



HARMS FROM ABROAD

IMPACT OF GLOBAL SECURITY MEASURES ON CIVIC SPACE IN NIGERIA

VICTORIA IBEZIM-OHAERI | LOTANNA NWODO

© ACTION GROUP ON FREE CIVIC SPACE





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IN NIGERIA**

Written by

Victoria Ibezim-Ohaeri | Lotanna Nwodo

Additional research

SBM Intelligence | Justin Gbagir Esq | Rafiu Adeniran
Lawal | Okechukwu Nwanguma | Fyneface
Dumnamene Fyneface | Godwin Kingsley | Zikora Ibeh |
Olusola Oluwafemi

Reviewed by

Katerina Hadzi-Miceva Evans | Sangeeta Goswami |
James Savage | Lydia Cocom

Graphics design

Emmanuel Ogunleye

Published by

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AAH:	Action against Hunger
AGFCS:	Action Group for Free Civic Space
AML/CFT:	Anti-money Laundering/Combating the Financing of Terrorism
CAC:	Corporate Affairs Commission
CBN:	Central Bank of Nigeria
CCD:	Centre for Citizens with Disabilities
CDD:	Customer Due Diligence
CISEC:	Civil Security Cooperation
COVID19:	Coronavirus Pandemic
CSOs:	Civil Society Organizations
CT:	Counter Terrorism
CTC:	Counter Terrorism Committee
CTED:	Counter Terrorism Committee Executive Directorate
DDRR:	Demobilisation, Disassociation, Reintegration Reconciliation
DNFBPS:	Designated Non-Financial Businesses and Professions
DNFIs:	Designated Non-Financial Institutions
DRR:	Deradicalization, Rehabilitation, and Reintegration
ECLN:	European Center for Non-Profit Law
ECOWAS:	Economic Community of West Africa States
EFCC:	Economic and Financial Crimes Commission
ESN:	Eastern Security Network
ESW	Egmont secure web
FATF:	Financial Action Task Force
FGHR:	Fund for Global Human Rights
FSIPI:	Forefall, Secure, Identify, Prepare and Implement
FSRBs:	FATF-styled Regional Bodies
GAFI:	Groupe d'Action Financiere
GCFT:	Global Counter Terrorism Forum
GCERF:	Community Engagement and Resilience Fund
GCTF:	Global Counter Terrorism Forum
GCTS:	Global Counter Terrorism Strategy
HSC:	Human Security Collective
ICNL:	International Center for Non-Profit Law
IDP:	Internally Displaced Persons
IMN:	Islamic Movement of Nigeria
IMF:	International Monetary Funds.
INGO:	International Non-Governmental Organization
IPOB:	Indigenous Peoples of Biafra
ISWAP:	Islamic State West Africa Province
IYC:	Ijaw Youths Congress
JAS:	Jama'atul Ahlus Sunnah
JRI:	Justice Right Initiative
JTAB:	Joint Terrorism Analysis Branch
RULAAC:	Rule of Law and Accountability Advocacy Centre

MEND:	Movement for the Emancipation of the Niger Delta
MOSOP:	Movement for the Survival of Ogoni People
NACTEST:	National Counter Terrorism Strategy
NAF:	Nigerian Armed Forces
NCCT:	Non-corporative Countries and Territories
NHCC:	National Humanitarian Coordination Council
NDPVF:	The Niger Delta's People Volunteer Force
NFIU:	Nigeria Financial Intelligence Unit
NGOs:	Non-Governmental Organizations
NHCTWG:	National Humanitarian Co-ordination Technical Working Group
NPOs:	Non-Profit Organizations
NRA:	National Risk Assessment
OECD:	Organization for Economic Corporation and Development
ONSA:	Office of the National Security Adviser
OSC:	Operation Safe Corridor
PCVE:	Preventing and Countering Violent Extremism
P2P:	Peer-to-peer
PIL:	Public Interest Litigation
PNG:	Person Non-grata
SBI:	SB Morgen Intelligence
SCUML:	Special Control Unit against Money Laundering
SSS:	State Security Services
SPAN:	Security and Policy Alternatives Network
STR:	Suspicious Transaction Report
TIERS:	The Initiative for Equal Rights
TPA:	Terrorism Prevention Act
UN:	United Nations
UNICEF:	United Nations Children Emergency Funds
UNOCT:	United Nations Office of Counter Terrorism
UNSC:	United Nations Security Council
VSI:	Vision Spring Initiative
WIDEF:	World Impact Development Foundation

INTRODUCTION

How does the transnational security architecture and the use of “the security playbook” manifest in key national contexts? What evidence is there of the role of transnational security architecture (such as the UN Global Counter Terrorism Strategy; Financial Action Task Force; UN Security Council Resolutions and others) in facilitating restrictions on civic space in Nigeria? What links exist between transnational and domestic entities promoting and implementing a hard security paradigm and measures? What regional or bilateral security partnerships does Nigeria have with other countries and how do they influence the development and implementation of national security measures that limit fundamental freedoms and civil society?

Indeed, Nigeria is struggling to rein in several theaters of insecurity in different parts of the country. The military and non-military measures—mostly copied from abroad—deployed to combat these security threats create opportunities for the use and abuse of counter terrorism and security laws, and this is potentially becoming the dominant driver of closing civic space in Nigeria. Accordingly, this paper establishes the links between the transnational and national drivers of closing civic space in Nigeria built on the rhetoric of countering terrorism and defending national security. The enquiry starts by tracing the transnational origins and sources where national counterterrorism initiatives draw inspiration from. This is done by examining the international norms and standards that countries like Nigeria feel under pressure to comply with, the global networks the country is under pressure to join and the consequences attached to non-compliance. The trends and patterns of governmental restrictions arising from the implementation of international counterterrorism norms at the local level illuminate whether the way Nigeria is following these standards is problematic or not. The findings build evidence of government's accelerated use of a security playbook to stifle dissent in the name of counterterrorism. Based on the collective intelligence and diagnosis of this security playbook, the paper concludes by highlighting the opportunities that exist in short-term and long-term for civic actors to push back, to disrupt, to reform, and over long-term to transform the influence of security on civic space.

TERRORISM AND INSECURITY IN NIGERIA: OVERVIEW OF LOCAL CONTEXT

Illegal armed groups and designated terrorists

Jama'atul Ahlus Sunnah (JAS), led by Abubakar Shekau until May 2021, and the Islamic State West Africa Province (ISWAP)—a break-away group from JAS in 2016—are the two major armed groups operating in Nigeria's North-East. Both groups, globally designated as terrorists,¹ have two striking similarities: they emerged from the Boko Haram insurgency that started in 2009. Though they differ on strategy, their primary objective is to establish an Islamic Caliphate that practices 'pure Islam'. In terms of strategy, JAS routinely declares all opponents of their ideology as “takfir”, meaning an infidel. This means that killing such a person is justified. Consistent with this disposition, JAS has carried out wanton acts of violence against communities, suicide bombings and massacres across the northern region of Nigeria. On the other hand, ISWAP has narrowed the focus of its attacks to military targets, Christians, aid workers (irrespective of their faith, accusing them of attempting to proselytize Muslim populations to Christianity). While ISWAP holds sway in areas around the Lake Chad basin in Borno and Yobe States, JAS operates

¹ Counter-terrorism Guide: https://www.dni.gov/nctc/groups/boko_haram.html

predominantly in the expansive Sambisa Forest, which stretches across the middle part of Borno State to parts of Adamawa, Yobe, Bauchi and Jigawa states. Because of the activities of these groups, Nigeria is ranked 3 on the 2019 Global Terrorism Index.²

· **Ethnic militias**

Ethnic militias add to the list of armed groups operating in the North-East region of the country. Their operational bases include the Numan, Lamurde and Demsa Local Government areas of Adamawa State, where Fulani and Bachama militias have engaged in internecine violence over land and water. The timeline of the deadliest cycle of violence between these militias was between November 2017 and January 2018, which was followed by a lull that was shattered in January and November 2020. Attacks by ethnic militias are also commonplace in the north-central part of the country, especially in Plateau, Taraba and Benue States. The attacks are rooted in protracted conflicts over land and water for cattle-rearing and as revenge for previous attacks. In the north-central region, the militias—mostly of Fulani origin—have been accused of incessant attacks in Benue State, where between 600,000³ and 1.5 million⁴ people are said to have been displaced. In Plateau State, the attacks are concentrated in Jos South, Riyom, Barkin Ladi and Bassa Local Government Areas, and have displaced at least 170,000 persons.⁵ There have also been attacks by Fulani militias in parts of Nasarawa and Taraba States, albeit far fewer and less frequent.

· **Vanguard for the Defence of Black Muslims**

Ansarul fi Muslimah biladis Sudan (Vanguard for the Defence of Black Muslims) known as Ansaru (also known as al-Qaeda in the Lands Beyond the Sahel) is a former splinter group of Boko Haram operating mainly in Kogi State—Nigeria's north-central region. Claiming to act in defence of Muslims, the group mainly targets Christian populations. In August 2012, a church was attacked in Okene town in a manner similar to Boko Haram attacks in the north-east and two soldiers were killed⁷ at a mosque; in January 2013, members of the sect attacked⁸ a contingent of the Nigerian Army heading to Mali for peacekeeping operations. However, since the arrest of its leader,⁹ Khalid al-Barnawi, in 2016, no further attacks have been recorded in the region.

· **Fulani pastoralists (bandits)**

In past five years, insecurity has degenerated into a free-for-all in the North-West region, particularly in the states of Kaduna, Katsina, and Zamfara. Triggered by a confluence of factors—such as poorly-managed conflicts between Fulani pastoralists and farming communities, proliferation of light weapons, cattle rustling and illegal gold mining—numerous armed groups have emerged collectively identified as “bandits” by the Nigerian government and security forces. The Fulani pastoralists were originally cattle rustlers before they morphed into monstrous armed operations that involve kidnappings along major highways, mass abductions and indiscriminate attacks on communities.

² <https://www.gcerf.org/nigeria/>

³ [Herdsman attacks: Over 600,000 persons displaced in Benue \(Daily Post Nigeria\)](#)

⁴ [—Herdsman Attacks: Benue facing worst humanitarian crisis with 1.5million IDPs Ortom \(Vanguard Nigeria\)](#)

⁵ [Stopping Nigeria's Spiralling Farmer-Herder Violence \(Crisis Group\)](#)

⁶ [UPDATED: Gunmen Attack Deeper Life Bible Church In Okene, Kill 15 Worshipers \(Sahara Reporters\)](#)

⁷ [Nigeria Okene city gunmen target soldiers \(BBC News\)](#)

⁸ [Two Killed, Four Injured In Bomb Attacks On Mali-bound Nigerian Troops At Okene \(Sahara Reporters\)](#)

⁹ [Khalid al-Barnawi: Nigeria Islamist group head 'arrested' \(BBC News\)](#)

Farmer-herders' conflicts

In West Africa, herders have had a long history of migrating and establishing relationships with various sedentary farming populations with which they co-exist, co-operate and compete for shared renewable resources. In the pre-colonial era, records of conflict between herders and farmers were lean and the socio-economic interaction between both groups, symbiotic. Lately, especially since the beginning of the 21st century, conflicts between farmers and herders assumed dangerous dimensions. The conflict between herders and farmers in Nigeria—centered in the Middle Belt but spreading southward—has escalated sharply. The first half of 2018 had seen more than 100 incidents of violence and more fatalities than any previous six-month period since the conflict started worsening in 2014.¹⁰ The surge of violence is concentrated in Plateau, Benue and Nasarawa states in the North Central geopolitical zone and in the adjoining Adamawa and Taraba states in the Northeast zone. The deadliest sequence of events was the 23-24 June attack on eleven villages in BarkinLadi and subsequent reprisals on a highway, which altogether killed more than 200 people.¹¹ As a result of the conflict in these states, the number of Internally Displaced Persons (IDPs) sheltered in very inhospitable conditions, has doubled, placing additional strain on scarce resources.¹² Apart from displacement and homelessness, IDP'S suffer the deprivations of food, rape, abductions, and massive destructions of their traditional livelihoods of farmers and farming households.¹³

Unknown gunmen in south-east Nigeria

Unknown gunmen have been terrorizing southeastern Nigeria inhabited by the Igbo tribe. Since 2020, these gunmen are responsible for coordinated attacks on major security institutions like the police and correctional facilities. There are competing responses and views regarding the origin and identity of the "unknown gunmen". Nigeria's President Buhari proscribed the activities of the separatist movement, Indigenous Peoples of Biafra (IPOB), designating them a terrorist group despite the rebuttal by foreign governments especially the United States and the United Kingdom.¹⁴ Irked by the decades of institutionalized marginalization of the Igbos, IPOB clamors for the secession of the south-eastern region from Nigeria. It is believed that the increasing face-off between Nigeria's security agencies and IPOB birthed the new security lexicon called the 'unknown gunmen'. While government actors and security agents link the unknown gunmen with IPOB and their security wing, Eastern Security Network (ESN), local populations in the southeastern region disagree vehemently, alleging that 'unknown gunmen' are criminal elements from outside the region, launching violent attacks in south-eastern communities in order to give IPOB a bad name by creating an atmosphere of fear and insecurity where they operate.

Gang and cultists wars in the south-south

In the oil-rich south-south region which constitutes most of Nigeria's Niger Delta, irresponsible

¹⁰ International Crisis Group, Stopping Nigeria's Spiralling Farmer-Herder Violence, https://www.jstor.org/stable/resrep31476.4?seq=1#metadata_info_tab_contents

¹¹ International Crisis Group, *ibid.*

¹² Abass I M. (2018) No Retreat No Surrender; Conflict for Survival Between Fulani Pastoralists and Farmers in Northern Nigeria. *European Scientific Journal* 8(1) 331-346

¹³ *Ibid*

¹⁴ Anthony Ogonna, Vanguard, IPOB not a terrorist organisation – US govt (2017) Accessed via <https://www.vanguardngr.com/2017/09/ipob-not-a-terrorist-organisation-us-govt/>

oil exploration activities by multinational corporations, environmental degradation, underdevelopment, poverty, youth restiveness and unemployment lie at the root of the protracted violent conflicts in the area. The crises in the region started in the 1990s, arising from the activities of the different militant groups protesting the injustice and environmental degradation that attends decades of oil exploration in the area. Groups like The Movement for the Survival of the Ogoni People (MOSOP), Ijaw Youth Congress (IYC), Movement for the Emancipation of the Niger Delta (MEND), The Niger Delta Vigilante Force (NDVF), The Niger Delta People's Volunteer Force (NDPVF) started to carry out deadly attacks on oil and gas facilities. They also started to attack Nigerian Naval officers, oil company staff, killing some and leaving others badly injured. In addition, they carried out operations which resulted in hostage taking/kidnapping, raping, oil theft, piracy, assassination and perhaps, bombing, as was alleged about the October 1, 2010, incident at Eagle Square, Abuja.¹⁵ With the introduction of an amnesty programme appealing for the repentance and surrender of militants, much of the economic sabotage and violence crimes against the state fizzled out but have emerged in other forms like cultism and gang wars. Cult groups¹⁶ now perpetrate crimes that include the harassment of ordinary citizens, rape, burglary, robbery. They are also involved in vandalism, oil bunkering as well as piracy.¹⁷

South-west: Self-determination and other agitations

Besides the armed groups named above, there are also ethnic militias operating in different parts of the country especially the south-south and south-west regions. The South-West's determination to take charge of their own economic independence and regional security to curtail the deadly invasion and land encroachments by herdsman is igniting fresh demands for secession. The secession campaigns led by Chief Sunday Igboho's Yoruba Nation group for the creation of a Yoruba nation out of Nigeria heightened as criminal herders moved into the hinterlands in Oyo, Ondo, Ekiti and Ogun States killing people, raping women, and setting communities on fire. Herders are hardly ever arrested and punished for these violent crimes, raising concerns that Nigerian security forces are handling the herder-induced conflicts with kid gloves.

Security-based Restrictions on the Civic Space in Nigeria

Combating the mounting insecurity in different parts of the country necessitated the introduction of numerous security and counter-terrorism (CT) initiatives such as the National Counter-terrorism Strategy (NACTEST), the National Action Plan for Preventing and Countering Violent Extremism (PCVE) policy 2017, the Counterterrorism Center (CTC) and the deradicalization, rehabilitation, and reintegration (DRR) programs. Because most of these security initiatives draw inspiration from abroad, local implementation is fraught with numerous challenges and tensions, fueling calls for reforms.

It is within the context of insecurity that civic actors in Nigeria operate, carrying on different types of good works. In Nigeria alone, over 90,000 non-profit entities either registered as incorporated trustees or companies limited by guarantee form a very important part of civil

¹⁵ Obi, Callistar, Challenges of Insecurity and Terrorism in Nigeria: Implication for National Development (February 28, 2015). OIDA International Journal of Sustainable Development, Vol. 08, No. 02, pp. 11-18, 2015, Available at SSRN: <https://ssrn.com/abstract=2586395>

¹⁶ Jamestown Wellington, The Jamestown Foundation, Nigeria's Cults and their Role in the Niger Delta Insurgency; Accessed via <https://jamestown.org/program/nigerias-cults-and-their-role-in-the-niger-delta-insurgency/>

¹⁷ <https://issuu.com/fundforpeace/docs/cungr1215-unlock-nigeria-12e>

society sector, with their activities reaching millions of people, particularly in the areas of education, health, security, agriculture, policy formulation, democracy, governance, gender, public rights advocacy, and so forth. These civic actors are further organized along the lines of professional associations, trade unions, registered organizations, social movements and individual activists operating online or offline, campaigning against impunity, bad governance, demanding accountability for widespread injustices while mounting pressure on federal and state authorities to address mounting insecurity and other issues of public concern.

State actors are pushing back, especially as the advancements in digital technologies have expanded the spaces for civic engagement, amplifying the agitations of civic actors and reaching wider audiences at great speed and less cost. Official intolerance for criticism and dissent has particularly forced citizens, especially ethnic agitators, religious groups and young people to explore alternative platforms and strategies to express their grievances. The use of highhanded and militarized solutions to IPOB's self-determination agitations in the South-East and the #EndSARS protest of October 2020 illuminate how the state is using its power to crush demonstrators and stifle organized dissent under the guise of national security or preserving national unity. Too many governmental restrictions linked to the enforcement of security measures have considerably narrowed the civic space in the country, while disrupting the continuous functionality and capacity of local organizations to organize and assemble freely. The cumulation of these contractions formed the basis for CIVICUS's rankings which downgraded Nigeria from '**obstructed**' to '**repressed**' in its *People Power Under Attack 2019 report*.¹⁸

The findings build evidence of government's accelerated use of a security playbook to stifle dissent in the name of counterterrorism, and deepen understanding of the unintended consequences of global security measures in Nigeria.

18 CIVICUS, *People Power Under Attack*, December 2019. Please see <https://civicus.contentfiles.net/media/assets/file/GlobalReport2019.pdf>



CHAPTER ONE

GLOBAL CONTEXT OF COUNTER-TERRORISM REGULATION



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1.1. UNIVERSALISM OF COUNTER-TERRORISM NORMS

Although terrorism had long been an international problem,¹⁹ it took the centre stage after the September 11, 2001 attacks on Twin Towers and the Pentagon in the United States soil orchestrated by the Al Qaeda terrorist group, prompting swift global responses and the crystallization of international norms on counter terrorism. Ever since, the war against terror has been accorded high priority on the world's list of cross-border organized crimes such as narcotics, money laundering and illicit arms trafficking. Accordingly, terrorism is widely considered as a global problem requiring every nation state and territory to support and commit to waging war against terrorists. As a threat to the comity of nations, there are certain rules, policies, principles and measures to combat terrorism that are applicable to every country and persons, irrespective of their origins, colour and race. Countries are expected to adopt or comply with these universal norms despite their status as independent sovereigns having the autonomy to legislate for their respective territories.

As with other cross-border criminal activities,²⁰ rulemaking on terrorism adopts a top-down approach. Norms developed at the international level are passed down for compliance by states. Compliance often requires states to make laws and establish institutions that enforce international norms within their territories. While states are allowed to develop their own rules and regulations against terrorism, whatever norms that exist within states are viewed as

¹⁹ See Mike Smith "Securing our Future: A Decade of Counter-terrorism Strategies". Available at <https://www.un.org/en/chronicle/article/securing-our-future-decade-counter-terrorism-strategies>, accessed 26 September 2021

²⁰ Such as war on narcotics, money laundering and illicit arms trafficking

complementary to the international norms. The universalist posture of international counterterrorism (CT) norms flows from the assumption that the standards in question, and the countries to which they apply, are intrinsically “good”. A universalist posturing overlooks the disparate nuances and realities across jurisdictions that cause uniform rules to produce different consequences in diverse contexts. For example, a law that vests the police with broad powers may not pose a problem in a country with strong institutions and independent judiciary but will likely be abused by authorities in another country with weak institutions and otiose judiciary. There is also a third possibility that countries can use compliance with international norms as an excuse to conceal the real intentions behind overly restrictive laws, policies and countermeasures. This has been referred to as “policy laundering”.²¹²²

1.2. INTERNATIONAL NORM-FORMING ENTITIES

The United Nations Security Council sits atop the list of international institution whose resolutions are legally binding on countries.²³ However, since September 11, 2001, there has been a proliferation of new institutions, many with selective membership whose regulatory scope is increasing and expanding and whose standards (usually in the form of “soft law”)²⁴ are often binding on other states and crystallise into hard law.²⁵ While soft laws are not legally binding in international law, CT soft laws have morphed into binding obligations in the national context on states not even parties to the making of such rules. Any bid by countries to insulate themselves from these norms may attract isolation from the international political and financial systems controlled by the originators of the CT norms.

Another way soft laws crystallise into binding hard law is through adoption by the UNSC in its resolutions. In fact, certain principles in UNSC resolutions or procedures originated from soft law forming entities such as Financial Action Task Force (FATF) and the Global Counter-Terrorism Forum (GCTF).²⁶ Although these groups are not representative of the membership of the UN, and do not have concrete commitments to human rights, their principles and normative standards take binding forms when included in UNSC resolutions.²⁷

International CT norm-forming entities are broadly classified into four categories: (a) state actors (b) intergovernmental organizations such as the United Nations, African Union, Economic Community of West African States (ECOWAS); (c) financial, trade and customs organisations; and (d) informal forums of states²⁸ of which we will focus on the Financial Action Task Force (FATF) and the Global Counter Terrorism Forum.

1.2.1. State Actors

Some countries make rules that have cross-border application based on their relative international economic and strategic importance. 'State actors' therefore refers to powerful and influential countries that are able to enforce or procure the enforcement of their laws and policies in foreign jurisdictions through the use or threat of force and economic sanctions, or through the regulation of their financial systems in a way that compels foreign sovereign entities to comply with those laws. For instance, the USA has successfully enforced its laws abroad through several means including its broad sanctions programme – sanctions criminalising doing business with

²¹ See Ben Hayes “Counter-Terrorism, “Policy Laundering,” and the FATF: Legalizing Surveillance, Regulating Civil Society”. Available at <http://www.statewatch.org/analyses/no-171-fafp-report.pdf>, accessed 26 September 2021

²² Ibid.

In addition to the UNSC resolutions, countries are bound by CT treaties which they have signed

²³ Fionnuala Ní Aoláin “Promotion and protection of human rights and fundamental freedoms while countering terrorism”.

²⁴ Available at <https://undocs.org/A/74/335>, accessed 26 September 2021. “Soft law” has been defined as those international norms, principles and procedures that are outside the formal sources applied by the International Court of Justice and lack the requisite degree of normative content to create enforceable rights and obligations but are still able to produce certain legal effects. Ibid.

²⁵ Ibid.

²⁶ Ibid., p. 11

²⁷ As will be seen later in this research, in one of its resolutions, the UNSC calls on members to abide by FATF Recommendations

These forums are informal partnerships between influential states which do not have the structures of international

²⁸ organisations and formal paraphernalia like secretariats, treaties, etc. Such forums include the FATF and the GCTF.

²⁹ The US elaborate sanction program is administered by the Office of Foreign Assets Control of the US Treasury. See <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>

certain countries which they expect other countries or entities to respect or risk access to the US financial system. Other sanctions take the form of arms embargoes, foreign assistance reductions and cut-offs, export and import limitations, asset freezes, tariff increases, revocation of most favored nation (MFN) trade status, negative votes in international financial institutions, withdrawal of diplomatic relations, visa denials, cancellation of air links, and prohibitions on credit, financing, and investment.³⁰ The USA also assumes universal jurisdiction on issues which pose threats to its national security and can go into other countries to address threats of terrorism against the USA.

Recognising that the use of sanctions is contested sensitive, and complex, powerful countries are resorting to a range of foreign policy and diplomatic tools, in place of sanctions to tackle corruption and human rights abuses more effectively. For example, there is a trend among sanctioning states (e.g. US, Canada, UK) towards using the more targeted 'Magnitsky sanctions' which enable them to impose sanctions on named individuals rather than entire countries or sectors, thereby avoiding broad-based sanctions that can affect entire vulnerable populations. There is a positive argument for using these more targeted Magnitsky-style sanctions in the tools to address rights abuses and abusers, and organisations are calling for them to be applied to leaders and officials who oversee gross crackdowns on / abuses of civic space.

In addition to the USA, the European Union is another important sanctioning entity. These sanctions compel targeted countries to make changes to their local laws and institutions to avoid the costs of economic sanctions. Blacklisting is also another strategy for compelling compliance by flagging the target jurisdiction as risky which affects their relationships with other states.³¹ Beyond sanctions, wealthy states also enforce CT principles on their aid recipients who must comply or forego their economic assistance programs. As a recipient of international aid, Nigeria is exposed to the whims and vagaries of donor countries and institutions.

Acting individually, these governments are already powerful, but acting together, they are insurmountable. The various groups of powerful governments—the G-20s, G-8s, G-7s, etc.—come together to take decisions that influence policy directions across the political and business worlds and have the means to compel compliance from the rest of the world. The outcome is an international agenda skewed in the favour of powerful countries and structured to achieve their political and economic objectives. Established in 1989, by a Group of Seven (G7) Summit,³² the FATF, is the most important AML/CFT watchdog globally. The body is a notable outcome of coalitions of powerful governments. Even without being compelled, less powerful states often model their laws after those applied in powerful countries as best practice benchmarks.

1.2.2. International Political Organizations

A day after the September 11 attacks in the United States, the United Nations Security Council (UNSC) passed Resolution 1368 (2001) condemning “in the strongest terms, the horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington, D.C. and Pennsylvania and regards such acts, like any act of international terrorism, as a threat to

³⁰ Richard N. Haass, Brookings, Economic Sanctions: Too Much of a Bad Thing (1998) Accessed via <https://www.brookings.edu/research/economic-sanctions-too-much-of-a-bad-thing/>

³¹ The Guardian Nigeria News “Nigeria, EU, money laundering and terror financing.” Available at <https://guardian.ng/opinion/nigeria-eu-money-laundering-and-terror-financing/>, accessed 26 September 2021.

³² History of the FATF: <https://www.fatf-gafi.org/about/historyofthefatf/>

international peace and security". It called "on the international community to redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions"; and expresses its readiness to "take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations."

Subsequently, the UNSC passed Resolution 1373³³ on 28 September 2001 setting out specific obligations of states to prevent and suppress financing of terrorism, criminalise the willful provision and collection of funds for terrorist activities, freeze funds and assets linked to terrorism, and prohibit making funds available for the benefit of persons or entities who commit or attempt to commit or facilitate or participate in the commission of terrorist acts. Resolution 1373 is considered as the bedrock of CT legislation in the world having been made pursuant to the UNSC's powers under Chapter VII of the UN Charter which empowers the Security Council to make binding resolutions on matters related to international peace and security. Resolution 1373 paved the way for the proliferation of security and CT legislation and policies by complying States. It also established the Counter Terrorism Committee (CTC) which is charged with monitoring the provisions of the resolution. The CTC, alongside the United Nations Office of Counter Terrorism (UNOCT) and Counter-Terrorism Committee Executive Directorate (CTED) are key bodies responsible for the outreach, implementation and monitoring of member states' compliance with UN resolutions on counter terrorism.

Regional CT norms have also been developed in the context of the African Union, the Council of Europe, the European Union, the League of Arab States, the Organization for Security and Co-operation in Europe, the Organization of American States, the Organization of the Islamic Conference, the South Asian Association for Regional Cooperation and other organizations.³⁴

1.2.3. Financial, Trade and Customs International Organisations

Financial, trade and customs organisations regulate economic cooperation among its members and clients as a condition for enjoying the benefits of membership. By way of illustration, the Organization for Economic Corporation and Development's (OECD's) Guidelines are legally non-binding, but adherent countries are encouraged to implement them. Similarly, Bretton Woods institutions like the World Bank and the IMF include counter-terrorism related conditions in funding agreements with developing countries benefitting from their financing, policy advice, and technical assistance.

1.2.4. Financial Action Task Force and the Global Counter Terrorism Forum

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.³⁵ The task force was formed with 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. In 1990 FATF adopted 40 detailed recommendations to that effect.³⁶

³³ See UN Security Council https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf

³⁴ Office of the United Nations High Commissioner for Human Rights "Human Rights, Terrorism and Counter-terrorism." Available at <https://www.un.org/ruleoflaw/files/Factsheet32EN.pdf>, accessed 26 September 2021

³⁵ Spaces for Change "Closing Spaces for Democratic Engagement and Civil Society in Nigeria". Available at <https://spacesforchange.org/wp-content/uploads/2017/06/Beyond-FATF-Trends-Risks-and-Restrictive-Regulation-of-Non-Profit-Organisations-in-Nigeria.pdf>, accessed 26 September 2021, pp. 22-23.

³⁶ Ibid.

The first forty recommendations adopted in 1989 purely targeted money laundering activities, but all that changed just 6 (six) weeks after the September 11 terrorist attacks on the United States. These attacks propelled the expansion of the FATF's focus to include the development of 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, with one of them specifically targeting non-profit organizations. In October 2004, another special recommendation was added to bring the special recommendations to nine and the total FATF recommendations to forty-nine (49).

Taken together, FATF's 40+9 recommendations and compliance mechanisms represent a comprehensive set of anti-money laundering and countering the financing of terrorism 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 its mandate."³⁷ Membership of FATF is selective, and the core of its membership are 30-something of the world's most powerful economies. Non-members of the FATF may however join FATF-styled regional bodies (FSRBs) but do not by the virtue of that regional membership participate in the formulation of FATF standards. Expressing similar sentiments about a small group of powerful countries imposing global agenda with no clear legitimacy and wielding sticks for noncompliance, a UN Special Rapporteur stated that:

FATF standards are universally enforced rules that are "effectively imposed by a rather small core group of States representing the globe's most advanced economies. The weight of financial and economic power underpinning the (technically) legally non-binding set of standards means that following the direction set by the FATF is not merely optional for States with lower levels of financial and economic development. Such circumstances inevitably raise concerns related to state sovereignty and legitimacy of regulatory processes."³⁸

FATF has a powerful approach to ensure enforcement of its nonbinding standards. FATF can gray list countries or give ratings of a country which affect its ability to get international loans or 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.³⁹ Furthermore, many international organizations such as the Organisation for Economic Co-operation and Development (OECD), World Bank and the International Monetary Fund (IMF) have adopted FATF's recommendation as the benchmark for assessing donee countries' compliance level with anti-money laundering and countering financing of terrorism (AML/CFT) standards. FATF outcomes may have far-reaching effects on the willingness of global lending institutions to extend financial assistance to countries that require support.

Numerous interventions of the United Nations and other international organizations lend credence to FATF. A recent resolution of the UN Security Council "strongly urges all States to implement the comprehensive international standards embodied in the revised Forty FATF Recommendations on Combating Money Laundering, and the Financing of Terrorism and

³⁷ Ibid.

³⁸ Fionnuala Ní Aoláin "Promotion and protection of human rights and fundamental freedoms while countering terrorism". Available at <https://undocs.org/A/74/335>, accessed 26 September 2021, p. 17

³⁹ Ibid.

Proliferation and its interpretive notes”.⁴⁰ Arguably, that specific call by the Security Council to comply with the FATF’s recommendations elevates the Taskforce’s Standards to the level of binding international law.

- **Global Counter Terrorism Forum (GCTF)**

Unlike the FATF famed for its selective membership and domination by the world’s most powerful countries, the Global Counter Terrorism Forum (GCTF) is an informal, inclusive, multilateral counterterrorism platform, deploying consensus-based strategies to prevent, combat, and prosecute terrorist acts and thwart recruitment to terrorism. The Forum offers a platform for policymakers and practitioners from around the world to share experiences and expertise, and to develop practical, publicly available tools and strategies on how to prevent and counter the evolving terrorist threat.⁴¹ Nigeria is a founding member of the GCTF alongside countries like Algeria, Australia, Canada, China, Colombia, Denmark, Egypt, the European Union, France, Germany, India, Indonesia, Italy, Japan, Jordan, Morocco, The Netherlands, New Zealand, Nigeria, Pakistan, Qatar, Russia, Saudi Arabia, South Africa, Spain, Switzerland, Turkey, the United Arab Emirates, the United Kingdom and the United States. The African Union, which Nigeria is also a key member, participates actively in GCTF activities.

Among other things, the GCTF is responsible for addressing the “foreign terrorist fighters” problem, supporting victims of terrorism, taking action against kidnapping for ransom and other sources of terrorism funding, supporting multi-sectoral approaches to countering violent extremism, including community engagement and community-oriented policing and so forth.⁴² Recognizing the protracted hostilities between farmers and herders and other organized criminal activities in the northern and middle-belt regions of Nigeria as a major driver of recruitment and radicalisation to violent extremism, GCTF Inspired Institutions like the Global Community Engagement and Resilience Fund (GCERF), has provided funding support to community initiatives in Nigeria focusing on conflict resolution and prevention of violent extremism.

Conclusion

As we have seen, international norm-forming entities abound, dictating standards, guidelines and measures states should follow to counter terrorism. Despite the litany of resolutions passed, norms articulated, and the plethora of enforcement mechanisms created, there is still no clear definition of the term, terrorism. Instead, member states have the discretion to define terrorism as they please. As we shall see in this report, the way national governments—like Nigeria—have defined terrorism and enforced the countermeasures have had grave implications on human rights and civic freedoms.

⁴⁰ UNSC Resolution 2462 (2019). Available at [https://undocs.org/S/RES/2462\(2019\)](https://undocs.org/S/RES/2462(2019)), accessed 26 September 2021

⁴¹ <https://www.thegctf.org/>

⁴² International Center for Counter Terrorism, ICCT Hosts Administrative Unit of Global Counterterrorism Forum, <https://icct.nl/update/icct-hosts-administrative-unit-of-global-counterterrorism-forum/>



CHAPTER TWO

INFLUENCE OF UNIVERSAL CT NORMS IN NIGERIA



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A very clear connection exists between international CT norms and Nigeria's legal regimes on anti-money laundering and countering the financing of terrorism (AML/CFT). Most of the existing policy and legislative responses to combat terrorism in Nigeria derive inspiration from the country's bid to extricate itself from the consequences of non-compliance with international CT, AML/CFT standards. There are five major ways through which universal CT norms influence national counterterrorism measures. They include compliance/regulatory actions, establishment of complementary structures, copycat-ism and lastly, domestication or adaptation of international legislative initiatives and transborder influences.

As we shall see below, the contractions on the civic space flow directly from the influence of international norms in grounding of the narrative of securitization and CT in national policy. The localization of global security initiatives provides legal impetus for the expansion of domestic normative framework and the creation of new domestic architecture of CT related bodies modelled after the international ones. Ultimately, the expansion of state power and the proliferation of institutions with limited mechanisms for oversight are prone to abuse and have been detrimental to human rights and civil society space. Below, this paper x-rays how the spread and multiplication of global narrative norms and structures have devastating effect for national societies.

2.1. Compliance/Regulatory actions

The first notable regulatory action against Nigeria was recorded in 2002 when FATF included Nigeria in its list of non-cooperative countries and territories (NCCT) prompting the enactment of the Money Laundering (Prohibition) Act 2004 and the Economic and Financial Crimes Commission (Establishment) Act.⁴³ These legislative measures culminated in the removal of the country from the NCCT list.

In October 2009, the FATF conducted a preliminary review of the Nigerian AML/CFT regime and identified some strategic deficiencies. The action plan that was developed with the FATF to address those deficiencies included specific actions in five areas, namely:

- (a) Criminalize Terrorist Financing (TF) in accordance with the FATF Standards and relevant Conventions
- (b) Implement the UNSCRs 1267⁴⁴ and 1373 through law, regulations or other necessary measures, and ensure that there are appropriate procedures to freeze, seize and confiscate terrorist funds
- (c) Establish whether the current money laundering legislation captures all the required predicate offences, and make any necessary amendments to the AML legislation
- (d) Ensure that the requirements of FATF Recommendation 5⁴⁵ have been set out appropriately in law or regulation and other enforceable means, and that they apply to all financial institutions covered by the FATF definition; and
- (e) Clarify the respective AML/CFT responsibilities of the NFIU and the three financial services supervisory bodies (the CBN, the SEC and NAICOM), and demonstrate that they are undertaking effective AML/CFT supervision across the financial sector.⁴⁶

In 2011, Nigeria was once again on the radar of FATF when the country was included in FATF's list of "jurisdictions with strategic AML/CFT deficiencies that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies." Consequently, FATF called on its members to consider the risks arising from the deficiencies associated with the said jurisdictions.⁴⁷ Efforts to extricate the country from this list led to the 2012 amendment to the Money Laundering (Prohibition) Act and the 2013 amendment to the Terrorism (Prevention) Act. In a public statement dated 18 October 2013, FATF removed Nigeria from the list of countries identified as jurisdictions with significant deficiencies in their AML/CFT regimes.⁴⁸

Another major international regulatory action that propelled changes to the Nigerian AML/CFT landscape is the suspension of Nigeria from the Egmont Group⁵⁰ in 2017 "following repeated failures on the part of the Nigerian Financial Intelligence Unit (NFIU) to address concerns regarding the protection of confidential information, specifically related to the status of suspicious transaction report (STR) details and information derived from international exchanges, as well as concerns on the legal basis and clarity of the NFIU's independence from the Economic and Financial Crimes Commission (EFCC)."⁵¹ Again, this led to the enactment of the

43 Babajide Komolafe "Inside NFIU and the new regime stopping states from messing with local govt funds." Available at <https://www.vanguardngr.com/2019/05/inside-nfiu-and-the-new-regime-stopping-states-from-messing-with-local-govt-funds/>, accessed 26 September 2021

44 This resolution requires all states to implement an asset freeze; travel ban; and an arms embargo against individuals, groups, and entities subject to sanctions, as identified by the "Consolidated List." United Nations Security Council [https://undocs.org/S/RES/1267\(1999\)](https://undocs.org/S/RES/1267(1999)).

45 FATF Recommendation 5 provides measures to assist countries in fulfilling the legal requirements of the International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention), and relevant United Nations Security Council Resolutions.

46 GIABA "Nigeria Exits FATF Global Compliance Monitoring List; Sao Tome and Principe Handed Over to GIABA." Available at https://www.giaba.org/media/f/624_Press, accessed 26 September 2021

47 FATF Public Statement - 28 October 2011. Available at <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/fatfpublicstatement-28october2011.html>, accessed 26 September 2021

48 GIABA "6th Follow up Report on the Mutual Evaluation of Nigeria." Available at https://www.giaba.org/media/f/838_6th%20FUR%20Nigeria%20-%20English.pdf, accessed 26 September 2021

49 GIABA "Nigeria Exits FATF Global Compliance Monitoring List; Sao Tome and Principe Handed Over to GIABA." Available at https://www.giaba.org/media/f/624_Press, accessed 26 September 2021

50 The Egmont Group is a united body of 167 Financial Intelligence Units (FIUs). The Egmont Group provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing. See <https://egmontgroup.org/content/about>

51 See Egmont Group "Co-Chairs' Statement - 24th Plenary of the Egmont Group of Financial Intelligence Units." Available at <https://www.egmontgroup.org/en/content/co-chairs%20%80%99-statement-24th-plenary-egmont-group-financial-intelligence-units>, accessed 26 September 2021

enactment of the Nigerian Financial Intelligence Unit Act 2018 to establish the NFIU as a separate unit from EFCC.⁵²

Another interesting evidence of international influence on Nigeria's AML/CFT regulation is the link between the FATF's Guidance on Virtual Assets⁵³ and the current ban on crypto currency trading in Nigeria. The FATF defines a "virtual asset" or VA as a "digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes" The guidance notes the potentially heightened AML/CFT risks that peer-to-peer (P2P) transactions (transfers to and from "unhosted wallets") pose. Shortly thereafter, the Central Bank of Nigeria (CBN) prohibited financial institutions to stop facilitating crypto transactions and desist from transacting with entities engaging in crypto.

2.2. Establishment of complementary structures

Jurisdictions are required to implement the international initiatives at the national level by putting in place appropriate legal and institutional frameworks, Jurisdictions are required to implement the international initiatives at the national level by putting in place appropriate legal and institutional frameworks, Jurisdictions are required to implement counterparts of international initiatives at the national level. Accordingly, Nigeria's CT infrastructure complements structures set up by or envisaged by international organisations. The Counter Terrorism Centre (Nigerian CTC) established pursuant to the Terrorism Prevention Act anchors the country's CT strategies by providing guidance to security, law enforcement and intelligence agencies. The CTC as well as its strategies not only mirror the country's obligations to the UN but also domesticates the United Nations CT programmes through the National Counter-terrorism Strategy and the Preventing and Countering Violent Extremism Policy Framework and National Action Plan.⁵⁴ According to the Nigerian CTC, its relationships with relevant partners transcend state actor include donor agencies and international counterterrorism platforms like the Global Counter Terrorism Forum and its inspired institutions such as the Global Community Engagement and Resilience Fund, Hedayah (based in Abu Dhabi) and the United Nations.⁵⁵

2.3. Copycat-ism

Copycatism simply refers to the habit of imitating the regulatory behavior and practices of other countries with minimal or no adaptation to the local context. Nigeria has increased its surveillance operations and infrastructure, copying from major world economies who have intensified their surveillance programmes, driven by the same CT narratives that are rooted in the notion that human rights are not absolute. Lately, Nigeria has scaled up its investments in surveillance technologies,⁵⁶ ostensibly imitating the elaborate surveillance programmes in countries like the United States,⁵⁷ the United Kingdom,⁵⁸ China⁵⁹ and Russia.⁶⁰ Suppressing terrorism is the official justification advanced for the heightened surveillance agendas.⁶¹

Inspired by repressive laws copied from Singapore, Nigeria has used national security as an excuse to initiate legislative proposals designed to curtail internet freedoms, arguing that such legislations will help to draw a line between protecting national security and the freedom of

52 The Guardian Nigeria News "Nigeria back as an active member of Egmont Group." Available at <https://guardian.ng/news/nigeria-back-active-member-of-egmont-group/>, accessed 26 September 2021

53 FATF Guidance for a Risk-Based Approach to Virtual Currencies. Available at <https://www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-VA-VASPs.pdf>, accessed 26 September 2021 See <https://ctc.gov.ng/about-ctc/>, accessed 26 September 2021

54 *Ibid.*

55 —Nigeria, Kenya use Israeli surveillance tool to listen to calls Quartz Africa (qz.com); Nigerian govt moves to control media, allocates N4.8bn to monitor WhatsApp, phone calls (premiumtimesng.com)

56 America spying on its citizens Surveillance of Citizens by Government - The New York Times (nytimes.com) Surveillance - All you need to know - Politics.co.uk

57 Xxx 'A Surveillance Net Blankets Chinas Cities, Giving Police Vast Powers - The New York Times (nytimes.com); What China's Surveillance Means for the

58 Rest of the World | Time: How China harnesses data fusion to make sense of surveillance data (brookings.edu)

59 Russia is growing its surveillance state but not everyone is monitored equally - The Washington Post; Moscow Silently Expands Surveillance of Citizens |

60 Human Rights Watch (hrw.org)

61 See Action Group on Free Civic Space, Security Playbook of Digital Authoritarianism in Nigeria (December 2021); www.closingpaces.org

expression online.⁶² The Protection from Internet Falsehoods, Manipulations and Other Related Matters Bill, 2019 (popularly known as the Social Media Bill). The Social Media Bill was plagiarized from Singapore, a country that ranks lower than Nigeria on press freedoms. Another notorious example of security-linked copy and paste legislative framework is Nigeria's Infectious Diseases Bill which was copied from Singapore.⁶³

2.4. Domestication or adaptation of international legislative initiatives

Between 2001 and 2018, at least 140 governments adopted counter-terrorism legislations and other administrative measures often defended by reference to new or perceived threats, or simply to comply with new international requirements.⁶⁴ Presently, the legal, institutional, and operational frameworks for combating terrorism and financing of terrorism in Nigeria are inspired or adapted from those that exist at the international CT levels. In fact, every CT legislation or countermeasures in Nigeria derives inspiration from specific international CT norms and standards. From the National Counter-terrorism Strategy (NACTEST) to the Money Laundering (Prohibition) Act 2004, currently 2011 ML (Prohibition) Act to the Terrorism Prevention Act (TPA) Act in 2011 (as amended) to the Cybercrime laws up to the banking regulations, all their provisions are modelled after those laid down in international CT standards. Apart from legal CT initiatives, the institutional mechanisms for enforcing the numerous CT laws and policies also follow a similar trajectory. 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'. Similarly, a statement on Nigeria Financial Intelligence Unit (NFIU) website acknowledges that, NFIU was established in fulfillment of the requirement of FATF,⁶⁵ 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 Economic and Financial Crimes Commission (EFCC) Act, it draws its responsibilities directly from the 40+9 Special Recommendations of the FATF. The above official rationales for the establishment of these two federal agencies demonstrate how international CT norms trickle down to the local context in the form of legal and institutional CT mechanisms adapted from their foreign counterparts.

2.5. Transborder political influences of powerful countries

A comparative study of state practices evinces that the stances of powerful economies, and their interpretation of the international counterterrorism (CT) framework, influence the practices obtained in less powerful countries. Nigeria has for the most part, either retained very repressive post-colonial legislations or modelled new laws after those in the United Kingdom. Nigerian courts continue to apply English laws decisions after half a century of their independence from England. In interpreting Nigerian laws, the Nigerian judiciary are also known to follow judicial precedents from the courts in England.

Even beyond direct colonial ties, simple imitation and global interconnections motivate countries like Nigeria to copy and paste laws and practices from other countries, which they consider as significant or a strategic ally. A notorious example of copy and paste practices

62 Vanguard, Anti-social Media Bill: Senator defends alleged Plagiarism of Singapore Statute (2019) Accessed via <https://www.vanguardngr.com/2019/11/anti-social-media-bill-senator-defends-alleged-plagiarism-of-singapore-statute/>

63. [Nigeria copies and pastes new laws from Singapore | World | The Times](https://www.thetimes.com/travel/article/nigeria-copies-and-pastes-new-laws-from-singapore-world-the-times)

64. Fionnuala Ni Aoláin "Promotion and protection of human rights and fundamental freedoms while countering terrorism". Available at <https://undocs.org/A/74/335>, accessed 26 September 2021, p. 3

65 SPACES FOR CHANGE, Beyond FATF: Trends, Risks and Restrictive Regulation of Non-Profit Organizations in Nigeria, May 2017, Accessed via <https://spacesforchange.org/wp-content/uploads/2017/06/Beyond-FATF-Trends-Risks-and-Restrictive-Regulation-of-Non-Profit-Organisations-in-Nigeria.pdf>

include Nigeria's Infectious Diseases Bill which was copied from Singapore.⁶⁶ This legislative measure introduced during the Covid-19 pandemic is exemplary of how states characterized a health emergency as a security threat, using that framing to attempt to introduce excessive emergency powers that undermine civic space and human rights.

A report rightly observed that:⁶⁷

Antidemocratic African governments are not only copying or drawing inspiration and succor from one another, but may also be finding comfort in the shadow of illiberalism cast by major actors on the global stage. The report finds some evidence of learning and support among governments. This includes public declarations by legislators and government officials who defend their anti-NGO actions by referencing measures undertaken elsewhere on the continent and beyond. Evidence can also be found in legal texts that use language similar to foreign laws, and in demarches by governments in search of support from other governments. Despite such evidence of transmission, however, it is uncertain whether it is the result of active efforts to disseminate “worst practices” or simple imitation.⁶⁸

Buzzwords like “International Best Practices” or “international standards” are commonplace justifications for the importation of foreign norms into local policy development. State agents have used this mantra without a clear identification and understanding of the source of the imported best practice. Excerpts from the National Security Strategy states that “in furtherance of this strategy, the national objectives will be to monitor and enforce the implementation of the legislative frameworks regulating cybersecurity in Nigeria in line with international standards and best practices.”⁶⁹ This may mean that Nigeria is open to borrowing from what is obtainable in several other jurisdictions, as it has indeed done with regards to surveillance.⁷⁰

⁶⁶ [Nigeria copies and pastes new laws from Singapore | World | The Times](#)

⁶⁷ [Nigeria copies and pastes new laws from Singapore | World | The Times](#)

⁶⁸ [05132019_UPDATED_FINAL_Africa_Special_Brief_Freedoms_Under_Threat.pdf \(freedomhouse.org\) p. 3-4](#)

⁶⁹ [ONSA-UPDATED.pdf \(ctc.gov.ng\) p.25](#)

⁷⁰ —Nigeria, Kenya use Israeli surveillance tool to listen to calls Quartz Africa (qz.com); Nigerian govt moves to control media, allocates N4.8bn to monitor WhatsApp, phone calls (premiumtimesng.com)

CHAPTER THREE

LEGISLATIVE AND INSTITUTIONAL CT INITIATIVES AND THEIR (MIS)APPLICATION IN NIGERIA



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A clear nexus exists between international CT norms and Nigeria's CT legal regimes. As was stated in the previous chapter, nearly all CT legislations and policy-based countermeasures in Nigeria originate from specific international CT norms and standards. The table below traces the origin of the extant policy and legislative measures to counter money laundering and terrorism financing in Nigeria:

Nigerian AML/CFT Regimes and their Origins

Nigerian Law	Underpinning/Supporting International Documents
Nigerian Drug Law Enforcement Agency (NDLEA) Act	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (the Vienna Convention) ⁷¹
Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994	The Vienna Convention ⁷²
Advanced Fee Fraud and other Fraud Related Offences Act 1995	The Vienna Convention ⁷³
Money Laundering Act 1995	The Vienna Convention ⁷⁴
Money Laundering (Prohibition) Act 2003	The Vienna Convention; United Nations Convention Against Transnational Organized Crime 2000 (the Palermo Convention)

⁷¹ Section 3(1)(m) of NDLEA Act

⁷² Joseph O Sanusi "Central Bank of Nigeria's standpoint of anti-money laundering compliance." Available at <https://www.bis.org/review/r030606c.pdf>, accessed 26 September 2021, p.2

⁷³ Ibid

⁷⁴ Ibid

Money Laundering (Prohibition) Act 2004, replaced by Money Laundering (Prohibition) Act 2011 as amended in 2012 **FATF Recommendations**

SCUML Regulations	FATF Recommendations
CBN AML/CFT Regulation 2013	FATF Recommendations
Economic and Financial Crimes Act 2004 as amended in 2014	FATF Recommendations
Terrorism (Prevention) Act 2011, as amended in 2013	FATF Recommendations, UNSC Resolution 1373
Terrorism Prevention (Freezing of International Terrorists Funds and other Related Measures) Regulations 2011	FATF Recommendations, United Nations Security Council Resolutions
Nigerian Financial Intelligence Unit Act 2018	FATF Recommendations; The Egmont Group requirement
The Cybercrimes (Prohibition, Prevention) Act	The Budapest Convention; ⁷⁵ African Union Convention on Cyber Security and Personal Data Protection
National Counter Terrorism Strategy	The UN Global Counter Terrorism Strategy adopted by UNGA on September 8, 2006
Ban on cryptocurrency	FATF Guidance on Virtual assets
Surveillance Programme	FATF Recommendations; FATF Guidance on Digital Identity; GIABA Assessment of Counter Terrorist Financing Capacities in West Africa; UNSC Resolution 1373

The table above demonstrates how the implementation of international CT norms influences the content and direction of AML/CFT policy and legislative responses in national spheres. While many global and regional documents have influenced the development and content of national legislative initiatives, evidence and research has focused on application of FATF and the UN Global Counterterrorism Strategy (GCTS). The recommendations and guidance documents of the FATF Standards on AML/CFT and the GCTS specifically informed the following legislative, regulatory and institutional mechanisms which we shall discuss below:

- Passage of the Money Laundering (Prohibition) Act 2004, currently 2011 ML (Prohibition) Act
- Enactment of the Terrorism Prevention Act (TPA) Act in 2011, and amended establishment of the Special Control Unit against Money Laundering
- The establishment of the Nigerian Financial Intelligence Unit (NFIU)
- Central Bank of Nigeria Anti-Money Laundering/Combating the Financing of Terrorism Regulations, 2013 (“CBN CT Regulation”)
- National Risk Assessment (2016)
- Nigerian FIU Trends and Typology report (2013)
- Companies and Allied Matters Act (CAMA) 2020
- National Counter-terrorism Strategy (NACTEST) and the Policy Framework and
- National Action Plan for Preventing and Countering Violent Extremism (PCVE),

⁷⁵ The Citizen Lab “Paradigm Initiative Nigeria and the Economic Cost of Cybercrime.” Available at <https://citizenlab.ca/2013/09/paradigm-initiative-nigeria-and-the-economic-cost-of-cybercrime/>, accessed 26 September 2021

As we have seen above, national legislative initiatives to combat terrorism are deeply rooted in the FATF Standards and the UN Global Counterterrorism Strategy (GCTS) in particular. These legislations, regulations and guidelines impose technical, reporting and due diligence obligations on governments, corporate bodies, including non-profits. Laws like 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 enacted in compliance with FATF requirements. In the same vein, NACTEST and PCVE were inspired by the UN Global Counter Terrorism Strategy adopted by UNGA on September 8, 2006. It also draws from the considerable research from numerous national departments working on counterterrorism and international experts. The document combines the hard military approach—intelligence gathering and use of force—with a soft approach, which aims to win hearts and minds and address the root causes of radicalization within Nigerian communities.⁷⁶

- MISAPPLICATION OF LEGISLATIVE CT INITIATIVES IN NIGERIA

How then do state agents misuse the CT and security laws? The government's CT initiatives, particularly the laws, policies and regulatory measures framed around the objective of countering terrorism have been implemented, have had a negative effect on the ability of citizens to exercise and fully enjoy their democratic freedoms protected by law. Some of these counter-terrorism legislations contain provisions that are restrictive and impose onerous burdens on entities operating within the political, social, financial and non-financial systems, including the non-profit sector. Numerous studies find that countries use legal or quasi-legal, bureaucratic, financial, political, and security related methods to contract the civic space.⁷⁷ The most popular legal frameworks invoked by state agents to justify the suppression of civil rights and freedom under the pretext of counterterrorism or protecting national security are discussed below:

3.1.1. Section 45 of the Constitution of the Federal Republic of Nigeria

The constitutional exception to the human rights guarantees in Section 45 of the Constitution of the Federal Republic of Nigeria legitimizes derogations to personal liberties in certain circumstances such as in the interest of defence, public safety, public order, public morality or public health. What this means is that certain constitutional guarantees, specifically 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) are not absolute. These rights can be breached on the ground of “defence”, “public safety”, “public order”, “public morality” or “public health”. For instance, the prohibition of public gatherings and the forced closure of places of worship in the course of enforcing COVID-19 social distancing protocols in the country restricted the freedom of assembly and religion.⁷⁸

While the basis for these restrictions are understandable, the flip side is that the phrases, “defence”, “public safety”, “public order”, “public morality” or “public health” are vague and overly broad that any legitimate expression or demonstration of organized dissent can be easily

⁷⁶ Office of the National Security Adviser <https://ctc.gov.ng/about-ctc/>

⁷⁷ Sián Herbert “Restricting space for civil society.” Available at www.gsdr.org/wp-content/uploads/2016/03/HDQ1266.pdf, accessed 26 September 2021, p. 3

⁷⁸ Victoria Ibezim-Ohaeri, Navigating Civic Space in a Time of COVID-19: Reflections from Nigeria, SPACES FOR CHANGE, 2021, Accessed via <https://closingspaces.org/navigating-civic-space-in-a-time-of-covid-19-reflections-from-nigeria/>

stretched to come under the ambit of the stipulated offences. National security agencies have often latched onto these vague terminologies to restrict civic activities under the banner of defending national security. For instance, several attempts to introduce bills for the regulation of the social media and non-profit organizations (NPOs) in Nigeria have found a footing in Section 45 of the Constitution. Without evidence or conducting a risk assessment of the sectors, officials have advocated for tighter regulation of NPOs based on the perception that they are vulnerable to abuse for terrorist financing and thus pose a risk to the national security. The lead paper in support of the “bill to provide for the Establishment of Non-Governmental Organisations Regulatory Commission” emphasized 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.”⁷⁹

3.1.2. The Terrorism Prevention Act, amended in 2013 (“TPA”)

The TPA and the regulations made thereunder tops the list of the most-misused CT frameworks in Nigeria. Though enacted in compliance with Nigeria's international CT obligations and under immense pressure from FATF, the biggest flaw of the TPA is the failure to clearly delineate what amounts to terrorism. The definitional uncertainty opened the doorway for the government to brand any dissenting group of persons or movements as 'terrorists' and then visit the consequences prescribed under the law upon such person or movement. Persons accused of terrorist activities face immediate repercussions even before being found guilty of the offence such as arrest without bail, freezing of accounts and incalculable reputational damages.

Section 35 of the Terrorism Prohibition Act (TPA) is a clear footprint of Recommendation 8 of the FATF Standards within the Nigerian legal system. Although Recommendation 8 has been rephrased,⁸⁰ the nasty stains endure. The section of the TPA allows the government agency responsible for registration of organisations to refuse to register, or to deregister any charity “based on security or criminal intelligence reports, where there are reasonable grounds to believe that an applicant for registration as a registered charity has made, is making or is likely to make available any resources, directly or indirectly, to a terrorist group”.⁸¹ Charities are the only organisations singled out for this kind of measures in the TPA. Although the charity is able to file an action in court to reverse the decision within 60 days after which the charity is foreclosed from challenging the decision, state agents have weaponized this provision to either suspend or order the closure of humanitarian groups for allegedly aiding and abetting terrorism.⁸²

Furthermore, state agents have routinely used the TPA to clamp down on opposition groups, ethnic agitators and for frightening activists into silence. Most forms of organized dissent in the country—whether religious, regional, political—have been met with stiff resistance and their organizers have become frequent targets of political crackdowns by the Nigerian government. State actors relied on the provisions of the Section 13(1)(a) and (b) of the TPA and Regulation 31(2)(a) and (3)(b) of the Central Bank of Nigeria Anti-Money Laundering/Combating the Financing of Terrorism Regulations, 2013 (“CBN CT Regulation”) to order the freezing of bank accounts belonging to #ENDSARS campaigners.⁸³ Not only that, pro-Biafra agitations led by the Indigenous Peoples of Biafra (IPOB) which started since 1999 traversed the administrations of

⁷⁹ Spaces for Change “Closing Spaces for Democratic Engagement and Civil Society in Nigeria”. Available at <https://spacesforchange.org/wp-content/uploads/2017/06/Beyond-FATF-Trends-Risks-and-Restrictive-Regulation-of-Non-Profit-Organisations-in-Nigeria.pdf>, accessed 26 September 2021, p. 17. For a more complete and updated chronology of attempts to legislate restrictive laws and regulations, see www.closingspaces.org

⁸⁰ The current iteration of Recommendation 8 prescribes a risk-based approach of regulating NPOs requiring states to assess the TF risks to which NPOs are exposed and then apply commensurate measures aimed at countering the identified risks. Section 35(1) of TPA

⁸¹ Action Against Hunger, Nigeria: Following Forced Closure Of Offices in Borno and Yobe States, Action Against Hunger Strongly

⁸² Rejects Accusations of Supporting Terrorist Groups: <https://www.actionagainsthunger.org/story/nigeria-borno-yobe-action-against-hunger-strongly-rejects-accusations-of-supporting-terrorist-groups>

⁸³ Nairametrics “#EndSARS: CBN says funds in frozen accounts may be linked to terrorist activities.” Available at <https://nairametrics.com/2020/11/11/endsars-cbn-says-funds-in-frozen-accounts-may-be-linked-to-terrorist-activities/>, accessed 26 September 2021

President Olusegun Obasanjo, late President Musa Yar'Adua President Goodluck Jonathan, with occasional skirmishes between the secessionist campaigners and state agents. From the beginning of the Buhari regime in 2015, the crackdown on IPOB intensified, with hundreds of their members arrested, detained, tortured, and killed by state security forces. The crackdown on IPOB climaxed with the proscription and designation of the group as a terrorist organisation in 2017, raising questions regarding the justification for criminalizing a group famed for its nonviolent agitations.

The brazen differential in the application of the TPA to various security situations in the country fuels fears of deliberate misuse of the CT frameworks to stifle organized dissent. The selective application of the TPA also brings to light how security laws are exploited to perpetuate pre-existing ethno-religious agendas and to deliberately target critics rather than focus on actual threats. Of particular significance is the proscription of the south-east-based Indigenous Peoples of Biafra (IPOB) at a time when extremely-violent Fulani herdsmen who bear deadly weapons and engage in terrorist activities in the northern region had not been designated a terrorist group and proscribed by the government.⁸⁴ The Global Terrorism Index named Nigerian Fulani militants as the fourth deadliest terror group in world.⁸⁵ Miyetti Allah, the umbrella body of Fulani cattle owners has taken responsibility for some deadly revenge attacks on communities, but the federal government appears to approach the issue more disinterestedly.

The Operation Safe Corridor⁸⁶ and the Demobilisation, Disassociation, Reintegration Reconciliation (DDRR) programme implemented in the Northeast Nigeria⁸⁷ shows the willingness of the government to deal civilly with persons who were repentant Boko Haram terrorists than other dissenting groups. The leniency shown to repented Boko Haram fighters and the government's continued retention of a federal minister that has previously expressed public support for the Al Qaeda⁸⁸ send signals that certain dissident groups enjoy some level of protection from CT measures.

3.1.7. Central Bank of Nigeria Anti-Money Laundering/Combating the Financing of Terrorism Regulations, 2013 ("CBN CT Regulation")

Numerous provisions of the CBN CT Regulation enunciate the actions undertaken by the Central Bank of Nigeria to prevent laundering money and the financing of terrorism and ensure effective compliance by financial institutions. Invoking section 3)(b) of the CBN CT Regulation to press terrorist financing charges against #ENDSARS protesters, the Federal High Court argued that "there is a grave allegation that the defendants are involved in suspected terrorism financing via their bank accounts in contravention of the provisions of extant laws and regulations. The aforesaid transactions undertaken by the defendants, using their bank accounts, can cause significant economic and security harm to the public and the Federal Republic of Nigeria if left unchecked".⁸⁹

CBN's CT Regulations have recently provided legal impetus for criminalizing, targeting and dismantling online fundraising campaigns and platforms that protesters have used. #EndSARS

84 Ugwueze, M.I. (2021). Biafra war documentaries: Explaining continual resurgence of secessionist agitations in the South-East, Nigeria. *Civil Wars*, DOI: 10.1080/13698249.2021.1903781

85 <https://www.independent.co.uk/news/world/africa/global-terrorism-index-nigerian-fulani-militants-named-fourth-deadliest-terror-group-world-a6739851.html>

86 See the Preventing and Countering Violent Extremism Policy Framework and National Action Plan. Available at <https://ctc.gov.ng/about-ctc/>, accessed 26 September 2021

87 See "Counter-Terrorism Centre Strategic Report 2018." Available at <https://ctc.gov.ng/wp-content/uploads/2020/03/REVIEW-OF-ACT-INNER-2019.pdf>, accessed 26 September 2021

88 Vanguard "Presidency's defence of Isa Pantami." Available at <https://www.vanguardngr.com/2021/05/presidency-defence-of-isa-pantami/>, accessed 26 September 2021

89 Ibid.

protesters primarily raised funds using bitcoins and cryptocurrency, bypassing the Central Bank's restrictions on many accounts, including threats to sanction the payment gateway company—Flutterwave—that facilitated crowdfunding for the movement.⁹⁰ In a circular dated February 5, 2021, the Central Bank of Nigeria (CBN) ordered financial institutions to identify people and organizations trading in cryptocurrency and close their accounts immediately, threatening severe regulatory sanctions for non-compliance.⁹¹ CBN attributed the ban to the opacity of cryptocurrency which makes it susceptible to money laundering and terrorist financing. Terrorism-financing charges against protesters have lingered despite verified claims that funds raised through cryptocurrency were solely applied towards coordinating offline and online demonstrations against police brutality. No actual links to terrorist financing have been established, but criminal charges against protesters are still subsisting.

3.1.8. Cybercrimes Act

The Cybercrimes Act has an uncanny connection with the TPA – especially the provisions on cyber terrorism. The government has maximized this connection to target critics predominantly operating in online spaces. Section 18(1) of the Cybercrimes Act provides that:

“Any person that accesses or causes to be accessed any computer or computer system or network for purposes of terrorism, commits an offence and is liable on conviction to life imprisonment.”

As exemplified by the #EndSARS protests, social media networking sites, especially Twitter and Facebook play a major role in transforming the character of the protests from online rage to street action. Accordingly, Section 18 of the Cybercrimes Act is the most popular provision used to justify criminal charges brought against vocal critics, journalists, bloggers and campaigners actively using the social media to demand political and corporate accountability. Just like Emperor Gabriel Ogbonna who was arrested, arraigned and illegally detained based on allegations of cyber terrorism for his online publication regarding the Governor of Abia State, the Closing Spaces Database has tracked over 50 incidents involving civic actors currently facing criminal charges, including terrorism on account of critical commentary posted on Facebook or Twitter.⁹²

3.1.9. National Security Agencies Act

The State Security Service was established pursuant to the National Security Agencies Act to prevent, detect, and protect Nigeria from threats to its national Security whether of a military or a non-military nature. The Office of the National Security Adviser (ONSA) and the agencies within that office, particularly the State Security Service (SSS), are powerful tools under the control of the Presidency. As the chief implementer of CT initiatives in Nigeria, the SSS is decorated with undefined powers to proceed against perceived and actual threats of terrorism. This anti-terror mandate is so loosely defined that it encompasses virtually anything so designated by the agency as a terrorist threat. From this excessive loose definition springs a discretion that is wide, unchecked and prone to abuse. As technology is significantly expanding access to spaces for civic engagement, so also has the categories of persons at the receiving end of state-ordered crackdowns exponentially expanded in this age of social media. Using

⁹⁰ SPACES FOR CHANGE, UNINTENDED CONSEQUENCES OF FATF STANDARDS ON THE NPO SECTOR AND THE CIVIC SPACE IN NIGERIA, Policy Brief submitted to the FATF Workstream on Unintended Consequences of FATF Standards (2021).

⁹¹ Central Bank of Nigeria, Cryptocurrency Trading: CBN Orders Banks To Close Operating Accounts (2021): <https://www.cbn.gov.ng/Out/2021/CCD/Volume%203%20Number%202%20CBN%20Update%20February%202021.pdf>.

⁹² Sahara Reporters “Abia Government Arrests, Remands Activist in Prison Custody Over Alleged False Publication.” Available at <http://saharareporters.com/2020/04/04/abia-government-arrests-remands-activist-prison-custody-over-alleged-false-publication>, accessed 26 September 2021. The 26 March 2021 charge sheet against the accused reads in part, “That Emperor Gabriel Ogbonna ‘M’ and others now at large within the 18th-19th day of March, 2020, at 118 Market Road, Aba in the Aba North Magisterial District, knowingly and intentionally published false and threat message on the Internet that Governor Okezie Ikpeazu swore on oath before the ancient Harashima (A Hindu god) to abide absolutely by conditions presented by his predecessor in office and subvert the people of Abia State, that he also signed a document between the former governor of Abia State, Senator T. A. Orji, his son, Hon. Chinedum Orji, that the spirits they worship should deal with him if he fails in his undertaking, a publication you know to be false for the purpose of causing annoyance, inconvenience, danger, insult, criminal intimidation, enmity, hatred and ill-will against Okezie Ikpeazu, contrary to Section 27(1) (a) and 18(1) of the Cybercrimes (Prohibition Prevention ETC) Act, 2015.”

⁹³ <https://closingspaces.org/category/freedom-of-expression/>

narratives backed by their limitless CT and PVE mandates, the SSS have been involved in inviting and threatening citizens with arrests⁹⁴ and prosecution for terrorism, inciting violence and, indeed, whatever charges that can be derived from their mandates.

3.2.0. National Counter-terrorism Strategy (NACTEST)

This overarching strategy for combating terrorism in Nigeria is laid out in the National Counterterrorism Strategy (NACTEST), a service-wide assortment of counterterrorism efforts bordering on the deployment of carrot-and-stick approach in fighting terrorism. NACTEST rests on five pillars: de-radicalization, security of lives and properties, investigation and punishment of violent extremists, threat mitigation and policy formulation and cross-governmental coordination. Collectively, the five streams are referred to by the acronym FSIPI, meaning Forestall, Secure, Identify, Prepare and Implement (FSIPI).

NACTEST is coordinated by the Counter-Terrorism Centre (CTC) in the Office of the National Security Adviser (ONSA), and the Centre houses the Joint Terrorism Analysis Branch (JTAB) and the Behavioural Analysis and Strategic Communications Unit, enabling the ONSA to coordinate intelligence sharing and cooperation amongst agencies. The primary responsibilities of the CTC include the development, direction, and implementation of the national counterterrorism strategy. The Centre also builds and maintains relationships with non-state actors such as donor agencies and other international actors such as the Global Counter-Terrorism Forum, Global Community Engagement and Resilience Fund, and the United Nations. Although NACTEST arrogates coordination role to the ONSA, the primary responsibility for combating terrorism vests in the Nigerian military, who are operating within the ongoing Operation Hadin Kai to counter Boko Haram and its offshoots in the north-east and Operation Sahel Sanity to combat bandit gangs in the North-West.

Another key policy for countering terrorism in Nigeria is the Policy Framework and National Action Plan for Preventing and Countering Violent Extremism (PCVE), designed to institutionalize, mainstream and coordinate PCVE programmes at national, state and local levels; strengthen the accessible justice system and respect for human rights and rule of law; enhance the capacity of individuals/communities to prevent and counter violent extremism, and recover from violent occurrences; and institutionalize, mainstream and integrate strategic communication in PCVE programmes at all levels. The PCVE was developed in view of the Report of the United Nation's Secretary General on Plan of Action to Prevent Violent Extremism issued on 24 December 2015, in which member states were encouraged to develop Plans of Action to prevent violent extremism. The UN Office of Counter-Terrorism (UNOCT) was designated by the Secretary-General as the main focal point of the UN System for preventing and countering violent extremism (PCVE) conducive to terrorism.⁹⁵

- **Impacts of War against Terror and P/CVE programming on the Civic Space**

A major feature of NACTEST and the National Action Plan for Preventing and Countering Violent Extremism (PCVE) is the lack a national definition of terrorism, discussed in the next chapter. However, while NACTEST combines the hard military approach, intelligence gathering and use

⁹⁴ Nigerian Tribune, Michael Ovat, Fr Mbaka Cries Out Over DSS Invitation, Accessed via <https://tribuneonlineng.com/fr-mbaka-cries-out-over-dss-invitation/>

⁹⁵ The UNOCT coordinates and complements the work of UN agencies in countries where they are supporting Member States in developing PCVE strategies and plans of action or related legislative and policy frameworks.

of force, with a soft approach, the National Action Plan for PCVE professes to be non-military in approach, development funded and employing a whole-of-government approach to combat terrorism and countering violent extremism in Nigeria. Taken together, NACTEST and the National Action Plan for PCVE are detailed and comprehensive in design and strategy, but several gaps remain, especially with regards to their implementation in accordance with the UN Global Counter Terrorism Strategy and the consequential reductions on the civic space.

With regard to NACTEST's use of force approach, the military's use of highhanded strategies to quell terrorist enclaves has been serially documented. Thousands of civilians caught in the crossfire between the terrorist groups and security forces lost their lives. according to one report, Nigerian military forces have extrajudicially executed more than 1,200 people; arbitrarily arrested at least 20,000 people, mostly young men and boys; and have committed countless acts of torture. Hundreds, if not thousands, of Nigerians have become victims of enforced disappearance; and at least 7,000 people have died in military detention.⁹⁶

In response to the massive human rights violations, large-scale displacement, property and livelihood losses, ravaging the localities where anti-terror military operations take place, a host of humanitarian organizations operate in those areas, providing assistance to the affected local populations. Tensions have often arisen between state agents and humanitarian organizations, with accusations and counteraccusations of affiliation with terrorist groups often renting the air. Borno State Governor, chief executive of the Nigerian state most devastated by Boko Haram's Islamic terrorism in the north-east publicly alleged that only eight of 126 registered agencies in Borno state were there to genuinely help.⁹⁷ He has regularly accused some U.N. and international aid agencies of aiding and abetting terrorist groups and misusing funds meant for refugees. He further criticized their fixation on the IDP camps and profiting "from the insecurity and agony of our people".⁹⁸ As result, the narrative linking INGOs with terrorist activities have festered in local media and the offices of notable international non-governmental organizations (INGOs) had been closed.⁹⁹

The sudden declaration of INGOs as persona non-grata (PNG) based on allegations of providing support to non-state armed groups remains a serious concern. Two INGOs, Action Against Hunger (AAH) and Mercy Corps, on the 18 September and 25 September respectively, were ordered to suspend operations in the northeast by the Nigerian Armed Forces (NAF).¹⁰⁰ Allegations of this nature directed at humanitarian actors—United Nations (UN), international non-governmental organizations (INGOs), local NGOs—are not new. On 14 December 2018, the United Nations Children's Emergency Fund (UNICEF's) activities in the north-east were temporarily suspended due to allegations that workshops that took place on 12/13 December in Maiduguri in Borno state, north-east Nigeria were training people for "clandestine" activities that are "sabotaging" counterterrorism efforts.¹⁰¹ The announcements from the military not only included closure of offices and suspension of operations, staff were also declared persona non-grata and asked to leave the country. Suspension and closure of activities threatens to deprive thousands of people from life-saving assistance in devastated communities in critical need of humanitarian assistance, especially in the three most affected states of Borno, Adamawa and Yobe.

⁹⁶ Amnesty International, Nigeria: Stars on their shoulders: Blood on their hands: War crimes committed by the Nigerian military (2015) <https://www.amnesty.org/en/documents/afr44/1657/2015/en/>

⁹⁷ BBC News, Nigeria Boko Haram crisis: Aid agencies 'wasting funds' (2017): <https://www.bbc.com/news/world-africa-38582457>

⁹⁸ BBC News, *ibid.*: <https://www.bbc.com/news/world-africa-38582457>

⁹⁹ Vanguard, International NGOs complicit in Boko Haram activities in North-East Nigeria, report reveals (2020)

<https://www.vanguardngr.com/2020/06/international-ngos-complicit-in-boko-haram-activities-in-north-east-nigeria-report-reveals/>

¹⁰⁰ Action Against Hunger, Nigeria: Following Forced Closure Of Offices in Borno and Yobe States, Action Against Hunger Strongly Rejects Accusations of Supporting Terrorist Groups: <https://www.actionagainsthunger.org/story/nigeria-borno-yobe-action-against-hunger-strongly-rejects-accusations-of-supporting-terrorist-groups>

¹⁰¹ Reuters, 'Nigeria lifts UNICEF suspension hours after accusing staff of spying for Islamists' online available at

Just the same way international CT functions are fragmented across numerous international bodies and intergovernmental institutions, Nigeria also follows the same tradition, vesting CT functions on a multitude of agencies, departments, ministries, committees, and security formations. Inter-agency rivalry and battle for supremacy between and among the various agencies charged with different mandates under the NACTEST is commonplace because of their overlapping roles and duplicated duties. ONSA, an office that renders solely advisory services to the President and statutorily lacks executive powers, is mandated to oversee and coordinate the numerous units undertaking CT functions. Lacking executive powers, ONSA's coordination functions is gravely impacted, especially where certain security and law enforcement agencies do not report directly to this office.

CONCLUSION

As we have seen in this chapter, well-intentioned international norms and laws to combat terrorism generate unintended consequences in national contexts. Governments are overstretching counter-terrorism and security laws and powers to achieve purposes unrelated to enforcing law and order. Particularly significant is how measures to address terrorism and national security challenges are often exploited to close the civic space, violate the rights of civil society actors and human rights defenders, and limits citizens' rights to free expression, association and assembly. This is consistent with the UN's findings that "most countries, when meeting their obligations to counter terrorism by rushing through legislative and practical measures, have created negative consequences for civil liberties and fundamental human rights."¹¹³

While most international norms from which national CT laws are borrowed from have scant accountability provisions for punishing or deterring the misuse or abuse of their standards, opportunities are emerging that can be leveraged to evaluate anti-terror operations and initiate reforms. For instance, the CTC and CTED plan to undertake a hybrid follow-up visit to Nigeria to assess the country's progress in implementing relevant Security Council resolutions and to discuss and facilitate the provision of technical assistance aimed at enhancing national counter-terrorism capacities.¹¹⁴ Nigeria is also enhancing its cooperation with the United Nations Centre for Counter Terrorism (UNCCT) in the area of capacity building.

While the introduction of these evaluation mechanisms, including onsite visits and technical assistance reflects efforts to embed accountability procedures in the security architecture at the global level, several challenges remain. The biggest challenge is that the strategic reviews of international norms at the global level often defy gravity. These upstream changes hardly trickle down because they are made when borrowed norms have crystalized into hard law passed by national parliaments characterized by complex, elongated rule-making and amendment procedures.

¹¹³ Office of the United Nations High Commissioner for Human Rights "Human Rights, Terrorism and Counter-terrorism." Available at <https://www.un.org/ruleoflaw/files/Factsheet32EN.pdf>, accessed 26 September 2021, p. 20

¹¹⁴ Statement By H.E. Ambassador George Edokpa Deputy Permanent Representative of Nigeria to the United Nations on "Measures to Eliminate International Terrorism" at the 76th Session of the United Nations General Assembly New York 5 October, 2021

In light of the above developments, the Nigerian federal legislature has revisited the topic of legislation for NGOs, hinting at the possibility of reintroducing the draft NGO Regulatory Commission Bill.¹⁰² The National Assembly Senate Committee on Civil Society has also been asked to launch investigations into INGO activities. Not only that, the Nigerian government implemented the Civil Security Cooperation (CiSEC) framework recommendations and established the National Humanitarian Coordination Council (NHCC) to oversee humanitarian operations.¹⁰³ A 27-man National Humanitarian Co-ordination Technical Working Group (NHCTWG)¹⁰⁴ was constituted to provide technical support to the NHCC. This new regulatory, led by the ONSA and Federal Minister of Humanitarian Affairs, Disaster Management and Social Development (FMHDS) has ensured that the trend of suspension or closure of humanitarian organizations without review or redress is no more. In sum, the forced closures and the tide of legislative and regulatory proposals/initiatives reflect the increasingly restrictive operating environment for implementing humanitarian assistance in crisis-affected areas, where humanitarian aid workers continue to face challenges as they strive to deliver urgent, life-saving assistance to populations in need.

Censorship of the media is commonplace in areas where forceful military operations take place. Consequently, media coverage of military onslaught against insurgents and factions of Boko Haram terrorist groups attracts heavy sanctions such as office raids, equipment seizures, seal-up of premises as well as arrests of editors and journalists¹⁰⁵ writing and publishing such stories.¹⁰⁶ Daily Trust Newspapers have had their offices in Abuja and Maiduguri, Borno State sealed by armed soldiers for publishing a report detailing how the Nigerian military assembled troops and equipment in preparation for a massive operation to retake Baga and five other towns in Borno from Boko Haram.¹⁰⁷ The regional editor and reporter working for the newspaper were arrested during the raid described as a “disturbing attempt to stifle media freedom in Nigeria.”¹⁰⁸

On the other hand, National Action Plan for PCVE's major flaw is not just the emphasis placed on Boko Haram-led terrorism, but also how the so called 'soft' or 'non-military' approach undergirding the PCVE strategies favor leniency toward extremist groups. For instance, the Operation Safe Corridor (OSC) programme was established in 2016 as a national rehabilitation and deradicalization program for repentant ex-terrorists and low-risk ex-combatants affiliated with Boko Haram and Islamic State in West Africa (BH-ISWA). Consequently, security resource allocation prioritizes the rehabilitation and reintegration of former fighters far above the displaced languishing in pain and sorrow caused by the activities of the Boko Haram terrorists. Because of this heavy spending on perpetrators rather than on helping victims recover from losses and secure justice, rising tension and anger towards the CVE programs by victims and communities displaced by BH-ISWA violence have been documented.¹⁰⁹ Angry protests by displaced communities, currently sheltered in the numerous internally-displaced persons (IDP) camps scattered around the northern region, have frequently erupted. Journalists reporting displaced communities' protests against the diversion of relief materials¹¹⁰ and killing of refugees¹¹¹ been arrested and detained based on allegations of “defamation of character and falsehood”.¹¹²

102 Nasir Ayitogo, Premium Times, Updated: Nigerian Lawmakers To Revisit NGO Regulatory Bill – Speaker, <https://www.premiumtimesng.com/news/headlines/354099-just-in-nigerian-lawmakers-to-revisit-ngo-regulatory-bill-speaker.html>

103 Blueprint Newspaper, FG sets up technical group to coordinate humanitarian activities(2020); <https://www.blueprint.ng/fq-sets-up-technical-group-to-coordinate-humanitarian-activities/>

104. The group comprises commissioners in charge of humanitarian issues in Borno, Adamawa and Yobe; heads of NEMA, NEDC and NCFRMI; representatives of Operations of the Armed Forces, the European Union Commission, United States Agency for International Development and United Nations Office for the Coordination of Humanitarian Affairs

105 Ifex, Nigerian soldiers arrest and detain “The Punch” journalist for 2 days (2018) <https://ifex.org/nigerian-soldiers-arrest-and-detain-the-punch-journalist-for-2-days/>

106 Abdulkareem Haruna, Premium Times, Nigerian soldiers arrest journalist ‘over Boko Haram report’ (2020) <https://www.premiumtimesng.com/news/headlines/375256-nigerian-soldiers-arrest-journalist-over-boko-haram-report.html>

107 Sani Tukur, Premium Times, Armed Soldiers Raid Nigerian Newspaper Offices, Arrest Journalists (2019) <https://www.premiumtimesng.com/news/headlines/304402-just-in-armed-soldiers-raid-nigerian-newspaper-offices-arrest-journalists.html>

108 Human Rights Watch, Nigeria: Military Raids Newspaper, Detains Staff (2019) <https://www.hrw.org/news/2019/01/08/nigeria-military-raids-newspaper-detains-staff>

109 Brookings, We Don't Want Them Back, Accessed via <https://www.brookings.edu/research/in-nigeria-we-dont-want-them-back/>

110 Joseph Wantu, The Guardian, Benue IDPs protest against diversion of relief materials (2017) <https://guardian.ng/news/benue-idps-protest-against-diversion-of-relief-materials/>

111 Ihuoma Ilo, HumanAngle, Angry IDPs Protest Killing of Colleagues in Northcentral Nigeria, Block Highway (2021), <https://humanglemedia.com/angry-idps-protest-killing-of-colleagues-in-northcentral-nigeria-block-highway/>

112 The Cable, Journalist arrested ‘over story on protest at Benue IDP camp’ (2017) <https://www.thecable.ng/nan-reporter-arrested-story-protest-benue-idp-camp>



CHAPTER FOUR

DRIVERS OF MISUSE OF INTERNATIONAL CT ARCHITECTURE TO NARROW CIVIC SPACE IN NIGERIA



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The term, “civic space” refers to those human rights key to a healthy functioning of any democratic society, which enable individuals and groups, whether converging online or offline, to express themselves, organize, participate and influence how they are governed. Those rights include the freedom of expression, freedom of association, freedom of assembly, and participation right. In its 2018 report, CIVICUS reported that civil society is under serious attack in 111 countries, almost six in 10 countries worldwide.¹¹⁵ This also means that just four per cent of the world's population live in countries with open space for civil society (civic space).¹¹⁶ In 2019, CIVICUS downgraded Nigeria from '**obstructed**' to '**repressed**' in its *People Power Under Attack 2019 report*.¹¹⁷

In the past, the civic repression in Nigeria was associated with military regimes. On the 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. Civic actors operating within the civil society spaces were common preys of the military junta as many suffered physical harassments, arbitrary imprisonments and extrajudicial executions.¹¹⁸ Ironically, the return to democratic rule in 1999 did not end the culture of civil society repression. The oppressive tactics deployed to stifle dissent

¹¹⁵ CIVICUS “People Power Under Attack: A global analysis of threats to fundamental freedoms.” Available at https://www.civicus.org/documents/PeoplePowerUnderAttack_Report.27November.pdf, accessed 26 September 2021, p. 4

¹¹⁶ *Ibid.*

¹¹⁷ CIVICUS, *People Power Under Attack*, December 2019. Please see <https://civicus.contentfiles.net/media/assets/file/GlobalReport2019.pdf>

¹¹⁸ Spaces for Change “Closing Spaces for Democratic Engagement and Civil Society in Nigeria”. Available at <https://spacesforchange.org/wp-content/uploads/2017/06/Beyond-FATF-Trends-Risks-and-Restrictive-Regulation-of-Non-Profit-Organisations-in-Nigeria.pdf>, accessed 26 September 2021, pp. 20-21.

political power to democratically elected civilians and the restoration of the suspended constitutional provisions.¹¹⁹ With the democratic rule now in place, what has changed is that the era of absolutism common with military dictators has been replaced with legitimization of repressive governmental behaviour using the instrumentality of the law.

4.1. EXPLOITING INTERNATIONAL CT NORMS TO NARROW THE CIVIC SPACE

Implementing international CT norms locally is quite problematic. We have demonstrated in the preceding chapters that there is a clear nexus between international CT norms and Nigeria's CT legal regimes. There is practically no CT legislation or countermeasure that does not have an international foundation. Who then bears responsibility for the misuse of the counterterrorism architecture as well as the unintended consequences that they produce in national contexts? It is true that the government of any country bears ultimate responsibility for the formulation and implementation of CT policies within their territories. Below, we outline how international norms are exploited to narrow the civic space and why the onus to repair those gaps—and end that exploitation—rests on regional and international CT norm-forming organisations, including soft law.

4.1.2. Terrorism lacks definitional certainty

Terrorism provisions are very problematic. The absence of a clear definition of terrorism is a fatal flaw emanating from the founding CT instruments. Even UNSC Resolution 1373 regarded as the galaxy upon which international CT norms revolve around does not include a clear definition of “terrorism”. Other vital descriptive details left out includes the appropriate trial procedures, proportionate punishment for terrorist acts and the distinction between terrorism and other violent crimes. This uncertainty is routinely exploited by governments, especially authoritarian

regimes, to adopt overbroad definitions that allows them to widen the dragnet to clamp down on real and perceived opposition and stifle dissent. Particularly worrying in the Nigerian context is the constantly-expanding mutation of terrorism undergirding the official recharacterization of simple misdemeanors as acts of terrorism.

What is terrorism? The definitional uncertainty has opened the doorway for the government to brand any dissenting group of persons or movements as 'terrorists' and then visit the consequences prescribed under the law upon such person or movement.

4.1.3. Urgent compliance timelines and consequences of non-compliance

The consequences of non-compliance to international CT norms are dire, such as blacklisting, economic sanctions, low ratings during Mutual Evaluation and peer reviews exercises. When a country is blacklisted as a non-cooperative country or territory, it impacts the country's ability to undertake international transactions and its nationals might be unable to access the benefits of

¹¹⁹ Ibid.

In 2017, the Egmont Group suspended Nigeria citing the country's inability to comply with the directive to ensure autonomy of the Financial Intelligence Unit (FIU). The suspension was lifted only after a hurriedly-enacted legal framework making the NFIU independent of government's control met the expectations of the Egmont Group. The suspension immediately activated the shutdown of the Egmont secure web (ESW) against Nigeria with the implication that Nigeria can no longer exchange sensitive information with other member countries in order to carry out investigative and regulatory responsibilities such as sharing criminal intelligence and financial information bothering on money laundering, terrorism financing, proliferation of arms, corruption, financial and economic crimes.¹²⁰

Determined to attain a compliant rating and to avoid the consequences of non-compliance, it has been the practice of the Nigerian government to introduce tighter regulatory measures and establish new institutions without conducting sufficient analysis, meaningful consultations, and the outreach required to produce an organic framework. Where legislative processes are considered lengthy, expensive or inconvenient, governments may resort to delegating rule-making powers to ministries and agencies to make byelaws and regulations that bypass parliamentary scrutiny. Nigeria exemplifies this typology with the CBN making regulations on asset freezing and confiscation without going through the parliament. In the same way, the Special Control Unit against Money Laundering (SCUML) has made regulations listing non-profit organizations (NPOs) as designated non-financial institutions (DNFIs) without having to go through formal law-making processes and avoiding the public scrutiny that they would have otherwise encountered. Such issues typically need to be regulated in a law that will be subject to parliament scrutiny.

The Global NPO Coalition on FATF has noted that the urgency expected of countries to implement FATF requirements is one of the drivers of abuse of CT norms to restrict the civic space. The abuse often stems from the direct findings and recommendations in the mutual evaluation reports and the lack of nuance as well as international human rights context when transposing the requirements of Recommendation 8 to the national context.¹²¹

4.1.3. No clear human rights provisions in international CT norms

International CT standards pay lip service to the tenets of human rights, and neither do the routine use of cosmetic phrases like “in compliance with *international law, including human rights, humanitarian and refugee law*”¹²² translate into positive obligations for states. The UN Security Council Resolution 1373 does not contain any functional provision on human rights.¹²³ This set the tone for the proliferation of extreme CT measures resulting in massive contractions of the civic space across jurisdictions.

Furthermore, the FATF Recommendations contain only three mentions of human rights in the Interpretative Notes which are all framed along these broad lines without concrete guidance and commitments on how to implement CT measures in HR compliant way.¹²⁴ This approach implicitly places CT norms above the human rights framework rather than mandating it to be led by the HR framework in application of CT measures. According to the Special Rapporteur on

120 The Cable, How EFCC caused Nigeria's suspension by Egmont Group (2017) <https://www.thecable.ng/efcc-caused-nigerias-suspension-egmont-group>

121 Global NPO Coalition on FATF “Section-iii-and-iv-Global-Coalition-submission.” Available at <https://fatfplatform.org/assets/Section-iii-and-iv-Global-Coalition-submission.pdf>, accessed 26 September 2021, p. 1

122 Ibid., p. 9

123 The only mention of Human Rights is in resolution 3(f) which calls upon states to “Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts.”

124 It could be argued that since it is not a human rights document, it need only reference existing obligations. However, this argument would miss the point. The onus is on a person who is prescribing standards with potential effects on human rights to take initiatives for the preservation human rights while complying with the standards.

the promotion and protection of human rights and fundamental freedoms while countering terrorism, institutions responsible for producing CT soft law are themselves not well grounded on human rights.¹²⁵ In her words:

“The establishment of new global, regional and selective institutions, many of novel legal status, created with limited reference to human rights in their constitutive documents means that structured, consistent and well-defined human rights inputs are lacking in these settings. Access to such institutions has proven difficult and inconsistent for many human rights entities, including the Special Rapporteur. These bodies have no formal accreditation mechanism, leading to ad hoc and inconsistent access for civil society and human rights organizations. The norm production process itself is ad hoc, not announced in advance, and in some cases moves so swiftly that the capacity for external human rights experts to mobilize input will be virtually nil.”

Even though the concept of “promotion and protection of human rights and fundamental freedoms while countering terrorism” has become a mantra within the UN structures¹²⁶ coupled with the resolutions of both the UN General Assembly and of the Security Council admonishing respect of human rights while countering terrorism, human rights have remained a secondary consideration in formulation of CT norms in practice. It has been observed that the fourth pillar of the Global Counter Terrorism Strategy, which deals with human rights is the least developed.¹²⁷ The recent and most significant strategic review of the UN's Global Counterterrorism Strategy replicated previous shortcoming by failing to ensure that human rights are hardwired into CT norms at the point of origination.¹²⁸ There is also a significant discrepancy between international documents. For example, the Global Counter-Terrorism Strategy reviewed in 2021, did not fully align its language on counter-terrorism financing of nonprofits with the FATF R8 and UN Security Council Resolution 2462. In this regard, UNSC 2462 recognizes the vital role played by non-profit organizations in national economies and social systems, calls on Member States to periodically conduct a risk assessment of its non-profit sector or update existing ones to determine the organizations vulnerable to terrorist financing and to inform the implementation of a risk-based approach.¹²⁹

Security Council resolutions on CT and the prevention and countering of violent extremism are all characterized by lack of or insufficient engagement with civil society actors regarding the legal, political, social and cultural impacts of such resolutions; so much so that the first resolution to contain a reference to civil society in its operative part is Resolution 2178 of 2014.¹³⁰ Not infrequently too, UN human rights entities and organizations are only invited 'late in the game' to give views on almost fully finalized norms. At this stage, critical reviews are hardly considered or perceived as unhelpful, or out of sync with the thinking of States, and unconstructive to the process.¹³¹

¹²⁵ Ibid.

¹²⁶ In April 2005, the Commission on Human Rights, in resolution 2005/80, created a mandate of a special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

¹²⁷ Fionnuala Ni Aoláin “Promotion and protection of human rights and fundamental freedoms while countering terrorism”. Available at <https://undocs.org/A/74/335>, accessed 26 September 2021, pp. 9-10

¹²⁸ Saferworld Joint Statement: Joint statement: UN should ensure independent oversight of UN Counter-Terrorism architecture (2021) Accessed via <https://www.saferworld.org.uk/resources/news-and-analysis/post/969-un-should-ensure-independent-oversight-of-un-counter-terrorism-architecture>

¹²⁹ UNSCR 2462: <http://unscr.com/en/resolutions/doc/2462>

¹³⁰ Fionnuala Ni Aoláin “Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders.” Available at <https://undocs.org/pdf?symbol=en/A/HRC/40/52>, accessed 26 September 2021, p. 6

¹³¹ Ibid., p. 10

4.1.5. Specific provisions targeting NPOs

The International CT norms have provided a legal impetus for the proliferation of local laws targeted at NPOs, including human rights defenders, activists, campaigners and critics demanding transparency from the government. FATF's Recommendation 8, as initially drafted, ostensibly heightened preexisting tensions between governments and NPOs which seemed to allow for governments' suppression of NPOs. The initial language of Recommendation 8 was that "NPOs possess characteristics that make them particularly attractive to terrorists or vulnerable to misuse for terrorist financing" and called on countries to "review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism."

This recommendation triggered a global push back from human rights watchdogs, specifically the Global NPO Coalition on FATF, who identified the dangers in the phraseology of the recommendation. As feared, there was a hike globally in the number of restrictive regulations targeting NPOs under the preamble that NPOs were vulnerable to terrorist financing. One study in Nigeria¹³² identified other subsequent reports of FATF on NPOs which adumbrated FATF's sentiment linking NPOs to terrorist financing. For instance, the FATF's 2015 Best Practices Report reiterated that long after the abuse of NPOs by terrorists and terrorist organisations was formally recognised as a concern, some NPOs continue to be misused and exploited by terrorists through a variety of means particularly those in conflict regions. 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.¹³³

FATF recommended several measures to counter abuse of NPOs for terrorist activities. Some of these measures include registration, maintaining information on the purpose and objectives of the organization's activities, issuing detailed annual statements and to maintain records of all transactions. Other dissuasive sanctions such as the freezing of accounts, removal of trustees, fines, decertification, delicensing and deregistration were also envisaged.¹³⁴ These recommended measures majorly developed without consultation with civil society actors, continue to be exploited to impose onerous operational burdens that limit and disrupt civil society. Although Recommendation 8 has been rephrased¹³⁵ following intense push back by NPO actors under the auspice of the Global NPO Coalition on FATF, the sentiment that NPOs were prone to misuse for terrorist financing had caused extensive damage in local contexts. Extensive work has already been done by the Global NPO Coalition on FATF in curating evidence of repressive legislation and policies targeted at NPOs in the wake of FATF's recommendations.¹³⁶

- Specific burdens on NPOs: Blanket generalizations

In Nigeria, the major legislative burden imposed on NPOs in the wake of Recommendation 8 is the 2004 Anti-Money Laundering Act (MLA) which introduced the term, 'Designated Financial Institutions and Designated Non-Financial Institutions, (DNFIs) which substantially shares

¹³² Spaces for Change "Closing Spaces for Democratic Engagement and Civil Society in Nigeria". Available at <https://spacesforchange.org/wp-content/uploads/2017/06/Beyond-FATF-Trends-Risks-and-Restrictive-Regulation-of-Non-Profit-Organisations-in-Nigeria.pdf>, accessed 26 September 2021, p. 23

¹³³ Ibid.

¹³⁴ Fionnuala Ní Aoláin "Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders." Available at <https://undocs.org/pdf?symbol=en/A/HRC/40/52>, accessed 26 September 2021, p. 10

¹³⁵ The current iteration of Recommendation 8 prescribes a risk-based approach of regulating NPOs requiring states to assess the TF risks to which NPOs are exposed and then apply commensurate measures aimed at countering the identified risks.

¹³⁶ Global NPO Coalition on FATF "Section-iii-and-iv-Global-Coalition-submission." Available at <https://fatfplatform.org/assets/Section-iii-and-iv-Global-Coalition-submission.pdf>, accessed 26 September 2021

similar definition and characteristics with designated non-financial businesses and professions (DNFBPs). The interpretation section of the MLA defines DNFBPs the same way FATF defines DNFBPs. A ministerial regulation made pursuant to the 2004 law, included NPOs in the list of Designated Non-Financial Institutions (DNFBPs). That designation lumped NPOs together with other businesses as DNFBPs, subjecting NPOs to the FATF requirements for DNFBPs. The terrorist financing reporting requirements for DNFBPs are onerous, time-consuming, with attendant high compliance costs. The inclusion of NPOs in the DNFI list subsists even though FATF does not include NPOs in its definition of DNFBPs. In its latest Mutual Evaluation Report, GIABA found that Nigeria has not undertaken a categorisation of at-risk NPOs, and the nature of threats posed by terrorist entities as well as how terrorist actors abuse those NPOs. Classifying all NPOs as DNFBPs and subjecting them without discrimination to the full suite of AML/CFT responsibilities is not a substitute for this exercise and goes against the intent of R.8.¹³⁷ Consequent upon this designation, NPOs have less time to devote to the actual work they are supposed to do, as a lot of time is devoted to compliance and paper work. This results in project delays and help not reaching those in greatest need in real time.

- **Specific burdens on NPOs: Multiple registration controls**

Relying again on the particularly vulnerable classification that FATF introduced, Section 35 of the Terrorism Prevention Act allows the government agency responsible for registration of organisations to refuse to register, or to deregister any charity “based on security or criminal intelligence reports, where there are reasonable grounds to believe that an applicant for registration as a registered charity has made, is making or is likely to make available any resources, directly or indirectly, to a terrorist group”.¹³⁸ In keeping with FATF's elevation of security over human rights (in this case the presumption of innocence), the TPA places the obligation on the charity to file an action in court to reverse the decision within 60 days after which the charity is foreclosed from challenging the decision.

Glaringly, charities were the only organisations singled out for this kind of measures listed in Section 35 of the TPA. This provision has already been wielded by the government to either suspend or order the closure of charities accused of aiding and abetting terrorism.¹³⁹ Flowing from the above provision, NPOs are subjected to multiple registration controls in over 9 different entities. To acquire a legal status needed to operate in Nigeria, NPOs are required to register with the Corporate Affairs Commission (CAC), Special Control Unit against Money Laundering (SCUML), Ministry of Budget and National Planning, Federal Inland Revenue Service, various line ministries and security agencies for verification such as the Office of the National Security Adviser (ONSA), Ministry of Justice, Department of State Security Services, National Intelligence Agency, Ministry of Health, Environment and other agencies.

Adherence to multiple AML/CFT compliance obligations of diverse regulatory entities tilts towards overregulation.

¹³⁷ See GIABA Mutual Evaluation Report 2021: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GIABA-Mutual%20Evaluation%20Report%20of%20the%20Federal%20Republic%20of%20Nigeria.pdf>

¹³⁸ Section 35(1) of TPA

¹³⁹ [Nigeria: Following Forced Closure of Offices in Borno and Yobe States, Action Against Hunger Strongly Rejects Accusations of Supporting Terrorist Groups | Action Against Hunger](#)

- **Specific burdens on NPOs: Tidal wave of restrictive legislative proposals**

Further, the NPO community has faced a barrage of attempts by the government to make laws regulating NPOs in Nigeria and interfering with their funding in the form of NGO Bills. The bill, popularly known as the NGO Bill,¹⁴⁰ aimed to empower the Nigerian government, through various bodies, including a proposed regulatory commission to regulate, monitor and interfere with the funding and operation of non-governmental organizations (NGOs) and civil society groups (CSOs).¹⁴¹

Although Nigeria conducted a national risk assessment of money laundering and terrorism financial risks in the country in 2016, no risk assessment of the NPO sector was undertaken, and the tide of regulatory proposals advanced for the regulation of the non-profit sector have therefore crafted blanket legislation aimed at the entire NPO sector (which is not in line with Recommendation 8 or other FATF recommendations). As sector-led study revealed¹⁴² that the 2016 NRA neither identified the NPOs which face TF threats nor reviewed the specific NPOs vulnerable to potential TF abuse, as required by revised Recommendation 8 of the Financial Action Task Force (FATF) Standards. A number of stringent restrictive measures proposed in the national risk assessment (NRA) for countering the ML/TF risks had enormous potential to constrain non-profit activity, thereby contracting the civic space even further.¹⁴³

The opportunity to put up a strong challenge and dismantle the perception of NPO's as conduits for money-laundering or the financing of terrorism emerged in the last quarter of 2019 during the FATF Mutual Evaluation and onsite visit to Nigeria. Spaces for Change's 2019 research report, [Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria](#), challenged the official classification of NPOs as DNFI, disputing the evidential basis for the identification and classification of ML/FT risks, threats and vulnerabilities in the sector. This report builds on a previous 2017 study that examined the link between the Financial Action Task Force (FATF) Recommendation 8 (R8) and restrictions on civic freedoms in Nigeria.¹⁴⁴ The research findings not only laid the foundation for massive awareness-creation and sensitization of civil society and non-profit organizations on the AML/CFT drivers of governmental restrictions, but also expanded the space for dialogue and engagement between NGOs and Nigeria's AML/CFT regulators on the need for a standalone risk assessment of the non-profit sector in Nigeria.¹⁴⁵ Nigerian NPOs consider the recently-scheduled risk assessment of the NPO sector as a major victory.

4.1.6. Specific Statements and Recommendations on Surveillance

FATF and GIABA strongly recommend surveillance by countries as part of their customer due diligence (CDD) obligations and as tools for tracing and curbing the financing of terrorism. FATF Recommendations require countries, financial institutions and DNFI to collect information about customers and to report suspicious transactions to a government regulator – the financial intelligent unit. FATF Recommendation 10 requires that each country determine how it imposes

140 See <https://closingspaces.org/category/anti-ngo-bills-restrictive-laws/>

141. Victoria Ibezim-Ohaeri, Galvanizing Collective Action to Protect Nigeria's Civic Space, published by Shehu Musa Yar Adua Foundation, 2021,

<https://yaraduafoundation.org/files/Galvanizing%20Collective%20Action.pdf>

142. Spaces for Change "Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria." Available at <https://spacesforchange.org/wp-content/uploads/2019/03/FULL-REPORT-UNPACKING-THE-OFFICIAL-CONSTRUCTION-OF-RISKS-AND-VULNERABILITIES-FOR-THE-THIRD-SECTOR>

143 -IN-NIGERIA_compressed.pdf, accessed 26 September 2021, pp. 43-49

Victoria Ibezim-Ohaeri, FATF and Civic Space: Lessons from Nigeria (2020), <https://fatfplatform.org/stories/fatf-and-civic-space-lessons-from-nigeria/>

144. SPACES FOR CHANGE, Beyond FATF: Trends, Risks and Restrictive Regulation of Non-Profit Organizations in Nigeria, May 2017, Accessed via <https://spacesforchange.org/wp-content/uploads/2017/06/Beyond-FATF-Trends-Risks-and-Restrictive-Regulation-of-Non-Profit-Organisations-in-Nigeria.pdf>

145. Victoria Ibezim-Ohaeri, FATF and Civic Space: Lessons from Nigeria (2020), <https://fatfplatform.org/stories/fatf-and-civic-space-lessons-from-nigeria/>

4.1.7. Transborder Political Influences of Powerful Countries

Powerful countries also wield a strong influence on CT policy development in developing countries through international trade and development assistance or aid programs, further reinforcing global north's CT norms. Advanced economies are often invested in protecting the commercial interests of their indigenous businesses abroad irrespective of their ethical shortcomings. Israel and the United States are primary suppliers of invasive surveillance technologies to Nigeria. Countries like the United States and Israel with deep vested interests in the export of surveillance technologies to Nigeria will continue to exert influence on less powerful countries to protect the export market for their technologies. Private corporations, including major producers of surveillance technologies,¹⁴⁹ can also notoriously influence government policies through lobbying.¹⁵⁰

In the same vein, development countries receiving aid money including international and national nongovernmental organisations (NGOs) have begun to feel the impact of counter-terrorism law and measures embedded in cooperation or grant agreements. Because they often impose conditions or set the parameters for national policy initiatives and security interventions, these agreements produce two effects at the national levels. On one hand they inspire governments to adopt and implement the CT norms enforced in the donor country. On the other hand, it provides a legal impetus for governments to criminalize or suspend the work of humanitarian actors. In Nigeria, donor contracts with NGOs have favored organizations with legal registration status with numerous entities, resulting in the concentration of donor funding in few elite organizations mainly operating in the city centers. Because of this donor requirement, NGOs have also been under pressure to register with the litany of ministries, agencies, and submit to annual audits. On the other hand, the suspension or forced closure of humanitarian organizations operating in the north-east have also affected community acceptance not just of the affected INGOs but of the entire humanitarian response.

Conclusion

From the foregoing, international CT norms intended to curb terrorist activities have expressly given governments the impetus to hide under the guise of compliance to curtail individual freedoms and impose restrictions on targeted entities. FATF's recent workstream to gather data regarding the "unintended consequences" of its Recommendations (including cautionary provisions in its Guidance Notes on Digital Identity) is in itself, an acknowledgement of the enormous potential for the misuse or misapplication of its standards within states. So, where does accountability lie for the consequential harms of international norms at the national level? The government of any country bears ultimate responsibility for the formulation and implementation of CT policies within their territories. In Nigeria, civic freedoms curtailed in the name of countering terrorism are clearly enshrined in the Constitution and other binding international law instruments like the African Charter on Human and Peoples' Rights¹⁵¹ and the Universal Declaration of Human Rights which has attained the status of binding customary international law. International CT norms do not release Nigeria from its obligations under a plethora of international human rights frameworks. The constitutional authorization of

¹⁴⁹ See Action Group on Free Civic Space, Security Playbook of Digital Authoritarianism in Nigeria (December 2021): www.closingpaces.org.

¹⁵⁰ [Companies selling surveillance technologies to govts lobby for more militaristic approaches to migration - Business & Human Rights Resource Centre \(business-humanrights.org\)](#)

¹⁵¹ This treaty has been domesticated as a national law in Nigeria

CDD obligations, either through law or enforceable means. As a result of this, governments have overstretched this provision in ways that offend privacy rights. Recognizing that this gap exists, FATF noted in its 2017 Supplement on Customer Due Diligence and Financial Inclusion:

Industry feedback highlights a number of practical difficulties regarding identification and verification requirements, most of which arise pursuant to national legislative or regulatory requirements, and not the FATF Recommendations. For instance, in a normal CDD scenario, the FATF Recommendations do not require information to be gathered on matters such as occupation, income or address, which some national AML/CFT regimes mandate, although it may be reasonable in many circumstances to seek some of this information so that effective monitoring for unusual transactions can occur. Similarly, although a majority of countries specify the use of a passport or government-issued identification card as one of the methods that can be used to verify the identity of customers, the FATF Recommendations do allow countries to use other reliable, independent source documents, data or information. This flexibility is particularly relevant for financial inclusion, since low-income migrant workers, for example, often lack standard identification documents. Rigid CDD requirements that insist on government-issued identification documents, adopted by some countries or financial institutions, have acted as barriers to these disadvantaged populations obtaining access to the formal financial system.¹⁴⁶

When the requirement for CDD is joined to Recommendation 8 discussed above, it becomes clear why NPOs have been subjected to aggressive financial surveillance. Despite the revision of Recommendation 8 few years ago, GIABA specifically singles out NPOs for rigorous surveillance". According to GIABA's Assessment of Counter Terrorist Financing Capacities in West Africa (Burkina Faso, Cote D'ivoire, Mali, Niger, and Nigeria), "the lack of rigorous supervision and surveillance of activities, including the funding of several NPOs in these countries, constitutes further risks of TF."¹⁴⁷

UNSC resolutions empower states to conduct physical surveillance of persons. Resolution 2(c) of UNSC Resolution 1373 mandates that states "take necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information." Resolution 3(a) of the UNSC calls on states to "*find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist group.*" A recent study by the Action Group on Free Civic Space revealed how the massive financial resources, equipment and technologies originally procured in the name of counterterrorism and curbing insecurity have been diverted to monitor the movement of citizens, to track activities of civic actors online, intercept private communications, restrict online civic space, and limit the ability of civic actors to organize, associate and assemble freely.¹⁴⁸

¹⁴⁶ [Anti-money laundering and terrorist financing measures and financial inclusion \(fatf-gafi.org\)](https://www.fatf-gafi.org/en/publications/anti-money-laundering-and-terrorist-financing-measures-and-financial-inclusion/)

¹⁴⁷ [1132_ENG-Assessment of the CFT Capacities in GIABA MS.pdf p. 53](#)

¹⁴⁸ Action Group on Free Civic Space, Security Playbook of Digital Authoritarianism in Nigeria (December 2021): www.closingpaces.org

derogations to personal liberties in certain circumstances such as in the interest of defence, public safety, public order, public morality or public health should not be inconsistent with other obligations under international law. Both national and international law require that measures taken in those circumstances must be reasonably justifiable for the purpose of dealing with the situation that necessitated those derogations.

One thing is clear: well-intentioned international norms and laws are having unintended consequences at the national levels. The propensity of state agents to misapply standards in ways that overreach statutory authority is a continuing concern across the globe. Change can come about when international laws, especially the UN-driven counter-terrorism regimes (which often transmute to national law) are reviewed to specify with exactitude, the acceptable standards of official behaviour in internal and external skirmishes that may have implications for security, as well as other situations that do not rise to the level of terrorism and of violent extremism. And for the reviews to trickle down, the same tactics used by international norm-forming entities to secure collective compliance as well as the consequences attached to non-compliance can be applied to encourage states to attain the goals of proportionality and prevent abuse of its standards. Glaring inaction in the face of massive human rights violations arising from the misapplication of international CT norms at the national level contributes to normalizing overreaching state conduct for counterterrorism purposes. This sort of inaction shifts the burden of accountability for the abuses happening at the local level to international CT norm-forming organisations.



CHAPTER FIVE

FORWARD LOOKING APPROACHES



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The previous chapters explained how the application of these international norms produce unintended consequences in the local contexts where they are implemented. What are the opportunities available to the civil society to challenge, disrupt, reform and transform the influence of CT and security on the civic space in Nigeria? First, we identified some of the core issues NPOs should primarily focus on as they grapple with the misuse of CT norms and security narratives for the suppression of civic freedoms. We have also identified some strategies and mechanisms for challenging the abuse of CT norms and security narratives that contract the civic space. How then can civil society use these strategies as levers to get results? How do we make those mechanisms more meaningful?

5.1 Areas of Focus

5.1.1. Clear Definitions

The ambiguity in the definition of terrorism is a global problem. It is not peculiar to Nigeria, especially as new threats emerge as a result of the advancements in digital technologies. This results in countries violating the rights of their own or other citizens, including provisions laid

out under international human rights law during their counter-terrorism efforts.¹⁵² While it may be difficult to clearly delimit the term “terrorism”, it is very much possible to clearly set out what terrorism is not. Definitions of terrorism and of violent extremism in national laws must not be overly-broad and vague. They must be precise and sufficiently clear to avoid including members of civil society, or non-violent acts carried out in the exercise of fundamental freedoms. The protection of national security must be narrowly construed. Emergency measures must be strictly limited, and not be used to crackdown on civil society actors and stifle freedom of expression.¹⁵³

Consistent with the definitional uncertainty for terrorism, the 'terrorist' designation process in Nigeria is equally problematic. As we have seen from prosecution of #EndSARS protesters for terrorism financing and the proscription of the Indigenous Peoples of Biafra (IPOB) and the Islamic Movement of Nigeria (IMN), the lack of a definition facilitates the politicization and misuse of the term "terrorism" to restrain non-terrorist (or sometimes even non-criminal) activities of civic actors, protestors, religious and ethnic agitator alike. Reversing this trend requires targeted advocacy for the development of a transparent process and framework for the designation and delisting of groups as terrorists as well as freezing procedures. To make it harder for state actors to stretch and apply anti-terrorism regimes to any perceived threat or semblance of collision with constituted authority, the development of a designation process will bridge the gap in the current CT practice where the procedure and legal basis for designations, sanctions listings and for freezing assets is unknown or unclear.

5.1.2. Hardwiring Human Rights in Compliance Ratings

One way to ensure that human rights are kept at the forefront of CT efforts is to hardwire human rights in country compliance ratings such as the Universal Peer Review and Mutual Evaluations. This would mean including human rights conditions as a parameter for the assessments, thereby placing the onus on countries to demonstrate how they have (both in design and in action) met each CT requirements while respecting human rights. For example, in monitoring compliance with its Recommendation 4 (Confiscation and provisional measures), FATF can require that countries demonstrate the adequacy of measures in place to avoid, minimize and correct any interference with the property and privacy rights of innocent citizens. Failure to demonstrate this should automatically be counted as a non-compliance with the standard.

5.1.3. Reparations

Countries should be required to set up and maintain an adequate reparation programme for compensation of persons inadvertently affected by CT measures. A reparation mechanism is imperative because of the high likelihood of human rights infringements in counter-terrorism operation, especially where security forces are engaged in conflict with terrorist groups. Reparation programmes may include funds administered by the judiciary for direct payment to persons or groups who have established that they suffered injuries as a result of CT measures taken by the government. At the international level, norm-forming entities should also have a reparation mechanism in place modelled along similar lines to the UN Voluntary Fund for

152 Global NPO Coalition on FATF “Section-iii-and-iv-Global-Coalition-submission.” Available at <https://fatfplatform.org/assets/Section-iii-and-iv-Global-Coalition-submission.pdf>, accessed 26 September 2021, p. 2

153 David and Theado, The United Nations Counter-Terrorism Complex (2017) found here (https://www.fidh.org/IMG/pdf/9.25_fidh_final_compressed.pdf)

Victims of Torture that can provide support to individuals, organisations or communities that have suffered abuse or harms through CT efforts implemented locally.¹⁵⁴

5.1.4. National Risk Assessments

National risk assessment (NRA) of money laundering and terrorism financing risks in a country's financial and non-financial systems plays a pivotal role in the FATF CT framework. It is the NRA that justifies any action taken by the country to address identified threats and vulnerabilities of sectors exposed to money laundering and terrorism financing. As was evident in the 2016 NRA, a poorly-conducted risk assessment may be exploited to impose blanket restrictions and justify the foisting of stringent measures on the sector. To reduce this risk, the NPO Risk Assessment scheduled for third quarter of 2021 offers a window of opportunity to conduct an assessment that will yield risk-based analysis for identifying the subsets of NPOs at risk and the development of a proportionate terrorism financing response to identified threats. The NPO sector is diverse both in structure, objectives and the causes they take on. Each subsector faces a unique risk spectrum. Therefore, inclusion and participation of NPOs in the risk assessment will ensure that the exercise preserves the rights key to civil society: freedom of expression and opinion, freedom of association, freedom of assembly, and participation right.

NPOs can also leverage the outcomes of a properly-conducted risk assessment to show that the NPO sector is diverse both in terms of numbers, types, structures, and complexity. As such, the entire sector cannot be categorized as vulnerable to terrorist financing abuse. This error needs to be corrected because the mere revision of Recommendation 8 has proven to be insufficient. Spaces for Change's studies on NPOs in Nigeria reveals that there is hardly any characteristics of NPOs that makes them inherently vulnerable for abuse over and above other kinds of organisations requiring any targeted regulation of NPOs.¹⁵⁵

5.2. STRATEGIES

5.2.1. Advocacy

Major success stories have been recorded as a result of advocacy by the civil society on a wide range of issues. The revision of Recommendation 8 from its original sweeping iteration to a risk-based approach was a major achievement in challenging the misbranding of NPOs as conduits for terrorist financing. In fact, persistent advocacy has resulted in some changes at FATF in a bid to address the criticisms regarding its lack of engagement with the civil society. Since 2016, the Global NPO Coalition on the FATF has been permitted to nominate four representatives to participate in the annual Private Sector Consultative Forum, ensuring some human rights/humanitarian presence in the room.¹⁵⁶ In addition, the FATF committed to enhancing engagement with NPOs by holding annual meetings on specific issues of common interest and organizing ad hoc exchanges on technical matters.¹⁵⁷ In Nigeria, advocacy by the civil society organizations has been instrumental in defeating many attempts to enact restrictive regulatory codes for NPOs built on the rhetoric of terrorism. Sustained advocacy at the national and international levels are necessary to keep issues of over-securitization of the civic space on the front burner of public, political and global consciousness.

¹⁵⁴ OHCHR, The United Nations Voluntary Fund for Victims of Torture <https://www.ohchr.org/en/issues/torture/unvft/pages/index.aspx>

¹⁵⁵ Spaces for Change "Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria." Available at https://spacesforchange.org/wp-content/uploads/2019/03/FULL-REPORT-UNPACKING-THE-OFFICIAL-CONSTRUCTION-OF-RISKS-AND-VULNERABILITIES-FOR-THE-THIRD-SECTOR-IN-NIGERIA_compressed.pdf, accessed 26 September 2021, pp. 43-49

¹⁵⁶ Fionnuala Ní Aoláin "Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders." Available at <https://undocs.org/pdf?symbol=en/A/HRC/40/52>, accessed 26 September 2021, p. 23

¹⁵⁷ Ibid. p. 23-24



5.2.2. Policy and Political Engagements

AML/CFT advocacy is technical, complex and often involves extensive balancing acts. Civil society must therefore continue to maintain cordial relationships with public and private actors, including seeking out opportunities to collaborate with policy makers to exchange information and work out lasting and feasible solutions. For instance, the detailed and systematic analysis by Spaces for Change of Nigeria's 2016 National Risk Assessment from the perspective of FATF Recommendation 8¹⁵⁸ captured the attention of the Nigerian NFIU, SCUML as well as a five-member team of FATF/GIABA assessors which opened doors for meaningful engagements and information exchanges between the Nigerian civil society on the one hand and the aforementioned CT actors on core issues such as regulation of NPOs, classification of NPOs as DNFIs and adequacy of existing regulatory framework for NPOs.¹⁵⁹ These engagements translate to better perspectives for the policy makers as well as the opportunity for the civil society to take on board intelligence-driven insights from the policy circles.

5.2.3. Trainings and Research

To adequately challenge the abuse of CT norms, a strong knowledge of the interrelations between the law, politics, international relations around the issues of CT and PCVE, as well as clear understanding of the workings of the major CT actors, are imperative. Civic organizations have successfully used research to push for the reform of the CT regimes applied to the non-profit sector in Nigeria. In its detailed review of the Nigeria NRA, Spaces for Change challenged the official classification of NPOs as DNFIs, disputing the evidential basis for the identification and classification of ML/FT risks, threats and vulnerabilities in the sector.¹⁶⁰ GIABA's Mutual Evaluation Report 2021 agreed with this view when it found that Nigerian authorities' understanding of NPOs' TF risks do not justify their categorisation and regulation as DNFBPs.

Furthermore, many actors in Nigeria's NPO sector are unaware of how CT norms handed down by organisations like FATF influence some of the frequent regulatory shocks and stresses disrupting civil society operations in Nigeria. Improved understanding of FATF and similar CT norm-forming bodies—through trainings and capacity development—will uniquely position NPOs to engage with the regulators and policy makers to proffer well-informed arguments to counter attempts to pass restrictive legislations. This underscores the importance of continued research and training on this subject and the dissemination of the findings through a wide range of media channels.

5.2.4. North-South Collaborations and Partnerships

Coordination between actors across countries is another strategy that has helped to facilitate a cross-issue learning exchange between organisations in the Global North and the Global South.¹⁶¹ Collaborative partnerships are highly recommended between local and international organizations working around this remit such as the Global NPO Coalition on FATF, Human Security Collective (HSC), International Center for Non-profit Law, (ICNL), European Center for Non-profit Law (ECNL), Security and Policy Alternatives Network (SPAN) and the CSO Coalition

¹⁵⁸ Spaces for Change "Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria." Available at https://spacesforchange.org/wp-content/uploads/2019/03/FULL-REPORT-UNPACKING-THE-OFFICIAL-CONSTRUCTION-OF-RISKS-AND-VULNERABILITIES-FOR-THE-THIRD-SECTOR-IN-NIGERIA_compressed.pdf, accessed 26 September 2021, pp. 43-49

¹⁵⁹ Victoria Ibezim-Ohaeri, FATF and Civic Space: Lessons from Nigeria (2020) Accessed via <https://fatfplatform.org/stories/fatf-and-civic-space-lessons-from-nigeria/>

¹⁶⁰ Spaces for Change "Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria." Available at https://spacesforchange.org/wp-content/uploads/2019/03/FULL-REPORT-UNPACKING-THE-OFFICIAL-CONSTRUCTION-OF-RISKS-AND-VULNERABILITIES-FOR-THE-THIRD-SECTOR-IN-NIGERIA_compressed.pdf

¹⁶¹ Victoria Ibezim-Ohaeri, *Confronting Closing Civic Spaces in Nigeria*, Issue 26, SUR International Journal on Human Rights, September 2017

on Human Rights and Counter-Terrorism (also known as the Group of Groups) etc. to foster knowledge-sharing and knowledge transfer.

Opportunities to conduct workshops with relevant agencies like the Office of the National Security Adviser (ONSA), the Nigerian Financial Intelligence Unit (NFIU), Special Control Unit against Money Laundering (SCUML), Economic and Financial Crimes Commission (EFCC), and the Nigeria Police, should be maximized to inject human rights perspectives into national CT programmes and where possible to arrive at shared conclusions.¹⁶² Finally, inroads should be sought into the Nigerian legislature to proactively educate and deconstruct long-held perception of NPOs as prone to terrorist financing abuses, and to demonstrate that the stringent regulation of NPOs is unnecessary based on prevailing evidence.

5.2.5. Training Judicial Officers

Local media have often reported stories that accused judges hearing cases bordering on terrorism of “judicial rascality and impunity” based on their apparent demonstration of prejudice and bias. In one case, locking out the legal representatives defending ethnic agitators charged with terrorism from the courtroom attracted widespread condemnation, casting doubts on the ability of the courts to give justice and fair hearing.¹⁶³

An independent and informed judiciary is statutorily mandated to check the excesses of security agencies through judicial reviews, court pronouncements and injunctive orders. The judiciary has not yet featured prominently in the discourse around the abuse of CT norms. This may be attributable to paucity of deep understanding of the interface between counterterrorism and human rights. Technical knowledge updates through capacity building are necessary to equip judicial officers to adjudicate and preside over human rights applications violated during CT operations.

5.2.6. Litigation

Public interest litigation (PIL) is a potent tool for addressing the adverse impacts of CT regulation on human rights. Under Nigerian law, any person whose right has been violated by a public or private person can bring court action challenging the breach or potential breach of human rights of other persons without being hampered by locus standi objections.¹⁶⁴ There are successful examples of cases wherein Nigerian courts have curbed restrictive security legislation such as the Public Order Act which requires Nigerians to obtain police permits before holding public gatherings.¹⁶⁵ Whilst the constitution allows for certain limitations to certain rights, the circumstances for such derogations are limited. Unlike a commonly held notion, the constitutional provision on human rights derogation requires that such derogation must be backed by a law that is reasonably justifiable in a democratic society.¹⁶⁶ This empowers the court, upon an application by citizens to appraise whether actions of security agencies in Nigeria that tramples on human rights are justifiable.

A major reason while PIL lags behind in Nigeria is the cost of litigation. This can be ameliorated through the establishment of litigation funds by donor bodies or coalitions of NPOs in Nigeria

¹⁶² A similar workshop was organized by ONSA and UNDP on observance of human rights in the prevention of violent extremism. See <https://ctc.gov.ng/onsa-and-undp-collaborate-to-train-law-enforcement-and-security-officials-on-observance-of-human-rights-in-the-prevention-of-violent-extremism/>, accessed 26 September 2021

¹⁶³ P.M. News, Nnamdi Kanu: Justice Binta Nyako engaging in judicial rascality, impunity – IPOB (2021); <https://pmnewsnigeria.com/2021/11/13/nnamdi-kanu-justice-binta-nyako-engaging-in-judicial-rascality-impunity-ipob/>

¹⁶⁴ See The Fundamental Rights (Enforcement and Procedure) Rules 2009

¹⁶⁵ Inspector General of Police v All Nigeria Peoples Party (2007) 18 NWLR (Pt.1066) 457

¹⁶⁶ Section 45 of the Constitution of the Federal Republic of Nigeria

for the prosecution of, or provision of support for, cases deemed to be of a significant national importance for the preservation of human rights in Nigeria. In this regard, partnerships between NPOs and the Nigerian Bar Association¹⁶⁷ and the pro bono departments of private law firms can also be considered.

5.2.7. Engaging the Military Formations

Very few advocacy groups have access to military institutions working to combat terrorism in the country. There is need to undertake high-level advocacy targeting high-ranking serving military personnel, advocating for the compelling need to review the enforcement of NACTEST and PCVE programming, as well as anti-protest operations, in ways that align with the country's domestic and international human rights obligations. Targeted workshops for military personnel will offer a platform for influencing and refining the Nigerian government's policy and military response to humanitarian assistance in the north-east as well as civil remonstrations while laying the foundation for increasing adherence to the applicable rules of national and international law governing the containment measures.

5.2.8. Civic Actors' Clinics

Modelled after the NGO Regulatory Compliance Clinic,¹⁶⁸ it is useful to introduce a Civic Actors' Clinic drawing from the lessons learned from this scanning exercise to produce resources designed to equip citizen advocates, social movements, especially ethnic agitators, human rights defenders, journalists, local and international NGOs with the resources needed to counter CT-scented restrictions in advance before they materialise.

5.2.9. Further Research Inquiry on Downstream CT Harms is Necessary

There is need for much more research by a raft of actors into the influence of OCT and CTED work and programs in the country. CTC and CTED have scheduled a hybrid follow-up visit to Nigeria to assess the country's progress in implementing relevant Security Council resolutions. While this visit is a positive move, it creates an opportunity for civic actors and organizations impacted by CT operations to engage. That engagement needs to be preceded by indepth inquiries mapping the drivers and impact, as well as looking into the influences of other international non-forming institutions and softlaws on the ground.

5.3. ENTRY POINTS

Finally, what are the available opportunities that civil society can explore to disrupt, rectify or transform the defects in CT norms? What platforms can NPOs leverage to push back against the weaponization of the CT architecture by state security agents and regulatory bodies? We have identified some entry points at the local, regional and global levels. An example is the UN Counter Terrorism Executive Directorate's (UNCTED's) refresh of the UN Compendium on recommendations to states for implementing biometric technologies to counter terrorism.

¹⁶⁷ which has a Section on Public Interest and Development Law,

¹⁶⁸ <https://spacesforchange.org/?s=compliance+clinic>

5.3.1. Periodic Reviews of CT Frameworks

The various national CT and cybersecurity strategies such as the National Counter Terrorism Strategy 2016 (subject to review biennially), the National Cybersecurity Policy and Strategy 2021 (subject to review every 5 years), the Policy Framework and National Action Plan for Preventing and Countering Violent Extremism 2017 (to be reviewed after 3 years), the National Security Strategy 2019 (to be reviewed every 5-10 years).¹⁶⁹ While the timelines for some of these reviews may have elapsed,¹⁷⁰ several civil society organizations took proactive steps to participate during the review processes of the various strategies, ensuring that positive consideration is given to civic spaces in their design.

International CT frameworks are subjected to periodic review.¹⁷¹ These are opportunities to carry out human rights audits of the CT strategies and to reinject learnings from across the globe into the frameworks.

5.3.2. Mutual Evaluations

Mutual Evaluations under the auspices of FATF or FATF-Styled Regional Bodies (such as GIABA for West Africa) present an opportunity for the civil society to engage with the representatives of these bodies. The evaluation procedures involve outreach to civil society during which anti-NPO narratives of the government can be challenged. This is also a channel for feedback to the entities on the impacts of the legislation and regulation passed by Nigeria to comply with FATF standards. In addition, NPO representatives would be able to challenge negative narratives towards the NPO sector contained in official reports.

Nigeria's latest mutual evaluations report by FATF regional body (GIABA) clearly identifies over-regulation of civil society in Nigeria. The report found that Nigeria has extended AML/CFT requirements on the Not-for-profit (NPO) sector which is not in line with the FATF requirements and does not reflect a risk-based approach. Nigeria has not conducted a sectoral risk assessment of NPOs vulnerable to TF abuse in line with the risk-based approach.

5.3.3. FATF Unintended Consequences Workstream

In February 2021, FATF launched a new project to study and mitigate the unintended consequences resulting from the incorrect implementation of the FATF Standards.¹⁷² Two of the broad unintended consequences identified by FATF revolve around the subject of this report, namely:

- (I) Undue targeting of NPOs through non-implementation of the FATF's risk-based approach; and
- (II) The curtailment of human rights (with a focus on due process and procedural rights) stemming from the misuse of the FATF Standards or AML/CFT assessment processes to enact, justify, or implement laws, which may violate rights such as due process or the right to a fair trial.

¹⁶⁹ Based on documents available on CTC website – ctc.gov.ng, accessed 26 September 2021

¹⁷⁰ Ibid.

¹⁷¹ UN Global Counter-Terrorism Strategy is due for review every 2 years. See <https://www.un.org/counterterrorism/un-global-counter-terrorism-strategy>, accessed 26 September 2021

¹⁷² FATF "Mitigating the Unintended Consequences of the FATF Standards." Available at https://www.fatf-gafi.org/publications/financial_inclusionandnpoissues/documents/unintended-consequences-project.html, accessed 26 September 2021

The expected outcome of this workstream is to provide the FATF plenary with tangible evidence of the impact of the CT standards on human rights and the civil society and to present practical solutions for refining the FATF standards. This is a positive development and provides the civil society with the opportunity to engage with a major CT norm actor on the issues highlighted in this research.

5.3.4. The mandate on promotion and protection of human rights and fundamental freedoms while countering terrorism

The Special Rapporteur is an independent expert appointed by the UN Human Rights Council (HRC) and is mandated by HRC resolution 15/15 to among other things, make concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism, including, at the request of States, for the provision of advisory services or technical assistance on such matters. The office of the Special Rapporteur is an opportune channel for transmitting human rights concerns of CT norms identified by the civil society to the UN. Several reports of the Special Rapporteur indicate a positive disposition of the office towards engagement with the civil society.

Recently, the Special Rapporteur called for input to a Report on the Human Rights Dimensions of Technical Assistance and Capacity Building in the Counter Terrorism and Countering / Preventing Violent Extremism Arenas which would illuminate the human rights dimension of CT technical assistance and capacity building provided to States by regional and global entities.¹⁷³ This and similar opportunities should be maximally utilized by the civil society.

5.3.5. GCTF-inspired Initiative on Ensuring Implementation of Countering the Financing of Terrorism Measures While Safeguarding Civic Space

currently has Morocco, the Netherlands and the United Nations as co-leads. This provides a platform for stakeholders to discuss perspectives and experiences, share lessons learned and existing good practices, and develop a good practice memorandum on ways to achieve implementation of proportionate and risk-based CFT) measures that avoid negatively affecting civic space and humanitarian operations. Through their series of expert meetings, Nigerian activists and advocates can create linkages and contribute to strengthening the dialogue and coordination on CT measures in African countries among government representatives, regulatory agencies, counterterrorism and counterterrorism financing (CFT) practitioners, civil society organizations, humanitarian actors, the private sector, United Nations bodies, and other relevant stakeholders.

5.3.6. What can be done at the continental level?

-Most of the regional frameworks are dated and due for periodic review. What actions can we take to push for review of the frameworks below:

-Convention to Combat and Prevent Terrorism in 1999

Algiers Plan of Action on the Prevention and Combating of Terrorism (2002). Read

more here: <https://issafrica.org/ctafrika/international-regional-counter-terrorism-related-legal-instruments/african-union-au/african-union-au-conventions-and-protocols>

173 See OHCHR "Call for inputs: Report on the Human Rights Dimensions of Technical Assistance and Capacity Building in the Counter-Terrorism and Countering / Preventing Violent Extremism Arenas." Available at https://www.ohchr.org/EN/Issues/Terrorism/Pages/HR_Technical_Assistance_Capacity_Building.aspx, accessed 26 September 2021

5.3.7. At the subregional level:

- GCTF Capacity-Building in the West Africa (WA) Region Working Group currently has Algeria and Germany as Co-Chairs. In addition to having more West African representatives in the leadership of the working group, Nigerian and West African civic actors can leverage this platform to share information on efforts made to counter terrorism financing, the results being achieved, and the lessons learned. Information shared can feed into the strengthening of institutional frameworks (including policy, legislation, etc.) and remodelling of best practices in financial intelligence and investigations across the subregion.
- Ecowas Political Declaration and Common Position Against Terrorism was adopted in Yamoussoukro, Côte d'Ivoire, on 28 February 2013. The document is ripe for review through engagement with various ECOWAS mechanisms in Senegal, Abuja etc.
- Another document due for an update is the ECOWAS Counter-Terrorism Strategy. Member States are obligated to carry out a periodic evaluation and reporting on the measures taken and challenges encountered in the implementation of this Strategy, with civil society obligated to be consulted as well.
- ECOWAS adopted the 2020-2024 Action Plan in 2019. Its eight priority areas range from pooling of efforts and coordination of counter-terrorism initiatives to promoting inter-community dialogue and preventing violent extremism.
- What is the status of implementation of the 2020-2024 Action Plan? What progress has been made and what are next steps forward?

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ACTION GROUP ON FREE CIVIC SPACE



ACTION GROUP ON FREE CIVIC SPACE SECRETARIAT:

SPACES FOR CHANGE | S4C
35B AJAKAIYE STREET, ONIPETESI ESTATE, MANGORO, IKEJA, LAGOS, NIGERIA
Email: info@closingspaces.org
Telephone: +234 703 620 2074 | +234 909 453 9638
Website: <https://closingspaces.org/group-activities/>