

**UNPACKING  
THE OFFICIAL  
CONSTRUCTION  
OF RISKS AND  
VULNERABILITIES  
FOR THE THIRD SECTOR IN  
NIGERIA**

**SPACES FOR CHANGE**

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## ACKNOWLEDGMENTS

The non-profit sector, including the broader civil society, is an ally, and not an adversary in the government's fight against money laundering (ML), terrorism financing (TF) and the proliferation of weapons of mass destruction. This analytical paper has been written to make that point clear. Along this line, this paper aims to build the capacity of non-profit organizations to understand and engage the outcomes of the national risk assessment (NRA) which Nigeria conducted in 2016 in order to identify, assess, and understand the ML/TF risks within its jurisdiction and then take proportionate action to mitigate such risks, based on a risk-based approach. SPACES FOR CHANGE proceeds upon the premise that civil society actors can effectively push back when they understand, monitor and report the drivers of governmental restrictions to civic spaces, and develop early warning systems to counter them.

This paper would not have been possible without the dedication, rigor and teamwork of many persons within and outside the organization. Very special thanks go to the civic space project's research team comprising Victoria Ibezim-Ohaeri, Lotanna Nwodo, Amah-Jerry Douglas and Fisayo Ajala, whose rigorous research and analysis of the NRA report, culminated in this paper. Ms. Rejoice Collins Imozemeh, Udochi Great, Chimee Adioha and Anita Akpunonu provided administrative and logistical support throughout the research. SPACES FOR CHANGE's Victoria Ibezim-Ohaeri coordinated the research from the beginning to its final steps, with the cooperation and critical inputs of a host of actors in the public and private sectors, donor community, and international and local experts on ML/TF.

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## ABBREVIATIONS

### List of Abbreviations

AML –	Anti Money Laundering
CAC –	Corporate Affairs Commission
CFT –	Combating the Financing of Terrorism
CSOs –	Civil Society Organizations
DFNBPs –	Designated Non-Financial Businesses and Professions
DFNIs -	Designated Non Financial Institutions
ECOWAS -	Economic Community of West African States
ECNL –	European Centre for Nonprofit law
EFCC –	Economic and Financial Crimes Commission
FATF –	Financial Action Task Force
FMBNP –	Federal Ministry of Budget and National Planning
FIRS –	Federal Inland Revenue Service
GIABA –	Intergovernmental Action against Money Laundering in West Africa
ML –	Money Laundering
MLPA –	Money Laundering Prohibition Act
NFIU –	National Financial Intelligence Unit
NGO –	Non Governmental Sector
NPO –	Non Profit Sector
R8 –	Recommendation 8
SCUML –	Special Control Unit against Money Laundering
TF –	Terrorist Financing
TPA –	Terrorism Prevention Act
UN –	United Nations
UNSC –	United Nations Security Council

## METHODOLOGY

This paper critically analyses the outcomes of the 2016 national risk assessment on money laundering and terrorist financing risks in Nigeria (Nigeria NRA). It aims to interrogate the applicability of the legal regimes governing anti-money laundering and countering financing of terrorism (AML/CFT) to the non-profit sector in Nigeria in light of the Financial Action Task Force's (FATF's) revised Recommendation 8 (R8). The paper draws extensively from a variety of existing literature on money laundering and terrorism financing accessed from multiple internal and external sources, mainly the FATF documents, Nigeria NRA report, academic papers, textbooks, AML/CFT policies and laws in Nigeria and so forth. The term, FATF documents, refer to a host of publications commissioned and published by the global body, including but not limited to FATF Standards, FATF Recommendations, Interpretation Notes, FATF Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, among others.

The analysis of the Nigeria NRA was preceded by an intensive review of NRAs conducted in other jurisdictions in order to identify the methodology adopted, the similarities and differences between them and Nigerian NRA. The next step was determining whether the Nigerian NRA complies with the standards which the FATF set out for the conduct of NRAs. For instance, Recommendation 8 specifically applies to the NPO sector and requires countries to carry out specific TF analysis of the sector in order to determine the extent which the NPO sector is vulnerable to terrorist financing. This obligation under R8 may be satisfied under the NRA or under a specific TF risk assessment carried out on the NPO sector.

With the above in mind, SPACES FOR CHANGE deployed various research and analytical techniques to ascertain whether the NRA exercise satisfies the requirements of R8. As noted in the findings, it is possible that the Nigerian NRA may not have set out to comply with Recommendation 8. To that extent, this report should not be read as an indictment of the Nigerian NRA simply because it falls short of the stipulated requirements. More so, there are still opportunities in the future to conduct a specific TF risk assessment of the NPO sector in a way that is R8-compliant. What this paper sets out to demonstrate is the evident gaps in the Nigeria NRA, and other vital issues that ought to be considered when undertaking TF risk assessment of the NPO sector in Nigeria.

The first section of the paper introduces and examines the rationale for conducting NRAs. The second section delves deeper into the discussion around the specified methodologies for conducting NRAs, drawing distinctions between ML and TF assessments, and their applicability to the NPO sector. The third section unpacks the official construction of threats and vulnerabilities affecting the third sector, highlighting the shortcomings in the Nigeria NRA, especially the methods of data collection, the classification of sectors, the data

analytical methods and other ethical considerations. It went further to interrogate the perception that non-profits in Nigeria are poorly regulated. This interrogation involved a robust examination of corporate governance codes and regulatory regimes regulating corporate entities, including non-profits. The extensive analysis of policies and extant laws applicable to non-profits was undertaken to deconstruct the misconception of under-regulation and more especially, present evidence-based counter arguments to popular policy prescriptions and tactics that have the effect of shrinking the civic space. In sum, this paper concludes that whatever risks and vulnerabilities identified within the third sector and the interventions proposed to counter them, should neither provide an excuse for governments to introduce restrictive laws and measures that crush civil liberties, nor contract the spaces for civic engagement and legitimate non-profit operations.

This paper builds on SPACES FOR CHANGE's 2017 research which examined the link between the Financial Action Task Force's (FATF's) Recommendation 8 and restrictions on civic freedoms in Nigeria. That study detailed how domestic efforts to comply with this international provision has not only opened the door for states to introduce restrictive legislation, but also given them further grounds to crush dissent, violate civil liberties and impose restrictions on civil society. In addition to the SPACES FOR CHANGE's past research, this paper further benefitted from an in-depth technical review and comments from GreenAcre Group, Human Security Collective and the European Center for Non-profit Law (ECNL).

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## EXECUTIVE SUMMARY

### The Risk Assessment of the Non-Profit Sector: Rationale, Results, Reactions

Across the globe, the work of charities, non-governmental organizations (NGOs), and humanitarian groups—all often regarded as non-profit organizations (NPOs)—have gained tremendous traction over time and space. In Nigeria, NPOs predate the colonial era up to the period of post-independence, operating in various forms such as social movements, student unions and nationalists engaged in pro-independence struggles. Their subsequent metamorphosis into civic movements advocating for democratic rule provided alternative leadership at critical periods in the country's national life particularly during the long decades of military rule.<sup>1</sup> Since Nigeria's return to full democratic rule in 1999, NPOs carrying out different kinds of good works now form a very important part of civil society sector, with their activities reaching millions of people, particularly in the areas of education, health, security, agriculture, policy formulation, democracy, governance, gender rights, public rights advocacy, and so forth. So huge is the non-profit sector that it garnered over \$13.85 Billion in foreign financial inflows to the Nigerian economy between 2015 and 2016.<sup>2</sup>

The Nigerian government conducted a National Risk Assessment (Nigeria NRA) in 2016 to identify, assess, and understand the money laundering and terrorist financing risks for the country's financial systems, including the non-profit sector, and take proportionate measures to counter any threats so identified. Ever since Nigeria started seeking the membership of Financial Action Task Force (FATF), the country has been under pressure to rev up its compliance with the standards and regulations espoused by the international body. The NRA is one of the compulsory compliance tests FATF requires countries to undertake in order to deepen their understanding of the money laundering (ML) and terrorism financing (TF) risks they are exposed to, and also measure the effectiveness of national measures and mechanisms for mitigating those risks proportionately. An assessment of the vulnerability of non-profit sector in particular, may be conceptualized as a stress test of the immune system of the sector against TF threats.

The Nigeria NRA was coordinated by the Nigeria Financial Intelligence Unit (NFIU) “in consideration of its strategic role as the national agency responsible for the coordination of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) matters in the country.”<sup>3</sup> The working group for the assignment functioned under the auspices of Nigeria's AML/CFT Inter-Agency Ministerial Committee.<sup>4</sup> At the material time for conducting the National Risk Assessment, the NFIU functioned as a unit under the Economic and Financial Crimes Commission (EFCC).

The working group adopted the World Bank National Risk Assessment tool (“World Bank Tool”) for the exercise. The definition of key concepts in the World Bank Tool, namely, threats and vulnerabilities, are similar to the definitions under the Guidance Notes on the conduct of a National Money Laundering and Terrorist Financing Risk Assessment<sup>5</sup> (Risk Assessment Guidance Notes). The working group was required to assess the threat and vulnerability levels respectively of specific sectors through the spectrum of Low,

1. Kew, Darren and Oshikoya, Modupe (2014) *Escape from Tyranny: Civil Society and Democratic Struggles in Africa* in Obadare, Ebenezer (ed) *Handbook of Civil Society in Africa*. Springer -Verlag New York

2. Bamaga Bello (2018): *The Challenges of Regulating NPOs for AML/CFT Compliance: A presentation made at the GIABA Regional Workshop on the Development of Effective Frameworks and Structure to fight against ML/TF through Non- profit Organizations (NPOs) from 4<sup>th</sup> – 6<sup>th</sup> April, 2018 at Abuja, Nigeria.* Bamaga Bello, FNIM is the Director of the Special Control Unit against Money Laundering, pg 4.

3. Nigeria National Risk Assessment Report. retrieved from <http://www.nfiu.gov.ng/images/Downloads/downloads/nrareport.pdf>

4. Ibid.,

5. FATF Guidance: National Money Laundering and Terrorist Financing Risk Assessment (2013) available at [http://www.fatf-gafi.org/media/fatf/content/images/National\\_ML\\_TF\\_Risk\\_Assessment.pdf](http://www.fatf-gafi.org/media/fatf/content/images/National_ML_TF_Risk_Assessment.pdf).

Medium Low, Medium, Medium High, and High. The purpose of carrying out an assessment of the vulnerability of NPOs is to identify the weaknesses that could lead to the successful abuse of the sector for TF.

The Nigeria NRA finds that 65% of non-profit organizations (NPOs) interviewed receive 50% of their funding from foreign donors while 35% receive 100% of their funding from domestic donors.<sup>6</sup> It concludes that the practice of foreign agencies or individuals sending money directly to NPO's without being accountable or reporting to any regulatory body is a potential risk for ML.<sup>7</sup> The Nigeria NRA further posits that some of NPOs have become tools for money laundering either by politically exposed persons (PEPs) or public servants under the guise of contributing for a particular cause or projects. These assertions are not backed by any evidence and would appear to the reader of the Nigeria NRA as speculative.

For instance, in April 2018, a director of the Nigeria Financial Intelligence Unit (NFIU) disclosed that the agency had begun the profiling of NGOs with the aim of de-registering organizations that have “deviated” from their mandate. The profiling and screening, according to NFIU, became necessary in view of the emerging threat of “non-profit organizations” being used as “veritable tools to launder money and finance terrorism” in Nigeria and other West African countries.<sup>8</sup> This statement made without reference to any evidence in terms of specific incidents, convictions, asset forfeitures, penalties, closures or any ongoing ML/TF investigation involving any non-profit entity in Nigeria. The official perception of NPOs as unaccountable often flows from the disconnect between regulatory agencies and NPO funding-raising dynamics. Officials and official institutions are largely unaware of the stringent due diligence measures and reporting requirements attached to foreign donations and grant-making to NPOs.

In its concluding remark, the Nigeria NRA admits that while the abuse of NPOs for ML may seem to be potentially low, NPOs pose significant ML threat “due to the fact that NPOs are not effectively regulated.” It goes on to state that “while there are no available data on cases, assets frozen, seized or confiscated in relation to money laundering, it's still very obvious from our findings that this sector poses a risk, hence the ML threat assessment level for this sector is rated Medium High.” Reaching conclusions like this without evidence reinforce the notorious perception of strong links between charitable operations and terrorism, providing an excuse for countries to roll-out certain measures that significantly constrict the space for non-profit activities.

### **Should NPOs be subjected to AML/CFT regimes and stringent surveillance procedures?**

FATF's 40+9 Recommendations are regarded as the global norm on anti-money laundering and countering financing of terrorism. Out of these 49 Recommendations, Recommendation 8 (R8) specifically relates to nonprofit organisations' (NPOs') susceptibility to terrorist financing abuse. The initial language of R8 was that “NPOs possess characteristics that make them particularly attractive to terrorists or vulnerable to misuse for terrorist financing.” This recommendation triggered a global push back from international NPOs and human rights watchdogs who identified the dangers in the phraseology of the recommendation.

Yielding to pressure from the global NPO community, FATF revised R8 in 2016, jettisoning the sweeping categorization of NPOs as vulnerable to terrorist financing. The revised regulation now requires countries to undertake a risk assessment of the NPO sector in order to identify the vulnerabilities of NPOs, the vulnerable NPOs and evaluate the sufficiency of available legislation for counteracting the risks.

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6. *Ibid.*, pp. 32-33.

7. *Ibid.*, p. 33.

8. The Punch, Terrorist Financing: FG Begins Moves To De-Register 'Deviant' NGOs, Published April 4, 2018: <https://punchng.com/terrorist-financing-fg-begins-moves-to-de-register-deviant-ngos/>

Consequently, the obligation of countries under R8 is no longer to visit NPOs with more stringent regulation and scrutiny but that any measure taken by countries on Recommendation 8 must be backed by a risk assessment of NPOs exposure to terrorist financing and must be commensurate with the identified TF risks. The emphasis of FATF with respect to R8 is that countries are able to demonstrate that they understand the risk that the NPO sector faces and are able to apply counter measures that are targeted at, and proportional to the risks.

It seems the FATF revision came a little too late. Prior to the revision, the perception of NPOs as having links to terrorist financing had spread far and wide. Also, countries had introduced measures tightening the space for non-profit activity in their respective jurisdictions and laws once made, are difficult to retract. Whether it is the conclusion of the Nigeria NRA or the profiling measures of the NFIU, these developments are characteristic of the unrelenting attempts by state actors to use restrictive measures, including legislations, to control the activities of non-governmental groups by limiting their capacity to organize and receive funding.

A parliamentary attempt in 2016 to shrink the civil society space through the proposal for the establishment of a NGO Regulatory Commission<sup>9</sup> came few weeks after Nigeria voted against a July 2016 Human Rights Council Resolution at its 32nd session, which required States to commit to ensure a safe and enabling environment in which civil society can operate free from hindrance and insecurity.<sup>10</sup> Nigeria is one of the 7 countries that voted against the resolution. Far beyond the state-led exertions to use the instrumentality of the law to close the civil society space are other underhand tactics designed to achieve the same objective. Arrests, detentions, bank account freezes, social media surveillance, smear campaigns, media trials of active citizens and vocal critics of the government have also been documented and published on a database developed by SPACES FOR CHANGE.<sup>11</sup>

However, when it comes to the financing of terrorism, the official disposition toward the NPO sector has been antagonistic. Although R8 has been revised, it already established the front for what has become, in a number of jurisdictions, an unrelenting battle between (a) local law and policy makers, who under the guise of compliance with the FATF Standards seek to tighten the regulation of NPOs, on the one hand, and (b) the members of the NPO sector, who view the Standards as licenses to law and policy makers to clamp down on dissent and foist restrictive regulatory regimes upon NPOs, on the other hand. This view of the NPO sector has been termed by many as “policy laundering”, which is the fronting of policies and laws as seeking to achieve obvious societal good while concealing the real predicate intention behind such policies.<sup>12</sup> Thus, governments may hide under compliance with its non-binding international obligations, to make laws that would restrict the rights of its citizens. It should be noted that sometime, the policy makers may seek to make restrictive laws in an honest, albeit erroneous, venture to comply with FATF recommendations. That is why a deep understanding of FATF and its recommendations is indispensable, hence this study.

The paper faults the official construction of risks, threats and assessment of the third sector as detailed in the Nigeria NRA 2016 for the following reasons:

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9. The bill, popularly known as the NGO Bill, sought to “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”

10. 32nd session of the Human Rights Council (13 June to 1 July and 8 July 2016) available at <https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session32/pages/32regularsession.aspx>

11. A database of closing spaces for civic rights in Nigeria. see [www.closingspaces.org](http://www.closingspaces.org)

12. See Ben Hayes “Counter-Terrorism, “Policy Laundering,” and the FATF: Legalizing Surveillance, Regulating Civil Society”. Available at

1. R8 is exclusively a TF recommendation. Therefore, for the purpose of compliance with R8, NPOs should ordinarily not be subjected to a sectoral ML assessment. In other words, the NPO sector is not regarded by FATF as facing any specific ML risk that warrants a specific assessment of the sector. Therefore, a major shortcoming of the Nigeria National Risk Assessment is that it specifically assesses the NPO sector for ML risks, sharply contrasting with FATF's R8 requirements.
2. The major flaw in the Nigeria NRA is the classification of NPOs as DNFBPs. As a result of this classification, it is unlikely that the AML/CFT regulators would be able to apply a targeted approach in their regulation of NPOs as the same set of rules would be applied to diverse organizations with different objectives, organizational structures, sizes, funding streams and risk exposure levels, just because they share a non-profit outlook in common.
3. A National Risk Assessment is a specific requirement of Recommendation 1 of the FATF Standards which sets the tone for the Risk-Based Approach to AML/CFT. Contrary to the requirements of the risk-based approach, the Nigeria NRA does not identify the NPOs which face threats of terrorist financing. Understanding which NPOs face threats of TF requires in-depth understanding of the various types or categories of NPOs operating in Nigeria and the actual TF threats faced by the NPO sector.
4. The prevalent notion in the Nigeria Risk Assessment towards the NPO sector is that (1) the NPO sector is not regulated, and (2) as a result of the non-regulation of the NPO sector, they are both at risk of ML and TF abuse. As a result of this, the NPO sector was regarded as being worse off than the financial sector because the financial sector is regulated while the NPO sector is not. As has been shown in this report, the NPO sector is regulated and no legislative or regulatory gap was discovered in the course of this research. Instead, the authors believe that what is missing is the conscientious application of the laws and regulations by the regulators.
5. Under the threat analysis of the NPO sector, the Nigeria NRA appears to mix up the meaning of "threat" with "vulnerability" in various parts of the analysis. The lack of clear understanding of threats and vulnerability and the apparent attribution of TF risks and vulnerabilities in the ML assessment of the NPO sector casts a shadow of doubt over the outcome of the NRA.
6. In conclusion, the Nigeria NRA does not satisfy the requirements in Recommendation 8. This may be rectified by undertaking a specific risk assessment of the Nigerian NPO Sector taking into consideration the provisions of Recommendation 8 and other supporting FATF documents such as the Interpretative Notes to Recommendation 8, the Best Practices Paper and the Risk Assessment Guidance Notes.

In light of the foregoing, this paper critically analyses the findings of the National Risk Assessment (Nigeria NRA) 2016. It interrogates the applicability of AML/CFT regimes to the NPO sector in Nigeria in light of FATF's revised Recommendation 8. What this study has done is to present the data, evidence and legal arguments in support of the integrity of the NPO sector in Nigeria, while advocating for a collective push back against the clampdown on civil society. Furthermore, the paper assesses the adequacy of the regulatory frameworks and institutional arrangements for preventing the misuse of CSOs resources, highlighting the existing gaps in the construction of official threats and vulnerability assessments, including where high risks remain and where implementation could be enhanced.

# INTRODUCTION AND BACKGROUND

## The Regulation of Non-profit Organizations (NPOs) in Nigeria – An Overview

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 non-profit organizations in Nigeria, for instance, are mandated to 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. Some others operating at the grassroots register as community-based organizations at the state and local government levels.

An accurate estimate of the size of NPOs operating in Nigeria is hard to come by. Estimates of registered NGOs in Nigeria with the CAC vary from 50,000 to N100, 000.<sup>13</sup> The Corporate Affairs Commission (CAC) has 55,456 registered local NPOs in its database,<sup>14</sup> while the Ministry of Budget and National Planning has registered 176 Foreign NPOs as of 2016. On the other hand, NPOs are categorized as designated non-financial businesses and professions (DNFBPs) subject to the regulatory oversight of the Special Control Unit on Money Laundering (SCUML). The agency puts the total number of NPOs registered with it at 55, 632. This means that SCUML exercises supervisory authority for only 17.2 % of registered NPOs in Nigeria.<sup>15</sup> While these estimates are significant, they do not seem to take account of unregistered charitable groups and organizations operating at state and local levels.

With the rising influence of non-profits and their fêted recognition as the third sector, governments, with corresponding intensity, are strengthening the legal and regulatory structures for the supervision of nonprofits, especially with regard to anti-money laundering (AML) and countering financing of terrorism (CFT). In Nigeria, new laws have been introduced to increase scrutiny of financial inflows to non-profits, while existing laws have witnessed frequent repeals mainly to reflect the country's adherence with international standards on AML and CFT. National AML/CFT legislations include the Money Laundering (Prohibition) Act, 2011 (as amended); Terrorism (Prevention) Act 2011 (as amended); Terrorism Prevention Regulations 2013; Designated Non-Financial Institutions (DNFIs) Regulations 2013; Companies and Allied Matters Act (1990) as amended; Federal Inland Revenue Service (Establishment) Act 2007; Financial

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13. USAID 2016 CSO Sustainability Index for West Africa. Retrieved [https://www.usaid.gov/sites/default/files/documents/1866/2016\\_Africa\\_CSOSI\\_-\\_508.pdf](https://www.usaid.gov/sites/default/files/documents/1866/2016_Africa_CSOSI_-_508.pdf), pg176

14. Bamaga Bello (2018): The Challenges of Regulating NPOs for AML/CFT Compliance: A presentation made at the GIABA Regional Workshop on the Development of Effective Frameworks and Structure to fight against ML/TF through Non-profit Organizations (NPOs) from 4<sup>th</sup> – 6<sup>th</sup> April, 2018 at Abuja, Nigeria. Bamanga Bello, FNIM is the Director of the Special Control Unit against Money Laundering, pg 5

15. Ibid.

Reporting Council Act 2011; Economic and Financial Crimes Commission (Establishment) Act 2004; Special Control Unit against Money Laundering Regulations, etc.

One consistent outcome of the enactment or repeal of AML/CFT legislations is the enlargement of governmental power to regulate NPO operations, and subject them to increased state scrutiny. Regulatory agencies like the SCUML, CAC, EFCC, Ministry of Budget and National Planning, National Financial Intelligence Unit (NFIU) among others, primarily undertake regulatory oversight through various methods and restrictions such as the requirement for periodic financial reports, submission of currency transaction reports (CTRs) and suspicious transaction reports (STRs), filing of annual returns in lieu of tax exemptions, surveillance of financial inflows, winding up erring NPOs, developing code of corporate governance for NPOs, among several others.

National AML/CFT regimes derive inspiration from international financial regulations, particularly those developed by the Financial Action Task Force (the FATF), the major global rule-forming body against Money Laundering (“ML”) and Terrorist Financing (“TF”). FATF is an inter-governmental body established in Paris in 1989 by the Group of 7 (G7). It is both a policy-making and enforcement body of sets of anti-money laundering (“AML”) and Combatting Financing of Terrorism (“CFT”) rules referred to as standards and recommendations.<sup>16</sup> However, irrespective of how loose the words FATF “standards” and “recommendations” may appear, they are accorded a lot of weight among comity of nations as well as by international organizations such as the World Bank and the International Monetary Fund. FATF was initially set up to tackle the drug problem and the money laundering and misuse of financial institutions to accomplish those ends.

FATF, usually through its regional affiliates, carry out mutual assessments of countries based on the FATF Standards and rates each country in accordance with certain modalities. The Intergovernmental body against Money Laundering in West Africa (GIABA) is the FATF-styled regional body that oversees compliance with the AML/CFT obligations for countries in the West African sub-region. Countries are assessed for their technical assessment with each of the FATF Standards on the spectrum of Compliant, Largely Compliant, Partially Compliant, and Non-Compliant.<sup>17</sup> Under technical assessment, countries are assessed for their compliance with the requirements and procedures as prescribed in the FATF Standards.<sup>18</sup> In addition to technical compliance, countries are also assessed for the effectiveness of the AML/CFT system of the company based on a string of expectations referred to as the Immediate Outcomes, with each Immediate Outcome relating to a number of FATF recommendations. Under effectiveness assessment, the assessors are interested in the actual effect of the technical compliance on the AML/CFT risk level in the country; in other words, the extent to which the defined outcomes of the AML/CFT efforts are achieved.<sup>19</sup> Each country is rated on the spectrum of High Level of Effectiveness, Substantial Level of

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16. Global NPO Coalition on FATF “What is the FATF?” Available at <http://fatfplatform.org/what-is-the-fatf/>, accessed December 12, 2018

17. FATF “Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems” (FATF Methodology), p. 12

18. Ibid.

19. Ibid., p. 15

Moderate Level of Effectiveness and Low Level of Effectiveness.<sup>20</sup> Thus, during an assessment of a country, its technical compliance as well as the level of effectiveness gives a composite view of the country's AML/CFT system.

Although FATF does not have a clear-cut enforcement program for its standards, the level of compliance of a company can have far-reaching effect on the integration of a country with other economies of the world. This is because FATF standards have been widely accepted among countries of the world as well as international organizations as the global gold standard for determining a country's commitment to AML/CFT. Thus, non-compliance may isolate a country or its citizens from taking full advantage of the international financial systems.

Nigeria's AML and CFT laws were birthed by certain incidents locally and internationally that had profound implications for the stability of both the global and the country's financial system and international credit ratings. One such occurrence is the September 2001 terrorist attack in the United States, which necessitated the drafting of eight special recommendations relating to terrorist financing by the FATF in October 2001. The recommendations and guidance documents of the FATF were so influential at the national level that they specifically informed the amendment of the AML Act in 2004, and the enactment of the Terrorism Prevention Act (TPA) Act in 2011. Out of FATF's 49 recommendations, Recommendation 8 is especially concerned with the regulation of nonprofit organisations against terrorist financing abuse.

The overarching purpose behind the setting of these global standards is to curtail the abilities of criminals to launder the proceeds of their crimes as well as restrict the ability of terrorists to obtain finance. The extension of FATF's standards towards NPOs have therefore triggered heated controversies regarding the direct and potentially-unintended ramifications of the standards to the effective operation of NPOs. Accordingly, there are growing concerns across the globe regarding whether AML/CFT regimes should apply to non-profit organizations in the first place. At the core of these concerns is the supposition that reasonable grounds must exist to believe that NPOs pose considerable risk of terrorist abuse or money laundering. That is to say: is there any strong evidential base backing the assumption of risks, threats and vulnerabilities of NPOs to terrorist abuse and money laundering as reinforced in policy and legislative circles? The evidence of such reasonable grounds if it exists, needs to be publicly available, independently verifiable and justifiable. Otherwise, the imposition of restrictions on NPOs on account of AML/CFT vulnerabilities would potentially shrink the space for carrying out their legitimate charitable and humanitarian operations.

20. *Ibid.*, p. 21

## CHAPTER 1

# FATF, AML/CFT RULES AND THE NON-PROFIT SECTOR

### 1.0. Money Laundering, Countering Financing of Terrorism: What Do These Terms Mean?

#### - What is money laundering?

The United Nations describes money laundering as the conversion or transfer or acquisition or possession or use or concealment or disguising the true nature, source, location, disposition, movement, rights with respect to or ownership of property, knowing that such property is derived from a criminal activity or from an act of participation in such activity or of assisting any person who is involved in the commission of such offence or offences to evade the legal consequences of his/her actions.<sup>21</sup> In this way, ill-gotten gains or dirty money are cleaned through series of transactions so that they appear to be proceeds from legal activities.<sup>22</sup> Although money laundering is a diverse and often complex process, it basically involves the following:

#### - **Placement**

The first and most vulnerable stage of laundering money is placement. The goal is to introduce the unlawful proceeds into the financial system without attracting attention of the financial institution or law enforcement agencies.<sup>23</sup> An example may include: dividing large amounts of currency into less-conspicuous smaller sums that are deposited directly into a bank account, depositing a refund cheque from a cancelled vacation package, insurance policy or purchasing a series of monetary instruments

21. UN Definition On Money Laundering; Cullled Form UN Website: <http://www.un.org/qa/20special/presskit/themes/money-5.htm>

22. Combating Money Laundering and the Financing of Terrorism: A Comprehensive Training Guide- The International Bank for Reconstruction and Development / The World Bank © 2009

23. Lenders 360: Fraud in Commercial Real Estate: Tips & Red Flags on Money Laundering & Terrorist Financings, June 2011: <https://www.lenders360blog.com/2011/06/fraud-in-commercial-real-estate-tips-red-flags-on-money-laundering-terrorist-financings/>

(e.g. cashier's cheques or money orders) that are then collected and deposited into accounts at another location or financial institution.<sup>24</sup>

### **Layering**

The second stage of the money laundering process is layering and this involves moving funds around the financial system, often in a complex series of transactions to create confusion and complicate the paper trail. Examples of layering include exchanging monetary instruments for larger or smaller amounts, or wiring or transferring funds to and through numerous accounts in one or more financial institutions.<sup>25</sup>

### **Integration**

The ultimate goal of the money laundering process is integration. Once the funds are in the financial system, they are insulated through the layering stage. The integration stage is used to create the appearance of legality through additional transactions. These transactions further shield the criminal from a recorded connection to the funds by providing a plausible explanation for the source of the funds. Examples include the purchase and resale of real estate, investment securities, foreign trusts or other assets.<sup>26</sup>

Money laundering can take the following forms:<sup>27</sup>

1. **Third party money laundering** is the laundering of proceeds by a person who was not involved in the commission of the predicate offence.
2. **Self-laundering** is the laundering of proceeds by a person who was involved in the commission of the predicate offence.
3. **Stand-alone (or autonomous) money laundering** refers to the prosecution of ML offences independently, without also necessarily prosecuting the predicate offence. This could be particularly relevant inter alia:
  - (i) When there is insufficient evidence of the particular predicate offence that gives rise to the criminal proceeds; or
  - (ii) In situations where there is a lack of territorial jurisdiction over the predicate offence. The proceeds may have been laundered by the defendant (self-laundering) or by a third party (third party ML).

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24. Central Bank of Nigeria's Anti-Money Laundering/ Combating the Financing of Terrorism (AML/CFT) Risk-Based Supervision (RBS) Framework, 2011 B 1

25. Central Bank of Nigeria's (CBN's) Anti-Money Laundering/ Combating the Financing of Terrorism (AML/CFT) Risk-Based Supervision (RBS) Framework, 2011 B 1

26. CBN (ibid).

27. CBN (ibid).

## 1.1 The Financial Action Task Force's (FATF's) Recommendation 8 (R8)

The Financial Action Task Force (FATF) is an inter-governmental body established in Paris in 1989 by the Group of 7 (G7). It is both a policy-making and enforcement body of sets of anti-money laundering (“AML”) and Combatting Financing of Terrorism (“CFT”) rules referred to as standards and recommendations.<sup>28</sup> In April 1990, the FATF handed down 40 detailed Recommendations on ways to counter AML and CFT threats. After 9/11, 8 Special Recommendations were added, enlarging FATF's mandate to include the fight against terrorist financing. In 2004, a 9th Recommendation was added.<sup>29</sup> In 2012, the FATF published the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (the “FATF Standards”), which is a review and update of the FATF recommendations to address new and emerging threats, clarify and strengthen many of the existing obligations, while maintaining the necessary stability and rigor in the recommendations.<sup>30</sup> This paper is based on the 2012 FATF Standards and the FATF principles that apply post the FATF Standards.

FATF's 40+9 Recommendations are regarded as the global norm on anti-money laundering and countering financing of terrorism. Out of these 49 Recommendations, Recommendation 8 (R8) specifically relates to nonprofit organisations' (NPOs') susceptibility to terrorist financing abuse. The initial language of R8 was that “NPOs possess characteristics that make them particularly attractive to terrorists or vulnerable to misuse for terrorist financing.” This recommendation triggered a global push back from international NPOs and human rights watchdogs 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 impression that NPOs were vulnerable to terrorist financing.<sup>31</sup>

The NPO community argued that R8, as it was originally phrased, was not backed by any objective evidence of risks and vulnerabilities within the sector. It deviated from the risk-based approach which was the hallmark of the 2012 FATF Standards. The risk-based approach, as explained by the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorists, implies that “countries, state authorities, as well as the private sector should have an understanding of the ML/TF risks to which they are exposed and apply AML/CFT measures in a manner and to an extent which would ensure mitigation of these risks.”<sup>32</sup> Previously, a risk-based approach was supposed to be applied only in certain circumstances, but “under the [2012] recommendations, it is an overarching requirement, which makes the foundation for an effective implementation of all recommendations.”<sup>33</sup>

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28. Global NPO Coalition on FATF “What is the FATF?” Available at <http://fatfplatform.org/what-is-the-fatf/>, accessed December 12, 2018

29. *Ibid.*

30. The FATF Standards, p. 7

31. ICNL “A Mapping of Existing Initiatives to Address Legal Constraints on Foreign Funding of Civil Society” p. 1. Available at <http://fatfplatform.org/wp-content/uploads/2015/02/ICNL-Mapping-Draft.pdf> accessed December 10, 2018.

32. Council of Europe “Risk Based Approach”. Available at <https://www.coe.int/en/web/moneyval/implementation/risk-based-approach> accessed December 10, 2018

33. *Ibid.*

Thanks to the persistent agitation of the NPO community, R8 was revised in 2016, to provide as follows:

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

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

The revised R8 jettisoned the sweeping categorization of NPOs as vulnerable to terrorist financing and requires countries to undertake a risk assessment of the NPO sector in order to identify the vulnerabilities of NPOs, the vulnerable NPOs and evaluate the sufficiency of available legislation for counteracting the risks. Consequently, the obligation of countries under R8 is no longer to visit NPOs with more stringent regulation and scrutiny without more, but that any measure taken by countries on R8 must be backed by a risk assessment of NPOs' exposure to terrorist financing and must be commensurate with the identified TF risks. The emphasis of FATF with respect to Recommendation 8 is that countries are able to demonstrate that they understand the risk that the NPO sector faces and are able to apply counter measures that are targeted at and proportional to the risks.

Recommendation 8 does not apply to every NPO in a country, but those that fall within FATF's definition of NPO – “legal person or arrangement or organization 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'.”<sup>34</sup>

European Council for Not-for-Profit Law (“ECNL”) summarized the changes made to Recommendation 8 as follows:

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

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34. FATF Standards, p. 54

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

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

In addition to compliance with the text of Recommendation 8 (i.e. technical compliance), countries are required to comply with the Immediate Outcomes as applicable to NPOs, primarily Immediate Outcome 10 which measures to what extent terrorists, terrorist organizations and terrorist support networks are identified and deprived of the resources and means to finance or support terrorist activities and organizations. This includes proper implementation of targeted financial sanctions against persons and entities designated by the United Nations Security Council and under applicable national or regional sanctions regimes. Also assessed is the extent to which a country has *"a good understanding of the terrorist financing risks and takes appropriate and proportionate actions to mitigate those risks, including measures that prevent the raising and moving of funds through entities or methods which are at greatest risk of being misused by terrorists."*<sup>36</sup>

## NPO Sector: What Should Countries Assess?

Non-profits that fall within FATF's definition of NPO

Comply with the Immediate Outcomes 10 applicable to NPOs

Good understanding of NPOs' TF risks and proportionate mitigation plans

35. European Council for Not-for-Profit Law "A string of successes in changing global counter-terrorism policies that impact civic space". Available at <http://ecnl.org/a-string-of-successes-in-changing-global-counter-terrorism-policies-that-impact-civic-space/> accessed December 10, 2018

36. FATF Methodology, p. 118

## 1.2 Need for Risk Assessment of the NPO Sector in Nigeria

Nothing illustrates the need for a risk assessment of the NPO sector in Nigeria more than the recent moves by the Nigerian government to make laws or regulations aimed at preventing the abuse of NPOs for terrorist financing. This move is ostensibly based on the prejudices incited by the original Recommendation 8. In 2016, a restrictive legislative proposal,<sup>37</sup> “A bill for an Act to Provide for the Establishment of Non-Governmental Organizations Regulatory Commission” which aimed to supervise, coordinate and monitor nongovernmental organizations (NGOs) and civil society organizations (CSOs) in Nigeria, was considered for passage. Among other objectives, the bill, popularly known as the NGO Bill, sought to “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”.<sup>38</sup> Had the bill been passed, it would have foisted onerous registration and reporting obligations on NGOs, and also enlarge governmental powers to control, monitor and interfere with their funding streams.<sup>39</sup>

Without a proper risk assessment, any law designed to regulate the NPO sector holds enormous potential to either obstruct or impose operational burdens on NPOs. A feeling widely shared among civil society actors in Nigeria was that the proposed legislation aimed to clamp down on the heightening activism—led by NPOs—exposing corruption and executive underperformance while seeking political accountability and better welfare for citizens. Whereas some restrictive regulations seek to constrict funding to non-profit entities, others target the tools and material resources that NPOs use to propagate their social and humanitarian agendas. Glaring examples include the introduction of policies and regulations targeting access to and use of the internet, which would indirectly, take a huge toll on the effectiveness of those civil society organizations relying on the internet for their activities. More so, certain NPOs are exclusively internet-based and some influential individuals are able to garner sufficient followership that their opinions regarding government activities and policies are able to shape public opinion.

In 2016, the Nigerian parliament introduced a Bill for an Act to Prohibit Frivolous Petitions, popularly known as the Anti-Social Media Bill. The Anti-Social Media Bill designed to control dissent on social media literally required citizens to depose to affidavits in courts before making any posts on social media with respect to the government or its officials. The bill was rejected. In November 2016, the Nigerian Communication Commission again, directed telecommunications operators to hike their tariff for data by 200 percent.<sup>40</sup> Although the government claimed the hike formed part of efforts to protect smaller telecommunication operators in the market, the directive was widely perceived as another ploy by the government to limit access to the internet and effectively reduce the level of criticisms leveled against the government on online platforms. Fortunately, the government reversed the directive following widespread outrage.

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37. Honorable Umar Jubril Ibrahim, now deceased, who represented Lokoja/Kogi Federal Constituency of Kogi State in the Nigeria's House of Representatives, sponsored the Bill

38. Spaces for Change (2017, August 4) Summary of the NGO bill. Retrieved <https://www.spacesforchange.org/2017/08/summary-of-the-ngo-bill/>

39. Victoria Ibezim-Ohaeri, Confronting Closing Civic Spaces In Nigeria, SUR International Journal on Human Rights, 26th Edition, <http://sur.conectas.org/en/confronting-closing-civic-spaces-in-nigeria/>

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

The requirement for a risk assessment of the NPO sector is to curtail the ability of the government to make laws which pay lip service to CFT, but which have no pragmatic CFT values. Not all CFT risks require the passing of legislation. Some risks can be counteracted through policy changes, process adjustments and supervision. According to the Interpretive Note to Recommendation 8, it is possible that existing regulatory or other measures may already sufficiently address the current TF risk to the NPOs.<sup>41</sup> FATF was careful not to stipulate any mandatory measures to be taken by countries. It however contains a list of suggested measures which could be applied to NPOs if warranted by the risks identified.<sup>42</sup>

### 1.3 Scope of Risk Assessment of Nigeria's NPO Sector

According to the Interpretive Notes to Recommendation 8, “Since not all NPOs are inherently high risk (and some may represent little or no risk at all), countries should identify which subset of organizations fall within the FATF definition of NPO.”<sup>43</sup> FATF defines an NPO as a “legal person or arrangement or organization 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.’”<sup>44</sup>

FATF, in its Best Practices Paper on Combatting the Abuse of Non-Profit Organizations (Recommendation 8) (Best Practices Paper), emphasized as follows:

*Recommendation 8 does not apply to the NPO sector as a whole. Countries should take a targeted approach to implementing the measures called for in Recommendation 8, including oversight and regulatory mechanisms, based on an understanding of the diversity of the NPO sector and the terrorism risks faced by the domestic NPO sector. Given the variety of legal forms that NPOs can have, depending on the country, the FATF has adopted a functional definition of NPO. This definition is based on those activities and characteristics of an organization which put it at risk of terrorist abuse, rather than on the simple fact that it is operating on a non-profit basis. Recommendation 8 only applies to those NPOs which fall within the FATF definition of a non-profit organization.*<sup>45</sup>

If R8 only applies to “those NPOs which fall within the FATF definition of a non-profit organization”, then invariably, Recommendation 8 would apply to every NPO in Nigeria. In order to make sense of this requirement that countries must first identify which NPOs fall within the FATF definition of non-profit organizations, the FATF Standards should be read as a whole. Such reading would reveal that the aforesaid sentence refers to the obligation of the government to

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41. FATF Standards, p. 55

42. *Ibid.*

43. *Ibid.*, p. 54

44. *Ibid.*, p. 57

45. The Best Practices Paper, p. 6.

carry out a risk assessment of the NPO sector and apply its CFT efforts to the subset of NPOs which have been identified as, and to the extent to which they are, prone to TF risks.

Therefore, the obligations of each country pursuant to Recommendation 8 are as follows:

- \* Identifying the NPOs which face TF threats;
- \* Determining which of those NPOs identified above are vulnerable to TF abuse; and
- \* Reviewing the adequacy of laws and regulations and other measures that relate to the NPOs identified as vulnerable in respect of the inherent risks.

### **1) Identifying the NPOs under TF threat**

Threats of TF are factual. They refer to a person or a group of people, object or activity with the potential to cause harm to the state, society or its economy. Threat is the risk creator. Countries must understand the TF threats that apply to its NPOs by studying past occurrences and their frequencies as well as being abreast of predicate offences (in the case of NPOs, terrorist activities). It is expected that TF threats would be higher in regions where terrorism exists and such, NPOs operating in terrorist hotspots would be considered riskier than NPOs located in relatively safer environments.<sup>46</sup>

### **2) Determining the vulnerabilities of the NPOs under TF threat**

Vulnerabilities, on the other hand refer to the systemic weakness of NPOs that may be exploited for terrorist financing. These may include both intrinsic issues, such as the operational composition of NPOs, as well as extrinsic issues such as the nature of other sectors of the economy, border porosity, regulation of the financial system and the nature of trades and services generally undertaken in the country and lessons learnt from other jurisdictions. FATF also developed typologies which analyze case studies from across the globe and these may be handy resources in risk assessment. Therefore, even where the threat exists, certain NPOs may not be characterized as being at risk of TF abuse if they are found not be vulnerable to TF.

### **3) Review of adequacy of existing measures**

The fact that some NPOs are at risk of TF does not in all cases require that the countries must take any legislative action to address such risk. The requirement of FATF is that countries must determine whether existing measures and regulation applicable to the NPOs, including availability of institutions, personnel and experts, are sufficient to counteract the identified TF risks. In summary, according to the Best Practices Paper on Recommendation 8, “[n]ot all NPOs are high risk, and some may represent *little or no risk at all. It may be possible that existing measures are sufficient to address the current TF risks to the NPO sector identified in a country, although periodic reviews may identify new or evolved TF risks over time.*”<sup>47</sup>

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46. World Bank “Introduction to the Risk Assessment Tool” p. 12.

47. The Best Practices Paper, p. 7

The essence of risk assessment of the NPO sector is to segment the NPO sector in such a way that the country is able to sift out the NPOs which are not at risk of TF abuse and focus CFT efforts on the NPOs which are at risk of TF abuse.

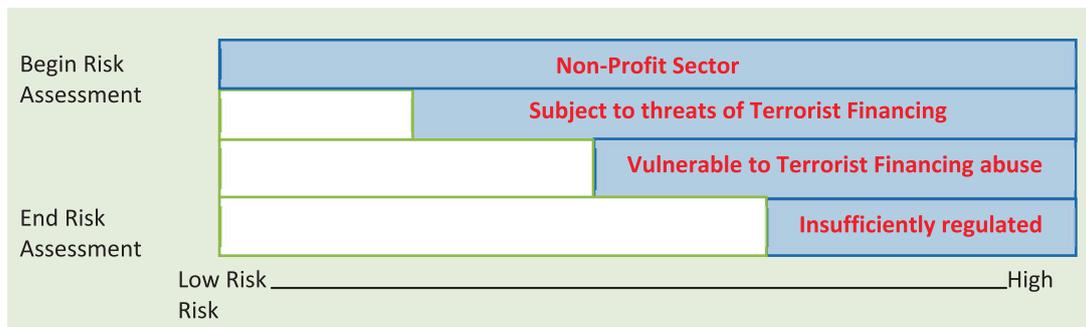


Figure 1: Flow of Risk Assessment of the NPO Sector. The above image demonstrates the role risk assessment plays in ensuring a targeted approach in addressing AML/CFT risks. By the end of a risk assessment of the NPO sector, the country will have identified, not only which NPOs are at risk, but the extent of resources and efforts to be allocated toward countering the risks.

#### 1.4 Risk Assessment of the Nigerian NPO sector

The risk assessment of the NPO sector may either be carried out as a separate exercise or as part of the National Risk Assessment (NRA). NRA is a comprehensive AML/CFT risk assessment across all relevant sectors to which the FATF Standards apply. NRA is not optional. It is a compulsory requirement of Recommendation 1 of the FATF Standards which provides that countries should identify, assess and understand the ML/TF risks inherent in the country to enable the country effectively target and prioritize resources in combatting the risks. However, whilst the conduct of an NRA may satisfy Recommendation 1, such NRA must meet the standards set out in Recommendation 8 to be considered as satisfying the requirement for a separate risk assessment of the NPO sector.

## CHAPTER 2

# NIGERIA NATIONAL RISK ASSESSMENT

### 1.5 Overview and Methodology

Nigeria has published the Report of the Nigeria National Risk Assessment on Money Laundering and Terrorist Financing 2016 (Nigeria NRA). Ever since the country started seeking the membership of FATF, it has been under pressure to rev up its compliance with FATF Standards. Conducting a national risk assessment of the money laundering and terrorist financing risks in the country's financial system, including the NPO sector, is one of the compulsory compliance requirements espoused in FATF Standards. A National Risk Assessment Forum inaugurated in April 2013 recorded no tangible progress due to some logistical and financial challenges.<sup>48</sup> In 2016, a new secretariat working group was inaugurated comprising 92 officers drawn from 38 AML/CFT stakeholder agencies and the private sector.<sup>49</sup>

The Nigeria NRA was coordinated by the Nigeria Financial Intelligence Unit (NFIU) “in consideration of its strategic role as the national agency responsible for the coordination of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) matters in the country.”<sup>50</sup> The working group for the assignment functioned under the auspices of Nigeria's AML/CFT Inter-Agency Ministerial Committee.<sup>51</sup> At the material time for conducting the National Risk Assessment, the NFIU functioned as a unit under the Economic and Financial Crimes Commission (EFCC) and did not have its independent statutory enablement.<sup>52</sup> This lack of independence led to the suspension of the NFIU from the Egmont Group as well as hampered the process of Nigeria's admission into FATF.<sup>53</sup> It was not until September 2018, after the passing of the Nigerian Financial Intelligence Unit Act that Nigeria's membership of the Egmont Group was restored.<sup>54</sup>

The working group adopted the World Bank National Risk Assessment tool (“World Bank Tool”) for the exercise. The World Bank Tool guides jurisdictions in assessing their ML/TF risks with a view to helping them use the information gained to design a more effective, risk-based anti-money laundering and combating the financing of terrorism (AML/CFT) regime.<sup>55</sup> The jurisdiction gathers the results of the fact-finding on the level of AML/CFT threats and the vulnerabilities

48. Nigeria NRA, p. xix

49. *Ibid.*

50. *Ibid.*, p. xv

51. *Ibid.*, p. 42

52. That the NFIU led the Nigeria National Risk Assessment could potentially affect the credibility to be assigned to the report considering that the NFIU did not, at the time of the report, comply with the standard of independence required by FATF of financial intelligence units of countries.

53. Punch, “FATF writes AGF, warns against Nigeria's Suspension by Egmont Group”. Available at <https://punchng.com/fatf-writes-agf-warns-against-nigerias-suspension-by-egmont-group/>, accessed December 15, 2018.

54. Punch, “Egmont Group lifts suspension on Nigeria.” <https://punchng.com/egmont-group-lifts-suspension-on-nigeria/>, accessed December 15, 2018.

55. World Bank Tool, p.1.

within the system. Based on the threat and vulnerability level assigned by the jurisdiction to a particular sector, the World Bank Tool is then used to determine the AML/CFT risk to be assigned to such sector. The definition of key concepts in the World Bank Tool, namely, threats and vulnerabilities, are similar to the definitions under the *Guidance Notes on the Conduct of a National Money Laundering and Terrorist Financing Risk Assessment*<sup>56</sup> (Risk Assessment Guidance Notes). The working group is required to assess the threat and vulnerability levels respectively of specific sectors through the spectrum of Low, Medium Low, Medium, Medium High, and High. The overall AML/CFT risk to be assigned to a sector is determined using the heatmap in Figure 2 below.

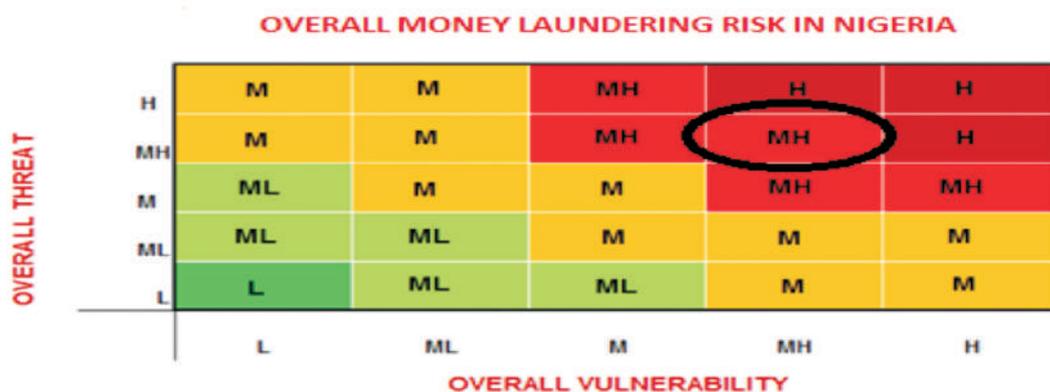


Figure 2: Overall Money Laundering Risk in a Jurisdiction. Source: The World Bank Tool/Nigeria Risk Assessment. Note: L = low; ML = medium-low; MH = medium-high; H = high. The risk is set at the level where the results of the threat assessment and the vulnerability assessment intersect. See the example in footnote.<sup>57</sup>

However, in order to effectively utilize the World Bank Tool, adequate knowledge of the FATF Standards, Interpretative Notes as well as the Best Practices Paper applicable to each sector, is imperative. A good way to view it is that the FATF documents provide the substantive rules, while the World Bank Tool provide procedure for carrying out the NRA. It does not seem that the World Bank Tool was developed specifically for the purpose of compliance with FATF Standards. The World Bank Tool does not contain any reference to FATF. Therefore, in order to achieve the desired FATF outcomes using the World Bank Tool, the substance of the NRA must be in consonance with FATF Standards.

56. Available at [http://www.fatf-gafi.org/media/fatf/content/images/National\\_ML\\_TF\\_Risk\\_Assessment.pdf](http://www.fatf-gafi.org/media/fatf/content/images/National_ML_TF_Risk_Assessment.pdf).

57. For example, if the threat has been assessed as “medium” and the vulnerability has been assessed as “medium-high,” the risk will be “medium high.” This means that although the threat level in the assessed jurisdiction is at a medium level, the overall risk is medium-high, given the higher vulnerability level (the weaknesses in the country’s defense mechanisms). In Figure 2, overall risk levels have been color-coded, with low levels green, medium levels yellow, and high levels red.

## 1.6 Risk Assessment of NPOs under the Nigeria National Risk Assessment

### I. Money Laundering

Recommendation 8 is exclusively a TF recommendation. Therefore, for the purpose of compliance with Recommendation 8, NPOs should ordinarily not be subjected to a sectoral ML assessment. The language of the Recommendation 8 was unequivocal in designating the recommendation as a TF recommendation:–

*“Countries should review the adequacy of laws and regulations that relate to non-profit organizations which the country has identified as being vulnerable to terrorist financing abuse....”*

Furthermore, according to Best Practices Paper on Recommendation 8, “while it is possible that NPOs, like their for-profit counterparts may face numerous risks relating to money laundering, corruption and tax evasion, Recommendation 8 is only intended to address the particular vulnerability of NPOs to terrorist abuse.”<sup>58</sup> What this means is that NPOs were not specifically identified as money laundering risks under the FATF Standards. This is not to be taken to mean that NPOs are not abused for the purpose of money laundering and other unlawful purposes such as tax evasion.<sup>59</sup> Neither does it mean that NPOs should not be assessed along with other constituents of the economy for ML risks pursuant to an NRA conducted in accordance with Recommendation 1. In other words, the NPO sector is not regarded by FATF as facing any specific ML risk that warrants a specific assessment of the sector.

Again, it needs to be emphasized that FATF does not classify NPOs as Designated Non-Financial Businesses and Professions (“DNFBPs”). DNFBPs are businesses and professions which are not financial institutions but are regarded by FATF to be prone to ML/TF abuse as a result of the very nature of activities undertaken by such businesses and professions. Therefore, the mere classification of a business or profession<sup>60</sup> as DNFBP imputes certain perception of ML/TF risk on such organizations, thereby subjecting them to specific stringent AML obligations that other organizations which are neither financial institutions nor DNFBPs face.

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58. Best Practices Paper, p.11.

59. See OECD “Report on Abuse of Charities for Money-Laundering and Tax Evasion”. Available at <https://www.oecd.org/tax/exchange-of-tax-information/42232037.pdf>

60. FATF defines DNFBPs as follows: “Designated non-financial businesses and professions means (a) casinos, (b) real estate agents, (c) dealers in precious metals, (d) dealers in precious stones, (e) lawyers, notaries, other independent legal professionals and accountants, and (f) trust and company service providers.” Notable in this definition is the fact that FATF employs the word “means” and not “includes”. While the use of the word “includes” in the introduction of the definition would have given countries the discretion to expand the businesses included in the definition of DNFBPs, the choice of “means” connotes that only the businesses listed in the definition are regarded by FATF as DNFBPs. Any expansion of the definition, as is the case under the SCUML Regulation, would amount to a departure from the standards of FATF. It should be noted that FATF is intent to ensure that it does not foist unnecessary obligations on organizations and do not envisage that countries take the liberty to extend its standards to businesses other than as contemplated under applicable FATF recommendations.

### Obligations of DNFBPs under the FATF Standards

Under the FATF Standards DNFBPs are subject to the following obligations

- Internal policies, procedures and controls, based on the Insurance institution's assessment of the AML/CFT risks associated with its business, and designed to reasonably anticipate and prevent money laundering and terrorist financing.
- Customer Due Diligence
- Appointment of a compliance officer at management level.
- Filing of Suspicious Transactions Report (“STR”).
- On-going or regular training for its employees.
- Record keeping
- Internal control/Independent Audit of the AML/CFT program.

*Box 1: Obligations of DNFBPs under the FATF Standards. Source: FATF Standards.*

Taking into account that R8 does not specifically include ML assessment of NPOs, does not categorize NPOs as DNFBPs, this is indicative that a sectoral ML assessment of NPOs is not an FATF requirement. But the Nigeria NRA overreaches this regulatory requirement by specifically assessing the NPO sector for ML risks. This overreach evidently stems from the flawed classification of NPOs as DNFBPs. In a 2013 regulation (the “SCUML Regulation”), the Special Control Unit against Money Laundering (“SCUML”),<sup>61</sup> the Nigerian regulator for DNFBPs, categorized NPOs in Nigeria as DNFBPs. The effect of this categorization is far reaching. Not only does it bring NPOs which thrive on public goodwill under undue scrutiny, but also imposes stringent compliance obligations on them. More tellingly, the categorization of NPOs as DNFBPs flagrantly breaches FATF's position which declares that “NPOs are not considered designated non-financial businesses and professions and should not be subject to the FATF requirements for DNFBPs.”<sup>62</sup>

The variance between the misclassification of NPOs and the standards formulated by FATF casts doubts on the substantial value to be accorded to the ML assessment of NPOs in the Nigeria NRA. It may result in a lower score for Nigeria on its understanding of its obligation under the FATF regime. Added to this, the Nigeria NRA does not identify any specific ML risk encountered by NPOs in Nigeria. Whilst ML risk is the product of ML threat and ML vulnerabilities as demonstrated in Figure 2 above, the ML risk analysis of NPOs does not identify any real threat encountered by the NPO sector and appears to base its assessment entirely on the perceived vulnerabilities of the NPO sector.<sup>63</sup>

Under the threat analysis of the NPO sector, the Nigeria NRA appears to mix up the meaning of “threat” with “vulnerability” in various parts of the analysis. For example, the report discusses weakness in the regulation of NPOs under the ML threat section of the NRA. Page 32 of the Nigeria NRA report stated as follows:

61. The Special Control Unit against Money Laundering was established in 2005 as a commitment by Nigeria, through the Federal Government constituted Presidential Inter-Agency Committee, to the Financial Action Task Force (FATF). The statutory responsibility of SCUML is 'to be a world-class regulatory unit in the supervision, monitoring and regulation of the Designated Non-Financial Institutions (DNFI) as regards compliance to anti Money laundering and combating the financing of terrorism in Nigeria.

62. Best Practices Paper, p. 19.

63. There might be a few exceptional instances under which a risk assessment may rely only on vulnerabilities in the absence of positive evidence of threats. This includes where there exist plausible typologies of threats to the NPO sector.

*NPOs generally enjoy substantial public trust, which is one of the basic components that has contributed to the sector's success; it also provides an opportunity for money launderers to hide their illicit funds under the disguise of humanitarian activities. Due to the weak and ineffective monitoring measures in place for the regulation of their activities, it has become extremely difficult and elusive to track the activities of NPOs effectively, such as matching their expenditure against their perceived income. Some of them have become tools for money laundering either by PEPs or public servants under the guise of contributing for a particular cause or projects.<sup>64</sup>*

The Nigeria NRA finds that 65% of NPOs interviewed receive 50% of their funding from foreign donors while 35% receive 100% of their funding from domestic donors.<sup>65</sup> It concludes that the practice of foreign agencies or individuals sending money directly to NPO's without being accountable or reporting to any regulatory body is a potential risk for ML.<sup>66</sup> The Nigeria NRA further posits that some of NPOs have become tools for money laundering either by politically exposed persons (PEPs) or public servants under the guise of contributing for a particular cause or projects. These assertions are not backed by any evidence and therefore would appear to the reader of the Nigeria NRA as speculative.

The Nigeria NRA admits in its concluding remark that while the abuse of NPOS for ML may seem to be potentially low, NPOs pose significant ML threat “due to the fact that NPO's are not effectively regulated”. It goes on to state that “While there are no available data on cases, assets frozen, seized or confiscated in relation to money laundering, it's still very obvious from our findings that this sector poses a risk, hence the ML threat assessment level for this sector is rated Medium High.” This statement is, however, not supported by any evidence.

The lack of regulation would appear to fall within the realm of vulnerabilities rather than threats. Threats are factual instances of money laundering activities channeled through NPOs while vulnerabilities would relate to the ability of the system to withstand the threats. Therefore, assuming that NPOs in Nigeria are inadequately regulated, that would be a vulnerability and not a threat, as the NRA hastily concluded.

The hasty generalizations continue with the discussion regarding the ML vulnerabilities of the NPO sector in Nigeria. Here, the Nigeria NRA referred to a typology on TF contained in FATF's report on Terrorist Financing in West Africa in support of its ML vulnerability assessment of the NPO sector.<sup>67</sup> It stated as follows:

*“NPOs may be vulnerable to abuse by terrorists for a variety of reasons. NPOs enjoy the public trust, have access to considerable sources of funds and are often cash-intensive. They have a global presence that provides a framework for national, international operations and financial transactions, often within or near those areas that are most exposed to terrorist activity....”*

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64. Nigeria NRA, p. 32.

65. *Ibid.*, pp. 32-33.

66. *Ibid.*, p. 33.

67. *Ibid.*, p. 185.

The lack of clear understanding of threats and vulnerability and the apparent attribution of TF risks and vulnerabilities in the ML assessment of the NPO sector puts a question mark on the outcome of the ML risk assessment of the NPO sector. Despite the manifest confusion in the understanding and application of terminologies, the NRA went ahead to rate the overall ML vulnerability of the NPO sector as “high”. This rating does not appear to flow from any evidential basis other than the misplaced attribution of TF threats and vulnerabilities in the ML assessment. There was no explanation proffered for the high risk rating given the earlier admission that the threats of abuse of NPOs for ML is low.

## **I. Terrorist Financing**

The Nigeria NRA addressed the CFT risks in Nigeria in Chapter 8 of the report. It began with a discussion on terrorist activities in Nigeria. The only terrorist groups identified in the NRA are Jama'atu Ahlus-Sunnah Lidda'awati Wal Jihad (Boko Haram) and Jama'atu Ansarul Mislimina Fibiladis –Sudan (JAMBS), which is a breakaway faction from Boko Haram. According to a report, Boko Haram, one of the deadliest terrorist groups currently in operation globally, conducted hundreds of terrorist attacks, resulting in over 5 000 casualties in 2014 and 6 000 casualties in 2015.<sup>68</sup> The violence that originated in Nigeria has spilled into the neighbouring countries of Cameroon, Chad, and Niger.

The Nigeria NRA also identified other violent groups including the Islamic Movement of Nigeria which it described as the “Muslim Brotherhood or Shiite Sect”; the Movement for the Emancipation of the Niger Delta (MEND); the Odua People's Congress (OPC); Movement for the Actualization of the Sovereign State of Biafra (MASSOB); and the Indigenous People of Biafra (IPOB). Whilst the classification of some of these groups as violent remain controversial, it should be noted that the IPOB was proscribed in September 2017 as a terrorist group by the Federal Government of Nigeria. The questionability of the records linking IPOB with violence, culminated in many groups, institutions, including the diplomatic community vehemently kicking against the classification.<sup>69</sup> However, it is important to point out that the language and tone employed by the Nigeria NRA in describing the groups exudes a lack of objectivity.

According to the Nigeria NRA, the TF threats facing Nigeria emanate from domestic sources rather than from foreign sources. Boko Haram exemplifies this point. Despite the widely-held notion that Boko Haram enjoys the support of some foreign affiliate terrorist groups, the Nigeria NRA found no proof that foreign organizations provide funding to Boko Haram. The Nigeria NRA further identifies both legitimate and illegitimate sources of terrorist financing, but again, without any evidential support, surmises that “terrorist financing funds are raised through abuse of legitimate or clean sources like trading, charity organizations, and donations including alms giving.”<sup>70</sup>

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68. The Washington Post (2016), The brutal toll of Boko Haram's attacks on civilians, [www.washingtonpost.com/graphics/world/nigeria-boko-haram/](http://www.washingtonpost.com/graphics/world/nigeria-boko-haram/) 3 United States Department of State, cited in GIABA's Terrorist Financing In West And Central Africa, October 2016.

68. The Punch, We don't see IPOB as terrorist organisation – United States; published September 2017 <https://punchng.com/we-dont-see-ipob-as-terrorist-organisation-us/>

70. Ibid., p. 196.

### Sources of Terrorist Finance Listed in the NRA

#### Legitimate Methods

Voluntary membership contribution  
Compulsory levies imposed on members  
Use of legitimate proxy business outfits  
Sale of certain items

#### Illegitimate Methods

Extortion  
Violent Robberies  
Begging<sup>71</sup>  
Smuggling  
Human trafficking  
Protection fees  
Payment of Zakkat  
Kidnapping for ransom money  
Local Sympathizers<sup>72</sup>  
Cattle rustling  
Raiding of villages for consumables

*Box 2: Sources of Terrorist Finance as listed in the Nigeria NRA*

The major channels for the movement of funds are through physical movement of cash, use of bank proxy bank accounts, through purchase and sale of goods and through money transfers using bureau de change. The TF threat in Nigeria was assessed to be medium. Similarly, the overall TF vulnerability rating of Nigeria is also medium. The rating is predicated on the following factors:

- (a) Nigeria's economy is cash-based which makes it difficult to investigate the movement of money;
- (b) inadequate supervision of the DNFBP sector;<sup>73</sup>
- (c) Nigeria has porous and illegal borders;
- (d) Ineffective cooperation between Nigeria's TF stakeholders with foreign counterparts;
- (e) Non-functional targeted financial sanctions regime;
- (f) Lack of centralized database for intelligence-sharing on terrorism/TF by Nigerian agencies;
- (g) Existing data are not maintained in formats that make for easy accessibility;
- (h) Inadequate training of stakeholders; and
- (l) Delay in the prosecution of terrorism/TF.

71. Begging is not ipso facto illegitimate. Although some states in Nigeria have illegalized street begging, such as Lagos State, it may not be correct to generally categorize begging as illegitimate for the purpose of the NRA.

72. This is described in the NRA as fees given to Boko Haram by people who are sympathetic to their beliefs or cause. The issue with this categorization is that it does not appear to be illegitimate in the local context.

73. It may be assumed that DNFBP sector as used here includes, albeit erroneously, the NPO sector.

The Nigeria NRA did not undertake in-depth sectoral TF risk assessment. Therefore, there was no specific appraisal of the NPO sector's vulnerability to TF risks, probably because the Nigeria NRA was conducted using the World Bank Tool and methodology. The World Bank Risk Assessment Methodology<sup>74</sup> attaches importance to the conduct of risk assessment at the national level, notwithstanding the potential benefit of focused sector risk assessment. It is also worth mentioning that the World Bank Risk Assessment Methodology does not include a section on NPOs.

The World Bank Tool provides a guide to countries seeking to carry out a risk assessment of their ML/TF environment as a “self-assessment.”<sup>75</sup> Since FATF recognizes the World Bank Tool, the expectation is that an NRA conducted in line with the World Bank Tool would satisfy FATF's NRA requirement. However, the gathering of data, outreach to relevant sectors, and analysis of data are the responsibility of the country. Therefore, following the structure and methodology suggested by the World Bank does not automatically amount to compliance with obligations under the FATF Standards. Even the Risk Assessment Guidance Notes issued by the FATF state that the notes are not a standard and therefore, are not intended to designate specific actions necessary to meet obligations under Recommendation 1 and Interpretive Note 1, or any other Recommendations dealing with the risk-based approach.

The use of the World Bank Tool appears to achieve technical compliance with the requirement for an NRA but does not appear structured enough to address the immediate outcomes with regards to the conduct of an NRA. What can be deduced from the above is that complying with any methodology in conducting an NRA is one thing, but whether the outcome satisfies the demands of the FATF Standards is another thing.

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74. World Bank Risk Assessment Methodology, p. 6.

75. *Ibid.*, p.1

## CHAPTER 3

# ANALYSIS OF THE NIGERIA NATIONAL RISK ASSESSMENT IN THE LIGHT OF RECOMMENDATION 8

To begin with, conducting a National Risk Assessment is a specific requirement of Recommendation 1 of the FATF Standards which set the tone for the Risk-Based Approach to AML/CFT. According to Recommendation 1:

*Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should 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. Based on that assessment, countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This approach should be an essential foundation to efficient allocation of resources across the anti-money laundering and countering the financing of terrorism (AML/CFT) regime and the implementation of risk-based measures throughout the FATF Recommendations. Where countries identify higher risks, they should ensure that their AML/CFT regime adequately addresses such risks. Where countries identify lower risks, they may decide to allow simplified measures for some of the FATF Recommendations under certain circumstances.<sup>76</sup>*

In assessing compliance with Recommendation 1, FATF will consider whether the technical requirements as set out above have been met by the country; and, in addition, assess to what extent the country has met the Immediate Outcomes with respect to Recommendation 1, specifically, Immediate Outcome 1 which provides as follows:

*A country properly identifies, assesses and understands its money laundering and terrorist financing risks, and co-ordinates domestically to put in place actions to mitigate these risks. This includes the involvement of competent authorities and other relevant authorities; using a wide range of reliable information sources; using the assessment(s) of risks as a basis for developing and prioritizing AML/CFT policies and activities; and communicating and implementing those policies and activities in a coordinated way across appropriate channels.*

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76. FATF Standards, p. 9.

*The relevant competent authorities also co-operate, and co-ordinate policies and activities to combat the financing of proliferation. Over time, this results in substantial mitigation of money laundering and terrorist financing risks.<sup>77</sup>*

The above may be considered as a general provision. Recommendation 8 contains specific provisions requiring the conduct of a TF risk assessment of the NPO sector in order to identify the NPOs which are vulnerable to TF abuse. This may be achieved under a comprehensive NRA, in which case, the NRA will have complied with the country's obligations under Recommendation 8. Otherwise, the jurisdiction would still be required to conduct a specific TF risk assessment of its NPO sector

That said, this section critically analyzed the Nigeria NRA in the light of risk assessment exercise of Recommendation 8 to determine whether the Nigeria NRA satisfies the following requirements :

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

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77. FATF Methodology, p. 19.

1.7 Nigeria NRA does not identify the NGOs which face threats of Terrorist Financing

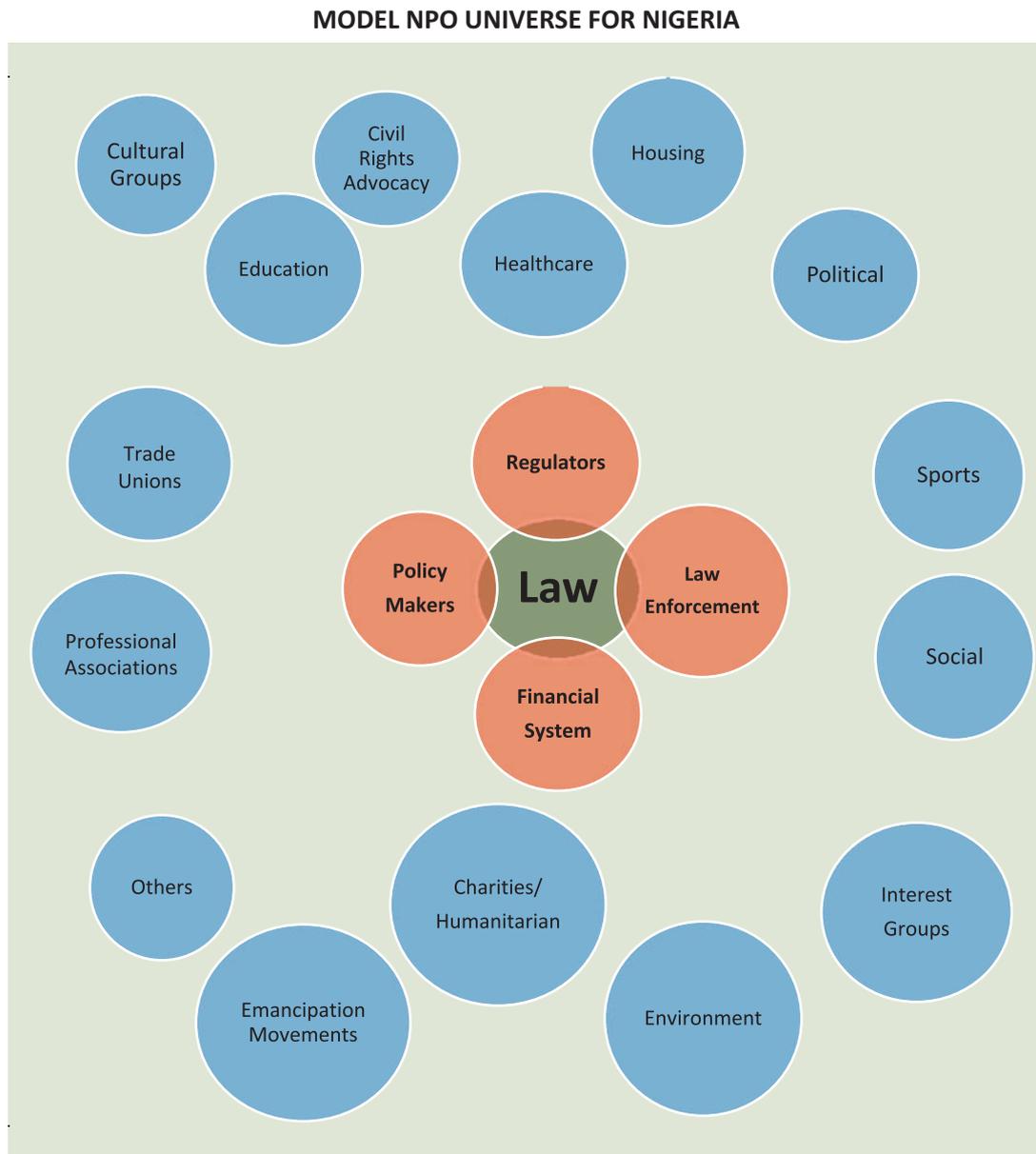


Figure 3: Model NPO Universe for Nigeria. The sizes of the circles do not indicate scale.  
Source: Authors<sup>78</sup>

78. Lester M. Salamon and Helmut K. Anheier, *The International Classification of Nonprofit Organizations: ICNPO-REVISION 1*, 1996, published by The Johns Hopkins University Institute for Policy Studies, in the Working Papers of The Johns Hopkins

The first responsibility of the Nigeria NRA with respect to Recommendation 8 is to understand which NPOs face threats of TF. This requires in-depth understanding of the various types of NPOs operating in Nigeria and the actual TF threats they face. In Nigeria, NPOs take various forms, and include very informal outfits such as book clubs, town union meetings, age grade meetings, old boys/girls associations as well as very formal groups such as professional associations, charities, chambers of commerce, local non-governmental organizations (NGOs) and international NGOs. Faith-based groups, including churches and mosques; humanitarian and service delivery organizations; human rights, advocacy and accountability groups, are all classified as non-profit bodies in Nigeria.<sup>79</sup> However, the operations of these groups vary, same with the levels of risks and vulnerabilities that they face and pose. The threats to which NPOs are exposed to, vary across the various forms and categories. With this information, the country would be able to classify and apply proportionate mitigate measures to NPOs according to the extent of risks that they pose.

In a study, FATF identified five ways in which terrorist entities could abuse NPOs, and they include:

- (a) Diversion of Funds – an NPO, or an individual acting on behalf of an NPO, diverts funds to a known or suspected terrorist entity;
- (b) Affiliation with a terrorist entity – An NPO, or an individual acting on behalf of NPO, maintains an operational affiliation with a terrorist organization or support of terrorism;
- (c) Abuse of programing – NPO-funded programs meant to support legitimate humanitarian purposes are manipulated at the point of delivery to support terrorism;
- (d) Support for recruitment - NPO-funded programs or facilities are used to create an environment which supports and/or promotes terrorism recruitment-related activities; and
- (e) False representation and Sham NPOs – Under the guise of charitable activity, an organization or individual raises funds and/or carries out other activities in support of terrorism.<sup>80</sup>

Clearly, NPOs face different levels of threats or exposure to the threats listed above, ranging from high to insignificant. The failure to assess the NPO sector based on these distinctions is problematic, and reflects poorly on the outcomes of the Nigeria NRA. Doing so would have enabled TF threats to 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. Studies commissioned by the FATF lend credence to this approach when they stated that “there is a correlation between the types of

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79. Comparative Nonprofit Sector Project, Accessed in January 20, 2019: [http://asauk.org.uk/wp-content/uploads/2018/02/CNP\\_WP19\\_1996.pdf](http://asauk.org.uk/wp-content/uploads/2018/02/CNP_WP19_1996.pdf)

See SPACES FOR CHANGE, Standing Together to Defend the Civic Space: <https://www.spacesforchange.org/2018/12/standing-together-to-defend-the-civic-space/>

80. FATF “Report on Risk of Terrorist Abuse in Non-Profit Organizations,” (Report on NPO Risks) p. 5. Available at <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf>, accessed December 15, 2018.

activities an NPO is engaged in, and the risk of abuse....Additionally, the case studies and available research indicate there is a stronger risk of abuse for NPOs carrying out activities in areas targeted by terrorist movements.”<sup>81</sup> A discussion of the three major paradigms sheds further light on the disparate levels of TF threats in the NPO sector.

## I. Activities/Services

NPOs may be expressive or service-oriented.<sup>82</sup> Expressive NPOs are those which seek to provide platforms for beneficiaries to develop and showcase their skills, training and interests, while service NPOs are those that provide services, by transferring value to their beneficiaries. There may not be a clear-cut distinction between the two categories as hybrids may exist, but NPOs may be categorized based on their predominant attributes. Studies conducted by the FATF find that service NPOs are most frequently abused by terrorist movements.

### Salamon's Classification

Lester Salamon, split NPOs into 8 general categories, 4 of which fall under expressive and 4 under services.

#### **Services**

Housing  
Social Service  
Education  
Health Care

#### **Expressive**

Sports and Recreation  
Arts and Culture  
Interest Representation  
Advocacy

*Box 3: Categorization of NPOs. Source: Lester Salamon, et al.* <sup>83</sup>

## II. Location of NPO/Beneficiaries

The terrorism hotspot in Nigeria is in the North-eastern part of the country, the operational base of the Boko Haram terrorist group. The Nigeria NRA provides details of the group's activities in the North East. With the intensity of terrorist activity in the region and the resulting humanitarian crisis, several NPOs, especially those rendering humanitarian assistance, have established offices there to provide various forms of support to the beleaguered populations such as the provision of relief materials like food, clothing, drugs and healthcare services, and other support services.

It can be inferred from the above that service NPOs operating in the North-east are exposed to greater TF threats than those operating outside the region. One such major threat such NPOs face is the diversion of relief materials and services meant for the victims of terrorist activities.

81. *Ibid.*, p. 31.

82. Salamon et al “The State of Global Civil Society and Volunteering – Latest findings from the implementation of the UN Nonprofit Handbook,” p. 5 Available at [http://ccss.jhu.edu/wp-content/uploads/downloads/2013/04/JHU\\_Global-Civil-Society-Volunteering\\_FINAL\\_3.2013.pdf](http://ccss.jhu.edu/wp-content/uploads/downloads/2013/04/JHU_Global-Civil-Society-Volunteering_FINAL_3.2013.pdf), accessed December 15, 2018.

83. *Ibid.*

The infamous “grass-cutting scandal”, involving a senior government official<sup>84</sup> is a classic example.<sup>85</sup> The disgraced former secretary to the Government of the Federation allegedly diverted funds provided by the Federal Government of Nigeria under the Presidential Initiative on North East for rehabilitation efforts in the region.<sup>86</sup> Similarly, incidents of diversion of relief materials and reselling them in the open market have also been documented.<sup>87</sup> For service NPOs operating in the North-East region, the diversion typology is a potential risk that they face in their humanitarian operations. It would, however, be erroneous to attribute this risk quotient to every NPO in Nigeria, hence the relevance of the risk-based approach in combatting TF threats within the sector.

### III. Source of Funding

According to the Nigeria NRA, “65% of NPOs interviewed receive 50% of their funding from foreign donors while 35% receive 100% of their funding from domestic donors.” An accurate estimate of the size of NPOs operating in Nigeria is hard to come by. Estimates of registered NGOs in Nigeria with the CAC vary from 50,000 to N100, 000.<sup>88</sup> The Corporate Affairs Commission (CAC) has 55,456 registered local NPOs in its database,<sup>89</sup> while the Ministry of Budget and National Planning has registered 176 Foreign NPOs as of 2016. Information regarding the total number of NPOs interviewed during the NRA, their operational characteristics and thematic focal areas, were not provided, making an independent evaluation of the data difficult. This information gap makes it harder to determine whether the number of sampled groups was sufficient to draw statistically significant findings to make generalizations for the entire NPO sector.

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84. Former Secretary to the Government of the Federation, Babachir Lawal

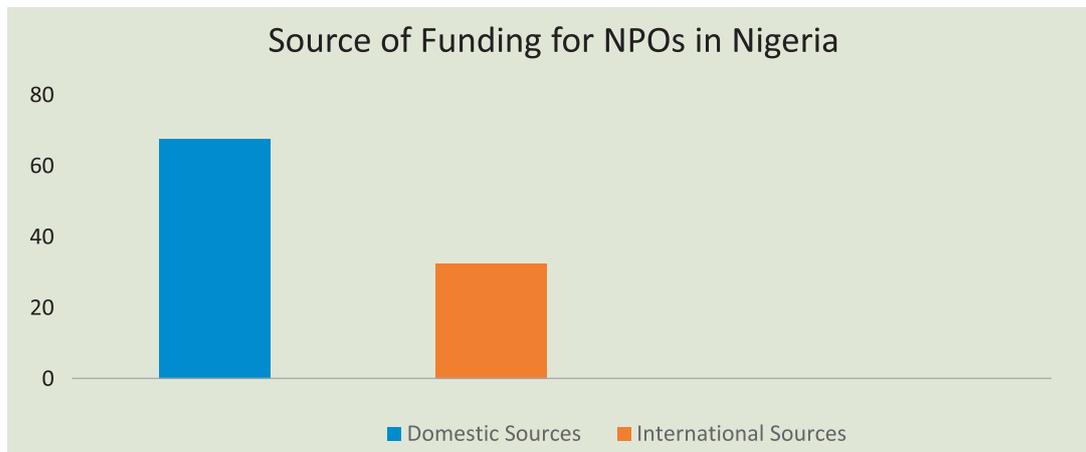
85. Punch “Grass-cutting scandal: Senate panel indicts suspended SGF, recommends prosecution.” Available at <https://punchng.com/grass-cutting-scandal-senate-panel-indicts-suspended-sgf-recommends-prosecution/>, accessed December 15, 2018.

86. Ibid.

87. Vanguard “IDP relief material diverted for commercial purposes in Bauchi.” Available at <https://www.vanguardngr.com/2018/02/idps-relief-materials-diverted-commercial-purposes-bauchi/> accessed December 15, 2018.

88. USAID 2016 CSO Sustainability Index for West Africa. Retrieved [https://www.usaid.gov/sites/default/files/documents/1866/2016\\_Africa\\_CSOSI\\_-\\_508.pdf](https://www.usaid.gov/sites/default/files/documents/1866/2016_Africa_CSOSI_-_508.pdf), pg176

89. Bamaga Bello (2018): The Challenges of Regulating NPOs for AML/CFT Compliance: *A presentation made at the GIABA Regional Workshop on the Development of Effective Frameworks and Structure to fight against ML/TF through Non-profit Organizations (NPOs) from 4<sup>th</sup> – 6<sup>th</sup> April, 2018 at Abuja, Nigeria.* Bamanga Bello, FNIM is the Director of the Special Control Unit against Money Laundering.



One thing is clear: the Nigeria NRA makes the assumption that the receipt of funding from international sources aggravates TF risks in the NPO sector. This assumption does not take into account that non-profit groups may receive funding from a combination of local and foreign sources. Also, it does not reflect the massive volunteer workforce, including international actors, providing free services to NPOs, which suffice as funding support. When discussing the financing of NPOs, the term “resources” from foreign sources do not always denote money, but also includes technical assistance and cooperation with considerable costs attached to those specialized services, as opposed to funds.<sup>90</sup> More so, the Nigerian financial system has institutionalized procedures for identifying suspicious transactions irrespective of whether the source is domestic or international.

The dichotomization of funding sources into domestic and international streams reflects the idea that TF threats mainly emanate from outside the shores of a country. The logic behind this is that the country is able to regulate the movement of funds within its domestic financial system. Israel's National Risk Assessment agrees with this logic when it stated that: -

*It should be emphasized that terror funds originating in foreign countries relate to the fact that the funds are being transferred through routes and locations outside of Israel's control or legal jurisdiction (i.e., there is no use of the Israeli financial system).<sup>91</sup>*

While the validity of the above claim is arguable, SPACES FOR CHANGE takes the view that local context matters. As such, general notions of threats may not apply with equal velocity in different contexts. In Nigeria, Boko Haram is a home-grown terrorist group with an array of funding sources set out in Box 2 above, including local sympathizers and recruitment of local volunteer fighters. It may, therefore, not be effective to attribute higher risks to foreign funding

90. Report on NPO Risks, p. 23.

91. “Israel National Risk Assessment on Terror Financing,” pp. 4-5. Available at [http://www.justice.gov.il/Units/HalbantHon/Pirsumim/Documents/TF\\_Risk\\_Assesment\\_ENG.pdf](http://www.justice.gov.il/Units/HalbantHon/Pirsumim/Documents/TF_Risk_Assesment_ENG.pdf) accessed December 15, 2018.

for such groups. Instead, it may be useful to beam the searchlight on informal funding sources outside the formal regulatory structures where movement of funds is hard to track.

The Nigeria NRA tends to agree with this submission. In its assessment of International Money Transfer Service Operators, it noted that “[a]lthough there are no available data of IMTSOs being used for money laundering, the sector poses low money laundering risks due to the local policy regulations in place and the international AML/CFT regulations guiding their operations from their host countries.<sup>92</sup> Therefore, funds received through formal channels are relatively safer than those received via unofficial channels such as physical cash transfers,<sup>93</sup> use of livestock and trade by barter. It is expected that terrorist financiers would rather opt for means of resource transfer which would afford them as much concealment as possible.

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92. The Nigeria NRA, p. 34. The authors agree with this statement and not necessarily the methodology by which the Nigeria NRA arrived at it.

93. According to the Nigeria NRA, the NPO subsector showed some significant exposure to cash transactions because the use of electronic payments are not common in rural areas where the NPOs mostly offer services. Statistics from SCUML show that 232 cash-based transaction reports amounting to N512,645,200.55 (\$1,708,817.3) were filed by 42 NPOs as at December 2014. *Ibid.*, p. 185.

### Model TF Risk Filter for Nigeria NPO Sector

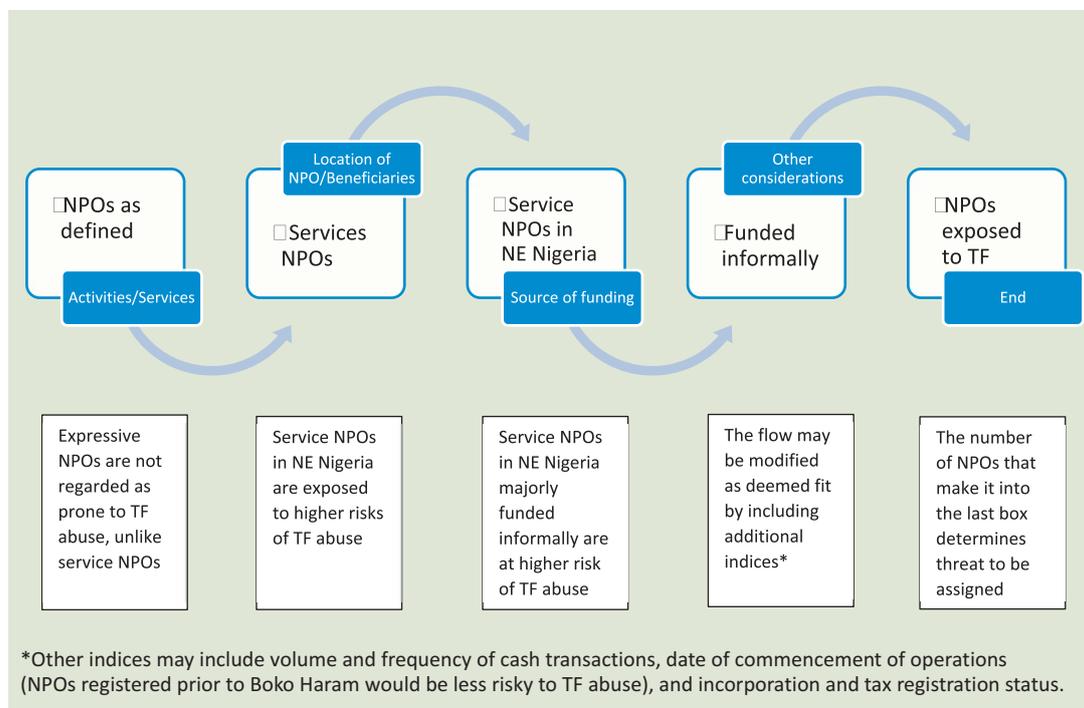


Figure 5: Model flow chart for identifying NPOs facing TF threats. Source: Authors based on the discussions in this section.

#### 1.8 The Nigeria NRA did not review the vulnerabilities of the NPOs which face threats of Terrorist Financing

The purpose of carrying out a vulnerability assessment of NPOs is to identify the weaknesses within the sector that may be exploited for terrorist abuse. It may be conceptualized as a stress test of the immune system of the sector against TF threats. FATF defines vulnerabilities as “[t]hings that can be exploited by the threat or that may support or facilitate its activities.”<sup>94</sup>

The Nigeria NRA discussed the vulnerability of the jurisdiction to TF but does not elucidate on the specific vulnerabilities of the NPO sector as espoused in the World Bank Tool. Recommendation 8 requires that countries specifically understand the vulnerabilities of NPOs to TF threats. Considering the absence of any specific vulnerability assessment in the Nigeria NRA, the TF assessment falls short of the requirements of Recommendation 8.

The vulnerabilities of the NPO sector depend on a number of factors that may broadly be classified into two – (a) the macro factors, and (b) the micro factors. The macro factors affect the vulnerabilities of the country to TF threats while micro factors specifically apply to the NPO sector as a result of the sector's peculiarities. The macro factors are considered during a national risk assessment and are broadly categorized by FATF into political, economic, social, technological, environmental and legislative.<sup>95</sup>

94. Report on NPO Risks, p. vi.

95. Risk Assessment Guidance Notes, p. 39.

The micro factors are those unique features of NPOs which enable NPOs function effectively and distinguish them from other kinds of entities. On the other hand, these unique features may also be exploited by terrorist financiers. FATF categorizes them into four –

**a. Extended logistical networks**

The NPO sector enjoys greater reach, allowing NPOs to deliver programs in multiple areas through multiple partners. Conversely, because of their scope, extended logistical networks also increase their exposure to TF threats.

**b. Large transitory workforce**

The nature of the workforce in the NPO sector comprised majorly by volunteers make it difficult to scrutinize staff. Because of the nature of the workforce, a number of the staff may lack the technical abilities to assess and understand risks and legal matters.

**c. Operational capacity**

NPOs have access to considerable source of funds and are cash-intensive. They are able to reach far and wide and enjoy the trust of the public. This may be exploited by terrorist financiers in carrying out their own outreaches.

**d. Organizational culture**

NPOs place greater emphasis on the delivery of the delivering the services and lesser emphasis on process. This makes them vulnerable to threats of TF.<sup>96</sup>

Vulnerabilities of Nigerian NPOs were simply outlined by the Nigeria Financial Intelligence Unit as follows:<sup>97</sup>

- NPOs enjoy the trust and acceptability of the people and therefore can be very attractive for criminals to hijack and use it to carry out their criminal activities, including supporting or financing terrorism;
- NPOs attract less scrutiny from the authorities and are most likely to overlooked and thus, allowed unwittingly to beat certain checks by appropriate authorities;
- NPOs are open to funding from all sorts and therefore present a very attractive vehicle to raise funds for terrorist activities;
- NPOs have the capacity to gain access to all the nooks and crannies of any given environment with less stringent monitoring of the services and messages rendered by the NPOs;

A great number of NPOs are not captured in the official database of government and could therefore operate clandestinely to perpetuate evil; and

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96. Report on NPO Risks, p. 24.

97. Francis Usani, Director, NFIU

- Some local NPOs seek and obtain international affiliations and therefore subject themselves to the dictates of their international partners. This sort of affiliations can lead to change in ideals and objectives overtime, either consciously or unconsciously.<sup>98</sup>

The overall TF risk of the Nigerian NPO sector is not clearly set out in the Nigeria NRA, making it difficult to extract the vulnerability score assigned to every risk the sector faces, or is exposed to. Vulnerability scores are premised on the prevalence and gravity of risks identified during the assessment. In the end, the overall vulnerability of the NPO sector would be the mean position of the scores of each vulnerability. Lumping NPOs together with other businesses as DNFBPs compounds the scoring of the vulnerability assessment. 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 subsector faces a unique risk spectrum. As such, the same set of risks and obligations applicable to a humanitarian NGO operating in North East Nigeria would significantly differ from that of a book club located in Lagos State, South West, Nigeria. Lumping them together not only defeats the fine intents of the risk-based approach, but is also tantamount to tarring all NPOs with the same brush. The result is typically the blanket restrictions on NPOs that occasion inimical consequences on the entire sector.

Therefore, the appropriate approach in our view would be to assess the NPO as a separate sector from DNFBPs and assign a risk score to the specific threats and vulnerabilities identified. The scores assigned represent an outcome of the whole process which invariably informs the measures the country would take to mitigate them. The effect of the risk scores is illustrated in the box below:

<b>High</b> Address immediately	<b>Medium High</b> Address as soon as possible
<b>Medium Low</b> Address in due course	<b>Low</b> Monitor

Box 4: The effect of risk scores. Source:<sup>99</sup>

### **1.9 The Nigeria NRA did not review the sufficiency of laws and regulations relating to NPOs in Nigeria**

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. In fact, the whole essence of a risk

98. Francis Usani "Protecting Non-Profit Organizations (NPO) From Possible Terrorism Financing Abuse." Available at <https://www.un.org/sc/ctc/wp-content/uploads/2016/12/2016-12-13-Session-VII-1500-1630-Francis-Usani-Nigeria.pdf>, accessed December 15, 2018.

99. Risk Assessment Guidance Notes, p. 28.

assessment is to determine whether existing legal and regulatory frameworks are sufficient to protect NPOs against their vulnerabilities. The Nigeria NRA does not address this. Instead, it approaches the assessment of the NPO sector from the disposition that the NPO sector is not regulated and as such, is exposed to TF risks. This position does not represent the current state of affairs in Nigeria. The country boasts of extensive laws and regulations which protect NPOs from being exploited for TF.<sup>100</sup>

According to the Department of Social Development of South Africa, the scope of review of existing laws may include reviewing the adequacy of the rules on the formation of NPOs, governance obligations of NPOs, reporting requirements of NPOs and enforcement mechanisms.<sup>101</sup> Where the review finds that existing laws and regulations are inadequate, countries are then obligated to take commensurate legislative measures to plug the gaps identified. In a number of published works, FATF has admonished that care must be taken to ensure that any legislative action taken to combat TF vulnerabilities must be commensurate to the risk. Because the aim of the CFT is not to suppress NPOs from carrying out good works, any legislative action taken by the government without a credible risk analysis of the NPO sector may not likely address the real vulnerabilities. Rather, such moves reek of plots to suppress legitimate NPO activities. As noted in the early pages of this paper, the Nigerian government had in the past tried to roll out laws and regulations with enormous potential to contract NPO activities and the civic space in Nigeria. Those legislative measures were not preceded by an NRA.

It is worthy to reiterate that Nigeria already has an elaborate body of laws and regulations designed to counteract the vulnerabilities identified in the NRA. Not only that, any perceived risks 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. Below, the examination of some laws applicable to the NPO sector, demonstrates that the problem with Nigeria's TF efforts is not a lack of laws, but rather, a lack of strong and independent institutions with the political will to implement existing laws and regulations effectively.

#### Regulation of NPOs in Nigeria

**Rules on Formation of NPOs:** The most important rule on the formation of NPOs in Nigeria is the Constitution of the Federal Republic of Nigeria which guarantees the freedom of peaceful assembly.<sup>102</sup> Thus, any group of persons in Nigeria have the right to form themselves into a group or organization,

100. Interpretive Note to Recommendation 8, to the effect that it is not necessary to make TF specific regulation for the NPO sector. See FATF Standards, p. 55. Footnote 24 on Page 55 of FATF Standards provides that “specific licensing or registration requirements for counter terrorist financing purposes are not necessary. For example, in some countries NPOs are already registered with tax authorities and monitored in the context of qualifying for favorable tax treatment (such as tax credits or tax exemptions).” By analogy, this should be extended to all other regulatory activities such as monitoring, and reporting.

101. Department of Social Development, Republic of South Africa “Policy Framework on Nonprofit Organizations Law,” p. 17. Available at [www.icnl.org/research/library/files/South%20Africa/policy-framework-npo-law.pdf](http://www.icnl.org/research/library/files/South%20Africa/policy-framework-npo-law.pdf) accessed December 15, 2018.

102. Section 40 of the Constitution of the Federal Republic of Nigeria

provided that the objects of the NPOs are legal and not contrary to public policy and interests. This right encompasses the freedom of worship<sup>103</sup> and of expression<sup>104</sup> which are guaranteed to every Nigerian citizen. Persons are, therefore, entitled to form themselves into groups for the purpose of propagating their religion or views. By virtue of section 45, the government may curtail this right through legislation made in the interest of defense, public safety, public order, public morality or public health. Although this exception may be stretched by the government in order to clamp down on activities of NPOs which oppose the government, the courts have clarified that the government cannot under the guise of Section 45 legislate away the rights of the citizens.<sup>105</sup> Therefore, laws which seek to restrict the rights of people to form and operate NPOs in Nigeria would be viewed with suspicion by the courts.

There is no obligation to register an NPO under Nigerian law. However, NPOs may choose to incorporate their organization at the Corporate Affairs Commission either as companies limited by guarantee or as incorporated trustees. The effect of registration is to enable NPOs enjoy the rights of corporate entities, such as the rights to own land and execute contracts in the name of the NPOs. However, registration is not a license to operate, and as a result, both registered and unregistered NPOs have equal rights to carry on their activities in Nigeria.

The Nigeria NRA identified NPOs' freedom to operate without registration as a risk factor. Any regulation which compulsorily mandates all NPOs to register would most likely be unconstitutional as it would defeat the whole essence of the freedom of citizens to form themselves into groups for any legitimate cause. The primary aim of the NRA is to identify which activities would require NPOs to register, based on the outcome of the risk assessment. In other words, legislative actions would be appropriate if targeted at regulating the services provided by NPOs identified to be at risk of TF abuse and not at the formation of NPOs.

The Companies and Allied Matters Act 1990 (as amended) makes elaborate provisions guiding the formation and registration of corporate entities in Nigeria. Accordingly, Nigeria does not require any additional law to regulate the formation of NPOs. Where the NRA identifies non-registration of NPOs providing certain services as risky, the government may make a regulation mandating only those NPOs providing those identified services to register with the Corporate Affairs Commission pursuant to the Companies and Allied Matters Act.

### **Regulation on Governance**

The Companies and Allied Matters Act equally contains comprehensive corporate governance provisions. Corporate governance rules typically lay down procedures and mechanisms for internal functionalities and decision-making within an organization in order to ensure transparency, accountability and fairness. The Companies and Allied Matters Act covers these issues, including provisions relating to the appointment of the board of directors, powers of shareholders, the interaction between the board of directors and the shareholders, the procedures for arriving at decisions, etc. SPACES FOR CHANGE takes the view that CAMA provisions are sufficient to address any corporate governance gaps that may exist in the NPOs identified to be at risk of TF abuse. In addition to

103. Section 38 of the Constitution of the Federal Republic of Nigeria.

104. Section 39 of the Constitution of the Federal Republic of Nigeria.

105. Inspector General of Police v All Nigeria Peoples Party (2007) 18 NWLR (Pt.1066) 457; A-G Federation v. Abubakar (2007) 10 NWLR (Pt. 1041) 1.

the provisions of CAMA, certain non-governmental organizations have introduced initiatives aimed at self-regulating the behavior of non-profit institutions.<sup>106</sup>

### **Due Diligence Measures**

NPOs are expected to conduct due diligence measures on their donors and beneficiaries. Specifically Section 3 of the Money Laundering Prohibition Act (MLPA) 2011 (as amended) state that designated non-financial institutions, DFNIs, shall undertake due diligence measures when (a) establishing business relationships; (b) carrying out occasional transactions above the applicable designated threshold prescribed by relevant regulation, including transactions carried out in a single operation or in several operations that appear to be linked; (c) carrying out occasional transaction that are wire transfers; (d) there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds; or (e) the Financial Institution or Designated Non-Financial Institution has doubts about the veracity or adequacy of previously obtained customer identification data. The Nigeria NRA classifies NPOs as DFNIs.

It is the 2004 Anti-Money Laundering Act that introduced the term, 'Designated Financial Institutions and Designated Non-Financial Institutions, which substantially shares similar definition and characteristics with DNFBPs. The interpretation section of the MLA act defines DFNIs the same way FATF defines DNFBPs:

*banks, body, association or group of persons, whether corporate or incorporate which carries on the business or investment and securities, a discount house, insurance institutions, debt factorisation and conversion firms, bureau de change, finance company, money brokerage firm whose principal business includes factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, investment management, local purchase order financing, export finance, project consultancy, financial consultancy, pension funds management and such oilier businesses as the Central Bank or other appropriate regulatory authorities may from time to time designate;*

Under that law, DFNIs were described as dealers in jewelry, cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing and settlement companies, legal practitioners, hotels, casinos, supermarkets or such other businesses as the Federal Ministry of Commerce or appropriate regulatory authorities may from time to time designate.<sup>107</sup> (See also footnote 38). It is instructive to note that the interpretation section of the 2004 and 2011 MLA did not classify charities and NPOs as DFNIs. Rather, it gives the supervising ministry the discretion to decide what businesses may be classified as DFNIs.

106. For instance, the Nigeria Network of NGOs (NNNGO), comprising over 1800 organizations ranging from small groups working at the local level, to larger networks working at the national level, has published a Code of Corporate Governance for Non-Governmental Organizations, to which every member of NNNGO must subscribe to. The code provides additional guidance to Nigerian NPOs on the maintenance of healthy corporate governance practices and functional internal control systems. See <http://www.nnngo.org/membership/>

107. Interpretation Section of the Anti-Money Laundering and Prohibition Act (2004). Retrieved <http://nass.gov.ng/document/download/5807>

## Reporting

Registered NPOs have reporting obligations under the CAMA and tax statutes.<sup>108</sup> Under the CAMA, companies limited by guarantee, predominantly NGOs, are required to file annual reports and hold general meetings. Annual reports contain statements relating to the activities of the NPO, corporate governance issues such as the composition of board of directors, membership of the NPO, as well as detailed audited financial statements of the organization.

NPOs are required to comply fully with the tax laws of Nigeria. An NPO which generates income must declare same to the Federal Inland Revenue Service in the same manner as for-profit organizations. The only difference is that NPOs enjoy exemption status with respect to corporate taxes. However, the individual members of the NPOs including their staffs are mandated to obtain tax identification numbers and remit their taxes to the applicable state tax collector.

Although FATF Standards do not require the classification of NPOs as DNFBPs, NPOs in Nigeria are mandated under the SCUML Regulation to file certain returns to SCUML. As an extant law in Nigeria, the SCUML Regulation is binding on NPOs as with other DNFBPs. Under SCUML, NPOs are mandated to report international transfer of funds or securities exceeding US\$10,000 or its equivalent. NPOs are also required to file two different cash reports to the SCUML.<sup>109</sup> One is the Cash-based Transaction Report, for cash transaction in excess of \$1,000 and the Currency Transaction Report in excess of N5, 000,000.00 or its equivalent in foreign currency for individual and N10, 000,000.00 or its equivalent in foreign currency. In cases where the grant or funding is paid in tranches, NPOs are bound to file a currency transaction report with the SCUML as soon the funding is concluded.

Subjecting NPOs to SCUML oversight imposes additional regulatory burdens on not-for-profit entities. This would most likely not result in favorable FATF evaluation for Nigeria as it is not premised on the risk-based approach required under the FATF Standards, particularly in the light of 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”

## Record keeping

Adhering to the FATF standards which requires NPOs to maintain, for a period of at least five years, records of domestic and international transactions,<sup>110</sup> the MLPA 2011 (as amended) requires NPOs to preserve and keep at the disposal of the authorities, customer records and records of other suspicious transactions for five years. These records, according to Section 8 of this Act should be presented on demand to the Central Bank of Nigeria (CBN), or the National Drug Law Enforcement Agency and such

<sup>108</sup>. Tax statutes include the Companies Income Tact, Personal Income Tax Act and other laws regarding payments of levies and rates to the government.

<sup>109</sup>. NPOs, as a result of their classification as DNFBPs are required to file the following reports to SCUML: (a) Currency Transactions Report (“CTR”). NPOs are required to file CTR on all transactions in excess of ₦5, 000,000.00 or its equivalent in foreign currency for individual and ₦10, 000,000.00 or its equivalent in foreign currency for a corporate body to the NFIU and a copy to SCUML; (b) Suspicious Transactions Report (“STR”). NPOs shall file STR where it is unable to ascertain the identity of a beneficiary or counterparty, or it is unable to determine risk factors applicable to the beneficiary or counterparty. See Money Laundering (Prohibition) Act, 2011.

<sup>110</sup>. Recommendation 11 of the 2012 Financial Action Task Force Standards on Combating Money Laundering and the Financing of Terrorism and Arms Proliferation, pg.13.

other regulatory authorities, judicial persons specified by the Economic and Financial Crimes Commission (EFCC).

Finally, the 2011 MLPA (as amended), requires NPOs to identify customers, keep records of financial transactions, and file cash transaction reports to the Ministry of Trade and Commerce, the supervising ministry for DNFIs (also the same as DNFBPs). Section 5(5) empowers the EFCC to demand and receive reports directly from DNFIs. The Minister of the Supervising Ministry is empowered to make regulations for the operations of DNFIs. NPOs that fail to comply with the provision within the stipulated period are said to have committed an offence and are liable on conviction to (a) a fine of N250, 000.00 for each day during which the offence continues; and (b) suspension, revocation or withdrawal of license by the appropriate licensing authority as the circumstances may demand.

### **Enforcement**

The primary regulators of NPOs in Nigeria are the Corporate Affairs Commission, the Federal Internal Revenue Service and SCUML. These organizations enforce the registration, corporate governance and reporting obligations of NPOs. Their powers are already expansive, making it totally unnecessary to establish any additional or dedicated regulator for the NPO sector. Having a dedicated regulator for the NPO sector would be expensive and roll back the gains made on the ease of doing business in Nigeria. The NPO sector, being characteristically non-profit, may be inundated with levies and fees payable to the regulator which would either hamper or increasing the running cost for their operations. In the final analysis, the establishment of additional regulatory mechanisms tilt towards over-regulation of the sector, with blurry prospects of curing the prevailing shortcomings of regulatory institutions. Therefore, governmental focus needs to be redirected towards empowering and retooling existing regulators to carry out their respective functions more effectively.

### **Granting procedures and processing requirements**

Donor bodies have diverse grant-making procedures that grantees are required to subscribe to and comply with. Accordingly, NPOs that receive foreign funding are typically subjected to painstaking grant procedures, periodic checks and balances, due diligence processes and associated reporting requirements often demanded by donor agencies.<sup>111</sup> Most grant contracts contain clauses that actively guard against money laundering and terrorism financing. Officials and official institutions are largely unaware of these stringent due diligence measures and reporting requirements attached to foreign donations and grant-making to NPOs. This knowledge gap fuels the duplication of regulatory and due-diligence initiatives, tilting towards over-regulation and multiplication of bureaucracy. The hammer of [over]regulation falls disproportionately on smaller NPOs and indigenous organizations playing important roles as watchdogs of the State and as defenders of human and civil rights.<sup>112</sup>

*Box 5: Regulation of the NPO sector. Source: Authors*

111. Spaces for Change (2018, December 7) Standing Together to defend the Civic Space. Retrieved <https://www.spacesforchange.org/2018/12/standing-together-to-defend-the-civic-space/>

112. Victoria Ibezim-Ohaeri, NGO BILL: Another disturbing evidence of closing spaces in Nigeria, Published on TheCable Newspaper on August 2017, <https://www.thecable.ng/ngo-bill-another-disturbing-evidence-closing-spaces-nigeria>

### **Interconnectedness effect**

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. For example, where the banking sector, insurance sector and the capital markets are effectively regulated, the risks of abusing NPOs for financing of terrorist activities channeled through banks, insurance companies and the capital markets would be dissipated. Thus, while weaknesses in these systems would translate to higher TF risks for NPOs, the proper action to take is not to increase the regulation of NPOs; instead the government should take steps to plug the gaps in those intermediate systems.

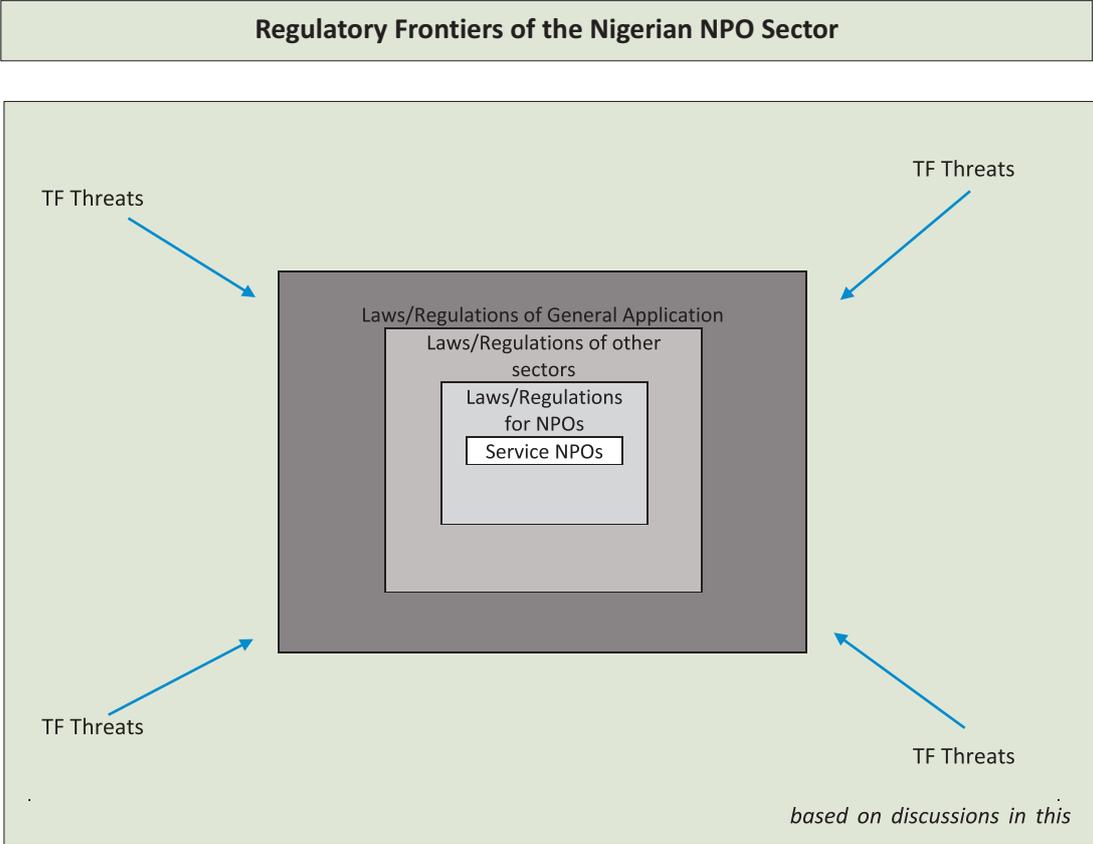
For example, it was specifically noted in the NRA that Bureau de Change (BDC) pose high TF risk business in Nigeria. It would be anomalous to seek to regulate the funding of NPOs through Bureau de change. Instead, the proper course of action would be to regulate the operations of BDCs. Where a source or channel of funding is unique to the NPO sector, the government should seek to regulate the use of that channel instead of seeking to impose wider regulatory burdens on NPOs. For example, the use of crowdfunding is popular among NPOs for raising money for good works. Since crowdfunding is not regulated, terrorist organizations may potentially seek finance through crowdfunding by passing off as a charitable organization. In this case, the proper reaction of the government is to regulate the use of crowdfunding and not to make rules unrelated to the risks identified.

*Box 6: The Interconnectedness Effect. Source: Authors*

### **Laws of General Application**

The NPO sector operates within the country's legal system. Therefore, it is subject to laws which apply to every human being and corporate entity in Nigeria, ranging from federal and state statutes, common law, customary laws, as well as the judicial pronouncement by the courts. The criminal laws of Nigeria, immigration laws (relating to cross border movements of persons), customs laws (relating to cross border movement of goods); excise laws (relating to the movement of goods within Nigeria), land tenure laws, labor laws etc, are all examples of laws which if applied effectively, would grossly reduce the TF risks that NPOs encounter. These laws have dedicated entities statutorily mandated to enforce them such as the Nigeria Police, the Nigeria Immigration Service and the Nigeria Customs Service. The interaction of these laws and enforcement agencies and the effects they have on the NPO sectors counter the argument that the NPO sector requires additional laws and regulations, and a dedicated or additional regulator.

*Box 7: Laws of General Application. Source: Authors*



*Figure 6: Various levels of regulation of the NPO sector. Source: Authors based on discussions in this section. This demonstrates the layers of legal and regulatory protection which NPOs in Nigeria currently enjoy. Therefore, although certain NPOs may be vulnerable to TF threats, there are sufficient laws and regulations shielding those organizations from the abuse.*

## CHAPTER 4

# CONCLUSION: THE NEED FOR R8-COMPLIANT RISK ASSESSMENT OF NIGERIA'S NON-PROFIT SECTOR

The disposition of the Nigeria Risk Assessment towards the NPO sector is that (1) the NPO sector is not regulated; and (2) as a result of the non-regulation of the NPO sector, they are at risk of both ML and TF abuse. Proceeding upon this premise, the NRA perceives the NPO sector as being worse off than the financial sector because the financial sector is supposedly regulated while the NPO sector is not. As has been shown in the previous section, the NPO sector is as much regulated as the financial sector. Not only that, there is no regulatory gap discovered in the course of this research. Instead, what is missing is the conscientious application of existing laws and regulations by the regulators.

This paper has clearly demonstrated that the lack of a dedicated regulator is neither a threat nor a vulnerability. The need for a dedicated regulator arises only after a thorough threat and vulnerability analysis discloses that such an exceptional regulatory intervention would be required to counteract the risks facing the assessed sector. It also needs to be emphasized that the absence of adequate regulation of a business, which may be a vulnerability factor, should be distinguished from the absence of a dedicated regulator. Box 8 below tabulates the ML risks across businesses.

Business	Dedicated Regulator	Vulnerability	Threat	Overall Risk Score
Bank	CBN	MH	M	MH
Capital Market	SEC	M	M	M
Insurance	NAICOM	M	L	ML
Real Estate	Nil	MH	MH	MH
Hotels	Nil	MH	MH	MH
NPOs	Nil	MH	MH	MH
Car Dealers	Nil	H	MH	H

Law Firms	Nil	MH	MH	MH
Accounting Firms	Nil	MH	MH	MH
Casinos	Nil	M	L	ML
Jewelry Dealers	Nil	MH	MH	MH
Trust and Company Service Providers	Nil	MH	MH	MH
International Money Transfer Service	CBN	ML	ML	ML
Bureaux de Change	CBN	MH	MH	MH
Finance Companies	CBN	ML	ML	ML
Primary Mortgage Bank	CBN	ML	L	ML
Microfinance Banks	CBN	ML	L	ML
Development Finance Institutions	Varies	ML	L	ML

L=Low; ML=Medium Low; M=Medium; MH=Medium; High H=High.

*Box 8: Money Laundering risk scores shows that except for Banks and Bureaux de Change, no sector with a dedicated regulator is rated as high risk; whilst every other business without a designated regulator has been rated high risk except for casinos. Source: the Nigeria NRA.*

In several sections above, this paper objects to the classification of NPOs as DNFBPs. According to FATF, DNFBPs comprise of businesses and trades, often with an undertone of profit-making. As a result of this objectionable labeling, it is unlikely that AML/CFT regulators would apply a targeted approach in their regulation of NPOs as the same set of rules and measures would be applied to diverse organizations with different objectives, organizational structures and sizes just because they share a non-profit outlook in common.

There is now a precedent for challenging a wrongful classification as a DNFBP. The Nigerian Bar Association challenged the designation of legal practitioners as DNFBPs under the Money Laundering (Prohibition Act), 2011 for contravening already existing provisions of Nigerian law regulating lawyer-client relationships. Incensed by the Central Bank of Nigeria's (CBN's) circular<sup>113</sup> which required banks to obtain evidence of registration with SCUML from legal

113. FPR/CIR/GEN/VOL.1/028 dated 2 August 2012

practitioners when opening client accounts, the national body of legal practitioners headed to court to challenge this requirement and asked the court to declare that the provisions of Section 5 MLA, in so far as they purport to apply to legal practitioners, as null and void. In that case, the NBA argued that legal practice is already regulated under a body of laws which the Money Laundering (Prohibition) Act 2011 contravenes.<sup>114</sup>

Secondly, the Money Laundering (Prohibition) Act 2011 which categorized legal practitioners as DNFI's violates the constitutional right of privacy, which the Money Laundering (Prohibition) Act 2011, cannot derogate from. They further argued that ML statute does not fall under the derogations permissible under Section 45 of the Constitution of the Federal Republic of Nigeria. Section 45(1)(a) of the Constitution of the Federal Republic of Nigeria provides as follows that

*“Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society (a) in the interest of defense, public safety, public order, public morality or public health.” For these reasons, they sought an order of the court deleting legal practitioners from the definition of DNFI's and an order of perpetual injunction restraining the CBN from seeking to implement the circular in relation to legal practitioners. In its verdict, the court gave an order of perpetual injunction restraining the Federal Government, the CBN and the SCUML from enforcing Section 5 of the MLA against legal practitioners”*

Drawing from the sentiments shared in the NBA case above, the question would then be whether the SCUML Regulation falls within the permissible derogations to constitutionally-guaranteed human rights under S. 45 of the Nigerian Constitution. And secondly, whether it should apply to the NPO sector that is already regulated under a body of laws. For a number of reasons, the judicial pronouncement in the NBA case similarly applies with equal force to NPOs. Of particular significance is that the NRA does not disclose any special risks NPOs exposed to that are significantly different from for-profit organizations carrying out similar services that NPOs provide. In the absence of proven ML/TF risks that NPOs specifically pose, the inclusion of NPOs as DNFBPs in the SCUML Regulation is not justifiable.

Furthermore, the deficits in data gathering and analysis, the confusing application of threat and vulnerability terminologies, and numerous contradictions in the Nigeria NRA cast doubts on the credibility of the exercise. For example, data sources were not provided just the same way the information regarding the number of respondents interviewed and the methodology adopted in arriving at its conclusions were missing. The extensive information gap reflects poorly on the outcomes of the NRA. A case in point is the rating of ML threat assessment of NPOs as Medium High after admitting that the abuse of NPOs for ML is potentially low. Strangely, the NRA reached an opposite conclusion with respect to casinos, when it stated that “although there are no established cases of casinos being used for money laundering in Nigeria, but given the size of the sector and revenues generated, we have assessed the threat of using casinos for money laundering to be low.”<sup>115</sup>

We conclude that the Nigeria NRA does not satisfy the requirements of Recommendation 8. That the Nigeria NRA makes no single mention of R8 in the whole report hints that the official

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114. See <https://www.pressreader.com/nigeria/thisday/20150217/281921656484019>

115. The Nigeria NRA, p. 31.

intention may not have been for the NRA to be R8-compliant. The classification and assessment of the NPO sector as DNFBPs further informs the inference that conducting an R8-compliant NRA was not intended. The classification of the NPO sector as a DNFBP is faulty and so also is the assessment of the NPO sector as a sub component of the DNFBPs. This classification deviates from FATF's definition of designated non-financial institutions (DNFIs) which does not include NPOs. In fact, the NPO sector is regarded as the third sector after the private and government sectors.<sup>116</sup>

SPACES FOR CHANGE used the R8 paradigm to analyze the findings of the National Risk Assessment 2016 because the Nigeria NRA undertook a specific assessment of the NPO sector, but as a sub-component of DNFBPs. It then follows that the NRA outcomes can also be independently evaluated using FATF's set standards for NPOs. Analysis has been restricted to TF risks and does not include analysis of ML risks mainly because R8 does not contemplate ML risk analysis for the NPO sector. The evident gaps in the Nigeria NRA detailed in this paper have been presented, analysed and discussed, with the expectation that adequate measures would be taken to address them in subsequent risk assessments of the NPO sector. And finally, any risk assessment of the NPO sector so conducted should take into consideration, the provisions of Recommendation 8 and other supporting FATF documents such as the Interpretative Notes to Recommendation 8, the Best Practices Paper and the Risk Assessment Guidance Notes.

116. "UK National Audit Office "What are third sector organizations and their benefits to commissioners."  
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