

Report on guidelines and challenges to prevent the misuse of NPOs for terrorist financing in GAFILAT countries



July 2021





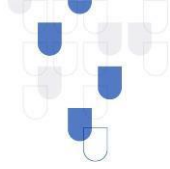
ABBREVIATIONS AND ACRONYMS

UNSC	United Nations Security Council
CTED	United Nations Counter-Terrorism Committee Executive Directorate
RBA	Risk-Based Approach
NRA	National Risk Assessment
TF	Terrorist Financing
FATF	Financial Action Task Force
GAFILAT	Financial Action Task Force of Latin America
UNSC Technical Guide	Technical Guide to the implementation of United Nations Security Council Resolution 1373 (2001) and other relevant resolutions
Joint Report	Joint Report of the Counter-Terrorism Committee Executive Directorate and the Analytical Support and Sanctions Monitoring Team on measures taken by Member States to counter terrorist financing S/2020/493
ML	Money Laundering
IN R.	Interpretive Note to Recommendation
NPO	Non-profit organisations
R.	Recommendation
UNSCR	United Nations Security Council Resolution
ES	Executive Secretariat



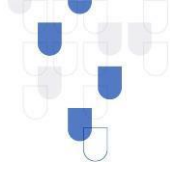
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EXECUTIVE SUMMARY

1. Within the framework of the Working Group on Terrorist Financing (GTFT) of the Financial Action Task Force of Latin America (GAFILAT), the Delegation of Mexico proposed developing a regional exercise to identify and exchange experiences, guidelines, and challenges on the risk of terrorist financing (TF) in non-profit organisations (NPOs) among member countries. This proposal was approved by the GTFT and the XXXIX GAFILAT Plenary of Representatives. This document was prepared based on the Mexican proposal and a survey of GAFILAT countries.
2. The purpose of this report is to provide guidelines and identify some of the challenges encountered by the countries of the region when implementing measures to prevent NPOs from being misused for TF. This is in accordance with the Interpretive Note to Recommendation (IN R.) 8, which states that countries should work with NPOs to develop and refine best practices to address the risks and vulnerabilities of this sector from being abused for TF.
3. Although this project is descriptive and indicative in nature and, therefore, has no impact on the evaluation of compliance with FATF R.8, it can be considered as a tool to facilitate or guide countries to improve compliance with the criteria for the application of the standard in this area.
4. It is important to note that GAFILAT, like the Financial Action Task Force (FATF) and the rest of the Global Network, recognises the importance of the NPO sector for the economy and development of the countries in the different regions where they operate. The role played by NPOs is undoubtedly of vital importance, particularly in the current context of the health crisis caused by the COVID-19 pandemic. Moreover, it is also worth remembering that some NPOs, by the nature of the work they do, may be at risk of being misused for TF, so it is important that countries implement measures to identify, reduce, and mitigate such risks for them in particular.
5. This report is based on FATF R.8, its Interpretive Note, and other documents developed by the FATF that provide relevant information on the risk of misuse of NPOs for TF. In addition, it contemplates the inputs obtained from the responses to the GAFILAT questionnaire that was answered by 12 of its 17 member countries, which meant a participation of 71% of the delegations that comprise GAFILAT. This is an important participation that makes it possible to reach the conclusions presented in this document.



6. Also, and in order to show a global overview, information from the Joint Report of the UN Counter-Terrorism Committee Executive Directorate (CTED) and the Analytical Support and Sanctions Monitoring Team on the measures adopted by Member States to hinder the financing of terrorism S/2020/493 (Joint Report) was included, which presents a synthesis of the measures, good practices, and challenges faced by States at the global level in the implementation of international standards on the fight against TF.

7. In order to present an overview of experiences, some guidelines, and challenges on TF risk for NPOs, this document begins with an explanation of its scope and objectives, and the methodology used. It then develops the generalities of the international standard on measures to prevent misuse of NPOs for TF. The following sections outline the issues of TF risk assessment in the NPO sector, the identification of the sub-sector that falls under the FATF definition, and the measures to be adopted under a risk-based approach (RBA).

8. Considering some of the challenges and particularities of the region, the last sections of the document explore the undesired effects of an inadequate implementation of the standard and how the measures implemented in the NPO sector to reduce their risk of being misused for other crimes can contribute to mitigate TF risks. Finally, the document provides a summary of the main challenges identified in order to assist the delegations in the process of identifying the main common problems in the region and, consequently, to develop strategies to overcome them.

RISK ASSESSMENT

9. R.8 encourages countries to identify the risks of misuse of NPOs for TF purposes. As a good practice, the sector can be involved in the exercise to assess the risks, including the identification of mitigants. There is no single methodology for assessing the risks of misuse of NPOs for TF, however, in conducting this analysis, the following elements are suggested to be included:

- Domestic review of the NPO sector
- Identify the subset of NPOs that fall within the FATF definition and
- Define the risk of misuse of NPOs for TF of the identified NPOs that meet the FATF definition.

MEASURES WITH A RISK-BASED APPROACH

10. Once the subset of NPOs with TF risks and the definition of this risk have been identified, countries should implement measures commensurate with such risks to prevent NPOs from being abused to perpetrate such crime.



UNINTENDED EFFECTS

11. The implementation of excessive or one-size-fits-all measures lacking an RBA is not consistent with R.8 and may, on the contrary, generate undesired effects such¹ as for example:

- Exclusion of NPOs or loss of access to the formal financial system derived from the restrictions imposed (*De-risking*).
- Other restrictions for the development of the NPO sector or the complete suppression of the sector.
- Obstacles or restrictions to the performance of their activities, including those of a humanitarian or human rights protection nature.

12. Considering how important it is for NPOs to have access to the formal financial system in the day-to-day development of their activities, FATF IN R.8 includes as part of the standard that *“countries should encourage NPOs to conduct transactions via regulated financial channels, whenever feasible, keeping in mind the varying capacities of financial sectors in different countries and in different areas of urgent charitable and humanitarian concerns.”*²

13. Therefore, it is important that when implementing measures to prevent the misuse of NPOs for TF purposes, countries take into account and assess that these measures are not excessive, discourage the development of humanitarian, charitable or religious activities that the sector seeks to implement, or hinder or delay the development of the sector while fully respecting the rights of freedom of expression and association of individuals in civil society and religious freedom.

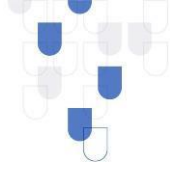
OTHER RISKS OF MISUSE OF NPOs

14. NPOs may face numerous other risks, related to money laundering (ML), fraud, corruption, tax evasion, among others. Therefore, it is important not to lose sight of the fact that FATF R.8 is only focused on addressing the vulnerabilities of NPOs to be misused for TF.³

1 At the time of writing, the FATF is developing a paper that explores this in more detail. <https://www.fatf-gafi.org/publications/financialinclusionandnpoissues/documents/unintended-consequences-project.html>

2 FATF. FATF Standards. 2012 - 2020. Interpretive Note to Recommendation 8.

3 FATF. FATF Best Practices on Combating the Abuse of NPOs for TF. para. 12.



CHALLENGES

15. Finally, this document presents a summary of the main challenges identified in TF risk management for the sector in the region:

- A. Comprehensive understanding of the NPO sector in each country.
- B. Identifying the sub-sector of NPOs that fall within the FATF definition.
- C. Conducting a risk analysis of the misuse of NPOs for TF.
- D. Implementing RBA measures.
- E. Mitigating unintended effects of implementation.
- F. Encouraging a continuous dialog with the sector.

16. Ongoing efforts by GAFILAT countries to implement the International Standard can be further strengthened by closer collaboration and encouraging dialog with the NPO sector. The sector also benefits from the confidence that the public may have in it, and therefore the measures adopted to protect it from misuse for TF may be in line with other measures that the sector implements to receive the support of society and the private sector in its actions.

17. As a final goal, it is believed that with the proper implementation of R.8 and its IN, countries will come closer to the macro-objective of consolidating an effective system to prevent and combat terrorism and its financing in pursuit of international security in accordance with the provisions of Chapter VII of the UN Charter.



BACKGROUND

18. GAFILAT's GTFT, created in 2015, arose from the need to have a specific forum for discussion and follow-up in the region on terrorism and its financing. The work of this working group has focused not only on providing countries with technical support for the implementation of the TF obligations arising from the International Standards, but also on promoting the development of initiatives to strengthen the region's CFT regimes in this area. A very important issue that has been worked on in parallel in the GTFT is that of promoting compliance by the Member States with their obligations regarding risk identification and management of those NPOs most at risk of being misused for TF.

19. In the GTFT session held on July 23, 2019, in the framework of the XXXIX Plenary of Representatives of GAFILAT, held in Luque, Paraguay, the Global NPO Coalition on FATF presented the panorama of said sector vis-à-vis the International Standards in the region (mainly R.8 and Chapter IV of the "FATF Guidance on Terrorist Financing Risk Assessment" of July 2019).

20. It is important to note that, in June 2016, the FATF conducted the revision of R.8 and its Interpretive Note in order to delimit the subset of NPOs that should be subject to effective supervision or monitoring in CFT matters. This update of the standard allowed harmonising R.8 with the FATF Typologies Report on the "Risk of Terrorist Abuse in Non-Profit Organisations,"⁴ of June 2014 and with the "FATF Best Practices on Combating the Abuse of NPOs for TF,"⁵ of June 2015.

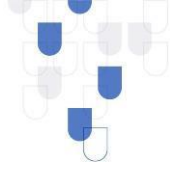
21. The delegations of GAFILAT member countries recognised that certain NPO sectors are key actors in the fight against TF and that adequate knowledge of their obligations in this area and risk management makes them valuable allies of the countries in preventing and combating this crime.

22. In this regard, the Delegation of Mexico proposed, within the framework of the XXXIX Plenary of Representatives, to develop a regional exercise to identify and exchange experiences, guidelines, and challenges regarding the risk of TF in NPOs among member countries. This proposal was adopted by the GTFT and the GAFILAT plenary. This document was prepared based on the Mexican proposal and a survey of GAFILAT countries.

4 [gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf](https://www.gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf)

5 <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>

Translated by courtesy into Spanish: <https://www.gafilat.org/index.php/es/biblioteca-virtual/gafilat/documentos-de-interes-17/informacion-ala-cft-relevante-sobre-las-osfl/3868-mejores-practicas-del-gafi-sobre-la-lucha-contr-el-abuso-de-las-osfl/file>



23. It should be noted that, in recent years, the GAFILAT Executive Secretariat has promoted various actions to foster closer ties between the Member countries and the main NPO groups operating in the region. In this regard, for example, in the framework of the XL Plenary of GAFILAT Representatives, held in December 2019, in Arequipa, Peru, a meeting was held between different NPO groups (Global NPO Coalition on FATF and the International Center for Not-for-Profit Law) and the Presidency, Vice Presidency of GAFILAT in addition to the Coordinators of the GTFT and the Executive Secretariat of the organisation to exchange some experiences and challenges identified by both parties in compliance with FATF R.8.

24. It is important to note that GAFILAT, like the FATF and the rest of the Global Network, recognises the importance of the NPO sector for the economy and development of the countries in the different regions where they operate. The role played by NPOs is undoubtedly of vital importance, particularly in the current context of the health crisis caused by the COVID-19 pandemic. Moreover, it is also worth remembering that some NPOs, by the nature of the work they do, may be at risk of being misused for TF, so it is important that countries implement measures to identify, reduce, and mitigate such risks for them in particular.

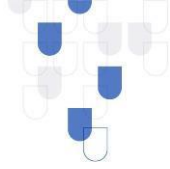
25. This report builds on FATF R.8, its Interpretive Note and other documents developed by the FATF (such as relevant guidelines and best practice documents)⁶ that provide relevant information on the risk of misuse of NPOs for TF. In addition, it is complemented by the inputs obtained from the survey developed within the framework of this project by the GAFILAT delegations participating in the project.⁷

26. Similarly, and in order to show a global overview, information from the CTED Joint Report (Joint Report) was included, which presents a synthesis of the measures, good practices, and challenges faced by States in the implementation of international standards on the fight against TF. This information was useful for the preparation of this document, and some relevant findings related to NPO international standards on TF matters are included below.

27. In order to present an overview of experiences, some guidelines, and challenges on TF risk for NPOs, this document begins with an explanation of its scope and objectives, and the methodology used. It then develops the generalities of the international standard on measures to prevent misuse of NPOs for TF. The following sections outline the issues of TF risk assessment in the NPO sector, the identification of the sub-sector that falls under the FATF definition, and the measures to be adopted under a risk-based approach (RBA).

6 Main FATF publications on compliance with R.8: [https://www.fatf-gafi.org/publications/financialinclusionandnpoissues/?hf=10&b=0&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/publications/financialinclusionandnpoissues/?hf=10&b=0&s=desc(fatf_releasedate))

7 The Global NPO Coalition on FATF and the International Center for Not-for-Profit Law provided the GAFILAT ES with relevant input from a project where they surveyed 729 NPOs in 17 Latin American countries in 2020. <https://www.icnl.org/post/news/materiales-de-referencia-proyecto-regional-de-mapeo-de-riesgo-osfl>



28. Considering some of the challenges and particularities of the region, the last sections of the document explore the unintended effects of an inadequate implementation of the standard and how the measures implemented in the NPO sector to reduce their risk of being misused for other crimes can contribute to mitigate TF risks. Finally, the document provides a summary of the main challenges identified in order to assist the delegations in the process of identifying the main common problems in the region and, consequently, to develop strategies to overcome them.

SCOPE AND OBJECTIVES

29. This document has its origin in the need for countries to develop research and promote the exchange of information that will contribute to a better understanding of the TF risks that could affect the most exposed NPOs, based on existing sources of information in the countries and in the region.

30. Likewise, the purpose of this report is to provide certain guidelines and identify the most significant challenges encountered by the countries of the region when implementing measures to prevent NPOs from being misused for TF. This is in accordance with IN R.8, which states that countries should work with NPOs to develop and refine best practices to address the sector's terrorist financing risks and vulnerabilities of being abused.

31. In this sense, although this project is descriptive and indicative in nature and, therefore, has no impact on the evaluation of compliance with FATF R.8, it is expected to act as a tool to facilitate or guide countries to improve compliance with the criteria for the application of the standard in this area.

32. Likewise, this document may allow a more detailed assessment to identify the risks of those NPOs with greater exposure to TF, so that countries can review their regulations, mechanisms, and mitigating measures, if necessary.

33. The set of international instruments on the subject is of particular importance, since they refer to the adoption of an RBA for this sector. In this regard, this document presents certain guidelines for the countries of the region to apply a RBA, without prejudice to the requirements of R.1, and to implement measures consistent with the identified risk of TF in the applicable NPO sector.



METHODOLOGY

34. This report, prepared within the framework of GAFILAT's GTFT, was based on the information contained in the various mutual evaluation reports, as well as that provided by GAFILAT countries through a web-based questionnaire. The preparation of this document was structured as follows:

- I. The GTFT Coordination and the GAFILAT Executive Secretariat, in collaboration with the Global Coalition, designed an online questionnaire to collect information on NPOs in the region and the monitoring of this sector by the delegations, in accordance with the definition of FATF's IN R.8.
- II. The questionnaire was disseminated online to all GAFILAT members.
- III. The organisation and analysis of the responses was conducted by the GTFT Coordination and the Executive Secretariat for submission to the Working Group.
- IV. The draft document was submitted for comments by the delegations.
- V. The dissemination of the results and discussion of the document will be held within the framework of the GTFT and subsequently submitted to the Plenary of Representatives for approval.

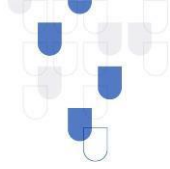
Sources of information

35. For the preparation of the report, the following FATF documents were used to address issues related to the misuse of NPOs for TF:

- International standards on the fight against money laundering and terrorist financing and the financing of the proliferation of weapons of mass destruction (40 Recommendations).
www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-%20organisations.pdf
<https://www.fatf-gafi.org/publications/methodsandtrends/documents/risk-terrorist-abuse-non-profits.html>
- FATF Terrorist Financing Risk Assessment Guidance.

36. The following United Nations Security Council Resolutions (UNSCR) were also used as a source for international standards:

- UNSCR 1373 (2001).
- UNSCR 1617 (2005).
- UNSCR 2129 (2013).
- UNSCR 2253 (2015).
- UNSCR 2462 (2019).



37. Additionally, the Technical Guide to the implementation of UNSCR 1373 and other relevant resolutions S/2019/998 (UNSC Technical Guide), prepared by the executive committee, was used. This guide has been conceived as a consultation tool that seeks to contribute to ensure a coherent analysis of the implementation activities of the measures established under UNSCR 1373 and other relevant resolutions, carried out by the United Nations Member States. In this regard, the UNSC Technical Guide in addition to referring to each of the paragraphs of resolutions 1373 (2001) and 1624 (2005), points out the key provisions of resolutions 2178 (2014) and 2396 (2017) on terrorism and its financing.

38. For the purpose of presenting some global trends related to the NPO international standards, the Joint Report of Counter-Terrorism Committee's Executive Directorate and the Analytical Support and Sanctions Monitoring Team on Measures Taken by UN Member States to counter the financing of terrorism S/2020/493 (Joint Report) was also used.

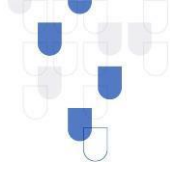
39. This report contains an analysis and conclusions based on the responses of 112 UN Member States to the questionnaire developed by CTED and the Analytical Support and Sanctions Monitoring Team. With this questionnaire, information was requested on the implementation by UN Member States of the measures set out in resolutions 1267 (1999) and 1373 (2001).

40. The Joint Report provides an account of the measures, good practices, and problems faced by States in the implementation of international standards on the fight against TF; including some relevant findings related to measures to prevent the misuse of NPOs by terrorists or terrorist financiers.

41. With respect to the information on GAFILAT countries, as mentioned above, the inputs were obtained from the responses to the questionnaire that was answered by 12 of its 17 member countries, which meant a participation of 71% of the delegations that comprise GAFILAT. This is an important participation that makes it possible to reach the conclusions presented in this document.

INTRODUCTION

42. The FATF, just after the terrorist attacks of September 11, 2001, in the United States of America, issued Special Recommendation VIII against TF related to NPOs in October of the same year. It recognises the vital role played by NPOs within the States, as well as the identification that some of these entities have been abused for the purpose of financing terrorist acts, including those that occurred during the so-called "9/11," and therefore encourages States to implement measures to reduce this risk.



43. Subsequently, in 2012, the FATF updated its standard and Special Recommendation VIII was included as R.8, within the 40 Recommendations. In the 2012 version, this Recommendation was not modified much, however, in June 2016, the FATF updated it again to emphasise that not all NPOs represent a high risk of TF and, therefore, it is important to identify those organisations that fall within the FATF definition and apply supervision and monitoring measures with an RBA accordingly.

44. Additionally, the United Nations Security Council (UNSC) issued UNSCR 1373 in September 2001, creating an important framework for the global fight against terrorism and its financing. Then, in UNSCR 1617 (2005) in its paragraph 7, *“strongly urges all Member States to implement the comprehensive, international standards embodied in the Financial Action Task Force’s (FATF) Forty Recommendations and the FATF Nine Special Recommendations on Terrorist Financing,”*⁸ including the Recommendation on NPOs.

45. More explicitly, in 2015, the UNSC, adopts UNSCR 2253 (2015) where it recognises *“the need for Member States to prevent the abuse of non-governmental, non-profit, and charitable organizations by and for terrorists, and calling upon non-governmental, non-profit, and charitable organizations to prevent and oppose, as appropriate, attempts by terrorists to abuse their status, while recalling the importance of fully respecting the rights to freedom of expression and association of individuals in civil society and freedom of religion or belief, and welcoming the relevant updated Best Practices Paper issued by the Financial Action Task Force for the appropriate, risk-based implementation of the international standard related to preventing terrorist abuse of the non-profit sector.”*⁹

46. With the above, the international standard that encourages States to implement measures to prevent and mitigate the risk of misuse of NPOs, is mandatory in compliance with Chapter VII of the UN Charter and the FATF 40 Recommendations.

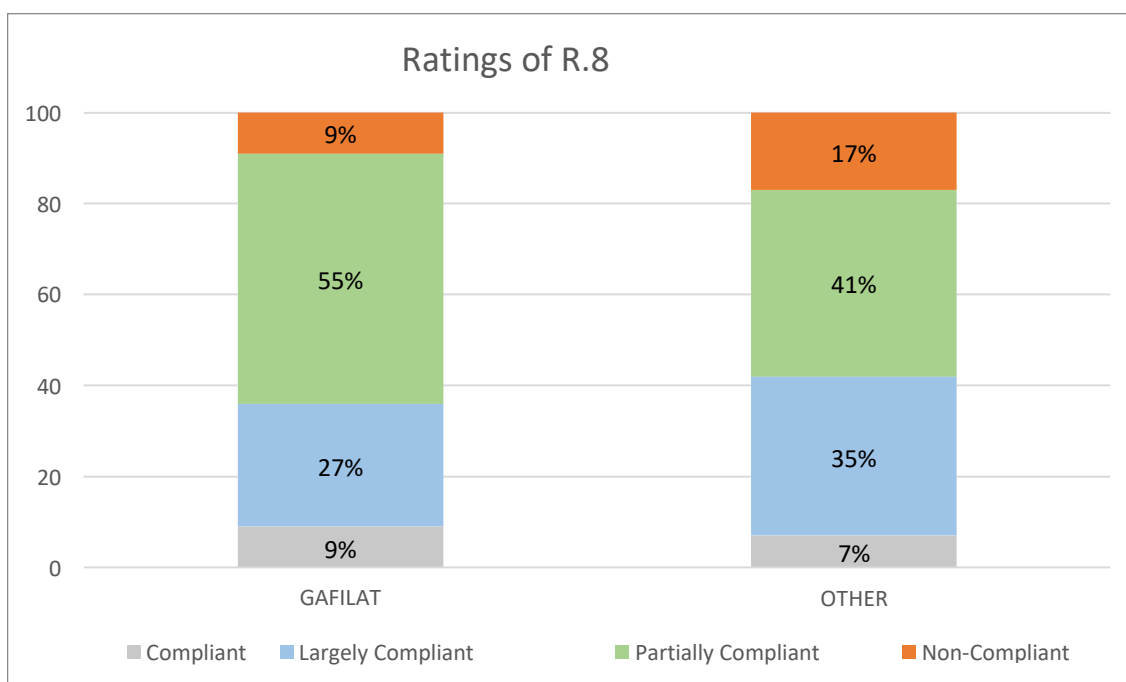
47. The various GAFILAT countries, the FATF, and the rest of the Global Network continue to develop evaluations on compliance with the 40 Recommendations, including R.8. As of the date of preparation of this document (April 2021), 106 countries have been evaluated. The following chart shows a comparison of the ratings achieved on this recommendation by GAFILAT countries in comparison with the result obtained by the rest of the countries evaluated in the Global Network to date, within the framework of the Fourth Round of FATF Mutual Evaluations.

8 Resolution 1617 (2005) para. 7.

9 Resolution 2253 (2015) p. 4.



Graph 1: Ratings of R.8 in the Fourth Round of Mutual Evaluations¹⁰



48. This table shows that compliance with this recommendation at the global level still presents significant challenges. Comparing GAFILAT¹¹ delegations with the rest of the countries evaluated, the region has an even lower level of compliance with respect to the rest of the countries. In this sense, only 36% of GAFILAT countries have obtained an acceptable level where 9% have achieved a rating of Compliant and 27% Largely Compliant. The remaining 64% obtained ratings ranging from Partially Compliant (55%) to Non-Compliant (9%).

49. Although the rest of the countries evaluated in the Global Network do not present a very favourable level of compliance either. Forty-two per cent of the countries were rated largely compliant or compliant, which is somewhat better than the result for the region. However, the remaining 58 per cent were rated between non-compliant (17%) and partially compliant (41%). With these data, it can be concluded that countries around the world continue to face significant challenges in implementing this standard.

¹⁰ The results only reflect countries that as of April 2021 had been assessed and their results have been published by the FATF. Source FATF: <http://www.fatf-gafi.org/publications/mutualevaluations/documents/assessment-ratings.html>

¹¹ This figure includes Mexico as a GAFILAT member and does not include Mexico as a FATF member for the purposes of this exercise.



Objective of Recommendation 8

50. As explained above, among the 40 FATF Recommendations in force, R.8 is the one that defines the standard for NPOs.

51. This Recommendation sets forth: *“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.”*¹²

52. Additionally, as stated in IN R.8, the objective of this recommendation is to ensure that NPOs are not illegally used by terrorist organisations:

- (i) To pose as legitimate entities;
- (ii) To exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures;
- (iii) To conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes.

53. This document includes the following elements of relevance that are useful in the proper implementation of this recommendation:

- A. **Terrorist Financing:** The focus of this Recommendation is TF, therefore, what it aims for is for countries to implement measures to prevent the abuse of these entities for such crime. Although NPOs may be vulnerable to being misused for other offenses such as ML, tax crimes, and other predicate offenses, as any other type of legal person or legal entity, R.8 is focused exclusively on TF.
- B. **Not all NPOs have a TF risk:** The FATF recognises in its international good practices document to combat the misuse of NPOs, that not all these entities have a TF risk, it also highlights that there may be NPOs that have a low, medium or high risk, or even, no risk of abuse for TF.¹³
- C. **The Recommendation does not apply to the entire universe of NPOs:** IN R. 8 clearly states that this recommendation “does not apply to the entire universe of NPOs.”¹⁴ Precisely because the recommendation is focused on preventing TF, and the FATF recognises that not all NPOs are at risk of being abused for this crime, this recommendation applies only to those NPOs

12 FATF. FATF Standards. 2012 - 2020. Recommendation 8.

13 FATF. FATF Best Practices on Combating the Abuse of NPOs for TF. para. 7.

14 FATF. FATF Standards. 2012 - 2020. Interpretive Note to Recommendation 8.



that fall within the FATF definition of NPOs that, by the nature of their activities or characteristics, have a risk of abuse for this crime.

- D. **A risk-based approach should be applied:** Measures applied to NPOs should be consistent with their level of risk of being misused for TF. As discussed above, not all of these entities have a TF risk and for those that have this risk, it is not the same for the entire sector, therefore, to properly implement this recommendation it is important to develop a risk assessment of the misuse of NPOs for TF and based on the results, *“countries should apply focused and proportionate measures, in line with the risk-based approach.”*¹⁵
- E. **NPOs do not necessarily have to be reporting institutions.** R.8 does not require NPOs to be considered reporting institutions and, therefore, they do not necessarily have to implement the full range of preventive measures, including knowledge and identification of the customer, the beneficial owner, the obligation to submit suspicious transaction reports, among others. Countries may, however, depending on an RBA, impose some of these measures on NPOs that have been identified as posing a higher risk of TF.

54. Below are some aspects that may be useful in implementing this recommendation, as well as statistics at both the global and GAFILAT country levels, accompanied by some guidelines and challenges identified that may be considered in the implementation of the applicable standard.

RISK ASSESSMENT

55. FATF R.1 encourages countries to develop a national risk assessment (NRA) for ML and TF. There is no single methodology for developing these analyses, and countries may choose to develop assessments focused on each of the offenses, or develop certain aspects in different documents. In the end, the objective is to obtain a complete understanding of the risks of ML and TF at the national and sectoral levels.

56. The Joint Report identified that most States have conducted TF risk assessments as part of their NRA or broader ML risk assessments.¹⁶ In this regard, *“Sixty per cent of responding States to the questionnaire of the Joint Report indicated that they had conducted a TF risk assessment as part of their NRA process or broader money laundering risk assessment. Only 20 per cent of States reported that they had conducted a dedicated TF risk assessment. Around 10 per cent of responding States*

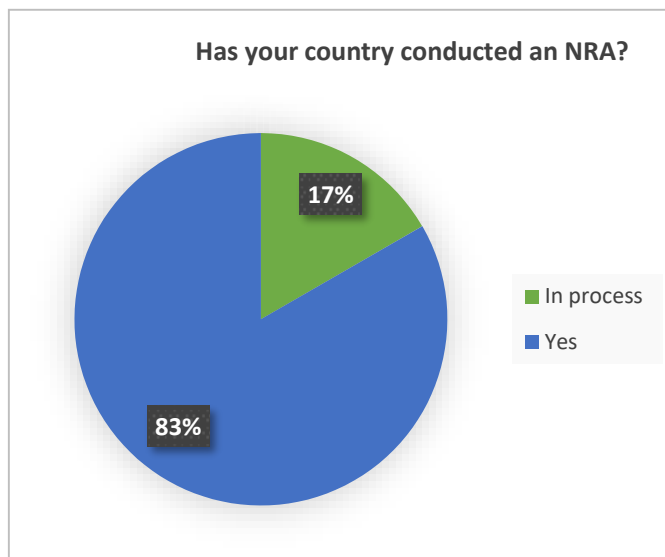
¹⁵ FATF. FATF Standards. 2012 - 2020. Recommendation 8.

¹⁶ CTED. Joint Report. S/2020/493, p. 14



indicated that they had not conducted a TF risk assessment but planned to do so in 2020 or in the near future.”¹⁷

Graph 2: GAFILAT countries that have carried out or are in the process of developing an NRA



57. From GAFILAT’s perspective, all the countries that responded to the form indicated that they had developed a risk assessment, or were in the process of doing so. It is clear from the responses that this assessment includes an analysis of the TF risk (mainly contained in the NRAs). Among the main conclusions on TF presented by the countries surveyed, it is worth noting that none of the countries in the region considered their TF risk to be high. In a few situations, the threat was identified as medium-high.

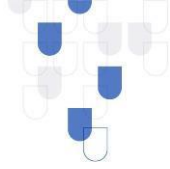
Identify the risk of misuse of NPOs for TF purposes

58. Regardless of the methodology, mechanisms, or procedures used for the development of a TF NRA, it is important to emphasise that countries should include in their analysis the risk to NPOs susceptible to be abused for TF, or develop a specific assessment on that sector. This is the initial step for a proper implementation of R.8.

59. The UNSC Technical Guide explains that “(...) since not all non-profit organizations are inherently high-risk, States should first understand their domestic non-profit organization sector and the terrorism financing risks facing this sector in order to identify which subsets fall within the definition provided by the Financial Action Task Force and are at higher risk of financing terrorism.”¹⁸

17 CTED. Joint Report. S/2020/493. Paragraph 39.

18 UNSC. UNSC Technical Guide. 2019. S/2019/998. Paragraph 116.



60. As pointed out by the FATF in its document on good international practices on combating the abuse of NPOs, developing a domestic assessment of the entire NPO sector is fundamental and necessary as a starting point for an adequate implementation of R.8 and its IN R.8, since it enables countries to:

- a. Better understand the domestic NPO sector, including size, type, activities, operating channels or instruments, and locations, among other aspects.
- b. Determine which NPOs in their country fall within the scope of the FATF definition of a NPO, and therefore, are covered by R.8.
- c. Understand the TF risks facing their specific NPO sector, in particular those covered by the FATF definition.
- d. Ascertain whether laws, regulations, and other measures already in place can help mitigate risks or whether additional measures are needed.
- e. Identify whether the measures in place are commensurate and appropriate with the risks identified, in compliance with FATF R.1 on RBA, and do not disrupt or discourage legitimate non-profit activities.¹⁹

61. According to R.8, the risk assessment of misuse of NPOs for TF should seek to:

- a. Identify which subset of organisations fall within the FATF definition of NPO;
- b. Identify the nature of threats posed by terrorist entities to the NPOs which are at risk;
- c. Identify how terrorist actors abuse those NPOs.

62. This assessment should be carried out periodically, as risks are changing and countries should be able to identify if there has been any change in circumstances that would result in a change in the level of risk assigned.

63. There is no single methodology for assessing the risks of misuse of NPOs for TF, however, the FATF in its Guide for the assessment of TF risks presents, in part 4, some elements that can be taken into account when developing these analyses.

64. This risk assessment of misuse of NPOs for TF purposes can be part of the TF NRA or can be developed in a separate document, although it is important that the findings are consistent and taken into account to broadly identify TF risks from a national perspective.

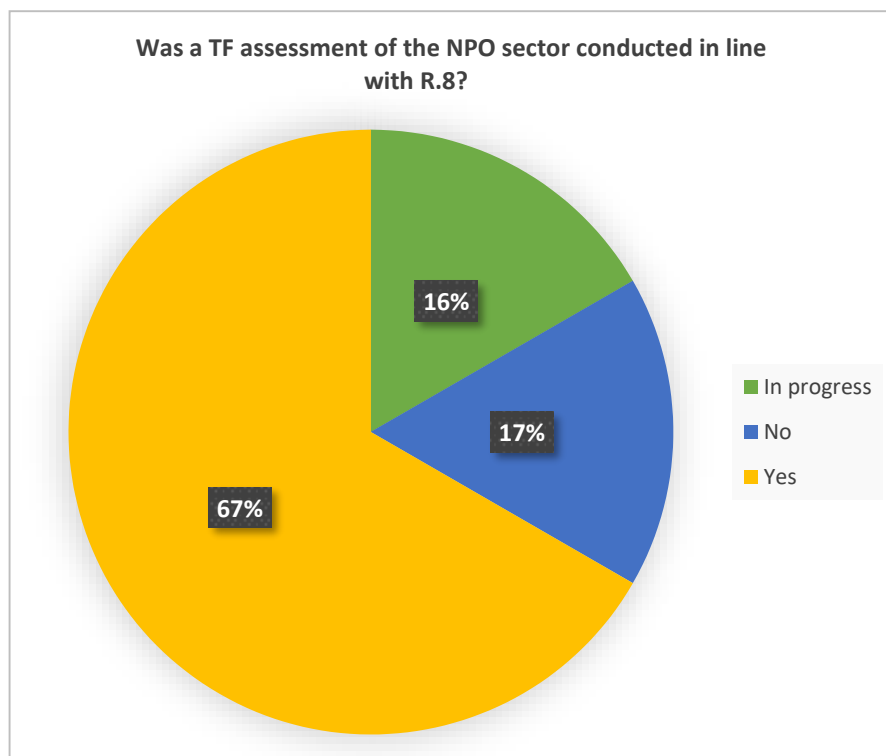
¹⁹ FATF Best Practices on Combating the Abuse of NPOs for TF (2015). para. 14



65. From the perspective of implementing an assessment that includes the approach to NPOs misused for TF, the Joint Report identified that *“Sixty-seven per cent of reporting States indicated that they had conducted a non-profit organization terrorism-financing risk assessment; and 22 per cent stated that they had not done so.”*²⁰ The Joint Report concludes that the comparison of States’ responses in this regard appears to indicate that a large number of non-profit organisation-sector assessments have been conducted as part of overall money-laundering/terrorism financing risk assessments, rather than as dedicated exercises.

66. From the regional perspective, the majority of GAFILAT countries (67%) acknowledge that they have conducted a TF risk assessment in line with the requirements of R.8, and only 17% consider that their TF assessment is not in line with R.8.

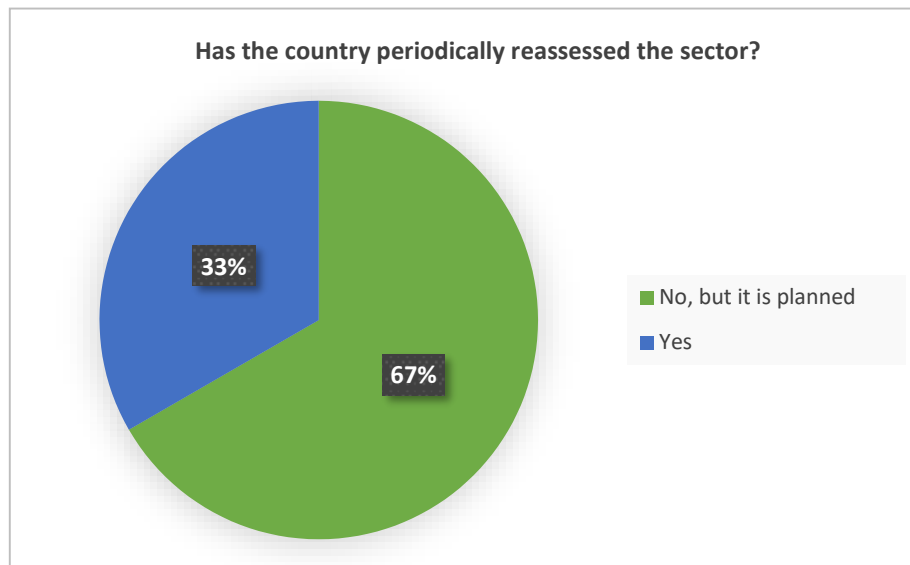
Graph 3: Percentage of GAFILAT countries that conducted an NRA in line with R.8



20 CTED. Joint Report. S/2020/493. Paragraph 77



Graph 4: GAFILAT countries that have or will periodically reassess the TF risk of NPOs



67. The Joint Report identified that “sixty-four per cent of States that provided information on the timing of their NPO assessments conducted the assessment between 2017 and 2019.”²¹ Of the GAFILAT countries that responded to the questionnaire, most reported that they plan to reassess the sector, and it can be deduced that they will probably carry out a risk assessment in line with R.8.

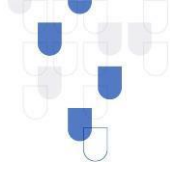
Elements to consider in the risk analysis

68. When conducting an assessment of the risks of misuse of NPOs for TF purposes, the following elements are suggested:

- a. Domestic review of the NPO sector.
- b. Identify the subset of NPOs that fall within the FATF definition.
- c. Define the risk of misuse of NPOs for TF of the identified NPOs that meet the FATF definition.

69. The NPO sector should be involved in the development of this analysis, as they can provide relevant information for a complete analysis of this sector. IN R.8 highlights that “developing cooperative relationships among the public and private sectors and with NPOs is critical to understanding NPOs’ risks and risk mitigation strategies, raising awareness, increasing effectiveness and fostering capabilities to combat terrorist financing abuse

21 CTED. Joint Report. S/2020/493. Paragraph 78



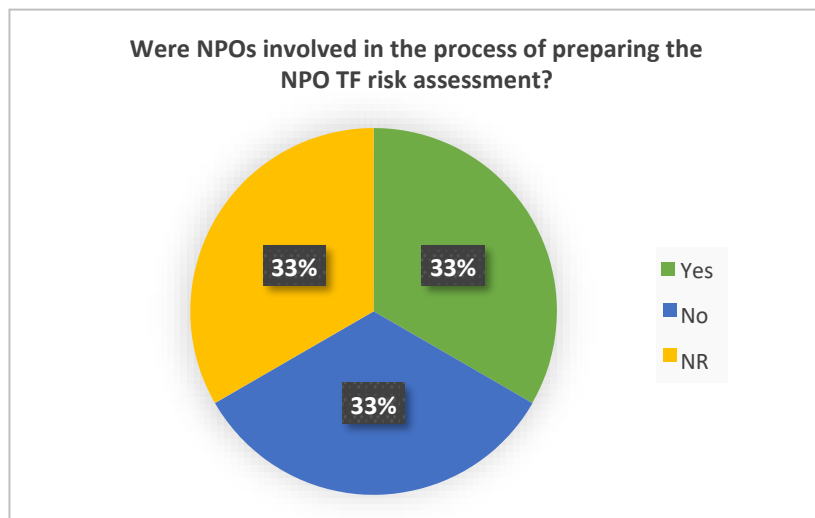
within NPOs. Countries should encourage the development of academic research on, and information-sharing in, NPOs to address terrorist financing related issues.”²²

70. Likewise, the UNSC Technical Guide suggests that *“States should work with non-profit organizations to develop and refine best practices to address terrorism financing risks and vulnerabilities in order to protect them from that abuse.”²³*

71. With respect to the participation of NPOs in the TF risk assessment processes that have been carried out to date, it should be noted that in general it is limited. The Joint Report points out that only one State noted that it had engaged with domestic and international organisations to reassess the risk to the non-profit sector, following a TF NRA.²⁴

72. In GAFILAT countries, only 33% of the countries surveyed stated that NPOs were involved in the TF risk assessment process, 33% did not answer the question, and the other 33% did not involve the sector in this process.

Graph 5: Involvement of NPOs in the development of the TF risk assessment in GAFILAT countries



Domestic review of the NPO sector

73. To develop an assessment of the risks of misuse of NPOs for TF, the FATF guidance for TF risk assessment suggests that a comprehensive understanding of the characteristics,

²² FATF. FATF Standards. 2012 - 2020. Interpretive Note to Recommendation 8.

²³ UNSC. UNSC Technical Guide. 2019. S/2019/998. Paragraph 118.

²⁴ CTED. Joint Report. S/2020/493. Paragraph 80



nature and activities of the sector is a vital prerequisite for understanding the TF risks faced by certain NPOs.²⁵

74. In that sense, in order to develop an understanding of the sector, information can be included on: the types of organisation(s) and the purpose(s) for which they were established, the location of activities in which they are engaged, the services provided, their donor base, the value of sector assets, movement of funds, means of payment, and the cash intensity of the sector.²⁶

75. The truth is that the NPO sector can be very varied and broad. In Latin America, in particular, the use of NPOs is very common and therefore it is important to have clarity on the sector in order to identify the subset that may be misused for TF.

76. In order to carry out a study of NPOs, each country may opt for different methodologies, depending on how the sector is organised, the type of legal entities that may be “non-profit,” the type of information available, the type of activities they conduct, their financing mechanisms, among others.

77. Considering this wide variety, a brief and generic explanation of the NPO sector is presented below.

Understanding the NPO sector

78. NPOs are entities created by the will of one or more persons (natural or legal) to carry out activities for the benefit of their associates, third parties or the community in general. NPOs make up what is called the “third sector” of the economy, since they are not part of the public sector (governmental institutions), nor of the private sector (companies or for-profit entities).

Particularities of NPOs

79. NPOs have certain particularities that differentiate them from both the public and private sectors. Some of the main characteristics relevant to this document are explained below:



25 FATF. FATF Terrorist Financing Risk Assessment Guidance. Paragraph 66
26 FATF. FATF Terrorist Financing Risk Assessment Guidance. Paragraph 67

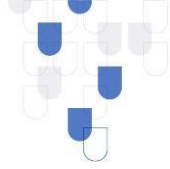


- A. **“Non-profit” nature:** The main characteristic that differentiates NPOs from the private sector is that they are entities that do not pursue the distribution of profits among their members and seek to conserve their assets in order to allocate them to the development of their object or activity, and are therefore called “non-profit.”
- B. **Surpluses:** In line with their non-profit nature, the surpluses that these entities generate are reinvested in their own activities or objectives and are not considered net income to be distributed as dividends among their members.
- C. **Financing:** NPOs are financed by receiving a contribution from their members, by offering a good or service, or in the form of a contribution or donation from individuals or a public or private entity. It is important to highlight that this income is generally not considered income or investment income.
- D. **Tax benefits:** In general, NPOs may obtain tax benefits or exemptions, due to the type of activity they carry out and/or the type of legal and financing structure they have. This will depend on the tax policy and legislation of each country.
- E. **Work team:** Some of its staff may carry out activities for or on behalf of the entity without remuneration, as members or volunteers. In some entities, the majority of its staff are volunteers.
- F. **Governmental independence:** NPOs may receive contributions from the public treasury through support, incentive, or encouragement programs; however, the activities they develop or the services they offer do not depend on or represent government decisions, although these may be in line with them.

Legal structure:

80. NPOs can be constituted under different legal forms. Each country has the power to define in its legislation the legal arrangements that may have “non-profit” characteristics, but in general the following types of legal entities can be highlighted:

- Associations
- Corporations
- Foundations
- Cooperatives or precooperatives
- Mutual associations
- Employee funds or unions
- Non-governmental organisation



Type of activities they conduct

81. NPOs may engage in a wide variety of activities that can be categorised in different ways. The following is a general categorisation to illustrate the wide range of activities that NPOs usually engage in:

- A. Solidarity-based economy:** These are entities that promote associativity, cooperation, and self-management, and are oriented towards the production, consumption, and commercialisation of goods and services, in a mainly self-managed and cooperative manner. This activity is mainly developed through legal structures such as cooperatives, pre-cooperatives or mutual associations. These types of entities can develop microfinance activities.
- B. Non-governmental or development cooperation organisations (NGOs):** These are entities that promote economic and social development and social justice, including the reduction of poverty or economic disparity, offer humanitarian aid, among other issues.
- C. Civil society organisations:** These entities promote the defence of different causes, such as human and civil rights, environmental protection, democracy, among others. Under some classifications these entities are also considered NGOs.
- D. Trade unions, workers' or professional associations:** These entities promote rights related to the workplace of workers and professionals.
- E. Trade unions:** These are business associations that seek to promote their economic sector or industry.
- F. Religious Entity:** Entities that promote the development and practice of a religion or spiritual instruction.
- G. Political parties and movements:** Entities that promote political ideas and candidates to represent those ideas in corporations and public institutions of popular election.
- H. Organisations that provide non-profit services:** These are entities that offer services that can also be offered by the public or private sector, but in this context, they are non-profit, offered through legal structures such as foundations, associations or corporations. These services involve a variety of issues, including, for example:
 - Education – e.g., educational institutions, universities.
 - Medicine – e.g., hospitals, health centres.
 - Environmental or animal protection – e.g., animal shelters or waste collection and recycling centres.



- Services for groups with special needs – e.g., children, people with disabilities or certain diseases, refugees.
- I. **Artistic, cultural, training or sports organisations:** These are entities focused on developing and promoting artistic, cultural, and sports expressions, such as theatre, dance, music, or any sport.
- J. **Social or community-based organisations:** These are entities that promote the development of activities in communities or social groups, including, for example:
 - Minority, ethnic, or gender communities.
 - Groups of people present in certain territories such as neighbourhoods or cities.
 - Groups of people who are associated by a particular characteristic, for example, a profession (e.g., an association of engineers) or an age range (e.g., an association of retirees).
- K. **Corporate social responsibility foundations:** These are institutions created and financed by a company for the purpose of making donations and carrying out philanthropic activities, legally separate from the company from which they originate.

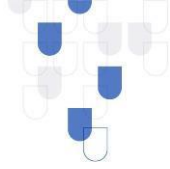
82. As explained above, NPOs can be classified in many ways, and the above description may be limited and not include some activities or subsectors. Nevertheless, it is evident that the variety of issues and activities that NPOs can develop is very broad and demonstrates the great importance of this sector in any state. Particularly in Latin America, a wide variety of sectors are developed from the non-profit perspective, which makes the sector a determining factor for economic and social development in the region.

Identify the sub-sector of NPOs that fall within the FATF definition

83. Considering how broad the NPO sector is, and that not all NPOs are at risk of being abused for TF, it is crucial to be able to identify the sub-sector of NPOs that fall under the FATF definition, and therefore have a risk of being used for TF. From a broad and clear understanding of the sector, the necessary tools will be available to identify this sub-sector.

84. The FATF definition of NPOs that is relevant to understanding the potential level of risk of abuse for TF purposes refers to them as: ***“legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of ‘good works.’”***²⁷

27 FATF. FATF Standards. 2012 - 2020. Glossary – Non-Profit Organisation.



85. It is important to note that the FATF definition of NPOs may not be comparable to other definitions or legal terms at the national level, as the definition is primarily functional, i.e., it defines NPOs by their activities and not necessarily by their legal personality. This means that, for example, not all foundations or associations fall within the FATF definition and to identify those that do fall within the definition it is important to go beyond the name given to the legal entity and understand the activities or objectives they carry out.

86. The truth is that identifying the NPO sub-sector that meets the FATF definition is a challenge, and in each country this sub-sector may be very different since it will depend on many factors, among which the following may be considered: the domestic and international terrorist threat, the structure of the NPO sector at the domestic level, the territory in which they operate, the types of channels used for their operations, and the jurisdictions with which they operate, among others. Therefore, some guidelines are presented below to support the definition of this sub-sector.

87. **Main activity of “fund raising or disbursement”:** Although all NPOs have mechanisms to finance their activities, there are entities whose main activity is to raise funds and/or distribute them to other entities or individuals for the latter to implement activities and projects. The main characteristic of these entities is that they do not necessarily execute the projects directly, but seek out and support individuals or other entities financially so that they can implement activities or execute projects.

88. These activities are completely legal and very common in some NPO sectors. However, they are more vulnerable to TF, as funds can be diverted to support terrorism. It is these types of entities that undoubtedly fall under the FATF definition.

89. **Other NPOs with TF risk:** NPOs that do not have fund-raising or disbursement as their main activity but that, for some reasonable reason, are considered to have a TF risk (low, medium or high), should also be considered under the FATF definition.

90. It is important to remember that the objective of these measures is to prevent or combat TF, therefore, if there is a sub-sector that the country identifies as having some risk, even if it is low, then it should be considered as a sub-sector covered by the FATF definition and should receive mitigants commensurate with that level of risk. If, on the other hand, sub-sectors are identified that have no TF risk, they clearly do not fall within the FATF definition and should not be treated under the R.8 regime.

91. To identify which sectors fall within the FATF definition of TF risk, the following elements set out by the FATF in the Good International Practices Paper to Combat the Misuse of NPOs can be considered:

A. Proximity to terrorist threat: The risk of misuse of NPOs is more likely when entities offer



services or activities in areas or territories close to, or where a terrorist threat is evident. This refers to NPOs operating in:

- I. Conflict areas where there is an active terrorist threat or,
- II. Countries where there is no conflict, but NPOs offer services to a specific group of people who may be targeted by a terrorist movement for support or cover.

In considering this concept of proximity to the threat, consideration should also be given to NPOs that internationally support activities in countries, regions or jurisdictions that are prone to the terrorist threat and are usually listed internationally as non-cooperative or high-risk countries for terrorism and TF.

It is important to note that NPOs may operate in areas, territories, or jurisdictions with low levels of governance or political instability. In these cases, these entities may present risks associated with corruption or criminality, but not necessarily with TF,²⁸ so it is important that in identifying entities that fall within the FATF definition, the focus on TF crime is not lost sight of.

- B. Other potentially vulnerable activities.** NPOs that provide services, such as programs focused on providing housing, social services, education or medical care, in territories or populations with proximity to the terrorist threat are more vulnerable to being abused for TF.
- C. Potentially less vulnerable activities.** These are NPOs that offer expressive activities, such as sports, recreation, arts, culture, political, environmental or other activism, political parties or think tanks.²⁹

92. These three elements above are just some guidelines that countries can use when identifying the sub-sector included in the FATF definition, but ultimately this definition can only be achieved by considering the characteristics of NPOs in each country, their context and their degree of terrorist threat.

93. It is possible that, when performing this analysis to identify the NPO sub-sector that meets the FATF definition, it may be found that this sub-sector is only one segment within the larger universe of NPOs (see illustration 1).

28 FATF Best Practices on Combating the Abuse of NPOs for TF (2015). para. 16.b)

29 FATF Best Practices on Combating the Abuse of NPOs for TF (2015). para. 16. a)

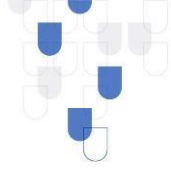
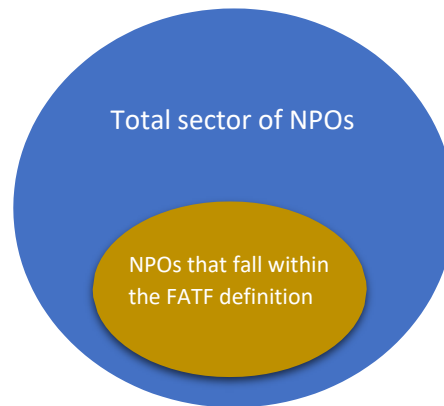
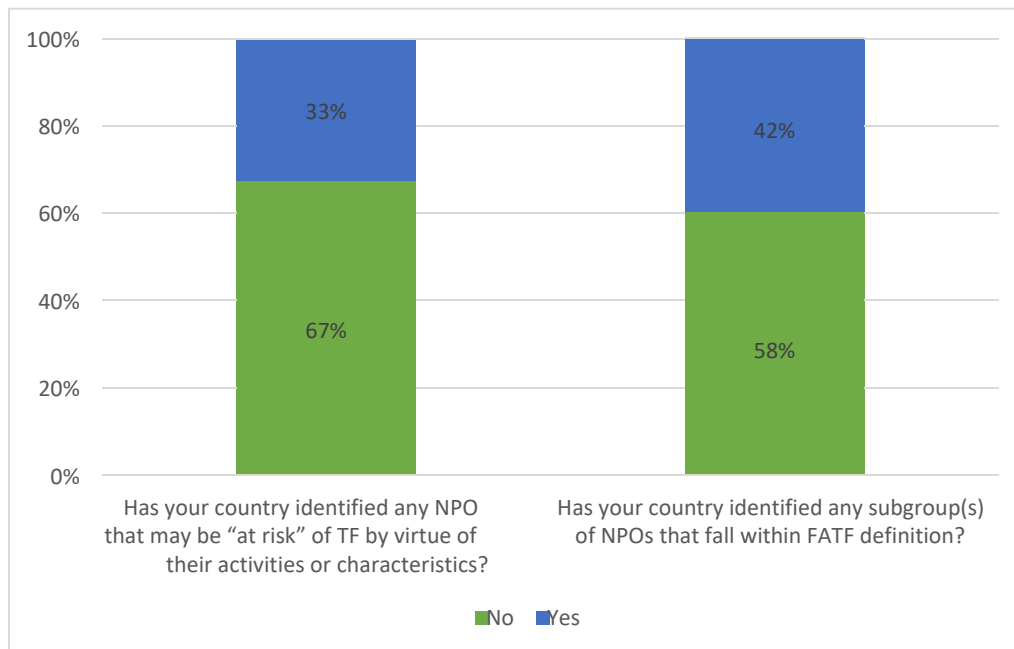


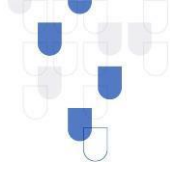
Illustration 1: Example of NPOs that fall within the FATF definition.



94. GAFILAT countries were asked if they have identified any NPO sub-sector that could be at risk of TF, by virtue of its activities and characteristics, and the majority (67%) of participating countries responded that they have not identified any NPOs at risk of TF. Similarly, they were asked if they have found a sub-sector of NPOs that fit the FATF definition and only 48 per cent confirmed that they have identified this sector. This information is consistent and allows concluding that the countries that have identified some TF risk in a sub-sector of NPOs, consider that these are covered by the FATF definition.

Graph 6: GAFILAT countries that have identified NPOs that meet the FATF definition of NPOs





Identify the risk of misuse of NPOs for TF purposes

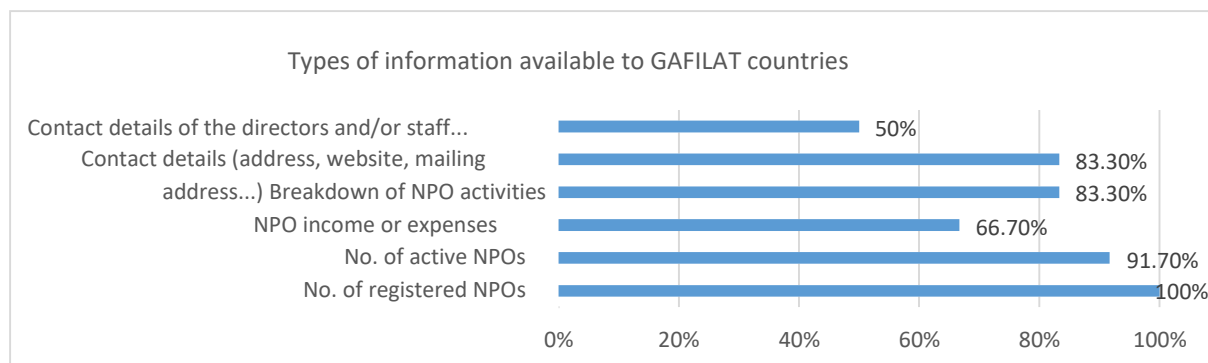
95. Once the sub-sector that falls under the FATF definition of NPOs has been identified, the risk of these entities being misused for TF can be identified. For this definition, the vulnerabilities of the sector and the threats related to TF can be analysed.

96. In identifying the types and characteristics of NPOs that may be vulnerable to misuse for TF purposes, countries may consider: domestic and foreign intelligence on NPO misuse, investigations and suspicious activity, domestic or international TF typologies related to NPOs, and input from civil society representatives (including sector or organisational risk self-assessments). This exercise is likely to involve consideration of both sectoral and organisational vulnerabilities.³⁰

97. In assessing the TF threats facing NPOs identified as vulnerable to TF misuse, countries may consider: the overall terrorism and TF threat environment, the prevalence of national intelligence on the TF threat posed to NPOs, existing regional and international typologies (and their applicability in the national context), as well as that credible information from verifiable open sources on links between national NPOs and terrorist individuals or organisations.³¹

98. To develop this risk assessment, countries can choose from different sources of available information. The following chart shows some examples of types of information available to GAFILAT countries responding to the NPO survey that can be used in the risk analysis.

Graph 7: Types of information available to GAFILAT countries about NPOs



30 FATF. FATF Terrorist Financing Risk Assessment Guidance. para. 68

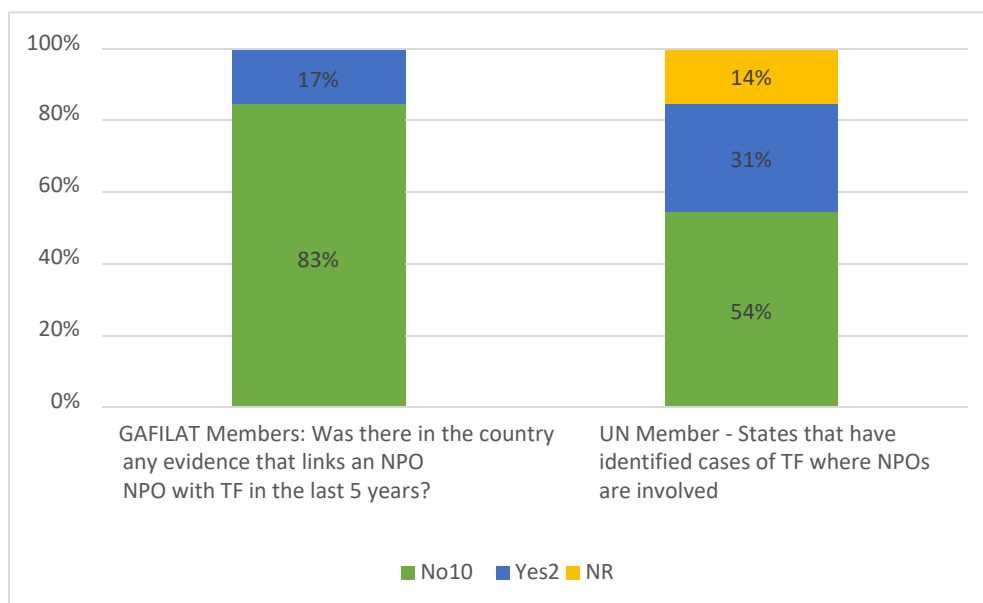
31 FATF. FATF Terrorist Financing Risk Assessment Guidance. para. 69



99. An important element for risk analysis is to identify whether the risk has materialised and, therefore, whether there is information that some NPOs are being or were abused for TF. The Joint Report identified that, of the UN member countries that responded to the survey, “54 per cent of responding States indicated that they had never identified cases of terrorism financing through the non-profit sector, and around one-third indicated that they had.”³²

100. A more focused review of GAFILAT member countries identifies even less evidence that NPOs are linked to TF. In this regard, only 17 per cent of the responding countries had identified a link and 83 per cent have not identified any evidence in the last 5 years. This is consistent with the terrorist threat in the region and the risks of TF which, overall, appear to be lower than in other regions of the world where conflict zones exist or where there have been more terrorist attacks.

Graph 8: Evidence of TF cases related to NPOs in GAFILAT countries and UN Member States³³



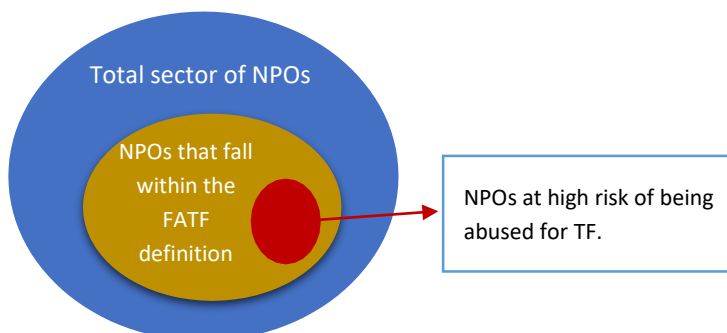
101. It is possible that, when analysing the risks of NPOs being abused for TF, countries may identify that different entities have different levels of risk. In this sense, some may have high, medium or low risk, and even all NPOs that fall under the FATF definition, despite having a vulnerability, may be considered to have a low risk.

32 CTED. Joint Report. S/2020/493. Paragraph 75

33 Information on GAFILAT countries was obtained from surveys conducted by the GAFILAT Executive Secretariat. The information on the UN member countries was obtained from the Joint Report Figure VIII, page 25.



Illustration 2: NPOs at high risk of being abused for TF may be few.



102. The Joint Report identified that “twenty-one per cent of States that had conducted a risk assessment of the sector assessed the risk level to be from medium-low to medium high, and 21 per cent to low and very low.”³⁴ Only 5 per cent considered the risk to be high. Fifty-three per cent did not respond on the risks or did not offer a response.

103. Also, the Joint Report identified that “most States that had conducted a risk assessment of their non-profit sector indicated that the vast majority in the sector were low risk, but that some non-profit organizations presented specific features (e.g., operating in sensitive geographic zones, being located on the periphery of large cities, or making significant use of the Internet) that might present higher risks. Several States noted that foreign non-profit organizations licensed to operate locally and local non-profit organizations with foreign funds were regarded as higher risk than such organizations receiving national funds and operating solely domestically. Many States appeared to reserve higher scrutiny for non-profit organizations operating in, or collecting donations in, border areas.”³⁵

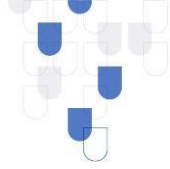
104. GAFILAT countries, for their part, generally stated that the risk they have identified is low. However, in some particular situations, countries identified sub-sectors of NPOs as having greater vulnerabilities, although none of the responding countries identified a high risk of misuse of NPOs by terrorists.

MEASURES WITH A RISK-BASED APPROACH

105. Once the subset of NPOs with TF risks and the definition of this risk have been identified, countries should implement measures commensurate with the identified risks to prevent NPOs from being abused for TF. The majority of GAFILAT countries that responded to the

34 CTED. Joint Report. S/2020/493. Paragraph 78

35 CTED. Joint Report. S/2020/493. Paragraph 79



survey (75%) indicated that they have implemented measures to prevent the misuse of NPOs for TF.

106. The UNSC Technical Guide sets forth that “measures put in place by Member States to protect non-profit organizations from potential abuse should be tailored and in accordance with a risk-based approach. It is imperative that States implement such measures in a manner that respects their obligations under the Charter of the United Nations and international human rights law.”³⁶

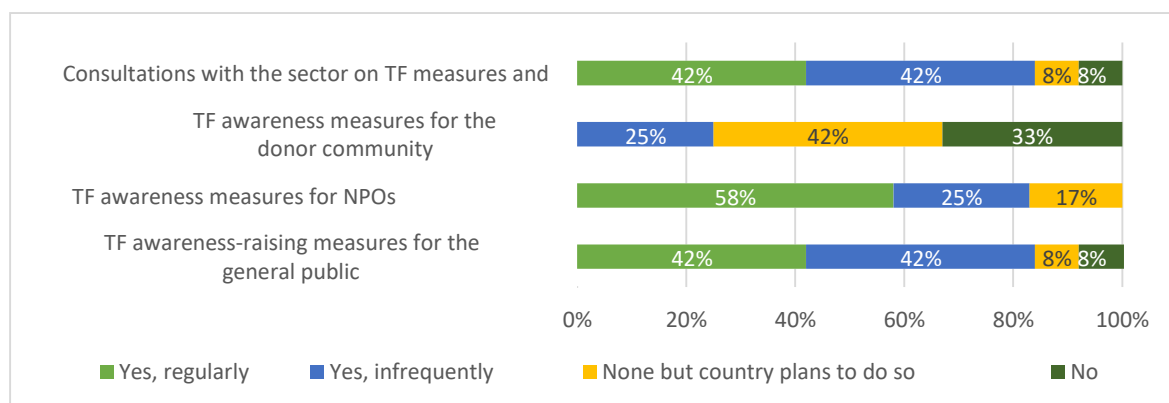
107. According to IN. R.8 an effective approach involves the following four elements:

- I. Sustained outreach to the sector
- II. Targeted risk-based supervision or monitoring
- III. Effective investigation and information gathering
- IV. Effective mechanisms for international cooperation

108. Of the measures that can be applied to the sector, it is important to approach the sector to raise awareness of the risks to which these entities may be exposed, and to evaluate whether the laws or measures implemented are aimed at mitigating the TF risk identified, and whether they are proportional. In this sense, the Joint Report revealed that “seventy-four per cent of States indicated that they had raised the awareness of their non-profit sector to the risk of terrorism financing, 13 per cent indicated that they had not, and 13 per cent provided no information.”³⁷

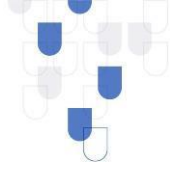
109. GAFILAT member countries were consulted on various outreach strategies with the non-profit sector. Graph 9 shows that in the great majority of the countries activities have been developed aimed at the sector, and to a lesser extent at the donor community.

Graph 9: Specific outreach actions carried out with NPOs by GAFILAT countries



36 UNSC. UNSC Technical Guide. 2019. S/2019/998. Paragraph 115

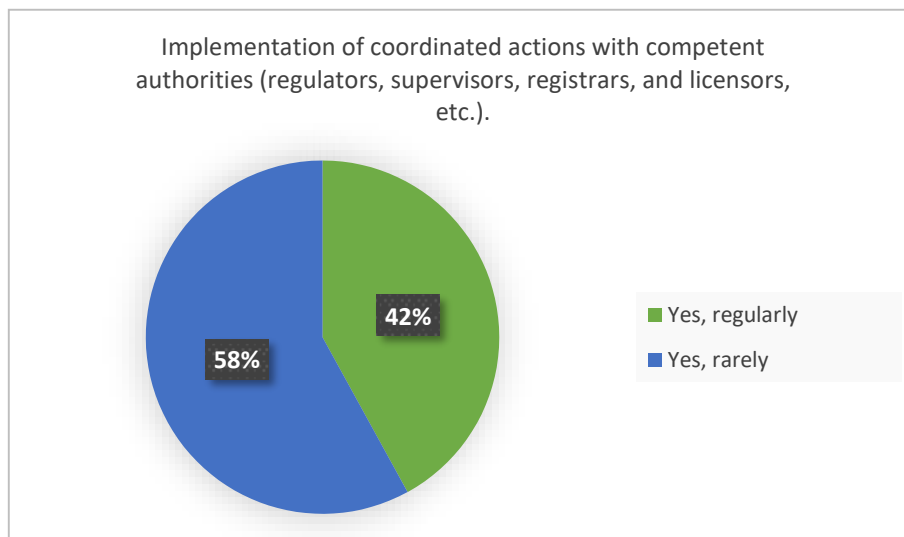
37 CTED. Joint Report. S/2020/493. Paragraph 81



110. From the perspective of other measures, such as the development of regulation focused on NPOs or supervision, the Joint Report explains that the *“sixty-nine per cent of responding States indicated that they had adopted targeted measures (including legal and supervisory frameworks) to prevent abuse of non-profit organizations, and 19 per cent responded that they had not taken any measures.”*³⁸

111. Some GAFILAT countries also confirmed that they have taken legal measures targeting NPOs. Some of them are general in nature and others are specific to TF. Additionally, all GAFILAT member countries that participated in the survey answered that they have implemented coordinated actions among competent entities. In most cases it has been with little frequency, but they have ultimately implemented measures.

Graph 10: Coordinated actions of GAFILAT countries' authorities

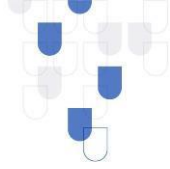


112. It is important to emphasize that measures should promote transparency on the part of NPOs, such as accountability, to generate greater trust among the sector, the donor community and the general public, with the aim of ensuring that funds and charitable services reach the legitimate beneficiaries.

113. The UNSC Technical Guide highlights that *“systems that promote achieving a high degree of accountability, integrity and public confidence in the management and functioning of non-profit organizations are integral to ensuring that they cannot be abused to finance terrorism.”*³⁹

38 CTED. Joint Report. S/2020/493. Paragraph 82

39 UNSC. UNSC Technical Guide. 2019. S/2019/998. Paragraph 121.



114. As a good practice, the importance of constant engagement with the sector is highlighted. Countries can promote the transparency and integrity of NPOs, undertake programs to raise awareness of the TF vulnerabilities and risks faced by the sector, work with the sector to encourage the development and implementation of good practices, and encourage the sector to transact through regulated financial channels.

115. The regulatory and supervisory measures that can be contemplated are diverse, however, it is important to implement such measures with a risk-based approach. The higher the risk, the more complex the measures or requirements that may be imposed on the NPO sub-sector.

116. These measures may include, for example, that NPOs maintain information on: the purpose and objectives of their stated activities, the identity of the persons who own, control or direct their activities. NPOs could also be required to issue annual financial statements or implement controls to ensure that funds are properly accounted for, among others.

117. Some of these measures may already be in place to encourage transparency in the sector, so it is important to recognise that they could also have an impact on mitigating TF risk.

UNINTENDED EFFECTS

118. Both the IN. R. 8 and the UNSC Technical Guide explain that *“measures to protect NPOs from potential terrorist financing abuse should be targeted and in line with the risk-based approach. It is also important for such measures to be implemented in a manner which respects countries’ obligations under the Charter of the United Nations and international human rights law.”*⁴⁰

119. The UNSC Technical Guide also suggests that measures taken to halt financing support should *“to the extent reasonably possible, minimize the negative impact on innocent and legitimate beneficiaries of charitable activities developed by NPOs.”*⁴¹

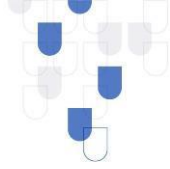
120. In addition, the UNSC Technical Guide emphasises that *“focused measures adopted by countries to protect non-profit organizations from abuse for the purpose of financing terrorism should not disrupt or discourage legitimate charitable activities.”*⁴²

40 FATF. FATF Standards. 2012 - 2020. Interpretive Note to Recommendation 8.

41 UNSC. UNSC Technical Guide. 2019. S/2019/998. Paragraph 120

42 UNSC. UNSC Technical Guide. 2019. S/2019/998. Paragraph 121.

43 The FATF is in the process of developing a document that explores this in more detail. <http://www.fatf-gafi.org/publications/financialinclusionandnpoissues/documents/unintended-consequences-project.html>



121. Considering the above, it is possible that countries are implementing measures to prevent NPOs from being abused for TF, but it is important to analyse whether these measures are proportional to the risks, and in case they are excessive, they could be relaxed when minor risks have been identified.

122. The implementation of excessive measures or lacking a RBA is not consistent with R.8 and may, on the contrary, generate undesired effects such⁴³ as for example:

- Exclusion of NPOs or loss of access to the formal financial system.
- De-risking, cancelation, or restriction of access to the formal financial system.
- Restrictions for the development of the NPO sector or the complete suppression of the sector.
- Obstacles or restrictions to the performance of their activities, including those of a humanitarian or human rights protection nature.

Financial inclusion of NPOs

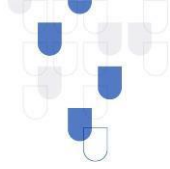
123. The exclusion, loss, de-risking or restrictions on access to the formal financial system by NPOs is a reality that unfortunately occurs. The FATF in its good practices document recognises that, in recent years, there have been reports of financial institutions terminating or restricting access to legitimate use of financial services by NPOs.

124. Terminating business relationships with individual customers or an entire sector, e.g., NPOs, without considering the level of risk or mitigation measures is not an appropriate implementation of FATF standards. These practices may have the potential to increase informality, reduce transparency and undermine the ability to identify and take relevant and appropriate action against TF.

125. Terminating the business relationship with an NPO and, for example, closing its bank accounts, also negatively impacts the ability of these entities to provide assistance in developing countries and conflict zones where humanitarian aid is needed and where charitable activity contributes to the fight against terrorism. Financial institutions should not terminate or refrain from establishing business relationships in cases where TF risks may arise, but should take enhanced measures commensurate with such risks.

126. Considering how important it is for NPOs to have access to the formal financial system in the day-to-day development of their activities, FATF IN R.8 includes as part of the standard that *“countries should encourage NPOs to conduct transactions via regulated financial channels, whenever feasible, keeping in mind the varying capacities of financial sectors in different countries and in different areas of urgent charitable and humanitarian concerns.”*⁴⁴

44 FATF. FATF Standards. 2012 - 2020. Interpretive Note to Recommendation 8.



127. It is important that NPOs that manage funds have access to the formal financial system and can make transactions, including overseas, through formal channels. This contributes to the transparency of the sector and allows authorities to have sufficient information, if necessary, to investigate a TF case.

128. In its best practices document, the FATF explains that financial institutions should not view all NPOs as high risk.⁴⁵ As explained above, it is possible that a significant portion of the NPO sector may not be at risk of being abused for TF purposes. It is therefore vital to conduct a good analysis of the customer's TF risks and take appropriate and proportionate mitigation measures.

129. Although the FATF encourages financial inclusion of NPOs, this is an aspect that seems to have modest implementation. From an overall perspective, the Joint Report revealed that only *“two States noted the need for government, non-profit organizations and financial services firms to establish partnerships to discuss the challenges and operating risks faced by non-profit organizations in high-risk situations, with a view to minimizing the impact of counter-financing of terrorism measures on humanitarian aid delivery and addressing the difficulty of accessing formal financial channels. States noted their concern at the de-risking of non-profit organizations by financial institutions. Some States underlined that de-risking was prohibited.”*⁴⁶

130. With respect to GAFILAT, most of the countries participating in the survey commented that they are not aware of the exclusion of NPOs from the formal financial system. However, the question arises as to whether this lack of knowledge is due to the fact that this phenomenon does not occur in the region, or because the countries do not have the mechanisms in place to obtain reports on this issue.

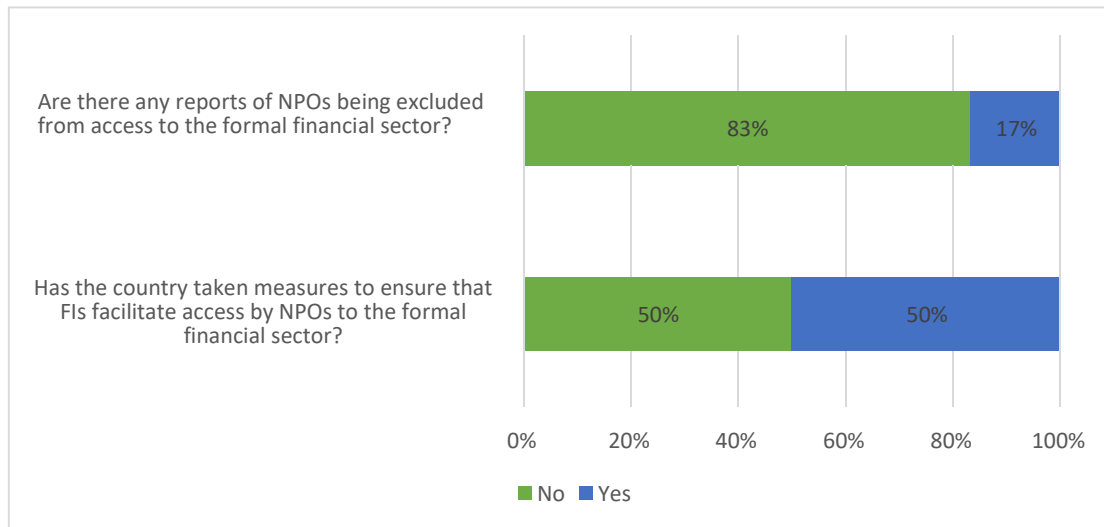
131. Furthermore, the basic questionnaire for this report shows that half of the participating countries indicated that they had implemented some measure to ensure that NPOs have access to the formal financial system.

⁴⁵ FATF Best Practices on Combating the Abuse of NPOs for TF (2015). para. 68

⁴⁶ CTED. Joint Report. S/2020/493. Para. 84



Graph 11: Information on access to the financial system by NPOs in GAFILAT member countries



Not discouraging the activities of NPOs

132. The preamble of UNSCR 2129 (2013) recognises the need for Member States to prevent the abuse of non-governmental, non-profit, and charitable organisations by and for terrorists, and calls upon non-governmental, non-profit, and charitable organisations to prevent and oppose, as appropriate, attempts by terrorists to abuse their status, while recalling the importance of fully respecting the rights to freedom of expression and association of individuals in civil society and freedom of religion or belief.⁴⁷

133. Complementarily, in UNSCR 2462 (2019), the UNSC urges States, when designing and applying measures to counter the financing of terrorism, to take into account the potential effect of those measures on exclusively humanitarian activities, including medical activities, which are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law.

134. In this sense, the Joint Report revealed that *“forty-five per cent of States lack an institutional framework to consider the effects of counter-financing of terrorism measures on humanitarian activities, and 35 per cent of States have adopted measures in this area. Most measures described were of a general nature (e.g., general references to constitutional guarantees). Other measures include strict disbursement conditions and control systems, mostly of public funding allocated to support humanitarian projects (even in crisis regions).”*⁴⁸

⁴⁷ UNSCR 2129. (2013) preamble, p. 4

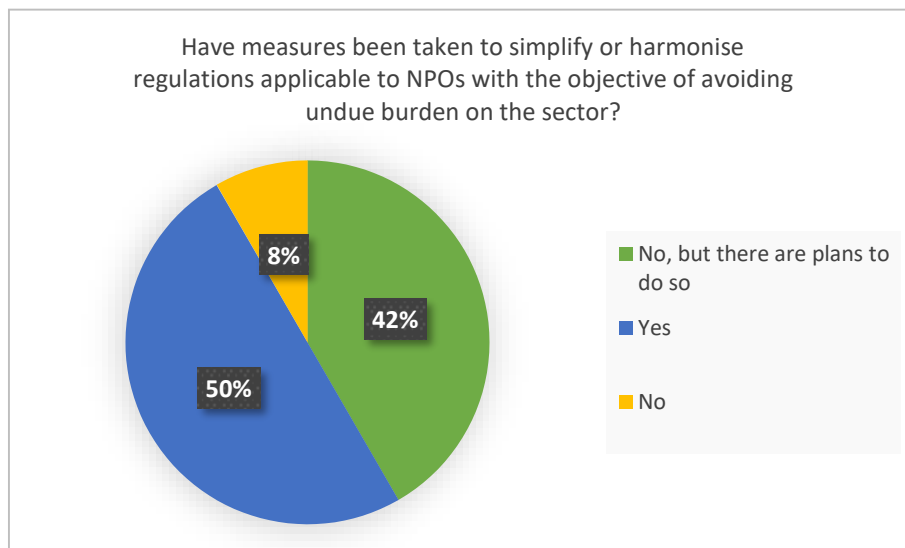
⁴⁸ CTED. Joint Report. S/2020/493. Para. 83



135. Likewise, the Joint Report showed that, at the global level, 50 per cent of the responding countries have considered the implications for humanitarian activities when implementing mechanisms against TF.

136. From the perspective of the GAFILAT countries, half of the responding countries indicated that they had taken measures to simplify or harmonise the regulations applicable to NPOs in order to avoid placing an excessive burden on the sector, thereby avoiding discouraging their activities. Although these actions are positive in terms of guaranteeing the development of the NPO sector, there is no evidence that humanitarian aspects and the guarantee of the rights to freedom of expression and association have been taken into account in this process.

Graph 13: GAFILAT countries that have taken regulatory measures to prevent undue burden on the NPO sector



137. Therefore, it is important that when implementing measures to prevent the misuse of NPOs for TF purposes, countries take into account and assess that these measures are not excessive, discourage the development of humanitarian, charitable or religious activities that the sector seeks to implement, or hinder or delay the development of the sector while fully respecting the rights of freedom of expression and association of individuals in civil society and religious freedom.

OTHER RISKS OF MISUSE OF NPOs

138. As highlighted in the FATF good practices document, while it is possible that NPOs, like their for-profit counterparts, may face numerous other risks relating to money laundering, fraud, corruption, and tax evasion, FATF Recommendation 8 is only intended to address the particular

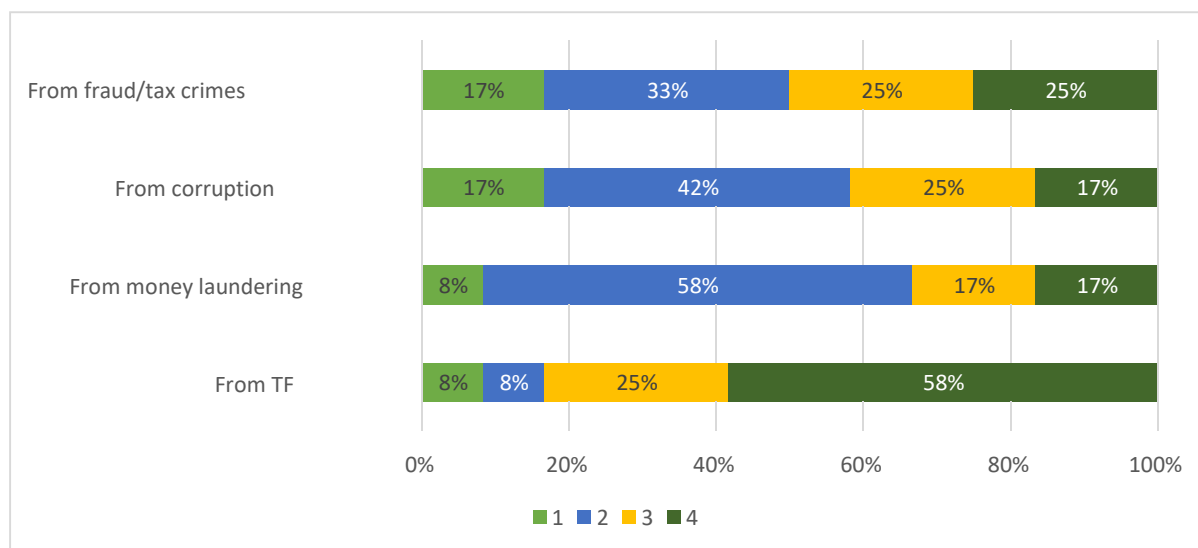


vulnerability of NPOs to terrorist abuse.⁴⁹

139. Nevertheless, GAFILAT countries recognise that there are even higher priority risks for NPOs other than TF. Overall, it is noteworthy that the majority (58%) of the participating countries considered the risk of misuse of NPOs for TF purposes to be of minor importance by giving it the lowest rating in the survey. The fact that TF crime was not ranked as a priority appears to be consistent with the TF threat facing the region, which in that sense appears to be limited.

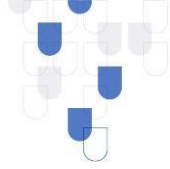
140. The majority (58%) of the countries stated that the risk to NPOs comes, to a greater extent, from the crime of ML and 42% considered that the risk comes, to a greater extent, from corruption, but in both cases the importance assigned was in second place, as shown in the following graph.

Graph 12: Order of importance of the risk of misuse of NPOs from different crimes. (Where 1 represents higher importance and 4 represents lower importance).



141. Considering that the perceived importance of the risk of misuse of NPOs to TF is lower than that of other predicate offenses, it is very important that countries clearly identify the risks and implement measures commensurate and proportionate to those risks. It is important to note that measures aimed at mitigating the relative risks of NPOs to other crimes can also mitigate TF risks.

49 FATF Best Practices on Combating the Abuse of NPOs for TF (2015). para. 12.



142. The FATF good practices document highlights that, although many of the measures implemented may be primarily aimed at combating fraud, tax evasion, embezzlement, money laundering, and other financial crimes in the NPO sector, they can also help mitigate TF abuse. The same can be said of government initiatives, or initiatives promoted by the sector itself, to enhance transparency and integrity of NPOs, their transactions, financial flows, even if they are not primarily aimed at combating terrorist abuse.⁵⁰

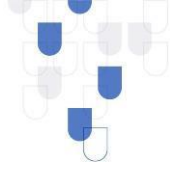
143. Therefore, it is important for countries to review the measures they have implemented in the NPO sector to identify whether these can also help mitigate the risks of abuse for TF, or whether, considering the risk, more measures are needed, or some can be relaxed when a lower risk has been identified.

CHALLENGES

144. This paper has explored the main components of R.8 and its IN, and has presented some guidance on how GAFILAT and UN member countries are implementing the International Standard to prevent NPOs from being abused by terrorists and their financiers. However, it is evident that, both in the region and globally, there are still challenges to overcome in order to shield the NPO sector from this threat in a manner consistent with the standard. In this context, the following is a summary of some of the challenges identified in the document:

- A. **Understanding of the NPO sector in each country.** The NPO sector is different in each country and, recognising the relevance of NPOs in Latin American countries, it is very important that the authorities make efforts to know in detail their characteristics and composition. It is vital to know the size, type of entities, activities, locations, their operations, and financial flows, among other aspects. This knowledge will make it possible to develop an adequate risk analysis and clearly identify the sub-sector that falls within the FATF definition. In order to know this sector, a good practice is to have a close dialogue with its members, so that in a collaborative way a radiography adjusted to the characteristics of the existing NPOs at the national level can be obtained.
- B. **Conducting a risk analysis of the misuse of NPOs for TF.** Although all countries in the region have or are in the process of developing a TF risk analysis, it is important to consider that the element of the risk of misuse of NPOs for TF is a special element. Also, the TF risk of NPOs should be analysed either within an NRA or within a specific sectoral assessment.

⁵⁰ FATF Best Practices on Combating the Abuse of NPOs for TF (2015). para. 63



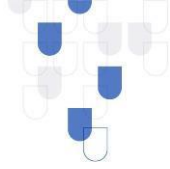
- C. **Identifying the sub-sector of NPOs that fall within the FATF definition.** As explained by the FATF in its IN. R.8, not all NPOs are subject to the standard, so identifying the sub-sector to which R.8 applies is a vital element in order to adequately and comprehensively implement the FATF standard. The entities that fall under the FATF definition vary from country to country and, therefore, it is important that each country identifies this sub-sector considering its context, the characteristics of the NPO sector, and the TF threat.

- D. **Implement risk-based measures.** It is clear that countries are implementing measures to prevent NPOs from being abused for TF. However, it is important for delegations to identify whether these measures are commensurate with the risks identified in order to target greater measures to those NPOs that have higher risks, and not generate the unintended effects of implementing excessive measures to NPOs that have lower risks of being abused for TF.

- E. **Mitigating unintended effects of implementation.** From the application of the standard, it is possible that some undesired effects may have been generated with an impact on NPOs. It is important to identify these situations and apply measures with a RBA, to prevent the misuse of this sector, but without discouraging its actions and encouraging access to financial services by NPOs, as the standard encourages.

- F. **Encouraging dialog with the sector.** The outreach and involvement of the sector in the risk identification and management process is a very relevant exercise to obtain all the information available to the sector and to develop strategies to mitigate and address these risks adequately. Therefore, it is a good practice to work with the NPO sector to understand the threats, vulnerabilities, TF risks, and their mitigants.

- G. **International cooperation.** Considering the transactional nature of TF crime, it is important to recognise the preponderant role of international cooperation between competent authorities for the investigation and prosecution of TF offence. Therefore, countries should encourage the strengthening of effective mechanisms to respond to requests for information related to NPOs.



CONCLUSIONS

145. The NPO sector in Latin America is broad and very diverse. For this reason, it encompasses many entities of different types, purposes, forms of work, financing and aimed at different publics, audiences or beneficiaries. In short, it is a very important sector for the economic and social development of the countries. However, as has been pointed out, because of its characteristics it can also be misused for TF.

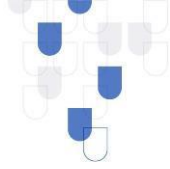
146. It is clear that GAFILAT countries are making significant efforts to implement R.8 adequately. Nevertheless, the region still has a limited level of implementation in several aspects, so it is important to continue working to improve its application and ensure greater consistency with R.8.

147. As presented, the FATF standard, as regards R.8, does not require measures to be taken for the entire universe of entities that make up the NPO sector. On the contrary, it seeks that measures be targeted at entities that have a risk of being abused for TF. Therefore, it is crucial that GAFILAT countries conduct sector assessments to identify the entities that fall within the FATF definition, as well as to identify the level of risk that these entities present for being misused for TF.

148. Different entities that fall under the FATF definition may have different levels of risk of being abused for terrorism and its financing and therefore the measures that GAFILAT countries implement to mitigate these risks and protect these entities should be commensurate with such identified risks and within the context of the environment in which such sub-sector operates, the country's own characteristics and the level of the terrorism and FT threat specific to the location.

149. Ongoing efforts by GAFILAT countries to implement the International Standard can be further strengthened by closer collaboration and encouraging dialogue with the NPO sector. The sector also benefits from the confidence that the public may have in it, and therefore the measures adopted to protect them from misuse for TF may be in line with other measures that the sector implements to receive the support of society and the private sector in its actions.

150. Consequently, fostering effective collaboration between GAFILAT countries and NPOs can help identify complementary measures that are relevant and adjusted to the needs of the sector, but also relevant to prevent misuse for both TF and other crimes. As a final goal, it is believed that by taking these steps with the NPO sector, countries will come closer to the macro-objective of consolidating an effective system to prevent and combat terrorism and its financing in pursuit of international security in accordance with the provisions of Chapter VII of the UN Charter.



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