

Summary:

VOICE hosted this event to raise awareness of NGOs and other stakeholders about the impact of counter-terrorism laws and policies on humanitarian action. In the first half of the evening, two expert speakers presented an overview of international and European measures to combat terrorism financing, and how the NGO sector is affected in the process of risk assessments. Five panellists and the audience discussed the impact of donor counter-terrorism measures on NGOs, and advocacy tools to minimise their effect. The event was hosted under Chatham House Rule.

Several **key challenges** presented to NGOs by such measures emerged:

1. An increased risk of being blacklisted
2. A permanently suspicious climate without any foundation or legal background that an NGO could contest.
3. A change of rules at national level for international NGOs which may make it harder for international NGOs to engage with local partners or receive funding at national level, inhibits NGOs' abilities to work in consortia, and generally restricts the activities of civil society.
4. An increased administrative and financial burden for NGOs. This was counter to the commitments to simplification in the Grand Bargain.

NGOs recommend:

- NGOs must join forces and build coalitions to mitigate the negative effects of donor counter-terrorism measures. Collaboration is needed to address key issues around the role of civil society and legitimacy.
- Humanitarian actors must operate transparently and embrace technical standards and good financial practice as well as the humanitarian principles to build trust with donors (and the public), secure continued funding, and operate sustainably. One such good practice would be to limit the dependence on traditional donors by exploring the use of private funds.
- Dialogue between all actors – NGOs, governments and financial institutions – is needed and must be facilitated by governments or international institutions.
- NGOs must stay informed and engage with their (national) governments who undertake counter-terrorism processes to ensure NGO voices are heard.
- The Financial Action Task Force (FATF) agrees that “zero tolerance” doesn’t work. Acceptable limits for diverted funds are needed to increase acceptance of NGOs and ensure humanitarian work can go on. NGOs must raise this issue at member states (MS) level too.
- Governments and the European Commission (EC) need to take responsibility and ensure their risk assessments are transparent (e.g. blacklisting criteria) and include NGOs. Their counter-terrorism measures must respect IHL and enable and protect the work of humanitarian NGOs. Consultations with NGOs are crucial.
- Sanctions for states that do not respect the FATF process or abuse it are needed, as well as tools to measure and counter abuse (counter-abuse measures).

Part 1: Expert panel

The first expert speaker provided an overview of the activities of the Financial Action Task Force (FATF), the impact of its counter-terrorism measures on NGOs, and how these measures have developed over the past decade.

Counter-terrorism measures over time

The FATF was established in 1989 by the then-G7 to prevent drug cartels' money-laundering, and was expanded to include terrorism financing after 9/11. In 2012, special anti-terrorism regulations made up of 40 recommendations were added. Of those, recommendation 8 is dedicated to the non-profit sector and caused problems for the operational and political space of non-profit organisations (NPOs) and the wider sector. Due to ambiguous wording that left it open to interpretation, it gave governments an internationally legitimate tool to push back on civil society space and reduce funding.

To change this status quo, NPOs came together to jointly engage with the FATF and highlight the importance of humanitarian and other civil society actors as well as how their work had been inhibited by recommendation 8. After 3-4 years, a good working relationship was established, and recommendation 8 was amended to ensure governments would not do wholesale regulation or blacklisting of whole sectors. Instead, governments need to differentiate between individual organisations within a given sector based on risk assessments, and undertake targeted action based on this assessment. Now, this needs to be applied at country level.

The risk assessment at country level should go through four steps:

1. Risk assessment
2. Assess existing laws and how they address identified risks
3. Find the gaps and develop risk mitigation measures proportional to the risk and that do not restrict operations of legitimate NPOs
4. Create a result consistent with obligations under International Human Rights and Humanitarian Law (IHRL and IHL)

As governments use classified information and the assessment process can lack transparency, it is important that they approach NGOs to validate information and give them the opportunity to present their own view.

Examples

Two examples show the importance of these assessment for NPOs. In Kyrgyzstan, NPOs, financial intelligence and the national government worked together to test the methodology. In Ireland, NPOs were not involved in the national risk assessment but had a multi-stakeholder meeting with the government just before the FATF assessor came. Human rights NPOs, foundations, associations and tax authorities seized that opportunity to discuss the upcoming FATF recommendation and how Ireland could prepare. Such multi-stakeholder rounds and their input is appreciated by governments and NPOs alike.

Tools

To ensure CSOs and NPOs actively and jointly engage in the FATF process, and have the tools to do so, the [Civil Society Platform on the FATF](#) was set up.

The FATF secretariat is also very helpful, including in helping build regional relations and in conducting the evaluation in regions.

NPOs were prepared for the FATF questions and were able to raise NPO issues such as problems with banks and the registration of partners overseas.

The second expert speaker presented preliminary results of the EU’s supra-national risk assessment (SNRA), which the Commission is required to do. It will provide a picture of risks at EU level and mitigating measures to take to avoid money laundering and terrorism financing.

Counter-terrorism at EU level

In the follow-up of the Paris and Brussels attacks, the EU published several different projects, for instance the agenda on security and various political commitments at member state (MS) level and at the Justice and Home Affairs Council. In February 2016, the European Commission (EC) published an action plan on terrorism financing which outlined some short-term actions to disrupt terrorists’ resources in the long term. One mid-term action has been to speed up the delivery of the SNRA, which the EC is set to deliver by June 2017.

The Commission developed a **5-step methodology**:

- 1) Identify risk
- 2) Assessment of threat
- 3) Assessment of vulnerability
- 4) Combination to identify level of risks (EC is about to start step 4)
- 5) Identification of mitigating measures – to limit identified risks

(Mixed items, such as crowdfunding and NPOs, do not have specific risk assessment for them so far, but they’re probably relevant to the analysis.)

Based on contact with member states (MS) and private sector, for the **vulnerability assessment**, which the EC just completed, 3 criteria were taken into account:

- 1) Inherent risk exposure – Some sectors are more at risk due to their nature, e.g. due to high risk customers, risky geographical location, or a risky product
- 2) Awareness of risk and/or vulnerability – This doesn’t mean the sector is complicit, but that it can be abused. Thus awareness within the sector is important (e.g. having contact points in sector) as well as having competent authorities.
- 3) Legal framework and controls in place – The existing framework (e.g. governance and legislature, anti-money-laundering controls in place) and its effectiveness vary greatly from one sector to another

Preliminary results on NPOs

For NPOs, two main risk situations were identified where they can be abused or have weaknesses:

- 1) Collection of funds – e.g. they can be used to finance terrorism without knowledge of NPO
- 2) Transfer of funds – e.g. they can be misused to finance terrorism

Challenges are present particularly in terms of scope. The EC took inspiration from the way the FATF works by referring to expressive NPOs

Expressive NPO – definition by FATF

“Non-profit organisations predominantly involved in expressive activities, which include programmes focused on sports and recreation, arts and culture, interest representation, and advocacy.”

vs. service NPOs (such as humanitarian NPOs). While they present some commonalities, they cannot all be put into the same category.

Preliminary assessment

Threat: Authorities did not notice recurring or specific use of NPOs by terrorist groups, or for terrorism financing. However, it is easy to create NPOs and some terrorist groups could have capabilities to do that. NPOs can also be used by foreign terrorist fighters to finance their travel, some police authorities have found. There is thus a significant level of threat, with signs of potential use.

Vulnerability: NPOs face high risk exposure due to area of operation, high risk “customers” and the use of cash. Awareness of risk is lacking as there’s no centralised framework to deliver relevant specific messages or guidance to central contact point. Awareness is thus not sufficient.

Legal framework: There is no harmonised regime for NPOs, so there are various levels of controls at EU level. Thus, there are lacking controls for transactions within the EU between MS or from MS to the outside.

Next steps: follow-up with civil society

The deadline for delivery for the European Commission (EC) on the SNRA is in June 2017. Ahead of it, the Commission has met with private sector representatives as well as some NPOs.

In March, they plan on having a **third consultation on mitigation measures**. The EC’s intention is not to impose an additional burden on NPOs. Mitigating measures can only suggest that MS give more training to NPOs to know how to deal with risk.

In response to questions from participants

What is the amount of money thought to be diverted from NPOs?

The NPO sector is identified as “significantly vulnerable” but the rationale behind the assessment is more important than that. The current objective of the SNRA is purely to assess potentiality of (ab)use. So far, it is impossible to concretely quantify the amount of money being diverted from NPOs or governments, as the risks remain more hypothetical with MS not finding any specific cases so far.

When NPOs have a presence in multiple countries, where are they evaluated?

On the method of evaluation, the answer was that NGOs operating in foreign countries are evaluated in their country of origin, unless they have a legal base in their country of operation. If they do, that might be evaluated as well.

Part 2: Panel and audience discuss

In the second half of the evening, a number of panellists led the discussion with participants from civil society and EU institutions. At first, they reflected on the challenges and risks humanitarian NGOs faced on counter-terrorism measures. They also discussed field impact and localisation and finished with NGO responses and advocacy.

Challenges

Several participants mentioned that the changing political climate (affected by such things as Brexit, nationalistic policies and contested elections) may come to have a worldwide influence on humanitarian work. There are many new trends and crises affecting humanitarians that are larger than just counter-terrorism alone. Humanitarian aid is increasingly being linked to national interests and security (including counter-terrorism and defence), and is being scrutinised from that perspective.

However, many NGOs had encountered negative effects from risk assessments, for instance problems with banks and transfers of funds, especially to “at risk” countries, being blocked. Islamic faith-based organisations in particular feel the effect of anti-terrorism measures. Specific risks to NGOs were identified:

5. An **increased risk of being blacklisted**, particularly the UN double-system, which calls for MS to propose organisations for listing and then obliges all MS to transpose those listings into their national systems. The system gives particular space to MS to define their own additional (perhaps arbitrary and more stringent) rules and blacklists, increasing the risk for NPOs to be the subject of these measures.
6. A **permanently suspicious climate without any foundation or legal background** that an NGO could contest. NGOs and humanitarian funding come under increased scrutiny, exemplified and aggravated by the way some mainstream media outlets use unsubstantiated allegations to attack the sector. Counter-terrorism discourse in the media tends to take the humanity away as it often doesn't differentiate between combatants and civilians.
7. A change of rules at national level for international NGOs which may make it **harder for international NGOs to engage with local partners** or receive funding at national level and inhibits **NGOs' abilities to work in consortia**. Both working with local partners and consortia are important methods for humanitarian effectiveness.
8. An **ever-increasing administrative burden** as NGOs are forced to become more centralised and put the financial burden on headquarters (HQ). This is contrary to the Grand Bargain commitment to simplification.

The situation is further aggravated as each donor uses their own system and set of rules, operating on a “one size fits all” approach doesn't work and can put NPOs in danger. The operational impact is staggering both financially, with a reduced cash flow, and from the strategic choices that NGOs are forced to make in terms of where and how to intervene.

Field impact and localisation

Historically, many organisations operated for years in countries and regions where people were labelled terrorists. Depending on the donor and their criteria, such work could be seriously impeded. For instance, an organisation funded by USAID working with the FARC rebels in Colombia (in the 1990s and 2000s) would have been blacklisted under current conditions for “providing material support to a terrorist group”, and thus been unable to operate.

Humanitarian actors aim to follow the humanitarian principles of impartiality and neutrality, but the rules imposed by donors can interfere with these principles and inhibit work relating to dialogue and acceptance, which is crucial for access to crisis-affected populations. NGOs draw their mandate, from these humanitarian principles. However, most NGOs (including all operating in conflict zones) fall under the “at risk” umbrella, with the impact of anti-terrorism policies potentially affecting up to a third of the global turnover of some NGOs. Increasingly, their ability to fulfil their mandate is jeopardised, and organisations feel like they find themselves having to choose to follow the humanitarian principles, or to follow the rules of donors on counter-terrorism.

Localisation, which featured strongly in the agenda of the World Humanitarian Summit (WHS), is also a potential victim of donor counter-terrorism measures. The focus at the WHS was on NPOs to engage on capacity building of local communities and first responders. Yet NGOs working with local partners are most affected by donor counter-terrorism measures and struggle to continue their work as funds get blocked.

NGOs’ responses and advocacy

A key point that arose during the discussion was that while NPOs/NGOs may feel uninformed, risk awareness is actually rather high in the sector. The humanitarian principles – particularly impartiality – force NGOs to consider each engagement with different actors in each case, and they continue to function as a key tool for legitimacy in the field. Thus humanitarian NGOs are well equipped to engage in informed discussion with donors concerned about money-laundering and/or terrorism financing, due diligence and to advocate for measures that do not inhibit their work.

Now is the time for NGOs to act, and to act in partnership. A prime example comes from the UK, see text box on the right. NGOs are also starting to build dialogue with financial institutions to reduce the risk of bounced checks and returned payments. The Bank of Scotland is a prime example, as it tries to work with charities to ensure their money transfers run smoothly.

At the same time, NGOs are also starting to engage with the media. For instance, in the UK an umbrella organisation compiles case studies of impact (which can be anonymised and sanitised to protect organisations) to mitigate negative and often unsubstantiated media reports. In Germany, several NGOs are trying to bring humanitarian principles into public discussion and raise awareness through newspaper articles, radio interviews and children’s education.

Several networks are working on joint advocacy, for instance IASC’s working group has a **draft counter-terrorism advocacy paper** that NGOs can sign on to.

Good practice from the UK

In the UK, humanitarian, peacebuilding and development NGOs and groups came together to examine common problems and build an information-sharing forum. One of the key engagements was in 2014 with an independent annual review of counter-terrorism legislation. The NGO coalition raised the issues affecting their work as a direct or indirect result of the legislation. The review recommended a dialogue between Government and NGOs. This is slowly developing with the Home Office coordinating inputs from all other government ministries. Other NGOs can draw lessons from the process and apply it in their national context.

Recommendations

Several key recommendations emerged from the discussion.

1. NGOs must join forces and build coalitions to mitigate the negative effects of donor counter-terrorism measures. Collaboration is needed to address key issues around the role of civil society and legitimacy.
2. Humanitarian actors must operate transparently and embrace technical standards and good financial practice as well as the humanitarian principles to build trust with donors (and the public), secure continued funding, and operate sustainably. One such good practice would be to limit the dependence on traditional donors by exploring the use of private funds.
3. Dialogue between all actors – NGOs, governments and financial institutions – is needed and must be facilitated by governments or international institutions.
4. NGOs must stay informed and engage with their (national) governments who undertake counter-terrorism processes to ensure NGO voices are heard.
5. The Financial Action Task Force (FATF) agrees that “zero tolerance” doesn’t work. Acceptable limits for diverted funds are needed to increase acceptance of NGOs and ensure humanitarian work can go on. NGOs must raise this issue at member states (MS) level too.
6. Governments and the European Commission need to take responsibility and ensure their risk assessments are transparent (e.g. blacklisting criteria) and include NGOs. Their counter-terrorism measures must respect IHL and enable and protect the work of humanitarian NGOs. Consultations with NGOs are crucial.
7. Sanctions for states that do not respect the FATF process or abuse it are needed, as well as tools to measure and counter abuse (counter-abuse measures).

Advocacy opportunities

- At EU level, European Commission consultation with NPOs to discuss the SNRA, March 2017
- At national or global level, risk assessments by MS and FATF
- Raising awareness in own organisations and outside siloes
- Feed into and use the IASC counter-terrorism advocacy paper
- Briefing papers and advocacy by networks like VOICE
- Other ideas raised during the discussion, e.g. developing rules of engagement and due diligence; and then signing up to these

VOICE (*Voluntary Organisations in Cooperation in Emergencies*) is a network representing 85 European NGOs active in humanitarian aid worldwide. VOICE is the main NGO interlocutor with the EU on emergency aid and disaster risk reduction.



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