

March 23, 2015

To: Mr. Roger Wilkins AO, FATF President
By email

On March 4, 2015, the FATF Secretariat shared a section of the draft *Best Practice Paper on Combating the Abuse of Non-Profit Organisation* (BPP), requesting input from non-profit organizations (NPOs) to be submitted before the consultation on March 25 or by April 10. Input is requested on self-regulation and due diligence practices and on limited sections of the BPP, mainly those that target NPOs.

We welcome FATF's approach to consult the sector. We wish to ensure that there is wide and meaningful consultation as possible on the whole paper, especially grassroots service organizations, which are more difficult to reach.¹

To reinforce our recommendations in the dialogue with FATF to date, we present **three initial key requests to FATF related to the process and limited draft shared**. These are made on behalf of the undersigned organizations, which come from various backgrounds (international law, peacebuilding, service provision, human rights, humanitarian assistance, foundations, etc.), and are deeply concerned about the content and the process of developing a document which affects our work. Specifically, we call upon the FATF to:

(1) Share a full BPP draft for consultation and welcome inputs from the NPO sector on the entire document, including the part relating to governmental regulation and practices;

(2) Allow for a meaningful consultation process from a broader group of NPOs by allocating more time and opportunities for the sector to provide input;

(3) To guard against generalized one-size-fits-all regulations, the BPP should exclude text that suggests model NPO practices and guidelines. To the extent examples of NPO practices are included they should not be referred to as "best practices" but as examples. This can be done by putting them in an Annex or text boxes. They should be clearly separated from guidelines for governments.

In detail:

(1) Share a full BPP draft for consultation process and welcome inputs from the NPO sector on the entire document, including the part relating to governmental regulation and practices.

Sharing the full draft BPP is necessary for NPOs to provide meaningful input. In order to comment effectively, NPOs need to understand the context, approach

¹ As expressed in a written submission by a group of NPOs on December 18, 2014 and London meeting on March 2, 2015 organized by Global Center on Cooperative Security.

and structure of the entire BPP. Internationally recognized [principles of consultations](#) and regulations on participation adopted by many members of the FATF require that stakeholders be provided with full draft documents during consultation processes. **We therefore request the FATF to promptly share the full BPP draft for the consultation process so NPOs can provide meaningful input.**

In addition, NPOs are directly - and at times adversely - affected by the regulations and practices adopted by governments pursuant to Recommendation 8. **We therefore request that FATF welcome inputs by the NPO sector on the entire document, including the part relating to governmental regulation and practices affecting NPOs.**

(2) Allow for a meaningful consultation process from a broader group of NPOs by allocating more time and opportunities for the sector to provide input.

Recommendation 8 calls for outreach to the sector, and FATF has a critically important opportunity to model effective outreach through this process. FATF's commitment to commence a dialogue between governments and NPOs is therefore welcomed. However, the suggested time for the consultation process for the BPP revision (until April 10) is too short. A call for consultations has not been shared publicly, via the FATF official website and no reference of the draft BPP has been made in the report on the February 2015 plenary session.

The March 25 consultation is welcome. At the same time, the meeting will occur in English, in Brussels, with no travel funding offered, and with limited advance notice. Accordingly, the process *de facto* excludes many organizations, particularly grassroots organizations whose staff do not speak English or cannot easily come to Brussels for a one day meeting with FATF. ***Accordingly, we respectfully request that FATF encourage member states to organize more significant outreach to the sector through national consultations in local language, and we request that FATF extend the deadline for adoption of the BPP so meaningful outreach and consultations are possible.*** UN Special Rapporteur Kiai's [report](#) on civil society participation in multilateral organizations includes helpful principles on how to conduct meaningful consultation and should be a resource.

(3) To guard against generalized one-size-fits-all regulations, the BPP should exclude text that suggests model NPO practices and guidelines. To the extent examples of NPO practices are included, they should not be referred to as "best practices" but as examples. This can be done by putting them in an Annex or text boxes. They should be clearly separated from guidelines for governments.

Having in mind that Recommendation 8 and its Interpretive Note are targeted specifically to governments and recalling the problem of overregulation that has resulted from its implementation in some countries, the BPP should refrain from attempting to define "best practices" for the NPO sector, as it appears to do in the

current draft outline. Such an approach can lead to a one size fits all that is contrary to the risk based approach endorsed by FATF. The BPP should not use mandatory language, as the draft does in paragraphs 13-16 by repeated use of the word “should.” We also remind the FATF that the European Commission also did not pursue such "codifying" approach regarding NPO self-regulation.

At the London meeting, FATF stated that it is important to show governments what the NPO sector is already doing to mitigate risk. Consistent with this objective, references to NPO practices or sector self-regulation should appear in the section on national risk assessments.

If the purpose of including NPO practices is to showcase illustrative examples of due diligence, risk assessment and risk mitigation measures that individual NPOs use, in order to inform governments of what the sector is already doing to mitigate risk, this could be helpful only if these examples *do not* appear to be set out as standards/principles or model regulations. The BPP should point out that NPO practices are developed in a concrete scenario/context and often only by one individual organization active in a certain region/for certain purposes.

We therefore request that any NPO practices included in the BPP be labelled “examples” and not “best practices” and either be in the clearly separated annex of self-regulatory and individual examples of NPO sector to the BPP or illustrative text boxes within the risk assessment section. The BPP should explicitly state that FATF does not set standards for NPOs or mandate regulations by government. That is the responsibility of the NPO sector, based on a risk assessment and the country’s context. The BPP should by all means not encourage Governments to incorporate in regulation examples that are typical for NPO self-regulation.

We propose that any NPO examples be followed by the list of resources of over 350 self-regulatory mechanisms NPOs use around the world, to illustrate the variety of resources for variety of organizations.

Finally, we remind the FATF of the input provided by a NPO coalition to the BPP content in December 18, 2014 (*see annex to this document*). We are pleased to see from the suggested headings in the outline (point 4.b) that the new BPP aims to address many of the issues we raised concerning the need to provide guidance to countries on how to implement Recommendation 8. We could provide further input once the entire BPP draft is shared.

We kindly ask FATF to provide feedback on the above requests to Ms Lia van Broekhoven (lia@hscollective.org) and Ms Kay Guinane (kguinane@charityandsecurity.org) so that we can continue with constructive dialogue and decide most effective manner of providing meaningful input.

Yours respectfully:

American Friends Service Committee	United States
ARTICLE 19	United Kingdom
Association of German Foundations	Germany
Association of Ukrainian Monitors on Human Rights	Ukraine
Conduct in Law Enforcement	
Association Konekt	Macedonia
Australian Council for International Development	Australia
Avv. Prof. Michele de Meo, Law Firm	Italy
Belarussian Helsinki Committee	Belarus
Berghof Foundation	Germany
Brian Dooley, Human Rights First*	United States
Brot für die Welt	Germany
Bulgarian Helsinki Committee	Bulgaria
Bulgarian Center for Not for Profit Law	Bulgaria
Center for Civil Liberties	Ukraine
Center Transparency International	Russia
Center for the Development of Democracy and Human Rights	Russia
Charity & Security Network	United States
Citizens Campaign for Right to Information	Nepal
Civic Development and Partnership Foundation	Armenia
CIVICUS	South Africa
Conciliation Resources	United Kingdom
Cordaid	Netherlands
Council of Finnish Foundations	Finland
Council on Foundations	United States
Defending Dissent Foundation	United States
Dr. Leila Alieva, University at Oxford*	United Kingdom
Dutch Association of Foundations	Netherlands
Ecumenical Women's Initiative	Croatia
European Center for Not for Profit Law	Hungary
European Foundation Centre	Belgium
Fondation de France	France
Freedom Files	Russia
Fund for Global Human Rights	United States/United Kingdom
Ghana Integrity Initiative	Ghana
Global Partnership for the Prevention of Armed Conflict	Netherlands
Herbalife Family Foundation	United States
Helsinki Citizen Assembly Vanadzor	Armenia
Helsinki Foundation for Human Rights	Poland
Helsinki Committee of Armenia	Armenia
Human Rights Monitoring Institute	Lithuania
Human Rights Movement "Bir Duino-Kyrgyzstan"	Kyrgyzstan
Human Security Collective	Netherlands
ICCO Interchurch Organization for Development Cooperation	Netherlands
International Center for Not for Profit Law	United States
International Partnership for Human Rights	Belgium
Islamic Relief USA	United States
Island Resources Foundation	British Virgin Islands
Kazakhstan International Bureau for Human Rights and Rule of Law	Kazakhstan
Kharkiv Regional Foundation "Public Alternatives"	Ukraine

KinderUSA	United States
Kosova Rehabilitation Center for Torture Victims	Kosovo
Life for Relief and Development	United States
Macedonian Center for International Cooperation	Macedonia
Moriah Fund	United States
Netherlands Helsinki Committee	Netherlands
Norwegian Helsinki Committee	Norway
Norwegian Refugee Council	Norway
Oak Foundation	Switzerland
Office of Civil Freedoms	Tajikistan
Open Knowledge Finland	Finland
Open Ministry Finland	Finland
Open Society Foundation	United States
Palestinian Center for Development and Media Freedom	Palestine
Public Foundation Notabene	Tajikistan
Public Verdict Foundation	Russia
Prof. Sue Smock, Wayne State University (retired)	United States
Syrian American Medical Society	United States
Transnational Institute	Netherlands
Transparency International	Germany
The Human Rights Center of Azerbaijan	Azerbaijan
The Barys Zvozkau Belarusian Human Rights House	Belarus
UNITED for Intercultural Action	Netherlands
West Africa Civil Society Institute	Ghana
Women Peacemakers Program	Netherlands
Zakat Foundation of America	United States

*Organization listed for identification purposes only

Cc:

Mr. Je-Yoon Shin, Vice-President FATF

Jennifer Fowler and Juan Manuel Vega Serrano, Co-Chairs, FATF Policy Development Group

FATF Secretariat

Nigel Tarling, Head, International Programme, Charity Commission of England and Wales

Alastair Bland, Director, Review and Analysis Division, Charities Directorate, Legislative Policy & Regulatory Affairs Branch, Canada Revenue Agency

ANNEX

INITIAL NPO INPUT INTO FATF REVISION OF THE R8 “BEST PRACTICES PAPER”

Contact person: Lia van Broekhoven lia@hscollective.org

December 18, 2014

Introduction and General Comments

These recommendations for the upcoming FATF Best Practice Paper (BPP) revision are shared with the FATF Secretariat upon their invitation and with consideration of the discussion in the October 2014 meeting in Paris. They were developed by the group of non-profit organization (NPO) participants in that meeting, with initial input from the wider NPO working group. Therefore, this should be considered as **starting point for subsequent discussions** with the NPO sector, which should take place both before and after the draft BPP is produced. A formal and structured process is needed, including adequate time for NPO response to drafts.

Beyond this BPP revision, we want to reiterate our request for continuous formal consultation between the NPO sector and FATF, including participation in the Private Sector Consultative Forum.

At the outset we want to make four general comments:

1. As a starting point for our input in the BPP revision, it should be noted that our desire to improve the BPP does not constitute an endorsement of R8 itself. We want to reiterate our concerns with FATF R8 and the Interpretive Note (IN). **We do not agree with R8's premise and seek its revision.** The evidence over the past few years shows that instances of terrorist financing by NPOs are extremely rare relative to the size of the sector. Hence R8's premise and approach of singling out the NPO sector by stating that NPOs are “particularly” vulnerable to be abused for terrorist financing needs to be revised to reflect reality.
2. These **comments are informed by documented cases of the negative effects of inappropriate implementation of R8**, which includes overregulation and disproportionate restrictions on legitimate activities of NPOs. This is contrary to the positive principles of the R8/IN: a risk based approach, proportionality, effectiveness and protection for the legitimate activities of NPOs. The wording of the current BPP contributes to that problem (e.g., paragraphs 20-23). Recent examples show that it also sends a message to financial institutions that NPOs are risky customers, with the result that NPOs have a growing problem with access to the formal banking system.
3. Revisions of the BPP should **focus on the steps that governments (not NPOs) need to take** to implement R8 and the IN, with due consideration for the principles of R8 and overall FATF approach cited above. This request is in line with the IN which clearly refers to actions that should be taken by countries. However, the current BPP is a mixture of government and nonprofit sector good practice recommendations, which creates confusion and has encouraged cases of government overregulation. We hence recommend that the BPP clearly address governments. To the extent FATF discusses NPO

practices, we recommend that those be presented in an annex as examples of good practices the sector can adopt to foster accountability and transparency. We would be happy to provide additional input for that purpose.

4. We recommend that the **BPP contain a stand-alone list of R8/IN principles**: a risk based approach, proportionality, effectiveness and protection for the legitimate activities of NPOs (see Section III Principles below). In each specific step of the process required by R8/IN, the BPP should recall the specific principles that must be considered.

Below we elaborate points 2-4. Specifically, we focus on (1) the need to clarify the purpose and scope of the BPP, (2) a step by step guide for governments and (3) recalling key principles that should be considered when undertaking these steps. We also raise other issues that should be considered as the BPP is revised. In the future we look forward to engaging on point 1 as well as other issues of mutual concern.

I. Scope and purpose of the Best Practices Paper

Considering that the BPP supports the implementation of the R8 and the IN, **it should be limited in scope to the issues and principles addressed in R8 and the IN.**

A redraft of the BPP provides an opportunity to develop a paper that is complimentary to the other relevant FATF documents, and particularly to the IN. Since the IN sets out specific policy requirements, the BPP should not do the same. Instead, it should reinforce the core principles of the IN (and other relevant documents, such as the 2013 FATF Methodology for Assessing Technical Compliance), and provide specific guidance. **Detailed or specific policy or legal recommendations should not be included.**

Indeed, FATF related Best Practice Papers for other sectors suggest that their purpose is to provide non-binding guidance for policy makers and governments based on work already undertaken and in response to identified challenges in the implementation of the recommendations.² Similarly, the BPP for NPOs should clearly state that its purpose is to provide guidance for governments on steps they should undertake as they implement R8/IN and support outcomes that do not over-regulate or integrate the principles guiding the R8/IN.

II. “How to” – a step by step guide for country implementation of R8/IN

The BPP should **provide guidance on each step** of R8/IN implementation by elaborating what is involved and required in each component of the standard. It should also address sub-issues that may appear in implementation or have been already been identified as a challenge. For example, key steps for implementation of R8/IN would be:

1. Risk assessment;
2. Outreach to the NPO sector;

² Best Practices Paper The Use Of The FATF Recommendations To Combat Corruption (2013), Best Practice Paper Targeted Financial Sanction Related To Terrorism And Terrorist Financing (Recommendation 6)

3. Proportionate and concrete approach to mitigate any identified risk taking into account fundamental rights and principles and binding international human rights obligations.

We recommend that under each step the BPP provide **good practice approaches** for implementing the steps and include **examples of practices to avoid**, such as over-regulation, or practices not in line with R8/IN and binding international human rights obligations (perhaps in boxed text). Furthermore, the BPP should highlight cases where governments have overstepped or imposed restrictions in law and practice that are not based on a risk based approach or consistent with human rights obligations.³ For each specific step of the process we recommend that the BPP recalls the specific principles that must be considered.

Below we illustrate how these key steps for governments could be structured and explained:

Step 1: Countries must undertake a risk assessment and develop a targeted risk mitigation strategy *before* any regulatory measures are adopted (link to Recommendation 1)

The BPP should be clear that as a first step countries should **undertake a risk assessment *before* any regulatory measures are considered**. It should provide better guidance, including examples of practices on how risk assessment is done. The current BPP mentions the importance of risk assessment and risk mitigation but it does not clearly specify that it is a preliminary step or explain its importance. Considering the fact that many governments implement R8 without undertaking a risk assessment it is critical that the BPP emphasize this as a first underlying step which should guide all next steps and decisions in the implementation of R8/IN.

There are few important messages that need to be emphasized to the countries as guidance on the risk assessment:

- i. If a country conducts a thorough risk assessment and **finds no significant uncovered risk** no further action would be required. We suggest that the BPP clearly indicate that if a risk assessment reaches such a conclusion **no further action may be required**.
- ii. The BPP should also clearly state that there should be no assumptions about the level of risk prior to the risk assessment. It should be clear that **only if the risk assessment finds that a particular risk exists and is not yet appropriately addressed with effective hard law/soft-law measures, should further action be considered**.
- iii. A **review of the existing legal and regulatory framework** (including criminal law provisions, economic sanctions programs and NPO regulations) is a core part of the risk assessment process. R8 states that countries should review their laws to ensure that NPOs cannot be abused, so the risk assessment needs to focus on both the risks posed by the sector (as qualified by actual instances of abuse) and the ways in which the current legal framework addresses or fails to address these risks.

³ The NPO working group is collecting an illustrative list of problems with implementation of R8/IN, and list of examples of do's and don'ts which can help BPP authors to include good practice and problematic regulation. The working group is also analyzing good regulatory approaches with regard to transparency and accountability.

- iv. Governments should be **encouraged to look at existing soft law and self-regulatory programs** as well as hard law approaches. The BPP should note that effective NPO transparency and accountability measures include codes of conduct, ethical principles, and due diligence measures.⁴
- v. The BPP should also caution governments that **paragraph 5b of the R8 IN is about the scope and nature of the supervision of the NPO sector, not the identification of risk *per se*.**

Principles to be considered: proportionality, respect for international human rights obligations, as outlined below under Section III Principles.

An example of good practice: In at least two cases, domestic reviews have been undertaken in a genuinely consultative and inclusive way, with good results. In two countries FIUs chaired domestic review processes. The process was implemented by a committee consisting of government and NPO representatives equal in both number and status. In both cases, the result was agreement between the government and NPO sector on the main strategic risks in their countries, and the strategies needed to address them.

An example of bad practice: Country A justified enactment of a new ANL/CFT law that requires all NPOs to register and report all foreign cash transfers to the government by citing FATF R8. No risk assessment was carried out and there was no outreach to NPOs or other affected sectors, such as barristers and banks. Research on the law concluded that the sheer amount of information collected and stored by the government will have negative human rights implications in the future.

Step 2: Countries should reach out to the whole nonprofit sector in all phases of R8 implementation

The BPP should state that **outreach to the NPO sector should be cross-cutting and embedded throughout the process**, from awareness raising to risk assessment to risk mitigation to the mutual evaluation. NPOs recognize that rational and responsive risk management is part and parcel of good programming

The BPP should have a **strong focus on this multi-stakeholder approach**, stressing that there should be information sharing and discussion in both directions. The BPP revision should be a starting point for improved FATF communication to governments that seeks to prevent abuse or misinterpretation of R8 by making full engagement with the NPO sector a best practice.

Outreach discussions should include the four elements of R8 and the issues under each: a) outreach; b) supervision or monitoring of the NPO sector (paragraph 5b of the INR8); c) effective information gathering and investigation (paragraph 5c of the INR8); and d) effective capacity to respond to international requests for information about an NPO of concern (paragraph 5d of the INR8).

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http://www.efc.be/programmes_services/resources/Documents/ExploringTransparencyAndAccountabilityRegulationOfPublicBenefitFoundationsInEurope_FINAL.pdf and http://ec.europa.eu/dgs/home-affairs/doc_centre/terrorism/docs/initiatives_improving_transparency_accountability_npos_avr09.pdf

The BPP should also recommend specific good outreach practices such as:

- Governments should seek to establish a collaborative relationship with the NPO sector. This requires regular and frank dialogue about trade-offs involved on the ground, and about how to move forward to address them.
- Governments should reach out to the NPO sector to raise awareness of actual identified risk of abuse among the NPO sector and share information about resources/tools that are available to NPOs, such as self-regulatory programs, toolkits, use of regulated financial channels; etc.
- Government should not assume that NPOs are unaware of the risks.
- Outreach to NPOs should encourage dialog and information sharing and be open and respectful of diverse viewpoints. The awareness raising measures should be balanced against the actual potential risk and targeted specifically to groups identified as most vulnerable.

Principles to be considered for outreach: Collaborative relationships; targeted approach, proportionality.

Step 3: Countries should undertake a proportionate approach to mitigate the identified risk

Once a concrete risk is identified and it has been determined that the risk has not been adequately addressed in current law or self-regulatory practices, appropriate **mitigation measures** can be considered. These **must be proportional to the risk**. This means that special regulations aimed at preventing terrorist financing by NPOs must only target those found to be at risk in the risk assessment. No new measures should be introduced in the name of R8 unless they reflect a genuine threat (as identified by the risk assessment) and a genuine gap in criminal, civil or administrative procedure (as identified by the review of the legal framework). If countries have the right laws in place they should be well placed to deal with criminal acts committed by NPOs or terrorist abuse of NPOs.

Furthermore, such actions should **target only those areas that need intervention** and not impose restrictions or obligations on the entire sector. In other words, a few isolated cases of abuse do not justify broad regulatory measures. In addition, **the risk assessment should focus on actual instances of terrorist financing** as evidence of risk **and within the scope of R8/ IN**. Issues that fall outside the scope of the R8/IN should not be considered as risk factors and should be excluded. For example, political speech is protected expression under international human rights law. Because there is no commonly agreed upon definition of what constitutes “radical” or “extremist” speech, using these terms as risk factors opens the door to abuse of the FATF process in order to suppress political opposition. Risk analysis should instead focus on concrete activities that have a direct connection to terrorist support or abuse.

The BPP should clarify **that supervision and monitoring should only target a subset of NPOs not the entire NPO sector**:

- those that account for significant financial resources based on thresholds agreed in the countries, and
- those organizations with certain substantial international activities (so not small organizations working in local communities), and
- only if these subset NPOs have also been identified as being at risk for abuse in the risk assessment process.

In general, our view is that the BPP should provide more clarification around definitions of NPOs. Currently, there is a general definition in the glossary of terms in the IN and another for the subset of “NPOs” defined in the para 5.b of the IN. We recognize that in the limited update to the BPP in June 2013, FATF made efforts to highlight that certain measures should only apply to a subset of NPOs. Experience shows that many governments implement the measures to all NPOs regardless of risk, size, type, etc. Therefore, we suggest that the BPP clarify within the proposed steps which measures should target what organizations and highlight good practices.

The BPP should **address the important issue of treatment of humanitarian organizations** and the need to honor obligations under international humanitarian law (IHL). It should be clear that any risk management standards adapted specifically for the humanitarian sector must be consistent with IHL and must not arbitrarily or categorically impede principled humanitarian action.⁵

Principles to be considered: targeted approach, proportionality, international human rights and humanitarian law norms.

An example of good practice: A regulator developed a Compliance Toolkit for registered charities (NPOs). The Toolkit explains the perceived risks, the relevant laws and clearly sets out the legal responsibilities and best practices that charities should be aware of in relation to the risk of terrorism or terrorist financing. It removes ambiguity over what is expected from those responsible for the charity. Crucially, the Toolkit adopts a risk-based approach.

A bad practice example is as follows: In a country X, a nonprofit with more than three employees must appoint a Money Laundering Reporting Officer. Nonprofits with less than three employees are required to “perform the Money Laundering Reporting Officer functions” though they need not appoint a MLRO. Fines range from \$3,000-\$30,000 (including a \$5000 for “failure to maintain any records required to be maintained”). This issue is of a particular concern to smaller nonprofits, including those with all-volunteer staff. This not a targeted, proportionate or risk based approach.

III. General principles

We recommend that each step in implementation of R8/IN refer to the general principles that apply specifically to that issue, so that they guide governments. We also recommend that the BPP contain a separate section of all key principles listed under R8/IN, in particular:

- **The activities of legitimate NPOs are important and must be protected;** The BPP should provide detail in respect to the principles for protecting legitimate NPO activities. For example, the six principles for protecting civil society set out

⁵ *Safeguarding Humanitarianism in Armed Conflict: A Call for Reconciling International Legal Obligations and Counterterrorism Measures in the United States*, Charity & Security Network, June 2012 Available online at http://www.charityandsecurity.org/studies/Safeguarding__Humanitarianism_in_Armed_Conflict

by the World Movement for Democracy and the International Center for Not for Profit Law are excellent and widely respected.⁶

- Countries **must respect the fundamental rights** of association, assembly and expression. Limits on these rights can only be imposed in the name of national security if they are the least restrictive means to address a specific risk or concrete threat and be carried out in a specific, proportionate and temporary manner.
- Countries must **comply with international humanitarian law**.
- The **diversity of the NPO sector** and its national contexts must be taken into account, so that there is **flexibility** to address a specific risk, and **no one-size-fits-all** approaches are appropriate.

IV. Other issues to be considered in revising BPP

We strongly **recommend restructuring the current Section V Areas of Focus**. Currently, the BPP moves between two approaches. It either speaks about best practices in a certain area (e.g., V.14.a) or provides a check list of questions or strong suggestions for regulation on specific matters (e.g., Section V.17 and V.230). As a result, there is confusion and Section V has been used as a general regulatory checklist for NPO due diligence. This is inconsistent with a risk-based, proportionate and flexible approach. Instead the BPP should consider using examples of national approaches for concrete risk mitigation measures, but not suggest or recommend specific regulations or “model” regulations.

The introduction of the BPP and statement of problem should recall the limited abuse of NPOs found and the revised BPP should reflect findings.⁷ It should also stress the importance of ensuring that R8 is not misinterpreted or misused to suppress NPO activity not related to terrorist financing, since we have seen many cases of overregulation.

We strongly ask that the 2014 typology report not be incorporated by reference into the BPP. While the typology report may serve as a resource, it not a policy document and the BPP should not imply or propose that it be used as a template for national regulatory frameworks. We also ask that no case studies of abuse be included (as it is in the current BPP) because the case studies listed in the typology report are not fully disclosed and have not been the subject of consultation with NPOs and wider stakeholders. (See the Transnational NPO Working on FATF comments on the typology report.⁸)

The BPP should **alert counties to growing problems with NPO access to financial services** and the need for government regulatory regimes to encourage the financial sector to serve NPOs, so that NPO funds can remain in transparent, regulated channels. This is part of an effective approach to AML/CFT.

⁶ <http://www.wmd.org/documents/Defending%20Civil%20Society%20-%20English.pdf>

⁷ For example, the 2008 European Commission initiated report “Study to Assess the Extent of Abuse of Non-Profit Organisations for Financial Criminal Purposes at EU Level” which was commissioned to the Matrix Knowledge Group stated that indications suggest limited abuse of NPOs.

⁸ <http://www.charityandsecurity.org/system/files/NPO%20Sector%20Typology%20Position%20Paper%20FATF.pdf>

Conclusion

The limited update of the Best Practices Paper in 2013 was a solid starting point for full revision of the document. This is an opportunity for FATF to engage in its own best practices of consultation and outreach with the NPO sector. We hope for better guidance for governments and clarity that should prevent future abuse or misuse of the FATF process.

As explained here, the group of NPOs submitting this brief believe the revised BPP should be targeted to governments and guide them through the appropriate steps and principles necessary to implement R8 in a manner that is effective and consistent with the fundamental FATF principles and human rights obligations.

As the Working Group on Tackling the Financing of Terrorism of the United Nations Counter Terrorism Implementation Task Force recommended in 2009, “*States should avoid rhetoric that ties NPOs to terrorism financing in general terms, because it overstates the threat and unduly damages the NPO sector as a whole.*” The BPP should reflect this standard and emphasize it.

Annex 1: Initial list of references

Pending: Inter-Agency Steering Committee Toolkit for Humanitarian Operations

In response to demands by operational actors, a counterterrorism risk management and due diligence toolkit is being developed on the Inter-Agency Standing Committee (IASC). The IASC is the primary mechanism for inter-agency (UN, NGO, Red Cross/Crescent Movement) coordination of humanitarian assistance. Due for completion by mid-2015 and supported by an Advisory Group of ICRC, UN and NGO actors, the toolkit is being designed to assist humanitarian organisations to develop practical and principled approaches to a range of donor counterterrorism measures on risk management, due diligence and anti-diversion. It will be based largely on the independent NRC/OCHA study on donor counterterrorism measures, extensive research by Harvard Law School and field consultations with humanitarian organisations and donors in Amman, Kabul and Nairobi. The research is attached and is available online [here](#) and [here](#).

While the toolkit's primary aim is to further strengthen organisations' internal risk management systems with respect to counterterrorism, it will also be as a tool for dialogue about appropriate risk management standards and expectations with donors and donor governments.

Reports:

[Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association](#), (A/69/365)

The report addresses concerns about the exercise of the rights to freedom of peaceful assembly and of association in the context of multilateral institutions, September 2014.

[Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association](#), (A/HRC/26/29)

The report addresses legislation and practices that discriminate against certain groups and deprive them of their rights to freely associate and peacefully assemble, April 2014.

[Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya](#)

(A/HRC/25/55)

The report addresses concerns regarding the legal environment for human rights defenders and recommendations for improvement of the situation.

[Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association](#), (A/68/299)

The report addresses documents threats to the freedoms of assembly and expression in the context of elections, September 2013.

[Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association](#), (A/HRC/23/39)

The report addresses restrictions to ability of civil society to access funding and resources, April 2013.

[Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association](#), (A/HRC/20/27)

The report addresses practices in implementation of the freedoms of association and assembly, May 2012.

Publications:

[Protecting civic space and the right to access resources](#)

Community of Democracies and the UN Special Rapporteur on freedoms of peaceful assembly and of association. May 2014

[Financial Management Capacity Building for Non Profit Organisations](#)

By Cordaid and Mr. M. Kandasami. December 2012. Explains good practices to improve NPO financial governance practice.

[Recent Public and Self-Regulatory Initiatives Improving Transparency and Accountability of Non-Profit Organisations in the European Union](#)

European Union commissioned study, 2009

[Exploring Transparency and Accountability Regulation of Public Benefit Organizations in Europe](#)

European Foundation Center, 2011

[Nonprofit Organizations and the Combatting of Terrorist Financing: a Proportionate Response](#)

World Bank June 2010

Databases:

[A Database of Self-Regulation Initiatives](#) by One World Trust

Annex 2: Initial list of examples

Risk Assessment

The BPP should include examples of good practices for governments. Here are some suggestions:

- In at least two cases, Domestic Reviews have been undertaken in a genuinely consultative and inclusive way, with good results. In two countries FIUs chaired domestic review processes. The process was implemented by a committee consisting of government and NPO representatives equal in both number and status. In both cases, the result was agreement between the government and NPO sector on the main strategic risks in their countries, and the strategies needed to address them.
- Law enforcement agencies can encourage NPOs to undertake internal risk assessments and develop and implement risk mitigation plans. This approach minimizes the need for criminal or civil sanctions and is effective as a preventative measure.

The BPP should include examples of bad practices. Here are some suggestions:

- Country A justified enactment of a new ANL/CFT law that requires all NPOs to register and report all foreign cash transfers to the government by citing FATF R8. No risk assessment was carried out and there was no outreach to NPOs or other affected sectors, such as barristers and banks. Research on the law concluded that the sheer amount of information collected and stored by the government will have negative human rights implications in the future.

Outreach

The BPP should include examples of good outreach practices. For example:

- One European country undertook a balanced outreach programme targeting NPOs and NPO umbrella organizations to alert and warn the NPO sector about the potential risks of terrorist abuse and to call on the sector to be watchful and undertake due diligence practices to keep risk as low as possible. The same country also reached out to their PO sector and organized meetings with NPO representatives ahead of and after the FATF evaluation to listen to the sector's views.
- A government convenes a nationwide discussion between a diverse cross-section of the NPO sector, financial intelligence units (FIUs), law enforcement, charity regulators and financial institutions to discuss areas of vulnerability to abuse by terrorists, including the types of channels that are being exploited and locations and types of activities where risks are emerging.

The BPP should include examples of bad outreach practices:

- Governments often do not reach out to the sector concerning terrorist financing issues----neither generally for awareness raising nor before they adopt measures that affect the NPO sector.
- In country X when government calls nonprofits together to discuss anti-terrorist financing and related issues the agenda tends to be lectures and presentations by government with some question and answer time for nonprofits, with no process for joint effort to address issues

Proportionate approach to risk mitigation

Examples of good practice:

- When a news story accused a charity of supporting a terrorist organization the charity regulator conducted an investigation without shutting down the charity. It found that there was no basis for the accusation of terrorist support, but raised questions about the affiliations of leaders in a local partner organization and the adequacy of due diligence procedures. It ordered the charity to sever its ties with the local partner organization and review its due diligence program.
- A charity regulator developed a Compliance Toolkit for registered charities (NPOs). The Toolkit explains the perceived risks, the relevant laws and clearly sets out the legal responsibilities and best practices that charities should be aware of in relation to the risk of terrorism or terrorist financing. It removes ambiguity over what is expected from those responsible for the charity. Crucially, the Toolkit adopts a risk-based approach:

“Trustees’ legal duties and responsibilities apply to all charities and all trustees, whatever the charity, its size and activities. What this means in practice however depends on the circumstances. The extent, form and detail of the project and partner monitoring checks and due diligence that is required, and how this should extend to donors and beneficiaries, will depend on the nature of the risks in the particular circumstances. The level of checks and procedures required will be dependent on the nature of the activities the charity carries out, and how and where they are undertaken. Where the risks are high – such as in areas where it is well known or likely that proscribed and other terrorist organisations are known to operate – trustees must ensure those steps are sufficiently robust...”

Examples of bad practices:

- In a country X, a nonprofit with more than three employees must appoint a Money Laundering Reporting Officer. Nonprofits with less than three employees are required to “perform the Money Laundering Reporting Officer functions” though they need not appoint a MLRO. Fines range from \$3,000-\$30,000 (including a \$5000 for “failure to maintain any records required to be maintained”). This issue is of a particular concern to smaller nonprofits, including those with all-volunteer staff. This not a targeted, proportionate or risk based approach.
- A country imposes due diligence standards designed for commercial entities on the NPO sector without regard for the unique character of NPOs. “Know your customer” is not the same as “Know your beneficiary.” Treating them as the same thing has led some donor governments to impose contractual conditions on funding that require humanitarian organizations to gather sensitive personal information on individuals to submit to government,. This creates a conflict with the humanitarian standards of independence and neutrality and increases risk of attacks against aid workers.
- Limits and restrictions on foreign funding for NPOs interfere with the rights of association and assembly, expression and more often appear to be a misuse of the FATF process for political purposes than a genuine effort to combat terrorist financing.
- Treatment of advocacy organizations, including human rights defenders, as political entities rather than charitable organizations.

Financial institutions “derisking”

- UN agencies, INGOs and NNGOs are responding to humanitarian needs in Iran, including assisting Afghan refugees. However, due to AML/CFT concerns and sanctions imposed by the US and the EU, in 2012 Iran's banks were cut off from the SWIFT network, considered the world’s primary financial clearing house.

Thus, without a functioning international banking system, those organisations with a foreign donor base *cannot conduct bank-to-bank transfers of donor funds*, and so are all facing the same challenges to avail themselves of the necessary funds to carry on their work. These challenges create formidable risks to staff safety, result in waste of donor funds due to increased transaction costs, and may also be contributing to hyper-inflation, damaging the economy further. What is required is a financial mechanism which allows transfer of humanitarian funds from foreign to Iranian banks without fear of contravening sanctions or other counter-terrorism requirements.

- Somalia, Western banks have cut off their remittances services to Somalia due to UK and US AML/CFT laws and fear of losing financial services licenses in lucrative Western market. As detailed in an [Oxfam report](#), remittances previously provided a USD1.3 billion/year lifeline for many Somalis – this is larger than total annual humanitarian aid – and the effect of *hawala* and other coping mechanisms is not yet clear.