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FACTSHEET

Understanding AML & CFT Risks in the NPO Sector in Nigeria

with support from Open Society Foundations and Fund for Global Human Rights

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WHAT IS A NATIONAL RISK ASSESSMENT (NRA)?

Countries conduct a national risk assessment (NRA) to identify, assess and understand the money laundering (ML) and terrorist financing (TF) risks within its jurisdiction. Conducting a risk assessment of the ML and TF risks in the countryis one of the compulsory compliance requirements espoused in the Financial Action Taskforce (FATF) Standards, specifically FATF Recommendation 1. Once these risks are properly understood and assessed, countries can take proportionate measures to counter any threats so identified. The application of measures according to the level of risk is known as the risk-based approach (RBA).

What is FATF?

The Financial Action Taskforce (FATF), also known as Groupe d'Action Financière (GAFI), was formed in 1989, following the G7 Summit in Paris, in response to the mounting concern over money laundering across the globe. Governments constituted the intergovernmental body to develop and promote policies designed to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. FATF examines money laundering techniques and trends, reviews the action which had already been taken at a national or international level, and sets out new measures still needed to be taken to combat money laundering. The Task Force is seen as a "partnership between governments, accountable to the Ministers of its member Governments, who give it its mandate."

National Risk Assessment: Does it Apply to the Non-profit Sector?

FATF's 40+9 Recommendations are regarded as the global norm on anti-money laundering (AML) and countering financing of terrorism (CFT). Out of these 49 Recommendations, Recommendation 8 (R8) specifically applies to non-profit organisations (NPOs), with a primary focus on their susceptibility to TF abuse.FATF's R8, revised in 2016, requires countries to undertake a domestic review of their entire NPO sector in order to identify features and types of NPOs which, by virtue of their activities or characteristics, are at risk of being misused for terrorist financing. In other words,R8 requires countries to undertake a risk assessment of the NPO sector in order to identify the vulnerabilities of NPOs to terrorism financing, the vulnerable NPOs and evaluate the sufficiency of available legislation for counteracting the TF risks. The requirement to identify the NPOs at risk of TF, and for countries to apply focused and proportionate measures, to such non-profit organisations to protect them from terrorist financing abuse, corresponds to the risk–based approach.

The country's obligations under R8 are as follows:

- identifying the NPOs which face TF threats;
- determining which of those NPOs identified above are vulnerable to TF abuse;
- reviewing the adequacy of laws and regulations and other measures that relate to the NPOs identified as vulnerable in respect of the inherent risks.

It is important to note that R8 is a TF recommendation. According to FATF's Best Practices Paper, paragraph 12, *"while it is possible that NPOs, like their for-profit counterparts, may face numerous risk relating to money laundering fraud, corruption and tax evasion, Recommendation 8 is only intended to address the particular vulnerability of NPOs to terrorist abuse."*

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WHAT IS AN NPO?

FATF definition of a non-profit organisation

"A legal person or arrangement or organisation" that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works".

Non-profit organizations in Nigeria are entities incorporated or set up for the advancement of any religious, literary, scientific, social development, cultural, sporting or other charitable purpose. The scope of this description covers non-governmental organizations (NGOs), civil society organizations (CSOs), religious institutions, philanthropic foundations, donor bodies, social movements, pressure groups etc. Non-profit entities in Nigeria operate mainly as local or international NGOs, depending on the nature of their registration, the scale and reach of their operations and the type of work they engage in.

Foreign NPOs register with the Federal Ministry of Budget and National Planning (FMBNP). On the other hand, national level organizations mainly register with the Corporate Affairs Commission, CAC, either as incorporated trustees or companies limited by guarantee. The domestic NPOs are higher in number than the international NPOs. Some others operating at the grassroots register as community-based organizations at the state and local government levels. Within the FATF definition of NPO, Recommendation 8 is intended to apply only to those NPOs that pose the greatest risk of terrorist financing abuse. (BPP 2015: 7).

Are NPOs Vulnerable to Terrorism Financing?

The objective of R8 is to ensure that NPOs are not misused by terrorist organisations in the following ways:

- to pose as legitimate entities;
- to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or
- to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes.

Funds used for terrorist financing are mainly raised through the abuse of legitimate or clean sources like trading, charity organizations, and donations including alms giving. Financing is required not just to fund specific terrorist operations, but to meet the broader organizational costs of developing and maintaining a terrorist organization, facilitating and funding various types of attacks, and to create an enabling environment necessary to sustain their activities.
The Intergovernmental Action Group Against Money Laundering in West Africa (GIABA) and the Nigerian Financial Intelligence Unit (NFIU) outlined methods used by financiers to assist terrorists in carrying out acts of terrorism. They identified the following sources:

a). through proceeds of trade, legal enterprise and other lucrative activities

b). through NGOs, charity organizations, and levies

c). through smuggling of arms, assets and currencies by cash couriers; and

d). through proceeds of crime, extortion including drug trafficking.

Nigeria's NRA report published in 2016 disclosed other terrorist financing methods adopted by the terrorists as follows: Bank robberies use of trade-based financing Protection fees and ransom from kidnapping Life stock rustling use of Gold as a medium of exchange use of legitimate businesses (sale of dry fish, dry meat) Raiding of villages for consumables (palm produce) Smuggling/sale of arms and ammunitions etc.

Who Regulates NPOs' AML/CFT Risks in Nigeria?

FATF's Recommendation One (1) requires

countries to take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. By virtue of the 2004 Money Laundering (Prohibition) Act 2004 as amended, NPOs are categorized as d*esignated non-financial businesses and professions (*DNFBPs) subject to the regulatory oversight of the Special Control Unit on Money Laundering (SCUML). SCUML is responsible for AML/CFT compliance for all DNFBPs, including NPOs. Established in 2005, the functions of SCUML are as follows:

- Register, certify and sensitize DNFBPs in Nigeria.
- Monitor, regulate and supervise the activities of DNFBPs as it relates to AML/CFT regime.
- Conduct onsite, off-site and spot check Inspections on DNFBPs.
- Collection of statutory reports: cash transaction reports (CTRs), suspicious transaction reports (STRs) and currency transactions.
- Provide a database of DNFBPs and their financial transactions to support tactical, operational and strategic policy options in combating ML/TF.

The regulation of the NPO sector in Nigeria is further fragmented among various agencies of government such as the Corporate Affairs Commission (CAC), the Federal Ministry of Budget and National Planning, SCUML and the like. NPOs like other incorporated entities, are also obliged to file annual returns to CAC. They are also obliged to register with SCUML and satisfy the stipulated due diligence and periodic reporting obligations. Similarly, States' Ministry of Social Development (the nomenclature varies across states) also register and license community based-organizations and other smaller non-profit entities working in their jurisdictions.

Are NPOs DNFBPs?

2004 Anti-Money Laundering Act introduced the term, 'Designated Financial Institutions and Designated Non-Financial Institutions, (DNFIs) which substantially shares similar definition and characteristics with DNFBPs. Section 25 of the Money Laundering Prohibition Act defines DNFIs (DNFBPs) as:

> ''dealers in jewellery, cars and luxury goods, precious stones and metals, real estate, estate developers, estate surveyors and valuers, estate agents, chartered accountants, audit firms, tax consultants, clearing and settlement companies, hotels, casinos, supermarkets, dealers in mechanized farming equipm ent and machineries, practitioners of mechanised farming, non-governmental organisations (NGOs) or such other businesses as the Federal Ministry of Trade and Investment or appropriate regulatory authorities may from time to time designate.

The Nigeria NRA conducted in 2016 also classified NPOs as DNFBPs. These businesses and professions, designated as DNFBPs, play a vital role in the economic and financial activities of Nigeria, as they provide essential services in both the formal and informal sectors of the economy. However, FATF's Best Practice Paper (BPP) paragraph 35 states as follows:

> ***NPOs are not considered designated non-financial businesses and professions (DNFBPs) and should therefore not be subject to the FATF requirements for DNFBPs.***

Based on the above, NPOs are not DNFBPs. Subjecting NPOs to AML/CFT requirement for DFNBPs may impose additional regulatory burdens on not-for-profit entities. Potentially, this has implication for FATF's evaluation for Nigeria as it is neither premised on the RBA, nor in alignment with Immediate Outcome 10.2 which appraises "to what extent, without disrupting or discouraging legitimate NPO activities, has the country applied focused and proportionate measures to such NPOs which the country has identified as being vulnerable to terrorist financing abuse, in line with the risk-based approach?"

NIGERIA NRA AND THE NPO SECTOR

In the Nigeria NRA, the non-profit sector was also assessed alongside other financial and non-financial sectors of the Nigerian economy. The first responsibility of the Nigeria NRA with respect to R8 is to understand which NPOs face threats of TF. In doing this, the TF threats would be scoped on the basis of three major paradigms –

(i) the types of activities or services undertaken or provided by the NPOs;
(ii) the location of the NPOs and their beneficiaries; and
(iii) the NPO's source of funding.

Each of these classifications inflect on the exposure of NPOs in various ways, as "*there is a correlation between the types of activities an NPO is engaged in, and the risk of abuse….*''

Lumping NPOs together with other businesses as DNFBPs compounds the scoring of the vulnerability assessment as the NPO sector is diverse in structure, objectives and the causes they take on—ranging from educational to religion, education, social, environmental, law or humanitarian activities— and each subsector faces a unique risk spectrum. Therefore, the appropriate approach would be to assess the NPO as a separate sector from DNFBPs and assign a risk score to the specific threats and vulnerabilities identified.

Do AML/CFT Laws Restrict NPO Operations?

In many jurisdictions, the application and enforcement of AML/CFT laws and policies often engender restrictions on civic rights and liberties, particularly the rights to free speech, free assembly and free association. The restrictions on these rights shrink the spaces for democratic engagement and civil society operations. SPACES FOR CHANGE's | S4C's database of closing civic spaces in Nigeria—www.closingspaces.org—has documented over 150 incidents of restrictions on civil liberties, with the most impacted being the activists, journalists and non-profit groups. Although many cases documented were not linked to AML/CFT, national security is usually cited as an official justification for the restrictions.

Countries are to employ a targeted approach in dealing with the terrorist threats identified within the NPO sector. Because of the diversity of the NPO sector, both in structure, objectives and the causes they take on—ranging from educational to religion, education, social, environmental, law or humanitarian activities—each sub-sector faces a unique risk spectrum. As the FATF recommends, 'measures adopted by countries to protect the NPO sector from terrorist abuse should not disrupt or discourage legitimate charitable activities. Rather, such measures should promote transparency and engender greater confidence in the sector, across the donor community and with the general public, that charitable funds and services reach intended legitimate beneficiaries.' (FATF's Best Practice Paper on Combating the Abuse of Non-profit Organizations, P.8).

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Are the Laws and Regulations Relating to NPOs in Nigeria Sufficient?

The final responsibility under a risk assessment of the NPO sector is to review the laws and regulations relating to the NPO sector in order to determine whether they are adequate to counteract the vulnerabilities identified in the sector. Nigeria has an elaborate body of laws and regulations designed to counteract the ML and TF of the NPO sector vulnerabilities identified in the NRA. Not only that, any perceived risk(s) faced by NPOs are further ameliorated by the plethora of extant policies and regulations applicable to other sectors.

The majority of these policies and laws are of general application; that is, they are sector neutral, applying to all entities irrespective of the type of persons or organizations. The premise here is that the entire gamut of national financial and non-financial systems are intertwined, with each depending on the other for viability and performance. In other words, the regulation of other sectors of Nigeria must also be taken into consideration when determining whether the NPO sector is sufficiently regulated because the strength of one sector invariably strengthens the other sectors.

AML/CFT Laws Applicable to the NPOs in Nigeria:

- Money Laundering (Prohibition) Act, 2011 (as amended)
- Terrorism (Prevention) Act 2011 (as amended)
- Terrorism (Prevention) (Amendment) Act 2013
- Federal Ministry of Industry, Trade and Investment (FMITI) (Designation of Non-Financial Institutions and other Related Matters) Regulation, 2013
  Companies and Allied Matters Act (1990) as amended
- Federal Inland Revenue Service (Establishment) Act 2007
- Financial Reporting Council Act 2011; Economic and Financial Crimes Commission (Establishment) Act 2004
- Special Control Unit against Money Laundering Regulations etc.

What Can NPOs Do to Prevent Misuse of Their Entities for ML and TF Purposes?

Putting in place good governance and strong financial management systems have been adjudged as one of the best ways NPOs can ensure that they are not abused for terrorist purposes. Having strong financial management systems entail having strong financial controls and risk management procedures guiding the organization's internal and external operations. In addition, MLPA 2011, as amended, requires NPOs to carry out proper due diligence on those individuals and organisations that give money to, receive money from or work closely with. (Section 3).

Adhering to the FATF standards which requires NPOs to maintain, for a period of at least five years, records of domestic and international transactions, the MLPA 2011 (as amended), requires NPOs to preserve and keep at the disposal of the authorities, customer records and records of other transactions for five years. These records are to be presented on demand to the Central Bank of Nigeria (CBN), or the National Drug Law Enforcement Agency and such other regulatory authorities, judicial persons specified by the Economic and Financial Crimes Commission (EFCC). (Section 8).

ABOUT US

Established in May 2011, SPACES FOR CHANGE|S4C is a human rights organization working to increase the participation of the often-unheard members of the population- mainly youth, women and marginalized communities – in the development of social and economic policies in Nigeria, and also help public authorities and corporate entities put human rights at the heart of their decision making.

Through rigorous research, policy advocacy, youth engagement and community action, S4C creates spaces for, inclusion, debate and the empowerment enabling target groups to influence policy agenda-setting and decisions. The organization's work cuts across four mutually reinforcing thematic focal areas: Defending the Civic Space, Housing and Urban Governance, Energy and Environmental Justice, Women and Youth Inclusion.

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