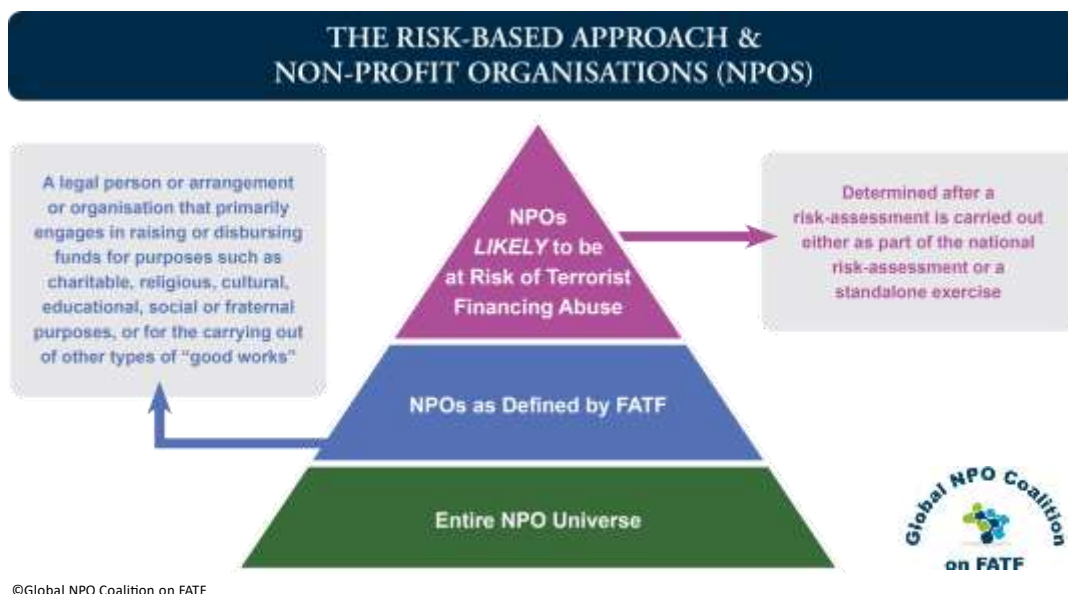


National Risk Assessment: input to public consultation

The Global NPO Coalition is of the opinion that **there should be a separate section for NPO Risk Assessments (RAs) in the proposed guidance**. The input that follows is centred around Global NPO Coalition membership experience of NPO Risk Assessments (for R.8) conducted in various countries. A few general observations on NRAs are made towards the end.

Background:

Given the requirements set out under R.8.1, and reinforced by the recent revisions to R.8 and its Interpretive Note, as well as extensive guidance in the revised Best Practices Paper on R.8, it is essential for countries to carry out a TF Risk Assessment of the NPO sector, either as part of the National Risk Assessment or as a standalone exercise. The goal is to **identify the subset** of NPOs in a country that meet the FATF definition, identify the **features and characteristics** of those NPOs that may create exposure to TF risk, and then, if any NPOs are found to be at risk, to help these NPOs effectively mitigate that risk.



There are two parts to this sectoral Risk Assessment process. The first is determining the **inherent risk** (threat and vulnerability) to which a subset of the sector is exposed. The second is to take into account the rules, regulations and measures already in place (including sectoral self-regulation measures) to see whether there is any **residual risk**. If gaps are found, the risk mitigation measures that are then put in place must be proportionate to the risk and must not hamper legitimate nonprofit activity. Additionally, there should be outreach to and engagement and consultation with the NPO sector throughout the Risk Assessment process.

Summary of R8 Process



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Challenges which FATF could address in and through the guidance:

- Methodology:** The FATF does not specify any particular methodology: though there is a [World Bank NPO TF RA tool](#) and [other tools](#) and expertise on the market. The RA process is cost-, labour- and time-intensive, with countries often finding that while they can get the tool from the World Bank, for example, there is not adequate training, handholding and help that operationalising such a tool demands. More guidance and capacity delivery from the FATF/FSRBs on this is, in our view, essential. The training, for example, should foresee a stage of gathering key statistical data and, if this is not available (see point 3 on **Data** below), technical assistance to obtain it. In this way, countries could take better advantage of the methodological tools provided by third parties. Additionally, consultation should start at the planning stage. Bad methodologies and/or poor planning are typically the cause of non-compliant RAs. There is nothing confidential about a methodology, and therefore no excuse for excluding stakeholders from the planning or design phase.
- Definitions:** The FATF makes a distinction between the legal and functional definition of NPOs for the purposes of R.8. Countries struggle with making that distinction (so in getting to the middle bit of the pyramid in the diagram above), and often end up applying the TF lens to the entire universe of NPOs in a country including even informal or unregistered groups, affinity or interest groups that do not fundraise, or grassroots/rural groups that also fall outside FATF's NPO definition. At other times, NPOs that fall squarely within the FATF functional definition, such as certain religious NPOs, are left out because they are registered under a separate law altogether. Additionally, and as the Global NPO Coalition has pointed out earlier, the scope of that functional definition is still ambiguous, not helpful enough, and also possibly not adequately reflective of the current threat landscape. It might be useful for the FATF, for example, to provide examples of NPOs which are outside the scope of the FATF's definition (cooperatives, mutual and non-financial trust funds, trade unions, political parties,

private hospitals/health clinics, private schools/universities/ educational institutions...). The FATF should also clarify that certain NPO forms might not exist in the local context or legislation (trusts, e.g.) – removing the confusion that exists in some jurisdictions when it comes to implementation (this has been particularly flagged by our partners in the Western Balkans).

Further, sham NPOs used as TF fronts should be a completely separate category from legitimate NPOs. Some sectoral or national RAs maintain these as the same category, and then point to sham NPOs as abuse of the charitable/NPO sector, which is a mischaracterisation of legitimate NPOs¹. Sham NPOs are a matter for law enforcement.

3. **Data:** Data on the sector is often incomplete or spread across multiple departments/ministries. So even the mapping of the bottom rung of the pyramid is difficult in many contexts, let alone getting to the second rung. Moreover, the RA methodology is often underpinned by surveys to multiple stakeholders, including NPOs. For NPOs, this means reaching and hearing from a statistically significant number of NPOs in a country (through a random sampling process). If the data set itself is incomplete and flawed, as it is in many contexts, then the results do not stand up to scientific scrutiny. There are also issues with data that is confidential (and not shared); and data that is circular and speculative (based on perception and without any basis in empirical evidence) – for example, that all ‘Muslim’ NPOs are ‘high risk’, based on nothing more than a historical discourse which has proven sticky and discriminatory, or the number of defensive Suspicious Transaction Records filed. It has also been observed that this lack of adequate data leads countries to defaulting to a high-risk rating for all or most NPOs.

In addition to surveys, external citations/sources used in a RA should not come from only one sector, as we see government citations/sources being almost the only ones in some RAs.

Further, we also see cases of citations/sources from unreputable and discriminatory sources, and this calls into question the legitimacy of the RA.

4. **Self-regulation:** Countries sometimes just assess the inherent risk of the sector and base their risk rating on this, without taking into account already existing mitigating factors. Apart from laws, rules and regulations, these mitigating factors include sectoral self-regulation measures and/or codes of conduct (TF specific, and also TF-relevant, such as good governance, accountability, transparency, knowing your partners and beneficiaries: sectoral self-hygiene/due-diligence measures which will ultimately prevent NPOs from being abused for TF purposes). Additionally, stringent donor grantmaking and financial reporting procedures also mitigate ML/TF risks and need to be taken into account when determining overall risk. (See paras 94, 95 and 96 in the revised Best Practices Paper, along with Annex B, which makes this explicit).
5. **Engagement, consultation, outreach, participation:** The FATF encourages a participatory approach to NPO Risk Assessments. We advise the FATF be more prescriptive about this. In our experience, the effective sectoral RAs have been those where NPOs have been part of the RA Working Group. As is outlined in the Best Practices Paper: ‘a healthy ongoing productive working relationship with a representative section of the sector is of paramount importance to the success to the risk assessment exercise.’ Engagement and consultation must happen at the inception stage, and must continue throughout the whole lifecycle of a RA. Given the complexity of the sector and challenges in identifying what falls under the

¹ <https://home.treasury.gov/system/files/136/2024-National-Terrorist-Financing-Risk-Assessment.pdf>

functional definition (as explained above), cooperation and active engagement of NPOs in the NRA can help properly identify the NPOs for the purposes of R.8 and thus greatly improve the quality of the assessment. It also enables institutions better understand NPO legislation and the practical aspects of nonprofit work, identify additional research data and information available within the sector, properly interpret NPO data, and identify self-regulation mechanisms. Furthermore, close cooperation with NPOs also helps with the effectiveness of the outreach and capacity building. While NPOs might be sceptical when the information and messaging comes from the FIU, say, they will be much more open and accepting when the messaging comes from their peers.

Additionally, the FATF should be clear about countries disseminating the findings of the RA widely among the sector, so that the sector is aware of where the gaps are, and how best to mitigate those. An RA done without engagement and outreach is ultimately a mere desk exercise, carried out to tick the FATF technical compliance box. Furthermore, RAs done without engagement and outreach are often indicators of repressive approaches to the NPO sector in the name of CFT, and FATF should take this into account.

6. **Context:** The overall risk and context of a country must underpin the sectoral assessment. If the overall TF risk in a country is low, the sectoral RA must also reflect this in its understanding, approach and ultimately, in the measures proposed.
7. **Measures:** Measures proposed to mitigate risks and plug gaps must be in line with international human rights, humanitarian and refugee law, and must not impinge on countries' fundamental freedom obligations (including association, peaceful assembly and expression) under treaty and customary international law. Relatedly, the FATF must ensure that the R.8 assessment methodology is explicit about how evaluators should proceed when faced with disproportionate measures or measures that abuse the Standard.
8. **Written product:** The FATF says that the Risk Assessment need not be a written product. We struggle to understand how a sound, scientific and effective Risk Assessment (one not based on perception) can be anything other than a written product. (If there are examples of such Risk Assessments, we would be glad to have references to these examples in the proposed guidance). Further, a lack of a written risk assessment would severely complicate engagement with the NPO and other sectors and make assessing the adequacy of process and outcome nearly impossible. To be effective in supporting system-wide risk mitigation, there needs to be a public-facing output.
9. **Innovation and proportionality:** Countries should be encouraged to narrow down their risk conceptions beyond the unit of 'the NPO organisation', and differentiate risk accordingly. For example, in the recent [Austrian sectoral RA](#), there is a differentiated classification of the overall organisational risk included in the sectoral RA. In general, the NPO sector's risk of being abused for TF purposes is rated as *low*. The risk of those NPOs being misused for TF purposes with projects in identified risk areas (approximately 0.06 % of the sector) is *medium* if they have certain seals/accreditations. The TF risk for NPOs without these seals and with projects in identified risk areas is to be classified as *medium to high*. This classification concerns only the *project scope of the NPOs* which falls within the two identified risk areas. For other project areas, the risk is to be classified as *low*. This differentiated classification based on project scope, rather than the entire organisation, is an innovative way to differentiate risk and ensure proportional measures.

10. **Concept of risk:** The visualisation of risk and TF within the FATF context is unidimensional, when it comes to NPOs. It does not consider that nonprofits mitigate terrorism risks (among others) through their daily development, humanitarian, peacebuilding, and rights work. And that the (un)intended consequences of an over-securitized FATF approach, including the misuse and abuse of the financial-integrity standards by governments, results in NPO suppression, repression and financial exclusion, thus harming legitimate nonprofit activity and the communities they serve. The UN Special Rapporteur on Human Rights and Counter-terrorism further found these State measures to be counterproductive to actually combatting terrorism, noting that “[a]ny effective counter-terrorism strategy needs to strengthen, not weaken, civil society... Restricting civil society’s ability to operate is short-sighted, ineffective and futile and can itself be a contributing factor to violence.”² When using the common FATF-related term, the “risk-based approach,” it is important therefore to ask “what risk?,” “whose risk?” and “how much risk?”.

Examples:

Nigeria: journey from non-engagement/reporting entity designation to full compliance

Nigeria published a [National Risk Assessment](#) for TF and ML (completed in 2016), which identified Designated Non-Financial Businesses and Institutions (DNFIs), of which NPOs are a subset, as being amongst those sectors most vulnerable to ML/TF. [Spaces for Change](#), a Global NPO Coalition member, [challenged](#) (2019) this assessment of risk for the non-profit sector, disputing the official classification of NPOs as DNFI and teasing out the nuances between vulnerability and threat, among other issues. The report led to increased and constructive engagement with the FIU (SCUML) and other government and NPO stakeholders, including GIABA, the FATF-Style Regional Body for West Africa. In 2022, the law was amended to remove NPOs from the list of designated entities. Further, NPOs were involved throughout the official sectoral RA process conducted in 2023. Nigeria is one of the few countries that is now Compliant on R.8.

Tunisia: from compliance to current challenges

State institutions (including the FIU, the General Directorate of Associations and Political Parties at the Presidency of the Government, the Anti-Terrorism Commission) and national NPOs collaborated effectively to update the RA of the sector. The collaboration, and the work done on implementing R.8 in a way which protects civil society freedoms, was much valued all round, leading to Tunisia being found Compliant on R.8 in 2019. Just as importantly, a genuine partnership emerged at the time between government and civil society on issues relating to possible TF risks in the NPO sector and measures to be implemented to mitigate these risks.

The sectoral RA, however, was never published. In the meantime, the political situation in the past few years has changed rapidly in Tunisia. There is now less space for civil society, and moves are afoot

² Fionnuala Ní Aoláin, *Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders*, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mar 1, 2019, U.N. Doc A/HRC/40/52, at para 14.



to amend the (excellent) association law. Another sectoral RA is being planned, and it remains to be seen whether there will be the same level of engagement with civil society as there was in 2019, and whether Tunisia will retain its Compliant rating going forward.

Peru: enhanced due diligence for all NPOs

The challenge of balancing financial integrity requirements and financial inclusion of NPOs is still far from being addressed in most Latin American countries. Even in cases where authorities have managed to implement sectoral RAs in the non-profit sector, such as Peru, Paraguay, Argentina and Uruguay, this has not resulted in coordinated work with financial institutions.

The Peruvian case is a fairly descriptive example of what is happening in the region. Although the country completed the last sectoral RA of NPOs in 2021, identifying different levels of exposure to TF risk, this has not had an impact on the modification of the one-size-fits-all regulation in force.

According to the responses to the sectoral RA, 12 out of 15 banks surveyed consistently apply enhanced due diligence measures to NPOs in accordance with SBS (the bank regulator) instructions (SBS Resolution No. 2660-2015).³

As long as the FATF does not strongly encourage countries to include mechanisms to measure the impact of financial exclusion of some sectors such as NPOs, this issue will remain muted and affected sectors will continue to do their best to continue their activities even at the risk of using more cash or opening accounts in the name of third parties.

South Africa: sectoral RA following grey-listing

South Africa recently completed (2024) its sectoral [TF Risk Assessment](#). This assessment was conducted in collaboration with the non-profit sector, and included a survey of 301 NPOs and data submissions from law enforcement, regulatory and supervisory institutions, intelligence agencies and financial institutions. South Africa received technical assistance from the EU AML/CFT Global Facility, and the assessment was completed using the methodology provided by Greenacre Group. Their involvement was instrumental in including the non-profit sector in this process and in shaping how the assessment was conducted. This collaboration ensured adherence to timelines and strengthened relationships between various government departments and the nonprofit sector.

There are various types of non-profits in South Africa that fit the FATF definition and are regulated by various authorities. However, data on registered organisations is incomplete, and there is no alignment between the various regulators on the data gathered. A subset of the sector, voluntary associations, can choose to be governed by common law with no mandatory registration requirements. Since this subset is unregistered, it was difficult to locate them for the purposes of the sectoral assessment. With the assistance of civil society representatives on the technical and oversight task team, provincial focus groups were hosted, and these findings were incorporated into the overall assessment. <https://www.fic.gov.za/wp-content/uploads/2024/04/Terrorist-financing-risk-assessment-for-the-NPO-sector-in-South-Africa.pdf>

Legislative amendments were enacted before this sectoral RA was completed. Through the efforts of

³ SBS Resolution N°2660-2015, Article 32°. - Enhanced know-your-customer due diligence regime, requires FIs to apply this regime to all existing and potential customers that qualify as NPOs. See page 85 of the SRA's report (<chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.sbs.gob.pe/Portals/5/jer/ESTUDIO-ANALISIS-RIESGO/2023/ESR%20Sector%20OSFL%202022.pdf>)



the NPO Working Group and other partners, comments were provided on proposed changes that would have impacted fundamental freedoms such as association, assembly, and expression. These amendments were made in response to South Africa being grey-listed but not informed by a risk-based approach. Continuous monitoring is needed to understand the impact of these amendments on the sector's ability to operate.

Austria: In 2023, the Austrian Ministry of Finance (BMF) launched a Public–Private Partnership (PPP) with the NPO sector to enhance collaboration and conduct a sectoral RA in preparation for an upcoming FATF Mutual Evaluation. This partnership included key NPO umbrella associations, academia and the tax authority. NPOs were given many opportunities for feedback during each stage of the sectoral RA. Through an extensive and iterative feedback processes, NPOs provided crucial insights into their operations, helping to construct the research, refine risk assessments and highlight existing and appropriate mitigation measures. The collaboration has fostered mutual understanding and trust, facilitated by regular updates, targeted workshops, and a dedicated communication channel (NPO mailbox). As a result of the RA, 99% of the sector was labeled low risk, with a risk differentiation model for the remaining 0.06% based on project areas. Moving forward, priorities of the PPP include support on organisational risk assessments, and addressing banking challenges and operational constraints.

Observations on National Risk Assessments (NRAs) in general:

- Civil society as well as an **independent National Human Rights institution** should form part of the NRA team. This is important for **risk contextualisation**.
- The NRA process must be transparent: countries should publish the NRA timeline, the stakeholders involved, avenues for participation/consultation, and the main findings and follow-up processes