

# Financial Surveillance of Civil Society

## The Missing Link in Discussing Our Enabling Environment

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Human Security Collective (HSC), a foundation based in The Hague, facilitates linkages between civil society, local communities, and policymakers at the regional and international levels, and strengthens engagements with the UN and EU to advocate for a human security approach to counterterrorism. In our work, we center on the needs and capabilities of people when it comes to dealing with sources of threats. We work from the notion that security is too important to be left in the hands of states and military only. HSC believes that an enabling environment for civil society is a fundamental condition for the prevention and mitigation of violent extremism.



Counterterrorism measures influence the way civil society operates worldwide. In combination with anti-Western sentiments that predated 9/11 and have grown stronger due to a shift in the balance of power at the global level, these measures provide ill-intentioned governments with a powerful tool to clamp down on human-rights defenders, women leaders, conflict mediators, and development and humanitarian workers. Donor governments that promote an enabling environment for civil society paradoxically also tolerate a disabling financial-surveillance system that intends to prevent civil-society abuse aimed at financing terrorism.

### Countering terrorism measures

Terrorism and counterterrorism have a centuries-old history, but the tragic events of 9/11 may be considered a watershed in terms of the way terrorism is addressed. The decisions made by the US and its allies after those events led to a pervasive proliferation of counterterrorism rules and regulations with a global reach. Billions of US dollars have gone into antiterrorism-related measures worldwide that influence the way we live, travel and co-exist, in both the public and the private domains. Of the many counterterrorism measures that have been developed in past decade, it is worth highlighting a lesser-known measure that aims to prevent the flow of financial resources and other support to terrorists via civil-society or non-profit organizations (NPO). This measure is strongly contributing to a disabling environment for civil society and is impacting the position and initiatives of human-rights defenders, women activists and conflict mediators who work in high-risk areas.

### Financial surveillance

The measures taken in connection with the countering financing of terrorism (CFT) program belong within the category of so-called soft measures, such as sanctions mechanisms for countries and lists of terrorists or proscribed groups. Providing material and financial support to persons and organizations on such lists is considered to be illegitimate under a number of binding Security Council Resolutions.

Over the past decade, the surveillance of the financial system and the demands for the increased regulation and financial transparency of non-profit or civil-society organizations have become focal points of counterterrorism policies, with the stated aim of reducing their vulnerability to abuse by terrorist organizations. This has happened because intergovernmental organizations have adopted the hypothesis that terrorist organizations use laundered money for their activities, and that charities and NPOs are a potential conduit for such terrorist organizations. As a result, non-profit organizations have been placed under surveillance, while charitable giving, development assistance and remittances from diaspora communities have been intensively scrutinized by security agencies, particularly those organizations working with “suspect communities” or in conflict zones.

An internationally highly influential working group, the Financial Action Task Force (FATF) developed a standard with a global reach that includes a recommendation on the prevention of NPO abuse for terrorist or criminal purposes. According to this Recommendation 8 (R8):



*Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organizations are particularly vulnerable, and countries should ensure that they cannot be misused: (a) by terrorist organizations posing as legitimate entities; (b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and (c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.*

While it seems to make perfect sense to prevent terrorism by going after its financial resources, the mere existence and implementation of R8 have led to unintended consequences that are counterproductive to its original intention of preventing financing for terrorism. The severing of civil-society groups from their lines of financial support in the name of terrorism prevention goes hand in hand with the shrinking space of groups that are pivotal in holding authorities and governments to account for decisions that negatively affect human rights, conflict mediation, sustainable development and citizens' agency. This has had a chilling effect on their rights to freedom of speech, assembly and association.

The implementation of the FATF standard, which includes 40 recommendations on anti-money laundering and countering the financing of terrorism, is peer evaluated on a rotating basis every six to seven years. The evaluators have three rates for valuating compliance: fully compliant, partially compliant and noncompliant. The valuation is binding and determines the international financial standing of a country with regard to trade, investments and, when it concerns developing countries, aid. A partial or noncompliant rate means that a country has to improve on its anti-money-laundering standards within one to two years' time to prevent its being blacklisted. Currently 180 countries are evaluated in terms of their compliance to the standard by the FATF secretariat in Paris, by one of their regionally affiliated bodies and by the World Bank and IMF. Governments that have already taken domestic measures such as adopting restrictive nongovernmental organization (NGO) laws and regulations to curtail civil-society space benefit from R8 as another tool in their anti-civil-society toolkit. Governments that are in the process of developing stricter NGO laws benefit from the standard as it ties together financial, operational, and political restrictions of civil society. Overall, we see a trend of ill-intended governments that are using R8 to hinder civil society from accessing international financial support and

feel emboldened to do so by the FATF standard and compliance regime.

In 2011, before the revolutions in the Middle East and North Africa (MENA) region, Egypt and Tunisia got the highest FATF marks for standard compliance. The USA, too, scored the maximum points. Risk aversion on the part of a number of reputable US-based foundations and international non-governmental organizations may have contributed to this high score. The Patriot Act and the presidential directives under the Bush administration were powerful tools to prevent foundations and charities from continuing or starting partnerships in so-called high-risk countries.

It was probably never the intention of the developers of R8 to purposefully hinder the freedoms of civil society, but this is exactly what is happening the world over. Governments in countries where civil society receives international financial support are, for a number of reasons, suspicious of these organizations or consider them to be a threat to their own power base or the country's national unity. Consequently, they make use of R8 as a pretext to stop their funding. Grantmakers in donor countries are increasingly burdened by administrative due diligence as a consequence of R8.

### **Risk aversion and reduction of financial space of civil society**

Risk aversion has led grantmakers to opt for safer activities and to reduce their efforts in political advocacy. A number of well-known human-rights foundations have ceased their support to partners in "terrorist-prone" areas altogether. The withdrawal of significant NPO support for civil society in sensitive areas may in turn lead to increased space for extremist groups that fill the void of systemic underdevelopment, violations of fundamental rights, including women's rights, and exclusion. Grantmakers that continue to support partners in sensitive areas have to comply with time-consuming due-diligence procedures. A Dutch grant maker estimated that of every euro his organization spends on the support of partners in MENA and South Asian countries, one-third goes to administrative checks required by the back-donor and the bank. Not only is this disproportional in terms of costs, but also in transfer turnaround. Overzealous partner vetting and partner checking puts undue pressure on the relationship building that is key in human-rights, peace-building and development work. Smaller grant makers that often support more risky initiatives of extraordinary social-change agents, such as women activists, lack the

capacities to go through time-consuming due-diligence procedures and are disproportionately hit by the current requirements of banks and related financial institutions.

### **Banks and risk aversion**

Banks apply onerous due-diligence procedures before they transfer cash for NPOs to their partners in sensitive areas. The rules of the game of the FATF standard hold them ultimately responsible for ensuring that cash transfers will not fall into the wrong, i.e. terrorist or criminal, hands. According to an ex-banker, the charity sector in general and small NPOs (which often include women's rights organizations) in particular are considered by the big international banks to be of no commercial interest, which makes it easier to deny them services, including refusing to allow them to open a bank account.

Other bankers, however, stressed that they did not want to build a reputation as being a charity-unfriendly bank and would therefore be open to supporting NPOs, including those that are unknown to the public, small scale and supportive of human rights and other sensitive issues. These organizations then have to bank under the wing of larger, notably a-political NPOs with a trusted public image and bank record.

It is currently standard practice among grantmakers and banks to use information from commercial data providers for due-diligence procedures. These private companies use open-source data to profile at-risk persons or organizations and sell their information at market prices to private and public organizations that are required to do due-diligence checks on their clients or grantees. The persons and organizations concerned have no prior knowledge of their inclusion in these databases nor are there remedies for restoring one's reputation or setting the record straight if needed. In this situation, smart entrepreneurs are making profitable use of the reversal-of-guilt argument that characterizes the ugly face of counterterrorism.

Banks experience routine delays in cash transfers to high-risk areas and conflict zones. It is standard for cash transfers in US dollars to be checked by the US Federal Bank, a procedure that may hold up transfers for months. Cash transfers via banks through money-lending institutions to countries like Somalia, which have no official banks, have stopped altogether. Evidence shows that donor counterterrorism measures hindered aid to the Somali victims of the famine in 2011. At the same time, the terrorist Al Shabaab was able to deliver aid in the void created by financial

and access restrictions stipulated by donor counterterrorism measures....

### **Paradoxes**

On the other side of the financial chain in the recipient countries, banks are required to report to the authorities any suspicious transactions by international donors to local NPOs. In countries like Ethiopia and India, a suspicious transaction has a cap on financial support under NGO law. Governments consider civil-society groups that receive the larger part of their funds from abroad as spies, enemies of the state or troublemakers. This framing applies particularly to human-rights defenders and anti-corruption groups that, by the very nature of their work, have a hard time mobilizing domestic funding or support.

Human rights, conflict mediation and Islamic grantmakers and their grantees seem to be disproportionately affected by the system of financial surveillance. A human-rights grant maker underlined the painful paradox that the support for women's rights in the border area between Pakistan and Afghanistan would be seen by the Pakistani government and by the home country of the grant maker, the UK, as a potentially terrorist-prone activity under FATF R8.

Another example in the paradoxical category is the experience of a Dutch sub-grantee organization working on capacity building of women leaders in the MENA region that was denied a bank account for grant money that it had received from the Dutch government. The bank did not want to open such an account for the women's organization, as financial transactions to some of the countries in the region was considered a risk.

Policy inconsistencies between different line agencies surface when you take a closer look at financial surveillance in the post 9/11 era. While the Ministries of Foreign Affairs, notably in Western democratic countries, are strongly voicing the importance of civil-society freedoms to galvanize human rights, peaceful communities, social justice and sustainable development, their Treasuries put up obstacles to realizing those aspirations.

The call for greater transparency in development aid, which also appears as a key element of the post-2015 development agenda, is hindered by the effects of financial counterterrorism measures. Grantmakers and their partners have found ways to continue their activities without going through the banking system. Their choice for a certain measure of "financial in-transparency" is not



lightly taken as it comes with greater physical risks, such as carrying money in person across borders, and greater reputational risks.

A number of civil-society organizations decided to register themselves as a consultancy or business, as those are still exempted from surveillance measures in a number of countries. We have yet to see whether this will be a durable solution for carrying on with initiatives that at the end of the day fall within the government's "suspect" category.

Sadly, the imposed or self-chosen financial exclusion due to the unintended consequences of R8 compliance may lead to increased influence for terrorist groups in areas that require the presence of a strong and sustainable alternative, not only in tangible services but also in ideas on what constitutes a good society.

### What does civil society do?

Until recently, the FATF operated on the CFT recommendations without civil-society engagement or oversight. A critical report on FATF that Statewatch and TNI<sup>1</sup> wrote at the request of HSC, as well as their work in approaching the previous FATF president, the Dutch Treasury and the World Bank Financial Integrity Unit, was pivotal in opening the door to engagement with the Secretariat and a number of influential member states. A Transnational NPO group was established by HSC and the Charity and Security Network in Washington DC that co-convenes and facilitates regular conference calls on relevant issues and produces material to guide consultations with FATF working groups responsible for the revision of guidance documents for the implementation of R8.<sup>2</sup> A number of organizations of the Transnational NPO group will engage the World Bank and IMF to improve the current FATF evaluation methodology.

The TEDX Liberdade,<sup>3</sup> on the power of citizens' agency for change features a talk by the author of the Statewatch report, Ben Hayes, on the issues raised in this article. More public outreach seems to be a promising mechanism to achieve buy-in from the general public.

In the US and the Netherlands, regular meetings take place with the relevant line ministries and the FATF delegation leaders of the Ministries of Finance to discuss possible ways forward for solving policy inconsistencies as well as agenda items that are of relevance to NPOs in the plenary sessions. HSC facilitated a structured dialogue between the legislators, the banks, the Dutch banking association and the civil-society groups affected about the problems encountered by banks and civil society due to R8 and possible solutions. While such modalities may be difficult to organize in other countries, civil-society umbrella organizations such as Bond in the UK should look into the possibilities to follow the US and Dutch examples.

A number of foundations active in the area of human rights, peacebuilding and general development issues, along with their umbrella organizations such as Ariadne<sup>4</sup> and the European Foundation Centre have started to consult their membership on the issue, not only as an awareness-raising topic, but as an advocacy issue as well. The International Human Rights Funding Group is taking a leading role, both in the US and in Europe.

Grantmakers are beginning to support programs aimed at raising the awareness of and reaching out to their partners with regard to the FATF regime and the effects of R8 in particular. They consider this as an investment in upcoming evaluations of the FATF in the countries where they support partners, and as complementary to the work of HSC and others in enabling structural meetings with World Bank and FATF evaluators with civil-society delegates during a country's evaluation.

Together with the OSF Fiscal Governance program, HSC initiated a dialogue with transparency civil-society networks such as the Fiscal Transparency Coalition regarding the inconsistencies in advocacy concerning the FATF standard implementation. As it is now, a number of influential civil-society organizations strongly support the anti-money-laundering recommendations, while a different group of NPOs is highly critical of the measures for countering the financing of terrorism. Both civil-society communities would gain in their advocacy by working together instead, and connecting their thus far separated engagement with the FATF. This initiative also addresses the need for greater accountability by the FATF.

1 [www.statewatch.org/analyses/no-171-fafp-report.pdf](http://www.statewatch.org/analyses/no-171-fafp-report.pdf)

2 For more information about the NPO FATF initiative, or the civil-society Google group, contact Nathaniel Turner ([nturner@charityandsecurity.org](mailto:nturner@charityandsecurity.org)).

3 [www.tedxliberdade.com/](http://www.tedxliberdade.com/)

4 For more information about the Ariadne Portal community, contact Kenneth Hill ([kenneth.hill@ariadne-network.eu](mailto:kenneth.hill@ariadne-network.eu)).

The UN Special Rapporteur on the rights to freedom of peaceable assembly and of association of civil society, Maina Kiai, has integrated within his reporting the detrimental effects of financial surveillance and criticisms on the disabling factors of civil-society space. His work and that of his team are pivotal in connecting a number of disabling factors that shrink back civil society space worldwide.

Last but not least, Civicus has agreed to develop an international campaign on FATF R8 as a significant disabling factor for civil society. In its coming Civicus General Assembly in September 2014, Civicus will organize a session on the unintended consequences of R8 of the FATF regime, what has been achieved so far to raise awareness and push back, and how an external strategy like a campaign that can be noisy and explicit can support the internal engagements that have developed by civil society so far.

I expect that the combination of internal and external strategies will continue to galvanize efforts to push back on financial surveillance. The more civil-society groups that want to join in strengthening these efforts, the better. Particularly, advocacy in the context of the post-2015 development process seems required as the issue of financial surveillance and the regime that is pushing it is largely absent in the ongoing discussions on the importance of an enabling environment for civil society in the process of achieving future development goals.

➤ For more information about the Human Security Collective, go to [www.hscollective.org](http://www.hscollective.org)

