

# U4 Helpdesk Answer

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U4 Helpdesk Answer 2023:20

## The participation of low and middle-income countries in the Financial Action Task Force.

The FATF standard setting process is primarily set by FATF members, but engagement from others (particularly LMICs) is facilitated through the FATF-style regional bodies (FSRBs) which hold associate member status. The standards are also reviewed, which gives external stakeholders the opportunity to give feedback on their content. Nonetheless, a body of literature maintains that the FATF has not achieved sufficient inclusion of LMICs when setting and implementing its standards.

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# Query

## How do low and middle-income countries (LMICs) view and engage with the Financial Action Task Force (FATF) standard setting process?

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### Caveat

It should be noted that the literature on the topic of LMICs' views and engagement with the FATF is limited. The FATF does not typically publish detailed reports of its Plenary sessions and many of its meetings are held behind closed doors. This Helpdesk Answer relies on publicly available information; therefore, it cannot comment on the detailed affairs of FATF internal meetings. This also makes it difficult to assess how LMICs view the FATF, and potentially many opinions or reactions from representatives from these countries have not been published in the public domain.

### Background

Money laundering, terrorist and proliferation financing are financial crimes which enable billions to be stolen from citizens worldwide. Evidence

#### MAIN POINTS

- The FATF's members consist primarily of higher income countries, and participation of most lower and middle-income countries in its standard setting process is through the FATF-style regional bodies (FSRBs).
- This, as the FATF states, enables LMICs to influence the development of FATF standards and participate in FATF mutual evaluations (FATF 2019 a), which assess the compliance of countries' AML/CTF measures with the FATF Recommendations. This process can carry significant implications, including influencing FATF's decision to identify a jurisdiction as one under increased monitoring (the "grey list") or a high-risk jurisdiction subject to a call for action ("the black list").
- However, a limited body of literature contends that the FATF is not transparent in the precise level of influence the FSRBs have over the standard setting and review process. Some argue that the FATF is still largely driven by the agenda of higher income countries.
- Recommendations put forward include increasing transparency in the process of grey or black listing a jurisdiction, giving greater consideration to lower capacity of lower and middle-income countries and enabling stronger rights of LMICs in the FATF Plenary.

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shows that money laundering affects the most vulnerable and hinders development of low and middle-income countries (LMICs) (Gueddari, Nourira and Saafi 2023), depriving them of capital that could otherwise be invested in public services.

In response to this globalised threat, in 1989 the Financial Action Task Force (FATF) was established by the G7 as the first global body to tackle money laundering. Its initial objectives were to examine money laundering techniques and trends, review the action already taken at national and international levels, and to set out measures needed to counter money laundering (FATF no date a). Later, in 2001, its mandate was expanded to include counter-terrorist financing (FATF no date a).

Today, the FATF monitors countries to ensure they implement the FATF standards effectively within their national frameworks. It sets out a number of recommendations (known as the FATF Recommendations or the FATF standards) which “countries should implement through measures adapted to their particular circumstances” (FATF 2023 a: 7; FATF 2008: 4).

These [40 recommendations](#) include standards on the criminalisation of money laundering, sanctions related to terrorism and terrorist financing, understanding AML/CF risks, customer due diligence by financial and non-financial businesses and professionals, transparency of legal entities and arrangements, as well as effective supervision and measures to improve international cooperation (FATF 2023 a).

The FATF sits within the global financial governance framework as the main anti-money laundering task force, alongside other mechanisms such as the OECD Global Forum, the United Nations Convention against Corruption (UNCAC), and others (FACTI 2021). The FATF decision-making body is the FATF Plenary, which sets the

standards and guidance (the recommendations) that are adopted by a consensus of member jurisdictions (FATF 2019 a).

LMICs participate in the FATF standard setting process through its membership, the work of regional bodies, observer status and/or public consultations on the development of its 40 recommendations. They are involved in the FATF peer review process, otherwise known as mutual evaluations, through the regional bodies and can also attend the Plenary sessions through the regional bodies (FATF 2019 b).

There is nonetheless a body of literature and reports from a limited number of countries that is critical of the level of participation and influence that LMICs have. These arguments are often directed towards the reported exclusion of LMICs as the composition of the FATF is primarily concentrated in higher-income countries (HICs) (Moraes 2019; Jones and Knaack 2019). Some literature argues that the FATF could increase participation of LMICs through enabling direct representation at the FATF Plenary, for example (FACTI 2021). There are some reports that the FATF has a disproportionate impact on smaller economies, meaning that their inclusion in its standard setting process is particularly pertinent.

This Helpdesk Answer provides an overview of the FATF standard setting process, where its 40 recommendations are set and revised, and how the task force engages with LMICs in this process. It provides examples from academia and news reports on the experience of LMICs on their engagement with the FATF standard setting process. It lists the actions that the FATF has taken (and made publicly available) to further ensure the participation and influence of LMICs in its standard setting process. It ends on providing additional proposals made in the literature on how

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to further engage LMICs to ensure that the FATF is a thoroughly inclusive global body.

## The FATF standard setting process and the engagement of LMICs

### The FATF membership

The FATF currently comprises of 39 members<sup>1</sup> from 37 jurisdictions and two regional organisations, the European Commission and the Gulf Co-operation Council (FATF no date a). The decision-making body of the FATF, the FATF Plenary, meets three times a year, and considers its mutual evaluation reports, policies and other matters. The FATF Plenary is attended by its members, associate members (the FSRBs) and observers<sup>2</sup>, while representatives of non-members can be extended by invitations on an ad-hoc basis (FATF 2019 a: 8).

The criteria to join the FATF as a member is that it must be “strategically important” by having a large population, large GDP, developed banking sector and/or must adhere to globally accepted financial standards (Chohan 2019:5).

Decisions pertaining to responsibilities and decisions made in the FATF Plenary are taken “by consensus” by the member jurisdictions and

organisations (FATF 2019 a: 7). This means that the each of the 39 FATF member jurisdictions and organisations have a de facto veto over decisions taken by the Plenary. The FATF mandate states that the Plenary:

- a) Determines the manner in which it conducts its affairs
- b) appoints the president, the vice-president and the steering group
- c) approves the work programme and budget for the FATF
- d) adopts standards, guidance and reports developed by the FATF
- e) decides on membership, FSRB status and observer status for the FATF
- f) decides on any other matter governing the business and affairs of the FATF (FATF 2019 a).

The majority of the FATF members are HICs, but there are upper-middle-income countries in the current membership, which includes Brazil, Malaysia, Mexico and Türkiye (FATF no date b).

### The FATF-style regional bodies membership

The mechanism through which the largest number of LMICs (that are not direct members) engage with the FATF is through the regional bodies, otherwise known as the FATF-style regional bodies (FSRBs). The FSRBs are entitled to attend the Plenary sessions and can participate in the working groups formed there (FATF 2019 a: 8). Working

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<sup>1</sup> The full list of members are: Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, European Commission, Finland, France, Germany, Greece, Gulf Co-operation Council, Hong Kong, Iceland, India, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Malaysia, Mexico, Netherlands, New Zealand, Norway, Portugal, Saudi Arabia, Singapore, South Africa, Spain,

Sweden, Switzerland, Türkiye, United Kingdom and United States (FATF no date b).

<sup>2</sup> The FATF observers include the African Development Bank, Asian Development Bank, Council of Europe, the IMF, the Inter-American Development Bank, among many others (FATF no date b). For the full list, see [here](#).

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groups are established by the Plenary, and the president selects and appoints the chairs of these working groups (FATF 2019 a: 8). However, the selection criteria by which each working group is put together are unclear. The FSRBs also attend annual FATF-FSRB High-Level Meetings where they discuss a range of issues that affect the global implementation of the FATF standards, prepare for the next round of mutual evaluations, as well as other areas of work (FATF 2023 c).

The FSRBs are the Asia/Pacific Group on Money Laundering (APG), Caribbean Financial Action Task Force (CFATF), Eurasian Group (EAG),

Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), GABAC, Financial Action Task Force of Latin America (GAFILAT), Inter Governmental Action Group against Money Laundering in West Africa (GIABA), Middle East and North Africa Financial Action Task Force (MENAFATF) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) (FATF no date b). The FSRBs have gained stronger status and, according to the FATF, currently take part in “all FATF activities as associate members” (FATF 2014). The figure below shows the regions that each FSRB is associated with.



**The FATF and the FSRBs annotated to their regions (FATF no date b)**

The responsibilities of the members, observers and FSRBs are laid out in the FATF’s mandate. The FATF members are responsible for implementing the FATF Recommendations, undergoing mutual evaluations and developing the FATF standards (FATF 2019 a). The FSRBs are responsible for endorsing the FATF Recommendations, promoting

the effective implementation of the FATF standards through peer reviews, and participating in the development of the FATF standards, guidance and other policies (FATF 2019 a: 6).

The [High-Level Principles for the relationship between the FATF and the FSRBs](#) guides the

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relationship between the FATF members and the FSRBs. In this document, it states that “in setting the standard... the FATF depends on input from the FSRBs as much as from its own members” (FATF 2019 b: 1). The FATF and FSRBs should have access to all of each other’s documents (confidential or not) and should be able to offer other member jurisdictions the opportunity to provide input into their respective decision-making processes (FATF 2019 b: 3).

Core funding comes from the member government contributions for the FSRBs, as well as additional financial assistance provided by other relevant additional programmes as long as this does not affect the body’s impartiality (FATF 2019 b). While the FATF mandate (2019 a) and the High-Level Principles (2019 b) set out that LMICs, through FSRB membership, are engaged with the standard setting process and other work, there is little else in the way of other publicly available information that details exactly how this works in practice or if the principles are consistently followed.

In addition, the FSRBs provide technical assistance to the authorities in its member and observer countries (APG no date a). As described by the FSRB APG, this includes among others, preparing national anti-money laundering and countering the financing of terrorism (AML/CFT) strategies and risk assessments, drafting legislation, regulation and guidance, enhancing the operation of financial intelligence units, and training investigators, prosecutors and judges on money laundering and terrorist financing (APG no date a).

### Reviews of the FATF Recommendations

Another opportunity for engagement with the FATF standard setting process is during the recommendation reviews. The FATF Recommendations are revised when the need is

identified, as has been done in 1996, 2001, 2003, and more recently in 2012. Individual recommendations have been reviewed more recently. The reviews ensure the standards remain up-to-date and relevant, as well as to benefit from lessons learned from implementing the standards (FATF no date c).

The latest full review of all the recommendations, as described in the [FATF annual report 2011/2012](#) stated that “the revision of the FATF Recommendations was an inclusive process, involving government officials, private sector and civil society through a series of public consultations and private sector consultative forum meetings (FATF 2011/2012: 15). They are reviewed and updated by the members in “close cooperation” with the FSRBs and observer organisations (FATF 2023 a: 8), therefore giving LMICs the opportunity to contribute through the FSRBs and/or observer organisations.

Between October 2010 and January 2011, the FATF undertook public consultations on the first phase of its review of the FATF standards, which included consulting with the financial sector, designated non-financial business and professions (DNFBPs), and non-government organisations and individuals (FATF no date c). The FATF has opened up the process and consulted with other stakeholders beyond its membership. However, the level of engagement of stakeholders based in low and middle-income countries is unclear.

### The mutual evaluation process

The mutual evaluations, or peer reviews, and their follow-up processes determine the degree of a country’s technical compliance, implementation and effectiveness of its systems to counter money laundering and financing of terrorism and proliferation (FATF 2019 a: 4). They include in-

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depth country reports which involve on-site visits by assessors (FATF no date g).

Here, LMICs can participate through the FSRBs, which are responsible for conducting mutual evaluations of its own members (FATF 2019 a). The FSRBs are also given the opportunity to offer qualified assessors and reviewers to other member jurisdictions' mutual evaluations as well as their own (FATF 2019 b). According to the APG's website, their team of experts who work as assessors for the mutual evaluations consists of legal experts, financial and regulatory experts, and law enforcement experts who are drawn from APG member jurisdictions and are trained yearly at the APG secretariat (APG no date b). Moreover, the FSRBs provide an internal review on the mutual evaluation reports prepared by assessors on their own member jurisdictions and check for consistency (APG 2023). All member jurisdictions of the FSRB can comment on the final draft of the mutual evaluation report and this is discussed in a meeting before it goes to the FATF Plenary (APG 2023).

The mutual evaluation process also incorporates a Plenary discussion of all mutual evaluation and follow-up reports to evaluate the findings and proposed ratings (FATF 2019 b: 7). Consensus between the FATF members is needed (except for the country being assessed, if it is a member) to overrule any findings by the assessors (FATF no date g).

### **The FATF “grey list” and “black list”**

Where the mutual evaluation identifies weaknesses in a jurisdiction's regime, they may be referred to

the FATF's grey or black lists. This process is overseen by the FATF's International Co-operation Review Group (ICRG) which identifies jurisdictions with strategic AML/CFT deficiencies (Nance 2018). The four regional joint groups of the ICRG carry out reviews covering the areas of Africa/Middle East, the Americas, Asia/Pacific, and Europe/Eurasia (FATF no date d). A jurisdiction is referred to the ICRG for review for various reasons, including:

- It does not participate in a FRSB or does not allow its mutual evaluation results to be published in a timely manner
- it is nominated by a FATF member or FSRB due to specific risks
- it achieved poor results in its mutual evaluation (FATF no date d)<sup>2</sup>

A jurisdiction that enters this ICRG review process as a result of its poor mutual evaluation results has a one-year observation period to work with the FATF or its FSRB to address deficiencies (FATF no date d). If jurisdictions fail to improve after the observation period, they may be publicly identified through the grey list, or for those considered higher risk, on the black list FATF (FATF no date d).

The grey list, otherwise known as jurisdictions under increased monitoring, identifies jurisdictions that are actively working with the FATF to address the strategic deficiencies in their regime (FATF no date f). Being on the grey list does not mean a jurisdiction is subject to sanctions; however, it does signal to financial institutions that there could be enhanced transaction risks in doing business with the jurisdiction (Basel Governance 2022). Financial

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<sup>2</sup> The FATF also prioritises the review of those countries with more significant financial sectors, e.g., US\$5 billion or more in financial assets (FATF no date d).

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institutions are expected to apply a risk-based approach and perform detailed due diligence on customers from these high-risk jurisdictions, therefore, this may result in investors reallocating resources from the country in question (Basel Governance 2022).

There is no formal note of enforcement in the FATF guidance documents on how to react when a jurisdiction is black listed (or placed on the high-risk jurisdictions subject to a call for action list). Only the interpretative note on Recommendation 19 refers to this, which calls for countries to exercise extreme caution in dealing with financial bodies from higher-risk countries, including written explanations of the reasons for any financial transaction and refusing the establishment of subsidiaries or branches of financial institutions from the country concerned (FATF 2023 a: 86).

## Views on the FATF's engagement with LMICs

It should be noted that the research into LMICs views on their engagement and participation in the FATF standard setting process is limited. This section relies on a small number of publicly available papers on the topic.

### Representation in the FATF membership

While the FATF sets global standards that apply to more than 206 jurisdictions across the globe, the limited representation of countries in the decision-making process, particularly of LMICs, has generated criticism (e.g. van Duyne et al. 2018: 157). In 2010-11, the unequal level of participation of FSRBs in FATF was explicitly noted by the Mexican presidency of the FATF who placed

emphasis on greater participation of the FSRBs, stating that more still needs to be done to improve inclusion (Moraes 2022: 234).

Ghoshray (2015: 534) contends that, despite flexible guidelines, the FATF development process still lacks participation from outside jurisdictions. This has led to an asymmetric negotiating power between higher income countries (HICs) and LMICs, which continues to shape the FATF guidance formulation (Ghoshray 2015: 534). This, Ghoshray argues, has led to the recommendations not addressing the differences between jurisdictions and leaning towards those of the developed world (Ghoshray 2015).

The African Union Commission's 2019 report on [Domestic Resource Mobilization: Fighting Against Corruption and Illicit Financial Flows](#) alludes to this issue, in that South Africa is the only member of the FATF and not all African countries are included as members of the FSRBs (African Union 2019: 85). The result of this lack of inclusion, the report notes, means that countries in the same regional economic community can have different protocols and rules which criminals can exploit (African Union Commission 2019: 85).

However, counterarguments to this note that more equal and inclusive representation, that is all jurisdictions having an equal vote in the Plenary whether members or not, could lead to a "watering down" of the FATF standards (Stephenson 2021). This argument notes that it is the strength and the content of the recommendations that is most important and that the institutional structure should prioritise this first and foremost (Stephenson 2021).

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## **Anti-money laundering and its connection with other pressing issues**

Critics have also raised concerns with the perceived narrow mandate of FATF. For them, global anti-money laundering standards should be set considering other related pressing issues. For instance, the Office of the Special Adviser on Africa (OSAA) states that AML strategies have been developed as separate international policy priorities and there is not much in common between countering money launderers, eradicating poverty, and promoting peace and security (OSAA 2022: 33). The FACTI Panel's (2021) report on Financial Integrity for Sustainable Development also highlights the fragmented, uncoordinated and non-inclusive global governance system on illicit finance.

The OSAA goes on to state that some FATF Recommendations were applied as a result of an escalation of pressure and threat of sanctions, meaning some countries rushed through legislation, but later retreated in implementing these due to lack of political will, funds and technical know-how (OSAA 2022: 33). This, the report concludes, has caused ineffective and poorly implemented AML frameworks in many LMICs (OSAA 2022).

### **Lack of transparency and oversight**

Additional criticisms of the FATF standard setting process and the participation of LMICs state that it has "limited independent governance and oversight of its activities" (Chase, Keatinge and Reimer 2021). This argument hinges on that the FATF operates without a legal convention or articles of agreement to outline its mandate and extent of its powers, which is interpreted as "lacking operational transparency" (Chase, Keatinge and Reimer 2021).

As noted by van Duyne et al. (2018), final decisions are made by the Plenary and there is no formal mechanism to dispute these. This, they contend, is a serious lack of separation of powers, given the FATF's "imposition" in ruling over global AML policies of its members and its on-site assessments during the mutual evaluation process (van Duyne et al. 2018).

The FATF has also been interpreted by some as close-knit players in global finance failing to recognise the divergent nuances of jurisdictions in developing countries (Ghoshray 2015 :532). The FATF's former top official, David Lewis, complained after leaving his post that he had concerns over the group's informal method of selecting its presidents and the pressure that national governments bring to bear on its secretariat behind the scenes (Couvée 2022). Lewis voiced doubts over the independence of the secretariat and that he was "constantly" under pressure to fill positions in the secretariat with staff from the member jurisdictions, rather than with candidates who won their jobs based on open competition merit (Couvée 2022).

Finally, there is very little in the public domain about the ICRG and its four regional review groups, despite it playing the essential function of global compliance enforcement policy (van Duyne 2018: 145). This means that, although in principle LMICs are engaged in the grey or black listing process through the regional review groups, the information on how this happens in practice is not made public.

### **Capacity issues of LMICs in implementing the FATF standards**

Another challenge put forward in the literature is that LMICs have lower capacity in comparison with HICs to effectively implement the FATF Recommendations, meaning there could be a risk

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that the standards and mutual evaluation process does not take these limitations into account. This is also linked to the argument that the recommendations were initially formed primarily by HICs and therefore may be more amenable to the characteristics of their jurisdictions.

The African Union Commission has emphasised this point, noting that not all African governments have the resources to fully implement the FATF Recommendations and many lack the expertise and capacity to track flows of illicit money (African Union Commission 2019: 85). AML is a costly activity for any entity dealing with financial services, meaning it will be out of reach for some (Nance 2018). If there is a lack of political will, this could complicate it further.

The OSAA also highlights that limited resources and a state's technical capacity are usually "debilitating facts" inhibiting the success of the FSRBs (OSAA 2022: 32). Their report also goes on to note that many regulators in African countries are poorly resourced, meaning they are less likely to be compliant with the FATF Recommendations (OSAA 2022: 33).

### **Impact on LMICs**

Reports contend that there is the perception, particularly within LMICs, that through the ICRG process (moving jurisdictions to the grey or black list) stronger economies are "forcing excessive and unnecessary regulations onto less developed financial systems" (de Oliveira 2015). The consequences of "grey" or "black listing" are that it leads to reduced foreign direct investment (FDI) and competitive disadvantage for smaller financial services industries and the impact of this is stronger for smaller economies (de Oliveira 2015).

Indeed, studies show that these costly financial reforms have the consequence of damaging states' reputations among investors, thus producing pressure to comply through actual or anticipated capital flight (Sharman 2009). In addition, the International Monetary Fund (IMF) analysed the economic impact of the FATF grey listing on capital flows using machine learning through a sample of 89 emerging and developing countries between 2000 and 2017. They found that there is a large, significant effect of grey listing on capital inflows (Kida and Paetzold 2021). Their results suggest that FDI declines on average by 7.9% when a country is grey listed (Kida and Paetzold 2021).

## **Responses to grey/black listing**

Research did not identify public statements by government representatives or international organisations on the standard setting process at the FATF. The majority of publicly available statements from LMICs made in response to the FATF centre around being grey or black listed by the body. The literature in this section is primarily from responses in the media and do not necessarily reflect on the AML deficiencies identified in the FATF review process. Additionally, it should be noted that many responses may come from undemocratic regimes.

In February 2021, Morocco was placed on the FATF grey list. Consequently, local experts were reported criticising the FATF for this when other jurisdictions that were "world-renowned" for money laundering, such as Luxembourg, was absent from the list (Rahhou 2022).

Additionally, in 2015, an APG mutual evaluation report flagged one of its member jurisdictions,

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Vanuatu, for serious AML and CFT deficiencies (Tabisal 2021). Vanuatu was subsequently placed on the FATF grey list (Tabisal 2021). Australian and US banks responded by closing their bank accounts in Vanuatu and it was listed on the European Commission's own list of "high-risk third countries with strategic deficiencies" (Tabisal 2021).

While Vanuatu's parliament quickly passed legislative amendments aiming to comply with the FATF's prescribed action plan, with the compliance standards for Vanuatu's banks and exporters now being reportedly tighter than that of Australia or Canada, the country remained on the European Commission's list (Tabisal 2021). This meant that, although it was removed from FATF's grey list, the country is still considered a "tax haven" by the EU due to their zero-tax policy (Tabisal 2021). Vanuatu is transparent, the author argues, in its tax regime unlike EU countries and territories, many of which act as the major pass-through economies for tax evasion (Tabisal 2021). While this criticism largely relates to the European Commission's list, this still exemplifies the difficult position LMICs are put under and the disproportionate impact they experience compared to other higher-income economies.

Finally, in October 2022, Myanmar was placed on the FATF black list due to significant strategic deficiencies identified in the mutual evaluation report, particularly those identified after the coup. The authors note that black listing could also affect international NGOs who might have to cut funding for local civil society organisations (CSOs) due to heightened due diligence and risks (Chau and Oo 2022). They also argue that Myanmar's treatment is unfair as the country is more engaged with the FATF than other jurisdictions on the black list (Chau and Oo 2022).

The authors note that the brunt of the damage will be felt by the citizens of Myanmar, not the military

regime (Chau and Oo 2022). A Myanmar based business analyst noted that black listing would not only affect organisations and companies in or involved with Myanmar, but also Burmese citizens across the world (Chau and Oo 2022). This is due to it being much harder to open or maintain a bank account or access financial services for any international transaction (Chau and Oo 2022). Another commentary on Myanmar's blacklisting argued that the decision was politically motivated, as a way for sanctions to be increased and to express opposition to the current junta regime in power in Myanmar (Saifee Islam 2022).

These case studies argue that there is a lack of transparency in the FATF grey or black listing process. They also contend that grey or black listing can often have the most negative impact on already disadvantaged citizens in LMICs, particularly when accessing international financial services. Additionally, the FATF grey list is closely linked to other lists such as that of the European Commission. This has a causal effect on a jurisdiction if, for example, they are taken off the FATF grey list but remain on other lists with little guidance on how to be removed, therefore causing an already (comparatively) small economy to shrink further.

## Measures taken by the FATF

### Inclusion of LMICs

Prior to the late 1990s, the FATF restricted its focus on its policies to its own members (at the time, a handful of HICs) (Pisa 2019). However, this later changed as its policymakers began "to account for the increasingly globalised nature of the financial system" (Pisa 2019). This was achieved primarily through the establishment of the FRSBs, most of

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which were established between 1997 and 2004 (Pisa 2019).

And while criticisms exist that the FATF's Recommendations do not take into consideration the individual country contexts, in some instances, the work of the FSRBs show evidence of doing so. For example, in ESAAMLG's 2013-2014 annual report, they noted that many countries in their region suffer from poaching and illicit trade in wildlife products (ESAAMLG 2014 :25). This was brought to their attention by the Namibian representative and, as a result, the ESAAMLG secretariat undertook a project to determine the magnitude of wildlife crimes, who is involved, trends in related payment methods, how these are eventually laundered and how to effectively implement control measures (ESAAMLG 2014: 26-27).

### **Providing guidance on implementing the standards**

In 2008, the FATF responded to arguments that having low supervisory capacity and large informal economies made it difficult for LMICs to implement its standards. The guide titled [Guidance on Capacity Building for Mutual Evaluations and Implementation of the FATF Standards Within Low-Capacity Countries](#) provides information on the key principles and examples to ensure that all stakeholders involved in the implementation of an effective AML/CFT system have a common understanding of the issue (FATF 2008). It notes advice such as the importance of gaining political commitment to begin the process, how to identify the lead government agency to drive the process, how to sequence and prioritise implementation of the recommendations according to the local context, how to engage the private sector and how to receive technical assistance from the FSRBs and other technical assistance providers (FATF 2008). For example, the ESAAMLG has established a

technical assistance and training coordination forum and regular technical assistance and training to its members (ESAAMLG 2020: 45).

The guidance report also acknowledges the different contexts in LMICs, such as a larger informal sector than that of HICs. It states that this is “a challenge when the FATF standards presume a level of formality in the economy” (FATF 2008: 5). It also notes the difficulties in basic customer identification and verification when there may be inadequate documentation and data retention systems (FATF 2008: 5). Given these structural characteristics, the report states that beyond the “core” recommendations, the country's particular vulnerabilities will be considered (FATF 2008: 5). However, there is little detail in the report on how this would be done in practice, and the High-Level Principles (2019 b) maintain that “all mutual evaluations of FATF and FSRBs must be consistent and based on a common interpretation of the FATF Recommendations to protect the FATF brand” (FATF 2019 b: 7).

Additionally, the report highlights the use of technical assistance providers, who can provide assistance such as a review of the current AML/CFT regime or an overall AML/CFT needs assessment (FATF 2008: 9). The technical assistance providers and co-ordinators that can assist jurisdictions with capacity constraints are: FSRBs, Offshore Group of Banking Supervisors (OGBS), the IMF, the World Bank, United Nations, Commonwealth Secretariat and bilateral/multilateral country providers (FATF 2008: 4).

### **Revising and updating the FATF standards**

The FATF website states that the revision of the FATF standards ensure that they are up-to-date, relevant and learn from lessons in implementing them (FATF no date c). The FATF consults with

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various stakeholders when reviewing the recommendations, including trustees, financial institutions, designated non-financial businesses and professions (DNFBPs) and non-profit organisations (FATF no date e). This provides the opportunity for external stakeholders beyond the FATF members to have input into the standard setting process. Nonetheless, according to article 20 (d) of the mandate, the Plenary is ultimately responsible for the adoption of the standards, with decisions made by consensus by the member jurisdictions and organisations (FATF 2019 a: 9).

The FATF also incorporates feedback from private stakeholders as well as states to work towards a more balanced governance model (Pavlidis 2021). In the last decades, Pavlidis (2021) argues that, by doing so, the FATF has “achieved significant progress in this respect by supporting a constructive dialogue with the private sector”. It has also increased its legitimatisation through a number of additional jurisdictions in recent years through its associate members and observers (Pavlidis 2021).

Furthermore, while the first version of the FATF Recommendations had been strongly influenced by the national AML legislations of countries like the US, it has since evolved through as “continuous comparative law exercise whereby successful national norms become global standards” (Pavlidis 2021). Indeed, Nance (2018) states that the FATF Recommendations now operate in line with the principles of “experimentalist governance” which emphasises flexible and revisable standards over fixed and universal rules (Nance 2018). These standards are therefore “participatory networks” and “involve dynamic problem-solving over strictly rule enforcement” (Nance 2018).

## Recommendations put forward in the literature

### Greater inclusion of LMICs in the FATF

Moraes (2022: 239) argues that the contribution of the FSRBs seems to be “disproportionately devoted to monitoring and ensuring compliance with the FATF standards” rather than influencing the standard and agenda setting. Therefore, while the FATF has succeeded in increasing the participation of LMICs somewhat, there is still plenty of room to increase the capacity of non-members (Moraes 2022: 239). This could be achieved through expanding membership or increasing the responsibilities and influence of the FSRBs.

The African Union Commission’s report (2019) puts forward the recommendations that the African Union Commission should apply for observer status in the FATF so that they can better engage with the FATF to further voice the needs of African nations (African Union Commission 2019: 156). Additionally, de Oliveira (2015) puts forward the recommendation that institutional and structural reform is a solution to improve the global representation deficit. The changes could broaden the FATF membership beyond the current list, moving out of the Organisation for Economic Cooperation and Development (OECD) headquarters and shifting political guidance away from G7/G20 countries and into an expanded FATF Plenary (de Oliveira 2015).

The Office of the Special Adviser on Africa (OSAA) also recommends that AML regulations be more tailor-made to suit different contexts, such as countries have that have a large informal or cash-based economy (OSAA 2022: 34). The OSAA also suggests that the Economic Commission for Africa (ECA) recommend and support a common African

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position on strengthening the AML regulatory system developed under FATF (OSAA 2022: 37). OSAA also puts forward the recommendation that the ECA should also support technical assistance to FATF-style regional bodies in the African region (OSAA 2022: 37).

Finally, the FACTI report (2021) argues that, starting with the existing FATF Plenary, the legal foundation for an inclusive intergovernmental body on money laundering could be created (FACTI 2021). FACTI writes that FATF would benefit from a more formal establishment of a governing body, with appropriate rules for universal representation (FACTI 2021: 43). This would include formally giving a voice for all, instead of having non-FATF members speak through the FSRBs, which are only observers at the FATF Plenary (FACTI 2021: 43). Adopting a constituency approach, instead of the Plenary's current format, would mean that there is greater direct representation for the current non-members (FACTI 2021: 43).

### **Increased transparency**

As noted, the FATF states in its High-Level Principles (2012) that “in the setting of standards... FATF depends on input from the FSRBs as much as from its own members” (FATF 2019 b: 1). However, as there is little transparency on how this works, and given that the Plenary makes decisions via consensus from its members, it is difficult for outside parties to ascertain how inclusive and participatory this process has been. While the FATF has indeed made progress in increasing the transparency of its workings, this could be pursued further to ensure the delivery of quality standards that enjoy international acceptance and implementation (Pavlidis 2021: 10).

Chase, Keatinge and Reimer in their commentary published in the Royal United Services Institute for

Defence and Security Studies (2021) advise that the FATF needs to commit to greater transparency in its deliberations and decision-making. This, they argue, can be achieved through the introduction of independent governance and oversight, such as an ombuds office (and staff) to investigate and represent grievances (Chase, Keatinge and Reimer 2021).

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The U4 anti-corruption helpdesk is a free research service exclusively for staff from U4 partner agencies. This service is a collaboration between U4 and Transparency International (TI) in Berlin, Germany. Researchers at TI run the helpdesk.

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