

## POLICY BRIEFER

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### FINANCIAL ACTION TASK FORCE ARGUMENTS & COUNTER-ARGUMENTS:

How to anticipate and respond to unfounded claims about non-profit organizations and FATF standards in Mongolia

#### FATF Background

The Financial Action Task Force (FATF) is an inter-governmental body whose objectives are to promote effective implementation of legal, regulatory, and operational standards for combating money laundering, terrorist financing (TF), and other threats to the international financial system. To this end, FATF has developed 40 Recommendations for States committed to combatting these crimes. One of these recommendations, FATF Recommendation 8, requires that countries review “the laws and regulations governing non-profit organisations (NPOs) so that these organisations cannot be abused for the financing of terrorism.”<sup>1</sup>

FATF standards that apply to NPOs are generally little known or understood, either by the NPO sector or by government agency officials charged with enforcing them. Governments too often seek to overregulate the NPO sector based on an incorrect understanding of anti-money laundering and counter-terrorist financing (AML/CFT) standards. This has resulted in significant undue hardship to civil society groups. Indeed, the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has found that some States have used FATF standards “as a means of reducing civil society space and suppressing political opposition” causing “incalculable damage to civil society.”<sup>2</sup>

The Special Rapporteur further found these State measures to be counterproductive to actually combatting terrorism, noting that “[a]ny effective counter-terrorism strategy needs to strengthen, not weaken, civil society.... Restricting civil society’s ability to

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<sup>1</sup> Best Practices on Combating the Abuse of Non-Profit Organisations, FATF, <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/bpp-combating-abuse-npo.html> [hereinafter Best Practices].

<sup>2</sup> Fionnuala Ní Aoláin, Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mar 1, 2019, U.N. Doc A/HRC/40/52, at para 6.

operate is short-sighted, ineffective and futile and can itself be a contributing factor to violence.”<sup>3</sup>

Unfortunately, NPOs are often unfamiliar with FATF and are thus unable to argue how and why government actions constitute overreach and are not properly grounded in FATF standards.

## FATF in Mongolia

Mongolia became a member of FATF’s Asia Pacific Group (APG) in 2004, and is also an observer of FATF’s Eurasian Group (EAG). It was first evaluated by FATF/APG in July 2007. In the 2007 Mutual Evaluation Review (MER), APG found Mongolia to be partially compliant in the area of non-profit regulation, with no domestic NPO sector review, no outreach to the sector on AML/CFT, and “ineffective” sanctions and registration requirements.<sup>4</sup> APG recommended that “[a]s a matter of priority Mongolia should conduct a review of its NPO sector and should utilise the finding of such a review to assist the preparation of the draft law on NPOs to ensure that targeted AML/CFT measures can be effectively designed and implemented to enhance good governance of the sector.”<sup>5</sup>

Following the adoption of the first mutual evaluation report (MER) of Mongolia, the Mongolian government made a high-level political commitment to work with FATF and APG to address its strategic AML/CFT deficiencies. Despite this commitment, Mongolia was placed on FATF’s grey list (officially, “Jurisdictions under Increased Monitoring”) for the first time in 2013.<sup>6</sup> In 2014, FATF welcomed Mongolia’s significant progress in improving its AML/CFT regime and noted that Mongolia had established the legal and regulatory framework to meet its commitments in its action plan regarding the strategic deficiencies FATF had identified in June 2011.<sup>7</sup> Mongolia was subsequently removed from the grey list and no longer subject to FATF’s monitoring process under its on-going global AML/CFT compliance process.

In 2016, FATF revised Recommendation 8 on NPOs, removing the unsubstantiated claim that the NPO sector is ‘particularly vulnerable’ to terrorist abuse, and shifting to a targeted, risk-based approach that recognizes the sector’s diversity.

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<sup>3</sup> *Id.* at para 14.

<sup>4</sup> APG, Mutual Evaluation Report on Mongolia, July 1, 2007, p 100, available at: <http://www.apgml.org/members-and-observers/members/member-documents.aspx?m=ee2ef268-6106-40ec-806e-bec3987f9f88>.

<sup>5</sup> *Id.* at p 99.

<sup>6</sup> See, e.g., Improving Global AML/CFT Compliance: On-going process - 21 June 2013, FATF, <http://www.fatf-gafi.org/countries/a-c/argentina/documents/compliance-june-2013.html>.

<sup>7</sup> See Improving Global AML/CFT Compliance: on-going process - 27 June 2014, Mongolia, FATF, <http://www.fatf-gafi.org/countries/a-c/argentina/documents/fatf-compliance-june-2014.html>.

In the years since its initial MER, Mongolia strengthened its AML/CFT system, making significant improvements to its technical compliance with FATF standards. Among others, Mongolia passed AML/CFT legislation, established a Financial Intelligence Unit in the Central Bank, and completed its first AML/CFT national risk assessment.<sup>8</sup> In December 2016, Mongolia underwent its second APG Mutual Evaluation, adopted by APG members in July 2017. The MER again found Mongolia to be partially compliant with Recommendation 8, noting that

Mongolia was unable to demonstrate effectiveness in implementing a targeted approach, conducting sufficient outreach and exercising oversight in dealing with at-risk NPOs. Furthermore, Mongolia did not demonstrate that it has taken any effective measures to protect NPOs from the threat of terrorism and TF, or to prevent the NPO sector from being misused for terrorism and TF purposes.<sup>9</sup>

Most of the focus of the updated review was on lack of outreach to ‘at-risk’ NPOs. In its 2019 Follow-Up Report (FUR), APG noted that Mongolia’s new TF risk assessment

includes an assessment of the TF risks associated with NPOs, and identifies the NPO sector overall as medium-high risk for TF and Mongolia’s highest risk sector for TF. However, (i) Mongolia has not adequately identified a subset of organisations which fall within the FATF definition of an NPO [...] and threats and vulnerabilities of at-risk NPOs, and (ii) is in the process of reviewing the adequacy of measures to address at-risk NPOs. [...] Mongolia has undertaken very limited outreach to the NPO sector [...]; has not worked with the NPO sector to develop and refine best practice to address TF risks and vulnerabilities; and is not encouraging NPOs to conduct transactions via regulated financial channels.<sup>10</sup>

Following the 2019 FUR, FATF placed Mongolia back on the grey list where it remains to date, **largely for reasons unrelated to Recommendation 8 and the NPO sector**. In particular, FATF has recommended that Mongolia, in relation to its grey listing,

continue to work on implementing its action plan to address its strategic deficiencies, including by: (1) improving sectoral ML/TF risk understanding by DNFBP supervisors, applying a risk-based approach to supervision, particularly in relation to **dealers in precious metals and stones**; (2) demonstrating increased investigations and prosecutions of **different types of ML activity** in line

<sup>8</sup> APG, Members and Observers, Mongolia, <http://www.apgml.org/members-and-observers/members/details.aspx?m=ee2ef268-6106-40ec-806e-bec3987f9f88>

<sup>9</sup> APG, Mutual Evaluation Review of Mongolia, Sept 2017, p 63, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Mongolia%20MER%202017%20-%20published%20version.pdf>.

<sup>10</sup> APG, 2nd Follow-Up Report Mutual Evaluation of Mongolia, Oct 2019, p 6, <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/APG-Follow-Up-Report-Mongolia-2019.pdf>.

with identified risks; and (3) monitoring compliance by FIs and DNFBPs with their PF-related TFS obligations, including the application of proportionate and dissuasive sanctions.<sup>11</sup>

Grey-listing is often used by governments as a justification for enacting additional restrictions on civil society and the non-profit sector. Notably, however, **the deficiencies listed above are not related to the non-profit sector**. Moreover, with respect to NPOs and Recommendation 8, FATF has recommended a very narrow range of measures targeting “at-risk” NPOs. Such an approach does not justify sector-wide restrictions or measures.

While some governments continue to treat the NPO sector with suspicion under the outdated understanding of Recommendation 8, FATF recently recognized “**the vital importance of NPOs in providing crucial charitable services around the world**, as well as the difficulties in providing that assistance to those in need.”<sup>12</sup> As a consequence, it advised governments not to burden civil society through overbroad regulatory measures, as “most NPOs carry little or no TF risk.”<sup>13</sup>

The ongoing situation around COVID-19 has further emphasized the critical importance of the NPO sector. Again, FATF recognized the importance of allowing the NPO sector to function freely, noting that:

This global public health emergency has highlighted **the vital work of charities and non-profit organisations (NPOs) to combat COVID-19 and its effects**. The FATF has worked closely with NPOs over the years to refine the FATF Standards to provide flexibility to ensure that charitable donations and activity can proceed expeditiously through legitimate and transparent channels and without disruption.<sup>14</sup>

ICNL has significant experience interacting with governments on FATF standards, and counter-acting arguments used to justify laws and regulations impeding civil society, including in grey-listed countries. Common government arguments are outlined below, along with counter-arguments civil society partners and NPOs in Mongolia can use to confront the prospect of excessive regulation more effectively. These counter-arguments revolve around correct representations of FATF standards – and in particular, revised Recommendation 8.

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<sup>11</sup> FATF, Jurisdictions under Increased Monitoring – 21 February 2020, Mongolia, <http://www.fatf-gafi.org/countries/d-i/iceland/documents/increased-monitoring-february-2020.html>.

<sup>12</sup> FATF, Statement by the FATF President: COVID-19 and measures to combat illicit financing, Apr 1, 2020, <http://www.fatf-gafi.org/publications/fatfgeneral/documents/statement-covid-19.html> [hereinafter FATF Statement 2020].

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (emphasis added)

## Potential Arguments Related to FATF, and Effective Civil Society Counter-Arguments

**ARGUMENT:** “NPOs are particularly vulnerable to terrorist financing abuse.”

- **COUNTER-ARGUMENT: FATF rejected this position in 2016.** Indeed, global advocacy by NPOs convinced FATF that **no evidence exists to support this claim**, and that standards based on this premise were inhibiting the full exercise of fundamental human rights such as freedom of association.<sup>15</sup>

FATF has also rejected “one-size-fits-all” regulatory measures that indiscriminately treat the entire NPO sector as vulnerable, recognizing that “not all NPOs are inherently high risk and some may represent little or no risk at all.”<sup>16</sup> **Any argument that the NPO sector is particularly vulnerable or that treats the entire sector in a uniform manner does not conform to FATF’s recommendation to adopt the risk-based approach** implicit in all 40 FATF Recommendations. The risk-based approach means that countries must first assess and determine risk, and, on that basis, impose measures if existing measures are insufficient to address the risk.<sup>17</sup>

**ARGUMENT:** “More stringent regulations and greater oversight controls help reduce the risk that NPOs will be used by terrorist organizations.”

- **COUNTER-ARGUMENT:** Tighter controls and regulations (for example, an increase in the information required by public agencies and financial institutions, suspensions or cancellation of legal personality due to technicalities, etc.) have not proven effective, and can in fact be counterproductive.<sup>18</sup> Onerous requirements and disproportionate penalties imposed by the State not only infringe on freedom of association, but also motivate some NPOs to operate informally, which could reduce their public accountability and increase risks. Moreover, when financial institutions implement AML/CFT regulations in a way that makes it difficult for NPOs to open bank accounts, organizations are forced to operate outside of the formal financial system, e.g. through cash transactions.

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<sup>15</sup> Global NPO Coalition on FATF. *Recommendation 8 & NPO Response*. <http://fatfplatform.org/special-recommendation-8/>; see also Ní Aoláin, *supra* note 2, at para 31.

<sup>16</sup> FATF Recommendations, Feb 2012, <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>, page 54 [hereinafter FATF Recommendations].

<sup>17</sup> *Id.* at 53.

<sup>18</sup> See, e.g., Ní Aoláin, *supra* note 2, at para 10: “Recent research shows that there is no evidence that legal restrictions on civil society reduces the number of terrorist attacks within a country. Civil society restrictions do not make a country safe from terrorist attacks; the security rhetoric does not achieve the expected outcomes.”

Thus, **controls that hinder NPO operations may actually increase informal financial transactions and do not reduce risk.**

Moreover, the international community has recognized that **CSOs are a crucial partner in government counter-terrorism efforts**, and any restrictions on their work may negatively impact CT efforts.<sup>19</sup>

Finally, a **more complex regulatory structure increases cost and often exceeds government capacity** to implement effective AML/CFT oversight. FATF pointed this out in its most recent MER of Bangladesh, recommending a more targeted, risk-based approach.<sup>20</sup> Overly burdensome regulatory procedures for NPOs both fail to reduce TF risk and to meet FATF standards.

**ARGUMENT:** *“We didn’t want to impose new legislation, but the FATF made us do it.”*

- **COUNTER-ARGUMENT:** With regard to NPOs, FATF recommends that States first determine whether or not a subset of NPOs is vulnerable to terrorist financing abuse, and if so, which subset of NPOs is vulnerable. Next, countries should review the adequacy of existing laws and regulations pertaining to that subset.<sup>21</sup> **FATF states that existing regulations may be sufficient to deal with the actual risk of terrorist financing through NPOs, in which case no regulatory change is necessary.**<sup>22</sup> A State should only impose new legal measures if it determines, based on an assessment of risk, that existing laws and regulations are not sufficient to protect those NPOs identified as vulnerable. Such measures must be focused and proportionate to the risks identified.<sup>23</sup> **Any measures taken by countries to protect NPOs from abuse for terrorist financing must not interrupt or discourage legitimate charitable activities.**<sup>24</sup>

FATF has specifically noted, with respect to Mongolia, the need to undertake more outreach to the NPO sector and the failure to actually identify at-risk

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<sup>19</sup> See, e.g., Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy, Report of the Secretary-General, Apr 20, 2018, A/72/840, [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/72/840](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/72/840), para 30: “the General Assembly and the Security Council have recognized that civil society, including non-governmental organizations, can make important contributions to these efforts. It is vital to take full advantage of the potential contributions of civil society organizations, especially with regard to building resilience to violent extremism as and when it is conducive to terrorism, and mitigating the consequences of terrorism.” See also Resolution adopted by the General Assembly on 26 June 2018, The United Nations Global Counter-Terrorism Strategy Review, July 2 2018, A/RES/72/284, <https://undocs.org/A/RES/72/284>.

<sup>20</sup> See Bangladesh MER, FATF, Oct 2016, <http://fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-MER-Bangladesh-2016.pdf>, at page 5, 9, 13, 62.

<sup>21</sup> FATF Recommendations, *supra* note 16, at page 54.

<sup>22</sup> *Id.* at 55.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 53.

NPOs in Mongolia’s current risk assessment.<sup>25</sup> These are steps that should occur in advance of any new legislation, and in consultation with NPOs.

**ARGUMENT:** *“Governments need to supervise the entire NPO sector; or, at least, the majority of it, in order to ‘fish out’ those NPOs that might be abused.”*

- **COUNTER-ARGUMENT:** This argument runs counter to the risk-based approach required by FATF. **With respect to NPOs and Recommendation 8, FATF has recommended a very narrow range of measures targeting “at-risk” NPOs.** Such an approach does not justify sector-wide restrictions or measures. **AML/CFT regulations impose an additional administrative burden and put more pressure on the limited resources of government agencies responsible for their implementation.** FATF’s focused approach maximizes the use of resources to oversee NPOs that are actually at risk of being abused for terrorist financing, versus an inefficient and overreaching attempt to “supervise” the entire NPO sector for this purpose (as in Bangladesh, see above).<sup>26</sup> Again, FATF specifically recommended that Mongolia focus its efforts on “at-risk” NPOs.

**ARGUMENT:** *“NPOs might be abused by terrorist organizations without realizing it; or there may be terrorist organizations disguised as NPOs.”*

- **COUNTER-ARGUMENT:** While there have been a handful of incidents of abuse in the NPO sector, the evidence suggests the frequency and severity of such abuse is very low, and non-existent in many countries.<sup>27</sup>

Lacking evidence, some experts refer to a few emblematic cases of NPO abuse to show that NPOs are indeed vulnerable.<sup>28</sup> Such examples do not demonstrate that the NPO sector is particularly susceptible to being abused for the crimes referenced in the FATF standards. **No evidence has been produced to date that demonstrates that the NPO sector is more likely to be at risk for this type of crime than the private sector** (in fact the opposite is likely to be true).<sup>29</sup>

<sup>25</sup> APG, 2nd Follow-Up Report Mutual Evaluation of Mongolia, Oct 2019, p 6, <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/APG-Follow-Up-Report-Mongolia-2019.pdf>.

<sup>26</sup> Asia/Pacific Group on Money Laundering (APG), *Anti-money laundering and counter-terrorist financing measures, Bangladesh, Mutual Evaluation Report, Oct 2016*, page 129, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-MER-Bangladesh-2016.pdf>.

<sup>27</sup> Transnational NPO Working Group on FATF, “NPO Sector Risk and Risk Mitigation Survey Analysis,” February 2014, <http://fatfplatform.org/wp-content/uploads/2015/02/NPO-Sector-Typology-Position-Paper-FATF.pdf>.

<sup>28</sup> See, e.g. *Organizaciones Sin Fines de Lucro en esquemas de lavado y evasión fiscal (Non-profit organizations are involved in money laundering and tax evasion schemes)*. [http://www.lavadodinero.com/varios/editorial/Presentacion\\_ONG\\_2013.pdf](http://www.lavadodinero.com/varios/editorial/Presentacion_ONG_2013.pdf).

<sup>29</sup> *Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, A/70/266* (4 August 2015), [http://freeassembly.net/wp-content/uploads/2015/09/A\\_70\\_266\\_ENG.pdf](http://freeassembly.net/wp-content/uploads/2015/09/A_70_266_ENG.pdf), ¶ 52.

ARGUMENT: *“Money laundering is a big concern and, therefore, AML/CFT standards must be enforced on those NPOs at risk.”*

- COUNTER-ARGUMENT: With regard to NPOs, **Recommendation 8 refers only to terrorist financing**. Anti-money laundering (AML) measures are part of other Recommendations (10, 11, 20, 22, and 23) specifically linked to entities such as **financial institutions, money transfer services, casinos, real estate brokers, gemstone/precious metal operations, attorneys, notaries, and accountants**. **NPOs are not included, as they are not considered at risk for money laundering**. Thus, FATF obligations applied to other sectors are not applicable to NPOs; they are designed for for-profit professional entities with clients. For these reasons, **it is not necessary to enforce AML measures on the NPO sector**, since doing so would clearly exceed the stipulations of Recommendation 8. With respect to AML in Mongolia, FATF has specifically highlighted the **gemstone/precious metals industry**.

ARGUMENT: *“NPOs are not accountable to anyone and nobody knows what they do.”*

- COUNTER-ARGUMENT: This argument ignores the reality. **Registered NPOs are regularly required to submit reports and other details of their operations to government authorities** (e.g., to tax bureaus). NPOs are also accountable to their donors through financial and programmatic reports, and to their members through internal reporting and meetings of their governing bodies (e.g. advisory councils, board of directors).

The UN Special Rapporteur on the rights to the freedom of peaceful assembly and of association has further noted that there is no evidence that the non-profit sector is less accountable or more likely to violate tax laws or engage in financial crime than any other sector.<sup>30</sup>

Notably, FATF CFT measures recognize the importance not only of legislation, but also of “soft” measures such as self-regulation for NPOs, internal rules, and codes of conduct. NPOs in Mongolia can work to adopt self-regulation measures to further enhance public accountability and transparency in the sector.

ARGUMENT: *“NPOs do not have any internal controls. They are often managed by a single person.”*

- COUNTER-ARGUMENT: **NPOs are subject to multiple layers of governance and control**, consisting of, among others: national and state-level laws; donor standards and requirements; standards adopted voluntarily through by-laws

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<sup>30</sup> *Id.*



(that must comply with legal standards); and self-regulatory standards, as well as those adopted voluntarily by the organization itself. Many laws and standards used to regulate NPOs with legal personality require particular levels of internal governance and accounting practice, leading to NPO by-laws establishing rules of governance and administrative controls.

Government officials commonly have little knowledge of the NPO sector or the multiple governance regimes regulating it, which generates confusion and suspicion about the nature of the NPO activities, their internal governance systems, the environments in which they operate, or the negative impact of AML/CFT laws on NPOs. For example, some organizations provide education, health, or welfare services to communities that are far away from urban areas and where the State is not present. Institutional or formal financial services may not exist in such communities, forcing NPOs to carry out informal commercial transactions. Dialogue could clarify many inaccurate perceptions about NPO activities.

**ARGUMENT:** *“FATF standards are minimum standards, and States may impose greater controls if they wish.”*

- **COUNTER-ARGUMENT:** FATF has highlighted that **any controls imposed by a State must be implemented in conformity with the Charter of the United Nations and international human rights law.**<sup>31</sup> This means that if a State imposes controls beyond the minimum standards, it must ensure that the measures are consistent with State obligations under international human rights instruments that guarantee the right to freedom of association. Furthermore, **regulatory measures must not amount to unwarranted interference in the affairs of an NPO.** FATF has also stated that AML/CFT measures should not impede the legitimate charitable activities of NPOs. Any action undertaken by the State should, to the extent possible, “minimize negative impact on innocent and legitimate beneficiaries of charitable activity” carried out by NPOs.<sup>32</sup> The Government of Mongolia must take these limitations into account when devising any measures that affect the NPO sector, and remember that such measures should target “at-risk” NPOs (determined through a responsible and transparent risk-assessment approach, developed in consultation with the NPO sector).

**ARGUMENT:** *“FATF does not require that risk be determined in a participatory or public process. That is left to our discretion.”*

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<sup>31</sup> FATF Recommendations, *supra* note 16, at page 52.

<sup>32</sup> *Id.* at 53.

- **COUNTER-ARGUMENT:** While it is true that States have discretion in determining how to conduct NPO risk assessments, **the latest 2019 FATF Guidelines for risk assessment focus on a collaborative approach and engagement with NPOs**, providing examples from Kosovo and Kyrgyzstan on collaborative risk assessment with NPOs.<sup>33</sup>

FATF has also recommended that, since not all NPOs are inherently at risk, and some may pose little to no risk, countries must make use of *all sources of relevant information* to identify a NPO subset – if one exists – which is vulnerable to terrorist financing abuse.<sup>34</sup> For the purposes of identifying that subset, FATF has recommended that States launch NPO outreach programs to raise awareness about NPO vulnerabilities, and the measures NPOs can take to protect themselves from abuse.<sup>35</sup> The most recent country evaluations performed by FATF have considered whether governments conducted outreach activities to NPOs, and whether NPOs were involved in discussions about potential risks or participated in education programs. **Several countries have received lower Recommendation 8 compliance ratings because they did not approach the NPO sector.**<sup>36</sup> Mongolia could likely improve its compliance rating for Recommendation 8 by conducting more outreach to the NPO sector.

**ARGUMENT:** *“The State did take the opinions of NPOs into consideration when carrying out the NPO sector risk assessment.” [But the NPOs consulted are not representative or are all affiliated with a given political party, or the State convened the sector to participate in training workshops rather than dialogues on how to determine NPO sector risks.]*

- **COUNTER-ARGUMENT:** It is not sufficient for the State to consult with only a small fragment of the NPO sector. Surveys conducted by ICNL among NPO leaders with knowledge of AML/CFT and FATF standards revealed that very few NPOs have participated in State-organized meetings for the purpose of conducting an NPO sector risk assessment. Instead, FATF recommends that States work in collaboration with NPOs, NPO networks, NPO self-regulatory organizations, and donor organizations as good practice to comply with State obligations to reach out to the NPO sector.<sup>37</sup> **NPO consultations must be representative and broad if they are to fulfill FATF requirements** for a risk assessment that truly reflects the entire sector.

<sup>33</sup> See FATF Report, *Terrorist Financing Risk Assessment Guidance*, July 2019, <http://www.fatf-gafi.org/media/fatf/documents/reports/Terrorist-Financing-Risk-Assessment-Guidance.pdf>, pages 49-50.

<sup>34</sup> FATF Recommendations, *supra* note 16, at page 54.

<sup>35</sup> *Id.*

<sup>36</sup> FATF, Mutual Evaluations. [http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc\(fatf\\_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate)).

<sup>37</sup> Best Practices, *supra* note 1, at ¶25.

**ARGUMENT:** *“The Ministry would like to consult the NPO sector and involve it in risk assessment and policymaking, but there are limits to our staff availability.”*

- **COUNTER-ARGUMENT: Investing in the risk assessment will save resources over the long term.** Effective risk-based AML/CFT standards and policies would prevent oversight agencies from having to devote a disproportionate amount of time to NPOs that represent little or no risk. Reducing the reporting burdens and other controls on these NPOs would free public officials to address oversight more efficiently, leaving more resources available to identify, in consultation with the NPO sector, the subset of NPOs at risk (if any). In this way, the State could meet the FATF standards on effective implementation of legal, regulatory, and operational measures, including sustained outreach to the NPO sector.<sup>38</sup>

**ARGUMENT:** *“Banks must perform surveillance on NPO financial transactions because they are high risk.”*

- **COUNTER-ARGUMENT:** Senior Financial Intelligence Unit (FIU) officials have recognized that controls imposed by financial institutions have been based on an excessive perception of NPO sector risk. The president of FATF has stated that **both NPOs and their beneficiaries have been hurt as a result of bank practices to avoid risk in transactions involving NPOs.**<sup>39</sup> Such practices force NPOs to rely on informal channels for financial transactions, thereby increasing risk and counteracting AML/CFT objectives. FATF identifies as good practice State collaboration with the financial sector to foster mutual understanding on the correct implementation of risk-based policies. Through dialogue with NPOs,<sup>40</sup> the Mongolian government and financial actors should identify effective risk-mitigating measures that are acceptable to all parties.

**ARGUMENT:** *“We cannot abide by FATF requirements without enforcing mandatory registration on associations.”*

- **COUNTER-ARGUMENT: Under international law, there is no requirement for mandatory registration of associations.** In fact, it is a best practice, recognized by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, for states to allow “a voluntary registration regime that permits

<sup>38</sup> FATF Recommendations, *supra* note 16, at page 53-54.

<sup>39</sup> A Plus, *Keeping it clean*, Feb 2018, <https://aplusmag.goodbarber.com/home-order/c/0/i/20307420/keeping-it-clean>.

<sup>40</sup> Best Practices, *supra* note 1, at ¶71.

unregistered associations to operate.”<sup>41</sup> Many groups may not have the capacity or physical access to be able to register, while others may be denied the right to register arbitrarily if authorities do not agree with their views.<sup>42</sup>

There are other, more effective ways to meet FATF requirements while remaining in conformity with international law; indeed, **many jurisdictions are FATF compliant while allowing voluntary registration of CSOs.**<sup>43</sup>

**ARGUMENT:** “Given the threat of COVID-19, extreme measures, including those restricting the activities and increasing oversight of CSOs, are justified.”

- **COUNTER-ARGUMENT:** While a public health crisis of the scale of COVID-19 can justify certain measures by national authorities, **civic freedoms and fundamental human rights must be respected, in compliance with international law.** Intrusive surveillance, the policing and criminalization of disinformation, and long-term protest bans are examples of government overreach that is difficult to justify, even in a crisis.

International law requires that any emergency measures be necessary, proportionate, and non-discriminatory.<sup>44</sup> Moreover, civil society and non-profits have been critical in leading the fight against COVID-19 and delivering essential services across the globe. As FATF has emphasized, governments and “financial institutions should apply a risk-based approach to ensure that legitimate NPO activity is not unnecessarily delayed, disrupted or discouraged.”<sup>45</sup> FATF has encouraged countries to work with relevant NPOs to ensure that much needed aid is getting to its intended recipients in a transparent manner.<sup>46</sup>



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<sup>41</sup> Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council, Apr 14, 2014, A/HRC/26/29, [https://www.ohchr.org/Documents/Issues/FAssociation/A-HRC-26-29\\_en.pdf](https://www.ohchr.org/Documents/Issues/FAssociation/A-HRC-26-29_en.pdf), at para 55.

<sup>42</sup> *Id.*

<sup>43</sup> See, e.g., the UK, the US, France, Australia and Germany.

<sup>44</sup> COVID-19: States should not abuse emergency measures to suppress human rights – UN experts, Mar 16, 2020, UN OHCHR, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E>.

<sup>45</sup> FATF Statement 2020, *supra* note 12.

<sup>46</sup> *Id.*