

House Foreign Affairs Committee  
Tom Lantos Human Rights Commission

Hearing  
on  
Counter-terrorism and Human Rights: Striking the Right Balance  
October 26, 2021 - 10:00 a.m.  
Virtual via Cisco WebEx  
Statement of Jocelyn Nieva  
Senior Legal Advisor for Latin America and the Caribbean  
International Center for Not-for-Profit Law

Good morning, Co-chair McGovern, Co-chair Smith, and Commission representatives. Thank you for this opportunity to speak about misuse of counter-terrorism standards to restrict civic freedoms in Latin America.

On March 8th of this year, Nicaraguan President Daniel Ortega responded to civil society criticism, stating:

*[T]hose Organizations that they call NGOs ... have been created for what? To launder money and then distribute it to carry out terrorist, destabilizing activities. But we already have Laws for that ... and we have information on how the laundering has been done for years, and still until recently thousands and thousands of dollars were flowing here to spread terror.*

Indeed, in the run-up to next month's presidential election, Ortega's administration has cited counter-terrorism and national sovereignty laws to arrest many prominent civil society leaders who might challenge him, and to shut down dozens of long-established human rights and other non-profit organizations (NPOs).

Earlier this year Venezuela issued a new counter-terrorism administrative order. The order classifies *all* NPOs as entities at high risk of abuse for terrorism financing, and subjects all to a mandatory new registry; open-ended inspections by regulators who are predominantly uniformed military servicemembers; and sanctions including forced dissolution. Human rights defenders point out that even if they wanted to follow the law, many organizations will be unable to comply because their paperwork is out of date – a consequence of a documented government practice of rejecting NPO updates on newly-elected board members and amended by-laws. As a result, Venezuelans anticipate an imminent wave of forced NPO closures.

Government officials argue that their counter-terrorism laws are necessary to comply with the global standards of the Financial Action Task Force, or FATF. In January 2020, the regional FATF body for most of Latin America, GAFILAT, lent support to those assertions by raising its evaluation of Nicaragua from “partially” to “largely compliant” with FATF’s standard on regulation of NPOs – its Recommendation 8 – even as the country passed a restrictive counter-terrorism law and shut down several leading human rights organizations.

It’s not supposed to be this way. In 2016, FATF reformed its Recommendation 8 when presented with substantial evidence that FATF’s standards were being misused to restrict civic space. Through those 2016 reforms, FATF instructed countries to evaluate their NPO sectors to identify a subset of organizations at risk of abuse, and then implement targeted and proportionate evidence-based terrorism financing oversight measures, without limiting legitimate charitable activities, and in conformity with human rights treaty obligations.

Yet throughout the region, countries are failing to implement this risk-based approach. Instead, NPOs are subject to burdensome and costly registration and reporting requirements applied to organizations equally, regardless of evidence of risk. All NPOs – even those at little to no risk of terrorism financing abuse – must divert resources away from their public benefit missions to meet oversight requirements. Moreover, the limited capacity of NPOs to understand and comply with costly, complex, and typically redundant counter-terrorism financing rules leaves organizations vulnerable to disruptive investigations, fines, and other penalties. In practice, selective enforcement leaves high-profile human rights defenders most vulnerable to sanctions. This is particularly the case in more authoritarian countries.

The International Center for Not-for-Profit Law (ICNL) has partnered with the Global NPO Coalition on FATF and regional experts to raise awareness of FATF’s reformed standards and to assess NPO perceptions on risk and country compliance. We recently published a [17-country study](#) based on 729 NPO survey responses, showing that only 15% of respondents perceive that their governments have implemented laws and measures based on identified sector risk of terrorism financing abuse. We are pleased that GAFILAT implemented a parallel study in conjunction with ICNL and our partners and published a report calling on member countries to comply with FATF’s reformed standards. GAFILAT’s report echoes a current FATF global initiative to identify and mitigate the unintended consequences of improper application of its standards.

These new initiatives bring us to a moment of truth. In the coming months, Venezuela, Bolivia, and El Salvador – countries with highly problematic laws and practices – will all be evaluated by FATF regional bodies. Will the evaluators correctly apply FATF’s improved standards, preventing those countries from claiming the FATF bodies’ endorsement of laws and practices that restrict civic space in the name of countering terrorism financing?

Please allow me to close by recommending that the United States support these initiatives to identify and counter excessive terrorism financing regulation of NPOs. With US support, an enhanced evaluator training program could help ensure that evaluation teams correctly apply FATF's revised Recommendation 8 standard. Enhanced training should also require evaluators to meet with independent NPOs to consider their perspectives when evaluating country compliance.

Thank you very much.