

## Submission by NPOs attending the FATF consultation at the PSCF on RA guidance for NPOs

The Global NPO Coalition on FATF welcomes the FATF initiative to develop more guidance on assessing risk for the financing of terrorism. Our experience from working with different governments shows that they are struggling with the undertaking of a national risk assessment (NRA) and the specific assessment of the nonprofit sector. We recommend that the Non-Profit Organisation (NPO)-specific general points be formulated as a concise chapter and be **listed along with the general principles in the RA guidance on CFT itself** and not as an annex. In the longer run, a more detailed and tailored-to-regional-needs guidance document for the nonprofit sector could be envisaged by FATF and NPOs.

### Overarching messages to be included in the draft Guidance

1. We want to **recall the importance of the risk assessment (RA) in the FATF risk-based approach**. NPOs are not universally vulnerable to TF, and it is right and important that countries should assess what their risk level is, and in what part of their diverse sector it is highest.
2. As also stated by FATF representatives during the Private Sector Consultative Forum, **the RAs are more than a product - they are a process** that will eventually affect the behaviour and work of multiple stakeholders.
3. Because governments have a great deal of flexibility in choosing the form of the RA on the NPO sector, it is important that governments **share the methodology and approach they have developed with NPOs and other stakeholders, as well as consult with the NPO sector, to the extent possible, on findings, identification of risk and any actual cases of abuse**. This will only help the sector understand the risks it faces and work together to mitigate them.

It is advisable for risk assessment processes to be transparent and reports to be published. This should include publishing the methodology used, and the proposed plan for consultation. Whilst it is accepted that some data will need to be kept confidential, findings should nevertheless be summarised so that the risk is understood by the sector.

4. The guidance should echo FATF's explicit and repeated recognition of the vital work that NPOs do, and therefore needs to emphasise again that **the risk assessment is not a tool to limit the work of the sector but to enable it to continue its important work, including in the fight against terrorism-financing**.

*“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 FATF recognises the vital importance of NPOs in providing these important charitable services, as well as the difficulty of providing assistance to those in need, often in high risk areas and conflict zones, and applauds the efforts of NPOs to meet such needs.”* 2, Interpretive Note R8

5. As an overarching message, the guidance should highlight that a risk assessment should also **consider how actions of other actors, which aim to reduce the risk in one part of the sector/for another sector, may increase the overall risk profile in a country or for one specific actor.** This is true not only for the NPOs but also for RAs of other sectors.

For example, measures by financial institutions to limit their institutional and reputational risk by reducing or withdrawing banking services. These risk compliance measures, when applied by banks, could force nonprofits into using alternative, riskier money transfer channels. Practices by banks such as suspending accounts of NPOs without legitimate cause, requiring detailed reviews of internal documents including project reports, and requiring the disclosure of the private information of directors, board members, trustees and donors are measures that impede the work of NPOs and lead to increased TF risk. So do onerous, or resource intensive, government and donor government regulations which unduly increase the compliance burden for otherwise legitimate nonprofits. These practices can result in reducing the effectiveness of the regulations, making it harder for regulators to distinguish the NPOs that are truly high-risk. Examples of such measures include broad measures that target NPOs which do not fall under the FATF definition, listing NPOs as obliged entities and requiring from them equal reporting requirements as DNFBPs, requiring pre-approval of receipt or disbursement of funds and donations, etc. A risk assessment process and report should explicitly identify and mention any such counter-productive approaches, which may at the end lead to the ineffectiveness of measures proposed.

6. As part of the assessment, jurisdictions should **review the adequacy of measures which relate to the subset of the NPO sector that may be abused for terrorist financing.** In line with the FATF Standards, the guidance should specify that where existing measures are sufficient, **no further action is needed.**

From the draft outline shared with the Coalition, we understand that other parts of the NRA Guidance will also potentially be applicable to the NPO sector. As we do not have access to the actual draft, we cannot comment on that. However, we strongly advise that the guidance specifically refer to exactly which sections from the other chapters may be considered for NPOs so as to provide as much clarity as possible and avoid possible misapplication.

### **Specific messages regarding risk assessment processes to be included in the Guidance**

We respectfully recommend that the following key messages are highlighted more explicitly and clearly in the guidance. We draw these from our experience of working on the implementation of the FATF Standards. If they are not appropriately applied, they undermine the effectiveness of the measures and the implementation of the FATF goals.

- **Countries should use the FATF definition on NPOs as a starting point when conducting risk assessment.** Governments should determine the NPOs at-risk after conducting a risk assessment of only those NPOs in the country that fall within this definition.

Countries should recognise that the definitions of NPOs used in their laws may not coincide with the FATF definition of NPOs. They should consider whether organisations covered by their NPO laws or AML/CFT measures in other laws may be considered NPOs by FATF.

- The FATF recognition that **not all NPOs within its definition represent the same level of terrorist financing risk**, and that **some NPOs carry no risk at all** should be emphasised. This is in the spirit of Recommendation 8, which calls for a **‘risk-based’ approach.** Zero tolerance

approaches are not compatible with the spirit of the Recommendation. It is unlikely that a risk assessment will be able to assert with absolute confidence that there is no TF risk for its NPO sector. However, no country, authority, financial institution or NPO can or should be expected to operate in a zero-risk environment.

Jurisdictions are increasingly espousing a zero tolerance approach in relation to terrorist financing risks that NPOs may face. This is not compatible with an evidence-based risk-based approach and impedes NPOs' work by unduly disrupting and limiting legitimate charitable activity. A low risk assessment is likely in many cases. In such cases, countries should consider whether that risk falls within its risk appetite.

- In the context of the RA with regard to NPOs, the **focus should not only be on inherent risk but on addressing residual risk, including reviewing existing measures**, hard law, soft law and NPO risk-management measures.

With regard to addressing residual risk, the guidance needs to take into consideration that risk management, no matter how well conceived and implemented, cannot eliminate risk; it only reduces the likelihood of its occurrence, and mitigates against the potential consequences. It is the responsibility of the organisation and other stakeholders to find a risk compliance mechanism to identify and take all reasonable actions to reduce the risk as far as possible, and having done so, to decide if the remaining, or "residual" risk, is acceptable or not. This decision should be weighted according to the severity of need and the resulting criticality of the humanitarian, human rights or development response.

In case the guidance references examples for the due diligence required by donor governments on employees, partners and beneficiaries that already address risks, the guidance should stress as per the Interpretive note to Recommendation 8 Paragraph C Measures 6 (b) (v.) that: 'NPOs could be required to take reasonable measures to confirm the identity, credentials and good standing of beneficiaries and associate NPOs and that they are not involved with and/or using the charitable funds to support terrorists or terrorist organisations. However, NPOs should not be required to conduct customer due diligence. NPOs should not be expected to identify each specific individual, as such a requirement would not always be possible and would, in some instances, impede the ability of NPOs to provide much-needed services in crises and humanitarian contexts. Donor governments, particularly development banks, are increasingly asking humanitarian NPOs to conduct bank-style due diligence on beneficiaries. The beneficiary selection process is based on needs, vulnerability and selection criteria generally defined by respective clusters in line with international standards and in consultation with the relevant technical authorities and local communities. Customer due diligence does not form part of the selection criteria, and would negatively impact the impartiality and timely nature of responses. A risk assessment process should identify such situations and address them in the findings and recommendations.

- This was also emphasised by FATF representatives during the Private Sector Consultative Forum in relation to the overall approach to the risk assessment. **Risk assessments should flag existing measures that do not address identified risks, or are disproportionate to risk**, so that they can be removed.

*In practice, to be 'Effective' under Immediate Outcome 10, measures must not disrupt legitimate NPO activities. Measures which disrupt legitimate NPO activities necessarily do not meet this effectiveness test. The Interpretive Note elaborates that measures should minimize the negative impact of TF measures on beneficiaries.*

**A risk assessment should explicitly consider the positive but also negative impact of any measures, both in terms of legitimate NPO activity, the potential negative impact on beneficiaries and possible non-compliance with human rights and humanitarian law.** Towards this end, the FATF also explicitly recognises that NPOs should be operationally independent, and that implementation of R8 must be “consistent with countries’ obligations to respect freedom of association, assembly, expression, religion or belief, and international humanitarian law”.<sup>[4]</sup> It further recognises the possibility that R8 could be used to justify the abuse of civil society for political purposes, and that such actions may “undermine *the legitimate purpose of the Recommendation*”.

- Risk assessments should consider that Recommendation 8 relates only to terrorist financing and **not to money laundering.**

NPOs are not DNFBPs. NPOs should not be reporting entities, or required to undertake customer due diligence. Where such or other AML-related measures exist, they should be critically analysed for their impact on the overall risk environment (see above general messages), and for compliance with the FATF requirements on not hindering legitimate NPO activity (IO.10).

- Risk assessment **methodologies should be evidence based and work with clear data.** The risk assessment should explicitly analyse the quality of data used, and whether it is sufficient to base an assessment upon. If there is insufficient good quality data to make an assessment, authorities should assess and state whether this is because (1) there are few or no incidences of terrorist financing in the NPO sector, or (2) the authorities lack the competence to identify cases which they have reason to suspect exist. Authorities should, wherever possible, avoid using speculative data. Surveys should avoid leading, open or speculative questions on risks. Questions on risk perception should always include an option to answer ‘don’t know’. Authorities should avoid borrowed data from a neighbour. This is specific learning from engagement in the RA-related processes in Germany, Mexico, Argentina, Kosovo.

If there is insufficient good-quality data, authorities may choose to use a methodology designed to compensate for that gap. For example, by using a gap analysis, threat intelligence or descriptive research model. In such circumstances, authorities should be clear that the model was chosen in the absence of sufficient good quality data to allow a proper case analysis, and explicitly state how the absence of this data and the use of the specified methodology may limit the accuracy of the final assessment.

- Large and decentralised jurisdictions should recognise that the risk may vary significantly between different parts of the country. In some cases, a series of provincial risk assessments may be preferable, or even constitutionally necessary. In such cases, federal authorities should play a coordinating and advisory role to **ensure consistent and comparable methodologies and results** (a country in Asia actually applied 3 different RA methodologies to 3 different regions in the countries).
- Authorities should recognize, and where possible incorporate, the efforts made by NPOs to consider and assess the TF risk in/to their sector. Such surveys, studies, research and self-assessments can provide an invaluable perspective on the ground-level risk and the impact of mitigating measures.
- Authorities should ensure that there is proper consultation within government. All relevant authorities should be included; FIUs, law enforcement, registration bodies, regulators, tax

authorities, line ministries or others. However, **it is particularly important that the regulatory authority for NPOs - either a ministry or specific regulator is aware, understands and is involved in the RA process from the outset.** This is particularly important to ensure that risk-mitigating regulatory measures are assessed and implemented effectively.

- Where possible, **the national risk assessment findings should be formulated in a way to provide explicit guidance for banks on how best to evaluate the relative riskiness of their NPO clients.** This should include clear guidance on those NPOs which banks should routinely classify as lower risk, in line with the R8 requirement and to encourage the use of formal banking channels, as well as the strategic aim of the assessment to consider the total risk environment (see line 2).

### **Engagement and outreach in risk assessments**

- The FATF requires countries to consult with all stakeholders, including Civil Society Organizations, under Immediate Outcome 1 (IO.1). Hence we encourage FATF jurisdictions to involve NPOs as a constructive stakeholder and partner in the risk assessment processes, and in overall actions towards meeting standards in this area.
- **RAs could be improved globally if engagement and outreach with the sectors concerned happens more systematically and continuously.** NPOs have become more aware of the FATF structure and its Recommendations and are becoming important partners in achieving the common goal of fighting terrorism financing and money laundering. Since 2013, the global coalition has engaged constructively with FATF and this dynamic is now repeated at the regional (FSRBs) and country level.
- NPOs understand that there may be a risk of abuse in parts of the sector (as in other sectors) and we are seeing more and more cases of constructive NPO engagement with governments in FATF jurisdictions, identifying risks where they exist and suggesting mitigation measures. The guidance should recognise that NPOs are investing significant efforts in **increasing awareness and training NPOs at the global, regional and national level to engage in FATF risk assessment** and broader processes. The examples showcased here (which we hope will be included in the guidance) show the genuine effort put in by NPOs in contributing towards risk assessment processes by providing expertise through technical assistance, outreach towards a wider set of NPOs on the ground, and own self-assessment processes.
- The guidance could explain how NPOs have already engaged around improving the NRAs for assessing TF/AML risk related to NPOs and jurisdictions may consider the following, to the extent appropriate (including materials already-developed and tested):
  - NPOs have worked with experts on developing a RA methodology for NPOs in order to fill a gap. It is currently being tested by some jurisdictions who are open to it.
  - NPOs have worked to develop their own self-assessments, surveys, and reviews in a series of countries (Germany, Switzerland, Mexico), which can be used as templates for consideration in other jurisdictions.
  - They are regional NPO self-assessments in progress (Latin America region)
  - Some NPOs provide RA training to government officials as well as NPOs.
- Engagement is a process. It should continue through the risk assessment process. The form of the engagement, and the organisations involved, may change as the assessment proceeds, with a very

wide range consulted at the outset, and then those groups identified as high risk primarily consulted when consideration is given to the effectiveness and impact of mitigating measures. The process may include:

- NPO/government working groups (e.g., Kyrgyzstan)
- Public hearings. Invitations may be made via general mail shots, where authorities are in possession of details of all NPOs; by public announcement via various press and social media that the process is starting (e.g., Kyrgyzstan is an example of a country which made a public call for applicants to be engaged in the risk assessment process). Australia, by virtue of making an open call for comments in advance of the RA, is a good practice example.
- Surveys and questionnaires (e.g., Germany).

Special consideration needs to be given on how to reach organisations which may be at high risk, but which are often disengaged from consultation processes. The normal consultation channels may not be affected, as they will most likely lead to umbrella bodies or organisations which by their nature are low risk.

## Examples of partnership efforts in contributing to risk assessment processes

The following examples are drawn from experiences of members of the the Expert Hub on AML/CFT and the Global NPO Coalition on FATF.

### **Kosovo**

NPOs in Kosovo had an opportunity to participate in the government-led working group on conducting a risk assessment of the NPO sector during 2017/2018. NPO representatives in the group were educated and provided substantive input into the methodology and to the draft risk assessment report. The government also provided additional time for internal NPO sectoral consultation on the draft report, which increased its outreach and resulted in more coherent input. As a result, the risk assessment report includes more focused measures based on awareness raising, increased cooperation and implementation of the existing legal framework, as well as developing a detailed National Action Plan on Counter-Terrorism measures. In addition, a significant number of NPOs in Kosovo have been made aware of this topic and have provided information about their work.

### **Kyrgyzstan**

During 2019, NPOs in Kyrgyzstan have been included in the government-led working group on conducting the NPO sector risk assessment. The FIU issued a public call for civil society representatives to become formal members of the risk assessment working group, with three NPOs appointed to the group. NPO representatives worked with government to identify and adapt a methodology developed by an international consultancy for use in Kyrgyzstan. This methodology requires active engagement of the NPO sector, to increase accuracy of the data collected, increase awareness about the potential risks and protective measures, build trust among the sectors and enhance buy-in for the recommendations and results

### **Tunisia**

The Tunisian FIU and Department of Civil Society are working in partnership with local NPOs and international experts to implement a Risk Assessment of the sector, which they intend to showcase as an example of regional best practice. The Risk Assessment methodology includes joint (government/NPO sector) interpretation of risk data, a joint analysis of mitigating measures, and the inclusion of data from

surveys of the sector on their perception and assessment of the TF risk and risk mitigating measures. The Tunisian FIU and NPO regulator are also working closely with civil society to deliver sessions across the country to raise awareness of the TF risk and obtain feedback from NPOs on issues they face in relation to TF and effective mitigating measures.

### **Australia**

Australia conducted a stand-alone NPO sector risk assessment following its Mutual Evaluation in 2015. Early in the process, Australia issued a public call for comments from the NPO sector and other interested stakeholders. It also detailed the methodology it would be using for the risk assessment. A detailed risk assessment report was produced in 2017. Australia's original rating of Non-Compliant in 2015 was recently re-assessed as Largely Compliant following this initiative.

### **Germany**

Germany is in the phase of pre-FATF evaluation for which both the government and NPO sector are preparing. In contrast to other examples listed here, no joint risk assessment is planned. Instead there is liaison and discussion between the authorities and the NPOs which are leading civil society initiatives on the topic. Hence, authorities have met with NPOs to explain the process and their plans, and have engaged with NPOs as they develop their risk assessment methodology. Meanwhile NPOs have undertaken an independent assessment, using in part data from a survey of over 400 organisations of their perception of the TF risk and the effectiveness of mitigating measures by both government and the NPO sector. Government was invited to comment on the survey questions prior to the poll, and the initial findings will be presented at a joint government-NPO workshop. The survey itself was specifically designed to avoid speculative answers from respondents.

### **Argentina and Mexico - Sub-Regional Risk Assessment on Terrorism Financing of NPO**

NPO Coalitions in Argentina and Mexico are conducting a Sub-Regional Risk Assessment on Terrorism Financing of the nonprofit sector with the technical support of Global NPO Coalition members. The sectoral assessment findings will contribute to a better understanding of TF risks in nonprofits and will be useful as a model for other countries in the Latin-American region. Both countries are in the pre-evaluation phase and getting ready for their National Risk Assessments.

### **Nigeria**

Nigeria is in the process of acquiring FATF membership, and is in the pre-evaluation phase, with an evaluation coming up in the next 2 years. In order to facilitate the engagement of NPOs in that process, an NPO expert on AML/CFT organised a country-level workshop with the Nigerian Financial Intelligence Unit on the FATF standards and procedures, and on the need to engage civil society. The workshop was a collaborative effort with the government institution and resulted in more awareness in the NPO sector about the Nigerian AML/CFT regime. At the same time, it provided an opportunity for engagement with and the communicating of NPO perspectives. NPOs in Nigeria followed up with joint discussions on future strategy on NPO engagement in the evaluation process.

### **Netherlands**

The stakeholder roundtable co-hosted by a member of the Global NPO Coalition and the Ministry of Finance and in partnership with the Ministry of Foreign Affairs addresses TF risk compliance measures applied by NPOs, banks and the Ministry of Foreign Affairs and Foreign Trade and Development Cooperation and the challenges faced by the stakeholders concerning inherent and residual risks. A number of solutions are currently being further developed, e.g. sharing of risk compliance measures to identify

residual risk, setting up a mechanism through which nonprofits are able to understand AML/CFT requirements by banks and ways to comply with these requirements, and banks are better able to understand the specific challenges NPOs face when carrying out work in conflict and high-risk areas.

## US

Treasury updated its 2015 National Terrorist Financing Risk Assessment (NTFRA) in 2018 and recognized that the charitable sector overall is low risk, but noted that charities operating in areas where terrorist groups operate face increased risk. The US nonprofit sector provided input to Treasury on the NTFRA, noting that increasing difficulties accessing financial services forces charities to use more risky methods of moving funds, including carrying cash. The NTFRA did not mention this issue.

## UK

The UK assessed NPO risk as part of its National Risk Assessment (NRA), which is regularly reviewed and updated. In the last update prior to its 2018 Mutual Evaluation, the UK assessed that whilst the inherent risk to its NPO sector was not significantly altered, the net risk was lower due to the effectiveness of targeted mitigating measures introduced in the interim. These measures included increased outreach and specific guidance for NPOs on avoiding TF risk. Consequently, the net or residual risk for NPOs was adjusted to 'low', from a previous assessment of 'medium-high'. The assessment recognises that a small number of NPOs remain higher risk, and continues to tailor outreach and monitoring measures for that part of the sector. The UK's assessment demonstrates how it was found compliant on R8.

## Indonesia / The Philippines

As part of the Third Round Evaluation, both Indonesia and The Philippines undertook detailed joint-evaluations to comply with the Domestic Review requirement. With technical assistance from UK government officials, representatives from government and civil society jointly implemented a methodology for assessing their legal and regulatory mitigating measures. The reviews included desk assessments and visits to all relevant regulators and a representative range of NPOs, both in the capital and in the regions. In both cases, the joint government-NPO assessment team agreed a range of strategic recommendations for improvements.

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[1] See also 4, Typologies. *“The importance of the NPO sector to the global community cannot be overstated. It is a vibrant sector, providing innumerable services to millions of people.”*

[2] *To what extent, without disrupting legitimate NPO activities, has the country implemented a targeted approach, conducted outreach, and exercised oversight in dealing with NPOs that are at risk from the threat of terrorist abuse?* Immediate Outcome 10, 10.2. See also INR8 paragraphs 4(a), 4(d) and 4(e), and Best Practices Paper paragraph 32(a).

[3] *“Actions taken for this purpose should, to the extent reasonably possible, minimise negative impact on innocent and legitimate beneficiaries of charitable activity.”* 4 (e), Interpretive Note R8.

[4] 6, Best Practices Paper. See also *ibid* 22, and Typologies 28.



[5] 86, Typologies. See also *ibid* 84, 85 and 87

[6] “*It may be possible that existing measures are sufficient to address the current TF risk to the NPO sector identified in a country, although periodic reviews may identify new or evolved TF risks over time.*” 7, Best Practices Paper. See also Paragraphs 19 and 29.

[7] “*IO.1.6. To what extent does the country ensure that respective financial institutions, DNFBPs and other sectors affected by the application of the FATF Standards are aware of the relevant results of the national ML/TF risk assessment(s)?*” Information that could support this assessment include: “*3. Outreach activities to private sector and relevant authorities (e.g., briefings and guidance on relevant conclusions from risk assessment(s); frequency and relevancy of consultation on policies and legislation, input to develop risk assessment(s) and other policy products).*” Examples that could support the conclusions include “*6. Which competent authorities and relevant stakeholders... are involved in the assessment(s) of risks? How do they provide inputs to the national level ML/TF assessment(s) of risks, and at what stage?*”

[8] Introduction to *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*.