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Research and Advocacy Toolkit to Help Stakeholders Counter Overregulation of Not-for-Profit Organizations based on Misapplications of Financial Action Task Force Standards

ENGLISH-LANGUAGE SUMMARY

Not-for-profit civil society organizations (NPOs) throughout the Americas and the world are struggling to understand and respond to anti-money laundering and counter terrorism-financing (AML-CTF) regulations and practices that are making it more difficult for NPOs to legally form and operate. In many Latin American countries, AML-CTF regulations have:

- Dramatically increased the quantity of documents NPOs must submit to obtain legal recognition;
- Imposed oversight regimes that subject NPOs to inspection at any time, day or night;
- Established disproportionate sanctions including forced suspension for even minor technical deficiencies or delays in required reporting; and
- Required private financial institutions to conduct extreme vetting of their NPO customers or face severe fines, leading many banks to delay, reduce, or eliminate services to NPOs.

Frequently, governments contend that such onerous laws and policies are required in order to comply with the AML-CTF standards of the Financial Action Task Force (FATF). FATF is an inter-governmental body that produces AML-CTF recommendations, conducts evaluations, and gives ratings on state compliance. FATF Recommendation 8 addresses AML-CTF in the context of the NPO sector. Governments take FATF ratings seriously because they affect countries' bond ratings, access to financial markets, trade, and investment. Periodic FATF evaluations – particularly those that result in or follow poor ratings – therefore challenge governments to demonstrate to FATF evaluators that they are taking action to improve their AML-CTF laws and policies; they may also present governments with a pretext to crack down on CSOs through severe FATF-inspired restrictions.

In 2016, following persuasive advocacy by the Global NPO Coalition on FATF, FATF changed its standards. Faced with minimal evidence of NPO abuse for terror



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financing on one hand and ample evidence of a disproportionately harmful impact on NPOs from Recommendation 8-inspired laws and measures, FATF revised Recommendation 8 to remove its characterization of NPOs as “particularly vulnerable” to terrorism financing abuse. Instead, countries must now:

- Evaluate NPOs to determine risk of abuse for the financing of terrorism and focus AML-CTF laws and measures on those identified as high risk;
- Evaluate existing laws and measures to ensure that they are appropriate, and that they do not conflict with countries’ obligations under human rights treaties or restrict the legitimate charitable activities of NPOs; and
- Base AML-CTF laws and measures on information from all relevant sources, including data on risk gathered through dialogue with NPOs.

Most NPOs worldwide are unaware of these nearly two-year old revised FATF standards and are ill-prepared to advocate against excessive regulations or participate meaningfully in FATF evaluation processes. This gap in NPO awareness is particularly acute in Latin America because of the lack of Spanish-language reference materials and research and advocacy tools on AML-CTF and FATF standards.

To fill this need, the International Center for Not-for-Profit Law (ICNL) has collaborated with its affiliate organization, the European Center for Not-for-Profit Law (ECNL), to produce user-friendly Spanish language resources to assist stakeholders to:

- Understand FATF standards, procedures, timelines, and options for engagement;
- Map relevant laws and actors;
- Evaluate their country’s AML-CTF laws, regulations, and other measures; and
- Develop advocacy strategies that anticipate and counter government arguments premised on inaccurate characterizations of FATF’s revised standards.

The compendium of tools and resources available on ICNL’s website and publicized on various other social media platforms includes the following:



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1. A VIDEO INTRODUCTION

This video will present each component of the compendium, its content and purpose, and how it can be used to inform and advance engagement at the national, regional, and global levels for more appropriate AML-CTF and FATF laws, measures, and procedures.

1. A POWERPOINT OVERVIEW OF KEY THEMES, OPTIONS, AND TIMELINE FOR NPO PARTICIPATION IN FATF-RELATED PROCEDURES

This document presents a comprehensive overview of country obligations related to FATF Recommendation 8 as well as FATF procedures with the aim of preparing NPOs to participate in and influence AML-CTF policymaking and FATF evaluations. The document first parses Recommendation 8, with explanations of and links to FATF interpretations of each action required of countries. This breakdown helps stakeholders understand that simply imposing strict new regulations on all NPOs fails to meet FATF standards of risk-based oversight.

Next, a checklist of key questions helps users:

- Understand the timeline for country evaluations by FATF peer evaluators;
- Identify where their respective country falls on the timeline; and
- Anticipate potential new restrictions as well as opportunities for engagement with government policymakers and FATF evaluators.

In sections corresponding to before, during, and after FATF country evaluations, users are introduced to:

- Options NPOs may consider for collective action;
- What they might gain from the engagement; and
- How to approach the government and FATF evaluators.

Users are further helped to consider their strategic options depending upon the sector's relationship with the government, with separate recommendations for circumstances:

- Where the government has not demonstrated any interest in collaborating with the NPO sector on sector risk assessments or FATF peer evaluations;
- Where the government has invited such collaboration; and
- Where the government is openly hostile to the NPO sector.

The document concludes with guidance on:



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- The importance of unified NPO sector action;
- Strategic alliances at the national, regional, and global levels; as well as
- International mechanisms and events that may serve as platforms for advocacy for improved implementation of FATF standards.

2. A TOOL FOR MAPPING AND EVALUATING RELEVANT AML-CTF LAWS AND MEASURES

This tool includes a research matrix designed to guide NPOs in identifying, assessing, and informing others about key AML-CTF laws and practices in their countries. The matrix includes questions on recent changes in the laws; government entities charged with AML-CTF oversight; key legal obligations for NPOs; applicable sanctions; government webpages where norms and interpretive guidance are posted; and impact on NPOs.

3. SAMPLE DESKTOP RESEARCH REPORTS EVALUATING THE LAWS, MEASURES, AND COMPLIANCE WITH FATF PROCEDURES FOR FIVE LATIN AMERICAN COUNTRIES

ICNL used the research tools to conduct desktop research and produce reports on five Latin American countries that have recently concluded FATF country evaluations or are anticipating new FATF-inspired NPO risk assessments or AML-CTF regulations. The five reports cover Argentina, Brazil, Peru, Panama, and Mexico.

The first section of each report assesses the country's AML-CTF laws, regulations and measures against international standards of the right to freedom of association, and against FATF Recommendation 8 standards. The second section assesses the country's performance in engaging NPOs in the required NPO sector risk assessment and in FATF country evaluations. The reports can serve as a key resource for NPOs in the five countries, as well as provide a model for similar research and evaluations in other Latin American countries and worldwide.

4. A TOOL FOR MAPPING RELEVANT ACTORS AS PART OF DEVELOPING NPO ADVOCACY STRATEGIES

In order for NPOs to effectively advocate for improved AML-CTF laws, measures, and evaluation procedures consistent with FATF standards, they must identify key actors to persuade, mobilize, educate, and, where appropriate, resist. This tool presents sample actors at the national, regional, and international levels, distinguished according to their levels of interest, influence, and knowledge on



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FATF standards. The tool then enables users to map out potential allies, adversaries, and influencers relevant to their own country context.

5. A POWERPOINT TO HELP STAKEHOLDERS ANTICIPATE AND RESPOND TO ARGUMENTS JUSTIFYING EXCESSIVE AML-CTF REGULATION OF NPOS BASED ON INACCURATE REPRESENTATIONS OF FATF STANDARDS

The lack of awareness of the revised FATF standards has made it difficult for NPOs to identify when representatives of government agencies, banks, and even civil society peers attempt to justify restrictive laws and the exclusion of NPOs from FATF procedures based on mischaracterized or outdated information. This presentation compiles misstatements of FATF's Recommendation 8 and its official interpretations that are frequently put forth to support restrictive laws, measures, and procedures. Each argument, for example, that NPOs are "particularly vulnerable" to abuse for the financing of terrorism, is matched with a plain language response that can be incorporated into policy arguments. Citations are provided for each counterargument for support and further research.

6. SPANISH TRANSLATIONS OF KEY FATF DOCUMENTS.

To date, neither FATF nor its Latin American regional body, GAFILAT, has published official translations of the revised Recommendation 8 and its Interpretive Note. For close to two years after the standard was revised, the GAFILAT website preserved the rejected language for Recommendation 8, contributing to the confusion of stakeholders in the Americas. To address the need for more accurate information about the revised standards, ICNL includes in this compendium unofficial translations of FATF's Recommendation 8 and its Interpretive Note.