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To,
Mr. T. Raja Kumar
President, Financial Action Task Force

Copy to:
Violaine Clerc
Executive Secretary, Financial Action Task Force

We are writing to inform the FATF Secretariat of a state of deep fear and anxiety that dominates Indian civil society today, caused by the government's crackdown on dissent through the misuse of laws—Foreign Contribution (Regulation) Act (FCRA); Unlawful Activities (Prevention) Act (UAPA); and the Prevention of Money Laundering Act (PMLA), and investigation agencies—National Investigation Agency (NIA) and Enforcement Directorate (ED),¹ each of which has been created or amended to allegedly comply with FATF recommendations. More recently, the government has used the provisions of FCRA to cancel the licenses of more than 20,000 NPOs depriving them of foreign funds.² This brings the impacts fully within the ambit of “the unintended consequences of the implementation of the FATF framework” and runs contrary to Recommendation 8, with its emphasis on not hindering legitimate charitable activity.³ While the government has misused these laws to target civil society, it has failed to take action against corporations accused of money laundering through the establishment of offshore companies,⁴ and introduced opaque political funding schemes that run the risk of facilitating money laundering.⁵ Such actions violate Recommendations 3 and 4, which set out that countries adopt measures to combat money laundering and terrorist financing risk.

In this context, we are writing to make the FATF Secretariat aware of the role that the [Global NPO Coalition on FATF](#) and Amnesty International wish to play in the upcoming Mutual Evaluation Review (MER) process of India, scheduled for November 2023. Our goal is to help the FATF fully

¹ M.S., Nileena, *The Enforcers: How the ED became a political tool*, <https://caravanmagazine.in/law/ed-political-tool>, accessed on August 22, 2023

² The Wire Staff, *As Three More NGOs Lose FCRA Licence, a Relook at the Govt's Funding Restrictions*, <https://thewire.in/rights/as-three-more-ngos-lose-fcra-licence-a-relook-at-the-govts-funding-restrictions>, accessed on August 22, 2023

³ <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Unintended-Consequences.pdf>

⁴ M.S., Nileena, *The Enforcers: How the ED became a political tool*, <https://caravanmagazine.in/law/ed-political-tool>, accessed on August 22, 2023

⁵ Vaishnav, Milan, *Electoral Bonds: The Safeguards of Indian Democracy Are Crumbling*, <https://carnegieendowment.org/2019/11/25/electoral-bonds-safeguards-of-indian-democracy-are-crumbling-pub-80428>, accessed on August 22, 2023



take on board key insights and concerns from the NPO sector when conducting the MER. At present, our consultations with Indian NPOs have indicated some significant risks of the MER team being misled by the Government of India leading to errors in the review process, especially for Recommendation 8. These risks include:

1. Coercion of civil society actors into silence: Multiple NPOs have said they do not dare to speak the truth about the impacts on the sector of FATF-inspired laws. The risks to organizations are wide-ranging, and include: losing their nonprofit status; bank accounts being frozen leading to potential closure of organizations; being under sustained investigation leading to a disruption in day-to-day work; and the possibility of prolonged incarceration under stringent anti-terror laws that reverse the presumption of innocence. There is a growing sense of self-restraint among the Indian NPO sector as a result of continuous intimidation and targeting of organizations that are critical of government policies. In many cases, NPOs have reported they have received verbal threats from state authorities and faced harassment by way of unauthorized visits from police officers to their offices.
2. Gatekeeping of civil society processes by the Government of India: We saw this most recently in the Civil Society 20 (C20) consultation, part of the G20 process that India is currently hosting, where Indian government authorities did not allow the pre-designated Indian NPO representatives to receive the presidency of C20. We are likely to see a similar process of gatekeeping, leading to governmental NGOs (GONGOs) being the only NPOs that participate in the Recommendation 8 consultations during the MER. This poses a legitimate threat to FATF's independent evaluation of India's adherence to Recommendation 8 resulting in the obfuscation of the risks faced by NPOs in India.
3. Exclusion of civil society voices: The Government has failed to engage with NPOs, with no consultations having been carried out during the legislative amendment process related to NPOs. This runs contrary to the FATF's 2013 typology report, which recommends that countries carry out outreach to, and full and fair consultation with, NPOs. Unfortunately, NPOs in India are being sidelined and portrayed, in a blanket manner, as a national security risk. Additionally, this is being used as a pretext for imposing vague and arbitrary limitations without adequate safeguards and effective remedies against abuse, thereby not meeting the international human rights principles of proportionality and necessity. Prime Minister Narendra Modi has accused NPOs of conspiring to remove him from office.⁶ Senior government functionaries have falsely attacked civil society organizations,

⁶ Mohanty, Meera, *PM Narendra Modi says he is victim of NGOs' conspiracy*, <https://economictimes.indiatimes.com/news/politics-and-nation/pm-narendra-modi-says-he-is-victim-of-ngos-conspiracy/articleshow/51081446.cms?from=mdr>, accessed on August 22, 2023



calling them the “new frontier of war”.⁷ Such claims are bereft of any evidence and are akin to a coordinated smear campaign against NPOs, considering there is no credible and publicly available data showing misuse of funds for terrorist financing by NPOs in India. In fact, Indian authorities acknowledged during India’s last (2010) MER that there was a significantly low risk of terrorist financing within Indian NPOs. This dichotomy has been a sustained issue that the Global NPO Coalition has raised in the past. The lack of consultation with NPOs has resulted in aggravation of the unintended harms of FATF-inspired laws, with little to no possibility of effective risk mitigation.

To mitigate these risks, the Global NPO Coalition has offered to be a conduit for critical civil society reports (forthcoming in the coming month or so) that contain data on non-compliance of FATF recommendations by the Indian government, and that will be important for the upcoming FATF evaluation process. These reports will enable evaluators to understand the perspective of Indian NPOs and will also apprise them of nefarious ways the Indian government has adopted to stifle civil society space in India. Additionally, we call on the FATF to:

1. Include at least one independent and impartial civil society expert either directly in the team of evaluators or involve them otherwise in the MER process. Such a person will be able to advise the team on the nature of civil society concerns without prejudice and warn evaluators of attempts to obfuscate the situation on the ground.
2. Engage in a dialogue with Indian civil society actors, particularly those affected by crackdowns justified by the government as part of compliance with FATF. The FATF should consider how best to consult in a manner that ensures meaningful participation as well as securing the safety of participants to avoid backlash from the government.

We believe that the upcoming evaluation presents an opportunity for the FATF to denounce any disproportionate, arbitrary, and unnecessary restrictions on India’s NPO sector. The FATF must call on India to respect human rights and their international obligations. By including an independent NPO expert in the evaluation team and ensuring evaluators meet the impacted NPOs, the FATF can ensure its recommendations are being complied with by the Indian government both in letter and in spirit.

⁷ Deshpande, Abhinay, *Wars are too expensive and unaffordable, NSA Ajit Doval tells IPS officer trainees*, <https://www.thehindu.com/news/national/wars-are-too-expensive-and-unaffordable-nsa-ajit-doval-tells-ips-officer-trainees/article37451128.ece>, accessed on August 22, 2023