



European Center for
Not-for-Profit Law

QUESTION AND ANSWER SESSION ON THE RISK ASSESSMENT OF NOT-FOR-PROFIT ORGANIZATIONS IN NIGERIA

Organized by Spaces for Change | S4C in collaboration with the Special Control
Unit against Money Laundering (SCUML) and with support from European Center
for Not-for-Profit Law

REPORT OF PROCEEDINGS

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APPRECIATIONS:

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Speakers: **Daniel Isei** – Director, Special Control Unit against Money Laundering (SCUML)
 Mohammed Ahmed – Chief of Staff, Nigeria Financial Intelligence Unit (NFIU)
 Ben Evans – Technical Expert, Greenacre Associates, UK
 Amine Ghali – Director, Kadem, Tunisia
 Vanja Skoric – European Centre for Not-For-Profit Law (ECNL)
 Victoria Ibezim-Ohaeri – Technical Expert, Executive Director, S4C

Summary

This is the first question and answer (Q & A) session on the terrorist financing assessment of non-profit organizations (NPOs) in Nigeria. This exercise is a key requirement in fulfilling the Recommendation 8 of the Financial Action Task Force (FATF) requirements. The scheduled risk assessment is considered as a major response to the longstanding advocacy and pushback by non-profit organizations (NPOs) regarding the results of the 2016 national risk assessment (NRA) of money laundering (ML) and terrorism-financing (TF) risks in the country. The objectives of the assessment are to:

- ✓ To conduct proper classification of the NPOs in Nigeria in order to identify those at risk to money laundering threat/terrorist financing abuse.
- ✓ To ensure improved compliance with relevant international and domestic laws/regulations (FATF/GIABA/MLPA/TPA/CAMA) by NPOs to secure better rating for Nigeria in the ongoing FATF/GIABA mutual evaluation exercise of Nigeria.
- ✓ To develop commensurate mitigation measures for the at-risk and vulnerable NPOs operating in Nigeria
- ✓ To ensure enhanced coordination and collaboration between government regulatory/law enforcement agencies and the civil society.

A few weeks ago, ME report was discussed during the 2ND intercessional plenary *and* one of the key issues that came up is the regime Nigeria has in place for protecting the NPO sector against terrorist financing and how the NPO sector is regulated in Nigeria.

~ Daniel Isei, SCUML

Opening remarks ~ Daniel Isei, SCUML and Mr. Mohammed Ahmed, NFIU

In his opening remarks, Mr. Daniel Isei, Director, Special Control Unit against Money Laundering (SCUML) assured of SCUML's cooperation with all stakeholders to ensure a hitch-free process. The Q & A session will provide valuable insights and information, especially from the technical experts on how best to go about the risk assessment exercise. Likewise, Mr. Mohammed Ahmed, Chief of Staff, Nigeria Financial Intelligence Unit (NFIU), extended the best wishes of the Director/CEO of the NFIU, Mallam Modibbo Haman Tukur who was unavoidable absent. Mr. Ahmed recalled the outcomes of the report of the 2019 Mutual Evaluation (ME) exercise by GIABA. A few weeks ago, ME report was discussed during the 2nd intercessional plenary *and* one of the key issues that came up is the regime Nigeria has in place for protecting the NPO sector and how the NPO sector is regulated in Nigeria. One of the fundamental issues that was raised is understanding the risks in that sector or the risks that terrorism financing poses to the sector. Against this backdrop, the scheduled risk assessment exercise affords an opportunity for the players and operators in the sector to begin to work together to understand the specific risk factors that are present in the sector and put in place mitigation measures to address them in a proportionate way.

Timeline of activities preceding the risk assessment exercise – Victoria Ibezim-Ohaeri, Spaces for Change | S4C

The push for a standalone risk assessment of the NPO sector dates back to 2013 when the NFIU published the Trends and Typologies Report which 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 that report indicted NPOs and charities as vulnerable to the financing of terrorism. In 2016 again, Nigeria conducted a nationwide risk assessment (NRA) on all sectors and which again, identified Designated Non-Financial Businesses and Institutions (DNFIs), of which non-profit organizations (NPOs) are a subset, as being among those sectors most vulnerable to money laundering (ML) and terrorist financing (TF) It is instructive to note that the 2013 and the 2016 reports were conducted without the active consultation and participation the NPO sector, putting into question the validity of both reports.

In 2019, Spaces for change published a report which disputed some of the findings in NFIU's Trends and Typologies Report and the 2016 NRA regarding the assessment or risks and vulnerabilities in the third sector and recommended a specific assessment of the non-profit sector. In particular, S4C's report, [Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria](#), extensively analyzed whether the 2016 NRA satisfied the requirements of FATF's Recommendation 8. One major finding is that the 2016 NRA neither identified the NPO's which faced terrorism financing threats nor revealed the vulnerabilities of those specific subsets of NPO's that are vulnerable to terrorism financing abuse as required by Recommendation 8 of the Financial Action Task Force.

Following that report, SCUML began a sector-wide, broad-based, community engagement with local and international NGOs operating within Nigeria as well as with government agencies. In June 2019, Special Control Unit Against Money Laundering (SCUML) and SPACES FOR CHANGE, with the participation of a representative of the NPO Global Coalition on FATF, co-hosted a workshop to discuss NPO's concerns regarding the NRA contained in a report, [Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria](#).

Between September to October 2019, Nigerian was subjected to the second round of Mutual Evaluations. During the second round of Nigeria's Mutual Evaluation (ME) and onsite visit by Financial Action Task Force (FATF) and Intergovernmental Action Group Against Money Laundering (GIABA), a civil society delegation under the auspices of the [ACTION GROUP ON FREE CIVIC SPACE](#) and the INGO Forum met with the external assessors, advocating for Nigeria to conduct a specific risk assessment of the NPO sector. Afterwards, SCUML and Spaces for Change have organised AML/CFT compliance clinics for NPOs operating in the South-east

In particular, S4C's report, Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria, extensively analyzed whether the 2016 NRA satisfied the requirements of FATF's Recommendation 8. One of the major disputes was that the 2016 NRA neither identified the NPO's which faced terrorism financing threats nor revealed the vulnerabilities of those specific subsets of NPO's that are vulnerable to terrorism financing abuse as required by Recommendation 8 of the Financial Action Task Force.

Victoria Ibezim-Ohaeri

region, North-Central and INGOs operating in Nigeria. Over 100 local and international NPOs have been trained as part of a broader strategy to enhance AML/CFT compliance culture within the NPO sector. SCUML has also provided technical support to organizations like CLEEN Foundation on domestic review of laws and regulations on the NPO sector in Nigeria. April 2021 was a very busy month for SCUML because they also had other collaborative engagements for strengthening civic advocacy and local engagement with the USAID.

In August 2020, SCUML developed and circulated drafts of AML/CFT policy guidelines to NPOs and Government authorities to guide the categorization of NPOs according to their ML/FT risk exposure and lay the foundation for the application of targeted regulatory measures proportionate to the risks identified. That same year, SCUML also met with the leadership of the INGO forum to foster better collaboration and improved compliance to AML/CFT regimes. In August 2020, President Muhammadu Buhari assented to the amendment of the Companies and Allied Matters Act (CAMA). Part F of that legislation introduced new legal provisions for the governance of non-profit organizations. NPOs have expressed deep concerns regarding several provisions of the new CAMA law, especially S. 839 which provides for the suspension of trustees and appointment of interim manager.

Yielding to the demands of NPOs for a specific risk assessment of the NPO sector, the Nigerian government has approved and authorized SCUML to conduct a standalone assessment of the terrorism financing risks in the sector in line with Recommendation 8 (R8) of FATF Standards. To further this course, the Nigerian Government has appointed two technical experts with global experience and expertise in implementing the FATF regulatory compliance measures. One major advantage of this scheduled exercise is that the NPO sector now has an opportunity to be part of the risk assessments and ensure that the exercise preserves the rights key to civil society: freedom of expression and opinion, freedom of association, freedom of assembly, and participation right. This is also an opportunity to dispel the doubts, myths and accusations against the civil society being a threat to national security and labeling them as enemies of the state.

FATF's R8 is a very important guide in the risk assessment of the non-profit sector. FATF has clarified that R8 does not apply to the NPO sector as a whole. It only applies to those NPOs that fall within the functional definition of Non-Profit Organizations and not the entire country's universe of NPOs. FATF also requires governments to understand the domestic non-profit sector and to have the ability to identify which organizations meet this FATF definition and then use a targeted drills-based approach, implementing the measures called for in R8 to the subset of NPOs.

Why the NRA exercise is important – Ben Evans, GreenAcre Associates UK

Ben Evans is one of the two technical experts appointed by the Nigerian government through SCUML to provide technical direction to the NRA exercise. He has over 17 years' experience delivering projects to assist in the application FATFs, AML/CFT regulations in NPO sector. He has, for 12 years, worked with the UK Government on NPO regulation including 9 years providing technical assistance to several foreign governments on best practices in NPO regulation and compliance with the FATF requirements to combat terrorism financing in the NPO sector. He was the one that developed, devised and applied the NPO risk assessment methodology which has been applied in Macedonia, Tunisia, Jordan, Indonesia, Philippines, etc. He has also provided

training and technical assistance to undertake assessment of AML/CFT measures in NPO sector and to improve AML/CFT policy and regulations in many countries.

First, it important to outline what this risk assessment is and define key terms. There are many different terms that are being used to describe NPOs. In this context, NGOs comprise non-governmental organizations, non-profit organizations, charities, etc. What is important is to follow the FATF definition of what NPOs are and not necessarily the country's own legal definition. This risk assessment must be compliant and consistent with the FATF definition even if that is different to the legal definition or the expectation of what NPOs or NGOs are.

The second term is terrorist financing. Terrorist financing is simply the financing of terrorism; but in practice, it is interpreted by FATF in a very broad way. It does not only mean money being sent to terrorists to use for planning or implementing terrorist attacks. It can be the use of any funds, assets or resources for any kind of not just logistical support but even recruitment or spreading propaganda or other materials. The terms, NPOs, Terrorist Financing and Risk Assessment are not used loosely but must be compliant with the FATF definitions of them. This is important because it is impossible to attain the complaint rating if we operate outside the given definitions of FATF. The FATF definitions of relevant terms are:

- i. NPOs: Refer not necessarily a formal or legal corporation, but a group of people, formal or informal but with a legal arrangement of sorts characterized by funds availability or funds movement for public benefit.
- ii. Terrorist Financing: refers to the use of funds, assets or resources for planning or implementation of terrorist attacks. This could also include recruitment and even logistical support in the spread of propaganda and radical materials. Cases where an NPO has allowed its property to be used by radical groups who then spread extremist ideologies or propaganda are also considered terrorist financing. So, the scope is really quite broad and is certainly much more liable than just funds being sent for attacks.
- iii. Risk Assessment: It is important to note that a risk assessment is not the same thing as an investigation. It is a critical assessment of the underlying threat environment and the specific vulnerabilities of NPOs to being abused for that threat purpose. It is an assessment of the possibility of terrorist financing abuse in the NPO sector. The assessment process does not aim try and identify potential criminal activity that is going on. That is the job of the police and the security services. Instead, the risk assessment exercise assesses the possibility of NPOs in Nigeria might be at risk for terrorist financing purposes. Any evidence of that risk having occurred in the past will give some idea of where the risk is. Even where there is no known case of terrorist financing, the risk assessment will look at the underlying threat environment and the specific vulnerabilities of NPOs to being abused for that threat purpose.

It is important to note that a risk assessment is not the same thing as an investigation. It is a critical assessment of the underlying threat environment and the specific vulnerabilities of NPOs to being abused for that threat purpose. It is an assessment of the possibility of terrorist financing abuse in the NPO sector. The risk assessment requirement is by far the most significant part of R8.

~ Ben Evans

Stages of the risk assessment exercise

So, what will the assessment focus on? First, it will identify which NPOs in Nigeria are likely to be exposed to a terrorist financing risk. FATF recognizes that most NPOs are likely to have low or no risk for terrorist financing. So, the focus is on identifying those NPOs which by

nature of their location, or by nature of their activities and operations, may be more exposed to a terrorist financing risk. The second step is to identify how effective mitigating measures are in place for reducing that risk. Those mitigating measures could be laws and regulations by government, government policies, awareness raising, outreaches, trainings, technical assistance to government. It could even be a significant part of these things NPOs do themselves, their own self-regulatory bodies or their own internal good practices. At the end of the process, a formal assessment of all those mitigation measures will be made to identify any mitigating measures which are ineffective or absent. Clear strategic recommendations will be made to deal with any weaknesses in the measures in order to reduce potential terrorist financing risk.

FATF is the international body responsible for setting and assessing standards on combating money laundering and terrorist financing. In that role, it has 40 recommendations and 11 immediate outcomes. Recommendation 8 specifically deals with the terrorist financing risk in the NPO sector and the first requirement for R8 is for a terrorist financing risk assessment to be conducted. So, this is a terrorist financing risk assessment, and not a money laundering risk assessment. The risk assessment requirement is by far the most significant part of R8. The government itself is under significant pressure externally to be compliant with all of the FATF requirements.

FATF expects the following outcomes from the Risk Assessment exercise

- i. To identify the nature of terrorist financing risks to the NPO sector and what form they may take.
- ii. To identify the specific NPOs that are the most vulnerable to terrorist financing risks.
- iii. Identify how effective mitigating measures are in minimizing the identified risk.
- iv. Identify clear strategic recommendations to deal with the weaknesses in the mitigating measures.
- v. Develop the framework for the steps the government will take in the face of any terrorist financing risk.

It is also important to note that banks and other financial institutions will also be taking a look at the NRA report for the purpose of insulating themselves against money laundering and other financial crimes. If for any reason, Nigeria is found to be non-compliant with the FATF requirement, it will be globally considered that Nigeria is at very high risk for terrorist financing and money laundering. The consequence of this for the NPO sector is that access to funds will be very limited.

In late 2019 or early 2020, Tunisia became part of a group of few nations (such as UK, USA, Canada and Australia) rated compliant on FATF's Recommendation 8. Tunisia moved from FATF's grey list of countries with high risks of terrorism in the past year and joined this group of compliant nations.

~ Amine Ghali

The Tunisian experience with the NRA – Amine Ghali, Director, Kadem, Tunisia

Back in 2018, Tunisia was included in the Grey List of FATF regarding the risk of terrorist financing. The Tunisian NPO sector was viewed or perceived as being vulnerable to a high risk of terrorist financing. Tunisians started to feel the heat of this classification. Banks were reluctant to work with civil society organizations and NPOs were having a hard time receiving funds from abroad. Financial operations were delayed, prompting moves by the government to change legislations and introduce new ones with more restrictive provisions. Civil societies working on human rights and civic space engaged and tried to understand what was going on. At this time, the entire FATF dynamic was very new to the civil society.

What is FATF? What is the link between FATF and civic space? Tunisian NPOs had the opportunity to learn about this through the Global NPO coalition on FATF—a group of civil society groups pushing against FATF-induced financial regulations exploited by states to unleash restrictive measures and stifle dissent. Armed with an understanding of the technical aspect of this link between FATF and CSOs, Tunisian NPOs initiated constructive dialogue and engagements with the Tunisian FIU unit, called the Tunisia CTAF. Relying on the methodology developed by Ben Evans, the engagements and joint capacity building exercises brought together representatives of the government, civil society, government institutions, the FIU, the central bank, the department of civil society at the Prime Minister's office and other institutions under a working group. In late 2019 or early 2020, Tunisia was part of a group of 5 or 6 nations (such as UK, USA, Canada and Australia) rated compliant on Recommendation 8. Tunisia moved from being a country exiting FATF's grey list of countries with high risks of terrorism in the past year and joined this group of compliant nations. So that was an achievement that brought a lot of attention from the international community. Important points NPOs must note about the risk assessment exercise is that it requires experience and expertise. The civil society must engage FIUs with expertise, division of responsibilities and also accept collaboration from both private and public sectors.

A pre-condition for complying with the FATF standards is to do appropriate risk assessment together and in engagement with the non-profit sector. This will really put Nigeria on the right path to be fully correct in its implementation of the FATF standards. Through the assessment exercise, countries and governments can obtain very useful insight and information from the non-profit sector about specific needs, concerns, vulnerabilities, risks, challenges that can be used to direct more effective policies, more effective guidance and risk mitigating measures.

Vanja Skoric

Global perspectives on NRA – Vanja Skoric, Vanja Skoric, European Centre For Not-For-Profit Law

Risk assessment exercises really do significantly change the attitudes, landscapes and the whole environment about the risks and terrorist financing outlook and about regulatory measures that governments take after such exercises. So, it is a very useful and successful mechanism to achieve multiple goals and to achieve a win-win situation for all parties. Currently, the FATF is conducting a specific workstream identifying unintended consequences of the Recommendation

8 of their standards that are affecting the non-profit sector. After many years of implementing Recommendation 8 and FATF standards, they have realized that the implementation of this Recommendation 8 is negatively impacting civil society and the non-profit sector in many countries across the globe. That is why many countries have

to conduct appropriate and risk-based risk assessment to fulfill this risk-based approach requirement that FATF looks for. Instead of satisfying the requirements of R8, many countries go down the road of over-regulation and overly restricting the work of the civil society without concrete reasons or evidence or without measures being proportionate to the risk. And this goes down to not conducting the risk assessment properly.

So, a pre-condition for complying with the FATF standards is to do appropriate risk assessment together and in engagement with the non-profit sector. This will really put Nigeria on the right path to be fully correct in its implementation of the FATF standards. Through the assessment exercise, countries and governments can obtain very useful insight and information from the non-profit sector about specific needs, concerns, vulnerabilities, risks, challenges that can be used to direct more effective policies, more effective guidance and risk mitigating measures. Risk mitigation measures may be implemented more effectively if the non-profit sector is involved from the start in also designing and agreeing on some risk mitigating measures and especially those measures that can be considered as self-regulation.

NPOs are not classified as NFBPs according to FATF and the measures that apply to NFBPs do not automatically apply to NPOs.

~ Ben Evans

Questions and Answers

- 1. Question:** Why are NPOs as designated non-financial businesses and professions?
Answer: The NFBPs are designated Non-Financial Businesses and Professions which is a category which FATF created to cover non-financial institutions which may nevertheless be used as means of storing funds or transmitting funds or assets in some way. They are perceived as a weak link because they can be a way to launder money without going through the banks. However, NPOs are not classified as NFBPs according to FATF and the measures that apply to NFBPs do not automatically apply to NPOs.
- 2. Question:** Why do banks require cooperative societies registered at the state level to present a SCUML certificate to open a bank? Cooperatives do not have legal registration certificates issued by Corporate Affairs Commission (CAC).
Answer: This is a communication gap within the agencies. SCUML has made it clear that cooperative societies do not need a SCUML certificate before enjoying bank services because they are not required by law to register with the CAC. SCUML will expedite action to ensure that this directive is complied with and a notice placed on our website for easy access and confirmation.
- 3. Question:** After Tunisia secured the compliant rating, what kind of changes were noticed in the regulatory landscape?
Answer: The release of the report has been delayed due to the Covid-19 pandemic. Ideally, after Tunisia achieved the compliant rating, we expected a concurrent easing of

measures but that is dependent on whether or when the report is released. So we continue to push and insist on the release of the result and implementation of recommendations.

4. **Question:** The NPOs that were identified as being most vulnerable to terrorist financing risk, what characteristics did they have? Did they share any specific characteristics?

Answer: Yes. Their shared characteristic were NPOs who raise fund from the streets and public areas, including through alms and those who shared borders with Libya.

5. **Question:** Is there a specific timeline for the risk assessment? When is it going to start and how is the process going to look like?

Answer: Tentatively, we have a period of 6 months, starting from October 2021. By March 2022, we should have the first draft of the report. However, because of the diverse nature of Nigeria's socio-economic terrain, we will take our time and extend if the need arises, in order to have the best results.

6. **Question:** Is this a self-risk assessment by the organisation or the SCUML will coordinate it?

Answer: It will be coordinated by SCUML but with full cooperation in the sense of interviews, surveys from a random sample of NPOs and question and answer sessions like this from the NPOs.

7. **Question:** Are there any specific actions required from NPOs for this process to move forward?

Answer: Yes. Cooperation during the interviews and surveys. Also, some organisations will be invited to be a part of the larger working group that will look at the conclusions together. As we go towards the end of the exercise, there will be need for dissemination of the information in terms of our findings within the NPO sector and perhaps some talks and trainings.

Closing Remarks

In her closing remarks, Ms. Ibinabo Amachree, Assistant Director, SCUML she reassured participants of SCUML's commitment to ensuring that the entire process is as open and transparent as possible.