August 7, 2014

Alexandra Eckert, FATF/GAFI Secretariat

Alastair Bland, Co-Chair, RTM Working Group

Nigel Tarling, Co-Chair, RTM Working Group

Annexe Franqueville 238

2, rue Andre Pascal

75016 Paris, France

By Email

Dear Ms. Eckert, Mr. Tarling and Mr. Bland,

The undersigned civil society organizations are writing to respond to the June Financial Action Task Force (FATF) publication *Risk of Terrorist Abuse in Non-Profit Organisations* and to suggest an approach to the next phase in FATF’s update of recommendations for government regulations to protect the nonprofit sector from abuse by terrorist organizations in the update of its “Best Practices Paper” (BPP).

Detailed comments on FATF’s update of its typologies report were sent in March,[[1]](#footnote-1) in advance of the report draft, and in June to respond to the draft report shared with the Transnational NPO working group on FATF. Through workshops coordinated by civil society groups in New York and Brussels, and conference calls coordinated by the FATF, we believe that the ongoing dialog between FATF and civil society groups has been crucial in sharing concerns of all parties. We share the goals of protecting the NPO sector’s ability to operate, including preventing abuse by terrorist organizations or over-regulation by government. The question in our dialog is how to best achieve these goals.

We appreciate the inclusion of several of our recommendations in the final report. In particular we are pleased with references to the positive role civil society plays in increasing human security worldwide and the special protections the sector has under international human rights law and international humanitarian law. These references, together with the June 2013 first round of revisions to the Best BPP are a starting point for the upcoming second round, in-depth review of it.

We also encouraged that the typology report noted the expertise of the nonprofit sector in developing and implementing tools and practices that safeguard its resources and mission. We urge you to draw on this expertise as the process moves forward. Because the in-depth revision of the BPP will influence laws and regulations impacting nonprofits in 180 countries around the world, it is critical that the results do not exacerbate an alarming trend of excessive restrictions on civil society space.[[2]](#footnote-2)

Our major concerns about the report fall into three categories: some implied and express policy positions, the potential for inaccurate conclusions to be drawn from the limited data in the report and the frequent conflation of vulnerability and risk in the discussion.

*Policy issues:*

The typology report noted that it is not intended to be a policy document and rightly says that each country must develop regulatory frameworks that address its own circumstances. But despite the insistence that the report is not intended to communicate policy, its emphasis on a preventative approach and use of administrative sanctions could be used to impose an excessive level of regulation and government control of the NPO sector. NPOs undertake extensive due diligence to prevent diversion of their resources to non-charitable purposes, and those operating in areas of armed conflict are particularly careful. So while we support a preventative approach, we are concerned that the report appears to adopt this policy without adequate discussion of the need for proportionality in its application.

Effectiveness and proportionality must govern the approach in development of any regulatory framework or policy. Without incorporating these factors, preventative regulatory approaches could be used in a manner inconsistent with these goals and feed into an alarming trend of excessive restrictions on civil society space globally. The report notes concerns about abuse of the FATF process in this regard, and these concerns must be taken into account in the in-depth review of the BPP. A disproportionate emphasis on the nonprofit sector, which the report notes has a low incidence of actual abuse by terrorists, could feed this trend.

In at least one case it takes an explicit policy position that should be left to the BPP process or to individual states. On page 33 it states that humanitarian exemptions should be determined on a specific case-by-case basis. That is a highly controversial position that has been challenged as inconsistent with the requirements of international humanitarian law.[[3]](#footnote-3) As the process moves forward FATF must work to ensure that the outcome of country-level FATF compliance is consistent with binding legal obligations under international human rights and humanitarian law.

*The need for more research and the potential for inappropriate use of case studies:*

The report asserts that further research is needed in key areas, and we agree. We caution FATF and readers of the report not to generalize from the findings based on case studies. The report was not based on a scientific survey, and while case studies are helpful and indicate potential trends for further consideration, the data cannot be taken as fact or extrapolated to apply to the nonprofit sector globally. Any measures designed to prevent terrorist abuse of NPOs must be based on evidence demonstrating the need for such intervention. Measures that impact the entire NPO sector cannot be justified by extremely rare events. This is consistent with the special legal protections that apply to the nonprofit sector, grounded in freedoms of association, assembly and expression.

For example, the report does not explore the distinction between complicit and non-complicit instances of terrorist abuse of the NPO sector, a key issue for countries developing proportionate and effective regulatory structures that comply with international human rights law and international humanitarian law.

*The dangers of conflating vulnerabilities and risk of abuse:*

The report distinguishes between risk and vulnerability with recognition that a vulnerability only becomes a risk when there is both intent and capacity to commit or support a terrorist act. However, much of the discussion puts the two together. This could easily lead to counterproductive over-regulation. As far as we are aware, no evidence exists that the NPO sector as a whole faces systemic risk or abuse. Vulnerabilities (that also apply to many sectors operating internationally) do not in and of themselves constitute a risk of abuse. Regulatory programs aimed at preventing vulnerabilities from becoming risks or abuses should not prevent NPOs from doing critical work that saves lives *and* provides an alternative to the terrorist narrative. It is critical going forward that the BPP and resulting regulatory strategies clearly distinguish risk from vulnerability.

*Conclusion:*

There is scope for a more participatory approach in the future work of FATF, including more public consultation with multiple stakeholders. NPOs are committed to working with intergovernmental organizations such as FATF, national governments, parliaments and others in civil society, as well as with the financial services industry, to prevent terrorist abuse of NPOs and to mitigate the negative impact of counter-terrorism measures. We would welcome establishment of a more formal and structured dialog between the FATF and the NPO sector and look forward to contributing to this process.

We see the goal of protecting the nonprofit sector from abuse by terrorist organizations as part of a larger goal of enabling the sector to carry out is work and contribute to human security. It is crucial that regulatory programs intended to prevent terrorist abuse of the sector be consistent with human rights and facilitate the goal of enhancing civil society’s ability to address drivers of violent extremism by offering alternative structures and resources to key communities. We think this is achievable and look forward to working with you in the BPP process.

Yours truly,

Australian Council for International Development

Brot fur die Welt, Germany

Center for National and International Studies, Azerbaijan

CDA Collaborative Learning, United States

Charity & Security Network, United States

Conciliation Resources, United Kingdom

Civicus, World Alliance for Citizen Participation, South Africa

Defending Dissent Foundation, United States

Donors and Foundations Network Europe

European Center for Not-for-Profit Law, Hungary

European Foundation Centre

Fund for Global Human Rights, United States

Global Partnership for the Prevention of Armed Conflict, Netherlands

Human Appeal International, United Kingdom

Human Security Collective, Netherlands

International Center for Not for Profit Law, United States

Islamic Relief Worldwide, United Kingdom

KinderUSA, United States

Muslim Charities Forum, United Kingdom

Open Democracy Advice Centre, South Africa

SAANE for Philanthropy Advisory in the Arab Region

Transparency International

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

1. http://www.charityandsecurity.org/system/files/NPO%20Sector%20Typology%20Position%20Paper%20FATF.pdf [↑](#footnote-ref-1)
2. *Global Surveillance of Dirty Money: Assessing Assessment of Regimes to Control Money Laundering and Combat the Financing of Terrorism* mentions a number of ways in which FATF’s recommendations can have a negative impact on civil society by creating administrative and operational burdens. <http://www.lexglobal.org/files/Report_Global%20Surveillance%20of%20Dirty%20Money%201.30.2014.pdf> [↑](#footnote-ref-2)
3. See *Safeguarding Humanitarianism in Armed Conflict: A Call for Reconciling International Legal Obligations and Counterterrorism Measures in the United States*, published by the Charity & Security Network, July 2012. Available online at http://www.charityandsecurity.org/system/files/Safeguarding%20Humanitarianism%20Final.pdf [↑](#footnote-ref-3)