

**Expert working group meeting on preventing abuse of the  
non-profit sector for the purposes of terrorist financing**

*Lancaster House, London*

*18-20 January 2011*

**KEY OBSERVATIONS OF THE ORGANIZERS**

1. The following summarizes and elaborates some of the key findings and recommendations from the “Expert working group meeting on preventing abuse of the non-profit sector for the purposes of terrorist financing” held in London from 18-20 January 2011. The Center on Global Counterterrorism Cooperation prepared this summary of key observations. It is not an official or complete record of the proceedings and does not necessarily reflect all the views of the meeting sponsors or participants.
2. The meeting was the first in a process that will include a series of regional workshops to discuss the risk of terrorist abuse of the non-profit sector, and to share good practices and foster cooperation in responding to that risk. The meeting was convened under the auspices of the UN Counter-Terrorism Executive Directorate (CTED) with the support of the government of Canada, and was hosted by the British government. The Center on Global Counterterrorism Cooperation and the Charities Commission of England and Wales collaborated in organizing the meeting. Participants included representatives from international and regional organizations active in this field, in addition to national-level officials with a role in counter-terrorist financing or charities regulation, as well as representatives from the non-profit sector.<sup>1</sup>

*Key observations*

3. Terrorists raise and move funds in diverse ways. Across different sectors of the economy, terrorists seek to abuse legitimate organizations for operations and support. Non-profit organizations (NPOs) are vulnerable to such abuse by terrorists. The primary **policy objective** in this area should be to strengthen and secure the sector, to build its capacity, and protect it from abuse, with minimum disruption to its many positive contributions.
4. In many cases NPOs already take strenuous efforts to ensure that they are not open to abuse through their own systems and procedures. Governments can learn from this experience when developing new frameworks for regulating the sector and should involve NPOs in developing new laws and regulations that affect the sector.
5. Best practice approaches to NPO regulation emphasize **proportionality**. That is, they seek to preserve and encourage the dynamism of the sector while mitigating the vulnerability of the sector to terrorist abuse. This may entail the utilization of **risk assessment** tools, which also enable regulators to deploy limited resources most effectively.

6. **Knowledge of the sector** is critical in regulating NPOs. The sector is remarkably diverse. NPOs have strong incentives to abide by norms of good governance. Within the sector, several initiatives have emerged to improve transparency and accountability, and to reduce fraud and corruption. These are often compatible with the recent emphasis on counter-terrorist financing.
7. Different frameworks for regulating the NPO sector can be found in different regions and difference jurisdictions. There can be no one-size-fits-all approach in preventing the abuse of NPOs. Some governments utilize multiple **regulatory tools** including registration and reporting requirements which provide opportunities to gather information and perform risk assessments. **Outreach** to the sector is critical to both raise awareness and underscore that NPOs are partners in this process.
8. Within governments, several bodies are involved in preventing the abuse of NPOs. **Law enforcement** agencies have an important role in detecting, investigating, and disrupting abuse. Information sharing among regulators, financial intelligence units (FIUs), law enforcement, and prosecutors is vital as cases move from detection to investigation and prosecution. Different governments have evolved different mechanisms for **interagency cooperation**.
9. At present, levels of compliance with **international standards** (especially the Financial Action Task Force's (FATF) Special Recommendation VIII) are low. Many states have yet to review their non-profit sector. Relatedly, while there are impediments to **international cooperation** at present, there may be opportunities to consider new mechanisms in the future.

### *Policy objectives*

10. Participants acknowledged that the non-profit sector is a vital means of harnessing voluntary resources in the provision of assistance to those most in need and fulfils a range of positive social, cultural, religious, and educational purposes. Importantly, the ability to participate in charitable activity derives from fundamental human rights, such as the right to freedom of association. These principles should inform state responses.
11. In pursuing their objectives, NPOs themselves are affected by terrorism in several ways. For example, field workers have been captured or killed by terrorist groups. As with other civil society organizations, NPOs also can make positive contributions to countering terrorism by addressing so-called conditions conducive to terrorism. At the same time, because they often operate with less formal structures, they can be misused to support terrorist groups or operations. On the other hand, the perception of over-stringent regulation can result in a chilling effect on donations. In turn, this can lead to a loss of trust and a decline in effectiveness. For this reason, several participants observed, the strategic objective of NPO regulation should be to strengthen and secure the sector, to build its capacity, and protect it from abuse, with minimum disruption to its many positive contributions.

### *Threat, proportionality, and risk assessment*

12. According to the participants, terrorist abuse of NPOs can arise in at least four ways: NPO finances may be diverted to terrorists; NPO operations may benefit terrorists; the material resources of NPOs can be diverted to terrorists; and NPO personnel can be used to finance terrorism, whether through kidnapping or as a result of terrorists assuming the credentials of NPO workers. Participants also distinguished between “complicit” and “exploited” NPOs. The former are those established by terrorists as a front for the purpose of terrorist financing. The latter are NPOs where terrorists have infiltrated and are engaging in abuse.<sup>2</sup>
13. Participants discussed the fact that, although the total number of cases of terrorist abuse of NPOs globally is unknown, reported cases do exist in a number of countries. On this basis, authorities in various regions have drawn solid conclusions about the potential vulnerabilities in the sector and have designed appropriate safeguards. However, relatively few countries have conducted a thorough risk assessment in this area. It is certain that the majority of NPOs pose little or no risk of terrorist abuse. Therefore, participants raised the importance of applying the principle of proportionality in developing and implementing regulatory responses, based on a risk-based approach to countering the possible abuse of the NPO sector for terrorist purposes. At the policy level, a risk-based approach is essential to effectively distribute the limited resources that are available to regulators and law enforcement. Assessments of risk should be based on knowledge of the sector. They should include an assessment of the threat of terrorist abuse (that is, it is not enough to consider the threat of terrorism, which is not synonymous with the threat of terrorist financing). This should be balanced against factors that mitigate the threat and an analysis of the likely impacts of regulation (i.e. the economic, human, reputational, and political consequences of regulatory action). Some states have developed specific tools for risk assessment. These tools utilize criteria such as whether organizations are involved in raising and distributing funds, the amount of money involved, the region of NPO activity, and the track record of any partner or beneficiary organizations and their officers. Typologies of past abuse can usefully inform risk analyses.
14. While participants acknowledged the importance of proportionality and risk assessment in NPO regulation, they identified several challenges. The diversity of the NPO sector makes it difficult to specify set criteria to be analyzed in risk assessments. These assessments can be too formulaic and may be reduced to a mere “box ticking” exercise. Further, risk assessment tools may have the unintended consequence of stereotyping or profiling certain organizations. Low capacity countries may find it particularly challenging to implement a system of risk assessment if information cannot be gathered or is not up to date. More generally, the principle of proportionality can be difficult to implement in practice. One method is to disaggregate regulatory “tiers.” To this end, in some states, small NPOs (i.e. those whose annual turnover is below a certain threshold) are not required to register, although they may be subject to other requirements.

### *Knowledge of the sector*

15. Participants stressed that the NPO sector is diverse, that different countries have differing understandings of NPOs, and that they take many different legal forms. This fact alone underscores that common standards will be difficult to implement as there can be no one-size-fits-all approach to regulating the sector. For this reason, participants emphasized the importance of knowing the NPO sector. Different types of NPOs present different regulatory challenges. To increase transparency and accountability, and to avoid fraud, corruption, and waste, some large charities have already devoted significant resources to institutionalizing good governance procedures. These include internal controls as well as specific measures to ensure the integrity of partners and beneficiaries in the field. For example, “partnership appraisal forms,” searches of publicly available information (including lists of sanctions targets), and face-to-face interactions enable these NPOs to get a sense of the capabilities of potential partners. Formal contracts are used to hold partners accountable and performance assessments are undertaken to ensure effectiveness. Within the sector, several initiatives have emerged to improve transparency and accountability, and to reduce fraud and corruption. Participants noted that these overlap with the recent emphasis on counter-terrorist financing. In this regard, the sector and the state have a shared interest in advancing good governance within the sector.
16. Where NPOs do not have the ability to self-regulate in this way, participants stressed the importance of building capacity within the sector, especially to improve risk assessment and management. In terms of developing knowledge of the sector, the process of implementing FATF Special Recommendation VIII (SRVIII) has enabled states to develop a more comprehensive understanding of the scope and diversity of their NPO sector. Reviews of the sector, as called for by SRVIII, have been enhanced by directly involving the sector in the review process.

### *Regulatory tools*

17. Participants shared their experiences in developing and implementing national-level frameworks for NPO regulation. There is some variation across states. Some states prefer a light regulatory touch while others impose more requirements. Some states primarily utilize taxation laws, while others have specific legislation on charities and foundations. The identity of the regulator, and other domestic agencies involved, tends to vary. States concentrate their efforts on different aspects of the NPO enterprise, i.e. by focusing on fund-raising activities or the activity of international NPOs. Nonetheless, there are also elements common to these national frameworks. For example, states utilize key opportunities for intervention, such as registration, annual reporting, and periodic audits.
18. Registration often provides an initial point of contact between an NPO and the state. Participants noted that this presents an opportunity to gather information and to inculcate a “culture of compliance.” Some states provide post-registration services, such as assistance in establishing bank accounts. NPOs are commonly required to submit a range of statements and reports to regulators, ranging from annual reports and periodic audits, to the notification of changes in office holders. Gathering and managing this information

is critical for the purpose of risk assessment, investigation, and, where necessary, prosecution.

19. Some states have developed relatively unique regulatory tools. For example, it was noted that some states utilize a mechanism such as a “fundraising standards board” to set standards for fundraising and liaise with the media, especially during periods of sudden fundraising, such as after disasters. Other regulators have the power to pursue administrative sanctions or remedies which in many cases have lower burdens of proof than the criminal standard. These were cited as useful and flexible alternatives to pursuing full-fledged prosecutions.
20. Participants reflected that while NPO regulation varies across different jurisdictions there are best practice examples from both the North and the South. More generally, the capacity of regulators affects the scope of regulation. In some states, weak legal instruments have proven to be an impediment to effective regulation. Similarly, the inability to gather, manage, and analyze data is an impediment to effective regulation. Some states have only a modest capacity to track the activities of NPOs beyond registration. In this regard, participants noted the need for capacity-building assistance targeted to regulators.

#### *Outreach to the sector*

21. Participants spent time discussing the monitoring and oversight functions of regulators and, in particular, measures to reach out to and engage the NPO sector. Outreach is critical if NPOs are to become partners and stakeholders in regulation – part of the solution, not the problem, as one participant put it. Outreach can take many forms including face-to-face meetings, the issuance of guidance, websites and other electronic media, periodic roundtables, and site visits. Guidance may be general (pertaining to good governance *per se*) or more specific, to raise awareness about the risk of terrorist financing in the sector and to encourage the development of appropriate safeguards. An effective mechanism for outreach is to interact with umbrella organizations.
22. Participants discussed methods of framing regulators’ concern with potential terrorist abuse, so as not to arouse suspicion or cause offence within the NPO sector. Regulators ought to consider such “public messaging” carefully. It can be useful to present counter-terrorist financing measures in the broader context of good governance initiatives developed within the sector itself. In this context, participants recalled that NPOs have a strong incentive to develop and maintain robust internal controls, to main levels of public trust. In this way, regulators can emphasize the positive spillover effects that flow from continuously improving transparency and accountability.
23. Participants also stressed the importance of outreach to other government agencies, as well as mechanisms for NPOs to “reach into” government. Participants suggested regulators could invite “reach in” by soliciting comments on legislation, forming NPO advisory councils, and through other informal and formal channels. Yet broader measures of outreach – to the general public – were also discussed. Some states have utilized

YouTube to raise awareness of good charitable practices among donors. In addition, specific publications, available to the public on the web, allow donors to undertake a kind of risk analysis themselves. Further to this, sanitized cases and typologies can be posted on public websites. Maintaining a public register of NPOs is useful for enhancing transparency in this regard.

24. Participants identified a number of challenges to outreach including: the size and diversity of the sector; weak or nonexistent umbrella organizations; sensitivity to the issue of terrorism among civil society and; a lack of trust on both sides. In some states, there is some degree of mutual skepticism between the sector and the government. Here, outreach activities might be more effectively facilitated through a third party. While some states have done little by way of outreach, it was generally agreed to be extremely important and in most cases very welcomed by the sector itself.

#### *The role of law enforcement and interagency cooperation*

25. Measures to prevent the abuse of NPOs are often part of a broader counter-terrorist financing or counterterrorism policy and may involve law enforcement in the criminal investigation to disrupt activities. Regulators, therefore, must be part of a cross-government or interagency mechanism to coordinate policy implementation. In addition to facilitating effective implementation, such mechanisms bring different perspectives, points of leverage, and skill sets to bear on these issues. Inter-agency information-sharing is critical, for example, to investigate and prosecute cases, or to implement sanctions. There was broad recognition of the need for information sharing among regulators, law enforcement, intelligence agencies (including FIUs), and prosecutors. Participants described a range of practices and arrangements, including the use of focal points, the posting of liaison officers, embedded and seconded officers, semi-regular inter-governmental working groups, and joint task forces. It was noted that most states have some laws supporting or mandating interagency information sharing.
26. Participants suggested that law enforcement agencies should have mandates and authorities broad enough for them to be able to disrupt and investigate potential cases of abuse, but that these powers must be balanced with civil liberties and human rights. Other challenges include the different evidentiary thresholds that sometime pertain as cases move from investigation to prosecution. Also, different agencies may disagree on when and how to intervene in any particular case of abuse. Participants noted that it can be a challenge to move from regulation to prosecution as it can be difficult to find information that will “stick” in court. There were few examples cited of prosecutions that relied on terrorism financing charges. Rather, many cases, it was noted, rely instead on criminal charges of money laundering, tax evasion, fraud, embezzlement, or other charges.

#### *International standards*

27. The key international standard in this area is FATF Special Recommendation VIII. The dilemmas of standard setting were acknowledged: the NPO sector is diverse; legal and constitutional limits condition national responses; resources for supervision are limited

and; there is the possibility of unintended consequences. Again, a one-size-fits-all approach is not feasible. In light of these challenges, SRVIII attracts low degrees of compliance. This reflects the failure of many states to undertake a review of their NPO sector. There was some discussion about the adequacy of SRVIII and whether it might be useful for FATF to issue additional guidance in this area and/or undertake a review of the recommendation, although there was no consensus on this point.

### *International cooperation*

28. Participants reported that international cooperation among NPO regulators is not well developed and that this sometimes presents an obstacle in cross-border information sharing. In many countries it is difficult to identify the competent authority. It was noted that while law enforcement cooperation is fairly well established, channels of communication between regulators are less clear. Participants identified a number of other challenges to international cooperation, including privacy concerns and the absence of a legal framework to enable the sharing of information on NPOs.
29. Participants considered options for improving international cooperation among regulators. This included proposals for a list of points of contact and for an international body of regulators. One possible product from this process, it was suggested, might be a directory with information on each country's regulatory framework and points of contact. Other suggestions included: more work on MOUs between regulators of different countries; the creation of institutional structures for exchange of information; and the study of other models, including the UK regulatory group (England, Scotland, N. Ireland, Wales) and the Common Law Regulators Conference.

### *Future steps*

30. Despite the contentious politics that has sometimes attached to these issues, participants in the expert working group found that there was some consensus among the group. Many participants share a common understanding of the problem, its challenges, and the principles that should inform state responses. Participants identified several possible tools that might come out of this process as it moves onto the regional workshops, including a directory of regulatory frameworks and corresponding points of contact and a risk assessment matrix to enable jurisdictions to assess the level of risk to their NPO sector.
31. Participants stressed that this is an iterative process. The London meeting was the first step and provides a useful starting point for the process to move onto a series of regional meetings that will explore the issues addressed above in a tailored regional context. The regional meetings will provide an opportunity to collect additional examples of good practice, take stock of regional challenges, and formulate more concrete recommendations. Those recommendations will be included in a final report that will be presented at the last meeting in this process in early 2013.

## Notes

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<sup>1</sup> Participants in the meeting included law enforcement officials, and policy makers from the governments of Argentina, Australia, Bosnia and Herzegovina, Canada, Colombia, Germany, Indonesia, Jordan, Kenya, Latvia, The Netherlands, New Zealand, Nigeria, Pakistan, Qatar, South Africa, Sri Lanka, Switzerland, Thailand, the United Kingdom, and the United States. Among the multilateral bodies present were representatives from the Financial Action Task Force (FATF) and FATF-style regional bodies, including the Asia-Pacific Group on Money-Laundering, the Eastern and Southern Africa Anti-Money Laundering Group, and the Inter-Governmental Action Group against Money Laundering in West Africa; representatives from regional organizations, including the European Commission and the Organization for Security and Co-operation in Europe; as well as representatives from the UN Counter-Terrorism Implementation Task Force and its constituent entities, including the International Monetary Fund, the World Bank, the UN Counter-Terrorism Executive Directorate, INTERPOL, and the UN Office on Drugs and Crime's Terrorism Prevention Branch. Representatives from the NPO sector included participants from the Center on Global Counterterrorism Cooperation, the International Center for Not-for-Profit Law, Islamic Relief Worldwide, and Oxfam.

<sup>2</sup> For a more detailed definition of these terms, see Emile van der Does de Willebois (2010), *Nonprofit Organizations and the Combating of Terrorism Financing*, World Bank Working Paper No. 208 (Washington, DC: World Bank).