



DEFENDERS
PROTECTION INITIATIVE



**WORKSHOP ON SAFEGUARDING
CIVIC SPACE WHILE
COUNTERING THE FINANCING
OF TERRORISM**



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MOTT FOUNDATION





WHO WE ARE

A Non-Government Organisation that offers tailored, practical, contextualized security and safety options to civil society.

We are driven by the passion to mitigate the impact of threats faced by Human Rights Defenders as they promote and protect human rights. It was founded in January 2012 by Human Rights Activists and security management specialists who were formerly working with Protection International in the East and Horn of Africa region on security and protection management issues.

WHY US

We pride ourselves in employing unique and innovative approaches as our contribution to a safer working environment for civil society.

Our norm is a continuous cycle of learning where both DPI and its partners learn from each other through participatory approaches.

DPI's CORE AREAS OF INTERVENTION

- i. Confronting the unintended consequences of Financial Action Task Force- Anti- Money Laundering and Countering Terrorism Financing regulations to strengthen Human Rights Defenders' capacity in safety, security management, and protection.
- ii Offer rapid response assistance to human rights defenders at risk concerning the civic space.
- iii. Research, document, and disseminate information on risks, threats, and attacks that accrue from their policy formulation and change work.
- iv. Establish and promote collaboration and co-operation amongst Human Rights Defenders to promote, protect, and defend human rights at the national and regional level.
- v. Promote and protect human rights culture.
- vi Build an accessible, available and affordable center of excellence in the field of safety, security management, and protection for human rights defenders.

DPI's WORK ON ANTI-MONEY LAUNDERING AND TERRORISM FINANCING

New and highly restrictive regulations were being applied to NGOs in countries across the world to combat money laundering and terrorism financing, DPI seeks to stand between this to influence a conducive operating environment for civil society.

Accomplishments

i. In the Year 2021, DPI conducted a strategic advocacy research titled *'Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Laws: An Examination of Their Impact on Civic Space in Uganda'*. DPI strategically shared the study finding with key influential individuals/agencies in the FATF processes ahead of the submission of Uganda National NPO risk assessment on TF. These included the ESAAMLG, and an official at the International Monetary Fund both of whom constitute the ICRG team. It is believed that this report might have greatly influenced the February 2022 FATF recommendation to Uganda's NPO risk assessment report. FATF argued the Uganda government to align its report to FATF standards and drop the conclusion of lumping the Madarasa and NGOs in governance as high risk.

ii. Taking the lead on FATF. DPI is proud of its collaboration with the 10 members of the National NPO working group on FATF-Uganda, 10 members of the NPO Coalition on FATF-East and Southern Chapter, Financial Intelligence Authority-Uganda, the ESAAMLG and the Global NPO Coalition on FATF to push to raise awareness among over 200 HRDs on AML/CFT matters, and to influence FATF inspired regulation at national level.

iii. The Defenders Protection Initiative is one of the two organizations nominated to participate in the National Risk Assessment for NPOs on the Financing of Terrorism in Uganda. This has given DPI and HRDs a window of opportunity to defend the position of NPOs during the assessment process. Our absence on the assessment team would lead to the group taking an irrational decision against the sector and developing questionnaires "blind" to the NPO perspective.



WHAT ORGANISATIONS NEED TO KNOW ABOUT ANTI-MONEY LAUNDERING AND COUNTERING FINANCING TERRORISM.



List of Acronyms

AML	Anti-Money Laundering
AUSTRAC	Australian Transaction Reports and Analysis Centre
CFT	Countering Financing Terrorism
CTF	Countering Terrorism Financing
ESAAMLG	The Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
IMF	International Monetary Fund
ML	Money Laundering
PF	Proliferation Financing
R.8	Recommendation 8

YOUR GUIDANCE NOTES

1



INTRODUCTION

The Financial Action Task Force (FATF) defines a Non-Profit Organisation (NPO) as a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for charitable, religious, cultural, educational, social, or fraternal purposes for the carrying out of other types of “good works.”

Non-profit organisations perform a vital role in different communities worldwide, often remote and challenging/hard to reach. Their functions may include but are not limited to providing relief and support to groups of the population in need and in urgent crisis; advocating for peace, democracy, and the rule of law in countries that suffer deficits of the same; striving for the realisation of human rights and fundamental freedoms and promoting a human rights culture in a non-violent way. Unfortunately, the FATF policy regulation has linked some NPO operations and funding to illicit sources and the facilitation of discrete processes and intent to finance terrorism.

Recommendation 8 of the little-known Financial Action Task Force requires that the laws and regulations that govern non-profit organizations should be reviewed so that these organizations cannot be

While the Financial Action Task Force - "Recommendation 8" was intended to protect the non-profit sector (NPOs/NGOs) from abuse, several countries around the world have and continue to use the FATF regulation as a seal of approval to justify undue restrictions towards the sector.

Such has taken a draconian policy and administrative course ranging from increased state surveillance to foreign funding restrictions for peace, development, human rights, and fundamental freedoms advocacy work in some jurisdictions.

Why the guidance notes?

This guidance notes, therefore, should facilitate learning among members of the Non-Profit sector about the critical money laundering and financing of terrorism key concepts, FATF 40 recommendations, with emphasis on Recommendation 8. The handbook also provides a broader understanding of the impact of FATF recommendations on global and national policies, focusing on government ML/FT regime, financial institutions De-risking policy measures, and the non-profit sector concerns. The book further presents some best practices in developing and implementing practical protocols to mitigate the sectors' susceptibility to the risk of ML/FT.

The guidance note affirms the need to introduce the NPOs with knowledge in understanding ML/FT policy regulations, recognise the impact, and partner for solutions in combating the abuse of Non-profit organisations without interfering with the operations of legitimate actors of the sector.

The Authors from the Defenders Protection Initiative and the Civic Advisory Hub are committed to maintaining a close and constructive dialogue with the non-profit sector to improve and update the handbook's content.



The Crime of Money Laundering, And Financing of Terrorism

Global peace, security, and development are today more confronted by economic crimes of Money Laundering (ML), Financing of Terrorism (TF), and Proliferation Financing (PF) than ever before. These crimes do undermine jurisdictions, political and economic interests, and pose grave threats to national security. Thus, fighting these crimes effectively requires an all-inclusive approach where different stakeholders are presented with the opportunity to learn and participate, and contribute to the knowledge and skills pool purposed for collective prevention, detection, and policing of these crimes.¹ Therefore, the non-profit actors ought to be taken as critical players in combating these financial crimes' prevalence and not branded as perpetrators.

Why Non-profit actors need to understand Money Laundering and Financing of Terrorism regime

Recommendation 8 (R.8) of the Financial Action Task Force focuses on combating non-profit organisations' abuse. Non-profit organisations play an essential role in the global economy. They complement the governmental and business sectors' activities in providing services, comfort, and hope to the needy.

Unfortunately, the NPO sector has been exploited by terrorist organisations to provide financial and logistical support or otherwise support terrorist recruitments or terrorist operations. **Recommendation 8** requires the regulators of NPOs to review the laws and legislation so that NPOs cannot be abused for financing terrorism.²

Such has taken a draconian policy and administrative course ranging from increased state surveillance to foreign funding restrictions for peace, development, human rights, and fundamental freedoms advocacy work in some jurisdictions.

What is Money Laundering?

It is imperative to note that there is no universally accepted definition of Money Laundering; however, there are various definitions of Money Laundering by the different authorities, some of which are indicated below;

- i. The Process of making dirty money look clean.
- ii. Money Laundering includes a wide range of activities and processes which are often intended to conceal the nature, source, location, disposition, or movement of the proceeds of crime in a manner that disguises their illegal origin.

See generally, Delbruck, J. (2001). The Fight against Global Terrorism: Self-Defense or Collective Security as International Police Action: Some Comments on the International Legal Implications of the War against Terrorism. *German YB Int'l L.*, 44, 9. See also Rosand, E. (2003). Security council resolution 1373, the counter-terrorism committee, and the fight against terrorism. *The American Journal of International Law*, 97(2), 333-341.

FATF Recommendation 8 requires that the laws and regulations that govern non-profit organisations be reviewed so that these organisations cannot be abused for the financing of terrorism. Available at <https://www.fatf-gafi.org/>

The Three Stages of Money Laundering

The Money Laundering process involves a complex and interconnected series of transactions. These are explained in the three typical stages of money laundering.

Stage 1: Placement

This may involve the physical disposal of cash or other assets derived from criminal activity.

Example of placement scenario

K (*the money launderer*) introduces illicit gains (e.g. Cash from illegal narcotics sales, human trafficking, corruption, etc.) into the financial system by placing the funds into circulation through formal financial institutions or other legitimate businesses, both domestic and international.

Stage 2: Layering

This second stage of ML involves employing all money launderer (s) tactics to separate the illicit gains from their source by layers of financial transactions intended to conceal the origin of the gains. This stage involves converting the proceeds of the crime into another form and creating complex layers of financial transactions to obfuscate the funds' source and ownership.

Example of layering scenario

K (*the money launderer*) electronically transfers money from country A to country B, from one financial institution to another by dividing the funds into advanced financial options. K may also choose to invest in real estate and other legitimate businesses or place money in stocks, bonds, or life insurance products to create layers that separate the source's illicit gains.

Stage 3: Integration

This involves positioning deceptive legitimacy to illicit gains or wealth through the re-entry of the funds into the economy in what appears to be regular business or personal transactions.

Example of intergration scenario

After layering the illicit gains, K (*the money launderer*) uses the illegal gains to invest in real estate, financial ventures or luxury assets in what seemingly appears normal transactions to create a perception of legitimacy. By the integration stage, it is exceedingly difficult to distinguish between legal and illegal wealth.

International Monetary Fund "Reference Materials" Available at <https://www.imf.org/external/np/leg/amlcft/eng/aml4.htm> (Accessed 10 November 2020)
The World Bank Group "Combating Money Laundering and the Financing of Terrorism - A Comprehensive Training Guide : Workbook 7. Investigating Money Laundering and Terrorist Financing (2009)" Available at <https://openknowledge.worldbank.org/handle/10986/2666> For a comprehensive discussion of the definitions, see Chatain, P. L., McDowell, J., Mousset, C., Schott, P. A., & Van der Does, E. (2009). Preventing money laundering and terrorism financing: A practical guide for Bank supervisors. The World Bank.

What is Terrorist Financing?

Just Like money laundering, there is no universal definition of Financing of Terrorism. However, some jurisdictions do have their guiding definitions as listed below.

- i. Starting with the International Monetary Fund (IMF), Terrorism financing is defined as a process through which individual (s) or collect funds to apply those funds to the execution of terrorist deeds.
- ii. According to the World Bank, terrorism financing is defined as any form of financial support towards terrorism or those who conspire, participate ,and encourage the execution of terrorist deeds.

If simply defined, terrorism financing can be taken to mean financial support, in any form, of terrorism or of those who encourage, plan, or engage in terrorism. Unlike Money Laundering, which involves illicit funds, Financing of Terrorism uses both legitimate and illegitimate funds to facilitate an act of terror.

The terrorist financing process

This process involves:

- i. Collecting the money for purposes of supporting the terrorist (from legitimate or illegitimate sources).
- ii. Storing of the money while determining that its use is in line with the act.
- iii. Moving the money to the place and at the time it is needed.
- iv. Putting the money to use in advancing the terrorist organisation's goals.



MAINTAINING AN EFFECTIVE SELF-REGULATION PROGRAM

2

MAINTAINING AN EFFECTIVE SELF-REGULATION PROGRAM

According to FATF and other AML/CTF standard setters, NPOs by their nature are perceived as vulnerable to these crimes. Following the Risk-based approach, methodology, regulators are required to:

- i. Conduct NPO sectoral ML/FT risk assessment to guide national mitigation measures;
- ii. Assess their risk based on the nature of transactions, payment methods, and jurisdictions they conduct transactions;
- iii. Implement mitigating measures to protect themselves from being abused; and report to the Financial Intelligence Unit (FIU) once they identify a suspicious transaction or confirm they have received property from a designated individual or entity.

Failing to report to the FIU knowledge or suspicion of crime proceeds or terrorist property is a criminal offense; Suppose an NPO continues to deal with such a transaction or funds knowing or having reasonable grounds to believe that the funds are criminal proceeds or terrorists' funds and does not report it to the relevant authorities.

The following may be considered Red Flags for reporting Suspicious Transactions and Activity Reports (STRs/SARs) if you are:

Organization level

- Where an NPO is asked to provide services or benefits on favourable terms to the donor or a person nominated by the donor.
 - Unusual or substantial one-time donations are received from unidentifiable or suspicious sources.
 - If a series of small donations are received from sources that cannot be identified or checked.
 - Where donations are made in a foreign currency or foreign sources where financial regulation or legal framework is not as rigorous.
 - If conditions attached to a donation are as such that NPO would merely be a vehicle for transferring funds from one individual or organization to another individual or organization
 - Where payments are received from a known donor but through an unknown party.
 - Where donations are received from unknown or anonymous bodies.
 - Where payments are received from an unusual payment mechanism where this would not be a typical method of payment.
- Where donations are conditional on being used in partnership with particular individuals or organizations where the NPO has concerns about those individuals or organizations.

Beneficiaries

- Where there may appear signs that people may have been placed on distribution and aid lists by providing kickbacks and bribes to officials.
- Lists of beneficiaries contain multiple manual corrections, multiple names may appear, and may contain more family members.
- Evidence that third parties or intermediaries have demanded payment for recommending or nominating beneficiaries.
- Where an NPO provides assistance, services, or support based on a certain sum of money per beneficiary and the numbers are relatively high.
- Where an NPO provides services to larger numbers of beneficiaries, where it may be easier to disguise additional beneficiaries.
- Fake or suspicious identity documents.

Beneficiaries with identical characteristics and addresses or multiple identical or similar names and signatures.

Employees

- Indications that staff may be living beyond their means or appearing at unusual times.
- Staff carrying out tasks or jobs they should not be, or other unusual staff behaviour or conduct.
- Sudden or increased staffing costs.

Projects

- Invoices and paperwork have been tampered with, and altered in crucial aspects with handwritten amendments.
- Inventory shortages.
- The project is vague or lacks adequate financial or technical details.
- Missing key documents or only copies can be reproduced.
- Lack of evidence to show fair and transparent tendering or procurement procedures.
- Invoices and papers recording a higher cost for goods or services than expected or agreed.
- Signatures confirming receipt or payments are missing, or the invoice unsigned or undated.
- Receipts have been signed and dated a long time after the goods or services should have been delivered.
- Repeated excuses of system crashing, losing records or paperwork.
- Discrepancies between budgeted needs and payments requested.
- Requests for payments in cash to be made to an unknown third party or other organization.
- Funds are not being banked or accounted for.
- Emails from new or unusual email addresses not in the partner's domain name or from someone who is not a previously agreed contact point.
- Inconsistencies between narrative reports and financial claims and reports.

Partners

- The structure or nature of the proposed project makes it difficult to identify the partner and verify their identity and details.
- The proposal includes delegating work to other unknown partners or newly formed organizations.
- Partners request unnecessary or unusual levels of privacy and secrecy.
- Requests by partners to use a particular auditor or accountant.
- The project involves unusual payment mechanisms, requests for cash, or for money to be paid into an account not held in the name of the partner, or in a country in which the partner is not based and not where the project is being carried out.

It is important to note that it is not only cash transactions that may be suspicious. ML includes the layering and integrating stages where there is no more cash, but only funds that are moved around while trying to confuse the money trail. It can also be of any amount.



Building Effective AML/CTF compliance practices

NPOs are defined by their purpose, their reliance on contributions from donors, and the trust placed in them by the wider community. Not all NPOs are inherently high-risk organizations, and it is desirable to identify the high-risk NPOs, i.e. NPOs which by their activities, characteristics, asset size, international and geographical activities are likely to be at risk for terrorist financing abuse, for proper risk management.

NPOs should perform and maintain the regular performance of compliance tests to examine the effectiveness of AML/CTF systems and controls implemented by the NPO. Findings must be documented, and recommendations provided purposed rectification of any deficiencies identified.

However, for a shift to an enhanced AML/CFT control system, an organization may consider the following:

i. Day to Day measures

- Observe appropriate internal governance and financial controls and ensure that all finances are fully accounted for and are spent in a manner that is consistent with the purpose of the organization (NPO). The appropriateness of the AML/CFT control measures is dependent on the risk level and the NPO.
- Maintain proper and adequate financial records for both the receipt and use of all financial resources together with audit trails of decisions made. Records of both domestic and international transactions must be sufficiently detailed to verify that funds have been appropriately spent as intended and, in a manner, consistent with the purpose and objectives of the organization.

- Ascertain what due diligence, monitoring, and verification of the use of funds they need to carry out to meet their legal duties as per the AML/CFT obligation.
- Take reasonable and appropriate steps to know who your beneficiaries are, at least in broad terms, and conduct appropriate verification where the risks are high and have clear beneficiary selection criteria, which is consistently applied.

ii. Know Your Donors

- Before receiving any donor funds, NPOs should establish that the donor is not placed on the United Nations' list of persons who are linked to terrorist financing or against whom a ban, sanction, or embargo subsists.
- NPOs should conduct, on a risk-based approach, a reasonable search of public information, including information available on the internet, to determine whether the donor or their key employees, board members, or other senior managerial staff are suspected (or not) of being involved in activities relating to terrorism, including terrorist financing.
- NPOs must undertake their best efforts to document the identity of their significant donors. NPOs must collect, verify and maintain a record of correct and complete identification particulars of substantial donors.
- NPOs should ensure that any conditions that may be attached are appropriate and can be accepted.

iii. Know Your Beneficiaries and Partners (KYB/P)

- NPOs must ascertain correct and complete identification particulars of each of its beneficiaries (person, group of persons or organization, etc.) who receives cash or services or in-kind contributions.
- In cases where the projects are implemented through partnership agreements with other partners, the NPO shall make it a part of its project agreements that partners shall maintain and share beneficiaries' information.
- NPOs must ensure that the partner organizations shall not be from any such organization whose license has been revoked or registration canceled by other authorities.
- In case the beneficiary is an organization/ group of persons, the donor NPO must know a detailed profile and particulars of such an organization. The NPO shall ensure that its beneficiaries are not linked with any suspected terrorist activity or any link with terrorist support networks.

iv. Know your Employees/Staff/Volunteers (KYE/S/V)

- An NPO must maintain records of particulars of its employees (both national and foreign), including but not limited to a permanent address, present address, copy of National ID Card, passport number, nationality, personal email ID, phone or mobile number, experience, etc.



FINANCIAL ACTION TASK FORCE (FATF)

3

Introduction

Founded in 1989, the Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of policies, to combat money laundering and terrorism financing, and other related threats to the integrity of the international financial system. The FATF is the world's foremost anti-money laundering (AML) and counter-terrorism funding (CFT) regulator. While it has 39 official members and jurisdictions, it depends on the support of nine FATF-style regional bodies (FSRBs) to ensure that its policies extend to all corners of the world. It should be noted that the FATF has significantly influenced and changed the way the banking and business sectors around the world conduct their affairs. It also impacted national laws, policy frameworks and the operation of governments. ⁵

Objectives of the FATF

The stated objectives of FATF are to “set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

FATF 40 recommendations

A key element of FATF's efforts is its detailed list of appropriate standards for countries to implement. These measures are set out in the 40 Recommendations, which were first issued in 1990 and revised in 1996, 2003 and 2012. FATF has also issued various Interpretative Notes designed to clarify the application of specific Recommendations and to provide additional guidance.

After the events of September 11, 2001, FATF adopted and published the FATF IX Special Recommendations on terrorist financing. The first eight Special Recommendations were adopted on October 31, 2001, and the ninth on October 22, 2004. The 2012 revisions combined the IX Special Recommendations into the 40 Recommendations as clustered below.



An overview of the FATF 40 Recommendations

Group	Topic	Recommendations
i	AML/CFT Policies and Coordination <ul style="list-style-type: none"> Assessing risks and applying a risk-based approach National cooperation and coordination 	1-2
ii	Money Laundering and Confiscation <ul style="list-style-type: none"> Money laundering offences Confiscation and provisional measures 	3-4
iii	Terrorist Financing and Financing of Proliferation <ul style="list-style-type: none"> Terrorist financing offences Targeted financial sanctions related to terrorism and terrorist financing Targeted financial sanctions related to the proliferation Non-profit organisations 	5-8
iv	Financial and Nonfinancial Institution Preventative Measures <ul style="list-style-type: none"> Financial institution secrecy laws Customer due diligence and record-keeping Additional measures for specific customers and activities Reliance, controls and financial groups Reporting of suspicious transactions Designated non-financial businesses and professions 	9-23
v	Transparency and Beneficial Ownership of Legal Persons and Arrangements <ul style="list-style-type: none"> Transparency and beneficial ownership of legal persons Transparency and beneficial ownership of legal arrangements 	24-25
vi	Powers and Responsibilities of Competent Authorities and Other Institutional Measures <ul style="list-style-type: none"> Regulation and supervision Operational and law enforcement General requirements Sanctions 	26-35
vii	International Cooperation <ul style="list-style-type: none"> International instruments Mutual legal assistance Mutual legal assistance regarding freezing and confiscation Extradition Other forms of international cooperation 	36-40



The Eastern And Southern Africa Anti-Money Laundering Group (ESAAMLG) And National Financial Intelligence Units

The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) is a Regional Body subscribing to global standards to combat money laundering and financing of terrorism and proliferation. Its 19 Member Countries are Angola, Botswana, Eritrea, Eswatini, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Tanzania, Uganda, Zambia, and Zimbabwe, and includes a number of regional and international observers such as AUSTRAC, Commonwealth Secretariat, East African Community, FATF, IMF, SADC, United Kingdom, United States of America, UNODC, World Bank and World Customs Organization. The United Kingdom and the United States of America have been cooperating and supporting nations of the organization since it was established in 1999.

The main objectives of ESAAMLG are to:

- i. Adopt and implement the 40 Recommendations of the FATF;
- ii. Apply anti-money laundering measures to all serious crimes;
- iii. Implement measures to combat the financing of terrorism and
- iv. Implement any other measures contained in the multilateral agreements and initiatives relevant to the prevention and control of the laundering of proceeds of all serious crimes and the financing of terrorism and proliferation of weapons of mass destruction.

National Intelligence Units

Recommendation 29 of the FATF provides that, countries should establish a Financial Intelligence Unit that serves as a national centre for the receipt and analysis of;

- i. suspicious transaction reports; and
 - ii. other information relevant to money laundering, associated predicate offences, and terrorist financing, and for the dissemination of the results of that analysis.
- The recommendation also provides that FIUs should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative, and law enforcement information that it requires to undertake its functions properly.

General Functions of Financial Intelligence Units

Group	Description
Receiving Transaction Reports	The basic definition of the reporting obligation has two main aspects: which persons and entities are to be obligated to report and what is to be reported. Other aspects needing consideration include the form and contents of reports, rules relating to the reporting organisations, and means of enhancing the flow and quality of reports (including sanctions).
Analysing Reports	The second element of the core functions of an FIU, as defined by the Egmont Group, is the analysis of reports received from reporting entities.
Disseminating Reports	The third core function of an FIU is the dissemination of the information it has received and the sharing of the results of its analysis. The ability of an FIU to quickly share reliable financial intelligence and related information with domestic and foreign authorities is critical to the success of its mission.

THE NATIONAL SECTORAL RISK ASSESSMENT FOR NPOS



According to FATF and other AML/CTF standard setters, NPOs by their nature are perceived as vulnerable to these crimes. For example, a non-profit organisation may be set up as a sham business to bring illegally obtained funds into the financial system. Also, legitimately obtained funds can be abused by terrorists to finance terrorist activities. This may occur when a non-profit organisation conducts fundraising activities where the contributors to the fundraising activities believe that the funds will go to relief efforts abroad, but, some or all the funds are transferred to a terrorist group.

As a way of complying with **Recommendation 8**, jurisdictions are required to conduct non-profit organization sectoral ML/FT risk assessment to guide national mitigation measures for the sector. This may also play a significant role in limiting the “blind and unnecessary overregulation” of the NPO sector. The World Bank and the International Monitoring Fund have developed guidelines and tools to inform national regulators to conduct a successful process.⁶

Objectives of the National NPO Assessment

The main objective of the NPO sector risk assessment is to examine and analyse the ML/FT risk posed by the NPO sector in a given jurisdiction. However, different jurisdictions are at liberty to choose areas of consideration for assessment depending on the feasibility of the threat. Some may choose to consider assessing only one of them (ML/ FT) or both.

For any consideration, however, the focus must be placed on the extent to which the sector or a category of NPOs within the sector is susceptible to the threat of being misused by;

- i. terrorist organisations posing as legitimate entities.
- ii. manipulating legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- iii. obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

The specific objectives.

It is imperative to note that like any robust investigative process, setting of specific objectives is key to such a process. For example, the Specific Objectives of this process may include among others:

- i. Identifying and assessing either ML/FT risks (threats and vulnerabilities) of the NPO sector;
- ii. Profile and categorize NPOs according to their risk levels;
- iii. Suggest actionable recommendations on how the identified risks can be mitigated (vulnerabilities reduced and threats minimized); and
- iv. Develop tailored outreach and monitoring action plans for higher risks NPOs.

⁶ See for example Hayes, B. (2012). Counter-Terrorism, Policy Laundering, and the FATF: Legalizing Surveillance, Regulating Civil Society. *Int'l J. Not-for-Profit L.*, 14, 5.

The scope of work for the National NPO Risk Assessment Team

The scope of work for NPO risk assessment team will include but not limited to;

- a) Review the legal, policy and regulatory framework for NPOs in a particular country and assess their adequacy in fighting ML/FT;
- b) Undertake a situation analysis of NPOs operating in a particular country to date taking into consideration international issues on TF;
- c) Undertake stakeholder consultations and document their views on the level of exposure of the NPOs to ML/FT;
- d) Through a consultative and participatory process and using an appropriate tool, undertake analysis of identified threats, vulnerabilities, and overall TF risks.
- e) Review the institutional capacity, organizational setup, and financial and administrative system of the NPO regulator in respect of its mandate as empowered by the AML (as amended) to enforce compliance with AML/CTF requirements.
- f) Hold stakeholder meeting(s) to validate the draft risk assessment report findings.
- g) Finalize risk assessment report and submit to the national AML/CTF taskforce.

Illustrative Characteristics of Higher Risk NPOs

No.	Risk Parameter	Risk characteristics
1	Zone	Operating in conflict ridden and/or border zones including, but not limited to tribal agencies/ merged areas, sensitive areas of any province, and areas/regions which have experienced terrorist attacks. However, this does not preclude the possibility of soliciting financial support by the terrorists from other areas.
2	Activity	Primarily working in service activities including: <ul style="list-style-type: none"> • Social services or social welfare • Housing • Health • Education
3	Legal status/level of formality	<ul style="list-style-type: none"> • Unincorporated NPOs (High likelihood, low consequence) • Incorporated/registered NPOs meeting criteria 1 and 2 (Low likelihood, high consequence)
4	Revenue/Quantum of donations	Large size NPOs with annual grants/income/subsidies/donations of \$500,000 and above
5	Funding Source	<ul style="list-style-type: none"> • Foreign funding from unknown sources • Foreign funding from high-risk countries or those characterized by lower AML/CFT/PF compliance • Major collection in the form of public/street donations, donation boxes, from anonymous donors, etc.
6	Geo-political factors	Having nationals from unfriendly countries as sponsors or volunteers of NPOs

Illustrative Characteristics of Higher Risk NPOs

No.	Risk Parameter	Risk characteristics
7	Legal Compliance	<ul style="list-style-type: none"> • Serious non-compliance by registered NPOs • Involvement of sponsors/directors/officers of NPOs in unlawful activities through other companies or business entities
2	Financial misconduct by NPOs or sponsors/directors	<ul style="list-style-type: none"> • Violation of licensing conditions by licensed NPOs • Failure to observe accounting and auditing principles in the recognition, measurement and disclosure through financial statements • Serving as conduit in respect of illicit financial transactions

Source: *Compliance toolkit: Protecting Charities from Harm*, Charity Commission, UK

Gaps in the National NPO Risk Assessment Process

- i. The Assessment Team, in general, may or do not include specialists or experts on CSOs.
- ii. The Assessment Team may or are less knowledgeable on issues that might affect civil society and the effectiveness of measures under R.8.
- iii. There is often a lack or limited government outreach to civil society about the National NPO Risk Assessment process.
- iv. Application of R.8 in some cases has meant the shrinking of the financial, operational, and political space for civil society in general - counterproductive to mitigating terrorist threats.

HOW NGOS CAN PARTICIPATE IN THE FATF PROCESS

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HOW NGOS CAN PARTICIPATE IN THE FATF PROCESS.

According to FATF Recommendation 8, governments are required to review and assess the "adequacy of laws and regulations that relate to non-profit organizations, and develop commensurate measures to mitigate any risk and threat posed to the sector." The FATF makes emphasis on the application of a risk-based approach as opposed to a broad-brush approach to countries' terrorist financing measures.

To FATF, countries should avoid the imposition of blanket restrictions on the nonprofit sector, and justify their regulations based on evidence of existing risk. Besides, the FATF expects that countries should update their risk assessments periodically, recognizing that risk changes over time and in different sectors. A meaningful way that governments should assess risk in the nonprofit sector is through continuous dialogue and consultation with civil society stakeholders - you!

All counter-terrorist financing and anti-money laundering regulation of nonprofits in a particular country should be based on the risk assessment, so NPOs must participate in this effort. The Global NPO Coalition on FATF provides tools and a wealth of knowledge with a detailed explanation of how NON-PROFIT ORGANISATIONS can participate in these processes as stakeholders as enlisted below.

Conducting Non-Profit Organization Tailored Outreach

Key Actions

Conduct relevant outreach (dialogue, organize awareness workshops) with stakeholders including NPOs, government, financial institutions, regulators, and regional/international bodies.⁷

Best Practices

- Roundtables with relevant government ministries, departments, and agencies (MDAs).
- Developing and cultivating relationships with key regulatory actors for the NPO sector.
- Continuous engagement on emerging issues.

Perform NPO-focused Mutual Monitoring.

Key Actions

While the government monitors the NON-PROFIT ORGANISATION sector for potential terrorism financing risk and sets out rules on accountability and transparency, the NPO sector needs to monitor the measures imposed to ensure that they are proportionate to the risk and do not hamper legitimate charitable activity in any way.⁸

Best Practices

- Establishing national NPO working groups.
- Designing and facilitating initiatives for regular monitoring of regulatory implications.
- Publishing policy briefs targeting key stakeholders.

⁷ For additional insights on outreach engagements, see the Global NPO Coalition on FATF at [https://fatfplatform.org/get-involved/conducting-relevant-outreach/..](https://fatfplatform.org/get-involved/conducting-relevant-outreach/)

Engaging in the National Risk Assessment Process

Key Actions

The NPO sector would be at the table when the government is determining whether the industry is at risk of being abused for terrorism financing.⁹

Best Practices

- Conducting shadow risk assessments
- Advocate for the amendment or repealing of legislation shrinking civic space
- Understand the recommendations from the NRA
- Develop strategies for monitoring the state's implementation of recommendations

Engaging in the Mutual Evaluation Process

Key Actions

NPO Participation and Engagement in the Mutual Evaluation Process.

Best Practices

- Find out who represents your government at the FATF plenary (likely to be the Ministry of Finance) and request a meeting.
- If your country is not a member of FATF find out who in government is the contact for the FATF regional body. A list of FATF members and regional bodies is [here](#).
- Be aware of when your Country is up for a FATF evaluation. Form a coalition to advocate the cause of a free and fully-functioning civil society space.
- Learn from civil society in countries that have gone through the mutual evaluation process.
- Keep tabs on and highlight rules/regulations/laws that are, either directly or indirectly, affecting your ability to function effectively.

Gathering Evidence and Information

Key Actions

Documentation, monitoring and tracking incidents of possible and actual misapplication of R8

Best Practices

- Gather evidence and information on the unintended consequences of countering the financing of terrorism (CFT) agenda on the operational environment of civil society in your Country, whether that is banks blocking transactions to conflict zones or closing NPO accounts; laws being enacted to restrict foreign funding; the introduction of burdensome governance and audit requirements; the prosecution of human rights defenders; or limitations to the right to assemble or protest.¹¹

Raising NPO Awareness

Key Actions

Empower local NPOs with knowledge on existing FATF style legislation and its implications on civic space in the country to develop effective advocacy strategies.

Best Practices

- Form a NON-PROFIT ORGANISATION coalition on FATF to advocate for a free and fully-functioning civil society.
- Keep tabs on and highlight rules/regulations/laws that are, either directly or indirectly, affecting your ability to function effectively.
- Be aware of when your Country is up for a FATF evaluation. Engage in the process to the extent possible. Learn from civil society in countries that have gone through the Mutual Evaluation process.
- Join the Global NON-PROFIT ORGANISATION Coalition on FATF for guidance, best practice examples and engagement and advocacy strategies.
- Collate and disseminate; already-existing rules/regulations/laws on CFT/CT, already-existing sectoral self-regulation measures and their effectiveness; the adverse impact of any new/already-existing AML/CFT rules/regulations/laws; examples of shrinking civic space in the Country.

⁸ For additional insights on outreach engagements, see the Global NPO Coalition on FATF at <https://fatfplatform.org/get-involved/mutual-monitoring/>
⁹ For additional insights on outreach engagements, see the Global NPO Coalition on FATF at <https://fatfplatform.org/get-involved/engaging-in-risk-assessment/> Also, Nigeria published a **National Risk Assessment** for TF and ML (completed in 2016), which identified Designated Non-Financial Businesses and Institutions (DNFIs), of which NON-PROFIT ORGANISATIONS are a subset, as being amongst those sectors most vulnerable to ML/TF. Spaces for Change, a Global NON-PROFIT ORGANISATION Coalition member, **challenged** (2019) this assessment of risk for the non-profit sector, disputing the official classification of NON-PROFIT ORGANISATIONS as DNFIs and teasing out the nuances between vulnerability and threat, among other issues. The report led to increased and constructive engagement with the FIU (SCUML) and other government and NON-PROFIT ORGANISATION stakeholders, including GIABA, the FATF-Style Regional Body for West Africa.
See report by the NPO Coalition on FATF to learn about Enhancing Effective Implementation of FATF Standards on Nonprofits Lessons learnt from mutual evaluation processes. Available at https://fatfplatform.org/assets/FATF_Evaluations_Meeting_2016_Outcomes.pdf . See also, <https://fatfplatform.org/get-involved/engaging-in-mutual-evaluation-process/>

¹¹ Civicus' **Enabling Environment Index (EEI)** examines conditions within which civil society work. It ranks the governance, socio-cultural and socio-economic environments for civil society in 109 countries. Civicus also publishes an annual State of Civil Society Report.

Perform sector-led risk assessments for NPOs

Key Actions

Empower local NPOs with knowledge on existing FATF style legislation and its implications on civic space in the country to develop effective advocacy strategies.

Best Practices

- Setting up National Risk Assessment Working Groups.
Design and implement a risk a three-pronged risk assessment.¹²
- Present risk assessment results in a multi-stakeholder platform.
- Develop a detailed action plan that addresses the AML/CFT risks. The implementation of the action plan must follow a risk-based approach.



¹²Preparation (It entails activities related to setting up the working group that is to perform the task. At this stage the following elements have to be answered: Who constitutes the group and why? What level of knowledge should a group member have? , Which tool is the group going to use? Do group members have knowledge of the tool and who they are to target?) ; Assessment (This also begins with a 3-4 days' workshop for all Working Group members who are committed to the process. The aim of this workshop is to equip the group members with necessary hands-on knowledge and skills on the administration of the assessment tool, and unveiling the assessment process. The workshop should include a reflection session on the money laundering and terrorist financing risks dynamics in the in the sector and the country as a whole. During this stage, the Working Group is expected to develop a "SMART" roadmap that runs the process through to completion. DPI has a technical team to guide members of the NPO sector throughout this stage) ; Finalisation (Evaluating the risk assessment and the results therein, 2. Analysis of the proposed risk-based action plans, Implementation model of the plan and any other issue related to the same.)

**THE UNNECESSARY AND
UNINTENDED EFFECTS OF
AML/CTF MEASURES ON
CIVIC SPACE**

6

THE UNNECESSARY AND UNINTENDED EFFECTS OF AML/CTF MEASURES ON CIVIC SPACE

The operating space for civil society becomes increasingly small, attendant to the introduction of regressive legislation in many nations, limiting people's rights to free speech and peaceful assembly. Counter-terrorism laws are continually being misused to target the legitimate work of defenders of human rights. With broad and ambiguous language, NGO and Media Bills are increasingly being passed, promoting judicial prosecutions under the guise of 'threatening national security' against independent human rights organizations and media outlets. Administrative and bureaucratic abuse is used throughout the country to undermine defenders' work of human rights and journalists.

Generally, the AML/CFT architecture in most countries across Africa, reveals two broader concerns. Firstly, the anti-money laundering legislation contains general and overarching provisions under which the assets and business transactions of persons and organizations of interest may be closely monitored and curtailed under the guise of public interest. Secondly, Anti-terrorism legislation contains several broad provisions that leave it open to abuse. These include such general offenses as the 'promotion of terrorism' that may catch a wide range of legitimate activities within its ambit, especially in the areas of human rights advocacy.

Key NPO concerns with AML Regulations in Africa

Issue	Key NPO concerns
Burdensome obligations	In some countries like Uganda, provisions impose duties and obligations on NGOs to prevent and detect transactions that could be used by criminals in money laundering. This could mean that NGOs out to incur expenses in carrying out these obligations.
Due-diligence requirements	The imposition of a series of due diligence obligations on 'accountable persons' places additional work-load responsibilities on NGOs where they have to keep detailed documentation of their current and past activities for lengthy periods – for up to ten years in some cases.
Privacy and Surveillance	Provisions that allow governments to heavily monitor and scrutinize money transfers and other transactions of NGOs. If those transactions exceed specific amounts, states could use the information obtained to seize or freeze NPOs or activists' assets with divergent political views under the guise of 'public interest,' thus curtailing their access to resources.
Financial Exclusion	In some cases, NPOs face systemic challenges in accessing funds from their bank accounts. These include pre-authorisation of local branches by their headquarters to dispense funds to NPOs, request and submission of sensitive information to justify the purpose of funds, among others. This could expose NGOs to additional risk, especially where information on sensitive projects gets into the wrong hands.

Key NPO Concerns with CFT Legislation in Africa

Concerning Counter-terrorism legislation, the following key issues arise from a closer look at the legislation of various countries:

Issue	Key NPO concerns
Broad and vague definitions of terrorism	The definition of terrorism is mostly broad and vague. Therefore, it could be subjectively interpreted to undermine fundamental rights guaranteed under various constitutions, including freedom of expression, freedom of assembly, and association.
Possible misuse of “aiding and abetting” provisions	Provisions on aiding and abetting terrorism are mainly broad and could be subjectively interpreted to restrict fundamental rights guaranteed under the constitution.
Absence of judicial oversight in CFT legislation	In most cases, the absence of judicial oversight creates an opportunity for the broad interpretation and misuse of the powers, resulting in the violation of organizations’ right to privacy and individuals operating non-profit activities.
Increased securitization of law enforcement	Definitions of terrorism in most CFT legislation that lack precision enable authorities to apply them arbitrarily or discriminatorily. This could lead to the criminalization of otherwise peaceful activities in the pursuance of the legitimate exercise of fundamental freedoms, such as freedom of expression.



What key actions can NPOs and Regulators take?

Non-Profit Organizations

Actions	Areas of Intervention
Raising awareness	Actors in Civil society must find creative ways to raise awareness about the challenges faced as a result of the global security framework.
Scaling up regional and international engagement	Broaden, deepen, and sustain the sector's engagement with the global AML/CFT architecture, including FATF, UN agencies, and bodies that are traditionally seen as dealing with security-related issues both at the international and national level.
Developing and cultivating common ground with national regulators	The sector ought to explore innovative ways aimed at identifying entry points at the national level for oversight and accountability purposes.
Trend Analysis	Maintaining a robust trend analysis program should be deliberate, to inform quality engagements, relevant awareness-raising and constructive AML/CTF process participation.

Regulators

Actions	Areas of Intervention
Facilitating Independent oversight	States should establish an independent mechanism to review and oversee the exercise of emergency powers, terrorism legislation, administrative measures related to terrorism, and legislation addressing ML/FT. The mandates of such independent mechanisms should specifically include the effects of such legal measures on the functioning and capacity of civil society.
Promote clear definitions of terrorism	Governments should also ensure that the definitions of ML/FT in national laws must not be overly broad and vague. They must be precise and sufficiently clear to avoid including members of civil society, or non-violent acts carried out in the exercise of fundamental freedoms. The protection of national security must be narrowly construed. Emergency measures must be strictly limited, and not be used to crack down on civil society actors and stifle freedom of expression.
Ensure an enabling environment for NPOs to access resources	Measures that aim to regulate the existence and control and limit the funding of civil society must comply with the requirements of proportionality, necessity and non-discrimination. The failure to comply with administrative requirements must never be criminalized.