Analysing FATF standards, rules and procedures in the context of respect for human rights and interaction with civil society, mechanisms for civil society participation in the FATF decision-making process, as well as Kazakhstan's legal framework and commitments in this area

ANALYTICAL NOTE

Almaty, February 2025

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Introduction

This analytical note has been prepared[1] within the framework of the project "Working Group of Civil Society Organisations on Sustainable Development in Central Asia" implemented by the Public Association "Kazakhstan International Bureau for Human Rights and Rule of Law" (KIBHR) with the financial support of the Foundation for Promotion of Open Society ("FPOS").

The project aims to strengthen the capacity of civil society and protect its rights in the face of growing pressure on the non-profit sector in Central Asia. One of the key areas of such protection is the use of international financial institutions (IFIs), such as the Financial Action Task Force (FATF), as an advocacy tool against restrictive measures imposed by states in the region.

In recent years, the Central Asian countries have increased tendencies towards over-regulation of the civil sector, especially with regard to non-profit organisations (NPOs) working in the field of human rights, democratic development and transparency of public administration. Under the pretext of combating terrorist financing and money laundering, restrictions on foreign funding are being introduced, control over NPO activities is being strengthened, and new reporting requirements and registration procedures are being introduced. In introducing such excessive regulation, the presumption of guilt of NPOs prevails, while commercial, state and quasi-state organisations are not initially considered possible violators of terrorist financing requirements, thus undermining the principle of equality and non-discrimination.

The FATF is the leading international intergovernmental organisation for the development of standards on anti-money laundering (AML), countering the financing of terrorism (CFT) and financing the proliferation of weapons of mass destruction (FPWMD). It plays an important role in shaping global financial security policy by establishing binding recommendations that are monitored through a mutual evaluation mechanism. Although the FATF is not an international organisation in the traditional sense (it does not have legally binding norms), its standards are effectively binding on countries wishing to participate in the international financial system. Non-compliance with FATF recommendations can lead to serious economic consequences, including restricted access to international financial markets and reputational risks.

In the past, the FATF standards have often been used by states as a justification for imposing various restrictions on NPOs. Particularly stringent regulatory measures were associated with Recommendation 8, which in its original version (prior to 2016) implied that virtually all NPOs were at risk of being involved in terrorist financing. However, thanks to the efforts of international civil society and human rights organisations, the FATF has significantly revised its approach in recent years. In 2016, Recommendation 8 was amended so that states are now required to adopt a risk-based approach rather than imposing restrictions on the entire NPO sector without a differentiated risk assessment. In 2023, the FATF revised the recommendation again, with a focus on ensuring that it is never again used by countries as a tool for undue interference in civil society organisations.

Therefore, the FATF is gradually transforming from an organisation that unwittingly created problems for civil society into a potential mechanism for its protection. More recently, the organisation has become increasingly aware of the need to prevent undesirable consequences of

[1] This paper was prepared by Aigul Kaptayeva, an independent expert in the field of non-profit law and civil society, including working on the implementation of the FATF Recommendations in Kazakhstan from 2019.

the misapplication of its standards and has sought to prevent undue pressure on NPOs. This shift opens up new opportunities for advocacy, allowing NPOs not only to defend themselves against over-regulation, but also to seek mitigation of already existing restrictive measures through FATF mechanisms.

In Central Asian countries where traditional human rights protection mechanisms (e.g. through the UN or regional human rights structures) are proving ineffective, advocacy through the FATF may become one of the alternative advocacy tools to protect one's rights.

Given the commitment of countries in the region to follow the FATF standards, civil society can use the organisation's recommendations to:

- evidence the excessiveness of national restrictions on NPO activities;
- introduce international monitoring of regulatory measures for the non-profit sector;
- influence states through the international community requiring a balanced approach in the regulation of NPOs.

Modern realities require new advocacy strategies from civil society, as traditional mechanisms of international human rights pressure are becoming less effective. In these circumstances, FATF could become an important advocacy tool, as its standards directly influence states' policies in the financial and economic areas. Civil society can use states' international obligations towards the FATF to protect its right to operate freely, minimise unjustified controls and review restrictive measures already imposed.

The purpose of this memorandum is to analyse how civil society can use the FATF as a tool to protect its rights in the face of growing pressure from Central Asian states.

Key tasks include:

- An analysis of FATF standards, rules and procedures affecting civil society, with a focus on Recommendation 8 and its evolution from a controlling mechanism to a mechanism to protect the rights of NPOs.
- Exploring mechanisms for civil society participation in the FATF, including dialogue with national representatives at the FATF, international lobbying and advocacy strategies.
- Analysing Kazakhstan's legal obligations to the FATF, identifying cases of abuse of FATF standards to restrict the activities of NPOs and developing recommendations to protect civil space.

This analysis will propose recommendations on the use of FATF tools to counter repressive measures against civil society, which may be applicable not only to Kazakhstan, but also to other Central Asian countries.

1 Review of FATF standards, rules and procedures regarding respect for human rights and interaction with civil society

1.1 General information on the FATF

1.1.1 History of the establishment and mandate of the organisation

The *Financial Action Task Force on Money* Laundering (*FATF*) is an intergovernmental organisation that develops global standards for combating money laundering and terrorist financing (AML/CFT) and evaluates the compliance of national AML/CFT systems with these standards.

A resolution to establish the FATF was adopted in 1989 at the initiative of the G7 countries and the European Commission. At that time, the international community was increasingly aware of the scale of the threat posed by drug cartels and other criminal organisations, which were actively transferring money obtained by criminal means into the global financial system. Criminal groups exploited the weaknesses of fragmented national legislations and thus successfully concealed the true origin of their proceeds. There was an urgent need to establish a global coordinating body that would promote harmonisation of rules and ensure cooperation between countries in the fight against economic crime.

Initially, the FATF focused exclusively on anti-money laundering. However, the tragic events of 11 September 2001 expanded the organisation's mandate, and thus, since October 2001, combating money laundering has been added to countering the financing of terrorism. Since 2012, the FATF has also focused on preventing the financing of proliferation of weapons of mass destruction. Therefore, today the organisation supports a wide range of measures aimed at protecting the global financial system from these three groups of crimes. Although the organisation is not a legal entity under international law, its standards are binding on member countries because of the serious economic consequences for jurisdictions in the event of non-compliance.

The FATF began as a temporary working group but has evolved over time into a key player in global financial security. From the first "40 Recommendations" in 1990 to constant revisions and additions, the body has consistently expanded its scope of work and improved its approach to combating financial crime. The organisation's structure, based on close coordination within working groups and regular plenary meetings, ensures broad international participation and flexibility in decision-making. This enables the FATF to respond quickly to new challenges, whether it is the emergence of sophisticated money laundering schemes or the use of advanced technology to finance criminal or terrorist networks.

Over time, the FATF has developed a direct interaction with a number of regional organisations created on its model, which has allowed it to cover a wide range of jurisdictions, even in the most remote ones. The FATF's role as a "centre of gravity" for global financial security has established it as an authoritative regulator and coordinator of international AML/CFT efforts. Currently, a total of over 200 countries and jurisdictions have committed to implementing the FATF Standards.

1.1.2 Structure of the FATF

Let us now turn to examining the structure of this organisation. FATF consists of 40 members[2] (38 states and 2 regional organisations), which meet at the FATF plenary meetings several times a year and work together on international standards on AML/CFT and proliferation of weapons of mass

[2] The membership of the Russian Federation has been suspended since 24 February 2023. Therefore, the actual number of members is currently 39, not 40. The full list of FATF members is available at: https://www.fatf-gafi.org/en/the-fatf/who-we-are.html

destruction. The Plenary is the highest body of the FATF, where key decisions are made, new standards are discussed, and the effectiveness of previous measures is evaluated.

The governance structure of the FATF comprises several important elements. First and foremost are the President and Vice-President, usually representatives of member countries, who are elected for a fixed term to coordinate the organisation's work and meetings. The FATF President is a senior official appointed by the FATF Plenary from among its members. The President's term of office begins on 1 July and ends on 30 June, two years after assuming the office. The President convenes and conducts meetings of the FATF Plenary and the Steering Group. The FATF Executive Secretary and members of the FATF Secretariat report to the President and act on his/her instructions, in accordance with decisions taken by the Plenary, on all matters relating to the operation and functioning of the FATF. The President is the principal official representative of the FATF and acts on its behalf in its external relations. The current President is Elisa de Anda Madrazo of Mexico. She began her term as the President on 1 July 2024 and her term will continue until 30 June 2026. The Vice President of the FATF is Jeremy Weil of Canada. The Vice President assists the President in carrying out the duties of the office and replaces the President when necessary.

Another important body is the FATF Secretariat, which is housed in the Organisation for Economic Co-operation and Development (OECD) building in Paris. The Secretariat staff are involved in day-to-day analytical and organisational work: preparing documents, collecting and systematising information, and ensuring interaction between working groups. By the way, it is within these working groups that new topics such as regulation of cryptocurrencies, identification of risks in financial technologies or development of country evaluation methodology are being elaborated in detail.

In addition, the FATF structure includes so-called observers. FATF observers are international and regional organisations that are not members of the FATF, but have significant experience in combating money laundering and terrorist financing. They participate in the work of the FATF but do not have voting rights. Their primary role is to provide expert input, to help promote and implement FATF standards around the world, and to support and educate countries seeking to strengthen their own financial supervisory systems. Observers typically include international financial institutions (such as the IMF and World Bank), UN bodies, regional organisations (such as the Council of Europe's MONEYVAL) and law enforcement agencies (including Interpol) that work closely with each other and with the FATF to contribute to the global fight against financial crime.[3]

FATF Working Groups are specialised bodies that deal with the detailed elaboration of key AML/CFT issues. These groups are composed of experts from FATF member and observer countries, as well as invited experts from relevant fields. Their main task is to prepare recommendations, methodologies and analytical reports, which are then considered at the organisation-wide level and may be translated into updated standards or application guidance for governments and financial institutions. The outcomes of the working groups are considered in plenary meetings and, if approved, become part of FATF policy or guidance. The working groups allow for more detailed consideration of specific topics, comprehensive proposals to be made to the FATF plenary meetings, and rapid responses to emerging financial crime challenges. Through this system, the FATF remains flexible and able to regularly update its standards to reflect new threats and the changing global financial system environment.

To enhance effectiveness, the FATF cooperates with regional organisations, often referred to as "FATF-Style Regional Bodies". These bodies adhere to the same principles and standards as the FATF, but conduct supervision in particular regions, taking into account their specifics. This

[3] The full list of FATF observers is available at: https://www.fatf-gafi.org/en/countries/fatf.html

approach allows for national and regional specificities to be taken into account without losing global reach.

In other words, FATF-Style Regional Bodies are responsible for adapting global AML/CFT standards to the specificities of their regions. They conduct mutual evaluations, review the effectiveness of member countries' measures, and help improve their legal and organisational frameworks. Another important part of the work is the exchange of experience and the organisation of training events, which enhances the professional training of specialists and strengthens financial security within their regions.

FATF-Style Regional Bodies include, *inter alia*:

- Asia Pacific Group on Money Laundering (APG)
- Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
- Financial Action Task Force on Money Laundering in South America (GAFILAT)
- Middle East and North Africa Financial Action Task Force (MENAFATF)
- Eurasian Group on Combating Money Laundering and Terrorist Financing (EAG)
- Council of Europe Committee of Experts on the Evaluation of Measures against Money Laundering and the Financing of Terrorism (MONEYVAL)
- The Caribbean Financial Action Task Force (CFATF)
- Intergovernmental Action Group against Money Laundering in West Africa (GIABA)
- Group Against Money Laundering in Central Africa (GABAC)

FATF-Style Regional Bodies play a key role in strengthening the global financial crime network by ensuring that local measures are consistent with FATF international standards. By taking a regional approach, the effectiveness in detecting and suppressing money laundering and terrorist financing is greatly enhanced and co-operation between member countries and international institutions is more fruitful.

Therefore, the FATF structure comprises various players, each contributing to creating the global AML/CFT mechanisms. It includes member states, observers and working groups that work closely together under the leadership of the FATF President and Vice-President, and with the support of the permanent Secretariat. Each of these components is important in its own way: countries ensure implementation of the recommendations at the national level, working groups develop methodologies and analyse new threats, and observers, represented by international organisations, help to disseminate FATF standards around the world.

This comprehensive structure allows the organisation to respond dynamically to emerging challenges: to improve its own guidelines, to cooperate more actively with regional structures and to take into account the large-scale changes taking place in the financial sphere. It is this flexibility and depth of interaction within the FATF that has allowed it to remain the principal driver of development and unification of measures to protect the global financial system for several decades.

1.2 Key FATF standards and procedures on civil society and respect for human rights

1.2.1 FATF Recommendations

The main tool of the FATF in implementing its mandate is the *FATF Recommendations: International Standards on Combating Money Laundering, Financing of Terrorism and Proliferation of Weapons of Mass Destruction.*[4]

[4] The official English language version of the Recommendations is available at https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf

The FATF Recommendations, often referred to as the "FATF 40 Recommendations", were first formulated in 1990 in response to the growing volume and scope of money laundering globally. Since then, they have been regularly revised to reflect the emergence of new threats and changes in the global financial system, with notable updates in 1996 and 2003, and an extensive revision in 2012 that consolidated the former "40 Recommendations" and "9 Special Recommendations" on terrorist financing into a single set. Since then, the FATF has continued to make spot adjustments and add interpretive notes. The last substantive update in 2023 focused on clarifying the wording of Recommendation 8 (Non-Profit Organisations) in response to the ongoing trend of reducing the civil space in many countries by inappropriately and incorrectly applying this standard to NPOs.

The FATF Recommendations provide a comprehensive and coherent framework of measures that countries should implement to address AML/CFT and the financing of proliferation of weapons of mass destruction. Each country has specific legal, administrative and operational structures and different financial systems, so not all states can apply exactly the same measures to combat these threats.

The FATF Recommendations thus set an international standard that countries should implement through measures tailored to their specific circumstances. The FATF Standards include the Recommendations themselves and their Interpretive Notes, as well as the relevant definitions in the Glossary.

Who is the addressee of these recommendations? First and foremost, these standards are addressed to countries and governments that are responsible for criminalising money laundering and terrorist financing and for establishing controls over financial transactions. They are also addressed to competent authorities and supervisory bodies such as bank regulators and financial intelligence units, whose task is to detect irregularities, monitor suspicious transactions and disrupt criminal schemes. Finally, representatives of the financial and non-financial sectors (banks, insurance companies, lawyers, notaries, realtors, *etc.*) are also involved in the implementation of these rules and are required to follow the "Know Your Customer" principle, monitor transactions and report any suspicious transactions.

The structure of the FATF Recommendations is based on a combination of concisely worded and numbered recommendations and accompanying Interpretive Notes. These notes explain the nature of each rule, how states should implement specific measures, and what steps should be taken to achieve the greatest impact. Much of the recommendations are based on a risk-based approach, which assumes that measures are distributed according to the degree of threat: where the likelihood of illicit transactions is higher, controls should be stricter and, accordingly, less stringent measures should be applied where the risks are less pronounced.

In practical terms, the FATF Recommendations are implemented at several levels. Firstly, the government must incorporate them into its own legislation by criminalising financial crimes and regulating the procedure for controlling transactions. Secondly, financial institutions should form internal rules for identification of clients, monitoring of transactions and timely detection of unusual transactions. Thirdly, co-operation between countries is essential in the international arena, as complex money laundering and terrorist financing schemes often transcend jurisdictional boundaries. Finally, the FATF itself and the regional groups modelled on it periodically conduct mutual evaluations to check whether states are fulfilling their obligations in good faith.

The official Russian translation of the Recommendations is available at: https://eurasiangroup.org/files/uploads/files/FATF_Recommendations_2023_rus.pdf (Please note, this translation is updated as of February 2023 and does not include the latest updates of October 2023).

1.2.2 Consequences of non-compliance with FATF standards for countries

Failure to comply with FATF standards can result in a country being placed on a grey or black list, with serious reputational and economic consequences.

The FATF grey and black lists are important tools of the organisation to increase international pressure on countries that do not fully comply with AML/CFT requirements.

The official titles of these lists are:

- The grey list is "Jurisdictions under Increased Monitoring".
- The black list is "High-Risk Jurisdictions subject to a Call for Action".

The grey list includes jurisdictions that have identified strategic AML/CFT deficiencies but have agreed to work with the FATF on a plan to address them. This does not mean that the country is ignoring FATF requirements, but the deficiencies are still significant and the FATF encourages the international community to take this increased level of risk into account when dealing with those jurisdictions.

Consequences of being on the grey list include:

- Enhanced supervision: The country is required to report regularly to the FATF and FATF-Style Regional Bodies (FSRBs) on the implementation of the action plan.
- Additional partner due diligence: Banks and other financial institutions around the world may apply enhanced due diligence measures to transactions from this jurisdiction (e.g., greater scrutiny of beneficiaries and sources of funds).
- Reputational risks: Being on the grey list may make it more difficult to attract investment and international loans, as counterparties view such jurisdictions as riskier.

As of 25 October 2024, the grey list includes: *Algeria, Angola, Bulgaria, Burkina Faso, Cameroon, Côte d'Ivoire, Croatia, Democratic Republic of* the *Congo, Haiti, Kenya, Lebanon, Mali, Monaco, Mozambique, Namibia, Nigeria, Philippines, South Africa, South Sudan, Syria, Tanzania, Venezuela, Vietnam, Yemen.*[5]

The blacklist includes jurisdictions that fail to cooperate with the FATF or take insufficient steps to address critical AML/CFT violations. As of October 2024, the blacklist includes: Iran, the DPRK (North Korea), and Myanmar.[6]

Blacklisted countries face serious economic and financial consequences. The FATF encourages its member states to apply enhanced due diligence measures to such jurisdictions and, in some cases, "countermeasures" or "enhanced supervisory measures" up to and including de facto restriction or termination of financial relationships.

Consequences of being blacklisted include:

- *Strong countermeasures*: Financial institutions are strongly encouraged to conduct Enhanced Due Diligence on any transactions involving the country and in some cases refuse to cooperate at all.
- *Isolation from global finance*: Blacklisting causes serious reputational damage, often leading foreign banks to close correspondent accounts and foreign companies to curtail investment projects for fear of sanctions or money laundering.

[5] Source: https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html
[6] Source: https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html

- *Deterioration of the economic situation*: The erosion of trust of international partners strongly affects the banking system and business climate, which hinders the country's economic growth. In some cases, there are financial sanctions and the breakdown of international economic ties.

Therefore, being on the FATF grey or black list is an important signal to the international community that a country is not sufficiently prepared to address financial crime. For grey-listed jurisdictions, this means intensive remedial work and close cooperation with the FATF, while blacklisting threatens serious financial and political isolation. All of these measures are designed to encourage countries to strengthen their systems and join the global fight against money laundering and terrorist financing.

Compliance with the FATF recommendations is critical for countries, as non-compliance leads not only to financial isolation, loss of trust of international partners and restricted access to global capital markets, but also poses risks to the economic stability, investment attractiveness and sustainable development of the state generally. This is why it is important for civil society to work with the state to ensure correct and balanced application of the FATF standards, as states are obliged to effectively implement them at the risk of serious economic consequences, and this opens up opportunities for dialogue and joint work to protect civic space.

1.2.2 FATF mutual evaluations

FATF mutual evaluations are a multi-stage, standardised process that aims to evaluate the compliance of the national AML/CFT system with the FATF recommendations. The process has a clear structure with several main stages and steps of preparation, conduct and follow-up monitoring.

The main purpose of the mutual evaluations is to evaluate technical compliance with the FATF Recommendations, as well as to examine the level of effectiveness of the state AML/CFT system.

Mutual evaluations in non-FATF countries are conducted by FATF-Style Regional Bodies based on the Methodology for Evaluating Technical Compliance with FATF Recommendations and the Effectiveness of AML/CFT Systems.[7]

Reciprocity means that representatives of all member states of a regional body evaluate other member states in turn according to a set schedule.

Each step of the FATF mutual evaluation process is summarised below:

1. Preparatory Phase and Self-evaluation

At this stage, the country independently collects and compiles all necessary information on its AML/CFT system. Internal analyses are conducted, existing risks are identified, and a basic package of documents is compiled, which will form the basis for further evaluation. This stage is the basis for further analysis and allows experts to form a preliminary idea of the condition of the system.

2. Desk Review

A FATF's or FATF-Style Regional Body's group of experts examines documents, reports and other information provided by the country. The purpose is to make a preliminary evaluation of the national system's compliance with FATF standards and to identify key areas for further in-depth analysis.

[7] https://www.fatf-gafi.org/content/dam/fatf-gafi/methodology/FATF-Evaluatement-Methodology-2022.pdf.coredownload.inline.pdf

3. On-site Visit

A team of international expert evaluators visits the country to conduct a field inspection. During the visit, interviews are conducted with representatives of government authorities, financial institutions and other stakeholders, and evidence is gathered on the practical implementation of AML/CFT measures. They meet with government authorities, financial institutions, law enforcement agencies and other key stakeholders (including NPOs). The focus is on the extent to which risk-based principles are implemented in practice, how the various agencies interact, and how the system of control over financial flows works.

4. Evidence Analysis & Evaluation

Based on the data collected, experts evaluate the effectiveness of measures (including 11 FATF immediate outcomes) and the level of technical compliance of the legal and regulatory framework. The country's practices are compared with international standards.

For each FATF Recommendation, experts must make a judgement on the degree of technical compliance (or non-compliance) of a country with the standard. There are four possible levels of technical compliance: *compliant, substantially compliant, partially compliant, and non-compliant*. In exceptional circumstances, a Recommendation may also be designated as "not applicable".

In addition, experts evaluate the effectiveness of the national AML/CFT system against eleven Immediate Outcomes. "The FATF's Eleven Immediate Outcomes are a set of key indicators by which the FATF measures the effectiveness of the national AML/CFT system. These outcomes are specific, measurable effects that an effective AML/CFT system should demonstrate, and provide a basis for evaluating how well a country has implemented measures adopted.

These outcomes include, for example, the existence and quality of national risk assessments, the effectiveness of financial sector supervisory mechanisms, the ability of financial institutions and other actors to detect and prevent suspicious transactions in a timely manner, and the prompt application of measures to deter financial crime. In other words, the eleven outcomes cover both procedural aspects (e.g. implementation of customer identification and reporting procedures) and performance aspects (e.g. successful application of sanctions or corrective measures).

5. Draft Report Preparation

The expert group generates a preliminary report that details the results of the audit, identifies strengths and weaknesses, and offers specific recommendations for system improvement.

6. Review and Validation

The preliminary report is discussed with representatives of the evaluated country. The country provides comments, clarifications and, if necessary, additional materials to clarify the findings and adjust the recommendations.

7. Finalising and Publishing the Report

Based on the consultations and amendments made, a final report is prepared, which is published and becomes a public document. This report serves as a basis for the development of a corrective action plan and further improvement of the system.

8. Follow-up Monitoring and Re-evaluations

Following publication, countries develop and implement a corrective action plan. FATF and regional bodies continue to monitor the implementation of recommendations, and follow-up evaluations help to measure progress and identify new areas for improvement.

The entire mutual evaluation cycle usually takes between 18 and 24 months. This period includes the preparatory phase, the self-evaluation, the on-site visit, the drafting of the report and the harmonisation of recommendations with national authorities. The time can vary depending on the size of the country, the complexity of the national system and the amount of information provided.

According to FATF practices, mutual evaluations of countries are usually conducted approximately every five years. However, this interval is not rigidly fixed for all countries. States with identified significant deficiencies or high risk levels may be subject to additional inspections and monitoring at shorter intervals. Thus, the frequency of the evaluation may vary depending on the results of previous evaluations, the dynamics of improvement of the national system and the specific threats associated with money laundering and terrorist financing in a particular country.

1.2.3 FATF Recommendation 8: Evolution from a controlling mechanism to an NPO protection mechanism

When the issue of terrorist financing became particularly acute in the early 2000s, the FATF became aware that some NPOs, because of their humanitarian or charitable activities, extensive financial flows, and international presence, could be used (sometimes unknowingly) for terrorist purposes. In some instances, NPOs became conduits for the collection and diversion of funds that were ultimately used for terrorist purposes.

In view of the above, in 2001, the FATF developed a set of recommendations, including Recommendation 8, which focused specifically on NPOs. The substance of Recommendation 8 was that states need to protect the NPO sector from the possibility of its use or abuse for financial crime purposes by establishing a regulatory regime that adequately and effectively addresses the risks of terrorist financing in the sector.

Here is the first wording of FATF Recommendation 8, in force from 2001 until its first revision in 2016:

> *Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:*
>
> *(a) by terrorist organisations posing as legitimate entities;*
>
> *(b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and*
>
> *(c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.*[8]

However, there was a significant flaw in the original wording of Recommendation 8, as it characterised NPOs as "particularly vulnerable" to terrorist financing risks. This generalised statement failed to take into account the significant diversity of NPOs, their missions, and their different areas of operation. Rather than conducting individualised, evidence-based risk assessments, many states took the recommendation as a signal to tighten controls over the entire NPO sector.

Since the advent of Recommendation 8 in 2001, financial institutions in some countries have responded to the perceived risk of terrorist financing with a massive withdrawal of services to non-profit organisation (NPO) clients, while excessive government oversight measures have begun to

[8] See p. 16 of the 2012 edition of the FATF Recommendations - https://www.fatf-gafi.org/content/dam/fatf-gafi/translations/Recommendations/FATF-40-Rec-2012-Russian.pdf.coredownload.inline.pdf

impede their legitimate activities (sometimes accidentally and sometimes deliberately). These "unintended consequences" have been a concern of civil society around the world for many years.

Due to the unfortunate original wording of Recommendation 8, many states began to perceive the entire NPO sector as potentially vulnerable and began to use heavy-handed measures to regulate NPOs in the form of burdensome requirements that included:

- *The introduction of burdensome registration requirements for NPOs*, which made it difficult or impossible for them to establish and operate. For example, some countries began requiring detailed information on donors, members of the organisation and their financial transactions.
- *Restricted access to foreign funding*, which particularly affected human rights, humanitarian and anti-corruption organisations dependent on international grants. In a number of states, such NPOs have been declared "foreign agents" or even banned.
- *Mandatory licensing and additional financial reports* that made NPO operations overly complex and costly. Some countries have introduced requirements to co-ordinate all transactions with state authorities or to verify all incoming funds.
- *Disproportionate sanctions*, including criminal prosecution, if organisations failed to comply with new, sometimes vaguely worded requirements.

For a clearer understanding of the types of restrictive measures, we provide below a list of examples of misapplication of Recommendation 8 in various countries, as set out in *BRIEFER: Understanding and Responding to Government Over-Regulation based on Money Laundering and Terrorist Financing Restrictions*[9] prepared by the International Centre for Not-for-Profit Law (ICNL) and the European Centre for Not-for-Profit Law (ECNL).

Obstacles to the establishment of NPOs:
Overly complicated registration procedures, arbitrary denial of registration, mandatory annual registration and/or ban on registration.

Strict requirements for internal governance:
Provisions that interfere with the freedom of founders and members to determine the organisation's internal rules, especially if the organisation receives foreign funding.

Burdensome/excessive reporting requirements:
Complex reporting requirements for NPOs and high penalties for non-compliance, especially if the state does not impose similar requirements on all businesses in its territory. These may include requirements for dedicated AML/CFT compliance staff; detailed reporting on activities and performance evaluation; mandatory annual audits; and a requirement that all NPOs complete a detailed annual reporting form and that all NPOs receiving foreign funding have a universal obligation to declare all foreign contributions and be audited annually by a registered accounting firm.

Broad powers to seize NPO assets:
Legislation granting overly broad powers to seize the assets of NPOs without prior judicial decision if the organisation has been wrongly designated as a terrorist organisation.

Abuse of state investigative powers in AML/CFT risk assessments:
State investigations of NPOs for AML/CFT purposes without clear risk criteria or legitimate grounds and reasons; or requests to freeze NPO bank accounts based on very vague suspicions of AML/CFT violations. For example, authorities froze the bank accounts of #EndSARS campaigners in Nigeria on suspicion of terrorist financing; the accounts of a key human rights organisation in Tanzania for allegedly "suspicious transactions"; and in Uganda, the bank accounts of two local civil society election monitoring coalitions on allegations of terrorist financing. The Ugandan authorities also arrested a prominent human rights defender on money laundering charges and prosecution of the case is ongoing.

[9] The document is available at the following link: https://ecnl.org/sites/default/files/2021-10/NPO%20ML%20TF%20Restrictions%20and%20Responses%20Briefer%20Africa.pdf

Forced dissolution or suspension of NPOs: Legislation that provides simplified procedures for suspending and dissolving NPOs without full judicial guarantees in response to AML/CFT concerns.

Restrictions on access to funding: Requirements for all NPOs to obtain authorisation to receive foreign funds or carry out foreign-supported activities; restrictions on all NPOs to receive or distribute payments above very low thresholds; and/or requirements that all NPOs register with a government agency and obtain prior approval to receive foreign funding for any voluntary activities on a project-by-project basis.[10]

Against this background, NPO representatives from different countries began to unite, which eventually led to the establishment of the **Global NPO Coalition on FATF**[11] in 2012 to advocate for civil society rights in the implementation of FATF standards at the international level. The creation of this coalition was an attempt to rebalance the need to combat financial crime and protect freedom of association. Since then, the coalition has actively participated in the annual FATF forums and consultative meetings, seeking continued civil society representation in FATF consultative forums.

Through coordinated advocacy, the coalition has been able to draw attention to the problem of over-regulation and to develop and propose a risk-based approach to distinguish NPOs with real terrorist financing risks from organisations that operate transparently and with integrity.

After prolonged and persistent lobbying by the Global NPO Coalition on FATF, Recommendation 8 was revised in 2016, resulting in the removal of the description of NPOs in the recommendation as "particularly vulnerable" to terrorist abuse. In addition, the 2016 revision emphasised the need for a risk-based approach in developing counter-terrorist financing measures for NPOs. In addition, states were encouraged to promote dialogue with the NPO sector, alert them to risks, and educate them on internal controls and transparency.

This was the wording of FATF Recommendation 8 following the 2016 revision:

Countries should review the adequacy of laws and regulations that relate to non-profit organisations 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 organisations to protect them from terrorist financing abuse, including:

(a) by terrorist organisations posing as legitimate entities;
(b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures;
(c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.[12]

Although these steps were taken in the right direction, over time it turned out that even these measures were not enough to prevent countries from over-regulating the non-profit sector, and over-regulation continued in some countries.

In 2023, the FATF decided to revise Recommendation 8 again for several key reasons. First and foremost, the previous interpretation of the Recommendation continued to be used to prosecute NPOs in many countries. States, justifying their actions by Recommendation 8, often imposed stringent controls and oversight measures, even when the risk of abuse of funds in respect of

[10] Source: BRIEFER: Understanding and Responding to Government Over-Regulation based on Money Laundering and Terrorist Financing Restrictions, pp. 3-4.
[11] Coalition website: https://fatfplatform.org/about-us/
[12] See p. 16 of the 2018 edition of the FATF Recommendations - https://eurasiangroup.org/files/uploads/files/other_docs/FATF%20docs/rekomendacii-fatf-2019.pdf

specific NPOs was low. This, in turn, had a negative impact on civil society, limiting the ability of NPOs to realise humanitarian, charitable and other socially significant projects.

In addition, active pressure from civil society representatives and the Global NGO Coalition on the FATF played an important role in this process. These organisations insisted that regulations should not become a pretext for infringing on freedom of association, nor should they lead to unfounded "de-risking" by banks and government authorities. The revision introduced a more flexible, risk-based approach, which envisages applying more stringent controls only to those NPOs whose activities are genuinely associated with a high risk of terrorist financing.

Therefore, the revision of Recommendation 8 in 2023 sought to balance the need to prevent abuse with preserving the workspace for NPOs, ensuring robust protection for civil society without unduly interfering with their activities.

The following is an excerpt from the outcome document of the FATF Fourth Plenary Meeting held from 25 to 27 October 2023:

"*Misapplication of the FATF Recommendations has had a chilling effect on legitimate and much-needed charitable and humanitarian activities. The FATF's work to identify and analyse these unintended consequences highlighted that countries often poorly apply the FATF's risk-based approach. The FATF has clarified its requirements in close consultation with the non-profit sector. The revisions make it clear that Recommendation 8 does not apply to the entire not-for-profit sector, but only to the sub-set that falls within the FATF definition of an NPO. The revised Standard requires countries to identify the types of organisations that fall within the FATF definition, to assess their risks of abuse for terrorist financing and to have in place focused, proportionate and risk-based measures to mitigate these risks. It clarifies the approach for low-risk NPOs and the need for countries to ensure oversight or monitoring, but not go as far as supervising the sector in the same way they would for the financial or non-financial sectors. The revised Recommendation also aims to prevent the undue disruption or discouragement of legitimate charitable activities through the implementation of risk-based measures. It underlines that countries may also consider, where they exist, self-regulatory measures and related internal control measures in place within the NPOs*."[13]

At the same *FATF* plenary meeting, the revised *Best Practices on Combating the Abuse of Non-Profit Organisations*[14] was also approved. The updated document reflects changes made to the Recommendation itself and aims to promote its effective implementation. The FATF Best Practices document now includes examples of ineffective approaches and explains how the FATF requirements should not be implemented. As the FATF notes, the revision of Recommendation 8 and the publication of the updated Best Practices Paper "leaves no room for the implementation of measures that are not proportionate to the assessed terrorist financing risks and are therefore unduly burdensome or restrictive for organisations operating in the non-profit sector".[15]

Here is the text of FATF Recommendation 8 in the current updated version (2023):

Countries should identify the organisations which fall within the FATF definition of non-profit organisations (NPOs) and assess their terrorist financing risks.

[13] Source: https://fatfplatform.org/news/plenary-approves-revision-of-recommendation-8-and-new-best-practices/
[14] https://www.fatf-gafi.org/en/publications/Financialinclusionandnpoissues/Bpp-combating-abuse-npo.html
[15] https://fatfplatform.org/news/plenary-approves-revision-of-recommendation-8-and-new-best-practices/

Countries should have in place focused, proportionate and risk-based measures, without unduly disrupting or discouraging legitimate NPO activities, in line with the risk-based approach. The purpose of these measures is to protect such NPOs from terrorist financing abuse, including:
(a) by terrorist organisations posing as legitimate entities;
(b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
(c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.[16]

In order to ensure the correct application of the FATF Recommendations, the standards provide interpretive notes to each Recommendation. Interpretive Notes to the FATF Recommendations clarify their substance and help the States to apply the standards correctly, taking into account the national context. They provide a common understanding of the FATF principles, preventing over-regulation and helping to focus on the real risks.

The main purpose of the interpretive notes is to provide flexible and practical explanations for the implementation of the recommendations, avoiding a versatile "one law for all" approach. They emphasise the importance of proportionate and risk-based measures that prevent abuse but do not create unnecessary administrative barriers for NPOs, businesses and the financial sector.

Consider the key paragraphs of the Interpretive Note to FATF Recommendation 8:

Given the variety of legal forms that non-profit organisations can have, depending on the country, the FATF has adopted a functional definition of NPO. This definition is based on those activities and characteristics of an organisation which may put it at risk of terrorist financing abuse, rather than on the simple fact that it is operating on a non-profit basis.

For the purposes of this Recommendation, an NPO is defined as 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".

Recommendation 8 applies only to those organisations which fall within the FATF functional definition. It does not apply to the entire not-for-profit sector.

The FATF recognises the vital importance of the activities of NPOs, including their efforts to provide assistance in high-risk and conflict zones, and notes the contribution of NPOs to transparency and the prevention of terrorist financing abuse.

Measures applied should be focused and proportionate, in line with the risk-based approach. They should respect international obligations, including the UN Charter, international law, human rights rules, refugee rights and international humanitarian law.

Measures applied should not disrupt legitimate NPO activities. They should promote transparency and engender greater confidence in the sector, across the donor community and with the general public.

Countries should effectively investigate and take action against cases of terrorist financing through NPOs. However, measures should avoid harming innocent organisations and their beneficiaries.

[16] See p. 13 of the FATF Recommendations of November 2023 (*Russian translation not yet available)- https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf

Different levels of risk require different levels of regulation. Where NPOs present low risks, excessive measures should not be applied.

Developing partner relationships between the State and NPOs is critical to protect the sector.

The level of terrorist financing risk in the NPO sector can vary significantly.

- Countries should identify which organisations fall under the FATF definition of NPO.
- Conduct risk assessments for those organisations.
- Apply focused and proportionate measures based on identified risks.

Risk assessments should be based on reliable sources of information, including data from regulators, tax authorities, law enforcement agencies, and the NPOs themselves.[17]

Therefore, revised Recommendation 8 and its Interpretive Note oblige countries to protect civil society from terrorist financing abuse through risk-based implementation of enhanced measures.

The new amendments clarify that focussed, proportionate and risk-based measures are the foundation of an effective approach to detecting, preventing and combating the abuse of civil society for the purpose of terrorist financing. When properly implemented, such measures aim to protect the integrity of civil society without unduly hindering or restricting its legitimate activities.

2. Procedures and mechanisms for civil society participation and influence on FATF policies and decisions

This chapter examines mechanisms for civil society participation in policy and decision-making under the FATF. As the implementation of FATF standards without proper oversight can lead to restrictions on human rights and narrow the space for civil society, it is important to consider mechanisms to protect against the abuse of these standards. Alongside this, we will look at ways in which civil society organisations can constructively interact with the FATF, government agencies and other stakeholders to strengthen human rights standards and ensure dialogue in the implementation of FATF recommendations.

2.1 Impact of FATF standards on human rights

As we have emphasised many times above, the FATF develops international AML/CFT standards. While these measures are aimed at preventing criminal activity, their implementation in many countries has significant human rights implications. It is important to consider exactly which rights may be at risk and how negative impacts can be minimised.

In many countries, measures developed in response to FATF Recommendation 8 have resulted in increased scrutiny of NPOs. States require more detailed reporting, impose restrictions on receiving international funding, or even forcibly close down organisations. This creates serious obstacles to the work of civil society and violates the right to freedom of association enshrined in Article 22 of the International Covenant on Civil and Political Rights (ICCPR).[18]

Another important issue is the threat to freedom of expression. Anti-terrorism and financial laws can be used to harass journalists and activists, especially if their activities touch on sensitive political issues. The imposition of strict controls on the funding of independent media and human rights organisations may limit their ability to inform the public and undermine the principles of freedom of expression enshrined in Article 19 of the ICCPR.

[17] See pp. 60-65 of the FATF Recommendations (INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION The FATF Recommendations).
[18] https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml

In addition, the enhanced financial monitoring required by FATF standards affects the right to privacy. Requirements to disclose information on company ownership and financial transactions may lead to abuse, especially if a country lacks robust personal data protection mechanisms. In some cases, such measures may be used to exert political pressure on individuals or organisations, contrary to Article 17 of the ICCPR.

The freezing of assets of individuals and organisations suspected of terrorist financing also raises human rights issues. In a number of countries, such decisions are taken without clear appeal mechanisms, jeopardising the right to a fair trial under Article 14 of the ICCPR. The lack of transparency in such decisions can lead to undue restrictions on economic activity and violation of ownership rights.

Restrictions on funding for civil society reduce its ability to participate in public and political life. Strict reporting requirements and bans on foreign funding can hinder NPOs' activities by limiting their influence on decision-making processes and representation of the interests of different groups, which affects Article 25 of the ICCPR.

Finally, the practice of applying the FATF standards in some countries shows that certain groups, such as religious organisations, sexual or national minorities, may be subject to disproportionate scrutiny. This creates a risk of discrimination and undermines the principle of equality before the law enshrined in Article 26 of the ICCPR.

While it is necessary to combat financial crime, it is important that such measures do not lead to excessive restrictions on human rights and freedoms. International and national authorities should balance the requirements of financial monitoring with the protection of human rights.

In addition to the ICCPR, there are several other key international instruments that civil society activists can refer to when defending human rights and civic space:

- Universal Declaration of Human Rights (UDHR) – establishes fundamental rights, including the right to privacy and equality before the law.
- International Convention for the Suppression of the Financing of Terrorism - establishes the obligations of states to prevent and punish the financing of terrorist acts, while requiring respect for human rights in the implementation of relevant measures.
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) – sets out the obligations of states to create an enabling environment for human rights defence work, prevent persecution of activists and ensure their protection.
- The Guidelines on Freedom of Association of the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (OSCE ODIHR) and the Venice Commission of the Council of Europe (the Guidelines) – the document serves as a reference point for legislators, government bodies, courts, civil society and international organisations in the development and application of legislation regulating the activities of associations, including non-governmental organisations (NGOs), trade unions and political parties.

While it is necessary to combat financial crime, it is important that such measures do not result in restrictions on human rights and freedoms. International and national authorities must balance the requirements of financial monitoring with the protection of human rights. This can be achieved by independently monitoring the implementation of FATF standards, developing transparent appeal mechanisms, strengthening the protection of personal data, and ensuring fairness in decision-

making with respect to NPOs and civil society. Only such an approach can effectively combat financial crime without endangering democratic freedoms.

To prevent abuse of its recommendations and undesirable consequences for civil society, the FATF stresses the importance of ongoing dialogue and cooperation between governments and civil society. This approach helps to develop more balanced regulatory mechanisms that effectively prevent financial crime without infringing on the fundamental rights and freedoms of citizens.

2.2 Tools to protect civic space in the face of abuse of FATF standards

NPOs and civil society activists can use a number of international mechanisms to protect their rights and to counter the abuse of FATF standards by the state.

One of the most efficient tools is UN special procedures. For example, the UN Special Rapporteur on Freedom of Peaceful Assembly and Association examines cases of restrictions on freedom of association and state interference in the activities of NPOs. Activists can submit complaints to him/her, provide evidence of violations, and propose recommendations that can then be taken into account in international reports and appeals to states.

Another important mechanism is the UN Special Rapporteur on the Situation of Human Rights Defenders, who monitors the rights of civil society activists who come under pressure because of their activities. This includes cases of over-regulation of NPOs, harassment of activists and other forms of repression. This Rapporteur can send requests to governments, organise country visits and report at the UN level, thereby drawing international attention to specific cases of violations.

The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism is also of great relevance to this issue. He assesses whether measures to counter terrorist financing are consistent with international human rights standards. His activities include preparing reports, making recommendations to states and raising important issues in international forums.

The UN Human Rights Council (HRC), in particular its Universal Periodic Review (UPR) mechanism, plays a significant role. Under this process, states submit human rights reports and civil society activists can submit alternative reports and recommendations, thereby influencing international debate on issues of concern. It is also possible to file collective complaints with the UN Human Rights Council in cases where a state violates citizens' rights under the pretext of complying with FATF standards.

In addition, human rights organisations can apply to UN treaty bodies, such as the UN Human Rights Committee, which considers individual complaints of violations of rights guaranteed by the ICCPR. In cases where anti-money laundering or anti-terrorism measures are used to repress the civilian sector, a complaint can be lodged with the Committee against Torture if the victims have been ill-treated.

Finally, civil and international coalitions provide important support. For example, the Global NPO Coalition on FATF brings together organisations that work in cooperation to ensure that implementation of FATF standards does not lead to human rights violations. The Coalition produces alternative reports, engages in dialogue with the FATF, and promotes approaches bearing civil society interests in mind.

Major international organisations such as Human Rights Watch (HRW), Amnesty International, ICNL and ECNL also play a significant role in protecting the rights of civil society activists. They provide legal and analytical support, help prepare complaints and organise international campaigns to draw attention to systemic problems.

Thus, civil society activists have a wide range of tools to defend their rights and counter the abuse of FATF standards. The use of international mechanisms, participation in coalitions and access to human rights organisations not only helps to defend the rights of specific individuals and organisations, but also to achieve change at the systemic level.

2.3 FATF interaction with civil society: existing mechanisms, constraints and prospects

The FATF has traditionally been perceived as a closed and technocratic organisation whose focus is on developing and monitoring the implementation of international standards to combat terrorist financing and money laundering. However, the impact of these standards extends far beyond the financial sector, affecting the non-profit sector as well. This is why civil society is increasingly interested in dialogue with the FATF, seeking to minimise the risks of over-regulation and restrictions on its freedoms. It must be recognised that despite its reputation as a closed institution, the FATF has taken a number of steps towards greater openness in recent years.

Among the mechanisms available to civil society to interact with the FATF, several key ones can be highlighted:

Public consultations: On a number of occasions, the FATF holds public consultations on revisions to its standards. One recent example was the process of updating Recommendation 8 in 2023, during which representatives of NPOs around the world were given the opportunity to submit comments. However, practice shows that far from all civil society proposals are reflected in the final decisions.

Mutual Evaluation Process: Each country that joins the FATF undergoes a regular evaluation of the compliance of its national legislation with the organisation's standards. As part of this process, civil society can submit alternative (shadow) reports that highlight instances of abuse of anti-money laundering measures to restrict NPO activities. This tool provides an opportunity to document the real effects of regulation and propose corrective measures.

FATF Regional Groups: It is possible to interact with the FATF not only directly, but also through its regional units, such as the Eurasian Anti-Money Laundering Group (EAG). These structures, being closer to national contexts, can be more flexible in their dialogue with civil society. However, it should be noted that the EAG does not yet have a special platform for interaction with civil society, and this group is not very keen on such co-operation.

Publication of reports and case studies: The FATF has increased its focus on accessibility of finance in recent years, recognising that stringent regulatory measures can make it difficult for NPOs to access banking services. The organisation publishes analytical reports addressing these issues, and civil society can participate by providing data and examples of negative impacts.

It is important to note that despite these mechanisms, the FATF's interaction with civil society remains very limited.

One of the key reasons for this is the traditional format of the organisation's work: after all, FATF is an intergovernmental body whose main partners are national governments and financial institutions. Unlike human rights structures, such as the UN Human Rights Council, the FATF does not have a mandate to protect human rights, which initially creates a certain imbalance in priorities.

Another particularity is that the FATF prefers to co-operate with civil society through intermediaries rather than directly. The most prominent role here is played by the Global NGO Coalition on FATF, which brings together a number of international organisations working on

civil society and financial regulation. While the coalition performs an important function in representing NPOs in dialogue with the FATF, its role limits the access of a wider range of organisations to direct interaction.

The current model of interaction gives rise to a number of problems:

- NPOs are rarely allowed to participate directly in FATF plenary meetings. Even when consultations are held, their format does not always ensure equitable dialogue.
- Interaction with civil society is often reduced to formalities, with no obligation to take proposals into account in the outcome documents.
- Working through the Global NGO Coalition on FATF allows the organisation to filter the topics that come up on the agenda, and this is not always in the interests of all civil society representatives.

What steps can NPOs take to effectively interact with the FATF? While direct dialogue with the FATF remains challenging, civil society has several strategies to influence decision-making processes:

Participation in national consultations: Government authorities responsible for implementing the FATF standards can hold discussions with stakeholders. Involvement in this process allows not only to formulate their position, but also to influence country's domestic policy.

Advocacy through international organisations: The FATF's influence on government policy is often raised at the level of the UN, OSCE, Council of Europe and other international bodies. Working with organisations that have access to these platforms can be an effective way to communicate issues.

Working with national parliamentarians: Many decisions regarding the regulation of NPOs under the FATF standards are made at the level of national legislatures. Co-operating with MPs and senators, explaining to them the consequences of excessive restrictions, can help to mitigate harsh regulations.

Publications and public campaigns: Despite the FATF's closed nature, the organisation does respond to international pressure. Media coverage of NPO restriction issues, publications in major publications, and information campaigns can influence the agenda.

Preparation of independent reports and studies: The submission of alternative reports during country mutual evaluations or during the revision of FATF standards remains one of the most effective tools, as such documents are included in the overall package of information reviewed by FATF experts.

While the FATF has taken steps to interact with civil society, there are still serious limitations due to the closed nature of the organisation and its mandate, which is primarily focused on states and financial institutions. In this context, it is important for civil society not only to utilise existing mechanisms of interaction, but also to seek new points of influence through national governments, international structures, parliamentary processes and media space.

The FATF remains a structure in which civil society plays a secondary role. However, this does not mean that NPOs cannot influence it. For this purpose it is necessary to:

- utilise existing interaction mechanisms, but do not rely on them alone;
- promote FATF policy change so that standards are more responsive to civil society;

- form national and international coalitions thereby increasing collective influence;
- engage technical experts and financial analysts to speak the FATF's language; and
- utilise international human rights mechanisms and public campaigns when national authorities use FATF standards to pressure NPOs.

The FATF, for its part, faces a choice between continuing formal interaction with civil society or building a more inclusive process. Whether the process is a formality or a real tool to protect civil society depends on how successfully NPOs are able to advance their agenda.

In this context, civil society can not only adapt to the existing system, but also seek to change it.

Possible directions for reform:

- Formalising the role of civil society in the FATF decision-making process – for example, establishing an NPO working group that could formally participate in the discussion of recommendations.
- Introducing an independent mechanism to evaluate the impact of FATF standards on civil society – for example, through systematic examination of the negative effects of regulation.
- Transparency in the work of the FATF – open access to internal documents and the decision-making process, especially in terms of recommendations to countries.

Such initiatives remain at the level of ideas, but they can be promoted through international human rights coalitions and dialogue with the FATF.

2.4 Opportunities for civil society to co-operate with national government authorities implementing FATF recommendations

The implementation of FATF recommendations at the national level has a significant impact on the functioning of civil society, particularly in the context of NPO regulation. Interaction between government authorities and civil society in this process can both help to better protect the sector from terrorist financing risks and minimise over-regulation that creates undue restrictions on NPO activities. However, the nature of such co-operation depends on the level of transparency of national authorities, their willingness to engage in dialogue, and their ability to address the risks of over-regulation.

Let us consider the key areas of co-operation between the civil sector and public authorities.

One of the key requirements of the FATF is that states conduct a national risk assessment (NRA), which includes analysing threats related to terrorist financing, including through the non-profit sector. Typically, the financial intelligence authority[19] is the authorised body responsible for conducting the NRA. Therefore, establishing co-operation with financial intelligence authorities is critical for NPOs. Without constructive dialogue, NPOs risk facing excessive regulation, restrictions on financial transactions and unfounded allegations. Open interaction with financial intelligence authorities can minimise such risks, as these authorities can explain the real threats and NPOs can demonstrate transparency and internal controls that will promote fair regulation and prevent discrimination against the civil society sector.

Civil society can play an important role in this process by establishing co-operation with government agencies responsible for implementing the FATF recommendations, providing

[19] In Kazakhstan, the financial intelligence agency is the Republic of Kazakhstan Financial Monitoring Agency (FMA).

alternative data and independent evaluations to complement official sources. In addition, NPOs can provide access to information on their actual practices and the possible consequences of over-regulation, as well as participate in consultations and working groups engaged in risk assessment. The experience of many countries shows that the involvement of civil society in the NRA process helps to obtain a more objective picture of risks and avoid undue pressure on the sector.

In addition to participating in risk assessments, NPOs can influence legislative and regulatory developments, as the FATF standards require states to implement national acts regulating NPO activities in the context of countering terrorist financing. Civil society can actively participate in the development of such draft laws and regulations by proposing legal language that is consistent with the principles of proportionality and the protection of human rights. It is important to utilise the mechanisms of public debates and parliamentary hearings to pursue a non-discriminatory approach to the regulation of NPOs. In addition, monitoring of law enforcement practices can help identify cases of over-regulation and its negative consequences. In countries where civil society is actively involved in this process, NPOs have been able to play a key role in mitigating harsh legislative initiatives proposed as part of the implementation of the FATF standards.

An equally important area of co-operation is the development of public control and reporting mechanisms. Government bodies responsible for implementing the FATF standards should ensure transparency of their activities, especially with regard to the supervision of NPOs. Civil society can participate in the work of public councils and advisory committees under government bodies, make proposals to increase the transparency of state control and demand the publication of reports and public data on sanctions against NPOs. Regulatory monitoring and advocacy work are also important tools for documenting cases of undue pressure on organisations under the pretext of complying with FATF standards.

Another area of concern requiring co-operation is dialogue with financial regulators and banks. Excessive financial regulation results in NPOs being denied account opening, blocked transactions and increased de-risking, creating serious obstacles to their operations. Civil society interaction with government agencies and financial institutions can help develop guidance for banks on dealing with NPOs, ensure more transparent vetting procedures, and introduce special financial mechanisms for charities working in conflict and humanitarian crisis zones. The experience of countries that have introduced such mechanisms shows that NPOs have been able to avoid massive financial blockages and unjustified refusals by banks.

Despite the obvious benefits of civil society co-operation with state authorities, there are serious challenges. In many countries, there is a lack of political will to engage in open dialogue with NPOs, as authorities perceive the FATF standards as a tool to increase scrutiny rather than as a way to balance risks. Decision-making processes often remain closed, making it difficult for civil society to participate in discussions on regulations and risk assessment procedures. In addition, monitoring and advocacy require significant resources and expertise that not all organisations possess. In the context of limited civil society space, interaction with state authorities can also lead to manipulation of individual NPOs' participation in order to legitimise repressive measures.

Effective co-operation between civil society and national authorities implementing the FATF standards is only possible with a transparent, inclusive and evidence-based approach. Civil society should not simply react to measures already in place, but should proactively engage in policy development, ensuring balanced regulation that protects the sector from abuse and unreasonable restrictions. To this end, it is important to actively engage in risk assessment and legislative development, monitor the effects of regulation and seek interaction with the financial sector, promote transparency and public scrutiny mechanisms, and develop coalitions and international co-operation to strengthen civil society's bargaining power with the state.

Such approach will minimise the risks of over-regulation and ensure respect for human rights when implementing the FATF recommendations.

However, in practice, civil society's access to these mechanisms remains limited. In a number of countries, national authorities perceive FATF recommendations as peremptory directives, resulting in over-regulation of the sector without due consideration of civil society's views. For example, Kazakhstan faced criticism from local and international organisations for its lack of inclusive dialogue when conducting a national risk assessment of NPOs.

2.5 Opportunities for civil society co-operation with FATF-Style Regional Bodies, using the EAG as an example

FATF-Style Regional Bodies play an important role in adapting international standards to the regional context. They not only evaluate how well countries are implementing FATF recommendations, but also help states develop and implement measures to combat terrorist financing and money laundering. These bodies can significantly influence legislation and policy in their member countries, making them important partners but also targets of civil society scrutiny.

Cooperation with such organisations is important for NPOs, as regional groups form recommendations that then become the basis for national laws and regulations. If civil society is left out of this process, states can use the FATF standards as an excuse to tighten control over the non-profit sector, which can lead to over-regulation, financial restrictions, and limitations on international co-operation. Therefore, engaging civil society organisations in dialogue with TF-Style Regional Bodies becomes strategically important to protect space for NPOs and ensure a balanced approach to regulation.

In this regard, it makes sense for civil society representatives of Central Asian countries to try to establish co-operation with the EAG, as these countries are members of this regional body.

For reference: EAG was established in 2004 and is currently an associate member of FATF. The EAG comprises nine states: Belarus, China, India, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan and Uzbekistan.

One opportunity for interaction is the process of mutual country evaluations, in which the EAG analyses the extent to which the state is complying with FATF requirements. Civil society can contribute to this process by providing alternative reports that reflect the impact of regulation on the non-profit sector as well as instances of abuse. Such reports can be an important advocacy tool, as they show how specific measures in practice affect the work of charities and human rights organisations. In a number of cases, alternative reports have helped to draw attention to problems of excessive control and led to adjustments in approaches.

Another area of co-operation can be participation in consultations and working groups. While regional groups rarely openly involve NPOs in their discussions, civil society itself can initiate dialogue by submitting requests for participation in consultations, submitting proposals, and arranging meetings with national delegations. In countries where authorities are willing to interact, NPOs can participate in the development of national approaches to implementation of the FATF standards, thereby influencing the regulatory environment and minimising possible risks to their activities.

Nevertheless, civil society co-operation with the EAG can face serious challenges. The organisation, like other FATF regional bodies/groups, operates primarily for the benefit of national governments, and its processes remain opaque. Mutual country evaluations are often conducted without due consideration of alternative views, and recommendations can be politicised to justify

restrictive measures against the non-profit sector. Closed procedures and the lack of a mechanism for NPO participation make dialogue difficult, but not impossible.

For effective interaction, civil society needs to use all available tools: preparation of independent reports, international human rights mechanisms, work through partner organisations and advocacy at the level of national governments. It is important not only to respond to decisions already taken, but also to push for systemic change, demanding greater transparency and accountability on the part of the EAG. If civil society is able to take an active role in this process, it can not only protect its sector from over-regulation, but also influence the development of a more balanced and fair approach to the implementation of FATF standards in the region.

3. Legal framework and obligations of the Republic of Kazakhstan to the FATF on issues related to respect for human rights and interaction with civil society

This chapter analyses the legal framework and international obligations of the Republic of Kazakhstan in the context of the implementation of the FATF standards, with a particular focus on their impact on the observance of human rights and the functioning of civil society. In the context of the global fight against terrorist financing and money laundering, Kazakhstan, as a member of the EAG, has undertaken to implement the FATF recommendations into its national legal system.

At the same time, the regulation of financial flows and oversight of NPOs, as stipulated by international standards, should be consistent with the principles of democratic governance, openness and human rights protection. However, practice shows that the implementation of these obligations may lead to excessive control over the activities of NPOs, create additional administrative barriers and limit their ability to raise international funding.

This chapter examines Kazakhstan's international obligations, its national legislation on countering terrorist financing, and the existing problems related to the application of FATF Recommendation 8. Particular attention is paid to the impact of these measures on civil society, as well as analysing cases where anti-crisis mechanisms and regulatory measures have been used to strengthen state control over NPOs.

3.1 Kazakhstan's international obligations to implement the FATF standards

Kazakhstan is not a member of the FATF, but is a member of a FATF-Style Regional Body, the Eurasian Group on Combating Money Laundering and Financing of Terrorism established in 2004.

Thus, participation in the EAG imposes on Kazakhstan serious international obligations on legislation improvement, monitoring of financial flows, international co-operation and protection of the financial system from criminal use. The key obligations of Kazakhstan within the EAG are implementation of the FATF Recommendations, passing mutual evaluations, improving national legislation, ensuring effective financial monitoring, international cooperation, as well as strengthening measures to counter terrorist financing.

To fulfil the FATF requirements, Kazakhstan is obliged to bring its legislative and institutional system in line with international standards. This includes establishing clear mechanisms for regulation, supervision and monitoring of financial transactions, introducing effective measures to identify ultimate beneficiaries, ensuring transparency of corporate structures, and increasing control over high-risk sectors of the economy.

In developing all these measures, Kazakhstan is required to be guided by key FATF documents, including the Methodology for Evaluating Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, the Terrorist Financing Risk Assessment Guidelines, and the Best Practices Paper on Countering the Use of NPOs for the Purpose of Terrorist Financing. These documents focus on the need to protect NPOs from over-

regulation to ensure that counter-terrorist financing measures do not result in restrictions on the activities of law-abiding organisations and civil society institutions.

The FATF emphasises that states should ensure that measures are proportionate and avoid undue pressure on NPOs through balancing financial security and freedom of association. Countries are required to apply proportionate and risk-based measures that protect the sector from abuse without creating undue administrative and regulatory pressure. In this context, Kazakhstan needs to maintain a balance between meeting FATF standards and protecting the rights and freedoms of citizens.

By becoming a member of the UN and ratifying the ICCPR, the Republic of Kazakhstan has committed itself to comply with its regulations. In addition, the Republic of Kazakhstan, having become a participating State of the OSCE and a member of the Venice Commission of the Council of Europe, has also undertaken moral and political obligations to implement the documents adopted within the framework of these organisations, including the OSCE ODIHR and Council of Europe Venice Commission Guidelines on Freedom of Association.

However, the practice of implementing the FATF recommendations shows that in a number of cases Kazakhstan has used the argument of combating terrorist financing to establish excessive regulation of the NPO sector. This contradicts international standards, according to which any restrictions must be justified by necessity, proportionate to the perceived threat and non-discriminatory in nature. It is important for Kazakhstan, as a participant in international human rights mechanisms, to take these principles into account when developing and implementing national legislation.

Kazakhstan is also required to undergo mutual EAG evaluations, which analyse both the technical compliance of its legislation with FATF standards and the effectiveness of its enforcement practices. If deficiencies are identified, the country is required to promptly take corrective measures and report on progress.

In the area of financial monitoring, Kazakhstan should ensure comprehensive control over suspicious transactions and implement a risk-based approach in analysing financial flows. Financial institutions and entities subject to AML/CFT regulation are required to comply with the requirements for proper verification of clients, identification of suspicious transactions and transfer of relevant information to the Financial Monitoring Agency (FMA).

At the international level, Kazakhstan is obliged to co-operate with EAG member states, FATF, UN, Interpol, World Bank and other partners to exchange information, facilitate investigations and ensure extradition of persons involved in money laundering and terrorist financing.

Kazakhstan is obliged to promptly apply sanctions measures against persons and organisations on the UN and FATF international lists, block their assets and prevent the use of the country's financial system to finance terrorist activities.

In addition, Kazakhstan must regularly conduct a national risk assessment (NRA) of money laundering and terrorist financing, on the basis of which state strategies and regulations are developed and adjusted. State authorities are required to ensure transparent reporting to the EAG and FATF on the implementation of AML/CFT measures and progress made.

As such, Kazakhstan has comprehensive obligations to ensure compliance of its national system with the FATF requirements. Their implementation not only contributes to strengthening financial security, but also prevents possible sanctions from the international community, including being placed on the FATF "grey list", which could have a negative impact on the investment climate and international financial transactions of the country.

3.2 Progress in implementing the FATF recommendations: Kazakhstan's mutual evaluations

Initially, the national AML/CFT legal framework in Kazakhstan was formed from 2000, when an article on money laundering was introduced into the Criminal Code. In 2004, Kazakhstan became a member of the EAG, committing to implement the FATF standards, and by 2009, the country adopted its first AML/CFT law, creating a basic institutional and legal framework. However, at the time of the first mutual evaluation, the system was still imperfect and at the initial stage of functioning.

The first round of mutual evaluations of Kazakhstan took place in 2011, following which Kazakhstan was withdrawn from the standard monitoring procedure due to numerous deficiencies found by EAG evaluators. The outcome report noted both positive steps (adoption of a specialised law, establishment of a financial intelligence agency, development of inter-agency cooperation) and a number of deficiencies (incomplete criminalisation of certain crimes, need for improvement of legislation on beneficial ownership, requirement to improve the effectiveness of law enforcement practices).

In subsequent years, Kazakhstan has reported in the format of "Follow-up Reports" on measures taken to correct deficiencies and bring the AML/CFT system into greater compliance with FATF standards.

The 2011 report made recommendations to Kazakhstan indicating the need to address significant gaps, including weak controls over non-financial entities, limited asset freezing mechanisms, and insufficient measures to identify beneficial owners of companies.

In addition, special attention was paid to the need to reform the regulation of NPOs in the context of FATF Recommendation 8, for which Kazakhstan received a "Non-Compliance" rating.

Specifically, the evaluators noted the following deficiencies:

There have been no evaluations of NPO legislation for AML/CFT purposes.

There were no periodic analyses of the NPO sector to identify CFT risks, as well as AML/CFT awareness raising activities.

There is no system for monitoring the activities of larger NPOs.

There are no specific mechanisms for the timely exchange of information, both nationally and internationally, on NPOs in cases of suspected ML/CFT.

The range of sanctions for breaches of the legislation is quite narrow and does not apply for AML/CFT purposes.[20]

Between 2011 and 2018, Kazakhstan undertook a number of corrective measures. In particular, in 2015, the powers of the Financial Monitoring Committee (now the Financial Monitoring Agency) and law enforcement agencies were expanded, and in 2016 a mechanism of national risk assessment (NRA) on money laundering and terrorist financing was introduced. The first national risk assessment was conducted in 2018, but it was closed, limiting the involvement of the private sector and civil society in AML/CFT discussions. Key measures during this period included introducing automated systems to analyse financial flows, strengthening beneficial ownership transparency controls, and extending AML/CFT requirements to new sectors, including virtual asset providers.

[20] See p. 201 of the Mutual Evaluation Report on Combating Money Laundering and Terrorist Financing (2011)

An important recent step was the updated National Risk Assessment in 2021, which for the first time looked in detail at the threats posed by the use of new technologies and cross-border financial transactions.

The second round of mutual evaluation of Kazakhstan was conducted in 2022, with a field mission of EAG expert evaluators from 12 to 30 September. The report on the results of this evaluation was approved at the 38th EAG Plenary Meeting and published in July 2023.

In the report 2023, EAG evaluators noted that Kazakhstan has made significant progress in implementing the recommendations of the FATF. In their opinion, the country has fully implemented a risk-based approach, modernised financial monitoring systems, and brought mechanisms for combating terrorist financing in line with international standards. At the same time, certain deficiencies remain, including problems with transparency of data on beneficial owners of foreign companies, weak controls over cash flows, and the need to strengthen mechanisms for international recovery of criminal assets.

As a result of the second mutual evaluation, Kazakhstan improved its rating under Recommendation 8 from "Non-Compliance" to "Significant Compliance".

According to the evaluators, "*comprehensive information from relevant sources was used to identify the types of NPOs at risk of being used for CFT purposes and the level of risk, and all necessary legal and regulatory frameworks are in place, including those aimed at systematically informing NPOs of the risks of their involvement in terrorist financing without interfering in their activities, which generally meets the requirements*". [21]

At the same time, the evaluators recommend that for the future Kazakhstan "*Consider developing additional targeted measures for NPOs vulnerable to CFT, including in terms of ensuring control over spending by charitable and religious organisations based on the identified threats and risks of NPOs being used for CFT*".[22]

Despite the achievements made, the evaluators recommended that Kazakhstan continue to improve the national AML/CFT system. Recommendations include strengthening measures to ensure transparency of beneficial ownership, improving the effectiveness of supervision of financial monitoring entities, and strengthening international co-operation in the area of information exchange and mutual legal assistance. The implementation of these recommendations is aimed at further strengthening the national AML/CFT system and bringing it into full compliance with the FATF international standards.

It should be noted that Kazakhstan's NPOs do not agree with the improvement of Kazakhstan's rating for technical compliance with Recommendation 8. In their opinion, Kazakhstan's rating under this Recommendation should have been lowered on the contrary, as the country did not conduct a proper risk assessment of the non-profit sector, which would have identified which NPOs were vulnerable to being used for FATF purposes and evaluated the real risks.

Almost all measures taken by Kazakhstan in relation to NPOs are excessive and apply to the entire non-commercial sector in violation of FATF requirements. However, the EAG evaluators did not notice these violations and took the side of the state, which raises certain questions about the quality of mutual evaluations conducted by the EAG.

[21] See p. 304 of the Republic of Kazakhstan Mutual Evaluation Report (2023)
[22] See p. 17 paragraph 7 of the Republic of Kazakhstan Mutual Evaluation Report (2023)

3.3 Analysing the compliance of measures taken against NPOs in Kazakhstan with FATF standards

Kazakhstan, as a member of the EAG, has implemented a number of legislative and administrative measures aimed at preventing the use of NPOs for terrorist financing purposes. These measures were formally justified by the need to implement FATF Recommendation 8, which requires states to assess the risks of involvement of NPOs in terrorist financing and apply targeted, proportionate and risk-based regulatory measures.

As we have already noted, the EAG evaluators highly appreciated these measures, considering them effective and upgraded Kazakhstan's rating under Recommendation 8 to "Significant Compliance". However, representatives of NCOs do not agree with this evaluation and believe that instead of applying targeted and reasonable supervision of truly vulnerable NPOs, the state authorities continue to introduce excessive and disproportionate regulation that hampers the activities of civil society.

In order to understand this issue, it is necessary to review all these measures against NPOs in Kazakhstan under the pretext of implementing the FATF Recommendations and evaluate them for compliance with these standards.

As part of the implementation of Recommendation 8, over the past 10 years, the Government of Kazakhstan has introduced the following measures:

- In 2015, there was introduced annual reporting for NPOs[23] to the NGO Database maintained by the authorised body for interaction with NGOs – the Committee for Civil Society Affairs of the Ministry of Culture and Information of the Republic of Kazakhstan.[24]
- In 2016, an obligation was introduced for recipients of foreign funding[25] to submit relevant reports to the state revenue authorities.
- In 2020, additional requirements were introduced for charitable and religious organisations:[26] 1) to make payments and money transfers at the request of third parties or on their own initiative through entities which are subject to financial monitoring; 2) to provide, upon request, financial statements on transactions conducted with money and/or other property and information on identified risks to the authorised body; 3) to keep for at least five years information on transactions conducted with money and/or other property subject to mandatory state registration, as well as on founders (participants). In addition, they are obliged to send reports to the authorised body (AFM) on any suspicion of their use for terrorist financing purposes.

[23] Art. 41 p.5 of the Law of the Republic of Kazakhstan "On Non-Profit Organisations"; Rules for the provision of information on their activities by non-governmental organisations and formation of the Database on them

[24] Although this rule was initially introduced to increase transparency of NPOs' activities, the Government subsequently began to position this innovation as one of the measures to implement the FATF Recommendations, and which was credited by a group of evaluators within the framework of the Kazakhstan Mutual Evaluation in 2022.

[25] Art. 29 of the Code of the Republic of Kazakhstan "On Taxes and Other Obligatory Payments Budget" (the Tax Code); the Rules, Timing and Form of Submission to the State Revenue Authority of Information on Receipt and Expenditure of Money and/or Other Property Received from Foreign States, International and Foreign Organisations, Foreigners, and Stateless Persons;

[26] Art. 12-2 of the Republic of Kazakhstan Law "On Combating Legalisation (Laundering) of Proceeds of Crime and the Financing of Terrorism".

- In 2023, the Government decided[27] to regularly publish the Register of Persons Receiving Money and/or Other Property from Foreign States, International and Foreign Organisations, Foreigners, Stateless Persons on the website of the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan.

Let us examine these measures for compliance with the requirements of Recommendation 8.

1) Countries should determine which organisations fall within the FATF functional definition of NPOs

According to the Interpretive Note to Recommendation 8, countries should apply it only to organisations that meet the FATF functional definition, i.e. organisations that are primarily engaged in raising or distributing funds for charitable, religious, cultural, or other purposes. It does not cover the full range of organisations operating in the non-profit sector in a particular country.

This requirement is a key one, as it is important for countries to determine at the earliest stage which types of NPOs fall within the FATF definition, and only in relation to such organisations to assess the risks of involvement in terrorist financing and develop measures to mitigate any identified risks.

Now let us examine the above-mentioned measures for compliance with this requirement:

Annual reporting for NPOs to the NPO Database is non-compliant, as it applies to all NPOs in the country.

Reporting for recipients of foreign funding is non-compliant, as it applies to a wide range of entities, including not only NPOs, but also other legal entities and individuals.

Additional requirements for charities and religious organisations is technically compliant, as it is based on the national risk assessment, which found that charities and religious organisations fall under the FATF functional definition of NPOs in Kazakhstan. However, the Government was unable to demonstrate to Kazakhstan's NPOs any risk assessment methodology that identified these particular organisations as vulnerable to the risk of being used for terrorist financing purposes.

The publication of the Register of Recipients of Foreign Funding is non-compliant, as this measure applies to a wide range of persons (not only NPOs) and does not contribute in any way to the implementation of Recommendation 8. Not only is this measure non-compliant with the FATF standards, it also grossly violates international standards on the implementation of fundamental human rights (right to freedom of association, right to privacy, freedom of speech, right to participate in the management of public affairs), as it stigmatises civil society representatives by the source of funding and discloses their personal data, which creates a threat to personal security.

2) Countries should undertake a risk assessment of these organisations

The next key element in the implementation of Recommendation 8 is a mechanism to identify and assess the risks associated with terrorist financing through NPOs. The FATF recommends that governments develop mechanisms to assess terrorist financing risks in co-operation with civil society and based on evidence.

[27] Para. 8 of the Order of the Ministry of Finance of the Republic of Kazakhstan "On Approval of the Rules for Maintaining the Database of Persons Who Received and Spent Money and/or Other Property Received from Foreign States, International and Foreign Organisations, Foreigners, Stateless Persons, as well as Their Inclusion and Exclusion from the Database".

However, according to NPOs, the Kazakhstan authorities have not yet started to apply a risk-based approach to risk assessment in the non-profit sector as required by the FATF. Indeed, having reviewed above the measures that Kazakhstan has introduced and continues to introduce with respect to NPOs, it can be concluded that in most cases broad rules covering the entire non-profit sector are applied. Instead of introducing a risk-based approach, Kazakhstan resorts to excessive regulation of the entire sector without differentiating between organisations, which are actually vulnerable to terrorist financing threats, and law-abiding NPOs. At the same time, Kazakhstan not only does not involve independent NPOs in the risk assessment process, but also uses FATF recommendations as an instrument of political pressure.

Nevertheless, Kazakhstan reported to the EAG that a risk assessment of the non-profit sector was conducted as part of the 2021 national risk assessment,[28] as a result of which NPOs were assigned a medium risk level. However, it remains unclear how NPOs were assigned such a risk level, if the same report states that there were practically no cases of NPO involvement in CFT activities in the period under review. Moreover, the information on the risk assessment of the non-profit sector did not contain a detailed analysis of the NPO sector, and conclusions about its vulnerability were made without providing actual data. All these factors raise concerns among Kazakhstan's NPOs about the relevance and credibility of the evaluation presented.

3) *Countries should have in place focused, proportionate and risk-based measures, without unduly disrupting or discouraging legitimate NPO activities*

As we have already noted, most of the measures taken by Kazakhstan in relation to NPOs as part of the implementation of the FATF standards do not meet these requirements. According to various experts, Kazakhstan allows excessive and disproportionate regulation of NPOs in violation of the requirements of Recommendation 8. One example is the mandatory reporting of foreign funding, which hampers the activities of NPOs and creates administrative barriers to their legitimate activities.

Monitoring of foreign funding of NPOs becomes particularly biased once they begin to engage in public activities, such as providing legal assistance, conducting public opinion polls (except those conducted for commercial purposes), and collecting, analysing and disseminating information (if not conducted as part of commercial activities). According to Article 29 of the Tax Code, NPOs must submit reports on the receipt of funds from foreign sources to the tax authorities, and late or incorrect submission of data results in huge fines and administrative sanctions. In addition, such measures are discriminatory, as Article 29 of the Tax Code of Kazakhstan, which regulates reporting on foreign funding, contains 16 exceptions. These include all state institutions and persons holding responsible public positions, which effectively means that foreign funding of the state is not subject to the same control as funding of the civil sector.

Unfortunately, these regulations were introduced without a proper risk assessment of the non-profit sector, as required by the FATF standards. The government of Kazakhstan failed to provide a justification of the existing terrorist financing risks in the NPO sector before introducing these onerous requirements. Moreover, the National Risk Assessment does not mention foreign funding as a risk factor associated with NPOs. The report merely states that the potential risks of NPOs being used for terrorist financing purposes are primarily related to the ability to collect and move cash.

In addition, Kazakhstan has introduced severe sanctions, including heavy fines and even suspension or banning of activities, for minor reporting violations. At the same time, the reporting requirements are overly complex and detailed, which in itself is a form of interference in the

[28] P. 8 Public Report: National Risk Assessment of Terrorism Financing and Weapons of Mass Destruction Proliferation (2021)

activities of NPOs, forcing them to spend significant resources to fulfil bureaucratic requirements, distracting them from their core mission in society.

According to FATF standards, disproportionate measures should not be applied to civil society organisations. The imposition of disproportionate fines, activity bans and suspensions actually impede the normal functioning of organisations. NPOs have repeatedly noted the selective approach of the tax authorities in prosecuting civil society and human rights NPOs for reporting violations, particularly those receiving funding from certain international organisations.

In general, it is clear that the rules on foreign funding reporting do not meet the requirements of FATF Recommendation 8. Moreover, these measures directly contradict the ICCPR, as well as the OSCE ODIHR and Council of Europe Venice Commission Guidelines on Freedom of Association, which require that any restrictions on freedom of association be lawful, necessary and proportionate.

3.4 Recommendations to improve the implementation of FATF Recommendation 8 in Kazakhstan

To bring the regulatory practices of the non-profit sector in Kazakhstan in line with FATF Recommendation 8, the introduction of risk-based, proportionate and transparent regulation is required. Currently, the country applies universal and excessive controls that do not take into account the real risks of terrorist financing and restrict the activities of NPOs. In order to remedy this situation, a comprehensive reform is needed, including revising risk assessments, relaxing reporting requirements, protecting accessibility of finance for NPOs, removing excessive sanctions, and creating a mechanism for dialogue between the state and civil society.

The first step should be the **introduction of a new methodology for sectoral risk assessment** developed in line with FATF recommendations and involving local and international independent experts, as well as civil society organisations themselves. This would eliminate misleading and politically motivated justifications for increased scrutiny and provide an objective basis for regulation. Such an evaluation should be regularly updated and based on real data rather than assumptions.

The next important step should be to **abolish mandatory foreign funding reporting**, as it does not meet FATF standards, does not reflect real risks, and creates an excessive administrative burden for all NPOs. In this regard, it is also necessary to eliminate the Register of Recipients of Foreign Funding, which not only fails to combat terrorist financing, but also stigmatises recipients, while jeopardising their reputation and limiting their access to resources and threatening their personal safety and well-being. Instead, targeted controls should be implemented only for those organisations that are genuinely at heightened risk of involvement in terrorist financing schemes. This will balance the requirements of financial transparency and freedom of association.

Sanctions mechanisms for NPOs should be revised to eliminate the imposition of huge fines and suspension of activities for technical irregularities in reporting. Alternatively, a system of warnings and advisory measures should be introduced if violations are inadvertent and technical in nature, rather than the result of an actual offence with intent. Sanctions should be proportionate and only applied in cases of proven abuse, rather than serving as a tool to pressure civil society.

In addition, Kazakhstan should establish a **permanent mechanism for dialogue between government agencies and NPOs on AML/CFT issues**. This could be an advisory council under the Financial Monitoring Agency or an interdepartmental working group with the participation of representatives of civil society, international organisations and independent experts. Such a mechanism would make it possible to develop and adjust regulatory measures taking into account the interests of all parties, rather than unilaterally.

Ensuring accessibility of finance for NPOs and ending bank de-risking should also be a key element of reform. It is important to develop clear and transparent procedures for banking services for NPOs, including a ban on arbitrary closure of accounts and refusal to open new accounts without justified reasons. Banks should work within transparent regulatory procedures that exclude cases where NPOs are automatically labelled as high-risk entities without specific evidence. It is also necessary to introduce a mechanism for appealing bank decisions if an organisation faces blocking of accounts or denial of financial services.

Additional attention should be given to strengthening international co-operation, including sharing experience with democratic countries where regulation of NPOs is based on evidence rather than repressive measures. Kazakhstan should engage international experts to analyse national legislation and bring it in line with UN, OSCE and Venice Commission standards.

Thus, the reform of NPO regulation in Kazakhstan should not be aimed at total control, but at creating a balanced system based on proportionality, transparency and non-discrimination. Abolishing excessive restrictions, introducing real risk assessment, ensuring accessibility of finance, revising sanctions mechanisms and creating dialogue mechanisms will allow Kazakhstan to meet international standards, protect space for civil society and avoid international criticism.

RECOMMENDATIONS ON THE USE OF FATF TOOLS TO COUNTER REPRESSIVE MEASURES AGAINST CIVIL SOCIETY

The FATF provides a number of tools that can be used by civil society to counter over-regulation and repressive state measures. While the FATF standards are aimed at combating terrorist financing and money laundering, they should not be used as a tool to restrict the activities of NPOs.

Civil society in Kazakhstan and other Central Asian countries can use the following mechanisms to protect their rights and ensure that national legislation is brought in line with international standards.

Monitoring of national legislation and use of international FATF mechanisms

The first step to counter repressive measures is systematic and proactive monitoring of AML/CFT legislation and analysing its compliance with FATF standards and Kazakhstan's international obligations. One of the key requirements of FATF Recommendation 8 is the proportionality of regulatory measures, which implies the rejection of universal restrictions and the application of proactive measures only to those NPOs that are actually exposed to terrorist financing risks.

If the FATF standards are applied inappropriately to NPOs, they may appeal to the FATF Secretariat, providing a detailed description of the problem and, if necessary, supporting it with relevant evidence and materials. However, practice shows that the FATF Secretariat usually redirects such appeals to the government of the country concerned. Therefore, it is important for NPOs to clearly formulate their requests, specifying expectations from the FATF and possible mechanisms of its influence.

Civil society representatives can use the Global NGO Coalition on FATF to submit collective petitions reflecting the real impact of Kazakhstan's regulation on the non-profit sector. This platform has already demonstrated its effectiveness in 2023, when the coalition secured a revision of Recommendation 8, emphasising the need to take into account the right of NPOs to access funding. Kazakhstan's NPOs are free to interact with this coalition by presenting evidence of over-regulation and government pressure.

Shadow reports and participation in FATF evaluations

The FATF and FATF-Style Regional Bodies regularly conduct mutual country evaluations, and civil society participation in this process can be an effective tool to counter reprisals. In particular, civil society organisations can:

- Provide alternative data on the situation of NPOs in the country and record all violations caused by over-regulation.
- Document instances of stigmatisation and pressure on NPOs, including unfounded inspections, fines, suspension of activities, and closure of accounts.
- Team up with international organisations (e.g. OSCE, UN and the Global NGO Coalition on FATF) to file collective complaints and reports.

There are already precedents for the successful use of this mechanism. For example, in 2023, Indian NPOs published their shadow report, which presented the views of the Indian non-profit sector on the improper implementation of the FATF standards in that country. As a result, this brought additional international attention to the situation. Civil society representatives from Kazakhstan and other Central Asian countries can use this mechanism to present a real picture of the situation with the application of FATF standards in their countries.

Revision of FATF standards and advocacy at the international level

Civil society can directly engage in the FATF standards review process by seeking greater protection for NPOs from over-regulation. This is possible through:

- Submitting formal comments and proposals to the FATF Secretariat to amend Recommendation 8.
- Engaging with international experts and participating in discussions within the Global NGO Coalition on FATF.
- Using UN and OSCE platforms to bring issues to the international level.

In 2016, the UN Special Rapporteur on Freedom of Peaceful Assembly and Association submitted a report to the UN Human Rights Council criticising the trend of using AML/CFT standards to restrict the activities of NPOs. This contributed to a change in the FATF's approach to risk assessment. Civil society representatives from Kazakhstan and other Central Asian countries should initiate similar appeals through international human rights mechanisms.

International advocacy and human rights mechanisms

Civil society can use the tools of international advocacy to counter repressive measures of states. In particular, NPOs can:

- Submit complaints to the UN, OSCE and other international organisations, documenting violations of NPO rights. A special role in this can be played by:

- *UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association*, who examines cases of pressure on NPOs and stigmatisation of organisations.
- *The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, who evaluates whether measures to counter terrorist financing are consistent with international human rights standards.
- *The OSCE Office for Democratic Institutions and Human Rights* (ODIHR), which has already criticised Kazakhstan for over-regulating NPOs.

- Attract international media attention by seeking coverage of over-regulation issues.

- Interact with diplomatic missions in Kazakhstan (EU, USA, UK, Canada) to bring the issue to meetings with FATF and government representatives.

Similar measures have already been applied in other countries. In 2023, the OSCE prepared an urgent opinion on Georgia's Law on Transparency of Foreign Influence, harshly criticising mandatory reporting on foreign funding as disproportionate and in violation of international standards. NPO representatives from Kazakhstan and other Central Asian countries can initiate a similar legal opinion, seeking an international evaluation of the country's regulation.

We hope that this analysis will help civil society representatives in the region to better understand the FATF standards and their application mechanisms, enabling them to better protect their rights, access to finance and civic space in their countries.

Understanding international standards and utilising available advocacy tools can significantly strengthen the position of the non-governmental sector in Kazakhstan and other Central Asian countries. This will create the conditions for more transparent, proportionate and non-discriminatory regulation, consistent with the international obligations of the states in the region and not hindering the legitimate activities of civil society.