

Anti money laundering? Countering terrorism financing? FATF and its standards related to civil society

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TERMINOLOGY AND JARGON

- . NPO: Non-Profit Organisation
- . FATF: Financial Action Task Force
- . TF: Terrorist Financing
- . CFT: Countering the Financing of Terrorism
- . AML: Anti-Money Laundering
- . R8: Recommendation 8 (on NPOs)
- . IO.10: Immediate Outcome 10 (also NPOs)



COMMON TYPES OF ABUSE OF CIVIL SOCIETY / NPOs?

- Diversion of funds
- Affiliation with a terrorist entity (knowingly or unknowingly)
- Support to recruitment efforts
- False representation

“...a small number of organisations and individuals have taken advantage of the NPO sector..”





Examples of over-regulation in CT/CFT/AML:

- Introducing burdensome licencing and governance requirements
 - Barriers to operational activity - legal limitations on activities, governmental interference in internal affairs, vague grounds for dissolution, suspension or removal of association's board trustees indefinitely, under broad reasons
 - Wide discretion to deny registration based on broad grounds, including security and CT
- *Drafters of the act claimed it was intended “to eliminate militant and terror financing and ensure a terrorism-free country by 2021.”*
 - *Basis of regulation often hidden, but can establish clear connection with CT / CFT / AML / security reasons*
 - *In some cases, extra-legal harassment by security authorities*





Examples of over-regulation in CT/CFT/AML – cont:

- Branding of human rights defenders and activists as terrorists
 - Broad discretion to seize CSO assets without a prior court order under terrorism label
 - Barriers impeding ability of civil society to access funding
 - Government authority and discretion to ban grants and donations from outside country or from foreign entities inside country
- *New anti-terror legislation with proclaimed aim to "dry up sources of funding for terrorism".*
 - *CSOs that seek funding from external sources must register, additionally, with the NGO Affairs Bureau which operates within the Government.*



Are current approaches to addressing ML/TF effective?

- Broad restrictions not effective either for government or for civil society.
- Legal restrictions on CSOs have profound effects on crippling the capacities, constraining resources, lowering legitimacy and separating CSOs from local constituencies, but failed to achieve the outcomes of enhanced security.
- Restrictions create more TF/ML risks!!



*Civil society restrictions do not make a country safe from terrorist attacks - research has shown there is **no evidence** that legal restrictions on civil society reduce the number of terrorist attacks within a country.*
<https://www.csis.org/blogs/international-consortium-closing-civic-space/liberty-or-security-do-civil-society-restrictions>



FINANCIAL ACTION TASK FORCE



- The global standard setter for fighting money laundering and countering financing of terrorism
- Over 200 countries have committed to implement the standards
- Different regional bodies implement standards –
**Eastern and Southern Africa
Anti-Money Laundering Group
-ESAAMLG-**



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FATF Role

- **Standard setting:**
 - Technical Compliance (40 Standards known as ‘recommendations’)-
Recommendation 8 on Nonprofit Organizations
 - Effectiveness (11 Standards known as ‘Immediate Outcomes’)
- **Assessing compliance** - mutual evaluation process (report) and follow up (for member countries)
- **Training** modules development
- Engagement with private sector and **civil society** – formalized
- **Black and gray lists** – countries that have “strategic deficiencies” in their regimes to counter money-laundering or terrorist financing.





ESAAAMLG Role



- **Assessing compliance** - mutual evaluation process (report) and follow up
- **Trainings and education** for member states
- **Regional risk assessments** – WB + Turkey underway
- **Outreach** to civil society? Not formalized
- **All based on FATF rules and standards**



1 Angola	7 Zambia	13 Uganda
2 Namibia	8 Zimbabwe	14 Kenya
3 South Africa	9 Mozambique	15 Ethiopia
4 Botswana	10 Malawi	16 Comoros
5 Lesotho	11 Tanzania	17 Seychelles
6 Swaziland	12 Rwanda	18 Mauritius



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FATF NPO DEFINITION

- 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”.



Recommendation 8

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



FATF principles

- **Risk-based approach:** “identify, assess, and understand the money laundering and terrorist financing risks ...ensure risks are mitigated effectively.” (FATF Recommendation 1)
- **Effectiveness:** 10.2. To what extent, without disrupting legitimate NPO activities, has the country implemented a targeted approach, conducted outreach, and exercised oversight in dealing with NPOs that are at risk from the threat of terrorist abuse? (Immediate Outcome 10)



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Source: Joint Committee of the European Supervisory Authorities (2013)

How is risk assessed ?

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

- Identify the nature of threats posed by terrorist organisations to **NPOs deemed to be at risk** as well as how terrorist actors abuse those NPOs.

- Review the adequacy of measures, including laws and regulations, which relate to the **subset of the NPO sector that may be abused for TF**

Figure 4.1. Recommendation 8 Figure

Figure 4.1 provides an example of a jurisdiction's NPO sector. The volume within the FATF definition will vary between countries.



STEPS

1

Conduct a risk assessment of the NPO sector that identifies risk of terrorist abuse

2

Review existing laws, regulations and self-regulatory programmes to see if they address identified risks

3

Where gaps are found, develop risk mitigation measures that are proportionate to risk and do not restrict the operation of legitimate NPOs

4

Create a result that is consistent with obligations under international human rights and humanitarian law

Conduct outreach to NPOs throughout the process



What FATF says on engagement with civil society (NPOs)?

- **FATF Private Sector Consultative Meeting (PCSF)**
 - *Vienna, 2017, 2018, 2019*
- **FATF Conclusions included:**
 - Consultation and inclusiveness enriches all assessments, evaluations and follow ups
 - Governments need to do lot more engagement with smaller NPOs: not just engage with usual counterparts
 - Government should coordinate outreach to NPOs at the national level, so as not to overburden NPOs



FATF principles - summary

- **No “one size fits all”**: not an effective way to combat terrorist abuse of NPOs and is more likely to disrupt or discourage legitimate charitable activities (*FATF Best practices paper*)
- **Respect fundamental freedoms**: consistent with countries’ obligations to respect freedom of association, assembly, expression, religion or belief, and international humanitarian law (*FATF Best Practices Paper, FATF R8 Interpretative Note*)
- **Outreach**: Countries should work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse (*FATF Methodology, 8.2(c)*)



FATF standards – It's not (at) all about the laws

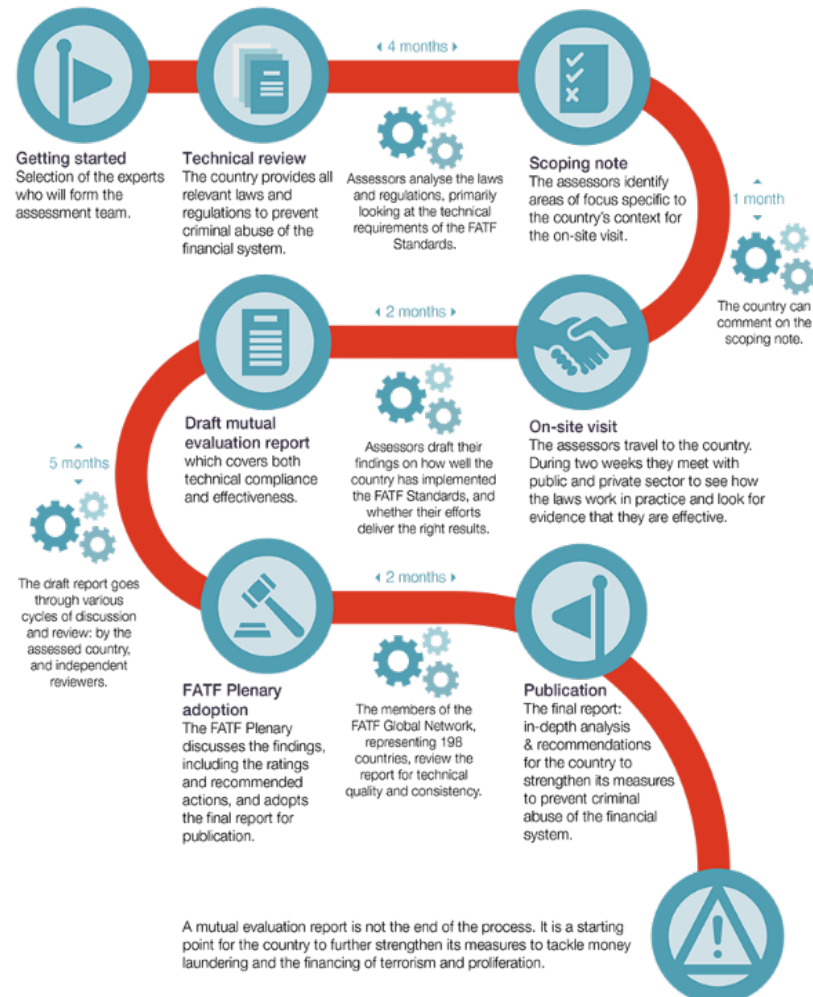
- There is no “magic bullet” regulation or legislation!
- Every country context requires unique, nuanced solutions based on **assessed risks and NPO sector**
- Most measures can be non-legal: **outreach, awareness, education, training, targeted supervision and dialogue, sector self-regulation....**



Evaluation process unpacked:

- Evaluation calendar
- Evaluation team and visit
- Conclusions from the visit
- Mutual evaluation report
- Follow up

The Mutual Evaluation Process

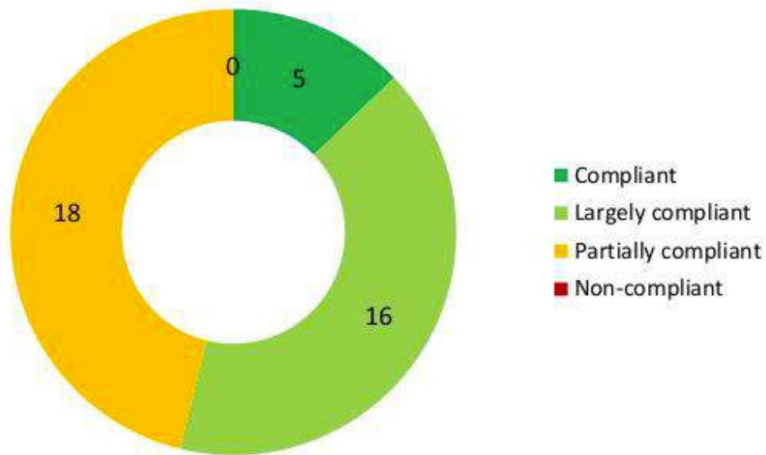


<https://www.fatf-gafi.org/faq/mutualevaluations/#d.en.448461>

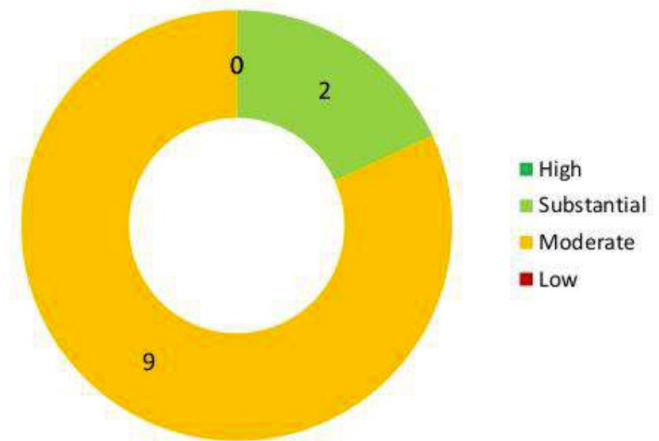
End result?

- **Mutual Evaluation Report (MER)**

- Drafting, reviewing
- Discussion at one of the FATF sessions
- Approval and Publication
- Follow-up
- Countries are required to address the shortcomings identified in the report.



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What meaningful engagement of NPO sector means?

1. Country risk assessments

- National / NPO risk assessment – involve NPOs
- Targeted approach / measures – discuss with NPOs
- Concerns of sectoral risks – discuss with NPOs

2. Country evaluations by FATF or Moneyval

- NPO perception of risk – discuss with evaluators
- Effectiveness of current measures – discuss with evaluators

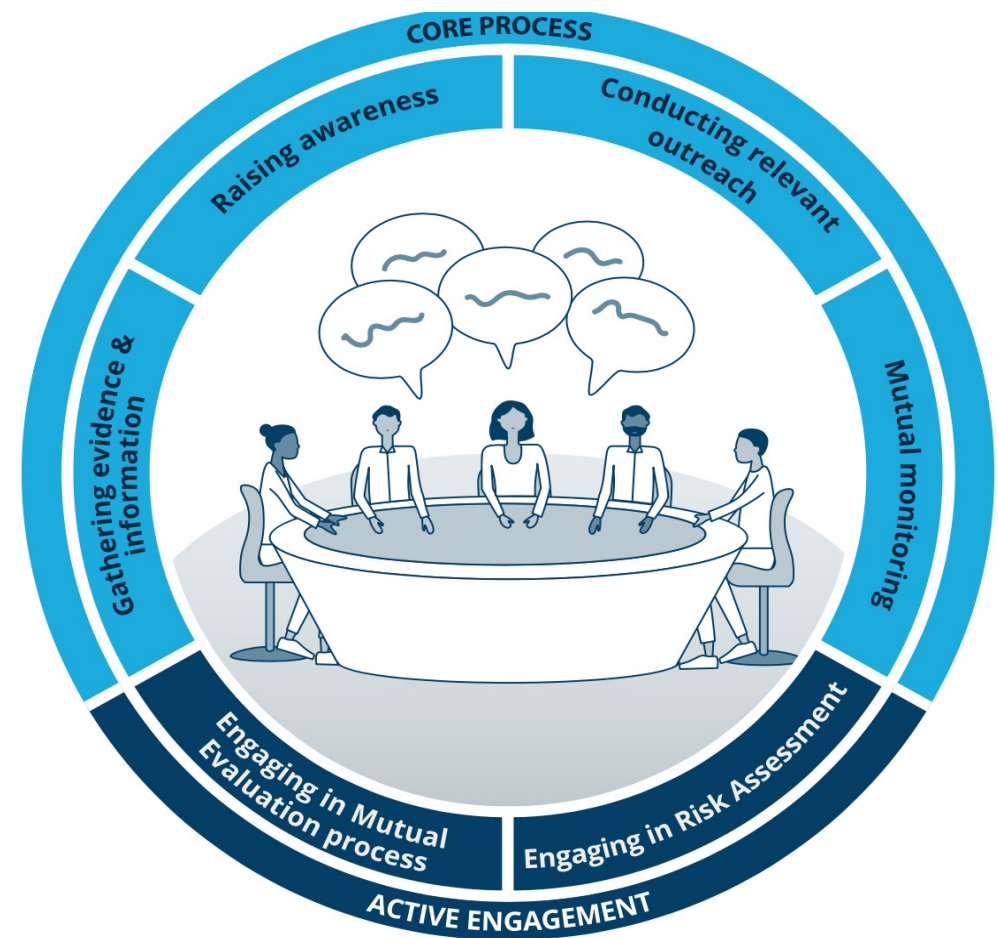
3. Follow up after evaluations

- Recommendations from reports – include NPOs
- “Follow up” reports – discuss with NPOs



Engagement Options

- Engage with authorities on upcoming risk assessment, evaluation and follow up
- Form coalition, inclusive of diverse actors
- Get umbrella organisations to address issue and advocate
- Engage with institutions in-charge of AML/CFT policies
- Try open dialogue about civil society sector concerns



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Good practice examples

- **North Macedonia, Tunisia**
collaborative risk assessment with civil society
- **Nigeria** – continuous dialogue with civil society in preparation for the risk assessment and 2022 FATF evaluation
- **Bulgaria, Kenya** – civil society own risk assessment analysis as complementary to official findings in mitigating TF risks



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- **Expert Hub on AML/CFT**





Push back Options

- **Push back restrictions** not based on risk assessment / not targeted / not proportionate
- Make the case for **revision or repeal of legislation** which is NOT line with the risk assessment and risk-based, targeted approach
- **Alert** FATF / regional body of CSO concerns
- Keep tabs of and **engage in follow up** procedure to check what new measures and regulations the government is putting in place to comply with FATF's Recommendations

EXAMPLE:

- Nigeria 2021 mutual evaluations report by FATF regional body (GIABA) clearly identifies **over-regulation of civil society issues** and recommends addressing those.
- *“Nigeria should no longer classify all NPOs as DNFBPs as this designation is inconsistent with the FATF standards, unsupported by the risk-based approach and imposes undue burdens on legitimate NPO activity.”*
- <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GIABA-Mutual%20Evaluation%20Report%20of%20the%20Federal%20Republic%20of%20Nigeria.pdf>



FATF ENGAGEMENT ENTRY POINT



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Mutual Evaluations

Q: How can NPOs and civil society organisations provide input into FATF Mutual Evaluations?

A: To assist assessment teams in upcoming mutual evaluations, the FATF compiles input from non-profit organisations (NPOs) and other civil society organisations on money laundering and terrorist financing risk and context.

For NPOs—as defined by the FATF—this could include information related to the implementation of risk-based measures to protect the sector from potential terrorist financing abuse. Similarly, input could include experiences of the application of the risk-based measures set out in Recommendation 8.

In order for assessment teams to consider input for upcoming assessments, please provide your input on a jurisdiction to contact@fatf-gafi.org **no less than two months prior to the indicated onsite date**. Please refer to the FATF mutual evaluation calendar for upcoming assessments and onsite dates.

Please note that any information provided to the FATF Secretariat will be shared with the assessment team, the assessed country, and external reviewers and the source of information will be identified. As assessors have huge volumes of material to review, please provide information in a succinct manner and in a format that mirrors the FATF Methodology. There is no mechanism under our FATF Procedures to provide feedback about how, or if, information received has been taken into account.

FATF UNINTENDED CONSEQUENCES FOR NPO SECTOR

The Interpretive Note specifically states that “measures to protect NPOs from potential terrorist financing abuse should be targeted and in line with the risk-based approach. It is also important for such measures to be **implemented in a manner which respects countries’ obligations under the Charter of the United Nations and international human rights law.**”

However there continue to be **countries that incorrectly implement the Standards and justify restrictive legal measures to NPOs in the name of “FATF compliance”**, both unintentionally and, in some cases, intentionally.



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FATF



High-Level Synopsis of the Stocktake of the
Unintended Consequences of the FATF Standards

<https://www.fatf-gafi.org/media/fatf/documents/Unintended-Consequences.pdf>



Briefer on understanding FATF standards and responding to their misuse in Africa



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BRIEFER

Understanding and Responding to
Government Over-Regulation
based on Money Laundering and
Terrorist Financing Restrictions¹

Briefer -

<https://ecnl.org/sites/default/files/2021-10/NPO%20ML%20TF%20Restrictions%20and%20Responses%20Briefer%20Africa.pdf>



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Search...

Does this sound familiar to you as a Non-Profit Organization (NPO)?



Perceived as risky for terrorism financing



Bank transfers blocked or delayed



Day-to-day operations hampered



Unable to register with ease

Global NPO Coalition on FATF (Financial Action Task Force)

The Global NPO Coalition aims to ensure that civil society has a voice in the debate on anti-money laundering and combating terrorism financing.

Our vision is to have a free and open operating space for civil society.

About Us

Explainer Slides

Global NPO Coalition on FATF



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- www.fatfplatform.org
- Engage with FATF at a global level
- 4 PSCF representatives
- Raise awareness, input FATF policies and disseminate best practices

THANK YOU!

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