

**Réseau National de Défense des Droits Humains  
(RNDDH)**

Membre de la

**fidh**

**The Fight Against Money Laundering :  
The Executive and Haitian Parliament dismantle the UCREF**

May 15, 2017

# **Executive Summary**

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## **I. Introduction**

The National Network for the Defense of Human Rights (RNDDH) took notice of a presidential decree which was issued on April 19, 2017, appointing Fritz JEAN to head the Central Unit of Financial Intelligence (UCREF), replacing Sonel JEAN FRANÇOIS.

This new appointment took place a few days before the Haitian Parliament passed a Law on the Organization and Functioning of the Central Financial Intelligence Unit (UCREF), which drew the attention of RNDDH and led the organization to perform a comparative analysis of the 2001 Law that created the UCREF and the newly enacted Law of 2017, which provides details on the organization and operations of the UCREF.

This report summarizes the major differences in the two legal texts mentioned above as identified by RNDDH, some of which are quite alarming.

## **II. Implementation and General Operations of the UCREF**

On February 21, 2001, the Haitian Parliament passed a "***Law on Money Laundering Arising from Illicit Trafficking of Drugs and Other Serious Offenses***".

Article 3.1.1 of this Law established the ***Central Financial Intelligence Unit (UCREF)*** under the authority and control of the ***National Committee to Combat Money Laundering (CNLBA)***.

The primary objective in creating UCREF and CNLBA is to intervene in order to combat money laundering. In this sense, the UCREF must collect information from financial institutions or other institutions involved in major financial transactions, such as banks, credit unions, casinos, insurance companies, house transfers, housing lotteries, vehicle dealers, and stockbrokers. There are also law firms and notaries which might receive large sums of money from people wishing to acquire properties.

Referral to UCREF is made by a declaration of suspicion. It is a document completed by any UCREF recognized financial institution which is also referred to as ***Assujettis***.

The suspicious transaction report must also be accompanied by a transaction statement. This is also called a declaration of the source of funds made by the client. Financial institutions have a duty to require this declaration from customers when the set threshold is exceeded. It differs from the declaration of suspicion which itself is made by the ***Assujettis***.

The regularity of the information collected enables UCREF to further investigate the matter and, on the basis of its relevance, draws up a report which it sends directly to the National Prosecutor. The latter works with the administrator of the Court of First Instance (*décanat*) for the distribution of the file to a Judge of Instruction who carries out a judicial inquiry. If the declaration of suspicion does not state that the person is accused of money laundering, UCREF is not authorized to open an investigation.

The client being investigated is not informed until the case has been referred to an investigating judge.

Since May 2016, UCREF set up its own specialized cell to carry out its own suspicious transaction reports, which were dependent on the frequency of received declaration of source of funds sent by the *Assujettis*.

Therefore, it is clear that UCREF must play an important role in society. In order to so, it requires freedom of action and autonomy. It must also maintain good relations with the *Central Bank*, the Association of Banks and the *Ministry of Justice and Public Security*. In addition, UCREF serves as an interface between Haitian financial institutions and international bodies cooperating in the fight against money laundering and the financing of terrorism.

In 2001, the Legislator drafted a very detailed law on the prevention and reduction of money laundering.

On the 4th and 8th May 2017, the *Chamber of Deputies* and the *Senate of the Republic* passed a *law on the Organization and Functioning of the Central Financial Intelligence Unit* (UCREF) with 32 articles, repealing the 2001 Law and focuses on the organization of UCREF rather than on money laundering.

On May 9, 2017, the law was forwarded to the Executive for promulgation, which has not yet been issued as of the date of publication of this report.

However, major concerns are raised by this new Law. They are concerning :

1. The volume of the 2017 Law compared to the 2001 Law
2. Defining the Concept of Money Laundering
3. Preventing Money Laundering
4. Transparency in Financial Operations
5. Regional and international cooperation
6. The procedure for appointing the Director General of the UCREF

### III. Comparative Analysis of the Laws of 2001 and 2017

#### 1. *Regarding the content of the laws of 2001 and 2017*

The 2001 Law is divided into seven titles, 14 chapters, subdivided into 78 articles. The 2017 Law contains only four chapters subdivided into 32 articles.

***Several articles considered very important in 2001 by legislators were set aside in 2017.***

#### 2. *Regarding the definition of Money Laundering*

The first title of the 2001 Law was reserved exclusively to define the concept of money laundering, its elements, and the various manifestations of this criminal activity.

Money laundering is then studied in its most subtle forms and manifestations, offering UCREF the opportunity to better understand the phenomenon and to better combat it.

In the 2017 Law the notion of money laundering is not defined in any article.

***RNDDH would like to remind legislators that the first priority within a law is to define the focus of the law. Consequently, the 2017 Law weakens UCREF and may take away from its ability to be effective in combating money laundering.***

### ***3. Regarding the Prevention of Money Laundering***

Title II of the 2001 Law provides for a set of provisions enabling the Haitian State to carry out a policy of prevention in the area of money laundering.

For example, Article 2.1.2 of the 2001 Law states : "***Any payment in cash by a secure carrier in a sum equal or greater than 200,000 gourdes in foreign currency is prohibited***".

The 2001 Act also sets out the applicable standards for the transfer of funds to and from abroad.

The Law of 2017 remains silent on this subject.

***Therefore the 2017 Law does not allow UCREF to undertake prevention in the field of money laundering. On the contrary, it inhibits the assurances put in place in 2001 by legislators.***

### ***4. Regarding transparency in financial operations***

The 2001 legislation had made transparency in financial operations a priority strategy in the fight against money laundering. Among other things, they required credit and financial institutions to identify any individual or institution who wished to open an account and to even intervene in the setting up and operation of casinos and gaming, to better combat money laundering.

In the 2017 Law, the legislation addressed insufficiently the concept of financial transparency, which, must be the backdrop to any fight against money laundering and other financial crimes.

### ***5. Regarding Regional and International Cooperation***

The member states of the international community have made regional and international judicial cooperation the preferred strategy in the fight against transnational crimes. It is in this context that several groups have been formed, including the ***Caribbean Financial Action Group*** (CFAT).

Following two meetings held in ***Aruba*** and ***Jamaica*** in the early 1990s, the GAFIC<sup>1</sup> was established. It is an organization of Caribbean States committed to combating money laundering and illicit trafficking of narcotic drugs and psychotropic substances on the basis of a number of regional and international instruments.

The establishment of UCREF in 2001 was not isolated. On the contrary, it was in recognition for the need for joint efforts against money laundering with partners in the

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<sup>1</sup> Source : [www.fatf-gafi.org/fr/pages/groupedactionfinancieredesCaraibesgafic.html](http://www.fatf-gafi.org/fr/pages/groupedactionfinancieredesCaraibesgafic.html)

international community which shaped Title V of the 2001 Law addressing international cooperation.

However, the Act of 2017 amending that of 2001 remains insufficient in addressing the concept of international judicial cooperation in the fight against money laundering.

***In doing so, the 2017 Law clearly marks the withdrawal of Haiti from the international cooperation circuit as the world is consolidating itself as a bloc to effectively combat financial and transnational crimes.***

At this stage, GAFIC requires amongst other things, the integration of UCREF into the Egmont Group. This integration is subject to the adoption of an organic law regarding the administrative and financial autonomy of UCREF. The fact UCREF is not joining the Egmont Group constitutes a risk of isolation for Haiti on the international stage in the fight against money laundering. Haiti is under threat of the phenomenon known as de-risking, which is when regional banks can decide to break their business relations with their Haitian counterparts if the financial systems of the country are not clean.

The *Egmont Group*<sup>2</sup> is an international forum established in 1995 that brings together, at the global level, the services responsible for receiving and processing suspicious laundering and terrorist financing reports.

***There is not doubt that such a decision would be a fatal blow to the struggling national economy.***

***Rather than endowing UCREF with an organic law tailored to defend partisan political interests, the Haitian authorities would be do better to elaborate and adopt a text that gives real and total autonomy to this institution, In order to enable it to reorganize the financial system, prevent and, where necessary, initiate an effective fight against money laundering and the financing of terrorism.***

## ***6. Regarding the procedure of nomination a Director General of UCREF***

Article 6.2.2 of the 2001 Law states: "***The Director General shall be appointed for a period of three years, renewable once, by order of the President of the Republic on the proposal of the Minister of Justice and Public Security from a list of three names drawn up by the National Committee to Combat Money Laundering. S/He is assisted by a Deputy Director General, appointed by the Minister of Justice and Public Security, from a list of three names established by the said Committee.*** »

According to Article 6.1.3, the ***National Committee for the Fight against Money Laundering*** consists of:

- The Coordinator of the ***National Commission for the Fight against Drugs*** (CONALD),
- A Magistrate,

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<sup>2</sup> Source : [www.egmontgroup.org](http://www.egmontgroup.org)

- A designated official of the *Ministry of Economy and Finance*,
- A police officer, appointed by the *Ministry of Justice and Public Security*, on the proposal of the *Director General of the National Police*,
- A qualified official appointed by the Governor of the *Bank of the Republic of Haiti* (BRH)
- A qualified personality designated by the *Professional Association of Banks*,
- A qualified person representing the para-banking sector.

Article 13 of the 2017 law states: "*The General Management shall be provided by a Director General appointed by a Presidential Order taken by the Council of Ministers on the recommendation of the Minister of Justice and Public Security. The Director General is assisted by a Deputy Director General appointed by the Minister of Justice and Public Security.*

*The Director General is appointed for a four (4) year term, renewable once.*

*It is subject to the hierarchical power of the Board of Directors. It may be terminated before the end of the term of office by the Chief Executive Officer in the event of serious misconduct.*

*Serious misconduct is defined as any act that is fraudulent, illegal or contrary to the fundamental purpose of UCREF's powers and internal regulations. "*

However, Article 5 of the 2017 Law stipulates that "*The Board of Directors has the following composition:*

- a) A President designated by the Bank of the Republic of Haiti*
- b) A Vice-President designated by the Ministry of Justice and Public Security;*
- c) One member appointed by the Ministry of Justice and Public Security;*
- d) One member appointed by the Ministry of Economy and Finance;*
- e) One member appointed by the Professional Association of Banks*

*The Board of Directors is appointed by Order of the Council of Ministers, after approval of the Senate of the Republic. "*

It is clear that in 2001 the Legislation insisted that the Director General of the UCREF and his deputy be chosen in a transparent manner and in accordance with their competency and ability to hold the post. Their appointment was therefore the result of an open call for candidates, to which anyone could take part. With the 2017 law, the criteria of transparency, competency and aptitude guaranteed by a clear process are no longer apparent. The Minister of Justice and Public Security may transmit the name of any person to the President of the Republic to be appointed Director General of the UCREF. The same shall apply to the post of Deputy Director.

***By passing the 2017 Law, the Haitian Parliament weakened UCREF by placing it under the total control of the Executive, which remains dangerous given the importance of this institution.***

The comparison of these two legal provisions relating to the appointment procedure of the Director General of UCREF makes it apparent that the Executive has knowingly violated the 2001 Law.

The replacement of Director General Sonel JEAN FRANÇOIS seems to have been decided under the terms of the 2017 Act, which itself authorizes the Executive to directly appoint a Chief Executive Officer to head UCREF. However, this law has not yet been passed by Parliament, since it is subsequent to the decree of April 19, 2017.

Therefore, it is clear, that this order is arbitrary and illegal because it violates the provisions of the 2001 Law relating to the appointment of a Director General to head the UCREF and does not respect the mandate of former Director General Sonel JEAN FRANÇOIS.

#### **IV. Conclusions and Recommendations**

In 2001, Legislators were aware of their mission to provide the country with an instrument capable of fighting against money laundering with some effectiveness. It was also concerned with guaranteeing the autonomy of UCREF in relation to the other powers and institutions of the State by endowing it with a competent and independent Director General and Deputy Director.

RNDDH would not say the 2001 Law was perfect, but recognizes that Legislators understood the need to allow UCREF to be effective in the performance of its work, while at the same time making available to it a legal instrument which was very detailed, facilitating its intervention in the prevention and the repression of money laundering.

Today, it is a clear that money laundering has reached a disproportionate ratio. It was for this reason, the 2001 Law took into account the obligation of States to cooperate in combatting cross-border financial crime, as a necessary strategy.

The 2017 Law, which is very succinct, falls outside the scope of the fight against money laundering, dramatically reducing the margin for maneuvering for the Haitian State and increases the risk of isolation of Haiti in the international scene. Moreover, far from guaranteeing the autonomy of the UCREF, it gives executive control over this entity, with a **Board of Directors** composed of five members, four of whom are appointed by the Executive itself, in addition to the General Manager and his Deputy.

Based on these observations, RNDDH recommends to the Executive :

- To recall the decree of April 19, 2017 because it is illegal and arbitrary and does not comply with the provisions of the 2001 Law.
- To not proceed with the publishing of the **2017 Law Organization and Operations of UCREF**
- Return the 2017 Law to the Haitian Parliament for a new assessment which is line with the current requirements related to the fight against money laundering, illicit trafficking in narcotics, financing of terrorism, and transnational financial crimes.

In conclusion, RNDDH invites state authorities in particular, but also all the actors of society in general, to understand the importance of autonomous and independent institutions in the establishment of a democratic rule of law. The attempt to control them is in no way beneficial to the country.