

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

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DISCUSSION PAPER

*Prepared by the Center on Global Counterterrorism Cooperation**

Introduction

International norms and rules to counter terrorist financing have advanced quickly in the last decade and a half. The International Convention for the Suppression of the Financing of Terrorism, adopted by the UN General Assembly in 1999, was the first authoritative multilateral statement on the topic. It was soon followed by action in the UN Security Council. Resolution 1373 (2001) devotes several operational paragraphs to the suppression of terrorist financing, while resolution 1390 (2002) expanded the targeted sanctions in place against the Taliban to include al Qaeda and related entities. In October 2001, the Financial Action Task Force (FATF) elaborated 8 Special Recommendations against terrorist financing, further broadening the scope of international action in this field. In some cases, these global measures were replicated or endorsed at the regional level. In the Western Hemisphere, the 2002 Organization of American States' (OAS) Inter-American Convention against Terrorism notes the importance of both the Convention and the FATF's Special Recommendations. The regional anti-money laundering body in South America, Grupo de Acción Financiera de Sudamérica (GAFISUD), which had been established in December 2000, adopted the FATF's Special Recommendation in 2002, prior to becoming an associate of FATF in 2006.

The rapid growth of norms and rules in this area reflects the high priority accorded to counterterrorism by international and regional actors. But it also presents a challenge to states, who must often enact or amend laws and policies, and develop the administrative capacity, to implement these measures. While many observers have commented upon the achievements of states in responding to multilateral measures to counter-terrorist financing, they also acknowledge that implementation will be a gradual process as different jurisdictions set priorities and calibrate their responses. Against this background, this discussion paper is part of an initiative that addresses a specific aspect of the contemporary counter-terrorist financing agenda – the vulnerability of the non-profit sector to terrorist abuse.¹ Reflecting the global trend, many states in South America are still beginning the process of implementing relevant standards to protect the non-profit sector from terrorist abuse. With this in mind, this initiative has been conceived as a dialogue. It brings together officials from within governments and from across

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states, and includes participants from civil society. Among this mix of stakeholders, the aim of the process is to develop consensus and contacts as states seek to improve their implementation of global counter-terrorist financing measures, while preserving the provision of public goods by the non-profit sector. This initiative was launched with a global-level meeting in London (January 2011), followed by regional-level working group meetings in Bangkok (March 2011), Auckland (November 2011) and Nairobi (March 2012). A statement of principles, reflecting the key findings of the London meeting, has generated much consensus among participants in the process (see Appendix). Among these findings, the importance of proportionality (i.e. that the response should be appropriate to the risk of abuse) and outreach (to the non-profit sector) have been particularly prominent. Beyond these principles, in each region the process has identified a range of good practices for regulating the sector and implementing standards. As there is no “one-size-fits-all” approach, the goal of the Buenos Aires working group meeting is to share perspectives, and to continue to gather tools and good practices, towards the broader objective of protecting the non-profit sector from terrorist abuse.

The next section of this discussion paper briefly reviews the global standard to counter terrorist financing through the non-profit sector. We then survey the threat of terrorism and terrorist financing in South America before discussing levels of compliance with the global standard among states in the region. The record to date, we note, ought to be viewed in the context of existing state practices in terms of regulating non-profit organizations (NPOs). The paper further considers the important role of the non-profit sector itself in this process. The vitality of civil society in the region, and its many contributions, make NPOs a critical partner for states as they consider ways in which to implement counter-terrorist financing norms and rules.

Preventing terrorist abuse of the non-profit sector: The global standard

International concern for the abuse of NPOs by terrorists is of relatively recent origin. Indeed, the 1999 UN Convention on Terrorist Financing does *not* include a specific reference to the vulnerability of NPOs. Rather, it was not until the FATF adopted Special Recommendation VIII (SRVIII) in October 2001 that a specific standard on this topic was elaborated. It states that:

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organisations 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.

The FATF defines an “NPO” as a “legal entity or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, education, social or fraternal purposes, or for the carrying out of other types of ‘good works.’”² Importantly, its recommendation has been affirmed by both the UN Security Council (in resolution 1617 (2005)) and General Assembly (in the 2006 UN Global Counterterrorism Strategy). As noted above, it

has also been adopted by the FATF-style regional body in South America, GAFISUD. In February 2012, SRVIII was renamed Recommendation 8 (R8).

More than a decade after the FATF introduced its special recommendations against terrorist financing, we know that some standards attract higher levels of compliance than others and that compliance with the special recommendation on NPOs is relatively weak at the global level. Over this period, the FATF has attempted to aid compliance by issuing an overview of best practices in 2002 and an interpretive note in 2006.³ The latter requires states to protect the sector against abuse, and to identify and take effective action against those NPOs that either are exploited by, or actively support, terrorists or terrorist organizations.

FATF itself has not yet formally consulted with the non-profit sector, although it has consistently underscored the importance of such consultation and the new President has identified this as a priority.⁴ Still, the FATF emphasizes that regulation should not be merely punitive (designed to take effective action against those NPOs that are exploited by, or actively support, terrorist organizations), but also preventive (designed to protect NPOs from such exploitation and abuse).⁵ It also stresses that such regulatory measures “should not disrupt or discourage legitimate charitable activities,” but should rather promote “transparency, integrity and public confidence in the management and functioning of all NPOs”.⁶ For such regulation to be both credible and effective, these documents suggest, it must be based on “[d]eveloping co-operative relationships”,⁷ between NPOs and a range of relevant regulatory authorities, such as sector regulators, tax authorities, financial intelligence units (FIUs), donor organizations, law enforcement agencies and intelligence authorities.⁸ And while such collaboration, the documents argue, may take diverse forms, “[a]n effective approach ... is one that involves all four of the following elements: (a) Outreach to the sector, (b) Supervision or monitoring, (c) Effective investigation and information gathering, and (d) Effective mechanisms for international co-operation.”⁹ This advice should of course be interpreted in a manner that is consistent with the FATF’s emphasis on the risk-based approach, in line with the February 2012 revision of its recommendations. Further discussion of R8 in the context of NPO regulation generally can be found in the “additional resources” listed at the end of this paper. Before turning to look at state responses to R8 in South America, it is useful to survey the threats of terrorism and terrorist financing in the region.

Terrorism and terrorist financing in South America

The states and people of South America have a long and bloody history in responding to terrorism and political violence. The Global Terrorism Database, which utilizes broad criteria in gathering data, records nearly 14,000 incidents of violence within the six participating states for the thirty year period from 1980-2010.¹⁰ About one third of these incidents occurred in Colombia, with slightly fewer in Peru. About one seventh of the total number of incidents occurred in Chile. Across the region, the data indicates a notable decline in incidents towards the end of the 1990s and over the course of the 2000s. Indeed, it is only in Colombia – where peace talks between the Fuerzas Armadas Revolucionarios de Colombia (FARC) and the government are set to commence – that violence has persisted in the 2000s (and even there, the number of incidents has been below 100 annually for the last decade).

The policy and scholarly debate about terrorist financing in South America is distinctive in that the weight of concern focuses on illicit activities in the Tri-Border Area (TBA) (where Argentina, Brazil and Paraguay meet) and on Colombian armed groups. In both cases, the problem of terrorist financing is part of a broader concern about illicit finance related to drug trafficking and transnational organized crime. Regarding the TBA, there is evidence that governments (from within the region and beyond it) have acted against money launderers and narco-traffickers with alleged links to Middle Eastern terrorist groups. Regarding Colombia, most observers note the significant achievements that have been made in preventing and suppressing the ability of armed groups to finance their violent activities through drug trafficking and crime.

Beyond these two examples, it is perhaps the case that to date many states (within the region, as well as among outside observers), have prioritized crime-related money laundering over counter-terrorist financing. In this regard, note also that the recent typologies joint meeting between GAFISUD and the Egmont Group devoted most time to discussing laundering for the purposes of trafficking, corruption and other forms of crime. (Terrorist financing does not feature prominently in the outcome document; R8 and NPOs are not mentioned at all).¹¹ However, viewed another way, the region demonstrates the complex fashion in which terrorist and criminal finance can commingle, and there is evidence to suggest that the financial tactics of both terrorists and criminals can evolve over time along with the motives of illicit actors (whether profit or politics). Therefore, implementing the full range of counter-terrorist financing measures and, in particular, acting to protect NPOs from abuse, warrants some measure of prominence on the regional agenda.

NPO regulation in South America: From local approaches to global standards

Reflecting the similarities in their legal traditions, states in South America have much in common in terms of their approaches to regulating NPOs, although there is some variation, too (see Table 1, overleaf). States generally legislate different forms of NPOs, according to their purpose and their rights as legal persons. A few states have enacted specific legislation for the purpose of establishing and registering NPOs, whereas others derive authority from their general civil codes. In registering an NPO, some states require the elaboration of an organizational charter or constitution, and some even provide a standardized “statute” to facilitate this. In some states, the right to freedom of association is established in the national constitution. Several states in the region maintain separate procedures for registering foreign NPOs, sometimes involving the foreign ministry (or equivalent) or the relevant line agency. Few states in the region maintain a centralized register of NPOs and this task is delegated to provincial- or city-level authorities in some cases. Regulatory agencies in different states are mandated to do a range of tasks in monitoring registered organizations. There is some evidence of outreach from regulators to the sector in some countries in the region. In some cases, registries and regulators have lacked capacity to perform these tasks.

Table 1: Overview of the Non-Profit Regulation in Participating States

| | Types of NPOs | Key legislation | Regulatory agencies |
|-----------|--|--|--|
| Argentina | Civil associations; Foundations; Mutual Entities | Civil Code, arts. 30-50; Law No.19.836; Law No. 20.321 | Inspector General of Justice (City of Buenos Aires); National Institute of Cooperatives and Social Economy (INAES) |
| Bolivia | Associations; Foundations | Civil Code, arts. 58, 60, 67, 69, 70; Supreme Decree 22409 (11 January 1990) | National Registry of Non-Governmental Agencies (RUNONGs); Public Prosecutor's Office |
| Chile | Corporations; Foundations | Civil Code, art. 546; Law 20.500 on Associations (2011); Supreme Decree (Ministry of Justice; 19 March 2003) | Department of Legal Persons (Ministry of Justice); National Registry of Not-For-Profit Legal Persons |
| Colombia | Corporations; Foundations | Civil Code, arts.643, 644 | Chamber of Commerce; Provincial authorities |
| Peru | Associations; Foundations; Committees | Civil Code, arts. 80-98, 99-110 and 111-123. | Public Registry; Public Registry and Supervisory Council on Foundations; Agency for International Cooperation (ACPI) |
| Uruguay | Civil associations; Foundations | Civil Code, art. 21; Law 17.163 | Ministry of Education and Culture; Ministry of Foreign Affairs |

It is against this background that states in the region have considered R8 and its implementation. In general, GAFISUD states have faced several challenges in complying with FATF standards. At different times, different members of GAFISUD have been named as jurisdictions with strategic deficiencies in implementing anti-money laundering and counter-terrorist financing standards. Some of them have further been identified as having made insufficient progress, whereas others have developed action plans with the FATF. Levels of compliance with R8 are also quite low. Of the nine GAFISUD members that have been reviewed as part of the third round of evaluations, seven are “non-compliant.” A similar result emerged from the second round of evaluations. The specific problems encountered in implementing R8 in South America are similar to those in other regions, where levels of compliance are also low. That is, in many cases, states are yet to take the first steps in implementing R8. They have not undertaken a review of the sector, as called for directly in R8. It follows that states are not well placed to adopt a risk-based approach to ensure that counter-measures are proportional to the threat posed. In some cases, the existing legal and administrative framework is inadequate to protect NPOs from potential abuse. Outreach to the sector – to inform stakeholders of risk and discuss responses – is generally underdeveloped. Information sharing is often fragmented among relevant government agencies and mechanisms for international cooperation are yet to be developed in many instances.

In one sense, drawing attention to current levels of compliance brings to light the challenges that states in the region face if they are to come into line with global standards. Viewed differently, there is something of an opportunity at hand here. That is to say, the timing is right for states to consider options for implementing R8 and to engage in a dialogue with NPOs to ensure

proportionality and effectiveness. In this spirit, it is important to consider how these initiatives are likely to be received by civil society actors, and the efforts that they have already undertaken to advance good governance in the sector.

The non-profit sector in South America

International concern for the vulnerability of NPOs to abuse by terrorists comes at a time of remarkable dynamism and diversity in the non-profit sector worldwide. Scholars cite a “global associational revolution” in recent decades, noting the “massive upsurge in private, voluntary activity in virtually every corner of the globe.”¹² NPOs are active in every sphere of civic life, including in the fields of culture, the arts and recreation, education and research, health care and social service provision, development assistance and disaster relief, religion, the environment, law, and business and professional associations.¹³ Under conditions of globalization, and with the benefit of contemporary communications technologies, these activities are more transnational and international than ever before. As a result, NPOs are now vital actors in the global economy. Their operations represent *at least* \$2.2 trillion (USD) in expenditures annually.¹⁴ In other words, if the non-profit sector were a country, it would be the seventh largest national economy in the world. In turn, NPOs employ some 56 million full-time equivalent workers – an average of 5.6 percent of the economically active populations in the countries for which data is available. In this way, NPO employment “exceeds the workforce of many sizable industries in these countries, including utilities, construction, transport and communications, and most individual branches of manufacturing.”¹⁵

The vitality and diversity of global civil society is reflected in the region, where the evolution of civil society is nonetheless unique. The process of democratization that has occurred across the continent has given rise to lively debates within civil society about the roles that NGOs can and should play as providers of social services and advocates (for free speech, democracy, human rights, accountability, etc.).¹⁶ As part of this process, we can observe points of contention in state-civil society relations, pertaining to the preservation of basic rights and concern about the politicization of civil society.¹⁷ Perhaps reflecting a desire to share experiences, networks among NPOs are well developed at the national level (umbrella bodies exist in most countries) and across the region. Regarding the latter, there are formal opportunities for outreach (such as through the OAS) in which CSOs participate.¹⁸ But importantly, NPO networks within the region have matured to the point where self-regulatory mechanisms are emerging.¹⁹ Moreover, some regional NPOs are connected to global networks – such as Civicus and the International Center for Non-Profit Law – where debates about standards of good governance and robust business practices within the sector are already well advanced.²⁰

In sum, in initiating a dialogue about protecting the sector from terrorist abuse, some civil society actors come to the table with relevant experience and having shown good faith by investing in improving governance within the sector. Past workshops in this process suggest that civil society actors have had limited exposure, if any, to FATF standards. One point for discussion, then, is to assess the extent to which the objectives of those measures are consistent with initiatives already underway in the sector.

Conclusion: Identifying opportunities to build consensus and capacity

Over the last decade and a half, measures to counter terrorist financing have been accorded an increasingly high priority by international and regional organizations. The broader context here, of course, is an increase in international concern for terrorism, reflected in the passage of key statements on terrorism out of the UN Security Council and General Assembly. Regarding the latter, the 2006 UN Global Counterterrorism Strategy, is a particularly notable achievement, bringing together UN Member States in an unprecedented way to endorse a balanced and proportional response to the threat of terrorism. But global measures must be rendered to local conditions. A key objective of this process is to build consensus and capacity towards this goal. Amid broader concerns about other forms of illicit financial activity, states in South America are acting to identify and respond to the risk of terrorist financing. Protecting NPOs is an important part of that agenda. While civil society organizations may lack familiarity with counter-terrorist financing measures, they should be viewed as partners in developing proportional and effective responses. In this regard, it is apt to conclude that promoting opportunities for NPO activity while also reducing the risk of abuse in the sector are indeed overlapping goals. Measures that contribute to good governance in the sector can reassure donors and enhance the reputation for integrity among NPOs. For this reason, dialogue is vital at many levels: among government agencies, across states, and between governments and NPOs.

Additional resources

Asia-Pacific Group on Money Laundering (APG), *NPO Sector Vulnerabilities* (2011). Available at <http://www.apgml.org/documents/docs/6/NPO%20Sector%20Vulnerabilities.pdf>.

Charity Commission of England and Wales (International Programme), “Building Blocks of Effective Regulation.” Available at: http://www.ngoregnet.org/About_effective_regulation/The_regulatory_bridge/Building_blocks_of_effective_reg.asp

Emile van der Does de Willebois (2010) *Nonprofit Organizations and the Combatting of Terrorism Financing: A Proportional Response*, World Bank Working Paper No. 208 (Washington, DC: World Bank).

Appendix: 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 difference 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.

¹ Other documents from this process are available on the website of the Center on Global Counterterrorism Cooperation: http://www.globalct.org/ourWork_projects_preventing_abuse.php.

² See Financial Action Task Force, *Interpretative Note to Special Recommendation VIII: Non-Profit Organizations*, February 2006, Paris, p. 2.

³ See 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. Note also the FATF's *Methodology for Assessing Compliance with the FATF 40 Recommendations and FATF 9 Special Recommendations*, updated February 2009.

⁴ Bjorn S. Aamo, "Presentation of the Priorities for the Norwegian Presidency," available at: <http://www.fatf-gafi.org/documents/documents/presentationoftheprioritiesforthenorwegianpresidency2012-2013.html>.

⁵ FATF, *Combating the Abuse of Non-Profit Organizations: International Best Practices*, p. 1.

⁶ *Ibid.*

⁷ *Ibid.*, p. 2.

⁸ *Ibid.*, pp. 2-3.

⁹ *Ibid.*, p. 3.

¹⁰ See www.start.umd.edu/gtd.

¹¹ *GAFISUD-Egmont Typologies Joint Meeting*, Quito, 8-11 May 2012. Available at

http://www.gafisud.info/pdf/Joint_typologies_GAFISUD_EG_meeting_2012_concept_paper-.pdf

¹² Lester M Salamon, S. Wojciech Sokolowski and Regina List (2004) "Global Civil Society: An Overview," in Salamon, Sokolowski and Associates, *Global Civil Society: Dimensions of the Nonprofit Sector* (Bloomfield, CT, USA: Kumarian Press), p.3; Lester M. Salamon (1994) "The Rise of the Nonprofit Sector," *Foreign Affairs*, Vol. 74, no. 3, pp.109-122.

¹³ See the Johns Hopkins Comparative Nonprofit Sector Project's "International Classification of Non-profit Organizations": Salamon, Sokolowski and Associates, *Global Civil Society*, Appendix C.

¹⁴ This figure, from the Johns Hopkins Comparative Nonprofit Sector Project, reflects data gathered in 40 countries only. See Lester M. Salamon (2010) "Putting the Civil Society Sector on the Economic Map of the World," *Annals of Public and Cooperative Economics*, Vol. 81 No. 2, p. 187.

¹⁵ Salamon, "Putting the Civil Society Sector on the Economic Map of the World," p.187. Employment numbers reflect data gathered in 42 countries.

¹⁶ Dagnino, Evelina (2010) "Civil society in Latin America: participatory citizens or service providers?" In Heidi Moksnes and Mia Melin (eds.) *Power to the People? (Con-)Tested Civil Society in Search of Democracy*. (Uppsala: Uppsala Centre for Sustainable Development), pp. 23-40. Available from: <http://www.csduppsala.uu.se/devnet/CivilSociety/Outlookserien/2010,PowerPeople/PP,%20Dagnino,%20Evelina.pdf>; Margaret E. Keck and Rebecca Neaera Abers (2006) "Civil Society and State Building in Latin America," *LASA Forum*, Vol. XXXVII, No. 1, pp. 30-32.

¹⁷ Evelina Dagnino, Alberto Olvera y Aldo Panfichi (2006) *La Disputa Por La Construcción Democrática en América Latina* (Programa Interinstitucional de Investigación-Acción sobre Democracia, Sociedad Civil y Derechos Humanos); Carlos Eduardo Ponce Silén (2010) *Limitations to Freedom of Association of Civil Society Organizations in Latin America: Comparative view and special case study of Nicaragua, Bolivia, Ecuador, Cuba and Venezuela*. Available at:

http://www.ohchr.org/Documents/Issues/FAssociation/Responses2012/other_contributions/World-Report_of_Sr.Ponce_on_Free_Association_in_Latin_Am.pdf.

¹⁸ See http://www.oas.org/en/ser/dia/civil_society/index.shtml.

¹⁹ Particularly notable here is *Rendir Cuentas* (<http://rendircuentas.org/>).

²⁰ Both Civicus (<https://www.civicus.org/news-and-resources-127/reports-and-publications/csi-reports/america-country-reports>) and ICNL (<http://www.icnl.org/programs/lac/index.html>) produce country reports on these and related issues.