



DEFENDERS
PROTECTION INITIATIVE

POLICY BRIEF ON

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM
FINANCING (AML/CTF) LAWS: AN EXAMINATION
OF THEIR IMPACT ON CIVIC SPACE IN UGANDA.

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ACRONYMS

AAIU	DENIVA
Action Aid International-Uganda	Development Network for Indigenous Voluntary Associations
ACTED	DGF
Agency for Technical Cooperation and Development	Democratic Governance Facility
AFENET	FOWODE
African Field Epidemiology Network	Forum for Women in Democracy
ACCU	FHRI
Anti-Corruption Coalition Uganda	Foundation for Human Rights Initiative
ACFM	FATF
Alliance for Campaign Finance Monitoring	Financial Action Task Force
AFIEGO	FIA
African Institute for Energy Governance	Financial Intelligence Authority
CTM	GLISS
Counter Terrorism Measures	Great Lakes Institute of Strategic Studies
CCEDU	GBV
Citizens Coalition for Electoral Democracy in Uganda	Gender Based Violence
CTC	HRCU
Counter Terrorism Committee	Human Rights Centre Uganda
CTITF	HURINET-U
Counterterrorism Implementation Task Force	Human Rights Network Uganda
CTED	HRC
Counter Terrorism Committee Executive Directorate	Human Rights Council
CSBAG	HRDs
Civil Society Budget Advocacy Group	Human Rights Defenders
CMA	ICCPR
Capital Markets Authority	International Covenant on Civil and Political Rights
CID	MOU
Criminal Investigation Directorate	Memorandums of Understanding
CCTTT	NCCT
Criminal Case Tracking Task Team	Non-Cooperative Countries or Territories
	NAPE
	National Association of Professional Environmentalists

NDI
National Democratic Institute
NUP
National Unity Platform
NEW-U
National Election Watch-Uganda
NPO
Not-for-Profit Organisations
ODPP
Office of the Director of Public Prosecutions
UHRC
Uganda Human Rights Commission
UYONET
Uganda Youth Network
UNNGOF
Uganda National NGO Forum
URA
Uganda Revenue Authority
URSB
Uganda Registrations Services Bureau
UPF
Uganda Police Force
UWONET
Uganda Women’s Network
WSR
Women Situation Room



FOREWORD

This report presents findings of a study conducted by DPI titled ‘Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Laws: An Examination of Their Impact on Civic Space in Uganda.’ The study was conducted between December 2020 and March 2021. It comes against a backdrop of a systematic buildup of contracting civic space in Uganda. This has largely been fueled by among other mechanisms, a litany of laws all having negative implications on the operating environment for civil society organisations in Uganda. The laws, mostly inspired by and in some cases implicitly forced on Uganda as a member of the international comity in the so called ‘global war against terrorism’, have been incorporated into Uganda’s legal sphere cumulatively. The study finds that whereas the law imposes obligations on Civil Society Organisations (CSOs) in respect to the fight against terrorism and the general safety and security of the country, majority are unaware of these obligations. The scope and extent of these obligations is also not clear to many especially when juxtaposed against the various rights and freedoms guaranteed under the Constitution of Uganda, 1995. To this end therefore, the study casts a light on Uganda’s Anti-Money laundering and Counter-Terrorism Financing legislation and examines the extent to which they are in tandem with international human rights standards. More fundamentally, the study seeks to disseminate the hitherto undocumented impact of the aforementioned

legislations on the work of civil society organisations with emphasis on Non-Governmental Organisations (NGOs). In this respect, the study finds that the manner in which the AML/CTF legislations have been enforced has greatly infringed on the work and rights of NGOs especially those operating in the sphere of rule of law, human rights and accountability. The laws have also been utilized to torment the leadership of NGOs. Many are currently under police surveillance and a subject of endless investigations for alleged violations of AML/CTF legislations.

Considering this grim situation, this study makes various recommendations for the progressive improvement of the operating framework of NGOs in Uganda. Such a framework must strike a balance between current NGOs’ obligations under the AML/CTF legislations and fundamental rights and freedoms especially the right to freedom of association. More fundamentally, the study makes an appeal for the immediate and urgent removal of NGOs from the list of accountable persons under the AML legislation. In order to achieve this, CSOs will need to be at the forefront of a concerted De-listing Advocacy Campaign since it is not a requirement for them to be included on the list of accountable persons under the standards set by the global Financial Action Task Force (FATF). On behalf of Defenders Protection Initiative, I take the honor to convey our sincere gratitude to all the stakeholders who contributed to this study. Additionally, cognisant of the huge scope of this subject matter, we do welcome your comments, ideas, and suggestions on practical ways to mitigate the unintended consequences of the AML/CFT regime on the civic space in Uganda.



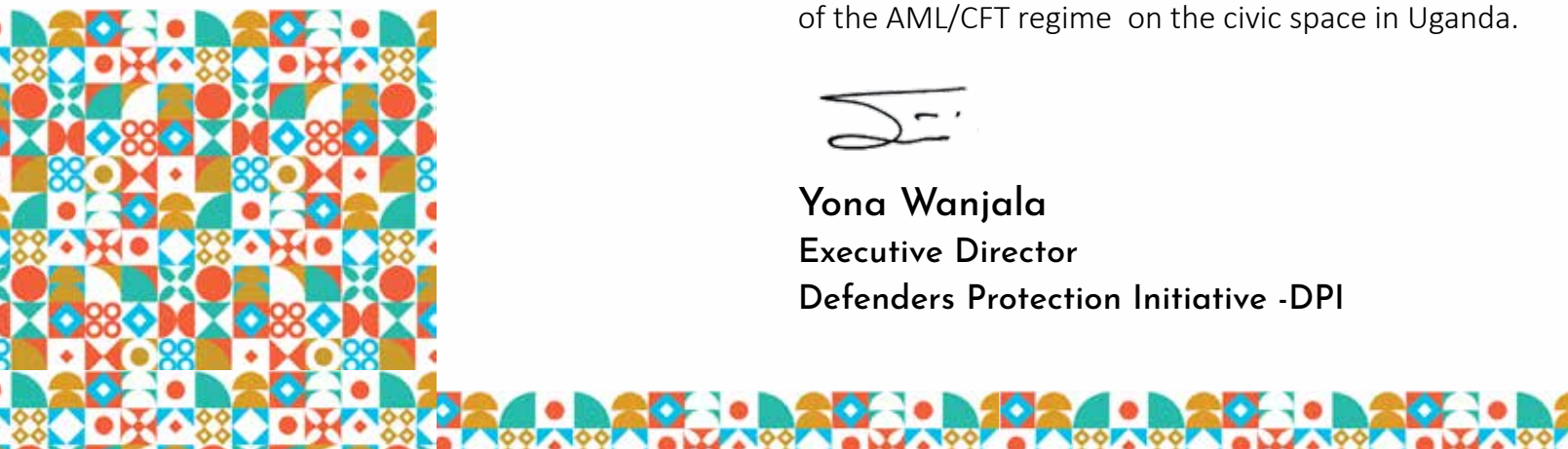
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This study report greatly benefited from the interaction with several individual human rights defenders and Non-Governmental Organisations (NGOs). DPI would like to thank all persons who agreed to be interviewed as part of the study. Their experiences and insightful views provided greatly enriched the findings of this report.

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EXECUTIVE SUMMARY

In the aftermath of the September 11, 2001, terror attacks on the United States of America (USA), countries around the world took heightened measures to enhance their national security and protect the life and property of their citizens. More significantly, the attack on the US created impetus for a global approach to the collective fight against terrorism. The United Nations which is the converging organ for all nations around the world has been at the forefront of this approach. Over the last few years, the UN has come up with different strategies to empower individual member states in countering terrorism within their national jurisdictions while at the same time contributing to their collective responsibility to ensure that the world is safe. The initiative for countries to adopt Anti-Money Laundering (AML) and Counter Terrorism Finance (CTF) laws and policies has been one of the most prominent approaches in this endeavor. This approach (use of AML/CTF legislation) to counter terrorism is highly complimented by the work of the Financial Action Task Force (FATF)- an inter-governmental organisation founded in 1989. Although its initial mandate was restricted to the detection and prevention of money laundering, it was expanded to include counter terrorism financing roles in the wake of the 2001 terror attacks on the US.

By virtual of it being a member state, Uganda is enjoined to follow the UN counter terrorism recommendations including the adoption of relevant AML and CTF legislations. Similarly, although Uganda is not a member of FATF, it is obliged to follow its recommendations as a matter of international comity. Besides, Uganda and East Africa as a region has had its own bitter experience with terrorism. On July 11, 2010, the country experienced its worst terror attack in the form of twin bombings at two prominent places of entertainment. In both these attacks a substantial number of lives

were lost (76 people) while many others were left with permanent injuries. In the wake of these events, and the growing international compulsion on states to enhance their efforts against terror, Uganda has in the last ten years heightened its counter terrorism efforts. The enactment of AML and CTF legislations represents one of the most prominent approaches that the country has taken as part of its efforts to counter terror. The laws criminalize terrorism and other related criminal acts such as money laundering. Most fundamentally, the laws contain stringent provisions for the detection and prevention of terrorism financing. While the adoption of laws for the control of terrorism financing is a very critical step in the fight against terrorism, there is a growing concern that the enforcement of such counter terrorism measures without due regard to due process and fundamental rights and freedoms can have devastating consequences for the operations of civil society.

Against this backdrop, the Defenders Protection Initiative (DPI) with the support of the Uganda Support Programme that is being implemented by GIZ supported by the European Union and the Germany government, commissioned a study to examine the impact of Uganda's anti-money laundering and counter terrorism legislation on civic space. The study also explored the extent to which FATF style regulations have impacted on the operations of civil society in Uganda.

According to the findings, there is overwhelming evidence to show that although the formulation of AML/CTF legislation was legitimate and necessary, its enforcement has been problematic with detrimental effects on the operations of civil society. In the first place, current AML/CTF legislation contain very ambiguous and overly broad terms. The broad terms especially those in relation to the definition of the offence of terrorism and

related offences have been used (abused) to criminalize the otherwise legitimate activities of Non-Government Organizations (NGOs) and their leaders. Still within the law, enforcement bodies such as the Financial Intelligence Authority (FIA) are given wide discretionary powers (often without judicial recourse) in respect to the enforcement of its provisions. Secondly, it is a major finding of the study that in the last five years (2016-2021), AML/CTF legislation has been deployed against NGOs in a more arbitrary manner and in some cases in total disregard of fundamental rights and freedoms guaranteed in the Constitution. Given that this five-year period coincides with the controversial removal of the presidential age limit in the Constitution to enable the incumbent to seek another term in office, it has been one of the most contentious in the country's political history. Accordingly, NGOs that were involved in the campaign against the removal of the age limit which was seen as the last beacon of hope for a peaceful transition of power faced unprecedented attacks including the arbitrary enforcement of AML/CTF legislations. Third and most recent, there was a heavy reliance on AML/CTF legislation to lay siege on NGOs involved in advocating for a free and fair electoral process. The accounts of these NGOs were frozen, and others were given directions to provide their funding and financial information to the FIA. On most occasions this was done without adequate warning and the option for NGOs to have recourse to courts of law. Even more absurd, there were several instances involving the arrest of individual leaders of NGOs on arguably trumped-up charges. Many of these leaders became victims of surveillance and protracted investigations only for the charges brought against them to be later dropped.

All this points towards a fault-finding approach by the FIA- the major agency responsible for the enforcement

of AML/CTF legislation. Such an approach coupled with the arbitrary enforcement of AML/CTF legislation has had devastating consequences for civil society and especially those NGOs whose work involves advocacy for civil political rights, good governance, and accountability. This is notwithstanding the fact that while NGOs may be soft spots, they have a huge role to play in countering terrorism since they act as a middle ground for the expression of disgruntlement and engagement with the state. This role helps to deflate and mitigate against issues and grievances that are often exploited by extremist groups to promote terrorism and violent extremism. For this reason and in as much as AML/CTF is necessary, it should be enforced in a manner that is consistent with existing international human rights standards. More importantly for Uganda, the Financial Intelligence Authority (FIA) should focus on empowering NGOs to comply with the provisions of the law instead of the current biased and fault-finding approach.



4.0 RECOMMENDATIONS

- Non-Governmental Organizations should streamline in-house periodic internal house cleaning exercises in form of legal audits. These could involve legal requirements check lists that are statutory in nature as directed under the AML/CTF legal frameworks. In this way, the organizations can assess their weaknesses and rectify them to ensure compliance with the directives by the FIA. This would also make them ready to withstand the ‘fault finding’ approach of law enforcement stakeholders of the laws.
- Conduct trainings and re-fresher awareness sessions with the entire staff of the non-governmental organizations so that all are knowledgeable on the organizational legal requirements and obligations under the AML/CTF legal framework. This kind of knowledge should not only be a reserve of the management of the organizations but rather to all the structures of a particular organization. This could further strengthen the NGOs personnel capacity in relation to the workings of the AML/CTF laws and attendant regulations.
- Establishment of a consistent, well-coordinated competent legal response CSOs team that is bestowed with the requisite resources and knowledge to contend with the unfair application of the AML/CTF and attendant legal framework as a political weapon to stifle the CSOs sector. This team could also offer tailor made trainings and awareness raising short modules to the CSOs fraternity and also be tasked with keeping abreast with the evolving legal amendments related to AML/CTF to ready the CSO fraternity response and also protection from unwarranted ambushes.
- Civil society acting collectively must continue the documentation (if possible, annually) and reporting on the negative impact of these laws to further raise awareness about them on the various human rights advocacy levels including the human rights mechanisms within the United Nations and African Union Human Rights Systems. More importantly, the CSOs fraternity should work towards strengthening and deepening their engagement with the national counterterrorism and terrorism financing architecture, including the FIA and NGO Bureau to also enhance oversight and accountability further over these entities.
- The need for comprehensive legislative reforms; this would focus particularly on the definitions of terrorism, ‘acts of terrorism’, and ‘terrorism

financing’ among others to expunge therefrom over broad, imprecise, vague, and ambiguous aspects that remain susceptible to abuse and as thus detrimental to the operations of the CSOs.

- The Parliamentary Committee on Human Rights and Constitutional Oversight and Accountability mechanisms such as the Uganda Human Rights Commission (UHRC) should take particular interest in the work methodologies of the FIA, ODPP and the Uganda Police to examine how compliant they are with procedural guarantees of fairness and justice for the CSOs that fall victim to AML/CTF laws. The UHRC can cause its findings to be tabled before Parliament for scrutiny and in the same vein the Parliamentary Committee on Human Rights has powers, on own volition to cause the examination and discussion of these laws in their Committee for potential legislative reforms.
- There is need for CSOs to develop a non-profit AML/CFT centered program to complement the regulator model. Such can take cognizance of the NPO experience or industry expertise that are relevant to the regulator.
- The CSOs should launch a De-listing Advocacy Campaign from being accountable persons under the AMLA. It is not a requirement under the FATF set standards.
- There is need for CSO to develop a non-profit AML/CFT centered program to complement the regulator model. Such can take cognizance of the NPO experience or industry expertise that are relevant to the regulator.



1.0 INTRODUCTION

The year 2001, September 11th, changed the global security apparatus after the terrorist attack on the United States of America (USA). In the aftermath was unleashed the ‘institutionalization of Counter Terrorism Measures (herein after CTM) through global implementation regimes and untargeted broad-brush measures.’ And as the world continued to unite against the so-called global war on terrorism, it became evident that this concerted effort had to go beyond the use of the barrel to hunt and kill the terrorist groups in whatever countries that played safe haven. The events of and following September 11, 2001 inspired several states to reevaluate the efficiency of their prevailing anti-terrorism legislative and policy frameworks. Many States took one or more of the three approaches in reforming (or not) their legislative approach towards terrorism namely; firstly ‘by asserting that the existing legal framework is sufficient to deal effectively with terrorism; (secondly) by introducing comprehensive or specific and targeted anti-terrorist acts; and (thirdly) by the use of repressive actions.’ In addition to these efforts, at the international and regional levels standards have been developed and rolled out for countries to implement as part of their counterterrorism strategy.

East African countries have not been an exception to this quest owing to their vulnerability. In 2015, the Garissa University in northern Kenya, was attacked by terrorists killing at least 147 people, majority being university students and injuring 79. Similarly, on 21st September 2013 al-Shabaab militants attacked Nairobi's premiere shopping centre-Westgate Mall in a siege that lasted 80 hours leading to 67 deaths and over 100 injuries. Uganda has suffered similar

attacks before, the most serious on 11th July, 2010 in a twin bombing that claimed at least 74 lives of merry-makers who had congregated at two separate outing venues to watch the World Cup finals. The Al-Shabaab claimed responsibility for the attacks. Following upon these events, the UN Counter-Terrorism Committee Executive Directorate (CTED) in 2016 warned about the fragility of East African countries and their susceptibility to terrorism and money laundering avalanche. International organisations and Inter-governmental bodies at the behest of powerful western countries maintain that ‘chronically impoverished countries’, ‘fragile States’, ‘war torn’ states are most susceptible to terrorism ‘radicalization’ and ‘extremism.’ Under pressure from the international community and the urge to be removed from the Financial Action Task Force on Money-Laundering watch list, Uganda like many African Countries has had to develop a legal and institutional framework to deal with AML/CTF. These laws enacted in the past decade together with attendant enforcement institutions introduced new dynamics in the operating environment of civil society in Uganda. Their noble goal notwithstanding, these laws and agencies have also had enormous negative impact on the work of CSOs and human rights defenders and by extension, the beneficiaries of their services.

In the renewed quest to counter terrorism, the CSOs have been highlighted as spheres of focus. They are regarded as soft targets of terror groups using seemingly innocent humanitarian and development aids as conduits of facilitating their activities, using them to launder money that is badly needed for them to fund their terror-oriented

operations. This school of thought is strongly affirmed by the highly powerful and influential multi-country institution of the Financial Action Task Force through its recommendation 8 that specifically singled out Not-for-Profit Organisations (NPOs) as the emerging hot spots for terrorism financing. This has since brought into play a highly intrusive stratagem of global financial regulation of the civil society fraternity with the African continent being the most affected. All of this has been achieved through the highly controversial ‘policy laundering’ perpetrated by governments of intergovernmental forums as an ‘indirect means of pushing international policies unlikely to win direct approval through the regular domestic political process.’ One of such lauded policies is Recommendation 8 of the FATF which notes that countries have an obligation to evaluate the ‘adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism.’ Clearly, the centrality of this recommendation (8) and its interpretive note is the foundation of the FATF’s exploits to thwart, identify, and disorder the manipulation of the NPO sector for terrorism financing agendas. Incarnate in these standards are ‘restrictions...that single out non-profit organisations as being particularly vulnerable to exploitation and abuse by terrorist organisations, and demands remedial action to ensure that CSOs are adequately regulated and supervised by state authorities.’

Their plausible agenda of countering terrorism notwithstanding, these adopted measures founded on such aforementioned recommendations, have been abused by some governments targeting the CSOs sector, often

perceived as foreign interests’ appendages dishonestly critical of their governments. These new rules/standards as has been argued elsewhere are making a ‘...significant contribution to a wider, global trend toward the restriction and closure of the ‘political space’ in which CSOs operate.’ All of this has been possible in the highly acclaimed yet controversial ‘global enforcement regimes.’ These have had grave repercussions on the CSOs sector exemplified in three categories of trends namely; reducing space for CSOs especially in relation to particular activities they execute; secondly has been the increased constraints on accessing financial services/funding needed for them to remain operational and thirdly, more particularly, for organisations operating in and around war/conflict areas, their operations have become more difficult, often viewed with suspicion. Considering these challenges, this study inquiries into the impact of AML/CTF legal frameworks on the works of human rights defenders and generally the CSO fraternity in Uganda.

Ben Hayes, ‘Counter-terrorism, ‘policy laundering’ and the FATF: legalizing surveillance, regulating civil society’, *Transnational Institute / Statewatch*, 2012 at 6. Accessible at https://www.tni.org/files/download/fatf_report-update_0.pdf [Accessed 12/02/2021]

Noëlle Quénivet, ‘The World after September 11: Has It Really Changed?’, *The European Journal of International Law* Vol. 16 No.3 at 568.

See Resolution 1373 (2001) was adopted by the UN Security Council at its 4385th meeting, on 28th, September 2001. Accessible at https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf [Accessed on 18/02/2021].

Hayes, 2012 at 12.

The Financial Action Task Force (FATF), ‘Risk of Terrorist Abuse in Non-Profit Organisations’, June 2014 at 1. Accessible at <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf> [Accessible at 15/01/2021]. Under its interpretative note, the FATF further avers that ‘NPOs may be vulnerable to abuse by terrorists for a variety of reasons. NPOs enjoy the public trust, have access to considerable sources of funds, and are often cash-intensive. Furthermore, some NPOs have a global presence that provides a framework for national and international operations and financial transactions, often within or near those areas that are most exposed to terrorist activity.’



2.0 CONCEPTUALIZATION OF KEY TERMS

2.1 Terrorism

There is contestation as to the exactness of the meaning of terrorism. Various agencies, legal and security practitioners across the globe have defined it differently. However, there is convergence of thought on the underlying commonalities of the concept in a descriptive manner. Firstly, that it is characterized with ‘acts of violence that target civilians in the pursuit of political and ideological aims.’ Other definitions can be found in the various existing conventions, declarations, resolutions, and treaties spread over the regional/continental human rights standards.

2.2 Non-Profit Organisations

In relation to NGOs or non-profit organisations, the UN Financial Action Task Force maintains a functional definition of such organizations to mean ‘a legal person or arrangement or organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of ‘good works.’

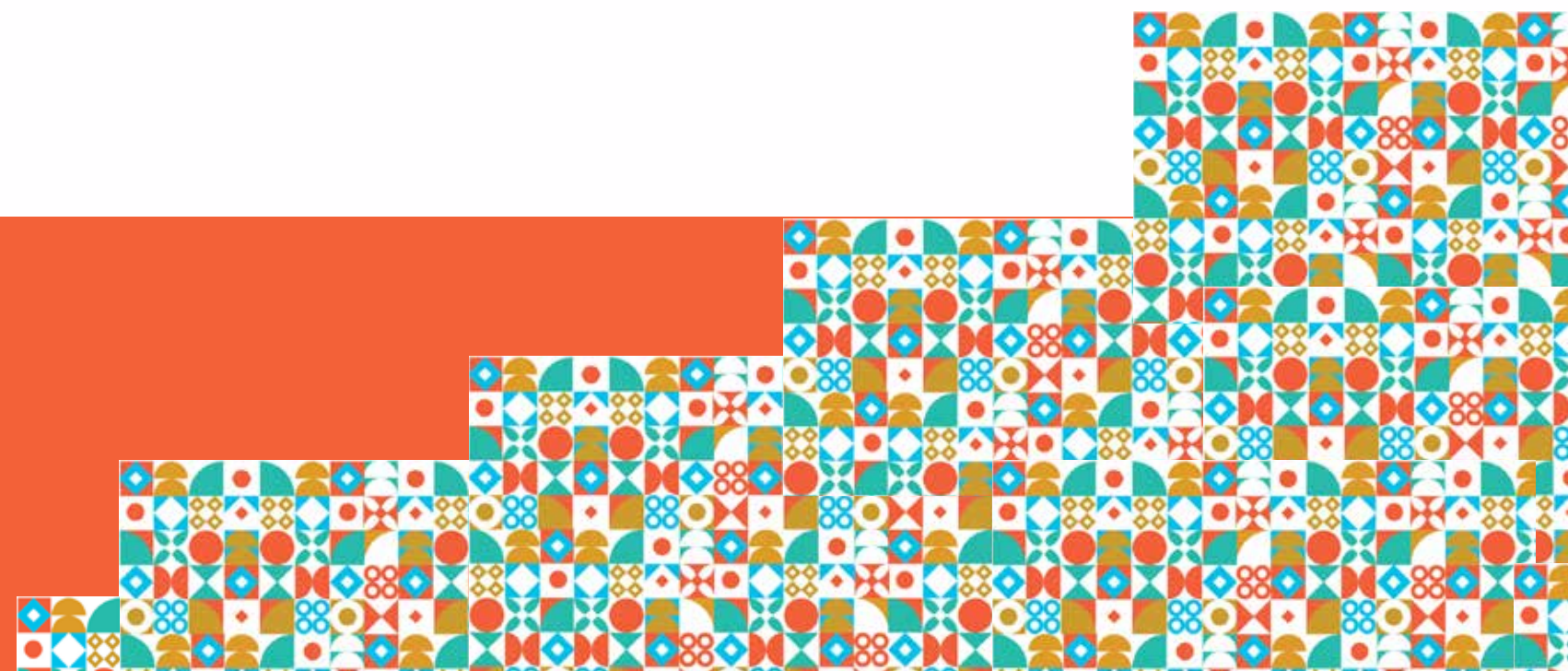
2.3 Money Laundering

Money laundering is defined extensively under the Anti-Money Laundering Act-2013 of Uganda. It provides that Money-laundering is the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under Section 3 of the Act. The various aspects of criminalized laundering of proceeds of crime are detailed under Section 3 of the Act to include among others acquiring, possessing, using or administering property, knowing, at the time of receipt, that the property is the proceeds of crime; or acting to avoid the transaction reporting requirements provided for in the law; assisting another to benefit from known proceeds of crime; or using known proceeds of crime to facilitate the commission of a crime; or participating in, associate with, conspire to commit, attempt to commit, aid and abet, or facilitate and counsel the commission of any of the above mentioned acts.

The law further prohibits the converting, ‘transfer, transport or transmission of property, knowing or suspecting that such property to be the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the crime generating the proceeds to evade the legal consequences of his or her actions.’ Additionally, it’s prohibited to ‘conceal, disguise or impede the establishment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing or suspecting that such property to be the proceeds of crime.’ Evidence of ‘knowledge, intent or purpose’ which must be proved as an element of the crime of money laundering can be ‘inferred from objective factual circumstance.’

Hayes (n 1) at 13. According to Hayes, ‘Decisively, in the wake of 9/11, IGOs began to establish and bolster global enforcement regimes using so-called ‘soft law’ (Resolutions, principles, guidelines etc.), which could be agreed and ratified much more quickly than traditional intergovernmental conventions, which often took several years of more to agree (and even longer to ratify and enter into force). Academics have described this process as ‘hard coercion through soft law’.

Office of the United Nations High Commissioner for Human Rights, ‘Human Rights, Terrorism and Counter-terror-



3.0 Legal and Institutional Framework of Anti-Money Laundering and Counter Terrorism Financing in Uganda

The legal and institutional framework applicable to AML and CTL in Uganda is defined in the national/domestic laws as well as the international and regional instruments that Uganda is party to and/or bound to implement by virtual of international comity. These have been explored in detail below.

3.1 United Nations International Standards [The Core Legal Instruments]

Uganda's AML and CTF legal framework has been largely inspired and, in some cases, imposed by a litany of international and regional (continental) legal instruments and foreign pressure. These substantive international laws can be categorized into Nine (9) spheres. These include instruments regarding civil aviation, protection of international staff, taking of hostages, protection of nuclear material, maritime navigation, explosive materials, terrorist bombings, terrorism financing and nuclear terrorism.

3.2 UN Soft laws and the Financial Action Task Force 40+9 Recommendations

Other soft law instruments (nonbinding but persuasive by virtue of Uganda being a member of the UN) include UN Resolutions and the Global AML/CTF Standards as set by the Financial Action Task Force. In terms of the former, is United Nations Global Counter-Terrorism Strategy that was adopted by the UN General Assembly in Resolution 60/288. The FATF Standards on the other hand are contained in two main documents i.e. 'International Best Practices: detecting and preventing the illicit cross-border transportation of cash and bearer negotiable instruments,' of 2010 and the 'Money Laundering through the Physical Transportation of Cash', of 2015.

The FATF-40+90 recommendations on terrorist financing and anti-money laundering together with the various UN Security Council Resolutions on counter terrorism and terrorist "blacklisting" have inspired several states around the world (Uganda inclusive) to come up with intrusive AML and CTF legislation. The recommendations contained therein have become pivotal references for nations around the globe in crafting their legislative measures to counter money laundering and terrorist financing.

See UN Security Council Resolution 1373 of 2001.

See UN Security Council Resolution 1535 of 2004

3.3 African Continent legal frameworks

At the Continental level, there exists the Algiers Plan of Action on the Prevention and Combating of Terrorism (2002) and the African Model Anti-Terrorism Law (2011).

3.4 Oversight International Agencies on Terrorism Financing and Money laundering

The standards prescribed in the above-mentioned international instruments are superintended over by several UN agencies and bodies. These include; the UN Security Council's Counter Terrorism Committee (CTC) the CTC Executive Directorate (CTED), Terrorism Sanctions Monitoring Committees, and the Counter Terrorism Implementation Task Force (CTITF). The other critical agency is the Financial Action Task Force. Established by the G-7 (Group of Seven) at the 1989 Summit held in Paris, the FATF has become an 'international-standard setter' on money laundering and terrorism financing.

3.5 Uganda's Domestic Legal and Institutional Framework on AML/CTF

Uganda's domestic AML/CTF related legal framework is found in various legislations. They include, Anti-Money Laundering Act, 2013 (as amended); Penal Code Act cap 120; Anti-Corruption Act, 2009 (as amended); Anti-Terrorism Act, 2002 (as amended); Anti-Money-Laundering-Regulations-2015; Anti-Terrorism Regulations, 2016; Narcotic Drugs and Psychotropic substances (Control) Act 2016; Financial Institutions Amendment Act 2016 and the Anti-Money Laundering (Exchange of Information) Regulations 2018(1).

As earlier noted, most of the provisions contained in these legislations have been inspired by a litany of international AML/CTM instruments. In some instances, the laws have been passed in response to global demands for countries to pass separate AML/CTF legislations.

3.6 Institutional Framework of Anti/Money Laundering and (Counter) Terrorism Financing in Uganda

Existing AML/CTF legislative frameworks are implemented by a cross section of institutions/agencies. These are established under the specific laws but there are also instances where other agencies have been given a mandate in respect to some of the functions outlined in the AML/CTF legislation. The institutions with an AML/CTF mandate include the Uganda



Police Force (UPF), Parliament of Uganda, Office of the Director of Public Prosecutions (ODPP), the Inspectorate of Government (IG), the Ministry of Finance Planning and Economic Development (MFPED), the Uganda Revenue Authority (URA) and the Uganda Wildlife Authority (UWA). The pivot of all these institutions is the Financial Intelligence Authority (FIA) established under the Anti Money Laundering Act 2013.

As part of its 'domestic co-operation' agenda, the FIA has entered into Memorandums of Understanding (MOUs) with several other agencies. By the end of 2019, the FIA had concluded MOUs with the Office of the Director of Public Prosecutions, Bank of Uganda (BOU), Capital Markets Authority (CMA), Uganda Revenue Authority, the Inspectorate of Government, and the Uganda Registrations Services Bureau (URSB). By entering into these arrangements, the FIA now boasts of having a robust inter-agency cooperation framework.

3.7 Emerging Concerns with the Legal Framework

a) Unchecked discretion of the FIA in respect to duration of bank account & transaction freezes

Whereas as the Financial Intelligence Authority (FIA) is granted powers within the law to cause the freezing and by extension halting of transactions of accounting persons such as NGOs, this power is not checked. Critically, the law is silent on how long the FIA can keep such bank accounts frozen as provided for under Section 17A of the Anti-Terrorism (Amendment) Act, 2015. Rather it is within the discretion of the FIA to determine this. This is susceptible to abuse and creates unnecessary and frustrating uncertainty on the part of the organisations under investigation especially when the monies they hold, at least for NGOs, are project time bound as part of the agreements with the development partners. In the long run, this can paralyze the work of the NGOs and limit their civic space.

b) Ambiguity of central terms in the laws

In the entire collection of the AMT/CTF laws in Uganda, some ambiguities stand out especially in relation to the conceptualization of the central terms upon which the connotation of criminality or breach stands. Such terms like 'acts of terrorism', 'terrorism', are defined in overly broad and vague ways defeating the notion of legality and certainty as required of a

good law. Firstly, there is no convergence of thought even among the international community as to the exact meaning of these terms. Every State therefore decides to conceptualize them as it deems fit or as its agendas dictate, with some definitions being as susceptible to abuses by the security agencies. In this regard, the Human Rights Council has observed that the lack of clear and comprehensive definitions 'allows States to adopt highly intrusive, disproportionate and discriminatory measures, notably to limit freedom of expression.'

c) Ambiguity and abuse of the FATF Recommendation 8

Owing to its ambiguity, Recommendation 8 under the FATF remains a contentious standard that is understood and applied differently by various countries. The FATF Recommendation has been criticized as having not taken into consideration the fact that States previously had extra means, including 'financial surveillance and police cooperation', to effectually deal with the terrorism financing danger. Furthermore, FATF does not afford definite measures that can protect the civil society fraternity from unjustifiable constraints to their right to freedom of association by States averring that their measures are in agreement with FATF Recommendations.

Closely related to the above, and certainly within the same sphere, is the indifference that has been exhibited by the United Nations towards the centrality of human rights promotion and protection in the enforcement of AML and CTF laws. A manifestation of this reality that is often highlighted by activists relates to UN Security Council Resolution 1373. This resolution which encompasses a comprehensive set of anti-terrorism courses, does not mention in any way the necessary corresponding general human rights standards to be observed even when these mechanisms are being implemented.

Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the role of measures to address terrorism and violent extremism on closing civic space and violating the rights of civil society actors and human rights defenders, A/HRC/40/52.

4.0 State Practice in Implementing AML/CTF

Legal Framework in Uganda: An Overview

In the past five years (2016-2021), Uganda has witnessed the invocation of the AML/CTF legal framework in a more heightened manner. During this same period, the country has also witnessed some of the most intense political contestations with the NGO sector playing a key role in advocating for human rights and good governance. In terms of some of the critical events, in 2017 there was a highly controversial Constitutional amendment to remove the Presidential age limit previously fixed at 75 years. More recently Uganda held its general Presidential and Parliamentary elections which were marred with extreme violence, extra judicial killings and enforced disappearances of an unknown number of opposition supporters majority of whom bore visible signs of torture on release from detention.

The role of NGOs (both individually and in consortium) in speaking against the level of violations and calling for those responsible to be held accountable has enlisted direct and indirect hostility from the state. In particular, the state has resorted to the aggressive enforcement of AML/CTF legislations against critical NGOs in a bid to silence them. Some of the incidents where the state has in the past unjustifiably deployed the AML/CTF framework to disrupt the activities of NGOs include the following.

a) *The Siege on Action Aid International-Uganda (AAIU) and the Great Lakes Institute of Strategic Studies (GLISS)*

The sieges on Action Aid International-Uganda and the Great Lakes Institute of Strategic Studies took place at the height of the removal of the presidential age limit from the constitution in September 2017. Action Aid International Uganda, a non-governmental organization (NGO) operating in various parts of the country with its headquarters in Kampala, had its accounts frozen. In this particular incident, five of the financial accounts of AAIU (Ugandan shillings account, US dollar, pounds sterling and two Euro accounts held in Standard Chartered bank) were frozen on the orders of the Bank of Uganda acting on the advice of the Uganda Police Force Criminal Investigations Department (CID). The freeze apparently was owing to the criminal investigations that were obtained in relation to alleged conspiracy to commit a felony and money laundering by the institution. While the accounts remained frozen until 2018, the state did not succeed in prosecuting any of the alleged crimes.

Within the same period, Great Lakes Institute for Strategic Studies (GLISS), a policy think tank

and Solidarity Uganda underwent a similar ordeal, when their accounts too were frozen. In all cases, the offices of all the two organisations were demarcated as crime scenes and ransacked by security forces led by the Uganda Police Force (UPF) in a cordon and search operation. In relation to Action Aid, the cordon off and subsequent search on 4th October was sanctioned by the Chief Magistrate's court of Makindye.

The staff of the institutions found at the premises during the search operation were detained, blocked from leaving the premises and their mobile phones confiscated. Individual leaders were subjected to continued interrogation at the Criminal Investigations Department of the Uganda Police.

It was alleged by the state that the two organisations were involved in 'illicit financial transactions' and that they were responsible for funding Youth groups (mainly Alternative Movement (TAM)) opposed to the Constitutional Amendment to remove the Presidential Candidates age cap of 75 years. According to the state, the actions of the NGOs amounted to subversive activities and were criminal.

However, all these accusations turned out to be unfounded. Action Aid successfully challenged the action of freezing their bank accounts before the Commercial Court. Their accounts were eventually unfrozen after a consent judgment was entered into between AAIU and the government. The accounts of GLISS were also unfrozen following an equally rigorous process. The actions of the state against the two NGOs have been observed to constitute 'administrative harassment.'

b) *Financial Related Administrative Inquiries into the operations of NGOs-2019*

Quite relatedly and within the same period of the siege on GLISS and AAIU, on October 11th, 2017, the Ministry of Internal Affairs directed 27 NGOs (most of which were prominently involved in human rights and accountability work) to submit specific 'financial information' to the NGO Bureau within a period of a week from the date of the directive. Part of the information that the NGOs were required to furnish included bank statements of the organization spanning the past three years, annual reports clearly stating activities and sources of funds from 2014 to 2016, all bank account numbers and lists of directors and executive directors.



The list of organisations to whom the directive was issued included, AAU, African Field Epidemiology Network (AFENET), Agency for Technical Cooperation and Development (ACTED), Association of Human Rights Organisations in Uganda, Be Forward Uganda, Citizens Coalition for Electoral Democracy in Uganda (CCEDU), Civil Society Budget Advocacy Group (CSBAG), Development Network for Indigenous Voluntary Associations (DENIVA), Educate Uganda, Feed the Children Uganda, Finnish Refugee Council, Ford Foundation, Foundation for Human Rights Initiative (FHRI), Forum for Women in Democracy (FOWODE), Global Refuge International Uganda, Great Lakes Institute for Strategic Studies (GLISS), Good Neighbours, Human Rights Centre Uganda (HRCU), Human Rights Network (HURINET), Mercy Corps, MIFUMI, Solidarity Uganda, Synagogue Church of All Nations, Teso Anti-Corruption Coalition, Uganda National NGO Forum (UNNGOF), Uganda Youth Network (UYONET) and the Uhuru Institute for Social Development. Just like AAIU and GLISS, majority of the mentioned NGOs were vehement in protesting the campaign of the constitutional amendment to lift the presidential age limit.

Similar to the above, though not fulfilled to the end point, in 2019, the State using the FIA made inquiries into the financial status and workings of 13 of some of the most prominent NGOs in Uganda at the time. A letter dated August 8, 2019 and signed by the FIA Executive Director, Sydney Asubo directed one of the banks-the Equity Bank to hand over information relating to among other aspects ‘account opening documents, bank statements for the last three years (2016-2019) and any other information available to you linked to each of the above-listed entities for our further review.’ The NGOs included ActionAid International Uganda, Citizens’ Coalition for Electoral Democracy in Uganda, Alliance for Campaign Finance Monitoring (ACFIM), Anti-Corruption Coalition Uganda (ACCU), Uganda National Non-Governmental Organization Forum (UNNGOF), Human Rights Network Uganda, National Democratic Institute (NDI), and Great Lakes Institute for Strategic Studies. The other NGOs on the list were Foundation for Human Rights Initiative (FHRI), Democratic Governance Facility (DGF), KICK Corruption out of Uganda, National Association of Professional Environmentalists (NAPE), and the African Institute for Energy Governance (AFIEGO).

While the UN recognizes the widespread use of administrative measures including bank account freezing and information hunting as a means to address a variety of security and terrorism

threats, it is problematic where these measures are exercised without affording the NGOs due process as was the case at hand.

c) Uganda Women’s Network (UWONET), Chapter 4 and Uganda National NGO-Forum (UNNGOF)-2021

In the period leading to the 2021 general Presidential and Parliamentary elections, bank accounts belonging to the Uganda Women’s Network (UWONET) and the NGO-Forum were frozen amidst accusations of terrorism financing. The frozen accounts were twenty (20) in total i.e., 10 belonging to the Uganda National NGO-Forum and 10 belonging to UWONET held in various banks including Stanbic Bank, ABSA Bank, KCB Bank and Standard Chartered Bank. In freezing the accounts, the FIA relied on Section 17 A of the Anti-Terrorism (Amendment) Act-2015.

It should be noted that the freezing of the accounts of UNNGOF came at the heels of the suspension of the operations of the National Election Watch-Uganda (NEW-U), a loose CSO coalition hosted at the UNNGOF and that had been formed to monitor, observe, document and report on the 2020/2021 general parliamentary and presidential elections including party primaries. The membership of the NEW-U coalition were to be deployed across the various parts of the country.

The Chapter 4 case still in 2020 was even more peculiar-the first of its kind involving money laundering charges being brought against an individual-leader of an NGO on the basis of grant funds received on the organization’s account. The Executive Director of Chapter 4, a national human rights organization-Mr. Nicholas Opiyo was arrested on the 22nd of December 2020 within Kampala together with other human rights lawyers namely Herbert Dakasi, Anthony Odur and Esomu Obure and National Unity Platform Political Party’s Human Rights Officer, Hamid Tenywa. They were arrested by plain clothed security agents which the police later confirmed were a ‘joint task team of security and financial intelligence’ on allegations of money laundering and related malicious acts.

At the time of publication of this report, Mr. Opiyo was still battling with charges of money laundering preferred against him. The events surrounding his charging and arraignment before Court further reflect abuse of process and AML/CTF laws. All the available good-faith-oriented



and rightful procedures on behalf of the State were ignored or arguably deliberately frustrated. This case is also indicative of the sad but often emphasized mode of operation of the FIA which maintains that it operates on 'intelligence' and not necessarily 'evidence' hence an inherent presumption of guilty arising from the intelligence agencies leaving the accused entity no room to contend with allegations informed by the intelligence.

The abuse of AML/CTF legal framework when dealing with outspoken NGOs and Human Rights Defenders greatly undermined their work during the electoral period, an environment that is historically tense in Uganda's politics requiring consistent monitoring and documentation of the status of human rights. More so, the organisations targeted were involved in voter education and civic awareness related initiatives both of which are central to informed decision making during the elections especially for marginalized groups such as women and youth.

But more importantly, these organisations, being local entities formed and run by Ugandan citizens are important vehicles of political participation which is constitutionally protected work under Article 38 of the Constitution. The freezing of their bank accounts meant that these entities could not take part in any electoral related activities. This goes contrary to the acceptable international standards and norms that govern elections since these encourage allowing unfettered access of independent organisations to freely and safely conduct election monitoring to help 'safeguard the general election process from electoral misconduct and instill public confidence in the integrity of the process.

The commonality that defines all of these NGOs is that they were undertaking works relating to electoral justice, human rights, democratization and elections observation. In all the aforementioned instances, the administrative invocation of freezing the accounts without completing the investigations and informing the concerned organisations and their leadership of the charges also goes to the arbitrary nature with which the AML/CTF legal regime in Uganda is enforced both by the DPP, the Uganda Police Force and the Financial Intelligence Authority (FIA).

It should be noted though, at the close of February, 2021 it came to light that the FIA had revoked the freeze on the Accounts belonging to the UNNGOF and UWONET as was published

in its letter dated February, 19, 2021 that was addressed to the Director of Public Prosecutions. It read: 'The purpose of this communication is to inform you that the Financial Intelligence Authority has revoked its directive to freeze funds on bank accounts of the Uganda National NGO Forum and the Uganda Women's Network (UWONET) held in different banks in the country.'

From the above discourse, the caliber of AML/CTF legal framework Uganda has and its attendant follies; the State conduct towards CSOs all combined speak to the manifest bias and inexplicable focus on NGOs as potential security threats than partners. This kind of approach by the government downplays the potential role that the NGOs (especially those involved in human rights work and democratic governance) play in countering terrorism and its triggers through their various actions and programmes. Yet civil society in general and NGOs in particular are critical in routing disgruntlement and allowing for productive engagement with the State, and in openly deflating the issues leading people to be drawn to terrorism and violent extremism. What is however disturbing in all the aforementioned ordeals that NGOs and the select personnel heading these organisations have gone through, is the manifest unifying thread of ambush by the FIA to seek compliance. Firstly, the discourse of AML/CTF remains fairly new in Uganda both within the enforcers of the legal framework and amongst the targeted/affected institutions such as NPOs. Secondly it is embedded with burdensome reporting requirements that remain elusive to some of the growing organisations that are not visited with the requisite skills and technical knowledge to undertake these necessary compliances.

The fault finding rather than enhancing compliance approach by the enforcers of the AML/CTF is not only inimical to the objectives of the law but also non-progressive in as far as it perpetrates a guilty and suspicious image of the NPOs/NGOs. The whole situation is reflective of a sector that is desolate with no sufficient awareness of its obligations and those of other players in bringing to efficiency of the AML/CTF legal framework. This certainly is not a progressive co-operation model between the CSOs and the FIA and attendant government agencies involved in implementing of the AML/CTF legal framework. Indeed, CSO leaders maintain that the guilty-image-depiction of NGOs by the State and FIA has to be countered.

5.0 Examining the Impact of the AML/CTF Legal Framework on the CSO Fraternity in Uganda

a) Restriction of Civic Space and Freedoms of Association and Assembly

Prominent among the impacts of AML/CTF legislation enforcement has been the restraining of the civic space and increased threats to freedoms of association and assembly. For example, in the TAM case mentioned earlier, ten members of the group were arrested after a police search and cordon exercise. These were, Eria Musoke, Ferdinand Luta, Eddy Atwine, Bashir Mubiru, Ronald Muwonge, Galasi Mushizimana, Abel Mucunguzi, Johab Agaba, Edris Mutebi and Jackson Ssemwanga. The leader was only released after his legal representatives sought for an order of unconditional release before the Buganda Road Court. The order was procured under section 25(3) of the Police Act which allows any person who has been detained for more than 48 hours without charge to apply to a magistrate's court for unconditional release.

The closure of offices and in most cases seizure of organizational documentation, some of which not relating to the subject matter under investigation greatly paralyzed the operations of the affected NGOs. It should also be observed that the targeting of data bases and information security mechanisms of NGOs coupled with police search and cordon methods has opened up this critical information to further security attacks and surveillance.

Recent AML/CTF legislation inspired attacks on NGOs are also responsible for the silent self-censorship within civil society. As the attacks continue to take hold, many CSOs, have tended to express and exercise-controlled caution, restricting their engagement into the spheres that are seemingly safe. Most NGOs for instance prefer to operate within the ambit of social, economic, and cultural rights rather than the overly superintended civil political rights, good governance and accountability sectors. The emerging trend of most NGOs in Uganda dealing with softer issues other than the contentious democratization aspects ultimately limits the relevance of the civil society sector by forcefully absconding from advocacy and oversight on the most pressing issues that the country is grappling with.

It should be further noted that the act of freezing NGOs' bank accounts and restricting their access is part and parcel of restricting civic space. The rights to freedom of peaceful assembly and of association have been expansively interpreted within the UN Human Rights Council to

extend to 'being able to seek, receive and use resources...essential to the existence and effective operations of any association.' Indeed the right to freedom of association is not limited to the capacity and ability of individuals or legal bodies to establish and join any associations/ organizations rather it extends to the right to 'seek, receive and use resources – human, material and financial—from domestic, foreign, and international sources.'

b) De-legitimization of CSO Works and stigmatization of CSO works

Regular attacks on CSOs depicts them as fraudulent, misusing and abusing funds/grants, a notion that dents their image in the societies where they operate especially those based in the rural areas. This has an expansive and long-term negative impact on their legitimacy especially among the constituencies they serve in their various humanitarian, development, and indeed social justice programmes. This de-legitimization of the work of civil society creates uncertainty and instability in the sector since it can generate apprehension among would be funders of social justice initiatives.

Yet, the de-legitimization and attendant stigmatization of CSOs continues to be perpetrated on the various media platforms including State owned media. High ranking government officials have also used different media platforms to criticize CSOs. All these actions amount into what the United Nations has classified as 'governmental smear campaigns, through State-controlled media or through statements by public officials, including Heads of State.' Such campaigns unfortunately serve the purpose of legitimizing the implementation of additional constricting measures further curtailing civic space.

c) Citizenry Rights Vs NGOs: the Contestation

The targeting of NGO leaders in the AML/CTF legal regime fails to separate them from the legally registered entities that they head and their individual capacities as citizens of Uganda with rights and freedoms to participate in the governance of their country. In the past, actions of individual NGO leaders have been interpreted to mean the actions of the NGOs, a situation that leads many to self-censure so as to 'save' the institutions they head clearly



infringing on their individual right to freedom of expression. This thus points to the reality of deployment of these laws to stifle associational, assembly rights and freedom of expression. This enforcement presupposes that citizenry duties lies only in obedience to the government without divergence of opinion. To this end therefore they only seek conformism while the process of demobilization of the NGOs is enforced albeit in a subtle manner and under the guise of law enforcement.

The enforcement of these laws by the FIA have also gone beyond the entities under investigation as per the law. Instead, the police, besieged and subjected the key staff of these organisations to repeated questioning over the works of their organisations. This has continued to obtain even in the most recent cases despite the fact that these NGOs are separate and distinct in law from the leadership. In 2017 for instance, Godber Tumushabe the Associate Director of Great Lakes Institute for Strategic Studies (GLISS), a policy think tank, and Arthur Larok, the country director of Action Aid International-Uganda were victims of AML/CTF legislative enforcements.

d) NGO operations disruption and Expensive Court Processes

The past experiences have also shown that the arbitrary enforcement of AML/CTF laws occasions illegalities that in most cases demand challenge in Courts of law. This ultimately distracts NGOs from focusing on their core mandate. They instead have to resort to fighting legally questionable accusations through hiring lawyers which is in itself a fairly costly process. In the event, NGOs must incur unforeseeable and arguably unnecessary expenses. In the end, the negative impacts suffered are extended to the often-vulnerable communities that benefit from the services offered by these entities whose accounts are frozen. This is more so for organisations that are humanitarian based to the core offering a wide range of services such as school fees scholarships, legal aid services and orphanages, among others.

On the personnel front, there is increased use of the Courts to further disrupt the works of civil society especially where the organizational leaders are charged and arraigned on trumped up charges within the AML/CTF legal framework. Even then, the hearing of these cases takes a

very long time since the state keeps asking for more time to complete its investigations. This trend and the inconvenience that it comes with has contributed to some leaders being less vocal against the government human rights excesses for fear that they could become targets for a litany of charges under such laws. This critic of using the judicial system to harass CSOs finds credence even within the UN human rights system. Accordingly, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms has decried the deployment of judicial harassment by states in countering terrorism.

e) Loss of access to services by beneficiaries

The internal disruptions that come with allegations of terrorism financing and money laundering and eventual freezing of bank accounts does not only affect the staff of these institutions in their gainful employment but also extends to the beneficiaries of their services. These beneficiaries vary in levels of need and therefore vulnerability-since some entirely depend on resources channeled through these organisations for survival.

In 2021 when its accounts were frozen, UWONET was running various activities as part of their elections project. The institution was engaged in training youth and women candidates that were taking part in the 2021 general elections. The organisation was also involved in coordination of activities of the Women Situation Room (WSR), a peace building mechanism by mainly women as was adopted by the African Union as best practice from the elections in Liberia in 2011. The freezing of its bank accounts greatly affected all these activities.

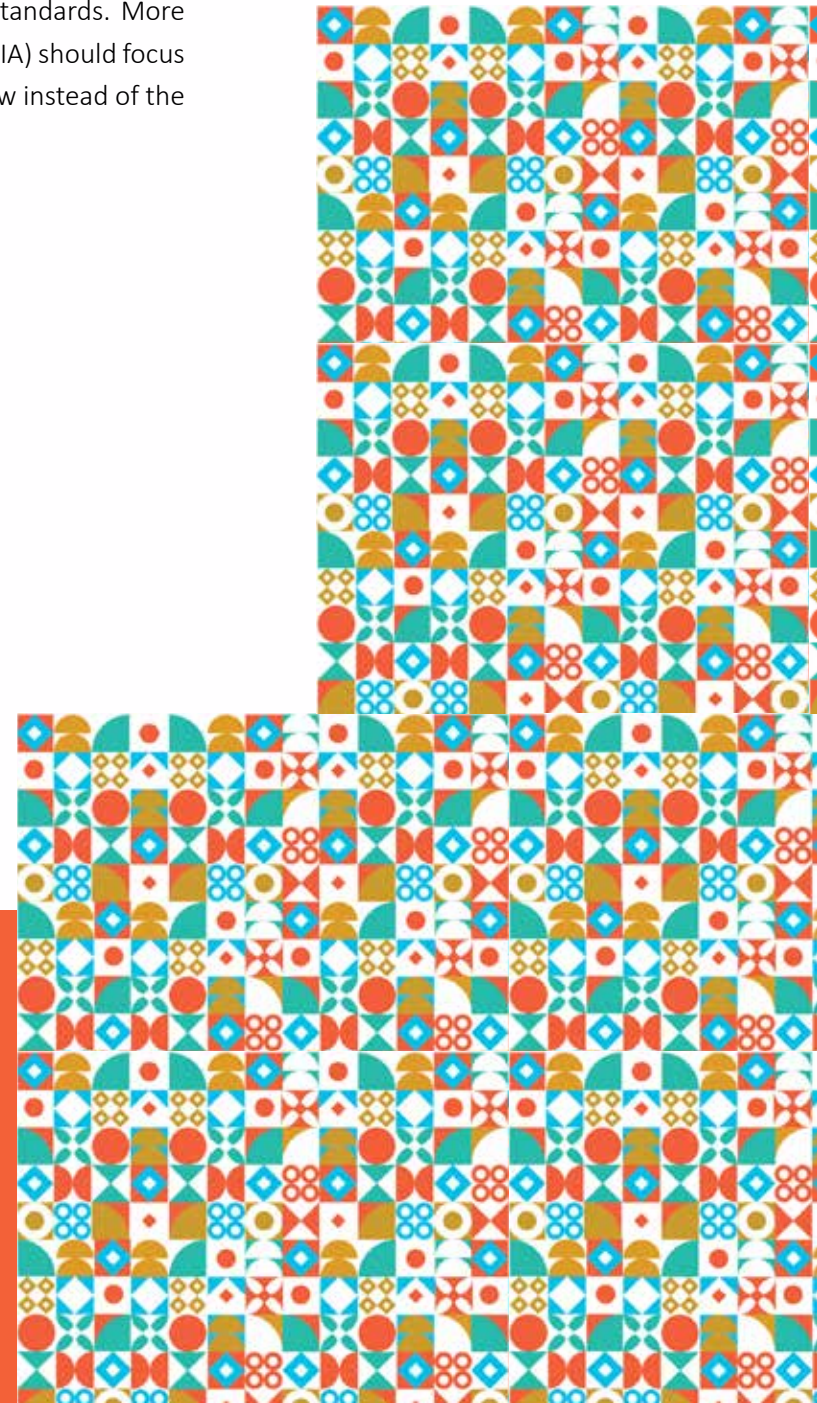
However, it should be noted that aside from civil political programmes, UWONET also coordinates various Gender Based Violence (GBV) campaigns in December of every year. While unrelated to the electoral activity and the purported AML/CTF charges, these too were frustrated by the freezing of the organization's accounts. In a similar manner, the freezing of bank accounts belonging to AAUI equally affected many GBV survivors considering that the various shelters they operate across the country remained in abeyance.

6.0 Conclusion

f) *The silent economic and grant disruptions of AML/CTF legal regimes against NGOs*

The freezing of organizational bank accounts also comes with the disruption of operational plans of the entities. The resultant negative effects affect NGOs beneficiaries in direct and indirect ways. Most significantly, the beneficiaries are affected economically resulting into what the UN has characterized as ‘financial marginalization.’ The chain of affected beneficiaries includes suppliers of services and assortments of products to the NGOs; hotel owners in relation to loss of income from the planned but later aborted workshops and seminars, among others. This is addition to the halting of payments of salaries to employees of these organisations all of which have a trickledown effect on the currency flow within the economy sometimes in terms of foreign exchange. The arbitrary implementation of these laws also has implications on grant negotiation and sustainability with the development partners.

Considering all these challenges, it is hereby concluded that the current biased and fault centered approach in the enforcement of AML/CTF legislation is arbitrary and counterproductive in the long run. Globally it is recognized that while NGOs may be soft spots, they have a huge role to play in countering terrorism since they act as a middle ground for the expression of disgruntlement and engagement with the state. This role helps to deflate and mitigate against issues and grievances that are often exploited by extremist groups to promote terrorism and violent extremism. For this reason and in as much as AML/CTF is necessary, it should be enforced in a manner that is consistent with existing international human rights standards. More importantly for Uganda, the Financial Intelligence Authority (FIA) should focus on empowering NGOs to comply with the provisions of the law instead of the current biased and fault-finding approach.





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