



**DEFENDERS**  
PROTECTION INITIATIVE



# A REPORT 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  
Action Aid International-Uganda  
ACTED  
Agency for Technical Cooperation and Development  
AFENET  
African Field Epidemiology Network  
ACCU  
Anti-Corruption Coalition Uganda  
ACFM  
Alliance for Campaign Finance Monitoring  
AFIEGO  
African Institute for Energy Governance  
CTM  
Counter Terrorism Measures  
CCEDU  
Citizens Coalition for Electoral Democracy in Uganda  
CTC  
Counter Terrorism Committee  
CTITF  
Counterterrorism Implementation Task Force  
CTED  
Counter Terrorism Committee Executive Directorate  
CSBAG  
Civil Society Budget Advocacy Group  
CMA  
Capital Markets Authority  
CID  
Criminal Investigation Directorate  
CCTTT  
Criminal Case Tracking Task Team

DENIVA  
Development Network for Indigenous Voluntary  
Associations  
DGF  
Democratic Governance Facility  
FOWODE  
Forum for Women in Democracy  
FHRI  
Foundation for Human Rights Initiative  
FATF  
Financial Action Task Force  
FIA  
Financial Intelligence Authority  
GLISS  
Great Lakes Institute of Strategic Studies  
GBV  
Gender Based Violence  
HRCU  
Human Rights Centre Uganda  
HURINET-U  
Human Rights Network Uganda  
HRC  
Human Rights Council  
HRDs  
Human Rights Defenders  
ICCPR  
International Covenant on Civil and Political Rights  
MOU  
Memorandums of Understanding  
NCCT  
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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# EXECUTIVE SUMMARY

## I. Study Objectives

The study sought to undertake an audit of relevant domestic AML/CTF legislation (contemporary policy and legal framework) with an actual and potential effect on civic space in Uganda based on actual experiences reported by local civil society actors. The audit involved a deep analysis of international and regional AML/CTF legislative frameworks to which Uganda is a State party. The audit also explores potential solutions to the current challenges faced by NGOs because of stringent obligations imposed by AML/CTF legislation. Such solutions should strike a balance between the legitimate enforcement of countering terrorism financing and money laundering legislation on one hand and fundamental human rights and freedoms such as freedom of assembly and association.

## II. Study Methodology

The study was carried out using qualitative research methods. This involved a desk review of both primary and secondary sources of literature for purposes of establishing a base line on the subject matter. This was complimented by key informant interviews with human rights defenders and NGOs across the country. The various interviews were designed to achieve legitimacy and actual documentation of lived realities and experiences of NGOs. The research questions were also designed to identify contemporary trends and patterns in respect to the challenge arising from unjustified enforcement of current AML/CTF legislative provisions against NGOs.

## III. Conceptualization, Legal and Institutional Framework of Anti-Money Laundering and Counter Terrorism Financing in Uganda

### 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.

However, it is 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" that have inspired several states around the world 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.

### 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 Legal and Institutional Framework on AML/CTF

Uganda's 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 amended).

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 particular 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', that 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. 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

*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.*

not mention in any way the necessary corresponding general human rights standards to be observed even when these mechanisms are being implemented.

#### 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

*Uganda: Elections Marred by Violence, Human Rights Watch. Available on <https://www.hrw.org/news/2021/01/21/uganda-elections-marred-violence>*



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.’

*a) 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 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 criminal charges being brought against an individual-leader of an NGO with money laundering and 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 targeted 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. 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 Uganda is currently 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 prominently

on State owned media. High ranking government officials have also used different 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.*' 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 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. The freezing of bank accounts belonging to AAUI also affected many GBV survivors considering that the various shelters they operate across the country remained in abeyance.

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 some times in terms of foreign exchange. The arbitrary implementation of these laws also has implications on grant negotiation and sustainability with the development partners.

#### 6.0 Recommendations

6.1 Non-Governmental Organisations should streamline in-house periodic internal house cleaning exercises in form of legal audits to elicit compliance. These could involve legal requirements check lists that are statutory in nature as directed under the AMT/CTF legal frameworks. In this way, the particular 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.

6.2 There is need to 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 domestic and international AML/CTF laws and attendant regulations.

6.3 Establishment of a consistent, well-coordinated competent legal team that is bestowed with the requisite resources and knowledge to contend with the unfair application of the AML/CFL legislations 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 NGOs fraternity and be tasked with keeping abreast with the evolving legal amendments related to AML/CTF to prepare the civil society fraternity response and offer protection from unwarranted

ambushes.

6.4 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 civil society 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 further enhance oversight and accountability over these entities.

6.5 The need for comprehensive legislative reforms; this would focus particularly on the definitions of terrorism, ‘acts of terrorism’, and ‘terrorism financing.’ Current definitions are overly broad, imprecise, vague and ambiguous rendering the law susceptible to abuse to the detriment civil society.

6.6 The Parliamentary Committee on Human Rights and other Constitutional Oversight and Accountability mechanisms such as the Uganda Human Rights Commission (UHRC) should exercise constant oversight over the AML/CTF enforcement bodies which include, the FIA, ODPP and the Uganda Police. In the exercise of this mandate, they should ensure that the relevant bodies comply with procedural guarantees of fairness and justice for all NGOs subjected to the provisions of AML/CTF legislation.

# 1.0 INTRODUCTION

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](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.

As above at 566.

1.1 The year 2001, September 11th, changed the global security apparatus after the terrorist attack on the United States of America. 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.'

1.2 Indeed, quite controversially, the world seemed to focus more on the adoption of legal means to counter what is evidently a political and social problem of terrorism. Consequently, in the recent past, there has been a proliferation of various international legal standards' frameworks at the international and continental levels that have been developed and rolled out for implementation to various countries to combat terrorism and other facilitating actions namely terrorism financing through generally money laundering. East African countries have not been an exception to this quest owing to their vulnerability.

1.3 East Africa's case is not any different from other African countries threatened by terrorist attacks from violent extremist organisations such as the Boko Haram in Nigeria, Al-Shabaab operating in Kenya and Somalia, Al-Qaeda operating in the Islamic Maghreb and Islamic State among others. A combination of their terror has been visited on the

10UN Counter-Terrorism Committee Executive Directorate, 'Global survey of the Implementation of Security Council Resolution 1373 (2001) by Member States,' 2016 at 30. Accessible at [https://www.un.org/sc/ctc/wp-content/uploads/2016/10/Global-Implementation-Survey-1373\\_EN.pdf](https://www.un.org/sc/ctc/wp-content/uploads/2016/10/Global-Implementation-Survey-1373_EN.pdf) [Accessed 27/02/2021]. Currently, East Africa and more specifically Uganda and Kenya are prime targets for terrorism owing to their role in the build-up and maintenance of AMISOM- African Union Mission Force for they provide part of the large contingents fighting the al-Shabab in Somalia. Uganda is also haven to other home grown terrorist branded organisations -the Lord's Resistance Army (LRA) and the Allied Democratic Forces (ADF).

people of Africa resulting into grave repercussions of loss of lives and destruction in their wake. In particular, Kenya and Uganda have borne more casualties. In 2015, on 2nd April, 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 merrymakers 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. It noted that;

*'East Africa continues to be extremely vulnerable to terrorism-related crimes. Continued political instability and the conflicts in Somalia, South Sudan and the Sudan contribute to this vulnerability, which is exacerbated by the sub region's porous borders, illegal flows of cash and weapons, and the movement of migrants and asylum seekers/refugees. Inequalities related to economic, social and cultural rights may also exacerbate tensions among the sub region's various ethnic populations, potentially fueling terrorist narratives and recruitment campaigns in areas where Governments appear to be non-responsive to community demands or criticism.'*

1.4 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, on the beneficiaries of these works across various sections of the public.

1.5 In this quest to counter terrorism, the CSOs under the wider umbrella of Not-for-Profit Organisations (NPOs) have been highlighted as spheres of focus. They are a soft target 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. In its interpretative note, the FATF avers that:

The ongoing international campaign against terrorist financing has unfortunately demonstrated however that terrorists and terrorist organisations exploit the NPO sector to raise and move funds, provide logistical support, encourage terrorist recruitment or otherwise support terrorist organisations and operations. This mis-use not only facilitates terrorist activity but also undermines donor confidence and jeopardizes the very integrity of NPOs. Therefore, protecting the NPO sector from terrorist abuse is both a critical component of the global fight against terrorism and a necessary step to preserve the integrity of NPOs.

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 worst hit. All of this has been achieved through the highly controversial ‘policy laundering’ perpetrated by governments of

*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](https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf) [Accessed on 18/02/2021]. Herein countries were reminded to undertake two actions:*

*(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;*

*(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);*

*FATF Special Recommendation VIII, Interpretative Note 2.*

*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*

intergovernmental forums as an ‘indirect means of pushing international policies unlikely to win direct approval through the regular domestic political process.’

1.6 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.’ It further notes that these NPOs are predominantly exposed, vulnerable and that States should guarantee that they cannot be abused: ‘(a) by terrorist organisations posing as legitimate entities; (b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and (c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.’

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.’

1.7 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.’



1.8 They 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. Hayes helps us to summarize the plight of NPOs under these laws in the aftermath of the 9/11 and how the States have since been equipped beyond measure to unleash may hem in the name of countering terrorism;

*However it also can't be denied that a number of counter terrorism measures (CTM) implemented by governments and international organizations have had a negative impact on the operational and political space of civil society. Autocratic or semi-autocratic regimes have always cut back on civil society but felt emboldened by the post 9/11 political environment of the war on terror and its rhetoric to further clamp down on civil society space. A number of governments that imposed stricter NGO laws, increased military and police actions against dissenting voices and opponents, and orchestrated targeted attacks against social activists, human rights defenders and peace builders, took less heat internationally as their measures were perceived and legitimized as part of the "war on terror".*

1.9 This study report which revisits this discourse by particularly inquiring into the impact of AML/CTF legal frameworks on the works of human rights defenders and generally the CSO fraternity is divided into five parts including this introduction. Part two discusses the conceptualization of money laundering, terrorism and counter terrorism and attendant measures. Part three is an inquiry into the AML/CTF legal framework in Uganda-how progressive and balanced in accentuating human rights especially when tested against the acceptable international standards. In part four, the study examines how the AML/CTF legal framework has been used and more so, what its impact has been on the CSO fraternity

*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. Terrorist organisations have taken advantage of these characteristics of NPOs to infiltrate the sector and misuse NPO funds and operations to cover for or support terrorist activity.'*

As above at 1.

As above at 10.

in Uganda. It provides evidence based data to facilitate public discourse about the negative impact of these legislations either in application or in the letter of the law-and potentially advocate for legislative reform as the fourth strand.

1.10 In the last part (5), the study provides some practical oriented potential solutions to the stalemate that persists on the need to balance between countering terrorism and money laundering on one hand and the need to ensure that the mechanisms and laws adopted to counter terrorism financing do not infringe on other human rights and freedoms more so the freedom to associate and assemble, which is the flagship mechanism for NGOs in the country. The recommendations emerging from this study are addressed to the relevant stakeholders within the chain of AML/CTF legislation implementation. Recommendations are also directed towards the CSOs on how to mitigate the potential impacts of the AML/CTF legislation and potential legislative reforms needed.

## 1.2 Objectives of the Study

### 1.2.1 General Objective

The Study's general objective was to examine the effects of anti-money laundering and counter-terrorism financing (AML/CTF) legislation on civic space in Uganda with a view of having a better understanding of the extent to which FATF style regulations impact on the operations of civil society in Uganda and provide a foundation for data-driven advocacy towards mitigating the unintended consequences of AML/CTF regulations on civic space in Uganda.

### 1.2.2 Specific Objectives

a) To undertake an audit of relevant domestic AML/CTF legislation (contemporary policy and legal framework) with an actual and potential effect on civic space in Uganda. This examination was extended to scrutiny of international standards/international and regional legal framework,

governing counter terrorism and money laundering related measures and laws to which Uganda is a party.

b) Undertake a review of relevant existing data generated from a recent survey conducted by Defenders Protection Initiative on the effects of AML/CTF Legislation on NGO Operations in Uganda.

c) Examine the existing and potential impact of AML/CTF legislation on civic space in Uganda based on actual experiences reported by local civil society actors.

d) Examine and identify some practical oriented potential solutions to the stalemate that persists on the need to balance between countering terrorism and money laundering on one hand and the need to ensure that these mechanisms and laws adopted to counter terrorism financing do not infringe on other human rights and freedoms such as freedom of assembly and association.

### 1.3 Methodology of the Study

#### 1.3.1 Data Collection

##### *Desktop-Data*

The study adopted a two multi-pronged approach to data collection and synthesis. First and foremost, data was collected through secondary desk top/literature review to establish the rough base line on the subject matter. The literature review also informed the design, choice and depth of engagement with the selected respondents during the secondary data collection that targeted key informants. Beyond literature accessible from scholarly discourse, data in form of reports was also sought from the targeted government entities including the FIA.

##### *Field Work Incursion-For Key Informants/Respondents*

For purposes of legitimacy and documentation of lived realities and contemporary trends and patterns on CSOs, the study was conducted with primarily collecting data from the relevant stakeholders on the

subject matter in the selected districts in Uganda. This field work was necessary not only to tap into recent happenings on the subject matter that may not have been captured by the literature reviewed but also to infuse within the study the crucial lived realities and contemporary trends and patterns on CSO operating environment with particular focus on the (AML/CTF) legislation. For purposes of this study, stakeholders were defined as ‘those individuals, groups of individuals or organizations that affect and/or could be affected, either positively or negatively by the implementation of the (AML/CTF) legislation in Uganda today.’ Key informant interviews were undertaken through development of research tools as described below;

##### *Key Informant Interviews*

Through purposive sampling, key informant interviews were conducted with selected/expert respondents from the identified actors/organizations, and the institutions overseeing or affected by the implementation of (AML/CTF) legislation. The key informant interviews were conducted using different methodologies including but not limited to the following as was determined by the prevalent circumstances obtaining: Face to face/Physical interviews; Phone interviews; and Zoom.

The key informant interviews were critical in verifying the information synthesized from the desk review research and getting firsthand experiences from the actors on the ground and specific geographical local experiences on the subject matter covered of (AML/CTF) legislation. The above was undertaken by the aid of developed, pre-tested tools of data collection-interview guides appendixes of the same are attached. The key informant interviews were undertaken with the following categories of persons and entities

**A. Affected Persons;** these included CSOs working in the various spheres of human rights work, both nationally and in confined geographies such as districts or regions either as individuals or through their unifying

bodies such as networks/coalitions. Uganda is not a homogenous country hence introducing peculiar political, social and economic dynamics in regional CSOs situations. The study sought a national representation of the diverse CSOs with a view of ascertaining the trends and patterns of the impact of AML/CTF legislation on rural/upcountry based CSOs, urban and peri-urban CSOs and Municipality/city based CSOs. To this end therefore, 2 CSOs were sourced from the 5 regions of the country-North, East, Central, South and Western Uganda.

**B. Central Government Sector/Line Ministries:** these focused on government 'mother' ministries dealing with implementation of the (AML/CTF) legislation issues (Mainly the Ministry of Internal Affairs that hosts the National NGO Bureau);

**C. Central Government Sector/Line Agencies:** These are semi-autonomous agencies that undertake work which affects or is affected by AML/CTF legislation-mainly the Financial Intelligence Authority (FIA);

**D. Relevant CSOs:** CSOs working in the various aspects of human rights across the country with specific focus on diversity of themes such as those working in extractives, infrastructural development contract monitoring groups; CSOs working in the accountability sector and land governance; working with women and vulnerable persons, land rights; offering legal aid to aggrieved HRDs/CSOs among others. All of these were considered to be very sensitive spheres and occasion grave repercussions from the State including the unfair use of AML/CTF legislation.

## 2.1 Conceptualization of Anti-Money Laundering and Counter Terrorism Financing

### 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.

**2.1** Such definitions include one from the General Assembly through a resolution which defines terrorism as 'criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes' and that such acts 'are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.' In 2004, the UN Security Council adopted another definition of terrorism to mean: 'criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organization to do or to abstain from doing any act.'

**2.2** In Uganda, the Boko Haram, Al-Shabaab, Islamic Maghreb, Lords' Resistance Movement, Allied Democratic Forces and Al-Qaeda have been gazetted by law as terrorist groups operational in and against Uganda.

Office of the United Nations High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-terrorism,' Fact Sheet 32 at 6. Accessible at <https://www.ohchr.org/documents/publications/factsheet32en.pdf> [Accessed 15/01/2021]

United Nations General Assembly, 'Declaration on Measures to Eliminate International Terrorism, Resolution 49/60, 1994.'

### **Conceptualizing Non-Profit Organisations**

**2.3** 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.’

### **Money Laundering**

**2.4** On the other hand, 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.

**2.5** 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.’

*Section 1-Interpretation Section of the Anti-Money Laundering Act, 2013.*

*Section 3 (c) of the Anti-Money Laundering Act, 2013.*

*Section 3 (d) of the Anti-Money Laundering Act, 2013.*

*Section 3 (e) of the Anti-Money Laundering Act, 2013.*

*Section 3 (f) of the Anti-Money Laundering Act, 2013.*

*Section 3 (g) of the Anti-Money Laundering Act, 2013.*

*Section 3 (a) of the Anti-Money Laundering Act, 2013.*

*Section 3 (b) of the Anti-Money Laundering Act, 2013.*

# LEGAL AND INSTITUTIONAL FRAMEWORK OF ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM IN

Section 4 of the Anti-Money Laundering Act, 2013.

Others include 1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft, 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, and the 2014 Protocol to Amend the Convention on Offences and Certain Acts Committed on Board Aircraft.

The Convention defines an 'internationally protected person' as a Head of State, Minister for Foreign Affairs, representative or official of a State or international organization who is entitled to special protection in a foreign State, and his/her family. These are often targets of terrorist groups.

The Convention among other provisions, provides that 'any person who seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostage within the meaning of this Convention.'

These include the 1980 Convention on the Physical Protection of Nuclear Material and the 2005 Amendments to the Convention on the Physical Protection of Nuclear Material.

Other instruments under this sphere are the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental

**2.6** Uganda's AML and CTF legal framework has been largely inspired and, in some cases, forced upon it by a litany of international legal instruments and foreign pressure. These substantive international laws can be categorized into Nine (9) spheres. These include instruments regarding civil aviation such as the 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation; instruments regarding the protection of international staff which include the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons; instruments regarding the taking of hostages such as the 1979 International Convention against the Taking of Hostages; and instruments regarding the protection of nuclear material.

**2.7** Other instruments cover the category of maritime navigation the most prominent being the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; instruments regarding explosive materials including the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection; regarding terrorist bombings incarnate in the 1997 International Convention for the Suppression of Terrorist Bombings; standards regarding the financing of terrorism as characterized by the 1999 International Convention for the Suppression of the Financing of Terrorism; instrument regarding nuclear terrorism espoused by the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism.

## **Corresponding international standards for protection of associational rights of CSOs**

**2.8** In the same way, just as the world has united to agree to the above mentioned standards on AML/CTF, it should be noted, that on the other hand, there are international standards agreed to relating to associational and assembly rights and freedoms of individuals and organisations. It follows, that the legal frameworks on AML/CTF must

Shelf, 2005 Protocol to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf.

Proclaimed by United Nations General Assembly Resolution 36/55 of 25 November 1981. Accessible at <https://www.ohchr.org/en/professionalinterest/pages/religionorbelief.aspx> [Accessed 21/02/2021]

be aligned to the proceeding international human rights standards of organisations so as not to inhibit their freedoms. To this end therefore, under the UN human rights system, various conventions and covenants provide for these associational rights while various Special Procedure mandate holders have further provided guidance in interpreting these provisions.

**2.9** Fore-most is Article 22 of the International Covenant on Civil and Political Rights (hereafter the ICCPR) which affirms that 'everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.' Article 6 (f) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly Resolution 36/55) explicitly provides that the right to freedom of thought, conscience, religion or belief shall include, inter alia, the freedom 'to solicit and receive voluntary financial and other contributions from individuals and institutions.'

**2.10.** On 21st March, 2013, the Human Rights Council adopted Resolution 22/6 on human rights defenders, calling upon States to ensure that 'reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy, and that restrictions are not discriminatorily imposed on potential sources of funding aimed at supporting the work of human rights defenders other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defense of human rights on account of the geographic origin of funding.'

**2.11** Similarly, the United Nations Declaration on Human Rights Defenders under Article 13 re-affirms that 'everyone has the right, individually and in association with others, to solicit, receive and utilize resources

for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with **Article 3 of the present Declaration.**'

**2.12** In relation to this Declaration, the Special Rapporteur has underlined that this provision firstly, recognizes no difference amongst the sources of funding, whether domestic, foreign or international sources. Secondly, it extends eligibility for access to funding to both legally registered associations and also individuals. Thirdly, it is an emanation from Article 22 of the International Covenant on Civil and Political Rights and therefore applicable to other systems of associations, regardless of their agenda as long as it is legal. To this end, the Special Rapporteur notes; 'the ability for associations to access funding and resources is an integral and vital part of the right to freedom of association... Any associations, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations.'

**2.13** Though the Declaration is not a binding instrument, it has endorsement from all the members of the UN General Assembly including Uganda. Additionally, it is premised and indeed contains a 'series of principles and rights that are based on human rights standards enshrined in other international instruments which are legally binding.' Accordingly, unjustifiable restrictions on access and use of funds mobilized by human rights defenders would be a contradiction of the aforementioned declaration on human rights defenders and the normative acceptable standards and rights owed to them therein. This is so even in cases involving restrictive counter terrorism measures. The Special Rapporteur concludes on this aspect by guiding that:

*'In order to ensure that associations are not abused by terrorist organizations, States should use alternative mechanisms to mitigate the risk, such as through banking laws and criminal laws that prohibit acts of terrorism. In this context, all United Nations agencies, notably those focusing on actions countering terrorism, have a key role to play and bear the moral responsibility to ensure that human rights in general, and freedom of association in particular, are not impaired by counter-terrorism and anti-money-laundering regulations. All measures adopted in this context should promote transparency and engender greater confidence in the sector, across the donor community and with the general public so that charitable funds and services reach intended legitimate beneficiaries.'*

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

**2.14** Other soft laws include the United Nations Global Counter-Terrorism Strategy (a creature of General Assembly Resolution 60/288), Financial Action Task Force, '*International best practices: detecting and preventing the illicit cross-border transportation of cash and bearer negotiable instruments*,' Paris, February 2010; Financial Action Task Force, '*Money Laundering through the Physical Transportation of Cash*,' (Paris, October 2015). The most prominent that have equipped States around the world with unprecedented boldness to legislate overly intrusive laws include the UN Security Council's Resolutions on counterterrorism and terrorist 'blacklisting' more specifically Resolution 1373. Others include Resolutions 2178 of 2014 and 2253 of 2015.

**2.15** The standards prescribed herein these instruments are superintended over by a number of UN agencies and bodies including among others the UN Security Council's Counterterrorism Committee (CTC) established in 2001 by UN Security Council Resolution 1373 (2001), the CTC Executive Directorate (CTED) established in 2004 by UN Security Council Resolution 1535 (2004), Terrorism Sanctions Monitoring Committees, and the Counterterrorism Implementation Task Force (CTITF). The other critical platform is the Financial Action

UN Human Rights Council, 'Protecting human rights defenders,' 15 March 2013. Twenty-second session; Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Accessible at <https://documents-dds-ny.un.org/doc/RESOLUTION/LTD/G13/120/26/PDF/G1312026.pdf?OpenElement> [Accessed 15/01/2021]

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms was adopted by General Assembly resolution 53/144 of 9 December, 1998. Accessible at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx> [Accessed 15/01/2021]

The Special Rapporteur on the rights to freedom of peaceful assembly and of association, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai,' 24, April 2013, at 6. Presented at the Human Rights Council, Twenty third session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Accessible at [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39\\_EN.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf) [Accessed 18/02/2021]

As above at 17.

As above at 6.

As above at 17.

Adopted by the UN Security Council at its 4385th meeting, on 28th, September, 2001. Accessible at [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/1373\(2001\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1373(2001)) [Accessed 15/01/2021]

Women Peace Makers, 'Counter-terrorism Measures and Their Effects on the Implementation of the Women, Peace and Security Agenda', Policy Brief, 2015. Accessible at <http://peacewomen.org/sites/default/files/Policy-brief-CTM.pdf> [Accessed 15/01/2021]

As above.

See <https://www.fatf-gafi.org/about/membersandobservers/#d.en.3147> [Accessed 15/01/2021]

In addition to the 37 member countries, the FATF operates through regional inter-governmental bodies that replicate and oversee the implementation of the FATF Recommendations on a regional basis. These include APG - Asia/Pacific Group on Money Laundering established in 1997; GAFISUD - Financial Action Task Force on Money Laundering in South America established in 2000; ESAAMLG - Eastern and Southern Africa Anti-Money Laundering Group established in 1999; EAG - Eurasian Group on money laundering and terrorist financing established in 2004; MONEYVAL - Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism established in 1997; MENAFATF - Middle East and North Africa Financial Action Task Force established in 2004 and GIABA - Inter Governmental Action Group against Money Laundering in West Africa established in 1999.

The FATF describes self as 'the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. As a policy-making body, the FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. The FATF reviews money laundering and terrorist financing techniques and continuously strengthens its standards to address new risks, such as the regulation of virtual assets, which have spread as cryptocurrencies gain popularity. The FATF monitors countries to ensure they implement the FATF Standards fully and effectively, and holds countries to account that do not comply.' For more on the FATF, see <https://www.fatf-gafi.org/about/> [Accessed 20/01/2021].

Task Force, formed in 1989 by the G-7 (Group of Seven) Summit held in Paris, France. The FATF has since grown to become an 'international-standard setter' on matters relating to money laundering and terrorism financing.

### **Financial Action Task Force (FATF) and its recommendations: Legitimizing coercion and authoritarianism?**

**2.16** The Financial Action Task Force (FATF), a less known but powerful multinational organization can be seen as the international standard-setter in the fight against terrorist financing and money laundering. Critically though, the organization has 37 States as members and from Africa, only South Africa is a member. Since 2001, the FATF has been at the forefront of rallying the globe in crafting, promoting and popularizing international policies that seek to mitigate and if possible alleviate the siege on financial institutions and banking systems by potential laundering and terrorist financing.

**2.17** The FATF has been credited for its elaborate 'recommendations' on money laundering established in 1990, and the 40+9 recommendations on terrorist financing and anti-money laundering. These recommendations have become the pivotal references by nations around the globe in crafting their legislative measures to counter money laundering and terrorist financing. For compliance, every 6-7 years, FATF undertakes a peer evaluation wherein all countries are ranked differently according to their extent/progress in compliance. These rankings ultimately influence the particular country's financial standing at the international level and could lead to black listing in the famed list of 'Non-Cooperative Countries or Territories' (NCCTs). This list is populated by those States that are said to be failing in respect to the international fight against money laundering and terrorism financing. Accordingly, this continuous cycle of country valuation and examination has arisen as an authoritative force for 'imposing new standards of global governance' upon countries.

**2.18** It is precisely this fear and the urge to belong internationally that countries including Uganda have been forced into a rush to enact and implement laws that carry the aspirations expressed in the FATF 40+9 recommendations. In 2005, these recommendations received endorsement from the UN Security Council when it urged all members of the UN to embrace them without reservation. The FATF, which has operated as a working group since inception has been criticized as having no legal framework such as a 'convention or treaty' within which to operate leaving it with 'the freedom and flexibility to operate without much public scrutiny.'

**2.19** Nonetheless, FATF has revolutionarised the discourse and actions around terrorism financing exerting enormous influence upon States across the universe especially through its compliance ranking/evaluation strategy. This has come with diverse repercussions on civil society. The Women for Peace note and summarize this aptly;

*A number of countries have started to use the FATF standard, and specifically Recommendation 8, as a pretext to clamp down on civil society space. Although countries often deny that it is the FATF standard that forces them to design and enact laws and regulations that go against civil liberties and civil society freedoms, evidence is growing that upcoming FATF evaluations have a preemptive effect on civil society space. This is a direct result of governments' desire to show the FATF that they are capable to prevent terrorist financing abuse through their charity and NPO sector. In addition, some countries are now starting to pass more restrictive NPO laws after the FATF evaluation -as if the evaluation was needed to legitimize the drafting of such laws.*

Questions still abound as to whether and how, if at all, 'a top-down, 'one size fits all' approach to NPO regulation is an appropriate or proportionate response to the possible vulnerability and actual exploitation of NPOs for terrorist financing purposes.'

See Anti-Money Laundering Forum. Accessible at <https://www.anti-moneylaundering.org/FATF.aspx> [Accessed on 15/01/2021]. The recommendations were originally published in 1990, and amended in 1996, 2003 and recently in October, 2020 to align them with contemporary challenges emerging with money laundering and terrorist financing.

According to the FATF, approximately 200 countries and jurisdictions have adopted these recommendations and committed to implementing them. See <https://www.fatf-gafi.org/about/> [Accessed 20/01/2021].

Women Peace Makers, 'Counter-terrorism Measures and Their Effects on the Implementation of the Women, Peace and Security Agenda', Policy Brief, 2015 at 2. Accessible at <http://peacewomen.org/sites/default/files/Policy-brief-CTM.pdf> [Accessed 15/01/2021]

Hayes (n 1) at 10.

Others include African Union (2002). Plan of Action of the African Union High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa, 11-14 September. Mtg/HLIG/Conv.Terror/Plan. (I). African Union, Assembly (2010) Decision on the Prevention and Combating of Terrorism, 27 July. Assembly/AU/ Dec.311 (XV); African Commission on Human and Peoples' Rights (2005). Resolution on the Protection of Human Rights and the Rule of Law in the fight against Terrorism (adopted at its 37th Ordinary Session held from 21 November to 5 December 2005, Banjul, The Gambia). ACHPR/RES.88 (XXXVIII). African Commission on Human and Peoples' Rights (2015). Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa (adopted at its 56th Ordinary Session held from 21 April to 7 May 2015, Banjul, The Gambia).

### African Continent legal frameworks

**2.20** At the Continental level, particularly in Africa, the African Union has also joined the movement legislating around counter terrorism and money laundering. Among the developed frameworks include the Algiers Plan of Action on the Prevention and Combating of Terrorism (2002) and the African Model Anti-Terrorism Law (2011). Other soft laws in the past have included the OAU Convention for the Elimination of Mercenarism in Africa in 1977 (adopted 3 July 1977, entered into force 22 April 1985) (CM/817 (XXIX) Annex II Rev.1.), which criminalized mercenarism. In 1992, the OAU adopted the Resolution on the Strengthening of Cooperation and Coordination among African States (AHG/Res.213 (XXVIII)) in which the Member States covenanted to fight the occurrences of extremism and terrorism. In the same vein, the Member States adopted a Declaration on the Code of Conduct for Inter-African Relations (AHG/Del.2 (XXX)) which also counters all forms of extremism and terrorist acts. Most prominent among these is the binding OAU Convention on the Prevention and Combating of Terrorism (adopted on 1st July, 1999, entered into force 6th December, 2002) which requires that State parties to criminalize terrorist acts under their national legal frameworks. Added to this is the 2004 Protocol to the Convention which operationalizes Article 3(d) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union 2002 (adopted 9th July, 2002, entered into force 26th December, 2003).

**2.21** Uganda's AML/CTF legal framework is comprised of a number of legislations which include, the Anti-Money Laundering 2013 (as amended), Anti-Terrorism Act, 2002 (as amended); Penal Code Act cap 120; Anti-Corruption Act, 2009 ( as amended); Narcotic Drugs and Psychotropic substances (Control) Act 2016; Financial Institutions Act 2004 (as amended); Anti-Money-Laundering-Regulations-2015; Anti-Terrorism Regulations, 2016-SI No.63 of 2016; Anti-Money Laundering (Exchange of Information) Regulations 2018(1). As earlier noted, majority of these laws drew their inspiration from the aforementioned international instruments and in some instances, they were in direct implementation/fulfilment of international law demands. Indeed, in 2017, the government of Uganda introduced an amendment to its Anti – Terrorism Act, 2012 to further provide an inclusive entry pool for all potential acts of terrorism that may not necessarily be provided for within its legal framework yet internationally accepted as such (an act of terrorism). To this end, under the Anti – Terrorism (Amendment) Act, 2017 , a person commits an act of terrorism who—(a) carries out or perpetrates any act, whether occurring in Uganda or elsewhere, that constitutes a crime in accordance with agreements, protocols and treaties described in the annex to the International Convention for the Suppression of the Financing of Terrorism, 1999.

### Terrorism Financing (TF)

**2.22** In Uganda, TF is defined descriptively and not definitively. Hence, under the law TF encompasses three different instances namely, resources contribution to terrorism organisations; assistance in the retention or control of terrorism funds and contributions towards acts of terrorism. It is critical to inquire into all these three aspects to best appreciate them and how they are being employed by the government of Uganda as synthesized later in the report. For the start however, Anti-Terrorism (Amendment) Act, 2015 provides for terrorism financing as prevalent when a person willingly 'collects or provides funds, directly

Others include African Union (2002). Plan of Action of the African Union High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa, 11-14 September. Mtg/HLIG/Conv.Terror/Plan. (I). African Union, Assembly (2010) Decision on the Prevention and Combating of Terrorism, 27 July. Assembly/AU/ Dec.311 (XV); African Commission on Human and Peoples' Rights (2005). Resolution on the Protection of Human Rights and the Rule of Law in the fight against Terrorism (adopted at its 37th Ordinary Session held from 21 November to 5 December 2005, Banjul, The Gambia). ACHPR/RES.88 (XXXVIII). African Commission on Human and Peoples' Rights (2015). Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa (adopted at its 56th Ordinary Session held from 21 April to 7 May 2015, Banjul, The Gambia).

Section 1 (1) (a) of the Anti - Terrorism (Amendment) Act, 2017. By this section therefore, Uganda subordinated its legal system to all these Conventions listed in the annex including -1.Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations, 1973; International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations, 1979; Convention on the Physical Protection of Nuclear Material, adopted at Vienna, 1980; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome, 1988; International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations, 1997.



or indirectly, by any means, with the intention that such funds will be used, or in the knowledge that such funds are to be used, in full or in part, by a person or a terrorist organization, to carry out a terrorist act.’ Further, a person commits an offence under this provision ‘regardless of whether the funds are actually used to commit an offence or not, and regardless of whether the funds are linked to a specific act of terrorism or not.’ Additionally, the law provides that a ‘person who attempts to participate or participates, by inciting, aiding, organizing or directing others to commit, or conspiring to commit an offence under this section, commits an offence.’

**a) Contributions towards acts of terrorism**

**2.23** The law prohibits any person from soliciting, or inviting another to ‘give, lend or otherwise make available, whether for consideration or not, any money or other property’ to use it to further the commission of acts of terrorism. Similarly, the Anti-Terrorism Act, 2012 forbids receiving or/and accepting from any source/persons any money or other property, whether arising from consideration or otherwise and thereafter apply or use it to commit or further the commission of acts of terrorism. The Anti-Terrorism Act, 2012 also introduces an aspect of knowledge-having reasonable cause/suspicion that the money may be used by the recipient to commit a terrorism offence. Relatedly, the Anti – Terrorism (Amendment) Act, 2017 further provides that ‘a person commits an offence, who willingly collects or provides funds, directly or indirectly, by any means, with the intention that such funds will be used, or in the knowledge that such funds are to be used, in full or in part, by—(a) a suspected terrorist or a terrorist organization ;(b) a person, to travel outside Uganda for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training whether against Uganda or any other state; or (c) any person, to carry out a terrorist act.’ Any of the above acts if proved constitute a criminal offence.

**b) Contributions to resources of terrorism organisations**

**2.24** The Anti-Terrorism Act criminalizes conduct of any person who willfully and knowingly engages in solicitation or invitation to ‘any other person to give, lend or otherwise make available, whether for consideration or not, any money or other property for the benefit of a terrorist organization.’ In the same vein, it criminalizes personal conduct that involves giving, lending or otherwise making available or receiving or accepting, ‘whether for consideration or not, any money or other property for the benefit of a terrorist organization.’ And lastly, any person who ‘enters into or is otherwise concerned in an arrangement by which money or other property is or is to be made available for the benefit of a terrorist organization, commits an offence.’

**c) Assisting in retention or control of terrorism funds**

**2.25** Additionally, the Anti-Terrorism Act seeks to prosecute the so called ‘terrorism funds retention person or entity.’ This is described as ‘a person who enters into or is otherwise concerned in an arrangement by which the retention or control by or on behalf of another person of terrorist funds is facilitated, whether by concealment, removal from Uganda, transfer to nominees or otherwise.’ Any of the above acts is deemed an offence unless the accused is exonerated on the account that he/she did not know and had no ‘reasonable cause to suspect that the arrangement related to terrorist funds.’

**2.26** The Anti-Terrorism Act also conceptualizes ‘terrorist funds’ to mean largely three things. Firstly it means ‘...funds which may be applied or used for the commission of, or in furtherance of, or in connection with acts of terrorism.’ The second meaning accorded to it is ‘the proceeds of the commission of acts of terrorism or of activities engaged in furtherance of or in connection with such acts’ which includes ‘any property which, in whole or in part, directly or

*Section 9A of the Anti-Terrorism (Amendment) Act, 2015.*

*Section 9A (2) of the Anti-Terrorism (Amendment) Act, 2015.*

*Section 9A (3) of the Anti-Terrorism (Amendment) Act, 2015.*

*Section 12 (1) (a) of the Anti-Terrorism Act, 2002. The Act came into operation on 07/June/2002.*

*Section 12 (1) (b) of the Anti-Terrorism Act, 2002.*

*Section 9A of the Anti - Terrorism (Amendment) Act, 2017. Date of Commencement: 26th, May, 2017*

*Section 13 (a) of the Anti-Terrorism Act, 2002.*

*Section 13 (b) of the Anti-Terrorism Act, 2002.*

*Section 13 (c) of the Anti-Terrorism Act, 2002.*

*Section 14 (1) of the Anti-Terrorism Act, 2002.*

*Section 14 (2) of the Anti-Terrorism Act, 2002.*

*Section 14 (3) (a) of the Anti-Terrorism Act, 2002.*

*Section 14 (3) (b) and 14 (4) of the Anti-Terrorism Act, 2002.*

*Section 14 (3) (c) and 14 (4) of the Anti-Terrorism Act, 2002*

*See Section 2-Amendment of section 9A of the Principal Act; The Anti - Terrorism (Amendment) Act, 2017, that commenced on 26th May, 2017.*

indirectly represents such proceeds. The third meaning relates to ‘the resources of a terrorist organization’ which includes any money or other property which is, or is to be applied or made available for the benefit of a terrorist organization. Thus, the law provides that: ‘A person commits an offence, who willingly collects or provides funds, directly or indirectly, by any means, with the intention that such funds will be used, or in the knowledge that such funds are to be used, in full or in part, by—(a) a suspected terrorist or a terrorist organization; (b) a person, to travel outside Uganda for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training whether against Uganda or any other state; or(c) any person, to carry out a terrorist act.’ Additionally, Ugandan law conceptualizes ‘funds’ (potentially useable in terror acts) to include; ‘assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such assets, including, but not limited to, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, and letters of credit.’

*Section 1 (a) of the Anti - Terrorism (Amendment) Act, 2015; This amended the Anti-Terrorism Act, 2002 to harmonize the definition of “funds” with that contained in the International Convention For the Suppression of the Financing of Terrorism,1999; to amend the definitions of “terrorism” and “acts of terrorism” to include the international aspects envisaged by the Convention; and for related purposes*

**2.27** The aforementioned legal framework is littered with a number of aspects that border unconstitutionality while some are susceptible to abuse by the implementing agencies. Indeed, as has been argued elsewhere, a combination of the UN, African Union, the FATF recommendations and the domestic AML/CTF legal frameworks create a

*‘...dense, global web of international law and policy transposed into national rules and regulations and endless bureaucracy. As the web has been expanded, the powers of state officials, prosecutors and investigators have been harmonized at a particularly high (as in highly coercive) level. At the same time, guarantees for suspects, defendants and ‘suspect communities’ have been largely disregarded. Caught in this global web are charities, development organisations, NGOs, human rights defenders, community organizers, conflict mediators and others who find their work hampered or paralyzed by onerous regulations or politically-motivated legal maneuvers.*

*Hayes (n 1) at 10-11.*

*Section 17A of the Anti-Terrorism (Amendment) Act-2015 provides for the Freezing or seizure of funds and property. It provides under (1) that the Financial Intelligence Authority may, cause the freezing or seizing of funds or property where it is satisfied that the funds are or the property is intended for terrorism activities.(2) Where the Financial Intelligence Authority causes the freezing or seizing of funds or property under Sub section (1),the Financial Intelligence Authority shall, immediately inform the Director of Public Prosecutions in any case not later than forty eight hours after the time of freezing or seizing.*

Below we scrutinize some of these emerging concerns.

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

**2.28** Whereas as the FIA is granted powers within the law to cause the freezing and by extension halting of transactions of institutions such as NGOs in execution of its work, 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 the Anti-Terrorism (Amendment) Act-2015. Rather it is within the discretion of the FIA to determine this. Indeed, as is later discussed in this report, in all the cases when the bank accounts of NGOs were frozen on allegations of money laundering and terrorism financing, those that had the freezing orders rescinded, it was executed at a time of choosing by the FIA. This is wide discretion susceptible to abuse and creates unnecessary and frustrating uncertainty on the part of the organisations under investigations 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 operations of the civil society fraternity.

**2.29** The best practice would be for the FIA to have power to freeze but within 48 hours, proceed to Courts of law to affirm/uphold that freezing based on concrete justifiable reasons from the FIA. This will give the institution under investigation the opportunity to contest arbitrary freezes with the Court as the final arbiters. Indeed, in such a setting, even when the entity under investigations finds the process of having accounts frozen taking longer than required with no corresponding manifest progress of the investigations, it could have recourse for relief by seeking the indulgence of the Court.

**2.30** The above seems to be in tandem, at least for now, with the thinking of the Executive Director of FIA, Mr. Asubo Sydney;

*We [FIA] have the power to halt transactions, admittedly, the impact is the same as a freeze. The discretion of how long to halt is left to the authority. It is not the best practice. Best practice is to put a time frame. We sparingly use the power to freeze as provided to us under the Anti-Terrorism (Amendment) Act 2015. To my knowledge, this power has been applied only 5 times in 6 years we have been in existence. We have proposed 30 working days to have a halt/freeze in place and if at the end of the period, we need an extension, it should only be through Court. However this proposal which we made more than one year ago has taken a bit of time for implementation.*

Relatedly, the Anti-Terrorism Amendment Act, 2015 undermines the discretionary powers of the Office of the Director of Prosecutions as guaranteed by the Constitution of Uganda, 1995 by holding the office holder hostage to the dictates and actions of the FIA. Under Section 17 A (3), the law provides that, ‘after receipt of the information under sub section (2) (from the FIA informing them of a freezing), the Director of Public Prosecution shall apply to court for an order freezing or seizing

such funds or property and the court shall make a determination expeditiously.’ The DPP is left with only one option-of applying to the Court for an order without according him/her any opportunity to assess and advice on the feasibility of the action of FIA in a particular subject matter. This section, also breaches the right to a fair hearing of the targeted entity whose funds or property have been frozen. What would have been an oversight platform of the DPP over the actions of FIA is turned into an endorsement platform instead, further frustrating the efforts of the suspected entity that would have utilized the DPP second layer of oversight to challenge the actions of the FIA.

#### **b) Ambiguity of central terms in the laws**

**2.31** In the entire collection of the AMT/CTF laws in Uganda, some particular ambiguities stand out especially in relation to the conceptualization of the central terms upon which the connotation of criminality or breach stands. Some of these include the ‘acts of terrorism’, ‘terrorism’, etc. These are defined in overly broad and vague ways defeating the notion of legality and certainty as required of a good law.

**2.32** Firstly, there is no convergence of thought even among the international comity 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. Further this lack of comprehensive definition, many have argued, ‘...allows States to adopt highly intrusive, disproportionate and discriminatory measures, notably to limit freedom of expression.’

**2.33** Indeed, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has noted that these nebulous terminologies in the laws have been

*Key note address of the Executive Director of FIA, Mr. Asubo Sydney, delivered during a Consultative Meeting with Civil Society Organisations in Uganda organized by DPI on 11th, Thursday, February 2021. Also accessible at <https://www.fia.go.ug/implementing-amlcft-measures-while-safeguarding-civic-space>*

*Under Section 17 A (3) of the Anti-Terrorism Amendment Act, 2015.*

*Noëlle Quénivet, ‘The World after September 11: Has It Really Changed?’, The European Journal of International Law Vol. 16 No.3 at 567.*

*The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, ‘Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders,’ Human Rights Council, Fortieth Session, 25th February-22th March, 2019. Presented under Agenda item 3-1st March, 2019 at 6; Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development. Accessible at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/057/59/PDF/G1905759.pdf?OpenElement> [Accessed 12/02/2021]*

*The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders,' Human Rights Council, Fortieth Session, 25th February-22th March, 2019. Presented under Agenda item 3-1st March, 2019 at 11; Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development. Accessible at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/057/59/PDF/G1905759.pdf?OpenElement> [Accessed 12/02/2021]*

*Hayes (n 1) at 7.*

*As above.*

*Quénivet (n 74) at 569.*

*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](https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf) [Accessed on 18/02/2021]*

*Quénivet (n 64) at 569.*

intentionally abused against a wide-ranging diversity of civil society groups, individual human rights activists, opposition politicians and human rights oriented advocacy activities to 'criminalize legitimate expression, including controversial viewpoints and information of legitimate public interest.'

### **c) Ambiguity and abuse of the FATF Recommendation 8**

**2.34** Recommendation 8 under the FATF remains a contentious standard that is understood and applied differently by various countries. This varied interpretation is largely aided by its ambiguity. The FATF 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 Recommendation 8. The Special Rapporteur recognizes the necessity to battle terrorism, but notes and cautions against the application of constricting measures—such as FATF Recommendation 8 that has been 'misused by States to violate international law.'

Indeed, to many commentators, Recommendation 8 has shaped a scheme of burdensome rules and regulations that have unlimited potential to subject NPOs to disproportionate state regulation and investigation, which controls their undertakings and thus the 'operational and political space of civil society organisations.' Ultimately, FATF Recommendation 8 provides governments yet an additional apparatus that can be used against critical-dissenting voices. Although the Recommendation is reinforced and 'legitimized internationally' on further scrutiny, it is a 'counter-productive and contradictory approach.'

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 balanced against AML and CTF laws. A manifestation of this reality often highlighted by activists relates to UN Security Council Resolution 1373. This resolution that encompasses comprehensive 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. It is not until later in 2014, that the UN Security Council in Resolution 2178 (2014), accentuated that respect for human rights, rule of law and fundamental freedoms as being complementary and jointly fortifying with effective counter-terrorism procedures. The Resolution also noted that these norms are an indispensable fragment of an efficacious counter-terrorism programme. It further noted that failure to observe with these and other international obligations, such as those under the Charter of the United Nations, has been one of the reasons for amplified radicalization and has nurtured a logic of impunity.

**2.35** In the same vein, the above legislative framework is implemented by a cross section of agencies, some, established within specific laws while others have been given a mandate on some of the aspects listed within the laws. These institutions, some of which operate autonomously include the Uganda Police Force (UPF), Parliament of Uganda, the Office of the Director of Public Prosecutions (ODPP), the Inspectorate of Government (IG), the Ministry of Finance Planning and Economic Development (MFPED), Uganda Revenue Authority (URA) and the Uganda Wildlife Authority (UWA).

**2.36** The FIA collaborates with these institutions as part of its ‘domestic co-operation’ agenda. The co-operation is guided by the Memorandums of Understanding (MOUs) entered into by the FIA with the various institutions. As at 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 (URA), the Inspectorate of Government (IG), and the Uganda Registrations Services Bureau (URSB). Through this there has been an establishment of what the FIA maintains is ‘a robust inter-agency cooperation framework’ that supports its works. Through this framework, joint staff trainings in AML/CTF are conducted and there is constant sharing of information on the emerging developments in the country including cases under watch also dubbed as ‘active cases.’

#### **Financial Intelligence Authority [FIA]**

**2.37** This Authority is established under Section 18 of the Anti-Money Laundering Act- as a body corporate with perpetual succession and which can sue and be sued in its corporate name with capacity to do all acts and things as a body corporate may lawfully do. The law provides to the effect that the FIA shall be ‘independent in the performance of its functions and shall not be subjected to the direction, instruction or control of any person or Authority.’ Yet, this same independence is

*Financial Intelligence Authority (FIA), ‘Annual Report for the FY 2018/2019’, September 2019 at 21.*

*Section 18 (1) and (2) of the Anti-Money Laundering Act-2013. It should also be noted that this is a direct recommendation from the FATF Recommendation 26 that provides for the establishment of Financial Intelligence Units (FIUs) responsible for processing Suspicious Transactional Reports (STRs) and assisting police investigations demanding financial information. It provides for the units to be established for ‘receiving (and, as permitted, requesting), analysis and dissemination of STR and other information regarding potential money laundering or terrorist financing. The FIU should have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STRs [suspicious transaction reports, also known as Suspicious Activity Reports (SARs)].’*

*Section 22 (1) of the Anti-Money Laundering Act-2013.*

*Section 22 (2) of the Anti-Money Laundering Act-2013.*

eroded when the law provides that the ‘Minister may give the Authority policy Guidelines.’ The Financial Intelligence Authority (herein after FIA) focuses on largely five aspects which include the enforcement of annual compliance reports for entities and accountable persons supposed to file these as provided for under Regulation 45(1) of the Anti-Money Laundering Regulations, 2015.

**2.38** The other roles which are prominent and central to the subject matter of this study include the enhancement of the ‘identification of the proceeds of crime and the combating of money laundering’; ensuring compliance with the AML-Act; enhancement of ‘public awareness and understanding of matters related to money laundering.’

**2.39** Among the many functions and particularly those subject to the discourse that ensues herein after include processing, analysis and interpretation of information ‘disclosed to it and obtained by it in terms of this Act’; informing, advising and cooperating with other competent authorities; giving guidance to ‘accountable persons, competent authorities, and other persons regarding compliance with the provisions of this Act.’ The AML Act-2013 also provides for general powers of the FIA, a very contentious aspect. Among its so many powers include;

**a) [Information Solicitation from Accountable persons]** obtaining any ‘information from accountable persons, supervisory agencies and law enforcement agencies in the performance of its functions in accordance with this Act’;

**b) Power to Instruct Accountable Persons;** to take such steps as may be appropriate in relation to enforcing compliance with this Act or to facilitate investigations anticipated by the Authority’;

*Section 19 (a) of the Anti-Money Laundering Act-2013.*

*Section 19 (b) of the Anti-Money Laundering Act-2013.*

*Section 19 (c) of the Anti-Money Laundering Act-2013. For example, in 2019, the FIA held four public awareness forums in the districts of Eastern Uganda- in Jinja, Mbale; Western Uganda in Mbarara district and in West-Nile region in Arua district. All these events attracted over 600 participants. These same were also relayed on various visual and audio media stations including NTV, NBS and Bukedde Television among others. It also participated in 8 invited public dialogues/ workshops and took part as exhibitors in various exhibitions held in the country in 2019. See Financial Intelligence Authority (FIA), ‘Annual Report for the FY 2018/2019’, September 2019 at 26-31.*

*Section 20 (1) (a) of the Anti-Money Laundering Act-2013. For example in the financial year 2018/2019 received, analysed and disseminated 535 Suspicious Transaction Reports (STRs)/financial intelligence reports to law enforcement authorities and other appropriate competent authorities. Of these (455) 85% were received from commercial banks, (69) 13% from forex bureaus and (8) or 2% from the rest of the reporting entities but none included NGOs. Since inception, the FIA has dealt with a total of 1,853. See Financial Intelligence Authority (FIA), ‘Annual Report for the FY 2018/2019’, September 2019 at 33.*

*Section 20 (1) (d) of the Anti-Money Laundering Act-2013.*

*Section 20 (1) (e) of the Anti-Money Laundering Act-2013.*

c) **Power to enter upon the premises of any accountable persons;** during ordinary business hours to inspect for compliance with the provisions of this Act’;

d) **Power to escalate money laundering investigations** through sending a ‘report on the activities of any accountable person to a competent authority if the Authority determines that there is an element of money laundering or terrorism financing’;

e) **Impose administrative Sanctions;** on an ‘accountable person who fails to comply with directives, guidelines or requests issued by the Authority’;

f) **Halt any financial activity;** in the event that a suspicion warning has been reported to the Authority.

2.40 Arguably, one of the most outstanding attributes of the law and practice in relation to the FIA that has come to bare in the recent past is the authority’s power to halt any financial transactions of any institution i.e. bank and Non-profit organization that they deem suspicious. According to the Executive Director of FIA, contrary to accusations of arbitrary use, this is power that they sparingly apply. He notes:

*While there has been a misconception that we are trigger happy to apply the powers to freeze, the reverse is true. The situations that call for a freeze vs where we actually go ahead to freeze would be a ratio of 95% to 5%. Apart from the banking sector where we have taken more hardline stances, for the rest, we bring the law to their attention before we apply the penalties. Penalizing entities will not serve the purpose for which the law was intended.*

2.41 The above assertions from the FIA notwithstanding, voices within the CSOs sector have continuously emerged that the FIA has been

abused and used to achieve political ends of the ruling party. According to some stakeholders,’

*We cannot separate the law from politics. Therefore, while the technocrats’ team at the FIA may be well meaning with good intentions, they are susceptible to political capture in the hands of the State for the good of their ambitions which most times may be anti-NGOs.*

Section 21 (j) of the Anti-Money Laundering Act, 2013.

Section 21 (k) of the Anti-Money Laundering Act, 2013.

Section 21 (L) of the Anti-Money Laundering Act, 2013.

Section 21 (n) of the Anti-Money Laundering Act, 2013.

Section 12 of the Anti-Money Laundering (Amendment) Act 2017.

Section 21 (o) of the Anti-Money Laundering Act, 2013

Key note address of the Executive Director of FIA, Mr. Asubo Sydney, delivered during a Consultative Meeting with Civil Society Organisations in Uganda organized by DPI on 11th, Thursday, February 2021. Also accessible at <https://www.fia.go.ug/implementing-amlcft-measures-while-safeguarding-civic-space>

CSO respondent interview, 08/02/2021.

**3.1** Uganda has witnessed the invocation of the AML/CTF legal framework in a more heightened manner in the past 5 years [2016-2021]. This period also doubles as one of the most intense political contestations within the country, with the NGO sector playing a key role. More particularly, this time was characterized by the highly controversial Constitutional amendment of the presidential age limit to enable Yoweri Kaguta Museveni seek yet another term in office. If the Constitution had been left intact, he would not have been eligible to stand for Presidency in the 2021 general elections on the account of advanced age i.e., 75 years.

**3.2** Most recently in January 2021, 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 political 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 those incidents are summarized herein below and as shall be shown, the State relied on the FATF Recommendation 6 that provides for targeted sanctions to NPOs suspected to be engaging in terrorism funding. These are dubbed ‘methods of Disruption.’ Under the Ugandan AML/CTF framework such disruption methods take the form of administrative enforcement, penalties, and sanctions as per the table below (Table has been adopted in whole)

*Financial Action Task Force (FATF), ‘Risk of Terrorist Abuse in Non-Profit Organisations,’ June 2014 at 62.*

*ActionAid has been working in Uganda since 1982 in various spheres of human rights including among others defending the rights of women; the rights of poor and marginalized people to land, food and education; and the right for the people of Uganda to demand justice in the areas of tax, anti-corruption and political accountability.’*

METHODS OF DISRUPTION	ADMINISTRATIVE ENFORCEMENT, PENALTIES, AND TARGETED SANCTIONS
A. Regulatory Compliance	I. Regulatory authorities issued a letter to an NPO outlining their concerns and providing the NPO with the opportunity to address the concerns. II. NPO was made to enter into a compliance agreement with regulatory authorities to enforce stricter due diligence and/or accountability standards
B. Enforcement Action (by competent authorities)	I. NPO was denied registration II. NPO activities were temporarily suspended III. NPO activities are being monitored with the knowledge of the NPO IV. NPO board of directors was changed V. NPO was audited VI. NPO was levied financial penalties VII. NPO property was forfeited
C. Targeted Sanctions	I. NPO was listed as a supporter of terrorism II. NPO accounts or assets were frozen

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

**3.3** The most prominent aforementioned incidents happened in September, 2017, at the height of the Parliamentary and indeed public discourse on the removal of the Presidential candidates age limits in the 1995 Constitution of the Republic of Uganda. Action Aid International

Uganda (AAIU), a non-governmental organization (NGO) operating in various parts of the country with its headquarters in Kampala, had its bank accounts frozen on account of conspiracy to commit a felony and money laundering charges. 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 until February 2018 acting on the advice of the Uganda Police Force Criminal Investigations Department (CID).

**3.4** Further, the Managing Director of Standard Chartered bank, was directed by the deputy governor of Bank of Uganda, Dr. Louis Kasekende, through a letter to immediately freeze all the organization's accounts of Action Aid International Uganda owing to the ongoing criminal investigations that were obtained in relation to alleged conspiracy to commit a felony and money laundering. These accounts were to remain frozen until otherwise directed by the Bank of Uganda

**3.5** Unlike the present seemingly mainstreamed process where the FIA commences the processes of interest in the financial dealings of a particular NGO, in 2017 and more particularly the cases of Action Aid International Uganda, the process commenced with freezing of the bank accounts more over by the Bank of Uganda contrary to the law. Indeed, it took action by Action Aid International Uganda to write to the Financial Intelligence Authority (FIA), on 13th October 2017 in the quest to establish if the organization was under any form of investigation. The FIA only acted retrospectively, in what was manifestly a tainted process.

**3.6** Within the same period, Great Lakes Institute for Strategic Studies (GLISS), a local policy think tank and Solidarity Uganda underwent a similar ordeal, when its accounts too were frozen. The offices of these

organisations were later demarcated as crime scenes and ransacked by a litany of security forces led by the Uganda Police Force (UPF) in a cordon and search operation. In relation to Action Aid International Uganda, the cordon off and subsequent search of Action Aid International Uganda at around 4pm on 4th October was sanctioned by the Chief Magistrate's court of Makindye, within which the offices of Action Aid International Uganda were situated.

**3.7** The officer in charge of the investigation AIP Henry Peter Walya who made the application accompanied by an affidavit in which he stated that within the office of Action Aid International Uganda premises located at Diplomat Zone Kasanga lay "the evidence relating to illicit transfer of funds for funding unlawful activities." The staff of the institution found there during the search operation were detained, blocked from leaving the premises while their mobile phones were confiscated. Its leaders were subjected to continued interrogation at the Criminal Investigations Department of the Uganda Police.

**3.8** According to the government of Uganda, the two entities were engaging in 'illicit financial transactions' and were responsible for funding the activities of the Youth groups (mainly Alternative Movement (TAM) operating across various parts of the country that were allegedly resisting the Constitutional Amendment aimed at removing the Presidential Candidates age cap of 75 years. These, according to the State were, subversive activities. Action Aid International Uganda later challenged the action in the Commercial Court seeking the unfreezing of its accounts, which were eventually unfrozen following a consent judgment between the two parties.

**3.9** Later, the government also unfroze GLISS's accounts after a rigorous process. In what observers called 'administrative harassment,' Mr. Arthur Larok, Country Director, and Mr. Bruno Ssemaganda, Head of

*Derrick Kiyonga, 'In the name of national security, or silencing civil society?', The Daily Monitor, 6th /December/ 2020. Accessible at <https://www.monitor.co.ug/uganda/magazines/people-power/in-the-name-of-national-security-or-silencing-civil-society--3220434> [Accessed 10/12/2020]*

*This was pursuant, to section 110 of the Financial Institutions Act, 2004.*

*Ibid.*

*Kiyonga (n 92).*

*The police alleged that Action Aid and GLISS were funding the Alternative Movement (TAM), a youth organization that was accused of staging protests against the tabling of the private member's bill (by the Igara West MP Raphael Magyezi), that sought to scrap the constitutional age limits on presidential candidates that was pending. [The offices of TAM located at MM plaza, on Luwum Street in Kampala city, were later broken into by the police even without a search warrant on the 18th September allegedly to recover evidence on the planned protests supposedly supported by Action Aid and GLISS. A number of equipment of including seven laptops, two cameras, 10 audio recorders, 500 T-shirts and Uganda flags were taken during the raid, some of which were not recorded in the Police records].*



Section 7 of the Anti-Terrorism Act stipulates that a person commits an act of terrorism 'who, for purposes of influencing the government or intimidating the public or a section of the public and for a political, religious, social or economic aim, indiscriminately without due regard to the safety of others or property.' Under Section 17A, the FIA is given power to freeze accounts, stipulating: 'The Financial Intelligence Authority may cause the freezing or seizing of funds or property where it is satisfied that the funds are or the property is intended for terrorism activities.' Subsection 2 is to the effect that, 'Where the Financial Intelligence Authority causes the freezing or seizing of funds or property under Sub-section (1), the Financial Intelligence Authority shall, immediately inform the Director of Public Prosecutions in any case not later than 48 hours after the time of freezing or seizing.'

Kenneth Kazibwe, 'Financial Intelligence Authority investigates 14 NGOs over money laundering', Nile Post, 14th, August, 2019. Accessible at <https://nilepost.co.ug/2019/08/14/financial-intelligence-authority-investigates-14-ngos-over-money-laundering/> [Accessed 20/12/2019]

Isaiah Mwebaze, 'Equity Bank in dilemma as gov't asks for financial details of critical NGOs', Eagle online, 14th, August, 2019. Accessible at <https://eagle.co.ug/2019/08/14/equity-bank-in-dilemma-as-govt-asks-for-financial-details-of-critical-ngos.html> [Accessed 12/02/2021]

Finance of Action Aid International Uganda (AAIU), were summoned and interrogated at the Criminal Investigation Directorate (CID) of the Uganda Police Force on October 6, 2017. They were also made to repeatedly appear before the SSP Paul Mark Odongo, the head of Criminal Terrorism Act, 2002. These laws were conveniently thrown around together with others including more particularly, Section 44 of the NGO Act, 2016 which stipulates that "organization shall not engage in any act which is prejudicial to the security" and laws of Uganda.

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

**3.11** 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, some of the most prominent doing work in human rights and accountability sphere, to submit specific 'financial information' to the NGO Bureau within a week from the date of the directive. Part of the information they were required to furnish included bank statements of the organization spanning to 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.

**3.12** The list of organisations included several NGOs engaged in human rights, humanitarian and development work: AAIU, 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 Uhuru Institute for Social Development. Just like AAIU and GLISS, majority of the above NGOs were vehement in protesting the campaign of the constitutional amendment to lift the presidential age limit.

**3.13** 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 the most prominent NGOs in Uganda at the time. The government claimed to be seeking their source of funding. The letter dated August 8, 2019 from the FIA Executive Director, Sydney Asubo directed one of the banks-the Equity Bank to hand over information about the 13 organisations 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.' These NGOs included ActionAid International Uganda, Citizens' Coalition for Electoral Democracy in Uganda, Alliance for Campaign Finance Monitoring, Anti-Corruption Coalition Uganda, National Non-Governmental Organization Forum, Human Rights Network Uganda, National Democratic Institute, and Great Lakes Institute for Strategic Studies. Others were the Foundation for Human Rights Initiative, Democratic Governance Facility, and KICK Corruption out of Uganda, National Association of Professional Environmentalists, and the African Institute for Energy Governance.

**3.14** The UN recognizes the wide spread use of administrative measures including bank account freezing and information hunting as discussed above as a means to address a variety of security and terrorism threats. However, this becomes problematic when used without affording the affected CSOs recourse to judicial protection.

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

**3.15** In the period leading to the 2021 general Presidential and Parliamentary elections, bank accounts belonging to the Uganda Women's Network (UWONET) and the Uganda National NGO-Forum were frozen amidst accusations of terrorism financing. On the 10th day of December 2020, the Financial Intelligence Authority (FIA) through its Director-Sydney Asubo wrote to the Director of Public Prosecutions (DPP), informing the office of the Authority's decision to freeze accounts of the organisations-UWONET and UNNGO-Forum. The action of the FIA was allegedly based on security intelligence reports of purported terrorism funding. The FIA also called upon the (DDP) to take on the matter for 'further management.'

**3.16** The affected accounts, 10 in total of UNNGO-Forum and 10 in total of UWONET were held in Stanbic Bank, ABSA Bank, KCB Bank and Standard Chartered Bank. In ordering their freezing, the FIA relied on Section 17 A of the Anti-Terrorism (Amendment) Act-2015. However, it should be noted that the freezing of the accounts of UNNGO-Forum came at the heels of the suspension of the operations of the National Election Watch-Uganda (NEW-U), a loose CSO coalition that had been formed to monitor, observe, document and report on the 2020/2021 general parliamentary and presidential elections including party primaries with a membership that was to be deployed across various parts of the country. This Forum was hosted at the UNNGO-Forum. The government of Uganda maintained that NEW-U was not a registered NGO within the laws of Uganda and within its membership, some NGOs were not dully registered or had not renewed their operational licenses and were thus operating illegally in breach of the NGO Act 2016 and the attendant regulations.

**3.17** The Chapter 4 Uganda case was even more peculiar-the first of

its kind involving the charging of an individual-leader of an NGO with money laundering of grant funds that were transmitted on to the organization's account. The Executive Director of Chapter 4 Uganda, 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 as well as the National Unity Platform Political Party's Human Rights Officer, Hamid Tenywa.

They were arrested by a number of 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.' All the arrested personnel were detained at Special Investigations Unit/Division of the Uganda Police Force in Kireka, a Kampala Suburb.

**3.18** At the time of publication of this report, Mr. Opiyo was still battling with the money laundering charges preferred against him. The events surrounding his arrest and arraignment before Court further reflect abuse of process and of AML/CTF laws. On December 28, 2020, Mr. Nicholas Opiyo appeared before the Anti-Corruption Division of the High Court sitting at the Buganda Road Magistrates Court in Kampala. This was via video-link for mention of the case in a court that had a presiding judicial officer who had no jurisdiction to both record Opiyo's plea and hear a bail application on his behalf. Obviously, Mr. Opiyo had to be remanded and indeed he was remanded to Kitalya Maximum Security Prison until 11th January 2021.

**3.19** All the available good-faith-oriented and rightful procedures on behalf of the State were ignored or arguably deliberately frustrated. Firstly, Mr. Opiyo was arrested before the investigations were fully complete contrary to best practice of policing, little wonder therefore why he was not arraigned before a High Court to rightly have mention

*The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders,' Human Rights Council, Fortieth Session, 25th February-22th March, 2019. Presented under Agenda item3-1st March, 2019 at 14; Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development. Accessible at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/057/59/PDF/G1905759.pdf?OpenElement> [Accessed 12/02/2021]*

*Franklin Draku, 'Govt freezes accounts of 4 NGOs doing poll work,' The Daily Monitor, 2nd, December, 2020. Accessible at <https://www.monitor.co.ug/uganda/special-reports/elections/govt-freezes-accounts-of-4-ngos-doing-poll-work-3216360> [Accessed 12/02/2021]*

*Sengooba Alirabaki, 'Financial Intelligence Authority Boss Accuses Top NGOs Of Financial Terrorism, Writes To DPP To Act After Freezing Their Bank Accounts,' Grapevine News, 11th, December, 2020. Accessible at <https://www.thegrapevine.co.ug/financial-intelligence-authority-boss-accuses-top-ngos-of-financial-terrorism-writes-to-dpp-to-act-after-freezing-their-bank-accounts/> [Accessed 12/02/2021]*

*Section 17A provides for the Freezing or seizure of funds and property to the effect that; (1) The Financial Intelligence Authority may cause the freezing or seizing of funds or property where it is satisfied that the funds are or the property is intended for terrorism activities. (2) Where the Financial Intelligence Authority causes the freezing or seizing of funds or property under Sub section (1), the Financial Intelligence Authority shall, immediately inform the Director of Public Prosecutions in any case not later than forty eight hours after the time of freezing or seizing. (3) After receipt of the information under sub section (2), the Director of Public Prosecution shall apply to court for an order freezing or seizing such funds or*

property and the court shall make a determination expeditiously.

CSO respondent interview, 2/02/2021, Kampala.

The Independent, 'NGOs plead with government over frozen bank accounts,' 7th, January, 2021. Accessible at <https://www.independent.co.ug/ngos-plead-with-government-over-frozen-bank-accounts/> [Accessed on 12/02/2021]

The Daily Monitor, 'Nicholas Opiyo's arrest is troubling, says US ambassador,' 23rd, December, 2020. Accessible at <https://www.monitor.co.ug/uganda/news/national/nicholas-opiyo-s-arrest-is-troubling-says-us-ambassador-3237108> [Accessed 12/02/2021]

Kenneth Kazibwe, 'Lawyer Nicholas Opiyo is detained on money laundering charges-Police,' The Nile Post, 23rd, December, 2020. Accessible at <https://nilepost.co.ug/2020/12/23/lawyer-nicholas-opiyo-is-detained-on-money-laundering-charges-police/> [Accessed 12/02/2021]

CSO respondent interview, 2/02/2021, Kampala.

CSO respondent interview, 2/02/2021, Kampala.

of his case and hearing of his bail application. Secondly, even if the arrest was necessary as deemed by the security but without completion of the investigations, again good practice would have demanded that Mr. Opiyo is charged with a holding charge (offence) and accorded his temporary liberty through execution of a police bond. The above case is a typical example of how such laws are used to frustrate the works of the CSOs fraternity and human rights defenders. Eventually, Mr. Opiyo was granted bail by the High Court on 30th December, 2020. 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 guilt arising from the intelligence agencies leaving the accused entity no room to contend with allegations informed by the intelligence.

**3.20** These attacks using the AML/CTF legal framework undermined the works of the Human rights defenders and non-governmental organisations (NGOs) 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 already playing a fundamental role in voter education and civic awareness related initiatives that are central to informed decision making of the citizens during the elections especially for marginalized groups such as women and the youth.

**3.21** But more importantly, these organisations, being local entities formed and run by the Ugandan citizens are also vehicles of political participation which is constitutionally protected work under Article 38 of the Constitution. The freezing of their accounts meant that these entities could not take part in any elections related activities. This goes contrary to the acceptable international standards and norms that govern elections which encourage allowing unfettered access of the 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.'

**3.22** In the particular later incidents of 18th and 19th of November, 2020, that were characterized by riots following the arrest of the flag bearer of the National Unity Platform Party Presidential candidate Hon. Robert Kyagulanyi Ssentamu, alias Bobi Wine, in eastern Uganda, district of Luuka on November 18, 2020. The UNNGO-Forum was accused of supporting these protests by among others feeding the protesters, accusations UNNGO-Forum protested. The commonality that defines all of these NGOs is that they were undertaking works relating to electoral justice, human rights, democratization and elections observation. Worth noting in this ordeal was the allegation that these three organisations were funding terrorist activities yet the leaders of these entities had not been arrested? One would have anticipated otherwise as Godber Tumushabe, the Executive Director of GLISS that suffered a similar fate in 2017 notes:

*'...You cannot claim that the UNNGO Forum and UWONET were involved in terrorism and leave the leaders to move freely on the streets. Terrorists cannot be left to move freely on the streets because it would put the lives of people in danger...'*

**3.23** This speaks to the often trumped up allegations that do not come with proof to sustain the charges both against the institution and its leaders in Courts of law. The talk of NGOs specifically and generally the CSO fraternity supporting the opposition as accentuated by the Government has continuously been projected coupled with allegations of NGOs funding or engaging in 'subversive activities.' 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 within which the AML/CTF legal regime in Uganda is enforced both by the DPP, the Uganda Police Force and the Financial Intelligence Authority (FIA).

**3.24** It should be noted though, at the writing of this report, at the close of February, it came to light that the FIA had revoked the freeze on the Accounts of UNNGO-Forum and UWONET as was published in its letter dated February, 19, 2021 and 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.’

**3.25** The unfreezing came after the highly contested 14th/01/2021 general parliamentary and presidential elections leading critiques to question the timing of the freezing, the caliber of the organisations that were involved and the fact that the investigations conveniently revealed nothing worth of prosecutorial value to commence criminal proceedings against these organisations. The way these highly publicized actions of account freezing end, without reporting back to the public before whom the victim organisations’ reputations have been damaged continues to gain credence that the AML/CTF legal regime is a political tool to beat the NGOs sector into submission and control by the government.

#### **Raid on RAHU for Alleged Money Laundering and Subversive Activities**

**3.26** In another case, on the 16th April, 2021, the CEO, Mr. Humphrey Nabimanya of Reach A Hand Uganda (RAHU), a youth-led and youth centered health-services- organization, was arrested over alleged

money laundering and subversive activities under Police General Inquiry File (GIF): 79/2021. Mr. Nabimanya was detained at the Uganda Police’s Special Investigations Division in Kireka, on the outskirts of Kampala City. Earlier in the day, the Uganda Police Force equipped with a search warrant from the Chief Magistrates Court of Makindye searched the premises of RAHU situate in Kansanga, Plot 7502, Block 244, Heritage Village, Pipe road, Kitaranga in Kampala City. The Police took away several project and organizational documentation and equipment of the organization for further inquiry. It is for this reason, that the police also justified detaining Mr. Nabimanya i.e., assisting in the inquiry. RAHU among other services, engages in sexual reproductive health and rights, HIV/AIDS awareness and prevention, Behaviour Change Communication and livelihood and skills development amongst the youth. At the publication of this report, this incident was still unfolding but its most likely to end in the same manner as similar past cases.

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 CSOs as potential security threats than partners. This kind of approach by the government downplays the potential role that the CSOs play in countering terrorism and its triggers through their various actions and programmes. Indeed civil society is 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. The civil society actors are the ever present entities in areas where the State is ‘unable or unwilling to govern,’ often playing an intermediate role, a factor attributed to their trustworthiness, legitimacy and contact with the remote communities. Further;

*They can meaningfully generate peace and development, including implementation of the 2030 Agenda for Sustainable Development, and can clearly articulate*

*Respondent interview with FIA official, Kampala, 7/Feb/2021.*

*CSO respondent interview, 8/02/2021, Kampala.*

*CSO respondent interview, 8/02/2021, Kampala.*

*CSO respondent interview, 10/02/2021, Kampala.*

*Damali Mukhaye, ‘NGOs dare govt to prove claims on terror funding,’ The Daily Monitor, 14th, December, 2020. Accessible at <https://www.monitor.co.ug/uganda/news/national/ngos-dare-govt-to-prove-claims-on-terror-funding--3228026> [Accessed on 12/02/2021]*

*The Independent, ‘NGOs plead with government over frozen bank accounts,’ 7th, January, 2021. Accessible at <https://www.independent.co.ug/ngos-plead-with-government-over-frozen-bank-accounts/> [Accessed on 12/02/2021]*

*Kenneth Kazibwe, ‘Govt unfreezes accounts of NGOs accused of terrorism funding,’ The Nile Post, 27th, February, 2021. Accessible at <https://nilepost.co.ug/2021/02/27/govt-unfreezes-accounts-of-ngos-accused-of-terrorism-funding/> [Accessed at 01/03/2021]*

*CSO Respondent Interview, 17th, April, 2021, Kampala.*

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders,' Human Rights Council, Fortieth Session, 25th February-22, March, 2019. Presented under Agenda item 3-1st March, 2019 at 5; Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development. Accessible at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/057/59/PDF/G1905759.pdf?OpenElement> [Accessed 12/02/2021]

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders,' Human Rights Council, Fortieth Session, 25th February-22, March, 2019. Presented under Agenda item 3-1st March, 2019 at 5; Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development. Accessible at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/057/59/PDF/G1905759.pdf?OpenElement> [Accessed 12/02/2021]

As above.

CSO Respondent Interview, 21/02/2021.

CSO Respondent Interview, 21/02/2021.

Government Respondent Interview, 27/02/2021, Kampala.

*the sources of grievances identified as factors leading to terrorist and extremist violence. As recruitment in certain regions is localized, with their invaluable knowledge of local drivers and local trends, civil society actors can help fill a government gap by providing alternative narratives and developing locally driven initiatives that respond to community-specific needs.*

**3.27** Even the often cited (but misconceived) anti-state sentiments as alleged to be by NGOs seeking accountability for human rights violations from the State, have their place in contributing to countering terrorism. Without a doubt, there is evidence that governments can catalyze the recruitment cells of terrorists in extreme forms of brutality, closing up discontent airing spaces and systematic marginalization of particular sections of the public. As Ben Hayes notes and rightly so in further affirming the role of the CSOs in countering terrorism;

*Lack of responsible and trustworthy governance and the existence of continuous underdevelopment, instability and violence are a driving force behind the attraction to extremist groups and their ideology. When the state fails society, people will resort to existing alternatives for livelihoods and a certain measure of stability. Violent extremists and their networks pretend to provide these.*

The insistence by CSOs for 'State transparency and effective accountability' for human rights violations committed by the State agencies/agents and non-state actors plays a fundamental role in restoring trust and confidence in national and international 'counter-terrorism efforts and the essential yet fragile trust between individuals, communities and the authorities in countering terrorism.'

**3.28** Further civil society can also expressively contribute in directing the grievances and anxiety exploited by terrorist and violent extremist groups, providing 'peaceful alternatives and improving relationships between the State and its citizens.' Ultimately the UN special procedures mandate holders warn and guide to the effect that;

*The cost of stifling civil society to prevent any perceived threat of terrorism far outweighs its benefits. Any effective counter-terrorism strategy needs to strengthen, not weaken, civil society. There is growing evidence that the instrumentalization of agendas to counterterrorism and to prevent and counter violent extremism is leading to a lack of trust in State authorities. By contrast, civil society can be seen as an impartial actor. A strong, resilient and vibrant civil society is both a sign of an open and inclusive society, and a buffer against repressive State practices and impunity. Restricting civil society's ability to operate is short-sighted, ineffective and futile and can itself be a contributing factor to violence.*

**3.29** In addition, the Special Rapporteur on freedom of assembly while noting the significance of the civil society organizations in contending with terrorism also decries undue obstructive measures. These can lead the development partners/donors to remove provision from NGOs functioning in challenging atmospheres, which in fact demoralizes instrumental CSO creativities in the fight against terrorism and eventually have adversative consequences on peace and security.

**3.30** 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. Xvaier Ejoyi, the Country Director of Action Aid-International Uganda decries noting:

*How do you enhance compliance, knowledge and appreciation of what terrorism and money laundering does to Uganda rather than waiting to catch people at*

## 4.0 EXAMINING THE IMPACT OF THE AML/CTF LEGAL FRAMEWORK ON THE CSO FRATERNITY IN UGANDA

*fault? This is key for me. It is important to note that there are concerns about the measures we are taking as a country. The risk assessment shall be important...if we look at money laundering and the threat of terrorism, there is a real risk. This country loses significant resources to illicit movement of funds. Uganda has been on the receiving end of terrorism. We need to reflect as a nation and ensure that we are enforcing the law in a way that is fair.*

**3.31** 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, CSOs leaders maintain that the guilty-image-depiction of NGOs by the State and FIA has to be countered.

As we work with the FIA, they should also publicize where we do well and notify us on where we need to improve so that we can improve on ourselves as civil society.

**3.32** At the time of undertaking this study, the FIA was in final preparations of undertaking a national risk assessment of entities to determine its course of action as propounded by the Executive Director.

*We are carrying out a risk assessment. One of the core questions to be answered- which sector is vulnerable to abuse for terrorism funding? This is the risk profile. We can then put appropriate measures in place and spare low risk entities the burden of some compliance obligations.*

It can only be hoped that the FIA would, in appreciation of the nature of the work of CSOs and their contributions including countering conditions that make terrorism inevitable can focus on bettering the operational framework of NGOs in relation to risk assessment.

It should be noted that the implementation of the AML/CTF laws despite the positive aspects, it has also come with a variety of negative implications on not only the civil society actors such as the institutions and the personnel therein, but it has also extended to civic space as discussed below.

### **4.1 Restriction of Civic Space and Freedoms of Association and Assembly**

The impact of these attacks have been varied depending on the organization under attack, the time (context) and the geographical scope of the organizational operational modalities. Prominent among these has been the restraining of civic space and increased threats to freedoms of association and assembly. For example, in the case of TAM, 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.

**4.2** The leader of TAM was also arrested and released on 5th October 2017. This was 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. Indeed, Mr. Norman Tumuhimbise maintained that his and the arrest of the youthful members of TAM was strategically intended to 'help' police 'pin' the leaders of Action Aid International Uganda and GLISS on money laundering and counter terrorism financing.

**4.3** The closure of offices and in most cases seizure of various organizational documentation, some of which relating not to the subject matter under investigation led some of the victim NGOs to

frustrations as some of their envisaged plans could not be implemented. The targeting of the information data bases and information security mechanisms of the NGOs they are investigating through police search and cordon makes the information of these CSOs susceptible to further security attacks and surveillance.

**4.4** The attacks are also responsible for the silent self-censorship within the CSOs fraternity. As the attacks on the member organisations of the sector continue to take hold, many CSOs, due to this chilling effect, have tended to express and exercise-controlled caution, restricting their engagement into the spheres that are seemingly safe such as those within the ambit of social, economic and cultural rights rather than the overly superintended works in good governance. In agreement with the views of the Ugandan HRDs interviewed, the UN Special Rapporteur has uncovered similar effects of the AML/CTF legal measures noting aptly that;

*...The mere existence of these measures, and their use against some civil society actors, is sufficient to not only silence those that are directly targeted, but also to send a message to all civil society actors that they are at risk should they continue their activities. The result is a weakened civil space infrastructure and limited engagement in sites of most need. Women's organizations, which tend to be smaller and more informal, have been significantly more affected by these increased administrative requirements.'*

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 Uganda is currently grappling with.

**4.5** It should further be noted that the act of freezing NGO 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 does-not only include the capacity and ability of individuals or legal bodies to establish and join any association/organization rather it extends to the right to 'seek, receive and use resources – human, material and financial—from domestic, foreign, and international sources.'

**4.6** To this end therefore, attention should be focused on the legal frameworks and policies and their impact on resources mobilization, use and access for they have a substantial influence on the efficiency and sustainability of associations or, instead, subdue them to a reliant and feeble position. This is even more critical for associations/entities in the sphere of promotion of human rights, including economic, social and cultural rights, for, 'access to resources is important, not only to the existence of the association itself, but also to the enjoyment of other human rights by those benefitting from the work of the association.' As such, the unjustifiable constraints on resources accessible to associations/entities have a bearing on the enjoyment of the right to freedom of association and also can 'undermine civil, cultural, economic, political and social rights as a whole.'

**4.7** De-legitimization of CSO Works and stigmatization of CSO works Despite the guidance from the UN Special Procedure Mandate holders to the effect that 'States have a responsibility to address money-laundering and terrorism, but this should never be used as a justification to undermine the credibility of the concerned association, nor to unduly impede its legitimate work', in Uganda this threat is imminent. AML/CTF legislation inspired attacks depict

CSO Respondent Interview, 22/02/2021.

CSO Respondent Interview, 23/02/2021.

CSO Respondent Interview, 23/02/2021, Kampala.

*The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders,' Human Rights Council, Fortieth Session, 25th February-22th March, 2019. Presented under Agenda item 3-1st March, 2019 at 17; Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development. Accessible at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/057/59/PDF/G1905759.pdf?OpenElement> [Accessed 12/02/2021]*

CSO Respondent Interview, 27/02/2021, Kampala.

*The Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 24 April 2013, at 4-5. Presented at the Human Rights Council, Twenty third session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Accessible at [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39\\_EN.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf) [Accessed 18/02/2021]*

As above.

*...financial transfers (e.g., donations, grants, contracts, sponsorships, social investments, etc.); loan guarantees and other forms of financial assistance from natural and legal persons; in-kind donations (e.g., contributions of goods, services, software and other forms of intellectual property, real property, etc.); material resources (e.g. office supplies, IT equipment, etc.); human resources (e.g. paid staff, volunteers, etc.); access to international assistance, solidarity; ability to travel and communicate without undue interference and the right to benefit from the protection of the State.'*

*The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders,' Human Rights Council, Fortieth Session, 25th February-22 March, 2019. Presented under Agenda item 3-1st March, 2019 at 15; Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development. Accessible at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/057/59/PDF/G1905759.pdf?OpenElement> [Accessed 12/02/2021]*

*CSO Respondent interview, 21/02/2021, Kampala.*

*The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders,' Human Rights Council, Fortieth Session, 25th February-22th March, 2019. Presented under Agenda item 3-1st March, 2019 at 15; Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development. Accessible at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/057/59/PDF/G1905759.pdf?OpenElement> [Accessed 12/02/2021]*

NGOs as fraudulent, misusing and abusing funds/grants, a notion that dents their image in the societies they serve 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 CSO contribution communicates uncertainty and instability within the sector but also in the country leading to apprehension by would be funders of social justice initiatives. In the same vein, in the recent past, the Working Group on Tackling the Financing of Terrorism of the United Nations Counter Terrorism Implementation Task Force recommended that; States should avoid rhetoric that ties NPOs to terrorism financing in general terms, because it overstates the threat and unduly damages the NPO sector as a whole.

**4.8** Yet, the de-legitimization and attendant stigmatization of NGOs continues to be perpetrated on the various media platforms including prominently on State owned media. High ranking government officials have also used different platforms to criticize NGOs. 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.

And what is the objective of such negative publicity more-so, if it touches on the reputation of the organisations that are targeted by the FIA? One CSOs leader maintains;

*There is the aspect of reputation of the NGOs. Accounts may be unfrozen but what do we then do for the reputation [of the organization] that was in question?*

**4.9** The Special Rapporteur aptly summaries this spreading phenomenon around the world, Uganda not excluded;

*'...objective is to delegitimize civil society and tarnish the reputation of its actors, by loosely characterizing them as "terrorists", implying that they are "threats to national security" or "enemies of the State", even by lobbying other States or through international forums. Such methods increase the vulnerability of all civil society actors, contributing to the perception that they are legitimate targets for abuse by State and non-State actors....'*

This damaging tagging propels a strong gesture that civil society organisations and actors therein are 'legitimate targets' for attacks and then legitimizes the implementation of additional constricting procedures further curtailing civic space. This further renders hostile the working environment of legitimate NGOs in the country, an affront to freedom of association and the right to political participation and contributing to the policy direction of one's country.

**4.10** Infringement on Citizenry Rights within targeted NGOs: the Contestation

The target of the 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 expression and civic duties. 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 guised under law enforcement.

**4.11** 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 particular, in 2017, Godber Tumushabe, 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 the victims. Mr. Nicholas Opiyo of Chapter 4 and Mr. Nabimanya Humphrey of RAHU are some of the other victims. This has occasioned tension and fear amongst many of these leaders with this now emerging trend of incarcerating the NGO leaders as well.

#### **4.12 NGO operations disruption and Expensive Court Processes**

The past experiences have also shown that the enforcement of these laws arbitrarily occasions illegalities that in most cases demand Court action to challenge them. This ultimately diverts NGOs from their work to firefighting these legally questionable allegations through hiring lawyers to challenge these actions, a fairly expensive process as well. Hence NGOs find that they must incur unforeseeable and arguably unnecessary expenses. The negative impacts of this 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 including school fees scholarships; legal aid services, orphanages, GBV shelters among others.

**4.13** On another personnel front, the use of the Courts to further disrupt the works of the CSOs is increasingly taking root especially where

the organizational leaders are charged and arraigned for trumped up charges within the AML/CTF legal framework. This trend 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 criticism of using the judicial system to harass CSOs finds credence even within the UN human rights system. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has decried 'judicial harassment' to the effect that:

*There is increasing use of spurious criminal proceedings under security legislation against civil society. In many cases, it appears that charges under security legislation are brought to legitimize other measures taken against civil society actors, such as house raids, arrests, detention (often lengthy) and travel bans.*

**4.14** In the same vein, the implementation of AML/CTF legal framework has been characterized by unbearably long investigations that can easily cripple and break down an institution. One respondent noted that;

We have seen investigations into NGO Accounts, with some being frozen for months, property, institutional documentation, computers, hard disks among other organizational assets are taken for investigations. Months and months pass and the investigations report is not completed and not public and the taken properties are not returned.

These protracted investigations threaten the survival of the NGOs under watch and investigations. They also derail their often time bound project based works.

#### **4.15 Loss of access to services to beneficiaries**

The internal disruptions that come with allegations of terrorism financing and money laundering and eventual freezing of accounts does not only affect the staff of these institutions in their gainful employment,

*The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders,' Human Rights Council, Fortieth Session, 25th February-22, March, 2019. Presented under Agenda item 3-1st March, 2019 at 16; Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development. Accessible at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/057/59/PDF/G1905759.pdf?OpenElement> [Accessed 12/02/2021]*

CSO Respondent Interview, 23/01/2021.

The Independent, 'UWONET denies claims of terror financing', December, 13th, 2020. Accessible at <https://www.independent.co.ug/uwonet-denies-claims-of-terror-financing/> [Accessed 12/02/2021]

Ms Tezira Jamwa, Chairperson of UWONET. See further Damali Mukhaye, 'NGOs dare govt to prove claims on terror funding', The Daily Monitor, 14th, December, 2020. Accessible at <https://www.monitor.co.ug/uganda/news/national/ngos-dare-govt-to-prove-claims-on-terror-funding--3228026> [Accessed on 2/02/2021]

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders,' Human Rights Council, Fortieth Session, 25th February-22, March, 2019. Presented under Agenda item3-1st March, 2019 at 17; Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development. Accessible at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/057/59/PDF/G1905759.pdf?OpenElement> [Accessed 12/02/2021]

it extends to the deprivation of services to the beneficiaries of these services by the respective organisations affected. These beneficiaries vary in levels of need and therefore vulnerability-since some entirely depend on resources channeled through these organisations for survival. A case in focus in UWONET-U and the disruption of its works in the electoral cycle.

**4.16** In 2021 when its accounts were frozen, UWONET-U was running various activities as part of their 2021 elections project. The institution was engaged in training youth and women candidates that were taking part in the 2021 general elections. In the same vein, UWONET- U was coordinating the 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. With the suspension of funds, all these activities were halted.

It should also be noted that in December of every year, UWONET coordinates several activities under the GBV (Gender Based Violence) prevention campaign across the country. These too were frustrated by the freezing of the organizational accounts. The Chairperson of UWONET captured this impact aptly noting that:

This action has and will continue to affect the operation of UWONET generally but specifically activities that were ongoing for the benefit of our targeted groups especially women and girls including the activities for the 126 days of activism to end gender based violence and trainings of women candidates in various districts.

*The freezing of bank accounts belonging to AAUI also affected many GBV activities considering that the various shelters they operate across the country remained in abeyance.*

#### **4.17 The silent economic and grant disruptions of AML/CTF legal regimes against NGOs**

With the freezing of organizational accounts that comes with disruption of operational plans of these entities, the resultant negative effects are also felt economically thereby affecting a litany of both direct and indirect beneficiaries of these NGOs. This is what the UN calls 'financial marginalization.' Included in this chain are suppliers of services and assortments of products to the NGOs affected; attendant hotel related expenditures in the planned but later aborted workshops and seminars among others. This is in 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.

**4.18** Additionally is the negative impact of the arbitrary implementation of these laws on grant negotiation and sustainability with the development partners. Arthur Larok, the former Country Director of Action Aid Uganda International shares aptly this impact when Action Aid Uganda International was accused of terrorism financing in 2017:

We lost income, as potential donors reconsidered projects or processes previously agreed, citing concerns around the safety of grants following the siege. Intense state propaganda portrayed us as a criminal entity investigated for economic crimes. Sections of the media framed us as an antigovernment opposition party disguised as an NGO. It was shocking to hear highly placed officials referring to Action Aid Uganda International as an organization with a track record of spying for foreign governments. Ongoing claims left our image and reputation damaged and saw sections of the population turn against us.

The concerns of Arthur Larok are further given credence by the former UN Special Rapporteur on Freedom of Assembly and Association who

*The Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 24, April 2013, at 7. Presented at the Human Rights Council, Twenty third session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Accessible at [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39\\_EN.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf) [Accessed 18/02/2021]*

noted what he called ‘problematic constraints’ to accessing funding to include, inter alia, ‘...banning or restricting foreign-funded CSOs from engaging in human rights or advocacy activities; stigmatizing or delegitimizing the work of foreign-funded CSOs by requiring them to be labeled as “foreign agents” or other pejorative terms; initiating audit or inspection campaigns to harass CSOs; and imposing criminal penalties on CSOs for failure to comply with the foregoing constraints on funding.’

#### **4.19 Frustrations of Article 38 of the Constitution: Citizenry civic duties and rights**

Almost all of the affected organisations above operate in the sphere of rule of law, human rights and democratization of the country. More specifically in the period under review, the NGOs were focusing on monitoring, documenting and reporting on the electoral processes that were under way. Majority were readying for and already engaged in civic and voter education, domestic election observation, following up and preventing elections related violence. These universally recognized non-partisan elections activities were all halted when some of the organisations such as UWONET-U and UNNGO-FORUM among others had their accounts frozen on the eve of the elections period and throughout the polling days and the aftermath. The activities of these NGOs are protected under Article 38 (1) of the Ugandan Constitution which provides that everyone has the right to participate in the affairs of government, individually or through his or her representatives in accordance with the law. Article 38 (2) there under also provides every Ugandan with the right to participate in peaceful activities to influence the policies of government through civic organisations. The actions of financially crippling NGOs through freezing their accounts, arresting and charging the NGO leaders a litany of offences including money laundering under the AML and CTF legal regimes undermine the fundamental role of Article 38 of the Constitution which lies at the core of citizenry civic participation in the governance of their country.

## 5.0 STUDY CONCLUSIONS AND RECOMMENDATIONS

**5.1** Non-Governmental Organisations should stream line in-house periodic 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 particular 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.

**5.2** 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.

**5.3** 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.

**5.4** 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 counter-terrorism and terrorism financing architecture, including the FIA and NGO Bureau to also further enhance oversight and accountability over these entities.

**5.5** 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.

**5.6** 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.

**5.7** 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.

**5.8** 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.

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