offense(s) to evade the legal consequences of their actions (IMF 2001; UN 1988), has permeated different spheres of human activities and life for decades. Lately, the transfer of illicit funds to promote terrorist and extremist activities has also heightened in sub-Saharan Africa.

Generally, money laundering requires an underlying primary, profit-making crime (such as corruption, drug trafficking, market manipulation, fraud, and tax evasion), along with the intent to conceal the proceeds of the crime or to further the criminal enterprise (Ojukwu-Ogba & Osode, 2020). These activities generate financial flows that involve the diversion of resources away from economically and socially productive uses, and these diversions can have negative impacts on the financial sector and the external stability of countries. Additionally, they also have a corrosive, corrupting effect on society and the economic system as a whole. Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) measures have therefore

emerged as critical components of the global effort to combat financial crimes, maintain the integrity of financial systems, and prevent illicit activities and acts of terror (Jayasekara, 2020). The key objectives of AML/CFT measures are to detect, deter, and prevent perpetrators from illegally obtaining funds from criminal activities and indulging in more illicit activities with ill-gotten gains (Jayasekara, 2021; Chua, 2021).

AML/CFT measures are typically governed by a comprehensive regulatory framework that includes laws, regulations, and guidelines at both the national and international levels. At the international level, the Financial Action Task Force (FATF) sets global standards and recommendations for AML/CFT efforts, which many countries adopt (FATF, 2012). While financial institutions may be the foremost entities due to their critical role in the deposit and transfer of money, the AML/CFT measures are not limited to them alone. AML/CFT measures also apply to real estate, precious metals and stones dealers, gaming companies, the not-for-profit sector, and other sectors susceptible to money laundering and terrorism financing (GIABA, 2019; Act 1044, 2020, Section 28).

## 2. NPOs and the Global Landscape of AML/CFT Measures

The evolution of the global financial system and the surge in money laundering and terrorist financing have caused non-profit organizations (NPOs) to be

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directly and indirectly affected by FATF standards by virtue of their operations (FATF/OECD, 2015). FATF has recognized the importance of NPOs in the context of AML/CFT. Accordingly, FATF has issued specific guidance to help countries address the risks while maintaining the legitimate activities of NPOs through FATF Recommendation 8 (R8). FATF R8 sets out a broad framework for the regulation of NPOs to prevent abuse by terrorist groups and their affiliates. Accordingly, several countries have enacted policies and laws to protect their economies from illicit financial flows and stifle any attempts to finance the activities of terrorist groups.

However, in an attempt to comply with the FATF recommendations, some governments have tightened the rules on the NPO sector beyond what is under R8 to evade the complications associated with illicit financial activities. This has contributed to new and sometimes cumbersome measures such as onerous registration and licensure laws, increased state surveillance and regulation of the sector, and difficulties in accessing and distributing financial resources by NPOs. According to an ICNL (2021) report, globally, there have been a number of cases where overregulation related to AML/CFT has negatively affected NPOs (ECNL, 2021). The report asserts that governments often justify those measures as necessary in order to comply with the standards of the FATF.

## 2.1 Best Practices

Notwithstanding the challenges and issues that have emerged with the implementation of the FATF recommendations, there are international best practices that form the basis for robust AML/CFT regimes. According to ICNL (2021), governments are required to show that they have “implemented a targeted approach, conducted outreach, and exercised oversight in dealing with NPOs that are at risk from the threat of terrorist abuse”. Consequently, countries must strike a balance in protecting their financial systems to prevent money laundering and terrorism financing activities without compromising the operations of NPOs.

Therefore, implementing AML/CFT measures within the NPO sector requires a balanced

approach to ensure the sector's integrity and financial transparency while protecting NPOs from governmental abuse. Some of the best practices include the establishment of financial intelligence centers, the adoption of risk-based approaches in the categorization of NPOs, financial due diligence, the enactment of protective but inclusive laws, and the training and sensitization of actors in the sector, among others.

The establishment of a centralized body or agency responsible for overseeing and coordinating AML/CFT efforts across various government agencies and stakeholders is pivotal in ensuring that AML/CFT measures are effectively executed. With national coordination, collaboration and partnership can be brewed among the private sector, civil society, and governments to broaden the scope of AML/CFT efforts and lead to a more comprehensive approach. For instance, in Australia and New Zealand, the cooperative models that have been adopted offer valuable insights on some of the best practices that countries can adopt.

These best practices also induce compliance from NPOs for the successful implementation of AML/CFT measures. For instance, a risk-based approach is recommended for regulating the NPO sector, recognizing that not all NPOs pose the same risk of being exploited for money laundering or terrorism financing. Implementing a risk-based approach to AML/CFT focuses resources on areas with higher risks of money laundering and terrorism financing and allows for tailored regulation.

Furthermore, training and awareness programs play a key role in ensuring that NPOs have the capacity and understanding to conduct due diligence. Providing training and awareness programs for NPO staff, board members, and volunteers also builds the capacity of NPOs to develop internal AML/CFT compliance programs to prevent financial crimes and terrorism financing. For instance, the Netherlands provides training and awareness initiatives for NPOs through the Financial Intelligence Unit Netherlands (FIU-NL) and other relevant authorities. Others, such as the Charities Regulatory Authority in Ireland

and the Swedish Financial Intelligence Unit, also provide training and support to NPOs to enhance their understanding and to help them comply with AML/CFT regulations.

Moreover, conducting due diligence, such as verifying the identity of donors and beneficiaries, particularly for high-value or high-risk transactions, is crucial for implementing AML/CFT measures. Due diligence initiated by financial institutions and regulators helps prevent the abuse of NPOs by money launderers.

Beyond these, other practices, such as whistleblower protection, are essential to encouraging individuals within the sector to report AML/CFT violations without fear of retaliation. Whistleblower protection contributes not only to preventing financial crimes and terrorism financing, but also fostering a culture of accountability and transparency within the NPO sector. By ensuring that individuals can report concerns without fear of reprisal, NPOs can play a more active role in safeguarding the integrity of the financial system and preventing illicit activities while preserving their essential missions.

### 3. Implementation of AML/CFT Measures in Ghana

The 2019 Mutual Evaluation Report (MER) of the Inter-Governmental Action Group against Money Laundering (GIABA) rated Ghana as non-compliant with FATF's R8 (GIABA, 2020). GIABA was particularly concerned that Ghana's regulatory framework was porous and exposed the NPOs to the abuse of money laundering and financing terrorist activities. Ghana was therefore blacklisted by the European Union (EU) in 2020. The blacklisting was due to weak anti-money laundering and terrorist financing policies and legislative measures.

In response, the Government of Ghana (GoG) undertook a number of steps to strengthen its legal and regulatory frameworks. Ghana therefore introduced AML/CFT measures as essential components of the efforts to combat financial crimes, maintain financial integrity, and prevent illicit activities in the country. The

major AML/CFT legal and policy frameworks include, Anti-Money Laundering Act, 2008 (Act 749) and its subsequent amendments, the Anti-Money Laundering Act, 2020 (Act 1044); The Financial Institutions (Non-Banking) Act, 2008 (Act 774), The National Anti-Money Laundering & Countering the Financing of Terrorism and Proliferation (AML/CFT&P) Policy. Others include amendments to introduction of the national Non-Profit Organization Policy 2020; and establishment of the Not-for Profit Organizations Secretariat (NPOS) to facilitate and enforce regular reporting and renewal of operating permits for NPOs (GIABA, 2022).

The FATF-inspired NPO measures also included targeted policy measures and administrative directives targeted at NPOs because they were flagged as high-risk institutions. For instance, the NPO secretariat was revitalized and empowered to enforce regular reporting and renewal of operating permits for NPOs to respond to the issues raised by the report. Accordingly, the 5th Enhanced Follow-up Report and Technical Compliance by GIABA in 2022 re-rated the country as partially compliant with R8. This rating was based on measures adopted to meet the requirements of the regional AML body.

### 4. The Implications of AML/CFT Measures on NPOs in Ghana

#### 4.1 Progressive Implications

The implementation of AML/CFT measures in Ghana has had several positive implications for NPOs in the country. These implications have strengthened the integrity of the NPO sector, enhanced transparency, and fostered public trust. The progressive impacts include the following:

##### 4.1.1 Introduction of NPO license

Under the NPO policy, all entities that seek to operate as non-profit organizations are required to apply for and be licensed to operate. The NPO license forms part of the measures to sanitize the sector and replaces the certificate to commence business that, until now, was issued by the Office of the Registrar of Companies.

#### **4.1.2 Increased renewal of licenses**

The introduction of the licensing regime has seen an increase in the number of NPOs that have registered with the NPOS. For instance, between 2018 and 2022, the number of renewals per year increased from 829 to 4840.

#### **4.1.3 Establishment of the NPO Secretariat**

The measures informed by the FATF have laid the foundation for the establishment of a functional NPO Secretariat as a facilitator and regulator of NPO activities in the country.

#### **4.1.4 Exigency to pass an NPO law in Ghana**

The FATF-inspired AML/CFT measures have necessitated the need for the country to enact a law to regulate the NPO sector. An NPO law would provide NPOs with a clear legal framework that outlines their rights and responsibilities, as well as the clarity essential to ensuring that NPOs comply with AML/CFT measures.

#### **4.1.5 Increased Transparency**

The re-introduction of annual renewals as part of the administrative directives under the 2020 NPO Policy has increased the transparency of NPOs. For instance, although the submission of annual financial audits and statements is a mandatory requirement, the introduction of the NPO licensing regime opened a channel of transparency into the activities and operations of players in the sector who, until then, had not filed annual returns or renewed their operating licenses with the then Department of Social Welfare.

### **4.2 Regressive Implications**

Ghana's efforts to align with global AML/CFT standards have inadvertently impacted the operations of NPOs in the country. While strides toward policy and legal framework improvements are commendable, gaps persist, particularly in alignment with the FATF's recommendations for the NPO sector. Some of the negative implications of current measures include:

#### **4.2.1 Regulatory Hurdles**

The requirements to set up and operate an NPO

have increased by multiple folds. For example, a new NPO is subjected to two levels of registration. First with the Registrar of Companies as a Company Limited by Guarantee, and then with the NPO Secretariat, including verification of directors and completion of Beneficial Ownership (BO) forms. Others include:

- a) *requirement for police verification of directors as part of the registration process*
- b) *filing of two separate annual reports and financial statements with the Office of the Registrar of Companies and the NPOS for renewal of licenses*
- c) *requirement for information and a regular update of beneficial owners*

The administrative challenges associated with registration, licensing, and compliance can deter many aspiring NPOs.

#### **4.2.2 Increased Financial Monitoring**

Most NPOs source their funding from foreign donors (USAID, 2021). However, with the implementation of AML/CFT measures, most banks flag NPOs as high-risk entities and therefore carry out stringent AML/CFT measures such as enhanced due diligence, and monitoring of their financial activities. For instance, most, if not all, foreign inflow is subjected to checks by the banks, even if it is coming from a credible source. Although this cautious approach affects not just Ghanaian NPOs but also their global counterparts, such strict onboarding practices are generally intimidating for small organizations that are entering the sector.

#### **4.2.3 Lack of openness around the implementation of AML/CFT measures**

Although Ghana has enacted a Right to Information law, there is generally restricted access to information from regulatory institutions on money laundering developments within the NPO sector. Currently, issues of AML and CFT are overly securitized and operated at a high level, and therefore access to information on these

issues is limited. For instance, information on the number of NPOs that have been flagged for suspicious transactions or NPO accounts closed due to terrorist financing issues is not readily accessible.

#### **4.2.4 Policy Implementation Challenges**

The implementation of the AML/CFT measures has generally been a top-down approach, which has marginalized grassroots stakeholders, making policy adherence and acceptance challenging. Awareness among grassroots NPOs on AML/CFT issues remains low; hence, adopting a top-down approach that does not consider the nuances and ground realities has implications for compliance.

#### **4.2.5 Inadequacy of the Legal Regime**

While considerable progress has been made to improve the policy and legal frameworks, the NPO sector, still lags in terms of the adequacy of laws because Ghana has not fully implemented all the GIABA recommendations for the sector. For instance, the country is categorized as partially compliant with FATF recommendation 8 because Ghana has not yet enacted an NPO law to regulate the sector.

## **5. Conclusion**

The impact of AML/CFT measures on NPOs in Ghana is a complex issue that demands a balanced approach. While these measures are essential for safeguarding the financial system and preventing illicit financial activities, they have the potential to hinder the vital work of NPOs. Therefore, striking the right balance is crucial for both regulatory compliance and the preservation of the sector's legitimacy.

NPOs in Ghana face challenges, including increased compliance burdens and financial constraints in complying with AML/CFT measures. To address these challenges, it is imperative that Ghana tailor its AML/CFT regulations to the specific risk profiles of different NPOs. A one-size-fits-all approach is not suitable, as it may unduly burden low-risk organizations.

Additionally, the government and relevant authorities

must provide training and capacity-building programs to equip NPOs with the knowledge and tools necessary for compliance. The success of AML/CFT measures in the NPO sector depends on awareness and compliance.

In conclusion, Ghana has a vital role to play in balancing its commitment to AML/CFT efforts with the preservation of NPOs' missions. By addressing the challenges and harnessing the opportunities, Ghana can ensure a robust and secure financial landscape that supports the vibrant contributions of its non-profit sector by integrating global best practices, fostering collaborative dialogues, and implementing proactive policies.

## **6. Recommendations**

Addressing the challenges highlighted will require strategic interventions by key stakeholders. The recommendations are in three parts. Recommendations are clustered among the main stakeholders in the implementation of AML/CFT measures in the NPO sector in Ghana, that is, the regulatory institutions, the NPOs, and the financial institutions. Accordingly, the following targeted sector, institutional, regulatory, and legislative recommendations are proposed:

### **6.1 Non-Profit Organizations**

- a) *NPOs should carry out an independent appraisal of the draft NPO bill and submit their position paper to the government.*
- b) *Carry out due diligence on funding sources and internal governance structures.*
- c) *NPOs must strengthen their internal governance and financial management structures and make them compliant with the AML/CFT laws.*
- d) *NPO-led peer review mechanisms must be strengthened. For instance, relevant governance and operational structures for the NPO forum outlined in the 2020 NPO Policy must be established for effectiveness.*
- e) *Intensify education on AML/CFT issues beyond the high-risk entities to include all sector operators.*



## **6.2 Government (Ministries and other Regulatory Institutions)**

### **6.2.1 Executive**

- a) *The Ministry of Gender, Children, and Social Protection (MoGCSP) and the Ministry of Justice and Attorney-General's Department must ensure inclusive processes in the development of a comprehensive and forward-looking NPO bill that will maintain the vibrancy and contribution of the sector to national development.*
- b) *The FIC and NPOS must undertake regular risk assessments and monitoring of the impact of policy measures on the sector. Specifically, the;*

### **6.2.2 Non-Profit Organization Secretariat**

- a) *Broaden and intensify the education of all NPOs on the AML/CFT laws in the country and their responsibilities.*
- b) *Develop and share user-friendly IEC materials on NPO operations, particularly the registration processes and the new directives for the management of NPO operations.*
- c) *Enhance the inclusion of policy-making processes and improve the participation of a broad range of NPO actors in the development and review of policy measures to promote collective ownership and implementation. This can be done by deepening collaboration with actors in the sector, particularly NPOs at the grassroots.*

### **6.2.3 Financial Intelligence Centre**

- a) *Improve the level of transparency or openness in the implementation of AML/CFT measures.*
- b) *Expedite action to develop AML/CFT guidelines for the NPO sector.*
- c) *Regularly share information or updates on suspicious transaction reports related to the NPO sector to serve as a guide to organizations and the public.*

## **6.3 Parliament**

- a) *Expedite action when the NPO bill is proposed by the government to ensure timely passage.*
- b) *Adopt a bipartisan approach in the review of the draft NPO bill to prevent the inclusion of clauses that could be abused by the government to constrict NPOs and civic space.*

## **6.4 Financial Institutions**

- a) *Develop and implement a nuanced risk assessment methodology, recognizing the varied risk profiles of different NPOs.*
- b) *Promote financial inclusion by streamlining onboarding processes rather than making them cumbersome for new NPOs.*
- c) *Establish feedback systems to address NPO-specific challenges.*

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#### **About This Publication**

*This policy brief is compiled from a desktop research and findings from a baseline study titled “The Impact of AML/CFT Measures on NPOs in Ghana” conducted for the Institute for Democratic Governance.*

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