

SPACES FOR CHANGE

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CLOSING SPACES FOR CIVIL SOCIETY AND DEMOCRATIC ENGAGEMENT IN NIGERIA

2017

Spaces for Youth Development and Social Change
[SPACES FOR CHANGE | S4C]

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SPACES FOR YOUTH DEVELOPMENT AND SOCIAL CHANGE

SPACES FOR CHANGE | S4C

Established in May 2011, Spaces for Change (S4C) is a Lagos-based research and advocacy organization working to infuse human rights into social and economic decision-making processes in Nigeria. Known for leveraging digital technology to crowd source data and execute high-profile policy campaigns around research findings, S4C continues to create spaces for inclusion, debate and reflection. In the process, the organization facilitates public participation in the promotion, evaluation and setting of strategic policy directions on specific social and economic priorities in Nigeria.

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PREFACE

Non-profit organizations (NPOs)¹, especially civil society organizations (CSOs), have witnessed increased regulatory restrictions to their operations across the globe. Although the restriction of civic spaces is usually framed around the objective of protecting national interest and security, it is often triggered by a number of international regulations and treaties that governments have either ratified or submitted to its implementation.

An example is the 40 Recommendations handed down by Financial Action Task Force (FATF), the global body that sets the standards for combating money laundering (ML) and the financing of terrorism (FT). Although they are referred to as Recommendations, they are followed in over 180 jurisdictions, and have become powerful tools for combating transnational organized crime. Prior to its revision in 2016, FATF's Recommendation 8 characterised non-governmental organizations (NGOs) as being particularly "vulnerable to terrorist abuse". Based on this characterization, countries like Nigeria have rolled out several laws and policy measures applicable to corporate persons which have had the effect of imposing greater regulatory obligations on them, including incorporated non-profits. NPOs working in different jurisdictions, have as a result, faced increased scrutiny and legal constraints, shrinking the spaces for both charitable work and civil society operations. Evidence from across Africa, particularly in Kenya, Ethiopia, Sierra-Leone and Nigeria point to the determination of states to increase regulatory pressure, which continues to close the spaces for civic action and engagement.

Beginning from 2016, SPACES FOR CHANGE launched a systematic inquiry into Nigeria's legal regimes for combating money laundering and financing of terrorism in order to understand the linkages between the country's compliance with FATF's Recommendation 8 and the shrinking spaces for civic engagement and civil society operations in Nigeria. The inquiry gauged the effectiveness of the implementation of national frameworks for countering ML and FT, highlighting where high risks remain or where implementation could be enhanced.

To better understand the impact that policies and measures developed in compliance with international standards have had or are having on citizens and the civil society, we developed a database of closed spaces, profiling 100 incidents of the overbroad application of official measures against ML and FT or policies enforced in furtherance of national interest and security. Individuals, communities and organizations that are predominantly targeted are those advancing goals and advocacy consistent with civil society promotion and organization.

Overall, there may not be explicit linkages between the fulfilment of treaty (international) obligations and the national legislative attempts to regulate the civic space. But that does not mean the linkages are illusory or non-existent. On one hand, there is evidence that the plethora of legislative efforts to restrict the civic space flows from poor understanding and overzealous implementation of international regulations. On the other hand, while the FATF Recommendations, for instance, have not been expressly mentioned in any of the legislations proposed for the regulation of NPOs, domestic efforts to comply with these international standards

¹This term is used here to include Non-Governmental Organisations ("NGOs") and Civil Society Organisations ("CSOs").



May have opened the door for human rights abuses, providing the government with further grounds to crush dissent and impose restrictions on civil society. To the hundreds of advocates and millions of people that benefit from non-profit activities, strategic collective action is needed to mobilize a shift in the perceptions and narratives that aim to criminalize and delegitimize charitable activities, consequently, exposing them to recurrent restrictive policies and regulations that undermine the impact and reach of their work.

This report contains two parts. The first part, 'Beyond FATF: Trends, Risks and Restrictive Regulation of Non-Profit Organisations in Nigeria', examined the (in)adequacy of Nigeria's legal framework for countering terrorism-financing and money laundering in order to determine whether a proper evidential link exists between the enforcement of FATF standards and the broadening state endeavours to close the spaces for civil society in the country. The second part, 'Closing Spaces for Civic Engagement and Civil Society in Nigeria', generated a database of closing spaces in Nigeria, presenting the evidence of restrictions on citizens and civil society operations, perpetrated under the guise of 'national interest', 'national security' and 'other ML and FT' considerations.

We are immensely grateful to Open Society Foundations and Open Society Initiative for West Africa (OSIWA) for providing the funding for this research. We also thank the Fund for Global Human Rights for providing additional support for this research, and more particularly, for their inspiring guidance, constructive criticism and friendly advice throughout the project.

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ABBREVIATIONS

AML	–	Anti Money Laundering	FATF	–	Financial Action Task Force
APC	–	All Progressives Congress	FRCN	–	Financial Reporting Council of Nigeria
CAC	–	Corporate Affairs Commission	FT	–	Financing of Terrorism
CAMA	–	Company and Allied Matters Act	GAFI	–	Grouped'ActionFinancière
CAN Nigeria	–	Christian Association of Nigeria	GIABA	–	Inter-governmental Action Group against Money Laundering
CDD	–	Customer Due Diligence	ICRG	-	International Cooperation Review Group
CBN	–	Central Bank of Nigeria	IMN	-	Islamic Movement of Nigeria
CFT	–	Counter Terrorism Financing	IPOB	–	Independent Peoples of Biafra
COAS	–	Chief of Army Staff	JDPC	–	Justice Development and Peace Commission
CPC	–	Congress for Change	MAFO	–	Movement Against Fulani Occupation
CSO	–	Civil Society Organizations	ML	–	Money Laundering
CTR	–	Current Transactions Report	MURIC	–	Muslim Rights Concern
DNFBPs	–	Designated Non-financial Businesses and Professions	NFIU	–	Nigeria Financial Intelligence Unit
DNFI	–	Designated Non Financial Institutions	NGO	–	Non Governmental Organization
ECNL	-	European Center for Non-Profit Law	NGO Bill	-	Bill for an Act to Provide for the Establishment of the Non-Governmental Organisations Regulatory Commission
EFCC	–	Economic and Financial Crimes Commission			



NLC	–	Nigerian Labour Congress
NPO	–	Non Profit Organizations
NUT	–	Nigeria Union of Teachers
PDP	–	Peoples Democratic Party
R8	–	FATF Recommendation 8
SCUML	–	Special Control Unit for Money Laundering
SOKAPU	–	Southern Kaduna Peoples Union
SSS	–	State Security Service
S4C	–	SPACES FOR CHANGE
URI	–	United Religions Initiative
UNSCRs	-	United Nations Security Council's Resolutions





EXECUTIVE SUMMARY

Are the spaces for civic engagement in Nigeria expanding or contracting in light of the current measures and policies adopted by the Nigerian government to meet FATF requirements? Is there any evidence linking the implementation of FATF Standards in Nigeria with the multiplication of oversight regimes for regulating non-profit organisations, resulting in the growing restrictions to their operations? Are the national regimes for combating ML and FT measures (in)adequate and what impacts have they had on NPOs? What then needs to be done to push back on over-regulation of the non-profit sector? This research not only seeks to provide answers to these questions, but also present the evidence and legal arguments needed to protect the integrity of NPOs in Nigeria and resist the clampdown on civil society.

~ Methodology for the research

To begin the search for answers to our research questions, we divided the overall research activity into two parts. The first part focused mainly on the implementation of the FATF Standards and the consequential restrictive legislations impacting on nonprofit organizations in Nigeria. In the second part, we developed a database profiling the incidences of closing spaces we identified and documented.

Data gathering was undertaken in four inter-related phases over a 6 month period (November 2016 – April 2017). In the first phase, a literature review was conducted, looking back through recent research on money laundering, financing or terrorism and the features of state repression, identifying potential links between them where necessary. Building on the findings of the literature review, the researchers zoomed into specific states with the highest concentration of incidents of 'closed spaces'. During the second phase of the research, data was collected from a variety of primary research sources across the country. More specifically, S4C conducted direct interviews and fact-finding missions to the South-East, South-South, South-West, North-Central and North-West geopolitical zones in Nigeria, gathering and documenting testimonies from citizens, groups and organizations affected by the tightening environment for citizen expression and civil society action in Nigeria. This process afforded an opportunity to engage civil society stakeholders, human rights activists, opinion leaders and government officials operating in those places around these issues. Additional data was sourced from secondary literature obtained locally and internationally, particularly through digital crowdsourcing, media analysis, and participation in international FATF research networks and meetings. The compilation of findings from across regions were used to populate and develop the database of 'closed spaces', presenting the evidence of restrictions on civil society as well as on citizens' ability to freely use the civic spaces.



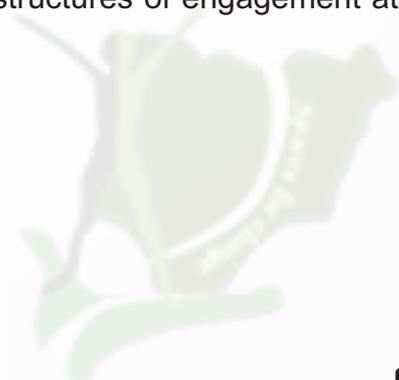
During the third phase of the research, S4C convened a one-day public forum on 'Citizenship, Civic Spaces and Civil Society in Nigeria' held on the 28th of February in Abuja, bringing together diverse stakeholders including the media, academic, the National Human Rights Commission and international organizations to interrogate the wave of executive acts and legislative initiatives tightening the spaces for democratic engagement. At this forum, S4C presented the preliminary findings of this research to a broad spectrum of representatives of diverse non-profit organizations drawn from the civil society, the media, indigenous communities and religious groups. The opinions, observations and experiences shared at the seminar lend depth and meaning to the case studies generated, while highlighting the gaps in law enforcement that need to be plugged.

The fourth and final phase of the research involved targeted interviews and consultations with leading regional and national AML and CFT agencies, particularly the Inter-Governmental Action Group against Money Laundering (GIABA), the Special Control Unit against Money Laundering (SCUML) and the Nigerian Financial Intelligence Unit. Also significantly insightful were the learning exchanges with other leading experts and organizations researching the implications of FAFT on the non-profit sector. Along this line, the research received technical reviews and inputs from European Center for Non-Profit Law (ECNL) the leading international research organization that has since 2013, mobilized the Global NPO Coalition on FATF, drawn from over 130 organizations in 46 countries, representing human rights, service organizations, peace builders, donors, and transparency groups. The Fund for Global Human Rights provided support to ECNL to conduct the technical reviews.

Presenting the initial research findings at local and international forums, including the FATF Private Sector Consultative Forum with NPOs held on 22 March 2017, in Vienna Austria, helped to clarify basic misunderstandings regarding FATF Recommendation 8 and national risk assessment procedures. Further engagement with the FAFT-styled regional bodies like GIABA enhanced our understanding of national implementation strategies and timelines. All of these steps helped in the identification of common bottlenecks or barriers to a more efficient process, and in turn inform policy making to overcome these challenges.

~ Key findings

Civil society existed in pre-colonial Nigeria as associational forms that enabled participation, communication, information flow and influence between the citizens and the state, as well as means of social economic assistance, control of social existence and survival to citizens. The anti-taxation riots/protests of the Aba women in 1929 and the Abeokuta women in the 1940's are instances of organized resistance carried out under informal or non – associational groups opposing arbitrary taxation policies in colonial Nigeria. With the advent of colonialism, new social exchanges and new platforms of consciousness and agitation emerged, impacting on existing societal structures of engagement at the communal, traditional, cultural and other group levels.





Where there is a free and healthy civic space, members of that society are enabled to contribute to public life. They are also empowered to exercise their fundamental rights of information, expression, assembly, association and participation. As such, when the civic space is restricted, human and civil rights are denied, government accountability is jeopardized, citizen voices are silenced, civic energy is sapped, confidence in state authorities is eroded and opportunities for dialogue and development are lost. Consider the following examples that reveal the extent of pressure active citizens and others participants in the civic spaces are now facing:

On August 8, 2016, the Economic and Financial Crimes Commission (EFCC) arrested Abubakar Sidiq Usman, a prominent blogger based on allegations of cyberstalking.² Another blogger and journalist Musa Babale Azare, was arrested on the orders of the Bauchi Governor, Mohammed Abdullahi Abubaka on August 20, 2016. Again, section 24 of the Cybercrime Law on cyberstalking was cited.³ Similarly, the State Security Service (SSS) in Uyo, arrested Iroegbu Emenike, a blogger and publisher of Abia Facts, on September 6, 2016 while Jamil Mabai was arrested and detained by Police in Kaduna state for criticizing Katsina State Governor for purchasing 3000 metal coffins.⁴ On November 21, 2016, an Imo-based journalist, Aku Obidinma, was arrested by agents of the State Security Service over a media faceoff with the Deputy Governor of Imo state. He was charged and remanded in prison custody by a Magistrate court and forced to spend his Christmas holidays there despite meeting the bail conditions.⁵

As the above incidents make clear, there have been consistent restrictions on freedoms of expression both on the mainstream and social media spaces in Nigeria. The denial of civil and political liberties, surveillance and arrests of bloggers or political opponents, violations of personal or physical integrity rights, restriction of freedoms of expression on mainstream and internet media, are all unhealthy signals that indicate a repressed or closed civil society. When these signals are recurrent, they obstruct public participation in democratic engagement, bringing about an environment of state repression. Obstructions of this nature are reminiscent of the repressive tactics traditionally utilized by military regimes. As evidence would subsequently show, civilian administrations are increasingly, resorting to these tactics to coerce associational and non-associational entities into submission.

Restrictions to civil society operations in Nigeria could further be regarded as one of the structural legacies of military rule. Between 1966 and 1999, save for a few years of intervening civilian governments, the ruling junta clamped down

²EFCC under attack over arrest of Abusidiq. Naij.com Retrieved <https://www.naij.com/920308-breaking-efcc-attack-arrest-top-blogger.html>

³AbdulWasiu Hassan. August 20, 2016. Policemen arrest Blogger in Abuja for criticisinggovernor.DailyTrust.Retrieved <https://www.dailytrust.com.ng/news/general/policemen-arrest-blogger-in-abuja-for-criticising-governor/159656.html>

⁴AminuAdamu. (October 10, 2016) After 22 days in detention for criticizing governor, Nigerian blogger gets bail. Premium Times, <http://www.premiumtimesng.com/news/headlines/212538-22-days-detention-criticising-governor-nigerian-blogger-gets-bail.html> . Samuel Ogundipe; Another bloggerarrested by State Agents. Premium Times. Retrieved from

<http://www.premiumtimesng.com/news/top-news/209985-another-nigerian-blogger-arrested-state-agents.html>, September 7, 2016.

⁵Steve Uzoechi December 25, 2016. Activist spends Christmas in prison custody despite meeting bail terms. New Telegraph. retrieved <https://newtelegraphonline.com/news/sunday-magazine/activist-spends-christmas-prison-despite-meeting-bail-condition/>



heavily on dissent, including civil society-led campaigns for the return to democratic rule. On assumption of power, often attained through bloody coups, military dictators usually began their reign of terror by suspending the operation of the national constitution, in whole or in part, replacing them with military decrees. The restrictions were not only structural, but also physical. Extrajudicial killings, summary trials and imprisonment without trial of persons or groups considered as antagonists of the government were among the popular strategies military dictators deployed to crush dissent and political opposition.

Civil society became part of the language of the opposition precisely at the moment when discontent with military rule and the economy crystallized. In this sense, civil society discourse in Nigeria was a product of two contradictory currents – the appetite of the military's highest echelons for social homogenization and domination, pitted against the desire of a nascent coalition of pro-democracy forces for political liberalization and economic empowerment.⁶The civil society formations that continue to emerge as a result of these contestations, whether operating in online and offline communities, have a common agenda: to diversify or dilute power at the top, while fostering diverse views and advocating change through bottom-up mobilization.

~ Developing Indicators for Monitoring and Measuring Closing Spaces

What happens when civic spaces and the civil society are closed? How are they closed? Is there any measuring model that monitors this closure? In developing a methodology for monitoring closing spaces for civil society in Nigeria, researchers were guided by the CIVICUS's civic space freedom classifications into five categories: open, narrowed, obstructed, repressed and closed. Each of these categories has their specific conditions. As findings would later demonstrate, CIVICUS's civic space freedom classifications succinctly describe the state of the civic space in Nigeria. In addition, past and present cases of civic space restriction in Nigeria indicate how the Nigerian formal or informal civic spaces oscillate within CIVICUS' categories of closed, repressed and obstructed.

~ Is the domestic implementation of FATF Standards responsible for the closing spaces for civic engagement and civil society in Nigeria?

Until it was revised in June 2016, FATF's Recommendation 8's (R8's) characterization of NPOs among the many vehicles that are potentially vulnerable to abuse of terrorism financing had profound consequences on NPOs. Along this line, Nigeria moved to implement CFT controls intended to limit any risk NPOs carry.

⁶Ibid



For the purposes of registration, reporting and conduct of Customer Due Diligence (CDD), a local regulation classified NPOs as Designated Non-Financial Institutions (DNFI) in Nigeria, putting NPOs under AML/CFT related obligations and restrictions. Although the FATF has in response to intensive research and advocacy by global civil society advocates, revised the language of R8 which led to over-regulation of the sector, national AML and CFT frameworks remain significantly unchanged, and continue to put additional obligations (and restrictions) on NPOs.

R8 stated that “NPOs possess characteristics that make them particularly attractive to terrorists or vulnerable to misuse for terrorist financing.” The Global NPO Coalition on FATF hotly contested this Recommendation, leading to its eventual revision in 2016. The revised R8 now requires governments to apply focused and proportionate measures only to identified NPOs that are at risk. In the Interpretative Note to R8, FATF cautioned against the one-size-fits-all approach adopted by governments which has restricted the civic space and basic human freedoms. It therefore, called on governments to respect fundamental rights and humanitarian law, and avoid over-regulation of the non-profit sector.

The language of R8 may have changed, but the negative sentiments against NPOs the former language produced remain. The unfriendly disposition of the government toward NPOs persists. In turn, the NPOs, including the civil society is apprehensive that the government could hide under the guise of compliance with FATF standards to clamp down on them. This fear is well-founded especially in light of the widening categories of restrictive regulation. Two major types of restrictive regulation have been identified: (a) those proposing stiffer regulations and (b) overboard application of existing regulations.

(A) Proposing stiffer regulations

Despite the plethora of measures that have been put in place to advance AML and CFT objectives, restrictive legislations targeted at NPOs are still being churned out frequently. There have also been series of efforts to introduce laws that would have the effect of restricting use the internet by citizens. In May 2016, Nigerian civil society groups successfully pushed back the Bill Prohibiting Frivolous Petitions, popularly known as the Social Media Bill, designed to regulate communications and use of the social media. Had it been passed, the Bill would have required citizens to depose to affidavits in law courts before posting any statement on social media with respect to the government or its officials. With many NPOs now increasingly relying on improvements in access to technology to advance their advocacy agendas, such a law would have significantly undermined the effectiveness of their campaigning activities, especially around social justice and political accountability. Also, it would have taken a toll on the internet-based organizations, including influential individuals with popular followership, whose opinions regarding government activities and policies help to shape public opinion.

Barely two months after the Bill was rested, another bill -- A bill to provide for the Establishment of Non-Governmental Organizations Regulatory Commission -- designed to restrict civil society operations in Nigeria has passed second reading

⁷See Section 2(1)(f) of the Designation of Non-Financial Institutions and Other Related Matters) Regulations, 2013



in the Nigerian parliament. If passed into law, the bill, popularly known as the NGO Bill, will empower the Nigerian government, through various bodies to regulate, monitor and interfere with the funding and operation of NGOs and CSOs. At the state level, the Deputy Speaker of Imo State legislature also initiated a bill designed to gag media freedom in the state. The bill which set out to define the standard of operations for media houses in the state passed the second reading before intense resistance from civil society stakeholders led to its withdrawal.

Stiffer regulations can also come in the form of policy directives to specific government departments which have the effect of obstructing civic engagement. In November 2016, the Nigerian Communication Commission directed telecommunications operators to hike data tariffs by 200 percent.⁸ Although the government claimed the hike was designed to protect the smaller telecommunications operators, there were speculations that the directive was another ploy by the Federal Government to limit access to the internet and effectively reduce the level of criticisms leveled against the government on online platforms. Fortunately, the government has reversed the directive following widespread outrage against it.

There are presently three bills proposed by different legislators at the National Assembly, each seeking for the establishment of a regulatory agency for NPOs in Nigeria.⁹ These bills came barely two years after a bill for the regulation of international donations to NPOs was introduced at the 7th House of Representative. That bill did not scale through before the tenure of 7th Republic House of Representatives ended in May 2015. The bill has not been reintroduced.¹⁰ Among the three bills seeking to regulate NPOs, the Bill for an Act to Provide for the Establishment of the Non-Governmental Organisations Regulatory Commission (the “NGO Bill”) has received the most attention from the civil society owing to two reasons:

- (a) the scope of the NGO Bill is expansive and would seek to regulate all facets of the existence and operation of NPOs in Nigeria; and
- (b) the NGO Bill has received accelerated hearing at the National Assembly and within a few months has passed through Second Reading to Committee Stage.

⁸ CNN, 2016. “Nigerians Win Fight Against Mobile Data Price Hike.” Available at <http://edition.cnn.com/2016/12/01/africa/nigeria-data-tariff-hike/>, accessed 06/03/2017

⁹ The long titles of the bills are: (1) *A Bill for an Act to Regulate the Acceptance and Utilisation of Financial/Material Contribution of Donor Agencies to Voluntary Organisations and for Matters Connected Therewith (the “Foreign Contribution (Regulation) Bill, 2013”)*; (2) *A Bill for an Act to Establish the Civil Societies Regulatory Commission and For Related Matters, 2016*; and (3) *A Bill for an Act to Establish the Civil Societies Commission and For Related Matters, 2016*

¹⁰ Partners Nigeria, 2016. “Nigeria NGO which way forward: Self-regulation or Government Regulation?” Available at <http://partnersnigeria.org/nigeria-ngo-which-way-forward-self-regulation-or-government-regulation/>, accessed 06/03/2017



(B) Overbroad application of existing legislation

Another popular method of restricting the civic space is through overbroad application and enforcement of existing legislation. An interesting example is the use of the Cybercrime (Prohibition, Prevention, Etc) Act 2015 to violate the rights to free speech. The Cybercrime Act was enacted to provide a framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria. Security agencies have capitalized on this legislation to torment social critics and activists who criticize the government on social media.¹¹

Religious leaders have also come under the beam of security agencies, causing them to experience greater constraints to their religious operations as with other NPOs. On 17th October 2016, the Financial Reporting Council of Nigeria (“FRCN”) issued the National Code of Corporate Governance which is a three-in-one code seeking to regulate public and private companies as well as NPOs. The arm of the code applicable to NPOs would compel founders of non-profits to vacate their headship positions after twenty years or upon attaining the age of seventy. This provision, perceived to target churches and other religious groups, led to the one of the most-prominent religious figures in the country vacating his position as the administrator of the church. The code has since been suspended in its entirety¹²

Another particularly notorious provision used to justify repressive tactics is Section 45 of the Constitution of the Federal Republic of Nigeria which provides that the liberties of citizens may be justifiably restricted in the interest of defence, public safety, public order, public morality or public health. National security agencies, who have responsibility for the “prevention and detection of crime of a military nature against the security of Nigeria,”¹³ have latched onto this constitutional provision to restrict the operations of NPOs under the banner of defending national security. Overbroad application of legal rules leave ample opportunities for state misuse of power and extended human rights abuses.

One single thread running through the plethora of restrictive regulations is the cyclic premise on national security or the national interest. The lead paper in support of the NGO Bill emphasizes the need “to regulate CSOs on matters relating to their funding, foreign affiliation and national security, and ... to check any likelihood of CSOs being illegally sponsored against the interest of Nigeria.” In simple parlance, these arguments reecho increasingly popular sentiments suggesting that NGOs are “vulnerable to terrorist abuse” or are “enablers for funding terrorist groups.” Prior to its revision in 2016, these sentiments find support in Recommendation 8 of the Financial Action Task Force, the global standard-setter for anti-money laundering and countering financing of terrorism. Perception is growing that domestic efforts to comply with these international standards may have opened the door for human rights abuses, providing the government with further grounds to crush dissent and impose restrictions on civil society.

¹¹ Committee to Protect Journalists, 2016. “How Nigeria's Cybercrime Law is being used to try to Muzzle the Press.” Available at <https://cpj.org/blog/2016/09/how-nigerias-cybercrime-law-is-being-used-to-try-t.php>, accessed 06/03/2017

¹² hisDay, 2017. “Corporate Governance Code: The Intrigues, Politics and Untold Story.” Available at <https://www.thisdaylive.com/index.php/2017/01/15/corporate-governance-code-the-intrigues-politics-and-untold-story/>, accessed 06/03/2017

¹³ Section 1(1)(a) of the National Securities Agencies Act



NPOs in Nigeria are subject to a wide range of regulatory frameworks that prescribe disparate measures for mitigating ML and FT risks, as several examples in the chapters below shall demonstrate. Gaps, however, remain. For instance, the lack of prosecution and conviction despite the large number of suspicious transaction reports (STRs), is an indicator of a gap in the country's AML/CFT regime.¹⁴ The need for concerted implementation of existing laws may be necessary, just as the strengthening of the country's investigative, prosecutorial and adjudicative capacities in dealing with ML/FT and their predicate crimes have been recommended.¹⁵

The introduction of additional legislation will ostensibly, tilt towards over-regulation. In compliance with FATF requirements, targeted implementation may be necessary towards NPOs identified to be at risk. Additional legislation does not necessarily translate to effective regulation of NPOs unless a risk has been identified in the course of a risk assessment of the NPO sector which requires to be legislated.

The move towards targeted regulation of NPOs has several implications. One is the inherent potential to compromise the independence of non-profit entities. The government's ability to interfere in the operation of NPOs is particularly inimical to NPOs that engage in human rights advocacy, government accountability, and the promotion of democracy. Protecting these entities from the repressive antics of both state and non-state actors makes it imperative for every regulatory action to be backed by a comprehensive risk-benefit analysis to ensure that the benefits of the regulation action would outweigh the risks. Secondly, overburdening NPOs with regulatory responsibilities increases the cost of operating the organisation, thereby, restricting both the impact and scale of their operations.

Overall, there may not be explicit linkages between FATF Standards and the legislative attempts to regulate the civic space at the national level. But that does not mean the linkages are illusory or non-existent. For instance, one of the GIABA's key recommendations to Nigeria¹⁶ is that a supervisory authority like the UK Charity Commission should be replicated in the country. Consistent with this recommendation, the main thrust of both the rested 2014 NGO Funding Bill and the present 2016 NGO Bill is the proposal for the establishment of the NGO Regulatory Commission modelled after the UK regulatory body. These Bills, however, overstretched GIABA's recommendation, introducing other unduly restrictive and invasive provisions that could potentially undermine NPO operations in the country.

On one hand, there is evidence that the plethora of legislative efforts to restrict the civic space flows from poor understanding and overzealous implementation of international regulations. On the other hand, domestic efforts to comply with

¹⁴ GIABA 2014 Annual Report, p.48.

¹⁵ GIABA Recommendations to Nigeria . See GIABA 2014 Annual Report, p.49.

¹⁶ See GIABA 2008 Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism



international standards may have opened the door for human rights abuses, providing the government with further grounds to crush dissent and impose restrictions on civil society. The same applies to FATF Recommendations even though they may not have been expressly mentioned in any of the legislations proposed for the regulation of NPOs. This perception fuels the wave of suspicion within the NPO circles. Not only that, previous experiences reinforce widely-held assumptions that legislation enacted for the regulation of NPOs in Nigeria could be hijacked and used to legitimize the tightening environment for civil society action, including the restrictions on basic freedoms of expression and assembly, persecution of political dissent, and increased surveillance of citizens.

In sum:

- (a) There are no direct links between the NGO Bill and the FATF Recommendations. The revised Recommendation 8 does not require the specific regulation of NPOs unless supported by a risk assessment of the 'NPO sector';
- (b) FATF's rating of Nigeria no longer depends on the number of legislation or regulatory agencies applicable to the NPO sector as FATF would require a risk-based approach to CFT and proof of effective targeted and proportional measures;
- (c) Nigeria has carried out a risk assessment of the NPO sector to determine its vulnerability to terrorist financing (TF), but the outcome of this assessment is yet to be made public;
- (c) Even if risk assessment of the NPO sector is publicized, it is expected that the existing legal frameworks in Nigeria would be sufficient to address the risks and there would be no need to specifically regulate NPOs;
- (D) There is a high propensity that the NGO Bill and related legislative proposals designed to specifically regulate NGOs may be misapplied or implemented in a repressive manner.





PART A

**Beyond FATF:
Trends, Risks and
Restrictive
Regulation of Non-Profit
Organisations
in Nigeria**





CHAPTER ONE

An Overview of Restrictive Regulation of Non-Profit Organisations in Nigeria

Spaces for group action, citizen engagement and organization are crucial, and central to democracy, including civil society operations. Thanks to the advancement in technology, online and offline spaces are increasingly, not only transforming into centers of democratic expression, but also have become catalysts for social and political change. In corresponding pace, governments have initiated steps to either regulate or restrict these spaces, with implications on human rights and freedoms, particularly the freedom of expression, public assembly, conscience and thought. The civil society plays an important role in democracy promotion and the realization of human rights. Restrictive regulation of the spaces for human and civic interaction significantly limits the ability of the civil society to effectively undertake these roles.

The shrinking spaces for both the charitable activities and advocacy initiatives of non-profit organizations dates back to the Nigerian Civil War, between 1967-70, when the then Federal Government of Nigeria doubted the altruistic motives of several aid organizations. Consequently, they denied them access to victims of the humanitarian crises, leading to the deaths of millions of people in the war-torn South-Eastern part of the country. There were concerns that aid organizations could under the guise of providing aid, smuggle arms and financial aid to the Biafra-led secessionists.¹⁷

Restrictions to civil society operations in Nigeria could further be regarded as one of the structural legacies of military rule. Between 1966 and 1999, save for a few years of intervening civilian governments, the ruling junta clamped down heavily on dissent, including civil society-led campaigns for the return to democratic rule. On assumption of power, often attained through bloody coups, military dictators usually began their reign of terror by suspending the operation of the national constitution, in whole or in part, replacing them with military decrees. The suspended provisions typically targeted the bill of rights--such as the right of peaceful assembly, association and free speech--enshrined in Chapter 4 of the Nigerian Constitution. Ouster clauses inserted into the constitution precluded judicial tribunals from determining the propriety (or otherwise) of military actions that contravened human rights.

The restrictions were not only structural, but also physical. Extrajudicial killings, summary trials and imprisonment without trial of persons or groups considered as antagonists of the government were among the popular strategies military dictators deployed to crush political opposition. A string of publications have detailed the dark days, chronicling the repressive environment the civil society had to contend with.

According to some authors:

¹⁷ See Dungal, J., 2004. A right to humanitarian assistance in internal armed conflicts respecting sovereignty, neutrality and legitimacy: practical proposals to practical problems. *The Journal of Humanitarian Assistance*.



“The Abacha military regime that ruled Nigeria from 17 November 1993 to 8 June 1998 ... was involved in a perennial, if uneven, struggle with civil society organizations and ... to detain anybody considered a security risk for an indefinite period of time... The resilience and perseverance of the pro-democracy forces, with a tinge of providence, ensured that the Nigerian civil society had the last laugh.”¹

Ironically, the return to democratic rule in 1999 did not end the culture of civil society repression. The negative attitude toward NPOs continued notwithstanding the handover of political power to democratically-elected civilians and the restoration of the suspended constitutional provisions. Restrictions on the enjoyment of fundamental rights and freedoms have been linked to the heightening of global and national efforts to combat money laundering and the financing of terrorism. At the global level, the Financial Action Task Force spearheads anti-money-laundering (AML) and countering financing of terrorism (CFT) initiatives. In 2012, the FATF released the latest compilation of the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (the “FATF Standards”). This was in line with its objective of setting out legal, regulatory and operational measures for combating money laundering, terrorist financing and the proliferation of weapons of mass destruction, and other related threats to the integrity of the international financial system.¹⁹ NPOs were only specifically mentioned in the Recommendation 8 (R8) which is a CFT recommendation, but were not specifically identified as AML risks in the rest of the recommendations.

The implementation of FATF Recommendations in national spheres has strong implications on the work of NPOs. For instance, in its bid to comply with FATF's AML/CFT standards, Nigeria has enacted a host of legislations, regulations and guidelines which impose greater obligations on corporate bodies, including non-profits. The Money Laundering Act 2004, currently Money Laundering (Prohibition) Act, 2011, the Terrorism (Prevention) Act 2011, amended in 2013, the establishment of the Special Control Unit against Money Laundering (“SCUML”) in 2005, and the Central Bank of Nigeria AML/CFT Guidelines are among the major legislations enacted or measures adopted in compliance with FATF requirements.

Until it was revised in June 2016, FATF's Recommendation 8 (R8) characterization of NPOs among the many vehicles that are potentially vulnerable to terrorism financing abuse had profound consequences on NPOs. Nigeria moved to implement CFT controls intended to limit any risk NPOs carry. For the purposes of registration, reporting and conduct of Customer Due Diligence (CDD), a local regulation classified NPOs as Designated Non-Financial Institutions (DNFI) in Nigeria, putting NPOs under AML/CFT related obligations and restrictions.²⁰ Although the FATF has in response to intensive research and advocacy by global civil society advocates, revised the language of R8 which led to over-regulation of the sector, national AML and CFT frameworks remain significantly unchanged, and continue to put additional obligations (and restrictions) on NPOs.

¹⁸ Kunle Amuwo, Daniel C. Bach, Yann Lebeau, Introduction. Transition as Democratic Regression, Open Books, <http://books.openedition.org/ifra/632?lang=en>

¹⁹ Page 7 of the FATF Standards

²⁰ See Section 2(1)(f) of the Designation of Non-Financial Institutions and Other Related Matters) Regulations, 2013



CHAPTER 2

Contextual Implementation of FATF

What is FATF?

How do FATF Recommendations impact on NPOs in Nigeria?

2.1. FATF: History and Objectives

The FATF (also known as Groupe d'Action Financière (GAFI)) is an international task force of governments that was formed in 1989 following the G7 Summit in Paris in response to the mounting concern over money laundering across the globe.²² The task force had the responsibility of examining money laundering techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering.²³ In 1990, FATF adopted 40 detailed recommendations to that effect.²⁴

The first forty recommendations adopted in 1989 purely targeted money laundering activities, but all that changed after the terrorist attacks in the United States on September 11, 2001. These attacks propelled the expansion of the FATF's focus to include the development a framework of recommendations to combat the financing of terrorism. The result was the addition of eight special recommendations on countering financing of terrorism adopted in 2001.²⁵ In October 2004, another special recommendation was added to bring the special recommendations to nine and the total FATF recommendations to forty-nine (49).²⁶

Taken together, FATF's 40+9 recommendations and compliance mechanism amount to a comprehensive set of anti-money laundering and counter-terrorist recommendations. While most international bodies have a formal structure and constitution contained in a treaty, convention, or other agreement, this is not the case for the FATF. Instead, the Task Force is seen as a “partnership between governments, accountable to the Ministers of its member Governments, who give it mandate.

²¹ Insights into the implementation of AML/CFT regimes in the local context were drawn from the Nigerian Constitution, FATF recommendations relating to NPOs in Nigeria, GIABA reports on Nigeria, the texts of the NGO Bill, national legislations governing FT and ML in Nigeria and other secondary literature accessible in publicly-available sources. The questions and discussions in this section provide guideposts for undertaking some sort of context analysis or for understanding the nature and scope of implementation of FATF Standards in Nigeria.

²² Statewatch, Human Security Collective. “Countering terrorism or constraining civil society?”

The impact of Financial Action Task Force recommendations on non-profit organisations in Central and Eastern Europe and Central Asia, page 4.” Available at <http://www.statewatch.org/news/2015/aug/fatf-countering-terrorism-or-constraining-civil-society.pdf>, accessed 06/03/2017

²³ See <http://www.fatf-gafi.org/about/historyofthefatf/>

²⁴ Ibid.

²⁵ See <http://www.fatf-gafi.org/media/fatf/documents/reports/2001%202002%20ENG.pdf>

²⁶ Ibid.



²⁷FATF does not have any formal enforcement mechanism for its recommendations. However, many international organizations such as the World Bank and the International Monetary Fund have adopted FATF's recommendation as the benchmark for assessing donee countries' compliance level with AML/CFT standards. This may have far-reaching effects on the willingness of global lending institutions to extend financial assistance to countries that require support. In addition, FATF's ratings of a country may also influence the price of the stocks or bonds issued by corporate entities in that country. Securities issued by countries or corporate bodies in a company which have low compliance level with FATF standards would most likely be rated as risky.

Although Nigeria is not yet a member of the FATF, it is a founding and active member of the ECOWAS Inter-Governmental Action Group against Money Laundering (“GIABA”), which is an FATF-styled regional body responsible for the promotion and enforcement of the FATF standards in West Africa. Accordingly, Nigeria has committed to the full implementation of the international standards against money laundering, terrorist and proliferation financing. ²⁸Nigeria has applied to join FATF and it is expected that this will result in additional regulatory attention on all sectors of the economy including the NPO sector.

2.2. FATF's Recommendation 8

NPOs were specifically identified as CFT risks in the infamous FATF's Recommendation 8 (“Recommendation 8”) which prior to its revision in 2016 indicated that NPOs were vulnerable to terrorist financing and abuse. According to the original text of the recommendation, “countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused.”

Subsequent reports and analysis of charitable and non-profit operations reflected the initial sentiments linking NPOs to terrorist financing. For instance, the FATF's 2015 Best Practices Report reiterate that more than a decade after the abuse of NPOs by terrorists and terrorist organisations was formally recognised as a concern, some NPOs in the sector continue to be misused and exploited by terrorists through a variety of means, particularly those in conflict regions.²⁹ The report further finds that well-planned deceptions by terrorists abusing the NPO sector are difficult to penetrate with the resources available to non-governmental actors, making state-based oversight and its capabilities a necessary element to detecting the most sophisticated terrorist threats to the NPO sector.³⁰ The report of the FATF/GIABA Typologies Project on Terrorist Financing in West Africa, which used cases studies from Nigeria, Niger, Mali Burkina Faso and Senegal,

²⁷ See <https://www.publications.parliament.uk/pa/ld200809/ldselect/ldcom/132/13205.htm>

²⁸ See ThisDay “Anti-Money Laundering and Counter of Financing of Terrorism in Nigeria – a Call for Rescue.” Available at <https://www.thisdaylive.com/index.php/2016/11/20/anti-money-laundering-and-counter-financing-of-terrorism-mlcft-in-nigeria-a-call-for-rescue/>, accessed 06/03/2017

²⁹ Combating the Abuse of Non-profit Organizations (Recommendation 8), June 2015, pp.4-5.

³⁰ Ibid, @p.5.



further listed NGOs and charity organizations among the conduits which terrorist groups and their supporters raise funds.³¹

The Recommendation triggered intense reaction from the NPO communities around the globe led by the European Centre for Not-for-Profit Law (ECNL) and the International Centre for Not-for-Profit Law (ICNL). Together, ECNL and ICNL spearheaded the formation of the Global NPO Coalition (the “Global Coalition”) on FATF which is a loose network of diverse NPOs that advocate for changes in FATF's Recommendations affecting NPOs, particularly Recommendation 8 with the aim of eliminating the unintended consequences of FATF policies on civil society.³²

Since its formation, the Global Coalition mobilised support from over 130 organizations in 46 countries, comprising human rights, service organisations, peace builders, donors, and transparency groups. It provided in-depth evidence based research, raised awareness, and undertook concerted effort to open dialogue with the FATF. As a result, the FATF acknowledged the need to revise its documents and to strengthen its engagement with NPOs.³³ In June 2016, FATF revised its Recommendation from a universal classification of NPOs as vulnerable to terrorist financing to a risk-based approach which required countries to ascertain the actual terrorist financing risks to which NPOs in that country are exposed. Ireland and Denmark are among the first set of countries to be assessed on the basis of the Revised R8. The reports of the assessment carried out in late 2016 are expected in September 2017.

The revised Recommendation 8 provides as follows:

“Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse

The revised Recommendation 8 provides as follows:

“Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse, including:

- (a) by terrorist organisations posing as legitimate entities;
- (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.”

³¹ See GIABA, 2013 Annual Report, p.73.

³² More information about The Global NPO Coalition can be found on the coalition's website: <http://fatfplatform.org/about/>

³³ European Centre for Not-for-Profit Law. “A string of successes in changing global counter-terrorism policies that impact civic space.” Available at <http://ecnl.org/a-string-of-successes-in-changing-global-counter-terrorism-policies-that-impact-civic-space/>, accessed 06/03/2017



2.3. Country obligations with respect to NPOs under the FATF Standards

In light of the June 2016 revisions, the obligation of countries under Recommendation 8 is no longer to visit NPOs with more stringent regulation and scrutiny without more. Instead, countries are to ensure that any measure taken on Recommendation 8 must be backed by a risk assessment of NPOs' exposure to terrorist financing and must be commensurate with the identified terrorist financing risks. In addition, Recommendation 8 does not apply to every NPO in a country, but those which falls within FATF's definition of NPO.

FATF defines NPOs a:

– “legal person or arrangement or organisation 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'.”³⁴

ECNL summarised the changes made to Recommendation 8 as follows:

“Recommendation 8 (R8): Previous language in the R8 characterized all NPOs as “particularly vulnerable” to terrorist abuse and this premise led to over-regulation and restriction of the sector. The June 2016 R8 revision asks governments to apply focused and proportionate measures only to those NPOs identified as being at risk.

Interpretive Note (IN) to R8: The June 2016 change calls on governments to respect fundamental rights and humanitarian law, and to avoid overregulation of the NPOs. The IN also re-emphasizes the need for proportionate measures, instead of using the one-size-fits-all approaches which restricted civic space and fundamental freedoms.

Best Practice Paper (BPP): The paper was revised twice (2013 and 2015) to promote full respect of international obligations and freedoms; and to guide governments on how to engage with civil society to assess actual risks of abuse and work in partnership with NPOs to adopt the most appropriate mitigating regulatory and self-regulatory measures, without impeding on NPOs legitimate activities.”³⁵

The obligations of Nigeria under Recommendation 8 are therefore as follows:

- Identify the organisations which fall within the FATF definition of NPO.³⁶
- Determine which of those NPOs identified are vulnerable to terrorist financing abuse.³⁷
- Identify the nature of risks to which the NPOs identified as vulnerable are exposed.

³⁴ Page 54 of the FATF Standards as revised in 2016 Recommendation

³⁵ See Supra at footnote 19

³⁶ Presently, only NPOs registered as companies limited by guarantee or incorporated trustees at the Corporate Affairs Commission would fall within FATF's definition of NPO. However, in the event that the NGO Bill which requires every NPO to be registered as a legal entity with an NPO regulatory agency is enacted, every NPO in Nigeria would fall within FATF's definition of NPO

³⁷ FATF noted that not all NPOs are inherently high risk and some may represent little or no risk at all. Page 56 of the FATF Recommendation as revised in 2016



- Review the adequacy of laws and regulations and any other existing measures (including the self-regulatory measures from the NPO sector) that relate to the NPOs identified as vulnerable in respect of the inherent risks.
- If additional measures need to be taken, they shall be focused on the NPOs identified as vulnerable and shall be proportionate to the risks to which they are exposed.

Such measures should be implemented in a manner which respects Nigeria's constitution and Nigeria's obligations under the Charter of the United Nations and international human rights law and must not restrict legitimate NPO activities.

2.4. How do FATF Recommendations impact on NPOs in Nigeria?

Although the revision of the Recommendation 8 in 2016 sparked celebration within the civil society and philanthropic communities, the effects of the original Recommendation 8 has lingered. Countries had already taken action, which remain unchanged. In Nigeria, the Recommendation 8 may have influenced the categorisation of NPOs as Designated Non-financial Businesses and Professionals for the purposes of AML.³⁹ In a media report, the head of the anti-money-laundering agency, Special Control Unit against Money Laundering (SCUML) reportedly asserted that FATF has found that NPOs are used as conduit for money laundering.⁴⁰ This claim linking NPOs to money laundering not only remains unsupported by evidence, but also may have been a consequence of the misinterpretation of the Recommendation 8. This is so because none of the FATF's AML recommendations made express mention of NPOs. This blanket inclusion of all NPOs into DNFBP is contrary to the principle of risk-based, targeted approach required by the FATF Recommendation 1 and Recommendation 8, the Interpretative Note on the Recommendation 8⁴¹ and Best Practices Paper.⁴²

One place Nigeria could possibly draw inspiration is from the recent Mutual Evaluation Report on Uganda. There, the evaluators concluded that “[t]he authorities need to do more in order to identify and address the TF risks which exist in the sector, and create a regime that only targets the NPOs that are at risk for being abused for TF (instead of the current regime which designates all NPOs as DNFBPs).”⁴³

³⁸ Most NPOs may face little, if any, risk of terrorist financing abuse and therefore any additional measures should be targeted only to those NPOs found at risk. See Article 5 of the Interpretative Note to Recommendation 8

³⁹ See the SCUML Regulation

⁴⁰ Economic and Financial Crimes Commission. “NGOs: Vehicle for Money Laundering – SCUML.” Available at <https://efccnigeria.org/efcc/news/103-ngos-vehicle-for-money-laundering-scuml>, accessed 06/03/2017

⁴¹ Article 3 (e) of the Interpretative Note to Recommendation 8

⁴² Article 7 (a) of the FATF Best Practices Paper on Combating Abuse of Non Profit

⁴³ Page 47 of the Anti-Money Laundering and Counter-Terrorist Financing Measures Mutual Evaluation Report on Uganda by the Eastern and Southern Africa Anti-Money Laundering Group, 2016



2.4. GIABA Reports on Nigerian NGOs

In 2008, GIABA published the Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism for Nigeria. This was after assessing Nigeria's regulation of NPOs using the following parameters:

- Registration requirements
- Outreach to the NPO sector
- Information on objectives, ownership, control and administration
- Transaction and accounting records
- Powers to investigate and sanction
- Domestic and international cooperation.⁴⁴

Save for registration requirements, Nigeria was regarded as not having adequately met the above parameters. In its recommendation, GIABA noted that the registration processes for NPOs under the Companies and Allied Matters Act (CAMA)⁴⁵ are adequate, but concluded that there was need for more supervision and monitoring. According to GIABA, "Corporate Affairs Commission (CAC) is not capable of supervising NPOs as there is no provision in the CAMA requiring CAC or any other agency to do so." CAMA is the regulatory framework that establishes the Corporate Affairs Commission (CAC), and provides for the incorporation of companies and incidental matters, registration of business names and the incorporation of trustees of certain communities, bodies and associations.

GIABA conceded that it may not be good to frustrate organisations providing charities, but noted that their services must be balanced against public interest and security. It therefore recommended that:

- (a) a supervisory authority like the UK Charity Commission be created.
- (b) CAC should continue with the registration. By this recommendation, GIABA regards the CAC incapable of regulating other facets of NPO operations except registration.
- (c) the Nigerian Financial Intelligence Unit (NFIU)⁴⁶ should continue with its task of analyzing source of funding without muzzling freedom of association enshrined in the Constitution.
- (d) SCUML should develop a more strategic programme to enhance interaction with NPOs for the purpose of fulfilling their AML/CFT obligations.
- (e) The proposed review of CAMA should take into consideration the need for enhanced supervision of NPOs and the requirement for preservation of

⁴⁴ These parameters were used under the previous version of the Recommendation 8 and the previous GIABA methodology. Therefore, the Mutual Evaluation Report on Nigeria based on these parameters would no longer be effective

⁴⁵ CAMA is the regulatory framework that establishes the Corporate Affairs Commission (CAC), and provides for the incorporation of companies and incidental matters, registration of business names and the incorporation of trustees of certain communities, bodies and associations.

⁴⁶ The Nigerian Financial Intelligence Unit (NFIU) is the Nigerian arm of the global financial intelligence Units (FIUs) domiciled within the Economic and Financial Crimes Commission (EFCC) as an autonomous unit and operating in the African Region. The NFIU seeks to comply with international standards on combating Money Laundering and Financing of Terrorism.



records related to management of the NPOs and local and financial transactions.

⁴⁷ GIABA followed up the 2008 report with seven “Follow-Up Reports” for each year from 2009 to 2015 each re-assessing Nigeria's AML/CFT compliance based on improvements or otherwise made by Nigeria since the last assessment. With the enactment of the Money Laundering Prohibition (Amendment) Act 2011, Terrorism Prevention Act, 2012, and other legislation changes, the general assessment of Nigeria on the FATF scale has improved. However, the rating of the NPO sector remained “Non-compliant” all through the period in which NPOs were assessed.⁴⁸

GIABA's Compliance Rating of Nigeria vis-à-vis FATF Recommendations on NPOs

Year/Rating	Reasons for Rating
2008 Non-compliant	<ul style="list-style-type: none">· Few outreach programmes have been conducted to educate NPOs and religious organisations about threats from launderers and terrorists, thus they remain largely vulnerable.· Information on financial transactions, ownership and management structure are limited and may be different from what is filed at CAC unless they are compelled by the court to provide further information on ownership.· Since there is no monitoring, reporting or accounting mechanism in place, it is difficult to determine who has the controlling power over finance and administration of NPOs in Nigeria.· Transaction and accounting records are not available to anybody except the NPOs themselves. They are accountable to themselves and this can be abused by some of them who rely on donations from funding sources that may be illicit.· Court orders would be required to compel NPOs to provide information to law enforcement agencies. <p>Information available to the public and for international cooperation is limited as the NPO determines what information to share with other people nationally or internationally. At most, they are only answerable to those who provide fund to them.</p>



2009 Non-compliant	Same reasons as in 2008
2010 Non-compliant	Same reasons as in 2008
2011	SCUML should develop a more strategic programme to enhance interaction with NPOs for the purpose of fulfilling their AML/CFT

⁴⁷ Page 162-163 of the GIABA Mutual Evaluation Report on Nigeria, 2008

⁴⁸ NPOs were not rated in the Mutual Evaluation Report for 2012 to 2015

Non-compliant	Obligations.
2012 Nil	Assessment of NPOs was not included in the report
2013 Nil	Assessment of NPOs was not included in the report
2014 Nil	Assessment of NPOs was not included in the report
2015 Nil	Assessment of NPOs was not included in the report

It is pertinent to note that GIABA's Mutual Evaluation Report on Nigeria and the Follow-up Reports were based on the previous Recommendation 8 and the methodology that did not require effectiveness check or risk-based approach. Prior to the revisions in the FATF evaluation methodology (which is applied also by the FATF-style regional bodies such as GIABA), the evaluation focused on "technical compliance" of regulatory framework. The evaluation methodology was revised in 2014 and now requires that an 'effectiveness check' in addition to technical compliance check. In other words, the Mutual Evaluation Reports should also test for effectiveness of the approaches adopted by the government to combat ML and FT. In light of the current changes to R8 and the resulting shift in the evaluation methodology, GIABA's conclusions on Nigeria are no longer well-suited for measuring the country's Recommendation 8 compliance. This is because FATF has moved away from the approach focused on regulation and monitoring to a risk-based approach. Countries are now being called upon to justify the measures they have adopted to contain ML and FT.

Under the revised FATF Standards, there are two different risk assessment exercises that participating countries are required to carry out. They are:



- (a) National risk assessment (NRA) and
- (b) Risk assessment of the NPO sector

National Risk Assessment (NRA) is a process carried out by the government that includes the assessment of all AML and CFT risks across the board in the entire country, encompassing all sectors. Risk assessment of the NPO sector is a specific process done under the revised FATF Recommendation 8 (in conjunction with FATF Recommendation 1), which can be a separate procedure from the NRA process, or a part of the NRA. Under FATF Recommendation 1 (revised in 2012), the conduct of money laundering and terrorist financing assessment is now mandatory for all countries. This process now forms part of the compliance assessment under the FATF assessment regime.

- How are national risk assessments performed?
- What is the framework for approaching the assessment?

NRA is a direct responsibility of member States. Thus far, Ghana, Nigeria, Senegal and Sierra Leone have conducted their NRAs.⁴⁹ Except for Ghana, the other countries are yet to publish the reports of their NRAs. The countries that have concluded their NRA, except for Senegal, adopted the World Bank's Risk Assessment (RA) tool. FATF does not advise which particular risk assessment model countries use, as long as it can demonstrate to the assessors and FATF that the country understands its risks.⁵⁰ GIABA teamed up with the World Bank to provide the required technical and financial support to these countries.⁵¹ The assessment is necessary to assist countries mitigate the risks that they face, and prepare for the second round of evaluations.

The process began with the constitution of Working Groups (WG), including the WG on Designated Non-financial Businesses and Professions (DNFBPs). The WG comprised of NFIU, SCUML, social welfare department in Ghana, experts in the NPO sector, among others. Because most NPOs are categorized as DNFBPs, this is the body mandated to assess the NPO sector. The next stage is the mapping of the non-profit sector. This involved the identification and classification of operators in the sector. Sector specific questionnaires were developed and administered on the identified operators. The questionnaires focused on variables that will enable assessors ascertain the level of vulnerability. They followed up with targeted interviews of certain NPOs identified to be at risk. Analysis of the questionnaires and interviews helps in the determination of NPO vulnerability to ML and FT. The criteria or variables used to determine the vulnerability of NPOs are as follows:



- Client base profile of the NPOs
Who are the beneficiaries? – Any due diligence conducted on them?
- Level of cash activity
- Existence of informal operators – availability of entry controls
- Use of agents
- Exposure to cross border activities
- Difficulties in tracing transaction records – funds utilization
- Existence of ML/TF typologies on the abuse of the sector
- Existence of comprehensive internal control measures
- Knowledge of ML/TF risks inherent in their operations
- Others factors including comprehensiveness of legal and regulatory framework, effectiveness of regulation and supervision, availability & enforcement of sanctions etc

2.4. How do FATF evaluators select the NPOs to meet?

In determining who to meet during an evaluation process, FATF applies its definition regarding NPOs. Those NPOs that are outside the scope of the FATF definition are not likely to be invited by evaluators. FATF definition of NPOs excludes advocacy groups and focuses on service delivery groups. The reality is that the assessors cannot meet with everyone. Advocacy led by the Global NPO Coalition urges FATF to ensure that they meet at least a diverse range of NPO sector (e.g. human rights, humanitarian, and development and service delivery).

FATF engages NPOs through government authorities. In countries where governments have a tense relationship with the NPO sector, assessors can request to meet with other NPOs, not just those suggested by the government. The assessors also read UN reports, do a sort of context analysis, to help decide who they would like to meet. There is an objectivity element.

2.5. Risk-Based Analysis of NPOs in Nigeria

Although Nigeria did undertake an NRA,⁵² researchers were unable to access the report in order to evaluate the findings of the assessment relating to the NPO sector. It is also unclear whether the NPO sectoral assessment was carried out either as a part of the NRA or as a standalone process. However, the risk assessment of the NPO sector should cover specific elements listed in Recommendation 8 which are:

⁴⁹ GIABA 2014 Annual Report, p.80.

⁵⁰ PCF Vienna 2017 Coalition Notes, March 22, 2017

⁵¹ GIABA 2014 Annual Report, p.80.



- Identifying the organizations which fall within the FATF definition of NPO;
- Determine which of those NPOs identified above are vulnerable to terrorist financing abuse;
Identify the nature of risks to which the NPOs identified as vulnerable are exposed; and
- Review the adequacy of laws and regulations and other measures that relate to the NPOs identified as vulnerable in respect of the inherent risks.

The risk assessment of the NPO sector should also include outreach toward NPOs from the government and ideally, be done with NPO engagement, as mentioned in the Recommendation 8 Interpretative Note and the FATF Best Practices Paper on Combating Abuse of Non Profit Organisations (Recommendation 8). Therefore, in the event that Nigeria's risk assessment of the NPO sector was carried out as part of the NRA or as a separate process, this would have been preceded by an outreach to the NPO sector. If this requirement is not met, evaluators would most likely find Nigeria non-compliant with its obligations under the FATF Standards on NPOs. This rationale for this conclusion is drawn from the Mutual Evaluation Reports on Uganda, Ethiopia and Zimbabwe.

Mutual Evaluation Report on Uganda based on the new evaluation methodology (but under the old Recommendation 8) – Conclusion on NPOs.⁵³

No specific risk assessment done on NPOs

No specific outreach to NPOs

Low level of effectiveness.

Recommendation 8 score: Non-compliant

Key Findings:

Although, Uganda is engaged in combating terrorist threats domestically and externally, there is little demonstration that its systems on the implementation of targeted financial sanctions related to TF are effective. The framework to implement the sanctions is not in place and at the same time the NPO sector is not as regulated on AML/CFT as it should be. It is also not addressing the ML/TF risks that befall the sector as it faces shortage of resources and adequate staff to monitor and regulate the sector. The NGO Board which regulates the sector is not fully aware of the TF risks associated with the sector. The authorities need to do more in order to identify and address the TF risks which exist in the sector, and create a regime that only targets the NPOs that are at risk for being abused for TF (instead of the current regime which designates all NPOs as DNFBPs)⁵⁴

⁵²Economic and Financial Crimes Commission. "NFIU Director Advocates Unity in Risk Assessment." Available at <https://efccnigeria.org/efcc/news/1933-nfiu-director-advocates-unity-in-risk-assessment>, accessed 06/03/2017

⁵³The Eastern and Southern Africa Anti-Money Laundering Group arrived at similar conclusions in respect of Ethiopia and Zimbabwe respectively See also the Mutual Evaluation Report on Ethiopia available at <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/WB-ESAAMLG-Mutual-Evaluation-Report->



The NGO Board has not provided or issued any information relating to TF risks or terrorism to the NPO sector. It does not have the capacity to do so given its size and still the limited knowledge by the Board itself on the TF risks that the NPO sector might be exposed to.⁵⁵

The current regimes regulating the NPO sector do not deal with TF or the TF risks associated with the NPO sector. There is no TF risk assessment which has been done in the sector to determine which NPOs are vulnerable to TF risks and consistent with that, no guidance has been given to such NPOs on how to deal with the TF risks they are exposed to. The NGO Board has not engaged the NPO sector to raise awareness around TF matters and the NGO Board itself lacks deep knowledge of the kind of TF risks which some of the NPOs could be vulnerable to. Currently, the NGO Board does not have the capacity to carry out most of its functions and there is no proper coordination and administration of TF information related to the NPO sector.⁵⁶

Absent credible information regarding whether there was proper and adequate risk assessment of the NPO sector, it would be difficult to conclude that increased regulation of NPOs is required in Nigeria. There is currently no public record of involvement of any Nigerian-based NPO in terrorist financing. Neither is there any terrorist financing risks which NPOs pose over and above the risks posed by other corporate bodies and individuals.⁵⁷ Not only that, as we shall see, Nigeria

Ethiopia-2015.pdf; and the Mutual Evaluation Report on Zimbabwe available at <http://www.fatf-gafi.org/media/fatf/content/images/MER-Zimbabwe-2016.pdf>

⁵⁵Page 47 of the Anti-Money Laundering and Counter-Terrorist Financing Measures Mutual Evaluation Report on Uganda by the Eastern and Southern Africa Anti-Money Laundering Group, 2016

⁵⁶Ibid. at page 86

⁵⁷Ibid. at page 87

The FATF basically highlights the modus operandi of terrorist financiers using “typologies” based on case studies derived from governments and open sources. The typologies have been criticised for “implying that the NPO sector as a whole faces systemic risk or abuse in the absence of a credible evidence base, and for failing to recognise the counter-risk of over-regulation to NPOs doing critical work that saves lives and provides an alternative to the terrorist narrative”. However, it has been noted that some of the criticisms of the typologies have been addressed in the revised FATF Best Practices published in June 2015. See Statewatch, Human Security Collective. “Countering terrorism or constraining civil society? The impact of Financial Action Task Force recommendations on non-profit organisations in Central and Eastern Europe and Central Asia, page 6.” Available



has an array of legislative and institutional tools to regulate NPO operations, obviating the need for a dedicated NPO regulatory agency as GIABA recommends. In addition, NPOs in Nigeria have a framework for self-regulation under the auspices of the Nigerian Network of Non-Governmental Organisations which in 2012 adopted the Code of Conduct for Non-Governmental Organisations in Nigeria (“Code of Conduct for NPOs in Nigeria”) at its 12th Annual General Meeting.⁵⁸

Another point of concern is GIABA's conclusion questioning CAC's capability to effectively oversee NPO activities. GIABA's position hinges on the presumption that no provision in CAMA requires CAC or any other agency to do supervise NPOs. As already stated above, this position is out-of-date as it largely rests on the old Recommendation 8 and the old evaluation methodology which is not risk-based. More tellingly, CAMA contains fairly elaborate provisions empowering the CAC to regulate NPOs, including the power to make regulations regarding NPOs. CAC's disposition toward the operations of NPOs in Nigeria may be relaxed, but this is because NPOs are generally viewed as not-profit-driven, low-risk organisations with minimal motivation to breach ML and FT regulations.

at <http://www.statewatch.org/news/2015/aug/fatf-countering-terrorism-or-constraining-civil-society.pdf>, accessed 06/03/2017

⁵⁸The Nigeria Network of NGOs (NNNGO) is a generic membership body for civil society organisations in Nigeria that facilitates effective advocacy on issues of poverty and other developmental issues. Established in 1992, NNNGO represents over 1800 organisations ranging from small groups working at the local level, to larger networks working at the national level. For more information on NNNGO, please visit <http://www.nnngo.org/>. A copy of the Code of Conduct for Non-Governmental Organisations in Nigeria may be obtained from <http://nnngo.org/wp-content/uploads/2014/03/Code-of-Conduct-for-NGOs.pdf>.



CHAPTER 3

Linkages between FATF Recommendations and Restrictive Legislation

Are there linkages between FATF Recommendations and the laws, including proposed legislation affecting the work of NPOs in Nigeria? As noted in the preceding chapter, Nigeria has undertaken a national risk assessment (NRA), but the outcome of the risk assessment of the NPO sector has not been made public. As of May 2017, Nigeria's NRA has not been published. It is therefore, difficult to conclude that adequate risk assessment of NPOs has been carried out. However, Nigeria has introduced a number of legislative proposals designed to increase the regulation of NPOs in Nigeria. The most recent example is the Bill for an Act to Provide for the Establishment of the Non-Governmental Organisations Regulatory Commission for the Supervision, Co-ordination and Monitoring of Non-Governmental Organisations, Civil Society Organisations etc, in Nigeria and for Related Matters (popularly known as the "NGO Bill").⁵⁹ It is instructive to note that the NGO Bill is still a legislative proposal that has no force of law because it has not yet secured parliamentary assent. If passed into law, it will represent one of the most-ambitious efforts to restrict the space for civil society operations in Nigeria.

3.1 NGO Bill: History, Objectives

Sponsored by Honorable Umar Buba Jibril, the NGO Bill was introduced in June 2016 to enlarge governmental powers to regulate, monitor and interfere with the funding and operation of non-governmental organizations (NGOs) and civil society organizations (CSOs). Out of the several bills seeking to regulate NPOs in Nigeria, the NGO Bill has received greater attention from CSOs than the other subsisting bills because it contains far-reaching, restrictive provisions than its counterparts. It also appears to be the most-diligently prosecuted bill having passed the Second Reading stage within a short while. It has now been sent to the Committee on Civil Society and Development Partners for legislative input. However, the Bill is premised on the familiar arguments that are no different from other preceding bills – that there has been no or inadequate regulation of NPOs, which increases their vulnerability to money laundering and terrorist financing. Therefore, it was arguably, desirable to have a regulatory agency established specifically for regulating NPO funding streams.

At the Second Reading of the NGO Bill, the Bill's sponsor, Hon. Umar Buba Jibril argued as follows:

“

[it] is common knowledge that we have quite a number of civil society organisations in Nigeria covering various fields of endeavour, and mostly funded from within and outside the country. However, these organisations do not have a single legal framework that supervises the mode of their operations including their funding. What is only required of them is to register with the Corporate Affairs Commission and thereafter commence operation in Nigeria. This is defective in terms of operational values of such organisations as they are left to operate within their constitutions and sometimes within the whims and caprices of their donors.

⁵⁸HB. 16.05.585 C2431

⁶⁰The Punch. "Lawmakers' attempt at regulating civil society." <http://punchng.com/lawmakers-attempt-regulating-civil-society/>. Accessed 06/03/2017



“The Bill is apt in the circumstances to address or cure defects occasioned by the absence of a regulatory legal framework on the operations and activities of civil society organisations in Nigeria. Further, the [regulatory commission established under the NGO Bill] shall facilitate and coordinate the work of all national and international civil society organisations and equally maintain a register of all national and international civil society organisations with the precise sector affiliations and locations of their activities [...].

“[The regulatory commission established under the NGO Bill] will ensure transparency and accountability in the operation of non-governmental organisations and civil society organisations. The intendment therefore is to check any likelihood of abuse of the donations received by the civil society organisations which if not properly utilized may adversely affect the image of this country [...]. The [NGO Bill] will assist in checking any likelihood of any civil society organisation being illegally sponsored against the interest of Nigeria.”⁶¹

3.2 Scope of the NGO Bill

Below is a summary of the salient provisions of the NGO Bill:

SN	Subject	Summary Of Provisions
1	The NGO Regulatory Commission (the “Commission”)	The Bill establishes the Non-Governmental Organisations Regulatory Commission of Nigeria with functions including facilitating and coordinating the work of all national and international non-governmental organisations, maintaining a register for NPOs, receiving annual reports of NPOs, and advising the government on the activities of NPOs.
2	Registration of NGOs	<p>Requires every NPO to be registered with the Commission and sets out the requirements and procedure for registration. Fees shall be charged for the registration.</p> <p>A certificate shall be issued upon registration. Registration with the Commission shall confer legal personality on the NPO.</p> <p>Every certificate issued by the Commission shall be valid for a period of 24 months, and must thereafter be renewed by the NPO. Failure to renew will amount to termination of operation and will lead to the deletion of the name of the NPO from the register.</p> <p>The Commission may refuse registration of an applicant if it is satisfied that its proposed activities or procedures are not in the national interest or on the recommendation of the Nigerian National Council of Voluntary Agencies (a body to be established under the NGO Bill).</p>

⁶¹The Legislative Brief presented by Hon. Umar BubaJibril can be obtained from <http://placng.org/wp/wp-content/uploads/2016/07/Lead-Debate.pdf>



		The Commission may also cancel or suspend a certificate issued under the Bill.
3	Offence for Non Registration	It shall be an offence for any person to operate an NPO in Nigeria for welfare, research, health relief, agriculture, education, industry, the supply of amenities or any other similar purposes without registration and certificate under the NGO Bill.
4	Immigration	The Commission shall review applications for work permits in respect of prospective employees of a registered NPO and make recommendation to the Comptroller of Immigration for the issuance of the permit to the applicant.
5	Diplomatic Immunity	An organisation registered under the NGO Bill shall not be entitled to diplomatic or consular privileges or immunities.
6	Collaboration with and Disclosures to the Ministry of Interior	<p>An NPO is required not only to cooperate with its target constituency in respect of its projects but also obtain the approval of the Ministry of Interior to ensure that the project is in line with the objectives of the government.</p> <p>The project would also be registered by the Ministry of Interior and any variation of the project shall be communicated to the Ministry of Interior.</p> <p>In applying for the approval of the Ministry of Interior, the NPO is required to provide a number of information to the Ministry of Interior including the type of activities to be undertaken by the organisation, source of funding, implementation strategies and personnel information.</p>
7	Disclosure of Donor Funds and Assets (Sections 25© and 29)	<p>Funds pledged by donors must be disclosed before commencement of the implementation of the project including the identity of the donors, the mode of disbursement and the conditions attached to the funding by the donor.</p> <p>Assets transferred to build the capacity of an organisation shall be done through the Commission which will identify the operation criteria.</p>
8	Dealing with Assets of an NGO upon Discontinuance of	<p>The assets owned by NPOs through purchase or acquisition with donor funds are the property of the people of Nigeria.</p> <p>Upon discontinuance of operations, the NPO shall not</p>



	Operation	dispose of the assets and keep the relevant proceeds. The assets shall be surrendered to the government as trustee for the people of Nigeria. The NPO shall require the sanction of the Commission before transferring its assets to a like organisation.
9	Import Duty Waivers	Subject to certain conditions, importations by NPOs of articles imported in connection with its activities.
10	Taxation	NPOs are required to comply fully with the tax laws of Nigeria. An NPO which generates income must declare same to the Federal Inland Revenue Service and obtain a certificate of exemption.
11	Personnel Matters	NPOs shall promote the development of human resources and appropriate training for its Nigerian employees. NPOs are expected to use locally sourced expertise and expatriates are only to be used when the required expertise is not available in Nigeria.
12	The Nigerian National Council of Voluntary Agencies (the "Council")	The Bill provides for the establishment of the Council which shall be a self-regulatory agency for NPOs in Nigeria and shall publish codes of conducts which shall apply to its members.

3.3 The NGO Bill: Constitutionality, Risks and Relevance to NPOs

Our independent review of the NGO Bill reveals three areas of concern:

- (a) incompatibility with the constitutional rights of citizens
- (b) arrogates arbitrary powers to the government to over-regulate NPOs, and;
- (c) provisions of the NGO Bill are already covered under existing law applicable to NPOs.



3.3.1 Incompatibility with the constitutional rights of citizens

To start with, the requirement for compulsory registration of non-profit and non-governmental organizations sharply contrasts with the constitutional guarantees of free expression, public assembly and association rights.⁶² In other words, registration is not neither compulsory nor an obligation required of NPOs under the bill of rights enshrined in the Nigerian 1999 Constitution. The effect of registration of NPOs at the Corporate Affairs Commission or any other regulatory body is to extend certain privileges and status which it would otherwise not enjoy should it remain unincorporated.

Taken together, Sections 39 and 40 of the 1999 Constitution protect the rights of citizens to form themselves into groups or associations for whatever lawful purposes they may decide. The rights of such group of persons and individuals to hold, express and propagate any views legally are also guaranteed. However, the Constitution requires political parties to be registered with the Independent National Electoral Commission before they can gain legal recognition for the purpose of participating in elections. This requirement does not detract from the rights of citizens to form political organisations, only that such an organisation would not be able to field a candidate for an election. Another constitutional limitation to association right is hinged on religious activities. Under Section 38(4) of the Constitution, the exercise of the freedom of conscience and belief does not entitle any person to form or take part in the activity, or be a member of a secret society.⁶³

Sections 11 - 13 of the NGO Bill prescribe that every NGO operating in Nigeria shall be registered with the NGO Commission. Registration is to be done upon payment of such fees which the Commission may prescribe from time to time. The Commission may reject

⁶²Section 39(1) of the Constitution provides that “Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.”

However, the Constitution reserves the rights of the government to regulate the grant of licence to operate televisions, radio stations and telephone services.

Section 40 of the Constitution provides that “Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition”

⁶³A secret society is defined under section 318 of the Constitution to include any society, association, group or body of persons (whether registered or not) (a) that uses secret signs, oaths, rites or symbols and which is formed to promote a cause, the purpose or part of the purpose of which is to foster the interest of its members and to aid one another under any circumstances without due regard to merit, fair play or justice to the detriment of the legitimate interest of those who are not members; (b) the membership of which is incompatible with the function or dignity of any public office under this Constitution and whose members are sworn to observe oaths of secrecy; or (c) the activities of which are not known to the public at large, the names of whose members are kept secret and whose meetings and other activities are held in secret.

See also *Reg. Trustees of Amorc v. Awoniyi* [1994] 7 NWLR (Part 355)154; and *The Progressive Peoples Alliance v. Peoples Democratic Party* CA/PH/EPT/197C/08.



an application for registration for reasons which the applicant shall be informed of, and give the applicant a maximum of three months to correct the anomalies and resubmit the application. Any organisation that is not registered with the Commission cannot operate in Nigeria, except in situations of emergency where the Minister may make concessions on the advice of the Board. Registration with the Commission under the proposed Bill vests organisations with corporate personality, allowing it do such lawful acts which may be done by a body corporate.

Section 24 of the NGO Bill makes it an offence for any person to operate an NGO in Nigeria for welfare, research, health relief, agriculture, education, industry, the supply of amenities or any other similar purposes without registration and certification under the Act. Any person convicted of an offence under the Act is liable to a fine not exceeding ₦500,000, or to an imprisonment of eighteen months or to both. It is indisputable that this attempt at criminalising predominantly non-profit or humanitarian undertakings would adversely affect the legitimate activities of NPOs, volunteers or philanthropists, especially those united under a humanitarian cause without intending to be formed into a formal organisation. In the North-Eastern region of Nigeria ravaged by a humanitarian crisis brought on by the Boko Haram-led violence, NPO interventions have saved numerous lives, including that of women and children. Imposing registration or onerous registration requirements on groups providing humanitarian services may delay or frustrate help from reaching those in critical need.

In a series of cases, Nigeria's Supreme Court has found that an unincorporated organisation can lawfully exist under the laws of Nigeria although it would not be recognised as a legal entity, capable of suing or being sued, but may only act through its appointed representatives. In the case of *Fawehinmi v. N.B.A (No. 2)*⁶⁴ the Supreme Court held as follows:

“[the] right to form any association for the protection of the interests of the members is guaranteed under ...the 1979 Constitution and is an entrenched right. However, such an association of persons, though recognised by the Constitution does not ipso facto vest in the association the attributes of incorporation, which alone confers legal personality []. Thus an association of persons recognised by section 37 is a lawful association simpliciter. It is a recognition of the reality that the group of persons who have formed an association has an existence in fact.”

An interesting case in point is the case of *The Registered Trustees of Igbo Community, Oyo State v. Cyril Akabueze and Two Others*⁶⁵. In that case, the plaintiffs who were the Registered Trustees of Igbo Community in Oyo State claimed, among other reliefs, that the unregistered Igbo Community Development Association organised by the 1st and 2nd Defendants was an illegal organisation. On that basis, the Plaintiffs argued that they were the only legal and known organisation uniting the Igbos in Ibadan and Oyo States and the only umbrella body for all Igbo Town Unions and Associations in Oyo State. Plaintiffs further sought an injunction restraining the Defendants from convening or further organising meetings of Igbo Town Unions and Association in such a way and manner as to cause breach of peace and disunity amongst Igbos in Oyo State. Plaintiffs argued that the Defendant association, being unregistered, could not legally exist, and furthermore violated the provision of Part C of the Companies and Allied Matters Act 1990. Defendants, on the other hand, argued that no law in Nigeria prohibited the existence of

⁶⁴(1989) 2 NWLR (Pt.105) 558

⁶⁵Suit No: 1/568/96. The text of the case report can be obtained from <http://www.icnl.org/research/library/files/Nigeria/igbo.pdf>



unregistered associations and that the incorporation of an ethnic organisation like the Defendant was a matter of free choice as well as privilege, but never a duty.

The High Court of Oyo State found in favour of the defendants and held that an unincorporated association of persons is a constitutionally legitimate body and is not illegal merely by non-registration under applicable laws. Incorporation does not confer on an association pre-eminence and authority of leadership over unincorporated associations, and no rights of an incorporated association is violated by an unincorporated association engaging in the pursuit of objectives similar to that of the incorporated body.

Section 45 Exceptions

Section 45 of the 1999 Constitution spells out exceptional circumstances in which the state is allowed to derogate from constitutionally-protected rights, including the freedoms of expression and association. It provides that nothing in Sections 37(right to private and family life), 38 (freedom of thought, conscience and religion), 39 (freedom of expression and the press), 40(right to peaceful assembly and association) and 41(freedom of movement) of the Constitution shall invalidate any law that is reasonably justifiable in a democratic society, in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom of other persons. Section 45 is not only vague, but also provides a broad cover for derogation from protected rights. The Constitution neither defines nor provides any guidance regarding how derogations that are reasonably justifiable are determined. From that uncertainty springs discretionary power so wide, and often exercised without accountability, with little or no oversight.

The Nigerian courts have in a number of cases, provided some guidance. What appears to be the guiding pathway is that laws or measures contemplated under Section 45 of the Constitution shall not seek to restrict citizens' exercise of their human rights unless it is absolutely necessary. Thus, the court would strictly scrutinise the law to determine whether it is reasonably justifiable in a democratic society. In the case of *Inspector General of Police v All Nigeria Peoples Party*,⁶⁶ the Court of Appeal declared certain provisions of the Public Order Act illegal because it required persons to obtain police permits before engaging in public protests, processions or gatherings. According to the court, the requirement for police permit was antithetical to the rights protected in Section 40 (right to peaceful assembly and association) of the Constitution. In the court's opinion, the Constitution cannot be interpreted as giving a right in one section and then taking away the right in subsequent sections.⁶⁷ The court also appeared to take the position that it was wrong to legislate away the rights of citizens merely on the ground that some citizens might abuse the right. Not only that, criminal laws already exist to penalise persons who break the law.

From the foregoing, the NGO Bill, if passed into law, would have the effect of restricting constitutionally guaranteed rights of citizens to form associations for the purposes of achieving legitimate goals. The court's decision in *Inspector*

⁶⁶(2007) 18 NWLR (Pt.1066) 457

⁶⁷*A-G Federation v. Abubakar* (2007) 10 NWLR (Pt. 1041) 1



General of Police v All Nigeria Peoples Party further affirms that the requirement of compulsory registration of NPOs as stipulated under the NGO Bill would be found to be unjustifiable in a democratic society.

3.3.2. NGO Bill arrogates excessive powers to the government to over-regulate NPOs

A number of provisions in the NGO Bill confer excessive powers on the government to overly restrict or interfere with NPO operations in the country. Some of the concerning provisions are detailed below:

-Refusal of Registration and Deregistration

The Bill proposes to establish a body called the NGO Regulatory Commission. The Commission will have the power to refuse the registration of an applicant NPO. According to Section 15 of the NGO Bill, the Board may refuse registration of an applicant if:

- (a) it is satisfied that its proposed activities or procedures are not in the national interest;
- (b) it is satisfied that the applicant has given false information on the requirements of Subsection (3) of Section 1; and
- (c) it is satisfied, on the recommendation of the Council, that the applicant should not be registered.

The term, “national interest”, is cast in the same vague language as Section 45 of the Constitution discussed above. It is neither defined in the Bill nor is there any objective criteria for determining what activities can be said to be contrary to the interest of Nigeria. Perception is growing that this power could be abused, and is manifestly a ready-made tool for repression, especially in situations where an NPO may be involved in some form of activism that challenges the status quo.⁶⁸

There are concerns that Section 15 of the NGO Bill may be used by the government to stall the registration of an NPO which it considers as a thorn in its flesh. Further aggravating the situation is the additional right of the NGO Commission to cancel or suspend an NPO's certificate of registration if “the Council ⁶⁹has submitted a satisfactory recommendation for the cancellation of the

⁶⁸Instances abound where NPO registration was refused on the basis of their activism around political accountability. In a study carried out by the Nigerian Network of Non-Governmental Organisations, it was noted that certain “CSOs interviewed described how in the past, CSOs were not allowed to form because they have the advancement of human rights as their purpose. The Corporate Affairs Commission also frowned at including democracy as part of your organisation's name; instead they preferred the use of the word development.” See Nigerian Network of Non-Governmental Organisations, 2015. “Enabling Environment National Assessment (EENA) Country Report: Nigeria,” Page 15. Available at http://www.civicus.org/~civicusadmin/images/EENA_Nigeria.pdf; accessed 06/03/2017

⁶⁹The Council here refers to Nigeria National Council of Voluntary Agencies to be established under the NGO Bill



certificate.”⁷⁰What is deemed as 'a satisfactory recommendation' is purely discretionary and unilaterally determined by the Council. NPOs whose certificates are canceled or suspended are not availed with opportunities for fair hearing or to appeal the adverse decision. In addition, the Bill did not prescribe any modality or mechanism for deregistered NPOs to seek redress for wrongful deregistration.

-Requirement for the Renewal of NPO Certificate

Regardless of the financial standing of an NPO or the scope of its operations, Sections 14 – 17 of the Bill stipulate that the certificate of registration issued to an organisation registered under the Act is to last for a period of two years, and subject to renewal. If the certificate is not renewed, the operations of such organisation shall be terminated and its name deleted from the register. The Board may refuse to renew registration of an applicant if it is satisfied that its proposed activities or procedures are not in the national interest.

First of all, the requirement to renew registration every two years does not serve any real administrative or security purpose, but rather imposes an onerous burden on NGOs and CSOs. It would also disrupt planning and execution of projects by organisations, especially those with long term goals, as there is every possibility that in the subsequent year, renewal of registration may be refused. Secondly, the requirement for renewal provides an additional window for the government to frustrate the registration renewal process for organizations whose advocacy makes them uncomfortable. The government would also be able to vary the terms of the certificate of registration of an NPO at the time of renewal.⁷¹ Thus, in the event that the NGO Bill is enacted, the government could refuse to renew the certificate of registration of an NPO unless such organization abandons its activist ideals.

-Limiting the Independence of NPOs

What makes NPOs unique is that they are independent from government control.⁷² The Code of Conduct for NPOs in Nigeria sets out three tenets of independence as follows:

- (a) A non-governmental organisation is independent in setting its goals, decisions and activities and refrains from being controlled by political parties, public institutions or companies, resulting in losing its independence, autonomy and ability to act for the public benefit.
- (b) A non-governmental organisation and persons involved therein prevent from entering in the conflict of interest. In the event of a conflict of interest the necessary measures to eliminate such conflict of interest must be applied.

⁷¹Section 18(c) of the NGO Bill

⁷²Section 17(5) of the NGO Bill

⁷²See Investopedia “What is an NGO (non-governmental organization)?” Available at <http://www.investopedia.com/ask/answers/13/what-is-non-government-organization.asp>, accessed 06/03/2017



- (c) A non-governmental organisation shall enter into partnership agreement with a government or intergovernmental body and for profit organisations only when it is beneficial to the achievement of its objectives and does not compromise the independence or self-control of the organisation.⁷³

Many provisions of the NGO Bill negate the principles of independence espoused above. The import of Sections 25 – 29 of the NGO Bill is to rob NPOs of operational independence. Section 25(1)(b) of the Bill requires that approval is sought and obtained from the Ministry in relation to any activity they undertake towards improving the economic, social and cultural welfare of any target group within the country. Furthermore, Section 28 will empower the Commission to monitor and evaluate NGO projects. Implementing these provisions would inexorably result in bureaucratic bottlenecks, slowing down operations of NGOs and CSOs, and again, causing a lot of uncertainty as to when the Ministry may give or withhold approval for any given project.

The reality, however, is that many NGOs are only able to receive funding for certain projects from local and international donors on the strength of their credibility, financial accountability and certainty of project implementation. Many local and international donors usually require assurance that the intended projects or services will be implemented and/or delivered to targeted beneficiaries. Certainty of project implementation is not guaranteed when there is excessive government interference in the funding and activities of NPOs. This portends a decline in the support available to NPOs for their charitable, advocacy and related activities.

3.3.2. Sufficiency of Existing Frameworks for the Regulation of NPOs

In its 6th Follow-up Report of Nigeria, GIABA found that Nigeria has made significant progress in addressing the deficiencies in its AML and CFT regimes.⁷⁴ Some of the commendable steps taken by Nigeria include the criminalization of the financing of individual terrorists and groups, adoption of a comprehensive mechanism to effectively implement the requirements of United Nations Security Council's Resolutions (UNSCRs) 1267 and 1373⁷⁵, training of reporting entities, the passage of the Nigerian Financial Intelligence Unit (NFIU) Bill and repositioning the NFIU for better operational efficiency. The passage of the Bill aimed at enhancing the operational autonomy of the Unit, and ensuring its smooth transition from a unit of the Economic and Financial Crimes Commission to an independent body. Furthermore, Nigeria exited the FATF-Targeted Review Process in October 2013 due to the significant progress the country made in addressing the deficiencies in its ASAML/CFT systems, including the substantial completion of the action plan agreed with the Regional Review Group of the FATF's International Cooperation Review Group (ICRG).⁷⁶

⁷³Sections 27-29 of the Code of Conduct for NPOs in Nigeria

⁷⁴GIABA 2014 Annual Report, p.69.

⁷⁵UNSCR 1373 was adopted unanimously on 28 September 2001. It is a [counter-terrorism](#) measure passed following the [11 September terrorist attacks](#) on the United States. The resolution was adopted under [Chapter VII of the United Nations Charter](#), and is therefore binding on all UN member states.

⁷⁶GIABA 2014 Annual Report, p.48.



As already noted, there is no evidence that the NGO Bill emanated from a risk assessment of NPOs in Nigeria. Although the Bill does not specifically state that its proposals are informed by FATF compliance considerations, it is however, very likely that Nigeria would cite the NGO Bill as part of its effort to ensure better regulation of NPOs and prevent their use for terrorist financing.

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The revised FATF Standards affirm that the mere proliferation of laws and regulations does not necessarily translate to results. FATF requires an assessment of the adequacy of laws and regulations that relate to the NPOs which are vulnerable to terrorist financing abuse in order to determine whether additional legislation or regulation is required. FATF also clarified that “specific licensing or registration requirements for counter terrorist financing purposes are not necessary” especially where NPOs are already subject to registration under the law.

Further FATF advised that, “[it] may be possible that existing measures are sufficient to address the current TF risk to the NPO sector identified in a country, although periodic reviews may identify new or evolved TF risks over time.”

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There are ample reasons to believe that additional regulation may not be a productive path to follow at this time. First, a review of the general corpus of Nigerian law shows that NPOs are already, extensively regulated. Secondly, the NGO Bill, if passed into law, would establish a parallel framework for the regulation of NPOs in Nigeria. Thirdly, in the event a risk assessment of the NPO sector reveals enhanced NPO vulnerability to ML and FT, there is a possibility that existing laws would be adequate to cater for those risks. What would be required would be no more than a conscientious enforcement. In addition, the existing laws empower regulators to make regulations whenever it is necessary to plug any gaps in the law, or to amend existing law in order to bring it in line with modern realities.

In the next chapter, we shall discuss the plethora of existing laws and regulations applicable to NPOs in Nigeria. The analysis shall provide a context for appraising the relevance of the NGO Bill and any other legislation proposed for the regulation of non-profits in the country.

⁷⁷Page 57 of the FATF Standards as revised in 2016

⁷⁸Page 7 of the Best Practices Paper on Combating the Abuse of Non-Profit Organisations



CHAPTER 4

Existing Legal Framework for the Regulation of NGOs in Nigeria

4.1 Corporate Affairs Commission

Established pursuant to the Companies and Allied Matters Act (CAMA) of 1990, the Corporate Affairs Commission (“CAC”) is the national regulator of companies in Nigeria. The functions of the CAC are set out in Section 7 of CAMA as follows:-

- (a) administer this Act including the regulation and supervision of the formation, incorporation, registration, management, and winding up of companies under or pursuant to this Act;
- (b) establish and maintain a company's registry and offices in all the States of the Federation suitably and adequately equipped to discharge its functions under this Act or any other law in respect of which it is charged with responsibility;
- (c) arrange or conduct an investigation into the affairs of any company where the interests of the shareholders and the public so demand;
- (d) perform such other functions as may be specified by any Act or enactment; and
- (e) undertake such other activities as are necessary or expedient for giving full effect to the provisions of the Act.

4.2. Registration of NPOs under CAMA

In line with the tenor of the Constitution regarding the voluntariness of associations, CAMA's registration requirements for NPOs are permissive and not mandatory. Accordingly, CAMA provisions recognise the right of NPOs to exist without legal registration, but set out the rights and status which NPOs would enjoy should they opt to be registered under CAMA. To qualify for legal registration, the organisation must not be established with the object of carrying on business and making profits. There are also restrictions as to distribution of the income of the organisation among its members.

For NPOs that opt for legal registration, CAMA sets out two ways that they can attain that status. First, they could register as incorporated trustees, or secondly, as a company limited by guarantee.

⁷⁹See generally Section 26 of the CAMA



- Incorporated Trustees

According to Section 590 of CAMA:

“[w]here one or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by any body or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, he or they may, if so authorised by the community, body or association (in this Act referred to as "the association") apply to the Commission in the manner hereafter provided for registration under this Act as a corporate body.”

The above provision is a statutory confirmation that NPOs are permitted to exist and have a governance structure without the need to be registered. The procedure for registering NPOs, including NGOs as incorporated trustees involves considerable bureaucracy which may take long to complete. In exercise of its wide power, the CAC may require that a police clearance is obtained in respect of the organisation and the trustees named in the application. A draft of the organisation's constitution must also be submitted for scrutiny, and the applicants are required to advertise their application inviting objections, if any, in two daily newspapers circulating in the area where the organisation is/will be situated. At least one of the newspapers must be a national newspaper. Any objections to the incorporation of the trustees must be made within twenty-eight days of the advertisement, and the Commission may require the applicant “to furnish further information or explanation”, and may uphold or reject the objections as it considers fit, and inform the applicant accordingly.

- Company Limited by Guarantee

An organisation may instead, choose to register as a company limited by guarantee. In this case, they would possess the structures of any other company except that they are not permitted to carry out profit-driven businesses or freely distribute the income or assets of the company among members. Upon the dissolution of an NPO registered in this manner, its assets would be transferred to an organisation with similar objects. While registration as a company limited by guarantee confers the status of a body corporate on the NPO or NGO, under Part C, it is the trustees of the NGO who are formed into a body corporate. The effect of the registration is that the company assumes a different legal personality from the members of the organisation.

It is pertinent to note that the procedure for the registration of an NGO as a company limited by guarantee involves obtaining the consent of the Attorney General of the Federation whose office shall review the incorporation documents submitted by the promoters. The Ministry of Justice typically requests for

⁸⁰Section 26(4) of the CAMA. The Section provides that “[a] company limited by guarantee shall not be incorporated with the object of carrying on business for the purpose of making profits for distribution to members.”

⁸¹Section 26(10) of the CAMA

⁸²Salomon v Salomon, [1897] AC 22



background information on the promoters of the company. It also forwards the application to other ministries and agencies of government which are related to the objects being proposed by the NGO, for their objection or approval of the application. The Attorney General's power to approve or refuse an application is discretionary as there are no laid down criteria for making this determination. There is also no statutory procedure for challenging the decision of the Attorney General. This uncertainty discourages promoters from seeking this sort of registration.

4.3. Regulation of Corporate Governance and Management of NPOs

The sentiment shared by the proponents of the NGO Bill, including those advocating for stricter regulation of NPOs is that the CAC serves only as a registry for NPOs and does not regulate their activities. According to Hon. Umar BubaJibril, the sponsor of the NGO Bill, “what is only required of [NPOs] is to register with the Corporate Affairs Commission and thereafter commence operation in Nigeria. This is defective in terms of operational values of such organisations as they are left to operate within their constitutions and sometimes within the whims and caprices of their donors.” As the operational guidelines set out in the statutory framework for the regulation of companies demonstrate, Umar Jibril's position is incorrect. Not only does the CAMA serve as the registry for NPOs, it also scrutinises changes to the constitution or composition of registered NPOs, regulates their corporate governance structure, and also requires them to submit annual returns and statement of accounts.

Every change to the board of directors and constitutional documents must be filed with the CAC. Thus, the CAC exercises oversight on the management of registered NPOs at all times, as long as they remain in operation. Where necessary, the CAC is also empowered to launch investigations into the activities of a registered NPO. In the event that such investigation reveals some misconduct on the part of the NPO or any of its organs, CAC is empowered to levy and enforce fines against the NPO or any of its officials.

Furthermore, the CAC receives annual returns and financial statements of NPOs. The entire Part XI of the CAMA is devoted to the preparation, contents and filing of financial information of companies including companies limited by guarantee. The annual returns of companies limited by guarantee are required to provide information with respect to the corporate structure of the NPO, its assets, and financials.

NPOs registered as incorporated trustees are also required to file annual returns. According to Section 607 of the CAMA, the trustees of the corporation shall not

⁸³ By virtue of Section 292(4) of the CAMA, a notification of a change in the composition of the board of director of a company is to be sent to the CAC within 14 days of the change

⁸⁴ Sections 314-330 of the CAMA

⁸⁵ Section 331 of the CAMA



earlier than 30 June or later than 31 December each year (other than the year in which it is incorporated), submit to the CAC a return showing, among other things, the name of the corporation, the names, addresses and occupations of the trustees, and members of the governing body, particulars of any land held by the corporate body during the year, and of any changes which have taken place in the constitution of the association during the preceding year. The Minister of Finance may by regulation require the provision of additional information by incorporated trustees. Further, CAMA contains copious provisions regarding the treatment of the assets of an NPO after it ceases to exist. The CAC oversees the winding up of NPOs. Upon winding up, the residual assets of the NPO shall not be distributed to members but must be transferred to an organisation with similar objects or in accordance with the direction.

Section 331 of CAMA (applicable to companies limited by guarantee)

1. Every company shall cause accounting records to be kept in accordance with this section.
2. The accounting records shall be sufficient to show and explain the transactions of the company and shall be such as to:
 - (a) disclose with reasonable accuracy, at any time, the financial position of the company; and
 - (b) enable the directors to ensure that any financial statements prepared under this Part comply with the requirements of this Act as to the form and content of the company's financial statements.
3. The accounting records shall, in particular, contain:
 - (a) entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure took place; and
 - (b) a record of the assets and liabilities of the company.
4. If the business of the company involves dealing in goods, the accounting records shall contain:
 - (a) statements of stocks held by the company at the end of each year of the company;
 - (b) all statements of stocktakings from which any such statement of stock as is mentioned in paragraph (a) of this subsection has been or is to be prepared; and except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

⁸⁶Section 609 CAMA

⁸⁷Section 26(10) of the CAMA



Questions have been raised regarding the extent the CAC has effectively exercised the full gamut of its powers with respect to NPOs. Lax regulation of entities considered to be of low-risk is not uncommon. The same is true of CAMA with respect of NPO regulation. As the drift towards stricter regulation of NPOs continues to gain momentum, extant regulatory arrangements and trends demonstrate that CAC already possesses sufficient powers to address the AML and CTF concerns that may exist. Some of the regulatory arrangements are listed below:

Areas Regulated by CAC

- Registration of NGOs
- Management and Corporate Governance
- Investigation of Affairs of NPOs
- Dealing with the assets of NPOs

1.4. The National Planning Commission

The National Planning Commission (the “NPC”) has adopted the position that it regulates the registration of NPOs in Nigeria. During the hearing of the Foreign Contribution (Regulation) Bill, 2013 in 2014, the NPC had represented that it was the body empowered to monitor and regulate the activities of NPOs in Nigeria. Research revealed that NPOs actually register with the NPC especially foreign NPOs seeking registration in Nigeria. Although there is no express provision under CAMA requiring registration with the National Planning Commission, the Commission performs this role in line with the enabling legal framework that established it. Section 4(i) of the National Planning Commission Act requires registration from organisations that rely on donor funds especially international non-governmental organisations.

It would seem that the National Planning Commission does not require mandatory registration for all NPOs. However, where an international organisation registers with the NPC, such registration confers certain incentives, that is, privileges and exemptions on the organisation that are not ordinarily extended to locally-registered NPOs. The NPOs and the NPC usually enter into a memorandum of understanding which would outline the anticipated incentives.

⁸⁸The Nigerian Times. “National Planning Commission insists on overseeing NGOs, CSOs,” 2014. Available at <http://nigeriantimes.ng/news/national-planning-commission-insists-on-overseeing-ngos-csos/>, accessed 06/03/2017

⁸⁹Section 4(i) of the National Planning Commission Act provides that the functions of the National Planning Commission shall include to manage multilateral and bilateral economic co-operation, including development aid and technical assistance programming.



Incentives available to Foreign NPOs registered with NPC

- Exemption from customs duties and all taxes (including VAT) on vehicles, equipment and other property imported or purchased locally for projects, offices, working partners, residential accommodation, including any necessary spare parts, as may be required to conduct the work of the organisation in Nigeria.
- Non-Nigerian personnel of the organisation and their families are exempt from customs duties and all taxes (including VAT) on household effects, clothing, personal motor vehicles, equipment, foodstuff, medical drugs and other property imported for their use.
- Exemption from expatriate quotas, national service obligations, conditions and fees relating to the registration of foreigners, work permits and other immigration restrictions, and business permits in respect of expatriate employees and other long-term non-Nigerian staff, and provision of residence and multiple-entry permits as may be required from time to time. In practice the organisation will provide details of the expatriates to NPC and the NPC will write to the Nigerian embassy/Nigerian Immigration Service to issue the expatriate quotas and other immigration permits.
- All non-Nigerian staff of the organisation are granted exemption from all taxes (including VAT) on income derived from non-Nigerian sources, and

Donors and sponsors are granted foreign exchange (where required) and other approvals required to send grants to and remit funds in Nigeria and or to any of the projects, programs, individuals and institutions supported by them in Nigeria.

1.4. The Economic and Financial Crimes Commission

The Economic and Financial Crimes Commission (“EFCC”) was established under the Economic and Financial Crimes Commission (Establishment) Act, 2004. The functions of the EFCC includes inter alia:

- (a) the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc.;
- (b) the adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crimes related offences or the properties the value of which corresponds to such proceeds; and
- (c) the adoption of measures which includes coordinated preventive and regulatory actions, introduction and maintenance of investigative and control techniques on the prevention of economic and financial related crimes.



The EFCC Act is an improvement on the Financial Crimes Commission (Establishment) Act 2002 in that it for the first time, expressly illegalises terrorism and financing of terrorism in Nigeria. Thus, EFCC not only sets anti-money laundering rules, by is also in charge of checkmating the financing of terrorism. It is also charged with the responsibility for enforcing the provisions of the following anti-graft legislation:

- (a) the Money Laundering Act 2003; 2003 No.7 1995 No. 13 (as amended by the Money Laundering (Prohibition) Act 2011.
- (b) the Advance Fee Fraud and Other Fraud Related Offences Act 1995;
- (c) the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994, as amended;
- (d) the Banks and other Financial Institutions Act 1991, as amended; and
- (e) Miscellaneous Offences Act
- (f) any other law or regulations relating to economic and financial crimes, including the Criminal code of penal code

The Act was criticised for not making elaborate provisions on terrorism and the financing of terrorism. In response to this criticism, the Terrorism Prevention Act, 2011 (“TPA”) was enacted. The EFCC is one of the organisations charged with the administration of the TPA especially with regards to the financing of terrorism.

1.4. The Special Control Unit against Money Laundering (“SCUML”)

Historically, Nigeria's AML/CFT regulatory framework can be traced to the requirements of FATF. On its website, SCUML acknowledges that its establishment in 2005 was 'as a commitment by Nigeria, through the Federal Government-constituted Presidential Inter-Agency Committee, to the Financial Action Task Force'. Nigeria's effort to be removed from FATF's list of countries which are not compliant with FATF international standards, Nigeria has rolled out several regulations and institutions to tackle its deficiencies. The Money Laundering (Prohibition) Act (the “MLA”) and the Terrorism (Prevention) Act, 2011 (as amended in 2013) were outcomes of the National Strategy to remove Nigeria from FATF's shame list. The MLA imposes certain obligations on Designated Non-Financial Institutions (DNFI) including the obligations to report

⁹⁰SCUML website: <http://www.scuml.org/scuml/index.php/about-us>

⁹¹Security Justice and Growth Programme Nigeria. “Special Control Unit Against Money Laundering,” 2010. Available at https://www.britishcouncil.org/sites/default/files/special_control_unit_against_money_laundering.pdf, accessed 06/03/2017

⁹²The term “Designated Non-Financial Institution (DNFI)”, which is the terminology used in the MLA, means the same thing as “Designated Non-Financial Businesses and Professionals”, which is the terminology used in the SCUML Regulation.



suspicious transactions, to carry out customer due diligence and to keep records of customers and transactions for a period of 5 years.

The SCUML which is under the Ministry of Industry, Trade and Investment, is the body vested with the Anti-Money Laundering and Combating Financing of Terrorism mandate in Nigeria. Its mandates are to “monitor, supervise and regulate the activities of Designated Non-Financial Institutions (DNFIs) in Nigeria in consonance with the country's Anti-Money Laundering and Combating of the Financing of Terrorism regime.” SCUML works in collaboration with the Economic and Financial Crimes Commission (the coordinating agency for Nigeria's AML/CFT regime) and the Nigerian Financial Intelligence Unit (the “NFIU”) (the national repository of financial disclosures of cash-based transaction reports, currency transaction reports and suspicious transaction reports).

It is important to note that under the MLA, NPOs are not included in the definition of DNFI. However, the MLA empowers Minister of Industry and Trade (presently the Minister of Industry, Trade and Investment) to designate any other body as a DNFI from time to time. In 2013, then Minister of Commerce and Industry (now Ministry of Industry, Trade and Investment) issued the SCUML Regulation which expanded the definition of DNFI (or DNFBP) to include NPOs.

Although the FATF Standards do not require the classification of NPOs as DNFBPs, the SCUML regulation is an extant law of Nigeria, and accordingly, binding on NPOs. The additional regulatory burden it imposes on NPOs would most likely not result in favourable GIABA evaluation for Nigeria unless it is in line with the risk-based approach required under the FATF Standards revised in 2016 and FATF Best Practices Paper on Combating Abuse of Non Profit Organisations.

Obligations of DNFBPs under the FATF Standards

Under the FATF Standards DNFBPs are required to have AML/CFT programme designed on a risk-based approach, which shall at a minimum include the following:

- Internal policies, procedures and controls, based on the Insurance institution's assessment of the AML/CFT risks associated with its business, and designed to reasonably anticipate and prevent money laundering and terrorist financing.

⁹³Section 6 of the MLA

⁹⁴ Section 3 of the MLA

⁹⁵ Section 7 of the MLA

⁹⁶See the SCUML Regulation

⁹⁷ Section 25 of the MLA

⁹⁸ Paragraph 3.1 of the SCUML Regulation

⁹⁹ Please see section 1.2 of this report



- Customer Due Diligence
 - Appointment of a Compliance Officer or Money Laundering Reporting Officer (MLRO).
 - Currency Transactions Report (“CTR”). NPOs are required to file CTR on all transactions in excess of ₦ 5, 000,000.00 or its equivalent in foreign currency for individual and ₦ 10, 000,000.00 or its equivalent in foreign currency for a corporate body to the NFIU and a copy to SCUML.
 - Suspicious Transactions Report (“STR”). NPOs shall file STR where it is unable to ascertain the identity of the beneficiary/beneficial owner and /or where it is unable to determine risk factors applicable to the beneficiary/beneficial owner.
 - On-going or regular training for its employees.
 - Record keeping
- Internal control/Independent Audit of the AML/CFT programme.

1.4. The Nigerian Financial Intelligence Unit

Established in June 2004 the Nigerian Financial Intelligence Unit (“NFIU”) is a unit of the EFCC. According to a statement on NFIU website, NFIU was established in fulfillment of the requirement of FATF, and in response to the high level of money laundering and advanced fee fraud associated with Nigerians which has led to the blacklisting of Nigeria as a non-cooperative country by FATF. Although the NFIU was established pursuant to the EFCC Act, it draws its responsibilities directly from the 40+9 Special Recommendations of the FATF.

The NFIU serves as a national center for the receipt and analysis of Currency Transaction Reports (CTRs) and Suspicious Transaction Reports (STRs), and other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of the analysis to law enforcement and anti-corruption agencies. All CTRs and STRs filed by financial institutions and designated non-financial institutions including NPOs are transmitted and analysed by the NFIU. The NFIU comprises of the Legal and Cooperation Department, Compliance Department, Monitoring and Analysis Unit,

¹⁰⁰See Money Laundering (Prohibition) Act 2011

¹⁰¹Between May 2014 and May 2015 SCUML received over 66,057 CTRs from NPOs and other DNFBPs. See Page 3 of the 2015 GIABA Follow-up Report

¹⁰²See <http://www.nfiu.gov.ng/index.php/hm/nfiu>

¹⁰³Currency Transaction Reports are reports on transactions exceeding the statutory threshold; they are to be submitted within seven days from the date of transaction.

¹⁰⁴Suspicious Transaction Reports involve a frequency which is unjustifiable or unreasonable and is surrounded by conditions of unusual or unjustified complexity which appears to have no economic justification or lawful objective.

¹⁰⁵Ibid.



Strategic and Analysis Department, General Administration Unit and the ICT Department Unit.

Regulatory Mandates of NFIU

- Analysis of CTRs and STRs
 - Receives reports of international transfer of funds and securities by a person or body corporate of a sum exceeding US\$10,000.00 or naira equivalent
 - Cash transported or negotiable instruments in excess of US\$10,000 or its equivalent by individuals in or out of the country shall be declared to the Nigerian Customs Service and be reported by the NFIU
 - In consultation with the Central Bank of Nigeria and the CAC, determines the flow of transaction and the identities of beneficiaries of both corporate and individual accounts
 - Applies for the freezing of any account or transaction that is suspected to be involved in crime
 - Receives STRs related to terrorism and terrorist financing
- Receives other statutory reports mandated by the regulators in their AML/CFT Regulations.

1.4. Other Laws and Agencies

There are various other laws and agencies which regulate AML/CFT obligations of NPOs. While some of the laws apply directly to NPOs, others regulate possible avenues through which NPOs may possibly exploit or be exploited for terrorist financing such as through trades in securities, cash importation and transfers, technology transfer and importation, drugs.

Section 9 of the Money Laundering Prohibition Act, 2011 (as amended) requires every Designated Non-Financial Institution in Nigeria to develop programmes to combat the laundering of the proceeds of criminal financial activities. Section 2(1)(f) of the Designation of Non-Financial Institutions and Other Related Matters) Regulations, 2013, classified NPOs as Designated Non-Financial Institutions (DNFI) in Nigeria, placing them under AML/CFT related obligations and

¹⁰⁶Section 10 of the MLPA

¹⁰⁷Section 2(1) of the MLPA

¹⁰⁸See Foreign Exchange Act, 1995 and Section 2 (3) of the MLP Act, 2011 as amended

¹⁰⁹Section 14 of the MLPA

¹¹⁰Section 14 of the TPA



restrictions. The supervisory or regulatory authority for DFNIs, which is the Minister, Federal Ministry of Industry, Trade and Investment and the SCUML, may impose pecuniary sanctions upon an institution that fails to comply. DNFI's AML and CFT obligations are prescribed in the Federal Ministry of Industry, Trade and Investment (Designation of Non-Financial Institutions and Other Related Matters) Regulations, 2013.

Regulatory agencies like the Central Bank, the Securities and Exchange Commission, and the National Insurance Commission have their respective AML/CFT regulations and guidelines. In addition, terrorist financing is also punishable under general criminal law such as the Criminal Code and the Penal Code. From the foregoing, it would be difficult to conclude that there is inadequate regulation of NPOs in Nigeria. It is also unlikely that any risk assessment of the NPO sector would reveal any risks which are exclusive to NPOs, therefore necessitating the enactment of any law or any regulation specifically for the NPO sector.





CHAPTER 5

CONCLUDING THOUGHTS

5.1. Is There Need for Further Legislation of NPOs?

Too many legislations for mitigating ML and FT risks already exist: NPOs in Nigeria are subject to a wide range of regulatory frameworks that prescribe disparate measures for mitigating ML and FT risks, as several examples in the preceding chapters demonstrate. Gaps, however, remain. For instance, the lack of prosecution and conviction despite the large number of suspicious transaction reports (STRs), is an indicator of a challenge in the country's AML/CFT regime. The need for concerted implementation of existing laws may be necessary, just as the strengthening of the country's investigative, prosecutorial and adjudicative capacities in dealing with ML/FT and their predicate crimes, have been recommended.

Avoid risk of over-regulating the NPO sector: The introduction of additional legislation will ostensibly, tilt towards over-regulation. In compliance with FATF requirements, targeted implementation may be necessary towards NPOs identified to be at risk. Additional legislation does not necessarily translate to effective regulation of NPOs unless a risk has been identified in the course of a risk assessment of the NPO sector which requires to be legislated.

NPOs face no specific risks other corporate entities aren't exposed to: Establishment of a regulatory authority for NPOs is not backed by any actual risk assessment which is peculiar to the NPO sector. It is not all NPOs that are at high risk, just as some may present no risk at all. More so, there is no risk NPOs face that has not been legislated and regulated at both the national and universal levels. Put differently, all the risks identified and advanced as justification for over-regulating NPOs also apply to other for-profit entities. Also, those risks are already covered under existing legislation applicable to companies or corporate bodies in general.

Targeted NPO regulation may compromise institutional independence: The move towards targeted regulation of NPOs has several implications. One is the inherent potential to compromise the independence of non-profit entities. The government's ability to interfere in the operation of NPOs is particularly inimical to NPOs that engage in human rights advocacy, government accountability, and the promotion of democracy. Protecting these entities from the repressive antics of both state and non-state actors makes it imperative for every regulatory action to be backed by a comprehensive risk-benefit analysis to ensure that the benefits of the regulation action would outweigh the risks. Secondly, overburdening NPOs with regulatory responsibilities increases the cost of operating the organisation, thereby, restricting both the impact and scale of their operations.

¹¹¹ GIABA 2014 Annual Report, p.48.

¹¹² GIABA Recommendations to Nigeria . See GIABA 2014 Annual Report, p.49.



5.2. Are there Causal Links between Specific Regulation of NPOs and the FATF?

Overall, there may not be explicit linkages between FATF Standards and the legislative attempts to regulate the civic space at the national level. But that does not mean the linkages are illusory or non-existent. For instance, one of the GIABA's key recommendations to Nigeria is that a supervisory authority like the UK Charity Commission should be replicated in the country. Consistent with this recommendation, the main thrust of both the rested 2014 NGO Funding Bill and the present 2016 NGO Bill is the proposal for the establishment of the NGO Regulatory Commission modelled after the UK regulatory body. These Bills, however, overstretched GIABA's recommendation, introducing other unduly restrictive and invasive provisions that could potentially undermine NPO operations in the country.

On one hand, there is evidence that the plethora of legislative efforts to restrict the civic space flows from poor understanding and overzealous implementation of international regulations. On the other hand, domestic efforts to comply with international standards may have opened the door for human rights abuses, providing the government with further grounds to crush dissent and impose restrictions on civil society. The same applies to FATF Recommendations even though they may not have been expressly mentioned in any of the legislations proposed for the regulation of NPOs. This perception fuels the wave of suspicion within the NPO circles. Not only that, previous experiences reinforce widely-held assumptions that legislation enacted for the regulation of NPOs in Nigeria could be hijacked and used to legitimize the tightening environment for civil society action, including the restrictions on basic freedoms of expression and assembly, persecution of political dissent, and increased surveillance of citizens.

In sum:

- (a) There are no direct links between the NGO Bill and the FATF Recommendations. The revised Recommendation 8 does not require the specific regulation of NPOs unless supported by a risk assessment of the 'NPO sector.
- (b) FATF's rating of Nigeria no longer depends on the number of legislation or regulatory agencies applicable to the NPO sector as FATF would require a risk-based approach to CFT and proof of effective targeted and proportional measures;
- (c) Nigeria has carried out a risk assessment of the NPO sector to determine its vulnerability to terrorist financing (TF), but the outcome of this assessment is yet to be made public;
(
C) Even if risk assessment of the NPO sector is publicized, it is expected that the existing legal frameworks in Nigeria would be sufficient to address the risks and there would be no need to specifically regulate NPOs;
- (D) There is a high propensity that the NGO Bill and related legislative proposals designed to specifically regulate NGOs may be misapplied or implemented in a repressive manner.

¹¹³See GIABA 2008 Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism



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