For Immediate Press Release

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Nairobi, Kenya

Greylisting of Kenya by Financial Action Task Force Calls for Urgent Reforms to Combat Financial Crime

The recent inclusion of Kenya in the Financial Action Task Force's (FATF) grey list, on 23rd February 2024, poses significant challenges to Kenya's economic and social progress. This development not only tarnishes Kenya's reputation but also undermines its credibility as a reliable regional and global partner. Kenya was grey-listed because;

- The country lacks a clear strategy on the prosecution of money laundering offences. The FATF assessment found that Kenya could not demonstrate any successful investigation and prosecution of any money laundering offences.
- No adequate investigations, or prosecutions of legal or natural persons for terrorist financing offences despite conducting several investigations related to terrorism which created a mismatch when considering the risk profile.
- The country has a large sector of Non-Profit Organisations, but the sector is largely unregulated and unsupervised hence the risk of terrorism financing abuse remains unidentified.
- The National Risk Assessment (NRA) conducted by Kenya indicated that fraud, forgery and drug-related offences form the greatest risk to the country, but recovery from the said crimes was quite low as compared to recoveries made for misuse of resources and corruption.
- While Kenya had made good progress on Beneficial Ownership disclosures, not all companies and entities had complied with the requirement to disclose their real owners and the identification of Politically Exposed Persons (PEPs) and their transactions remained opaque due to the lack of Enhanced Due Diligence procedures required for such persons when conducting transactions domestically.

- While Kenya has carried out a risk assessment to identify and understand money laundering and terrorism financing risks associated with or emerging from virtual assets (VAs) and virtual asset service providers (VASPs), it has not prohibited their use or put in place relevant regulatory frameworks to monitor and regulate their use despite Kenya being ranked among the countries with the highest use of virtual assets.
- Risk-based approach towards Anti-Money Laundering/Counter-terrorist financing supervision was found to be relatively underdeveloped. Most supervisory activities occur for banks and microfinance banks. However, supervision of other Financial Institutions (FIs) or Designated Non-Financial Businesses and Professions (DNFBPs) is not carried out on a risk-sensitive basis. Inspections in these sectors were found to be too infrequent and focused on the presence of basic controls rather than the soundness of AML/CFT programmes.

Implications of the Greys List on Kenya

A decade after Kenya's removal from the FATF grey list, following meticulous efforts to address deficiencies highlighted in the 2010 Mutual Evaluation Report (MER), this recent setback plunges the nation back into the scrutiny of international financial watchdogs. Kenya's regression to the grey list status is not merely a national concern but a global alarm bell, resonating with institutions both directly and indirectly connected to Kenya's economic landscape. The greylisting underscores the urgent need for the Kenyan government to enact reforms and strengthen its anti-money laundering, countering the financing of terrorism, and combating proliferation financing (AML/CFT/CPF) framework; measures that are imperative to demonstrate a serious commitment to addressing illicit activities that threaten national stability and integrity. Kenya is likely to suffer consequences of greylisting in various ways including;

- ***Loss of Foreign Aid and Investments***; being on the Financial Action Task Force's (FATF) grey list, has significant implications for Kenya, including the ability to secure foreign aid and investments. Kenya's reputation as a stable and transparent financial environment will be compromised, potentially discouraging foreign investment and deterring businesses from operating in the country. Research indicates a reduction in foreign direct investment (FDI) to GDP ratio by up to 2% for countries with low FATF scores. The same research shows that FDI inflows can decline by 3%, portfolio inflows by 2.9%, and other investment inflows by 3.6% of GDP. For a country seeking to balance its trade deficit and reduce its debt burden, the reduction of FDIs and investment inflows would be catastrophic to the economy.

- ***Increased Compliance Costs:*** Grey listing requires stricter adherence to anti-money laundering (AML) and countering terrorist financing (CFT) regulations, leading to higher compliance costs for financial institutions, businesses, and individuals. An analysis of bank inflows between 2010 and 2015 shows a significant decrease in cross-border liabilities by about 16%. Most countries in the White List, that have complied with the FATF recommendations, have traditionally imposed stricter requirements when transacting with countries that have been grey listed to reduce the risk of handling dirty money. Kenyans are globally recognised as key players in the financial sector and exchanges both in trade and other social services like education and health. Many Kenyans seek these services in other countries, the greylisting will likely hurt them when seeking these services globally.

- ***Obstacles in International Trade and Payments:*** The need for increased scrutiny and enhanced due diligence from foreign banks and financial institutions may result in delays, higher transaction costs, and possible restrictions on cross-border trade and payments, with a reduction of up to 10% in payments received from the rest of the world based on research on SWIFT data from 2004 to 2014.

What must be done to combat financial crime in light of Kenya’s greylisting

In light of Kenya’s greylisting by the Financial Action Task Force's (FATF); we, the undersigned Civil Society Organizations (CSOs) emphasise the urgency of addressing the following recommendations:

- **Involvement of Stakeholders**: The Financial Reporting Centre (FRC), Treasury and other relevant government agencies should engage all stakeholders, including the public, by enacting and adopting whistle-blower protection laws in the fight against Anti-Money Laundering/Counter-terrorist financing,

- **Independence and efficacy of the Judiciary**: There is need to uphold the independence of the judiciary to combat graft effectively, ensuring financial autonomy and freedom from interference while continuously building the capacity of judicial officers to understand the intricate nature of Anti-Money Laundering and Terrorism Financing, to enhance the prosecution of the cited cases.
- **Operationalise the PBO Act:** The government should immediately operationalise the Public Benefit Organisations Act, 2013, to facilitate better regulation of the non-profit sector as envisaged in the law.
- **Enhanced Prosecution of High-Profile Cases:** The Office of the Director of Public Prosecution (ODPP) should strengthen its efforts to prosecute money laundering and terrorism financing cases, while collaborating with relevant agencies in investigating such crimes and to deter such offences effectively.
- **Coordination between Law Society of Kenya & Financial Reporting Centre:** There is need to foster collaboration between the Law Society of Kenya and the Financial Reporting Centre to develop regulations and guidelines for reporting institutions, raising awareness within the legal profession on Anti-Money Laundering and Terrorism Financing.

Kenya's greylisting by the Financial Action Taskforce underscores the urgent need for comprehensive reforms to strengthen its Anti-Money Laundering/Counter-terrorist financing framework. Through collaborative efforts among government agencies, civil society, and international partners, Kenya can enhance its compliance with global standards and restore confidence in its financial institutions.

Signed

1. Global Financial Integrity (GFI)
2. Transparency International Kenya (TI-Kenya)
3. Civil Forum for Asset Recovery (CiFAR)
4. African Forum and Network on Debt and Development (AFRODAD)
5. Institute of Public Finance
6. Kenya Human Rights Commission (KHRC)

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