

# **Terrorist Financing Risk Assessment for the NPO Sector in Kenya**

**Redacted Draft for Review v1.0**

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**REDACTED**

This report has been edited to remove five paragraphs which contained confidential information. Other data may also be confidential, and all contributors should be consulted if editing the report for public release.

## A: Introduction

### Context for this Risk Assessment

1. The ongoing international campaign against terrorist financing identified typologies worldwide where terrorists and terrorist organizations exploit the NPO sector through: collection, consolidation/aggregation, transfer, dissemination and use of funds raised (what is also known as the funding cycle); providing logistical support; encouraging terrorist recruitment; otherwise supporting terrorist organizations and operations; creating sham charities; or engaging in fraudulent fundraising for these purposes.
2. The Financial Action Task Force (FATF) is the international standard setting body in the area of Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT). Two parts of the FATF standards refer directly to NPOs - these are Recommendation 8 and Immediate Outcome 10 (see Annex 1).
3. Both FATF Recommendation 8 and FATF Immediate Outcome 10 require that countries, as a first step, identify the subset of organizations that fall under the FATF's definition of NPOs, 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.
4. Kenya is a member of ESAAMLG, the FATF-style Regional Body for East and Southern Africa. ESSAAMLG last published a Mutual Evaluation Report (MER) of Kenya's compliance with the FATF standards in September 2022.<sup>1</sup> The MER rated Recommendation 8 as Non-Compliant and effectiveness under Immediate Outcome 10 as Low. The major issues identified were:
  - Kenya has not identified the subset of NPOs at risk of TF abuse.
  - There is lack of effective monitoring.
  - There is no risk-based supervision or monitoring by the regulator and the supervisor. No review of the adequacy of measures, laws and regulations to afford proportionate and effective actions has been done.
  - There is an uncoordinated supervisory, regulatory and reporting regime for NPOs which does not promote accountability, and public confidence in the administration and management of NPO.
  - There are no periodical assessments of the sector.
  - There is general inadequacy of oversight and supervision by the NGO Coordination Board and the FRC.
  - No sanctions have been applied to any NPO for violations, as such, effectiveness, proportionality and dissuasiveness of the sanctions could not be determined.
  - No policies in place to ensure effective co-operation, co-ordination and information-sharing amongst appropriate authorities holding relevant information on NPOs.
  - There is lack of indication on how the relevant authorities cooperate, coordinate or share information on NPOs.
  - No clear mechanism to obtain full access to information on the administration and management of particular NPOs.<sup>2</sup>

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<sup>1</sup> *Anti-money laundering and counter-terrorist financing measures - Kenya, Second Round Mutual Evaluation Report*, ESAAMLG, Dar es Salaam <http://www.esaamlg.org/reports/me.php>

<sup>2</sup> *Ibid*, p.181

## Methodology

5. The purpose of this risk assessment is to conduct a comprehensive review to understand the features and types of NPOs at risk of TF abuse and the nature of the threat.
6. The FATF standards “do not prescribe a particular method or format for assessing risk” of terrorist financing in NPOs.<sup>3</sup>
7. General best practices for risk assessments 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 in general.
8. This risk assessment is based as closely as possible on FATF requirements and guidance. Paragraph 8.1 of the FATF Methodology states that 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.*
9. The methodology used by Kenya for its NPO risk assessment is designed to meet this requirement as follows:

Para.	Requirement	Relevant section
8.1(a)	<i>identify which subset of organizations fall within the FATF definition of NPO.</i>	Part C: ‘Scope of this Report’
8.1(a)	<i>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.</i>	Part F: ‘Identifying NPOs potentially at risk of terrorist financing’
8.1(b)	<i>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</i>	Part E: ‘Identifying the nature of the Threat’

10. This risk assessment will be complemented by a separate assessment of the adequacy of mitigating measures (Phase II of the risk assessment, *Review of Measures to Mitigate TF Risks in NPOs*). The additional assessment will “review[s] 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” in line with paragraph 8.1(c) of the FATF Methodology.

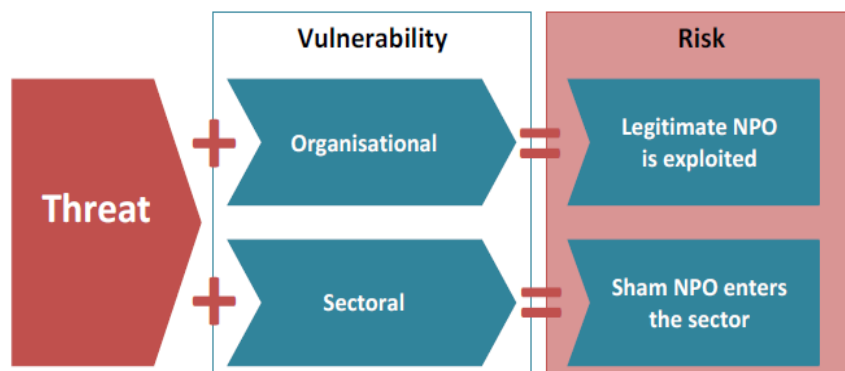
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<sup>3</sup> *Terrorist Financing Risk Assessment Guidance* (FATF, 2019)

Terminology and key concepts

11. The *Best Practices Paper* [FATF, 2014] provides the following graphic to illustrate how terrorist financing risk is assessed in the NPO sector.

Figure 1. Threat+Vulnerability=Risk



12. FATF defines the key concepts relating to risk in the *FATF Guidance: National Money Laundering and Terrorist Financing Risk Assessment* (FATF, 2013) and *The Risk of Terrorist Abuse in Non-Profit Organisations* (FATF, 2014). These definitions are used in this risk assessment. Additional interpretations of these terms within the context of this risk assessment, and definitions of additional key terms, are provided as follows:

Term	FATF definition	Interpretation	Relevant section
<b>Risk</b>	<i>'A function of three factors: threat, vulnerability and consequence.'</i>		Part E and F Phase II
<b>Threat</b>	<i>'A person or group of people, object or activity with the potential to cause harm. Threat is contingent on actors that possess the capability and the intent to do harm.'</i>	The specific group or persons may be unknown but caused by a known vulnerability, e.g. failed state.	Part E
<b>Nature of the threat</b>		The typologies or methods by which the <i>threat</i> may finance terrorism through NPOs.	Part E
<b>'at risk' NPOs</b>	<i>'NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse.'</i>	i.e. NPOs which are 'vulnerable' to terrorist financing abuse	Part F
<b>Vulnerability</b>	<i>'things that can be exploited by the threat or that may support or facilitate its activities. Vulnerability in the NPO sector can exist at either</i>	Vulnerabilities in this risk assessment consists of <i>inherent vulnerabilities</i> and <i>inadequate or absent</i>	Part F Phase II

	<i>the organisation or sectoral level.'</i>	<i>control measures (see below).</i>	
<b><i>Inherent vulnerability</i></b>		A specific aspect of the NPO or the way it operates that exposes it to a TF risk.  <i>'the features and types of [at risk] NPOs'</i>  <i>'[the] activities or characteristics' [of 'at risk' NPOs]</i>	Part F
<b><i>Inadequate or absent control measures</i></b>		The absence of inadequacy of measures that might prevent or mitigate the <i>threat</i> from exploiting the <i>vulnerability</i> . Could be organisational or sectoral.	Phase II <i>(Review of Measures to Mitigate TF Risks in NPOs)</i>
<b><i>Consequence</i></b>	<i>'the impact or harm that ML or TF may cause'</i>		Part F Phase II

### Implementation

13. The risk assessment was completed using a Methodology provided by Greenacre Associates. It was implemented by a Technical Group, and overseen by an Oversight Group.
14. The Technical Group team comprised representatives from the following organisations:
  - Bernadette Nzomo (NGO Board)
  - Andrew Ogombe (NGO Board)
  - Fredrick Okado (MUHURI)
  - Suba Churchill (KNCSC)
15. The primary responsibilities of the Technical Group were to:
  - Analyze data
  - Assess the data in line with the methodology and FATF requirements
  - Draft the report with the support of the technical consultant
  - Present the results to the oversight group
16. A Validation Meeting attended by all members of the Technical Group and Orientation Group was held in Nairobi and online on September 13<sup>th</sup> 2023 to discuss and sign-off this report.

### Data and sources

17. The current risk assessment uses both qualitative and quantitative data and, in line with FATF guidance<sup>4</sup>, seeks to ensure that qualitative data is given its due weight. This is particularly significant given the lack of quantitative data on TF risk in the NPO sector in Kenya.

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<sup>4</sup> "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

18. The following primary information and data sources were used in this assessment:

- **Interviews:** Online interviews were conducted with representatives from the following agencies in zoom meeting on 5<sup>th</sup> June 2023 with The Office of the Director of Public Prosecutions (ODPP) [intelligence agency]
- **Data request and questionnaire.** Written requests for data on terrorist financing in the NPO sector, case studies, and surveyed perceptions of the TF risk, threats and vulnerabilities were obtained from representatives of the following agencies:
  - Central Bank of Kenya
  - National Intelligence Service
  - Directorate of Criminal Investigation (ATPU)
  - National Crime Research Centre- did not populate the questionnaire -stated they did not have any data on TF risk
  - Financial Reporting Centre
  - Registrar of Companies-Limited by Guarantee
  - National Counter Terrorism Centre
  - Asset Recovery Agency
  - NGOs Co-ordination Board
- **Data from Suspicious Transaction Reports:** The FIU provided a summary of STRs received on FATF NPOs. The data covered 2014 to 2021
- **Survey:** A survey of 400 NPOs was conducted on perceptions of TF risk and the effectiveness of mitigating measures with 377 responded while 23 NPOs declined to respond. The sample frame was drawn from CBOs 260 from 26 sub counties, NGOs 3,536 (active NGOs) and CLG 2,551. The methodology assumed normally distributed data and sample size of 400 was arrived at and selected randomly from the sample frame. Data collection was through telephone interview, in person interviews and email via google form.

19. The following reports on AML/CFT in Kenya were consulted:

- Mutual Evaluation Report and any follow-up reports
- National Risk Assessment/TF risk Assessments
- Any NPO sectoral risk assessments

20. The following secondary information and data sources were used. Secondary information and data were not given the same weight as primary sources. Primarily it was used to inform the

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*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)*

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methodological approach, but it was also used selectively and in context to inform assessments where primary data was not available:

- *The Interpretive Note to Recommendation 8* (see *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – the FATF Recommendations* (2012, updated 2016)).
- *The Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems* (FATF (2013)).
- *The International Best Practices: Combating the Abuse of Non-Profit Organisations* (FATF (2015)).
- *The Risk of Terrorist Abuse in Non-Profit Organisations* (FATF, 2014).
- *The Terrorist Financing Risk Assessment Guidance* (FATF, 2019).
- The ESAAMLG Mutual Evaluation Report of Kenya;
- Feedback from the FATF Private Sector Consultative Forum (Vienna, March 2016);
- The Sectoral Risk Assessments of the NPO Sector from Nigeria, UK, Canada, Australia, Albania, North Macedonia, Jordan and the Philippines. The authors also had reference to six other completed but unpublished risk assessments for reference, including two from the ESAAMLG region.



## B: Executive Summary

21. This risk assessment was commissioned by the Government of Kenya as part of its commitment as a member of the Financial Action Task Force’s (FATF) Global Network<sup>5</sup> to combat the financing of terrorism. It was completed with support from Greenacre Associates and the Global Center on Cooperative Security (Global Center) with funding from the US Department of State.
22. The risk assessment meets the core FATF requirements in relation to Recommendation 8 and Immediate Outcome 10. Specifically, paragraph 8.1 of the FATF Methodology states that countries should:
- (a) identify which subset of organizations fall within the FATF definition of NPO...*
  - 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;*
  - 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*

23. The risk assessment identified the following [number] types of NPOs as meeting the FATF definition of NPOs.

**Table 2: Legal types of NPOs in Kenya.**

	<b>Type</b>	<b>Relevant law</b>	<b>Exclusively FATF NPOs</b>
1	NPO Type A	Law	Yes/No/Partly
2	NPO Type B	Law	Yes/No/Partly
3	NPO Type C	Law	Yes/No/Partly
4	NPO Type D	Law	Yes/No/Partly
5	NPO Type E	Law	Yes/No/Partly
6	NPO Type F	Law	Yes/No/Partly

24. Data used in this risk assessment included a survey of [number] NPOs; data submissions from the [list sources]; a questionnaire of [number] law enforcement and intelligence agencies; interviews with [number] supervisory bodies; and reviews of [number] laws, as well as other relevant literature. A combined qualitative and quantitative assessment was undertaken.
25. There are [no/number] known cases or suspicions of terrorist financing abuse of NPOs in Kenya.
26. The assessment considered:
- The size and nature of the overall TF threat in Kenya;
  - Analysis of TF abuse of NPOs in other jurisdictions; and of other forms of financial abuse of NPOs in Kenya;
  - Qualitative assessments of the likely nature of the risk from law enforcement, supervisory and NPO officials.

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<sup>5</sup> [Country] is a member of [FSRB], the FATF-Style Regional Body for [region].

27. [number] possible TF threats to NPOs in Kenya were identified.

**The Terrorist Financing Threat in Kenya**

1. [List conclusions from Section E].

**Nature of the TF Threat to NPOs in Kenya**

1. [List conclusions from Section E].

28. Part F of the risk assessment identified the inherent vulnerabilities to terrorist financing in the NPO sector, these being the features and types of NPOs, and activities and characteristics assessed as being likely to expose an NPO to a potential terrorist financing risk. [number] features, characteristics or activities were identified which increase the risk of TF abuse amongst NPOs in Kenya.

**Inherent Vulnerabilities:  
NPOs and NPO activities likely to be at increased risk of TF abuse**

1. [List conclusions from Section F].

29. Overall, the risk assessment noted [overall conclusions. May include reflection on prevalence of known TF cases; the quality of the data; and the specificities and prevalence of the risk factors identified]. In this context, the overall inherent risk of terrorist financing abuse of NPOs in Kenya was assessed as [overall assessment].
30. This risk assessment will be complemented by a separate *Review of Mitigating Measures*, which will review the adequacy of measures to mitigate the identified TF risks to NPOs and make recommendations for improvement.

**Inherent TF Risk of NPOs in Kenya**

**[Final Assessment]**

## C: FATF NPOs

31. Paragraph 8.1(a) of the FATF Methodology states that countries should “*identify which subset of organizations fall within the FATF definition of NPO.*”
32. FATF defines the term NPO to cover “*a legal person or arrangement or organization that primarily engages in raising or disbursing of funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works.”*”
33. This definition excludes:
  - Informal groups of people which do not meet the definition of legal arrangement;
  - Legal persons or arrangements or organizations which are not established for ‘good works’, such as political parties, trade unions, or cooperatives which are primarily engaged in economic activities for the political, personal or financial benefit of members;
  - Legal persons or arrangements or organizations not engaged in the raising or disbursing of funds as a main purpose. This might include those sports clubs, social associations or religious groups that do not or only incidentally engage in the raising or disbursing of funds.
34. FATF provides the following graph<sup>6</sup> to illustrate which NPOs should be covered by the risk assessment.

Figure 2: FATF NPOs (Source: *TF Risk Assessment Guidance*, FATF).



### Identifying ‘FATE NPOs’ in Kenya

35. On 11<sup>th</sup> November 2022, representatives from government and civil society attended an online workshop moderated by an external consultant. The workshop examined the FATF guidance on ‘FATF NPOs’ and the scope of R8 Risk Assessments and sought to identify which NPOs would meet the FATF definition and should be included within the scope of this risk assessment.
36. The group identified which NPOs meet the FATF definition and should therefore be included in the framework of this risk assessment. The activity of the group began by identifying all organizations in the country that are part of the non-profit sector. The following categories were identified:

<sup>6</sup> Figure 4.1, *Terrorist Financing Risk Assessment Guidance*, (FATF, 2019)

- Non-Governmental Organisations
- International NGOs
- Societies
- Companies limited by guarantee
- Community Benefit Organisations
- Trusts
- Social Justice Centres
- Self-help groups
- Political parties
- Trade unions
- Professional associations

37. **Non-Governmental Organisations (NGOs) and International NGOs (INGOs).** These organisations are defined as public benefit organisations by the NGO Coordination Act. All entities registered with the NGO Board meet the FATF definition of NPO. Some public benefit organisations are not yet registered with the NGO Board, which is a legacy of pre-existing laws (see below). The NGO Coordination Act covers both domestic and international (foreign) NGOs.
38. **Societies.** The Societies Act was the main legislative mechanism for civil society oversight prior to the NGO Coordination Act, although it had a much broader scope. New laws have removed political parties and public benefit organisations from its remit. However, some NPOs which meet the FATF definitions remain, chiefly **faith-based organisations** (some have also registered as NGOs). Other FATF NPOs may remain registered as societies as a legacy of the old legislation.
39. **Other Societies** are not FATF NPOs. This includes **Professional associations and trade unions**, which are excluded as mutual-benefit groups not established for 'good works.'
40. **Companies Limited by Guarantee.** A category of companies established under the companies act for non-profit, public benefit purposes. These entities are FATF NPOs.
41. **Community Benefit Organisations (CBOs).** Organisations with a mix of public- and mutual-benefit purposes. Predominantly local, some are broader in scope and have substantial finances. Although many may be outside of the FATF definition as mutual-benefit groups not established for 'good works.', this category is included within the scope of this report to allow a formal assessment of any potential risk.
42. **Self-help groups** are sometimes linked to CBOs, but as mutual benefit organisations are excluded from the FATF definition.
43. **Social Justice Centres** are likewise sometimes associated with CBOs. They are best described as movements, and do not raise, hold or disburse funds, do not have bank accounts, and do not have any legal form. As such they are excluded from the FATF definition. Should they formalise, they would need to register as CBOs.
44. **Trusts.** Trusts are a legal vehicle for holding property. Some are private benefit, others are public benefit (established to support 'good works'). Trusts may engage in fund-raising prior to the purchase of a property. Charitable trusts allow their property to be used for a public benefit purpose, such as a school, hospital or orphanage. Only public benefit trusts engaged in fundraising would meet the FATF definition of NPO. Public benefit trusts not engaged in fundraising are excluded as they are not engaged in the raising or disbursing of funds.

45. **Political parties** are excluded from the scope of the definition because they are formed for a narrower and specific economic or political interest of their founders and members, and not for the promotion of "good works" and wider public interest.
46. In summary, the following categories include legal entities that are FATF NPOs.

Table 3: NPOs in Kenya that are in line with the FATF definition.

	<b>Type</b>	<b>Comments</b>
1	NGOs	'Public benefit' organisations as identified in the NGO Coordination Act.
2	International NGOs	Foreign public benefit organisations under the NGO Coordination Act.
3	Community Benefit Organisations	As identified in the Community Groups Registration Act. Includes some non-FATF NPOs.
4	Companies Limited by Guarantee	Established under the Companies Act.
5	Faith Based Organisations (Societies Act)	Faith-based organisations established under the Societies Act.
6	(public benefit) Trusts engaged in fundraising	Established under various trust acts. Just those trusts that are public benefit and are raising funds prior to the purchase of a property.

Table 4: Civil Society organisations which do not meet the FATF definition.

	<b>Type</b>	<b>Reason for exclusion</b>
1	Societies – other (including trade unions and professional associations)	Mutual-benefit groups not established for 'good works.'
2	Self-help groups	Mutual-benefit groups not established for 'good works.'
3	Non-public benefit trusts	Trusts not established for public benefit.
4	Non-fundraising public benefit trusts	Do not raise or disburse funds.
5	Social Justice Centres	No legal form; do not raise or disburse funds.
6	Political parties	Not established for 'good works.'

## D. Profile of FATF NPOs in Kenya

47. Six categories of organisation have been identified which include FATF NPOs. These are:
1. NGOs (NGO coordination act 'public benefit')
  2. International (Foreign) NGOs
  3. Community Based Organisations
  4. Companies limited by guarantee
  5. Faith based organisations under the Societies Act
  6. Public benefit trusts engaged in fundraising
48. **Non-Governmental Organisations (NGOs):** NGOs are entities established for public benefit purposes under the NGO Coordination Act. All are required to register with the NGO Coordination Board. At the time of writing there are 13,052 NGOs registered with the NGO Board. 3005 NGOs filed annual reports in the year to June 30<sup>th</sup> 2022, with a combined total income of KSHs175.9 billion (US\$1.24bn). Assuming that the reporting NGOs were representative of the whole, the estimated total income of the sector would be KSHs640 billion (US\$4.5bn)
49. **International NGOs (INGOs):** NGOs are foreign entities established for public benefit purposes and registered with the NGO Board under the NGO Coordination Act. Some INGOs additionally have operational agreements with the Ministry of Foreign Affairs. At the time of writing there are 3,586 INGOs registered with the NGO Board with a combined total income of KSHS.136.23 billion (US\$950m).
50. **Community Based Organisations (CBOs):** Community Based Organisations are established under the Community Group Registration Act 2022. They must register with the Ministry of Labour and Social Protection. They are mainly small and local, although some grow larger in size and scope. Larger CBOs may convert to NGOs to exploit additional funding opportunities. At the time of writing there are over one million registered CBOs, with 60,000 CBOs registered in the year ending December 2022. No data is held on the income of CBOs.
51. **Companies Limited by Guarantee:** These are corporate entities with public benefit purposes established under the Companies Act and registered with the Business Registration Service. At the time of writing there are 2,552 registered Companies Limited by Guarantee. No data is held on their income.
52. **Faith Based Organisations (FBOs):** Many faith-based organisations remain as societies under the Societies Act. At the time of writing there are unknown number of registered FBOs registered and no data is held on their income.
53. **Trusts** are legal arrangements established under the Trusts Act. Some Trusts are registered under a combination of the Trustees (Perpetual Succession) Act and the Trustees Act. Trusts exist as a legal arrangement for the holding or land. If the land is, or is intended, to be used by a public benefit organisation, then the trust itself is public benefit. Trusts may be established prior to the purchase of land with the intention that land will be purchased, and may engage in fundraising for the purpose. Such fundraising, public benefit trusts are assessed as meeting the FATF definition. The number of such trusts at the time of writing is 2,450. No data is held on their income.
54. Also worth noting is the Public Benefit Organisations, which relates to public benefit organisations. At the time of writing this Act had not been operationalised.

**General observations on FATF NPOs – legal type**

55. Kenya’s NPO sector is large and diverse. 97% of NPOs are small, locally-based CBOs. , with a significant number of NGOs, and smaller numbers of CLGs and Trusts. There number of FBOs (societies) is unknown, but likely to number no more than a few thousand.

Figure 3: Categories of FATF NPOs in Kenya: CBOs and other NPOs (Sources: Official data).

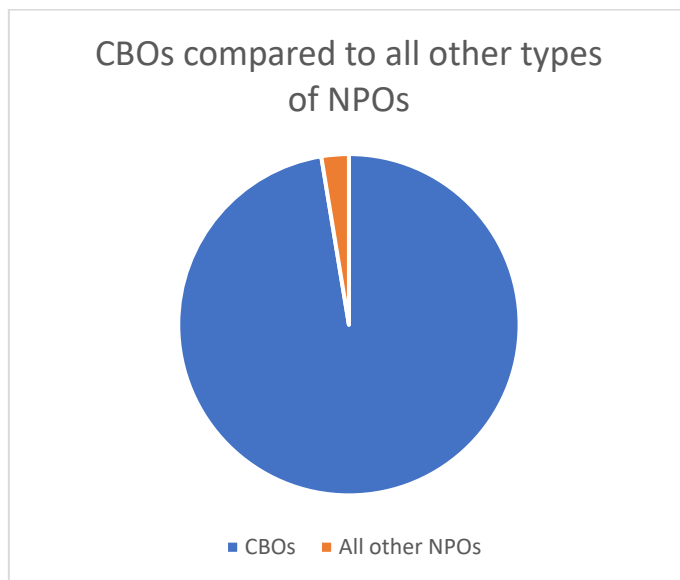
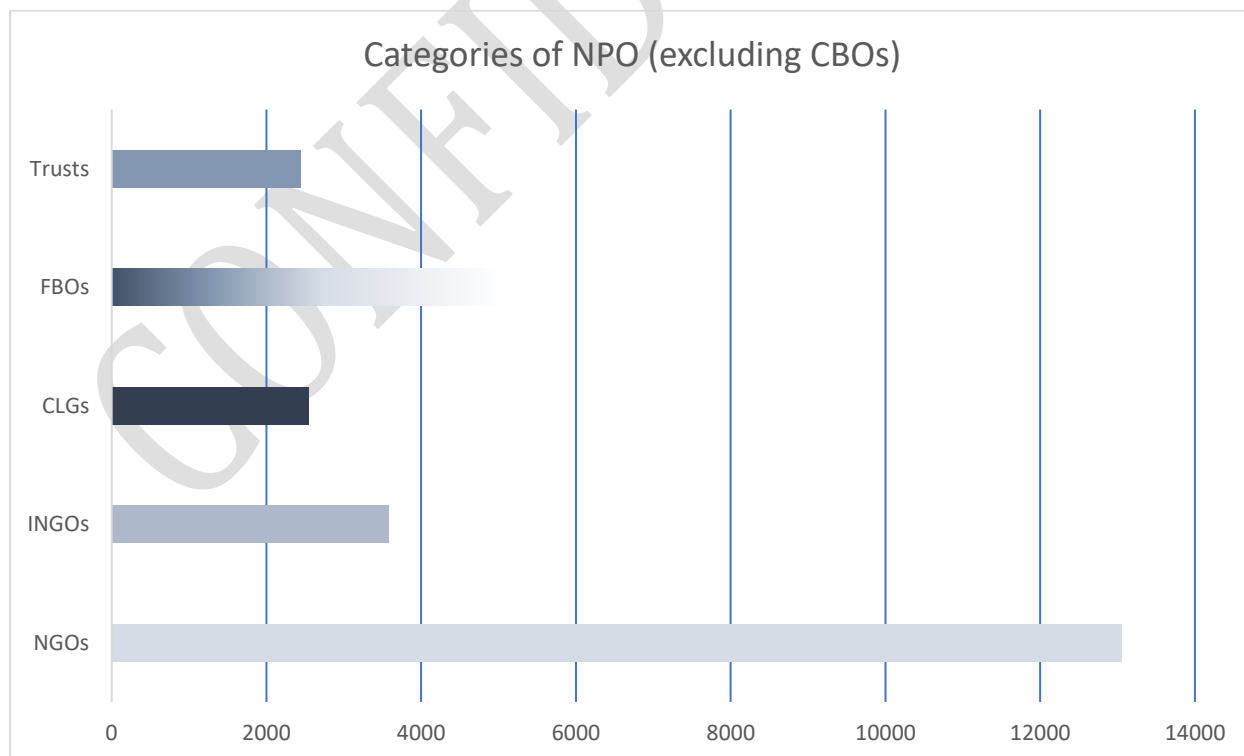


Figure 4: Categories of FATF NPOs in Kenya (Sources: Official data).



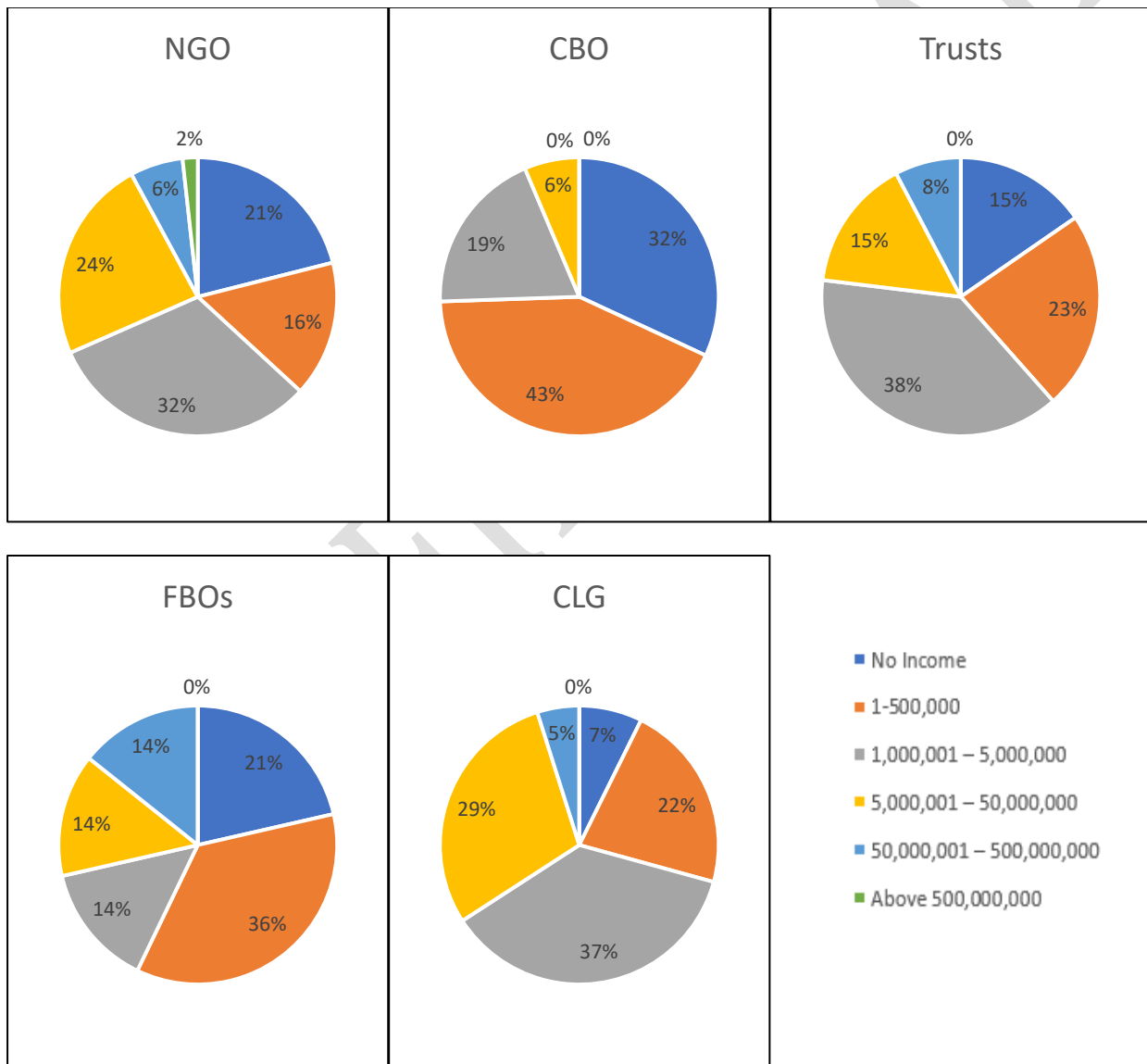
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**General observations on FATF NPOs – finances**

56. Data on the income of the sector is less clear. We have no official data on the income of CBOs, FBOs, CLGs or trusts, and only partial data on the income of NGOs. The survey did ask respondents to indicate their income band, and this reveals that the great majority of NPOs are small. Exactly three-quarters of CBOs (which make up 97% of the sector), have an income of less than KHS500,000 (US\$3,500), with a third reporting no income at all. Because so many NPOs are CBOs, we can therefore conclude that a third of NPOs have no income, and three-quarters have an income of less than KHS5m. FBOs are also notably low in income, although in contrast to the include some higher income organisations.
57. The data also clearly demonstrates that the largest NPOs will register as NGOs. Only 2 organisations reported an income in excess of KHS500m ((US\$3.5m), both of which were NGOs. No CBOs reported an income in excess of KHS50m (US\$35,000).

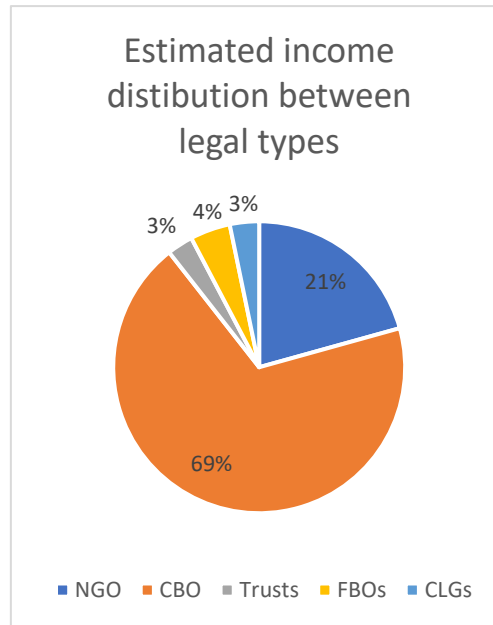
Figure 5: Estimated income distribution by legal types of NPO in Kenya (Sources: NPO survey).



58. To give a rough estimate of the relative weight of the different legal types, the median point for each income band in the survey was multiplied by the proportion of each NPO in a legal category reporting than income band; which was then multiplied by the number of NPOs in that category. The numbers

were aggregated and are presented in [Figure 6](#). This serves to give a rough estimate of how much of the NPO sectors funds might be in each legal category. Note, we have assumed 2,500 FBOs exist for this calculation.

**Figure 6: Estimated income distribution between legal types of NPO in Kenya** (Sources: Official data, NPO survey).

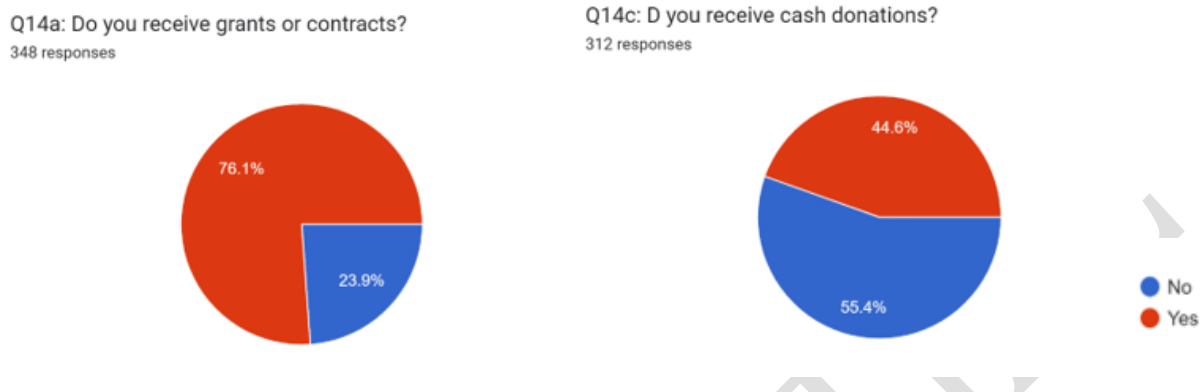


59. As noted above, no CBO reported an income in excess of KSH50m (US\$350,000). However, 6% of CBOs reported an income between KSH5 and KSH50m (US\$35,000 - \$350,000). This is equivalent to 60,000 CBOs in this income bracket. Even if the average income of the CBOs in this income band is at the bottom end of the range, this would account for a very significant proportion of the income of the sector. To illustrate, 60,000 CBOs with an income of KSH10m would have a combined income of KSH600bn, nearly equal to the total estimated income of NGOs, and three times greater than the reported income of all international NGOs.

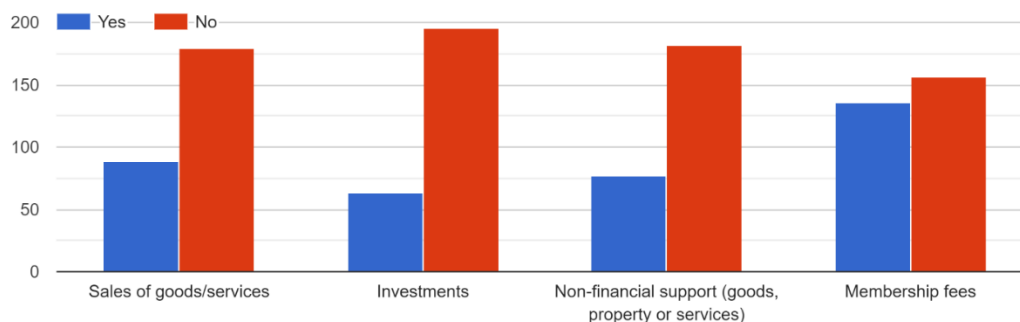
### General observations on FATF NPOs – Source of income

60. The survey obtained a range of data on significant sources of income, defined as any income source greater than 5% of the total. The results revealed that grants and contracts were the most significant sources of income.

Figures 7 and 8: Sources and nature of funding for NGOs (Source: NPO survey).

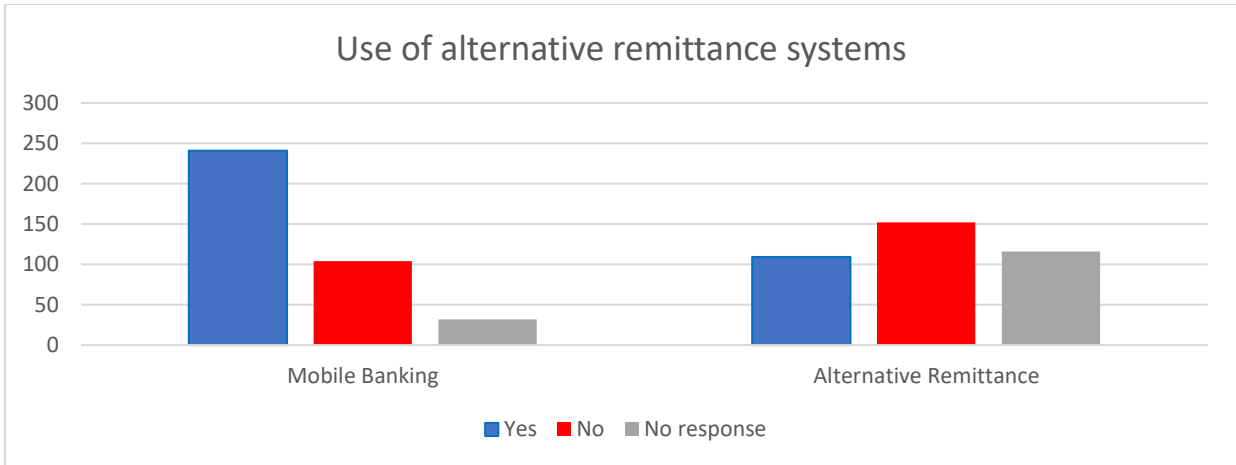


Q14h: Do you receive any other forms of income from...?



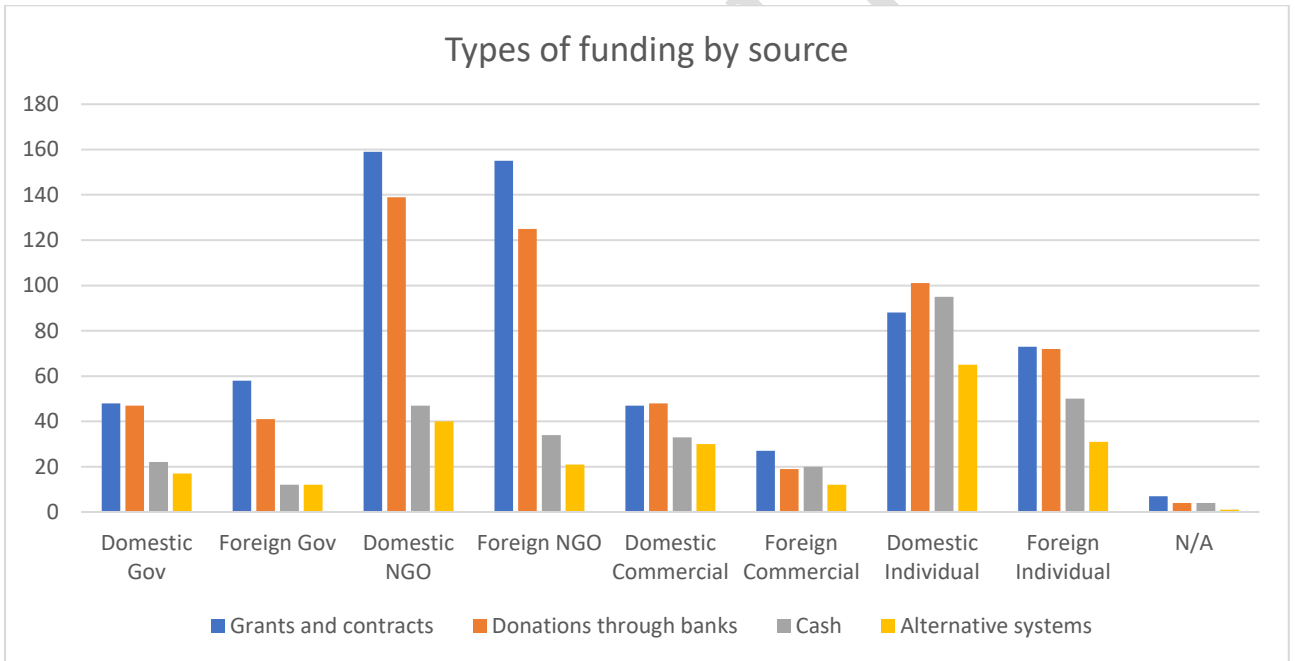
61. The survey asked specific questions on alternative remittance, divided into two categories. First, mobile banking services; and second, other alternative remittance systems. The questions relate to the receipt or transfers of funds using such systems. The survey revealed that mobile banking is particularly common, but that other systems are also regularly used.

Figure 9: Use of alternative remittance systems (Source: NPO survey).



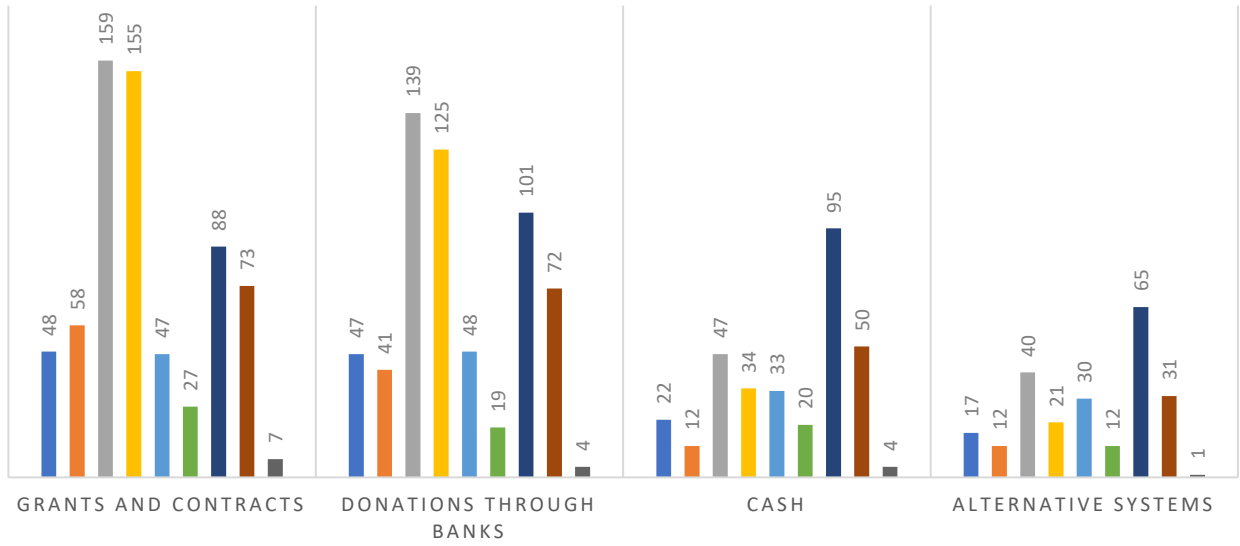
62. The survey obtained data on the sources and types of funding. It found that most funding came from other NGOs, followed by private individuals and government. For all types, it was split fairly evenly between domestic and foreign sources. Donations from private individuals in Kenya were disproportionately likely to be in cash or use alternative remittance systems.

Figures 10 and 11: Sources and types of funding (Source: NPO survey).



### SOURCE OF FUNDING BY TYPE

- Domestic Gov
- Foreign Gov
- Domestic NGO
- Foreign NGO
- Domestic Commercial
- Foreign Commercial
- Domestic Individual
- Foreign Individual
- N/A

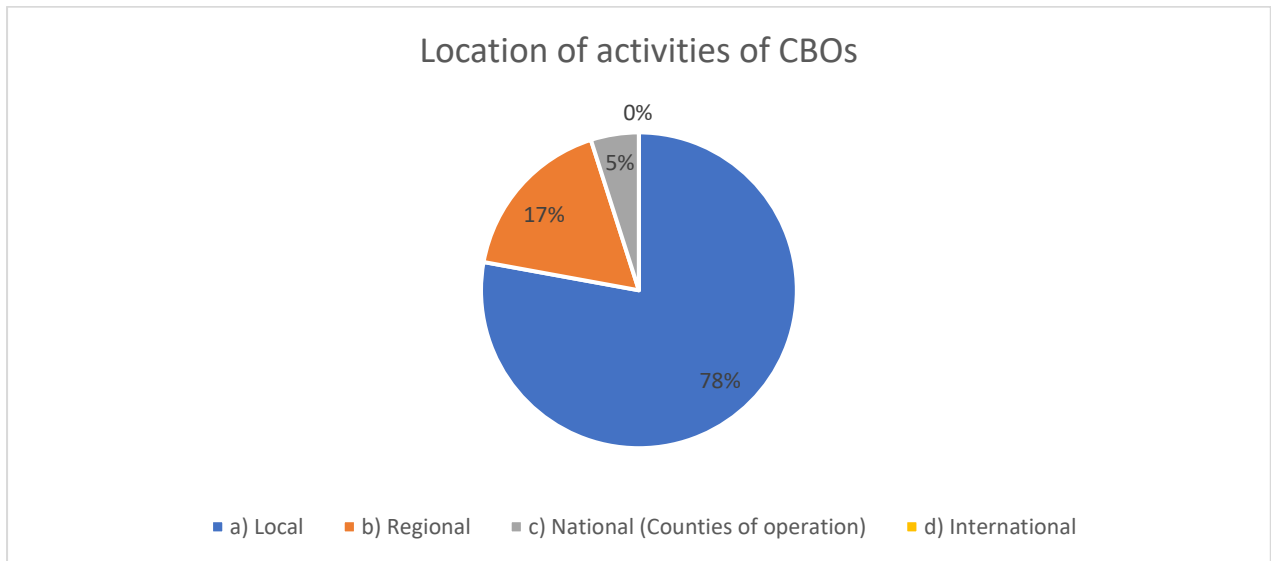


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**General observations on FATF NPOs – activities**

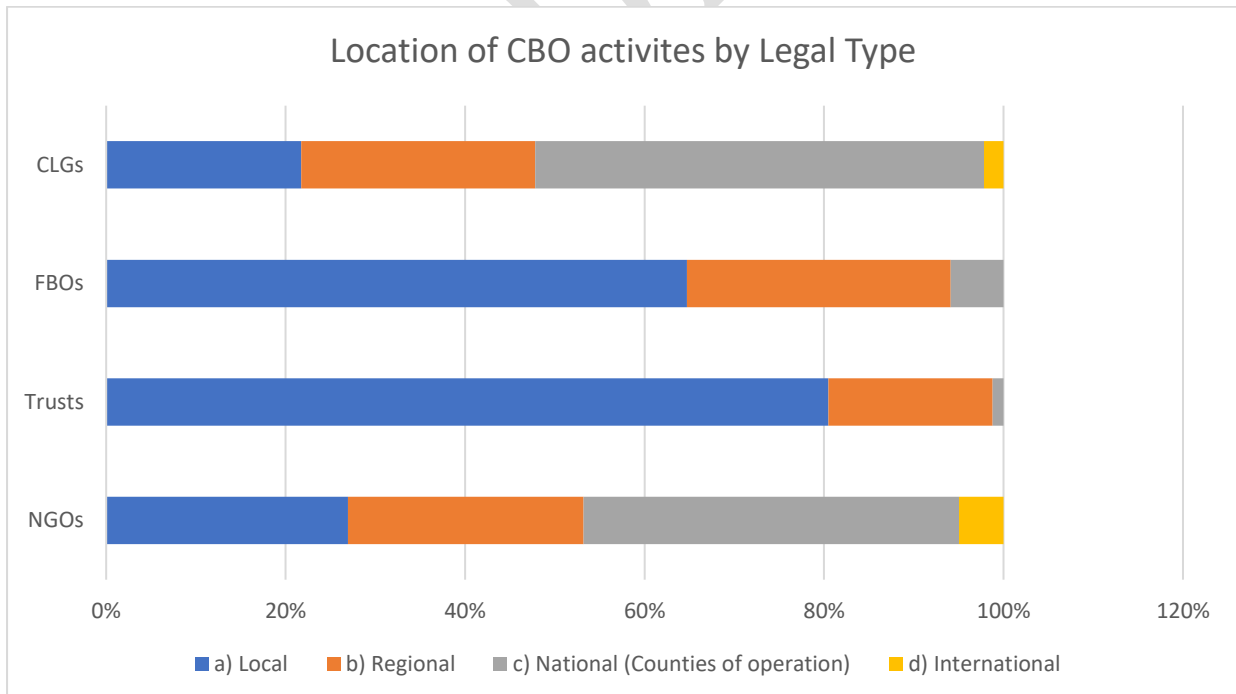
63. Most NPOs were local in nature. CBOs, which account for 97% of the total number of NPOs, are overwhelmingly local in nature. None report international activities.

Figure 12: Location of CBO activities (Source: NPO survey).



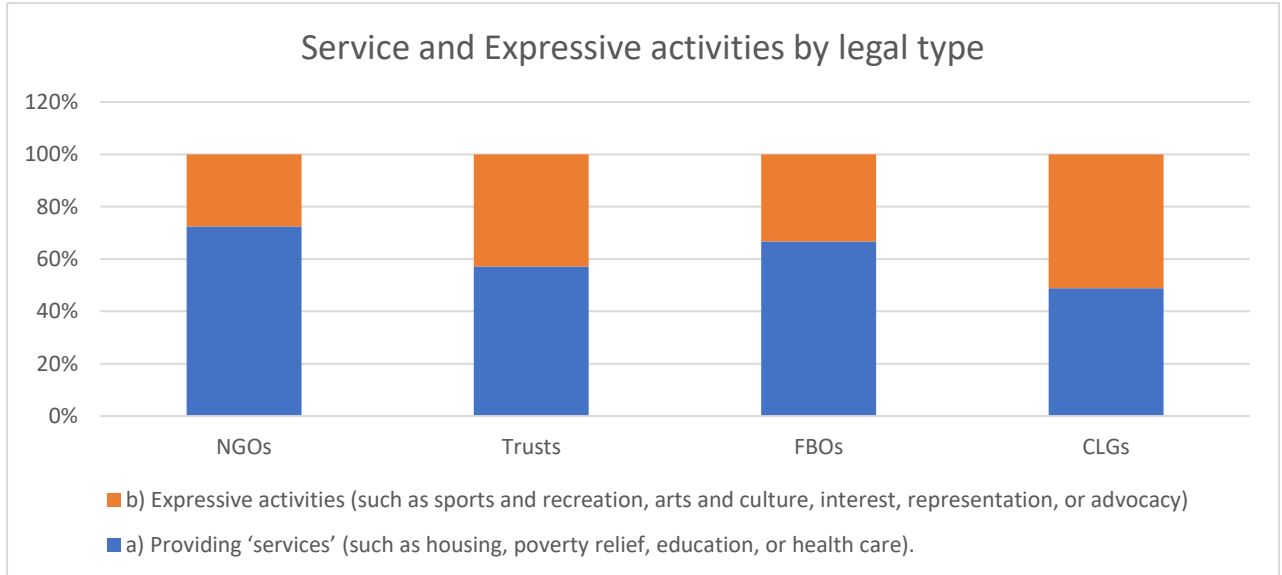
64. For the rump of the sector, the picture is more diverse. Trusts and CBOs have a more limited range of activities, and no international activities. CLGs are unusually likely to be national in scope, and NGOs have a near monopoly on international activities.

Figure 13: Location of CBO activities by legal type (Source: NPO survey).



65. CBOs were exactly split between those which provide services such as housing, poverty relief, education, or health care, and those which have expressive activities, such as sports and recreation, arts and culture, interest, representation, or advocacy. For other NGOs, service provision was more common for NGOs and FBOs, whereas CLGs were more likely to engage in expressive activities.

Figure 14: Service provision and expressive NPOs (Source: NPO survey).



## E: The Nature of the TF Threat to NPOs in Kenya

66. Paragraph 8.1(b) of the FATF Methodology states that countries should “*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.*”
67. This part of the risk assessment assesses the terrorist financing threat, and the nature of the threat to NPOs. This assessment combines quantitative data (evidence of that threat being manifest) and qualitative data (expert views on what the threat is likely to be).

### Kenya and the Terrorist Financing Threat

68. The National Money Laundering and Terrorist Financing (ML/TF) risk assessment of the Republic of Kenya was published by the Government of Kenya in October 2021. The report assessed Al Shabab as the main terrorist threat to Kenya. Al Shabab is present in the significant ungoverned spaces in Somalia. Kenya has un-manned and porous borders with Somalia, which has enabled Al Shabab to launch sporadic attacks from across Somalia targeting Kenyan law enforcement and civilians living along the border through the use of Improvised Explosives Devices (IEDs) and Vehicle Borne Improvised Explosives Devices (VBIEDs). In addition, three major terrorist attacks on Kenyan territory have been launched by Al Shabab in recent years, specifically:
- Westgate terror attack: 2013.
  - Garissa University terror attack: 2015.
  - 14 Riverside Drive attack: 2019.
69. Al Qaeda was responsible for the American Embassy attack in Nairobi in 1998. However, the authorities have assessed that the threat from Al-Qaeda has diminished in recent years.
70. The NRA noted the presence of an ISIS affiliate in Somalia, but did not assess it as a significant threat.
71. The NRA considered threats from self-radicalised individuals. It noted that these are uncommon and assessed these threats as less significant.
72. The overall TF threat was assessed as Medium, and the vulnerability assessed as Medium-Low.<sup>7</sup>
73. Kenya’s Mutual Evaluation Report (MER) was published in September 2022. It noted the conclusions of the NRA and highlighted two specific TF typologies from the cases: (1) funds suspected to have originated from outside the country and transferred through banks and mobile money operators; and (2) funds raised through charcoal and sugar smuggled into Kenya. The MER noted that the NRA did not include sectoral risk or consider a range of features relevant to the Country risk profile.<sup>8</sup> It states that the sector has not been adequately assessed for risk.<sup>9</sup> It noted that ‘weak NPO’ regulation heightened TF risks.<sup>10</sup>

### The Terrorist Financing Threat to NPOs in Kenya

#### Literature Review

74. Section 2.11.3 of the NRA analyses the terrorist financing risks and threats to NPOs in Kenya. It noted that “*There is little evidence to show the risk of abuse of the NPO sector for TF purposes*

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<sup>7</sup> XI, National Risk Assessment

<sup>8</sup> 37, ESAAMLG Mutual Evaluation of Kenya, 2022

<sup>9</sup> *Ibid*, 1

<sup>10</sup> *Ibid*, 2



*in Kenya*<sup>11</sup> and that the overall risk is Low.<sup>12</sup> One case of terrorist financing abuse of NPOs was noted, although no details were provided.

75. No sectoral risk assessment of terrorist financing in the NPO has previously been published.
76. The MER offers no specific opinion on the potential TF threat to NPOs.

#### Quantitative Data

77. Written requests for data on terrorist financing in the NPO sector were sent to thirteen (13) government agencies, and three agencies did not provide response as outlined below;

#### **Response**

1. National Intelligence Service - Written feedback
2. Directorate of Criminal Investigation (ATPU) - Written feedback
3. Office of the Director of Public Protections (ODPP) - Online feedback via zoom
4. National Crime Research Centre - Written feedback
5. Financial Reporting Centre - Written feedback
6. Central Bank of Kenya (CBK) - Written feedback
7. Registrar of Companies-Limited by Guarantee - Written feedback
8. National Counter Terrorism Centre - In person interview (respondent premises)
9. Asset Recovery Agency- Written feedback
10. NGOs Co-ordination Board- Written feedback

#### **Non responses**

1. Registrar of Societies
2. Trusts-Ministry of Lands
3. State Department for Social Security & Protection (CBO)

78. The Financial Reporting Centre (FRC) reported two investigations of NPOs, but no detail was provided on whether these related to TF. NPOs are reporting entities, but no Suspicious Transaction Reports (STRs) from NPOs have been received. A total of 70 STRs have been received by other reporting entities regarding NPOs, but contained no evidence linking NPOs to terrorist financing.
79. Officials at the Director of Public Prosecution (DPP) stated that there has been no other investigation of NPOs for TF offences in the last 5 years. Officials from the Anti-Terrorism Police Unit (ATPU) the National Counter Terrorism Centre (NCTC), the NGO Coordination Board (NGOB), and the Business Registration Service (BRS) stated in written or verbal responses that they had no data or statistics on any convictions, prosecutions, investigations, suspicions or information requests relating to NPOs and terrorist financing.

#### Qualitative Data

80. Supervisory, law enforcement and intelligence officials were canvassed on their opinion on the nature of the TF threat to NPOs in Kenya (see Section A for details of the surveyed agencies).
81. Officials from the National Counter-Terrorism Committee stated that in their opinion the terrorist financing threat to NPOs is low. The main potential threat is a transboundary threat from Somalia.
82. The NCTC further offered several observations on the potential nature of the terrorist financing threat through NPOs as follows:
  - the diversion of third-party project funding or supplies for the manufacture of IEDs;

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<sup>11</sup> P184, National Risk Assessment

<sup>12</sup> P186, National Risk Assessment

- cash sent-through non-banking channels for supporting terrorism;
  - the payment of point clearance fees by NPOs in areas controlled by terrorist groups;
  - covering the raising of funds for terrorist groups by using NPO's whose workforce is recruited from ethnic groups sympathetic to terrorist causes;
  - NPOs working with terrorist groups rather than government to provide services in high-risk areas;
  - NPOs funded by individuals perpetrating terrorist activities.
83. The Anti-Terrorism Police Unit (ATPU) assessed the threat to NPOs as low. The police noted that NPOs are largely funded by individual contributions. This is assessed as low threat and there are no known cases of terrorist financing; however, it was noted that financing of terrorism by individuals may in future be the main threat.
  84. Five submissions were received from the Director of Public Prosecutions (DPP). Three of the five responses rated the threat to NPO as medium and two rated it as high. The proximity of Kenya to states with organised terror groups was noted as a threat. Per the nature of the TF threat, the potential for NPOs to be used as a source of funding or distribution was noted.
  85. Officials from the Central Bank of Kenya (CBK) assessed the TF threat to NPOs as low, as they were not aware of any evidence of NPOs being abused for TF, or of any banking products or accounts being misused in this way.
  86. The Asset Recovery Agency assessed the TF threat to NPOs as medium. Officials noted the potential nature of the threat may be the sourcing of funds from abroad for the support of terrorism.
  87. Officials from the Financial Reporting Centre (FRC) assessed the threat as medium. It recognised that TF is likely to thrive in areas dominated by conflict and ungoverned spaces, noting the threat from the Somali border in particular. Per the nature of the threat, the FRC noted that NPOs use unregulated money value transfer services, which have been subject to several investigations for terrorist financing; and noted a high dependency on international funding, which could be a channel for abuse by terrorists seeking to support their activities. Further, it was noted that counter radicalisation and conflict resolution NPOs by their nature engage with individuals more likely to be sympathetic to terrorist causes, and the potential that staff from these NPOs may be lured into funding their operations.
  88. The NGO Coordination Board (NGOB) assessed the threat as medium, and noted the potential for NGOs operations to be used as cover for terrorist financing operations.
  89. The Business Registration Service (BRS), which registers companies limited by guarantee, assessed the terrorist financing threat as medium. It suggested that the nature of the threat may be the abuse of NPOs to provide resources to terrorist cells. It also suggested that NPOs working with groups close to terrorist cells may unwittingly end up supporting terrorist activities.
  90. **Assessment of the terrorist financing threat to NPOs in Kenya.** The literature, cases, quantitative and qualitative data concur that the major terrorist financing threat in Kenya comes from Al Shabab. It follows that Al Shabab presents the main terrorist financing threat to NPOs in Kenya. There is a particular threat in border areas, but it is present across the country. The threat level was assessed as low by police and terrorism agencies and the Central Bank; medium by other supervisory agencies; and medium-high by the prosecutor. It is noted that agencies with a specific terrorism remit rated the threat as lowest.
  91. **Identifying the nature of the threat** There is less consensus over the nature of the threat, perhaps reflecting the lack of direct evidence of how NPOs are abused for terrorist financing in Kenya. The most significant evidence relates to the *sub judice* prosecution of officials at a

faith-based NPO for the purchase of equipment for a terrorist group, and the operations and payment of fees and illegal taxes by NPOs in Al Shabab controlled areas of Somalia. There is some consensus in statements from officials on the potential nature of the threat, i.e.: that the funding would be sourced internationally; that NPOs may be used to raise, disperse or distribute funds, or used to purchase supplies for terrorist groups; and that an NPO's legitimate activity may be used as cover for the crimes. The NCTC offered the most comprehensive suggestions, with a particular focus on abuse of activities of NPOs working in high risk areas or with high risk communities.

### **The Terrorist Financing Threat in Kenya**

1. Al Shabab, Somalia and its border with Kenya.

### **Nature of the TF Threat to NPOs in Kenya**

1. Abuse of NPOs as a means for raising, dispersing, or distributing foreign funds to support terrorist activities
2. Payment of illegal taxes or fees to terrorist organisations by Kenyan NPOs operating abroad.
3. Abuse of NPOs for purchasing equipment for terrorist groups.
4. Abuse of NPOs legitimate activities as cover for criminal activities.
5. Exploitation of NPOs activities in areas with communities sympathetic to terrorism.

## **F: Identifying NPOs potentially 'at risk' of terrorist financing ('inherent vulnerabilities')**

92. Paragraph 8.1(a) of the FATF Methodology states that countries should “*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*”
93. In this risk assessment, ‘*at risk*’ NPOs are those that are assessed as being *inherently vulnerable* to TF risks. The specific *vulnerabilities* are those factors which make an NPO vulnerable, which may be a *feature or type of NPO*, or specific *activities or characteristics* of the ‘*at risk*’ NPOs. This section identifies those *vulnerabilities*, and assesses which are significant so that those NPOs that are ‘*at risk*’ (or *vulnerable*) to terrorist financing risk can be identified.
94. This section concludes with an assessment of the overall ‘inherent risk’ of the NPO sector to terrorist financing.
95. The assessment combines quantitative data (evidence of that risk being manifest) and qualitative data (expert views on what the risk is likely to be).

### Known incidences of terrorist financing in the NPO sector

96. Written requests for data on terrorist financing in the NPO sector were sent to thirteen (13) government agencies, and three agencies did not provide response. Two other agencies provided response in interviews (Zoom and in person).

#### **Response**

11. National Intelligence Service - Written feedback
12. Directorate of Criminal Investigation (ATPU) - Written feedback
13. Office of the Director of Public Protections (ODPP) - Online feedback via zoom
14. National Crime Research Centre - Written feedback
15. Financial Reporting Centre - Written feedback
16. Central Bank of Kenya (CBK) - Written feedback
17. Registrar of Companies-Limited by Guarantee - Written feedback
18. National Counter Terrorism Centre - In person interview (respondent premises)
19. Asset Recovery Agency- Written feedback
20. NGOs Co-ordination Board- Written feedback

#### **Non responses**

4. Registrar of Societies
5. Trusts-Ministry of Lands
6. State Department for Social Security & Protection (CBO)

97. These agencies were asked to provide data on:
- Convictions of NPOs or their agents for TF or related offences;
  - Prosecutions of NPOs or their agents for TF or related offences;
  - Regulatory interventions of NPOs or their agents for TF or related offences;
  - Active or closed investigations of NPOs or their agents for TF or related offences;
  - STRs/SARs relating to NPOs;
  - Requests for Mutual Legal Assistance relating to NPOs;
  - Case studies of terrorist financing abuse of NPOs.

98. Officials at the Director of Public Prosecution (DPP) stated that there has been no investigation of NPO for TF offences in the last 5 years. They noted two investigations of NPOs for cases involving money laundering. One involved an NGO and one a faith-based organisation.
99. The Anti-Terrorism Police Unit (ATPU) reported no data on convictions, prosecutions, investigations, or exchanges of information in relation to NPOs.
100. An official from the National Counter Terrorism Centre (NCTC) stated in an interview that the Centre did not have official statistics on convictions, prosecutions, or investigations for TF purposes.
101. Officials from the NGO Coordination Board (NGOB) and the Business Registration Service (BRS) did not identify any cases or suspicions of terrorist financing in the NPOs they supervise. The NGO Board noted that such issues would fall within the remit of law enforcement or intelligence agencies rather than the NGOB, a statement which is also true for the BRS.
102. Data on Suspicious Transaction Reports (STRs) was obtained from the Financial Reporting Centre (FRC). NPOs are reporting entities, but there have been zero (0) Suspicious Transaction Reports. activities (STRs) submitted by NPOs. A total of 70 STRs have been submitted by other reporting entities on NPOs in the period 2014-21, as illustrated below. These figures include both money laundering and terrorist financing concerns. No evidence linking NPOs to terrorist financing was extracted from these STRs.

Table 5: Suspicious Transaction Reports relating to NPOs. (Source: FRC)

Report Status	2014	2015	2016	2017	2018	2019	2020	2021	Total
Total	1	2	6	5	8	16	7	25	70

103. Reviews of the National Risk Assessment (NRA), the Mutual Evaluation Report (MER) and independent internet research looked for cases or evidence of TF in the NPO sector. The NRA noted one case of TF abuse of NPOs in the reporting period (see paragraph 74 above).<sup>13</sup> No other cases were found.

Qualitative assessment of the TF risk

104. The National Risk Assessment stated that the “*level of risk of TF abuse in the NPOs sector in Kenya is considered low*” whilst the overall vulnerability to TF abuse was rated Medium.<sup>14</sup>
105. Supervisory and law enforcement agencies were canvassed on their opinion on the size and nature of the TF vulnerabilities in NPOs in Kenya (see Section A for details). Eight agencies provided responses.
106. The National Counter-Terrorism Committee (NCTC) rated the overall terrorist financing risk to NPOs as medium, with much consideration given to deficiencies in mitigating measures (which will be assessed in a subsequent report). Inherent vulnerabilities of NPOs identified by the NCTC include:
- NPOs providing services in areas with terrorist activity, or with communities from which terrorist groups are drawn. In particular, it identified:
    - NPOs providing services to communities served by both government and groups sympathetic to terrorism;

<sup>13</sup> P.184, National Risk Assessment

<sup>14</sup> P.186, National Risk Assessment

- NPOs with a workforce drawn from communities sympathetic to terrorism.
- NPOs which lack the resources or capacity to verify the source of funds or supplies, or verify their activities;
- Companies Limited by Guarantee carrying out commercial activities.

107. Officials from the Anti-Terrorism Police Unit (ATPU) noted concerns about unregistered NPOs.

108. Officials from the Director of Public Prosecutions (DPP) rated the overall terrorist financing risk as medium. Actors likely to be associated with a terrorist financing risk were:

- Faith-based NPOs;
- NPOs close to Somalia;
- NPOs which lack the resources or capacity to undertake due diligence of partners, undertake audits, or meet acceptable standards of accountability.

109. Officials from the Central Bank of Kenya assessed the terrorist financing risk to NPOs as low. This assessment was based on the lack of evidence of terrorist financing abuse or sanctions of NPOs for terrorist financing.

110. The Asset Recovery Agency noted the following potential *inherent vulnerabilities*:

- Funding from unverified sources;
- NPOs which do not verify their activities;
- NPOs conducting activities outside of their declared objectives.

111. Officials from the Financial Reporting Centre (FRC) assessed the terrorist financing risk to NPOs as medium. They noted several potential *inherent vulnerabilities* as follows:

- operating in near the Somali border, or in areas dominated by conflict and ungoverned spaces;
- financing from international sources;
- NPOs engaged in countering radicalisation, conflict relief, peace building, human rights, disaster management, or the prevention of drug abuse
- NPOs using unregulated money value transfer services.

112. The NGO Coordination Board (NGOB) noted the following potential inherent vulnerabilities:

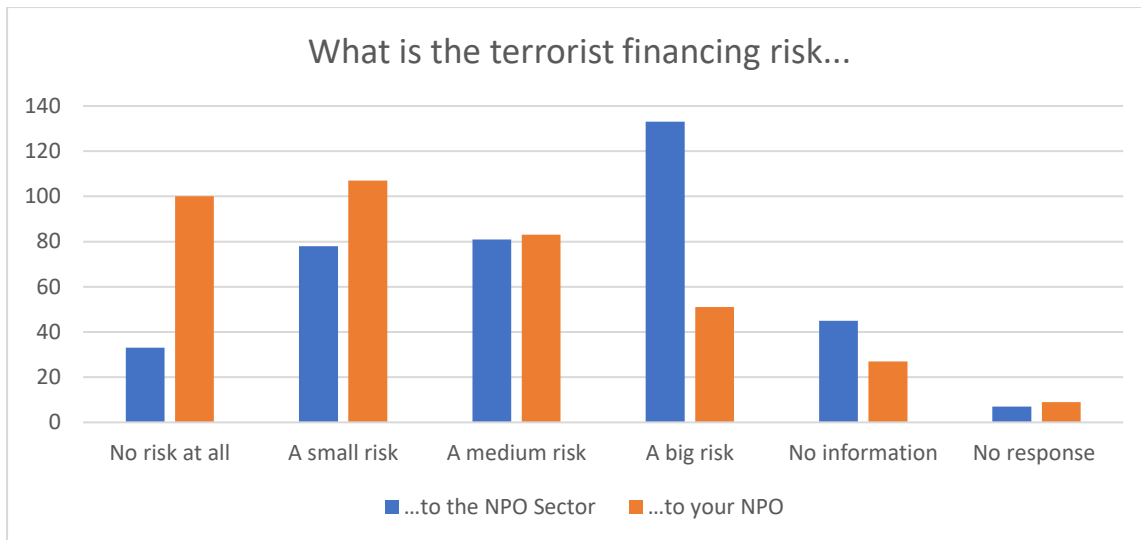
- NPOs with access to global programme networks.
- NPOs operating in marginalised areas prone to terror activities.

113. The Business Registration Service (BRS) assess the overall terrorist financing risk to NPOs a medium. It identified potential inherent vulnerabilities as follows:

- NPOs funded by high-risk donors;
- NPOs working in borders;
- NPOs working with groups exposed to terrorist supporters.

114. The NPO survey surveyed NPO's perception of whether NPOs may be at risk of terrorist financing. In general, NPOs rated the terrorist financing risk to the overall NPO sector as high, with a third of respondents rating the risk to the sector as a 'big risk'. When asked to assess the risk to their own NPOs, however, more than half said they faced no (27%) or a small risk (28%).

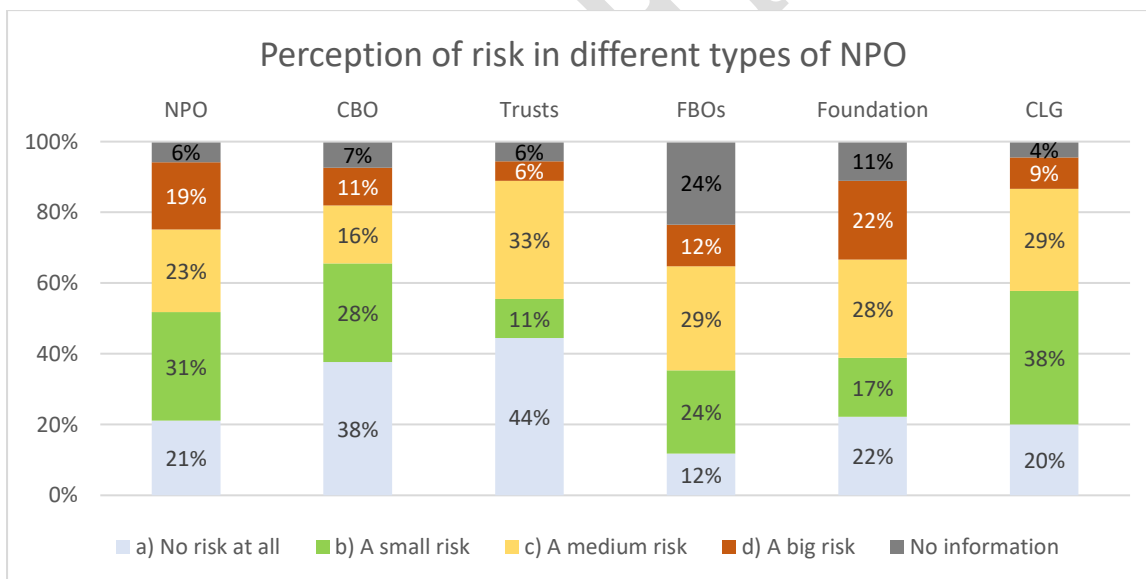
Figure 15: NPO perceptions of TF risk (total number) (Source: NPO survey).



The nature of any Terrorist Financing Risk to the NPO Sector

115. The NPO survey revealed that CBOs see themselves as least exposed to NPO risk, with two-thirds stating they had 'no' or 'low' risk, as did nearly 60% of companies limited by guarantee. By contrast, exactly half of the foundations surveyed saw their own risk as 'medium' or 'high'. NPOs had the most evenly split responses. Faith-based organisations (societies) were the least sure, with a quarter stating that they did not have the information to answer the question.

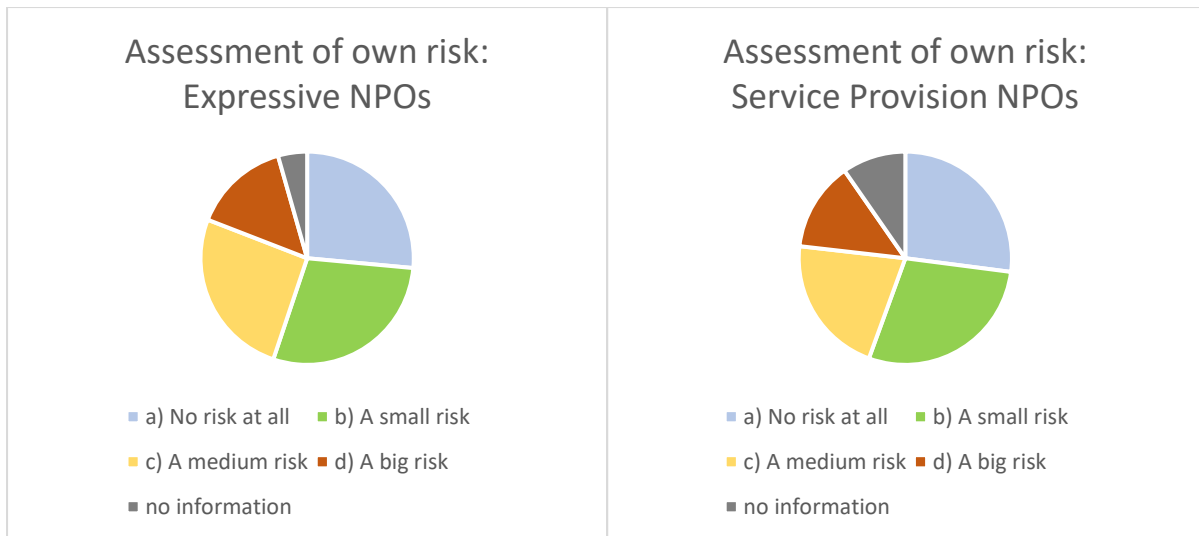
Figure 16: Perceptions of TF risk in different types of NPO (percentage) (Source: NPO survey).



116. FATF distinguishes between 'service provision' NPOs, which provide a tangible good or service such as money, healthcare, housing or education; and 'expressive NPOs', which seek to change people's perceptions or views through the arts, campaigning or advocacy. The view expressed by FATF in the *Typologies Report* and elsewhere is that the terrorist financing risk is primarily restricted to service provision NPOs.

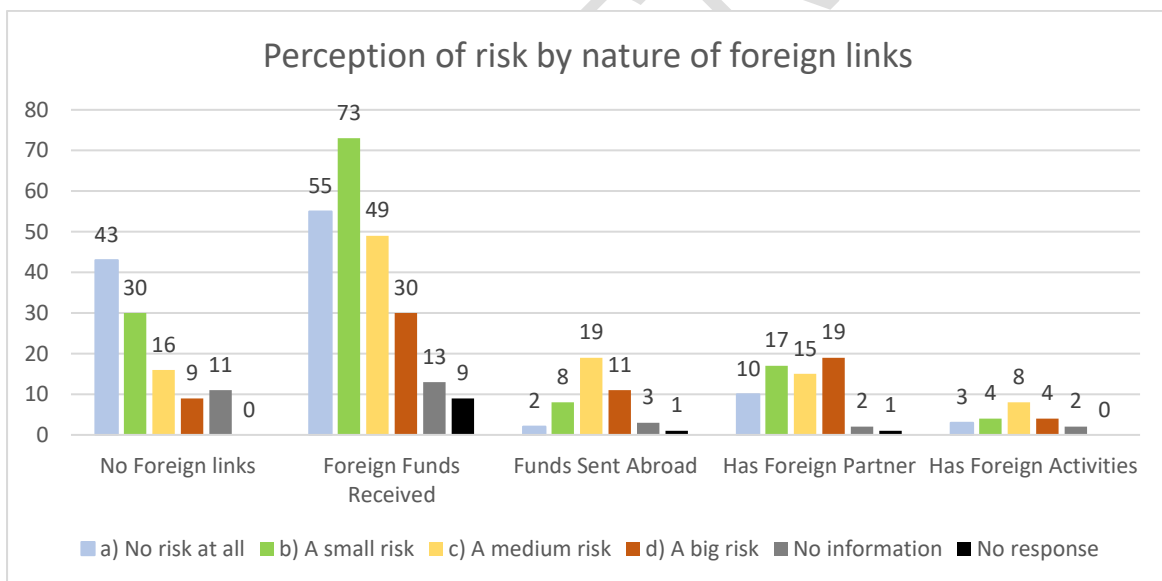
117. The NPO Survey asked respondents to indicate if they identified as an expressive or service provision NPO. 207 (55%) identified as service provision NPOs, 136 (36%) as expressive, and 25 (7%) did not respond. In contrast to FATF's analysis, the data from the survey reveals little difference in their assessment of their own risks.

Figure 17: NPO perceptions of TF risk by activity (Percentage) (Source: NPO survey).



118. The NPO Survey asked respondents to indicate their foreign links. As may be expected, NPOs without foreign links rated their risk exposure as lower than any other category. NPOs that operated in some way in foreign countries rated their risk as highest. Note, NPOs could choose more than one answer, so the totals exceed the number of respondents.

**Figure 18: NPO perceptions of TF risk by nature of foreign links (total number)** (Source: NPO survey).



**Potential Vulnerabilities**

119. The following potential inherent vulnerabilities have been identified:

- Vulnerability 1: NPOs working in areas with terrorist activity.
- Vulnerability 2: NPOs working with communities sympathetic to terrorist causes.
- Vulnerability 3: NPOs engaged in activities which bring them into contact with extremist groups (countering radicalisation, conflict relief, peace building, human rights and disaster management).
- Vulnerability 4: NPOs lacking incentives, resources or capacity to verify the source of funds or the source of supplies.



- Vulnerability 5: NPOs lacking incentives, resources or capacity to verify their activities or audit their finances.
- Vulnerability 6: NPOs lacking incentives, resources or capacity to undertake due diligence of partners.
- Vulnerability 7: NPOs receiving funds from unverifiable, high risk and/or foreign sources.
- Vulnerability 8: Faith-based NPOs.

This list excludes vulnerabilities identified by a single source qualitative submission unless supported by corroborating evidence.

#### Assessment of the Potential Vulnerabilities

120. First, the significance of each vulnerability was assessed. This assesses the weight and reliability of the evidence for a vulnerability, and how directly relevant the vulnerability is to potential risks.
121. Secondly, the prevalence of each vulnerability was assessed. This is assessing how common the vulnerability is in the NPO population.
122. **Vulnerability 1. NPOs working in areas with terrorist activity.** Several agencies identified this as a potential vulnerability, including the NCTC, the DPP and the FRC. Their analysis highlighted the Somalia and Kenya's border with it as the area of greatest risk. This is also a critical element in Kenya's understanding of the general terrorist financing threat. NPOs operating in areas where terrorist groups are active is very common in other risk assessments, including in the region; and was identified in the FATF *Typologies Report* (2016) as a significant risk factor for NPOs generally.
123. The number of NGOs registered under the NGOs Act operating in the Northern part of Kenya (border areas of Somalia) Garissa (64 NGOs), Wajir (28 NGOs) and Madera (31 NGOs). 21 survey respondents stated that they operate in foreign countries (6% of the total), but these NPOs may be active in any foreign country, not necessarily in Somalia. Further analysis reveals that these organisations are unequally distributed across legal types: A negligible number of CBOs are active overseas, whereas trusts, foundations and (to a lesser extent) companies are more likely to be active in foreign countries. Given the low baseline for these numbers, the results must be treated with a little caution.

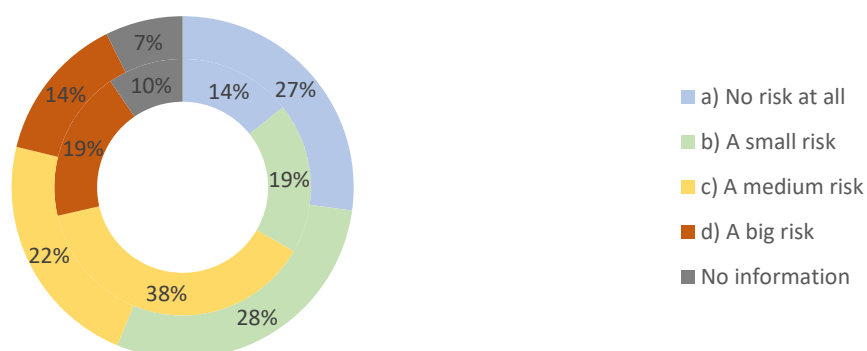
Table 5: NPOs with activities in foreign countries by legal (Source: NPO survey).

	Has foreign activities	Total number surveyed	Percentage
NGOs	11	142	8%
CBOs	1	124	1%
Trusts	2	18	11%
Societies (Faith Based Organisation)	1	17	6%
Foundations	2	18	11%
Companies Limited by Guarantee	4	47	9%

124. NPOs with foreign activities perceive a greater terrorist financing risk to their organisation than the average for all NPOs. 55% of these NPOs perceive their risk as 'medium' or 'high' compared to 36% of all NPOs.

Figure 19: Perceptions of TF risk by NPO with foreign activities compared to all NPOs (total number) (Source: NPO survey).

Perception of terrorist financing risk to your NPO:  
NPOs with Foreign Activities (inner circle) vs All NPOs (outer circle)



125. **Vulnerability 2. NPOs working with communities sympathetic to terrorist causes.**

**Vulnerability 3: NPOs engaged in activities which may bring them into contact with extremist groups.**

These vulnerabilities relate to NPOs whose work brings them into relationships with communities or groups which may be sympathetic to terrorist causes. Different iterations of these vulnerabilities were noted, such as:

- NPOs drawing a workforce from communities sympathetic to terrorism;
- NPOs providing services to communities served by both government and groups sympathetic to terrorism;
- NPOs with activities bring them into contact with extremist groups, including countering radicalisation, conflict relief, peace building, human rights and disaster management.

126. These vulnerabilities were noted by four agencies, including the NCTC and FRC. Most significantly, it was a factor in the *sub judice* prosecution of an NPO for terrorist financing offences. NPOs operating in areas in proximity to communities sympathetic to terrorism is a common factor in other risk assessments, and was identified in the FATF *Typologies Report* (2016) as a significant risk factor for NPOs generally.

127. There is no clear official data or survey data to indicate the prevalence of this inherent vulnerability.

128. **Vulnerability 4. NPOs lacking incentives, resources or capacity to verify the source of funds or the source of supplies.**

**Vulnerability 5: NPOs lacking incentives, resources or capacity to verify their activities or audit their finances.**

**Vulnerability 6: NPOs lacking incentives, resources or capacity to undertake due diligence of partners;**

**Vulnerability 7: NPOs receiving funds from unverifiable, high risk and/or foreign sources.**

These vulnerabilities relate to the absence of certain practices which authorities perceive as significant in mitigating potential terrorist financing risks. These vulnerabilities were mentioned by the NCTC, DPP and Assets Recovery Agency. The one *sub judice* prosecution of an NPO for terrorist financing offences relates to the purchase of equipment by an NPO for use by a terrorist group.

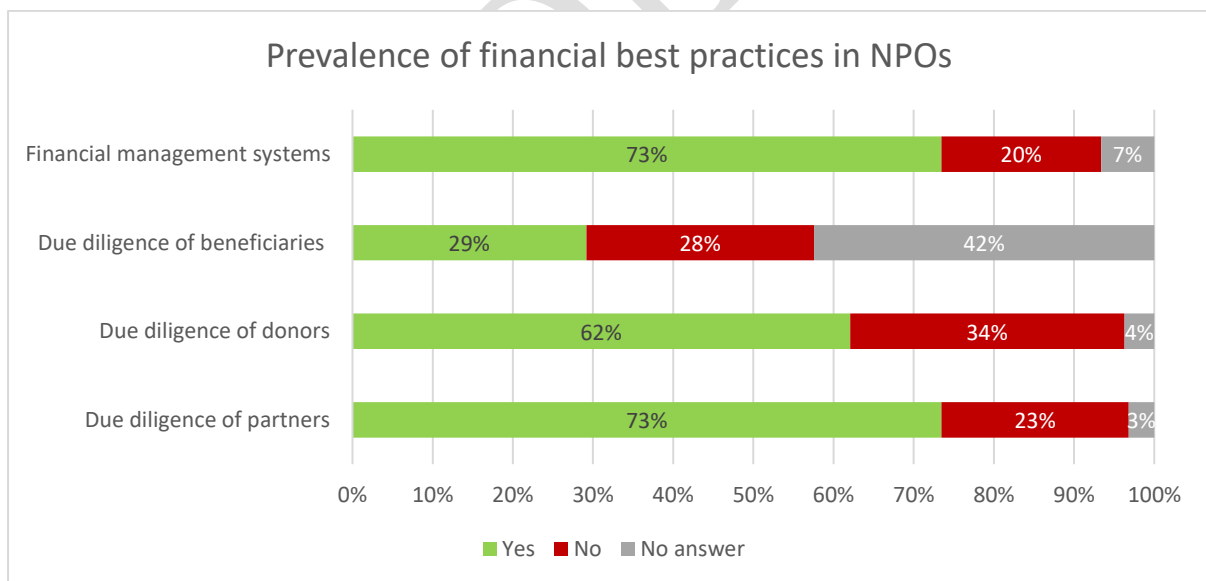
129. The NPO survey revealed that 60% of NPOs (230/377 NPO surveyed) has received funds, goods or services from foreign donors. The proportion of NGOs receiving funds is notably higher, although a majority of all types of NPO received foreign funding of some kind.

**Table 6: Foreign funded NPOs by legal type** (Source: NPO Survey)

	Total	Percentage of all foreign-funded NPOs	Percentage of legal type that is foreign funded
NGOs	104	47%	73%
CBOs	62	27%	50%
Trusts	9	4%	50%
Societies (Faith Based Organisation)	9	4%	53%
Foundations	9	4%	50%
Companies Limited by Guarantee	30	13%	64%
Not stated	4	2%	33%

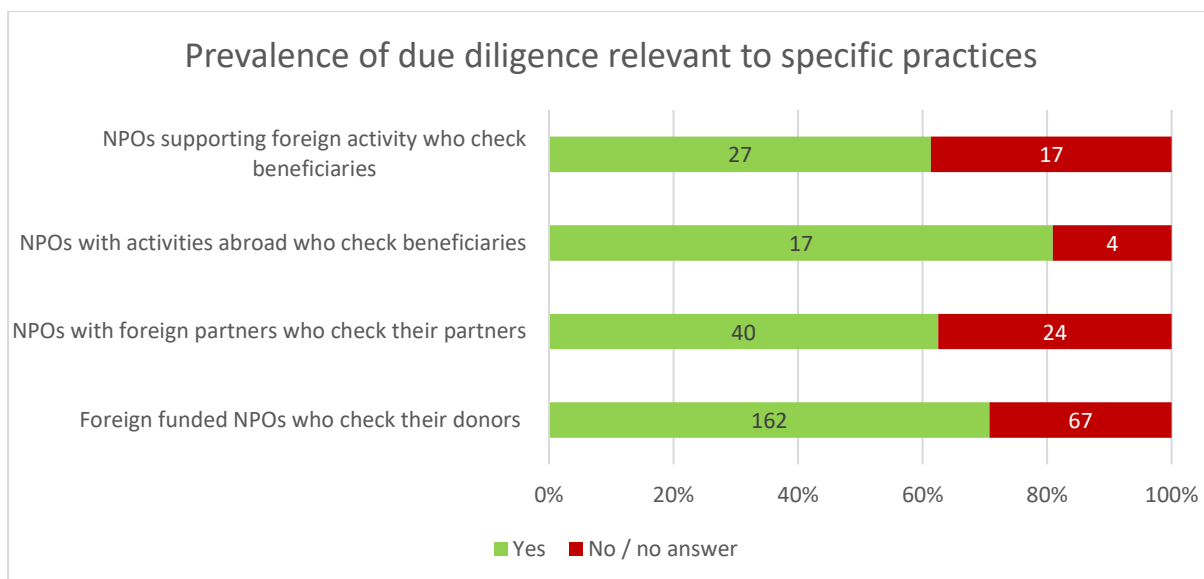
130. The NPO survey quizzed respondents on their financial practices. Nearly three-quarters of NPOs reported having financial management systems and procedures, and undertaking due diligence of partners. Due diligence of beneficiaries was lower, at 29%.

**Figure 20: Prevalence of financial best practice in NPOs** (Source: NPO Survey)



131. Analysing the data in more detail reveals that best practices are more likely to occur when an NPO faces a particular risk. For example, three-quarters of foreign funded NPOs undertake due diligence on their donors; and more than 80% of NPOs operating in foreign countries undertake due diligence of their beneficiaries, a rate nearly three times higher than for the sector as a whole.

**Figure 21: Prevalence of due diligence relevant to specific practices in NPOs** (Source: NPO Survey)



132. **Vulnerability 8: Faith-based NPOs.** This vulnerability relates to NPOs with religious activities. This was raised by one agency. Significantly, it was also noted as an element in the one *sub judice* prosecution. It is a common factor in sectoral risk assessments globally, although was not noted as a factor in the FATF Typologies Report.
133. The number of faith-based NPOs is unknown. Many faith-based organisations remain as societies under the Societies Act. At the time of writing the number of Faith-based organisations registered as Societies was unknown. Faith-based NPOs may also register as NGOs, although the number that have is unknown.

**Assessment of Inherent Vulnerabilities**

134. The following table summarises the significance and prevalence in the eight assessed potential inherent vulnerabilities in Kenya.

**Table 7: Significance and prevalence of the assessed potential inherent vulnerabilities**

	<b>Vulnerability</b>	<b>Significance</b>	<b>Prevalence</b>
1	Operating in areas of terrorist activity	High	Low-Medium
2	Working with communities sympathetic to terrorist causes	Medium-high	Unknown
3	Engaged in activities which bring them into contact with extremist groups	Medium high	Unknown
4	Lacking incentives, resources or capacity to verify the source of funds or the source of supplies.	Medium	Low-Medium
5	Lacking incentives, resources or capacity to verify their activities or audit their finances.	Medium	Medium

6	Lacking incentives, resources or capacity to undertake due diligence of partners.	Low-Medium	Low
7	Receiving funds from unverifiable, high risk and/or foreign sources.	Low-Medium	Medium
8	Faith-based NPOs	Low-Medium	Unknown

135. FATF Methodology 8.1(i) requires a risk assessment to ‘*Identify[ing] the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse*’.

**either**

136. As noted above, there are no known cases or concerns of terrorist financing abuse of NPOs in Kenya. Whilst there is a plausible terrorist financing threat (see Part E), the following assessment is made in the context of ‘no known cases’. In that context, the following potential inherent vulnerabilities have been identified based on studies of terrorist financing cases in [country], and on studies of typologies of terrorist financing abuse of NPOs in the broader region. These [number] factors will form the areas of focus for the assessment of mitigating measures.

**The features and types of NPOs that may [potentially] put them at risk of terrorist financing abuse.**

**or**

137. [Brief statement on the evidence, and how it supports a conclusion that...] the following activities and characteristics of NPOs are assessed as inherent vulnerabilities that are likely to increase the risk of TF abuse.

**The features and types of NPOs that put them at risk of terrorist financing abuse.**

**Inherent Vulnerabilities that are likely to put an NPO ‘at risk’ of terrorist financing abuse**

1. [Inherent vulnerability 1].

**Final Assessment of Inherent Risk of NPOs in Kenya**

138. Risk is assessed as a combination of threat, vulnerability and consequence. *[Brief statement on the manifestations of TF in NPOs in the country] [Brief statement on the threat, vulnerabilities, and consequences (if known); and the overall perception of risk]. In this context, the overall inherent risk of terrorist financing abuse of NPOs in Country is assessed as [None / Very Low / Low / Low-Medium / Medium / Medium-High / High / Very High].*

**Inherent TF Risk of NPOs in Country**

**None / Very Low / Low / Low-Medium / Medium /  
Medium-High / High / Very High**

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## **Annex 1: FATF Recommendations Relevant to NPOs**

### Recommendation 8 on Non-Profit Organisations

#### **"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).

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.

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## 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)