

HOW CAN CIVIL SOCIETY EFFECTIVELY ENGAGE IN COUNTER-TERRORISM PROCESSES?

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INTRODUCTION

Over 190 jurisdictions worldwide abide by 40 Recommendation on anti-money laundering and countering financing of terrorism (AML/CFT) set and assessed by the Financial Action Task Force (FATF).¹ One of them, Recommendation 8, covers civil society, or non-profit organizations (NPO) in FATF terminology.

FATF definition of non profit organizations: 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”.

Compliance with the recommendations is periodically evaluated by FATF or one of FATF-style regional bodies (FSRB) that effectively cover almost all countries in the world.²

This mutual evaluation processes produce ratings that have real consequences, affecting country’s bond ratings, access to financial markets, trade, and investment. In protection of these, many governments have proven willing to compromise human rights and civic freedoms. Since 2014, numerous countries have invoked AML/CFT standards as justification for constraints on human rights, including the fundamental freedoms of association, assembly, and expression (civic freedoms). Governments have limited access to foreign funding, impeded domestic fundraising, imposed burdensome reporting requirements, and otherwise over-regulated the sector in violation of international human rights law.

For the last 4 years, a global coalition of NPOs³ has successfully engaged with FATF, culminating in a substantial revision of Recommendation 8 in 2016.⁴ FATF acknowledged that burdensome restrictions were imposed on NPOs without meaningfully contributing to AML/CFT goals and that not all NPOs are at risk. **FATF now requires countries to undertake risk assessment process to demonstrate whether and which NPOs are at risk of terrorist financing abuse.** Based on those findings, countries should adopt measures that respond to the risk by targeting only those NPOs at risk and in a proportionate level to the risk.

¹ More about the FATF: <http://www.fatf-gafi.org/about/>

² Also referred to as FATF Associate Members: <http://www.fatf-gafi.org/about/membersandobservers/>

³ Find out more: www.fatfplatform.org

⁴ Timeline of advocacy efforts and successes: <http://ecnl.org/a-string-of-successes-in-changing-global-counter-terrorism-policies-that-impact-civic-space/>

This is a highly significant policy shift, and a vital step in preventing restrictions from misapplication of AML/CFT rules. However, this global policy shift is not in itself sufficient. There is evidence that **both evaluators and governments are failing to understand and adapt to the new rules, with negative impacts on NPO work and rights.** FATF evaluations still include sometimes damaging language for the sector (e.g., calls for enhanced oversight and control of the entire sector, stricter rules around fundraising by NPOs, or stricter criteria for registering NPOs). Individual governments are still imposing broad-brushed restrictions using AML/CFT as justification.

The challenge is at the regional and national levels. FATF compliance is a highly complex and burdensome process. Few NPOs are aware of the importance of FATF, fewer still of how to respond to it or engage in the evaluation process. Whilst FATF provides some guidance on aspects of Recommendation 8, it does not detail how countries should undertake risk assessments or ‘engage’ with NPOs in evaluations.

In addition, little is known about how can NPOs continue to be engaged after the evaluation process is official over and the FATF adopts the country evaluation report. This is important because the government frequently needs to undertake measures to comply with the findings of the evaluation report and show measures it has undertaken to respond to the report findings. **It is also at this stage of the process, that countries want to typically lay additional regulation on the NPO sector,** and so they inadvertently create restrictive measures. Sometimes they use the AML/CFT as an excuse to purposefully restrict civic space. NPOs have a role to engage and mitigate existing or potential restrictions. Yet the FATF post evaluation (follow up) process is still not fully understood.

***FATF website:** After adoption, the countries are required to address the shortcomings identified in the report. All countries are subject to post-assessment monitoring. This can include anything from regular reporting of improvements for countries that are already largely compliant and demonstratively committed to addressing the remaining few shortcomings, to issuing a public warning against a country that makes insufficient progress to address key deficiencies.*

To protect civic freedoms in practice, this paper builds on the global success to ensure that its impact is applied nationally. It can be used by civil society to learn how to engage in the FATF processes with specific focus on **what happens after the country evaluation is final and country needs to implement FATF recommendations.**

EVALUATION PROCESS IN A NUTSHELL

Countries are evaluated periodically on implementation of all 40 Recommendations by FATF or FATF-Style Regional Bodies. Ratings for FATF Recommendations include: **Compliant, Largely Compliant, Partially Compliant, and Non-Compliant.**

Lower compliance on recommendations can lead to international political pressure to change laws, increased credit risk ratings for the country, result in restrictions on international banking and sanctions (in extreme cases).⁵ Evaluations are therefore considered to be a very effective tool to ensure FATF policy implementation.

In 2014, FATF introduced a new methodology for evaluations⁶, which includes an effectiveness component that reviews the implementation of standards beyond mere technical compliance (only laws and regulation). In addition to checking that laws and regulations meet FATF standards, evaluators focus on the impact of any existing measures for AML/CFT, asking if they are actually effective on the ground.⁷

The scope of the evaluations involves two inter-related components:

- Technical compliance component will assess whether the necessary laws, regulations or other required measures are in force and effect, and whether the supporting AML/CFT institutional framework is in place.
- Effectiveness component will assess whether the AML/CFT systems are working, and the extent to which the country is achieving the defined set of outcomes.

The entire evaluation process typically lasts over a year and consists of several steps, that can roughly be divided into three phases:⁸

- (1) preparations for the evaluator's visit to the country (onsite-visit), during which the evaluation team is being formed, preparatory materials shared and technical compliance check of laws and regulations begins (desktop review);
- (2) Onsite visit of evaluator's team to the country, during which the evaluators meet and discuss effectiveness of AML/CFT system, with government officials, institutions and different sector representatives, including NPOs;

⁵ FATF high risk jurisdictions: [http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/?hf=10&b=0&s=desc(fatf_releasedate))

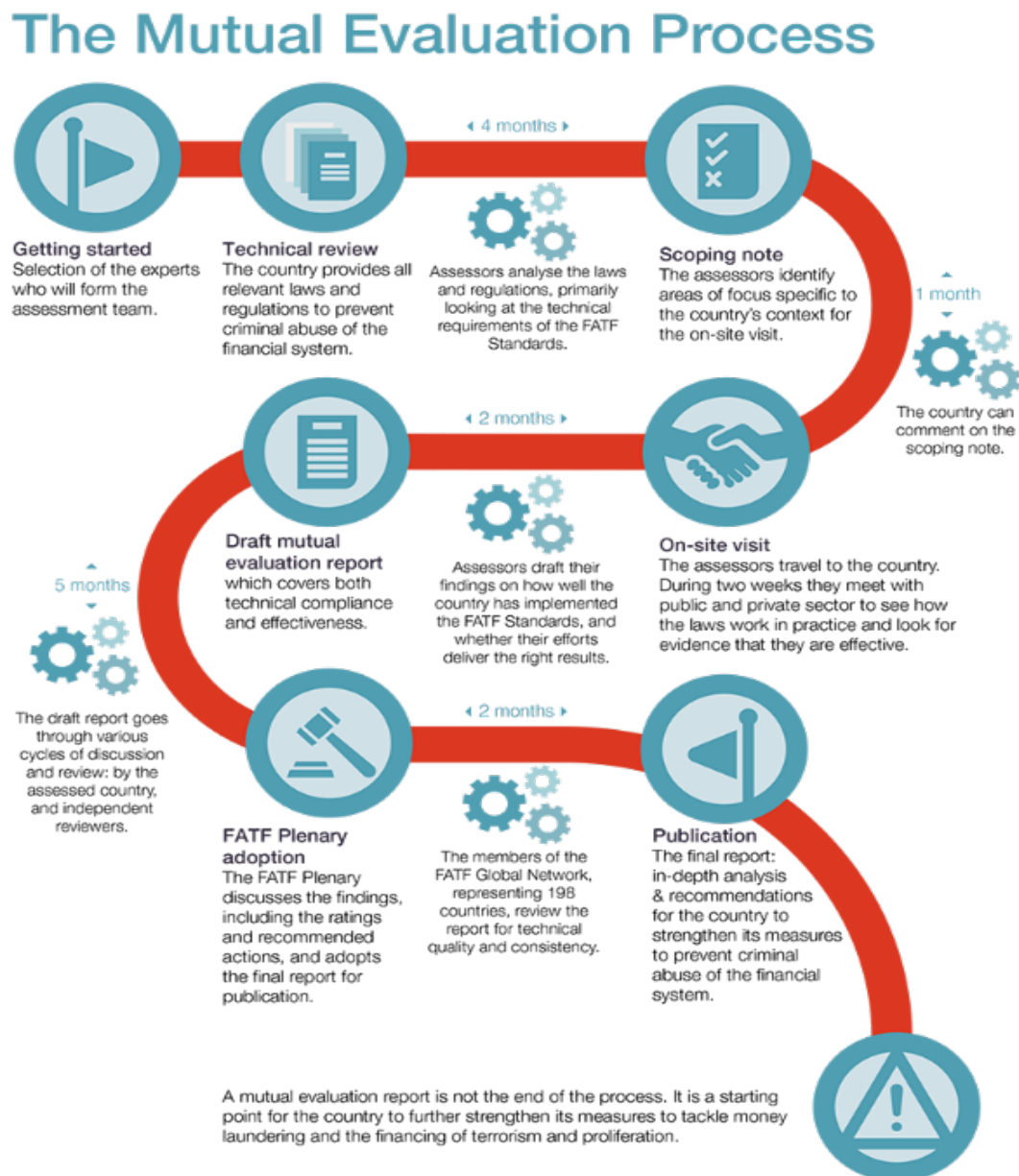
⁶ FATF evaluation methodology: <http://www.fatf-gafi.org/documents/documents/4th-round-procedures.html>

⁷ This methodology is used by the FATF, the FATF-Style Regional Bodies (FSRBs) and other assessment bodies such as the International Monetary Fund and the World Bank.

⁸ Video explaining the evaluation process: <https://www.youtube.com/watch?v=lrA9k3uZGRk>

- (3) Post onsite visit, during which evaluators prepare mutual evaluation report (MER), discuss and refine inputs and comments from the country and the FATF Secretariat. Finally, report is being adopted and published.

Detailed steps of the evaluation process can be found in the Annex 1.



Source: FATF website, evaluation procedures

After adopting and publishing of a MER, the country could be placed in either regular or enhanced follow-up procedure, depending on its overall rating and compliance with the FATF standards. Follow up is intended to continuously incite and assess the progress country is making in implementing the AML/CFT standards. Therefore, the evaluation cycle in practice never stops.

Regarding confidentiality of the process, typically, all documents, comments and information produced during the evaluation process, other than the published report, are treated as confidential. This makes it very difficult, if not impossible, for third parties (such as NPO sector) to have a formal, meaningful input in the process.

There is a prominent role of the FATF/FSRB Secretariat during the process:

- Supports the assessment team and the assessed country;
- Focuses on quality and consistency;
- Ensures compliance with process and procedures;
- Assists assessors and assessed country in the interpretation of the standards, methodology and process in line with past Plenary decisions;
- Ensures that assessors and assessed countries have access to relevant documentation; Project-leads the process and other tasks as indicated in these procedures.

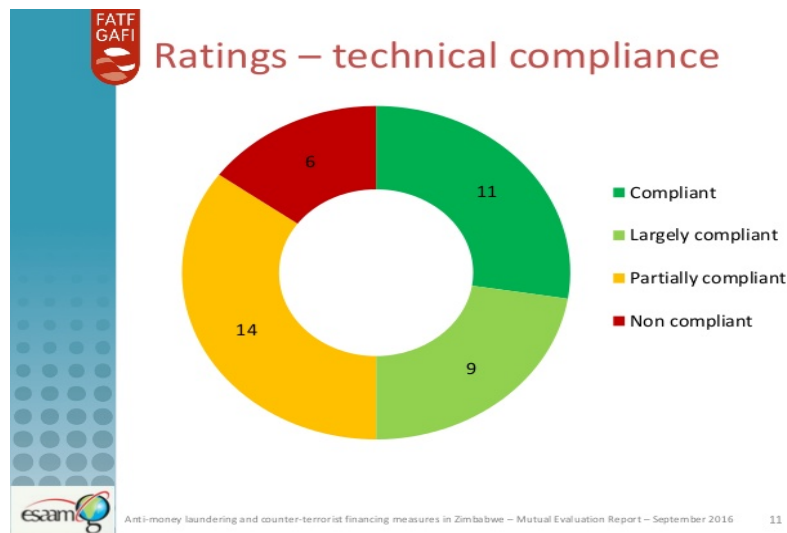
Given the overarching role of the Secretariat and the confidentiality of the entire process, the logical point for engagement during the process for civil society should be the FATF/FSRB Secretariat.

DEMYSTIFYING MER STRUCTURE- EXPLANATION OF FINDINGS

As mutual country evaluations are an effective method of implementing the FATF standards, it is important that evaluators understand not only the standards themselves but also the context of the sector they are evaluation. **Evaluation teams that assess the country compliance with FATF standards in general do not include a specialist or expert on civil society issues**, rather financial, criminal law and/or judicial background specialists. **Moreover, evaluators are not specifically trained on Recommendation 8 or issues that might affect civil society**, or on the effectiveness of measures under Recommendation 8, as they need to cover 40 recommendations in total, and Recommendation 8 is deemed as “less important part of FATF standards”. However, it does have lasting impact.

At the end of the evaluation process, the results and findings are included in the MER, which roughly included two parts: findings on the effectiveness and the implementation of the immediate outcomes, and findings on technical compliance. MER also includes rating on all individual Immediate Outcomes and Recommendations.⁹

⁹ FATF table on country ratings <http://www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.pdf>



Source: FATF website

There is no unified format for MER, which makes it sometimes difficult to navigate the sections. However, based on the latest published examples especially from the FATF MERs, there are a few commonalities that can help find specific NPO information.¹⁰

Typically, MERs include the Executive Summary, where it is possible to check for priority actions listed for that country and find out if any of those mention NPO sector. **MER usually starts** with explaining the country's background on ML/TF risks and the overall contexts. It then moves into national policy and regulatory/legal/operational framework for AML/CFT, preventive measures, supervision and cooperation. Throughout these first several sections, the MER is evaluating the level of effectiveness in implementing the FATF standards.

1. **Effectiveness** is determined based on the 11 Immediate Outcomes (IO) for effectiveness check. There are 11 IOs which can be rated as Low Level, Medium Level, Substantial Level and High Level of Effectiveness.¹¹ The one relating to NPOs is IO 10, on TF Preventive Measures and Financial Sanctions.

Immediate Outcomes 10: Terrorists, terrorist organizations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector.

¹⁰ See for example FATF MER on Mexico, 2017: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Mexico-2018.pdf>

¹¹ Immediate Outcomes: <http://www.fatf-gafi.org/publications/mutualevaluations/documents/effectiveness.html>

IO 10 is reflected in the MER usually within the section on **Terrorism Financing** and it includes, among other issues, NPOs - for example, Danish MER places NPO information in the subsection named “Targeted approach, outreach and oversight of at-risk non-profit organizations”.¹² Mexican MER places NPO information in the Chapter 4 under Terrorism Financing and Terrorism Proliferation.

What to look for within this subsection on IO 10 and NPOs:

(1) Check findings on any risk assessment conducted on NPOs, either as a part of national risk assessment (NRA) exercise or as a stand-alone process. Find out what were the conclusions on at risk NPOs, if any. How do evaluators assess the quality of existing risk assessment – was it enough to determine which subset of NPOs is actually at risk from terrorist financing? This will tell you if further action on a more thorough risk assessment will be needed in the follow up procedure.

(2) Check findings whether the country reviewed the adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector that may be abused for terrorism financing support in order to be able to take proportionate and effective actions to address the risks identified. This is separate, but dependent on risk assessment and can influence further legislative or other country measures.

(3) Check findings on outreach towards the NPO sector conducted by the institutions. Was it enough, what was actually done, what needs to be done more. The MER will usually suggest if the governments need to step up the outreach to NPOs and this is a useful entry point in the follow up procedure.

(4) Check findings on targeted approach and measures towards protecting NPOs from terrorist financing abuse, as well as on institutional capacity to oversee NPOs – are these regarded as proportionate, are these effective, what is missing with regards to information, action, regulation, etc. This is a good indication on potential legislative measures that will be required in the follow up period

In the end of this section, the MER checks consistency of existing government measures with the identified risk profiles of different sectors, including the NPOs, and provides for conclusions on how effective are existing measures – namely, what is the level of effectiveness for the IO 10.

¹² Denmark MER available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Denmark-2017.pdf>

2. **Information on Recommendation 8 and NPOs** is typically found in the section on Technical Compliance with subtitle such as: Recommendation 8 and Non Profit Organizations. It includes evaluation and weighing on criteria based on the Recommendation 8 and its Interpretative Note.¹³

What to look for within this subsection on Recommendation 8:

(1) Similar to effectiveness section on IO10, there might be additional findings on any risk assessment conducted on NPOs, either as a part of national risk assessment (NRA) exercise or as a stand-alone process. Find out what were the conclusions on at risk NPOs, if any. How do evaluators assess the quality of existing risk assessment – was it enough to determine which subset of NPOs is actually at risk from terrorist financing? This will tell you if further action on a more thorough risk assessment will be needed in the follow up procedure.

(2) Similar to effectiveness section on IO10, there could be some findings regarding review of adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector that may be abused for terrorism financing support in order to be able to take proportionate and effective actions to address the risks identified. This is separate, but dependent on risk assessment and can influence further legislative or other country measures.

(3) Similar to effectiveness section on IO10, there might be additional findings on outreach towards the NPO sector conducted by the institutions. Was it enough, what was actually done, what needs to be done more. The MER will usually suggest if the governments need to step up the outreach to NPOs and this is a useful entry point in the follow up procedure.

(4) Check findings on regulatory framework for NPOs, especially for registration or licensing of NPOs, maintaining information, oversight, financial and accounting provisions and standards, record keeping, fundraising, etc. In case some of it was found not comprehensive enough based on Recommendation 8 standards, it is a good indication on potential legislative measures that will be required in the follow up period.

¹³ Recommendation 8 and its Interpretative Note: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

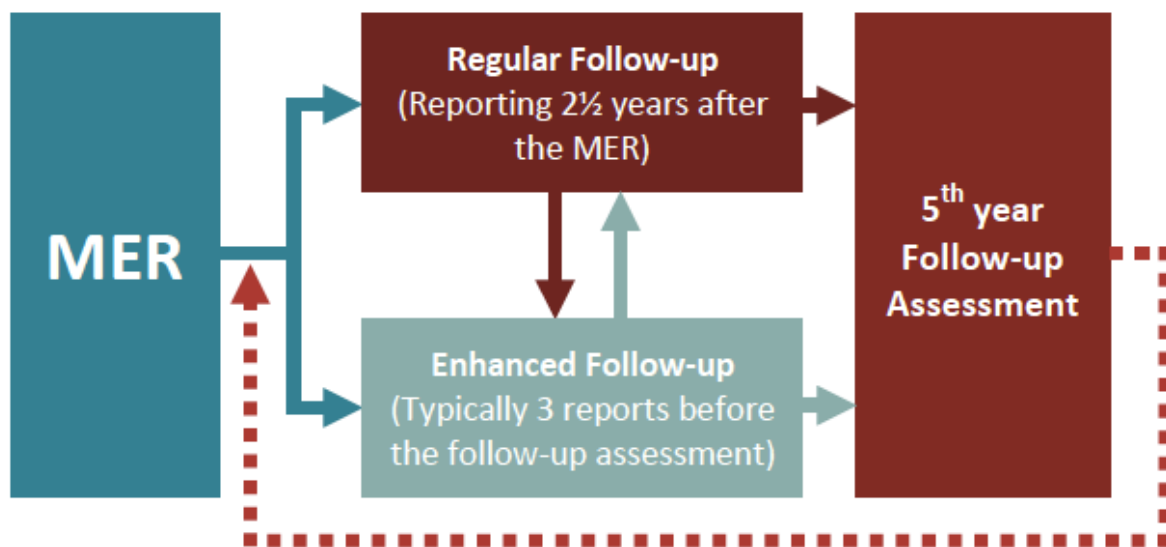
Following that is the **Weighing and Conclusions part**, where the **MER summarizes main findings** from this section and gives a **final rating on Recommendation 8**. Recommendations are rated Compliant, Largely Compliant, Partially Compliant, Non-Compliant.

- 3. **Specific recommendations from evaluators** to the country on what should be done to improve the implementation of the Recommendation 8 and FATF standards are included in some MERs, but not consistently. These can be helpful to civil society to guide them on what the government will likely focus in their follow up activities. However, in some instances, these recommendations, if now worded with nuance, can be harmful to the NPO sector and incite governments to introduce additional blanket regulation or restrictions on civil society, under the guise of the FATF standards.

Example: Serbian MER rated Recommendation 8 as Partially compliant, conducted and published by MONEYVAL, included potentially harmful language that might incite regulative action leading into over-regulation of NPO sector. It stated that Serbia has not yet implemented a targeted approach, including achieving oversight of, and providing guidance to the NPO sector with respect to its potential vulnerability to terrorist abuse. It also says that “Despite the fact that NPOs and religious organizations have already been used as vehicle for FT in the region, no governmental review of the NPO sector and of its vulnerabilities has been carried out, nor any monitoring activity targeting the potential FT abuses or outreach activities to increase awareness and understanding of FT risk.” Moreover, the MER concluded that “Shortcomings can be found in the monitoring of the activities of NPOs and particularly those without legal responsibility.” The MER also calls for a formal review of the NPO sector to be undertaken with regard to its activities, size and vulnerabilities to FT and adequate awareness-raising programmes to be carried out. The MER also recommends that “Appropriate and proportionate action should be taken to ensure greater financial transparency and control over funds raised by NPOs which are at the greatest risk of being misused by terrorists; Clear procedures or mechanisms should be put in place to effectively monitor the legitimate functioning of civil associations or foundations as well as religious

FOLLOW UP PROCEDURES

All countries evaluated under the FATF standards take part in the follow up procedures, either regular or enhanced follow up. According to the FATF, this follow-up is intended to encourage implementation of the FATF Standards following the adoption of mutual evaluation reports and to strengthen accountability.



Source: FATF Procedures

- Regular Follow-up – a default mechanism to ensure a continuous and on-going system of monitoring. This is the minimum standard that will apply to all countries, as they report back to the FATF/FSRB Plenary after two-and-a-half year from the adoption of the country’s MER. All countries will undergo a follow-up evaluation after five years. This is intended to be a targeted but more comprehensive report on the countries’ progress, with the main focus being on areas in which there have been changes, high risk areas identified in the MER or subsequently, on the priority areas for action.
- Enhanced Follow-up – FATF/FSRB Plenary may decide that the country should be placed in enhanced follow-up, which would result in the country reporting back more frequently than for regular follow-up. Countries in enhanced follow-up would typically first report back four Plenary meetings after the adoption of the country’s MER, and subsequently report twice more after three / and six Plenary

meetings. The frequency of reporting may vary. Again, the country will undergo a follow-up evaluation after five years.

Conditions for Enhanced Follow-up

A country will be placed immediately into enhanced follow-up if any one of the following applies:

- it has 8 or more NC/PC ratings for technical compliance, or
- it is rated NC/PC on any one or more of R.3, 5, 10, 11 and 20, or
- it has a low or moderate level of effectiveness for 7 or more of the 11 effectiveness outcomes, or
- it has a low level of effectiveness for 4 or more of the 11 effectiveness outcomes.

Moving from regular to enhanced follow up and back

The FATF/FSRB Plenary could decide to place the country into enhanced follow-up at any stage, if a significant number of priority actions have not been adequately addressed on a timely basis. For example, if it comes to the Plenary's attention that a country has lowered its compliance with the FATF standards during the regular follow-up process: a country will be placed into enhanced follow-up if its level of technical compliance changed to a level that the Plenary considers as equivalent to NC/PC on any one or more of R.3, 5, 10, 11 and 20.

The country can also move to regular follow-up at any time during the enhanced follow-up process in the following situations, especially if the FATF/FSRB Plenary is satisfied that the country has made significant progress against the priority actions in its MER or has taken satisfactory action to address its deficiencies.

o Follow up reports

In all of its follow up reports, the country will be asked to submit information regarding the latest situation of technical compliance (which may be used to justify re-ratings) and effectiveness.

For regular follow-up reports, the report will focus on re-ratings for technical compliance and/or demonstrating progress in addressing the shortcomings in the MER.

For enhanced follow-up, the first follow-up report should at least contain an outline of the country's strategy for addressing the issues identified in their MER and. Subsequent reports should focus on re-ratings for technical compliance and/or demonstrating progress in addressing the shortcomings in the MER.

The follow-up evaluation is intended to provide a more comprehensive update on the country's AML/CFT regime. This takes place five years after the adoption of the country's

MER, and will occur regardless of whether the country has been in regular or enhanced follow-up. Within this follow up, the evaluation primarily targets the Immediate Outcomes (IOs) with Low or Moderate Effectiveness (LE/ME) in areas of higher risk.

Regular follow-up reports and follow-up assessment reports will be published. The FATF/FSRB decides on the frequency with which enhanced follow-up reports are published, but they will be published whenever there is a re-rating.

For follow-up reports, only the technical compliance analysis is published by the FATF, as effectiveness updates are not analysed and discussed by the FATF/FSRB Plenary until the follow-up evaluation. Analysis of effectiveness will be included in the publication of the follow-up evaluation.

FSRB EXPERIENCE WITH FOLLOW UP PROCEDURES

For both the FATF and FSRBs, the follow up procedure after the latest new rounds of country evaluations are still a work in progress¹⁴ in terms of developing a thorough process, amending the procedures, developing templates and guidelines for member countries and educating its members. Limited material is currently published and available on these processes. Nevertheless, a dynamic process of follow up development is ongoing, and here are a few highlights.

- **GIABA**¹⁵

The GIABA is engaging national authorities and other stakeholders in member States to create awareness and also building internal capacity to effectively manage the follow up process. There is also specific technical/professional staff dedicated to assist and monitor the follow up procedure in addressing country strategic AML/CFT deficiencies – namely, Legal, Law Enforcement and Financial Sector Officers. In addition, GIABA has a standard template for follow ups which is available to member States and will be used with some modifications in the 2nd round. The template is not published. Follow up reports, on the other hand, are published on GIABA websites.

GIABA is providing ongoing training sessions on mutual evaluation process and procedures during plenary meetings and other capacity building programmes with private sector participants in attendance. After the MERs are published, GIABA expects the countries to take practical steps and address deficiencies identified in their AML/CFT

¹⁴ Interview with FATF Secretariat

¹⁵ Interview with GIABA Secretariat

systems. According to GIABA, the follow up procedure is a good incentive for countries to act, as it provides sufficient time (enhanced follow up one year and regular follow up 2 years after adoption of MER) for countries to address priority actions, recommendations and deficiencies in their AML/CFT systems. Also, the possibility of a country being moved from enhanced follow up process to the regular follow up process where it has made significant progress on priority actions, as well as possibility of consequent re-ratings of recommendations, provide incentive for countries to actively try to improve their performances. Follow up activities focus on both technical compliance and effectiveness issues.

GIABA considers greater collaboration is still required between national authorities and NPOs to integrate them in the overall follow up reporting process. National authorities are expected to consult widely in providing follow up reports to GIABA. In particular, relevant national authorities are expected to collaborate with private sector stakeholders (including NPOs) in addressing the deficiencies relating to the sector, especially preventive measures, in order to improve overall compliance with the FATF standards and progress made by member States. Thus, though the private sector does not play a direct role in the follow up reporting process, it plays critical role in the progress made and reported by member states in their follow up process.

Engagement of the NPOs will enhance efforts by national authorities to address relevant deficiencies in their AML/CFT systems. This improves progress made by countries, and impacts positively in the follow up reporting process.

- **ESAAMLG¹⁶**

The ESAAMLG is currently revising its follow up procedure to align them with the latest FATF amendments¹⁷. In addition, the ESAAMLG adopted Guidelines to assist member countries in dealing with their follow-up process in September 2017.¹⁸ Further, the ESAAMLG developed a Follow-Up Process Template, to assist countries in preparing the follow up.¹⁹ To coordinate the developments, the ESAAMLG holds Task Force of Senior Officials Meetings twice a year and at each one of these meetings, member countries have the opportunity to raise issues relating to the follow-up process which they are not clear with.

¹⁶ Interview with ESAAMLG Secretariat

¹⁷ Additional amendments have been proposed to be discussed at the FATF Plenary session in November 2017.

¹⁸ The Guidelines should soon be published on the ESAAMLG website.

¹⁹ To be revised in line with the latest amendments after 2017.

The few countries that have been assessed by the ESAAMLG under the latest evaluation round so far are showing a great initiative to address the deficiencies that were identified by the assessors as set out in their MERs. Two of the countries are already requesting for re-ratings on some of the Recommendations where they did not do very well during their evaluation. There is also growing awareness in member countries on the need to assess the terrorist financing risks relating to the NPO sector and most of the countries are now including a detailed component of it in their national risk assessment. However, awareness of the NPOs themselves is still relatively low in most countries. Therefore, more work in terms of awareness raising still needs to be done as well as developing NPO user friendly policies. Most of the countries are still to conduct either a NRA or an NPO sectoral risk assessment to assess the risks with the sector.

The extent of engagement of the private sector has improved greatly, particularly for countries which have carried out their national risk assessment and those in the process of doing so. The NPO sector in the majority of cases as well as the authorities are still to understand their role in the AML/CFT framework. Engaging both the authorities and the NPOs through the follow up process will make them more aware of the vulnerabilities relating to the NPO sector and where they exist, how they can be mitigated. The regulatory authorities of NPOs through frequent engagement will be better able to monitor NPOs for possible terrorist financing abuse and apply adequate resources in terms of mitigating the risks where they are needed most instead of the one size fit all which is used by the authorities in most cases.

IMPACT OF MERS AND FOLLOW UP ON NATIONAL LEVEL

This paper analyses the impact of the MER and follow up process on the NPO sector at the national level can based on a) risk assessment process that determines NPOs at risk, and b) policy and legal framework for mitigating that risk.

1. Impact on risk assessment process

Based on the latest MERs from the FATF and FSRBs, a number of countries did not fully satisfy the requirement to undertake a comprehensive domestic review on the NPOs activities, size, and other relevant features of the NPO sector for the purpose of identifying the features and types of NPOs that are at risk of being misused for terrorist financing. Evaluators findings typically include the suggestions or direct recommendations for countries to conduct a (more thorough) risk assessment of the NPO sector and, after that,

review domestic policy and legal framework concerning NPO sector based on risks that were detected.

Therefore, the first step in the follow up procedure of the country with less than satisfactory NPO risk assessment should be to conduct it in a way to meet the FATF Recommendation 8 standards. This also prevents a country to adopt blanket, one-size-fits-all regulation for NPO sector, as the risk assessment is intended to show which types and parts of NPO sector are actually at risk, and should be targeted with proportionate measures. Depending on the Recommendation 8 rating and the overall ratings of other recommendations in the MER, countries will approach the prioritization of the actions in the follow up procedure differently.²⁰

- ***Example Uganda – conducting National Risk Assessment after the non-compliant rating of the Recommendation 8***

The Uganda MER²¹ stated that there was no assessment of the NPO’s vulnerability to terrorist financing, and no outreach undertaken to the NPO sector concerning terrorist financing activities. The report considered the vulnerability of Uganda to terrorist financing and the possibility of the NPO sector being abused as a conduit to channel funds to be used for terrorist activities. It recommended that the authorities make an effort to understand the extent of the NPO sector’s exposure to terrorist financing risk and take measures to mitigate the risks identified. Importantly, the MER also mentioned that the FATF does not recommend all NPOs are brought under the AML/CFT framework. Rather, it reminded government that the Recommendation 8 requires authorities to carry out an assessment which NPOs are at risk and apply a limited set of measures to protect the sector from abuse by terrorist financiers. It also warns that regulations and actions in this area should not harm the legitimate activities of such organizations.

In early 2016, Uganda embarked on a National Risk Assessment (NRA) of AML/CFT risk using the World Bank’s NRA tool and methodology, with technical assistance from the International Centre for Asset Recovery (ICAR).²² As part of the NRA process, representatives from the government, from supervisory authorities and the private sector met to discuss the NRA (not clear whether NPOs were involved). Based on information available, the NRA is now complete, but not public, and there are no available findings.

²⁰ According to the FATF, countries with overall low ratings on many recommendations tend to prioritise the FATF standards that will get them out of the enhanced follow up first, which is usually not the Recommendation 8. On the other hand, countries with generally good ratings on most recommendations but lower one on Recommendation 8 might be inclined to tackle that one early in the follow up procedure, to increase their score.

²¹ Uganda MER available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/ESAAMLG-mutual-evaluation-Uganda-2016.pdf>

²² This is a ‘**diagnostic and decision-making**’ tool, using both quantitative and qualitative information to assess a country’s AML/CFT threats and vulnerabilities.

Regarding the FATF requirements, it is not mandatory for governments to publish the NRA report, however, there is a need, according to the FATF, that relevant information and findings will be shared with the appropriate sector. Only if this information is shared appropriately, can the NPO sector take measures to mitigate the risks identified. It is hoped that the Ugandan authorities will, in due course, share with the NPO sector the results of the risk assessment that are pertinent to the sector itself.

- ***Example Australia –conducting sectoral Risk Assessment on NPOs only after the non-compliant rating of the Recommendation 8***

The Australia MER²³ concluded that the country has not implemented a targeted approach nor has it exercised oversight in dealing with NPOs that are at risk from the threat of terrorist abuse. Authorities have not undertaken an assessment of the NPO sector to identify the features and types of NPOs that are particularly at risk of being misused for terrorist financing. MER recommended the country should implement a targeted approach in relation to preventing NPOs from abuse. As a first step, to undertake a thorough assessment of the terrorist financing risks that NPOs are facing and the potential vulnerabilities of the sector to terrorist activities.

Australia conducted its specific, sectoral risk assessment on NPOs only, during 2016 and 2017, which was published in August 2017.²⁴ The Australian institutions ACNC (charity regulator) and AUSTRAC (AML/CFT regulator) worked together to undertake the risk assessment, which included qualitative and quantitative data about the NPOs, as well as academic research and intelligence from law enforcement agencies. The process allowed for NPO engagement and included a nation-wide survey among NPOs on the issues of risk and vulnerability. This risk assessment aimed to build a better understanding of the extent, nature and types of both money laundering and terrorism financing risks that the NPO sector faces. It also includes practical strategies and tools to help NPOs protect themselves against these risks and contributes to the coordination of information gathering and investigation of NPOs at risk of misuse.

The publicly available report found that Australian NPO sector is at medium risk for both money laundering and terrorism financing abuse. The report shows that Australian NPOs can better manage money laundering and terrorism financing risks through good governance, an understanding of risks, strong internal controls, and good accountability. The report did not recommend additional regulatory measures for mitigating the risks.

²³ Australia MER available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Australia-2015.pdf>

²⁴ Available at <http://www.acnc.gov.au/nfprisk>

2. Impact on national laws and regulations

MERs from the FATF and FSRBs, include various findings on implementing the Recommendation 8 requirements, particularly on the issues of coordination, monitoring and oversight of the NPO sector. Some also include direct recommendations on what countries should improve within their regulatory framework. However, any regulatory activity should be predeceased by the thorough and satisfactory risk assessment of the NPO sector, in order to design targeted and proportionate measures, based on the FATF standards. Therefore, regulatory activity comes in the follow up procedure typically as a second step, after the country has thoroughly considered risk assessment and existing measures that cover NPO sector.

- ***Example Belgium - developing additional regulatory framework after the partially-compliant rating of the Recommendation 8***

The Belgium MER²⁵ included findings on shortcomings in the areas of administrative supervision regarding obligations on the transparency of NPOs, raising awareness, and targeted actions. In particular, this was with regard to controls regarding transparency that did not cover all of the components of the Recommendation 8. There was also a lack of initiatives to raise awareness and inform the NPO sector of terrorist financing risks. However, the Belgian authorities have identified the NPOs that are at risk and set up ongoing monitoring of their activities and transactions. Therefore, the risk assessment was deemed as satisfactory by the MER.

In the follow up procedure, the Belgium authorities, notably the Ministry of Justice, engaged with key NPO sector actors on developing potential additional regulation to fulfil the Recommendation 8 requirements. For example, the Ministry has consulted the sector on a proposal to introduce more accountability requirements that would ask NPOs to report on donor and donation details for donations beyond 40,000 EUR. The Ministry also solicited views on whether or not such information should be made publicly available. The sector has responded and argued that publication of the name and/or address of the donor and amount of donation would be in conflict with privacy rights and the freedom of association and that such a requirement would negatively influence giving in Belgium. The sector suggested the option whereby such information (if collected) would be only made available to the authority upon request. In addition, a draft law on companies and non-profit organizations was proposed with intention to harmonize the rules applicable to companies and non-profit organizations in terms of having the same obligations, same possibility to carry out commercial operations, same rules on bankruptcy, etc., and is still under discussion.

²⁵ Belgium MER available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Belgium-2015.pdf>

- ***Example Hungary - developing additional regulatory framework after the partially-compliant rating of the Recommendation 8***

The Hungary MER²⁶ included findings on “doubts about the level of transparency of the NPO sector”. It stated: “Hungary should establish an effective mechanism to conduct outreach to the NPO sector concerning terrorist financing issues and monitoring of the npos posing a higher terrorist financing risk. Hungary should ensure an adequate level of NPO transparency and control over funds raised by NPOs.” This was an example of evaluator’s assessments and recommendations with potential negative reflection and impact on the NPO legal framework, as it called for more overall transparency and control. The MER did include finding that Hungary should undertake a formal review of the NPO sector to assess the potential vulnerability of the sector to terrorist activities and reassess this information periodically. It also noted lack of outreach activities to the NPO sector concerning risk issues.

Despite the MER clearly stating that Hungary should undertake a review of the NPO sector and conduct targeted outreach, which should be the first step in the risk-based approach, the country used MER wording to justify adopting a restrictive legislation that targets all non-governmental organisations (NGOs) – the new NGO law requires organisations receiving more than 24,000 euros annually in “foreign funding” to register as “foreign-supported”, and brand as such in their publications, websites and public materials. NGOs will also need to disclose details on large individual donors, which are then recorded in a public register. NGOs that do not comply face closure.²⁷ The general justification of the law called upon to consider the “challenges that financial transactions from non-transparent source mean related to money laundering and terrorism financing. ... the risk arising from this may not only threaten for-profit sector but may appear in the civil society sector, as well.” The government clearly misinterpreted the FATF standards as it did not apply a risk-based, targeted and proportionate approach – there was no specific risk assessment findings published for NPO sector ahead of adopting the law. In addition, the government did not reach out to NPO sector nor engaged them widely in risk assessment or developing risk mitigating measures.

²⁶ Hungary MER available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MER-Hungary-2016.pdf>

²⁷ The preamble of the draft law took note of AML/CTF saying that the "law wishes to contribute to international efforts against money-laundering and terrorism".

ENTRY POINTS FOR NPO ENGAGEMENT IN FOLLOW UP

It is crucial for NPOs to commence or continue engagement in the follow up procedure to influence the country responses to the findings of the evaluators, to ensure that those responses are appropriate to the identified risks and needs and do not overregulate the sector. In addition, NPOs can use those reports to require change in legislation that already restricts their operation: for example, the MER of Uganda by ESAAMLG clearly identifies as problem the lack of risk assessment and the fact that the government should not apply (restrictive) measures to all NPOs as it currently does.²⁸

NPOs need to strategise how they can engage in the FATF process after the MER is published and findings, shortcomings and potentially recommendations are known. A MER can serve as a “road map” for NPOs to clarify and prioritize their strategy towards the government and decide how and when to get involved.

Examples of strategies include:

- **If the country is placed in the enhanced follow up after the MER publication,** NPOs should watch for intense government activity on remedying the standards, especially on those FATF recommendations marked non-compliant and partially compliant.
- **In case the Recommendation 8 is one of those, NPOs must be alert and ready to engage** in order to participate in developing new policies and regulation around the NPO sector.
- If the MER indicated **there was no risk assessment done on the NPO sector** (or the existing one was not satisfactory), NPOs can expect that the government will initiate some form of risk assessment and should request to be a part of this.

Follow up period is a good time for NPO coalitions to come together and make their voices heard towards the government, especially in the context where they can offer collaborative engagement to help implement FATF standards without damaging the sector. The risk of not engaging in the follow up evaluation process is twofold:

- NPOs will have no say in defining and/or countering any possible mitigation measures proposed by the risk assessment and the government (including laying out self-regulation measures already in place);
- NPOs might be subject to further laws, amended laws or regulations that further restrict their operating space.

²⁸ Uganda MER available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/ESAAMLG-mutual-evaluation-Uganda-2016.pdf>

The following is an exemplary list of recommendations for engagement:

1. General

- Form an NPO coalition, inclusive of diverse actors in the field, with the aim of putting forward the case that there is overregulation of the sector.
- Get NPO umbrella organisations in your country to adopt the issue and advocate on it, as it affects all NPOs in the country.
- Engage with the institutions in-charge of NPOs, or AML/CFT policies (or both) and have an open dialogue about your concerns.

2. Risk assessment process

- The sectoral risk assessment should involve representatives from the NPOs, including service delivery and advocacy groups, and NPO umbrella organisations.
- Try and find out if the government conducted a sectoral risk assessment as part of the National Risk Assessment process. Also try and find out what the outcome for NPOs was of that process – the findings of the assessment should be available.
- In case it is not possible to engage with the government on the level of trust and mutual respect, conduct your own risk assessment of the NPO sector. The sector can provide in-depth knowledge of and valuable information about structure, organisation and size of the sector, as well as help determine level of risk and assist in identifying vulnerabilities (see, for example, how NPOs in Switzerland conducted a brief overview of their own risks, which was featured in their MER: <http://fatfplatform.org/risk-assessment/>).
- Document existing self-regulation mechanisms in the sector and their effectiveness. Consider mitigating measures where weaknesses and risks are identified. Offer both to the government as an argument against additional (harmful) regulation.

3. Policy and regulatory framework

- Document the impact of recent legislation/regulations on your day-to-day functioning with regard to overregulation and, therefore, need of revision/repeal of existing laws (see, for example, how NPOs in the US documented the impact of counter-terror legislation on their effective functioning: <http://www.charityandsecurity.org/sites/default/files/files/FATFUSEvalMemo2015.pdf>)
- Make the case for the revision or repeal of legislation in line with the risk assessment and risk-based, targeted approach, the mitigating measures suggested and the existing self-regulation measures in place.
- Keep tabs of and engage with the FATF or FSRB secretariat in the follow up procedure to check what new measures and regulations the government is putting in place to comply with the FATF's Recommendations and what impact that has, if any, on your sector.

- Organise multi-stakeholder meetings – with representatives from the government, (i.e. from the Ministry of Finance, from the Financial Intelligence Authority, from banks, from the NGO regulator and from the FATF/FSRB secretariat) to initiate engagement, better understanding and change.

Annex 1: Steps of mutual evaluation process

1. Preparations	Six months before the on-site visit, FATF is setting the date and timeline for the evaluation process in agreement with the host country.
2. Confirmation and formation of evaluation team	Six months before the on-site visit. The team will usually consist of five to six expert evaluators (comprising at least one legal, financial ¹ and law enforcement expert), principally drawn from FATF or FATF-Style Regional Bodies member countries, and will be supported by members of the FATF Secretariat. Their main goal is to produce an independent report (containing analysis, findings and recommendations) concerning the country's compliance with the FATF standards, in terms of both technical compliance and effectiveness.
3. Information update about technical compliance	Four months before the on-site visit, countries should fill in the questionnaire for the technical compliance update on existing policies, laws and regulation to provide relevant information to the evaluation team.
4. Information update about effectiveness	Four months before the on-site visit, countries should provide information on effectiveness based on the 11 Immediate Outcomes identified in the effectiveness evaluation.
5. Desk-based review for technical compliance	Three months prior to the on-site visit, the evaluation team will conduct a desk-based review of the country's level of technical compliance, and the contextual factors and ML/TF risks. It will take into account relevant laws, regulations or other AML/CFT measures that are in force at that time, or will be in force and effect by the end of the on-site visit.
6. Identifying areas of increased focus for on site visit	Two months prior to the on-site visit, the evaluation team will, based on preliminary analysis prior to the visit, identify specific areas of focus during the on-site visit and in the MER. This will usually relate to effectiveness issues but could also include technical compliance issues. The scoping note will set out briefly the areas for increased

	focus, and why these areas have been selected. This is not a public document.
7. Programme of the on site visit	Evaluated country and the FATF/FSRB Secretariat prepare a draft programme and coordinate the logistics for the visit. The draft programme, together with any specific logistical arrangements, should be sent to the evaluation team at least eight weeks before the visit. It should be finalized at least three weeks prior to the on-site visit. The evaluation team may also request additional meetings during the on-site visit. Evaluators often meet with representatives of NPOs (not a mandatory requirement of FATF methodology manual).
8. On site visit	Evaluator’s team visits the country to review the 11 Immediate Outcomes relating to the effectiveness of the system and clarify any outstanding technical compliance issues. Evaluators must know different country circumstances and risks, and that countries may adopt different approaches to meet the FATF Standards. The total length of the visit is typically ten working days, but this could be extended for large or complex jurisdictions.
9. Preparation of the draft mutual evaluation report (MER)	<p>There should be a minimum of 27 weeks between the end of the on-site visit and the discussion of the MER in FATF / FSRB plenary session.</p> <ul style="list-style-type: none"> - <u>First draft MER</u> - the evaluation team will coordinate and refine the first draft MER, including the key findings, potential issues of note and priority recommendations to the country, within six weeks after the on-site visit. - <u>Second draft MER and summary</u> - on receipt of the country’s comments on the first draft MER, the evaluation team will review the various comments and make further amendments, as well as prepare the Executive Summary, within four weeks. - <u>Initial quality and consistency review</u> - as part of the FATF mutual evaluation process, the main functions of the initial reviewers are to ensure MERs are of an acceptable level of quality and consistency. - <u>Face to face meeting</u> - following the conclusion of the initial review, the evaluation team and the country will have three weeks to consider country and reviewers’ comments received on the second draft MER and Executive Summary, discuss likely changes and unresolved issues, and identify issues for discussion at the face-to-face meeting.

10. Plenary discussion of MER	Discussion of each MER and Executive Summary in FATF/FSRB plenary session (particularly the list of key issues) will focus on high-level and key substantive issues, primarily concerning effectiveness.
11. Adoption and publication of MER	FATF/FSRB plenary will adopt the MER. It will be further checked for typographical or similar errors. All MERs and Executive Summaries will be published on the FATF/FSRB website.
12. Follow up procedures	After the discussion and adoption of a MER, the country could be placed in either regular or enhanced follow-up. Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up is based on the policy that deals with members with significant deficiencies (for technical compliance or effectiveness) in their AML/CFT systems, and involves a more intensive process. Whether under regular or enhanced follow-up, the country will have a follow-up evaluation after five years. This is intended to be a targeted but more comprehensive report on the countries' progress and the priority areas for action.