

ALL YOU EVER WANTED TO KNOW ABOUT THE FATF BUT WERE TOO AFRAID TO ASK

CONTEXT

The Financial Action Task Force (FATF) is both a policy-making and enforcement body initiated by the Group of 7, focusing on combating money laundering and countering the financing of terrorism.¹ It has adopted 40 recommendations² – one of which, Recommendation 8, pertains to Non Profit Organisations (NPOs) – and it evaluates country compliance with these recommendations. It has grown to be a particularly relevant and strong body as it rates countries based on these recommendations, thus determining whether the country is a credible/good place for doing business.³ Governments wish to score well in these evaluations since reputational risk is at stake. Over 180 countries have committed themselves to implementing its recommendations.

Recommendation 8 sets out a broad framework for regulation of the non profit sector to prevent abuse by terrorists. The premise is that NPOs are seen as being particularly vulnerable to abuse for the financing of terrorism in a number of ways that FATF Recommendation 8 sets out: e.g., by being a conduit for funds, by obscuring diversion of funds and by being a front for terrorist organisations.

This broad brush tarring of the entire sector is contrary to the evidence base and has been criticised by the NPO sector.⁴ In addition, Recommendation 8 has had numerous unintended consequences since several governments have tightened rules on the NPO sector beyond what is stated under Recommendation 8.⁵ Cases of overregulation include difficulties faced in accessing and distributing financial resources, cumbersome registering and licensing laws, and increased state surveillance and regulation of the sector without any targeted and/or risk based approach. It has also given rise to fears of ‘policy laundering’,⁶ i.e., of states introducing surveillance/privacy-invasive measures to suit their agendas under the guise of implementing FATF standards and of infringements on humanitarian aid and basic human rights, namely the rights to freedom of expression and association, and the right to privacy.

As a result, the application of Recommendation 8 in many cases has meant the shrinking of the financial, operational and political space of NPOs in particular and of civil society in general. Additionally, the parts of civil society most affected are likely to be organisations working in high-risk and high-need areas on development, conflict transformation and human rights. This, ironically, is counterproductive to mitigating terrorist threats. One of the potential factors contributing to a greater risk of terrorist abuse is these very restrictive measures on NPOs, which force NPOs to potentially go underground or use less formal channels to continue their work. For more information on the FATF, see the coalition website on FATF/NPO matters:

<http://fatfplatform.org>

OUR WORK AND ACHIEVEMENTS

A global NPO coalition, spearheaded by Human Security Collective among others,⁷ seeks to ensure that the FATF's countering-the-financing-of-terrorism measures do not disrupt legitimate NPO activities and that there is sustained dialogue between the FATF and the NPO sector. The NPO coalition has pursued the following strategy in response to FATF's policies: engaging in a constructive dialogue with the FATF Secretariat and FATF member countries to ensure that the unintended consequences of its policies at the national level can be mitigated – all this without endorsing FATF Recommendation 8. Our achievements so far include:

- **Acknowledgement** by the FATF Secretariat, the FATF President and many FATF members **that the FATF recommendations have had unintended and damaging consequences** on the NPO sector and its legitimate and much-needed activities, which need to now be mitigated.
- A significant **positive change this past year in the FATF discourse on NPOs** and the concern around shrinking space for civil society.
- A **good and constructive working relationship** with the FATF Secretariat, with the FATF agreeing at its June 2015 plenary meeting in Australia to enhance its engagement with NPOs by **holding annual meetings** in addition to ad hoc exchanges on technical matters. The terms of reference for this engagement still need to be worked out in order for it to be effective and meaningful.
- **NPO input being integrated in the revised Best Practices Paper (BPP) related to Recommendation 8** which is an important achievement, because the BPP sets guidelines for governments on how to implement this recommendation. The revised BPP is now considerate of NPO needs, besides emphasising the importance of respecting fundamental rights of individuals and NPOs, and of avoiding overregulation, amongst others.

We try to engage as many NPOs in the dialogue with the FATF, though this can be challenging as NPOs are often not aware of the FATF, let alone its policies and the tremendous impact these can have on their functioning. It is also difficult to get NPOs interested since the topic appears (and indeed is) rather technical and abstract. Our web platform www.fatfplatform.org explains the ins and outs of all things FATF-related in more detail and publishes up-to-date information on the topic that may be useful for NPOs.

It is very important that as wide a range of NPOs as possible engages in the FATF discourse both at the global FATF policy level as well as at the national implementation level. NPO input can only be representative/meaningful if more parts and regions of the world are included in the debate.

HOW YOU CAN CONTRIBUTE:

As an NPO:

- Help us influence FATF policy: understand the FATF, join our coalition, review documents open for consultation, submit comments;
- Engage at the local/national level in your country's law reforms to ensure they reflect your needs; learn about what's happening, raise awareness among other NPOs;
- Advocate to be engaged in and actively contribute to the FATF evaluation processes;
- Monitor and collect information as to how FATF-inspired laws and policies impinge on civic space.

As a government:

- Reach out to NPOs to include them in dialogue on issues arising from the FATF framework, consult them in development of FATF-related policies and laws; ensure that measures taken are proportionate and do not lead to the overregulation of the sector;
- Include a broad group of NPOs in the national FATF evaluation process;
- Undertake a risk assessment and, in parallel, look at whether existing laws and self-regulation practices are enough to address the identified risk;
- Share good practices to encourage progressive implementation of the FATF recommendations.

References:

1. <http://www.fatf-gafi.org/pages/aboutus/>
2. FATF (2013). *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations*. Paris: FATF/OECD. http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf (accessed 1 Sept 2015)
3. <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/>
4. FATF (2014). *Risk of Terrorist Abuse in Non-Profit Organisations*. Typologies Report. Paris: FATF/OECD. <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf> (accessed 1 Sept 2015)
The NPO response to the Typologies Report: <http://fatfplatform.org/typology-review/>
5. http://fatfplatform.org/wp-content/uploads/2015/07/Catalogue-of-government-overregulation-July-2015_final-edited.pdf
6. Hayes, Ben (2012). *Counter-terrorism, 'Policy Laundering' and the FATF: Legalising Surveillance, Regulating Civil Society*. Amsterdam/London: Transnational Institute and Statewatch.
7. The activities are led by the Charity & Security Network (CSN) in the US and, in Europe, the European Center for Not for Profit Law (ECNL), the European Foundation Centre (EFC) and the Human Security Collective (HSC).