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NPO Regulation, Transparency, and Fraud Prevention: International Developments, Challenges, and Capacity Building

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Fraud risks to NPOs

- General definition of 'fraud'
 - The use of deception to obtain an advantage, esp. at the expense of someone else
 - Includes a wide range of activities (e.g., theft, tax fraud, bribery, embezzlement, abuses of position)
- NPOs can be victims, perpetrators, and facilitators of fraud
- But beneficiaries and donors ultimately lose out

Defining terrorist financing

‘[...] [D]irectly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
- (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.’

Art. 2(1) International Convention for the Suppression of the Financing of Terrorism

The legal framework on terrorist financing

- International action post-9/11
 - UNSC Resolutions 1267 and 1373
 - International Convention for the Suppression of the Financing of Terrorism
 - Financial Action Task Force ('FATF') Special Recommendations
 - COM (2005) 620 final (EU)

FATF Special Recommendation VIII ('SR VIII')

'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 particular vulnerable and countries should ensure that they cannot be misused:

- i) by terrorist organizations posing as legitimate entities
- ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.'

Terrorist financing risks for NPOs

- How NPOs can be misused for terrorist financing (per FATF SR VIII)
 1. Front / 'fake' NPOs
 2. Legitimate NPOs used as conduits for terrorist funds
 3. Legitimate funds diverted to terrorism

Implementing SR VIII

- Understanding the national non-profit sectors
- Awareness of TF risks amongst national NPOs
- Transparency through publication of aims, objectives and corporate governance, financial accounting, and auditing
- Quality assurance through comparison of project objectives and outcomes (desk-based and on-site)
- Enforcement through civil, criminal, and administrative sanctions, and cooperation between states

Challenges in implementing SR VIII

- Discomfort with government regulation
 - Social function
 - Range of actors
- Power imbalances between NPOs and beneficiaries
- Defining values of non-profit work
 - Impede open discussion of power, and its misuse
 - Lack of awareness, and/or capacity to address governance gap

Challenges in implementing SR VIII

- The difficulty of detecting terrorist finance
 - Small transactions, ordinary accounts
 - Non-bank financial channels
- Lack of (public) information about the severity and source of problem
- Government misuse of TF laws to curtail or suppress legitimate community organizing

Looking back, looking forward

- SR VIII as an example of international standard setting on NPO regulation
 - Inspired by historical / political events
 - Identified specific threats but recommended measures on NPO governance more generally
 - Borrowed from anti-money laundering initiatives targeting for-profit sector
 - Challenges in implementation, general to NFP sector and specific to terrorist financing