CMPAC

Canadian Muslim Public Affairs Council (CMPAC) Submission

Financial Action Task Force (FATF) Best Practice Paper to Combat the Abuse of Non Profit Organisations

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Canadian Muslim Public Affairs Council |Oakville, ON, Canada
info@canadianmuslimpac.ca | www.canadianmuslimpac.ca

Executive Summary

This submission provides strategic recommendations aimed at refining the R8 best practices, ensuring nations effectively tackle terrorism financing risks while safeguarding due process and the equitable treatment of Non-Profit Organizations (NPOs).

The FATF's consultation emerges during a critical juncture in Canada where mounting research-backed concerns indicate a trend: Muslim-led charities are seemingly under disproportionate scrutiny. Observations suggest that Canada's counter-terrorism financing regime has not just been targeting these charities, but has been taking stringent measures to both disrupt their operations and deregister them. This situation stems from Canada's national inherent risk assessment, which has subsequently resulted in concerns of financial institutions adopting de-risking practices specifically against Muslim charities.

As FATF advances its study on unintended consequences and endeavors to refine its best practices document, it becomes imperative to mandate member nations to:

1. Align and evaluate their practices in consonance with these best practices.
2. Actively review and address any unintentional repercussions arising from their counter-terrorism measures, mirroring FATF's introspective approach.

Genuine reform in the national security regime and counter-terrorism financing strategies of member countries necessitates an acknowledgment of inherent biases and the detrimental effects on certain segments of the population or the NPO sector. This is only possible if member countries undertake transparent self-assessments. Furthermore, the FATF's mutual evaluations should assess if member countries' practices manifest any unintended consequences linked to FATF's recommendations.

Currently, a predominant call from Canada's charitable sector is the suspension of the Review and Analysis Division (RAD) within the Canada Revenue Agency, the primary unit overseeing counter-terrorism financing. This call is precipitated by growing evidence suggesting biased auditing, particularly of Muslim-led charities. Notably, the division is now under the lens, with an investigation by Canada's National Security Intelligence Review Agency, focusing on potential discriminatory actions against Muslim-led charities.

Against this backdrop, CMPAC presents its recommendations for enhancing the R8 best practices document proposed by the FATF. CMPAC remains at the ready to delve deeper into its proposal and is keen to present its insights directly to the FATF.

About The Canadian Muslim Public Affairs Council

The Canadian Muslim Public Affairs Council (CMPAC) is a non-profit advocacy organization that combats structural Islamophobia by mobilizing communities, engaging decision makers, and shaping public policy. Our work towards structural change is research backed and community driven.

CMPAC has actively addressed issues affecting the Muslim community by participating in policy consultations and submitting evidence and testimonies on relevant matters. For instance, CMPAC has contributed to discussions on Bill C-20, which pertains to the establishment of the Public Complaints and Review Commission and amendments to relevant Acts and statutory instruments.

The organization also engages internationally, submitting reviews to the UN Security Council's Counter-terrorism Executive Directorate (CTED) to ensure Canada's adherence to the UN's counter-terrorism resolutions.

Pertinent to this consultation, CMPAC has engaged on the issue of over-policing of Muslim community members and organizations when it comes to anti-terrorism financing, and made recommendations to the Department of Finance on the topic..

The organization's influence is evident in media contributions, where it has brought critical policy discussions to the forefront. CMPAC has addressed topics such as systemic Islamophobia, the need for political inclusivity to win over diverse communities, and the rise of Islamophobia during the COVID-19 pandemic.

Examples include:

Review into Canada Revenue Agency bias has let down Canadian Muslims
https://nationalpost.com/opinion/review-into-canada-revenue-agency-bias-has-let-down-canadian-muslims

The consequences of falling behind our allies on combatting terrorist financing
https://policyoptions.irpp.org/magazines/january-2023/combatting-terrorist-financing/

The Liberal government must rid the country of systemic Islamophobia
https://policyoptions.irpp.org/magazines/november-2021/the-liberal-government-must-rid-the-country-of-systemic-islamophobia/

Issam Saleh: The Conservatives cannot afford to alienate Muslims if they hope to win next time around
https://nationalpost.com/opinion/issam-saleh-the-conservatives-cannot-afford-to-alienate-muslims-if-they-hope-to-win-next-time-around

Section 2.1.2 Assess TF risks posed to NPOs

Canada, as a founding member of the FATF, published its National Inherent Risk Assessment (NIRA) in 2015 and subsequently updated it in 2023. The risk assessments have been instrumental in guiding the Canada Revenue Agency (CRA) in its auditing of registered charities, aligning with its mandate for countering terrorism financing. Presented below is a case study that delves into the evolution of Canada's NIRA and the profound repercussions it has precipitated, particularly disrupting a specific segment of the charitable sector. In light of this case study, CMPAC offers several recommendations for consideration in the FATF Best Practice Paper aimed at countering the abuse of NPOs.

Case Study: Canada National Inherent RIsk Assessment (NIRA)

2015 National Inherent Risk Assessment (NIRA)

Canada's 'Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada' published in 2015[1] highlights that Canadian charities can be vulnerable to being misused for terrorist financing purposes due to its inherent characteristics. These include that charities can be exploited for terrorist financing for several reasons. One significant vulnerability is that charities are accessible to a large number of supporters, which can make it easier for terrorist organizations to solicit donations. In addition, the ease by which charities can transfer funds abroad, combined with the inherent difficulties of monitoring overseas charitable activities, makes it more challenging to ensure that funds are not diverted for terrorist or extremist purposes.

Specifically:

- One of the primary reasons for charities being targeted for terrorist financing is their accessibility to a large number of potential donors. Terrorist organizations can leverage this vulnerability by using their extensive networks to solicit donations under the guise of charitable giving. The report notes that terrorist organizations may use a

[1] 2015 NIRA
https://www.canada.ca/en/department-finance/services/publications/assessment-inherent-risks-money-laundering-terrorist-financing.html

façade of legitimate charitable activities to raise funds, and this could lead to large sums of money being diverted for other purposes.

- Another vulnerability identified in the report is the potential for foreign charities to be exploited by terrorist organizations, particularly in conflict zones, where charities may inadvertently provide support to terrorist groups under the guise of humanitarian aid.

The assessment identified a number of TF scenarios involving charities that include diversion of funds, affiliation with a terrorist entity, abuse of programming, support of recruitment, and false representation of an organization. It claims that diversion of funds is the most common.

It explains that the Canada Revenue Agency has a role to play in investigating and disruption by “detecting charities that are at risk and ensuring that they are not being abused to finance terrorism.”

The assessment report suggests that the overall risk of terrorist financing vulnerability involving charities in Canada is assessed as high and that there are specific vulnerabilities that need to be addressed. These include the potential for charities to be used as a conduit for terrorist financing, the risk of foreign charities being exploited by terrorist organizations, and the difficulty of monitoring the use of charitable funds overseas.

The assessment suggests that the vulnerabilities exist primarily with registered charities engaged in "service" activities that operate in close proximity to an active terrorist threat. This encompasses registered charities that operate both in high-risk jurisdictions, including in areas of conflict with an active terrorist threat, as well those that operate domestically, but within a population that is actively targeted by a terrorist movement for support and cover.

According to the assessment, the highest risk identified was associated with 10 groups, out of which 8 were identified as groups with a resemblance to Muslim organizations located abroad. The assessment further notes that these groups have connections or links to Canada.[2]

The assessment also concludes, without evidence, that the majority of the terrorism financing actors associated with the assessed terrorist groups have used registered charities.

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[2] Table 2
Terrorist Financing Threat Groups of Actors
Al Qaeda in the Arabian Peninsula, Al Qaeda Core, Al Qaeda in the Islamic Maghreb, Al Shabaab, Hamas, Foreign Fighters/Extremist Travellers, Hizballah, Islamic State of Iraq and Syria, Jabhat Al-Nusra, Khalistani Extremist Groups, Remnants of the Liberation Tigers of Tamil Eelam

Furthermore, the assessment identifies 10 countries that are considered to be high-risk for terrorist financing. Of these 10 countries, 8 are Muslim-majority countries. [3]

Additionally, the assessment recommends that regulators and law enforcement agencies should take a risk-based approach to monitor the activities of charities and develop measures to prevent terrorist financing. Ultimately, creating an effective framework to identify and prevent terrorist financing in charities will be essential to mitigate this risk.

Problems with the 2015 NIRA

Open Source Reporting

The assessment states its conclusions about terrorist financing actors and their links to Canada is based partially on open source reporting, which means that it is not solely based on intelligence. This makes it difficult to assess the accuracy of the assessment. Furthermore, the assessment does not provide any evidence to support its claim that Muslim countries are more likely to be used to finance terrorism.

RECOMMENDATION: The FATF best practices do not include open source material in its list of recommended information sources for shaping a country's risk assessment.

Section 2.1.3 of the FATF Best Practice should advise caution when utilizing open source information, as it may contain misinformation, prejudiced content, or material specifically designed to influence government agencies to target specific groups.

Disproportionate Risk to the Muslim Community

The assessment's focus on Muslim groups and Muslim countries has led to concerns in the Canadian charitable sector that the 2015 NIRA has led to unfairly targeting of Muslim charities. In fact, evidence has come to light that Muslim charities have been disproportionately audited by the CRA for terrorism financing. In 2021 the University of Toronto's Institute of Islamic Studies and the International Civil Liberties Monitoring Group both published independent reports that the CRA was disproportionately auditing Muslim charities with biased and prejudiced audits.

As well, the assessment's focus on Muslim groups has raised concerns that the Government of Canada is not doing enough to protect Muslim charities from unfair scrutiny and systemic

[3] Afghanistan, Egypt, India, Lebanon, Pakistan, Palestinian Territories, Somalia, Sri Lanka, Syria, Turkey, United Arab Emirates and Yemen

discrimination. Since the findings came to light, the Government of Canada has not taken any action to halt activities that have resulted in the discriminatory practice, and instead has mandated a review by the Ombudsperson that has failed. This has been followed by a review by the National Security Intelligence Review committee.

The 2015 NIRA has had significant repercussions on Muslim charities. It has led to disproportionate revocations of Muslim charities by the CRA. It has also led to further detrimental impacts on these organizations, particularly in terms of their ability to access banking services and financial support, which is crucial for their operations. This is especially true in the context of humanitarian relief efforts where funding is sent abroad. This financial exclusion can severely hinder their capacity to provide crucial aid and support to vulnerable communities in need.

Furthermore, the consequences of revocation extend beyond the organizations themselves. When a charity's status is revoked, it can have far-reaching implications for individuals associated with the charity, including restrictions on their involvement in charitable activities, travel, or their personal access to banking. Moreover, media coverage of these revocation decisions can lead to reputational damage, perpetuating negative stereotypes and impacting the public perception of Muslim charities as a whole.

These outcomes create a troubling cycle of challenges for Muslim charities, exacerbating the already existing barriers they face in fulfilling their missions and serving their communities.

Recommendation: Canada's approach to publishing a risk assessment markedly diverges from that of other FATF member countries. By explicitly highlighting the sources of high risks (al-qaeda, ISIS, etc.), Canada indirectly implies that Muslim-led charities inherently possess risk factors. This has paved the way for an overbroad, "unjustified wholesale" strategy by the CRA in selecting charities for audits concerning CTF.

FATF Best Practices Box 2 should further explain that simply categorizing all NPOs as high-risk without nuanced risk differentiation can lead to unintended consequences. Countries should be wary of assigning blanket risk assessments to any specific group based solely on implied faith or racial associations. Instead, risk evaluations should be anchored in more specific criteria, such as the nature of the work, and geographical regions of operation. By doing so, assessments can be both more precise and just.

2023 National Inherent Risk Assessment (NIRA)

In March 2023 the Ministry of Finance published the 'Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada,'[4] which outlined the Government of Canada's view on the risk of terrorism financing (TF) involved with charities.

The updated assessment continues to consider charities as a high vulnerability and indicates that charities are susceptible to abuse for terrorism financing due to their potential to be exploited by individuals or groups with malicious intent. The risk is higher when funds are transferred or received in cash or other non-transparent methods without adequate due diligence.

The updated assessment, in contrast to the 2015 assessment, introduces concern with the non-profit sector in addition to registered charities. Non-profit organizations are not regulated by the CRA.

Also, the updated assessment has extended the list of entities to 17 groups, of which 8 are Muslim like groups. The assessment has introduced a number of white supremacy and far-right groups. [5]

Problems with the 2023 NIRA

Mitigating Systemic Discrimination Due to Canada's NIRA

The 2015 NIRA primarily focuses on the risks associated with money laundering and terrorist financing in Canada, without explicitly addressing the issue of systemic discrimination. It highlights the vulnerabilities within Canadian sectors that can be exploited for illicit activities, but does not prescribe specific measures to combat discrimination against particular communities.

While the 2023 NIRA represents an update to its predecessor, it still falls short in fully acknowledging and addressing the systemic discrimination that has resulted from the

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[4] 2023 https://www.canada.ca/en/department-finance/programs/financial-sector-policy/updated-assessment-inherent-risks-money-laundering-terrorist-financing-canada.html

[5] Table 2: Terrorist Financing Threat Groups of Actors:
Muslim: Al Qaeda in the Arabian Peninsula, Al Qaeda Core, Al Qaeda in the Islamic Maghreb, Al Shabaab, Hamas, Hayat Tahrir Al-Sham, Hizballah, Islamic State in Iraq and the Levant (ISIL)
Others: Aryan Strike Force (ASF), Atomwaffen Division, The Base, Blood & Honour (B&H), Combat 18 (C18), Extremist groups supporting violent means to establish an independent state within India, Russian Imperial Movement, Three Percenters, Proud Boys

implementation of the 2015 NIRA. Although it does not explicitly recognize the discriminatory effects of the previous NIRA, it does make certain statements that distinguish it from the 2015 report.

The updated 2023 NIRA emphasizes the importance of not using the assessment of terrorist financing threats as a basis for discriminatory behavior or actions towards specific communities in Canada or abroad. It underscores the need to consider measures taken by government and private sector entities on a case-by-case basis, recognizing that many Canadians maintain legitimate ties to communities around the world. The report acknowledges that these relationships, in and of themselves, are not indicative of terrorist financing or money laundering activities.[6]

However, it is important to note that while the 2023 NIRA acknowledges the existence of risks, it does not go far enough in prescribing concrete measures to proactively detect, disrupt, and remedy discrimination against specific communities. It falls short of addressing the underlying issues that have perpetuated systemic discrimination within the regulatory framework.

To effectively mitigate systemic discrimination, it is crucial for the 2023 NIRA to be updated to explicitly recognize the historical impacts and unintended consequences of the 2015 NIRA and ensure that measures are in place to prevent discriminatory practices. This includes implementing comprehensive and inclusive risk assessment methodologies, engaging with affected communities, and actively working towards creating an equitable and fair regulatory environment.

RECOMMENDATION: In Section 2.1.4 (which pertains to the periodic review of NPO identification, TF risk assessments, and the implementation of mitigating measures), it should also be emphasized that countries continuously evaluate any unintended repercussions stemming from their risk assessments. Such findings should be documented in subsequent iterations of the risk assessment to ensure transparency and learning. Furthermore, while it's

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[6] This assessment of terrorist financing threats is based on threat groups identified by the United Nations Security Council as well as a careful review of intelligence and information from Canadian security and intelligence agencies. In no instance should it be used as a basis or justification for discriminatory behavior or action toward specific communities in Canada or abroad. Measures taken by government or private sector entities to mitigate risks related to terrorist financing should be considered on a case-by-case basis and recognize that many Canadians have ties to communities around the world which they maintain, and that while there are risks, these relationships are not, in and of themselves, a vector for terrorist financing and money laundering."

"However, the government recognizes that many Canadians have ties to communities around the world which they maintain, and that while there are risks, these relationships are not, in and of themselves, evidence of terrorist financing and money laundering."

vital to detail the responsibilities of various agencies within a country's risk assessment, it's equally crucial to delineate actions or approaches that should be avoided. This will help in preventing disproportionate or unjust actions against NPOs, maintaining a fair and balanced oversight framework.

Risk Level of the Charity Sector Must be Re-assessed

The 2015 NIRA made a significant claim that the majority of terrorism financing actors associated with assessed terrorist groups have utilized registered charities. However, in the period between 2015 and 2023, the Canada Revenue Agency (CRA) has not presented any concrete evidence to substantiate the allegation that a charity has indeed funded terrorism. Even in cases such as IRFAN Canada, where there were allegations of possible funding of Hamas, and ISNA, where there were allegations of possible funding of Jamaat-e-Islami, (and a few others) the CRA has not been able to establish that these charities or their board and executive members were involved in terrorist financing. Moreover, the RCMP has not concluded any investigations or brought charges against charities or their affiliated individuals for terrorism financing.

The absence of conclusive evidence linking Canadian charities to terrorism financing over the past eight years challenges the assertions made in both the 2015 and 2023 NIRAs. The lack of concrete cases and findings raises questions about the credibility and validity of the claim that charities are being exploited for terrorist financing purposes.

Given the absence of evidence connecting terrorism financing to the charity sector, there is a compelling need to re-assess the risk level assigned to charities within the 2023 NIRA. It is crucial to approach the assessment with a balanced and evidence-based perspective, taking into account the actual realities and proven instances of terrorist financing rather than relying on generalized assumptions or perceived risks.

There is an apparent inconsistency between Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime Strategy 2023-2026[7] and the 2023 NIRA. The government's strategy document states that the assessment of terrorist financing is based on a thorough examination of evidence and intelligence from Canadian security and intelligence agencies, focusing on threat actors identified by the United Nations Security Council and listed as terrorist entities in Canada. It further indicates that there is a low prevalence of sophisticated and organized terrorist financing networks in the country, with most activities involving

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[7] https://www.canada.ca/en/department-finance/programs/financial-sector-policy/canadas-anti-money-laundering-and-anti-terrorist-financing-regime-strategy-2023-2026.html

individuals making direct financial contributions or joining such groups abroad. Given this assessment, it raises questions as to why the 2023 NIRA highlights the presence of these actors in Canada and underscores a high risk within the charitable sector. Clarification is needed to reconcile these contrasting perspectives and ensure coherence within the overall anti-terrorism financing framework.

RECOMMENDATION: The CRA in Canada, in its supervisory role, has exhibited disproportionate actions against Muslim charities. This remains the case whether the charity in question is merely vulnerable, unintentionally misused, or is actually involved in supporting terrorism financing (the latter of which has not been observed in Canada).

Section 2.2 (MITIGATING THE TF RISK) should be refined to emphasize a distinction between charities that might be at risk versus those actively or intentionally supporting terrorism or its financing. Merely being at risk, whether due to the nature of the charity's work or a lack of stringent internal controls, shouldn't automatically classify a charity as a direct threat and result in the de-registration of the charity or major sanctions. Such charities should be granted opportunities to rectify and mitigate potential vulnerabilities, especially if there's no concrete evidence suggesting their involvement in actual terrorism financing. This approach ensures that organizations are treated with fairness and given chances to improve.

Canada is the only country that assesses inherent risk

Among the members of the FATF, Canada stands out as the sole country that publishes an "inherent" risk assessment. In contrast, other states gauge their vulnerabilities by considering the effectiveness of the mitigating measures implemented by supervisors and agencies.

The United States takes a unique approach by not only publishing its final risk assessment after factoring in all mitigating measures but also recognizing the crucial role that charities play in countering terrorism. The US acknowledges the valuable contributions of charities in preventing radicalization to violence and violent extremism. While some charities and nonprofit organizations (NPOs) have been misused to facilitate terrorist financing, the US Treasury and other government agencies emphasize that the majority of these organizations comply fully with the law. Furthermore, they recognize that not all tax-exempt charitable organizations pose the same level of terrorist financing risk, and the vast majority of US-based tax-exempt charities face minimal or no risk of being exploited for such purposes. For charities operating in high-risk jurisdictions, the US risk assessment acknowledges that many reputable and legitimate organizations in this sector implement a range of risk-mitigation measures, including due diligence, governance, transparency, accountability, and other compliance protocols, even during crisis situations.[8]

In contrast, Canada's 2023 NIRA fails to acknowledge the mitigating measures implemented by charities.

The United Kingdom's approach to risk assessment involves an initial stage of analyzing data to identify existing risks, assess the likelihood of their materialization, understand their potential impact, and evaluate the effectiveness of mitigating measures. This evaluation encompasses all sectors, activities, or products and considers risk factors categorized under vulnerability, likelihood, and mitigation.[9]

Regarding the sources of terrorist funding, the UK risk assessment reveals that methods such as fraud, abuse of mechanisms like student loans, and misuse of the charitable sector are far less prevalent. The scale of known abuse for terrorist financing within the UK charity sector is relatively low compared to the overall size of the sector.

In Canada, the guidance provided to supervisors based solely on inherent risk has proven problematic, leading to the disproportionate targeting of Muslim charities by the CRA. This issue warrants attention and consideration to ensure fair and equitable treatment of all charitable organizations.

RECOMMENDATION: In Section 2.2 (MITIGATING THE TF RISK), it should be underscored that the regulatory requirements imposed on charities play a pivotal role in determining the overall risk profile of the NPO sector. Hence, the recommendation is to integrate these regulatory stipulations directly into a country's risk assessment. Doing so not only enhances the accuracy of the assessment but also acknowledges the existing oversight mechanisms in place, providing a more holistic view of the actual risks faced by the NPO sector. By aligning regulatory measures with risk assessment, countries can more effectively tailor their strategies and interventions, ensuring that they are both proportionate and targeted.

Lack of Stakeholder Consultation

Since 2021, the Muslim charitable sector in Canada has raised concerns regarding the 2015 NIRA, which has garnered significant attention from the media and calls for reform. The Ministry of Finance communicated that it was undergoing a process to update the NIRA.

[8] https://home.treasury.gov/system/files/136/2022-National-Terrorist-Financing-Risk-Assessment.pdf

[9] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945411/NRA_2020_v1.2_FOR_PUBLICATION.pdf

However, the process of developing the updated NIRA lacked comprehensive and meaningful stakeholder consultation, particularly within the Muslim community, resulting in an outcome that fails to effectively mitigate the consequences of the 2015 NIRA.

While the Ministry of Finance may have sought feedback from a select number of individuals, the consultation process did not reflect a genuine and inclusive exercise that adequately captured the diverse perspectives and experiences of the Muslim charitable sector as a whole. This limited engagement with stakeholders has raised questions about the fairness and thoroughness of the process, and its ability to address the nuanced challenges faced by Muslim charities.

The rushed timeline set by the Financial Action Task Force (FATF) to publish an updated NIRA, combined with the lack of comprehensive stakeholder consultation, has led to an outcome that can be seen as a continuation of the 2015 NIRA.

RECOMMENDATION: In Section 2.1.4, which focuses on the periodic review of NPO identification, TF risk assessment, and the implementation of mitigating measures, there should be an added emphasis on active consultation with NPOs. As they are directly impacted by these assessments, their feedback and insights can provide invaluable context when re-evaluating TF risks. This collaborative approach ensures that the assessment is both comprehensive and grounded in real-world implications. By fostering a dialogue between regulators and NPOs, countries can better gauge the practical effects of their risk assessments, leading to more informed, adaptive, and effective strategies moving forward.

Section 2.3.1 Sustained outreach concerning TF issues toward NPO sector and donors community

While the FATF's best practices lay out a comprehensive framework for ongoing outreach for a country regarding TF issues to the NPO sector and the donor community, there appears to be a gap concerning the FATF's commitment to ensuring consistent communication with NPOs across various countries.

RECOMMENDATION: As part of the FATF's mutual evaluation procedure for a given country, it would be beneficial to incorporate discussions with the NPO sector. These dialogues can serve as a valuable source of feedback and provide on-ground perspectives that may not be captured otherwise. Including these consultations can significantly enhance the depth and breadth of the evaluation process, ensuring that the final assessment of a country is both robust and reflective of the realities faced by the NPOs operating within its borders. By integrating these interactions into the evaluation framework, the FATF can better align its assessments with the practical challenges and experiences of the NPO sector.

Section 2.3.2 Focused, proportionate and risk-based measures, including oversight or monitoring of NPOs where needed

Case Study: Review and Analysis Division (RAD)

To date the Canadian government's responsibility of countering terrorism financing in the NPO sector has been delegated in parts to different agencies such as the Canada Revenue Agency (CRA), responsible for overseeing the charitable sector – a key concern in Canada's national risk assessment. This approach has proven to be ineffective.

The CRA established the Review and Analysis division to conduct audits for terrorism financing concerns. Since 2008 RAD has audited 39 charities, of which 14 have been revoked and of these 14, 12 have been Muslim charities. RAD has also suspended at least 2 charities.

RAD's use of a public leads program, as mentioned in the Best Practice Paper, has also led to a lack of transparency in the information that leads to organizations being monitored and targeted for draconian and disproportionate enforcement measures.[10]

RAD's auditing of charities has not been successful in identifying actual instances of terrorism financing, but rather, it has unfairly targeted and marginalized specific communities within the charitable sector, damaging their reputation. The revocation of charities by the CRA has not resulted in any substantiated findings or proper follow-through of charges or trials against these organizations or individuals involved.

Counter to the FATF's guidance and the research consensus in the field, the CRA has confirmed that RAD's framework assumes that the risk primarily comes from Muslim-led charities and racialized communities. As a result, their approach views Muslim-led charities having a nexus to high risk actors globally. The result of this is a highly Islamophobic approach of selecting, auditing, and de-registering Muslim-led charities, where 80% of sanctioned organizations are Muslim-led charities.[11]

RAD's activities has deteriorated the CRA's relationship with the charitable sector, as it has focused more on de-risking rather than supporting the growth and flourishing of legitimate charitable activities.

RECOMMENDATION: RAD is a recognized failure in the prevention of terrorist financing, and its disbandment is being recommended by civil society organizations.[12]

Box A.17 in the FATF Best Practice Paper should be removed. While RAD appears to be a reasonable example to share, in practice the division's approach has been flawed, biased, overreaching, and contradictory to many of the directives in this document.

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[10] The problem of systemic bias in CRA audits" Faisal Kutty & Faisal Bhaba, The Philanthropist. https://thephilanthropist.ca/2023/03/the-problem-of-systemic-bias-in-cra-audits/

[11] "Under Layered Suspicion: A Review of CRA Audits of Muslim-led Charities" Anver Emon & Nadia Hasan, University of Toronto and National Council of Canadian Muslims. https://www.layeredsuspicion.ca/

[12] "Open Letter to the Prime Minister on CRA Review," National Council of Canadian Muslims. https://www.nccm.ca/openletter-cra/

Section 2.3.3. Effective information gathering and investigation

Case Study: Systemic Bias in Canada's Supervisory Audits

A recent article in "The Philanthropist"[13] highlighted research indicating that the CRA's audit findings frequently depend on sources that exhibit bias and Islamophobia.

The CRA has faced criticism for its alleged reliance on biased or poorly vetted terrorism experts in its scrutiny of Muslim charities. A notable figure in this context is Matthew Levitt, whose credentials have been questioned due to his lack of firsthand experience in the Middle East and limited linguistic abilities in Arabic. Despite the criticism of Levitt's work from recognized academic circles, the CRA seems to rely on his association with U.S. government institutions to vouch for his expertise.

Another contentious figures include Matthew Epstein and Evan Kohlmann, associated with the anti-Muslim Investigative Project on Terrorism (IPT). Lorenzo Vidino, known for promoting conspiracy theories about the Muslim Brotherhood, is an additional source the CRA reportedly trusts. Vidino's claims have been linked with rising Islamophobia.

Thomas Quiggin, a former intelligence officer, has been cited for alleging ties between Canadian Muslim organizations and global terrorist networks. His claims have been criticized for their alarmist nature, implying that Canada's Muslim community is plotting against Western civilization. The Muslim Association of Canada (MAC) has taken legal action against the CRA, claiming bias and discrimination, and highlighting the influence of Vidino and Quiggin in prompting audits. Danny Eisen's report co-authored with Quiggin, which accuses the National Council of Canadian Muslims (NCCM) of being part of a disruptive Muslim agenda, further exemplifies the issues with the sources CRA relies upon.

Many of these experts have ties to what's termed the "Islamophobia industry," a network that perpetuates anti-Muslim disinformation.

The CRA's reference list extends to institutions like the Hudson Institute, known for its right-wing stance and receiving funding from foundations promoting Islamophobic narratives. The agency also relies on questionable media outlets like Indian Express, accused of using Islamophobic narratives for traction.

[13] https://thephilanthropist.ca/2023/03/the-problem-of-systemic-bias-in-cra-audits/

RECOMMENDATION: The CRA is, either deliberately or due to a lack of training and bias, distancing itself from established, unbiased sources and instead favoring highly politicized and fringe ones. This approach could lead to decisions driven by flawed, outdated, or biased information, particularly against Muslim charities.

The FATF Best Practices should explicitly caution countries from relying upon misinformation and biased sources in its risk assessment of NPOs.

Section 2.3.4 Effective capacity to respond to international requests for information about an NPO of concern

Case Study: The Disproportionate Scrutiny of Charities Operating in the Palestinian Territories and India

As explained, the Canada Revenue Agency's Review and Analysis Division has displayed a pattern of targeting Muslim charities. Particularly evident during the initial wave of charity audits conducted between 2008 and 2015, these audits disproportionately targeted charities involved in humanitarian work in the Palestinian territories, encompassing regions like Gaza and the West Bank. Additionally, charities operating in India also found themselves under the microscope.

A closer examination reveals that, in the audits of IRFAN-Canada and ISNA Canada, the CRA RAD heavily relied on intelligence and documentation originating from Israel and India, respectively. For instance, a significant portion of the evidence referenced in the revocation of IRFAN-Canada's charitable status was sourced from Israel and the United States. The means by which the CRA acquired this information remains unclear, raising questions about transparency and the reliability of the intelligence sources.

RECOMMENDATION: The FATF must maintain a clear distinction between the processes of sharing intelligence and executing audits or potentially disruptive actions against charities. History has shown that geopolitical interests and external pressures from partner nations or international entities can sometimes influence decisions to hinder humanitarian efforts. Such biases can be particularly problematic when they stem from political, rather than genuine security concerns. To maintain its integrity and uphold the principles of fairness and transparency, the FATF should ensure that charity audits should be initiated based on rigorous and evidence-driven risk assessments, devoid of any external political influence.

The risk assessment used in audits must be transparent, allowing charities to understand the reasons for their selection and the specific concerns being addressed. This transparency not only reinforces the fairness of the process but also aids charities in enhancing their operations and compliance.

A country must actively safeguard its decision-making processes from undue influence by external parties, especially those with vested political interests. Establishing checks and balances can mitigate the risk of politically motivated disruptions to humanitarian operations.

Section 3.2 Mitigating TF Risk At An Individual NPO Level

As highlighted in Section 3.2, point 91 of the FATF best practices document, there are reiterated references emphasizing the necessity for member countries to implement measures in compliance with obligations stipulated under the Charter of the United Nations and international human rights law.

In Canada, however, there are growing concerns suggesting that the counter-terrorism financing (CTF) activities of the Canada Revenue Agency (CRA) may be compromising the rights of Canadian Muslims and their charities. Presently, a significant legal action pursued by a Muslim Charity against the CRA, underscores these concerns.

Case Study: Charter Challenge by the Muslim Association of Canada Against the Canada Revenue Agency

In early 2022, the Muslim Association of Canada initiated a Charter challenge against the Canada Revenue Agency, asserting violations of their freedom of religion, association, expression, and the right to equality, both for the charity and Canadian Muslims. This legal contest has underscored the perceived prejudiced methodology employed by the CRA in various stages, including the selection, risk assessment, audit, and the justification of findings using biased references. A public hearing was held in April of this year, with the verdict of this significant Charter challenge expected by the end of 2023.

The following media articles highlights the concerns of this charter challenge:

Toronto Star: The CRA's biased approach to Eid celebrations
April 29, 2023 - Faisal Kutty
https://www.thestar.com/opinion/contributors/2023/04/29/the-cras-biased-approach-to-eid-celebrations.html

National Post: Review into Canada Revenue Agency bias has let down Canadian Muslims
April 06, 2023 - Sarah Mushtaq
https://nationalpost.com/opinion/review-into-canada-revenue-agency-bias-has-let-down-canadian-muslims

The Hill Times: The CRA's reliance on biased sources can perpetuate Islamophobia
April 5, 2023 - Mohammed Iqbal Alnadvi
https://www.hilltimes.com/story/2023/04/05/the-cras-reliance-on-biased-sources-can-perpetuate-islamophobia/383494/

Eliminating the existing systemic and cultural biases that have persisted in previous elements of the AML/ATF regime are critical to a robust and effective regime that doesn't hinder legitimate charitable activities, specifically by disproportionately targeting Muslim lead organizations.

Since 9/11, Muslims have been viewed through a lens of suspicion that the community has been unable to escape in the intervening decades. This lens of suspicion persists in the CRA's Anti-Terrorist frameworks, despite a dearth of clear convictions of wrongdoing resulting from CRA investigations of Muslim charities in over 20 years.

Rather than seen as innocent until proven guilty, the Muslim charities being targeted by RAD and the CRA are frequently hit with sanctions almost immediately. This framework stands in stark contrast to the education-first frameworks the CRA engages in the broader charitable sector. The understanding and support given to small, local organizations whose vision is to benefit the community ends when the charity is run by, funded by, or serves primarily Muslim audiences. This amounts to a culture of Islamophobia and significant harm for the organizations being unduly targeted, often without the resources to understand why and take corrective measures. Without acknowledging and addressing this disparity, nothing prevents a new Canadian Financial Crimes Agency from replicating it.

The government should take concrete steps to balance the rights of due process with any security concerns that are raised regarding Muslim charities. Unfortunately, this is often not the case, with preemptive action and sanctions taken as a first step, and burdensome processes imposed for charities to demonstrate their innocence, with harm befalling their operations and reputation in the meantime.

The way the CRA and RAD currently operate in implementing their mandate towards countering Anti-Money Laundering and Terrorist Financing activities is rooted in both structural Islamophobia in explicitly disproportionately targeting Muslim organizations, and cultural Islamophobia in the heavy handed approaches that RAD continues to employ in assuming guilt and interfering with legitimate activities.

Furthemore, a recent examination by the Middle East Eye has revealed discrepancies in how the CRA handles Muslim charities compared to other charitable entities, particularly in decision-making, deregistration, and granting the right to appeal.

'A chilling effect': Muslim charities fall prey to Canada's double standards
https://www.middleeasteye.net/news/muslim-charities-fall-prey-canada-double-standards-chilling-effect

RECOMMENDATION: The FATF's revisions to R8 underscore the essential principle that non-profit organizations are entitled to transparent and just due process when addressing concerns of potential terrorist financing and money laundering. Nevertheless, the best practices document falls short in emphasizing the crucial need for non-profits to be granted the rightful opportunity to appeal and contest allegations of terrorism financing.

Canada and the FATF R8 Best Practices

Upon examining the proposed draft for the R8 best practices, there's a discernible disparity between the guidelines set forth by the FATF and Canada's current application of R8. A number of practices that the FATF has delineated as non-compliant or misaligned with R8 standards seem to be actively employed in the Canadian context.

Given Canada's membership and commitment to the FATF, we propose the following:

FATF's Mutual Evaluation of Canada: In its forthcoming mutual evaluation, the FATF should meticulously assess the R8 best practices in juxtaposition with Canada's implementation. This would offer a holistic understanding of the potential unintended consequences that Canadian Non-Profit Organizations (NPOs) might be grappling with due to this misalignment.

Key Areas of Focus: The FATF should particularly delve into:

- **Transparency and Clarity:** As underscored in paragraph 67, there's an unequivocal need for transparent and well-defined processes. The FATF should assess whether Canada's mechanisms provide its entities with lucid insights into what is expected of them and whether they adhere to global best practices.
- **Unhindered Access to Financial Systems:** The guidelines in paragraph 110 explicitly caution against barring legitimate NPOs from accessing mainstream financial institutions. This is vital for their operations, and the FATF should scrutinize any potential breaches of this directive within the Canadian context.
- **Addressing Unintended Repercussions:** As articulated in paragraph 114, the FATF encourages proactive measures to mitigate any unintentional negative fallout stemming from Recommendation 8. An assessment of how Canada addresses these side effects, if at all, is essential.