

**UNITED NATIONS**  
**COUNTER-TERRORISM COMMITTEE EXECUTIVE DIRECTORATE**  
**And the**  
**CENTER ON GLOBAL COUNTERTERRORISM COOPERATION**  
**On behalf of the**  
**UNITED NATIONS COUNTER-TERRORISM IMPLEMENTATION TASK FORCE**  
**WORKING GROUP ON TACKLING THE FINANCING OF TERRORISM**

**Regional working group meeting on preventing  
terrorist financing abuse of the non-profit sector**

*Nairobi, Kenya*

*28 February – 1 March 2012*

**KEY OBSERVATIONS OF THE ORGANIZERS**

1. The following summarizes and elaborates some of the key findings and recommendations from the “Regional working group meeting on preventing terrorist financing abuse of the non-profit sector,” held in Nairobi from 28 February – 1 March 2012. The Center on Global Counterterrorism Cooperation prepared this summary. It is not an official or complete record of the proceedings and does not necessarily reflect all the views of the meeting sponsors or participants.
2. The meeting was the fourth in a process to discuss the risk of terrorist abuse of the non-profit sector, and to share good practices and foster cooperation in responding to that risk. In light of the diversity of the sector, it is widely accepted that there can be no “one-size-fits-all” approach to regulating non-profit organizations (NPOs). As such, this initiative has been conceived as a dialogue among key international, regional, and national actors, including representatives from the non-profit sector, to share perspectives, and to gather tools and good practices to protect the sector from abuse. This dialogue, in its global component, was initiated with an expert group meeting in London from 18-20 January 2011. The key observations of the organizers from that workshop are attached. The dialogue continued with a regional working group meeting for experts from South and Southeast Asia, held in Bangkok in March 2011. A regional working group meeting for experts from the Asia-Pacific region was held in Auckland in November 2011.<sup>1</sup> Against this background, the Nairobi meeting provided the opportunity for experts from East Africa to advance the goals of protecting the non-profit sector from terrorist abuse while preserving its ability to provide public goods.
3. The meeting was convened by the United Nations Counter-Terrorism Committee Executive Directorate and the Center on Global Counterterrorism Cooperation on behalf of the UN Counter-Terrorism Implementation Task Force Working Group on Tackling the Financing of Terrorism. It was supported by the governments of Canada and Switzerland. The Charity Commission of England and Wales collaborated with the organizers and sponsors. Participants included national-level officials with a role in counter-terrorist financing or

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<sup>1</sup> Documents from the previous meetings – including discussion papers and observations of the organizers – are available at: [http://www.globalctc.org/ourWork\\_projects\\_preventing\\_abuse.php](http://www.globalctc.org/ourWork_projects_preventing_abuse.php)

charities regulation from several governments in the East Africa region, as well as officials from international and regional organizations active in this field. Representatives from the non-profit sector – from both international and domestic non-government organizations – also gathered to provide their perspective on the vulnerability of the sector to terrorist abuse, and to reflect upon the responses of states and the sector to the challenges that arise.

### *The regional context*

4. Participants noted the threat of terrorism in East Africa. This threat emanates principally from Somali-based militia al Shabaab, which has shown some capacity to regionalize its use of violence, as witnessed by the July 2010 bombings in Kampala, Uganda, as well as in other incidents of violence outside of Somalia. There is some evidence to suggest that al Shabaab, as well as past extremists in the region, have abused NPOs.<sup>2</sup> Participants from two states referred to suspected cases of terrorist abuse of NPOs that had occurred in their countries.
5. The vulnerability of the sector should be viewed in the context of the impressive growth of civil society organizations in the region, whose good works have expanded into all spheres of public life. Participants from both governments and the sector acknowledged the many vital contributions that NPOs make across the region. Indeed, reflecting the diversity of civil society, participants debated how to define “non-profit organizations” for legal and policy purposes, comparing different national approaches in light of relevant international standards.
6. Both government and non-government participants acknowledged that they face significant constraints in terms of their capacity to develop and implement norms and rules regarding NPO governance in the region. Some states in the region have identified specific training and technical assistance needs. NPO participants noted that although the region receives aid from abroad, donors often demand that expenditures are programmatic and project-based, meaning that little has been invested in the governance structures of NPOs at the local level. All stakeholders in this area are likely to face capacity constraints in the short and medium term.
7. Participants also acknowledged that state-civil society relations across the region have varied between contention and relative consensus in the past. Participants recognized the importance of dialogue as a means to identify common objectives and work towards a shared understanding of the problem and proposed solutions. In this regard, participants noted that the meeting was perhaps the first time that this range of stakeholders had been brought around the table on this issue.

### *Preventing NPO abuse in East Africa*

8. As these points make clear, there are many challenges facing states and NPOs as they seek to protect the sector against terrorist abuse in the region. The scale of these challenges is reflected in low levels of compliance with Financial Action Task Force (FATF)

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<sup>2</sup> On al Shabaab, see Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 1916 (2010), S/2011/433 (18 July 2011).

Recommendation 8 on NPOs.<sup>3</sup> For some states, which are working to enhance their anti-money laundering and counter-terrorist financing (AML/CFT) capability across the board, Recommendation 8 has not been accorded a high priority to date. Nonetheless, participants indicated an increased awareness of the requirements of Recommendation 8. That Recommendation calls upon states to review the adequacy of laws and regulations concerning NPOs to ensure they that are not abused by terrorists, including a risk-based review of the sector.

9. Among the examples of existing good practices in the region, many states enshrine the right to freedom of association in their constitutions. In practice, this important principle is often accompanied by a requirement that NPOs register to obtain legal personality. In turn, registration may yield benefits such as tax-free status. Some participants noted that their governments are working to rationalize and simplify registration requirements. They linked these efforts to the principle of proportionality, to ensure that regulatory regimes are efficient and maximize the benefits of NPO activity.
10. As some states have sought to improve the transparency of registration requirements, they have invested in new methods for maintaining their register. For example, participants cited the example of a registrar that has recently consolidated records into a single database.
11. Returning to the principle of proportionality, participants noted the importance of balancing regulatory requirements that ensure good governance in the sector with the imperative of facilitating the receipt of development aid from abroad. Several states have developed separate regulatory frameworks for international non-government organizations (INGOs). As they also receive assistance from abroad, participants discussed the ways in which proportionality in counter-terrorism measures with respect to INGOs might be seen as a means of attracting donor funds.
12. Participants acknowledged the importance of outreach to the sector. While these activities are underdeveloped in the region at present, there have been some efforts to develop consultative fora. Participants also reflected upon efforts that have been initiated within the sector itself to improve standards of NPO governance. Several self-regulatory initiatives have been attempted across the region. These have taken various forms. Some states provide for such initiatives in their NGO legislation. In other states, umbrella organizations have played a key role in the self regulation of the sector. Participants acknowledged the challenges in establishing and enforcing these measures but also cited them as an example of state-civil society cooperation that may be built upon in the future.
13. In some states, the increasing concern about terrorism has led to the passage of new legislation and the development of whole-of-government coordination mechanisms among counter-terrorism agencies. In some cases, this has improved opportunities for interagency cooperation.

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<sup>3</sup> Prior to February 2012, Recommendation 8 was known as “Special Recommendation VIII.” See [www.fatf-gafi.org/recommendations](http://www.fatf-gafi.org/recommendations). Note also: FATF, *Combating the Abuse of Non-Profit Organizations: International Best Practices*, October 2002 and; FATF, *Interpretative Note to Special Recommendation VIII: Non-Profit Organizations*, February 2006.

14. In most countries the legal and operational systems for counter-terrorist financing are still being developed. Participants described a need for capacity building in areas such as legislative drafting and establishing financial intelligence units, as well as specialized training. Several delegations noted that this workshop was the first opportunity to raise awareness about the need to protect the sector against terrorist abuse.
15. Similarly, for several states, the abuse of NPO is being policed more robustly as broader AML/CFT measures are implemented. In this regard, participants reflected upon their use of UN lists as one way of suppressing abuse. The use of specific AML/CFT tools, such as requirement that banks and financial institutions file “suspicious activity reports,” should improve the ability of states in the region to detect abuse.
16. Regional and international cooperation to protect NPOs from terrorist abuse is emerging. Regional organizations such as IGAD or EAC provide frameworks for regional cooperation. Some delegations also referred to the East African Police Chiefs Cooperation Organization (EAPCCO) hosted by the Interpol Regional Office. Cooperation among regional NPO regulators, and information sharing among the various stakeholders, was perceived as limited. According to one participant, the meeting underscored the extent to which the protection of NPOs from terrorist abuse is a regional and international issue.

#### *NPO perspectives*

17. The meeting provided the opportunity for representatives from the non-profit sector to discuss their perception of the risk of terrorist abuse in the sector; challenges regarding NPO regulation across the region; and examples of good practices that have emerged from within the sector itself (i.e. self-regulatory initiatives). Experts from a range of NPOs – including local, regional, and international organizations active in diverse fields, as well as umbrella bodies – participated in these discussions. In the course of their deliberations, NPO participants drew attention to several key points.
18. NPO participants gave particular emphasis to the principle of proportionality. State responses should be informed by evidence and adopt a risk-based approach. In seeking to manage the risk of terrorist abuse in the sector, NPOs seek guidance from states. Participants expressed concern regarding restrictive laws and policies, in order to avoid over-regulation. In approaching the NPO sector, it is important for governments to be mindful of the many positive contributions that the sector makes. Therefore, the goal of regulation should be to protect and strengthen the sector. Outreach activities that give rise to opportunities for a two-way dialogue are important. This would be facilitated by specifying a single point of contact within governments to liaise with the sector.
19. In that context, NPO participants recognized a need to raise awareness within the sector regarding the problem of terrorist financing, as well as the national, regional and global responses. As noted above, there is variation in the capacity of NPOs to respond to this problem, especially at the local level, where internal governance mechanisms may not be as well developed. In addition to their programmatic activities, local NGOs should be supported

in developing and implementing norms of good governance.

20. Participants also emphasized the role that civil society organizations play in addressing conditions conducive to terrorism. They recommended that governments view NPOs as partners, especially in engaging actors at the community level. Here, disproportionate responses to NPO vulnerability may yield unintended consequences. In this regard, NPO participants noted that civil society actors are deeply concerned about extremist violence. For this and many other reasons, NPOs value accountability: they have multiple, strong incentives to implement good business practices. Over time, this concern has found expression in a variety of attempts at self-regulation across the region, and in the trend towards more robust umbrella bodies to represent and advocate on behalf of the sector. While the impact of self-regulatory measures has been mixed to date, they nonetheless demonstrate the commitment of the sector to good governance.
21. NPO participants also noted the existence of a constitutional right to freedom of association in countries in the region. They sought to give more prominence to principles derived from human rights and international humanitarian law as states consider options for regulating and assessing the sector. Although this process aims to identify good practices among states, some participants suggested that bad practices – such as those that breach these principles – should also be acknowledged.
22. Participants discussed the current situation in Somalia, including the challenges that INGOs face in delivering humanitarian assistance, including emergency relief, as well as the methods used by al Shabaab to finance its activities. In an effort to mitigate the risk that aid resources will be diverted or co-opted by extremists, multilateral organizations and INGOs alike employ risk assessment tools. INGOs in particular perceive that their operations would be facilitated if states – especially those outside of the region from which funds are donated – were able to provide more detailed guidance to humanitarian actors. Some participants expressed frustration with current efforts by states to balance the imperative of delivering humanitarian assistance while minimizing the risk of abuse by extremists. These efforts, they noted, have had the unintended consequence of creating uncertainty for humanitarian actors and giving rise to a “chilling effect” among prospective donors to humanitarian causes in the region. INGOs emphasized that concern regarding terrorist financing should not result in the criminalization of humanitarian action.

#### *Future steps*

23. This meeting was part of a process that aims to develop a common understanding of sound regulatory approaches to counter the risk of terrorist financing through the non-profit sector. The meeting highlighted many of the challenges that stakeholders in East Africa face in advancing this objective. At the same time, participants welcomed the opportunity for dialogue, to share experiences and to reflect upon current practices among states and within the sector. Further regional working group meetings in this process are being planned for 2012 with a view to concluding the process in early 2013. The findings elaborated here will inform subsequent meetings and will be reflected in the final report of the process.

**Expert working group meeting on preventing abuse of the  
non-profit sector for the purposes of terrorist financing**

*Lancaster House, London*

*18-20 January 2011*

*Key observations of the Organizers: Summary*

- Terrorists raise and move funds in diverse ways. Across different sectors of the economy, terrorists seek to abuse legitimate organizations for operations and support. Non-profit organizations (NPOs) are vulnerable to such abuse by terrorists. The primary **policy objective** in this area should be to strengthen and secure the sector, to build its capacity, and protect it from abuse, with minimum disruption to its many positive contributions.
- In many cases NPOs already take strenuous efforts to ensure that they are not open to abuse through their own systems and procedures. Governments can learn from this experience when developing new frameworks for regulating the sector and should involve NPOs in developing new laws and regulations that affect the sector.
- Best practice approaches to NPO regulation emphasize **proportionality**. That is, they seek to preserve and encourage the dynamism of the sector while mitigating the vulnerability of the sector to terrorist abuse. This may entail the utilization of **risk assessment** tools, which also enable regulators to deploy limited resources most effectively.
- **Knowledge of the sector** is critical in regulating NPOs. The sector is remarkably diverse. NPOs have strong incentives to abide by norms of good governance. Within the sector, several initiatives have emerged to improve transparency and accountability, and to reduce fraud and corruption. These are often compatible with the recent emphasis on counter-terrorist financing.
- Different frameworks for regulating the NPO sector can be found in different regions and different jurisdictions. There can be no one-size-fits-all approach in preventing the abuse of NPOs. Some governments utilize multiple **regulatory tools** including registration and reporting requirements which provide opportunities to gather information and perform risk assessments. **Outreach** to the sector is critical to both raise awareness and underscore that NPOs are partners in this process.
- Within governments, several bodies are involved in preventing the abuse of NPOs. **Law enforcement** agencies have an important role in detecting, investigating, and disrupting abuse. Information sharing among regulators, financial intelligence units (FIUs), law enforcement, and prosecutors is vital as cases move from detection to investigation and prosecution. Different governments have evolved different mechanisms for **interagency cooperation**.
- At present, levels of compliance with **international standards** (especially the Financial Action Task Force's (FATF) Special Recommendation VIII) are low. Many states have yet to review their non-profit sector. Relatedly, while there are impediments to **international cooperation** at present, there may be opportunities to consider new mechanisms in the future.