



**Financial Intelligence Centre
Republic of Namibia**

PO Box 2882
Windhoek
Namibia

Phone: + 264 61 283 5100
Fax: + 264 61 283 5259
helpdesk@fic.na

CALLING ON ALL FINANCIAL SERVICE PROVIDERS, DONORS, ENTITIES AND PERSONS DEALING WITH NON- PROFIT ORGANISATIONS

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1. INTRODUCTION

This guidance is issued as per Section 9, 35(A) and (B) of the Financial Intelligence Act, 2012, as amended (The FIA).

The vital humanitarian and often lifesaving roles played by the NPO sector in its service to humanity, often under difficult circumstances remains paramount in the care that regulatory bodies such as the FIC takes in its supervision of this sector. The need to ensure regulatory and supervisory activities do not undermine legitimate NPO activities is a guiding principle in all FIC operations relating to NPOs. In furtherance of such, the regulatory activities in this regard are measured and targeted towards higher risk areas and vulnerabilities. The role of donors in the NPO sector is one area that needs appropriate guidance. Most, if not all NPO activities are often donor funded. Donors therefore play a critical role as enablers of NPO operations, services and activities. This guidance is issued to help donors appreciate vulnerabilities within NPOs in an effort to contribute to safeguarding the NPO sector from abuse.

It is common cause that NPOs, like most other sectors, need the services of financial institutions, in particular banks. Financial institutions are therefore required to consider the guidance herein and in Directive 05 of 2023 when engaging or availing services to NPOs. Directive 05 of 2023 can be accessed via <https://www.fic.na/index.php?page=2023-directives> .

2. HIGH RISK NPOs

At the time of this publication, there are no cases of domestic NPOs' involvement in advancing terrorism or terrorist financing (TF) activities in Namibia. The cases in which domestic NPOs have been abused primarily suggest money laundering or predicate offences such as fraud, tax evasion and theft. This does not mean local NPOs are immune to abuse for TF. If anything, it should be a concern that such vulnerabilities exist as same can be exploited to advance TF. FIC Guidance Note 12 of 2012 (see FIC website), as per observations in international case studies, presents a correlation between the types of activities a NPO is engaged in and the risk of TF abuse. A consideration of case studies internationally in which NPOs may have been abused is essential in understanding how same can unfold with domestic NPOs. The majority of international case studies at hand suggests that NPOs engaged in '**service activities**' such as housing, social services, education, or health care were most prevalent in cases of potential TF abuse. No case studies found NPOs engaged in '**expressive activities**' such as programmes focused on sports and recreation, arts and culture, interest representation or advocacy such as political parties, think tanks and advocacy groups.

Namibia's 2020 National Risk Assessment (NRA) found religious and Faith Based Organisations (FBOs) as highly exposed to risks of TF while the 2023 NRA update has additionally identified the broader category of 'service charities' as equally vulnerable to TF abuse. Therefore, the specific NPOs to which the FIA applies are religious or FBOs and those involved in charitable activities. If persons including financial institutions and donors consider engaging, assisting or serving such NPOs, they are required to satisfy themselves that NPOs of this nature are not unduly exposed to risks of financing terrorism.

3. PART A: VARIOUS MEANS OF POTENTIAL NPO ABUSE

Generally, five categories of NPO abuse or risk can be established, which are generally applicable across all NPOs. These are not mutually exclusive categories and can be summarised as follows:

- a. The **diversion of funds** is a significant method that focuses on the substantial financial resources within the NPO. Actors inside a NPO or external actors such as foreign partners, can engineer the diversion of funds from legitimate NPO activities. The corrupt use of NPO resources or theft and fraud related thereto presents a generally higher risk in terms of diversion as per case studies highlighted in the 2020 NRA report (accessible via <https://www.fic.na/index.php?page=2020-nra>) ;
- b. In other cases of abuse, **NPOs or directing officials who maintain an affiliation with a terrorist entity**, either knowingly or unknowingly, present significant risks of abuse. Those managing or directing NPO activities are in positions to direct NPO activities to support ulterior terrorist objectives or activities. In these instances, a NPO could be abused for multiple purposes, including general logistical support to the terrorist entity or radicalisation of people associated with the NPO;
- c. In some cases, **NPOs are abused to provide support to recruitment efforts** by terrorist entities. The few local TF cases in Namibia of potential TF suggests there may have been radicalisation of subjects at some stage;
- d. NPOs are also targeted for **abuse of programming**. In these instances, the flow of resources may be legitimate but NPO programmes are abused at the point of delivery or execution; and
- e. Finally, some **terrorist entities abuse the NPO sector through false representation**. In these instances, terrorist entities start 'sham' NPOs or falsely represent themselves as the agents of 'good works' in order to deceive donors into providing support.

Financial Institutions, donors and other persons or entities dealing with NPOs are encouraged to study the FIC's Guidance Note 12 of 2023 on NPOs, in particular section 5 and Annexure A which detail potential risks and indicators of high risks within NPOs. Such Guidance Note is

available on the FIC website under the 'Publications' folder for '2023 Guidance Notes', or via the following link: <https://www.fic.na/index.php?page=2023-guidance-notes>.

4. PART B: NPO RISK MANAGEMENT FRAMEWORKS

Financial Institutions, donors and such other entities or persons dealing with NPOs must have an appreciation of a NPO's risk exposure when making decisions around supporting NPOs. This section lists primary risk management frameworks which a NPO must have in place to reduce its TF risk exposure.

4.1 Licensing and authorization: Proof of registration as a Welfare Organization from the National Welfare Board, in terms of the National Welfare Act, 1965 (Act 79 of 1965). Where required, proof of registration as a Section 21 entity, amongst others. This gives assurance that the NPO complies with certain minimum requirements to reduce risks;

4.2 FIC registration: FBOs and charitable NPOs must register with the FIC. The FIC registration entails availing information which is considered in the NPO's risk assessment. This avails assurance that such NPO has been subjected to required due diligence. The FIC, as per the FIA, requires NPOs to demonstrate the presence of the following upon registration:

- a. **Governing documents** such as a charter, constitution, memorandum of association or articles or other governing documents deemed relevant by the FIC governing its organization. Such governing documents must specify, amongst others, the purpose and objectives of the NPO;
- b. **The NPO is physically present in Namibia** and must have a registered local office to which all communications and notices are sent;
- c. **Founders and governance bodies such as Board, Management Committee (MC)**, plus the mechanisms for appointing such board or MC. These are functions or persons exercising effective control of the NPO. If need be, depending on the NPO's risk profile, the FIC may require demonstration that the founders, board or MC is fit and proper;

- d. **Source of NPO funding.** This is essential in reducing abuse of NPOs;
- e. **Policy document or standard operating procedures** to manage TF risks. NPOs must implement controls to reduce risks of abuse of its services or programs, finances and resources. The said documents or frameworks must, at a minimum, speak to the following:
- i. **create means to confirm the identity, credentials and good standing** of donors and beneficiaries, beneficial owners etc;
 - ii. **managing risks of beneficiaries, including risks emanating from ties to high risk jurisdictions:** Where the NPO is involved in funding and/or resourcing other NPOs, arrangements, persons (or any other beneficiaries), the funding/donor or resourcing NPO has a responsibility to gain assurance that such funds or resources being availed are not to advance financial crimes and terrorist activities;
 - iii. **transparency around founders, donors, beneficiary information:** NPOs need to ensure that identification and relevant information of all their donors, beneficial owners and beneficiaries is publicly available or can be readily accessed by the public and competent authorities such as the FIC, Law Enforcement and licensing and registration bodies such as Government Ministries. Such records should be kept for a minimum period of five years, unless instructed by competent authorities otherwise;
 - iv. **mandatory sanctions screening:** ensure to screen all donors, beneficiaries, beneficial owners and relevant NPO stakeholders against the United Nations Security Council (UNSC) sanctions lists before any services are availed, for purposes of combatting TF and the funding of Proliferation activities. The updated sanctions lists can be found by accessing the following link: <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>;
 - v. **accounting for all NPO resources, receipts and expenditure:** having appropriate controls in place to ensure that all resources and funds are fully accounted for and used in a manner that is consistent with the legitimate services, activities, purpose and objective(s) of the NPO. Funds should only be moved or transferred via regulated systems, such as banking systems, which leave an audit trail of the transaction. Moving/transferring funds through cash or

informal mechanisms is high risk and should be limited to exceptional circumstances; and

- vi. **basic governance and administrative controls** such as limiting the movement or remittance of funds to regulated environments such as banking systems. Cash movements leaves no audit trail and informal banking channels present higher risks. Prudent approval controls, segregation of duties, etc., in the disbursing of funds.

The risk management measures listed above are essential controls donors need to consider at all times when dealing with NPOs. Financial Institutions, donors and any other persons dealing with NPOs are further requested to read relevant FIC publications on NPO risk management frameworks including:

- a. section 4 of Revised Directive 04 of 2023, accessible via <https://www.fic.na/index.php?page=2023-directives> ; and
- b. sections 5.2 and 6 of Guidance Note 13 of 2023, accessible via <https://www.fic.na/index.php?page=2023-guidance-notes> .

5. CONCLUSION

At present, all NPOs are directed to ensure registration with the FIC by **no later than 29 September 2023**, as per June 2023 FIA amendments. Financial Institutions, donors and any other persons dealing with NPOs are requested to help encourage NPOs to ensure such registration timely. NPOs that fail to register and remain in existence after that date will not be in compliance with the law.

The guidance and all such other related publications can be accessed on the FIC website at: <https://www.fic.na/index.php?page=2023-guidance-notes>



Z. BARRY

ACTING DIRECTOR: FINANCIAL INTELLIGENCE CENTRE