

Terrorist Financing Risk Assessment for the NPO Sector in Kenya

Draft Report

Part 2: Review of Measures to Mitigate TF Risks in NPOs in Kenya

G: Review of Measures to Mitigate Terrorist Financing Risk to NPOs in Kenya

1. The objective of Part II of this risk assessment is to “review the adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector that may be abused for terrorism financing support in order to be able to take proportionate and effective actions to address the risks identified” as required by R8.1(c) of the FATF Methodology.
2. The FATF standards “do not prescribe a particular method or format for assessing risk” of terrorist financing in NPOs.¹ General best practices for risk assessments and reviews of the NPO sector are included in FATF’s *Terrorist Financing Risk Assessment Guidance* (FATF, 2019). Additionally, *FATF Guidance: National Money Laundering and Terrorist Financing Risk Assessment* (FATF, 2013) provides guidance on risk assessments and reviews in general.
3. In November 2023, FATF revised Recommendation 8 and the associated Interpretive Note. It also published a new Best Practices Paper. At the time of writing, proposed revisions to Immediate Outcome 10 and the FATF methodology were under consideration. The revised requirements will apply to the 5th Round Methodology. Whilst this risk assessment has been completed during the 4th Round, we are mindful that going forward Kenya will need to demonstrate its compliance with the 5th Round methodology. As such, this assessment also considers the amended standards of the 5th Round methodology.
4. Having reviewed the FATF guidance and the approach of selected countries², the analysis of mitigating measures combines two models:
 1. **Gap Analysis:** Assessing all mitigating measures to identify any possible gaps in the measures. This is useful in ensuring the foundations for an effective risk-based model exist.
 2. **Case Analysis:** Assessing the effectiveness of mitigating measures that are relevant to the identified risk factors. This assesses whether measures are risk-based and targeted.
5. This review is an NPO-specific review. It does not aim to replicate the NRA, MER or other reviews of AML/CFT measures, but it is informed by them. Its remit excludes analysis of AML/CFT measures which incidentally, rather than specifically, address NPOs. Hence, it will note but not assess the regulations relating to TF sanctions for legal entities; but will assess any sanctions specifically targeted at NPOs.
6. This review is based as closely as possible on FATF requirements and guidance. The relevant FATF requirements or guidance are highlighted in the text where relevant. Where there is no relevant FATF guidance on an issue, assessments are made based on the expertise and experience of the authors.
7. The review covers three areas: (1) laws and regulations; (2) policy measures and outreach; and (3) self-regulatory and self-governance measures.
8. The metrics used in this review are taken from R8 and other FATF documents. The primary tests under the 4th Round Methodology are that the measures are ‘risk-based’ and ‘effective’.
 - **‘Effective’.** The Immediate Outcomes are an assessment of the ‘effectiveness’ of AML/CFT measures. The Interpretive Note (INR8) requires countries to adopt “*effective measures*” to counter terrorist financing.³ Effective measures are properly resourced.⁴

¹ *Terrorist Financing Risk Assessment Guidance* (FATF, 2019)

² Examples from the UK, Canada, Australia, Saudi Arabia, Indonesia, and the Philippines were reviewed.

³ 4(c), Interpretive Note R8

⁴ “Countries should provide their appropriate authorities, which are responsible for supervision, monitoring and investigation of their NPO sector, with adequate financial, human and technical resources”.⁷, Interpretive Note

- **‘Risk Based and Targeted’**. FATF states that a ‘Risk-Based Approach’ is the core principle for all FATF assessments.⁵ The Interpretive Note (INR8) “requires” countries to adopt “proportionate measures”,⁶ and adds that “A risk-based approach applying focused measures in dealing with identified threats of terrorist financing abuse to NPOs is essential.”⁷ This principle is reiterated both in general terms and in relation to specific activities through the FATF documentation.⁸
 - **‘Non-disruptive’**. Ensuring the measures do not disrupt legitimate NPO activity⁹; that they are adapted to local circumstances¹⁰; that they are consistent with international human rights obligations¹¹;
9. The primary tests under the 5th Round Methodology are that the measures are that the measures are ‘targeted’, ‘proportional’, ‘risk-based’, ‘non-disruptive’ and ‘effective’.
- **‘Targeted’**. Specific measures adopted by countries to protect NPOs from misuse for terrorist financing should not unduly disrupt or discourage legitimate charitable activities. On the contrary, such measures should promote accountability and build greater trust between NPOs, the donor community and the general public, so that charitable funds and services reach legitimate beneficiaries.
 - **‘Proportional’**. the measures must be adequate to achieve their protective function, the instrument(s) must be less intrusive and enable the desired result to be achieved, and be proportionate to the interest/social good they are intended to protect.
 - **‘Risk-Based’**. The FATF states that a "risk-based approach" is the fundamental principle of all FATF assessments. The revised interpretative note (INR8) states that "a risk-based approach that applies specific measures to address identified threats of terrorist financing abuse against NPOs is essential, given the diversity of the sector, the varying degrees to which parts of the sector may be vulnerable to terrorist financing abuse, the need to ensure that legitimate charitable activity continues to flourish, and the limited resources available from the authorities to combat terrorist financing in each country." . This principle is reiterated both in general terms and in relation to specific activities in FATF documentation.
 - **‘Non-disruptive’**. Ensure that measures do not disrupt or discourage the legitimate activity of NPOs; that they are adapted to local circumstances; and that they comply with States' obligations under the UN Charter and international law, including international human rights law, international humanitarian law and international refugee law.
 - **‘Effective’**. The immediate outcomes are an assessment of the "effectiveness" of CBC/TF measures. The Interpretative Note (INR8) requires countries to adopt "effective measures" to combat terrorist financing. Effective measures are adequately resourced.

⁵ See FATF Recommendation 1.

⁶ 4(c), Interpretive Note R8

⁷ 4(a), Interpretive Note R8.

⁸ See also paragraphs 19, 21, 23, 24, 29, 32 and 35 of the Best Practices Paper.

⁹ “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 Annex 1). See also INR8 paragraphs 4(a), 4(d) and 4(e), and Best Practices Paper paragraph 32(a).

¹⁰ The Best Practices Paper repeatedly states that there is no ‘one size fits all’ approach to TF measures in the NPO Sector. Paragraphs 23(c) states that a “one size fits all” approach is not an effective way to combat terrorist abuse of NPOs and is more likely to disrupt or discourage legitimate charitable activities”, and this sentiment is repeated in paragraphs 7(b), 18, 29, 32(a) and 32(e).

¹¹ Implementation of R8 must be “consistent with countries’ obligations to respect freedom of association, assembly, expression, religion or belief, and international humanitarian law”.6, Best Practices Paper. See also *ibid* 22, and Typologies 28.

Data and sources

10. The current risk assessment uses both qualitative and quantitative data and, in line with FATF guidance¹², seeks to ensure that qualitative data is given its due weight.
11. The following primary information and data sources were used in this assessment:
 - Written submissions on legal, regulatory and policy approaches to NPOs submitted by officials from the NGOs Co-ordination Board, Ministry of Labour and Social Protection, Business Registration Services (BRS), Registrar of Societies, and the principal register of trusts between November 2023 and February 2024.
 - A survey of non-profit organizations in Kenya (see Section I for more details)
 - Review of the following laws and regulations:
 - Public Benefit Organizations Act 2013
 - Community Group Registration Act 2022
 - Companies Act no 17 of 2015
 - Companies (General) Regulations 2015
 - Societies Act 1968 Cap 108
 - Trustees (Perpetual Succession) Act, cap 164

¹² “While quantitative assessments (i.e., based mostly on statistics) may seem much more reliable and able to be replicated over time, the lack of available quantitative data in the ML/TF field makes it difficult to rely exclusively on such information. Moreover, information on all relevant factors may not be expressed or explained in numerical or quantitative form, and there is a danger that risk assessments relying heavily on available quantitative information may be biased towards risks that are easier to measure and discount those for which quantitative information is not readily available. For these reasons, it is advisable to complement an ML/TF risk assessment with relevant qualitative information such as, as appropriate, intelligence information, expert judgments, private sector input, case studies, thematic assessments, typologies studies and other (regional or supranational) risk assessments in addition to any available quantitative data.” Paragraph 30-31, **FATF Guidance: National Money Laundering and Terrorist Financing Risk Assessment** (FATF (2013))

H. Analysis of the Legal and Regulatory Framework

12. On 14th May 2024 the government of Kenya through a gazette notice by the Cabinet Secretary operationalised the Public Benefit Organizations Act 2013 (hereinafter ‘the PBO Act’. The PBO Act repeals the Non-Governmental Organizations Co-ordination Act No.19 of 1990, replaces the category of Non-Governmental Organisation (NGO) with the category of PBO, and replaces the NGO Coordination Board with the PBO Regulatory Authority.
13. The Act does not supersede the Community Group Registration Act 2022; the Companies Act; the Societies Act 1968; or the Trustees (Perpetual Succession) Act.
14. Section C of the report (above) identifies five categories of NPO (in whole or part) that meet the FATF definition as follows:
 - **Non-Governmental Organisations and International NGOs (now PBOs)**
 - **Companies limited by guarantee**
 - **Community Based Organisations**
 - **Societies**
 - **Trusts.**
15. The following analysis is therefore in two parts. The analysis in the first table below is a desk-based analysis of the new PBO Act. As the law is in the very early stages of implementation, no analysis of its effectiveness in practice is possible. The second parts analyses the laws relating to the other categories of organizations that contain some FATF NPOs: CLGs, CBOs, Societies, and Trusts.

Gap Analysis of Public Benefits Organizations Act 2013.

	Public Benefit Organizations (PBOs) including INGOs.
Relevant law	Public Benefits Organisations Act 2013
Nature of organisations which are FATF NPOs	<p>PBOs are voluntary membership or non-membership groupings of individuals or organizations, which are autonomous, non-partisan, non-profit making, which engage in one of 23 public benefit activities and which are registered by the PBO authority. (s.5 and sixth schedule of the PBO Act).</p> <p>In s.5(2) it specifically excludes:</p> <p>“(d) a religious organization which is primarily devoted to religious teaching or worship”;</p> <p>(e) a society within the meaning of the Societies Act;</p>

	Public Benefit Organizations (PBOs) including INGOs.
	(i) a community-based organization whose objective include the direct benefit of its members.”
Number of NPOs	NGOs registered with the NGO Coordination Board are automatically registered with the PBO Authority. As of April 2024, this numbered 13,052 organisations, of which 3,257 are INGOs. They have one year to meet the new registration requirements with the PBO Authority. (S.5, Schedule 4).
Supervisory agency	The PBO Act creates the Public Benefits Organizations Regulatory Authority (hereinafter ‘the PBO Authority’) which has already assumed the responsibilities of the NGOs Coordination Board. (s.34). The PBO Authority is governed by a Board comprising four qualified persons with a background in civil society appointed by government, two qualified persons nominated by the Federation of PBOs, and four government officials appointed <i>ex officio</i> . (s.35).
Establishment and Registration	PBOs shall register by the PBO Authority. Registration here supersedes any other registration, and no entity can be registered under this and another Act. (s.6) The PBO Authority shall consider applications to operate from INGOs, and may either issue an exemption or require it to register. Exemption shall not be granted if the INGO intends to operate, implement activities from or fund-raise in Kenya. (s.11). The register shall be publicly available and include: <ul style="list-style-type: none"> • the area of the activities; • the registered officials; • any information provided by the PBO pursuant to this Act; • a detailed inventory of the assets; • any other information that the Authority may deem necessary.
Obtaining and publishing information on registered NPOs	Registered PBOs must provide the following documents or information (s.8): <ul style="list-style-type: none"> • Constitution (which includes name, objectives, and various other administrative requirements guaranteeing the non-profit status of the PBO) • Names and addresses of founders • Purposes and activities

	<p>Public Benefit Organizations (PBOs) including INGOs.</p> <ul style="list-style-type: none"> • Postal and physical address • Such other information as needed to assess if the PBO meets the requirements of the Act. <p>In addition, under s.8 (3) and s.11(5)), international NGOs must:</p> <ul style="list-style-type: none"> • Provide an application form • Provide proof of legal status in a foreign court • Have a Kenyan office and provide its address • Provide a written statement on its purposes, planned activities in Kenya, and details on authorized agent in Kenya. • Have at least 1/3 of its directors be Kenyan citizens resident in Kenya <p>The PBO must inform the PBO authority of any change to this information within 60 days ((s.8(8)).</p> <p>Names and addresses of members of the governing body must be provided within one month of their appointment. (s.32).</p>
Accounts and audits	<p>PBOs should be guided by principles and aspirations to maintain a culture of transparency and accountability in the receipt and management of funds. (s.27(g)).</p> <p>They are required to implement internal accounting and administrative procedures necessary to ensure the transparent and proper use of its financial and other resources and utilise their financial and other resources for the attainment of its aims, objects and purposes. (s.29).</p> <p>As such, they should keep proper books and accounts, and prepare an annual financial statement in compliance with relevant standards that have been independently audited. (s.30)</p>
Annual reporting	<p>PBOs must submit to the PBO Authority the following information annually (s.31):</p> <ul style="list-style-type: none"> • Financial statements • Audit statement • Narrative report on activities.

	Public Benefit Organizations (PBOs) including INGOs.
Publication of financial information	s.11 states that the register shall include any information provided to the PBO authority pursuant to the Act. It may be concluded therefore that the financial statements, audit statement and narrative report submitted under s.31 will be made publicly available.
Oversight and monitoring	The PBO authority's functions include review of annual reports. (s.42(1)(d))
Vetting and due diligence	
Investigations and intelligence	The PBO authority's functions include inquiries into any violation of the PBO Act or any other law (s.42(1)(h)). A general power to institute an inquiry into a PBO is established in s.63. This empowers the PBO authority or a person appointed by it to direct any person to provide statements, documents or evidence needed for the inquiry.
Sanctions and remedial powers	PBOs in violation of the Act may be served with a default notice. Failure to remedy the issue may result in a fine, or a suspension or cancellation of their registration. (s.18 and s.19). It is an offence to supply forged, false or misleading information to the Authority in respect of registration or for other purposes; or to falsely claim registration as a PBO, or make fraudulent use of a registration number or certificate. Such offences can be punished by fines or imprisonment. (s.64).

18. The following analysis covers laws relating to CBOs, CLGs, societies and trusts.

Gap Analysis Table: Legislation covering other types of FATF NPOs.

	Community Based Organisations (CBOs)	Companies Limited by Guarantee (CLGs)	Societies	Trusts
Relevant law(s)	Community Group Registration Act 2022 ("CGR Act")	Companies Act no 17 of 2015 Companies (General) Regulations 2015	Societies Act 1968 Cap 108	Trustees (Perpetual Succession) Act, cap 164
Nature of organisations which are FATF NPOs	Organisations with public-benefit purposes. Typically are smaller organizations and have less access to funding than NGOs.	The subset of CLGS that are formed for non-profit, public benefit purposes.	Faith-based organizations registered under the Societies Act meet the FATF definition as they are established for 'good works.'	Trusts are a legal vehicle for holding property. Trusts may engage in fundraising prior to the purchase of a property. Charitable trusts allow their property to be used for a

	Community Based Organisations (CBOs)	Companies Limited by Guarantee (CLGs)	Societies	Trusts
	Note: Mutual-benefit CBOs are not established for 'good works' and do not meet the FATF definition.		Note: Trade unions and professional associations registered under the Societies Act do not meet the FATF definition, as mutual-benefit groups not established for 'good works'	public benefit purpose, such as a school, hospital, or orphanage. Only public benefit trusts engaged in fundraising meet the FATF definition of NPO. Non-public benefit or non-fundraising public benefit trusts do not meet the FATF definition.
Number of NPOs	60,000 CBOs as of December 2023.	2,532	Est.50,000 active FBOs	2,450
Supervisory agency	Ministry of Labour and Social Protection	Business Registration Services (BRS)	Registrar of Societies. Part 4 of the act states Every society which is not a registered society, or an exempted society is an unlawful society. Part 31 of the act states that the registrar may call for information and accounts.	The principal register
Establishment and Registration	Registered with the registrar (at the sub-county level) using an automated system: Community Development management Information system (CDMIS). Registration	Companies Limited by Guarantee are required to be registered under the Companies Act, 2015. Registration is online through the e-Citizen platform.	Register with the registrar of societies in-person at sheria house. pursuant to cap 108 laws of Kenya (centralised) under part 3 of the societies act. Registration is also	Previously under the NGO Act, Trusts were established under the ministry of lands state department for lands and physical planning. However, in the current PBO Act Trust are to be established under

	Community Based Organisations (CBOs)	Companies Limited by Guarantee (CLGs)	Societies	Trusts
	is migrated to the e-Citizen platform.	An applicant for the registration of a CLG, is required to provide a proposed name of the company, proposed postal & physical address, details of directors and members, amount guaranteed by each member and beneficial ownership information to the registrar of companies.	available online via the e-Citizen platform.	the Business Registration Service. The registration involves two stages. The initial process is under Registration of Documents Act (RDA) whereby the name of the proposed Trust and Settlor/Trustee details are endorsed in RDA volumes. The second part is under the Perpetual Succession Act. Registration process within the BRS system is all done online.
Obtaining and publishing information on registered NPOs	CBOs must make available its financial records and related documents, and the register of members of the community group for inspection by the Directorate of Social Development or by any person authorized by the Directorate in writing, at the office of the Director at any reasonable time specified (34). Members of the CBO may also scrutinise records. CBOs shall, once every two years, furnish the Director a	All information is collected upon registration and changes to the register are held at the BRS and Kenya Revenue Authority. Data on beneficial owners is required to be obtained. The information on companies limited by guarantee is available online, including how to register and the basic information	They obtain registration and annual report information and can publish certain information. Section 31 The Registrar may call for information and accounts and any other information that may be deemed necessary. Section 48 On payment of the prescribed fees, any person may inspect at the office of the Registrar the register and any documents relating to any society relating to the register	Pursuant to section 15 anyone is entitled to information upon application to the register of Documents and payment.

	Community Based Organisations (CBOs)	Companies Limited by Guarantee (CLGs)	Societies	Trusts
	report on its activities, financial affairs, and any other matter as may be required by the Director. CBOs shall retain financial records for seven years.		under this act and may obtain from the register a copy of or extract from such register or document.	
Annual reporting		Companies limited by guarantee are required to file with the registrar of companies' annual returns, containing name, objectives, directors, and members of the company.	Part 30 Of the societies act states that every registered society shall furnish annually to the Registrar, on or before the prescribed date, such returns, accounts and other documents as may be prescribed.	Pursuant to section 6, trusts are required to file annual return of the names and addresses of the trustees at the end of each such period.
Accounts and audits		The company is required to keep financial records for at least 7 years. The statements are to be presented before members of the company during annual general meetings for scrutiny, which would ensure that there is accountability on the use of resources and funds. After which they are filed with the registrar of companies.	Part 29 on Meetings of societies (1) Every registered society shall, at least once in every year, hold a general meeting to which all its members shall be invited, and shall at such meeting— (a) render a full and true account of the moneys received and paid by the society, such account being audited in accordance with the rules of the society;	Pursuant to Section 3J a trust may appoint an enforcer in accordance with the terms of the trust deed to monitor the administration of the trust for the benefit of the beneficiaries
Publication of financial information		Financial statements of a company can be made available by the registrar to	Part 32 of the act states that The Registrar, where it appears to him to be in the interests of the members of	Pursuant to section 3J 2(d), an enforcer shall report to the settlor or the beneficiaries any

	Community Based Organisations (CBOs)	Companies Limited by Guarantee (CLGs)	Societies	Trusts
		members of the public upon request.	any society, may publish in the Gazette, or by advertisement in any newspaper or in any other manner he may think fit, any information received by him under section 20, section 21 or section 31 of this Act.	financial or other breaches by the trustees.
Oversight and monitoring		<p>Section 894 of the Act gives powers to the Registrar to strike off companies which fail to file annual returns or financial statements for a period of 5 years or more. Companies which fail to file or update BO information may also be struck off if they fail to comply with the Registrar's directive to file BO information.</p> <p>The BRS also prepares monthly reports which indicate the level of compliance with the requirement to update basic information with the Registrar.</p>	<p>Part 4 of the act provides for conduct and administration of societies. Part 6 provide for investigation of offences and punishment of offenders for failure to comply with part 4.</p> <p>Part 12 states that a society can be cancelled or suspended of registration.</p>	<p>While not mandatory, the law allows appointment of enforcers to monitor the administration of the trust for the benefit of the beneficiaries including:</p> <ol style="list-style-type: none"> 1. enforce the terms of the trust. 2. inquire into the status of implementation of the trust. 3. require the trustee to take remedial action, where there is breach of the terms of the trust. 4. report to the settlor or the beneficiaries any financial or other breaches by the trustees.

	Community Based Organisations (CBOs)	Companies Limited by Guarantee (CLGs)	Societies	Trusts
				5. pursue legal action against the trustees, whether criminal or civil
Vetting and due diligence	A community group is obligated to keep a register the name, contact address and the date of admission of each member (28). Vetting of members and elected officials is encouraged.	Before formation, the members and directors of the company are vetted by the National Intelligence Service. Any new member or director of the company is also vetted.	Section 12 states that a society can be cancelled or suspended of registration. The registrar can vet in collaboration with other government agencies the society where he has reasonable cause to believe among its objects, or is, likely to pursue, or to be used for, any unlawful purpose or any purpose prejudicial to or incompatible with peace, welfare or good order in Kenya; or (b) the interests of peace, welfare, or good order in Kenya would, where he has reasonable cause to believe, be likely to be prejudiced by the continued registration of the society;	The act provides for the rejection of application as the principal registrar gives a written notice to the applicant. The schedule implies that the registrar of documents conducts vetting to verify if the application is intended with the matters stated in the schedule
Investigations and intelligence	CDMIS data will be available to all government entities and other stakeholders upon request. Any person authorized by the Director in writing may obtain	Information on all registered companies is available on request to competent authorities.	Section 38 and 39 of the Act provides for powers to investigate.	Criminal activities are outside of the remit of the trusts. Law Enforcement agencies have the power to investigate unlawful activities including those involving trusts.

	Community Based Organisations (CBOs)	Companies Limited by Guarantee (CLGs)	Societies	Trusts
	<p>financial records, related documents, and the register of members from a CBO.</p> <p>Criminal activities are outside of the remit of the Directorate.</p>	<p>This information may be accessed through API, user portals or written request.</p>	<p>Criminal activities are outside of the remit of the registrar of societies.</p> <p>Law Enforcement agencies have the power to investigate unlawful activities including those involving FBOs.</p>	
Sanctions and remedial powers	<p>The CGR Act 2022 provides for Charges, fees for violating the provisions of the Act.</p>	<p>Section 894 of the Act gives powers to the Registrar to strike off companies which fail to file annual returns or financial statements for a period of 5 years or more. Companies which fail to file or update BO information may also be struck off if they fail to comply with the Registrar's directive to file BO information.</p> <p>Administration fines for late filling of returns</p> <p>Denial of service for failure to update basic and BO information.</p>	<p>The act provides for cancelation, fines, forfeiture and imprisonment for violation of the act</p>	<p>The act provides for prosecution by enforcers.</p> <p>While not mandatory, the law allows appointment of enforcers to monitor the administration of the trust for the benefit of the beneficiaries including:</p> <ol style="list-style-type: none"> 1. require the trustee to take remedial action, where there is breach of the terms of the trust.

Assessment of general adequacy of laws and regulations

19. The adequacy of five legal or regulatory activities are assessed below for each of the legal categories. The legal or regulatory activities are as follows:

- **Registration:** Registration identifies those NPOs which are active in the country and obtains necessary information on the NPO (see next paragraph below). The Interpretive Note states that licensing or registration forms part of an effective regulatory system.¹³ However, FATF is clear that detailed registration requirements are not necessary if there is little or no risk of terrorist financing,¹⁴ and they should not be imposed just for TF purposes.¹⁵ The level of licensing or registration is one of the factors considered as part of the Effectiveness assessment under Immediate Outcome 10.¹⁶
- **Information.** This section relates to information obtained and held by the regulator at registration; what information third parties have the right to access, either from the registrar or the NPO; and the mechanism for ensuring this information is regularly updated. FATF's Interpretive Note to Recommendation 8 suggests that this should cover the NPO's name, address, objectives, and governing document; and the name and address of the controllers, office holders and/or senior management.
- **Oversight, monitoring and reporting.** There are two parts to this requirement. First, that the information in the paragraph above is kept updated and accurate (e.g., the database is updated to reflect any changes in the controllers of the NPO). Secondly, it refers to the collection of financial and reporting information. This is a routine activity, which means it need not triggered by any particular concern or suspicion. Ideally, it will also provide information to enable the authorities to identify those specific NPOs that are potentially 'at risk' of terrorist financing, although that will depend upon the specific nature of the risk factors.

The Interpretive Note to Recommendation 8 states that NPOs could be required to:

- *"Issue annual financial statements that provide detailed breakdowns of incomes and expenditures."*¹⁷
- *"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."*¹⁸
- *"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 received and spent in a manner consistent with the purpose and objectives of the organisation..."*¹⁹

FATF states that, in most cases, additional reporting requirements for purely TF purposes will not be required.²⁰ The updated Interpretive Note on Recommendation 8 requires that

¹³ "NPOs could be required to license or register. This information should be available to competent authorities and encouraged to be available to the public." 6(b)(i), Interpretive Note R8

¹⁴ "Detailed registration procedures for NPOs... may not be appropriate for CFT purposes for those NPOs facing little to no TF risk. Any of these or other TF risk mitigation measures should be proportionate to the TF risk they face." 24, Best Practices Paper

¹⁵ "Countries are not required to impose specific licensing or registration requirements for counter-terrorist financing purposes. For example, in some countries NPOs are already registered with tax authorities and monitored in the context of qualifying for favourable tax treatment such as tax credits or tax exemptions" 31, Best Practices Paper

¹⁶ "IO.10 b) Examples of Specific Factors that could support the conclusions on Core Issues ... 10. What is the level of licensing or registration for NPOs?"

¹⁷ 6(b)(iii), Interpretive Note R8.

¹⁸ 6(b)(iv), Interpretive Note R8.

¹⁹ 6(b)(vi), Interpretive Note R8.

²⁰ "Additional reporting requirements ... may not be appropriate for CFT purposes for those NPOs facing little to no TF risk. Any of these or other TF risk mitigation measures should be proportionate to the TF risk they face." 24, best Practices Paper

‘at risk’ NPOs should be subject to “oversight or monitoring”.²¹ The Best Practices Paper clarifies that the terms ‘oversight or monitoring’ are used “to make a distinction between these terms and ‘supervision’, which is generally used in the context of financial institutions and designated non-financial businesses and professions (“DNFBPs”).”²² Hence, the aim of these measures is to obtain information that verifies that funds are applied in a way that it is consistent with the NPO’s objectives.

Monitoring is assessed under 8.3 and 8.4 of the FATF Methodology, and under Immediate Outcome 10.²³

- **Vetting and due diligence.** This relates to “the range of practical steps that need to be taken by NPOs so that they are reasonably assured of the provenance of the funds given to the NPO; confident that they know the people and organisations the NPO works with; and able to identify and manage associated risks.”²⁴ FATF is clear that there should be no expectation that certain types of due diligence be undertaken on all donors, partners or beneficiaries. “Proper due diligence is dependent upon the circumstances and context of each organisation and the environment in which it operates.”²⁵
- **Sanctions.** Paragraph 8.5(b) of the FATF Methodology states that “Appropriate authorities should be able to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of these NPOs.”²⁶ Further interpretation of this has been provided in the updated Interpretive Note, which states that “the range of such sanctions might include freezing of accounts, removal of trustees, fines, decertification, de-licensing, and de-registration. This should not preclude parallel civil, administrative, or criminal proceedings with respect to NPOs or persons acting on their behalf where appropriate.”²⁷

Assessment of adequacy of laws and regulations for PBOs:

20. The PBO law covers a significant segment of FATF NPOs, and as a result is the single most significant legislative and regulatory tool in addressing potential terrorist financing risks.
21. PBO law meets all the requirements of FATF in relation to registration.
22. Information: All required information is collected, and will be made available through a public database.
23. Oversight and monitoring: The PBO Authority will obtain detailed annual financial and narrative reports from PBOs, and has a power to ‘review’ these reports (s.42(1)(d)). However, the law does not specify the nature of such a review. The review process will need to be developed, and be mindful of the findings of this report and FATF requirements on proportionate and risk-based oversight, ensuring it does not unduly disrupt or discourage NPO activities.

²¹ 7(a), Interpretive Note to Recommendation 8 (FATF, 2023).

²² 7, Best Practices Paper (FATF, 2023).

²³ “a) Examples of Information that could support the conclusions on Core Issues. ...4. Information on NPO supervision and monitoring (e.g. frequency of review and monitoring of the NPO sector (including risk assessments).

a) Examples of Information that could support the conclusions on Core Issues...

4. Information on NPO supervision and monitoring (e.g. frequency of review and monitoring of the NPO sector (including risk assessments);

b) Examples of Specific Factors that could support the conclusions on Core Issues ...

10. ...To what extent is a risk-sensitive approach taken to supervise or monitor NPOs at risk from terrorist abuse and appropriate preventive, investigative, criminal, civil or administrative actions and co-operation mechanisms adopted?”.

Immediate Outcome 10, see Annex 1.

²⁴ 50, Best Practice Paper (2014)

²⁵ 49, Best Practice Paper (2014)

²⁶ 7(iii), Interpretive Note to Recommendation 8 (FATF, 2023).

²⁷ Footnote 32, Interpretive Note to Recommendation 8 (FATF, 2023).

24. Vetting and due diligence: There are no specific requirements relating to vetting or due diligence. Given the risk profile, the imposition of statutory requirements may be excessive. However, it would be expected that the PBO Authority and self-regulatory forums provide guidance on when vetting and due diligence may be needed, and how it can be implemented.
25. Investigations and Sanctions. The PBO Act provides the PBO Authority with adequate powers to investigate violations of this or any other act, and an adequate range of sanctions to deal with violations.
26. Risk based approach - Identifying 'at risk' PBOs: The PBO Act empowers the Authority to obtain 'any other information that it may deem necessary' at registration. In theory, this could include information which enables the identification of PBO types or activities which may put an NPO 'at risk' of terrorist financing abuse. There is no specific power to collect this kind of information on PBOs that are already registered. There is a general power to 'interpret the national policy on public benefit organizations so as to assist in its smooth implementation and observance by Government ministries, departments and agencies at various levels' (s.42(c)). It is not clear if this is sufficient to enable the Authority to obtain additional information on already registered PBOs to assess if they are within an 'at risk' category.
27. Risk based approach – targeting measure at 'at risk' PBOs: As above, it is not clear if the general power set out in s.42(c) is sufficient to enable the PBO Authority to target monitoring measures to potentially 'at risk' PBOs. The Authority does have broad general powers to advise PBOs on best practices, which will enable the provision of targeted advice and guidance.
28. Not inhibiting legitimate NPO activity: The PBO Act provides a wide range of protections for legitimate activity, and references an 'enabling environment' and 'freedom of association and assembly' multiple times. Registration under the act provides a wide range of benefits.
29. Notwithstanding the above, two specific provisions may inadvertently have the effect of inhibiting legitimate PBO activity.
 - s.11(5)(a) requires that INGOs implementing activities in Kenya must have at least 1/3 of the directors be Kenyan citizens resident in Kenya otherwise, the INGO is to specify the authorized agent, being a Kenyan citizen, retained by the organization, upon whom official notices, summonses and other process may be served. This may not be consistent with international interpretations of the freedom of association. .
 - s.8(4)(i) requires that a PBO's constitution "provide that the organization's financial transactions shall be conducted by means of a banking account." This restricts registration to NPOs which have been accepted by a bank. FATF recognises that many banks refuse to offer banking services to entire categories of NPOs. This provision effectively makes banks a second gatekeeper to registration, and may inadvertently prevent legitimate PBOs from being able to register.
 - s.30 requires PBOs to prepare annual financial statements that have been independently audited. Audit requirements may be beyond the resources of smaller NPOs, and may therefore prevent them from registering. Attention is drawn to the survey of NGOs, which found that that 37% of NGOs have an income of less than KHS500,000 (US\$3,500), and 21% have no income at all.
30. On paper, the PBO Act provides a comprehensive legal and regulatory framework for addressing potential terrorist financing risks within a large segment of the non-profit sector. The clear commitment to protecting fundamental freedoms, creating an enabling environment, requiring consultation with NPOs, and encouraging self-regulation are consistent with the spirit and intent of the new FATF guidance on NPOs published in 2023. Three provisions of potential concern are noted, but are relatively specific.
31. However, this positive assessment is based on a desk-based exercise, and it is incumbent upon Kenya to ensure the new PBO Authority, PBO Federation and PBO Tribunal have the capacity and

resources to implement the law as intended. If this happens, it is likely that the law will be seen as a best practice in the region and beyond.

Assessment of adequacy of laws and regulations for CBOs:

32. Community Based Organisations (CBOs) have been assessed as low risk, given their small size, negligible assets, largely voluntary nature and local focus. The 2023 revision of the Interpretive Note to Recommendation 8 states that “*for NPOs identified to be at low-risk of TF abuse, countries may focus only on undertaking outreach concerning terrorist financing issues, and may decide to refrain from taking additional mitigating measures.*”²⁸ Outreach is assessed in the next section. In line with the risk-based approach, this section will assess whether the current regulatory measures are sufficient given the low-risk for CBOs.
33. There is a simplified, online, and voluntary registration system for CBOs, with an automated self-registration system introduced to consolidate this process. Registered CBOs provide basic identifying information on the organisation and its controllers. They are obliged to keep financial and administrative records, are subject to inspection, and must submit documentation every two years.
34. The simplified system is very effective in ensuring high levels of compliance, with large numbers of CBOs registered. Whilst the voluntary nature of registration means there is no guarantee that all CBOs are registered, the system is assessed as both proportionate and effective given the low risk profile of these organisations. The significant additional benefits provided to PBOs make it very likely that more complex (and therefore riskier) NPOs will be likely to register as PBOs, and therefore be submitted to additional scrutiny.
35. A potential deficiency in the regulatory framework relates to sanctions. The sole available administrative sanctions available to the DSD are fines.
36. It is not clear whether the new automated online system will enable the addition of indicators linked to specific risks.

Assessment of adequacy of laws and regulations for CLGs:

37. Companies Limited by Guarantee (CLGs) are similar in nature and complexity to PBOs, and share many of the same risk features. In addition to this risk assessment, Kenya has conducted a risk assessment of all legal person’s and legal arrangements, including CLGs. This assessed the TF risk for CLGs as low.
38. Registration is compulsory and obtains all required information. There is high confidence in the accuracy of the information provided as it is verified against other government agencies.
39. Companies are required to update their records every time there is a change, either in the name, directors, article of association. There is a requirement to file annual returns and financial statements every year.
40. Compliance levels are very high, with the records of 93% of all registered CLGs updated records on the e-Citizen platform as of March 2024.
41. It is not clear if the current registration or reporting systems would enable the inclusion of indicators linked to the specific TF risks that have been identified in this report, or may be identified in the future.
42. There is no mechanism in place to encourage CLGs to confirm credentials of staff, volunteers, funders, partners or beneficiaries.

²⁸ 7, Interpretive Note to Recommendation 8 (2023).

43. The Business Registration Services has a range of sanctions including criminal sanctions, administrative fines, denial of service and strike off.
44. Overall, CLGs are subject to an effective regulatory system. There is high confidence in the quality, comprehensiveness and accuracy of the information held by the Business Registration Services on CLGs. However, it is not clear if the current systems allow for the identification of CLGs with the specific TF risk factors identified in this assessment.

Assessment of adequacy of laws and regulations for Societies:

45. Many faith-based organisations are registered as societies. Faith-based organisations that work in high-risk areas or with high-risk communities have been identified as a category potentially at risk of terrorist financing. The new PBO act explicitly excludes faith-based entities primarily devoted to religious teaching or worship, and societies within the meaning of the Societies Act.
46. The Societies Act requires societies to register, and there are provisions relating to the collection of information at registration, the vetting of founding officers, the updating of changes in information and the submission of annual financial statements.
47. However, significant deficiencies with the application of the law are noted. Inactive FBOs are not removed from the register.
48. Compliance with the requirements to update information and submit annual reports is relatively low.
49. A range of sanctions including fines are available, but they are not punitive enough as a deterrent measure.
50. Deficiencies in the register prevent the authorities from identifying currently active FBOs which may be 'at risk' of terrorist financing. The Kenyan Government issued a moratorium on 11th November 2014 on registration of FBOs, partly due to concerns about radicalization within FBOs. In July 2022 the moratorium was lifted subject to the gazettelement of regulations to identify issues prior to the ban.

Assessment of adequacy of laws and regulations for Trusts:

51. There are no specific concerns about terrorist financing risks in the trust sector, and it is likely that they are at low risk of terrorist financing abuse.
52. The registration system is paper-based, and whilst expected information is collected, it does not include mechanisms for verifying documentation. If specific risks were identified within trusts, there would be no mechanism for efficiently identifying them within the register.
53. Trusts are expected to make annual returns to the principal registrar of the names and addresses of the trustees after receiving their certificate of incorporation. Vetting and due diligence is not required but is encouraged by the principal registrar. There are no investigatory powers or sanctions specifically for trusts, and currently no targeted measures focusing on charitable trusts identified as 'at risk'.
54. Deficiencies were noted in the regulatory framework for trusts under the old law, NGO Act, specifically in relation to the lack of a computerised database of registered trusts. However, in the new PBO act, trusts are under the Business Registration Services where integration onto the automated online registration platform is ongoing. The absence of any intelligence identifying potential risks within the trusts sector, no new regulatory measures for trusts are warranted, in line with FATF's risk-based approach. Should the understanding of risks within trusts change, this approach should be reviewed.

Risk-based approach: Targeting of specific inherent vulnerabilities

55. The assessment of inherent vulnerabilities identified eight potential features of NPOs which may be 'at risk' of terrorist financing as follows:
1. NPOs operating in or near areas with active terrorist presence.
 2. NPOs working with, or in places where there may be, individuals that are sympathetic or supportive of terrorist causes.
 3. NPOs engaged in activities which may bring them into contact with terrorist groups or supporters.
 4. NPOs with unverified or unverifiable funding sources.
 5. NPOs with high risk and/or foreign funding sources.
 6. NPOs without adequate financial controls or the ability to verify their own activities.
 7. NPOs with unverified partners.
 8. Faith-based NPOs that fall under 1 and 2 above.
56. There are no specific laws or regulations that apply to these inherent vulnerabilities, with the exception of faith based NPOs, which are largely registered as Societies. See above for an analysis of the adequacy of regulations for societies (vulnerability 8).
57. NCTC requires that all NPOs working on P/CVE programmes in any part of the country seeks approval before beginning its work/programmes. The organizations are required to submit the following information:
- the personal details and contact address;
 - in the case of a registered association or a public benefit organization, the nature of the association or organization and the particulars of its registration is required;
 - the nature of services in respect to P/CVE programmes;
 - details of donors/sponsors/funders of the programmes and activities; and
 - details of targeted beneficiaries/groups of the projected P/CVE programmes
58. Additionally, the NCTC issues annual approval letters to the NPOs working on P/CVE and conducts periodic assessments and annual reviews of their work.
59. Existing registration systems would allow the authorities to identify NPOs which operate in or near areas of with an active terrorist presence (vulnerability 1). No targeted monitoring of these NPOs by supervisory authorities is noted.
60. Routine reporting may contain information which would enable the identification of NGOs or CLGs exposed to vulnerabilities 2–5. However, no mechanisms for identifying specific NPOs with these features are currently employed.
61. In relation to vulnerability 6, the analysis above details the financial control and verification requirements for each legal type of NPO.
62. In relation to vulnerability 7, there is no current mechanism for identifying NPOs with potentially risky unverified partners.
63. At the time of conducting the survey, Kenya was in the preliminary stages of developing specific measures to target NPOs which may be 'at risk' of terrorist financing.

Recommendations

64. The PBOA should develop mechanisms to identify the specific NPOs that have been identified as being potentially 'at risk' of terrorist financing:

- For PBOs, the authorities should seek legal clarification on whether the PBO Act provides sufficient authority to collect additional identifying information at registration and monitoring to enable them to identify PBOs that fall within the specific risk categories. Assuming the powers are sufficient, systems should be developed and implemented which allow identification of these PBOs.
 - For CLGs, authorities should review current registration and reporting systems to assess whether they can enable the identification of CLGs that fall within risk categories, and identify and implement any additional measures that may be needed to enable identification of CLGs potentially exposed to risk.
 - More fundamental reforms are required for FBOs currently registered as Societies. See below for more details.
65. Following the recommendation above, the PBO Authority and Business Registration Services should ensure that any routine monitoring or oversight activities relating to NPOs under their jurisdiction are targeted, proportionate, risk-based, and non-disruptive. This could include introducing systems to ensure that NPOs that may be potentially “at risk” of terrorism financing abuse are more likely to be subjected to routine desk-based reviews, inspections or audits. For low risk NPOs, outreach and engagement may be sufficient per the revised FATF guidance.
 66. Authorities should review the provisions and implementation of s.11(5)(a), s.8(4)(i) and s.30 of the PBO Act to ensure that they do not disrupt or discourage PBO activity and uphold national and international human rights frameworks.
 67. Political authorities should ensure that the new PBO Authority, PBO Federation and PBO Tribunal have the capacity and resources to implement the law as intended.
 68. Given the low risks to CBOs and trusts, no specific regulatory measures are recommended, in line with the risk-based approach required by FATF and elaborated in the revised Interpretive Note to Recommendation 8.²⁹ CBOs and trusts should be engaged in general awareness raising on potential TF risks and measures that individual NPOs can take to mitigate those risks (see next section).
 69. The FRC is in the process of amending the Proceeds of Crime and Anti-Money laundering Act (POCAMLA) to remove the PBO Authority (formerly NGOs Coordination Board) as a reporting entity, in line with the clarification from FATF that NPOs on the issue.³⁰ This amendment will be in line with FATF’s rec 8 guiding notes that NPOs should not be treated as DNFBPs.
 70. It is noted in the assessment of inherent vulnerabilities (section F, above) that a review of the oversight of faith-based organisations is already being considered as part of a separate process. It is recommended that the risks, vulnerabilities, and deficiencies identified in this assessment related to certain FBOs are communicated to the authorities responsible for the ongoing FBO review. The FBO review should be advised to consider the need for authorities to be able to identify the specific FBOs which may be ‘at risk’ of terrorist financing, because of their location or the communities that they operate with; and that these FBOs are subjected to targeted and proportionate oversight and provided with additional guidance and support where needed. The PBO review and development of subsequent oversight and risk mitigation measures should be done in collaboration with FBO representatives.
 71. The PBOA and the FRC should take measures to ensure that all competent authorities, relevant law enforcement and intelligence agencies are appraised of the findings in this report.

²⁹ See in particular paragraphs 5(e) and 7 of the revised Interpretive Note to Recommendation 8 (2023).

³⁰ See paragraphs 5(e) of the revised Interpretive Note to Recommendation 8 (2023) and paragraph 7 of the Best Practices Paper (2023).

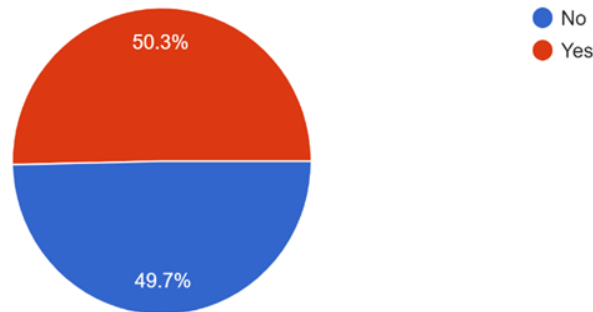
I: Policy and Outreach

72. This section of the report refers to policies and outreaches or initiatives provided or sponsored by government institutions. This includes awareness raising, capacity building, best practices, advice, trainings, workshops, and other initiatives, in compliance with the 4th Round Methodology for FATF R8.
73. As noted above, in November 2023 FATF issued a revised Recommendation 8, Interpretive Note and Best Practices Paper. Amendments to the FATF Methodology for R8 and to Immediate Outcome 10 are being discussed by FATF at the time of writing.
74. These amendments have established new standards for the 5th Round of evaluations. Two of the reforms are particularly significant to this section. These are:
- **Countries should consider the impact of self-regulatory measures in mitigating risks.** The Interpretive Note recognises that, for many NPOs, self-regulatory measures may be sufficient to mitigate risk (5(e), Interpretive Note)³¹. Current self-regulatory measures are assessed in the next section. Measures by government to encourage and facilitate self-regulation are considered in this section.
 - **Countries should develop cooperative relationships with the private sector and NPOs.** Countries are already assessed on how well they work with the NPO sector to identify and disseminate best practices on mitigating TF under criterion 2(c) of the FATF Methodology. The revised Interpretive Note expands this duty to include consultation during the risk assessment process (see paragraphs 5(f), 6(d)(i), 7(a)(ii) and (iii) of the Interpretive Note, and paragraphs 12m 29, 30, 32, 33, 37 and 39 of the revised Best Practices Paper).
75. This section will therefore assess outreach, the development of cooperative relationships, and government measures to facilitate self-regulation.
76. **National Counter-Terrorism Committee:** The NCTC has previously and conducted outreach and sensitization to approximately 29 NPOs on vulnerabilities and TF risks, as well as penalties for supporting/facilitating terrorists (individuals or groups) directly or indirectly. The outreach is done through; Public awareness meetings on the implications of TF and the ramifications to the NPOs, Community engagement fora for purposes of identifying the drivers of radicalisation and recruitment into violent extremism and the fact that such activities may constitute TF, Tailored engagements for Directors of NPOs and their families and how they can be channels for TF, and Inter-faith dialogue meetings coordinated by NCTC for purposes of informing NPOs how they can be abused through the guise of religion.
77. The NCTC's role in outreach include:
- Conducting TF awareness of all NPOs registered with NCTC on their susceptibility to abuse by terrorist actors/groups.
 - Tailored training and capacity building programmes for government agencies, including the NGOs Coordination Board, NIS, Police, NGAO and County Governments on their role in regulating and monitoring NPOs against TF.
 - Organizing community engagement fora where the NPOs operate and raise their awareness on the implications of being sympathetic to terrorist groups and how it which forms of support constitute to TF.
 - Partnering with academia and research organizations to undertake studies on the levels of community awareness on CT and TF aspects in order to understand terrorist financial networks on one hand and building community resilience on the other.

³¹ See also paragraphs 5a, 5c, 5d, 5e and 7 of the Interpretive Note to R8 (2023)

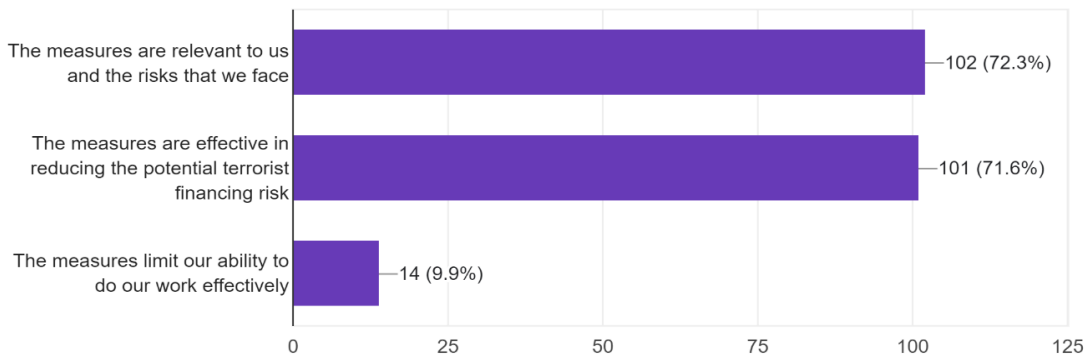
78. **The Public Benefits Organisations Authority.** The newly enacted Public Benefit Organizations Act 2013 provides for some significant developments in both the facilitation of self-regulatory measures by government, and in establishing a new framework for cooperation between government and the sector.
79. Developing cooperative relationships: The objectives of the PBO Act include “facilitate a constructive and principled collaboration between public benefit organisations, the Government, business, donors and other actors in order to advance public interest” (3(e)). Section 4(3) requires the government and PBOs to comply with principles of collaboration.
80. The First Schedule to the Act establishes very detailed principles for effective collaboration between the government and PBOs. This includes sections on: principles of collaboration; dialogue and communication; managing diverse expectations; conflict management; learning and sharing; sustainability and capacity building; joint initiatives; institutionalisation; resources; good governance, equity and equality; promotion of trust; monitoring and evaluation; and predictability.
81. It states that the sectors agree to the establishment of a joint committee of PBOs and government to pursue, monitor, report on and review the provision of these principles.
82. s.21 establishes a Federation of PBOs, comprising PBOs and recognised self-regulatory forums, to provide leadership on matters of interest to the sector; and advise the authority and donors on the development of the sector or other issues of relevance. (s. 21(9)).
83. Further, the Act requires the Cabinet Secretary, the PBO Authority and the Federation to have regular consultations to harmonise their policies. (s.21(10)).
84. The Act states that PBOs should be guided by principles and aspirations, including promoting a culture of dialogue; and fostering and maintaining mutual trust, partnership and respect between PBOs, the government, donors and the private sector. (s.27).
85. Self-regulation: The preamble to the PBO Act notes the importance of self-regulation, and the objectives of the Act include to “promote the development of self-regulation among public benefit organizations” (3(b)). S.28 requires the PBO Authority to encourage umbrella associations, and facilitate training on self-regulation.
86. The Act provides for the recognition by the PBO Authority of self-regulation forums, which any PBO may join (s.23 and s.24). The objectives of the Federation of PBOs includes to promote, coordinate and monitor the performance of self-regulation forums; and facilitate capacity building of NGOs (s.21(9)(b-d)).
87. **Survey findings:** During the survey, 288 respondents responded to the question on whether the government made them aware of the potential risk of terrorism financing to their organizations, rules of terrorism financing for banks or financial institutions which affect their NPOs, 50.3% Responded yes while 49.7% responded No.

Q7g: The government has made us aware of the potential risk of terrorist financing to our organization Rules on terrorist financing for banks or financial institutions which affect my CSO
288 responses



When asked if the measures were relevant to them and the risk that they face, whether the measures were effective in reducing the potential terrorist financing risk and if the measures limited their ability to do their work effectively, 141 respondents responded to the question where 72.3% responded that the measures were relevant to them and the risks that they face, 71.6% responded that the measures were effective in reducing the potential terrorist financing risk and 9.9% responded that the measures limited their ability to do their work effectively.

Q7g: The government has made us aware of the potential risk of terrorist financing to our organization Rules on terrorist financing for banks or financial institutions which affect my CSO
141 responses



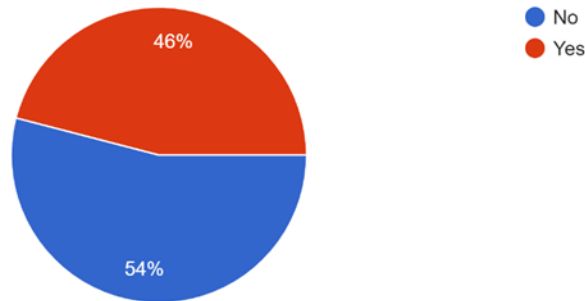
88. In conclusion, government outreach to NPOs in Kenya is still not sufficient. Government agencies such as the NGOs Coordination Board, the National Counter Terrorism Center (NCTC), the Asset Recovery Agency and many other agencies mandated to counter money laundering and terrorism financing always lack sufficient funding to effectively perform their mandate.

Risk-based approach: Targeting of specific inherent vulnerabilities.

89. When asked whether government provided them with advice or guidance on how best to reduce the potential terrorist financing risk in their organizations, 285 respondents responded to the question. 46% responded “No” while 54% responded “Yes”.

Q7h: The government has provided us with advice or guidance on how best to reduce the potential terrorist financing risk in our organization

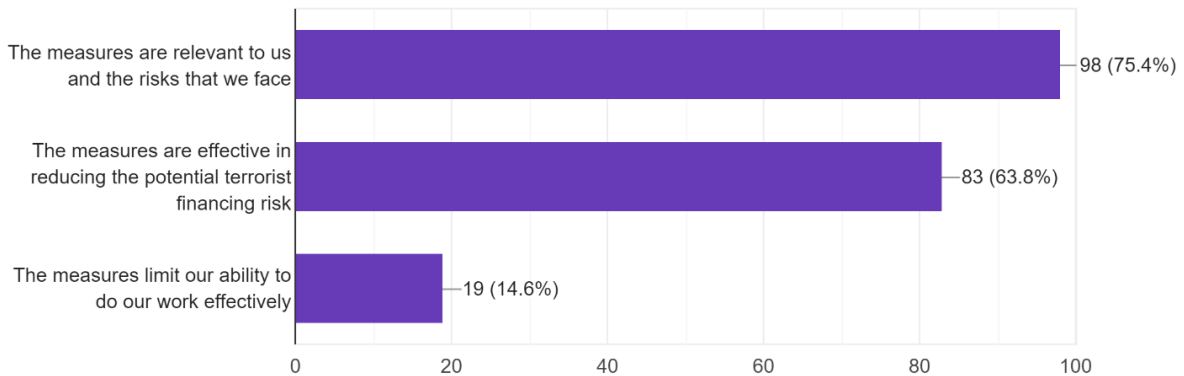
285 responses



The second part of the question was whether the advice or guidance provided by the government on how best to reduce the potential terrorist financing risk in their organization was relevant, effective or limited their ability to do their work effectively, 130 responded to the question, 75.4% responded that the measures were relevant to them and the risk they face, 63.8% responded that the measures were effective in reducing the potential terrorist financing risk while 14.6% responded that the measures limited their ability to do their work effectively.

Q7h: The government has provided us with advice or guidance on how best to reduce the potential terrorist financing risk in our organization

130 responses



90. In conclusion, Government institutions have made efforts to give to NPOs operating in high-risk area though more needs to be done in identifying the specific high-risk areas and what it means when we refer to communities sympathetic to terrorism.

Recommendations

- 91. Kenya should develop a comprehensive, sustained, and targeted programme of outreach to mitigate potential TF risks in the NPO sector.
- 92. The measures should be developed by a multi-agency team led by the PBOA in consultation with representative bodies from the NPO sector and donors. Development and delivery of the outreach may be by any one of these bodies, or by any combination of these bodies. Regardless of the approach, procedures should be developed to ensure coordinated targeting and delivery.

93. A wide range of measures are available. A detailed programme for outreach should be developed and implemented by the stakeholders listed in the paragraph above. The programme should cover a range of TF-relevant and TF-specific topics for a broad audience. It should include:
- General awareness raising programmes targeting donors and the public on TF-relevant issues and pointing to where further advice is available.
 - General advice and/or training for NPOs on best practices, including how to identify possible TF and how to identify if your NPO is higher risk.
 - Targeted advice, guidance and/or training for higher risk NPOs, providing detailed explanations of legal duties, and best practice guidance on key issues such as governance, finance, project management, risk management, and due diligence.
 - Socialisation of the Risk Assessment report and its key findings amongst government, NPO and private sector stakeholders.
94. Stakeholders should refer to the detailed best practices set out in the Best Practices Paper “*Combating the Terrorist Financing Abuse of Non-Profit Organisation*” (FATF, Paris 2023).³²

³² www.fatf-gafi.org/en/publications/Financialinclusionandnpoissues/Bpp-combating-abuse-npo.html

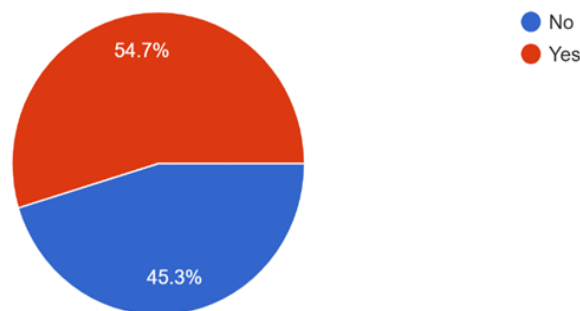
J: NPO Measures

95. As noted above, this risk assessment assesses compliance with the 4th Round Methodology for FATF R8. However, in November 2023 FATF issued a revised Recommendation 8, Interpretive Note and Best Practices Paper. In particular, the revised Interpretive Note recognises that, for many NPOs, self-regulatory measures may be sufficient to mitigate risk (5(e), Interpretive Note)³³. These self-regulatory measures are assessed in this section.

Assessment of general adequacy of self-regulatory measures

96. The NPO survey asked NPOs to self-report on nine best practices which are relevant to the reduction of TF risks. NPOs were asked whether they conduct formal risk assessment of terrorism financing, due diligence of partners (including contractors and subgrantees), due diligence of donors, due diligence of beneficiaries, whether they apply governance measures of procedures, have and apply financial management systems or procedures, apply project management systems or procedures, whether they subscribe to any third-party standard e.g. Voluntary codes of conduct, Service charter, ISOs.
97. In the responses when asked whether they do formal risk assessment of terrorism financing, 360 respondents responded to the question. Of the 360, 57.7% said “Yes” while 45,3% said “No”

Q5a: Do you do formal risk assessments of terrorist's financing?
360 responses

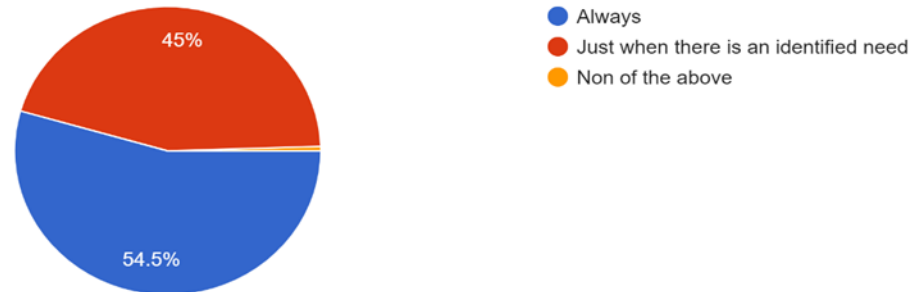


98. When asked if this was something they did all the time or they do it sometimes when they identify a need, 202 respondents responded to the question 54.5% said they do it always, 45% did it when there was an identified need while 0.5% did not have a response as indicated in the chart below.

³³ See also paragraphs 5a, 5c, 5d, 5e and 7 of the Interpretive Note to R8 (2023)

Q5a: Do you do formal risk assessments of terrorist's financing?? Is this something you do all the time, or do you just do it sometimes when you identify a need?

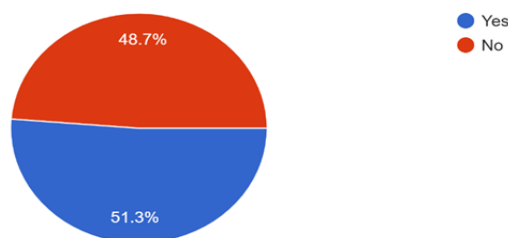
202 responses



99. When asked whether formal risk assessment of terrorism financing was one of the reasons, they did risk assessment to reduce a possible terrorist financing risk, 195 respondents responded to the question. Of the 195, 51.3% said "Yes" while 48.7% said "No".

Q5a: Do you do formal risk assessments of terrorist's financing? Is one of the reasons you do risk assessments to reduce a possible terrorist financing risk?

195 responses



Notable best practices in relation to specific inherent vulnerabilities

100. The NPO sector in Kenya has been implementing measures to identify, address and mitigate Terrorist Financing (TF) risks by ensuring that they are fully compliant with the requirements of the regulatory body (in our case the NGO Board) and other relevant regulatory requirements by other government institutions such as the Kenya Revenue Authority (KRA). The aim is to ensure that NPOs are fully aware of the steps that should take, should the NPO be vulnerable to TF abuse and that the NPO takes the steps to mitigate the risk.

101. NPOs led by Muslims for Human Rights (MUHURI) with support from various partners such as the Fund for Global Human Rights (FGHR), International Centre for Not-for-Profit Law (ICNL), and Human Security Collective (HSC) Co-founded a Civic space protection project themed "Protecting the Civic Space through the Engagement and Participation of NPOs in the FATF Processes in Kenya". The main target for the outreaches was NPOs that fall under the FATF definition of Non-profit Organisations. MUHURI worked with and non-governmental organizations such as the Global Center of Corporate Security, the Kenya National Civil Society Center (KNCSC) and the Non-Governmental Coordination Board (NGO Board) to conduct outreach to NPOs in seven (7) regions of the country namely Coast, Nairobi/Central, Nyanza, Western, North Rift, Eastern, and Northeastern regions. The main aim of the meetings was to build the capacity of civil society actors on measures to protect NPOs from terrorism financing

abuse, including the potential misapplication and abuse of such measures to limit civic space, access to financial services, and humanitarian action.

102. In the various outreach sessions conducted by MUHURI, Global Center on Cooperative Security, the Kenya National Civil Society Center (KNCSC) and the PBO Authority, formerly the NGO coordination board, provided a variety of topics covering the inherent vulnerability issues such as compliance Measures, Policy development, due diligence to both development partners and beneficiaries of their programs. Topics on how NPOs can verify funding sources as well as how they can strengthen their internal financial controls were also provided.

103. In Conclusion, the multiple awareness raising, Capacity building and training sessions conducted by various NPOs in Kenya offered a variety of topics for discussion that benefited the sector but more specifically in relation to compliance, due diligence, and civic space promotion.

Conclusions

104. In summary, NPOs outreaches are not always sustainable and limited in scope (Specifically regarding TF and specific risks). They are not targeted at those NPOs which have been identified as being “at risk” of TF. There is little guidance on the nature of the TF risks that NPOs face, or how they can identify or protect themselves against those risks. Funding is limited and support from government and the private sector is needed to address the issue.

Recommendations

105. While NPOs in Kenya have periodically implemented measures to identify and address TF risks, such action remains exceptions rather than the norms. To strengthen counter-terrorism financing efforts within NPOs, below are self-regulation measures proposed.

- More capacity building, trainings and awareness raising creation sessions be conducted to NPOs on AML/CFT regulations, compliance, due diligence, and TF risk identification. This can be done in collaboration with other stakeholders such as the NGO Coordination Board, Financial Reporting Center (FRC), National Counter-terrorism Center (NCTC), Asset Recovery Agency (ARA) and other government institutions. This can also be done through media engagements with local and national media houses. This could enhance NPOs Knowledge as well as of the community and other NPO stakeholders.
- NPOs that may be exposed to TF should be encouraged and supported to establish proportionate risk-mitigation measures, which may include a documented policy outlining their commitment to preventing illicit activities including TF.
- NPOs in Kenya should be encouraged to put in place good governance measures or procedures as well as elect ethical and untainted leadership and capacitated on their clear roles and responsibilities.
- NPOs in Kenya should conduct risk assessment processes which allows them to identify risks associated with different donors, projects, and regions. This information aids allocating resources effectively for due diligence and monitoring.
- NPOs should aim at ensuring transparency and accountability in financial management practices and reporting to maintain public confidence.
- NPOs should monitor financial transactions and donations to identify unusual patterns or unexplained contributions.
- NPOs should share information about the organisation’s mission, activities and performance with the public, donors, and relevant regulatory bodies.
- NPOs should work closely with government and law enforcement agencies to exchange information and address potential treats or concerns.

K: Reassessment Policy

106. The FATF Methodology states that:

"8.1 Countries should...:

(d) periodically reassess the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures."

107. A risk assessment is a snapshot, based on available evidence and context present at that time. FATF is clear that understanding and reviewing the nature of the TF risk should be an ongoing and an evolving process.

108. Triggers for a full re-assessment of the inherent and residual risk are:

- An official assessment significantly changes its assessment of the TF risk to NPOs. Official publications might include the National Risk Assessment or Terrorist Financing Risk Assessment. The assessment may see the risk as higher or lower than this report.
- An official assessment significantly changes its assessment of the overall terrorist financing threat in Kenya. This might be a significant change in the nature of the overall threat, or a change in the assessment in the level of the overall threat.
- An NPO is proved to be involved in the financing of a terrorist incident in Kenya;
- Five years has passed since the last full risk assessment.

109. A partial re-assessment will look at one or more specific risk factors (inherent risk), and/or the adequacy of the mitigating measures in relation to that risk. Triggers for a partial re-assessment of inherent and/or residual risk are:

- A significant change in the legal or regulatory framework in relation to the risk factor;
- A terrorist financing incident occurs in which the risk factor is material;
- An official assessment re-evaluates a risk factor (either higher or lower).

110. In line with the best practices identified by the FATF, any future assessment should include:

- *Involvement of NPOs:* "It is essential that efforts to identify NPOs and assess the risk of ML/TF include the participation of these organizations. It is important to ensure the participation of a representative sample of NPOs in the risk assessment process, taking into account factors such as the size of the entities, the organizational capacity, the nature of the operations and the diversity of the participants, as well as, where appropriate, representatives who have reliable knowledge of unregistered or unauthorized NPOs".³⁴
- *Clarity in the definition of NPOs:* It is essential that future evaluations begin with a clear definition of the concept of NPOs so that the population and sample can be defined in a way that is more in line with the reality of the context being analyzed;
- *Adapting to new challenges:* Although this risk assessment used an appropriate methodology, "the evolving nature of TF threats and vulnerabilities means that the relevant sources of information that countries will need to consult to assess the risk of TF faced by national NPOs may change over time. An important part of updating any assessment of the TF risk faced by NPOs will be to critically review the approach taken and identify areas where the approach could be improved next time (for example, by identifying blind spots, areas where more information is needed and NPOs that may have

³⁴ 32, Document on best practices (FATF, 2023)

been unduly affected), recognizing that some jurisdictions may need to adopt a phased approach. Risk updates may focus on specific threats or sub-sectors and/or the development of risk indicators."³⁵

- *Publication:* to "increase global understanding of risk and help stakeholders, including authorities, NPOs, financial institutions and donors, to identify, assess and understand their vulnerabilities."³⁶

³⁵ *Ibid*, 38

³⁶ *Ibid*, 23

L: Annexes

Annex 1: FATF Recommendations Relevant to NPOs

Recommendation 8 on Non-Profit Organisations (2016)

“8. Non-profit organisations

Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse, including:

- (a) by terrorist organisations posing as legitimate entities;*
- (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and*
- (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.*

Extract from ***The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation***
(FATF, June 2016).

Revised Recommendation 8 on Non-Profit Organisations (2023)

“8. Non-profit organisations

Countries should identify the organisations which fall within the FATF definition of non-profit organisations (NPOs) and assess their terrorist financing risks. Countries should have in place focused, proportionate and risk-based measures, without unduly disrupting or discouraging legitimate NPO activities, in line with the risk-based approach. The purpose of these measures is to protect such NPOs from terrorist financing abuse, including:

- (a) by terrorist organisations posing as legitimate entities;*
- (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and*
- (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.*

Extract from ***The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation***
(FATF, November 2023).

The *Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems* (FATF (2013)) provides guidance to assessors on assessing compliance with R8. It sets out the questions evaluators will look to answer in the Mutual Evaluation process. The methodology for Recommendation 8 is as follows:

Taking a risk-based approach

8.1 Countries should:

- (a) Without prejudice to the requirements of Recommendation 1, since not all NPOs are inherently high risk (and some may represent little or no risk at all), identify which subset of organizations fall within the FATF definition of NPO, and use all relevant sources of information, in order to identify the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse;*
- (b) identify the nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors abuse those NPOs;*
- (c) review the adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector that may be abused for terrorism financing support in order to be able to take proportionate and effective actions to address the risks identified; and*
- (d) periodically reassess the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures.*

Sustained outreach concerning terrorist financing issues

8.2 Countries should:

- (a) have clear policies to promote accountability, integrity, and public confidence in the administration and management of NPOs;*
- (b) encourage and undertake outreach and educational programmes to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse;*
- (c) work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse; and*
- (d) 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.*

Targeted risk-based supervision or monitoring of NPOs

8.3 Countries should take steps to promote effective supervision or monitoring such that they are able to demonstrate that risk based measures apply to NPOs at risk of terrorist financing abuse.

8.4. Appropriate authorities should:

- (a) monitor the compliance of NPOs with the requirements of this Recommendation, including the risk-based measures being applied to them under criterion 8.3; and*
- (b) be able to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of these NPOs.*

Effective information gathering and investigation

8.5 Countries should:

- (a) ensure effective co-operation, co-ordination and information-sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs;*

(b) have investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations;

(c) ensure that full access to information on the administration and management of particular NPOs (including financial and programmatic information) may be obtained during the course of an investigation; and

(d) establish appropriate mechanisms to ensure that, when there is suspicion or reasonable grounds to suspect that a particular NPO: (1) is involved in terrorist financing abuse and/or 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 other forms of terrorist support; 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, that this information is promptly shared with competent authorities, in order to take preventive or investigative action.

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

8.6 Countries should identify appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support.”

Extract from ***Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems***, updated February 2019, FATF, Paris, France.

Immediate Outcome 10

“Immediate Outcome 10: Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector.

Characteristics of an effective system: Terrorists, terrorist organisations and terrorist support networks are identified and deprived of the resources and means to finance or support terrorist activities and organisations. This includes proper implementation of targeted financial sanctions against persons and entities designated by the United Nations Security Council and under applicable national or regional sanctions regimes. The country also has a good understanding of the terrorist financing risks and takes appropriate and proportionate actions to mitigate those risks, including measures that prevent the raising and moving of funds through entities or methods which are at greatest risk of being misused by terrorists. Ultimately, this reduces terrorist financing flows, which would prevent terrorist acts. This outcome relates primarily to Recommendations 1, 4, 6 and 8, and also elements of Recommendations 14, 16, 30 to 32, 37, 38 and 40.”

Extract from **The Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems** (FATF, 2013)

IO.10 provides examples of information that could support the Evaluators’ conclusions:

“a) Examples of Information that could support the conclusions on Core Issues

1. Experiences of law enforcement, FIU and counter terrorism authorities (e.g., trends indicating that terrorist financiers are researching alternative methods for raising / transmitting funds; intelligence/source reporting indicating that terrorist organisations are having difficulty raising funds in the country).

2. Examples of interventions and confiscation (e.g; ... investigations and interventions in NPOs misused by terrorists).

...4. Information on NPO supervision and monitoring (e.g. frequency of review and monitoring of the NPO sector (including risk assessments); frequency of engagement and outreach (including guidance) to NPO sector regarding CFT measures and trends; remedial measures and sanctions taken against NPOs).”

Extracts from **The Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems** (FATF, 2013)

It further provides examples of specific factors that could support the Evaluators’ conclusions.

“b) Examples of Specific Factors that could support the conclusions on Core Issues

...10. What is the level of licensing or registration for NPOs? To what extent is a risk-sensitive approach taken to supervise or monitor NPOs at risk from terrorist abuse and appropriate preventive, investigative, criminal, civil or administrative actions and co-operation mechanisms adopted?

11. How well do NPOs understand their vulnerabilities and comply with the measures to protect themselves from the threat of terrorist abuse?”

Extracts from **The Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems** (FATF, 2013)

The *Methodology for Assessing Technical Compliance* provides ‘Notes to Assessors’ on how to assess IO.10. The notes relevant to NPOs are as follows:

“Note to Assessors: Assessors should also consider the relevant findings on the level of international co-operation which competent authorities are participating in when assessing this Immediate Outcome.

Core Issues to be considered in determining if the Outcome is being achieved.

...10.2. 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?...

...10.4. To what extent are the above measures consistent with the overall TF risk profile?”

Extracts from **The Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems** (FATF, 2013)