

## Barriers to Cross Border Nonprofit Operations and the Role of the Financial Action Task Force

Nonprofit organizations – humanitarian, peacebuilding, grantmaking, human rights and more – struggle against daunting obstacles in conflict zones where need is great and risk is high. Increasingly, their work is undermined by counterterror bureaucracies that impose unnecessary restrictions on operations. Some restrictive laws are deliberate attempts to suppress political opposition and others are excessive restrictions that do not take into account the ways in which the work of nonprofits could promote greater human security.

The Financial Action Task Force (FATF) is a key player in how these dynamics unfold. A multinational organization that sets standards for legal measures to combat threats to the international financial system, it expanded in the post-9/11 era to address terrorist financing. In doing so, it created Recommendation 8 (R8) on laws relating to nonprofit organizations. Unfortunately, over the past decade, implementation of R8 created a negative impact on civil society operations and access to financial resources to support nonprofit work. With significant input from the nonprofit sector, FATF revised R8 in 2016 to no longer characterize nonprofits as “particularly vulnerable” to terrorist abuse. However, more needs to be done to ensure that anti-terrorist financing laws cut the flow of money to terrorists, not to civil society. CSOs must pay close attention to the workings of FATF and its implementation in individual countries, to prevent new laws that impede their work.

### **What is the Financial Action Task Force? The most powerful agency you never heard of!**

Formed in 1989, FATF consists of 35 member states and eight regional associate members and official observer bodies, such as the World Bank and UN agencies. It sets anti-terrorist financing and anti-money laundering standards that are used to assess the adequacy of laws in nearly every country. Because FATF is not treaty-based and has no real legal authority, there is little transparency or public accountability. Although its recommendations do not create binding international obligations, its significant power and influence come from its evaluation program, which assesses 180 countries for compliance with its standards. A negative rating by FATF can affect a nation’s international credit rating and ability to attract investors.

### **FATF on Nonprofit Organizations**

R8 says countries should review the adequacy of laws and regulations that relate to nonprofit organizations that the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to these nonprofit organizations to protect them from terrorist financing abuse. Two key documents provide guidance on how FATF expects governments to implement R8. The Interpretive Note (IN), lays out objectives, principles, and the types of measures countries should take to be rated compliant. The Best Practices Paper (BPP) provides details on how government should implement R8.

FATF Recommendations also cover financial institutions, which have increasingly been expected to act as monitoring and enforcement arms of governments to identify, track and stop illicit money flows. The cost of compliance and the threat of significant sanctions for violations have led banks to ‘de-risk’ by dropping customers

deemed to be high-risk, such as NPOs. As a result, charities and grantmakers find it more difficult to access financial services.

Authoritarian countries have abused the FATF process to infringe on the rights of civil society, including its autonomy and ability to receive international support. Other governments have exceeded the requirements of R8 in their eagerness to get a 'compliant' rating in FATF's assessment process.

### **Spotlight, Critique and Response**

A 2012 groundbreaking report by Statewatch and the Transnational Institute examining the effects of FATF regulations in almost 160 countries found that FATF rules are being used by governments as an "instrument, to further cut back on the space of civil society ... freedom to access and distribute financial resources for development, conflict resolution and human rights work."<sup>1</sup> In response to the report, FATF stated, "It will be important that regulations and actions in this area do not harm the legitimate activities of such organisations." The following year, FATF adopted a new evaluation methodology that emphasizes the effectiveness of national systems. Civil society now has a way to draw attention to the counterproductive aspects of unnecessary restrictions on their operations and access to resources.

In June 2014, FATF published a report<sup>2</sup> identifying typologies of terrorist abuse of civil society. It concluded that NPOs most at risk are those engaged in service activities that operate in close proximity to active terrorist threats. In 2015, after consultation with NPOs, FATF made significant revisions to the BPP that takes a more constructive approach. Its findings include that government oversight should be "flexible, effective and proportional to the risk of abuse"; and recognition that nonprofit self-regulatory organizations can play a role in protecting the sector. 2016 revisions to R8 and IN brought them in line with the BPP and with FATF's new risk-based approach. Civil society should remain engaged with FATF to produce guidance and other documents aimed at combatting the global trend of de-risking.

### **Taking an Active Role: Opportunities for Nonprofits**

The Global NPO Coalition on FATF was formed in response to the 2012 Statewatch report. It is helping civil society raise its voice with FATF and at the national level as the new assessment methodology is implemented. It will be up to CSOs to engage in dialogue with their governments about how the new R8 is implemented and ensure that governments take a risk-based and proportional approach to protecting CSOs from terrorist abuse. It should not be used to create one-size-fits-all regulations.

For more information about FATF or about the work of the Charity & Security Network, contact us at:

Charity & Security Network  
700 12th Street NW Suite 700  
Washington, D.C. 20005  
Phone: (202) 481-6926  
Email: [info@charityandsecurity.org](mailto:info@charityandsecurity.org)  
[www.charityandsecurity.org](http://www.charityandsecurity.org)

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<sup>1</sup> Ben Hayes, January 2012, *Counter-Terrorism "Policy Laundering" and the FATF: Legalising Surveillance, Regulating Civil Society*, Transnational Institute/Statewatch report to Cordaid

<sup>2</sup> FATF, *Risk of Terrorist Abuse of Nonprofit Organisations* June 2014 Available at <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf> Accessed March 17, 2015.