

LIBERTY AND FREEDOMS AT RISK – SIX (6) ISSUES REQUIRING FURTHER ENGAGEMENT WITH NIGERIA

Submission by Coalition of CSOs in Nigeria under the umbrella of the Action Group on Free Civic Space

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Introduction

A review of Nigeria's National Risk Assessment (NRA) report raises significant concern that the government could potentially use the treatment of terrorism financing risks as justification to disrupt and discourage legitimate NPO activities in the country. A lack of evidence to support risk ratings and the broad attribution of vulnerabilities in the sector indicate that the application of risk management measures will neither be focused nor proportionate to the potential threats of terrorism finance abuse facing NPOs as required by Immediate Outcome 10.

From 2015, non-profit organizations (NPOs) and civil society organisations (CSOs) in Nigeria have been on high alert due to attempts by the government of Nigeria at Federal and State levels to impose restrictive measures, laws and policies that have the effect of stifling the civic space, silence activists and human rights defenders. Attempts at passing legislation—such as the 2016 Social Media Bill and the 2016 NGO Bill—designed to control dissent on social media, regulate NPOs and interfere with their funding, have failed due to sustained advocacy by CSOs working to defend the freedom of association, assembly and expression in Nigeria. Nevertheless, the government's increasing use, including overbroad application of extant laws such as the Cybercrime Act and the Terrorism Act, on bloggers, journalists is very worrying.

There are now worrying signs that the government could use the international commitment to curb terrorism financing as an opportunity to further shrink the civic space in the country.

The Coalition of CSOs in Nigeria comprises over 60 independent organizations working in the country in various thematic areas including promoting civic space, good governance and human rights.

Issues

Nigeria is now on the verge of undergoing another round of evaluations by the Financial Action Task Force in September 2019. A coalition of NPOs have seen the need to jointly present critical areas of concern that need to be urgently addressed to ensure that measures intended to curb corruption or combat money laundering and financing of terrorism do not further constrain the liberty and freedoms protected by the Nigerian Constitution and International human rights law which Nigeria have acceded to.

Six critical areas have been identified as follows:

1. AML/CFT ratings for the non-profit sector need more evidence
2. Risk-based approach (RBA) to AML/CFT regulation of NPOs is encouraged
3. No dedicated regulation of the NPO sector is required.
4. Description of NPOs as Designated Non-Financial Institutions/Designated Non-Financial Businesses and Professions (DNFIs/DNFBPs) needs to be reviewed
5. Specific Risk Assessment (RA) of the NPO sector is required.
6. Record keeping and information-sharing regarding terrorist financing (TF) trends and patterns need to be regularly updated.

Ratings need more evidence: An ML rating of Medium High for the NPO sector was not supported by any evidence or factual analysis in the NRA (National Risk Assessment) document. This risk rating, based on the premise that the sector is poorly regulated, is exaggerated. It worryingly gives the government unjustified excuse to further stifle the civic space with new regulations or target NPOs who attempt to hold the government accountable. In May, the Acting Economic and Financial Crimes Commission (EFCC) Chairman, Ibrahim Magu, called on Nigerian state governors to focus attention on non-governmental organisations alleging that “they are the arm that strengthens bandits and fund terrorism in the country.”¹ Magu claimed, without evidence, that some NGOs are the major source of funds for terrorist organisations and alleged that the EFCC had intercepted about ₦45 million from an NGO two weeks prior. To date, the details of the investigation have not been released.

The Financial Action Task Force (FATF) does not require countries to conduct a Money Laundering (ML) assessment for non-profit organisations (NPOs). However, Nigeria’s national risk assessment conducted in 2016 NRA went ahead to conduct a ML assessment for NPOs

RBA is a welcomed approach but can be strengthened. Nigeria’s National Risk Assessment (NRA) identified NPOs to be among the subset of DNFBPs highly vulnerable to terrorist financing. The evidence for this conclusion has been questioned above. However, in line with FATF’s prescription of a risk-based approach (RBA), Nigeria’s AML/CFT (Anti-Money Laundering/Combating the Financing of Terrorism) regulators are obligated to identify NPOs which face Terrorism Financing (TF) threats and assess the vulnerabilities of those specific NPOs which are vulnerable to or could be exploited for TF abuse. This 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.

We recognize SCUML’s efforts to apply regulatory action proportionate to the degree of risk within the NPO sector. However, the absence of clear assessment of risk vulnerability in the NRA, and the specific identification of the NPOs at greater risk, makes it difficult to know where heightened regulatory measures are required to facilitate full NPO cooperation and compliance.

¹ <https://www.premiumtimesng.com/news/more-news/327863-terrorism-financing-magu-wants-govt-to-focus-attention-on-ngos-activities.html>

ML/TF legislative and regulatory mechanisms are sufficient and can be strengthened. ML/TF legislative and regulatory mechanism for the NPO sector is fragmented across multiple government departments such as the Corporate Affairs Commission (CAC), Special Control Unit against Money Laundering (SCUML), Ministry of Planning, Financial Reporting Council of Nigeria (FRCN) and so forth. Working together, these agencies provide sufficient regulatory coverage for the entire sector, but this can be strengthened. In other words, there is no need for a dedicated regulatory body for regulating the activities of NPOs in Nigeria. Previous official attempts to introduce dedicated regulation of the sector by means of draconian and restrictive legislations such as the NGO Bill and the anti-Social Media Bill, have been resisted because of their enormous propensity to shrink the civic space. Rather, increased strengthening and funding of existing agencies with regulatory oversight for NPOs, especially CAC and SCUML, is advocated.

Any attempt to impose further regulations on NPOs would potentially impose very onerous burdens on the operations of thousands of organizations delivering life-changing relief and humanitarian assistance across the country. Such restrictive regulations, including the introduction of layers of government approvals on account of money laundering and terrorist financing, may also have the effect of interfering with funding for projects that need rapid response and action. Perception is also high that these measures could lead to shutdown of NPO initiatives, triggering job losses for millions of Nigerians employed in this sector. Finally, the lack of understanding of the NPO sector may create a risk in the operating environment forcing difficult trade-offs between the needs of people the NPOs are serving and the need to mitigate potential harm to NPOs personnel, resources, and reputation.

The Nigerian Financial Intelligence Unit (NFIU) placed within the Central Bank of Nigeria (CBN) is meant to be an independent or autonomous unit that seeks to comply with international standards on combating money laundering and financing of terrorism. The EFCC had attempted many times to have control over the NFIU, but this was averted to prevent Nigeria from being removed from the Egmont Group.² It is important that the NFIU is structured in a way that makes it impossible for it to be either used to disrupt the legitimate NPO operations or target NPOs unduly because of their accountability campaigning initiatives.

² There have been a few worrying incidents involving the NFIU that point to increased political use. The NFIU was almost suspended by Egmont Group because the EFCC, under which the NFIU was situated at the time, was leaking sensitive financial information on individuals to the media. There were also accusations that the EFCC, with data from the NFIU, was blackmailing individuals with the confidential intelligence at its disposal. Local Government guidelines issued by the NFIU were faulted and the offer of conditional financial independence is described as a veiled usurping of powers arrogated to the State Government by the Nigerian Constitution. See: <https://www.pulse.ng/bi/politics/politics-nigerian-lawmakers-okay-bill-on-independence-of-nigerian-financial/f17g12n>; <https://www.premiumtimesng.com/news/headlines/257607-fears-heighten-egmont-group-plans-expel-nigeria.html>; See also: <http://www.mondaq.com/Nigeria/x/683386/White+Collar+Crime+Fraud/In+The+Face+Of+Expulsion+From+The+Egmont+Group> ; Recently, the NFIU denied requesting bank details of political office holders then retracted that statement: <https://www.premiumtimesng.com/news/top-news/352288-nfiu-denies-requesting-bank-details-of-nass-judiciary.html>; and <https://tribuneonline.ng/nfiu-admits-writing-leaked-letter-seeking-senators-judicial-officers-bank-details/>

Description of NPOs as Designated Non-Financial Institutions/Designated Non-Financial Businesses and Professions (DNFIs/DNFBPs) is problematic. NPOs are not DFNIs/DNFBPs and the designation of NPOs as DFNIs under Nigerian law is inconsistent with FATF requirements. Section 25 of the Money Laundering Act [MLA] 2011 classifies NPOs as DFNIs along with casino operators, hotels and jewelry dealers. The Nigerian Bar Association [NBA] successfully challenged the classification of legal practitioners as DFNIs under the MLA in *Registered Trustees of Nigerian Bar Association v. Attorney General of the Federation & Ors* in December 2014. FATF's Best Practice Paper (BPP) paragraph 35 states clearly that NPOs 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.

Specific Risk Assessment (RA) of the NPO sector is 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 DFNIs, and without identifying those subsets of NPOs vulnerable to TF abuse, defeats the fine intents of the risk-based approach.

Record keeping and information-sharing regarding Terrorist Financing (TF) trends and patterns is not regular. It is imperative that the Nigerian government periodically updates and publicizes information on TF trends and patterns. In particular, there is need to update the NFIU's 2013 publication of trends and patterns of TF in Nigeria to capture new funds transfer trends and financial arrangements that have been introduced since 2013. Regular updates will enable the NPO sector to become aware of news ML/TF risk and take steps to nip them in the board. Nigeria may also be able to help mitigate the terrorist financing risks by leveraging off transparency, good governance and/or self-regulatory initiatives that are already being implemented by NPOs.