

## **Regional Workshop on Preventing Terrorist Abuse of Non-profit Organizations** Background note

Prepared by the Global Center on Cooperative Security\*

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### *Introduction*

The vulnerability of non-profit organizations (NPOs) to abuse by terrorists has attracted significant attention among governments and international and regional organizations, as well as within civil society. In 2001, the Financial Action Task Force (FATF) – the peak inter-governmental body that sets standards in the fields of anti-money laundering and counter-terrorist financing – adopted the recommendation 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 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.

Now known as Recommendation 8 (“R8”; previously “Special Recommendation VIII”), FATF has supported its implementation by issuing several guidance documents, including:

- an Interpretive Note (considered to be binding);<sup>1</sup>
- a Best Practices Paper (partially revised in 2013, with a more extensive revision forthcoming in 2015) and;<sup>2</sup>
- a typologies report, “Risk of terrorist abuse in non-profit organizations.”<sup>3</sup>

Since its emergence, implementing R8 has proven to be challenging for many States, both for members of FATF and for members of the eight FATF-style regional bodies (FSRBs), which now cover the globe. For members of the FSRB in West Africa – the Inter Governmental Action

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\* This note was prepared by the Global Center on Cooperative Security (Global Center) with input from colleagues from Inter Governmental Action Group against Money Laundering in West Africa (GIABA) and the United Nations Counter-Terrorism Committee Executive Directorate (CTED). Any errors or omissions are solely the responsibility of the Global Center. The information in this paper should not be regarded as endorsed by, or reflecting the official position of the GIABA, the United Nations or CTED, its bilateral partners nor participating NGOs. It is intended merely as a basis for discussion, and not a statement of any organization’s formal policy position.

<sup>1</sup> The Interpretive Note defines an NPO as a “legal person or arrangement or organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of ‘good works.’” It is available at: [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf).

<sup>2</sup> The current version of the Best Practices Paper is available at: <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/bpp-npo-2013.html>.

<sup>3</sup> Available at: <http://www.fatf-gafi.org/topics/methodsandtrends/documents/risk-terrorist-abuse-non-profits.html>.

Group against Money Laundering in West Africa (GIABA) – implementing R8 has been particularly challenging.

In addition, R8 has been a subject of concern for many civil society actors, who have pointed to the possible unintended consequences of increased scrutiny of the non-profit sector. These concerns were acknowledged in 2012 by the then President of FATF, who stressed the “importance of ensuring that [R8] is not being implemented in a manner that disrupts or discourages legitimate charitable activity.”<sup>4</sup>

In order to raise awareness and develop a common understanding among stakeholders concerning sound practices to reduce the risk of terrorist financing through the non-profit sector, in 2011 a multiyear project was launched under the aegis of the United Nations Counterterrorism Implementation Task Force’s Working Group on Tackling the Financing of Terrorism. This initiative was led by the United Nations Counter-Terrorism Committee Executive Directorate (CTED) and implemented in close partnership with the Global Center. CTED’s engagement on this issue reflects that reducing the vulnerability of the non-profit sector is among the most important steps to be taken by States pursuant to paragraph 1 of the UN Security Council resolution 1373 (2001) aimed at preventing the financing of terrorism. The past project was designed as a dialogue among stakeholders and included relevant officials from within governments (i.e. charities regulators, law enforcement and financial intelligence officials, policy makers and prosecutors) and across governments, as well as from regional and international organizations (including FATF and several FSRBs) and from civil society. Seven meetings were convened at the global and regional levels. Further information, including the findings of that project are summarized in the report, *To Protect and Prevent: Outcomes of a Global Dialogue to Counter Terrorist Abuse of the Non-profit Sector* (2013).<sup>5</sup>

This background note has been prepared for the Regional Meeting on Preventing Terrorist Abuse of Nonprofit Organizations to be held in Dakar, Senegal, on 1-3 June 2015. Extending the aims of the previous initiative, this meeting endeavors to advance dialogue among stakeholders regarding terrorist financing and NPOs among GIABA member states and others in the region.

### *Terrorism and terrorist financing in West Africa*

Regrettably, terrorism in West Africa has captured global attention in recent years. For example, the ability of extremist groups to claim territory in northern Mali in 2012 prompted French, followed by multilateral, intervention. Also, among the atrocities committed by Boko Haram in Nigeria, the April 2014 abduction of more than 200 school girls in Chibok, Borno state, was universally condemned. While Mali and Nigeria have been in the headlines most frequently, the regional origins – and implications – of the violent extremist threats they face are well known. All indications suggest that, having gained something of a foothold in the region, terrorism and

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<sup>4</sup> FATF, “Consultation and dialogue with Non-Profit Organizations: Chairman’s Summary,” 24 April 2013, available at: <http://www.fatf-gafi.org/documents/documents/consultationanddialoguewithnon-profitorganisations.html>.

<sup>5</sup> Available at: <http://www.globalcenter.org/publications/to-protect-and-prevent-outcomes-of-a-global-dialogue-to-counter-terrorist-abuse-of-the-nonprofit-sector/>.

violent extremism will be a primary concern for the governments and peoples of West Africa into the foreseeable future, commending that responses evolve to meet these threats.

Terrorist financing in West Africa has been the subject of a recent typologies report by FATF and GIABA.<sup>6</sup> That report noted several trends, including:<sup>7</sup>

- an upsurge in acts of terrorism and terrorist financing in the sub-region;
- emerging linkages between West African extremist groups and international terrorist organisations and provision of support by the latter to the former;
- the use of both legitimate and illegitimate means by terrorists and terrorist groups to raise funds for personal upkeep, recruitment, purchase of tools and equipment, the dissemination of propaganda, and
- the exploitation of formal and informal channels to move funds.

The report cited examples of NPOs being abused by terrorists, suggesting that this trend is becoming “more apparent.”<sup>8</sup> The report endorsed past studies on the topic, finding that terrorist may abuse NPOs in a wide variety of ways, including: diverting finances; diverting materials; using them as an intermediary to local partners that divert financing/materials; using them to facilitate travel and/or board travelers; using them as a front or cover for illicit activities; openly using them to provide social services as a means to solicit public support; using them as a platform to distribute messaging as a means to gain political/ideological support; using them to radicalize and/or enlist individuals; taxing them for access to certain impoverished areas; kidnapping and ransoming employees; impersonating employees to obtain access to particular areas/people; and using an NPO’s name to raise funds, without the NPO’s knowledge.<sup>9</sup>

In sum, the report underscores the vulnerabilities of the sector, while emphasizing the importance of States fulfilling their obligations to prevent terrorist abuse of the sector.

### *Countering terrorist financing in West Africa*

FATF’s recommendations have received endorsement in counterterrorism strategies at the global and regional levels, including the United Nations Global Counterterrorism Strategy (2006) and the ECOWAS Counterterrorism Strategy and Implementation Plan (2013). Other regional bodies – including the West African Monetary Union and GIABA itself – have elaborated related norms and rules, and taken steps to facilitate their implementation.

Levels of compliance with R8 among GIABA Member States are very low; almost all States received a “non-compliant” for R8 on their initial mutual evaluation. To some extent, this reflects a global trend, wherein R8 has, in general, attracted lower levels of compliance than other FATF recommendations. However, it also reflects that many West African states have built

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<sup>6</sup> See FATF/GIABA, *Terrorist Financing in West Africa* (2013), available at: [www.fatf-gafi.org/media/fatf/documents/reports/TF-in-West-Africa.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/TF-in-West-Africa.pdf).

<sup>7</sup> FATF/GIABA, *Terrorist Financing in West Africa*, pp. 3-4.

<sup>8</sup> FATF/GIABA, *Terrorist Financing in West Africa*, p. 4.

<sup>9</sup> Asia/Pacific Group on Money Laundering, (2011), *Typologies Report: NPO Sector Vulnerabilities* (2011), as cited by FATF/GIABA, *Terrorist Financing in West Africa*, pp.12-13.

their anti-money laundering and counter-terrorist systems more-or-less from scratch in recent years, and have faced capacity challenges in doing.

Among the specific challenges to implementation that are described in the mutual evaluations of GIABA Member States, evaluators sometimes found a lack of knowledge about the non-profit sector among governments, and a lack of knowledge within the sector concerning the risk of terrorist financing. As this suggests, few states in the region have moved to undertake a review of the sector, as called for in R8 and as set out in the FATF Interpretive Note and current Best Practices Paper. Some states lack basic data about the sector. Others have been assessed to have legislative and regulatory gaps in addressing the risk of terrorist financing through NPOs. These extend to rules pertaining to information gathered at the time of registration, and requirements in terms of NPO record-keeping, which can be important in the event that an investigation is launched.

Other challenges are administrative in nature. Some States do not have efficient regulatory or supervisory agencies. Still others have not developed procedures to gather, store and share information internally and to respond to requests for information from other governments. A specific challenge for many States has been outreach to the non-profit sector. While FATF recommends that States maintain an ongoing dialogue with the NPO sector and conduct outreach activities,<sup>10</sup> these efforts have been modest in the past. Of course, a core challenge in many States is capacity. Some States acknowledge that they possess insufficient resources and technical skills to address any risks of terrorist financing within the NPO sector, especially in light of the size and diversity of the non-profit sector in many countries.

Despite these challenges, a review of the relevant mutual evaluation reports reveals that there are also some good practices in the region. Indeed, GIABA's practice of relatively frequent follow-up reports after formal mutual evaluations brings to light a wave of legislative and institutional change across the region. For example, new legislation (to criminalize terrorist financing, among other measures) has been enacted and financial intelligence units have been formed for the first time in several States. In some States, more systematic outreach activities have commenced, while others have sought assistance as a way of addressing capacity gaps.

### *The importance of civil society in West Africa*

Civil society in West Africa is often described as vibrant and robust, making critical contributions to people and communities across the breadth of public life. The prevalence of community-driven development in the region, and participatory peacebuilding in post-conflict settings, has provided opportunities for the non-profit sector to expand. In these ways, civil society actors have sought to exercise and enjoy rights to freedom of association, speech and religion, which are often enshrined in the national constitutions of states across the region.

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<sup>10</sup> This is underscored in the Interpretive Note to R8, which states: “countries should encourage or undertake outreach programmes to raise awareness in the NPO sector about the vulnerabilities of NPOs to terrorist abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse” and; “countries should work with the NPO sector to develop and refine best practices to address terrorist financing risks and vulnerabilities and thus protect the sector from terrorist abuse” (see [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf), p.55).

Within the sector self-regulatory initiatives have emerged in several states in recent years. These indicate the robustness of the sector, as well as the intention of stakeholders to set and achieve appropriate standards for internal governance.<sup>11</sup> In this regard, civil society in West Africa is consistent with a global trend. Across the world, civil society actors have demonstrated their interest in establishing and maintaining practices of good governance and sound financial management, and there are now more than 350 self-regulatory initiatives currently in effect globally.<sup>12</sup>

The table in Annex A provides an overview of the non-profit sector in a sample of GIABA Member States and others in the region. As this suggests, there is some variation in the size of the non-profit sector, as well as in approaches to its regulation. Similarly, the tone and strength of state-civil society relations varies across the region, such that NPOs in some countries are less encumbered by legislative and regulatory measures than those in others.<sup>13</sup>

### *Conclusion*

A key lesson from past project meetings has been the importance of stakeholders – especially those from governments and civil society – working *collaboratively* to protect the sector from abuse. The timeliness of dialogue on protecting the non-profit sector from terrorist abuse can be inferred from a recent Presidential Statement from the UN Security Council. In it, the Council recognized the<sup>14</sup>

need for Member States to prevent the abuse of non-governmental, non-profit and charitable organizations by and for terrorists. The Security Council also calls upon non-governmental, non-profit, and charitable organizations to prevent and oppose, as appropriate, attempts by terrorists to abuse their status. The Security Council recognizes that terrorists sometimes abuse the non-profit status of organizations, including facilitating terrorist financing. As these abuses are addressed, the Security Council recalls the importance of fully respecting the rights to freedom of religion or belief and freedom of expression and association of individuals in civil society. In this regard, the Security Council takes note of the relevant recommendation of the Financial Action Task Force.

A key objective of the Dakar meeting is to discuss methods for integrating the twin goals of protecting the non-profit sector and preventing terrorist abuse, towards the realization of fundamental rights in an environment that characterized by peace, security and development.

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<sup>11</sup> Mary Kay Gugerty, “The Emergence of Nonprofit Self-Regulation in Africa,” *Nonprofit and Voluntary Sector Quarterly*, 39(6) (2010), pp. 1087–1112.

<sup>12</sup> Alice Obrecht, “Effective Accountability? The Drivers, Benefits and Mechanisms of CSO Self-Regulation,” One World Trust Briefing paper no. 130 (July 2012).

<sup>13</sup> United States Agency for International Development, *The 2013 CSO Sustainability Index for Sub-Saharan Africa* (2013).

<sup>14</sup> UN Doc. S/PRST/2013/1 (15 January 2013).

**Annex A: Overview of the non-profit sector in a sample of West African states\***

	<i>Key legislation</i>	<i>Main administering agencies</i>	<i>Main organizational forms</i>	<i>No. of NPOs (approx.)</i>	<i>FATF/FSRB status</i>	<i>Last mutual evaluation</i>
Benin	<ul style="list-style-type: none"> <li>• Law of 1st July 1901;</li> <li>• Decree 2001 – 234 of 12 July 2001;</li> <li>• Law 2006-14 of 31 October 2006;</li> <li>• Law 2006-14 of 31 October 2006;</li> <li>• Article 136 of criminal code procedure;</li> <li>• Decree 2006 – 752 of 31 December 2006;</li> <li>• Guideline 04/2007/CM/WAEMU</li> </ul>	Ministry of Interior; CENTIF; Ministry in Charge of Relations with Institutions (MRCI); Ministry of Economics and Finance (MEF)	Local associations (e.g. citizen's groups, trade unions, student groups); Religious and chiefly organizations; Vocational cooperatives.	1,155 (2002)	GIABA member	Evaluation in 2010; follow-up reports in 2011, 2012, 2013, 2014.
Burkina Faso	<ul style="list-style-type: none"> <li>• Act No. 10/92/ADP of 15 December 1992 on freedom of association</li> <li>• Act No. 061-2009/AN of 17 December 2009 on AML</li> </ul>	Ministry in charge of Public Liberties; CENTIF	There are three types of associations: non-declared associations; declared associations; and associations acknowledged as a public utility	(NA)	GIABA member	Evaluation in 2009; Implementation Action Plan in 2011; follow-up reports in 2010, 2011, 2012, 2013.
Cote d'Ivoire	<ul style="list-style-type: none"> <li>• Law No. 60-315 of 21 September 1960 relating to associations</li> <li>• Ordinance no. 2009-367 of 12 November 2009 on combating terrorist financing in Member States of the West African Economic and Monetary Union</li> </ul>	Ministry of the Interior; CENTIF	Declared associations; associations of public benefit.	(NA)	GIABA member	Evaluation in 2013; follow-up report in 2013

Ghana	<ul style="list-style-type: none"> <li>Company Code of 1963 (Act 179)</li> </ul>	Department of Social Welfare; Registrar General's Department	Companies limited by guarantee, covering NGOs, trust companies, foundations and charities	6,019 (2013)	GIABA member	Evaluation in 2009; follow-up reports in 2011, 2012
Guinea	<ul style="list-style-type: none"> <li>Law 2005/013/July 14, 2005</li> </ul>	National Service for the Regulation and Promotion of Associative Movements (SERPROMA) under the Ministry of Territorial Administration and Decentralization (MATD)	Associations; NGOs; Foundations	27,435 (2013)	GIABA member	Evaluation in 2012; follow-up in 2014
Mali	<ul style="list-style-type: none"> <li>Law 04-038 of 2004</li> <li>Law 025/PRM of 2008</li> <li>Law 10-062 of 2010</li> </ul>	Ministry of Regional Administration and Local Government (MATCL); CENTIF	Undeclared nonprofit organizations; declared nonprofit organizations; nonprofit organizations with framework agreements with the government.	1,254 registered CSOs (2013)	GIABA member	Evaluation in 2008; follow-ups in 2009, 2010, 2011, 2012, 2013
Mauritania	<ul style="list-style-type: none"> <li>Law on Associations (Law 64.098 of 1964 as amended by Law 73.007 of 1973)</li> </ul>				-	
Niger	<ul style="list-style-type: none"> <li>Order 84-06 of March 1, 1984;</li> <li>Decree 84-49 of March 1, 1984;</li> <li>Order 84-50 of December 5, 1984; Law 91-006 of May 20, 1991;</li> <li>Decree 92-292 of September 25, 1992;</li> <li>Circular of November 24, 1995.</li> </ul>	Ministry of Planning and Community Development (NGO/Development Association Directorate); Ministry of the Interior (Directorate of Public Liberties)	Nonprofit organizations (including NGOs and development associations)	867 (2007)	GIABA member	Evaluation in 2009; Implementation Action Plan in 2011; follow-ups in 2010, 2011, 2012, 2013.

Nigeria	<ul style="list-style-type: none"> <li>Companies and Allied Matters Act</li> </ul>	Corporate Affairs Commission; Ministry of Justice; Special Control Unit against Money Laundering; National Planning Commission	Civil society organizations (including religious- and community-based organizations and charities)	63,000 (2013)	GIABA member	Evaluation in 2008; Implementation Action Plan in 2011; follow-ups in 2009, 2010, 2012
Senegal	<ul style="list-style-type: none"> <li>Decree No. 2010-1490 of November 10, 2010, amending Decree no. 96-103 of 8 February 1996 and Decree no. 89-775 of 30 June 1969</li> <li>Uniform Law No. 2009-16 of 2 March 2009</li> </ul>	Ministry of Interior (Associations); Ministry of Finance (Foundations); Line Ministry (national NGOs); Ministry of Foreign Affairs (international NGOs); CENTIF	Associations, Foundations, and NGOs	11,600 associations; 487 registered NGOs (2015)	GIABA member	Evaluation in 2008; Implementation Action Plan in 2011; follow-ups in 2009, 2010, 2011, 2013,
Sierra Leone	<ul style="list-style-type: none"> <li>Revised Non-Governmental Organizations Policy Regulations 2009</li> <li>AML/CFT Act, 2012</li> </ul>	Ministry of Finance and Economic Development (NGOs); Registry's Department (Not-for-profit companies); Ministry of Social Welfare or Local Governments (Community-based organizations)	NGOs; Not-for-profit companies; Community-based organizations	(NA)	GIABA member	Evaluation in 2007; Implementation Action Plan in 2011; follow-ups in 2008, 2009, 2010, 2011, 2012, 2013

## \* Sources used in compiling Annex A:

- Mutual evaluation reports and related documents, available at [www.giaba.org](http://www.giaba.org).
- CIVICUS, *CIVICUS Civil Society Index – Rapid Assessment Report: West Africa Regional Report* (2014).
- United States Agency for International Development, *The 2013 CSO Sustainability Index for Sub-Saharan Africa* (2013).
- NGO Law Monitor, International Center for Not-For-Profit Law, available at [www.icnl.org/research/monitor/](http://www.icnl.org/research/monitor/).
- Christophe Mestre and Simon-Narcisse Tomety, *Etat des lieux de la situation de la société civile au Bénin et orientation pour le renforcement de ses capacités*, Centre International d'Etudes pour le Développement Local (October 2004).