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Key Issues, Options, and Timing for Non-profit Organization engagement in procedures related to FATF Standards

MARCH 2018

The International Center for Not-for-Profit Law, in collaboration with the European Center for Not-for-Profit Law, and with the support of the Global Non-Profit Organization Coalition on FATF, including The Human Security Collective, The European Foundation Center, The Charity & Security Network, and The Greenacre Group

What is the Financial Action Task Force (FATF)?



FATF is an inter-governmental organization whose goals are to create standards and promote the effective enforcement of legal, regulatory, and operational measures against money laundering and terrorist financing (AML/CFT). FATF has issued 40 recommendations to its affiliate countries. *Recommendation 8* pertains to NPOs.

GAFILAT is FATF's network in the Americas.

What must countries do to comply with FATF standards pertaining to non-profit organizations (NPOs)?

Countries should:

review the adequacy of laws and regulations that relate to non-profit organizations

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 organizations

to protect them from terrorist financing abuse [.]

The obligations of States under Recommendation 8 ^[1]

The goal of this presentation:

To provide a comprehensive overview of country obligations with regard to:

Recommendation 8 and FATF procedures used to evaluate compliance,

thus contributing to greater NPO capacity to participate in and influence compliance with FATF obligations and procedures.

We will identify:

Key issues pertaining to Recommendation 8;

Links to sources for more information;

Options for engagement that NPOs may consider;

and timelines for engagement.



How this presentation is organized:

An explanation of FATF Recommendation 8 requirements:

Guidance about options, strategies, and sources of information and support that NPOs may consider in order to influence FATF procedures. Key questions are timed to correspond to:

- Before a FATF Country Evaluation in your country;
- During a FATF Country Evaluation; and
- After the FATF Country Evaluation.

Countries should:

Review the adequacy of laws and regulations that relate to non-profit organizations which the country has identified as being vulnerable to terrorist financing abuse.

As explained in the Interpretative Note to Recommendation 8 [2] and Good Practices [3] published by FATF, countries must:

- Identify an NPO subset that is vulnerable to terrorist financing abuse –*the entire sector is not vulnerable*; and
- Review the adequacy of laws and regulations related to that NPO subset.
- Adequacy checks must identify the nature of terrorist financing threats and must consider the adequacy of other risk-mitigation measures, including policies, working more closely with the NPO sector, sector self-regulation measures, etc. [4]
- *Imposing new standards is not mandatory*; this check may reveal that standards in force are appropriate.
- What's more, if standards are too extensive and onerous, then FATF will consider them deficient. [5]

Countries should:

Apply focused and proportionate measures, in the light of a risk-based approach, to such non-profit organizations in order to protect them from terrorist financing abuse[.]

FATF has repeatedly rejected the notion that national standards should treat *all* NPOs in the same manner.

- First, FATF limits the definition of NPO to a non-profit entity 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’.”^[6]
- Second, FATF requires that countries examine NPOs within the limited definition above to identify the NPO subset at a high risk of terrorist financing abuse.^[7]
- In summary, according to FATF, “a universal approach’ would be inconsistent with the appropriate implementation of a risk-based approach.”^[8]

Countries should:

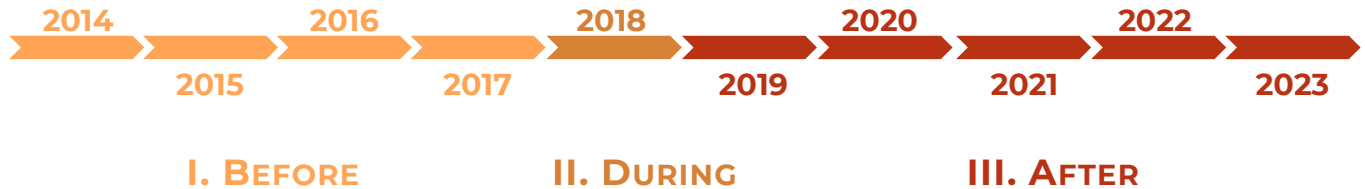
Apply focused and proportionate measures, in the light of a risk-based approach, to such non-profit organizations in order to protect them from terrorist financing abuse[.]

Laws, regulations, and other control measures implemented by nations must:

- Be related to the subset at risk;
- Minimize negative impacts on legitimate charitable activities; [\[9\]](#)
- Include effective, proportionate, and dissuasive sanctions in case of violations; [\[10\]](#) and
- Be implemented in conformity with human rights treaty obligations – including freedom of association. [\[11\]](#)

Country Evaluations by FATF/GAFILAT Peer Review Teams

When can NPOs participate in FATF procedures?... A timeline



Preliminary Question:

Where along the Country Mutual Evaluation timeline is my country?

It is important to know when your country will be evaluated because, as the evaluation date approaches:

- Your government may seek to implement new AML/CTF laws, regulations, or measures affecting the NPO sector; or
- Your country may aim to conduct any risk evaluations required by the FATF; and
- The NPO sector may have an opportunity to engage in these policy discussions, risk assessments, or evaluations.

Don't know?

You can find this information on [FATF's website](#).

I. BEFORE A COUNTRY MUTUAL EVALUATION

Has my country conducted an NPO sector risk assessment?

This risk assessment is a key step because it is the basis for GAFI or GAFILAT evaluators to determine whether the country is complying with Recommendation 8 in an effective way.

A country that *cannot prove*:

- That it has an understanding of NPO sector risk based on this evaluation; and
- That AML/CFT laws, regulations, and measures give due consideration to this risk assessment as opposed to imposing “one-size-fits-all” controls on all NPOs

will not be prepared for a Mutual Evaluation.

I. BEFORE A COUNTRY MUTUAL EVALUATION

Don't know whether your country has conducted an NPO sector risk assessment?

It might be difficult to determine whether a country has carried out an NPO sector risk assessment. This is because although FATF requires an assessment, it accepts that the assessment be completed in various ways, written or otherwise. ^[12]

You can search for an NPO sector risk assessment on the website of your country's Financial Intelligence Unit (FIU), Ministry of Finance, Ministry of the Interior, or equivalent office.

If the risk assessment cannot be found, then NPOs should contact either the FIU or other relevant agency to request that the assessment be made public.

I. BEFORE A COUNTRY MUTUAL EVALUATION

My country **has not** performed an NPO sector risk assessment

If your government is at the stage just prior to the Mutual Evaluation, then it has a strong incentive to promptly conduct an NPO sector risk assessment.

This is a key moment for active NPO sector engagement, not only because the sector should engage on any public policy matters relevant to its work, including AML/CTF standards, but also because FATF's own standards require "sustained outreach" between the government and the NPO sector.

[13]

In fact, FATF cites as a best practice a permanent two-way dialogue between the government and the NPO sector – especially through NPO coalitions and networks.

[14]

I. BEFORE A COUNTRY MUTUAL EVALUATION

What are the NPO sector's options to engage in risk assessments?

As a starting point, consider the extent to which your government is open to collaborating with the NPO sector:

- A. My government has not shown any interest in collaborating with NPOs for risk assessments or related matters;
- B. My government has requested that the NPO sector contribute to risk assessments;
or
- C. My government has been hostile towards the NPO sector and is not open to collaborating on risk assessments.

I. BEFORE A COUNTRY MUTUAL EVALUATION

A. My government shows no interest in collaborating

The NPO sector may still influence the risk assessment *by performing an assessment of its own and delivering it to the government for consideration.*^[15]

Why?

- It shows the NPO sector is a serious and informed stakeholder that should be consulted.
- It makes evidence-based advocacy easier.
- It helps to educate NPOs.
- It could influence the risk assessment and the country evaluation as well.
- It might convince the government that it should pursue collaboration with NPOs in the future.

How?

- By increasing knowledge of both FATF standards and the NPO sector's risks and vulnerabilities.
- By analyzing the effectiveness of laws and measures taken in your country to mitigate the risk of terrorist financing abuse.
- By analyzing the effectiveness of measures taken by the sector itself to mitigate risks (for example, codes of conduct, self-regulation systems, good internal governance practices).

I. BEFORE A COUNTRY MUTUAL EVALUATION

B. My government has requested that the NPO sector contribute to the risk assessment

Ideally, NPOs and the government should work together, as equal partners, to conduct risk assessments.

Why?

- It increases the likelihood that:
 - NPO points of view will be incorporated into risk assessments and country evaluations;
 - Outputs will be fair, balanced, and correct;
 - FATF evaluators' requirements will be satisfied; and
 - Future collaboration with regard to policies and follow-up will be improved.

How?

- Sector risk assessments in line with the Recommendation 8 requirements;
- Identification of a subset of NPOs at risk; and
- Collaborative identification of measures that are not in conformity with Recommendation 8 and should be amended.

I. BEFORE A COUNTRY MUTUAL EVALUATION

C. My government has been hostile towards the NPO sector and is not open to collaborating on risk assessments

In this case, the sector can publish its own shadow report.

Why?

- NPOs can cite FATF standards to systematically question the country's approach to regulating the sector;
- The shadow report can highlight risk-mitigating measures taken by NPOs themselves;
- The report can influence the country mutual evaluation; and
- FATF may call on the government to take the NPO sector into account in developing future policies and procedures.

How?

- With hard evidence demonstrating that:
 - The country is implementing ineffective, disproportionate, and counterproductive measures and policies that are inconsistent with FATF standards and curtail the rights of NPOs; and
 - NPOs are aware of the risks of terrorist financing and their own vulnerabilities.

I. BEFORE A COUNTRY MUTUAL EVALUATION

Where can NPOs find resources, data, and allies to help the sector contribute to a country's NPO sector risk assessment or produce a shadow risk assessment?

Within the government:

- The Financial Intelligence Unit or other agency designated to lead implementation of AML/CTF norms and procedures
- Any ministry with authority to regulate the civil sector
- The Central Bank

Outside of the government:

- Domestic and international experts on FATF issues:
 - *The Global NPO Coalition on FATF* ^[16]
 - *Global Expert Hub on AML/CTF (as of 2018, the Latin American Expert Hub members are from Argentina, Brazil, and Mexico)*
- Academic centers
- Financial institutions
- Your donors

I. BEFORE A COUNTRY MUTUAL EVALUATION

My country has performed an NPO sector risk assessment

Did the assessment comply with FATF standards as to process and outputs? ^[17]

- Were NPOs consulted?
- Does the assessment distinguish between NPOs according to evidence-based degree of risk, such as, for example:
 - Size, legal status, activities, donors, trans-border activities, fund transfers, payment methods, etc?
- Does the assessment identify an NPO subset at risk of terrorist financing abuse?
- Does the assessment review the adequacy of existing laws, regulations, and measures to mitigate risks for the identified NPO subset, and does it limit legitimate charitable work?
- Has it been updated periodically?

II. DURING THE COUNTRY EVALUATION

FATF/GAFILAT evaluators work in five stages:

1. Technical review of AML/CFT laws and measures
2. Preparation of a Note identifying key issues to investigate during the country visit
3. A country visit by a team of five or six experts for ten working days to perform the evaluation
4. Issuance of a provisional report that deals with technical compliance, effectiveness, and comments
5. Submission of a final report to FATF for approval and publication [\[18\]](#)

II. DURING THE COUNTRY EVALUATION

What can NPOs do to influence FATF's Evaluation if my government shows no interest in NPO sector involvement? ^[19]

Your advocacy strategy must focus on providing evaluators with relevant information collected by NPOs, using FATF's standards and terms. ^[20]

Before the country visit:

- Determine who can lead data collection and analysis;
- Write a *short* note summarizing the sector's analysis on:
 - Risk assessments, or failure to perform risk assessments;
 - Whether laws and other measures are proportionate and whether they curtail the legitimate work done by NPOs;
 - The government's record of outreach to NPOs with regard to regulations, assessments, and FATF procedures;
 - NPO oversight based on assessed risk;
 - Among other country obligations.
- Deliver the note to the FATF/GAFILAT Secretariat, preferably six months before the country visit. The sector's note will be shared with Evaluators and with the government; consider publicizing it widely.

II. DURING THE COUNTRY EVALUATION

What can NPOs do to influence FATF's Evaluation if my government shows no interest in NPO sector involvement?

Your advocacy strategy must focus on providing relevant information to Evaluators, who *are not obligated* to meet with any NPOs.

During the country visit:

- Request a meeting with the Evaluators; send a copy of the request to the Ministry of Finance;
- Because your request may not be granted, provide training on FATF standards and findings about the NPO sector to organizations representing networks of NPOs, since they are most likely to be interviewed by the Evaluators;
- Present a summary of the NPO sector's findings;
- Request a channel for communicating with Evaluators during and after their visit to your country; and
- Show the government, Evaluators, and the nation at large that the sector is serious and prepared with regard to AML/CFT issues and FATF procedures.

II. DURING THE COUNTRY EVALUATION

What information do Evaluators want to receive from NPOs when conducting interviews in a country?

Example of questions NPOs were asked during recent country evaluations:

- How are NPOs vulnerable to terrorist financing?
- Have you taken any measures to mitigate those vulnerabilities?
- Has the government provided NPOs with information or advice with regard to terrorist financing?
- Were NPOs asked to get involved in either the country or the NPO sector risk assessments?
- How do AML/CTF measures affect the NPO registration process?
- Have any registered NPOs been subjected to inspections?
- How has the country approached terrorist financing with regard to the NPO sector?
- To what extent have measures taken and penalties imposed on NPOs been proportionate?
- Do NPOs agree with determinations made during risk assessments?
- How could your country's policies improve with regard to NPOs and terrorist financing?

II. DURING THE COUNTRY EVALUATION

What can NPOs do to influence FATF Evaluations if my government is open to collaborating with the NPO sector?

Your advocacy strategy must focus on increasing and deepening collaboration with the government and your interactions with FATF evaluators. [\[21\]](#)

Before the country visit:

Determine:

- What information you already have and who can lead the collection and analysis of any missing data;
- How you can show the government that the NPO sector would be useful for a successful evaluation; for example, by providing data or facilitating their outreach to the NPO sector; and
- What the NPO sector will request from the government in recognition of its collaboration; for example, regulation amendments, facilitation of sessions with Evaluators, etc.

Write a short summary of this analysis and deliver it to both the government and FATF, preferably six months before the date of the country visit.

II. DURING THE COUNTRY EVALUATION

What can NPOs do to influence FATF Evaluations if my government is open to collaborating with the NPO sector?

Your advocacy strategy must focus on increasing and deepening collaboration with the government and your interactions with FATF evaluators.

During the country visit:

- Strive to maximize the participation of NPO sector representatives in as many FATF procedures in the country as possible;
- Submit a written request for a meeting with Evaluators to share findings about the sector, copying the government;
- Request a channel of communications with Evaluators during and after their visit to your country; and
- Show the government, Evaluators, and the nation at large, that the sector is serious and prepared with regard to AML/CFT issues and FATF procedures.

II. DURING THE COUNTRY EVALUATION

What can NPOs do to influence FATF evaluations if my government is hostile towards the NPO sector, the AML/CFT laws are restrictive, and the government is not open to collaboration?

Your advocacy strategy must focus on resisting further restrictions, highlighting cases of noncompliance with FATF standards, and mobilizing allies. [\[22\]](#)

Before the country visit:

- Determine who can lead data collection and analysis;
- Through training and dialogue, seek consensus within the NPO sector about government hostility and cases of noncompliance;
- Write a *short* note for the Evaluators, summarizing the situation (for the contents of that note, see previous slides);
- Deliver the note to the FATF/GAFILAT Secretariat – it will be shared with Evaluators *and* with the government; and
- Prepare a strategy and arguments for a public advocacy campaign and seek allies.

II. DURING THE COUNTRY EVALUATION

What can NPOs do to influence FATF evaluations if my government is hostile towards the NPO sector, the AML/CFT laws are restrictive, and the government is not open to collaboration?

Your advocacy strategy must focus on resisting further restrictions, highlighting cases of noncompliance with FATF standards, and mobilizing allies.

During the country visit:

- Request a meeting with the Evaluators, copying the government;
- Because your request may not be granted, provide training on FATF standards and findings about the NPO sector to organizations representing networks of NPOs, since they are most likely to be interviewed by the Evaluators;
- Present a summary of the NPO sector's findings to the Evaluators, the media, or any other relevant sector;
- Request a channel of communication with Evaluators during and after their visit to your country; and
- Show the government, Evaluators, and the nation at large, that the sector is serious and prepared with regard to AML/CFT issues and FATF procedures.

III. AFTER THE COUNTRY EVALUATION

Preliminary question: *What was the outcome of my country's last Mutual Evaluation?* ^[23]

My country is receiving enhanced follow-up:

- If your country received a rating of non-compliance or partial compliance in eight or more out of the 40 Recommendations, or if the ratings are low, your country will be subject to enhanced monitoring, with three FATF evaluations in five years.

This implies frequent opportunities for NPO advocacy with both FATF and the government.

My country is receiving regular FATF follow-up.

- In this case, FATF will follow up on the country after three years and after five years, which offers infrequent but predictable opportunities for advocacy.

Don't know?

- This information is available on FATF's website. ^[24]

III. AFTER THE COUNTRY EVALUATION

What can NPOs do to influence both FATF and my government after the Evaluation?

Key considerations:

My country is receiving enhanced follow-up :

- This means that there is a high possibility that the government will be looking for ways to demonstrate improvements in its AML/CFT controls to FATF, and the government might be developing new measures with a negative impact on NPOs.

My country is receiving regular follow-up:

- How was the country rated with regard to Recommendation 8?
- What cases of noncompliance were identified in the evaluation, and what are the potential implications for the NPO sector?
- Can the NPO sector offer the government help to improve its rating in follow-up assessments?

III. AFTER THE COUNTRY EVALUATION

What can NPOs do to influence both FATF and my government after the Evaluation?

In addition to the strategies above, NPOs might consider the following steps:

- *If the government shows no interest in collaborating* with the NPO sector, then NPOs can monitor any changes in policies and submit periodic updates to FATF following their schedule.
- *If the government is open to collaborating*, NPOs may offer to enhance outreach between the sector and the government regarding the effectiveness of measures and opportunities for reforms, as these steps are well received by the FATF.
- *If the government is hostile* to the NPO sector, NPOs can prioritize documenting and analyzing instances of noncompliance with standards, including limitations on NPOs' charitable work done due to the laws and measures in force as a way to resist further restrictions.

Final Considerations

NPOs should strive to maximize:

- United sector advocacy based on training on FATF standards and research and analysis on both the sector's situation and the country's degree of compliance;
- Taking advantage of potential alliances [\[26\]](#) with experts and NPO networks with expertise on AML/CFT and FATF at the national, regional, and global levels;
and
- Taking advantage of global events and meetings with regional or international mechanisms (for example, FATF and GAFILAT meetings, G20, Summit of the Americas, hearings of the Inter-American Court of Human Rights, Universal Periodic Reviews, etc.) to build awareness on the negative impact of AML/CFT laws and measures on NPOs and the need for reforms.

For More Information:

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This research was made possible by the generous support of the people of the United States through the United States Agency for International Development (USAID). The contents of this research is the responsibility of the International Center for Not-for-Profit Law (ICNL) and does not necessarily reflect the points of view of either USAID or the government of the United States.

Notes and References

- [1] Recommendation 8 and Interpretive Note. [Back](#)
- [2] *Ibid.* [Back](#)
- [3] Best Practices Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8), Section III.A <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf> [Back](#)
- [4] Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems. <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf> [Back](#)
- [5] FATF and GAFILAT (2018), *Anti-money laundering and counter-terrorist financing measures. Mexico*. Mutual Evaluation Report. FATF, Paris. ¶243. <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Mexico-2018.pdf> [Back](#)
- [6] IN ¶1 [Back](#)
- [7] See *Ibid.*, also see Best Practices Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8), Section III.A. ¶11. <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf> [Back](#)
- [8] See IN ¶6.b. [Back](#)
- [9] See *Ibid.* ¶4. [Back](#)
- [10] See *Ibid.* ¶6.b [Back](#)
- [11] See *Ibid.* ¶2 [Back](#)
- [12] See IN ¶5 [Back](#)
- [13] See *Ibid.* ¶6 [Back](#)
- [14] Best Practices Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8), ¶25, 27. <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf> [Back](#)
- [15] For guidance on how to perform this analysis of NPO-related national laws, regulations and measures, see this [ICNL research matrix](#) [Back](#)
- [16] Global NPO Coalition Webinar on the *ABCs for Risk Assessment of the Nonprofit Sector in Your Country*. <http://fatfplatform.org> Also available at <https://youtu.be/7Wxy17DnAj4> [Back](#)
- [17] Best Practices Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8), Section III.A <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf> [Back](#)
- [18] Case Study, Global NPO Coalition, *U.S. Nonprofit Organizations and the FATF Mutual Evaluation Process 2015-16*, November 2017. <http://fatfplatform.org/uncategorized/case-study-us-nonprofit-organizations-fatf-mutual-evaluation-process-2015-16/> [Back](#)
- [19] Case Study, Global NPO Coalition, *U.S. Nonprofit Organizations and the FATF Mutual Evaluation Process 2015-16*, November 2017. <http://fatfplatform.org/uncategorized/case-study-us-nonprofit-organizations-fatf-mutual-evaluation-process-2015-16/> [Back](#)
- [20] When developing your advocacy strategy, consider collecting arguments and counterarguments about NPO over-regulation based on erroneous interpretations of FATF standards and the stakeholder mapping tool. [Back](#)
- [21] When developing your advocacy strategy, consider collecting arguments and counterarguments about NPO over-regulation based on erroneous interpretations of FATF standards and the stakeholder mapping tool. [Back](#)
- [22] When developing your advocacy strategy, consider collecting arguments and counterarguments about NPO over-regulation based on erroneous interpretations of FATF standards and the stakeholder mapping tool. [Back](#)
- [23] FATF/GAFI Mutual Evaluations. Available at: [http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate)) [Back](#)
- [24] FATF. Procedures for the FATF fourth round of AML/CFT mutual evaluations. November 2017. (Page 20). See Figure 1, showing that regular follow-up takes place every three or five years after the mutual evaluation report is adopted. Enhanced follow-up consists of three reports before the mutual evaluation is written. <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF-4th-Round-Procedures.pdf> [Back](#)
- [25] If your government is in a stage before the Mutual Evaluation, then it has a strong incentive to perform the risk assessment in an expedited way. *This is the key time for the active engagement of the NPO sector, not only because the sector should always be involved in any public policy issue that is relevant to its own work, including AML/CTF standards, but also because the FATF's own standards require that the government and the sector maintain "sustained outreach."* *In fact, the FATF recommends a permanent, two-way dialogue as a best practice, especially accomplished through NPO coalitions and networks.* [Back](#)
- [26] See the [Stakeholder mapping tool](#). [Back](#)