

An analysis of the 2021 South African FATF mutual evaluation report: terrorist financing and NPOs

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Abstract

Purpose – In the aftermath of the 2021 Financial Action Task Force Mutual Evaluation Report, legislators, supervisory bodies, law enforcement and the like are focusing on preventing South Africa from being greylisted. This paper performs an analysis of the 2021 South African Financial Action Task Force (FATF) Mutual Evaluation, specifically Recommendation 8 and Immediate Outcome 10. The purpose of this paper is to address the concerns raised and assist those tasked with implementing remediation measures.

Design/methodology/approach – Secondary sources such as legislation, case law, textbooks and peer-reviewed publications are used in addressing the concerns. A major focus is placed on the evaluation itself, with an analysis of Recommendation 8 and Immediate Outcome 10.

Findings – Despite the non-compliance rating and a low level of effectiveness received regarding non-profit organisations, authorities might not place a large focus on remediating this, as more pertinent issues arise in the report. The lack of focus in this area adds to the likelihood of grey listing by FATF. However, with co-operation from the relevant stakeholders, these low ratings can be improved.

Originality/value – Since the Mutual Evaluation's release in October 2021 there have not been any papers addressing the highlighted issues in the non-profit sector in South Africa, to the best of the authors' knowledge. This paper will be the first of its kind and will be of use to authorities as regards mitigating the concerns raised by FATF.

Keywords Economic crime, Forensic accounting, Non-profit organisations, Non-profit sector, South Africa, Terrorist financing, Mutual evaluation, Recommendation 8, Immediate Outcome 10, FATF

Paper type Literature review

1. Introduction

The [International Monetary Fund \(2003\)](#) states that the non-profit sector plays a vital role in the economy and social development of the world. They do this by improving the

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lives of others through donations of funds, supplies or services. Non-profit organisations (NPOs) face many fraud-related risks, making it increasingly difficult to mitigate these risks (PWC Global Economic Crime and Fraud Survey, 2018). These organisations now need to question whether they are aware of how their entity is affected by fraud and if adequate measures are in place to combat it. A passive approach to preventing the abuse within the non-profit sector has rendered no real yield and the focus must shift to a more active approach (PWC Global Economic Crime Survey, 2016). The PWC Global Economic Crime and Fraud Survey (2018) states that a fraud risk assessment is the first step in detecting possible vulnerabilities in organisations (individually) and within a country's regulatory system. A risk assessment can be viewed as a preventative mechanism to make use of irrespective of the context required.

The Financial Action Task Force (FATF) performs its own risk assessment to establish whether countries are complying with the regulations and recommendations it provides. These are called "Mutual Evaluations" (MEs) and refer to the 40 Recommendations related to money laundering (ML) and the financing of terrorists (TF), as well as the 10 Immediate Outcomes (Schott, 2003). South Africa (SA) was scheduled to undergo a mutual evaluation in 2019, but due to the impact of COVID-19, the final Mutual Evaluation Report (MER) was only completed and made available for public perusal by the end of 2021 (FATF, 2023). The results were poor, with half of the 40 Recommendations being rated as "partially compliant" or "non-compliant" (van Wyk, 2022). According to Brown (2022), the report made it clear that although South Africa's legislative framework is adequate enough to combat ML and TF, the problem lies in the effective implementation thereof.

The two tables included in the MER – one setting out the effectiveness ratings, and the other setting out the technical compliance ratings – make it clear that the results are poor. This study focuses specifically on Recommendation 8, rated "non-compliant" (see Table 2 below), and Immediate Outcome (IO) 10, rated at a "low level of effectiveness" (see Table 1 below), both of which relate to NPOs. In Table 1, "Moderate" and "Low" refer to different levels of effectiveness.

In Table 2 below, "PC" is "Partially Compliant", "LC" is "Largely Compliant", "NC" is "Non-Compliant" and "C" is "Compliant".

Law enforcement and legislators tend to focus on corruption, fraud and tax crimes, as these are most prevalent in SA (FATF, 2021a, 2021b). TF is not a focal priority, with authorities having a limited understanding of offences related thereto (FATF, 2021a).

Immediate outcome	Rating
1: risk, policy and co-ordination	Moderate
2: international co-operation	Moderate
3: supervision	Moderate
4: preventive measures	Moderate
5: legal persons and arrangements	Low
6: financial intelligence	Moderate
7: ML investigation and prosecution	Moderate
8: confiscation	Moderate
9: TF investigation and prosecution	Low
10: TF preventive measures and financial sanctions	Low
11: PF financial sanctions	Moderate

Table 1.

Effectiveness ratings

Source: Authors' representation

Recommendation	Compliance level
1: assessing risk and applying risk-based approach	PC
2: national co-operation and co-ordination	PC
3: ML offence	LC
4: confiscation and provisional measures	LC
5: terrorist financing offence	PC
6: targeted financial sanctions – terrorism and TF	NC
7: targeted financial sanctions – proliferation	PC
8: NPOs	NC
9: financial institution secrecy laws	LC
10: customer due diligence	PC
11: record keeping	LC
12: politically exposed persons	NC
13: correspondent banking	LC
14: money or value transfer services	PC
15: new technologies	NC
16: wire transfers	LC
17: reliance on third parties	NC
18: internal controls and foreign branches and subsidiaries	PC
19: higher-risk countries	LC
20: reporting of suspicious transactions	LC
21: tipping-off and confidentiality	C
22: DNFBPs – customer due diligence	PC
23: DNFBPs – other measures	PC
24: transparency and beneficial ownership of legal persons	PC
25: transparency and beneficial ownership of legal arrangements	PC
26: regulation and supervision of financial institutions	PC
27: powers of supervision	PC
28: regulation and supervision of DNFBPs	PC
29: financial intelligence units	LC
30: responsibilities of law enforcement and investigative authorities	C
31: powers of law enforcement and investigative authorities	C
32: cash couriers	PC
33: statistics	LC
34: guidance and feedback	LC
35: sanctions	LC
36: international instruments	LC
37: mutual legal assistance	LC
38: mutual legal assistance – freezing and confiscation	LC
39: extradition	LC
40: other forms of international co-operation	LC

Source: Authors' representation

Table 2.
Technical compliance ratings

Tables 1 and 2 also highlight this – with TF-related recommendations and immediate outcomes rated very low. As TF is prevalent in the non-profit sector, and with little understanding as to how, why and when this form of NPO abuse occurs, the sector is left vulnerable (FATF, 2021a). The larger issues brought to light by the MER, which authorities tend to focus on, lead to concerns raised about issues in the non-profit sector being left either unaddressed or addressed incorrectly (FATF, 2021a).

The results of the FATF MER suggest that working groups for NPOs and co-operative, local oversight are important factors to consider for the survival and protection of this sector (FATF, 2019a). Most countries that fall under the ambit of FATF, are not adequately

conducting the risk assessments as provided for under Recommendation 8 (FATF, 2021b). SA is no exception to this rule and the results of the 2021 MER has led to a risk of grey listing. The gravity of this is highlighted by van Wyk (2022), who points out that the SA National Treasury itself says that “We are almost certainly headed to be grey-listed by the Financial Action Task Force next Feb 2023 unless we perform a few miracles”. This will have a detrimental impact on the economy, specifically in respect to international trading and cross-border transactions (van Wyk, 2022).

Given the effects of a potential grey-listed status, the SA Government, regulators, supervisory bodies and law enforcement have many concerns to address, with not much time. Treasury proposes a revision to the FIC Act, as well as other remediating measures (van Wyk, 2022). Treasury’s acting director-general highlights that the political will to address the weaknesses FATF have identified has increased a considerable amount, and that he is confident the country will avoid being placed on the grey list (Theunissen, 2022).

The authors add to this value chain by providing insight into the MER results pertaining to NPOs (Recommendation 8 and IO 10) and possible solutions to pertinent issues. To do this, reference is made as to how the FATF MEs are carried out and what the methodology entails. A short discussion of the requirements of Recommendation 8 and IO 10 follows, with an in-depth discussion into the results of the MER. The authors refer to steps taken by other countries in their MERs to address NPO concerns and provide possible methods that SA can use in mitigating these issues highlighted by FATF.

2. Methodology

This study is a literature review based mainly on journal articles, case studies, academic dissertations, legislation and government documents. The most important document referred to and which forms the basis of this study, is the 2021 South African Mutual Evaluation Report from FATF. The information gathered from the literature is used to understand the evaluation and the effects of the results, and to aid those charged with implementing remediation measures.

3. Limitations to the study

This study is mainly limited to Recommendation 8 and Immediate Outcome 10 of the FATF MER. Although reference is made to other secondary sources, the predominant focus is on these two areas. No in-depth discussion is made into the specific requirements of Recommendation 8 and Immediate Outcome 10, as the focus of the discussion is on the results and the proposal of remediation measures.

4. FATF Mutual Evaluation

4.1 Methodology

FATF appoints assessors in each country who rely on the methodology documents provided to them by FATF to perform the ME. In the South African ME, the group of assessors comprised 10 individuals from various international and regional bodies, namely FATF, the IMF, the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and a few specialists (Theunissen, 2022). These assessors started by gaining an understanding of the country’s risks and context, allowing them to make country-specific recommendations (FATF, 2013-2021). Schott (2003) states that one of the main objectives of FATF is to promote and enhance the usage and application of AML and countering the financing of terrorism (CFT) in countries worldwide. This is, however, limited to the countries that are overseen by FATF and have a local financial intelligence unit (FIU) to assist in conducting this assessment (Schott, 2003). In SA, the local FIU is the Financial

Intelligence Centre (FIC). Countries are assessed on its technical compliance, and its effectiveness in implementing the FATF Recommendations (FATF, 2013-2021). Thus, the methodology is split into two sections, which the report is based upon, namely, (1) technical compliance and (2) effectiveness.

Technical compliance refers to the 40 Recommendations, of which Recommendation 8 refers specifically to NPOs. There are four ratings a country can be given, based on its level of technical compliance to the FATF Standards, namely, compliant, largely compliant, partially compliant and non-compliant (FATF, 2013-2021). Effectiveness gets measured by referring to 11 IOs and then attributing one of the following four ratings to the country: high level of effectiveness, substantial level of effectiveness, moderate level of effectiveness and low level of effectiveness. IO 10 references NPOs, stating that “Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector” (FATF, 2013-2021).

4.2 Requirements: Recommendation 8

In the context of Recommendation 8, a non-profit refers to:

A 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 other types of “good works”.

For a country to fully comply with Recommendation 8, it should meet criteria set in the FATF Methodology document. This criteria is split under various main standards that the non-profit sector needs to adhere to, to be allocated a high rating of compliance, namely (FATF, 2013-2021):

- “Taking a risk-based approach (RBA) (criterion 8.1);
- Sustained outreach concerning TF issues (criterion 8.2);
- Targeted risk-based supervision or monitoring of NPOs (criterion 8.3 and 8.4);
- Effective information gathering and investigation (criterion 8.5); and
- Effective capacity to respond to international requests for information about an NPO of concern (criterion 8.6”).

The detailed requirements of Recommendation 8 will not be discussed in this study, as the focus is on the results and remediation methods.

4.3 Requirements: Immediate Outcome 10

In the context of the FATF MER (specifically IO 10), a terrorist is “any natural person who: (i) Commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act”. For the non-profit sector to comply with IO 10, there are four core issues that must be considered for the outcome to be deemed as being achieved, namely (FATF, 2013-2021):

- (1) Country's implementation of TFS in accordance with UNSCR1267 (United Nations Security Council Resolution) (and descendant resolutions) and UNSCR1373.
- (2) Extent to which the country has applied appropriate measures, in line with a RBA, to NPOs identified as vulnerable to TF abuse, without negatively impacting legitimate NPO activities.
- (3) Extent to which terrorists, terrorist organisations and TFs are stripped of their assets and aid provided to them.
- (4) Extent to which the above measures are consistent with the country's overall TF risk profile.

The detailed requirements of IO 10 will not be discussed in this paper, as the focus is on the results and remediation methods.

4.4 Results: Recommendation 8

Individual ratings of technical compliance are given in terms of each Recommendation and SA is rated "non-compliant" for Recommendation 8 due to major shortcomings (FATF, 2021b; FATF, 2013-2021). In the previous MER conducted in 2009, SA was rated "partially compliant" with this Recommendation (FATF, 2021a). Many of the concerns raised in that report are still not addressed. The two main factors that form the basis for the current low rating are described as the following (FATF, 2021a):

- (1) There has been no assessment identifying NPOs at a high risk of TF abuse.
- (2) Those charged with monitoring and investigating NPOs at risk of TF abuse do not have the necessary capacity to perform their duties.

Brown (2022) states that the MER emphasises that law enforcement in SA does not understand the complexities that accompany NPOs, trusts and companies, rendering them unable to effectively investigate crimes in this regard. The rating given by FATF is a result of the following key findings under each Criterion (FATF, 2021a):

- Criterion 8.1: SA adopted the [Nonprofit Organisations Act 71 of \(1997\)](#) (herein after "NPO Act") to define and regulate the sector. Since the last MER, a Strategic Risk Assessment has been done (in March 2012) identifying issues regarding NPO registration, outreach, supervision, and international co-operation. There has, however, been no indication of progress made by way of a follow-up report or any other communication. The nature of the TF risks and the methods employed by terrorists to abuse NPOs have never been assessed, except for by the Strategic Risk Assessment, which only acknowledged some inherent TF risks, as have previously been recognised on an international level. SA has not determined specific types or groups of NPOs especially vulnerable to TF abuse (based on their activities and characteristics). After the Strategic Risk Assessment, SA reviewed its laws and regulations regarding NPOs, but still did not identify the groups of NPOs at a higher risk of exploitation and the measures that are required to address the identified risks. In 2019, a similar assessment took place, but the results were the same. SA has the 'Annual Report on the State of NPOs' (published annually), which contains information on the income and expenses of NPOs. There has, however, been no consideration of new information obtained through these reports on the sector's vulnerabilities. The preliminary Terrorism Financing National Risk Assessment (TF NRA) that started in 2022 has yielded many results on the

vulnerabilities, but not yet on how these will be mitigated. The vulnerabilities identified are also closely related to those identified by the FIC (FIC, 2020).

- Criterion 8.2: Although the policies in the NPO Act promote accountability, integrity and public confidence in the management of NPOs, this Act only applies to those registered in terms of the NPO Act and therefore the scope is limited. The Act states that NPOs who register must conduct their financial transactions by way of a bank account, but given that registration is voluntary, this only applies to some NPOs. In accordance with Chapter 2 of the NPO Act, the Department of Social Development (DSD) – who is the NPO Directorate – and the FIC have implemented joint outreaches to educate NPOs on the TF risks they face. There has, however, not been any outreach to educate the donors. The DSD also have workshops and outreach programmes focused on assisting the boards of NPOs in determining whether they have adequate controls and compliance measures in place to comply with the Act, and their own internal value system.
- Criterion 8.3: The NPO Directorate (DSD) can scrutinise any document it obtains from an NPO, or require any supplementary documents, to ensure that the NPO complies with the NPO Act. SA has not been able to furnish any proof that effective supervision and monitoring is implemented in the sector, failing to demonstrate that risk-based measures apply to NPOs at risk of abuse.
- Criterion 8.4: NPOs registered in terms of the NPO Act are required to submit financial statements to the NPO Directorate. However, it is not clear that compliance in this is monitored. Individuals who are convicted of an offence as described in the NPO Act will be liable to a fine, imprisonment, or both. The amount of the fine and length of imprisonment are, however, not mentioned in the Act and no other information regarding sanctions against NPOs or those acting on their behalf has been furnished.
- Criterion 8.5: The DSD, responsible for co-operating with other stakeholders and authorities, is a member of the Inter-Departmental Committee (IDC) on AML and CFT. The DSD recently began liaising with the FIC by providing them with information on directors of NPOs applying for registration to verify the director. At the end of 2018, SA established a Non-Profit Organisations Task Team (NPOTT) to identify organisations at risk of TF. The NPOTT is chaired by the DSD, and they are mandated to respond to Recommendation 8 and IO 10. Thus, there is some form of co-operation and information-sharing.
- Criterion 8.6: There has been no indication as to the policies and procedures that would be followed when an international request has been received, pertaining to information about an NPO possibly involved in TF.

4.5 Results: Immediate Outcome 10

Of the four possible ratings of effectiveness, SA was given a “low level of effectiveness” rating, resultant from the following key findings (FATF, 2021b; FATF, 2021a):

- (1) Although the review process of the non-profit sector in SA has begun, no focus has been placed on TF abuse. The government officials charged with oversight of the

sector do not understand TF and are not trained to deal with the risks of TF abuse in NPOs.

- (2) The NPOTT was established to identify organisations at risk of TF – both registered and unregistered. They have, however, not started the process of monitoring or implementing measures against those at-risk organisations. This is partly due to the lack of proper oversight across the sector, as well as the broad focus the NPOTT review took. The review of the sector did not focus on TF, but rather on other risks such as ML, proliferation financing (PF) and good governance, therefore limiting the scope of results.
- (3) Registration with the NPO Directorate is voluntary and there is no central database for registration. Those not registered with the DSD are often registered under another governmental body, such as the Master's Office (trusts), the Companies and Intellectual Property Commission (CIPC) (non-profit companies) or the South African Revenue Services (SARS) (public benefit organisations). The fact that there is no single authority designated to protect the non-profit sector makes it difficult to effectively address TF risks.
- (4) Forfeiture of assets owned by terrorists and measures taken to combat NPO abuse are not on par with SA's TF risk profile. This method of forfeiture is limited, as it does not allow for the forfeiture of any asset of the designated individual, but only for specific identified property in SA.
- (5) The Targeted Financial Sanctions (TFS) measures implemented are not in line with SA's TF risk profile. Most of the cases of TF in SA have been transnational in nature and could be due to SA being used as a conduit to facilitate TF in surrounding African countries. Authorities in SA have identified links to the Islamic State of Iraq and the Levant (ISIL), various facilitation networks and terrorist cells, and have also dealt with foreign terrorist fighters (FTFs) – emphasising that the risk is more extensive than the mitigation measures.
- (6) At the time of the evaluation, SA was still in the process of conducting a TF NRA to determine the country's TF risk exposure. This assessment determined that SA is at risk of international terrorism and has not had any domestic terrorism. The DSD was not in any way involved in the TF NRA.
- (7) Authorities identified some extensive vulnerabilities in the sector through the TF NRA, but have not been able to determine whether these vulnerabilities are being exploited, or to what extent. Thus, they have only been able to determine that there is a potential for abuse and exploitation by terrorists. These vulnerabilities include those present in NPOs, along with other areas of concern. The NPOTT has also identified steps to be taken in addressing the identified risks but has not started the process of implementing these steps. The identified NPO TF vulnerabilities are:
 - NPOs in SA provide relief in areas of conflict, where exploitation by terrorists is a high risk.
 - Not all NPO funding channels are overseen, only those which circulate through an already regulated sector.
 - Beneficiaries of NPO funding are not always identified and there is no method to ensure that funds are not diverted to terrorists.

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- NPOs in SA have been active in making ransom payments to negotiate the release of hostages.
 - Cash transactions are prevalent in the sector, with many cross-border transactions, resulting in a less regulated environment.
 - Registration for NPOs is voluntary, making it possible for terrorist-led NPOs to thrive.
 - Regulations over NPOs are lacking and oversight is limited.
 - There is a lack of co-operation between government stakeholders, which makes identifying TF cases more difficult.
 - The DSD does not have the ability to monitor or investigate NPO risks, as these risks are national security risks that are not meant to be dealt with by the DSD.
 - Those charged with oversight of the sector are not trained in the risks associated with TF abuse and NPOs.
 - The sector is not aware of the TF risks it faces.

These main concerns noted by the MER directly address the questions asked when reference is made to the requirements set for determining the effectiveness measured by IO 10.

5. Consequences of the results

5.1 Grey listing

Countries that do not substantially comply and co-operate with the FATF Recommendations are placed on one of two lists ([Sanctions.io, 2022](#)). The first being the list of “Jurisdictions under increased monitoring” (also known as the “grey list”) and the second being the list of “High-risk jurisdictions subject to a call for action” (also known as the “black list”).

Countries strive to prevent themselves from being added to these lists, as it often leads to a loss of investments, international relations and transactions ([Sanctions.io, 2022](#); [van Wyk, 2022](#)). The “listed” countries are encouraged to make the necessary changes as soon as possible and ensure that the changes are relevant ([Schott, 2003](#); [FATF, 2022a](#)). According to [FATF \(2022a\)](#), the countries on the grey list are only placed there (instead of the black list) if the country is committed to resolving the identified issues. This country is then placed under increased supervision and must resolve the issues within an agreed timeframe ([FATF, 2022a](#)). Countries on the black list have such a large extent of ML, TF and PF present that FATF encourages member countries to perform enhanced due diligence when transacting with these countries ([FATF, 2022b](#)). There are currently only two countries on this list (North Korea and Iran), whilst the grey list has 23 listings ([FATF, 2022a](#); [FATF, 2022b](#)). If SA does not improve the ratings received in the MER by the end of the one-year observation period (ending October), SA could be grey-listed by February 2023 ([van Wyk, 2022](#)).

Grey listing will result in a variety of negative consequences for SA. According to [Brown \(2022\)](#), SA will be deemed a “high-risk environment” by the rest of the world, specifically concerning ML and TF. This will lead to stringent due diligence from investors and international banks, possibly resulting in an increase in the cost of transacting internationally ([Brown, 2022](#)). Many international banks and investment companies not only impose enhanced monitoring, but completely refrain from engaging with grey-listed countries ([Brown, 2022](#)).

FATF states that there are four main unintended consequences that result from these evaluations, other than the risk of grey listing or black listing ([FATF, 2021b](#)). These are:

- de-risking;
- financial exclusion;
- undue targeting of NPOs; and
- curtailment of human rights.

Of these four, only two directly impact the non-profit sector, and will be briefly discussed below.

5.2 De-risking

This refers to the situation where financial institutions end or restrict the business relationship held with certain clients, to avoid the risks associated with said clients ([FATF, 2021b](#)). De-risking is a strategy used by companies when it is not possible for them to safely manage the ML and TF risks they face when conducting business with an NPO ([FATF, 2020a](#)). As a result of various types of risk assessments, companies and other third parties could de-risk NPOs; but the FIC cautions them against taking such drastic measures ([FIC, 2019](#)). The results of risk assessments often lead to entities needing to improve their compliance and methods to deal with the risk of abuse to their organisation [[Klynveld Peat Marwick Goerdeler \(KPMG\), 2020](#)]. The de-risking of an NPO can lead to inflated transaction costs or can even result in most transactions taking place outside of the formal and regulated financial services sector.

5.3 Undue targeting of NPOs

As the abuse of the NPO sector for ML and TF became evident, FATF revised Recommendation 8 in 2016 to ensure that the associated risks are not being disproportionately mitigated ([FATF, 2021b](#)). Regardless of this focus, there are still many countries that apply the FATF standards too rigorously and incorrectly, leading to various constraints on the sector. These constraints include ([FATF, 2021b](#)) NPO supervision being intrusive; limitations on access to accounts and funds; forced dissolution; and de-registration or suspension of NPOs.

6. What have other countries done to address low Recommendation 8 ratings?

It typically takes countries between 5 and 10 years to get off of the grey list once they are put on it, but a shorter time frame is not impossible, as can be seen with the country of Mauritius ([Theunissen, 2022](#)). Mauritius was placed on the grey list in February 2020 and managed to get itself off of the list within a period of two years ([Theunissen, 2022](#)).

Zimbabwe (another ESAAMLG country) recently managed to improve their Recommendation 8 rating from “non-compliant” to “partially compliant”, which is one step up on the rating scale. Zimbabwe had its MER finalised and released to the public in September 2016 (FATF, 2016). Although it did not improve the original IO 10 rating of “moderate level of compliance”, it did improve its Recommendation 8 rating, and can be used by SA as a case study on how to improve its low rating. Zimbabwe also lacked outreach activities and had no risk assessment to identify NPOs at a higher risk of TF abuse (FATF, 2016). To mitigate and resolve these issues, Zimbabwe conducted such an assessment of NPOs and identified six NPOs at a higher risk for TF (FATF, 2019c). It did this by determining where the main source of funding comes from, which was said to be “high TF risk jurisdictions”. It also started the process of amending its version of an NPO Act (called the “Private and Voluntary Organizations Act”) (FATF, 2019c). Its outreach programmes were started in the form of two workshops to raise awareness among the non-profit sector, adding to the result of being re-rated and Recommendation 8 now being rated as “partially compliant”.

Morocco also managed to be re-rated from a rating of “non-compliant” to “largely compliant”, which is the second highest rating of technical compliance, after just 18 months (FATF, 2019b). It received the “non-compliant” rating due to a number of reasons, including the following (FATF, 2019b):

- Authorities did not educate donors or NPOs on the TF risk.
- Authorities did not collaborate with NPOs to develop best practices to combat TF abuse, and did not promote the use of regulated financial channels to NPOs.
- No identification of the groups or types of NPOs more likely to be abused for TF.

To address the concern raised regarding not identifying NPOs at risk for TF abuse, Moroccan authorities conducted a comprehensive study in September 2019 (FATF, 2020b). The study categorised NPOs into three different categories, namely, high, medium and low risks. To do this, authorities considered the sources and final destination of funds, the size of the relevant sector (are they local, or national etc.), the physical geographical area in which the NPOs function, as well as other key factors (FATF, 2020b). Authorities conducted a review of the current NPO legislation and regulations to determine whether it is still appropriate. They made it mandatory for NPOs to provide certain documents and information when the NPO is established, and when there is a change in management (FATF, 2020b).

Authorities issued a guide to NPOs that aims to assist them in, for example, having more transparency and accountability in terms of the NPOs financial activities, how they identify donors, and publicising their activities. The guide assists directors of NPOs in warning them of the TF risk, methods used by terrorists in abusing NPOs and creating stronger internal controls (FATF, 2020b). Moroccan authorities did not, however, ask for the assistance of the non-profit sector in developing this guide, nor did they use many awareness programmes to make the guide known to the whole sector. Morocco has an NPO Supervisory Authority (The Ministry of Interior), who has the legal power to do onsite or offsite inspections at NPOs as it deems necessary (FATF, 2020b). This ensures continuous supervision of high-risk NPOs. This Authority also established a detailed database that contains data from NPOs, which is regularly updated. The database assists the FIU in proactively monitoring those NPOs deemed as high-risk (FATF, 2020b). Due to Morocco addressing most of the concerns raised by FATF in 2019, it managed to redeem its “non-compliant” rating and

received a re-rating of “largely compliant”. Thus, South African authorities could refer to Zimbabwe and Morocco to determine what changes will promote a re-rating of Recommendation 8 and consequently IO 10 results, making it less likely for SA to be grey-listed.

7. SAs attempt to avoid grey listing

SA was given 18 months to respond to the FATF report and address the concerns highlighted, with the final deadline set as February 2023 (Theunissen, 2022). These 18 months are filled with many deadlines, one of them being the October 2022 deadline by which SA has to respond to three of the 40 recommendations, and the 11 IOs (Theunissen, 2022). Theunissen (2022) states that this October deadline is very important, as it will impact FATF's decision on whether SA should be placed on their grey list. To comply by this deadline, the Minister of Finance has proposed a new Bill, called the “General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill” (Minister of Finance, 2022). This new Bill proposes various changes and additions to the NPO Act, some of which the authors believe are advantageous, while others may be detrimental.

Regulations and assessments can only function effectively when there is regular monitoring (Bricknell *et al.*, 2011). This can only be achieved through regularly assessing an organisation's individual risks, as well as those of the sector as a whole. Grabosky (2001) makes the statement that the NPO, as an individual entity, is an important factor to consider when putting protocols in place and ensuring that an adequate response to the risk of abuse is provided. Countries need to apply the RBA when mitigating risks in the non-profit sector and ensure that the funds, goods and services reach those they were intended for (FATF, 2021b).

FATF (2013-2021) states in its methodology that it is important for countries to consider that not all NPOs are “inherently high risk”, in fact, many have no risk, or the risk is very small. Thus, when assessing the sector (such as the TF NRA), SA has to consider this and identify a group or type of NPO that is at a higher risk for TF abuse than others. The TF NRA must be completed so that authorities can create a basis for understanding SAs TF risk (FATF, 2021a). The TF NRA already underway should consider the same factors that Morocco did in its assessment. SA should consider where an NPO primarily functions, whether it has international donors or beneficiaries, along with other factors, and then classify it into a category related to its risk profile. Categorising these NPOs will make it easier for the DSD and the FIC to determine which NPOs or groups of NPOs need to be placed under increased monitoring and which do not. This way, there is no undue burdening of the whole sector, and those NPOs at a higher risk of TF are kept accountable and are forced to be transparent.

After performing such an assessment, the relevant laws and regulations should be reviewed to determine whether they still apply and are considered effective. As stated above, SA authorities have decided to introduce new additions and amendments to the NPO Act, with two of the seven clauses in the Bill – Clauses 8 and 10 – making it mandatory for NPOs to register in order to operate in the country (Minister of Finance, 2022). This places an undue burden on the sector as a whole, with many organisations at little to no risk now being made subject to the same rules as the high-risk NPOs. NPOs identified as having a higher risk of TF need to be identified and dealt with separately (FATF, 2021a). The Bill states that the intention of Clauses 8 and 10 is to promote oversight by the DSD over the whole non-profit sector. Different types of NPOs should be involved in the process of compiling new codes of best practice, as well as legislation, as those are the only stakeholders that know the real effect that these new regulations will have on the sector.

This mandatory registration will place a large financial burden on NPOs to produce financial statements and other information that they normally do not have to produce to such a detailed extent.

There are, however, some positive outcomes envisaged, as can be seen in the summary of additions and amendments to the NPO Act, in [Table 3](#) below:

Thus, many of the amendments and additions are a good indication of the commitment of authorities to avoid the grey list.

[FATF \(2021a\)](#) also states that mitigating the TF abuse risk in NPOs can be done by having a plan that sets out the responsibilities of various departments within government and what their expected outcome should be. The department or authority responsible for supervising the non-profit sector should be competent and understand TF, ML and accompanying risks in the non-profit sector. Thus, training should be provided to the DSD, the FIC and any other relevant role players, to ensure that those responsible for the well-being of the non-profit sector are aware of the vulnerabilities and risk of TF, as well as methods to mitigate and address this. The results of the TF NRA should be shared with those in the private sector who are subject to CFT and AML obligations, including NPOs and donors ([FATF, 2021a](#)).

8. Conclusion

The risk of TF abuse in NPOs can only be mitigated when adequate and proportionate measures are in place. Even though there is a global effort to protect NPOs, international standards are often not implemented as intended (nationally) and the RBA is not always performed adequately. SA authorities have begun the process of addressing the concerns raised in the 2021 FATF MER and have proposed amendments to the NPO Act. The authors have established that although many of these show promise and display a will to protect the sector, some amendments will have a dire impact on the sector. Authorities should consult NPOs when proposing new rules and legislation, allowing for input from those who will be affected by it. This will lead to informed changes to existing legislation and enhanced effectiveness thereof, rather than a rushed approach to mitigate the risk of grey listing. Although SA is at risk of grey listing, collaboration between different

Clause	Addition/amendment
9	Allows the NPO Directorate to liaise with other organs of state to function effectively and optimally
11 and 12	Requires NPOs to submit documents relating to their management, governance, administration, control structure, office bearers and everyday operations, ensuring that transparency is promoted
13	Includes more grounds for being disqualified as an office-bearer of an NPO, enabling directors to remove a person from the position of office-bearer if they fail to comply with the Act, or become a disqualified person
14	Includes more offences in relation to failing to comply with other sections in the current NPO Act, highlighting that accountability is an important factor in NPO legislation

Table 3.
Additions/
amendments to the
NPO Act

Source: Authors' representation

stakeholders in the sector can improve the low ratings received regarding Recommendation 8 and IO 10, which will, in turn, lower the odds of being grey-listed.

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