



## STATEMENT UPDATING FACTS ESTABLISHED IN THE REPORT:

### Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria

In March 2019, [SPACES FOR CHANGE | S4C](#) released the report, [Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria](#), which independently analyzed the findings of the 2016 national risk assessment (Nigeria NRA) on money laundering (ML) and terrorist financing (TF) risks in Nigeria. The Nigeria NRA identified Designated Non-Financial Institutions (DNFIs) as one of those sectors most vulnerable to ML and TF risks. Despite not being subset of DNFIs in the Financial Action Task Force (FATF) Standards, Nigerian regulations designate non-profit organizations (NPOs) as a subset of DNFIs. S4C's report interrogated the applicability of the stringent security measures espoused in anti-money laundering and countering financing of terrorism (AML/CFT) legal regimes to the non-profit sector in light of the FATF's revised Recommendation 8 (R8) and FATF's Best Practices Paper, paragraph 35 in particular. The report concluded with an assessment of the adequacy of the existing legal and regulatory framework for combating ML/TF risks in the non-profit sector.

S4C's analytical report draws five major conclusions:

- 1. The Nigeria NRA broadly satisfies the requirement of Recommendation 1 of the Financial Action Task Force (FATF) Standards which sets the tone for the Risk-Based Approach (RBA) to AML/CFT, but falls short of satisfying R8 requirements which solely applies to the non-profit sector.**
- 2. FATF Standards do not include NPOs as DNFIs. The classification of NPOs as DNFIs or Designated Non-financial Businesses and Professions (DNFBPs) constrains the application of the risk-based approach to combating ML/FT risks in the sector. The report proposes that the correct approach would be to assess the NPO as a separate sector from DNFBPs.**
- 3. The Nigeria NRA neither identified the NPOs which face TF threats, nor reviewed the vulnerabilities of those specific NPOs which vulnerable to TF abuse, as required by R8 which is exclusively a TF recommendation.**
- 4. The high ML and FT ratings for NPOs seems to flow from the interchangeable use of 'threats' and 'vulnerabilities' terminologies. Very strong evidence of prevalence and gravity of risks are needed.**
- 5. Finally, the NRA's observation that NPOs are not regulated or poorly-regulated was not based on a comprehensive review of the laws and regulations relating to the NPO sector to determine their adequacy to counteract the vulnerabilities identified. Also, the NRA assessment did not take into consideration, the transparency, good governance and/or self-regulatory initiatives, including the very stringent reporting obligations that are already being implemented by NPOs.<sup>1</sup>**

S4C's report has generated robust debate and very meaningful engagement between AML/CFT stakeholders, including federal regulators, philanthropic bodies and non-profit organizations (NPOs). Private meetings, focused group discussions and a multi-stakeholder meeting held in Abuja in June 2019 are examples of the logical follow-up steps initiated by various stakeholders towards discussing and addressing the key issues raised in the report and also enhance the AML/CFT compliance culture in the Nigerian NPO sector. It is important to mention that Nigeria is due for another round of mutual evaluation

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<sup>1</sup> Good governance practices here include rigorous pre-contractual due diligence measures, tranching grant remittances, periodic financial and narrative reporting, detailed expenditure analysis, internal and external audits, AML and CFT prohibition clauses in grant contracts etc.





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by FATF and GIABA, with an onsite visit scheduled for September – October 2019. The learning exchanges and stakeholder engagement referenced herein coincided with the preparations for the onsite visit. While some important lessons have been learned and shared, observations and updates provided and noted, certain gaps however remain.

#### Areas of consensus:

1. First off, the Nigeria's Financial Intelligence Unit's (NFIU's) Trends and Typologies Report 2013 examined and documented trends, techniques, patterns and methods employed by terrorists and their supporters to finance terrorism in Nigeria as well as identify the most vulnerable sectors used in facilitating the financing of terrorism. Chapter 2 of the report, including the Observed Fund Movement (Section 3.2) and Terrorist Financing Patterns (Section 3.4 (b)), documented 4 separate typologies where NPOs and charities were involved in either financing or moving funds used for terrorist activity, through *frequent wire transfers (inflows) from foreign donors or multiple large deposits followed by immediate large cash withdrawals by many unrelated individuals to the charity.*
2. S4C's independent review of additional information and documentation provided by Nigeria's AML/CFT regulators establish a clear methodology and actual, but few, evidence of TF abuse of NPOs. Between 2009 – 2013, only four incidents were recorded out of over 50,000 registered non-profits and charities, and many more operating at the community levels at the time.
3. The Global Corruption Index ranks Nigeria 148 out of 180 countries assessed in the world. Recognizing that there is a correlation between high levels of corruption and money laundering which could be misused for TF purposes, stakeholders agree that proactive and effective regulation of financial and non-financial sectors, including the NPO sector is imperative.
4. The engagement between NPOs from Nigeria's six geo-political regions and the various governmental actors, including donor bodies and the FATF-Style regional body for West Africa, GIABA, helped in deepening understanding of NPO regulation and oversight, and building consensus around key issues to ensure that any mitigating measures put in place as a result of the NRA or following on from the Mutual Evaluation do not impact legitimate NPO activity.
5. The mitigating measures put in place as a result of the NRA findings are being implemented. SCUML has stepped up efforts to apply targeted regulatory action to NPOs operating in the regions where risk of terrorist activity is high. This action is deemed as proportionate to the degree of risk within a subset of NPOs. However, the specific identification of the NPOs at greater risk is necessary in order to clearly establish where heightened regulatory measures are required to facilitate full NPO cooperation and compliance.
6. SPACES FOR CHANGE is committed to working together with SCUML to undertake an extensive classification of the entire NPO sector in order to inflect the scope of threats that exist within various subsets on the basis of the activities or services provided by the NPOs, the location of the NPOs and their beneficiaries; and *the risk of abuse...."*

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### Bridging the gaps:

1. **Ratings need more evidence:** The ML rating for the NPO sector is **Medium High**. High ML risk in the NPO sector was not demonstrated, substantiated or strongly supported by analysis in the NRA document. Hence, the AML risk is based on a perceived vulnerability by AML/CFT regulators. Basing risk on vulnerability can be justifiable, but only if: (i) There is some basis for assuming that there is a threat in the absence of evidence, e.g. that convincing typologies exist, and the evidence is lacking for an external reason, e.g. significant regulatory incapacity makes; and (ii) There is a full assessment of the vulnerability – e.g. the absence of mitigating measures such as laws and regulations.

Official documents, particularly the (NFIU's) Trends and Typologies Report 2013 documented a number of typologies of terrorist financing through non-governmental organizations (NGOs) and charities. SPACES FOR CHANGE's extensive review of the evidence presented in the 2013 report shows that the NPOs allegedly abused for TF purposes shared similar characteristics: they were all sham organizations set up by terrorist organizations posing as legitimate entities. Secondly, they were all located in areas of existing insurgency in the south-south and northern parts of Nigeria. We conclude that the TF trends and patterns in Nigeria establish few very incidents and tend to use isolated cases to generalize and propose drastic measures across the entire sector. Not only that, mitigating measures such as laws and regulations for combating and punishing terrorist activities exist, together with a plethora of institutions working together to counter the risks within sectors and prevent financial crimes.

2. **RBA is needed:** FATF's risk-based approach (RBA) requires countries to classify NPOs according to their risk exposure. Hence, **identifying the types of NPOs which face TF threats, and assessing the vulnerabilities of those specific NPOs which are vulnerable to, or could be exploited for TF abuse**, is an important step that needs to be taken to ensure counter-measures are commensurate to the ML/TF risks identified in the NRA rather than applying a "one size fits all" approach. Once these NPOs are assessed and identified, regulators can take proportionate measures to counter those threats according to the level of risk.
3. **No dedicated regulation of the NPO Sector is required.** The Nigerian government is proposing the establishment of a dedicated regulatory or supervisory body to oversee the registration, licensing and supervision of NPOs. If allowed to happen, the new body will add to the list of existing regulatory bodies already in place that regulate NPO activities in Nigeria. Chapter 3 of S4C's report elucidates the extensive regulatory and institutional frameworks for ML/TF offenses in Nigeria. The interaction of these laws and enforcement agencies and the effects they have on the NPO sectors deflect the argument that the NPO sector requires additional laws and regulations.

Hence, no dedicated or additional regulator is needed at this time to prevent over-regulation of the sector. Rather, increased strengthening and funding of existing agencies with regulatory oversight for NPOs such as Corporate Affairs Commission and Special Control Unit against Money Laundering (SCUML), is advocated.

4. **NPOs not DFNIs/DNFBPs:** The designation of NPOs as DFNIs under Nigerian law is inconsistent with FATF requirements. FATF's Best Practice Paper (BPP) paragraph 35 states clearly that **NPOs**

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*are not considered designated non-financial businesses and professions (DNFBPs) and should therefore not be subject to the FATF requirements for DNFBPs.* Subjecting NPOs to AML/CFT requirement for DNFBPs may lead to the over-regulation of the sector through the imposition of additional regulatory burdens on not-for-profit entities. This approach is neither premised on the RBA, nor in alignment with Immediate Outcome 10.2 which appraises “to what extent, without disrupting or discouraging legitimate NPO activities, has the country applied focused and proportionate measures to such NPOs which the country has identified as being vulnerable to terrorist financing abuse, in line with the risk-based approach?”

5. **Periodically update, publicize information regarding TF trends and patterns:** The NFIU’s 2013 publication of trends and patterns of TF in Nigeria is welcomed. The report should be periodically updated and publicized to enable all financial and non-financial sectors, including the NPO sector, appreciate the extent of the risks and the proportionality of the counter-measures.
6. **Specific RA of the NPO sector required:** For the Nigeria NRA to comply with R8, the correct approach would be to assess the NPO as a separate sector from DNFBPs. Lumping NPOs together with other businesses as DNFBPs compounds the scoring of the ML and TF vulnerability assessment for NPOs. 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. Lumping NPOs together with DNFBPs, and without identifying those subset of NPOs vulnerable to TF abuse, defeats the fine intents of the risk-based approach.

