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**FATF's recommendation 8 on non-profit organizations:
A new tool to unfairly and dangerously shrink civil society space**

July 10th, 2019

This contribution is sent on behalf of the "Torture & terrorism" Working group, an OMCT initiative which, by creating a new platform for cooperation among OMCT SOS-Torture Network Members and strategic partners, aims at empowering the anti-torture movement, re-enforcing collective advocacy and campaigning to counter the increasing acceptance of torture and policies that undermine both human rights and the legitimate response to terrorism and violent extremism. This working group is composed of 17 NGOs coming from all around the globe and working on 32 countries. All findings and country analysis provided in this submission are based on their experience & expertise with the support of OMCT International secretariat and our office in Tunisia. To know more about the Working group, click [here](#).

Background information

NGOs and human rights defenders are just as concerned about terrorism as governments or any other sector of society; yet several governments have deliberately disregarded this and treated them as security threats or adversaries. In the name of counter-terrorism and security, they are arrested, arbitrary detained, prosecuted, sentenced to heavy prison terms, attacked, threatened and harassed, for documenting human rights violations and calling on their governments to fulfil their legal obligation to respect the fundamental rights of all citizens. These patterns have been particularly pronounced in countries that have a poor human rights record and repressive practices but have also occurred in countries that pride themselves on upholding fundamental values of democracy and human rights.

States not only have a right to counter terrorist acts but in fact they have a duty under human rights law to do so, as part of their duty to protect individuals under their jurisdiction. Further, as has since been recognised by the UN General Assembly through its Global Counter Terrorism Strategy and Plan of Action¹, as well as by the Security Council², human rights are central to any effective counter-terrorism strategy, so HRDs/civil society are too. HRDs also contribute directly to addressing the conditions conducive to terrorism, as identified by the Global Counter-Terrorism Strategy³. Restricting HRDs' ability to operate on the basis that it is necessary to counter terrorism and violent extremism is thus not only short-sighted and ineffective, but it is also ultimately counter-productive.

¹ General Assembly resolution 60/288. See also its recent review A/RES/72/284, and note that a coalition of NGOs deplored that the review did not recognize the essential role that civil society plays in guarding against abusive counter- terrorism practices and responding to and preventing the conditions conducive to terrorism, « Global Group of NGOs Deplore Lack of Attention to Human Rights in Latest Review of UN's Global Counterterrorism Strategy by UN Member States », Press Release, 11 July 2018.

² Security Council Resolution 2178 (2014).

³ These include, but are not limited to "prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance". General Assembly Resolution 60/288, Annex, Pillar I.



The necessity to counter money laundering and the financing of terrorism ('AML/CFT') is not questioned. However, the working group members and the OMCT are concerned how this legitimate concern has become a new and convenient panacea to unfairly and dangerously shrink civil society space.

Most States have a legal obligation to adopt national legislation to combat the financing of terrorism⁴. In order to assess States' efforts, the mandate of the main international policy and regulatory body on the financing of terrorism, the Financial Action Task Force ('FATF') was extended in 2001 to include the financing of terrorism⁵. The FATF, established in 1989, has developed a myriad of soft laws: 40 recommendations to be implemented at the national level, complemented by Interpretative Notes, Best Practices, and a Handbook for Countries and Assessors. Together with 9 FATF-Style Regional Bodies, FATF Global Network gathers 198 jurisdictions that have committed themselves at their highest level to implement these standards and to be evaluated by their peers, using FATF's methodology and procedures characterized by a lack of transparency and inclusivity.

Although FATF's recommendations are technically non-binding, they have been endorsed by 180 countries, are universally recognised as the international standard for the countering of terrorism financing, have been incorporated into UN Security Council resolutions and the Global Counter-Terrorism Strategy, translated into obligations at the regional level, and implemented at national level. If not taken into consideration, they can lead to severe adverse consequences for the states in question, notably isolation from financial markets.

More specifically, recommendation 8 pertains to non-profit organisations ('NPOs'). It goes along with its Interpretative note (revised in 2016) and the Best Practices on Combating the Abuse of Non-Profit Organisation's revised version approved in 2015. Both documents insist on the reach of Recommendation 8 is supposed to be expressly limited to a small subset of the non-profit sector build upon risk-based approach. They also recognized the important role of civil society and the importance of ensuring that the implementation of FATF Recommendation 8 should not disrupt or discourage legitimate activity, as well as should not violate countries' obligations under the Charter of the United Nations and international human rights law.

But in practice, FATF and its regional bodies have exerted considerable influence, pressuring governments to adopt or amend national counter-terrorism legislation following opaque process. Regularly they are devoid a proper consultation with HRDs/civil society and characterized by an almost complete lack of accountability. There is indeed no attempt to

⁴ International Convention for the Suppression of the Financing of Terrorism Adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999, entered into force on 10 April 2002; Security Council resolution 1373 (2001).

⁵ It aims to "set standards and to promote effective implementation of legal, regulatory and operational measures for combating terrorist financing, and to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse". FATF Mandate (2012-2020), 20 April 2012, Washington, DC.



respond when governments abuse the FATF as a pretext to over-regulate, control or close down civil society, an action that should neither be covered nor legitimized through the FATF label.

Among the real-life impact of the FATF's recommendation is often an overly-complicated, restrictive registration requirement, limitations or de facto prohibition of foreign funding for critical human rights work, as well as the targeting of human rights work through restrictive banking laws.

While NPOs, and among them NGOs, must act within a transparent framework that specifies their methods of creation, financing & functioning, this should not be at the expense of freedom of expression and association, the right to privacy as well as the right to access funding. Indeed, the UN Declaration on Human Rights Defenders provides that everyone has the right, individually and in association with others, "at the national and international levels [...] to form, join and participate in non-governmental organizations, associations or groups" (Article 5) and "to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means" (Article 13). This includes the ability for civil society organisations "to access funding and other resources from domestic, foreign and international sources"⁶, which is an essential element of the right to freedom of peaceful assembly and association.

Today, little evidence of the effectiveness of recommendation 8 in stopping terrorism financing have been put forward. Several UN independent experts⁷ but also the United Nations Working Group on Tackling the Financing of Terrorism ('CTITF')⁸ put into question the systematic link between NPOs and terrorism. Still, the idea that the sector remains vulnerable is widespread and has crippling effects on NGOs' rights & Human right defender's legitimacy.

In the following we present a selection of country examples in which FATF's recommendation 8 is playing a destructive role on civil society freedom and vital human rights work. These examples do not aim at being exhaustive but to demonstrate the type of abuse of recommendation 8. Countries are presented by alphabetical order. More information can be made available upon request.

⁶ A/HRC/23/39

⁷ Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39, para. 25 and Special Rapporteur on human rights and counter terrorism A/70/371, para 23 and 24.

⁸ United Nations CTITF Working Group on Tackling the Financing of Terrorism, Recommendation 65, Report from October 2009.



Country illustrations

1. Argentina

Argentina is a FATF member since 2000 and member of FATF-Style Regional Body GAFILAT. In its 2010 Mutual Evaluation Report ('MER'), FATF emphasized the remaining lack of « adequate progress in addressing a number of deficiencies identified »⁹, including in the NPO sector¹⁰. Later on, 2014 MER kept pressuring Argentinian authorities to strengthen their AML/CFT System¹¹. As a consequence, Law 26683 of June 2011 reformed and strengthened the money laundering offence and transferred AML/CFT supervision to the Financial Information Unit ('UIF'), the office subordinate to the Government in charge of implementing FATF's directions and recommendations through research and intelligence prerogatives. Additionally, Argentina amended its Criminal code through the adoption of National Law n°26.734 in December 2011. New provisions on AML/CFT were added to enhance terrorism financing offence, in particular by criminalising the financing of terrorist acts, and terrorist organisations and individual terrorists for any purpose. Early 2019, new discussions started for further modifications to the Criminal Code but no precise agenda has been put forward taking into account upcoming general election (October 2019).

Local NGOs strongly denounce these wide and vague formulation which are increasing risk of misuses to prosecute social protest or any other forms of dissidence from NGOs. According to local partners, these provisions are way above the needs to ensure a strong AML/CFT system and to comply with FATF's recommendations. Although there haven't been yet any convicted persons or bank accounts cancelled due to these legal provisions, a few NGOs have already suffered from them and been threatened or forced to limit their activity, leading to a "chilling effect" of civil society space, as stated in these deux examples:

- In April 2018, a local NGO working on human rights and democracy received an official letter from UIF announcing an upcoming regular inspection at their offices. Criteria being used were allegedly formulated in order to comply with FATF's rules, but, according to this NGO, exceed its requirements. Moreover, NGO's team noticed that the inspection came out right after they conducted a high-profile advocacy action against the establishment of groups addressed as "enemies" of the public order by the government's security policy. After a year of uncertainty, UIF confirmed all documentation were in accordance with applicable laws.
- During the previous weeks of the G20 which took place in Buenos Aires in December 2018, one of Argentina's main newspapers published an article stating that an office of ATTAC, an international organization involved in the alter-globalization movement¹², was being investigated by authorities after receiving "suspicious bank transfers" from

⁹ Executive summary, MER 2010, point 2.

¹⁰ MER 2010, point 826.

¹¹ FATF upcoming 4th round of mutual evaluation is planned for 2021 (visit) and 2022 (plenary discussion).

¹² <https://www.attac.org/en>



abroad¹³. ATTAC's members explained these transfers were coming from Global Justice Now and ATTAC Germany, both in support of G20 side events. This investigation was initiated by the General Inspection of Justice ('IGJ')¹⁴. Strong suspicions were made by reliable local partners on how the IGJ got this information, arguing it came from the UIF and then was leaked to the press. Although the investigation confirmed compliance of bank transfers, media outreach had negative impact on ATTAC's work and impact around the G20 with the intention of making organisations part of alter-globalization movement keep a "low profile".

2. Bangladesh

Bangladesh is a founding member of the APG (1997), FATF-style regional body for Asia/Pacific Group. Following a very critical 2009 MER which threatened to downgrade Bangladesh from the 'grey list' to 'dark grey list' and indicated, among others, that Bangladesh had "no overall strategy to identify and address AML/CTF risks within NPO sector"¹⁵, the Bangladesh government developed an Action Plan and announced in April 2012 that the finances of non-profits would be subject to higher scrutiny. A new Commission was set up, together with a data base to investigate operations of NGOs allegedly involved in terror financing and other anti-state activities and to develop a new law to regulate their activities.

Bangladesh authorities conducted as well an assessment of the NPO/NGO sector that was published in October 2015¹⁶. Consequently, a highly criticised Foreign Donations (Voluntary Activities) Regulation bill was introduced in 2014 and adopted on October 5th, 2016 despite strong calls coming from local and international NGOs denouncing the "systemic approach by the Bangladesh authorities to stifle free expression and severely restrict the work of civil society"¹⁷. This Act requires organisations to register with the NGO Affairs Bureau and obtain prior approval to receiving foreign funding for any voluntary activity on a project-by-project basis. Its effect is de facto the need to get clearance to document, monitor and report human rights violations often of the same actors responsible for those violations.

Surprisingly, APG addressed attacks on NGOs and warned Bangladesh authorities in MER 2016 that «AML/CFT controls on all NPOs go well beyond the FATF obligations and may disrupt legitimate NPO activities while still not addressing the risks»¹⁸. This recommendation did not prevent Bangladesh Government from intensifying its crackdown, under the (perceived) fight against violent extremism spectrum, on civil society, media, and critics through various

¹³ <https://www.infobae.com/politica/2018/11/14/investigacion-sospechosas-transferencias-bancarias-desde-el-exterior-a-una-organizacion-que-promueve-protestas-contras-el-g20/>

¹⁴ An office subordinate to the executive branch of the government formally in charge of verifying the legality of the constitution of legal entities but lately also in charge of following closely the financial activity of these entities.

¹⁵ MER 2009, point 145.

¹⁶ https://www.bb.org.bd/pub/research/sp_research_work/srw1505.pdf

¹⁷ <http://www.omct.org/human-rights-defenders/urgent-interventions/bangladesh/2015/10/d23422/>

¹⁸ MER 2016, point 61.



threats, arbitrary arrests, unlawfully prosecution, enforced disappearance or extrajudicial killings.

The 2nd Follow up Report was adopted at the APG Plenary in July 2018. According to APG, Bangladesh has made some progress in addressing the technical compliance deficiencies identified but is asking to keep strengthening its AML/CFT System. No mention of Non-profit sector/recommendation 8 were made since the follow up report only focused on a selection of recommendations asked to be re-rated.

3. India

India became a member of the APG (Asian Pacific Group, FATF-style regional body) in 1998 and later of the FATF (2010). In July 2010 an FATF evaluation found India “non-compliant” and called on its government to implement new measures. Later that year, the Indian government amended the already restrictive Foreign Contributions Act (‘FCRA’) to allow the government to withdraw the permits of NGOs designated as “organizations of a political nature.” As a consequence, thousands of NGOs had their FCRA permits suspended, drastically silencing part of civil society. The same year, amendment to the Unlawful Activities prevention Act (hereinafter ‘UAPA’) was as well specifically made in order to be in line with FATF recommendations. While recognizing the efforts made, the 2013 Evaluation follow-up process still found that India’s level of compliance was not yet equivalent to “largely compliant”.

Since then, many civil society organisations have effectively been left in limbo, unable to receive funding impacting a large base of human rights work in the country and affecting many human right defenders. Latest numbers available from the Ministry of Home affairs (‘MHA’) date from August 2017 and indicates more than 11,000 organisations’ FCRA license were cancelled. Some of the prominent organisations whose FCRA were either not renewed, renewed and then cancelled, suspended and cancelled are Indian Social Action Forum, Centre for Promotion of Social Concerns, Lawyers Collective, Sabrang Trust, Centre for Justice and Peace, Greenpeace India, Church’s Auxiliary for Social Action.

On October 4, 2017, the MHA made it mandatory for all existing NGOs having FCRA accreditation and those seeking FCRA registration/prior permission in the future, to register on National Institution for Transforming India (‘NITI’) Aayog’s NGO-Darpan portal and generate a unique identification number (UIDN). This is despite the fact that FCRA and its allied rules regulating foreign funding of organisations do not mandate any requirement for Darpan registration or UIDN. Besides organisational particulars, the portal also requires individual details, including Aadhar details – the constitutional validity of which is presently being considered by the Supreme Court. Another fundamental challenge lies in the fact that one member cannot register with more than one organisation.

On June 24th, 2019, Cabinet approved new amendments to the UAPA as well as proposal to amend the National Intelligence (NIA) Agency Act seeking to widen the scope of cases the Agency can investigate. This agency was created in 2008 after the Mumbai terror attacks with major influence from the FATF. According to local partners, these proposed amendments



further curb civil liberties and fundamental rights and introduce new categories of surveillance, new policing and judicial mechanisms that are not ruled by fundamental principles of the criminal justice system.

4. Indonesia

Indonesia became a member of the APG in August 1999 and held the rotating APG Co-chair role from 2006 to 2008. Indonesia is also observer to FATF. The first MER adopted in 2008 stated there were « evidence of abuse of NPOs in Indonesia, including significant cases of terrorism financing », a number of Indonesian charities being listed by UN 1267 Sanctions Committee as terrorist organisations.¹⁹ After denouncing a lack of political will “to improve transparency and good governance in the NPO sector and to ensure that measures are in place to prevent and detect the abuse of NPOs for terrorism financing »²⁰, APG rated Indonesia as non-compliant to recommendation 8.

As a consequence, Indonesia undertook a terrorism financing National risk assessment in 2015, an NPO Strategic Assessment in 2016, and issued a Terrorism financing white paper in 2017 where types of CSOs considered as being at risk of terrorist financing abuse were very broadly defined and thus covering almost all range of civil society organisations²¹. The 2003 Law on Mass Organisations (‘NGO law’), a law strongly denounced by NGOs as being dangerously prejudicial to the freedom of association was replaced in 2017 by the Law No. 16/2017 ahead of the next APG evaluation. This new regulation applies to CSO defined in a very broad term²². Provisions are even more extensive than those set out in the former Law. They infringe upon the rights to freedom of association, expression, and religion, and provide the government wide latitude to obstruct NGO work. The law imposes a variety of vague obligations and prohibitions on NGO activities, and severe limitations on the creation of foreign-funded organizations. Under this law, the Government has the authority to dissolve NGOs or mass organizations unilaterally without any involvement of the judiciary body when they promote values in contradiction with the philosophy of Pancasila, the Indonesian state philosophy. Although so far this law has only been used to target radical Islamic group, local organisations are afraid this law could be used to silence NGOs which denounce human rights violations and stand against Government’s unlawfully behaviours. Many grassroots organisation such as Agrarian advocacy group and Pro-Papuan independent organisation, as well as some donors and International NGOs are already facing government scrutiny which force them limit their work.

¹⁹ MER 2008, point 792.

²⁰ MER 2008, point 838.

²¹ TF NRA 2015, pp. 116–17: “The following types of CSOs are at risk of terrorist financing abuse: (i) CSOs operating in certain geographic locations (the highest threat was for organisations in Central Java, Jakarta, West Java, and East Java); (ii) unincorporated CSOs; and (iii) CSOs engaged in raising or disbursing funds for charitable, religious, cultural, educational, social or fraternal purposes that were then used to support terrorist organisations.”

²² Article 2 of the NPO Regulation applies to CSOs, legal or non-legal entity status, that: (i) receive and distribute funds from and/or send funds outside of Indonesia; or (ii) whose funds for both donations and operations are largely derived from cash.



On May 25th, 2018 Law on Counter-Terrorism (No. 15/2003) was amended. It contains even more draconian measures and vague terms that erodes safeguards against arbitrary detention, torture and other ill-treatment, expand the scope of the application of the death penalty but also contains broad provisions on support to terrorism (article 12A & 12B) and public incitement to violence (Article 13A) where a minimum prison sentence of three years and maximum 12 years is stipulated²³. These provisions could apply to NGOs.

The latest MER issued in September 2018 recognized “Indonesia has identified the nature of threats to the NPO sector and imposed measures that are somewhat consistent with the identified risks, but minor deficiencies remain. »²⁴. APG rated Indonesia largely compliant to recommendation 8²⁵ without any references neither to the need to limit as much as possible current infringement of freedom of association nor to the necessity to narrow erosive measures to a small subset of the non-profit sector build upon detailed risk-based approach.

5. Pakistan

Pakistan joined the APG (Asian Pacific Group, FATF-style regional body) in 2000. In the 2009 MER, AML/CFT regime were defined as not commensurate with the risks and threats facing Pakistan. More specifically, when examining the NPO sector, the latest was qualified as « jealous of the freedoms guaranteed to it by the constitution and resistant to government regulation »²⁶. As a direct consequence, Pakistani authorities developed a whole repressive legal arsenal to comply with FATF’s recommendations.

The National Counter Terrorism Authority (‘NACTA’) was set up in 2009 and its powers and mandate were defined with the 2013 NACTA Act. NACTA is working in collaboration with all the Police and Counter Terrorism departments of the country to ensure effective implementation of FATF’s recommendations and became a key player in NGOs’ repression. The Economic coordination committee of the Cabinet (‘SECP’) approved a policy in November 2013 for the regulation of organizations receiving foreign funding. This regulation requests NGOs to register with the Government and sign a Memorandum of understanding valid up to five years with specific conditions to respect²⁷. Government has the power to cancel this certification and NGOs can then be banned for a period of 3 years. A National Action Plan (‘NAP’) for countering terrorism and extremism was approved on 24th of December 2014 by the Parliament and following this plan, Circular No. 02/2015 and Circular No. 04/2015 were issued to set up a license renewal process. During this process and according to our local partners, authorities held no consultations with civil society.

²³ https://www.hrw.org/sites/default/files/supporting_resources/indonesia_counterterrorism_bill_2017_0.pdf

²⁴ MER 2018, point 161.

²⁵ MER 2018, point 135.

²⁶ MER 2009, point 1011.

²⁷ They commit to not employ more than 10 percent foreign national staff and to ensure Pakistani nationals a preference for key positions.



Since the 2009 MER, on-going evaluation process took place on a regular basis, and kept pressuring Pakistanis authorities to take more restrictive approach and measures on AML/CFT. In the meantime, the working climate for international humanitarian and human rights groups was severely deteriorating: HRDs faced various threats, including killing, arbitrary arrest and detention, abduction and kidnapping, surveillance and judicial harassment. On December 2017, 29 NGOs have been ordered to shut down their activities within the next 60 days.

In June 2018 Pakistan was formally added to the 'grey list' of countries involved in providing monetary assistance to terrorists and related causes after a FATF meeting in Paris, as well as on the EU list of high risk third countries (July 27th, 2018)²⁸. Another FATF field visit took place in August 2018, and kept pressuring national authorities despite critics from local and international NGOs arguing Pakistan already had many laws on anti-money laundering but the challenge lied in their effective and transparent implementation.

On September 7th, 2018, a new report with guidelines for enforcing AML/CFT policies was issued by the SECP. In addition, the Ministry of Interior started to work on "Model Law for Registration, Regulation, and Facilitation of Charities Bill. On October, 2018, almost 20 NGOs were requested to stop their activities within the next 60 days.

A final FATF on-site visit took place on October 2018. Pakistan and the FATF negotiated a 10-point action plan to be implemented by September 2019 in order to get out of the grey list. The upcoming MER will be discussed and adopted at the 22nd APG Annual Meeting in July 2019, amid tensions between Pakistan and India, the latest being the current co-chair of the APG and accused by Pakistan to 'wrongly' influence the on-going process.

6. Tunisia

Tunisia is a MENAFATF member. Whereas in its 2016 evaluation, MENAFATF judged Tunisia "compliant" regarding NPO sector and AML/CFT, a National Risk Assessment ('NRA'), developed and issued in 2017 by the Tunisian Financial Analysis Commission ('CTAF') in a process lacking transparency and inclusivity, designated NPOs as "sector at risk". As a direct consequence the following evaluation of the FATF took up the words of the CTAF and defined NGOs as sector at risk, asking for a greater control. To note that in November 2017 the EU added Tunisia on their Tax havens black, before removing the country from that list in January 2018. As a direct consequence of the 2017 MENAFATF evaluation, Tunisian ministry of Interior and Justice announced in January 2018 the up-coming reform of the Tunisian anti-terrorism law²⁹. On February 7, 2018, Tunisia was added to the Financial Action Task Force list of "Non-Cooperative Countries or Territories" (NCCTs), also called the FATF blacklist, which increased pressure for short term improvements. In April 2018, the Anti-terrorism bill was presented to the Parliament. The bill provided for prudential management rules excluding companies and limiting their scope to legal persons established in the form of associations or non-profit

²⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1467&from=EN>

²⁹ Recently adopted in 2015 and which already raised many criticisms from local NGOs and the international community.



organizations, severe supervision under Finances Ministry for associations and NPOs which would have breached these prudential management rules as well as power to dissolve NGOs without specifying a clear and transparent procedure. Thanks to a strong mobilization from civil society organizations, these amendments were turned down and only minor edits have been made when the bill was adopted on January 10th, 2019.

In an open approach, civil society organizations tried for the past few months to reach out to the CTAF and MENAFATF in order to start a dialogue and discuss ways to set up a more inclusive and transparent national risk assessment process. A training gathering the CTAF, the Tunisian National Commission against terrorism and three NGOs took place in spring 2019 but recent exchanges (refusal to share draft Action plan, opaque selection process for associations to be able to take part to a meeting in June 2019) showed again lack of access to information and transparency and demonstrate steps backwards.

Additionally, Decree law 88-2011 is being heavily challenged. This decree regulates NGOs creation and activities and has been presented as a success and positive model for the region, applauded by civil society. Despite this, and due to international pressure coming from donors first but later on as a consequence of MENFATF evaluation, a first national consultation on a new legal framework was held on November 15th, 2017 in Tunis. Tunisian Government introduced a new bill containing dangerous legal provisions for freedom of association in order to comply with requirement for the fight against terrorism and money laundering. This bill would replace the declaration principle by an authorization process to set up an association, which open the door for more restrictions an arbitrariness. It would also review the sanctions system as well as create an electronic platform to monitor activities of associations. In July 2018, attempts to switch to such authorization regime were already been made when the Tunisian Parliament adopted the National register law (Ordinary law 30/2018) where both profit organizations and non-profit organizations were put in the same basket in clear contradiction with Decree Law 88-2011. Thanks to strong mobilisation coming from civil society, the new association bill contains disposition to remove associations from this National register.

Civil society tirelessly recalls that, together with Accounting Standards No. 45, Decree Law No. 88 already provide strong financial management rules to prevent, if these processes are fully implemented, any NGOS from money laundering and financing of terrorism. This has been confirmed by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association during his visit in Tunisia in September 2018 (17th-28th).

7. Turkey

Turkey became a member of the FATF in 1991 and is an observer to EAG, the FATF-style Regional Body for the Eurasia region. In 2012, FATF issued a formal threat to suspend Turkey's membership by February 2013 unless a highly controversial Terrorism Financing bill was approved. This law was adopted by the Turkish Parliament in February 2013 as a direct result of pressure from the FATF, regardless of real risks to use this bill to further silent human rights defenders, political opponents, media and lawyers thanks to broad and vague



definitions. The law also allows the Financial Crimes Investigation Board (MASAK) to track and monitor all the NGOs' financial transactions and activities.

In its 2014 MER, the FATF announced that Turkey has reached a satisfactory level of compliance with most of the recommendations, asking for further efforts to be taken in order to keep strengthening the AML/CFT system. More specifically Turkey seemed « to achieve a level of compliance at least equivalent to an LC rating on Special Recommendation VIII » but was ranked only partially compliant (PC) with no reference to current attacks against NGOs³⁰. Turkey was then removed from the FATF list of non-compliant countries on October 24th 2014.

In the meantime, a sustained and escalating crackdown is taking place on human rights defenders in Turkey through mass arrests and dismissals, threats, harassment and imprisonment. MASAK is playing a key role as in the 2018 case of investigation against Open society foundation ('OSF') & its involvement with Gezi park protests where both the investigation and the court case were based on MASAK's reports. OSF had to cease its operations and exited from Turkey following legal threats. All NGOs that received funds from the OSF are also under investigation, asked to provide all financial documents, even not those not directly related with OSF funding. Osman Kavala and Yiğit Aksakoğlu are now in pre-trial detention in connection with the Gezi park protests and all NGOs funded by OSF are also listed in the indictment.

On July 25th, 2018, the Turkish parliament approved a new draconian anti-terrorism law that strengthens the authorities' powers in detaining suspects and imposing public order after a two-year state of emergency ended the week before. Presidential Decree No. 17, published on September 13, 2018, amended Presidential Decree No. 1 of July 10, 2018 and abolished the Department of Associations to establish a Directorate General for Relations with Civil Society under the Ministry of Interior aiming at, according to Turkish authorities, improving civil society environment. An advisory body, the Civil Society Consultation Council, should also be created but so far, no further development took place.

Without obviously any clear and hard evidence to provide, there are strong supposition that FATF influenced and encouraged in some ways the 2019 Presidential Annual Program, published on October 27, 2018, which include a separate section on CSOs and lists the measures and policies to be carried out by the end of December 2019 in order to strengthen "transparency and accountability". This Annual Program, in combination with the amendment to Article 83 of the October 2018 Regulation on Associations, requires all NGOs' members to be registered on a e-platform (DERBIS) link to the Ministry of Interior. Among information being asked: identification numbers, name and surname, occupation, education status, and dates of membership in the association. This online registration system is being used by the Government to further track and blacklist NGOs. A local NGO already opened a court case to appeal this legal provision on grounds related to data privacy as well as freedom of association and expression.

³⁰ MER 2014, point 39.



To note that a new on-site visit took place beginning of 2019 and MER will be released this year in October.

Recommendations

We believe that it is not sufficient to simply state, as so many resolutions have done in the global counter-terrorism infrastructure, that such measures have to respect international human rights law, including Freedom of Association. In a global environment in which freedom of association and human rights defence, including on sensitive issues such as torture and impunity, is increasingly targeted, there is need for a broader see change. This see change should regard human rights work as an ally in the fight against violent extremism and needs to make sure that the authority that the FATF and others lend is not abused with impunity and silence. Human rights law and the UN Human Rights Defenders Declaration require an enabling environment which also the FATF and others have to respect.

Global recommendation:

Recognize the obligation to ensure an enabling environment, due diligence and the principle of no harm to human rights defenders and their space to act.

States have the obligation to respect and ensure respect for freedom of association and the obligation to provide an enabling and not a control environment over human rights work. International actors, such as the FATF or relevant UN Counter-terrorism bodies and mechanism, have to recognize this very obligation and to act themselves in due diligence to human rights defenders. In a paraphrased way they should apply and ensure the principle of 'no harm' to human rights defenders, including by acting when their authority is abused. We consider it vital that the results of the consultations by the Special Rapporteur on Terrorism and Human Rights clearly stipulate such as due diligence obligation and a no harm approach.

Specific recommendations toward FATF & FATF-style regional bodies:

- **Recognize and revise:** Fully recognise the key role played by human rights defenders and civil society actors in preventing and countering violent extremism:
 - Involve HRDs/civil society as a stakeholder and partner in overall actions as well as encourage such participatory approach at national level and accept an obligation of public consultation;
 - Launch a new review cycle of Interpretative note on recommendation 8 as well as the Best practice paper which should be based on a consultation process with human rights organizations; each recommendation should include a due diligence and impact assessment on human rights defender's protection.
- **Ensure transparency:** the very rationale of much of the tightening of legal frameworks is often the call for accountability of NGOs. In practice, however, international and regional advice on civil society legislation is inherently in transparent and opaque. Local



organizations have hardly any way to know about the nature or quality of the advice provided, opening the door for abuse. In other words, such advice is unaccountable.

- **Respond to the abuse:** Be attuned to and raise concerns with States at any occasion, especially upon threats of FATF sanctions such as grey/blacklisting, on the impact that sustained AML/CFT measures have on civil society. There is need that those that encourage new regulatory frameworks in line with FATF recommendations speak out when their authority is abused and justifying targeting human rights defenders work. This is also in the interest of international institutions to maintain their integrity and legitimacy.

Recommendations toward member states:

- **Recognize & protect:** Fully recognise the key role played by human rights defenders and civil society actors in preventing and countering violent extremism. They work should a priori not be seen as a risk factor. Care must be had to avoid a “chilling effect” due to stigmatisation, marginalisation and co-optation of civil society.
- **Respect:** Respect all components of the right to access funding - the right to solicit, receive and utilize funding.
- **Ensure a risk-based approach:** Any AML/CFT measures should be designed and implemented on the basis of a national risk assessment. No additional regulations should be applied if existing legislation and/or other measures are sufficient to mitigate risks.
- **Ensure transparency & participatory approach:** The risk assessment methodology, process & findings should be shared with HRDs/Civil society and other relevant stakeholders. States should ensure a participatory approach through regular & effective consultations.
- **Ensure accountability:** All AML/CFT measures should be subjected to adequate oversight and accountability mechanisms.