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CLOSING SPACES FOR CIVIL SOCIETY AND DEMOCRATIC ENGAGEMENT IN NIGERIA

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Spaces for Youth Development and Social Change
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SPACES FOR YOUTH DEVELOPMENT AND SOCIAL CHANGE

SPACES FOR CHANGE | S4C

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

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PREFACE

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

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

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

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

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

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



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

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

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

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ABBREVIATIONS

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



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





EXECUTIVE SUMMARY

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

~ Methodology for the research

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

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



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

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

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

~ Key findings

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





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

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

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

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

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

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

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

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

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



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

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

~ Developing Indicators for Monitoring and Measuring Closing Spaces

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

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

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

⁶Ibid



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

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

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

(A) Proposing stiffer regulations

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

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

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



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

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

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

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

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

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

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



(B) Overbroad application of existing legislation

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

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

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

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



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

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

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



~ Concluding observations

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

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

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

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

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

¹⁴ GIABA 2014 Annual Report, p.48.

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

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



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

In sum:

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

