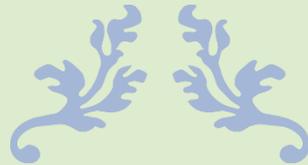


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**#MLPA: LEGAL ANALYSIS OF  
THE MONEY LAUNDERING  
(PREVENTION AND  
PROHIBITION) ACT, 2022**

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Policy Briefing Paper 015

**MAY 2022**



# #MLPA Policy Briefing Paper

MAY 23, 2022

## INTRODUCTION

Since 2013, non-profit organizations (NPOs) operating in Nigeria have been designated as obliged reporting entities under various national anti-money laundering and countering financing of terrorism (AML/CFT) programs and regimes. SPACES FOR CHANGE has [led advocacy pushing back on governmental restrictions on civil society](#) either framed around countering terrorism and protecting national security or resulting from the perception of NPOs as conduits for money-laundering or the financing of terrorism. S4C's 2019 research report, [Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria](#), challenged the official classification of NPOs as designated non-financial institutions (DNFIs). It also interrogated the evidential basis for tagging DNFIs—of which NPOs are a subset—amongst those sectors most vulnerable to money laundering (ML) and terrorist financing (TF).

After years of sustained research activism and constructive engagements with authorities campaigning relentlessly against this designation, Nigeria repealed the Money Laundering (Prohibition) Act, NO. 11, 2011 on the 12th of May 2022, and replaced it with another legislation, called the Money Laundering (Prevention and Prohibition) Act, 2022. The new law removed NPOs from the list of DNFIs, extricating non-profit entities from the litany of reporting and regulatory burdens that obstruct their legitimate charitable operations. See the major highlights below:

## #MLPA MAJOR HIGHLIGHTS

- i. **Repeals the former 2011 money laundering law:** The Money Laundering (Prohibition) Act, NO. 11, 2011 was repealed on the 12th of May 2022, and is now replaced by a new legislation, called the Money Laundering (Prevention and Prohibition) Act, 2022.
- ii. **The new law renames or refers to designated non-financial institutions (DNFIs) as designated non-financial business and professions (DNFBPs).** To enhance understanding of the new legal provisions, this briefer retains the former popular name, DNFIs.
- iii. **Establishment of SCUML as AML/CFT regulator for DNFIs:** The new law effectively establishes the Special Control Unit Against Money Laundering (SCUML) under the Economic and Financial Crimes Commission (EFCC) as the supervisory authority for DNFIs in relation to money laundering.
- iv. **Exclusion of non-profit organizations (NPO)s from DNFI list:** The new law excluded NPOs from the list of DNFBPs. The term, NPOs, did not appear at all in the entire legal framework.
- v. **Expansion of the DNFI list:** A look at Section 30 of this Money Laundering (Prevention and Prohibition) Act, 2022 reveals some new entrants into the DNFI category. They are consultants and consulting companies, legal practitioners and notaries, trust and company service providers etc. The inclusion of legal practitioners comes against the backdrop of the [order of perpetual injunction](#) restraining the Federal Government, Central Bank of Nigeria (CBN) and the SCUML from seeking to enforce money laundering measures against legal practitioners and notaries.



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**The new law excluded non-profit organizations from the list of designated non-financial business and profession (DNFBP). The term, NPOs, did not appear at all in the entire legal framework.**

- vi. **More stringent reporting obligations are imposed on DNFBs** which have the effect of lowering the ease of doing business in Nigeria.
- vii. **Some reporting obligations applicable to NPOs are retained:** The reporting obligations for NPOs retained under the new law have a sector-wide effect and do not specifically apply to NPOs alone.
  - **Expands the powers of competent authorities to conduct financial surveillance pursuant to a court order** which includes placing any bank account under surveillance and to obtain access to any suspected computer system.

## NPOS' REPORTING OBLIGATIONS UNDER THE NEW LAW

1. **Limitation on Cash Payments (Section 2):** The Act prohibits money laundering and criminalizes cash payments exceeding N5,000,000 or its equivalent, in the case of an individual; or (b) N10,000,000 or its equivalent in the case of an individual; or (b) N10,000,000 or its equivalent, in the case of a body corporate. Transactions above this threshold must now be routed electronically or through a financial institution. The Act specifically warns against splitting the payment into two or more transactions separately with intent to avoid the duty to report a transaction which should be reported.

The focus of this provision is to promote a cashless policy, and accordingly, is consistent with [CBN's April 2020 Directive on Cashless Policy](#) which announced charges on cash deposits over N500,000 for individuals and N3,000,000 for corporate bodies. The new policy on cash-based transactions (withdrawals & deposits) in banks, aims at reducing (**not eliminating**) (emphasis not S4C's) the amount of physical cash (coins and notes) circulating in the economy, and encouraging more electronic-based transactions (payments for goods, services, transfers, etc.). It is important to state that this reporting requirement not only applies to NPOs, but all other persons and business entities in Nigeria. Accordingly, it is not an NPO-specific obligation, but has a sector-wide application to all individuals and body corporates irrespective of the sector and scope of the financial or business operations.

2. **Duty to Report Inflows: (Section 3)** Inflows or transfers to or from a foreign country of funds or securities of a sum exceeding US\$10,000 or its equivalent shall be reported to SCUML, CBN or Securities Exchange Commission (SEC) in writing within one day from the date of the transaction. This requirement is a carry-over from the 2011 money laundering law. The report must contain particulars of the nature and amount of the transfer and the names and addresses of the sender and the receiver of the funds or securities. Although the term, NPOs, were not mentioned at all in this new legal framework, it is assumed that NPOs may continue to carry out this function to SCUML. As with the statutory limitation on cash-payment, this provision has sector-wide application extending to all individuals and body corporates, including non-profits,



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irrespective of their sectoral differences and scope of their financial or business operations.

## DFNI OBLIGATIONS NPOS ARE NOW EXCUSED FROM

**Expansion of the DNFI List:** The new law renames or refers to DNFI as DNFBPs. The term, DNFBPs, refers to businesses and professions which are not financial institutions but are regarded by the Financial Action Task Force (FATF) to be prone to money laundering and terrorism financing (ML/TF) abuse as a result of the very nature of their business activities. Under Section 30 of the new law, 2022, entities classified as designated non-financial businesses and professions include (a) automotive dealers, (b) businesses involved in the hospitality industry, (c) casinos, (d) clearing and settlement companies, (e) consultants and consulting companies, (f) dealers in jewelries, (g) dealers in mechanized farming equipment, farming equipment and machineries, (h) dealers in precious metals and precious stones, (i) dealers in real estate, estate developers, estate agents and brokers (j) high value dealers, (k) hotels, (l) legal practitioners and notaries, (m) licensed professional accountants, (n) mortgage brokers, (o) practitioners of mechanised farming, (p) supermarkets, (q) tax consultants, (r) trust and company service providers, (s) pools betting, or (t) such other businesses and professions as may be designated by the Minister responsible for Trade and Investment.

**Due Diligence Obligations (Section 4):** DNFI are obligated to conduct due diligence on their permanent or occasional customers—whether natural or legal persons or any other form of legal arrangements, using identification documents—in order to identify the beneficial owner using relevant information or data obtained from a reliable source. DNFI's responsibility to conduct due diligence applies when:

- (a) establishing business relationships; transferring or transporting funds, securities and cash;
- (b) carrying out occasional transactions above the applicable designated threshold
- (c) carrying out occasional transactions that are wire transfers
- (d) there is a suspicion of money laundering or terrorist financing
- (e) there are doubts about the veracity or adequacy of previously-obtained customer identification data.

Furthermore, DNFI are required to continuously conduct due diligence on a business relationship and scrutinize transactions undertaken during the course of the relationship by assessing their source of funds; their business and risk profile; their transaction history; review their customers' existing records and keep up-to-date records of the customers' data. Where certain customers present high risk, DNFI are to apply enhanced measures to manage and mitigate the risk as well as simplified measures to manage and mitigate lower risks. The measures include taking steps to gather sufficient information about the customer's institutional operations, assess their AML/CFT controls etc. DNFI are to report money laundering, put in place appropriate risk management systems and procedures for local and foreign politically exposed persons (PEP) and take reasonable measures to establish their source of wealth or the source of funds. These measures apply to persons entrusted with a prominent function by an international organization.

This section makes it compulsory for DNFI to conduct due diligence on their permanent or occasional customers. Most recipients of NPO funds fit the description of occasional beneficiaries as they often take part in one-off meetings, conferences, workshops, cash transfer programmes, field research, humanitarian, education, social and development programs etc. Numerous NPOs are also recipients of one-off and short-term grants from public and private donors. By this delisting, NPOs are now exempt from taking extraneous steps towards verifying



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the identity of their beneficiaries or using independent source documents, data or information to surveil recipients of aid.

Secondly, NPOs are ill-suited to carry out the type of rigorous due diligence initiatives prescribed under this law. NPOs lack the forensic infrastructure needed to conduct such extensive surveillance and profiling of their (often) one-off beneficiaries of aid. Requiring NPOs to assess the risk profiles, transaction history, existing records and keep up-to-date records of the beneficiaries' data will not just be extremely onerous, but also will force NPOs to totally deviate from their core charitable and humanitarian mandates and venture into investigative and undercover missions mainly reserved for security agencies and banking institutions. It also does not take into accounts efforts by NPOs to develop a [self-regulatory framework](#) to increase accountability and good governance ethics in the sector.

Also reduced are the stricter obligations associated with due diligence compliance requirements from multiple supervising authorities such as SCUML, FIRS, commercial banks, auditors, public and private donors. NPOs are already subjected to sometimes stringent due diligence screening and financial reporting obligations imposed by donors including external monitoring of the use of funds by auditors. Had NPOs remained in the DNFI category, NPOs' due diligence obligations would be doubled, placing them under enormous pressure and financial burdens of satisfying compliance and reporting requirements to multiple entities. This would have clearly amounted to disrupting or discouraging legitimate NPO activities.

**Expansion of DNFI's Stringent Reporting Obligations:** New and existing DNFI's that make use of cash transactions are now required to submit a declaration of their activities to SCUML within 3 months from the commencement of this Act. Before they can engage in any transaction exceeding US\$1,000 or its equivalent, they are now required to make their customers fill a standard data form, attaching proof of identification such as international passport, driving license, national identity card or such other document bearing his photograph. All these transactions are to be recorded in a chronological order in a register forwarded to SCUML within seven days from the date of the transaction. These records shall be preserved for at least five years. Failure to comply with the requirements of customer identification and the submission of returns amounts to an offence, punishable upon conviction by a fine of N250,000 for each day during which the offence continues; and suspension, revocation or withdrawal of license by the appropriate licensing authority.

Exempting NPOs from this type of onerous and stringent report is a positive development. Before the recent delisting, the 2011 repealed law required NPOs to file Cash-based Transaction Reports (CbTR) for cash transaction in excess of \$1,000 and the Currency Transaction Report in excess of N5, 000,000.00 or its equivalent in foreign currency for individual and N10, 000,000.00 or its equivalent in foreign currency. This is no longer required under the new law. NPOs host very regular public enlightenment and public advocacy events involving transactions exceeding US\$1,000 or its equivalent. Had NPOs remained on the DNFI list, it would mean that NPOs, especially the bigger organizations, will practically spend all their time reporting their transactions daily, weekly and monthly—as the case may be—to SCUML. The time, complexity, expense and huge volumes of paperwork associated with these reporting requirements can have chilling effects on profitmaking entities, let alone non-profit entities.

**Stringent Reporting Vs. Ease of Doing Business:** The expanded reporting obligations for DNFI's also means that SCUML will now have access to records of most financial transactions in the country exceeding US\$1,000 or its equivalent, with implications for personal privacy and data protection concerns. Such intense reporting has further adverse effects on the ease of doing



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business in Nigeria. In 2020, Nigeria ranked 131 on the global Ease of Doing Business index.<sup>1</sup> This low rating prompted Nigeria's Vice-President, Yemi Osinbajo, to decry how regulatory requirements and elongated certification processes are killing Nigerian businesses. "We have to take a second look at how we regulate. Over-regulation is killing businesses,"<sup>2</sup> another commentator added. As has been apply stated by an advocacy group, while monitoring and regulating financial transactions are important for investigating and preventing terrorist acts and other serious crimes, it is essential that it is done in a way that does not endanger human rights.<sup>3</sup>

**Suspicious Transaction Reporting (Section 7):** Similar to the due diligence obligations of DNFI's to assess their customers' risk profile and report unusual transactions, they have a further duty to look out for and report transactions that involve a frequency which is unjustifiable or unreasonable; or surrounded by conditions of unusual or unjustified complexity; or appears to have no economic justification or lawful objective' and or inconsistent with the customers' known transaction patterns. Reports are also compulsory where a transaction evokes reasonable suspicion of being proceeds of crime, unlawful act, money laundering or terrorist financing. This report shall be made within 24 hours after the transaction to the Nigerian Financial Intelligence Unit (NFIU), whether the transaction is complete or not. Failure to comply is a crime, and punishable upon conviction by a fine of N1,000,000 for each day during which the offence continues. It is a welcome relief for NPOs to be excused from this reporting obligation for the same reason given against imposing extreme due diligence responsibilities on NPOs.

**Duty to Keep and Preserve Records (Section 8):** DFNI's are obligated to keep all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction. The records are to be made swiftly available to the competent authorities and such other regulatory authorities or judicial persons, upon request. Taking into the account the requirement to file bi-annual statements, file annual returns and preserve records for six years under the Companies and Allied Matters Act (CAMA 2020), NPOs already bear similar obligations to disclose information on their income streams and expenditure to the Corporate Affairs Commission (CAC). It can be inferred that this exemption under the Money Laundering Act 2022 takes into account that another statute (CAMA 2020) has already covered the field.

**Duty to Have Anti-Money Laundering Programs and Policies (Section 10):** It is compulsory for DNFI's to develop programmes to combat the laundering of the proceeds of a crime or other unlawful acts. In event of non-compliance, CBN, SEC, National Insurance Commission or SCUML may impose a penalty not more than N1,000,000 on DNFI's. Other sanctions include suspending their operating licence. The compulsory programs include:

1. hire compliance officers at management level at its headquarters, every branch and local office
2. regular training programmes their employees
3. have central databases

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<sup>1</sup> World Bank, Business Enabling Environment (BEE) | The Ease of doing business index ranks countries against each other based on how the regulatory environment is conducive to business operations and stronger protections of property rights. See also <https://tradingeconomics.com/nigeria/ease-of-doing-business>

<sup>2</sup> Ayodeji Adegboyega, PREMIUM TIMES, Ease of Doing Business: Nigeria sets 60-day plan after agencies failed six times (February 8 2022); Accessed via <https://www.premiumtimesng.com/business/510330-ease-of-doing-business-nigeria-sets-60-day-plan-after-agencies-failed-six-times.html>

<sup>3</sup> Privacy International: How financial surveillance in the name of counter-terrorism fuels social exclusion (October 15, 2019); Accessed via <https://privacyinternational.org/long-read/3257/how-financial-surveillance-name-counter-terrorism-fuels-social-exclusion>



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4. have an internal audit unit to ensure compliance with and effectiveness of the measures taken to enforce the provisions of this Act.

This is another welcome relief for NPOs. By way of illustration, SPACES FOR CHANGE | S4C has two offices in Nigeria. Subjected NPOs to a provision like this means that S4C will need to have compliance officers at management level and in its two branches irrespective of the overhead burden it places on the organization's meagre resources. Because non-profits are largely dependent on grants and donations, a significant portion of their funds will be dedicated to implementing anti-money laundering programmes in the organization instead of charitable activities. This type of requirement will particularly have a chilling effect on smaller organizations whose scope of operations and budgets cannot readily accommodate such expenses.

**Duty to Report Heavy Lodgments and Transfers (Section 11):** DNFI's are to report in writing to the NFIU within seven days, any single transaction, lodgement or transfer of funds in excess of — (a) N5,000,000 or its equivalent, in the case of an individual; or (b) N10,000,000 or its equivalent, in the case of a body corporate. Failure to comply is a crime and liable on conviction to a fine of at least N250,000 and not more than N1,000,000 for each day the contravention continues.

**Mandatory Disclosure of Business Deals (Section 11 (4)):** The new law places an obligation of mandatory disclosure on DNFI's regardless of the rules of legal professional privilege and the invocation of client confidentiality principles. What this means that lawyers and consulting firms who are bound by principles of client confidentiality must now conform to the money laundering provisions in cases involving purchase or sale of property, management of trusts, business and managing of client money, securities or other assets etc. Similarly, personal privacy, secrecy or preservation of customer confidentiality shall not be invoked as a ground for objecting to money laundering measures. Contravention of this provision is an offence and is liable on conviction to a term of imprisonment of at least two years in the case of an individual or a fine of at least N10,000,000 for a body corporate. In addition, the principal officers of the body corporate shall be prosecuted and their company wound up. DNFI's are also required to consider and weigh the money laundering and terrorism financing risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products. (See Section 13).

## POWERS OF COMPETENT AUTHORITIES

**Power to Conduct Financial Surveillance (Section 15):** Upon the order of the Federal High Court obtained upon an ex-parte application, competent authorities empowered to identify and locate proceeds, properties, objects or other things related to the commission of an offence by doing any or all of the following:

- place any bank account under surveillance
- obtain access to any suspected computer system
- obtain communication of any authentic instrument or private contract, together with all bank, financial and commercial records, when the account, the telephone line or computer system is used by any person suspected of taking part in a transaction involving the proceeds of a financial crime or other crime.

The Unit, Commission shall in consultation with the CBN and CAC determine the flow of transaction and the identities of beneficiaries, including the beneficiaries of individual accounts and of corporate accounts. Under this new law, SCUML retains the responsibility for registering and certifying DNFI's and maintain a comprehensive database of such entities.



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They will also conduct off-site, on-site, and on the spot checks and inspections of DNFI's for the purposes of money laundering control and supervision and receive their statutory receipts.

## EMERGING CONCERNS

**Fears Regarding Subsequent Inclusion of NPOs in the DNFI Category:** Amid the current realities of a rapidly-shrinking civic space in Nigeria, there are legitimate concerns that NPOs may be re-added into this list of DNFI's in the future. This fear is well-founded for two major reasons. First, Section 30 of the new law confers additional powers on the Minister responsible for Trade and Investment to increase the DNFI list by designating such other businesses and professions as DNFI's. What this means is that the minister can exercise this authority at any time to re-include NPOs as an obliged reporting entity in the future. Secondly, this has actually happened before in 2013. Even though NGOs were not listed as DNFI's in the repealed law, SCUML's 2013 regulation (Designation of Non-Financial Institutions and Other Related Matters) categorized NPOs in Nigeria as DNFBPs, imposing stringent compliance obligations on them.

Additional protections offered by international mechanisms offer levers to push back against this sort of re-inclusion. For instance, SPACES FOR CHANGE | S4C's March 2019 report, [Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria](#) put up a strong challenge to the perception of NPO's as conduits for money-laundering or the financing of terrorism. Upholding arguments made in S4C's report, FATF regional body, GIABA's 2021 Mutual Evaluation Report found that Nigeria's classification of NPOs as DNFBPs on the grounds of money laundering extends well beyond the FATF standards and is inconsistent with a risk-based approach. In many sections of the MER, the report reiterated that classifying all NPOs as DNFBPs and subjecting them without discrimination to the full suite of AML/CFT responsibilities goes against the intent of Recommendation 8 (R8) of the FATF Standards. Based on these findings, Nigeria was rated non-compliant on R8.<sup>4</sup>

Based on the above consequences, it will be unlikely that Nigeria may consider re-including NPOs in the DNFI category. Re-including NPOs in the list of DNFBPs will further diminish the country's ratings by FATF. Not only that, the recent reviews to the money laundering legislation were specifically propelled by FATF's unfavourable findings and downward ratings in the MER, coupled with the country's eagerness to exit FATF's International Co-operation Review Group.

**Where to Find the New AML/CFT Regulatory Framework for NPOs?** [S4C has led national advocacy for Nigeria to conduct a standalone risk assessment of the NPO sector](#) in line with the requirements of R8. Yielding to advocacy pressure, Nigeria commenced a comprehensive risk assessment of the NPO sector in December 2021.<sup>5</sup> The essence of the exercise is to meet the requirements of FATF's R8 which requires countries to identify the NPOs which are prone to terrorist financing (TF) threats; determine which of those NPOs identified are vulnerable to TF and review the adequacy of laws and regulations and other measures that relate to the NPOs identified as vulnerable in respect of the inherent risks.

At this stage, the national NPO risk assessment is still in progress. At the end of the exercise, the sub-sets of NPOs vulnerable to TF would be identified and AML/CFT regulations proportionate to the identified risks would be developed. Blanket regulations and the attendant

<sup>4</sup> Victoria Ibezim-Ohaeri and Lotanna Nwodo; Action Group on Free Civic Space, Harms from Abroad: Impact Of Global Security Measures On Civic Space In Nigeria (2021) <https://closingspaces.org/harms-from-abroad-impact-of-global-security-measures-on-civic-space-in-nigeria/>

<sup>5</sup> Spaces for Change, EFCC, SCUML Flag Off Risk Assessment of NPOs in Nigeria (2021) <https://spacesforchange.org/efcc-scuiml-flag-off-risk-assessment-of-npos-in-nigeria/>



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restrictions are not to be slammed on the country's entire universe of NPOs. Accordingly, a ministerial directive, informed by the outcomes of the NPO risk assessment, is being expected to provide further guidance on the new AML/CFT regulatory framework for non-profits operating in the country.

For further reading:

- ❖ SPACES FOR CHANGE, [Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria](#), March 2019
- ❖ SPACES FOR CHANGE, [Beyond FATF: Trends, Risks and Restrictive Regulation of Non-Profit Organisations in Nigeria](#)
- ❖ Victoria Ibezim-Ohaeri and Lotanna Nwodo; Action Group on Free Civic Space, Harms from Abroad: Impact of Global Security Measures On Civic Space In Nigeria (2021) <https://closingspaces.org/harms-from-abroad-impact-of-global-security-measures-on-civic-space-in-nigeria/>
- ❖ SPACES FOR CHANGE, [Factsheet 02: What does the Civil Society have to know about FATF?](#)
- ❖ ACTION GROUP ON FREE CIVIC SPACE: [NIGERIA: Shrinking Civic Space in the Name of Security](#)

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