



# Counter-terrorism, 'policy laundering' and the FATF - legalising surveillance, regulating civil society



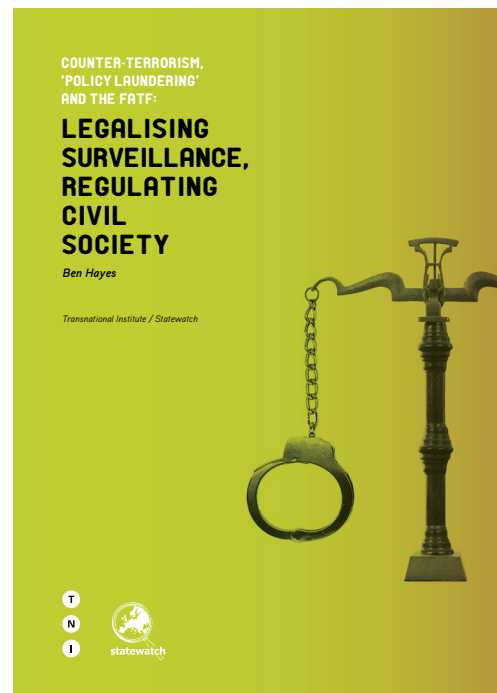
## Executive Summary

This new report published by the *Transnational Institute* and *Statewatch* examines the global framework for countering-terrorist financing developed by the Financial Action Task Force (FATF) and other international law enforcement bodies. The report includes a thorough examination of the impact of FATF's 'Special Recommendation VIII' on countering the threat of terrorist financing said to be posed by non-profit organisations (NPOs).

Developed out of a G7 initiative in 1990, the FATF's '40+9' Recommendations on combating money laundering (AML) and countering the financing of terrorism (CFT) are now an integral part of the global 'good governance' agenda. More than 180 states have now signed up to what is in practice, if not in law, a global convention. The FATF is headquartered at the Organisation for Economic Cooperation and Development in Paris; a further eight regional FATF formations replicate its work around the world.

The report argues that a lack of democratic control, oversight and accountability of the FATF has allowed for regulations that circumvent concerns about human rights, proportionality and effectiveness.

Countries subject to the FATF's Anti Money Laundering (AML)/Counter Terrorism Financing (CFT) requirements must introduce specific criminal laws, law enforcement powers, surveillance and data retention systems, financial services industry regulations and international police co-operation arrangements in accordance with FATF guidance. Participating countries must also undergo a rigorous evaluation of their national police and judicial systems in a peer-review-style assessment of their compliance with the Recommendations. Developed out of World Bank and IMF financial sector assessment programmes, this process significantly extends the scope of the Recommendations by imposing extraordinarily detailed guidance – over 250 criteria – on the measures states must take to comply with the 40+9 Recommendations. The rewards for FATF compliance are being seen as a safe place to do business; the sanctions for non-cooperation are designation as a 'non-cooperating territory' and international finance capital steering clear.



## **Special Recommendation VIII**

FATF 'Special Recommendation VIII' (SR VIII) requires states to "review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism", stating that "Non-profit organisations are particularly vulnerable... countries should ensure that they cannot be misused" for terrorist financing purposes. The Recommendation is then significantly extended in scope by the FATF's interpretation, guidance, best practice and the evaluation process, which strongly encourage states to introduce government licensing or registration procedures for non-profit organisations, ensure transparency and accountability of NPOs, introduce financial reporting systems, exchange this data with law enforcement agencies, and impose sanctions for non-compliance.

This kind of regulation is not without its problems in countries where non-profit organisations form a free and integral part of the fabric of what has come to be known as 'civil society', but in countries where community organisations, NGOs, charities and human rights groups and others already face suspicion, coercion and outright hostility from the state, the SR VIII regime can have profound – if unintended – consequences. The hypothesis is simple: that when international bodies encourage states to adopt regulatory regimes that could be used in practice to 'clampdown' or unduly restrict the legitimate activities of non-profit organisations, then there is a very real risk that this is precisely how repressive or coercive states will enact and apply the rules in practice.

This report examined the FATF mutual evaluation reports on 159 countries with regard to their compliance with Special Recommendation VIII. The vast majority of reports (85% of those examined) rated countries as 'non-compliant' (42%) or only 'partially compliant' (43%) with SR VIII. Only five out of 159 countries (3%) were designated as SR VIII 'compliant' (Belgium, Egypt, Italy, Tunisia and USA).

Where countries fall short of full compliance, the FATF evaluation reports contain specific recommendations on the national reforms necessary to comply with each Recommendation. The state concerned must then report back to their regional FATF assessment body on the reforms they have introduced within two years. The country will then be assessed again in the next round of mutual evaluations, with each round taking around five years. This continued cycle of assessment and review emerges as a powerful force for imposing new standards of 'global governance'.

### **Legitimising coercion and repression**

While this was obviously not the intention of the seven governments that established the FATF, its evaluation system has endorsed some of the most restrictive NPO regulatory regimes in the world, and strongly encouraged some already repressive governments to introduce new rules likely to restrict the political space in which NGOs and civil society actors operate.

Egypt and Tunisia – two of the five out of 159 countries rated 'compliant' with FATF SR VIII – have long enforced extremely prohibitive NPO regulatory frameworks. In both countries, the rules and regulations on NPOs were part a feared security apparatus that made it very difficult for organisations working on issues like human rights and democratic reform to operate, let alone play a meaningful role in society. Following the 'Arab Spring' revolutions, decades of repression and restrictions on civil society have been cited as an inhibiting factor for new social movements to challenge established power structures and achieve representation in subsequent legal and political processes.

The report also includes case studies on Burma/Myanmar, Cambodia, Colombia, India, Indonesia, Paraguay, Russia, Saudi Arabia, Sierra Leone and Uzbekistan – all of which have seen the imposition or proposal of rules that restrict or threaten the freedom of association and expression of NPOs and are endorsed or encouraged by FATF evaluators.

## **The global clampdown on civil society**

Worldwide civil society organisations, human rights defenders and political opponents continue to face overt and covert restrictions by repressive governments including some that are supposedly 'democratic'. According to a 2008 global study on the legal restrictions imposed on NPOs:

*[M]any regimes still employ standard forms of repression, from activists' imprisonment and organizational harassment to disappearances and executions. But in other states – principally, but not exclusively authoritarian or hybrid regimes – these standard techniques are often complemented or pre-empted by more sophisticated measures, including legal or quasi-legal obstacles [...] subtle governmental efforts to restrict the space in which civil society organizations ("CSOs") – especially democracy assistance groups – operate.<sup>1</sup>*

As a result, civil society 'groups around the world face unprecedented assaults from authoritarian policies and governments on their autonomy, ability to operate, and right to receive international assistance'.<sup>2</sup>

In elaborating an international law enforcement framework that contains no meaningful safeguards for freedom of association and expression, this report argues that the current FATF regime is facilitating and legitimising these more nuanced forms NPO/CSO repression.

The report also strongly questions whether a top-down, 'one size fits all' approach to NPO regulation is an appropriate or proportionate response to the possible vulnerability and actual exploitation of NPOs for terrorist financing purposes. It calls for urgent reforms limiting the scope of FATF Special Recommendation VIII and clarifying its purpose and intent.

## **Wide-ranging reforms required**

The report also links the FATF regime to the UN's over-broad terrorist 'blacklisting' and asset-freezing regime, global surveillance of the financial system, the prosecution of charities and NPOs for 'material support' for terrorism, and the outsourcing to private companies of 'AML/CFT' compliance systems.

Taken together, what emerges is a dense, global web of international law and policy transposed into national rules and regulations and endless bureaucracy. As the web has been expanded, the powers of state officials, prosecutors and investigators have been harmonised at a particularly high (as in highly coercive) level. At the same time, guarantees for suspects, defendants and 'suspect communities' have been largely disregarded. Caught in this global web are charities, development organisations, NGOs, human rights defenders, community organisers, conflict mediators and others who find their work hampered or paralysed by onerous regulations or politically-motivated legal manoeuvres.

The egregious violations of law and principle embodied in Guantanamo Bay, the CIA's 'rendition' programme and the widespread use of torture rightly preoccupied the international human rights community as it marked a decade of 'war on terror'. At the same time, these apparently more mundane and technical aspects of the global counter-terrorism framework have quietly become embedded in international law and practice.

The workings of the intergovernmental bodies that developed and implemented these rules are largely shielded from public scrutiny; the 'international community' has accepted the rules uncritically while failing to subject the bodies that created them to meaningful scrutiny or democratic control. In turn the exceptional measures they introduced after 9/11 have become the norm. Without urgent reform, the often obtuse nature of a large tranche of international 'counter-terrorism' legislation will continue to serve as a pre-text for every day restrictions on the political space in which people exercise their democratic freedom to organise, debate, campaign, protest and attempt to influence those who govern them.

## Notes

- 1 International Centre for Non-profit Law and World Movement for Democracy (2008) *Defending Civil Society*, available at: <http://www.wmd.org/projects/defending-civil-society/executive-summary>.
- 2 Tiwana, M. and Belay, N (2010), *Civil Society: The Clampdown is Real - Global Trends 2009-2010*, CIVICUS World Alliance for Citizen Participation, available at: <http://civicus.org/news-and-resources/reports-and-publications/234-civil-society-the-clamp-down-is-real>.

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Founded in 1974, TNI is an international network of activist scholars committed to critical analyses of the global problems of today and tomorrow. It aims to provide intellectual support to grassroots movements concerned to steer the world in a democratic, equitable and environmentally sustainable direction. In the spirit of public scholarship, and aligned to no political party, TNI seeks to create and promote international co-operation in analysing and finding possible solutions to such global problems as militarism and conflict, poverty and marginalisation, social injustice and environmental degradation.

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One of Statewatch's primary purposes is to provide a service for civil society to encourage informed discussion and debate - through the provision of news, features and analyses backed up by full-text documentation so that people can access for themselves primary sources and come to their own conclusions.