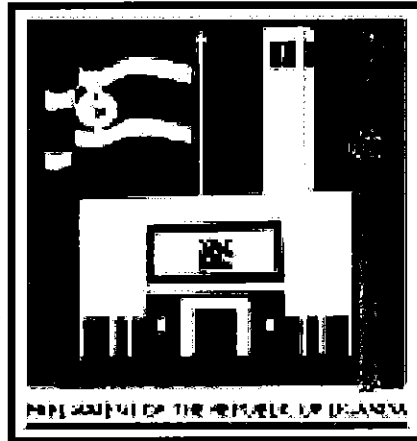


PARLIAMENT OF UGANDA



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THE REPORT

OF

**THE COMMITTEE ON DEFENCE AND INTERNAL AFFAIRS
ON THE ANTI-TERRORISM AMENDMENT BILL, 2015**

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JUNE 2015

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TABLE OF CONTENTS

LIST OF ACRONYMS3
INTRODUCTION4
BACKGROUND4
OBJECTIVES OF THE BILL5
METHODOLOGY5
ISSUES RAISED BY DIFFERENT STAKEHOLDERS ON THE BILL6
FINANCIAL INTELLIGENCE AUTHORITY (FIA)6
BANK OF UGANDA7
MINISTRY OF FINANCE8
THE PUBLIC8
OBSERVATIONS /RECOMMENDATIONS9
PROPOSED AMENDMENTS TO THE BILL10

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LIST OF ACRONYMS

AML/CFT – Anti-Money Laundering and Combating Financing of Terrorism

ATA – Anti Terrorism Act, 2002

DPP – Director of Public Prosecutions

ESAAMLG – Eastern and Southern African Anti-Money Laundering Group

FATF – Financial Action Task Force

FIA – Financial Intelligence Authority

FSRB – Financial Action Task Force Style Regional Bodies

ICRG – International Co-Operation Review Group

IMF – International Monetary Fund

IGP – Inspector General of Police

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**REPORT OF THE COMMITTEE ON DEFENCE AND INTERNAL AFFAIRS
ON THE ANT-TERRORISM AMENDMENT BILL, 2015**

1. INTRODUCTION

Rt. Hon. Speaker, The Anti-Terrorism (Amendment) Bill, 2015 was read for the first time in Parliament on 30th April 2015 by the Minister of Internal Affairs and was subsequently referred to the Committee on Defence and Internal Affairs for scrutiny and consideration in accordance with Article 90(1) of the Constitution of the Republic of Uganda and Rule 118 of the Rules of Procedure of Parliament of Uganda. The Bill seeks to amend the Anti-terrorism Act, 2002 to meet our International commitments on terrorism financing and criminalize terrorism financing.

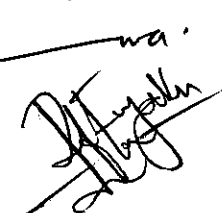
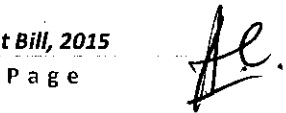
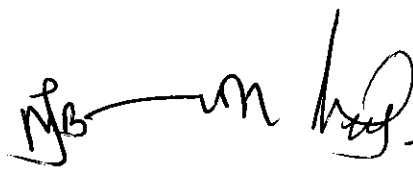
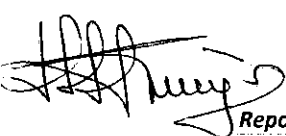
2. BACKGROUND

In a bid to combat terrorism and money laundering, Government has found it important to mitigate the threats of money laundering and terrorism financing. Uganda is one of the founding members of the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) which is one of the Financial Action Task Force (FATF) Style Regional Bodies (FSRB) across the world, a regional body that combats money laundering.

FATF is a global standard setting body for anti-money laundering and combating financial terrorism. For a country to be a member of a FSRB, it has to periodically undergo what is termed as a Mutual Evaluation of its standing in relation to its anti-money laundering and combating of terrorism efforts.

Suffice to note that all the sixteen (16) ESAAMLG member countries have completed the first round of mutual evaluation on compliance with FATF standards in Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT). ESAAMLG is in the process of conducting a second round of mutual evaluations for its members, basing on the new FATF recommendations of 2012.

The ESAAMLG top organ directed that countries maintain the same order of Mutual Evaluation as in the first round. Uganda was the first country to be evaluated in 2008 and therefore is the first to be evaluated in the second. One of the deficiencies Uganda had in the first round was



3. OBJECTIVES OF THE BILL

The objectives of the Bill are:

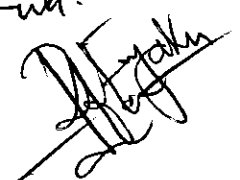
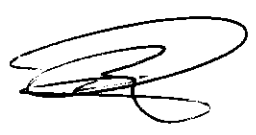
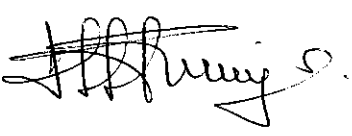
- (i) To amend the Anti-Terrorism Act 2002, to harmonize the definition of “funds” with that contained in the International Convention on the Suppression of the Financing of Terrorism 1999;
- (ii) To amend the definitions of “terrorism” and “acts of terrorism” to include the international aspects envisaged by the Convention for related purposes;
- (iii) To meet the requirements of the Financial Action Task Force that Countries not only criminalize terrorism but terrorism financing as well;
- (iv) To comply with the United Nations Conventions on Terrorism Financing which Uganda signed on 13th November 2001 and ratified on 6th November 2003;
- (v) To define the word “funds” to be at par with the UN Convention. In the current Act, the word “funds” is not defined so the amendment is meant to cure that omission (Clause 3);
- (vi) To cure an omission in the current Act by giving the Minister of Internal Affairs powers to issue requirements for better carrying out provision of the Act and give it full effect (Clause 5);
- (vii) To provide for the expeditious freezing, seizure and forfeiture of assets and property suspected to be linked to terrorist activities (Clause 4).

4. METHODOLOGY

The Committee used the following methodology in the process of scrutinizing the Bill:

- (i) Meetings with the following Stakeholders:
 - Financial Intelligence Authority;
 - Bank of Uganda
 - Ministry of Finance, Planning and Economic Development;
 - Ministry of Internal Affairs

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- Internal Security Organization.

(ii) Reviewed the following documents:

- The Anti-Terrorism Amendment Bill, 2015;
- The Anti-Terrorism Act, 2002;
- The Constitution of the Republic of Uganda;
- The Rules of Procedure of Parliament of Uganda;
- The Hansard;
- The United Nations Convention on the Suppression of Terrorism Financing;

(iii) Held public hearings;

(iv) Went on a benchmarking trip to Ghana.

5. ISSUES RAISED BY DIFFERENT STAKEHOLDERS ON THE BILL

(i) FINANCIAL INTELLIGENCE AUTHORITY (FIA)

In its presentation, the Interim Executive Director informed the Committee that the FIA has been working with other Stakeholders to strengthen and improve Uganda's Counter terrorism framework to conform to the Financial Action Task Force (FATF).

The Executive Director noted that the sole objective of the Bill is to amend the Anti-Terrorism Act, 2002 to harmonize the definition of "funds" with that contained in the International Convention on the Suppression of Financing of Terrorism 1999; to amend the definitions of "terrorism" and "act of terrorism" to include the international aspects envisaged by the Convention; and for related purposes.

He further stressed that most of the provisions of the International Convention on the Suppression of Financing of Terrorism, and FATF recommendation number 5 of addressing terrorism financing and financing of proliferation.

He highlighted the fact that Uganda is under immense pressure from the Eastern and Southern Africa Anti-money laundering group (ESAAMLG) and the FATF to ensure that the Bill is passed into law within the time frames set for Uganda.

(ii) BANK OF UGANDA

In its presentation, Bank of Uganda informed the Committee that it has been part of the technical Committee that drafted the Anti-Terrorism (Amendment) Bill, 2015 and as such was in position to contribute to the debate on the Bill.

It informed the Committee that the Anti-Terrorism Act, 2002 does not address Financial Action Task Force (FATF) recommendations on terrorism and terrorism financing and therefore, falls short of the required international standards in this regard. Furthermore, it noted that the Bill seeks to update and enhance the provisions of Uganda's Anti-Terrorism Laws to harmonize it with the requisite international standards whilst improving Uganda's counter-terrorism legislative framework and regime in order to enable Uganda respond effectively to terrorism threats and dangers.

The Bank fully agrees with the object of the Bill which is "to amend the Anti-Terrorism Act 2002 to harmonize the definition of "funds" with that contained in the International Convention on the Suppression of Financing of Terrorism, 1999; to amend the definitions of "terrorism" and "acts of terrorism" to include the international aspects envisaged by the Convention; and for related purposes".

It informed the Committee that Uganda is required to expedite the passing of the proposed amendments to the Anti Terrorism Act 2002 since criminalization of terrorism financing, seizing and freezing of terrorist assets are key criteria used by the FATF-ICRG to determine insufficient progress by Uganda.

Most of the provisions contained in the Bill comply with the provisions of the International Convention on the Suppression of Financing of Terrorism, and FATF Recommendation No. 5 addressing terrorism financing and financing of proliferation.

The Bank urged Parliament to expeditiously consider the Bill and pass it into law given the impending threat of the FATF to enforce detrimental action against Uganda if the Bill is not passed into law. The Bank further highlighted that Uganda is under pressure from the FATF and ESAAMLG to ensure that

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the Bill is passed into law within the timeframes set for Uganda.

(iii) MINISTRY OF FINANCE

The Ministry informed the Committee that financial institutions operate on the basic tenets of public confidence and integrity. In the short term, a financial institution that is seen condoning money laundering and terrorism activities will lose public confidence of their depositors and in the long run its ability to perform its important economic intermediation process will be affected as well.

The Ministry further informed the Committee that with the negative impact of money laundering and terrorism financing in mind, Government has a strong incentive to ensure that Uganda's AML/CFT regime is effective.

The Ministry noted that financial institutions being some of the most important partners in combating money laundering and terrorism financing risks, they play an important role of deterring and detecting money laundering and terrorism financing activities.

The Ministry concluded by informing the Committee that it has received a letter from the International Monetary Fund (IMF) reminding them of the 21st June 2015 deadline to have Uganda's terrorism laws amended in line with the FATF recommendations. The IMF threatened to review its dealings with Uganda if our laws are not amended by that date.

(iv) THE PUBLIC

A cross-section of the public raised the following issues on the Bill:

a. Seizure and Forfeiture

The public argued that freezing of assets should only happen after conviction.

b. The Role of the Financial Intelligence Authority

The public wants property seized after a thorough judicial process.


6. OBSERVATIONS /RECOMMENDATIONS

Having analyzed and scrutinized the Bill, the Committee makes the following observations/recommendations:

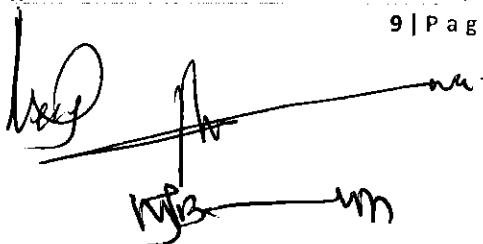
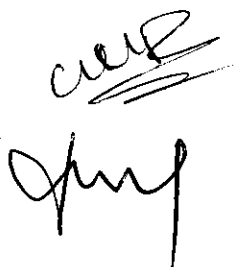
- (i) The Committee observes that since the enactment of the Anti-Terrorism Act of 2002, terrorism has changed character and forms thus requiring a review of the current laws.
- (ii) Because terrorism has changed character and forms, there is need to widen the definitions of "acts of terrorism" in the Anti-Terrorism Act 2002 with that of International Convention on the Suppression of the Financing of Terrorism and in compliance with FATF recommendations.

The Committee recommends that the definition of "acts of terrorism" be expanded since it is intended to establish terrorism offences as predicate offences of money laundering.

- (iii) The Committee observed that the ATA, 2002 does not address the issues emerging in the global financial framework which are aimed at combating terrorism. The Bill seeks to incorporate these issues which FATF has recommended on terrorism and terrorism financing because the ATA was falling short of these issues. Furthermore, it noted that the Bill seeks to update and enhance the provisions of Uganda's Anti-Terrorism Laws to harmonize it with the requisite international standards whilst improving Uganda's counter-terrorism legislative framework and regime in order to enable Uganda respond effectively to terrorism threats and dangers.
- (iv) The Committee observed that the Bill intends to give courts and the Inspector General of Police the mandate of seizing of funds or property where the court is satisfied that the funds are, or the property is, reasonably linked or intended for terrorism activities.


The Committee recommends that the immediate order for the seizure of such property should be mandated to the Director of Public Prosecutions (DPP) who will however be required to obtain a court order within forty eight (48) hours.

- (v) The Committee observed that any property forfeited to the State should vest in the Government of the Republic of Uganda.



(vi) **The Committee recommends that the Bill be passed into law subject to the following amendments**

7.0 PROPOSED AMENDMENTS TO THE ANTI- TERRORISM (AMENDMENT) BILL, 2015

1. Clause 2. Amendment of section 7 of principal Act.

Propose to amend clause 2 (b) of the Bill that seeks to amend S.7 (2) of the principal Act by;

- i) Under (b) (ii)
(b) Deleting the words 'or indirect involvement' appearing between 'direct' and 'or complicity'

Justification

It is not clear as to what amounts to indirect involvement in committing of the mentioned acts. Complicity is sufficient to cater for aiding and abetting.

- (ii) Under (b) (iii)
(c) Deleting the words 'or indirect' immediately after 'direct'

Justification

It is not clear as to what amounts to indirect involvement in committing of the mentioned acts. Complicity is sufficient to cater for aiding and abetting.

- (iii) Under (b) (v)
(e) Deleting the words 'or indirect' immediately after 'direct'



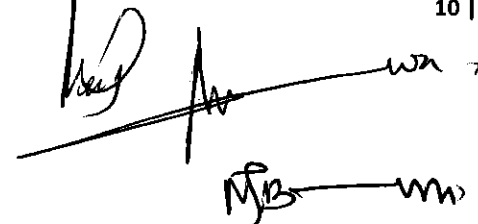

Justification

It is not clear as to what amounts to indirect involvement in committing of the mentioned acts. Complicity is sufficient to cater for aiding and abetting.

- (iv) under (b) (vii)
(k) Substituting for the word 'hostile acts' with the word "armed conflict"

Justification

To conform to Article 2 (1) (b) of the International Convention for the suppression of the financing of Terrorism which provides for in a situation of armed conflict.

- (v) Under (l) deleting the entire paragraph (l) and re-numbering accordingly.

Justification

It's impliedly provided for under section 7(2) (b) of the parent Act.

- (vi) Deleting paragraph (g) of Section 7(2) of the parent Act.

Justification

To avoid duplication of provisions since the content is elaborated under paragraph (p) in the amendment Bill.

2. Clause 3 Insertion of new section 9A

Propose to amend 9A by;

- (i) Under sub-clause (1) by substituting for the word 'a person' with the word 'an individual terrorist'

Justification

Individual terrorist is provided for under the legal regime of terrorism unlike a person, who is not clearly defined in terrorism legislation.

- (ii) Under sub-clause (4) by deleting the word 'thousand' between 'hundred' and 'currency'.

Justification

To provide for a realistic and corresponding fine to the 20 years of imprisonment.

3. Clause 4. Insertion of new sections 17A

Propose to amend clause 4 of the Bill by:

- (i) Substituting the entire clause 17A with the following;

(1) The court may, on the application of the Director of Public Prosecutions, order the freezing or seizing of funds or property where the court is satisfied that the funds are, or the property is, reasonably linked or intended for terrorism activities.

(2) Subject to Sub-section (1) above, the Director of Public Prosecution may, without a court order direct in writing for the freezing or seizing of funds or property, however such a directive should last for not

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(2) Subject to Sub-section (1) above, the Director of Public Prosecution may, without a court order direct in writing for the freezing or seizing of funds or property, however such a directive should last for not more than forty eight hours within which period, the Director of Public prosecution shall apply for an order confirming the directive or seizure.

(3) The court may on the application of the aggrieved party, revoke an order made where it is satisfied that the funds are, or the property is, not linked or intended for terrorism activities, in which case if it's under;

(a) Sub section (1) above, the revocation may be made at any time but not later than sixty working days.

(b) Sub section (2) above, the revocation may be made at any time but not later than sixty thirty days.

4. Insertion of new section 32 A

Propose to amend clause 4 of the Bill which seeks to insert 17B by under clause 17B (4) substituting the existing provision with the following;

(4) "Property forfeited to the State shall vest in Government."

Justification

Since the property is forfeited to the State, it should have the responsibility of selling or disposing it off.

5. Second schedule

Propose to amend the second schedule that spells out the list of terrorist Organizations recognized under S.10 of the parent Act, by inserting four terrorist organizations as follows;

- Ae.*
- 5. Boko Haram
 - 6. Al-Shabaab
 - 7. Islamic Maghreb
 - 8. Allied Democratic Forces

Justification

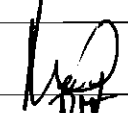
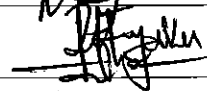
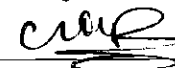
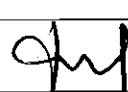
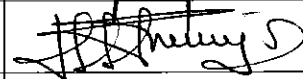
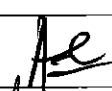
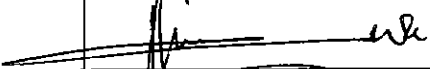

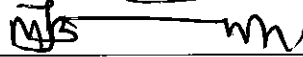
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To cater for the new emerging terrorist organizations.

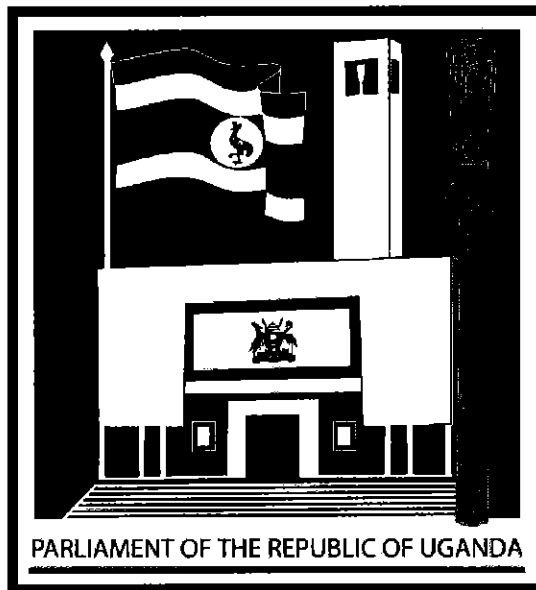
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**REPORT OF THE COMMITTEE ON DEFENCE AND INTERNAL AFFAIRS
ON THE ANT-TERRORISM AMENDMENT BILL, 2015**

S/N	NAME	SIGNATURE
1.	Hon. Namugwanya Benny Bugembe	
2.	Hon. Eriaku Emmanuel	
3.	Hon. Muwuma Milton	
4.	Hon. Muwanga Kivumbi	
5.	Hon. Mbogo Kezekia	
6.	Hon. Mbagadhi Frederick Nkayi	
7.	Hon. Nakawunde Sarah. T	
8.	Hon. Fungaroo Kaps Hassan	
9.	Hon. Amodoi Cyrus Imalingat	
10.	Hon. Mulindwa Patrick	
11.	Hon. Mulongo Simon	
12.	Hon. Okeyo Peter	
13.	Hon. Katirima Phinehas	
14.	Hon. Makhoha Margret	
15.	Hon. Ssekikubo Theodore	
16.	Hon. Akello Rose Lilly	
17.	Hon. Abia Christine	
18.	Hon. Lyomoki Samuel	
19.	Hon. Ssemujju Ibrahim Nganda	



A MINORITY REPORT

ON

THE ANTI-TERRORISM (AMENDMENT) BILL, 2015

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JUNE, 2015

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1.0 Introduction

The financing of terrorism is a matter of grave concern to the International Community as a whole; the number and seriousness of acts of International Terrorism depend on the financing that terrorists may obtain. Despite Uganda's high-level political commitment to work with the Financial Action Task Force (FATF) and the Eastern and Southern African Anti-Money laundering Group (ESAAMLG) to address its strategic Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT) deficiencies, the FATF is not yet satisfied that Uganda has made sufficient progress in improving its AML/CFT regime, and certain strategic AML/CFT deficiencies.

2.0 Justification for the proposed Anti-terrorism (amendment) Bill, 2015

Uganda is one jurisdiction that is not making sufficient progress hence the justification for the proposed amendment to the Anti-terrorism Act, 2002 which seeks address the deficiencies, which include: (1) adequately criminalising terrorist financing; (2) establishing and implementing an adequate legal framework for identifying, tracing and freezing terrorist assets; (3) ensuring effective record-keeping requirements; (4) establishing a fully operational and effectively functioning financial intelligence unit; (5) ensuring adequate suspicious transaction reporting requirements; (6) ensuring an adequate and effective AML/CFT supervisory and oversight programme for all financial sectors; and (7) ensuring that appropriate laws and procedures are in place with regard to international co-operation for the financial intelligence unit and supervisory authorities. The FATF encouraged Uganda to address its remaining AML/CFT deficiencies and continue the process of implementing its action plan in line with the International Convention For the suppression of the financing of terrorism, 1999.

The principle objectives of the bill are; to amend the Anti-terrorism Act, 2002 to harmonize the definition of "Funds" with that contained in the International Convention on suppression of the Financing of Terrorism 1999; to amend the definition of "terrorism" and "acts of terrorism" to include the International aspects envisaged by the convention for related purposes.

However we note that the Bill as presented to parliament and referred to the committee only proposes amendments to mother Act in regard to the offense of terrorism without proposing any definition of "terrorism" and "acts of terrorism" to include international aspects envisaged by ~~the~~ convention.

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Among the proposed amendments to the offence of terrorism include: (n) causing serious damage to property- which is stated without qualifying it..(q) any act prejudicial to national security or public safety- prejudicial means harmful to someone or sometime detrimental.

3.0 DISSENT FROM THE COMMITTEE POSITION

Under rule no. 194(1), it states that a member dissenting from the opinion of a majority of a Committee may state in writing the reasons for his or her or their dissent, and the statement of reasons shall be appended to the report of the Committee. Rule no. 194(2) provides that the Member dissenting from the opinion of the majority of the Committee shall be given time to present the minority report at the time of the consideration of the Committee report. It is on that basis that I present this minority report.

POINTS OF DECENT

3.1 proposed amendments aimed to prejudice rights and freedoms of citizens.

As regards suppressing terrorists financing we agree entirely that we need to compile with the international set standards and our law falls short of them. However some proposed amendment that are non- international and don't relate to the International Convention on the suppression of terrorist financing,1999 have been included with the aim to prejudice rights and freedoms of citizens contrary to the established constitutional order.

3.2 Lack of a clear Definition of "Terrorism" the Bill in its objectives proposes to amend and provide for the definition of terrorism but nothing is stated as definition in relation to the International Convention on the Suppression of Terrorist Financing.

We therefore propose the following definition to the word "terrorism"

"terrorism" means the use or threat of action where—

(a)

(i) the action falls within sub-paragraph (b),

(ii) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and

(iii) the use or threat is made for the purpose of advancing a political, religious or ideological cause;

(b) action falls within this sub-paragraph if it—

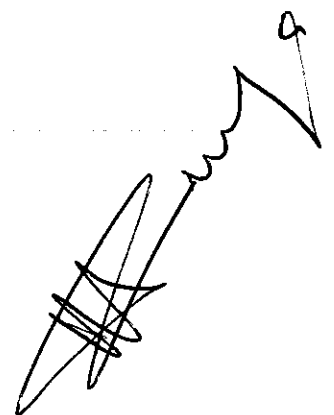
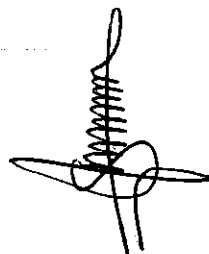
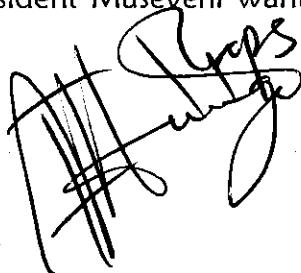
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- (i) involves serious violence against a person,
 - (ii) involves extensive destructive to property,
 - (iii) endangers a person's life, other than that of the person committing the action,
 - (iv) creates a serious risk to the health or safety of the public or a section of the public, or
 - (v) is designed seriously to interfere with or seriously to disrupt an electronic system;
- (c) the use or threat of action falling within sub-paragraph (b) which involves the use of firearms or explosives is terrorism whether or not sub-paragraph (a)(ii) is satisfied;**
- (d) in sub-paragraphs (a), (b) and (c)—
- (i) "action" includes action outside Uganda,
 - (ii) a reference to any person or to property is a reference to any person, or to property, wherever situated,
 - (iii) a reference to the public includes a reference to the public of a country other than that of Uganda,
 - (iv) "the government" means the government of Uganda, of a part of Uganda or of a country other than Uganda.

The above definition is all inclusive and addresses the objectives of the bill especially with regard to International aspects envisaged by the convention for related purposes.

3.3 "Causing Serious damage to property" being termed as a definition of terrorism

We are not opposed to the fact that extensive destruction of property violently and intentionally would amount to terrorism; however we are opposed to stating that "causing serious damage to property" amounts to an offence under this Anti- terrorism Bill, 2015. Imagine spontaneous demonstrations that could lead to serious damages to property due to the failure of the government to observe and respect the rule of law. We all remember the famous riots against the give -away of Mabira which occurred because President Museveni wanted to give away Mabira forest against the established



Constitutional order and the existing laws of the land in regard to the preservation of forests.

If we passed this law today and tomorrow the President decided to give away Mabira forest, and out of anger people rioted and serious damage to property occurred then thousands innocent will rot in jail under this Act yet; Article 38 on Civic rights and activities in the Constitution of the Republic of Uganda provides that-

- (1) Every Uganda citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with law.
- (2) Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organizations.

Many Ugandans are law abiding, on numerous occasions they have taken to exercise their constitutional rights to peacefully engage in activities to influence the policies of government through civic organizations only to meet with the brutality of the security forces.

We are passing draconian laws against the fundamental human rights and freedoms as provided for in the Constitution and if "causing serious damage to property" out of the anger caused by leaders who abuse the established Constitutional order amount to terrorism then what would be the offense on a leader who abuse the constitution and promotes state terror?

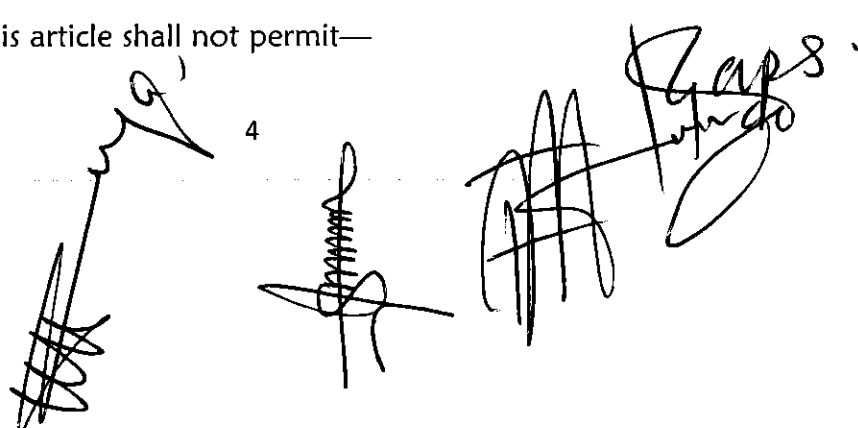
We propose, this offense be dropped because section 7(2)(a) of the Anti-terrorism Act,2002 covers extensive destruction and explains the actions that could lead to extensive destruction. How else would a terrorist cause serious damage to property without doing the acts as provided for in section 7(2)(a) of the Anti-terrorism Act,2002?

3.4 Criminalizing "any act prejudicial to national security or public safety" as a terrorist offence without qualifying national security and public safety is unconstitutional.

We recognize the importance of National security and public safety. Acting prejudicial against national security and public safety is criminal and the current existing laws of the land cater for it hence the very reason article **43 on General limitation on fundamental and other human rights and freedoms provides that;**

- (1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.
- (2) Public interest under this article shall not permit—
 - (a) political persecution;

4



The bottom of the page features several handwritten signatures and scribbles. On the left, there is a large, dark scribble. In the center, there is a signature that appears to be 'R'. To the right, there is a signature that appears to be 'Gaps' with 'Tutugo' written below it. The page number '4' is centered above these signatures.

(b) detention without trial;

(c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.

(d) *Interference with the legitimate operations of* *Hawalas*
However we have witnessed and the country is full of evidence against the Executive prejudicing the fundamental human rights and freedoms of political opponents in the name of public interest. Therefore passing this amendment to create an terrorist offence – “any act prejudicial to national security or public safety” will amount to opening the gate for the Executive to politically persecute political opponents and trample on their enjoyment of the rights and freedoms as prescribed in the Constitution of the Republic of Uganda centrally to article 43(2).

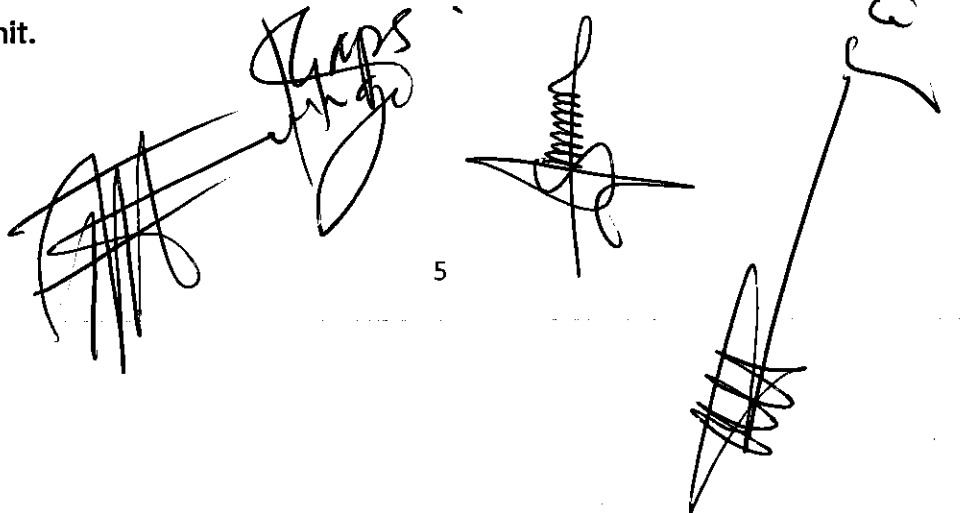
Hon. Colleagues, we swore to uphold and defend the constitution, let us not attempt to pass unconstitutional laws. To us, *true security is human rights protection*. We cannot trade off civil liberties in the name of countering terrorism for when we do that; that is not protection it is handing victory to terrorism.

The responsibility for countering terrorism is not only for the Executive but also for the legislature. What kind of laws shall we give the Executive today?

Our legislative response should target towards providing legislation that provides legal clarity or certainty, on the intention, scope and application of the particular law. It should leave no room for ambiguities that can further lead to abuse of rights. It should not give overwhelming, militaristic powers to police. Operational avenues of countering terrorism should be within the sphere of the law.

I pray that this parliament adopts the proposal herein presented in this minority report, in observance of and respect for rule of law to avoid handing victory to terrorism, because if you fight the weak and they have not any law to defend them they could resort to terrorism practices in order to survive in a land of laws that marginalize the weak, which we believe is not the intension of the International Convention on the Suppression of Terrorist financing, 1999.

I beg to submit.



5

