

Transnational NPO Working Group on FATF

Recommendations: Financial Action Task Force Typology Review

February 2014

The Financial Action Task Force (FATF) and Not-for-Profit-Organizations (NPOs) share a commitment to advancing human security and rejecting terrorism. To further these goals, the Co-Chairs of the Transnational NPO Working Group on FATF (Working Group)¹ submit the following recommendations, based on our research and input from members.

Since early 2013, dialogue between FATF and the Working Group has engendered a deeper understanding of how the NPO sector identifies and responds to the threat of terrorist abuse. This dialogue has also highlighted the impacts that overbroad and disproportionate laws and regulations have on NPOs' ability to operate. We were pleased to see this point acknowledged in revisions to the Best Practices Paper and guidance for assessors.

The FATF is now undertaking a NPO Typology review as a technical exercise that seeks to identify types of risks for potential abuse of NPOs for terrorism financing. This will inform a subsequent update of FATF's Best Practices Paper on Recommendation 8, which will address possible ways to counter such abuse.

Given the unique role NPOs play in the world and the fundamental rights of freedom of association and expression implicated in NPO formation and operation, it is critically important that FATF develop Typologies that are guided by the principles of proportionality and effectiveness. We are concerned that an unqualified approach to risk may simply reinforce the perception of regulators and other stakeholders, such as the financial industry, that NPOs should only be perceived as a potential risk, rather than a potentially reliable and beneficial partner.

Drawing on a number of consultations with NPOs, a literature review, an informal survey of NPOs and special meetings in New York and Brussels,² this paper lays out recommendations and comments for the FATF's Typology Review. (Further detail on this research is provided in Annexes to this document.)

In summary, the paper recommends that:

- 1.) FATF should distinguish between potential risk and actual abuse
- 2.) Typologies should be based on analysis of evidence that classifies clusters of similar cases
- 3.) A variety of strategies are needed to address a variety of types of abuse

¹The Transnational NPO Working Group on FATF was established in 2012 with the aim to: 1) undertake information gathering, research and analysis on issues arising from the work of FATF; 2) raise awareness among NPOs about FATF and how it affects public benefit organizations; 3) and engage with FATF and influence positively FATF's guidelines and tools concerning NPOs and their implementation. Co-Chairs are Kay Guinane, Director of the Charity & Security Network, and Lia von Broekhoven, Director, Human Security Collective.

² The New York meeting was held in December 2013 and the Brussels meeting was held in January 2014. Representatives from NPOs and the Co-Chairs of the FATF RTM Group's Typology Project attended both meetings.

- 4.) Typologies should recognize the diverse structures and functions of NPOs
- 5.) FATF should avoid an overbroad definition of terrorist financing
- 6.) Risk mitigation procedures undertaken by the NPO sector should be recognized.
- 7.) Impacts on the NPO sector must be minimized.

1.) FATF should distinguish between potential risk and actual abuse

The presumption of Recommendation 8 is that NPOs are “particularly vulnerable” to abuse by terrorist organizations. However, it is widely acknowledged³ that NPOs are not a significant source of terrorist financing. The working group has concerns about the assumptions on which the FATF’s approach to risk and NPOs are based. However, we recognize that NPOs have been abused by third parties, including terrorist groups. Maintaining the integrity of and public trust in the sector are important goals for both the working group as well as FATF.

In developing Typologies FATF should recognize that vulnerability and risk are not the same as actual abuse. The very factors that are said to make the sector vulnerable – its global presence, community based support and access to resources—are also its greatest strengths.⁴ NPOs, as FATF has recognized, “play an important role in preventing the causes of radical ideology from taking root and are, therefore potential allies in the fight against terrorism.”⁵

While there have been incidents of abuse in our sector, the evidence suggests the frequency and severity of such abuse is very low.⁶ Our literature review demonstrates that terrorist financing comes from a wide variety of sources, including kidnapping, bribery, smuggling, trade in diamonds and other commodities, and financial fraud, to name a few.

By focusing on actual abuse and not possibilities, FATF can better develop Typologies that contribute to effective and proportional approaches to protecting the NPO sector. This also helps guide effective allocation of limited resources. There may be a temptation to create Typologies based only on risk in order to prevent abuse from occurring. While risks can be identified, they must be separated from Typologies of abuse in order to avoid overreaction that impairs NPOs’ ability to operate and wastes limited government resources.

³ “Only .0001 percent of American NPOs have been implicated in terrorism” from: *Typologies Report: NPO Sector Vulnerabilities* (Sydney: APG, 2011). And, “...the incidence and prevalence of NPO financial abuse in the EU are limited” from: Matrix Insight, “Study to Assess the Extent of Abuse of Non-Profit Organizations for Financial Criminal Purposes at EU Level” April 3, 2008, page 66. And, Emile van der Does de Willebois, *Nonprofit Organizations and the Combating of Terrorism Financing: A Proportionate Response* (Washington D.C.: World Bank, 2010), page 4. And, Samantha Bricknell, Rob McCusker, Hannah Chadwick and David Rees, “Money Laundering and Terrorism Financing Risks to Australian Non-Profit Organisations,” *AIC Reports Research and Public Policy Series* no. 114.

⁴ Asia Pacific Group Typologies Report *NPO Sector Vulnerabilities*, July 2011 p. 16-17

⁵ FATF, *Best Practices: Combating the Abuse of Non-Profit Organisations (Recommendation 8)* (Paris: FATF/OECD, 2013).

⁶ Transnational NPO Working Group on FATF, “NPO Sector Risk and Risk Mitigation Survey Analysis,” February 2014. See Annex III.

Recommendation 1

FATF should focus on actual abuse and work with the NPO sector to promote and encourage self-regulatory prevention strategies that address risk. In other words, there should be no regulation by speculation.

2.) Typologies should be based on analysis of evidence that classifies clusters of similar cases

Typologies of abuse should be based on the best available evidence and statistical data rather than speculation or isolated case studies. We understand this is difficult to do. Much of the evidence of terrorist abuse of NPOs comes from a relatively small number of case studies, thus making useful generalizations about risk or the amount of terrorist financing difficult. According to the World Bank report, “there are no reliable figures...on the scale of terrorism funding or on NPO contributions.”⁷ More research in this area is badly needed.

As a result, it is important that FATF conduct a full analysis that combines the information gleaned from studies of actual cases it has collected and statistical data so that the resulting Typologies represent categories of similar circumstances and exclude outliers. The focus should be on the case studies and data, striking speculation or hypothetical risks from the analysis.

Statistical data is important because a focus on case studies has inherent limitations. The case studies are not a representative or scientific sample, and reflect what may be inconsistent or arbitrary selection processes by the governments submitting the information.

Recommendation 2

We suggest that the analysis identify specific common variables in the case studies, combine this with statistical data and then analyze how the variables cluster together. This process avoids the problem of having one case study become a Typology and maximizes the utility of the Typologies that emerge. In addition, the analysis should look at the frequency of particular types of abuse in order to identify trends.

The next step would be to rank the categories, both in the context the NPO sector and overall terrorist financing sources. In addition, it would be useful for the report to provide the context in which the case studies occur in order to increase understanding by governments and NPOs alike about the facts and circumstances that may lead to certain abuses and enable proportionate response.

The final report should describe the methodology used to develop and determine the Typologies.

⁷ Van der Does, *Nonprofit Organizations and the Combating of Terrorism Financing: A proportionate Response*, page 4.

3.) A variety of strategies are needed to address a variety of types of abuse

Research we reviewed in academic publications, think tank reports and government reports underscores the importance of avoiding a one-size-fits-all approach to addressing risk or abuse of NPOs.⁸ There are many different approaches governments can take to address risk or abuse of NPOs, ranging from financial investigations, guidance, regulation of the sector and criminal prosecution. The appropriate approach must be one that is proportional and contributes to an enabling environment for NPOs to do their work.

Research from academics, governments and the FATF itself have suggested a number of Typologies, and the following four appear to be the most frequently articulated:⁹ *complicit/sham organizations* that intentionally support a terrorist group, *social wings* that are controlled by or affiliated with a terrorist group, *legitimate organizations that are exploited by outsiders* and *legitimate organizations exploited by insiders*. Research suggests that the circumstances of each type are different and require a different approach for effective risk mitigation, prevention and law enforcement.

Significant concerns remain regarding these potential Typologies. Each involves distinct criteria and requires a nuanced approach. Government policies for different types of potential risk or abuse should vary and be proportionate and in line with measures taken for similar risks in other sectors.

Most of the risk the sector faces can be addressed either through existing legal and regulatory frameworks in combination with self-regulatory initiatives and diligence procedures that many NPOs already have in place. In other words, the existence of a risk does not automatically call for a NPO-specific law or rule.

For example, the literature and input suggest that *complicit/sham organizations* are the most frequent type of abuse and are primarily detected through financial investigations.¹⁰ These are shells or fronts used to raise, move or disburse funds. They do not provide aid, services or a public benefit. These types of organizations should not be considered part of the charitable sector. Enforcement against these types of organizations is best done through police investigations and/or financial intelligence units. Charitable sector regulation is not likely to be an effective means of detecting these groups because they can create fraudulent regulatory compliance documents and records.

Social wings are controlled by a terrorist organization and provide services. They may be formal affiliates of a terrorist organization or controlled by one. They may or may not divert resources from services to supporting violent acts or use services as leverage for recruitment or gaining public support. Not all interaction between NPOs and social wings may be seen as abuse. For example, in disaster situations social wings may be the only resource available to save lives in a crisis, as was the case in

⁸ Thomas J. Biersteker and Sue E. Eckert. (eds.), *Countering the Financing of Terrorism*, (London and New York: Routledge, 2008), page 4.

⁹ See: van der Does de Willebois, *Nonprofit Organizations and the Combating of Terrorism Financing*, and *Typologies Report: NPO Sector Vulnerabilities*, and FATF, *Best Practices*.

¹⁰ See Annex I.

Pakistan in the earthquake in 2005 and floods in 2010.¹¹ In other cases the social wing may not be on the terrorist list even if its affiliated terrorist group is. In these cases, some NPOs may legally engage with the social wing without being considered supporters of terrorism. NPOs, like FATF, have concerns about armed actors, including terrorist groups, seeking to enhance their status through claiming credit for aid provision. The humanitarian principles of independence and impartiality and NPO risk mitigation strategies minimize this risk, while allowing responses to crises where lives are at stake.

Organizations exploited by outsiders are in no way complicit in terrorist financing. The risks and abuse they face may include physical attacks and kidnapping of aid workers, the theft of tangible goods, diversion of aid away from its intended purpose after distribution and imposters collecting money under the banner of the charity. The risk derives primarily from the dangerous environments they operate in rather than a lack of oversight, regulation or due diligence. This type of abuse is also not likely to be addressed effectively by government regulation of nonprofits. Instead, effective law enforcement and government stability is the best way to prevent this form of abuse.

Organizations are *exploited by insiders* when a bad actor(s) within an otherwise legitimate organization use their position to divert funds or resources to terrorist groups. Research shows that exploitation of NPOs by insiders is very rare and occurs less often than diversion by complicit or externally exploited organizations.¹² Measures to respond to these situations should focus on processes that are most likely to expose bad actors. Experience shows that the people inside the NPO are most likely to identify bad actors. For example, a 2008 study by the Association of Certified Fraud Examiners found that “occupational frauds are much more likely to be detected by a tip than by audits, controls or any other means.”¹³ Both governments and NPOs should have procedures that encourage and protect people who expose bad actors, as well as the organizations they work for. This requires a proportional response to exploitation by insiders, as NPO employees are unlikely to report a bad actor if it means the organization will be shut down, have its funds frozen and its beneficiaries suddenly deprived of services through no fault of their own.

Recommendation 3

The types of risk or abuse may largely depend on the type of organization involved. Our research shows that *non-legitimate, complicit* NPOs are the greatest risk of abuse to the sector. These risks largely involve financial transactions or attacks on legitimate NPOs, such as kidnapping. These organizations are not really part of the sector and should not be viewed as such.¹⁴ The types of risks *legitimate* NPOs may be exposed to include robbery, stolen funds, threats, attacks, disruptions of operations and

¹¹ Molly Cunningham, *Deadly Combination: Disaster Conflict and the U.S. Material Support Law*, (Washington, DC: Charity & Security Network, 2012).

¹² See Annex I.

¹³ *2008 Report to the Nation on Occupational Fraud and Abuse* (Association of Certified Fraud Examiners, 2008), Page 4. See also, Matrix Insight, *Study to Assess the Extent of Abuse of Non-Profit Organizations for Financial Criminal Purposes at EU Level*, page 66, “There is a general agreement that NPO employees and volunteers are best placed to expose fraud and corrupt practices.”

¹⁴ See Annex I.

unauthorized activity by an employee. Of these, our research shows the rate of actual abuse is rare.¹⁵ However, research by Humanitarian Outcomes shows that abuse, particularly kidnappings, from external sources has been on the rise since 2010.¹⁶

4.) Typologies should recognize the diverse structures and functions of NPOs

The Typology report should recognize that there are significant differences among types of NPOs and describe the major categories that are relevant to the report. First and foremost there is the crucial distinction between NPOs defined in the Interpretive Note (IN) as:

"a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of 'good works.'"

and that subset of NPOs which IN C5(b) says should be subject to additional supervision and monitoring because they:

"account for (1) a significant portion of the financial resources under control of the sector; and (2) a substantial share of the sector's international activities."

Within the subset of NPOs that meet the criteria of IN C5(b) there are important distinctions that determine what appropriate and effective risk management may be. For example, grantmaking organizations do not operate programs on the ground and as a result face substantially different types of risk than humanitarian or development organizations that deal in distribution of tangible goods such as food or medicine or provide construction materials for schools or water sanitation facilities. In addition, organizations whose mission primarily involves speech and communications rather than funds or tangible goods are distinct from grantmakers or humanitarian or development organizations. Peacebuilding groups that work to get armed groups to use nonviolent means to address their grievances primarily provide training, technical assistance, personnel and services. Human rights defenders primarily operate through speech and communication, whether they are conducting investigations or providing training. NPOs in each sub sector have developed their own ways of working and risk management strategies which can always be strengthened where there is clear evidence of abuse.

Recommendation 4

FATF Typologies should clearly distinguish between the NPO sector at large and those referred to in the Interpretive Note at C5(b). FATF should further distinguish between the many different types of organizations that operate international programs, recognizing the categories discussed in this paper.

¹⁵ A survey conducted by the Working Group found that over 75% of respondents experienced various abuses (such as robbery, attacks and threats) either "never" or "rarely." See Annex III.

¹⁶ "Aid Worker Security Report 2012: Host States and their Impact on Security for Humanitarian Operations," *Humanitarian Outcomes*, 2012.

5.) FATF should avoid an overbroad definition of terrorist financing

FATF documents describe terrorist abuse of NPOs broadly as raising and moving funds, providing logistical support, encouraging recruitment and misusing operations. In some instances case studies from both FATF and other sources refer to “extremist” or “radical” speech and ideology. This is an expansive view of terrorist financing. Such speech may not be related to issues of terrorist financing at all but labeling it as an abuse of NPOs gives governments operating in bad faith an excuse to restrict freedom of speech or association.

Recommendation 5

Speech related factors do not have anything to do with finances or tangible resources. Speech is beyond the scope of FATF’s mission and attempts to regulate it in the context of Recommendation 8 opens the door to abuse of the FATF process.

6.) Risk mitigation procedures undertaken by the NPO sector should be recognized.

The NPO sector is very diverse. It operates largely in well-defined legal regulatory and administrative environments that are complemented by an ever growing body of self-regulatory¹⁷ guidance and mechanisms, as well as NPO capacity strengthening practices aimed at improving individual governance, management and operational practice.

Risk assessment by legitimate NPOs takes a variety of forms, depending on many variables. These include geographic location, type of activity, history of engagement in the area. The NPO sector provides a host of resources that provide NPOs with help on governance and transparency, financial and program management, program implementation, security, ethical standards and more. A list of examples of standards and guidance provided by NPO umbrella groups and experts is included in Annex II.

Recommendation 6

The Typology report should describe and recognize the efforts the NPO sector makes to manage risk, the resources it provides and the ethical standards under which it operates. The selection of specific risk mitigation measures must be left to the expertise and discretion of the NPOs, based on their experience and specific circumstances. This is consistent with the FATF’s updated Best Practices Paper that recognizes that a one-size-fits-all approach is inappropriate.¹⁸

7.) Impacts on the NPO sector must be minimized

The NPO sector comprises millions of organizations worldwide.¹⁹ The number of NPOs that may fit the description of IN5C(b) that have access to and transfer cash for public good benefit is estimated at

¹⁷ An overview of self-regulatory approaches can be found in Annex II.

¹⁸ As noted in the Charity & Security Network submission to FATF’s request for input from NPOs, December 2013.

¹⁹ For example, in the U.S. there are an estimated 1.5 million NPOs, over 3 million estimated in India and over 160,000 in the UK. *From*, U.S. State Department, “Fact sheet: Non-Governmental Organizations in the United

65,000 worldwide.²⁰ Research and consultations undertaken by the Working Group identified four main types of impact of counter-terrorism measures on NPOs:

- *Repressive Legislation*

There is now a trend of governments passing laws and rules that directly restrict the work of NPOs under the guise of counterterrorism, including capping foreign funding levels, prohibiting certain types of activities and forcing onerous registration processes. Some of these laws have been passed specifically mentioning Recommendation 8, while others mention compliance with global regulatory standards.

- *Financial Services Barriers*

A particularly notable concern for NPOs relates to financial services issues. Many NPOs have expressed concern over the increasing frequency of fund transfer delays or denials and account closures. Banks and donors, both public and private, are increasingly risk averse about NPOs, in part due to past FATF statements that perceived NPOs purely as a risk; some are even denied access to financial services and have to use informal channels in order to continue to operate. (See Annex III)

- *Infringement on Independence*

When NPOs are not able to operate as independent entities of civil society due to government rules and restrictions, they are often perceived as arms of government. This makes them targets for attacks, robberies and kidnappings.²¹ Adherence to the humanitarian principles in the Red Cross/Red Crescent Code of Conduct helps NPOs negotiate access to conflict zones and deliver aid impartially and to be seen as independent actors. Our concern is that anything which appears to infringe these principles and NPOs ability to adhere to them puts lives and assets at risk. NPOs do their own risk assessments about the capacity to deliver aid in accordance with humanitarian principles and have been known to suspend or end programs if they cannot be delivered securely.

- *Infringement on Protected Rights of Freedom of Association, Assembly and Expression*

Laws that aim to limit these fundamental freedoms are explicitly contrary to binding international human rights obligations of FATF member states and those that participate in the assessment process. FATF should not target pure speech, however radical or unpopular. The potential for broad and abusive interpretation of what is “extremist” opens the door to politicization of the FATF process.

- *Excessive and Unnecessary Administrative Burdens*

Costs associated with due diligence and compliance with anti-terrorist financing procedures can be significant, particularly for small NPOs. Since NPOs already have thorough checks on sub-grantees and monitor programs, any additional checks need to be cost effective and related to risk. This avoids unnecessary drain resources NPOs need for their primary public benefit goals. (See Annex III)

States” and One World South Asia, “India: More NGOs than School and Health Centers,” and UK Charity Commission Website, Historical Data.

²⁰ *The Future Role of Civil Society* (World Economic Forum, 2013), page 6.

²¹ *Department of Defense Support to Foreign Disaster Relief* (Washington D.C.: Department of Defense, 2011), Chapter 3.

Conclusion

Significant strides have been made in the dialogue between FATF and the NPO sector over the past two years, and we are looking forward to strengthening and formalizing this dialogue. We trust that NPO Typology review will take into account the above recommendations.

The Working Group Co-Chairs call for establishing a framework for a structured dialogue between NPOs and FATF, to ensure a transparent process and continued consultation and exchange on FATF's work as it relates to NPOs.

Annex I- Review of Case Studies on Terrorist Abuse of NPOs

Publically available case studies were analyzed to determine trends in terrorist abuse of NPOs. The case studies were taken from all major reports in the literature review conducted. Using categories noted in available research, case studies were categorized as follows:

- Sham or front organization- An NPO created expressly for the purpose of funneling money to terrorist organizations or to support terrorist activities.
- Social Wings- The humanitarian arms or branches of a terrorist organization.
- Exploited by Outsider- An NPO that is abused by an external force, such as a kidnapper or robber, who diverts the NPOs resources without their consent to further terrorist goals.
- Exploited by Insider- An NPO that is abused by an individual or individuals within the organization who fraudulently divert the NPOs resources to further terrorist goals.
- Other- These cases either did not actually involve NPOs or referred only to speech and expressive activities.

Type of NPO	Number of Case Studies in Sample	Percentage
Sham/front	30	45%
Social Wing	11	17%
Exploited by Outsider	0	0%
Exploited by Insider	14	21%
Other	11	17%
<i>Total</i>	<i>66</i>	<i>100%</i>

By combining Sham/Front organizations and Social Wings, **a full 62% of all case studies available involved organizations that were complicit in their support of terrorism.** This is an important distinction to make against NPOs that are exploited, and in no way intend to support terrorism. This data shows that legitimate NPOs are less of a concern than organizations that are simply abusing the NPO legal form.

The distinction between complicit and exploited organizations can have serious implications for how FATF recommends enforcement mechanisms. The review of case studies further identified various methods through which terrorist abuse of NPOs was discovered. In the 31 cases that provided information about how the abuse was uncovered, a large majority were via Financial Intelligence Unit investigations or reports from banks.

Method of Discovery	Number of Case Studies in Sample	Percentage
Financial reporting and FIU investigation	18	58%
Government enforcement (criminal or regulatory)	13	42%

The fact that a majority of cases of terrorist involve complicit NPOs, and are discovered through FIUs and bank due diligence should be applied to FATF typologies and recommendations. The data suggests that FATF must employ a wide range of tools for anti-terrorist financing because a majority of the cases involve non-legitimate NPOs and are discovered by banking institutions, not government regulation.

Sources for Case Studies

- [NPO Sector Vulnerabilities, Asia/Pacific Group Typologies Report](#), July 2011
- Preventing the Abuse of Non-Profit Organizations for Terrorist Financing, *OSCE CTN Electronic Journal*, June 2011
- [Typologies and Open Source Reporting on Terrorist Abuse of Charitable Operations in post-Earthquake Pakistan and India](#) US Treasury
- [“Terrorist Financing.”](#) Typology Report, FATF, 29 February, 2008
- [Study to Assess the Extent of Abuse of Non-Profit Organisations for Financial Criminal Purposes at EU Level](#), *Matrix Insight*, April 2008
- [Money laundering and terrorism financing risks to Australian non-profit organisations.](#) Bricknell, S. (et al.) (2011) Canberra: Australian Institute of Criminology
- [Egmont/FATF “Collection of Sanitized Cases Related to Terrorist Financing.”](#) 18 April 2002
- Egmont Group, web search results. Misuse of charities, Case Ref. 08015 – 08018
- US Treasury Case Studies Submitted to FATF 2013

Annex II- Accountability and Transparency Standards for NPOs

- [Principles of Conduct in Disaster Response Programmes](#), The International Red Cross and Red Crescent Movement
- [The Do No Harm Handbook: The Framework for Analyzing the Impact of Assistance on Conflict](#), Collaborative for Development Action, Inc. and CDA Collaborative Learning Projects, November 2004
- [Private Voluntary Organization \(PVO\) Standards](#), InterAction, 1992, updated January 2011
- [Humanitarian Accountability Partnership](#)
- [Preventing Corruption in Humanitarian Operations Handbook of Good Practices](#), Transparency International 2010
- [Humanitarian Charter and Minimum Standards in Humanitarian Response](#), The Sphere Project, 2011
- [Active Learning Network for Accountability and Performance in Humanitarian Action](#)
- [Coordination SUD](#)
- [Groupe URD](#)
- [Emergency Capacity Building Project](#)
- [People In Aid](#)
- [Principles of International Charity](#), Treasury Guidelines Working Group, March 2005
- [Humanitarian Accountability Partnership](#)
- [Muslim Charities Forum](#)
- [Inter-Agency Network on Education in Emergencies](#)
- [Enhanced Learning and Research for Humanitarian Assistance](#)
- [Central Bureau on Fundraising](#)
- [Peacebuilding Evaluation Consortium](#), Alliance for Peacebuilding

Annex III- NPO Sector Risk and Risk Mitigation Survey Analysis

Summary Report - February 2014

Introduction

The NPO Sector Risk and Risk Mitigation Survey was developed and distributed by the Transnational NPO Working Group on FATF²² to engender deeper understanding of how nonprofit organizations (NPOs) experience and respond to the risk of abuse by terrorist organizations and how globalized antiterrorist financing laws affect their operations. The results were analyzed by the Charity & Security Network and are intended to inform FATF's efforts to effectively implement Recommendation 8, which addresses NPOs.

The survey was sent to several hundred employees of NPOs around the world. It ran from late October to early December 2013, and 51 responses were received. This low response rate could be attributed to several factors, including the complexity of the questionnaire, and the sensitive nature of the topic, even in an anonymous survey. **This was not a scientific survey. Its results should only be read as general input and not as representative of the NPO sector at large.**

Four trends were identified: 1) The overall NPO experience is that actual abuse is rare. 2) There are significant differences in how organizations faced the risk of abuse and protected themselves against it. 3) Financial exclusion, via money transfer delays and bank account closures is a serious concern. 4) The operational impacts of counterterrorism rules, and the cost burdens associated with it, should not be taken lightly.

Profile of Respondents

Demographics

Respondents identified themselves in six categories: Democracy Builders, Development, Grantmaking, Humanitarian, Human Rights Defenders and Peacebuilders. A majority of the organizations (78%) are headquartered in Europe or North America. Their programs operate in all parts of the world, with many working on more than one continent. Two-thirds of respondents work in Africa, 60% in Asia, 53% work in MENA and 53% also in Europe.

70.5% of respondents have activities in conflict or disaster areas. A large majority (80%) work with local partners in the field. These organizations have special procedures in place to select and manage their local NPO partners (see section on Risk Management below).

Budget

²² The Transnational NPO Working Group on FATF was established in 2012 with the aim to: 1) undertake information gathering, research and analysis on issues arising from the work of FATF; 2) raise awareness among NPOs about FATF and how it affects public benefit organizations; and 3) engage with FATF and influence positively FATF's guidelines and tools concerning NPOs and their implementation.

Almost half (45%) of respondents had budgets over \$10 million,²³ and an additional 6% have budgets between \$5- \$10 million. The rest are evenly distributed below \$5 million. Overall, the size of the groups was evenly split between larger organizations with over \$5 million in operating funds, and those under \$5 million.

In general, organizations that identified themselves as being Development, Humanitarian or Grantmaking had budgets over \$10 million, while Human Rights Defenders, Peacebuilders and Democracy Builders tended to have budgets under \$5 million.

Three-fourths receive funding from a foreign source regardless of the organization's budget level or type, except for Grantmakers, only half of whom answered in the affirmative.

Operations/Activities

While respondents represent a wide range of organizations, 71% primarily classified themselves as Development, Humanitarian or Grantmaking organizations.²⁴ Nearly two-thirds of the respondents (65%) provided cross border assistance. This came largely in the form of tangible goods, such as equipment, food, shelter and medicine. Over half of the respondents indicated that they provide funding and nearly 40% provided skilled staff. This assistance was given around the world

Respondents Experience Low Level of Risk of Abuse

Overall, abuse risk experienced by respondents was **very low**. The survey asked about the following specific risks of abuse: attacks on personnel, money stolen, office or storage facilities robbed or attacked, operations disrupted or access to civilians denied and unauthorized action by employees or volunteers. For each of these the survey asked whether the abuse never occurred or if it did, whether it was rare, occasional or reoccurring. (The questionnaire did not ask groups to categorize who carried out the abuses—it should not be assumed that these abuses were orchestrated by terrorist groups.)

In each more than half indicated that they had never experienced an incident. Grantmakers in particular logged very few incidents of abuse. Overall 75% of the respondents rated the level of abuse as “never” or “rare.” However, certain groups did face more risks than others. Those identified as Humanitarian and/or Development more often reported abuse as being “occasional” or “reoccurring” than the other types of groups. Of these abuses, the most common were having operations disrupted and access to civilians denied. They also indicated that threats and attacks against personnel were an occasional or reoccurring problem more than other types of groups. The risk of money being stolen was at a lower level, ranked as a mostly rare or sometimes occasional, but not reoccurring, problem.

These results are understandable given the type of work that various organizations conduct. Humanitarian and Development organizations, unlike Grantmakers, were much more likely to indicate

²³ USD

²⁴ Respondents were allowed to categorize their organizations under multiple headings. The number of selections for each category was: Development- 19, Grantmaking- 16, Humanitarian- 16, Other- 12, Peacebuilding- 9, Human Rights Defender- 7, Democracy Building- 4, and Protection- 2.

that they provided humanitarian goods, equipment and skilled staff than any of the other types of groups. Grantmakers, understandably, mostly indicated that they provided funding.

This seems to indicate that the type of activity undertaken by a group is an important factor in how frequently they may experience any given risk. Grantmaking organizations, which mostly provided funding, and thus are not necessarily present on the ground, experienced risks at very low levels. Humanitarian and Development organizations, which provide tangible goods and skilled staff may have experienced somewhat higher levels of risk or abuse because of their need to operate on the ground.

However, Peacebuilders and Human Rights Defenders, who by the nature of their work must also operate on the ground, also experienced very low risk of abuse. This could mean that Humanitarian and Development groups face more risks because they are on the ground *and* provide tangible goods. Further research into the differences between services provided by Humanitarian and Development groups and Peacebuilders and Human Rights Defenders is needed to clarify this point.

Risk Assessment

Over half (53%) of respondents indicated that they conduct some form of formal risk assessment before operating in the field. However, risk assessment is tied strongly to incidents of abuse. The vast majority of organizations that had experienced any level of abuse conducted risk assessments. Humanitarian (80%) and Development (75%) organizations were most likely to conduct risk assessments. This is consistent with the somewhat higher level of risk compared to their peers.

Risk assessment came in a variety of forms, which is consistent with the context-specific approach and flexibility that NPOs find to be most effective. One respondent indicated that the organization has “professional security staff and regular security reviews in all countries in which we operate. These monitor incidents in a country and whether or not INGOs and their staff are targets, whether travel and programme access is at risk, and security updates for staff, partners and travelers are kept up to date.”

When it came to preventing terrorist abuse, another respondent described very specific procedures, including: “an internal ‘prohibited transactions’ policy. In support of that policy, we run the names of (i) new employees, (ii) new implementing partners and their key staff, and (iii) vendors and their key staff) through the external database. If we identify a match between one of the people or organisations we are checking and a name contained on the government lists, we analyse the situation and determine whether or not, legally, we can continue to engage with that person or organisation.”

Another respondent cited a standardized process conducted by the organization’s most senior technical staff, managed in country.

Risk Management

Almost all Grantmakers have adopted specific anti-terrorism measures (90%), although a lower number (54%) conduct formal risk assessments. The vast majority of Humanitarian (78%) and Development (60%) organizations also adopted such measures. Other groups were less likely to have done so. This

could be due to their smaller budgets, lower risk or other factors that are hard to determine based on the data available from the questionnaire.

Respondents indicated a wide variety of approaches to risk management and due diligence. The examples provided below should not be interpreted as either “best practices” or be used to suggest regulatory requirements. Instead, they illustrate the kinds of practices commonly undertaken. Examples of risk mitigation measures from the questionnaire include:

- We use “UN security system, local (church) communities, and a private security company.”
- “1. a counter terror policy is in place 2. purchase of screening software to undertake extensive screening 3. partner due diligence 4. staff training.”
- “Trustees adopted a policy on counter terrorism initiatives which establish annual country based risk assessments plus checks on partners and key staff”
- “1. As part of risk assessment, where there is the potential for operating in areas with terrorist groups, a specific decision is made by senior management at the headquarters to decide whether to proceed or not. 2. Mitigating measures and established systems are set in place (escalation process 3. Lessons learned from country offices operating in similar contexts are shared.”
- “OFAC checks; Extensive documentation required of Grantee.”
- “Reviews of lists, expenditure, full audit trial of invoices, details, part of contracts”
- “We cross-check our grantmaking database (for each grantee) with the SDN list. We also perform site visits and increased our procedures to "know" our grantees.”

Examples of risk management undertaken in selection and oversight of local partner NPOs include site visits, audits, spot checks, training, impact assessment, regular written reports, vetting of key staff and leadership, ensuring that the potential partners’ values are consistent with the NPOs’, and engaging an independent in-country advisory to conduct monitoring checks.

Barriers to Operations

Global and state level counterterrorism compliance has created counterproductive operational and administrative barriers for many nonprofits in the survey. These take the form of financial exclusion from risk-averse banking institutions, government anti-terrorism laws and regulations on programs and increased administrative costs associated with the two. Taken separately, these operational and administrative burdens may seem inconsequential, but as a whole, they create a significant impact on how and where NPOs operate.

Financial Exclusion

Many of the services respondents offer are in the form of financial support, so it was disturbing to find that more than half have experienced problems with access to banking services. This is true regardless of organization type or funding level.

Over half of respondents had international fund transfers delayed and/or denied. Over half of the Grantmakers noted this problem, which is a serious concern given how vital fund transfers are to the work they carry out. Even more troubling is that 34% of Grantmakers had accounts frozen due to procedures of a bank.

Only a quarter of the respondents use money service businesses. Those that do cite lack of banking services, high bank fees and working in remote areas as the reason for turning to money service businesses. Use of cash was also low but somewhat more frequent, with about 33% saying they sometimes use cash. The reasons for using cash fall into three categories: 1) the unavailability of banking services,, 2.) use for petty cash or small payments only, and 3) programmatic reasons. One respondent explained the programmatic reasons for cash disbursements to beneficiaries, saying, “Cash is often a more effective way of supporting vulnerable people, providing more independence, self reliance and dignity.”

If the formal banking system becomes increasingly unavailable to NPOs, the use of money service businesses and cash could increase.

Governments

Compliance with government anti-terrorism rules can impact the ability for NPOs to operate freely. One respondent stated that, “...sanctions-OFAC in particular- has led to a severe delay in implementation of projects which a partner office has identified as being appropriate to meet its objective and humanitarian mission. A grant of a license has taken a long time.” Another noted that, “In some high risk destinations programmes have been micro managed to minimize or exclude the possibility of in appropriate engagement with a proscribed group. On occasion this has affected the cost of implementation and the quality of the programme.”

Despite the importance many governments place on anti-terrorism policy, nearly 70% of respondents indicated that their government has never reached out to them regarding counterterrorism measures or risks. Depending on the overall environment for civil society in any particular country, this may be a lost opportunity. In countries that do not have repressive civil society laws more engagement would be an opportunity for NPOs to express their concerns over the burdens created by anti-terror laws and regulations and for government to get valuable input that can lead to more effective programs.

Examples from comments in the survey:

- “U.S. State Department requirement (part of US anti-terrorism measures) that INGOs working in, for example, Afghanistan submit their partner details to the US government for vetting.”
- “Some partners have refused to sign contracts with explicit counter terrorism clauses imposed by the donor, due to lack of trust in the donor's intention. Have reported losses to our regulator in areas where [proscribed] groups operate. In some areas NGO/UN coordination groups have designed local rules to deal with specific contexts.”

- “We did need to adjust our grant agreements but not our programs. We spent over a year working with grantees to create a grant agreement that would work for our grantees and still comply with counter terrorism regulations. The cost was significant...”

High Administrative Costs

While NPOs understand the necessity and benefits of investing resources in due diligence and oversight, many are concerned about the costs of compliance that is either ineffective or unnecessary. Compliance with counterterrorism measures increased the administrative costs of 70% of Grantmakers responding. It increased costs for 56% of Humanitarians and 40% of Development organizations. Peacebuilders and Human Rights Defenders did not indicate that their costs had increased. The actual increase in costs varies for each organization. One organization had to deploy “staff to comply with regulations and purchase of expensive software to undertake screening.” Others indicated staff training and paying staff to check lists as increasing their costs.

Comments from the survey:

- “Additional staff and security in different functions to carry out additional measures to ensure compliance. Use of an external database for compliance checking against sanctions lists (approx. £20,000 pa)”
- “Administrative costs for payment processes. USD \$50,000 per year.”
- “... we spent considerable time and cost to develop counterterrorism compliance measures. Initially these costs were in excess of \$800,000 USD. We wanted to assist our grantees with our new compliance measures which impacted our grants. Annually, after the initial compliance development process, we estimate the increased administrative costs are \$25,000 USD/year”
- “professional accounting fees, attorney fees, staff time for compliance”

Conclusion

As stated in the outset this summary is not based on a scientifically drawn sample and no generalizations about the NPO sector as a whole can be made from it. However, some basic trends and important points emerge from the survey responses. The first trend is that the overall experience of actual abuse is very low. Second, there were significant differences in how organizations faced the risk of abuse and protected themselves against it. Those operating on the ground and providing tangible services were more likely to face risk, but were also more likely to have measures in place to prevent abuse. The third trend concerned the impacts of legal and regulatory regimes on NPOs. Financial exclusion, via money transfer delays and bank account closures is a serious concern. Finally, the operational impacts of counterterrorism policy, and the cost burdens associated with it, should not be taken lightly. As FATF continues to formulate its typologies report, and eventually the Best Practices Paper, it should keep these trends in mind. Recognizing differences within the sector and incorporating this knowledge into discussions on proportionality and effectiveness of NPO regulations will help develop effective implementation of Recommendation 8.