

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

**SPACES FOR CHANGE**

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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.

**SPACES FOR CHANGE | S4C** is a non-profit organization working to instill respect for human rights into social and economic governance processes in Nigeria. Through research, policy analysis, youth engagement, public interest litigation and community action, the organization aims to increase the participation of Nigerian youth, women and marginalized constituencies in the development of social and economic policies, and also help public authorities and corporate entities to put a human rights approach at the heart of their decision-making.

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