



Engagement and advocacy strategies for NPOs

Background

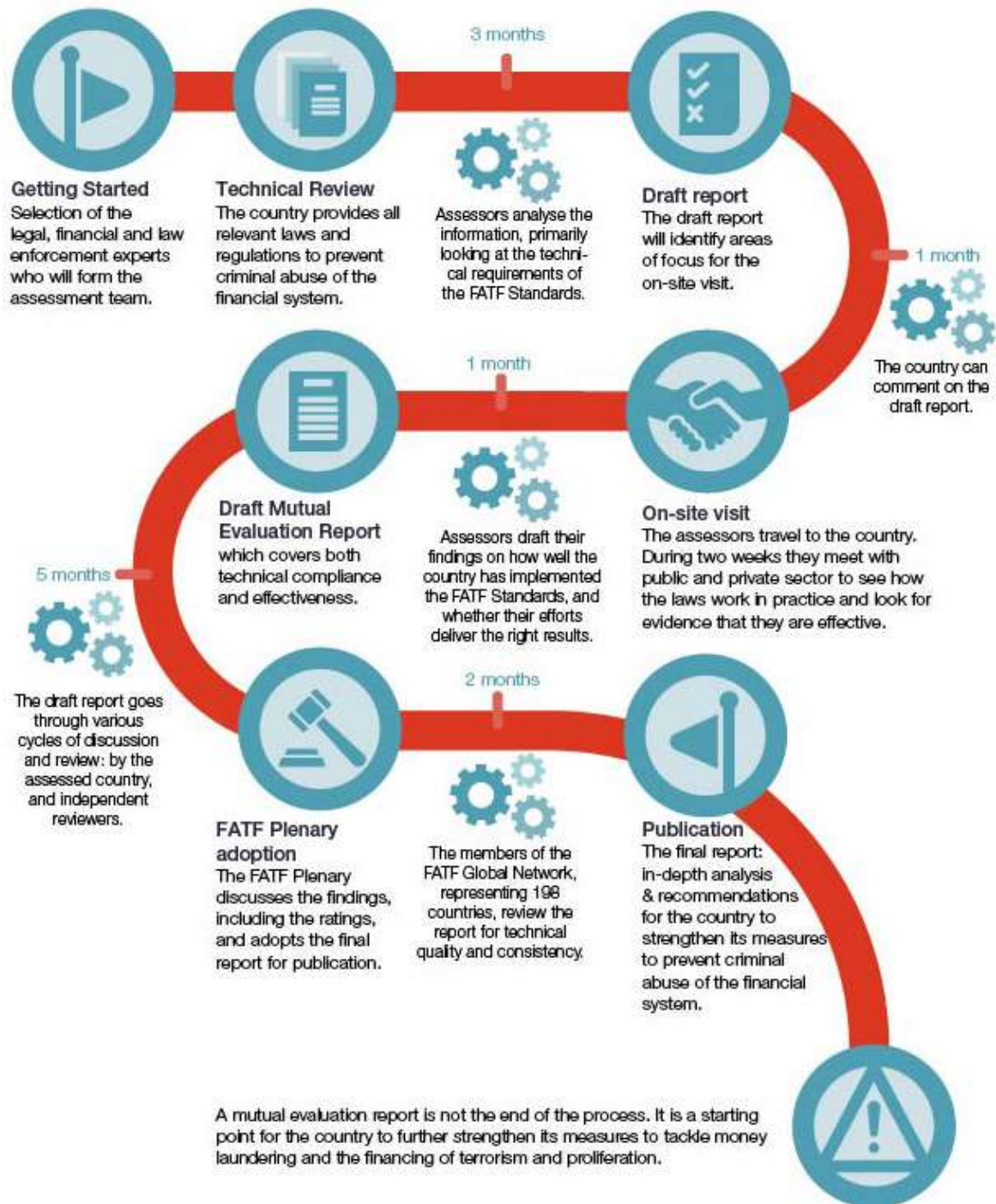
Counterterrorism (CT) and countering the financing of terrorism (CFT) measures have an increasingly negative impact on the NPO sector. This could be due to either of two reasons: the **poor design/implementation** of these measures or their **intentional misuse**. This often manifests at country level as legal provisions that restrict fundamental rights and freedoms, repressive measures against lawful, non-violent activities, challenges with access to financial services, or governmental smear campaigns with the objective of delegitimizing NPOs by loosely characterizing them as 'terrorists' to implying that they are a threat to 'national security'. This is compounded by the fact that because there is no universally agreed-upon definition of terrorism, and it is the prerogative of the State to define it as it wishes to. Further, there has emerged in the last few decades a perceived hierarchy of priorities between CT/CFT obligations and international human rights and humanitarian law, and a lack of clarity regarding CT/CFT obligations and legal safeguards for civil society and their important humanitarian, peacebuilding, rights-related and development work.

The Financial Action Task Force (FATF) is the international body tasked with countering terrorism financing, money laundering and proliferation financing. It **researches** ways criminals launder money and terrorist organizations raise and access funds, and **sets global Standards** to make it more difficult for criminals and terrorists to do this: its set of 40 Standards are known as the 'Recommendations'. The FATF **promotes, globally, the adoption and effective implementation of legal, regulatory and operational measures** for combating money laundering, terrorist financing, proliferation financing and other related threats to the integrity of the international financial system. Finally, the **FATF evaluates how effective countries are at implementing** the Standards, with low compliance leading to international political pressure, impacting trade, aid and banking, and in some extreme cases, even leading to countermeasures (sanctions).

The Mutual Evaluation

A country is evaluated by their peers on two aspects: first, whether they have the measures/regulations/institutions in place to tackle money laundering (ML), terrorism financing (TF) and proliferation financing (PF) and second, whether what is in place is delivering the right results. The former is the measure of technical compliance with the 40 Recommendations, and the latter, the assessment of effectiveness against the eleven Immediate Outcomes set out in the Standards. The entire process of a country undergoing an assessment is displayed in the diagram below. There is an onsite component to the assessment, during which the focus of the team of experts assessing the country is on whether what the country is doing to tackle ML/TF/PF is effective.

The Mutual Evaluation Process





NPOs and the FATF framework

Nonprofits were singled out by the FATF in 2001 as being 'particularly vulnerable' to TF abuse, becoming in the process the only legal entity to merit its own Recommendation (what is now Recommendation 8 of the 40). The exceptionalism meted out to the sector (without adequate empirical evidence) under the Standards led to a slew of unintended consequences, as outlined at the start, and as recognized by the FATF when they instituted the Unintended Consequences workstream in 2021 looking to mitigate NPO suppression, derisking, financial exclusion and adverse due process impacts of the implementation of Standards. Recommendation 8 has now been amended twice – first in 2016 and then in 2023 – largely due to the sustained advocacy of the Global NPO Coalition membership. The wording on NPOs being 'particularly vulnerable' to TF abuse was deleted in 2016, along with the institution at that point of the risk-based approach (meaning that countries need to understand the ML/TF risk to which they are exposed in order that measures they then put in place to mitigate this is adequately calibrated to the risk). The 2023 changes were even more far-reaching and included:

- A redefinition of objective: While the primary objective of R.8 is to protect NPOs from terrorism financing abuse, the [revised objective](#) (p.13) makes clear that this should be done without disrupting and discouraging legitimate nonprofit activity (so a '**do-no-harm**' focus)
- A redefinition of scope: It was clarified that not all NPOs meet the FATF **functional definition** and that the Standard applies to only a subset of NPOs (and not the entire universe of NPOs in a country)
- A focus on the Risk Assessment: The need to focus on an **evidence-based Risk Assessment** and not default to high risk for all NPOs was emphasized
- A clarification on measures, which need to be **focused, proportionate and relevant to the risk**
- An emphasis on self-regulation: Jurisdictions are required to take account of sectoral self-regulation measures when they assess risk mitigating factors

Additionally the [Best Practices Paper](#) on the implementation of the Standard was also updated, and includes good practice examples from around the world on engagement with NPOs, on sectoral self-regulation, and on solving financial access challenges. Importantly, bad practice examples are included as well – so what countries should not do when implementing Recommendation 8.

Moreover, the Best Practices Paper states clearly that:

'Complying with the FATF Recommendations should not contravene a country's obligations under the Charter of the United Nations, and international law, in particular, international human rights law, international refugee law and international humanitarian law....

Implementation of R.8 should respect and observe fundamental human rights and freedoms,



such as freedom of opinion, expression, religion or belief, and freedom of peaceful assembly and of association.'

While the normative Standard is now fairly nuanced and clear, its implementation at the national level is still often rule- rather than risk-based, leading to measures that are one-size-fits-all and disproportionate to the risk. In many contexts this leads to the hampering of legitimate nonprofit activity and the shrinking of civic space.

What NPOs can do

General

- Form an NPO coalition, including diverse actors in the field, with the aim of putting forward the case that there is overregulation of the sector.
- Get NPO umbrella organizations in your country to adopt the issue and advocate on it
- Engage with the institutions in-charge of NPOs, or AML/CFT policies (or both) and have an open dialogue about your concerns.
- Organise multi-stakeholder meetings with representatives from the government, (e.g., the Ministry of Finance, the Financial Intelligence Unit, the Central Bank) banks, the Banking Association, NPOs, NPO regulators to initiate engagement, better understanding and change. Such dialogue has been successfully set up and leveraged in many contexts to address issues around financial access challenges facing NPOs. Read more [here](#) and [here](#).

Risk Assessment process

- Try and find out whether the government has conducted a National Risk Assessment of ML/TF/PF risk in the country, and whether potential risk in the NPO sector was assessed as part of this exercise. Were NPOs involved?
- If a separate sectoral (NPO) Risk Assessment is planned, it should involve a wide representation of NPOs (humanitarian, development, peacebuilding, faith-based, rights groups), or umbrellas representing these stakeholders.
- In case it is not possible to engage with the government for various reasons, the sector might need to conduct a shadow Risk Assessment process. See <https://fatfplatform.org/get-involved/engaging-in-risk-assessment/> for more details.
- 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.

Mutual Evaluation process: the policy and regulatory framework

- Document the adverse impact (if any) of current legislation/regulations on your day-to-day functioning and, therefore, the need for the revision/repeal of existing laws



- Make the case for the revision or repeal of legislation in line with the Risk Assessment and the risk-based, targeted approach, as well as the mitigating measures suggested and the existing self-regulation measures in place.
- NPOs can now submit input to the assessment team ahead of a country's Mutual Evaluation. This input should be sent to contact@fatf-gafi.org no less than two months before the team's [onsite visit](#). Please note that any information shared with the assessors will also be shared with the assessed country. If there are any sensitivities, the Global NPO Coalition is happy to act as a conduit for the information, as we have done many times in the past.
- Try and meet the assessment team during the onsite visit. Evaluators often meet with representatives of NPOs (and like to meet with at least one or two that are determined to be in the 'high-risk' category), but this is not a mandatory requirement of the FATF methodology. Your input ahead of the onsite can also include suggestions to help the assessment team identify which NPOs to gather more input from and/or interview during the on-site visit.
- After the discussion and adoption of a Mutual Evaluation Report, the country could be placed in either a regular or enhanced follow-up process. Keep tabs on and engage with the FATF or the relevant FSRB Secretariat during this period to check what new measures and regulations the government is putting in place to comply with the FATF's Recommendations and what impact, if any, this has on your sector. Often a country will be asked to redo their Risk Assessment of the sector: this is a good opening to engage with the authorities and ensure that the process is consultative and truly reflective of the situation (and risks/vulnerabilities) on the ground.