

Outdated Text in FATF R8 and its Interpretive Note

Text that needs revision/updating highlighted in yellow

Submitted by: Global NPO Coalition on FATF

Note: These suggestions for revision of R8/IN do not imply endorsement of a specific FATF Recommendation on NPOs, as the evidence suggests NPOs are no more vulnerable for abuse than other sectors. Therefore, a withdrawal of Recommendation 8 should be considered. If Recommendation 8 is kept, it must change the current wording, which singles out the NPO sector as "particularly vulnerable." This is particularly offensive to the NPO sector and inconsistent with the risk-based approach.

Oct. 8, 2015

R8 with highlighted text	Comment/Proposed Text	BPP Source
<p>Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable,</p>	<p>This phrasing is particularly offensive to the NPO sector and misleading for countries, as the evidence indicates that NPOs are no more vulnerable to abuse than financial institutions or other sectors e.g. the business sector. In addition this broad brush of the entire NPO sector does not take into account that the vast majority of the millions of NPOs pursue legitimate charitable activities and abuse for terrorist financing only happens in rare and specific circumstances.</p> <p>Proposal: replace the highlighted part of the sentence with "Non-profit organizations may be vulnerable..." and add "FTOs exploit institutions in every sector, including non-profit organizations. Oversight measures to prevent exploitation must target abuses of NPOs without impeding their missions."</p>	<p>See Best Practice Paper, para 5 - "...some NPOs in the sector continue to be misused and exploited by terrorists through a variety of means"</p>
<p>and countries should ensure that they cannot be misused: (a) by terrorist</p>	<p>The word "ensure" is not consistent with the risk-</p>	<p>See Best</p>

<p>organisations posing as legitimate entities; (b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and (c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.</p>	<p>based and targeted approach – no regulation can ever ensure 100% that misuse cannot incur in any sector.</p> <p>Proposal: replace the highlighted word with "apply a targeted and proportionate approach so"</p>	<p>Practice Paper, para 7e) - " A targeted approach in dealing with the terrorist threat to the NPO sector is essential.."</p>
<p>Interpretive Note with highlighted text</p>	<p>Comment/Proposed Text</p>	
<p>A. INTRODUCTION</p> <p>1. Non-profit organisations (NPOs) play a vital role in the world economy and in many national economies and social systems. Their efforts complement the activity of the governmental and business sectors in providing essential services, comfort and hope to those in need around the world. The ongoing international campaign against terrorist financing has</p> <p>unfortunately demonstrated, however, that terrorists and terrorist organisations exploit the NPO sector to raise and move funds, provide logistical support, encourage terrorist recruitment, or otherwise support terrorist organisations and operations. This misuse not only facilitates terrorist activity, but also undermines donor confidence and jeopardises the very integrity of NPOs. Therefore, protecting the NPO sector from terrorist abuse is both a critical component of the global fight against terrorism and a necessary step to preserve the integrity of NPOs.</p>	<p>This section should also recognize the value of peace and justice oriented NPOs and the particular harm that over-regulation due to poor implementation of R8 can do to them.</p> <p>Proposal: "Nonprofit organisations play a vital part in the world and national economies. They play a key role in social systems, increasing social cohesion and maintaining and securing human rights and peace on the ground. They reduce the conditions that drive radicalization by responding to communities' expressed needs."</p> <p>This text implies a greater level of abuse has occurred than the evidence suggests. The language could be qualified to make it clear the entire sector has not been exploited.</p> <p>Proposal: replace the highlighted part of the sentence with "indicated that terrorists and</p>	<p>See Best Practice Paper, entire para 7b) and 7h)</p>

	<p>terrorist organisations may exploit some NPOs in specific circumstances or create sham charities in order to...."</p>	
<p>2. NPOs may be vulnerable to abuse by terrorists for a variety of reasons. NPOs enjoy the public trust, have access to considerable sources of funds, and are often cash-intensive. Furthermore, some NPOs have a global presence that provides a framework for national and international operations and financial transactions, often within or near those areas that are most exposed to terrorist activity. Depending on the legal form of the NPO and the country, NPOs may often be subject to little or no governmental oversight (for example, registration, record keeping, reporting and monitoring), or few formalities may be required for their creation (for example, there may be no skills or starting capital required, no background checks necessary for employees). Terrorist organisations have taken advantage of these characteristics of NPOs to infiltrate the sector and misuse NPO funds and operations to cover for, or support, terrorist activity.</p>	<p>Same comment as above Proposal: Remove "often" – since the majority of NPO laws have appropriate transparency and accountability rules in place including in many cases governmental oversight mechanisms.</p> <p>Proposal: replace the highlighted sentence with "Terrorists and terrorist organisations may in specific cases take advantage of NPOs to infiltrate the sector and misuse NPO funds and operations to cover for, or support, terrorist activity. Depending on the country, some governments may over-regulate NPOs in the name of security. The tendency toward radicalization increases in such settings, where citizens have inadequate independent and protected space to organize around community needs. "</p>	<p>See Best Practice Paper, entire para 7b) and 7h)</p>
<p>B. OBJECTIVES AND GENERAL PRINCIPLES</p> <p>3. The objective of Recommendation 8 is to ensure that NPOs are not misused by terrorist organisations: (i) to pose as legitimate entities; (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes. In this Interpretive Note, the approach taken to achieve this objective is based on the following general principles:</p> <p>(a) Past and ongoing abuse of the NPO sector by terrorists and terrorist organisations requires countries to adopt measures both:</p>	<p>This is inconsistent with the risk-based approach. A risk based approach that follows a risk assessment of the sector in relation to the threat context should be the first step taken. Part of that process is to distinguish between the types of action taken against NPOs that are complicit and those that are exploited, in order to protect legitimate NPOs.</p> <p>We know that 100% protection against abuse is impossible and a risk based approach should be taken. The RBA should be mentioned as early as</p>	<p>See Best Practice Paper, from para 9 to para 15</p>

<p>(i) to protect the sector against such abuse, and (ii) to identify and take effective action against those NPOs that either are exploited by, or actively support, terrorists or terrorist organisations.</p>	<p>possible.</p> <p>Proposal: “To protect those NPOs considered at risk for abuse...” or “to assess the risk of the NPO sector and to apply a risk-based and proportionate approach (RBA) to ensure that measures to prevent or mitigate terrorist financing are commensurate with the risks identified. Strict safeguards are essential to prevent politically motivated restrictions on NPOs in order to avoid the public perception that there is no protected space of NPOs. Limits on fundamental rights of association, assembly and expression are key push factors in driving violent extremism.”</p>	
<p>(b) Measures adopted by countries to protect the NPO sector from terrorist abuse should not disrupt or discourage legitimate charitable activities. Rather, such measures should promote transparency and engender greater confidence in the sector, across the donor community and with the general public, that charitable funds and services reach intended legitimate beneficiaries. Systems that promote achieving a high degree of transparency, integrity and public confidence in the management and functioning of all NPOs are integral to ensuring the sector cannot be misused for terrorist financing.</p>	<p>This text may not be consistent with the risk-based and proportionate approach. It can be read to mean TF related regulations should be applied to the entire sector.</p> <p>Proposal: Replace the highlighted phrase in the first sentence with “prevent and mitigate terrorist financing abuse of the NPO sector.”</p> <p>Replace the highlighted sentence with " Based on national risk assessment, countries should apply a risk-based and proportionate approach (RBA) to ensure that measures to prevent or mitigate terrorist financing are commensurate with the risks identified , do not inadvertently suppress protected political and human rights and ensure that NPOs can maintain access to</p>	<p>See Best Practice Paper, from para 9 to para 15</p>

	established and regulated financial services. "	
<p>(c) Measures adopted by countries to identify and take effective action against NPOs that either are exploited by, or actively support, terrorists or terrorist organisations should aim to prevent and prosecute, as appropriate, terrorist financing and other forms of terrorist support. Where NPOs suspected of, or implicated in, terrorist financing or other forms of terrorist support are identified, the first priority of countries must be to investigate and halt such terrorist financing or support. Actions taken for this purpose should, to the extent reasonably possible, avoid any negative impact on innocent and legitimate beneficiaries of charitable activity. However, this interest cannot excuse the need to undertake immediate and effective actions to advance the immediate interest of halting terrorist financing or other forms of terrorist support provided by NPOs.</p>	<p>This section should recognize that the rule of law and due process, including adequate notice of the substance of charges and a meaningful opportunity to respond, are essential for proper implementation of R8.</p> <p>Proposal: At the end of the highlighted sentence add “Such action should conform to the rule of law and due process, including adequate notice of the substance of charges and a meaningful opportunity to respond for NPOs subject to enforcement action. In all cases charitable funds must be used solely for charitable purposes.”</p>	
<p>(d) Developing cooperative relationships among the public, private and NPO sector is critical to raising awareness and fostering capabilities to combat terrorist abuse within the sector.</p> <p>Countries should encourage the development of academic research on, and information-sharing in, the NPO sector to address terrorist financing related issues.</p>	<p>This implies that NPOs are unaware of the risks and that they have nothing to contribute to knowledge about the risks. This should encourage a two-way dialog to deepen the knowledge based that supports a risk-based approach.</p> <p>Proposal: use wording from the Best Practice Paper para 4.</p> <p>Research is also important to monitor implementation of FATF Recommendations on NPOs, especially those with low risk and/or those for which freedoms of association, assembly and expression are fundamental to their mission.</p> <p>Proposal: At the end of the sentence on research add: “To prevent the FATF standards</p>	<p>See Best Practice Paper, para 4</p>

	<p>(intentionally or unintentionally) from silencing the legitimate NPO sector, countries should encourage and support research that monitors and reports on the effects R8 and other recommendations have on the NPO sector.”</p>	
<p>(e) A targeted approach in dealing with the terrorist threat to the NPO sector is essential given the diversity within individual national sectors, the differing degrees to which parts of each sector may be vulnerable to misuse by terrorists, the need to ensure that legitimate charitable activity continues to flourish, and the limited resources and authorities available to combat terrorist financing in each country.</p> <p>(f) Flexibility in developing a national response to terrorist financing in the NPO sector is also essential, in order to allow it to evolve over time as it faces the changing nature of the terrorist financing threat.</p>	<p>Proposal: Move these sections up, as they reflect the guiding principles of the risk-based approach.</p>	<p>See Best Practice Paper, from para 9 to para 15</p>
<p>C. MEASURES</p> <p>4. Countries should undertake domestic reviews of their NPO sector, or have the capacity to obtain timely information on its activities, size and other relevant features. In undertaking these assessments, countries should use all available sources of information in order to identify features and types of NPOs, which, by virtue of their activities or characteristics, are at risk of being misused for terrorist financing. Countries should also periodically reassess the sector by reviewing new information on the sector’s potential vulnerabilities to terrorist activities.</p>	<p>This should be subject to respecting privacy rights and reflect a risk-based and proportionate approach. It should also warn against use of unverified open source and media information as the basis for enforcement action, and stress the need to factual information to be concretely examined and confirmed. See the recent General Court of the European Union ruling in case T-400/10 (2014).</p> <p>Proposal: replace the highlighted part of the sentence with "...countries that use open source information should examine and verify it prior to relying it..."</p> <p>At the end of that sentence insert: “In addition data protection and the right to privacy should</p>	

	<p>be respected."</p> <p>Proposal: "Countries should assess whether a potential risk for terrorist financing abuse may have already been addressed by existing laws/regulations including self-regulatory tools (even though the laws may have not been drafted with this intention in mind). Countries should only consider appropriate and targeted measures if a risk has been identified."</p>	
<p>5. There is a diverse range of approaches in identifying, preventing and combating terrorist misuse of NPOs. An effective approach, however, is one that involves all four of the following elements: (a) outreach to the sector, (b) supervision or monitoring, (c) effective investigation and information gathering and (d) effective mechanisms for international cooperation. The following measures represent specific actions that countries should take with respect to each of these elements, in order to protect their NPO sector from terrorist financing abuse.</p>	<p>Mandatory language undercuts the risk-based approach and assumes that zero risk is feasible. The identification of risks belongs in previous paragraph – this is already about potential risk mitigation measures.</p> <p>Proposal: "There is a diverse range of approaches of how countries could mitigate risks which were potentially identified by the review of the sector. An effective approach, should involve the following elements: (a) ongoing outreach to the sector (b) proportionate and risk based supervision or monitoring c) effective investigation and information gathering and d) effective mechanisms for international cooperation. The following measures represent specific actions that countries should take with respect to each of these elements, in order to mitigate an identified risk of the sector."</p>	<p>Best Practice Paper, especially para 9, para 11, para 14, para 18, para 21, para 22</p>
<p>(a) Outreach to the NPO sector concerning terrorist financing issues</p> <p>(i) Countries should have clear policies to promote</p>	<p>Same comment on general NPO regulations as above – not risk-based. This could note that good governance in and of itself has the side benefit of</p>	<p>Best Practice Paper, especially para</p>

<p>transparency, integrity and public confidence in the administration and management of all NPOs.</p>	<p>protecting against abuse by terrorists.</p> <p>Proposal: emphasize the risk based and proportionate approach</p>	<p>9, para 11, para 14, para 18, para 21, para 22</p>
<p>(ii) Countries should encourage or undertake outreach programmes to raise awareness in the NPO sector about the vulnerabilities of NPOs to terrorist abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse.</p>	<p>Same comment as above - This implies that NPOs are unaware of the risks and that they have nothing to contribute to knowledge about the risks.</p> <p>Proposal: "countries should encourage a two-way dialog to deepen the knowledge base that supports a risk-based and proportionate approach."</p>	<p>Best Practice Paper para 4.</p>
<p>(iii) Countries should work with the NPO sector to develop and refine best practices to address terrorist financing risks and vulnerabilities and thus protect the sector from terrorist abuse.</p> <p>(iv) Countries should encourage NPOs to conduct transactions via regulated financial channels, wherever feasible, keeping in mind the varying capacities of financial sectors in different countries and in different areas of urgent charitable and humanitarian concerns.</p>	<p>NPOs that must conduct international financial transactions to carry out their missions are facing increasing barriers in accessing regulated financial channels. This should be addressed in the IN.</p> <p>Proposal: at the end of the highlighted sentence insert: "Countries should facilitate access to regulated financial channels for NPOs and encourage NPOs to conduct transactions via regulated financial channels."</p>	
<p>(b) Supervision or monitoring of the NPO sector Countries should take steps to promote effective supervision or monitoring of their NPO sector. In practice, countries should be able to demonstrate that the following standards apply to NPOs which account for (1) a significant portion of the financial resources under control of the sector; and (2) a substantial share of the sector's international activities.</p> <p>(i) NPOs should maintain information on: (1) the purpose and objectives of their stated activities; and (2) the identity of the person(s) who own, control or direct their activities,</p>	<p>This entire section is inconsistent with the risk-based approach.</p> <p>Proposal: New title: Proportionate and risk based Supervision or monitoring of the NPO sector</p> <p>Delete existing text and replace it with "Countries should take steps to promote effective supervision or monitoring of those</p>	<p>Best Practice Paper, especially para 9, para 11, para 14, para 18, para 21, para 22, para 29, para 30, para 31...</p>

<p>including senior officers, board members and trustees. This information should be publicly available either directly from the NPO or through appropriate authorities.</p> <p>(ii) NPOs should issue annual financial statements that provide detailed breakdowns of incomes and expenditures.</p> <p>(iii) NPOs should be licensed or registered. This information should be available to competent authorities.</p> <p>(iv) NPOs should have appropriate controls in place to ensure that all funds are fully accounted for, and are spent in a manner that is consistent with the purpose and objectives of the NPO’s stated activities.</p> <p>(v) NPOs should follow a “know your beneficiaries and associate NPOs” rule, which means that the NPO should make best efforts to confirm the identity, credentials and good standing of their beneficiaries and associate NPOs. NPOs should also undertake best efforts to document the identity of their significant donors and to respect donor confidentiality.</p> <p>(vi) NPOs should maintain, for a period of at least five years, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation, and should make these available to competent authorities upon appropriate authority. This also applies to information mentioned in paragraphs (i) and (ii) above.</p> <p>(vii) Appropriate authorities should monitor the compliance of NPOs with the requirements of this Recommendation. Appropriate authorities should be able to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of these NPOs.</p>	<p>NPOs at risk and avoid over-regulation, which disrupts the activities of legitimate NPOs. In practice, countries should consider standards that apply only to NPOs which have been identified to be at risk (either through laws or self-regulatory mechanisms).”</p> <p>Delete (i) – (vii)</p>	
(c) Effective information gathering and investigation	Countries should respect privacy rights of NPOs	

<p>(i) Countries should ensure effective cooperation, coordination and information sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs.</p>	<p>and not treat them as government entities for the purpose of information collection. There must be a specific justification for collection of information from a private entity, such as that required for a search warrant.</p> <p>Proposal: Delete highlighted text</p>	
<p>ii) Countries should have investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations.</p> <p>(iii) Countries should ensure that full access to information on the administration and management of a particular NPO (including financial and programmatic information) may be obtained during the course of an investigation.</p> <p>(iv) Countries should establish appropriate mechanisms to ensure that, when there is suspicion or reasonable grounds to suspect that a particular NPO: (1) is a front for fundraising by a terrorist organisation; (2) is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures; or (3) is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations, this information is promptly shared with relevant competent authorities, in order to take preventive or investigative action.</p> <p>(d) Effective capacity to respond to international requests for information about an NPO of concern Consistent with Recommendations on international cooperation, countries should identify appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or other forms of terrorist support.</p>	<p>No comment</p>	

<p>D. RESOURCES FOR SUPERVISION, MONITORING, AND INVESTIGATION</p> <p>6. Countries should provide their appropriate authorities responsible for supervision, monitoring and investigation of their NPO sector with adequate financial, human and technical resources.</p>	<p>No comment</p>	
<p>Glossary of specific terms used in this Recommendation</p> <p>Appropriate authorities refers to competent authorities, including accrediting institutions, and self-regulatory organisations.</p> <p>Associate NPOs includes foreign branches of international NPOs.</p> <p>Beneficiaries refers to those natural persons, or groups of natural persons who receive charitable, humanitarian or other types of assistance through the services of the NPO.</p> <p>Non-profit organisation or NPO refers to a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”.</p>	<p>No comment</p>	