



TIGHTENING THE PURSE STRINGS:

What Countering Terrorism Financing Costs Gender Equality and Security

DUKE LAW

INTERNATIONAL
Human Rights Clinic

WPP
WOMEN PEACEMAKERS PROGRAM

MARCH 2017



ABOUT THE AUTHORS

Established in 2013, the International Human Rights Clinic at Duke University School of Law in North Carolina, United States, provides an integrated approach to human rights education, advocacy, and scholarship and undertakes teaching, research, and fieldwork that focuses on domestic, regional, and international institutions and the protection of human rights. The International Human Rights Clinic allows students to build an experiential bridge between law school and practice and to critically engage with cutting-edge human rights issues, strategies, tactics, institutions, and law in domestic, regional, and international settings. Clinical Professor of Law Jayne Huckerby serves as the inaugural Clinic Director and Sarah Adamczyk is the Supervising Attorney/Lecturing Fellow with the Clinic.

The Women Peacemakers Program, based in The Hague, The Netherlands, is an activist organization that works for the non-violent resolution of conflict, and the inclusion of women's voice and leadership in nonviolent conflict resolution processes. The Women Peacemakers Program was originally established in 1997 as a program of the International Fellowship of Reconciliation, to support and empower women peace activists worldwide, and to advocate for a gender perspective in nonviolent peacebuilding. In October 2012, 15 years after its establishment, the Women Peacemakers Program became an independent, women-led organization, dedicated to advancing sustainable peace through gender-sensitive active nonviolence. The history of the Women Peacemakers Program is filled with ground-breaking work, which has been initiated and informed by its many pioneering network partners. Isabelle Geuskens serves as WPP's Executive Director and has worked with the organization since 2002.

www.womenpeacemakersprogram.com

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DEDICATION

The Duke IHRC and WPP wish to thank the dozens of women's organizations who participated in the survey for this Report and graciously shared their experiences and perspectives. We would additionally wish to thank the nearly 100 individuals from governmental, non-governmental, inter-governmental, and financial institutions interviewed in the preparation of this Report.

ACRONYMS

AEDPA	Anti-Terrorism and Effective Death Penalty Act 1996
AML	Anti-Money Laundering
AML/CTF	Anti-Money Laundering/ Countering Terrorism Financing
AWID	Association for Women's Rights in Development
BBA	British Bankers' Association
BSA	Bank Secrecy Act
CBR	Correspondent Banking Relationship
CDD	Customer Due Diligence
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CFT	Countering the Financing of Terrorism
CSO	Civil Society Organizations
CT	Counter-Terrorism
CTED	Counter-Terrorism Executive Directorate
CTF	Countering Terrorism Financing
CTITF	Counter-Terrorism Implementation Task Force
CVE	Countering Violent Extremism
EDD	Enhanced Due Diligence
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FTO	Foreign Terrorist Organization
GDP	Gross Domestic Product
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IEEPA	International Emergency Economic Powers Act
IMF	International Monetary Fund
INGO	International NGO
INR.8	Interpretive Note for FATF Recommendation No. 8
IRTPA	Intelligence Reform and Terrorism Act of 2004

ISIL	Islamic State in Iraq and the Levant
KYC	Know Your Customer
MENA	Middle East and North Africa
MSB	Money Services Business
MTO	Money Transfer Operator
NGO	Non-Governmental Organization
OECD	Organisation for Economic Co-operation and Development
NPO	Non-Profit Organization
OECD DAC	OECD Development Assistance Committee
OFAC	Office of Foreign Assets Control
OHCHR	Office of the United Nations High Commissioner for Human Rights
P/CVE	Preventing/Countering Violent Extremism
PEP	Politically Exposed Persons
PVS	Partner Vetting System
RAM	Risk Analysis and Management
RBA	Risk-Based Approach
SDGT	Specially Designated Global Terrorist
UN	United Nations
UNGA	United Nations General Assembly
UNICEF	United Nations International Children's Emergency Fund
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
USA PATRIOT ACT	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001
USAID	United States Agency for International Development
USD	United States Dollar
USG	United States Government
VfM	Value for Money
WFP	World Food Programme
WPS	Women, Peace, and Security

EXECUTIVE SUMMARY

In the aftermath of the events of September 11, 2001, the international community brought a new focus and urgency to prioritizing countering terrorism financing (CTF), including through domestic criminalization, expanded legal powers to sanction proscribed individuals and entities, mandatory counter-terrorism clauses in donor funding and partnership agreements, and new reporting requirements for financial institutions that in turn led banks to develop their own increasingly risk-averse controls. The United States (U.S.) government (USG) assumed a prominent role globally, not only in setting international standards on countering terrorism financing, but also through the extraterritorial reach of U.S. financial laws and regulations.

As part of this shift, stakeholders traditionally more on the sidelines in developing and implementing national security policies—such as the inter-governmental Financial Action Task Force (FATF), governmental finance ministries, and private financial institutions—took on a much greater role. Banking institutions were in many ways deputized to police these new standards, a position many did not necessarily welcome given the high compliance costs and risks of government enforcement actions if controls failed. In many contexts, civil society became the direct and indirect target of these rules to counter terrorism financing, losing critical access to resources, as well as the ability to fully use banking facilities, because of a regulatory assumption—much refuted, and since revised—that the sector was “particularly vulnerable” to terrorist financing abuse.

While by no means alone in bearing the brunt of this legal and regulatory environment, the specific profile of women’s rights organizing and organizations has meant that they experience these rules in a number of adverse and often gender-specific ways. On the frontlines of promoting and protecting human rights and critical to ensuring the success and sustainability of peace processes, women’s rights advocates and feminist movements mobilize to cause long-lasting social change in their communities. Yet while governments are required to ensure them a safe and enabling environment, precarious security conditions marked by threats from both State and non-State actors, as well as an acute funding crisis, are increasingly the norm. Highly reliant on foreign funding and often in receipt of short-term or project-based funding, women’s rights organizations have little financial resilience, are nascent or newly-established, are relatively small and often operate at the grassroots level, and already often face some degree of financial exclusion. Women’s rights organizations challenging the status quo by promoting gender equality frequently find themselves at odds with, and targeted by, their own governments, including by those that criminalize such legitimate activities as “terrorism.” To be able to continue their essential work in promoting gender equality, peace, and human rights, such groups may have to operate below the radar, with the security and confidentiality of their beneficiaries of paramount concern. Ensuring the ability of this work to continue is instrumental in creating long-lasting social change and peace, in a world where human rights and stability are under growing threat.

The ways in which countering terrorism financing rules have been designed and implemented take little to no account of these features of women’s rights organizations and the environments in which they operate. In practice, legal and regulatory frameworks to counter terrorism financing often restrict transnational financial flows (e.g., from Western donors to grassroots groups); involve heavy compliance requirements; cause delays in, or block receipt of, funds; favor established and often international organizations; call for detailed information on civil society’s activities, including in some cases beneficiaries; and decrease the risk appetite of donors and banks. The full extent of these impacts, however, is unknown as regulatory authorities, donors, and financial institutions do not often collect or share relevant information on impacts or explicitly provide reasons for limiting resources and financial access, while civil society actors typically under-report incidents out of reputational or enforcement concerns or due to low levels of knowledge regarding countering terrorism financing measures.

In particular, the gender and human rights implications of these countering terrorism financing policies have to date escaped scrutiny. There has, instead, been a tendency to treat civil society organizations and their activities as homogenous and to diagnose problems with—and then devise solutions to—countering terrorism financing regimes that overlook, and may in some cases, deepen adverse impacts. Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security represents the culmination of research, interviews, surveys, and statistical analysis carried out by the International Human Rights Clinic (IHRC) at Duke University School of Law and the Women Peacemakers Program (WPP) to begin to fill these gaps in understanding how responses to terrorism and violent extremism may, in practice, undermine gender equality. In particular, this Report analyzes these measures from an international human rights law perspective, assessing the extent to which countering terrorism financing measures comply with a host of international law obligations, such as prohibitions on both direct and indirect discrimination on the basis of sex and gender and guaranteeing freedom of association, assembly, and expression, including in ensuring access to resources.

From applying this gender and human rights perspective, it is clear that women’s rights and their defenders across the globe are frequently squeezed between terrorism and violent extremism on the one hand, and counter-terrorism or preventing and countering violent extremism (P/CVE) on the other. In the survey of grassroots women’s organizations undertaken for this Report, 86.67 percent of respondents classified their organization’s work—including in areas such as peacebuilding and conflict resolution—as contributing to combatting terrorism and violent extremism. Yet, 90 percent said that counter-terrorism measures had an adverse impact on work for peace, women’s rights, and gender equality generally.

Countering terrorism financing rules have exacerbated this incoherence. Restricting funding to women's rights organizing, women's rights organizations, and the promotion of gender equality stands in stark contradiction to governments' policy objectives and commitments that recognize the core importance of these local and grassroots actors and activities in achieving human rights and peaceful societies, particularly in conflict and post-conflict settings. While women and women's rights organizations are already often on the frontlines in their communities combatting all forms of violence—including that posed by terrorist and violent extremist groups—rules to combat terrorism financing make it difficult to support these essential and grassroots groups and efforts. Increasing efforts to mainstream gender and promote women's participation in efforts to counterterrorism and P/CVE therefore also come up against the challenge of countering terrorism financing rules. The ultimate impact of these countering terrorism financing measures has been to circumscribe how, where, and in some cases, even if, women's rights organizations can undertake their core work on mobilizing human rights, gender equality, and advancing the women, peace, and security agenda.

This Report outlines the five main categories of adverse impacts that resonated most profoundly with all interlocutors, including grassroots women's organizations, inter-governmental actors, non-governmental organizations, governmental agencies, donors (including women's funders groups), and financial institutions. The first impact concerns the ways in which States have at times imposed financial restrictions that reduce access to funding and overall operating space for women's rights organizing and organizations under the guise of ensuring national security. For example, States have imposed particular limitations on the receipt of foreign funding and utilized broad definitions of terrorism and violent extremism to adversely label and in some cases criminalize the legitimate activities of women's rights defenders. Secondly, countering terrorism financing policies have resulted in multiple impacts on the partners, programs, and beneficiaries of women's rights organizing and organizations. There has been a growing donor preference for larger, well-known international organizations with greater absorption capacity and compliance resources, as well as toward making larger and fewer grants, all to the detriment of grassroots women's civil society. Concern regarding even the potential diversion of funds to terrorism has reduced funding for women's peacebuilding and humanitarian assistance in areas where terrorist or violent extremist groups are active or exercise control. As a result, female civilians and activists in these areas, often victims of terrorism themselves, are neglected, may be accused of providing support to terrorists even when under duress, and may be forced to depend on these very terrorist organizations for service provision to their detriment.

The third key impact relates to the gender effects of financial de-risking, which, broadly defined, encompasses the financial risk management practices by which institutions reduce or lower risk exposure and which can, in practice, curtail a range of finan-

cial services to certain sectors or geographic areas. For financial institutions, particularly when there is little civil society expertise, women's organizations can be perceived as low-profit, high-risk clients and both women and women's rights organizations may be driven out of the formal financial sector, with serious repercussions for their safety and programs, and ultimately for the human rights of their beneficiaries. Fourth, women's rights organizing and organizations reported increased administrative burdens and reporting requirements that threaten their operational capacity and, amongst surveyed women's organizations, this has led 41.67 percent to not apply for much-needed funds and 16.67 percent to actually refuse offered grants. The final observed impact reflects the cumulative effect of all the above-mentioned factors on the safety and security of women's rights organizing and organizations. For example, 15 percent of survey respondents indicated they had experienced harassment or prosecution under countering terrorism financing measures while four times that figure—60 percent—expressed concern regarding such harassment or prosecution. Where resources and financial access have been cut off, women's rights organizations report various coping mechanisms—the most common of which is cash-carrying—to be able to keep accessing vital resources; these adaptive strategies themselves often contain additional safety risks.

To fully explore these impacts from a gender and human rights perspective, this Report is organized in the following sections:

Section I analyzes why a gender and human rights framework is relevant to countering terrorism financing and, in particular, how the failure to integrate a gender and human rights lens has created stark policy contradictions involving adverse human rights and security outcomes.

Section II outlines the post-9/11 context in which these countering terrorism financing policies arose, the precise measures involved in countering terrorism financing, and how these regulations are impacting civil society in general terms.

Section III explores the differential impact of countering terrorism financing rules in light of the profile and operating environments of women's rights organizing, women's rights organizations, and gender equality, as well as outlining some considerations in assessing scale and causation of impacts.

Section IV outlines the five main categories of adverse impacts of countering terrorism financing on women's rights organizing, women's rights organizations, and gender equality.

Section V examines the international human rights legal framework as applied to gender and countering terrorism financing.

Recommendations are then addressed to multilateral institutions, States, civil society, donors, and financial institutions on the basis of the preceding Sections.

METHODOLOGY

Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security is a joint report of the International Human Rights Clinic at Duke University Law School and Women Peacemakers Program and is based on a survey of women's organizations undertaken by WPP; scores of interviews that were conducted by the Duke IHRC with government entities, inter-governmental entities, non-governmental organizations (NGOs), donors (including women's funders groups), financial institutions, and academics; and extensive secondary research, including building on the WPP Policy Brief, *Counterterrorism Measures and their Effects on the Implementation of the Women, Peace and Security Agenda*, issued in March 2015.¹

Survey of women's organizations

Between April 2015 and August 2016, WPP conducted a survey of 60 women's organizations, both face-to-face as well as through electronic communication.² The survey was designed to better understand the impacts of countering terrorism financing regulations on civil society in general and on women's rights organizing, women's rights organizations, and gender equality in particular. The survey consisted of 25 questions, both closed and open-ended, that related to, *inter alia*, where organizations are operating; their primary sources of funding; the impact of CTF and other counter-terrorism measures on programs focused on women's rights, peacebuilding, and gender equality; and measures taken by affected organizations to ensure continued receipt of funding and access to financial services.

For confidentiality and security reasons, WPP chose a non-probability sample and invited approximately 100 organizations to participate in the survey. WPP identified respondents through existing partner organizations and networks, by directly approaching women's organizations during international conferences and meetings, and through asking respondents to suggest additional organizations to survey. As such, snowball sampling was used to help expand the pool beyond the initial respondents. Organizations were selected to ensure geographic diversity and balance across regions, including conflict or post-conflict areas, as well as those that may be considered to be "at risk" of terrorism and/or violent extremism.

Given the sensitivity of the information and the reticence of many women's organizations to discuss these issues publicly, an online survey was not feasible and all organizations were guaranteed confidentiality. All surveys were conducted in English. No compensation was provided for completing the survey.

Geographic focus

Survey respondents work in all regions and in 61 different countries, with the highest percentage (in order) working in Iraq, Pakistan, Sudan, India, Kenya, Syria, and Somalia. Ninety-five percent of all respondent organizations work in conflict/post-conflict areas and/or areas or with communities considered to be "at risk" of terrorist or violent extremist activity.

The organizations surveyed all "work with, support or promote women's rights organizing, women human rights defenders, women's peacebuilding, UNSCR [United Nations (U.N.) Security Council Resolution] 1325 implementation, women's empowerment, and/or women's human rights and gender equality broadly." The majority of the organizations are active in these issues on a local or grassroots level, while some are also active at the regional or international level.³

Survey procedure

When conducting surveys, none of the respondents received the questions before or after the interview. WPP staff recorded responses verbatim during the interview. The names and contact information of the organizations were collected solely for internal purposes to avoid duplication. Any identifying information related to the organization surveyed has been kept separately and will not be published. Secondary analysis of the de-identified survey data was undertaken by the Duke IHRC, with consultations with the Social Science Research Institute (SSRI) and the Data and Visualization Services (DVS) at Duke University.

COUNTRIES OF OPERATION

CAUCASUS & CENTRAL ASIA

Armenia
Azerbaijan
Belarus
Chechnya
Georgia
Uzbekistan

LATIN AMERICA

Colombia
El Salvador
Guatemala

MIDDLE EAST & NORTH AFRICA

Egypt
Iran
Iraq
Israel
Jordan
Lebanon
Libya
Morocco
Palestine
Syria
Tunisia
Turkey
Yemen

NORTH AMERICA

Cuba
Mexico
United States

SOUTH, CENTRAL, EASTERN EUROPE

Bosnia & Herzegovina
Ukraine

SOUTH & SOUTH EAST ASIA

Afghanistan
India
Indonesia
Nepal
Pakistan
Philippines
Sri Lanka

SUB-SAHARAN AFRICA

Benin
Burkina Faso
Burundi
Cameroon
Cape Verde
Cote d'Ivoire
DR Congo
Djibouti
Eritrea
Ethiopia
Ghana
Guinea
Guinea Bissau
Kenya
Liberia
Mali
Niger
Nigeria
Uganda
Senegal
Sierra Leone
Somalia
South Sudan
Sudan
The Gambia
Togo

WESTERN EUROPE

Netherlands
United Kingdom

¹ WOMEN PEACEMAKERS PROGRAM ET AL., POLICY BRIEF: COUNTERTERRORISM MEASURES AND THEIR EFFECTS ON THE IMPLEMENTATION OF THE WOMEN, PEACE AND SECURITY AGENDA (2015).

² 32 interviews were conducted via Skype, 27 interviews took place in-person, and one was conducted through Viber (a phone system often used for international calls).

³ Of the 60 surveys, 63.33 percent work in only one country and 18.33 percent operate in five or more countries.

ORGANIZATION HEADQUARTERS



Interviews

To complement the above survey results, between March 2016 and July 2016, the Duke IHRC separately conducted 61 in-depth interviews with 94 key stakeholders, representing 53 different organizations or agencies within government, inter-governmental entities, NGOs, donors (including women’s funders groups), financial institutions, and academics.

Interviews were conducted in-person in Geneva, Switzerland; London, United Kingdom (U.K.); New York, United States; Paris, France; and Washington D.C., United States, as well as via Skype and telephone. Given the sensitivity of the information, all interviews were conducted as informational and off-the-record. Interviewees were consulted only as representatives of their respective organizations and not in their personal capacities.

The Duke IHRC additionally reviewed and analyzed extensive secondary materials, including relevant CTF legislation, regulations, and policies at the national, regional, and international levels.

Consultative meetings

Prior to publication, the Duke IHRC and WPP convened two consultative stakeholder meetings, both under Chatham House rule, to present preliminary findings and to inform conclusions and recommendations. The first meeting, hosted by the Permanent Mission of the Kingdom of the Netherlands to the United Nations (U.N.), was held in October 2016 in New York as a side event during the annual U.N. Security Council open debate on women, peace, and security (WPS). To enable greater feedback from women’s organizations and women’s rights organizations, a second consultation, entitled “Powerful Agents of Change: Supporting Women’s Resilience for Prevention and Community Security,” was held in Beirut, Lebanon in February 2017 with representatives from organizations based in Iraq, Jordan, Lebanon, and Tunisia.

Review

This Report also benefitted greatly from the comments of expert reviewers as identified in the Acknowledgements.

SECTION I. TOWARD A GENDER AND HUMAN RIGHTS-BASED APPROACH TO COUNTERING TERRORISM FINANCING

1. Why gender and human rights matter in countering terrorism financing

With some exceptions, the gender and human rights dimensions and impacts of efforts to counter terrorism, and increasingly to prevent or counter violent extremism (P/CVE),⁴ have until very recently been overlooked. Notably, it was not until 2009 that the adverse gender and human rights impacts of counter-terrorism were first comprehensively documented at the international level in a report by the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.⁵ Subsequently, evidence has been catalogued that reflects how both “hard” (e.g., military, law enforcement, and intelligence) and “soft” (e.g., promotion of development, rule of law, and human rights) aspects of States’ responses to terrorism and violent extremism can in practice undermine gender equality,⁶ squeezing women’s rights and their defenders between terrorism and violent extremism on the one hand, and counter-terrorism or P/CVE responses, on the other.⁷

One of the main mechanisms by which women’s rights and women’s rights organizations have been squeezed is through the measures that States have introduced under the rubric of countering the financing of terrorism or violent extremism. These measures include countering

terrorism financing rules that the international community introduced in the aftermath of the events of 9/11, including ensuring that terrorist financing was criminalized under domestic law, expanding legal powers to implement sanctions against proscribed individuals and entities, including mandatory counter-terrorism clauses in donor funding and partnership agreements, and implementing new requirements for financial institutions that have in turn led banks to develop their own increasingly risk-averse controls.⁸ These measures also include other financial restrictions, such as limits on access to foreign funding for civil society, that States have introduced under the broad umbrella of ensuring national security.⁹

While both of these types of rules vary across context in terms of their actual nexus to countering terrorism financing, their overarching impact has been to circumscribe how, where, and in some cases, even if, women’s rights organizations can undertake their core work on mobilizing human rights, gender equality, and advancing the women, peace, and security agenda.¹⁰ Yet, despite such significant effects, the legal and regulatory frameworks that are in place at the national, regional, and international levels to combat or counter terrorism financing have hitherto escaped detailed scrutiny from a gender and human rights perspective.¹¹

The backdrop against which such rules are implemented is critical for understanding the magnitude of such effects. Accordingly, this Section identifies a number of patterns to demonstrate how government and non-State (e.g., financial institutions) actions that affect access to funding and operating space of civil society are an acute area of concern for women’s right organizing and organizations, and the fight for gender

4 There is no generally accepted definition of the terms “terrorism,” “violent extremism,” “countering terrorism,” or “countering or preventing violent extremism,” or how the terms relate. See, e.g., Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, ¶ 13, U.N. Doc. A/HRC/31/65 (Feb. 22, 2016) (“Conceptually, it has been challenging to differentiate between violent extremism and terrorism, with the two terms often used interchangeably and without a clear delineation of the boundaries between them.”). Violent extremism is intended to be a wider category than terrorism: see, e.g., U.N. Secretary-General, *Plan of Action to Prevent Violent Extremism*, ¶ 4, U.N. Doc. A/70/674 (Dec. 24, 2015) (“Violent extremism encompasses a wider category of manifestations”); S.C. Res. 2178, ¶ 15, U.N. Doc. S/RES/2178 (Sept. 24, 2014) (framing the relationship as follows, “violent extremism, which can be conducive to terrorism”). “Terrorism” itself is a broad term that can be misapplied to suppress civil society, including women’s rights organizations and organizing: see, e.g., Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Rep. of the Special Rapporteur on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, transmitted by Note of the Secretary-General*, ¶ 27, U.N. Doc. A/64/211 (Aug. 3, 2009). This report utilizes the terms descriptively without accepting the breadth of their application.

5 See generally A/64/211, *supra* note 4.

6 See, e.g., JAYNE HUCKERBY & LAMA FAKIH, CTR. FOR HUMAN RIGHTS & GLOB. JUSTICE, A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM (2011), <http://chrj.org/wp-content/uploads/2012/07/locatinggender.pdf> [hereinafter A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM]; Fionnuala Ní Aoláin, *Situating Women in Counterterrorism Discourses: Undulating Masculinities and Luminal Femininities*, 93 B.U. L. REV. 1085 (2013); GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES (Margaret L. Satterthwaite & Jayne C. Huckerby eds., 2013); JAYNE HUCKERBY, CTR. FOR HUMAN RIGHTS & GLOB. JUSTICE, WOMEN AND PREVENTING VIOLENT EXTREMISM: THE U.S. AND U.K. EXPERIENCES (2012); COUNTERTERRORISM MEASURES AND THEIR EFFECTS ON THE IMPLEMENTATION OF THE WOMEN, PEACE AND SECURITY AGENDA, *supra* note 1; RADHIKA COOMARASWAMY, PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE: A GLOBAL STUDY ON THE IMPLEMENTATION OF UNITED NATIONS SECURITY COUNCIL RESOLUTION 1325 220-33 (2015) [hereinafter PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE]; A/HRC/31/65, *supra* note 4, at ¶¶ 52-53.

7 A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 23 (referring to “[s]queezing and [p]olarization”); A/64/211, *supra* note 4, at ¶ 23 (“Those subject to gender-based abuses are often caught between targeting by terrorist groups and the State’s counter-terrorism measures that may fail to prevent, investigate, prosecute or punish these acts and may also perpetrate new human rights violations with impunity.”); PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 224 (“Women’s groups are trapped between terrorism and countering terrorism . . . working in very dangerous context[s] where terrorists [exist] and on the other hand their chances to deliver their voice . . . [are] shrinking in the name of countering terrorism” (citing respondent to the civil society survey for the Global Study, based in Libya)).

8 See *infra* Section II.3.

9 See, e.g., Special Rapporteur on the Situation of Human Rights Defenders, *Rep. of the Special Rapporteur on the Situation of Human Rights Defenders*, Human Rights Council, ¶ 69, U.N. Doc. A/HRC/25/55 (Dec. 23, 2013) (noting that the justifications for rules restricting foreign funding include “the prevention of money-laundering and terrorist-financing”).

10 See *infra* Section II.2.

11 For examples of gender and human rights-based analyses of countering terrorism financing, see, e.g., U.N. Doc. A/64/211, *supra* note 4, at ¶¶ 42-43; A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 70-80; COUNTERTERRORISM MEASURES AND THEIR EFFECTS ON THE IMPLEMENTATION OF THE WOMEN, PEACE AND SECURITY AGENDA, *supra* note 1, at 4-7.

equality more broadly. Three patterns are particularly relevant in this regard: the essential role of women's rights organizing and organizations; the funding crisis of women's rights organizing, women's rights organizations, and gender equality; and the squeezing of women's rights and women's rights organizing and organizations between terror and counter-terror.

After describing these patterns, this Section then identifies instances of stark policy incoherence where CTF rules that circumscribe funding for women's rights organizing and organizations stand in contradiction to not only the important role of women's rights organizations and organizing, but other objectives including, for example, donor shifts toward localization and efforts to mainstream gender and promote women's participation in P/CVE.

Box 1: Defining civil society, women's rights organizing, women's rights organizations, and gender equality

Civil society: “[D]istinct from government and business, civil society is the aggregate of individuals, non-governmental organizations and institutions that manifest interests and will of citizens.”¹² For example, according to the U.N. Office of the High Commissioner for Human Rights, civil society actors include:

- “Human rights defenders, including on-line activists;
- Human rights organizations (NGOs, associations, victim-support groups);
- Coalitions and networks (on e.g. women's rights, children's rights, or environmental issues, land rights, LGBTI, etc.);
- Persons with disabilities and their representative organizations;
- Community-based groups (indigenous peoples, minorities, rural communities);
- Faith-based groups (churches, religious groups);
- Unions (trade unions as well as professional associations such as journalists' associations, judges' and lawyers' and bar associations, magistrates' associations, student unions);
- Social movements (peace movements, student movements, pro-democracy movements);
- Professionals contributing directly to the enjoyment of human rights (e.g. humanitarian workers, lawyers, doctors and medical workers);
- Relatives and associations of victims of human rights violations; and
- Public institutions that carry out activities aimed at promoting human rights (schools, universities, research bodies).¹³

Gender equality: “[R]efers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equal-

ity does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration—recognizing the diversity of different groups of women and men.”¹⁴

Women's rights organizations: “[O]rganizations formed and led by women and that work intentionally to advance women's access to their full body of rights, generally using strategies of women's rights organizing.”¹⁵

Women's rights organizing: “[A]n approach that brings women together to build their awareness of their rights, help them identify and analyze their problems from a different perspective, frame agendas for action, identify strategies for advancing these agendas, and expand their struggle for gender equality to bring in more women affected by the same issues.”¹⁶



A crowd of Liberian women demonstrate for peace outside the courthouse in Accra, Ghana on June 4, 2003 where African heads of state had gathered to participate in a Liberian peace conference (June 4, 2003).

Credit: Luc Gnago/Reuters

12 ASS'N FOR WOMEN'S RIGHTS IN DEV., WATERING THE LEAVES, STARVING THE ROOTS: THE STATUS OF FINANCING FOR WOMEN'S RIGHTS ORGANIZING AND GENDER EQUALITY 138 (2013) [hereinafter WATERING THE LEAVES, STARVING THE ROOTS].

13 U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RTS., A PRACTICAL GUIDE FOR CIVIL SOCIETY: CIVIL SOCIETY SPACE AND THE UNITED NATIONS HUMAN RIGHTS SYSTEM 3–4 (2014), available at http://www.ohchr.org/Documents/AboutUs/CivilSociety/CS_space_UNHRSystem_Guide.pdf.

14 U.N. OFFICE OF THE SPECIAL ADVISER ON GENDER ISSUES AND THE ADVANCEMENT OF WOMEN, GENDER MAINSTREAMING: STRATEGY FOR PROMOTING GENDER EQUALITY 1 (2001), available at <http://www.un.org/womenwatch/osagi/pdf/factsheet1.pdf>.

15 WATERING THE LEAVES, STARVING THE ROOTS, *supra* note 12, at 138.

16 *Id.*

2. Current landscape for promoting gender equality and women's rights organizing and organizations

The essential role of women's rights organizing and organizations

Such squeezing and other adverse impacts are at odds with the international community's long-held recognition of the importance of civil society,¹⁷ and in particular of the roles of women's rights organizing and organizations. States recognize the "important and legitimate role of women human rights defenders in the promotion and protection of human rights, democracy, the rule of law and development,"¹⁸ as well as the inherent connection between achieving gender equality and other societal goals, such that "the empowerment, autonomy and advancement of women and the improvement of their political, social, legal and economic status are essential to respect for all human rights, the growth and prosperity of society and the achievement of representative, transparent and accountable government, democratic institutions and sustainable development in all areas of life."¹⁹ What works in achieving all of these goals is "feminist mobilization in civil society,"²⁰ which in turn depends on grassroots women's organizations having access to "a regular, dependable source of income that is at the discretion of the organization to spend on activities they believe to be most effective in making a difference."²¹

The significance of promoting women's rights and participation is also evident in conflict prevention, conflict, and post-conflict contexts, as well as in humanitarian crises more broadly. In conflict prevention, conflict, and post-conflict settings, women's participation "at all levels is key to the operational effectiveness,

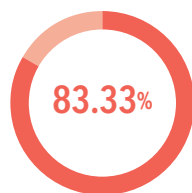
success and sustainability of peace processes and peacebuilding efforts."²² In humanitarian contexts, "[e]nsuring women's rights and empowerment has also been shown to accelerate the transition from humanitarian action to recovery, and build resilience thereby reducing the likelihood of recurrence of humanitarian crises."²³

Funding crisis of women's rights organizing, women's rights organizations, and gender equality

In practice, all of the above commitments to gender equality, women's rights organizing, women's rights organizations, and to the WPS agenda have fallen far short. The *2015 Global Study on the Implementation of U.N. Security Council Resolution 1325* concluded that the "failure to allocate sufficient resources and funds has been perhaps the most serious and unrelenting obstacle to implementation of women, peace and security commitments over the past 15 years."²⁴ The civil society survey undertaken as a contribution to the Global Study found that the highest barrier encountered by civil society working on women, peace, and security was lack of resources.²⁵ A recent review of the Organisation for Economic Co-operation and Development (OECD) Development Assistance Committee (DAC) members' aid to gender equality in fragile states and economies similarly found that "women's organizations in fragile states lack access to sustainable funding despite their vital role in building peace."²⁶ According to the OECD DAC Network on Gender Equality (Gendernet), "[i]n 2014, 8% of gender focused aid to civil society went directly to CSOs in developing countries. Little was reported as going directly to women's rights organisations. . . ."²⁷ Additionally, "just 1 per cent of all funding to fragile states in 2015 went to women's groups or governments' ministries of

- 17 See, e.g., Human Rights Council, Civil Society Space, 27th Sess., preambular ¶ 7, U.N. Doc. A/HRC/27/L.24 (Sept. 23, 2014) ("Recognizing the crucial importance of the active involvement of civil society, at all levels, in processes of governance and in promoting good governance, including through transparency and accountability, at all levels, which is indispensable for building peaceful, prosperous and democratic societies.").
- 18 S.C. Res. 68/181, ¶ 7, U.N. Doc. No. A/RES/68/181 (Jan. 30, 2014). See also Human Rights Council, Protecting Human Rights Defenders, 27th Sess., preambular ¶ 8, U.N. Doc. A/HRC/22/L.13 (Mar. 15, 2013) ("Stressing that respect and support for the activities of human rights defenders, including women human rights defenders, is essential to the overall enjoyment of human rights.").
- 19 A/RES/68/181, *supra* note 18, at preambular ¶ 18.
- 20 Mala Htun & S. Laurel Weldon, *The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective, 1975-2005*, 106 *Am. Pol. Sci. Rev.* 548, 548 (2012).
- 21 ANDREA CORNWALL, WOMEN'S EMPOWERMENT: WHAT WORKS AND WHY? 26 (2014), available at <https://www.wider.unu.edu/sites/default/files/wp2014-104.pdf>. See also *id.* at 25 ("All the evidence points to the fact that donor-driven projects, policies and programmes are not the basis for meaningful, sustainable change.").
- 22 PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 15. Note that the importance of the women, peace, and security agenda has been expressed in various thematic resolutions of the U.N. Security Council, in particular 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), and 2242 (2015). See also Thania Paffenholz, *Beyond the Normative: Can Women's Inclusion Make for Better Peace Processes*, THE GRADUATE INSTITUTE GENEVA, CENTRE ON CONFLICT, DEVELOPMENT AND PEACEBUILDING 2, 4 (Apr. 2015) (finding that "[i]nclusive peace processes" that give women's groups the opportunities to "exercise influence prior to, during, and after peace negotiations instead of merely increasing the number of women involved in these processes" mean that the "likelihood of peace agreements being reached and implemented is much higher.").
- 23 WORLD HUMANITARIAN SUMMIT, WOMEN AND GIRLS: CATALYSING ACTION TO ACHIEVE GENDER EQUALITY, HIGH-LEVEL LEADERS' ROUNDTABLE 2 (2016), available at http://whsturkey.org/Contents/Upload/Prospectus%204%20-%20Women%20and%20girls_x5po1x5m.x2b.pdf.
- 24 PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 16.
- 25 *Id.* at 383.
- 26 ORG. FOR ECON. CO-OPERATION AND DEV. (OECD) DAC NETWORK ON GENDER EQUALITY (GENDERNET), FINANCING UN SECURITY COUNCIL RESOLUTION 1325: AID IN SUPPORT OF GENDER EQUALITY AND WOMEN'S RIGHTS IN FRAGILE CONTEXTS 1 (2015), available at <http://www.oecd.org/dac/gender-development/Financing%20UN%20Security%20Council%20resolution%201325%20FINAL.pdf>.
- 27 OECD DAC NETWORK ON GENDER EQUALITY (GENDERNET), DONOR SUPPORT TO SOUTHERN WOMEN'S RIGHTS ORGANISATIONS 4 (2016).

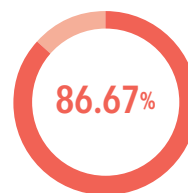
WOMEN, PEACE, AND SECURITY, COUNTER-TERRORISM, AND P/CVE



Of surveyed women's organizations work in conflict or post-conflict areas



Of surveyed women's organizations believe that counter-terrorism measures had an adverse impact on work for peace, women's rights, and gender equality generally



Of surveyed women's organizations believe that their organization's work contributes to combatting violent extremism and terrorism

women.²⁸ Financial support allocated by major donor countries to women's organizations to promote gender equality in poorer countries has reportedly dropped by more than 50 percent over the last five years.²⁹

The lack of resources for women's groups can in part be attributed to a shift in donor funding policies that have created an overall preference for giving grants to large projects or NGOs, including international NGOs in donor countries,³⁰ in ways that subsequently cut off funding to smaller and grassroots women's rights organizing and organizations. This shift involves:

- donors increasingly "equating scale of operations and institutional capacity with impact,"³¹ which makes it difficult for small women's groups to access funding;
- international NGOs undertaking programming on women's rights rather than being intermediaries who pass funds on to local grassroots women's groups and who instead may actually compete with such women's groups for funding;³²
- preference of humanitarian donors to send funding to "a few large international agencies over other international agencies—and to an extreme degree over local and national actors;"³³
- donor push for "value for money"³⁴ and measurability of results which can lead to a donor preference for short-term projects rather than providing the quality multi-year or core funding that women's groups need to operate in a sustainable way;³⁵

- funding that is provided to organizations in-country that often favors larger women's organizations over grassroots groups.³⁶

Squeezing of women's rights organizing and organizations between terror and counter-terror

The squeezing or trapping of women's rights organizing, organizations, and of gender equality between terrorism and violent extremism and its response, shows no signs of abating. A survey of women's civil society organizations for the *2015 Global Study on the Implementation of U.N. Security Council Resolution 1325* indicated that "84 per cent of the respondents stated that the emerging issues of concern were violent extremism and counter-terrorism."³⁷ In the survey of grassroots women's organizations undertaken for this Report, 86.67 percent of respondents classified their organization's work—including in areas such as peacebuilding and conflict resolution—as contributing to combatting terrorism and violent extremism. Yet, 90 percent said that counter-terrorism measures had an adverse impact on work for peace, women's rights, and gender equality generally. As one women's organization headquartered in Sub-Saharan Africa stated: "*Counterterrorism policy needs to acknowledge our resistance to terrorism as activists and communities; we are all seen as one right now—we are all lumped into the same box.*"

28 WOMEN AND GIRLS: CATALYSING ACTION TO ACHIEVE GENDER EQUALITY, HIGH-LEVEL LEADERS' ROUNDTABLE, *supra* note 23, at 2.

29 Liz Ford, *Funding for Women's Rights Groups in Poor Countries Falls by More than Half*, GUARDIAN (London), (Sept. 8, 2016), <https://www.theguardian.com/global-development/2016/sep/08/funding-womens-rights-groups-poor-countries-falls-awid-forum-brazil>.

30 E.S.C., Comm. on the Status of Women, Financing for Gender Equality and the Empowerment of Women, 52nd Sess., ¶ 67, U.N. Doc. E/CN.6/2008/2 (Dec. 2007) ("Donors are increasingly channelling their assistance via government agencies for distribution to NGOs, or are choosing to give to international NGOs located in donor countries. In addition, some donors prefer to fund large NGOs or projects, making access to funding difficult for smaller women's organizations. Limited funding and resources for women's organizations has created competition within the women's movement." (citations omitted)).

31 WATERING THE LEAVES, STARVING THE ROOTS, *supra* note 12, at 30.

32 *Id.* at 19.

33 CHRISTIAN ELS & NILS CARSTENSEN, FUNDING OF LOCAL AND NATIONAL HUMANITARIAN ACTORS 1 (2015), available at http://www.local2global.info/wp-content/uploads/l2gp_local_funding_final_250515.pdf.

34 See, e.g., U.K. DEP'T FOR INT'L DEV., DFID'S APPROACH TO VALUE FOR MONEY (VfM) 2 (2011) ("The purpose of the VfM drive is to develop a better understanding (and better articulation) of costs and results so that we can make more informed, evidence-based choices." (emphasis in original)).

35 WATERING THE LEAVES, STARVING THE ROOTS, *supra* note 12, at 125.

36 See, e.g., Bele Gau, *Supporting Women's Movements in Afghanistan: Challenges of Activism in a Fragile Context*, 24 GENDER & DEV. 409, 420 (2016).

37 PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 20.

3. Policy incoherence in countering terrorism financing and promoting women's rights organizing and organizations and gender equality

Countering terrorism financing and gender mainstreaming in counter-terrorism and P/CVE

The phenomenon of women's rights organizing and organizations being squeezed has taken on a new urgency in light of the recent impetus for States to mainstream gender³⁸ in their efforts to counter terrorism and P/CVE. This impetus includes increased efforts to:

- integrate the WPS and counter-terrorism and P/CVE agendas;
- encourage women's participation in counter-terrorism and P/CVE; and
- link gender inequality to terrorism and violent extremism.³⁹

In general terms, such efforts have exposed a fundamental challenge in how States think about the potential intersections of counter-terrorism and P/CVE with gender equality, women's rights organizing, and women's rights organizations. Namely, that "in reality, women are often already on the frontlines of combating terrorism and violent extremism in their communities, from assisting victims of terrorism to negotiating ceasefires to contributing to the equal and stable

societies."⁴⁰ Yet existing approaches to countering terrorism and P/CVE risk undermining these efforts and have raised a series of concerns about instrumentalization, securitization, backlash, and co-option, as well as how to protect a non-securitized space for women's rights organizing, women's rights organizations, and gender equality.⁴¹

Analyzing countering terrorism financing through a gender and human rights lens shows yet another fundamental policy incoherence in States' national security policies. On the one hand, P/CVE increasingly emphasizes the need for grassroots and localized efforts,⁴² including the participation of women. On the other, because of rules to combat terrorism financing, those are the very groups that are most difficult to fund.⁴³ Indeed, it has been noted that:

[O]ne of the unintended consequences of the overly broad U.S. law that prohibits the provision of "material support" to terrorism is that NGOs operating in conflict zones where foreign terrorist organizations operate are often unable to work in the areas where the need is greatest or partner with the most locally influential organizations because of the risk of being charged.⁴⁴

In such instances, countering terrorism financing rules can operate to "adversely affect civil society's ability to support and deliver local P/CVE interventions, some of which need to target 'former' extremists and 'defectors' if they are to have impact."⁴⁵ More broadly, governments act at cross-purposes when they fail to "[p]rovide civil society with the political and legal space to contribute to P/CVE efforts" due to "crack

38 See, e.g., *Gender Mainstreaming*, UN WOMEN, <http://www.un.org/womenwatch/osagi/gendermainstreaming.htm> (Mar. 2, 2017) ("Mainstreaming is not an end in itself but a strategy, an approach, a means to achieve the goal of gender equality. Mainstreaming involves ensuring that gender perspectives and attention to the goal of gender equality are central to all activities - policy development, research, advocacy/ dialogue, legislation, resource allocation, and planning, implementation and monitoring of programmes and projects.")

39 See Box 2: *Key U.N. statements on mainstreaming gender and promoting the participation of women in counter-terrorism and P/CVE*.

40 Jayne Huckerby, *The Complexities of Women, Peace, Security and Countering Violent Extremism*, JUST SECURITY (Sept. 24, 2015), <https://www.justsecurity.org/26337/womens-rights-simple-tool-counterterrorism/>.

41 See PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 222, 227-31 (recommending that governments should "[d]etach programming on women's rights from counter-terrorism and extremism, and all military planning and military processes" and to "[p]rotect women's and girls' rights at all times and ensure that efforts to counter violent extremism strategies do not stereotype, instrumentalize or securitize women and girls"); A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 26; Comm. on the Elimination of Discrimination Against Women, *Rec. No. 30 on Women in Conflict Prevention, Conflict and Post-conflict Situations*, ¶17, U.N. Doc. CEDAW/C/GC/30 (Oct. 18, 2013) [*hereinafter* CEDAW, *General Rec. No. 30*] (recommending that States parties "(b) Reject all forms of rollbacks in women's rights protections in order to appease non-State actors such as terrorists, private individuals or armed groups"); Jayne C. Huckerby, *Feminism and International Law in the Post 9/11 Era*, 39 *FORDHAM INT'L L. J.* 533, 580, 582 (2016); A/64/211, *supra* note 4, at ¶¶ 32-35; A/HRC/31/65, *supra* note 4, at ¶¶ 50, 56(d); GLOBAL COUNTERTERRORISM FORUM, *GOOD PRACTICES ON WOMEN AND COUNTERING VIOLENT EXTREMISM 2* (2015), available at <https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/A/GCTF-Good-Practices-on-Women-and-CVE.pdf> ("The human rights of women and girls . . . should be promoted and protected at all times and not just as a means for CVE.")

42 See, e.g., CHARITY AND SECURITY NETWORK, *FINANCIAL ACCESS FOR U.S. NON-PROFITS* viii (2017), available at http://www.charityandsecurity.org/system/files/FinancialAccessFullReport_2.21%20%282%29.pdf [*hereinafter* FINANCIAL ACCESS FOR U.S. NON-PROFITS] (highlighting the "vital role" of civil society organizations in engaging with and supporting local populations as a "key component of multilateral counterterrorism/countering violent extremism (P/CVE) initiatives").

43 See, e.g., Human Rights Council, *Rep. on Best Practices and Lessons Learned on how Protecting and Promoting Human Rights Contribute to Preventing and Countering Violent Extremism*, 33d Sess., ¶ 41, U.N. Doc. A/HRC/33/29 (July 21, 2016) (noting that because of countering terrorism financing rules and the situation of small, grassroots organizations, "[t]hese circumstances frequently result in the inability of small organizations to attract the funding needed for their operations and have a negative impact on the groups supported by them."). See *infra* notes 274-278 and 366-375 and accompanying text.

44 ERIC ROSAND, *THE PREVENTION PROJECT, COMMUNITIES FIRST: A BLUEPRINT FOR ORGANIZING AND SUSTAINING A GLOBAL MOVEMENT AGAINST VIOLENT EXTREMISM* 17, fn. 76 (2016), available at http://www.organizingagainstve.org/wp-content/uploads/2016/12/Communities_First_December_2016.pdf.

45 *Id.* at 17.

down on civil society's operating space and freedoms in the name or under the pretense of countering terrorism or violent extremism."⁴⁶

Women's rights organizing and the donor shift toward localization

When countering terrorism financing rules make it difficult to fund small grassroots organizations and efforts,⁴⁷ there is also a policy incoherence with the increased commitments that aid organizations and donors have expressed toward "localization." In recognition of the essential role of grassroots organizations—where much of women's rights organizing takes place⁴⁸—aid organizations and donors have recently called for a shift towards "localization," meaning increased support and funding to local and grassroots civil society. To date, localization has not been the norm; for example, in the area of humanitarian assistance, "[a]most half international humanitarian assistance (48%) from government donors continued to go first to six UN agencies with key roles in humanitarian coordination and response in 2013."⁴⁹ In contrast, approximately 18 percent goes directly to NGOs, "of which the vast majority was initially channelled through international NGOs."⁵⁰

One example of the recognition of the need to shift away from this funding landscape is reflected in the recent commitments contained in "The Grand Bargain,"⁵¹ through which aid organizations and donors—including the United States and several U.N. entities—commit to localization, through "[m]ore support and funding tools for local and national responders."⁵² This includes a commitment to "[a]chieve by 2020 a global, aggregated target of at least 25 per cent of humanitarian funding to local and national responders as directly as possible."⁵³ A number of other commitments contained in The Grand Bargain further this impetus toward support and funding of local and national civil society, including for example, commitments to:

- "[i]ncrease the use and coordination of cash-based programming;"⁵⁴
- "[i]ncrease multi-year, collaborative and flexible planning and multi-year funding instruments;"⁵⁵
- "[r]educe the earmarking of donor contributions;"⁵⁶ and
- "[s]implify and harmonise reporting requirements by the end of 2018 by reducing its volume, jointly deciding on common terminology, identifying core requirements and developing a common report structure."⁵⁷

46 *Id.*

47 See *infra* notes 274-278 and 366-375 and accompanying text.

48 See *infra* notes 289-299 and accompanying text.

49 GLOBAL HUMANITARIAN ASSISTANCE, DEVELOPMENT INITIATIVES, GLOBAL HUMANITARIAN ASSISTANCE, REPORT 2015: EXECUTIVE SUMMARY 5 (2015), available at http://www.globalhumanitarianassistance.org/wp-content/uploads/2015/06/GHA-report-2015_Executive-Summary.pdf.

50 *Id.*

51 WORLD HUMANITARIAN SUMMIT, THE GRAND BARGAIN: A SHARED COMMITMENT TO BETTER SERVE PEOPLE IN NEED (May 23, 2016), <https://consultations.worldhumanitariansummit.org/bitcache/075d4c18b82e0853e3d393e90af18acf734baf29?vid=580250&disposition=inline&op=view>. The Grand Bargain was proposed by the High-Level Panel on Humanitarian Financing that was appointed by the U.N. Secretary-General as part of the preparations for the World Humanitarian Summit convened by the U.N. in May 2016. See HIGH-LEVEL PANEL ON HUMANITARIAN FINANCING, REPORT TO THE SECRETARY-GENERAL: TOO IMPORTANT TO FAIL—ADDRESSING THE HUMANITARIAN FINANCING GAP (2015), <http://www.un.org/news/WEB-1521765-E-OCHA-Report-on-Humanitarian-Financing.pdf> (calling for the "recognition of the comparative advantages of local, national and international implementing organisations for delivery of services" (*id.* at vi.); for donors to "commit to more multiyear funding and less earmarking, since flexible funding is the lifeblood of humanitarian operations. And donors should simplify and harmonise their reporting requirements, leaving aid workers more time to perform their life-saving activities" (*id.* at vii.); and for "fewer links in the humanitarian funding chain." (*id.* at 17)).

52 THE GRAND BARGAIN: A SHARED COMMITMENT TO BETTER SERVE PEOPLE IN NEED, *supra* note 51, at 5.

53 *Id.*

54 *Id.* at 6.

55 *Id.* at 11.

56 *Id.* at 12.

57 *Id.* at 13.

Box 2: Key U.N. statements on mainstreaming gender and promoting the participation of women in counter-terrorism and P/CVE**Efforts to integrate WPS and the counter-terrorism and P/CVE agendas**

Expresses its intention to increase its attention to women, peace and security issues in all relevant thematic areas of work on its agenda, including in particular Protection of civilians in armed conflict, Post-conflict peacebuilding, The promotion and strengthening of the rule of law in the maintenance of international peace and security, Peace and Security in Africa, Threats to international peace and security caused by terrorist acts, and Maintenance of international peace and security.
S.C. Res. 2122, U.N. Doc. No. S/RES/2122 ¶ 3 (Oct. 18, 2013)

Reaffirming the need to increase attention to women, peace and security issues in all relevant thematic areas of work on its agenda, including in threats to international peace and security caused by terrorist acts, and noting the importance of incorporating the participation of women and youth in developing strategies to counter terrorism and violent extremism.
S.C. Res. 2195, U.N. Doc. No. S/RES/2195 preambular ¶ 14 (Dec. 14, 2014)

Calls for the greater integration by Member States and the United Nations of their agendas on women, peace and security, counter-terrorism and countering-violent extremism which can be conducive to terrorism, *requests* the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate to integrate gender as a cross-cutting issue throughout the activities within their respective mandates, including within country-specific assessments and reports, recommendations made to Member States, facilitating technical assistance to Member States and briefings to the Council, *encourages* the Counter-Terrorism Committee and Counter-Terrorism Committee Executive Directorate to hold further consultations with women and women's organizations to help inform their work, and *further encourages* the Counter-Terrorism Implementation Task Force to take the same approach in activities within its mandate.
S.C. Res. 2242, U.N. Doc. S/RES/2242 preambular ¶ 14 (Oct. 13, 2015)

Encouraging women's empowerment and participation in counter-terrorism and P/CVE

Noting the important contribution of women to the implementation of the Strategy, and encouraging Member States, United Nations entities and international, regional and subregional organizations to consider the participation of women in efforts to prevent and counter terrorism.
G.A. Res. 68/276, U.N. Doc. A/RES/68/276 preambular ¶ 20 (June 24, 2014)

Encourages Member States to engage relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narrative that can incite terrorist acts, address the conditions conducive to the spread of violent extremism, which can be conducive to terrorism, including by empowering youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society and adopt tailored approaches to countering recruitment to this kind of violent extremism and promoting social inclusion and cohesion.
S.C. Res. 2178, U.N. Doc. S/RES/2178 ¶ 16 (Sept. 24, 2014)

The [Security] Council encourages Member States to engage the participation and leadership of women and women's organizations, including refugee and internally displaced women, in developing strategies to counter violent extremism, and further to address, including by the empowerment of women, the conditions conducive to the spread of violent extremism.
S.C. Pres. Statement 2014/21, U.N. Doc. S/PRST/2014/21 ¶ 11 (Oct. 28, 2014)

Encourages States to engage with local communities and non-governmental actors through a whole-of-society approach in developing strategies that respect human rights and fundamental freedoms to counter narratives that incite acts of violent extremism and terrorism and address the conditions conducive to the spread of violent extremism, including by empowering women, religious, cultural, education and local leaders, engaging members of all concerned groups in civil society and from the private sector, adopting tailored approaches that incorporate human rights and fundamental freedoms to prevent and counter recruitment to this kind of violent extremism, and promoting social inclusion and cohesion.
U.N. Doc. A/HRC/30/L.25/Rev.1 ¶ 4 (Oct. 1, 2015)

Urges Member States and the United Nations system to ensure the participation and leadership of women and women's organizations in developing strategies to counter terrorism and violent extremism which can be conducive to terrorism, including through countering incitement to commit terrorist acts, creating counter narratives and other appropriate interventions, and building their capacity to do so effectively, and further to address, including by the empowerment of women, youth, religious and cultural leaders, the conditions conducive to the spread of terrorism and violent extremism which can be conducive to terrorism, consistent with the United Nations Global Counter-Terrorism Strategy (A/RES/60/288), *welcomes* the increasing focus on inclusive upstream prevention efforts and *encourages* the forthcoming Secretary-General's Plan of Action to Prevent Violent Extremism to integrate women's participation, leadership and empowerment as core to the United Nation's strategy and responses, *calls* for adequate financing in this regard and for an increased amount, within the funding of the UN for counter-terrorism and countering violent extremism which can be conducive to terrorism, to be committed to projects which address gender dimensions including women's empowerment.
S.C. Res. 2242, U.N. Doc. S/RES/2242 ¶ 13 (Oct. 13, 2015)

Encourages Member States to engage relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narrative that can incite terrorist acts, address the conditions conducive to the spread of violent extremism, which can be conducive to terrorism, including by empowering youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society and adopt tailored approaches to countering recruitment to this kind of violent extremism and promoting social inclusion and cohesion.
S.C. Res. 2250, U.N. Doc. No. 2250 ¶ 16 (Dec. 9, 2015)

Linking gender inequality to terrorism and violent extremism

The Security Council expresses with deep concern that violent extremism, which can be conducive to terrorism, often results in increased displacement, and is frequently targeted at women and girls, leading to serious human rights violations and abuses committed against them including murder, abduction, hostage taking, kidnapping, enslavement, their sale and forced marriage, human trafficking, rape, sexual slavery and other forms of sexual violence. The Council urges all Member States to protect their population in particular women and girls, affected by violent extremism which can be conducive to terrorism, whilst respecting all their obligations under international law, in particular international human rights, refugee and international humanitarian law. The Council encourages Member States to engage the participation and leadership of women and women's organizations, including refugee and internally displaced women, in developing strategies to counter violent extremism, and further to address, including by the empowerment of women, the conditions conducive to the spread of violent extremism. S.C. Pres. Statement 2014/21, U.N. Doc. S/PRST/2014/21, ¶ 11 (Oct. 28, 2014)

Women's empowerment is a critical force for sustainable peace. While women do sometimes play an active role in violent extremist organizations, it is also no coincidence that societies for which gender equality indicators are higher are less vulnerable to violent extremism. We must therefore ask ourselves how we can better promote women's participation, leadership and empowerment across society, including in governmental, security sector and civil society institutions. In line with Security Council resolution 2242 (2015), we must ensure that the protection and empowerment of women is a central consideration of strategies devised to counter terrorism and violent extremism. There is also a need to ensure that efforts to counter terrorism and violent extremism do not impact adversely on women's rights. I therefore recommend that Member States:

- (a) Mainstream gender perspectives across efforts to prevent violent extremism;
- (b) Invest in gender-sensitive research and data collection on women's roles in violent extremism, including on identifying the drivers that lead women to join violent extremist groups, and on the impacts of counter-terrorism strategies on their lives, in order to develop targeted and evidence-based policy and programming responses;
- (c) Include women and other underrepresented groups in national law enforcement and security agencies, including as part of counter-terrorism prevention and response frameworks;
- (d) Build the capacity of women and their civil society groups to engage in prevention and response efforts related to violent extremism;
- (e) Ensure that a portion of all funds dedicated to addressing violent extremism are committed to projects that address women's specific needs or empower women, as recommended in my recent report to the Security Council on women and peace and security (S/2015/716). U.N. Secretary General, *Plan of Action to Prevent Violent Extremism*, U.N. Doc. A/70/674 ¶ 53 (Dec. 24, 2015)

SECTION II. COUNTERING TERRORISM FINANCING: LEGAL, REGULATORY, AND INSTITUTIONAL FRAMEWORK

1. Overview and the post-9/11 context

“Money is the lifeblood of terrorist operations. Today, we’re asking the world to stop payment.”

President George W. Bush, upon signing Executive Order 13224 on September 23, 2001

Prior to September 11, 2001, there were almost no international standards specifically aimed at criminalizing or preventing the financing of terrorism.⁵⁸ Previous regulations on transnational financial crimes had largely focused on money laundering.⁵⁹ In the aftermath of the 9/11 attacks, the international community brought a new focus and urgency to prioritizing financial measures in its fight against terrorism and developing standards to address terrorist financing. On September 28, 2001, the U.N. Security Council acting under Chapter VII of the U.N. Charter unanimously adopted what would become a central component of its effort to counter terrorism financing, Resolution 1373;⁶⁰ on October 30, 2001, the inter-governmental body, the Financial Action Task Force expanded its mandate to address the risk of terrorist financing and adopted eight Special Recommendations on the topic;⁶¹ and on April 10, 2002 the *International Convention for the Suppression of the Financing of Terrorism* entered into force and currently has 187 parties and 132 signatories.⁶² The U.S. government played a particularly influential role in influencing the development of these standards at the multilateral level⁶³ while simultaneously developing a range of domestic rules rapidly,⁶⁴ often “under the radar, with the clear mission to revamp the way financial

tools were used”⁶⁵ and creating a “new era of financial warfare.”⁶⁶ Given both the impact of the USG on international standards at the U.N. and within FATF,⁶⁷ and the global reach of U.S. domestic standards,⁶⁸ this Section focuses on CTF measures at the international level by the U.N. and FATF, as well as the core components of U.S. countering terrorism financing rules. In particular, this Section first focuses on two types of CTF rules that have had particular implications for human rights and civil society, including for women’s rights organizing, women’s rights organizations, and gender equality: first, criminalization of terrorism financing and second, sanctions and asset freezing. It then turns to describe how these standards manifest in relation to donors, the practices of financial institutions, and in their focus on civil society.

What is terrorism financing and countering terrorism financing?

In its simplest terms, terrorism financing involves “provid[ing] or collect[ing] funds with the intention that they should be used or in the knowledge that they are to be used”⁶⁹ for terrorist activities or by designated terrorist organizations. Such “[f]unds may stem from both legal and illicit sources.”⁷⁰ In some cases, when funding has come from legal or legitimate sources, terrorism financing “has been referred to a ‘reverse money laundering’, which is a practice whereby ‘clean’ or ‘legitimate’ money is acquired and then funneled to support terrorism.”⁷¹ One core challenge with determining the scope of terrorism financing and its response is that none of the core international standards as contained in relevant U.N. Security Council resolutions, the *International Convention for the Suppression of the Financing of Terrorism*, and in the relevant FATF Recommendations,⁷² explicitly define “terrorism.”

The primary tools for countering the financing of terrorism at the international, regional, and national levels include measures to: crim-

58 For example, the International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, U.N. RES. 54/109 was adopted by the U.N. General Assembly on December 9, 1999 but did not enter into force until April 10, 2002. See generally NICHOLAS RYDER, THE FINANCIAL WAR ON TERRORISM: A REVIEW OF COUNTER-TERRORIST FINANCING STRATEGIES SINCE 2001 5 (2015); JIMMY GURULÉ, UNFUNDING TERROR: THE LEGAL RESPONSE TO THE FINANCING OF GLOBAL TERRORISM 4-5 (2010).

59 GURULÉ, *supra* note 58, at 4.

60 S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

61 FATF, FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, ANNUAL REPORT 2001-2002 4 (June 21, 2002), available at <http://www.fatf-gafi.org/media/fatf/documents/reports/2001%202002%20ENG.pdf>. A subsequent ninth recommendation was added in 2004. See *History of the FATF*, FATF, <http://www.fatf-gafi.org/about/historyofthefatf/>; see also GURULÉ, *supra* note 58, at 9; JUAN ZARATE, TREASURY’S WAR: THE UNLEASHING OF A NEW ERA OF FINANCIAL WARFARE 31-32 (2013). See further FATF, CONSOLIDATED FATF STRATEGY ON COMBATTING TERRORIST FINANCING 9-10 (Feb. 2016), available at <http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Terrorist-Financing-Strategy.pdf>; RYDER, *supra* note 58.

62 See International Convention for the Suppression of the Financing of Terrorism, G.A. Res. 54/109, U.N. Doc. A/RES/54/109 (Dec. 9, 1999), https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&clang=_en.

63 See, e.g., ZARATE, *supra* note 61, at 31 (noting that the U.S. Department of the Treasury’s strategy was to “leverage[] multilateral forums to address the issue of terrorist financing and to reiterate or define international obligations,” including in relation to FATF to steer this international anti-money-laundering body to focus on combating terrorist financing.”).

64 See RYDER, *supra* note 58, at 6.

65 ZARATE, *supra* note 61, at xi.

66 *Id.* at 12.

67 See *supra* note 63 and accompanying text.

68 See *infra* notes 75-83 and accompanying text.

69 *International Convention for the Suppression of the Financing of Terrorism*, *supra* note 62, art. 2.

70 *Anti-Money Laundering/Combating the Financing of Terrorism - Topics*, INT’L MONETARY FUND, <https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm>.

71 RYDER, *supra* note 58, at 5.

72 See *infra* notes 88-60 and accompanying text.

inalize terrorist financing; “targeted financial sanctions and terrorist asset freezing;” “equip law enforcement agencies and financial intelligence units (FIUs) with all necessary powers and resources;” “detect and prevent illicit cross-border transportation of cash;” “ensure prompt and constructive international and domestic cooperation;” and “take preventive measures to protect sectors that could be misused.”⁷³ In practice, as discussed further in Section IV., it is both the expansive application of these tools, as well as the use of additional measures under the guise of countering terrorism financing, that have particular human rights implications for women’s rights organizing, women’s rights organizations, and gender equality.

Key government and inter-governmental stakeholders in countering terrorist financing

The central role of combatting terrorist financing at both the international and domestic levels has increased the influence of certain stakeholders in government (e.g., economic and finance ministries),⁷⁴ inter-governmental (e.g., U.N. Security Council and the FATF), and non-State (e.g., financial institutions) entities in national security matters. Within the international community, the U.S. government has assumed a prominent role in not only setting international standards on countering terrorism financing, but also through the global reach of U.S. domestic counter-terror finance laws. In particular, the United States exercises extraterritorial jurisdiction to enforce its laws criminalizing material support to terrorism,⁷⁵ as well as jurisdiction over a broad range of financial transactions and institutions.⁷⁶ This jurisdiction over financial institutions has been particularly significant given “the centrality and stability of New York as a global financial center, the importance of the dollar as a reserve currency, and the demonstration effects of any steps, regulatory or otherwise, taken by the United States in the broader international system.”⁷⁷ For example, more than 99 percent of all U.S. dollar-clearing transactions⁷⁸—which “involves

the conversion of payments on behalf of clients into U.S. dollars from a foreign currency,⁷⁹—pass through clearing networks in New York, exposing all such transactions to U.S. jurisdiction and potential prosecution.⁸⁰ It is more generally critical for financial institutions to have a “fully operational banking presence”⁸¹ in the United States, which includes international banks that maintain “a bank account at a financial institution in the United States.”⁸² As a result, “[d]efying OFAC [the U.S. Department of the Treasury Office of Foreign Assets Control] is therefore not an option for most banks or businesses.”⁸³

Box 3: What is the Financial Action Task Force?

FATF is an “independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction,”⁸⁴ with its Secretariat housed at the headquarters of the OECD in Paris, France.⁸⁵ It is comprised of 35 Member States, two regional bodies (the European Commission and the Gulf Co-operation Council), and several associate members.⁸⁶ In addition, more than twenty international organizations including the International Monetary Fund (IMF) and the World Bank have observer status.⁸⁷

Established in 1989 by The Group of 7 (G-7) countries, FATF was initially mandated to focus on the prevention of money laundering through its 40 Recommendations, first published in 1990.⁸⁸ On October 30, 2001, during a FATF Special Plenary held in Washington, D.C.,⁸⁹ FATF expanded its remit to cover counter-terrorism and added Eight Special Recommendations specifically addressing terrorist financing.⁹⁰ A ninth recommendation was later added in October 2004.⁹¹ In February 2012, the FATF Rec-

73 CONSOLIDATED FATF STRATEGY ON COMBATTING TERRORIST FINANCING, *supra* note 61, at 1-2 (citations omitted).

74 For example, in the United States, this has involved the U.S. Department of the Treasury taking on a much larger role in U.S. national security matters after 9/11: see, e.g., ZARATE, *supra* note 61, at 46.

75 18 U.S.C. § 2339B(d)(2); 18 U.S.C. § 2339B(d)(1). See further CHARLES DOYLE, CONGRESSIONAL RESEARCH SERVICE (CRS), TERRORIST MATERIAL SUPPORT: AN OVERVIEW OF 18 U.S.C. 2339A AND 2339B 13 (Dec. 8, 2016), <https://www.fas.org/sgp/crs/natsec/R41333.pdf>.

76 See also 18 U.S.C. § 1956(b)(2); USA PATRIOT Act, Pub. L. No. 107-56, § 317 (Oct. 26, 2001); H.R. Rep. No. 107-250, pt. 1, 54-55 (2001).

77 ZARATE, *supra* note 61, at 12.

78 Duncan Kerr, *Clearing: European Banks Weigh up US Dollar Clearing Options*, EUROMONEY (Jan. 2015), <http://www.euromoney.com/Article/3412933/Clearing-European-banks-weigh-up-US-dollar-clearing-options.html> (“Tokyo, Hong Kong, Singapore and Manila are the only official offshore US dollar clearing centres, and the Federal Reserve only allowed them to be set up because of the time difference between Asia and the U.S.”). See also Yalman Onaran, *Dollar Dominance Intact as U.S. Fines on Banks Raise Ire*, BLOOMBERG (July 16, 2014), <https://www.bloomberg.com/news/articles/2014-07-15/dollar-dominance-intact-as-u-s-fines-on-banks-raise-ire> (“U.S. regulators can go after foreign banks doing dollar transactions anywhere in the world because almost all are routed through two clearing networks in the U.S.”).

79 Andrew R. Johnson, *Five Things on Dollar Clearing and BNP Paribas*, WALL ST. J. (Jun. 30, 2014), <http://blogs.wsj.com/briefly/2014/06/30/5-things-on-dollar-clearing-and-bnp-paribas/>.

80 See, e.g., *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161 (2d Cir. 2013) (holding that the purposeful maintenance of a correspondent bank account or transfer of international funds through a correspondent bank in New York was sufficient nexus to satisfy the New York long-arm jurisdiction statute).

81 See *Clearing: European Banks Weigh up US Dollar Clearing Options*, *supra* note 78 (“For most, if not all, major international banks, having a fully operational banking presence in the US, and specifically New York, is not just worthwhile but critical.”). See further Patrick Emmenegger, *The Long Arm of Justice: U.S. Structural Power and International Banking*, 17(3) BUS. & POL. 473, 473-493, (Oct. 2015) (“[B]anks in the liberal economic system can no longer survive without access to the US-controlled, dollar-based financial system, thus giving the USA structural power over banks.”).

82 See also 18 U.S.C. § 1956(b)(2).

83 ZARATE, *supra* note 61, at 26. In 2014 it was reported that close to “90 percent of the \$5.3 trillion a day in foreign-exchange transactions last year involved the dollar” and nearly all dollar transactions “are routed through two clearing networks in the U.S.” (*Dollar Dominance Intact as U.S. Fines on Banks Raise Ire*, *supra* note 78).

84 FATF, INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION – THE FATF RECOMMENDATIONS 2 (Feb. 2012, updated Oct. 2016), http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf [hereinafter FATF RECOMMENDATIONS].

85 FATF Secretariat, FATF, <http://www.fatf-gafi.org/about/fatfsecretariat/>.

86 *Members and Observers*, FATF, <http://www.fatf-gafi.org/about/membersandobservers/>.

87 *Id.*

88 *History of the FATF*, *supra* note 61; RYDER, *supra* note 58, at 43 (noting the 40 Recommendations sought to “provide a complete set of anti-money laundering procedures which covers the relevant laws and their enforcement, the activities and regulation of the financial system and matters relating to international cooperation.” (quoting J. Johnson, *Is the Global Financial System AML/CTF Prepared?*, 15(1) J. OF FIN. CRIME 7, 7-21, 8 (2008))).

89 FATF, FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, ANNUAL REPORT 2001-2002 5 (June 21, 2002), <http://www.fatf-gafi.org/media/fatf/documents/reports/2001%202002%20ENG.pdf>.

90 RYDER, *supra* note 58, at 9.

91 *History of the FATF*, *supra* note 61.

ommendations were consolidated into 40 recommendations, and subsequently updated in February 2013, October 2015, June 2016, and October 2016.⁹² These Recommendations “set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing.”⁹³ Along with their Interpretative Notes and Glossary, the Recommendations comprise the “FATF Standards” as contained in the *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*.⁹⁴ These FATF Standards are further complemented by non-mandatory FATF Guidance, Best Practice Papers and “other advice to assist countries with the implementation of the FATF standards.”⁹⁵

While the Recommendations are technically non-binding, they “have been endorsed by over 180 countries, and are universally recognised as the international standard for anti-money laundering and countering the financing of terrorism”⁹⁶ The FATF Standards have additionally been incorporated in multilateral instruments, including U.N. Security Council resolutions⁹⁷ and are utilized by entities such as the World Bank and IMF.⁹⁸ The FATF Recommendations are also the basis for regional rules

on anti-money laundering and countering terrorism financing (e.g., the European Union (E.U.) Fourth Anti-Money Laundering Directive).⁹⁹ At the domestic level, they are used by FATF in its mutual evaluations “of its members’ levels of implementation of the FATF Recommendations”¹⁰⁰ and countries deemed non-compliant face various adverse consequences, including isolation from global financial markets.¹⁰¹

These Recommendations essentially end up “creating a web of obligations around the world,”¹⁰² thus requiring human rights analysis of both the Recommendations and their implementation internationally, regionally, and domestically. Of these, Recommendation No. 8¹⁰³ on “Non-profit organisations” (NPOs)¹⁰⁴ has had particularly direct implications for civil society, primarily because until its revision on June 27, 2016 it had characterized NPOs as being “particularly vulnerable” to terrorist financing abuse.¹⁰⁵ Despite the influence of FATF’s standard-setting on governments and financial institutions, as well as the risks of adverse implementation of the standards, “[at] the local level, too many civil society organizations are unaware of the impact that the FATF and Recommendation 8 have on their day-to-day work.”¹⁰⁶

92 *Information on Updates Made to the FATF Recommendations*, FATF, <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html#UPDATES>.

93 FATF RECOMMENDATIONS, *supra* note 84, at 7.

94 *Id.* at 8.

95 *Id.*

96 *Id.* at 7.

97 S.C. Res. 1617, ¶ 7, U.N. Doc. S/RES/1617 (2005); S.C. Res. 2129, ¶ 17, U.N. Doc. S/RES/2129 (2013); S.C. Res. 2195, ¶ 5, U.N. Doc. S/RES/2195 (2014); S.C. Res. 2199, Preamble, U.N. Doc. S/RES/2199 (2015); S.C. Res. 2253, ¶¶ 16-17 U.N. Doc. S/RES/2253 (2015). See also The United Nations Global Counter-Terrorism Strategy, G.A. Res. 60/288, II ¶ 10, U.N. Doc. A/RES/60/288 (Sept. 20, 2006) (“To encourage States to implement the comprehensive international standards embodied in Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorist Financing, recognizing that States may require assistance in implementing them.”).

98 FATF Recommendations, *supra* note 84, at 8 (the FATF standards are accessed rigorously “through the assessment processes of the International Monetary Fund and the World Bank - on the basis of the FATF’s common assessment methodology.”)

99 See, e.g., Council Directive 2015/849, Preamble, 2015 O.J. 73 (EC), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0849> (“With a view to reinforcing the efficacy of the fight against money laundering and terrorist financing, the relevant Union legal acts should, where appropriate, be aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 . . .”). National governments of E.U. member states are required to implement the Directive’s requirements in law within two years of its enactment, i.e. by June 26, 2017: see *id.* art. 67. See also EUROPEAN COMMISSION, QUESTIONS AND ANSWERS: ANTI-MONEY LAUNDERING DIRECTIVE 1 (July 5, 2016), available at europa.eu/rapid/press-release_MEMO-16-2381_en.pdf. See generally, FINANCIAL ACTION TASK FORCE, HIGH-LEVEL PRINCIPLES & OBJECTIVES FOR FATF AND FATF-STYLE REGIONAL BODIES (FSRBS) 4 (2012), available at <http://www.fatf-gafi.org/media/fatf/documents/High-Level%20Principles%20and%20Objectives%20for%20FATF%20and%20FSRBS.pdf> (“[FATF-Style Regional Bodies] should actively promote the FATF Recommendations and support the actions of the FATF at the international level through its members’ implementation of and compliance with the FATF Recommendations, and through the adoption of policies consistent with FATF Recommendations and actions.”).

100 *Mutual Evaluations*, FATF, [http://www.fatf-gafi.org/publications/mutualevaluations/more/more-about-mutual-evaluations.html?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/more/more-about-mutual-evaluations.html?hf=10&b=0&s=desc(fatf_releasedate)). See also Kevin P. Newmeyer, *The FATF as a Model for Internet Governance*, CYBERSECURITY SUMMIT (WCS), 2D WORLDWIDE 2 (2011) (“By getting as many countries as possible to participate in the AML/CFT regime established by the FATF recommendations, the FATF leveraged its regional associates . . . If a country did not choose to follow and enforce the rules of the game, it risked being isolated from global financial markets and the negative impact to the country’s economy.”).

101 Kathryn L. Gardner, *Fighting Terrorism the FATF Way*, 13 GLOBAL GOVERNANCE 325, 333 (2007) (for countries deemed non-compliant through the FATF mutual evaluation process, FATF may “issue a statement requiring financial institutions to pay special attention to business transactions from the particular country, its citizens, and its businesses . . . Although nominally requiring increased ‘scrutiny’ of financial transactions, essentially this . . . measure restricts the access of the state, its financial institutions, and its citizens to the international market (or at least the percentage controlled by FATF member states) through higher barriers to entry.”).

102 ZARATE, *supra* note 61, at 32.

103 Originally Special Recommendation VIII was adopted in 2001, revised in 2003, then became Recommendation No. 8 when FATF published its updated recommendations that were adopted on February 16, 2012, and updated in February 2013, October 2015, June 2016, and October 2016. See *Information on updates made to the FATF Recommendations*, *supra* note 92. See further TOM KEATINGE, DEMOS, UNCHARITABLE BEHAVIOUR 30 (2014), available at <https://www.demos.co.uk/files/DEMOSuncharitablebehaviourREPORT.pdf>.

104 See FATF, BEST PRACTICES PAPER ON COMBATING THE ABUSE OF NON-PROFIT ORGANISATIONS, RECOMMENDATION 8 6-7 (2015), available at <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf> [hereinafter BEST PRACTICES PAPER] (identifying the FATF definition of an NPO as: “A legal person or arrangement or organisation 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.’”).

105 For previous text of Recommendation 8 prior to revisions, see FATF REPORT, RISK OF TERRORIST ABUSE IN NON-PROFIT ORGANISATIONS ¶ 1 (2014), <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf> [hereinafter TYPOLOGIES REPORT] (“Non-profit organisations: 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: (a) by terrorist organisations 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 organisations.”).

106 Iva Dobichina, *The Big Impact of the Little-Known “Recommendation 8,”* OPEN SOCIETY FOUND. (Jul. 11, 2016), <https://www.opensocietyfoundations.org/voices/big-impact-little-known-recommendation-8>.

2. Methods of countering terrorism financing

Criminalizing terrorism financing

As noted by the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

The adoption of binding international and regional instruments proscribing material support for terrorism, together with overbroad national legislation implementing those obligations or otherwise criminalizing such support, can pose a significant threat to civil society organizations, some of whose activities may—unwittingly—constitute indirect material support according to the definitions adopted.¹⁰⁷

The criminalization of terrorism financing was first addressed in an international instrument through the *International Convention for the Suppression of the Financing of Terrorism* in 1999.¹⁰⁸ Specifically, Article 4 of the Convention requires that States criminalize domestically the financing of terrorism,¹⁰⁹ which is defined in Article 2 as occurring “if that person by any means, directly 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”¹¹⁰ an offence within the Convention. Furthermore, it requires States to establish means of mutual inter-State co-operation and legal assistance (e.g., with criminal investigations into the financing of terrorism)¹¹¹ and to take a range of preventative measures, including those aimed at “financial institutions and other professions involved in financial transactions to . . . report transactions suspected of stemming from a criminal activity.”¹¹²

The impetus to criminalize the financing of terrorism was substantially furthered on September 28, 2001 when the U.N. Security Council unanimously adopted Resolution 1373.¹¹³ Described as “the central tenet of the UN’s legislative stance towards terrorist financing,”¹¹⁴ UNSCR 1373 paragraph 1(b) requires States to criminalize the funding of “terrorist acts”¹¹⁵ and paragraph 1(d) requires States to “prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly” for terrorist acts.¹¹⁶ In October 2001, when FATF expanded its mandate to address the risk of terrorist financing and adopted eight Special Recommendations on the topic,¹¹⁷ one of those recommendations was also focused on “[c]riminalising the financing of terrorism and associated money laundering.”¹¹⁸ Encouraging States to implement those FATF Special Recommendations, the U.N. Global Counter-Terrorism Strategy adopted in 2006¹¹⁹ further indicates that States should “cooperate fully in the fight against terrorism” including to “bring to justice” those involved in the financing of terrorist acts.¹²⁰

At the domestic level, criminalization of terrorist financing is now widespread. For example, a review of implementation of countering terrorism financing approaches in 194 jurisdictions, prepared for the Group of Twenty (G-20) leaders by FATF in November 2015, concluded that: “Almost all jurisdictions have criminalised terrorist financing as a distinct offence.”¹²¹ Across these laws, there can be variations that create a complex compliance web for civil society, including in relation to the “definition of terrorism in those laws, with varying levels of broadness and clarity; the diversity of the prohibitions that can have an impact on NGOs; the differing levels of required intent; and the varying scope of application of the laws *ratione loci*”¹²² as well as whether there are exemptions (e.g., for humanitarian purposes).¹²³

107 Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, 70th Sess., ¶ 31, U.N. Doc. A/70/371 (Sept. 18, 2015).

108 See *International Convention for the Suppression of the Financing of Terrorism*, *supra* note 62.

109 *Id.* at art. 4.

110 *Id.* at art. 2 (1).

111 *Id.* at art. 12.

112 *Id.* at art. 18.

113 S.C. Res. 1373, *supra* note 60; Press Release, Security Council, *Security Council Unanimously Adopts Wide-Ranging Anti-Terrorism Resolution; Calls for Suppressing Financing, Improving International Cooperation*, U.N. Press Release SC/7158 (Sept. 28, 2001).

114 RYDER, *supra* note 58, at 50.

115 S.C. Res. 1373, *supra* note 60, at ¶ 1(b).

116 *Id.* at ¶ 1(d).

117 See *supra* notes 88–95 and accompanying text.

118 FATF, FATF IX SPECIAL RECOMMENDATIONS 2 (Oct. 2001), available at <http://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Standards%20-%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf>.

119 The Strategy is contained in U.N. General Assembly Resolution 60/288, *supra* note 97. The Strategy and its review resolutions 62/272 (2008), 64/297 (2010), 66/282 (2012), 68/276 (2014), and 70/291 (2016) provide the core strategic framework and policy guidance to the collective effort of the U.N. system on countering terrorism: see further U.N. Global Counter-Terrorism Strategy, *supra* note 97, II, ¶ 10.

120 U.N. Global Counter-Terrorism Strategy, *supra* note 97, II, ¶¶ 1–2. Recently, criminalization has also focused on the phenomenon of foreign terrorist fighters: see, e.g., S/RES/2178, *supra* note 4, at ¶ 6(b). See also *id.* ¶¶ 4–5.

121 See FATF, TERRORIST FINANCING – FATF REPORT TO G20 LEADERS – ACTIONS BEING TAKEN BY THE FATF 3 (2015), available at <http://www.fatf-gafi.org/media/fatf/documents/reports/Terrorist-financing-actions-taken-by-FATF.pdf> (“Only four of the 194 jurisdictions reviewed (Brazil, the Czech Republic, Libya, and the Palestinian Authority) do not have a stand-alone offence of terrorist financing.”). See also A/70/371, *supra* note 107, at ¶ 33 (“Many States have now adopted legislation criminalizing material support”); *id.* at ¶ 34 (“Some jurisdictions also provide non-criminal sanctions that may affect civil society personnel, including their immigration status.”).

122 A/70/371, *supra* note 107, at ¶ 33.

123 *Id.* at ¶ 34.

Box 4: Material support under U.S. law: 18 U.S.C. § 2339B and Holder v. Humanitarian Law Project¹²⁴

The criminal offense of providing “material support” to terrorism first appeared in U.S. legislation under the 1994 Violent Crime Control and Law Enforcement Act, enacted as 18 U.S.C. 2339A, which criminalized support done with the intention of aiding terrorist or criminal acts.¹²⁵ Section 2339A “criminalizes donations and support if the provider specifically intends these donations to assist in known criminal acts. If a donor contributes to a terrorist organization without specifically knowing the donation would be used for criminal activity, the donors’ contributions are legal.”¹²⁶ To close any perceived or potential loophole and in response to the 1995 Oklahoma City bombing, U.S. Congress enacted a second “material support” provision under 18 U.S.C. 2339B(a)(1) through the Antiterrorism and Effective Death Penalty Act (AEDPA) in 1996, which prohibits “[w]hoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so”¹²⁷ Under this Section 2339B, “a person must have knowledge that the organization is a designated terrorist organization,”¹²⁸ and this knowledge of the organization’s designation is sufficient for a criminal prosecution; in other words, unlike Section 2339A, there is no requirement that an individual intended to support or advance any criminal acts.¹²⁹ As originally enacted in 1994, the term “material support or resources” also included an exemption for “humanitarian assistance to persons not directly involved in such violations.”¹³⁰ However, this exemption was deleted under AEDPA in 1996 and replaced by a narrower exception for

“medicine or religious materials.”¹³¹ The term “material support or resources” is defined by statute to include “property,” “financial services,” “lodging,” “expert advice or assistance,” “training,” and “personnel.”¹³² As noted above, U.S. laws proscribing material support to terrorism apply extraterritorially.¹³³

The U.S. Supreme Court upheld the statute on June 21, 2010 in the 6-3 decision in *Holder v. Humanitarian Law Project*, a ruling, which as characterized by the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has “reinforced” civil society concerns that material support laws “are often so broad and vague that they will end up being sanctioned for carrying out their activities even though they have taken every feasible precaution to avoid policies that could lead to the provision of indirect support for terrorist groups;”¹³⁴ had a “chilling effect on NGO operations;”¹³⁵ and also had “a very significant potential impact on humanitarian, human rights and advocacy organizations around the world.”¹³⁶

The plaintiffs in the case included two U.S. citizens and six domestic non-profit organizations that “wished to provide support for the humanitarian and political activities of the [Kurdistan Workers’ Party (aka Partiya Karkeran Kurdistan, or PKK) and the Liberation Tigers of Tamil Eelam (LTTE), both Designated Terrorist Organizations] in the form of monetary contributions, other tangible aid, legal training, and political advocacy, but that they could not do so for fear of prosecution under §2339B.”¹³⁷ Plaintiffs did not deny knowledge that the PKK and LTTE were listed as prohibited

124 *Holder v. Humanitarian Law Project*, 561 U.S. 1, 10 (2010).

125 18 U.S.C. § 2339A.

126 Holly Chapin, Note, *Clarifying Material Support to Terrorists: The Humanitarian Project Litigation and the U.S. Tamil Diaspora*, 20 J. OF INT’L SERVICE 69, 72 (2011); see 18 U.S.C. 2339A (criminalizing “material support” for knowing or intending that they are to be used in preparation for, or in carrying out “terrorist activities” (emphasis added)); see also David H. Pendle, Note, *Charity of the Heart and Sword: The Material Support Offense and Personnel Guilt*, 30 SEATTLE U. L. REV. 777, 783 (2007) (“§2339A did not foreclose the possibility of donors supporting criminals: a donor would not be liable for supporting a criminal so long as he or she did not know or specifically intend the aid to do so.”).

127 18 U.S.C. § 2339B(a)(1) (“Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989”). A third “material support” regulation was added under 18 U.S.C. 2339C in 2002 as part of the Terrorist Bombings Convention Implementation Act of 2002. See Terrorist Bombings Convention Implementation Act of 2002, Pub. L. 107-197, Preamble, (Jun. 25, 2002) (“To implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes.”).

128 18 U.S.C. § 2339B(a)(1); see also 18 U.S.C. § 2339B(g)(6) (“[T]he term ‘terrorist organization’ means an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act.”).

129 See further *Holder v. Humanitarian Law Project*, *supra* note 124, at 2-3 (holding that “§2339B’s text, which prohibits ‘knowingly’ providing material support and demonstrates that Congress chose knowledge about the organization’s connection to terrorism, not specific intent to further its terrorist activities, as the necessary mental state for a violation.”).

130 Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, Pub. L. 103-322, Title XII, § 120005.

131 Antiterrorism and Effective Death Penalty Act (AEDPA), Pub. L. 104-132, 104th Cong. (1996).

132 18 U.S.C. § 2339A(b)(1) (Material support includes “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.”). Training is defined under Section 2339A(b)(2) as “instruction or teaching designed to impart a specific skill, as opposed to general knowledge.” (18 U.S.C. § 2339A(b)(2)). Expert advice or assistance is a term added under the USA PATRIOT ACT in 2001 (*Holder v. Humanitarian Law Project*, *supra* note 124, at 11-12) and defined under Section 2339A(b)(3) as “advice or assistance derived from scientific, technical or other specialized knowledge” (18 U.S.C. 2339A(b)(3)). In relation to “Personnel”, amendments under Section 2339B(h) pursuant to the Intelligence Reform and Terrorism Act of 2004 (IRTPA), Pub. L. 108-458 clarified that “[n]o person may be prosecuted under this section in connection with the term ‘personnel’ unless that person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with 1 or more individuals (who may be or include himself) to work under that terrorist organization’s direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization. *Individuals who act entirely independently of the foreign terrorist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization’s direction and control*” (emphasis added) (18 U.S.C. § 2339B(h)). “Services,” was added under 2004 IRTPA, though not expressly defined under the material support statute; the Court clarified that the term “refers to concerted activity, not independent advocacy” (emphasis added) (*Holder v. Humanitarian Law Project*, *supra* note 124, at 23).

133 See *supra* notes 75-83 and accompanying text.

134 A/70/371, *supra* note 107, at ¶ 36.

135 *Id.*

136 *Id.* The majority opinion in many ways contributed to this uncertainty both by limiting the findings to the specific facts in the case without providing guidance in other circumstances; the Court expressly noted that “the material-support statute is constitutional as applied to the particular activities plaintiffs have told us they wish to pursue. We do not, however, address the resolution of more difficult cases that may arise under the statute in the future.” See *Holder v. Humanitarian Law Project*, *supra* note 124, at 8.

137 *Holder v. Humanitarian Law Project*, *supra* note 124, at 10.

foreign terrorist organizations (FTOs)¹³⁸ by the U.S. Secretary of State and instead claimed that they “seek to facilitate only the lawful, nonviolent purposes of those groups, and that applying the material-support law to prevent them from doing so violates the Constitution.”¹³⁹ The particular speech proposed by plaintiffs entailed trainings to PKK members “on how to use humanitarian and international law to peacefully resolve disputes” as well as “how to petition various representative bodies such as the United Nations for relief.”¹⁴⁰ The Court noted the fungibility of money in relation to designated FTOs and applied this similar reasoning to the fungibility of training to find that the intended activities of the plaintiffs would be illegal. For example, noting an incident in which the U.N. High Commissioner for Refugees was forced to close a camp in northern Iraq after it came under the control of the PKK, the Court noted that “[t]raining and advice on how to work with the United Nations could readily have helped the PKK in its efforts to use the United Nations camp as a base for terrorist activities.”¹⁴¹

Therefore, under U.S. laws on material support—given the absence of a requirement that an individual intended to support or advance any criminal acts; the existence of only a narrow exception for “medicine or religious materials;” wide interpretation of the term “material support or resources;” and its extraterritorial application—essentially “irrespective of their nationality, individuals working for civil society organizations anywhere in the world may now be prosecuted in the United States and incur up to 15 years imprisonment if they engage in one of the acts listed in the material support statute with an entity they knew was a designated foreign organization in the United States, or engaged in terrorist activity or acts of terrorism.”¹⁴²

Sanctions and freezing of assets

Prior to 9/11 and on October 15, 1999, UNSCR 1267¹⁴³ created a sanctions regime against the Taliban in Afghanistan.¹⁴⁴ Article 8 of the *International Convention for the Suppression of the Financing of Terrorism* more broadly required States Parties to take “appropriate measures” for the freezing and seizure of terrorist funds.¹⁴⁵ In the aftermath of the events of 9/11 and building on UNSCR 1267 and on the basis of UNSCR 1373, paragraph 1 (c),¹⁴⁶ Member States and regional entities¹⁴⁷ have subsequently created targeted sanctions regimes involving assets freezes, travel bans, and arms embargoes against individual and entities, including those associated with, *inter alia*, the Taliban, Osama Bin Laden, al Qaeda, Islamic State in Iraq and the Levant (ISIL, also known as Da’esh)¹⁴⁸ and the Al-Nusrah Front, wherever located.¹⁴⁹ As of 2010, “there were more than 200 different ‘terrorist’ lists across the world.”¹⁵⁰

In general terms, these sanctions regimes have been critiqued on a human rights basis, including because they:

[T]ypically result in a denial of access by listed individuals to their own property, a refusal of social security benefits, limitations on their ability to work and restrictions on their ability to travel domestically and internationally. They significantly interfere with the right to freedom of movement, property rights and the right to privacy in all its manifestations.¹⁵¹

138 Organizations are designated as foreign terrorist organizations (FTO) by the U.S. Secretary of State under a procedure authorized by Section 219 of the Immigration and Nationality Act, 8 U.S.C. 1189, which requires that: “(A) the organization is a foreign organization; (B) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) of this title or terrorism (as defined in section 2656(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism; and (C) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.”

139 Holder v. Humanitarian Law Project, *supra* note 124, at 8.

140 *Id.* at 21–22.

141 *Id.* at 38.

142 A/70/371, *supra* note 107, at ¶ 36.

143 S.C. Res. 1267, U.N. Doc. S/RES/1267 (1999).

144 In particular, S.C. Res. 1267 (1999), *supra* note 143, at ¶ 4(b) provides that Member States are required to: “Freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban”

145 *International Convention for the Suppression of the Financing of Terrorism*, *supra* note 62, Art. 8.

146 S.C. Res. 1373, *supra* note 60, at ¶ 1(c).

147 See A/70/371, *supra* note 107, at ¶ 32 (“Resolution 1373 (2001), paragraph 1 (c), has also been the basis on which national Governments and regional entities have set up sanction regimes applicable to individuals and entities designated as terrorist that supplement the United Nations Al-Qaida sanctions regime under Council resolution 1267 (1999)”).

148 The Islamic State in Iraq and the Levant (or ISIL) is also referred to as The Islamic State in Iraq and Syria or the Islamic State in Iraq and al-Sham (or ISIS), and Da’esh. For consistency, this Report uses the term Islamic State in Iraq and the Levant as referred to in relevant U.N. Security Council resolutions (see, e.g., S.C. Res. 2253, U.N. Doc. No. S/RES/2253 preambular ¶ 2 (Dec. 17, 2015)) without endorsing the term.

149 S.C. Res. 1267, *supra* note 143, was adopted before 9/11 but has been modified, strengthened, and addressed by subsequent resolutions, including resolutions 1333 (2000), 1390 (2002), 1452 (2002), 1455 (2003), 1526 (2004) 1617 (2005), 1735 (2006), 1735 (2006), 1822 (2008), 1904 (2009), 1989 (2011), 2083 (2012), 2161 (2014), 2170 (2014), 2178 (2014), 2199 (2015), 2214 (2015), 2253 (2015). See further Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Rep. of the Special Rapporteur on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, transmitted by Note of the Secretary-General*, U.N. Doc. A/65/258, ¶ 52 (Aug. 6, 2010) (“While resolution 1267 (1999) could be seen as a temporary emergency measure by the Security Council, using its Chapter VII powers to address a specific threat to peace and security, the regime is no longer limited in time or space.”).

150 Ben Hayes, *How International Rules on Countering the Financing of Terrorism Impact Civil Society*, TRANSNATIONAL INST. (TNI) (May 8, 2013), <https://www.tni.org/es/node/1452>.

151 Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, transmitted by Note of the Secretary-General*, General Assembly 67th Sess., ¶ 13, U.N. Doc. A/67/396 (Sept. 26, 2012).

In particular, the wide scope of UNSCR 1373¹⁵² has been significant for the human rights implications of sanctions and asset freezing as it leaves States free to decide unilaterally who to designate and does not mention humanitarian exemptions on a case-by-case basis “thus leaving it to individual States to decide whether to include them in their own national regimes.”¹⁵³ Similarly, the implementation of UNSCR 1267 has been critiqued from a human rights perspective, including for its “failure to incorporate a mechanism of independent judicial review”¹⁵⁴ and more broadly for “the due process deficits inherent in the Council’s Al-Qaida sanctions regime” that stems from the Resolution.¹⁵⁵

The U.S. government also adopted measures for sanctions and freezing of assets that have been particularly influential. Passed in 1977, the International Emergency Economic Powers Act (IEEPA) authorizes the President to declare “any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.”¹⁵⁶ If such threat is formally declared, IEEPA grants authority to, *inter alia*, seize and freeze assets.¹⁵⁷ On September 23, 2001, President George W. Bush signed Executive Order 13224 pursuant to this authority under the IEEPA, which authorized the U.S. government to “designate and block the assets of foreign individuals and entities that commit, or pose a significant risk of committing, acts of terrorism . . . and the assets of individuals and entities that provide support, services, or assistance to, or otherwise associ-

ate with, terrorists and terrorist organizations.”¹⁵⁸ According to the Charity and Security Network, “[w]hile the Executive Order allows a variety of sanctions to be imposed, over the past decade, Treasury has invoked some of the harshest sanctions against charities.”¹⁵⁹ The number of U.S. freezing orders against Islamic charities and other NGOs has been particularly marked.¹⁶⁰

3. Additional aspects of countering terrorism financing affecting civil society

Donor requirements

Due to the strictures of these legal regimes, private, government, and inter-governmental donors increasingly have put clauses in funding and partnership agreements that require “NGOs to provide onerous guarantees that their funds are not used to benefit terrorists or to support acts of terrorism.”¹⁶¹ Such clauses generally require grant recipients:

[T]o be aware of counter-terrorism legislation and to take concrete steps to ensure that funds are not used directly or indirectly to support terrorism and/or designated groups. Most clauses also require that these obligations are passed on to implementing partners, contractors or sub-grantees. All require notification where funds are utilised by, or a “link” discovered to, an entity designated as terrorist.¹⁶²

Known as counter-terrorism clauses, these clauses are present in contracts between many government, multilateral, and private donors and NGOs, and in some cases between the primary NGO receiving the donor grants and sub-contractors or

152 ZARATE, *supra* note 61, at 33 (noting that the resolution’s scope “was intentionally broad to ensure that the international community was putting broad measures into place to go after terrorist financing.”).

153 A/70/371, *supra* note 107, at ¶ 32.

154 A/67/396, *supra* note 151, at ¶ 12.

155 *Id.* at ¶ 1; see further Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, Human Rights Council, 29th Sess., ¶ 38, U.N. Doc. A/HRC/29/51 (June 16, 2015) (noting in respect of “shortcomings of the sanctions regime that the United Nations has established with regard to Al-Qaida, in particular . . . [that] concerns remain that most of the shortcomings that had been identified still remain valid and that the regime continues to fall short of international minimum standards of due process” and analyzing human rights shortcomings in the U.N. Security Council’s response to the Islamic State in Iraq and the Levant (*id.* at ¶¶ 35–45)).

156 50 U.S.C. § 1701(a); International Emergency Economic Powers Act (IEEPA), Pub. L. 95-223, 91 Stat. 1626 (1977).

157 50 U.S.C. § 1702(a)(1)(B).

158 *Executive Order 13224*, U.S. DEP’T OF STATE, OFFICE OF THE COORDINATOR OF COUNTERTERRORISM, <https://www.state.gov/j/ct/rls/other/des/122570.htm>. The Order specifically authorizes both the Secretary of State and the Secretary of the Treasury, in consultation with each other and the Attorney General, to designate individuals and entities as terrorist groups.

159 CHARITY & SECURITY NETWORK, SAFEGUARDING HUMANITARIANISM IN ARMED CONFLICT: A CALL FOR RECONCILING INTERNATIONAL LEGAL OBLIGATIONS AND COUNTERTERRORISM MEASURES IN THE UNITED STATES 9 (2012), available at <http://www.charityandsecurity.org/system/files/Safeguarding%20Humanitarianism%20Final.pdf>.

160 Rensselaer Lee, CONG. RESEARCH SERV., TERRORIST FINANCING: THE U.S. AND INTERNATIONAL RESPONSE 5 (Dec. 6, 2002), available at <http://burgess.house.gov/uploaded-files/wot%20-%20terrorist%20financing%20the%20u.s.%20and%20international%20response.pdf> (“Most controversial of all, perhaps, have been the U.S. freezing orders against Islamic charities and other nongovernmental organizations (NGOs).”).

161 A/70/371, *supra* note 107, at ¶ 33. See also FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 78 (“Donors are increasingly requiring NPOs to sign clauses in grant and partnership agreements requiring implementation of specific anti-bribery, anti-fraud and anti-terrorism-financing policies.”).

162 Kate Mackintosh & Ingrid Macdonald, *Counter-terrorism and Humanitarian Action*, HUMANITARIAN PRACTICE NETWORK, HUMANITARIAN EXCHANGE, No. 58, 24 (2013), available at <http://odihpn.org/wp-content/uploads/2013/08/HE58web.pdf>.

sub-grantees of that primary NGO.¹⁶³ On the government level, these clauses are utilized, for example, by Australia, Canada, and the United States, while the United Kingdom reserves “discretion to insert clauses in ‘high-risk’ contexts.”¹⁶⁴ An example of a U.S. donor counter-terrorism clause is as follows:

The Recipient is reminded that U.S. Executive Order and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Recipient to ensure compliance with these Executive Orders and laws. This provision must be included in all sub-contracts/sub-awards issued under this agreement.¹⁶⁵

On the inter-governmental level, one U.N. contract contained the following contract clause:

The Service Provider agrees to undertake all reasonable efforts to ensure that none of the funds received from [Grantor] under this Agreement are used to provide support to individuals or entities associated with terrorism, as included in the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999) This provision must be included in all subcontracts or sub-agreements entered into under this Agreement.¹⁶⁶

In addition to counter-terrorism clauses, some government donors may impose anti-terrorism financing restrictions pursuant to other mechanisms. For example, when various USG agencies are donors this can entail requirements for anti-terrorism certificates¹⁶⁷ and additional explicit requirements related to vetting (e.g., the United States Agency for International Development (USAID)/Department of State Partner Vetting System (PVS) and State Department Risk Analysis and Management (RAM)¹⁶⁸), including longer-standing rules governing the provision of USAID assistance in the West Bank and Gaza Strip.¹⁶⁹ This increase in donor regulations—particularly contract counter-terrorism clauses—has been well documented in the humanitarian space,¹⁷⁰ and also has an adverse impact on peacebuilding and other civil society groups.¹⁷¹

Financial institutions: reduced risk appetite, increased de-risking

Financial institutions and a risk-based approach

As noted by the U.N. Special Rapporteurs on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and on the rights to freedom of peaceful assembly and of association, denial of access to financial services to civil society affects a range of human rights, including the right to freedom of association.¹⁷² Financial institutions are at

- 163 NORWEGIAN REFUGEE COUNCIL, RISK MANAGEMENT TOOLKIT IN RELATION TO COUNTERTERRORISM MEASURES 9 (2015), available at <https://www.nrc.no/globalassets/pdf/reports/nrc-risk-management-toolkit-2015.pdf>. See also *id.* at 8 (noting that these clauses are also often found in “pooled fund agreements, where the pooled funds are financed by donor states.”).
- 164 Kate Mackintosh & Patrick Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action*, U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AID & NORWEGIAN REFUGEE COUNCIL 69 (2013), available at https://docs.unocha.org/sites/dms/documents/ct_study_full_report.pdf [hereinafter STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES].
- 165 COUNTERTERRORISM AND HUMANITARIAN ENGAGEMENT PROJECT, AN ANALYSIS OF CONTEMPORARY COUNTERTERRORISM-RELATED CLAUSES IN HUMANITARIAN GRANT AND PARTNERSHIP AGREEMENT CONTRACTS 57 (2014), http://blogs.harvard.edu/cheproject/files/2013/10/CHE_Project_-_Counterterrorism-related_Humanitarian_Grant_Clauses_May_2014.pdf.
- 166 *Id.* at 51.
- 167 See, e.g., USAID, CERTIFICATIONS, ASSURANCES, OTHER STATEMENTS OF THE RECIPIENT AND SOLICITATION STANDARD PROVISIONS 4 (2016), available at <https://www.usaid.gov/sites/default/files/documents/1868/303mav.pdf>.
- 168 Commencing in July 2015, USAID and Department of State have been implementing a pilot Partner Vetting System (PVS) program in Guatemala, Kenya, Lebanon, the Philippines, and Ukraine (USAID/State Partner System Pilot Program, USAID, <https://www.usaid.gov/work-usaid/partner-vetting-system>). The aim of PVS is to “help mitigate the risk that USAID funds and other resources could inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists” (*Partner Vetting in USAID Assistance*, USAID (July 27, 2015), <https://www.federalregister.gov/documents/2015/06/26/2015-15017/partner-vetting-in-usaid-assistance>). The Department of State “has been implementing RAM in the same pilot countries since 2012 and has not provided a clear end date to the pilot” (INTERACTION, PVS AND RAM: BACKGROUND AND ADVOCACY 1 (2015), available at <https://www.interaction.org/sites/default/files/PVS%20and%20RAM%20Background%20and%20Asks.pdf>). See also *60-Day Notice of Proposed Information Collection: Risk Analysis and Management (RAM)*, FED. REGISTER (Jan. 28, 2015), <https://www.federalregister.gov/documents/2015/01/28/2015-01590/60-day-notice-of-proposed-information-collection-risk-analysis-and-management-ram>. For assessments of the human rights challenges of PVS and RAM, including in relation to the right to privacy see COUNTERTERRORISM AND HUMANITARIAN ENGAGEMENT PROJECT, IMPLICATIONS OF THE USAID PARTNER VETTING SYSTEM AND STATE DEPARTMENT RISK ANALYSIS AND MANAGEMENT SYSTEM UNDER EUROPEAN UNION AND UNITED KINGDOM DATA PROTECTION AND PRIVACY LAW (2014); PVS AND RAM: BACKGROUND AND ADVOCACY, *id.*
- 169 USAID has been implementing vetting programs since 2007 in West Bank Gaza, alongside “three other formal anti-terrorism measures: (1) the anti-terrorism certification (ATC) . . . (2) mandatory clauses reminding contractors and grantees of their legal duty to comply with applicable anti-terrorism laws and regulations . . . and (3) a clause implementing the restriction imposed by Section 559(c) of the FY 06 Appropriations Act” (USAID WEST BANK/GAZA, MISSION ORDER No. 21, UPDATED ANTI-TERRORISM PROCEDURES 3 (2007), available at <https://www.usaid.gov/sites/default/files/documents/1883/2007-WBG-26.pdf>).
- 170 See generally STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES, *supra* note 164; AN ANALYSIS OF CONTEMPORARY COUNTERTERRORISM-RELATED CLAUSES IN HUMANITARIAN GRANT AND PARTNERSHIP AGREEMENT CONTRACTS, *supra* note 165; INTER-AGENCY STANDING COMMITTEE HUMANITARIAN FINANCING TASK TEAM, DONOR CONDITIONS AND THEIR IMPLICATIONS FOR HUMANITARIAN RESPONSE (2016), available at https://interagencystandingcommittee.org/system/files/20160416_donor_conditions_study_final_0.pdf.
- 171 See generally TERESA DUMASY & SOPHIE HASPELAGH, PROSCRIBING PEACE: THE IMPACT OF TERRORIST LISTING ON PEACEBUILDING ORGANISATIONS (Jan. 2016), available at http://www.c-r.org/downloads/Conciliation_Resources_Counter-terrorism_brief.pdf [hereinafter PROSCRIBING PEACE].
- 172 A/70/371, *supra* note 107, ¶¶ 42-43; Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai - Addendum - Mission to the United Kingdom of Great Britain and Northern Ireland, Human Rights Council, 23d Sess., ¶¶ 84-85, U.N. Doc. A/HRC/23/39/Add.1 (June 17, 2013) (“Denial of banking facilities including bank accounts and funds transfer facilities without reasonable suspicion that the targeted organization or transaction constitutes support of terrorism or money laundering is a violation of the right to freedom of association”: *id.* at ¶ 85).

the forefront of enforcing CTF legal and regulatory rules, applying a risk-based approach (RBA)¹⁷³ to “identify, assess and take effective action to mitigate their money laundering and terrorist financing risks,”¹⁷⁴ including through heightened requirements following the 9/11 attacks.¹⁷⁵ Countries, in turn, also subject banks “to adequate regulation and supervision” for their anti-money laundering (AML)/CTF measures.¹⁷⁶ The risk management practices of financial institutions primarily address five areas:

- “[a]ssessment, understanding, management and mitigation of risks;”¹⁷⁷
- customer due diligence (CDD) or potentially enhanced due diligence (EDD) requirements, including identification and verification of new customers;¹⁷⁸
- ongoing monitoring “in relation to all business relationships and transactions;”¹⁷⁹
- “management of information,” including record-keeping requirements;¹⁸⁰ and
- reporting of suspicious transactions to the relevant authority and taking action such as asset freezing if necessary.¹⁸¹

In theory, a RBA is meant to enable financial institutions to calibrate their AML/CTF measures according to the level of risk in bank-

ing relationships and transactions (e.g., to apply simplified due diligence where there are lower risks).¹⁸² However, in practice, a variety of factors incentivize banks to apply strict and increasingly risk-averse approaches to reduce their exposure and “implement risk-averse protocols . . . in order to shield themselves from any possible risk of liability under counter-terrorism legislation.”¹⁸³

These drivers and how they manifest to undermine access to financial services for women’s rights organizations are addressed more fully in Section IV.3, but in broad terms they include:

- high costs for financial crime compliance (e.g., costs related to onboarding and ongoing monitoring of customers);¹⁸⁴
- incidence and fear of enforcement actions and formal regulatory criticism (particularly by U.S. regulators and courts), including high fines for AML/CTF breaches;
- reputational risk involving “the risk of damage to one’s brand resultant from public attention to perceived wrongdoing;”¹⁸⁵
- low profitability of certain clients (e.g., civil society);¹⁸⁶ and
- regulatory confusion that mitigates in favor of risk-averse approaches.¹⁸⁷

- 173 FATF RECOMMENDATIONS, *supra* note 84, Interpretive Note to Rec. 1, ¶ 1 (“The risk-based approach (RBA) is an effective way to combat money laundering and terrorist financing.”). See *further* FATF, Guidance for a Risk-Based Approach: The Banking Sector (2014), available at <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Banking-Sector.pdf>.
- 174 FATF Recommendations, *supra* note 84, Rec. 1 (“Countries should require financial institutions and designated non-financial businesses and professions (DNFBPs) to “identify, assess and take effective action to mitigate their money laundering and terrorist financing risks.”); FATF Recommendations, *supra* note 84, Interpretive Note to Rec. 1, ¶ 2 (“The general principle of a RBA is that, where there are higher risks, countries should require financial institutions and DNFBPs to take enhanced measures to manage and mitigate those risks; and that, correspondingly, where the risks are lower, simplified measures may be permitted.”).
- 175 For example, in the United States, Congress amended the Bank Secrecy Act (BSA) through Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56, 115 Stat. 272 (2001), which “criminalized the financing of terrorism and augmented the existing BSA framework by strengthening customer identification procedures; prohibiting financial institutions from engaging in business with foreign shell banks; requiring financial institutions to have due diligence procedures and, in some cases, enhanced due diligence (EDD) procedures for foreign correspondent and private banking accounts; and improving information sharing between financial institutions and the U.S. government” (FED. FIN. INSTS. EXAMINATION COUNCIL, BANK SECRECY ACT/ANTI-MONEY LAUNDERING EXAMINATION MANUAL 4 (2014), available at https://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2014_v2.pdf). See also *Bank Secrecy Act*, OFFICE OF THE COMPTROLLER OF THE CURRENCY, <http://www.occ.treas.gov/topics/compliance-bsa/bsa/index-bsa.html> (“The [Bank Secrecy Act (BSA)] was amended to incorporate the provisions of the USA PATRIOT Act which requires every bank to adopt a customer identification program as part of its BSA compliance program.”).
- 176 FATF Recommendations, *supra* note 84, Rec. 26.
- 177 Basel Comm. on Banking Supervision, Guidelines: Sound Management of Risks Related to Money Laundering and Financing of Terrorism 4 (2016), available at <http://www.bis.org/bcbst/publ/d353.pdf> [hereinafter Guidelines: Sound Management of Risks Related to Money Laundering and Financing of Terrorism]. See *generally* Guidance for a Risk-Based Approach: The Banking Sector, *supra* note 173. See *further* FATF Recommendations, *supra* note 84, Recs. 10, 12, 19, and Interpretive Notes.
- 178 Guidelines: Sound Management of Risks Related to Money Laundering and Financing of Terrorism, *supra* note 177, at 7.
- 179 *Id.* at 10.
- 180 *Id.* at 11.
- 181 *Id.*
- 182 FATF Recommendations, *supra* note 84, Interpretive Note to Rec. 1, ¶ 2. See also CTR. FOR GLOBAL DEV., UNINTENDED CONSEQUENCES OF ANTI-MONEY LAUNDERING POLICIES FOR POOR COUNTRIES 5-6 (2015), available at <http://www.cgdev.org/sites/default/files/CGD-WG-Report-Unintended-Consequences-AML-Policies-2015.pdf> [HEREINAFTER UNINTENDED CONSEQUENCES OF ANTI-MONEY LAUNDERING POLICIES] (“Theoretically, the RBA allows regulators and compliance officers to allocate resources most effectively by allowing them to apply simplified due diligence where risk is low . . . it is difficult and risky to identify low-risk transactions and products for terrorist financing in order to apply simplified due diligence.”).
- 183 A/70/371, *supra* note 107, at ¶ 42. See *further* UNINTENDED CONSEQUENCES OF ANTI-MONEY LAUNDERING POLICIES, *supra* note 182, at 5-6.
- 184 JOHN HOWELL & CO. LTD. FOR THE FINANCIAL CONDUCT AUTHORITY, DRIVERS AND IMPACTS OF DERISKING 7 (2016), <https://www.fca.org.uk/publication/research/drivers-impacts-of-derisking.pdf> [hereinafter DRIVERS AND IMPACTS OF DERISKING]; UNINTENDED CONSEQUENCES OF ANTI-MONEY LAUNDERING POLICIES, *supra* note 182, at vii; BRITISH BANKERS’ ASS’N (BBA), RESPONSE TO CUTTING RED TAPE REVIEW, THE EFFECTIVENESS OF THE U.K.’S AML REGIME 2 (2015), available at <https://www.bba.org.uk/policy/bba-consultation-responses/bba-response-to-cutting-red-tape-review-effectiveness-of-the-uks-aml-regime/> (highlighting that the BBA estimates its “members are spending at least £5 Billion annually collectively on core financial crime compliance including enhanced systems and controls and recruitment of staff (not including the direct costs from fines AML/CTF breaches.”).
- 185 UNINTENDED CONSEQUENCES OF ANTI-MONEY LAUNDERING POLICIES, *supra* note 182, at 12. UNCHARITABLE BEHAVIOR, *supra* note 103, at 50-51.
- 186 UNCHARITABLE BEHAVIOR, *supra* note 103, at 49 (“Return (or profitability) is obviously important. Without profit, banks, like most private sector entities, cannot function.”).
- 187 UNINTENDED CONSEQUENCES OF ANTI-MONEY LAUNDERING POLICIES, *supra* note 182, at vii (“However, regulators sometimes send mixed signals about whether and how banks and other entities should manage their ML/TF risk, which sometimes results in simplistic risk assessment methodologies being applied by these entities.”).

In particular, for low-profit civil society clients, “[w]ithout positive incentives to offer services to NPOs, banks’ risk-reward calculation will continue to be weighted towards de-risking. Given the central role the U.S. plays in international finance, this impacts NPOs globally.”¹⁸⁸

Banks have indicated that their practices to counter terrorism financing have particularly impacted the following customer sectors and products: “trade finance,” correspondent banking relationships (CBRs),¹⁸⁹ “money service businesses, (including remittances), embassy accounts, PEPs [politically exposed persons], charities/NGOs, safe custody, bank notes, cash intensive businesses, gambling related businesses, segments of retail customers who are seen a higher risk and/or certain nationalities as well as businesses operating in particular countries subject to sanctions, terrorist financing or corruption concerns.”¹⁹⁰ In terms of the nature and scope of impacts of de-risking on civil society in the United States, a 2017 Charity and Security Network report found that two-thirds of all U.S.-based NPOs “that conduct international work are experiencing obstacles in accessing financial services,”¹⁹¹ and the “two most common problems encountered by NPOs are delayed wire transfers (affecting almost 37% of all NPOs) and increased fees (affecting approximately 33%).”¹⁹² Indeed, in addition to impacts on civil society, the World Bank has recently found that de-risking has increasingly led to the termination of correspondent banking relationships, as well as the closure of the accounts of money services businesses (MSBs).¹⁹³ Both of these phenomena—impacts on correspondent banking relationships and MSBs—have flow on effects that undermine

women’s rights organizing, women’s rights organizing, and gender equality, that will be further discussed below in Section IV.3.

Defining de-risking and why it matters

There has been debate over how best to encapsulate this phenomenon of how financial institutions apply a RBA to address terrorism financing risks. The term “de-risking” is now the “standard term” used,¹⁹⁴ although there is debate over its definition that has implications for identifying the full range of impacts of decisions of financial institutions on women’s rights organizing, women’s rights organizations, and gender equality.

A narrow definition of “de-risking,” that is favored by some States, focuses on the wholesale versus case-by-case decisions of banks to close accounts of “certain customer or product sectors.”¹⁹⁵ In practice, however, de-risking is much broader than wholesale closure of accounts,¹⁹⁶ such that “[t]otal withdrawal from a specific sector or customer group is at the farthest end of the de-risking spectrum.”¹⁹⁷ Instead, “more frequent” examples of financial crime risk management include: limiting services (e.g., cash clearing activity, bank notes) offered to certain relationships, “[c]urtailing certain products and services in and for certain countries and customer sectors,” and “limiting . . . exposure to certain higher risk customer sectors.”¹⁹⁸ In addition, a focus on de-risking as wholesale de-banking has tended to involve a focus on account closures by financial institutions in certain country contexts, specifically the United States, Australia, and the United Kingdom,¹⁹⁹ often excluding an assessment of how

- 188 Letter from 58 Nonprofit Organizations to Jacob J. Lew, Dept. of the Treasury & John Kerry, Secretary of State 2 (Feb. 25, 2016), http://www.charityandsecurity.org/system/files/Sign%20on%20tr%20fin%20Access_1.pdf [hereinafter *Charity and Security Network Feb. 2016 Joint Letter*].
- 189 FATF RECOMMENDATIONS, *supra* note 84, at 115 (correspondent banking is “the provision of banking services by one bank (the ‘correspondent bank’) to another bank (the ‘respondent bank’). Large international banks typically act as correspondents for thousands of other banks around the world.”); UNCHARITABLE BEHAVIOUR, *supra* note 103, at 48 (when moving money from one bank account to its final intended destination, there will often be “one (or more) banks, so-called ‘correspondent banks’, in[to] the chain resulting in a string of correspondent banks being used to move money from account to account across the globe.”).
- 190 BRITISH BANKING ASS’N (BBA), ET AL., DE-RISKING: GLOBAL IMPACT AND UNINTENDED CONSEQUENCES OF EXCLUSION AND STABILITY 18 (October 2014 FATF Plenary, Discussion Paper, 2014), available at https://classic.regonline.com/custImages/340000/341739/G24%20AFI/G24_2015/De-risking_Report.pdf [hereinafter DE-RISKING: GLOBAL IMPACT AND UNINTENDED CONSEQUENCES].
- 191 FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 38.
- 192 *Id.* at 39.
- 193 See WORLD BANK, REPORT ON THE G20 SURVEY IN DE-RISKING ACTIVITIES IN THE REMITTANCE MARKET (2015), available at <http://documents.worldbank.org/curated/en/679881467993185572/pdf/101071-WP-PUBLIC-GPFI-DWG-Remittances-De-risking-Report-2015-Final-2.pdf>; WORLD BANK, WITHDRAWAL FROM CORRESPONDENT BANKING: WHERE, WHY, AND WHAT TO DO ABOUT IT (2015), available at <http://documents.worldbank.org/curated/en/679881467993185572/pdf/101071-WP-PUBLIC-GPFI-DWG-Remittances-De-risking-Report-2015-Final-2.pdf>.
- 194 WORLD BANK, STAKEHOLDER DIALOGUE ON DE-RISKING 1 (2016), available at <http://files.acams.org/pdfs/2016/Derisking-Final.pdf>.
- 195 DE-RISKING: GLOBAL IMPACT AND UNINTENDED CONSEQUENCES, *supra* note 190, at 5 (“The most notable example is a bank ceasing to provide accounts to certain customer or product sectors.”). See also FATF, *FATF Clarifies Risk-based Approach: Case-by-case, not Wholesale De-risking* (Oct. 23, 2014), <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/rba-and-de-risking.html> (FATF defines “de-risking” as “the phenomenon of financial institutions terminating or restricting business relationships with clients or categories of clients to avoid, rather than manage, risk in line with the FATF’s risk-based approach.”).
- 196 John Byrne, “Let’s Work Together” – De-risking, De-marketing, or Financial Exclusion: Solution Elusive as long as we Refuse to Listen, BANKING EXCHANGE (June 10, 2016), <http://www.bankingexchange.com/blogs-3/aml-fraud/item/6292-let-s-work-together> (stating that wholesale exiting of categories of clients “actually rarely happens”).
- 197 DE-RISKING: GLOBAL IMPACT AND UNINTENDED CONSEQUENCES, *supra* note 190, at 5. See also DRIVERS AND IMPACTS OF DERISKING, *supra* note 184, at 22 (“We found no overt policies of not banking entire sectors for AML/CFT reasons.”).
- 198 DE-RISKING: GLOBAL IMPACT AND UNINTENDED CONSEQUENCES, *supra* note 190, at 5.
- 199 TRACEY DURNER & LIAT SHETRET, GLOBAL CTR ON COOP. SEC., UNDERSTANDING BANK DE-RISKING AND ITS EFFECTS ON FINANCIAL INCLUSION 1 (2015), available at <http://www.globalcenter.org/wp-content/uploads/2015/11/rr-bank-de-risking-181115-en.pdf> (“‘De-risking’ refers to financial institutions exiting relationships with and closing the accounts of clients considered ‘high risk.’ There is an observed trend toward de-risking of money service businesses, foreign embassies, nonprofit organizations, and correspondent banks, which has resulted in account closures in the US, the UK, and Australia.”).

de-risking effects manifest at the grassroots level. This focus further fails to recognize how risk assessment tools may define a set of customers “outside [the banks’] risk appetite,”²⁰⁰ including the exclusion of entire categories that “are likely to share certain characteristics of geography, sector, business type,”²⁰¹ particularly those operating in regions or countries deemed to be high-risk and in low-profit sectors. As such, because many of the criteria that are used to analyze risk factors of a particular banking relationship “are essentially about the nature of the customer’s business,”²⁰² generic factors such as the client’s geography and sector are often inherently part of the case-by-case decision-making by financial institutions. This means that when it comes to assessing whether this is wholesale versus case-by-case decision-making this may be “a distinction without a difference in that a bank’s decision on risk assessment may be the same whether it is undertaken on a case by case basis or wholesale basis, because the factors applied will not vary too much.”²⁰³

Because a full account of the adverse impacts of countering terrorism financing rules is hindered by a narrow definition of “de-risking” as referring only to when financial institutions engage in the wholesale closure of bank accounts, rather than encapsulating other reductions or impacts on financial services (e.g., delays in transfers or refusal to release funds), this Report instead uses a broader understanding of de-risking as a process of reducing or lowering risk exposure,²⁰⁴ in order to encapsulate the full range of restrictions on financial services that impact women’s rights organizing, women’s rights organizations, and gender equality.

Passing the buck: regulatory authorities and deputized banks

Regulatory authorities and banks, in many instances, “are blaming each other for the problem and to date have done little to solve it,”²⁰⁵ such that “[g]overnment points to the private sector, banks point at regulators, and NPOs are frustrated and left without financial services.”²⁰⁶ On the one hand, as mentioned above, fi-

ancial institutions are at the forefront of enforcing CTF legal and regulatory rules, with regulatory authorities having “increasingly turned to banks to act as guardians of the national and international financial borders against breach by terrorist financiers.”²⁰⁷ In practice, this is not always a role that banks welcome: from the high costs to ensure compliance with AML/CTF processes, the risks of enforcement action by governments for breaches, lack of regulatory clarity on what is required of banks, as well as—for some banks—a recognition that their risk-averse approaches to AML/CTF have actually deprived “legitimate” customers of banking services, in many cases the banks have become the unwilling face of overly restrictive CTF legal and regulatory regimes, and advocates of the need to “consider fundamental reforms to the AML/CTF framework.”²⁰⁸

At the same time, governments often fail to acknowledge the full extent to which they are responsible for setting the CTF legal and regulatory environment that shapes how financial institutions approach the assessment of risk and development of a RBA, instead placing the responsibility with banks by emphasizing that governments cannot intervene in bank decision-making. For example, in the United States, the Department of the Treasury recently stated that: “Treasury cannot direct any bank to open or maintain a particular account or relationship—such decisions must be made by banks themselves.”²⁰⁹

In other cases, regulatory authorities and banks can speak at cross-purposes. For example, while international regulators such as FATF²¹⁰ and domestic regulators such as the U.K.’s Financial Conduct Authority²¹¹ clarify that wholesale de-risking is not required by regulatory guidelines, banks have continued to be just as “adamant” that they do implement a risk-based approach and “do not ‘wholesale de-risk.’”²¹² This mismatch means that banks’ perception of the high risk of regulatory enforcement action—a key driver of banks’ low risk appetite—remains unchanged.²¹³ Between regulatory confusion and a tendency to point fingers at

200 DRIVERS AND IMPACTS OF DERISKING, *supra* note 184, at 24.

201 *Id.* at 24–25.

202 *Id.* at 20.

203 *Id.* at 19.

204 See, e.g., DE-RISKING: GLOBAL IMPACT AND UNINTENDED CONSEQUENCES, *supra* note 190, at 5. Cf. UNINTENDED CONSEQUENCES OF ANTI-MONEY LAUNDERING POLICIES, *supra* note 182, at 16.

205 Charity and Security Network Feb. 2016 Joint Letter, *supra* note 188, at 1.

206 FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at viii.

207 UNCHARITABLE BEHAVIOR, *supra* note 103, at 49–50. ZARATE, *supra* note 61, at 10 (noting that in the wake of 9/11, the U.S. Treasury Department quickly realized “that private-sector actors—most importantly the banks—could drive the isolation of rogue entities more effectively than governments—based principally on their own interests and desires to avoid unnecessary banking and reputational risk.”).

208 RESPONSE TO CUTTING RED TAPE REVIEW, THE EFFECTIVENESS OF THE U.K.’S AML REGIME, *supra* note 184, at 1 (see also *id.*: “The costs of financial crime compliance for the British banking industry have gone beyond a ‘tipping point’ in comparison with the AML/CTF benefits being accrued.”). See also, e.g., Rob Barry & Rachel Louise Ensign, *Losing Count: U.S. Terror Rules Drive Money Underground*, WALL ST. J., (Mar. 30, 2016), <https://www.wsj.com/articles/losing-count-u-s-terror-rules-drive-money-underground-1459349211> (quoting Maureen Carollo, the compliance chief at Great Plains National Bank in Oklahoma, “We’ve been deputized by the long arm of the law whether we wanted it to happen or not.”).

209 Jennifer Fowler, *Treasury Efforts to Protect and Support the Charitable Sector*, U.S. DEP’T OF THE TREASURY (Apr. 28, 2016), <https://www.treasury.gov/connect/blog/Pages/Treasury-Efforts-to-Protect-and-Support-the-Charitable-Sector.aspx>.

210 FATF Clarifies Risk-based Approach: Case-by-case, not Wholesale De-risking, *supra* note 195.

211 *Derisking: Banks’ Management of Money-laundering Risk*, FIN. CONDUCT AUTH., <https://www.fca.org.uk/about/what/enforcing/money-laundering/derisking>.

212 DRIVERS AND IMPACTS OF DERISKING, *supra* note 184, at 22.

213 UNINTENDED CONSEQUENCES OF ANTI-MONEY LAUNDERING POLICIES, *supra* note 182, at 26 (“These attempts by regulators to clarify their position on de-risking are to be welcomed, but may not be having much effect on banks’ perceptions of regulatory risk, especially if those perceptions are being predominantly driven by the incidence of AML/CTF-related enforcement actions.”).

each other, the resulting situation is often an impasse in which civil society is in the crosshairs.²¹⁴

Undue focus on risk of terrorism financing abuse of civil society

In the aftermath of the events of September 11, 2001, domestic and international regulators also turned their attention to the risks of terrorist financing abuse of civil society, also often referred to in different regulatory frameworks as NGOs, non-profit organizations or NPOs (e.g., in FATF Recommendations), or charities or the charitable sector (e.g., in USG rules). These regulatory standards have important trickle-down effects and strongly influence, for example, the behavior of both national regulatory authorities and financial institutions.²¹⁵ On the latter, as discussed above, financial institutions' de-risking practices have particularly affected civil society, resulting in the "terminating or restricting the access of legitimate NPOs to financial services, or taking longer to process transactions of NPOs."²¹⁶ On the former, FATF has itself acknowledged there is a "concern that some national responses to international standards have misused FATF recommendations to justify the abuse of civil society for political purposes, particularly to suppress dissent."²¹⁷

Adverse impacts of casting all NPOs as "particularly vulnerable" under former Recommendation No. 8

As discussed above, since October 2001, FATF has had a specific Recommendation focused on "Non-profit organisations" and the funding of terrorists, terrorist acts, and terrorist organizations.²¹⁸ This Recommendation was driven by a concern that NPOs could, for example, be responsible for the "diversion of funds" to terrorist entities, maintain an "affiliation with a terrorist entity," "provide support to recruitment efforts," be "targeted for abuse of programming," and/or be abused by terrorist entities through "false representation," meaning that "terrorist entities started 'sham'

NPOs or falsely represented themselves as the agents of 'good works' in order to deceive donors into providing support."²¹⁹ To that end, up until their most recent revision on June 27, 2016, Recommendation No. 8 and its Interpretive Note (INR.8) had taken a blanket approach to the sector that characterized all NPOs as being "particularly vulnerable" to terrorist financing abuse.²²⁰ This previous version of Recommendation 8—and the breadth of its approach to civil society of which it was both symptomatic and generative—was widely critiqued on a range of human rights and efficacy grounds, including:

- **Lack of evidence supporting the claim that NPOs are "particularly vulnerable" to terrorist financing abuse:** The assumption that NPOs are inherently or "particularly vulnerable" to abuse has long been disputed by the sector itself, as well as some U.N. entities and domestic regulatory authorities. For example, as noted by the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

[W]hile opportunities for abuse exist and there are examples in which the financing of terrorism through civil society has been established, several key stakeholders have put the scope of the problem in perspective. The World Bank has recognized that the amounts involved represent only a fraction of a percentage of total NPO funds. The Government of the United Kingdom of Great Britain and Northern Ireland, in its review of the charitable sector in 2007, noted that its assessment, together with law enforcement and intelligence agencies, was that "the scale of terrorist links to the charitable sector is extremely small in comparison to the size of the charitable sector", and in 2015 the Joint Committee on the Draft Protection of Charities Bill of the United Kingdom confirmed that "[t]he consensus of opinion is that abuse, distinct from honest mistakes and persistent mismanagement, is rare in the charity sector". For its part, the United Nations Counter-Terrorism Implementation Task Force Working Group on Tackling the Financing of Terrorism noted that "[i]t is important to be realistic about the actual use of this sector for terrorism financing. As a percentage of the total NPO financial flows, [terrorism funding]-related funds are very small". It also recommended that States "avoid rhetoric that ties NPOs to terrorism financing in general terms because it overstates the threat and unduly damages the NPO sector as a whole."²²¹

214 See, e.g., FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at viii ("U.S. policymakers and regulators appear reluctant to take NPOs' concerns seriously or to address these issues. Skepticism, along with long-held attitudes that the NPO sector is high-risk, pervades many discussions, from the policy levels down to individual bank examiners. FIs are likewise reluctant to devote resources to address issues regulators do not treat as a priority.").

215 DRIVERS AND IMPACTS OF DERISKING, *supra* note 184, at 27 ("[B]anks rely (and are expected to rely) on sources such as FATF standards and guidance . . . In all the ML/TF high risk sectors identified, there is some form of signalling from the authorities that the sector does pose some form of threat or have inherent vulnerabilities.").

216 BEST PRACTICES PAPER, *supra* note 104, at ¶ 64. See also *Charity and Security Network Feb. 2016 Joint Letter*, *supra* note 188, at 1 ("It is increasingly difficult for these nonprofit organizations (NPOs) to access financial services that are necessary to keep their operations going. Banks may delay, or refuse to make, transfers between organizations. Sometimes, NPOs are turned away as customers or have their accounts closed.").

217 TYPOLOGIES REPORT, *supra* note 105, at ¶ 86.

218 See *Information on updates made to the FATF Recommendations*, *supra* note 92. See further UNCHARITABLE BEHAVIOR, *supra* note 103, at 30.

219 TYPOLOGIES REPORT, *supra* note 105, at ¶ 13.

220 For previous text of Recommendation 8 prior to revisions, see TYPOLOGIES REPORT, *supra* note 105, at ¶ 1.

221 A/70/371, *supra* note 107, at ¶ 22 (citations omitted). See also Letter from Jennifer Fowler, Deputy Asst. Sec'y, Terrorist Fin. & Fin. Crimes, U.S. Dep't of the Treasury & Andrew N. Keller, Deputy Asst. Sec'y, Bureau of Econ. and Bus. Affairs, U.S. Dep't of State, to Kay Guinane Director, Charity & Security Network 3 (May 13, 2016), available at <http://www.charityandsecurity.org/system/files/Joint%20Response%20letter%20to%20NPO%20on%20reduced%20access%20to%20financial%20services%20May%202016%20signed.pdf> [hereinafter *U.S. Dep't of Treasury & State May 2016 Letter*] ("It is important to emphasize the Treasury Department's view that the charitable sector as a whole does not present a uniform or unacceptably high risk of money laundering, terrorist financing or sanctions violations.").

Additionally, this focus on NPO vulnerability fails to recognize that “very few, if any, instances of terrorism financing have been detected as a result of CSO [civil society organization]-specific supervisory measures.”²²²

- **Lack of sectoral equity in treatment of NPOs compared to the private sector:** The U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association has noted the need for “sectoral equity, noting that commercial companies and other entities have been abused for terrorist purposes,”²²³ such that States should “avoid measures that disproportionately target or burden civil society organizations, such as imposing onerous vetting rules, procedures or other CSO-specific requirements not applied to the corporate sector writ large.”²²⁴
- **Encourages regulatory authorities and financial institutions to adopt a “zero tolerance” approach to civil society:** The identification of NPOs as “particularly vulnerable,” could in some cases lend itself to financial institutions adopting a “zero tolerance” approach towards civil society, meaning that such institutions were encouraged to interpret the regulatory expectation of AML/CTF controls and compliance as being a strict standard in which no errors will be tolerated.²²⁵
- **Enables crackdown on civil society under the guise of implementing FATF Recommendation No. 8:** FATF Recommendations, including Recommendation No. 8, introduce a strong “risk of over-regulation,”²²⁶ providing an opportunity for “restrictive measures . . . which have been misused by States to violate international law.”²²⁷ According to the U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association, “FATF and other similar regulations . . . pos[e] a serious, disproportionate and unfair threat to those who have no connection with terrorism, including civil society organizations.”²²⁸ In this respect, it is

also relevant that in mutual evaluations, FATF “has rarely criticized overregulation and lack of respect for human rights, focusing instead on cases of insufficient regulation.”²²⁹

- **Absence of international human rights guarantees in FATF Recommendations:** The U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association has critiqued FATF’s “fail[ure] to provide for specific measures to protect the civil society sector from undue restrictions to their right to freedom of association by States asserting that their measures are in compliance with FATF Recommendation 8.”²³⁰ Similarly, the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has noted that the:

[A]bsence in recommendation 8 of any reference to the right of freedom of association (and its corollary, the ability to access financial resources) and to the need to respect the principles of legality, proportionality, necessity and non-discrimination, has lent a veneer of legitimacy to States that have adopted legislation without due respect for their international human rights obligations.²³¹

- **Broad application to all civil society actors:** In practice, it has been argued that national authorities and FATF and other regional body evaluators who assess the application of FATF Recommendations—particularly Recommendation No. 8’s precursor, Special Recommendation VIII—“do not take into account the fact that the recommendation addresses only a particular (limited) class of NPOs and rather evaluate the application of the measures proposed under SR VIII to the entire NPO sector rather than to the subset”²³²

This emphasis on an overly-prescriptive approach toward mitigating the risks of terrorist abuse of the civil society sector has been reflected in domestic countering terrorism financing rules.²³³

222 Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, *Rep. of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, Human Rights Council, 23d Sess., Special, ¶ 25, U.N. Doc. A/HRC/23/39 (Apr. 24, 2013).

223 *Id.* at ¶ 24.

224 *Id.* See also BEST PRACTICES PAPER, *supra* note 104, at ¶ 64 (“The FATF recognises the importance of ensuring that implementation of its Recommendations does not adversely and disproportionately affect NPOs.”).

225 It has instead been noted that such a zero tolerance approach is not required when applying the risk-based approach toward civil society. See, e.g., Fowler, *supra* note 209; U.S. *Dep’t of Treasury & State May 2016 Letter*, *supra* note 221, at 3. But see FATF AND ASIA/PACIFIC GROUP ON MONEY LAUNDERING (APG), ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING MEASURES: UNITED STATES, FOURTH ROUND EVALUATION REPORT 88 (2016).

226 Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, *Rep. of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, transmitted by Note of the Secretary-General, ¶ 35, U.N. Doc. A/69/365 (Sep. 1, 2014). See also Ben Hayes, *Counter-Terrorism, “Policy Laundering,” and the FATF: Legalizing Surveillance, Regulating Civil Society*, TRANSNATIONAL INST. & STATEWATCH 44 (Apr. 2012), <http://www.icnl.org/research/journal/vol14iss1/feature.html>; CIVICUS STATE, YEAR IN REVIEW: CIVIL SOCIETY AT THE GLOBAL LEVEL 8-9 (2016), available at http://civicus.org/images/documents/SOC52016/summaries/YIR_Civil-Society-Working-At-The-Global-Level.pdf; ECNL, EUR. FOUND. CTR. & HUMAN SEC. COLLECTIVE, ILLUSTRATIVE LIST OF OVERREGULATION OF NON PROFIT ORGANIZATIONS (NPOs) 1 (2015), available at http://fatfplatform.org/wp-content/uploads/2015/07/Catalogue-of-government-overregulation-July-2015_final-edited.pdf.

227 A/HRC/23/39, *supra* note 222, at ¶ 25.

228 A/69/365, *supra* note 226, at ¶ 36.

229 A/70/371, *supra* note 107, at ¶ 26 (citations omitted).

230 A/HRC/23/39, *supra* note 222, at ¶ 25.

231 A/70/371, *supra* note 107, at ¶ 26.

232 EMILE VAN DER DOES DE WILLEBOIS, NONPROFIT ORGANIZATIONS AND THE COMBATTING OF TERRORISM FINANCING: A PROPORTIONATE RESPONSE 10 (World Bank, Working Paper, 2010), <https://openknowledge.worldbank.org/bitstream/handle/10986/5926/578790PUB0Comb101public10BOX353783B.pdf?sequence=1>.

233 For analysis of the challenges in the U.S. government’s approach to countering terrorism financing rules and the charitable sector see CHARITY & SECURITY NETWORK / COUNCIL ON FOUNDS., FATF MUTUAL EVALUATION OF THE UNITED STATES: IMPACT ON NONPROFIT ORGANIZATIONS AND ALIGNMENT WITH FATF PRINCIPLES (July 6, 2015), available at <http://www.cof.org/sites/default/files/documents/files/FATFEvalCover-Memo.pdf> [hereinafter FATF MUTUAL EVALUATION OF THE UNITED STATES: IMPACT ON NONPROFIT ORGANIZATIONS]; INDEP. SECTOR ET AL., HANDBOOK ON COUNTER-TERRORISM MEASURES: WHAT U.S. NONPROFITS AND GRANTMAKERS NEED TO KNOW vi-vii (2004), available at <http://www.cof.org/sites/default/files/documents/files/CounterTerrorismHandbook.pdf>.

June 2016 revisions to Recommendation No. 8 and its Interpretative Note

On June 27, 2016, both Recommendation No. 8 and its Interpretative Note were revised to bring them more in line²³⁴ with the findings set out in the FATF *Typologies Report on Risk of Terrorist Abuse of NPOs*²³⁵ of June 2014 and the *FATF Best Practices on Combatting the Abuse of NPOs*²³⁶ of June 2015.

Box 5: Revised FATF Recommendation 8: Non-profit organisations (June 27, 2016)

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 which the country has identified as being vulnerable to terrorist financing abuse.** Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused. **Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse including:**

- (a) by terrorist organisations posing as legitimate entities;
- (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.²³⁷

The revised Recommendation No. 8 and its revised Interpretative Note emphasize five points that are particularly important from a human rights perspective:

- **Deletes “particularly vulnerable” language:** The new language deletes the description of NPOs in Recommendation No. 8 as being “particularly vulnerable” and states that the “Recommendation only applies to those NPOs which fall within the FATF definition of an NPO. It does not apply to the entire universe of NPOs.”²³⁸ As clarified in the *Best Practices* paper, Recommendation No. 8 and its Interpretative Note should only be applied to NPOs that (1) fall within the FATF definition of an NPO²³⁹ and (2) of those, only those that “pose the greatest risk of terrorist financing abuse.”²⁴⁰
- **Recommends a “targeted” risk-based approach:** The new language stresses that the implementation of Recommendation No. 8 and INR.8 should follow a “targeted” risk-based approach,²⁴¹ meaning one that involves “effective and proportionate measures, which should be commensurate to the risks identified through a risk-based approach.”²⁴² As such, INR.8 also states that a “one-size-fits-all” approach would be inconsistent with the proper implementation of a risk-based approach,” notes that “existing regulatory or other measures may already sufficiently address the current terrorist financing risk to the NPOs” and provides an illustrative list of some examples of measures that “could be applied to NPOs, in whole or in part, depending on the risks identified.”²⁴³

234 *Information on Updates Made to the FATF Recommendations*, *supra* note 92. Because FATF also produces Guidance, Best Practice Papers, and other documents to help guide implementation of Recommendations and their Interpretative Notes, a FATF *Typologies Report on Risk of Terrorist Abuse of NPOs* (TYPOLOGIES REPORT, *supra* note 105) was released in June 2014 to more concretely analyze and define the risk of terrorist abuse of the NPO sector. This *Typologies Report* found that not all NPOs were the same in terms of risk and that the different risk factors for NPOs correlated with (1) their types of activities and (2) whether they carried out those activities “in populations that are also targeted by terrorist movements for support.” (TYPOLOGIES REPORT, *supra* note 105, at ¶ 80). While this effort to develop a theory of how different NPOs were differently vulnerable to terrorist abuse was a welcome step, it still sent somewhat of a mixed message to national authorities. In particular, the *Typologies Report’s* focus on NPOs as having “interconnected vulnerabilities” (TYPOLOGIES REPORT, *supra* note 105, Key Finding 1); being subject to five categories of abuse or risk (from diversion of funding to the existence of sham charities) (TYPOLOGIES REPORT, *supra* note 105, at ¶ 13); and the use of 102 case studies to demonstrate the use of NPOs to support terrorist organizations, kept the NPO sector firmly in the spotlight of CTF legal and regulatory environments even while it aimed to stress that all NPOs should not be considered equally at risk. This blanket approach to the NPO sector changed somewhat in June 2015 when FATF revised its *Best Practices on Combatting the Abuse of NPOs*. Its main contribution was to specify that Recommendation No. 8 and its Interpretative Note did not apply to all NPOs such that when implementing a risk-based approach, a “one size fits all” approach to all NPOs is not appropriate” (BEST PRACTICES PAPER, *supra* note 104, at 4). The *Best Practices* paper also speaks to the risks that come from singling out the NPO sector under CTF legal and regulatory environments, stating that FATF “recognizes the importance of ensuring that implementation of its Recommendations does not adversely and disproportionately affect NPOs” in the access to financial services (BEST PRACTICES PAPER, *supra* note 104, at ¶ 64).

235 TYPOLOGIES REPORT, *supra* note 105.

236 BEST PRACTICES PAPER, *supra* note 104.

237 FATF RECOMMENDATIONS, *supra* note 84, Rec. 8.

238 *Id.*, Interpretative Note to Rec. 8, ¶ 1.

239 BEST PRACTICES PAPER *supra* note 104, at 6–7 (“A legal person or arrangement or organisation 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’”).

240 *Id.* at 7.

241 FATF Recommendations, *supra* note 84, Interpretative Note to Rec. 8, ¶ 2 (“Measures to protect NPOs from potential terrorist financing abuse should be targeted and in line with the risk-based approach.”).

242 *Id.* at ¶ 4(c). See also *id.* ¶ 5. See also FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, 13 (“FATF recognized that not all NPOs should be subject to the same measures, especially where humanitarian needs are acute and where charitable work contributes positively to the fight against regional and global terrorism.”).

243 FATF Recommendations, *supra* note 84, Interpretative Note to Rec. 8, ¶ 6(b) (emphasis added).

It is important from a human rights perspective that regulatory authorities recognize that this list is merely illustrative, and that the change of language to describe such measures as ones that countries “should” adopt to those that countries “could” adopt is designed to ensure more targeted application of the RBA, which should involve less rather than more restrictive approaches. However, the revised Recommendation No. 8 does not detail the elements of this risk-based approach and this lack of guidance in how countries should undertake the risk-based approach could pose a “further challenge” if governments are nonetheless still “relatively free” to make their own assessment and determination of which NPOs are at a higher risk of financial abuse by terrorist groups.²⁴⁴

- **Compliance with international human rights law:** The revisions in INR.8 for the first time call on countries to ensure that responses to civil society are consistent with international human rights law, such that they are “implemented in a manner which respects countries’ obligations under the Charter of the United Nations and international human rights law.”²⁴⁵
- **No customer due diligence (CDD) requirement for NPOs:** The revised INR.8 confirms that NPOs are not to be held to the same due diligence standards as banks (which are standards related to customer due diligence or CDD). Prior implementation of Recommendation No. 8 tended to involve holding NPOs to the same standards as financial institutions, particularly with respect to due diligence standards. Now the INR.8 provides:

NPOs could be required to take reasonable measures to confirm the identity, credentials and good standing of beneficiaries²⁴⁶ and associate NPOs and that they are not involved with and/or using the charitable funds to support terrorists or terrorist organisations.²⁴⁷ However, NPOs should not be required to conduct customer due diligence. NPOs could be required to take reasonable measures to document the identity of their significant donors and to respect donor confidentiality. The ultimate objective of this requirement is to prevent charitable funds from being used to finance and support terrorists and terrorist organisations.²⁴⁸

- **No expectation to identify individual beneficiaries:** The INR.8 notes that while NPOs “could be required to take reasonable measures to confirm the identity, credentials and good standing of beneficiaries and associate NPOs and that they are not involved with and/or using the charitable funds to support terrorists or terrorist organisations,”²⁴⁹ this “does not mean that NPOs are expected to identify each specific individual, as such a requirement would not always be possible and would, in some instances, impede the ability of NPOs to provide much-needed services.”²⁵⁰ Such clarifications on the inappropriateness of requests for information on individual beneficiaries are important and should be further developed and emphasized, as this is often a “red line” for organizations.²⁵¹ In particular, there is a need to ensure that the term “reasonable measures” (which is not defined in INR.8) is not interpreted expansively by relevant stakeholders. As discussed below, inquiries about beneficiaries can represent particular concerns for women’s rights organizing and women’s rights organizations due to often sensitive nature of their service provision (e.g., to survivors of gender-based violence).²⁵² Previously, there has been ambiguity and over-reach on this point—from both donors and financial institutions—in part due to a lack of clear guidance from domestic regulatory authorities (such as the U.S. government),²⁵³ that in an environment favorable to trying

244 *Nonprofits Are No Longer “Particularly Vulnerable”: What’s Next* GLOBAL NPO COALITION ON FATF, (Webinar, Sept. 12, 2016), <https://www.youtube.com/watch?v=v-OJxQaM8Wsk&feature=youtu.be>.

245 FATF Recommendations, *supra* note 84, Interpretive Note to Rec. 8, ¶ 2.

246 *Id.* at ¶ 6(b)(v), footnote 26 (“The term beneficiaries refers to those natural persons, or groups of natural persons who receive charitable, humanitarian or other types of assistance through the services of the NPO.”)

247 *Id.* at ¶ 6(b)(v), footnote 27 (“This does not mean that NPOs are expected to identify each specific individual, as such a requirement would not always be possible and would, in some instances, impede the ability of NPOs to provide much-needed services.”).

248 *Id.* at ¶ 6(b)(v) (emphasis added).

249 *Id.*

250 *Id.* at ¶ 6(b)(v), footnote 27.

251 AN ANALYSIS OF CONTEMPORARY COUNTERTERRORISM-RELATED CLAUSES IN HUMANITARIAN GRANT AND PARTNERSHIP AGREEMENT CONTRACTS, *supra* note 165, at 4.

252 See *infra* notes 312–313 and accompanying text.

253 In a February 2016 letter on behalf of 58 non-profit organizations to the U.S. Departments of State and the Treasury, there was a request that a “high-ranking official at the Department of Treasury issue a proactive, public statement that NPOs are not by definition high-risk and that under U.S. law, banks are not required to “know the customer of their NPO customer.” (*Charity and Security Network Feb. 2016 Joint Letter, supra* note 188, at 1). The U.S. government’s response to this letter fell short of explicitly confirming the latter (*U.S. Dep’t of Treasury & State May 2016 Letter, supra* note 221, at 2). As noted in civil society’s response to this letter, this creates a vagueness that can impede the provision of financial services to NPOs (*Charity and Security Network, Joint Letter to U.S. Dep’t of the Treasury and State 2* (July 16, 2016), <http://www.charityandsecurity.org/system/files/CSN%20Response%20to%20StTreasLtr%20%281%29%20July%202021.pdf> [hereinafter *Charity and Security Network July 2016 Joint Letter*] (“It is both unreasonable and unrealistic to expect banks to ask for and nonprofits to provide basic information on individual program beneficiaries.”).

to lower exposure to risk, mitigates in favor of over-reach (e.g., by banks taking an expansive approach to the nature of their CDD and EDD obligations).²⁵⁴ For example, the U.S. government has stated that banks are expected to “understand . . . basic beneficiary information,”²⁵⁵ creating a vagueness that leads “banks to ask for and nonprofits to provide basic information on individual program beneficiaries,” in a situation where “[b]anks do not need to know the names of all the people in a refugee camp in order to determine whether a nonprofit is a legitimate customer that has its own risk management systems in place.”²⁵⁶

Civil society engagement with FATF and response to revised Recommendation No. 8

These revisions to Recommendation No. 8 were, in large part, the result of civil society engagement with FATF regarding the adverse impacts of Recommendation No. 8. Beginning in 2012, an NPO working group began advocating with FATF and the first-ever meeting between FATF and 20 civil society representatives took place on April 24, 2013.²⁵⁷ Since then, the Global NPO Coalition on FATF²⁵⁸ has continued to meet with and advise FATF on unintended impacts on civil society and had proposed revisions to Recommendation No. 8.²⁵⁹ Though civil society has largely welcomed the July 2016 revisions,²⁶⁰ there are some ongoing concerns about aspects of the revised Recommendation and its Interpretive note, such as the fact that the States’ review of its “adequacy of measures” to address the NPO sector does not have to be in writing,²⁶¹ as well as particularly the lack of definition of key terms—e.g., “beneficiary,” “reasonable measures,” and “risk-based approach”—such that the lack of clarity could continue the trends of excessive self-regulation by civil society and restrictive controls by governments and banks.²⁶²

254 BBA, GETTING AID TO SYRIA: SANCTIONS ISSUES FOR BANKS AND HUMANITARIAN AGENCIES 11 (2013), available at <https://www.bba.org.uk/policy/financial-crime/sanctions-compliance/getting-aid-to-syria/> [hereinafter GETTING AID TO SYRIA] (for example, the BBA advises humanitarian agencies wanting to work in Syria to “provide banks with a one-page briefing on proposed programmes in Syria. This should include intended beneficiaries, how they are selected . . .”).

255 U.S. Dep’t of Treasury & State May 2016 Letter, *supra* note 221, at 2.

256 Charity and Security Network July 2016 Joint Letter, *supra* note 253, at 2.

257 FATF Holds First Consultation with Civil Society on Anti-Terror Financing Rules and Protecting Nonprofits, CHARITY & SECURITY NETWORK (May 2, 2013), <http://www.charityandsecurity.org/print/1014>.

258 About Us, THE NON PROFIT PLATFORM ON THE FATF, <http://fatfplatform.org/about/>.

259 See, e.g., TRANSNATIONAL NPO WORKING GROUP ON FATF RECOMMENDATIONS: FINANCIAL ACTION TASK FORCE TYPOLOGY REVIEW (Feb. 2014), available at <http://fatfplatform.org/wp-content/uploads/2015/02/NPO-Sector-Typology-Position-Paper-FATF.pdf>; *Public Consultation on the Revision of the Interpretive Note to Recommendation 8 Non-Profit Organisations (NPOs)*, FINANCIAL ACTION TASK FORCE (Nov. 6, 2015), available at <http://fatfplatform.org/wp-content/uploads/2015/11/GlobalCoalitionCommentsINRevision.pdf>; *Public Consultation on the Revision of Recommendation 8 (Non-profit Organisations)*, FINANCIAL ACTION TASK FORCE (Apr. 22, 2016), <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-consultation-npo-r8.html>.

260 See, e.g., Press Release, NPOs Applaud Important Changes in Financial Action Task Force (FATF) Policy – NPOs No Longer Considered “Particularly Vulnerable,” GLOBAL NPO COALITION ON FATF (June 29, 2016), <http://www.charityandsecurity.org/system/files/2016%2006%20NPOs%20applaud%20important%20changes%20in%20Financial%20Action%20Task%20Force%20%28FATF%29%20policy.pdf>. See also Press Release, Charity and Security Network, *Revision of FATF Recommendation 8 Applauded by NPO Sector*, http://www.charityandsecurity.org/NPOs_Hail_R8_Revision.

261 FATF RECOMMENDATIONS, *supra* note 84, Interpretive Note to Rec. 1, ¶ 5.

262 See, e.g., *Nonprofits Are No Longer “Particularly Vulnerable”: What’s Next*, *supra* note 244. For additional NPO responses and identification of challenges with revised Recommendation No. 8, see, e.g., Dobichina, *supra* note 106.

III. BEYOND HOMOGENEITY: WOMEN'S RIGHTS ORGANIZING, WOMEN'S RIGHTS ORGANIZATIONS, AND GENDER EQUALITY

1. Differential impacts of countering terrorism financing rules on organizations and rights: general

Recently there has been increased attention to the ways in which, in practice, international, regional, and domestic countering terrorism financing measures have had adverse human rights impacts. These impacts are addressed more fully in Section IV. and range from due process concerns for individuals and entities affected by sanctions²⁶³ to the direct or indirect targeting of civil society in ways that narrow their operating space.²⁶⁴

However, while there has been increased attention to the adverse impacts of countering terrorism financing laws, it is often not acknowledged that such effects are, in many cases, felt differently by different organizational types or in relation to the promotion and protection of certain human rights. As such, there can be a tendency to treat civil society organizations and their activities as homogenous and to diagnose problems and then devise solutions that overlook, and may in some cases, deepen adverse impacts. Instead, a key starting point for assessing how countering terrorism financing rules impact women's rights organizing, women's rights organizations, and gender equality is to recognize that neither civil society nor the particular contexts in which human rights guarantees are sought are uniform.

For States to ensure a safe and enabling environment for women's rights organizing and organizing and the realization of human rights consistent with international human rights and

humanitarian law²⁶⁵ means moving away from these blanket approaches to both rights and their defenders, toward a more nuanced lens that examines if, how, and to what extent effects of certain laws and policies might vary by organizational type, activities, beneficiaries, location, and other criteria. This rejection of a one-size-fit-all approach to ensuring a safe and enabling environment for civil society and the protection of human rights is required by international law itself; including, for example, by the obligation of non-discrimination and equality on the basis of grounds such as sex, gender, and religion,²⁶⁶ but also by rights to freedom of association, assembly, and expression.²⁶⁷ Importantly, as discussed below, international law prohibits direct or intentional discriminatory impacts on organizations,²⁶⁸ but also indirect adverse impacts on women's civil society and gender equality that flow from gender- or sex-neutral laws and policies.²⁶⁹ These obligations mean that in designing, implementing, and assessing countering terrorism financing measures, States must pay attention to the underlying gender dynamics of the environments in which they are being operationalized and ensure that these measures enable rather than hinder women's rights organizing and organizations, and the pursuit of gender equality more broadly, including to support women's rights groups in providing "unique perspectives for the establishment and maintenance of peace and security."²⁷⁰

Two general starting points are helpful for analyzing whether States are meeting these obligations. First, it is important to emphasize that these obligations apply to all States. There can be a tendency to assess governments' use of anti-terrorism laws and in particular countering terrorism financing rules to restrict the funding and activities of civil society as a phenomenon that occurs in developing countries. Yet recent analysis confirms that this trend of restricting civil society space—including under anti-terrorism laws—also occurs in geographic areas such as the United States²⁷¹ and in Europe.²⁷² In Europe, for example, "[s]ur-

263 See, e.g., A/67/396, *supra* note 151, at ¶ 13.

264 See, e.g., A/70/371, *supra* note 107, at ¶ 10; A/HRC/27/L.24, *supra* note 17, at preambular ¶ 11; EURO MED RIGHTS, SHACKLED FREEDOMS: WHAT SPACE FOR CIVIL SOCIETY IN THE EURO MED? 13 (2016), available at <http://www.statewatch.org/news/2016/sep/euromed-rights-shackled-freedoms-report-16.pdf>.

265 See, e.g., A PRACTICAL GUIDE FOR CIVIL SOCIETY, *supra* note 13, at 10 ("A safe and enabling environment for civil society work must be supported by a robust national legal framework, grounded in international human rights law.").

266 See *infra* notes 576-594 and accompanying text.

267 See *infra* notes 626-645 and accompanying text.

268 See, e.g., A/70/371, *supra* note 107, at ¶ 43 ("[S]ingling out organizations on the basis of stereotypical assumptions relating to characteristics, such as religion or the predominant race of the organization's membership or beneficiaries, constitutes unjustified discrimination and is prohibited under international law."); A/HRC/23/39/Add.1, *supra* note 172, at ¶¶ 83-85 ("Further, singling out certain organizations on the stereotypical assumption based on general characteristics such as religion, predominant race of the organization's membership that they are likely to participate in terrorist activities is not only disproportionate, it constitutes discrimination and is prohibited under international law."; *id.* at ¶ 85).

269 See *infra* notes 576-594 and accompanying text.

270 PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 34.

271 FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 38 (finding that that two thirds of all U.S.-based NPOs "that conduct international work are experiencing obstacles in accessing financial services").

272 SHACKLED FREEDOMS: WHAT SPACE FOR CIVIL SOCIETY IN THE EURO MED?, *supra* note 264, at 7 ("The Euro-Mediterranean region is paradigmatic of this narrowing of civil society space. It is interesting to note that this trend, although of varying intensity depending on the country, is observed in the countries of North Africa and the Middle East, but also in consolidated democracies in Europe" and "[i]n countries of the European Union, despite legal safeguards and the human rights 'shared values' rhetoric, civil society is under pressure.").

veillance and counter-terrorism measures . . . have an increasing impact on CSOs and are often combined with funding restrictions against organisations that find themselves under scrutiny.”²⁷³

Second, before turning to the specific interaction of countering terrorism financing rules and the profile of women’s rights organizing and organizations, there are some general trends that can be observed in how counter terrorism financing rules have had non-uniform effects. In practice, such rules have particularly affected access to resources, financial access, and activities of certain organizations and programs with the following features:

- small organizations;²⁷⁴
- grassroots organizations “that are frequently small-sized;”²⁷⁵
- nascent or less well-known organizations;²⁷⁶
- organizations that work in geographic areas under terrorist control or where terrorist groups are active or with communities deemed to be “at risk” of terrorism or violent extremism;²⁷⁷ and
- organizations that may not be perceived favorably by governments, including those that work on sensitive topics or have been otherwise stigmatized (e.g., Muslim communities) by national security measures.²⁷⁸

As will be discussed further below, many of these features map onto the specific profile of women’s rights organizing, women’s rights organizations, and gender equality.

2. Profile of women’s rights organizing, women’s rights organizations, and gender equality

During the “war on terror,” there was an expressed concern that it was “shrinking women’s movements because it [has] led to a revisiting and development of unfavourable funding policies for women’s organizations.”²⁷⁹ More specifically, in 2009, the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted that:

[T]errorism financing laws that restrict donations to non-profit organizations have particularly impacted organizations that promote gender equality, including women’s rights organizations. The small-scale and grassroots nature of such organizations means that they present a greater “risk” to foreign donors who are increasingly choosing to fund a limited number of centralized, large-scale organizations for fear of having their charitable donations stigmatized as financing of, or material support to, terrorism. At the same time, as divergent voices within their communities, it is precisely this foreign funding on which women’s rights organizations may be particularly dependent to achieve their objectives. The need to ensure accessible, safe and effective channels for donation to such organizations is particularly acute in situations of humanitarian crisis, which, as noted earlier, often have disproportionate impacts on women and girls.²⁸⁰



Woman addresses the crowd as protesters gathered at Place Kléber in Strasbourg, France, protesting the French government’s plan to extend the “state of emergency” for another three months (January 30, 2016).

Credit: Hadrian/Shutterstock.com

273 CIVIL SOC’Y EUROPE & CIVICUS, CIVIL SPACE IN EUROPE SURVEY 11 (2016), available at http://www.civicus.org/images/CivicSpaceinEuropeSurveyReport_FINAL251015.pdf.

274 See, e.g., FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 44 (finding that “[s]mall NPOs are more likely to face banking obstacles,” and “[w]hen dealing with financial access problems, size matters.”); STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES, *supra* note 164, at 100 (“Several large donors limit their partnerships to a few larger organisations who can absorb large donations and are seen as having the capacity to mitigate the risk, excluding other smaller partners and programmes which they might otherwise have funded.”).

275 A/HRC/33/29, *supra* note 43, at ¶ 41 (“Grass-roots organizations, especially those representing disadvantaged groups, are frequently small-sized. They face particular difficulties, as rules to counter the financing of terrorism tend to favour large, well-known organizations and require strict reporting and auditing requirements.”).

276 *Id.*

277 A/70/371, *supra* note 107, at ¶ 41 (“On a very practical level, NGO operations are increasingly constrained by restrictions on available funding in areas where terrorist groups are active”); A/HRC/33/29, *supra* note 43, at ¶ 40 (“The adverse effect is particularly great on organizations operating in contexts in which groups considered ‘terrorist’ or ‘violent extremist’ are active”).

278 See, e.g., STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES, *supra* note 164, at 108 (“How NGOs are perceived by governments, and to a certain extent by the general public, will also shape how they are impacted. Islamic NGOs appear to have faced greater scrutiny from certain governments in the West and also in the Gulf and North Africa”). See also A/HRC/23/39/Add.1, *supra* note 172, at ¶¶ 83–85; Alex Delmar-Morgan, *Islamic Charities in UK Fear They are Being Unfairly Targeted over Extremism*, GUARDIAN (London) (July 22, 2015), <http://www.theguardian.com/society/2015/jul/22/muslim-charities-uk-targeted-extremism-fears>; FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at vi (noting that the “prevalence and types of [financial access] problems” experienced by nonprofit organizations “vary by program area”).

279 ASS’N FOR WOMEN’S RIGHTS IN DEV. (AWID) & GLOBAL FUND FOR WOMEN, RESOURCE MOBILIZATION FOR WOMEN’S RIGHTS ORGANIZATIONS AND MOVEMENTS IN THE MIDDLE EAST AND NORTH AFRICA 16 (Sept. 2008), available at https://www.awid.org/sites/default/files/atoms/files/resource_mobilization_mena_meeting_2008.pdf.

280 A/64/211, *supra* note 4, at ¶ 42.

Box 6: Profile of women's rights organizing, women's rights organizations, and gender equality

- Small-sized and often have low financial resilience
- Receive short-term and project-based funding rather than multi-year, core flexible funding
- Reliant on foreign funding, particularly in conflict and post-conflict settings
- Work at the grassroots level, including on P/CVE and counter-terrorism
- Often new or emerging organizations
- Financially excluded, including through restricted access to financial services
- Operate in insecure and repressive environments under threat from State and non-State actors
- Work on controversial issues that involve challenging societal norms and require particular attention to confidentiality, safety, and security

In practice, the ways in which countering terrorism financing rules have been designed and implemented take little to no account of these features of women's rights organizations and the environments in which they operate. While by no means alone in bearing the brunt of this legal and regulatory environment, the specific profile of women's rights organizing and organizations has meant that they experience these rules—including overreach of governments, bank de-risking practices, changes in donor preferences, and the costs of compliance—in a number of adverse and often gender-specific ways. Indeed, while some of these features are generic and shared with other organizational types and activities that are susceptible to adverse impacts,²⁸¹ other features, including the particular funding landscape facing women's rights organizing and organizations as well as the gendered patterns of financial exclusion in many country contexts, point to gender-specific impacts. All of these features are identified below and the ways in which they manifest in the application of countering terrorism financing laws and regulations is addressed more fully in Section IV.

In general terms, women's rights organizing and organizations and the push for gender equality share the following features:

- **Receive short-term and project-based funding:** Women's rights organizations tend to receive earmarked or project-specific, short-term support rather than multi-year, core flexible funding.²⁸² This inherently jeopardizes their long-term sustainability and capacity-building. For example, according to one women's organization headquartered in North America, "*right now we can only get smaller funds, the bigger multi-year grants that enable you to be safe and sustainable as an organization have become extremely difficult to access.*" According to OECD DAC Network on Gender Equality (Gendernet), funding to women's groups is "typically small-scale and short-term. Small amounts of money can stimulate learning and innovation, but they do not enable vital expansion, scale-up and strengthening of organisational and operational capacity."²⁸³ These challenges in ensuring enhanced organizational and operational capacity can have particular ramifications when grant conditions contain particularly rigorous auditing and reporting requirements (e.g., to ensure that funds are not diverted to terrorism).²⁸⁴
- **Reliant on foreign funding:** The ability to "direct[ly] access... funding is getting more difficult for women's organizations."²⁸⁵ In particular, women's rights organizing and organizations, particularly in conflict and post-conflict settings, do not have access to domestic finance and are often reliant on foreign funding sources.²⁸⁶ Transferring of funds to these local groups therefore involves compliance with multiple countering terrorism financing rules, including of sending, transferring, and receiving countries. Often, given the prevalence of North American and European donors for women's groups,²⁸⁷ this particularly requires compliance with "particularly vigilant"²⁸⁸ U.S. government rules, as well as those of European governments.
- **Size, income level, and financial resilience of women's organizations:** Women's organizations operate with small amounts of money. For example, the Association for Women's Rights in Development (AWID) 2011 report publishing the results of a global survey of over 1,000 women's organizations found that the median income of the women's organizations in the survey was USD 22,750.²⁸⁹ Limited resourc-

281 See *supra* notes 274–278 and accompanying text.

282 WATERING THE LEAVES, STARVING THE ROOTS, *supra* note 12, at 17. See also RAZAN GHAZZAWI et al., BADAEL FOUNDATION, PEACEBUILDING DEFINES OUR FUTURE NOW, A STUDY OF WOMEN'S PEACE ACTIVISM IN SYRIA 37 (2015), available at http://badael.org/wp-content/uploads/2015/10/Syria_october22.pdf [hereinafter PEACEBUILDING DEFINES OUR FUTURE NOW] ("Funding is also often short-termed, which means that many women's groups have to spend a lot of time chasing financial support and writing reports rather than working with strategic planning and implementation. Most donors also fund specific projects or activities, which makes it difficult for women's groups to obtain core funding to cover staff costs and maintain themselves as institutions.")

283 DONOR SUPPORT TO SOUTHERN WOMEN'S RIGHTS ORGANISATIONS, *supra* note 27, at 4.

284 A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 74.

285 COUNTERTERRORISM MEASURES AND THEIR EFFECTS ON THE IMPLEMENTATION OF THE WOMEN, PEACE AND SECURITY AGENDA, *supra* note 1, at 6.

286 PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 372.

287 See, e.g., STEVEN LAWRENCE et al., FOUND. CTR. & INT'L HUMAN RIGHTS FUNDERS GROUP, ADVANCING HUMAN RIGHTS: UPDATE ON GLOBAL FOUNDATION GRANTMAKING, KEY FINDINGS (2013), available at http://foundationcenter.org/gainknowledge/research/pdf/humanrights_women.pdf?_ga=1.53490856.1272620855.1462908516.

288 DE-RISKING: GLOBAL IMPACT AND UNINTENDED CONSEQUENCES, *supra* note 190, at 23.

289 WATERING THE LEAVES, STARVING THE ROOTS, *supra* note 12, at 110.

es—along with factors such as low diversification of income sources and access to flexible and predictable funding—are one indication of the extent to which women’s rights organizations tend to have low financial resilience.²⁹⁰ Countering terrorism financing rules that either cause delays in, or cut off access to, resources, or require complex reporting and auditing requirements fail to take into account that often women’s rights organizations are “operating on very modest budgets with (a combination of) limited paid staff capacity and/or volunteer efforts”²⁹¹ and may be unable to apply for, or to process, complex grants, as well as to weather resource constraints.²⁹²

- **Work at the grassroots level, including in preventing and countering violent extremism and terrorism:** As reflected in the *2015 Global Study on the Implementation of U.N. Security Council Resolution 1325*: “Women’s civil society and community-based organizations are developing deliberate peacebuilding strategies and advancing critical conflict prevention methods at the grassroots level . . .”²⁹³ Women’s rights organizations are also often at the frontline of preventing and combatting violent extremism and terrorism, necessarily putting them in contact with, or proximity to, communities or environments that may be deemed to be “at risk” of terrorism and violent extremism. Women in their communities assist victims of terrorism, negotiate ceasefires, arrange for release of detainees, and more broadly contribute to the equal and stable societies that ultimately mitigate against all forms of violence and conflict.²⁹⁴ Amongst women’s organizations surveyed for this Report, 86.67 percent affirmatively responded that their “organization’s work contributes to combatting violent extremism and terrorism,” including through their organization’s work in areas such as peacebuilding and conflict resolution.

Counter-terrorism financing rules that penalize emerging,²⁹⁵ grassroots²⁹⁶ and/or those organizations working in areas or communities “at risk” of terrorism²⁹⁷ therefore affect women’s rights organizations and organizing. For example, as noted by one women’s organization headquartered in North America: “I believe counterterrorism

measures are going to be used as a blanket excuse to step away from supporting the grassroots organizations. This has a gendered impact, as many grassroots organizations are led by women, therefore counterterrorism regulations harm the women who work on peace and gender equality.” In addition, government and donor strategies that increasingly promote gender mainstreaming and women’s participation in P/CVE programming in areas where risks of radicalization are identified²⁹⁸ mean that, by definition, the likelihood of women’s rights organizations being in proximity to proscribed individuals and/or groups—and therefore the chance of falling foul of countering terrorism finance rules—is high and potentially only likely to increase.²⁹⁹

- **Nascency of some women’s rights organizing and organizations:** While many women’s rights organizations and activists have long-standing histories in their communities, others emerge to respond to new challenges in changing environments. For example, 31 percent of women’s organizations in the AWID study had been founded between 2006 and 2009.³⁰⁰ A recent review of women’s peace activism in Syria found that “[m]any of the women’s groups in Syria have emerged during the last few years in the exceptional circumstances of violent conflict.”³⁰¹ Policy landscapes that favor risk-averse funding priorities (e.g., toward well-known and long-established organizations) can circumscribe the ability of these new organizations to access funding, including because, for example, it is more difficult for newer organizations to satisfy onerous due diligence and other compliance requirements of donors and financial institutions than more established organizations.³⁰²
- **Gender and financial exclusion, including restricted access to financial services:** Financial exclusion is a gendered phenomenon, involving “a significant gender gap in account ownership, savings, credit, and payments behavior.”³⁰³ For example, in all countries there is a gender gap in the holding of bank accounts; in 2014, “58 percent of women worldwide have an account, compared to 65 percent of men.”³⁰⁴ In developing countries, “the gender gap . . . is estimated at 9 percentage points:

290 *Id.* at 118.

291 COUNTERTERRORISM MEASURES AND THEIR EFFECTS ON THE IMPLEMENTATION OF THE WOMEN, PEACE AND SECURITY AGENDA, *supra* note 1, at 6.

292 *Id.*

293 PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 204.

294 Huckerby, *The Complexities of Women, Peace, Security and Countering Violent Extremism*, *supra* note 40; SANAM ANDERLINI et al., UNCOMFORTABLE TRUTHS, UNCONVENTIONAL WISDOMS, WOMEN’S PERSPECTIVES ON VIOLENT EXTREMISM & SECURITY INTERVENTIONS 16 (2016), available at <http://www.icanpeacework.org/wp-content/uploads/2016/03/WASL-Brief-No.1-Full.pdf> (noting that “[w]omen’s [o]rganizations [are] on the [f]rontlines without [a]dequate [s]upport”).

295 See *supra* note 276 and accompanying text.

296 See *supra* note 275 and accompanying text.

297 See *supra* note 277 and accompanying text.

298 See *supra* notes 38–46 and accompanying text.

299 See *supra* notes 44–46 and accompanying text.

300 WATERING THE LEAVES, STARVING THE ROOTS, *supra* note 12, at 110.

301 PEACEBUILDING DEFINES OUR FUTURE NOW, *supra* note 282, at 37.

302 See *supra* note 276 and accompanying text.

303 Financial Inclusion Data - Gender, WORLD BANK, <http://datatopics.worldbank.org/financialinclusion/indv-characteristics/gender>. See also *Financial Inclusion - Overview*, WORLD BANK, <https://www.worldbank.org/en/topic/financialinclusion/overview> (“Financial inclusion means that individuals and businesses have access to useful and affordable financial products and services that meet their needs - transactions, payments, savings, credit and insurance - delivered in a responsible and sustainable way.”).

304 *Financial Inclusion Data - Gender*, *supra* note 303.

59% of men reported having an account in 2014, while only 50% of women did.³⁰⁵ In some countries, women face additional burdens in obtaining identification documents, which is in turn required for many banking services.³⁰⁶ Such patterns, combined with the low income levels and financial resilience of women's rights organizations, mean that they may have less leverage (e.g., than larger organizations, than multilateral entities) to negotiate with financial institutions to mitigate the impact of counter-terrorism restrictions in adverse banking decisions.³⁰⁷

- **Repressive government approaches to women's rights organizing, women's rights organizations, and gender equality:** As detailed further below in Section IV.1, women's rights organizing and efforts toward gender equality take place in increasingly restrictive and insecure environments marked by threats and targeting from both non-State (e.g., terrorist or violent extremist groups) and government actors.³⁰⁸ Such repressive approaches from governments often involve measures that restrict the operating space and resources available to women's groups, including by refusing to or excessively delaying registration of women's rights organizations and criminalizing legitimate activities of women's rights defenders as "terrorism."³⁰⁹
- **Working on sensitive and controversial issues:** According to the U.N. Special Rapporteur on the situation of human rights defenders, women's human rights defenders are often "perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society . . . This can, in certain contexts, lead to hostility or lack of support from the general population, as well as the authorities."³¹⁰ This might include work on gender-based violence; domestic violence; reproductive rights; rights of sex workers; lesbian, gay, bisexual, trans, and/or intersex

(LGBTI) rights; early marriage; and other activities aimed at achieving gender equality.³¹¹ In such contexts, confidentiality and "the need to guarantee the safety and security of themselves and their beneficiaries, with whom they are often working on sensitive topics in high-risk settings," is of paramount concern to women's rights organizations.³¹² Where counter-terrorism rules contribute to an increased focus on transparency that increasingly results in demanding requests (e.g., from donors, governments, banks), women's organizations are put in an even more difficult position that does not take account of their operational realities, including the need for such confidentiality.³¹³

3. Toward a gender and human rights analysis of countering terrorism financing: understanding scale and causation

To address the adverse impacts of countering terrorism financing measures on women's rights organizing, women's rights organizations, and gender equality first requires identifying the nature and scope of such effects as well as their causal relationship to countering terrorism financing rules. There are often four key challenges in undertaking this and similar analyses.

First is the general lack of data on the nature of effects and how widespread such impacts are in practice. In some cases, the information gap stems from inadequate data collection practices of regulatory authorities and financial institutions.³¹⁴ Under-reporting is also an issue; reputational, enforcement, and other concerns can make civil society (including women's rights organizations), donors, and financial institutions reticent to share information, particularly when it raises the possibility of criminal or other sanctions.³¹⁵ These concerns can be particularly acute in repressive environments, where governments seek opportunities to crackdown on groups, such as women's groups, that pursue agendas perceived to be unfavorable to the State.³¹⁶

Second, in many cases determining whether an effect stems from CTF or another factor can be complicated by the presence of multiple drivers of the reduced space for civil society (e.g., by regulato-

305 *Financial Inclusion - Overview*, *supra* note 303.

306 WORLD BANK, WOMEN, BUSINESS, AND THE LAW 2016 - GETTING TO EQUAL 8-10 (2015), available at <http://wbl.worldbank.org/~media/WBG/WBL/Documents/Reports/2016/Women-Business-and-the-Law-2016.pdf>.

307 See FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 44 ("Size matters not only because banks might respond more positively to larger organizations but also because small NPOs have fewer resources and staff to deal with these issues.").

308 See, e.g., A/RES/68/181, *supra* note 18, at preambular ¶ 8; A/HRC/25/55, *supra* note 9, at ¶¶ 98-101; SHACKLED FREEDOMS: WHAT SPACE FOR CIVIL SOCIETY IN THE EUROMED?, *supra* note 264, at 11; Office of the U.N. High Comm'r for Human Rts., Opening Statement by the U.N. High Comm'r for Human Rts. Zeid Ra'ad Al Hussein at the 30th session of the Human Rights Council (Sept. 14, 2015), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16414&StateofCivilSocietyReport2016_ExecutiveSummary, CIVICUS 14 (2016) http://civicus.org/images/documents/SOCS2016/summaries/State-of-Civil-Society-Report-2016_Exec-Summary.pdf.

309 See, e.g., A/64/211, *supra* note 4, at ¶ 27. See also A/HRC/33/29, *supra* note 43, at ¶ 21.

310 Special Rapporteur on the Situation of Human Rights Defenders, *Rep. of the Special Rapporteur on the Situation of Human Rights Defenders*, Human Rights Council, 16th Sess., ¶ 23, U.N. Doc. A/HRC/16/44 (Dec. 20, 2010) (citations omitted). See also Muhammad Haroon Siddique & Mokbul Morshed Ahmad, *Variables Affecting Fieldworkers of NGOs in Pakistan*, 22(2) DEV. IN PRAC. 216, 225 (2012) ("There are recent examples . . . as well as Balochistan provinces to illustrate the increased suspicion that the average citizen has begun to associate with INGOs as the agents of the West. Even the national NGOs are also sometimes seen as subsidiary agents of the large funders or INGOs, particularly when they challenge socio-cultural norms, like those surrounding women . . .").

311 See, e.g., PROTECTION INTERNATIONAL, CRIMINALISATION OF HUMAN RIGHTS DEFENDERS - CATEGORISATION OF THE PROBLEM AND MEASURES IN RESPONSE 41 (2016), available at http://protectioninternational.org/wp-content/uploads/2016/01/Criminalisation_PL_English_WebReady.pdf ("[A]ctivities in defence of sexual and reproductive rights bring women into conflict with religious or cultural fundamentalists and the more conservative social sectors, which can play a central role in their criminalization.").

312 COUNTERTERRORISM MEASURES AND THEIR EFFECTS ON THE IMPLEMENTATION OF THE WOMEN, PEACE AND SECURITY AGENDA, *supra* note 1, at 6.

313 *Id.*

314 See, e.g., DRIVERS AND IMPACTS OF DERISKING *supra* note 184, at 31 ("It is interesting that the large UK banks are, in general, not tracking account turnover (or derisking) by sector or subsector, and in order to answer our data requests, they had to manually compile estimates."). See also UNINTENDED CONSEQUENCES OF ANTI-MONEY LAUNDERING POLICIES, *supra* note 182, at 42 (noting that "[c]urrently, even basic statistics describing phenomena such as the number of NPOs or MTOs who lost their bank accounts in a given year do not exist in the countries we examined.>").

315 See, e.g., Rob Barry & Rachel Louise Ensing, *Cautious Banks Hinder Charity Financing*, WALL STREET J., (Mar. 30, 2016), <https://www.wsj.com/articles/cautious-banks-hinder-charity-financing-1459349551> ("Because both charities and banks are reluctant to discuss the issue, it isn't possible to know precisely how widespread the problem has become."); DRIVERS AND IMPACTS OF DERISKING, *supra* note 184, at 39.

316 See *supra* note 278 and accompanying text; A/64/211, *supra* note 4, at ¶ 27.

ry authorities), risk-averse decision-making (e.g., by financial institutions) and increased compliance burdens (e.g., by donors). For example, in addition to CTF, some States may utilize other tools to restrict civil society resources and space, such as through onerous registration requirements for associations.³¹⁷ For banks, the drivers of conservative risk management practices are also not just limited to CTF or more broadly AML/CTF controls. Instead, there is a “wider context of developments in the banking and regulatory world,” including the 2008 financial crisis, that have caused financial institutions to become more risk-averse and to enhance compliance structures and place limits on financial services for all kinds of banking relationships.³¹⁸

Third, causal analysis can be further complicated by the fact that the reasons for certain decision-making are not always provided by the relevant regulatory authorities, financial institutions, and donors. For example, financial institutions often do not explicitly identify the reasons for limiting access to financial services; those civil society organizations that have had their accounts closed often do not receive any explanation or may receive vague statements, such as that the “provision of banking services . . . now falls outside of our risk appetite.”³¹⁹

Fourth, low levels of knowledge regarding CTF measures mean that women’s rights organizations may not even be aware that their financial access was disrupted for reasons related to counter-terrorism. Asked to self-assess their knowledge of CTF rules on a scale from one to five, 86.67 percent of women’s rights organizations surveyed for this Report reported either “no knowledge,” “aware but little knowledge,” or “some knowledge” of countering terrorism financing rules. The average overall knowledge of the surveyed organizations was 2.55, i.e. between “aware but little knowledge” and “some knowledge.”

Within these limits, some general observations on the nature of effects and on causation can nonetheless still be made.³²⁰ In regard to financial institutions, for example, according to a survey of de-risking practices of U.K. banks, there is a correlation between financial institutions’ AML/CTF policies and the de-banking of civil society organizations.³²¹ Similarly, while changes in donor funding patterns and priorities are not exclusively the result of CTF measures,³²² a key reason donors have reportedly cited for not directly funding grassroots organizations is “strict anti-terror and anti-money laundering rules that make giving directly [to grassroots organizations] difficult.”³²³ Moreover, other reasons for not directly funding local actors—including lack of “administrative capacity to give smaller amounts of money,” “need[ing] to channel money through a few, trusted partners so that we can manage risk,” and concern that “southern and smaller CSOs do not have the capacity to fill in all our forms”³²⁴—are all, to varying levels, themselves influenced and triggered by countering terrorism financing measures and concerns.

317 See *supra* notes 326–328 and accompanying text.

318 DRIVERS AND IMPACTS OF DERISKING, *supra* note 184, at 17.

319 See, e.g., Letter from Jason Trigg, Area Commercial Director, HSBC Bank plc, to The Trustees, Ummah Welfare Trust (Jul. 22, 2014), www.uwt.org/site/upload/HSBC-ClosureLetter.pdf; *Cautious Banks Hinder Charity Financing*, *supra* note 208 (“There’s no explanation . . . no opportunity given to appeal, no willingness to discuss,” said James Warren, a lawyer representing four charities whose accounts have been shut. It’s adding to the problem in Syria and in the Middle East.”).

320 UNINTENDED CONSEQUENCES OF ANTI-MONEY LAUNDERING POLICIES FOR POOR COUNTRIES, *supra* note 182, at 42 (“[C]ausal analysis is not being conducted, but it could be, given a political commitment and, especially, better data.”).

321 *Id.* at vii (“While the consequences seem manifold, the data are too weak to make systemic judgements. That said, we do observe some correlations between AML/CTF policies and debanking of money transfer organizations, correspondent banking, and non-profits trying to access banking services in difficult environments.”).

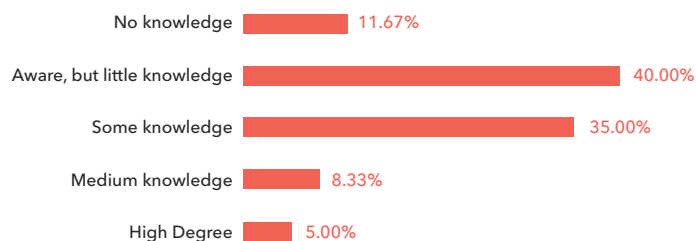
322 See *supra* notes 31–36 and accompanying text.

323 Dhananjayan Sriskandarajah, *Five Reasons Donors Give for not Funding Local NGOs Directly*, GUARDIAN (London) (Nov. 9, 2015), <https://www.theguardian.com/global-development-professionals-network/2015/nov/09/five-reasons-donors-give-for-not-funding-local-ngos-directly>.

324 *Id.*

325 Note that six respondents provided no response to this particular question and their responses are not included in these calculations.

KNOWLEDGE OF COUNTERING TERRORISM FINANCING RULES



In addition, in assessing causation and the impacts on women’s rights organizing and organizations specifically, the survey undertaken for this Report asked women’s organizations if they had received a reason for the financial limitations experienced by their organizations and, if so, were the grounds counter-terrorism related. Sixty percent of survey respondents had received a reason from the government, banks, and/or donors. Of these respondents, 50 percent were given a counter-terrorism reason. Amongst the 31.67 percent of total survey respondents who did not receive a reason for their organization’s impacts, 42.10 percent stated that they personally thought the reason was “counter-terrorism related.”³²⁵

When we first registered, and got so many questions, I asked my bank why. They explained that it came from the fact that we worked in Palestine, which triggered them to ask further. They said it was a 9/11 effect, that banks now carry extra responsibilities to guarantee that money does not end up in terrorist hands.

Women’s organization headquartered in the Middle East and North Africa (MENA)

The answer was coming from the banks sometimes, that the transaction problems had to do with international regulations on counter-terrorism financing rules, or anti-money laundering laws, or anti-terrorism regulations in their own country.

Women’s organization headquartered in North America

Banks and government would say that the problems caused in regards to funds would fall under the work against terrorism, and therefore could not be avoided.

Women’s organization working in Iraq

This has happened in Somalia, where banks were afraid to be held accountable with the tightening laws which also makes the banks responsible if any money would end up with so-called terrorist groups.

Women’s organization headquartered in Western Europe

IV. IMPACTS OF COUNTERING TERRORISM FINANCING ON WOMEN'S RIGHTS ORGANIZING, WOMEN'S RIGHTS ORGANIZATIONS, AND GENDER EQUALITY

This Section identifies five overarching impacts:

- use of counter-terrorism and countering terrorism financing rules to reduce resources and space for women's rights organizing, women's rights organizations, and gender equality;
- programmatic, partner, and beneficiary impacts for women's rights organizing, women's rights organizations, and gender equality;
- financial exclusion and restrictions on access to financial services for women rights organizing and organizations;
- prohibitive costs of due diligence and other administrative burdens for women's rights organizing and organizations; and
- insecurity of, and adaptive measures, by women's rights organizations as a result of countering terrorism financing rules.

1. Use of countering terrorism financing to reduce resources and operating space

Counter-terrorism and targeting of women's rights organizing and organizations

In recent years, governments have enacted a number of measures that have meant that "the space in which civil society groups are able to operate effectively has been radically reduced."³²⁶ Between 2012 and 2015, "more than ninety laws constraining the freedom of association have been proposed or enacted."³²⁷ Such measures may include:

- "outright prohibitions to access funding;
- requiring CSOs to obtain Government approval prior to receiving funding;
- requiring the transfer of funds to a centralized Government fund;

- banning or restricting foreign-funded CSOs from engaging in human rights or advocacy activities;
- stigmatizing or delegitimizing the work of foreign-funded CSOs by requiring them to be labeled as 'foreign agents' or other pejorative terms;
- initiating audit or inspection campaigns to harass CSOs; and imposing criminal penalties on CSOs for failure to comply with the foregoing constraints on funding."³²⁸

Often justified on the basis of national security or counter-terrorism, such laws have, in practice, been used as a "pretext" to either directly or indirectly narrow the operating space for civil society.³²⁹ This misuse of counter-terrorism rules includes the direct and indirect targeting of women's rights organizing, women's rights organizations, and women's human rights defenders. As noted by the U.N. General Assembly, "in some instances, national security and counter-terrorism legislation and other measures have been misused to target human rights defenders, including women human rights defenders, or have hindered their work and endangered their safety in a manner contrary to international law."³³⁰

These measures are used politically, to squeeze whomever they want to squeeze. This is a matter of power, and not so much of fighting terrorism. It is about silencing dissidents, the voices they do not like. If you are not willing to play the game of the government, you get stripped of your being.

Women's organization headquartered in MENA

There is always the fear that the government will use those anti-terrorism laws to stop our organization from carrying out our work, if they do not like what we do.

Women's organization working in Afghanistan

Such targeting under the rubric of national security takes place in a context in which women and those working on gender issues are already often specifically targeted for attack.³³¹ Women rights organizations and organizations are targeted by both State

³²⁶ A/70/371, *supra* note 107, at ¶ 9.

³²⁷ Douglas Rutzen, *Aid Barriers and the Rise of Philanthropic Protectionism*, 17(1) INT'L J. OF NOT-FOR-PROFIT LAW 7 (Mar. 2015) ("[B]etween 2004 and 2010, more than fifty countries considered or enacted measures restricting civil society.").

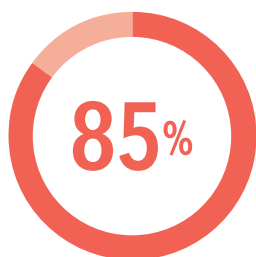
³²⁸ A/HRC/23/39, *supra* note 222, at ¶ 20.

³²⁹ SHACKLED FREEDOMS: WHAT SPACE FOR CIVIL SOCIETY IN THE EUROMED?, *supra* note 264, at 8. See also Human Rights Council Res. 25/18, preamble ¶ 12; A/70/371, *supra* note 264, at ¶ 9; A/HRC/23/39, *supra* note 222, at ¶¶ 22-26; David Cortright et al., *Friend Not Foe: Opening Spaces for Civil Society Engagement to Prevent Violent Extremism*, in FOURTH FREEDOM FORUM/KROC INSTITUTE, NOTRE DAME UNIVERSITY 5 (2011) ("One of the less known effects of the tragic 9/11 events and the subsequent global war on terror is the chilling impact counterterrorism measures have had on civil society and citizens' agency."); YEAR IN REVIEW: CIVIL SOCIETY AT THE GLOBAL LEVEL, *supra* note 226, at 3 ("States are increasingly using justifications of combating terrorism and protecting state security to restrict civic space").

³³⁰ See A/RES/68/181, *supra* note 18, at preamble ¶ 15. See also A/HRC/22/L.13, *supra* note 18, at preamble ¶ 11.

³³¹ See, e.g., A/HRC/25/55, *supra* note 9, at ¶¶ 98-101 (identifying "[s]pecial attention for risks and challenges faced by women defenders and those working on women's rights and gender issues"); SHACKLED FREEDOMS: WHAT SPACE FOR CIVIL SOCIETY IN THE EUROMED?, *supra* note 264, at 11 ("Women human rights defenders are sometimes targeted in a particular way by discourses and threats that stigmatize them as women."); CIVICUS, STATE OF CIVIL SOCIETY REPORT 2016, EXECUTIVE SUMMARY 14 (2016), available at http://civicus.org/images/documents/SOCS2016/summaries/State-of-Civil-Society-Report-2016_Exec-Summary.pdf ("Women human rights defenders and LGBTI activists may be attacked as a threat to national identity and national morality by political leaders who see them as a soft target, useful for distracting publics from political and economic failures").

INCREASED COMPLIANCE DEMANDS



Of surveyed women's organizations have experienced increased demands on their organizations (e.g. growing administrative burden due to transparency requirements) in terms of compliance conditions in order to receive or transfer funds from/to third parties

and non-State actors, from whom “women human rights defenders are at risk of and suffer from violations and abuses,”³³² including to their rights to life, freedom of opinion and association, and liberty and security of person. One such form of targeting is the criminalization of women's rights organizing and the activities of women's rights organizations, which in turn makes it “difficult, if not impossible, for associations working on these issues to raise funds.”³³³

Labelling women's rights organizing and organizations as “terrorism”

States have also utilized broad definitions of terrorism³³⁴ and violent extremism³³⁵—as well as used expansive approaches to counter incitement to terrorism³³⁶ and the penalization of “extremism” without any connection to violence—as grounds to threaten, criminalize, or crack down on legitimate women's rights actors. As noted by the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, States “have used vague and broad definitions of ‘terrorism’ to punish those who do not conform to traditional gender roles and to suppress social movements that seek gender equality in the protection of human rights.”³³⁷ Perversely, in many contexts it is those actors who oppose violent extremism and terrorism (e.g., by promoting development and gender equality) that “are themselves being labeled extremist and are facing constraints on their ability to operate.”³³⁸ Women's rights organizing and organizations feel this impact acutely as they are at once at risk of being criminalized by the State, while also on the frontlines in their communities in undertaking peacebuilding and human rights activities, including those that may contribute to combatting terrorism, violent extremism, and other forms of violence.³³⁹

REASON FOR IMPACTS ON FINANCIAL ACCESS



Of the 60% of all survey respondents who did receive a reason for the impact on financial access, 50% were given a counter-terrorism reason.

Everyone has been put in the same basket, we are all labeled terrorists.

Women's organization working in Morocco

As the definition on who is a terrorist is often very vague, we are always in danger of being accused of supporting terrorism, with the rise of ISIS this will become even more complex in our region. With more and more laws regarding counter-terrorism, everything could fall at some point under counter-terrorism, depending on who defines who is a terrorist, and what it means to be supporting terrorism.

Women's organization working in Syria

If we want real change, women's organizations need support, technically and financially, from the international community. We are women organizations, not terrorists; there is a great need for such a distinction.

Women's organization working in Iraq

The term “terrorism” is often used to defame civil society; it is used to threaten them.

Women's organization working in Egypt

There is a dilemma, as our government sees us as their enemy, they accuse us all the time of supporting terrorism; they demonize civil society. This gap has to be bridged. They have to trust us as civil society. In their efforts to protect the country from terrorism—and some probably really think this is what they are doing—they go too far, they lose sight of the damage they are doing.

Women's organization working in Kenya

332 See, e.g., A/RES/68/181, *supra* note 18, at preambular ¶ 8.

333 A/HRC/23/39, *supra* note 222, at ¶ 21.

334 See, e.g., SHACKLED FREEDOMS: WHAT SPACE FOR CIVIL SOCIETY IN THE EUROMED?, *supra* note 264, at 8.

335 A/HRC/31/65, *supra* note 4, at ¶¶ 21–22.

336 *Id.* at ¶¶ 23–24.

337 A/64/211, *supra* note 4, at ¶ 27. See also A/HRC/33/29, *supra* note 43, at ¶ 21.

338 Cortright et al., *supra* note 329, at 1.

339 See *supra* note 40 and accompanying text.

This misapplication of broad definitions of terrorism and violent extremism to criminalize women’s rights organizing and organizations as “terrorism” creates a problematic feedback loop. Facing repression from the State, the label of “terrorism” can shut down groups’ operations (e.g., through freezing of assets) and also place them outside of the risk appetite of donors and financial institutions, making them then unable to obtain funding for those activities for which they most need support, i.e. those that seek to challenge repressive governments and norms.³⁴⁰

Reduced resources for women’s rights organizing, women’s rights organizations, and gender equality

As noted by the U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association, the “ability to seek, secure and use resources is essential to the existence and effective operations of any association, no matter how small.”³⁴¹ Many measures to counter terrorism financing—and more broadly measures that limit access to funding in the name of national security (e.g., bans on foreign funding)—have had the direct or indirect effect of cutting off civil society’s ability to seek, secure, and access such resources.³⁴² This crackdown on civil society’s funding under the rubric of countering terrorism financing or protecting national security has encompassed women’s rights organizing and women’s rights organizations, limiting their access to resources.³⁴³

We have less space and less money than the terrorists, as they always find ways to finance their work as they are less restricted because they can use illegal ways.

Women’s organization working in Morocco

Women’s organizations are losing financial support, which is killing those local initiatives, as they are operating under extremely difficult circumstances.

Women’s organization working in Syria

All this is cutting our funds and in the long run, this will strangle us.

Women’s organization headquartered in MENA

In other cases, women’s organizations’ access to resources is reduced because counter-terrorism measures have interfered with the ability of organizations to conduct activities and they have had to send much-needed funds back to donors. For example, according to one women’s organization headquartered in South Asia: “Sometimes we send back the money to donors because activities could not happen due to counter-terrorism. Also diverting money for other activities, takes a lot of time.” In other cases, money is sent back because of extensive delays by financial institutions in releasing funds. For example, according to one women’s organization headquartered in North America:

We experience this all the time. Money comes back, we try to resend it, using different accounts. We lose a lot of time, and also money, as we have to pay the banking fee every time we try to do the transfer . . . The last time we tried to send money to Egypt, it took 16 months before the money was finally released, after our partner organization there provided lots of documents about our organization and their organization. The bank was holding the money all that time.

Because of CTF rules, donor themselves—particularly women’s funds—may also struggle in their ability to mobilize funds and then continue to provide resources to grassroots women’s rights organizations and organizing, despite the fact that it is essential for these women’s funds to “continue expanding and tapping new and evolving funding sources and to connect the dots with women’s rights organizations.”³⁴⁴

Limiting women’s rights organizations’ access to foreign funding under the guise of countering terrorism

As noted by the U.N. Special Rapporteur on the situation of human rights defenders, one of the justifications for rules restricting foreign funding is “the prevention of money-laundering and terrorist-financing.”³⁴⁵ In practice, however, such national security or countering terrorism financing concerns, “are often merely rhetorical and [that] the aim is restricting the activities of defenders.”³⁴⁶ This use of foreign funding laws as a purported

340 A/64/211, *supra* note 4, at ¶ 42.

341 A/HRC/23/39, *supra* note 222, at ¶ 8. See also *id.* at ¶ 9.

342 See, e.g., A/HRC/23/39, *supra* note 222, at ¶¶ 22–26 (“One of the most common reasons used by governments to limit access to funding relate to security measures, including protection against terrorism and prevention of money-laundering”: *id.* at ¶ 22); A/70/371, *supra* note 107, at ¶ 10 (“Many of the international and national measures aimed at countering terrorist financing and criminalizing material support for terrorism have had the indirect effect of restricting the space in which humanitarian and human rights NGOs are able to operate . . . international and national counter-terrorism measures, [which] have either intentionally targeted civil society groups, or have enabled Governments to clamp down on NGOs using counter-terrorism and national security to provide a veil of legitimacy for the suppression of legitimate human rights and humanitarian initiatives”). See also Kay Guinane, *The International Anti-Terrorist Financing System’s Negative Effect on Civil Society Resources*, CIVICUS STATE OF CIVIL SOCIETY REPORT 2015 (2015), available at http://civicus.org/images/SOCS2015_ESSAY9_AntiTerroristFinancingEffectsOnCS.pdf; Hayes, *How International Rules on Countering the Financing of Terrorism Impact Civil Society*, *supra* note 150.

343 See, e.g., A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 70–80; COUNTERTERRORISM MEASURES AND THEIR EFFECTS ON THE IMPLEMENTATION OF THE WOMEN, PEACE AND SECURITY AGENDA, *supra* note 1; PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 384; A/64/211, *supra* note 4, at ¶¶ 42–43.

344 WATERING THE LEAVES, STARVING THE ROOTS, *supra* note 12, at 98.

345 A/HRC/25/55, *supra* note 9, at ¶ 69.

346 *Id.*

national security measure is demonstrated, for example, by the response of one women's organization working in Chechnya:

Through the 'foreign agent' law they limit our activity saying we support terrorists and accuse us of taking part in terrorist deeds. As a result, we can be jailed or fined.

Such rules that restrict access to foreign funds are often not gender-neutral in their effects, including because the inequity in environments in which women's rights organizations work can already "unduly undermine access to funding"³⁴⁷ and because women's rights organizing and women's rights organizations rely heavily on foreign funds.³⁴⁸ According to one women's organization working in Azerbaijan: "If the government says no to receiving foreign funds, then we need to close the organization."

According to another women's organization working in Pakistan:

Many women's organizations in sensitive areas, meaning conflict areas, will not get the clearance from the government they need to receive foreign funds, and even if, they face difficulties finding donors who will fund them. There is too much surveillance on civil society, especially women organizations, from the government.

Squeezing of women's rights organizing and organizations, including failure to stem terrorism financing

There are a number of ways that countering terrorism financing rules have made it more dangerous for women's rights activism, squeezing advocates between terrorism, violent extremism, and extremism on the one hand, and the government's response on the other.³⁴⁹ One core way this happens is that such rules cut off resources to women's groups but fail to stem financial flows to terrorist or violent extremist groups.³⁵⁰

I think we need to address the governments and donors that terrorists have different ways than NGOs of operating. They limit our access to funds and ability to work.

Women's organization working in Iraq

It is killing our work, and the terrorists still get their money. They find their way.

Women's organization working in Nigeria

We just have to work with the system as well as we can. But it makes our work less effective, and I do not believe it stops any terrorists from getting their money. They are not using this official system.

Women's organization headquartered in North America

Such effects often occur in an environment where the government is implementing other repressive counter-terrorism measures that also circumscribe the activities of women's rights organizations. Such repressive measures are at best, ineffective toward terrorist or violent extremist actors, and at worst, can embolden those very terrorist or violent extremist actors against which women's groups are mobilizing.

Nationally and internationally, policies have been adopted which are violating women's right to move, to speak out and to demonstrate (sometimes also in the name of counter-terrorism). All those laws have impacted the women more than the extremists who are the source of those laws. The state's main concern is to control even if it is at the expenses of us, who are working on human rights and women's rights. People just accept anything in the name of counter-terrorism.

Women's organization working in Morocco

Women here are afraid of extremism, but also of the government regulations. You can almost touch it, so much fear is there.

Women's organization working in Turkey

We're sort of trapped. It creates resentment among communities, so it's easier for violent actors to classify those working against violent dogma as being an "agent" or working for the "other side," which makes it harder for us to do our work, because we have to prove that we are not that.

Women's organization headquartered in Sub-Saharan Africa

We are more scared of the government because of all the regulations, than we are of the terrorists.

Women's organization working in Pakistan

Because of the work we do—peace, human rights—you are already challenging the status quo. This puts you "at risk" in any case. Now with these measures, we are facing another risk. These two challenges complement each other. These measures are actually playing into the hands of the extremists!

Women's organization headquartered in MENA

347 A/HRC/23/39, *supra* note 222, at ¶ 21 (noting that "the political environment, where for instance patriarchy, sexism and authoritarian regimes are structural challenges, can also unduly undermine access to funding to civil society.")

348 See *supra* notes 285–288 and accompanying text.

349 See *supra* notes 7 and 37 and accompanying text.

350 See generally A/69/365, *supra* note 226, at ¶ 35 ("Many of these restrictions, unfortunately, do nothing to legitimately advance the fight against money-laundering and terrorism.").

2. Programmatic, partner, and beneficiary impacts

Countering terrorism financing rules have led to a series of “operational impacts,” that are “likely to be felt most directly by beneficiaries.”³⁵¹ These include:

- (1) “Changes or restrictions in funding to geographic areas, beneficiaries or partners
- (2) Changes or restrictions in programmes by donors or humanitarian organisations
- (3) Self-censorship or self-imposed limitations by humanitarian actors because of perceived legal or reputational risks
- (4) Decisions not to take funding from certain donors
- (5) Other programmatic decisions linked to counter-terrorism measures.”³⁵²

These impacts have a series of gender and human rights implications, that are discussed further below.

Limited funding and sustainability of women’s rights organizing and organizations working in “at risk” areas

Due to their work in conflict prevention, peacebuilding, and the promotion of human rights, women’s organizations are often on the frontlines of addressing the root causes of violence—including related to terrorism and violent extremism—in ways that necessarily put them in contact with, or proximity to, communities or environments marked by instability, ongoing conflict, and/or the presence of terrorist or violent extremist groups.³⁵³ In many conflict-affected regions such contact with non-State groups is “practically impossible to avoid,” as well as “critical” to be able to negotiate access to affected populations to provide humanitarian assistance and to ensure security of staff.³⁵⁴

Yet, at the same time, in practice, countering terrorism financing rules have particularly restricted financing and activities of civil society organizations that either work in those geographic

areas in which terrorist or violent extremists are active or exercise control or with communities deemed to be “at risk” of terrorism or violent extremism.³⁵⁵ While donors avoid such areas, so too do civil society actors, out of concern of potential exposure to criminal prosecutions or other sanctions from regulatory authorities.³⁵⁶ In Syria, for example, this has meant suspension of humanitarian work in areas under the control of the Islamic State in Iraq and the Levant.³⁵⁷ Financial institutions also de-risk in particular country contexts, reducing access to financial services for civil society in those locations. This includes countries without formal banking systems (e.g., Somalia), under sanctions (e.g., Iran), in conflict or where terrorist groups are present (e.g., “Syria, Afghanistan, Somalia, Nigeria, Gaza and Mali”), or close to and “typically serving as an access corridor to a region of instability,” such as Jordan and Turkey.³⁵⁸

These restrictions in funding to specific geographic areas have a series of gender and human rights effects for women’s rights organizing and women’s rights organizations. First, they limit the access to resources for women’s organizing and women’s rights organizations operating in those locations when such groups are already stretched thin by the dire funding landscape for women’s rights and their low financial resilience.³⁵⁹ For example, as one women’s organization working in Syria notes: “*At the beginning, because of the sanctions for Syria, we could not get any funds.*” According to one women’s organization working in Iraq:

Especially the lack of, and access to, funds have a great effect on women’s organizations in Iraq. We got questions from foreign donors and embassies that had grants whether we can guarantee that no money would end up with people related to ISIS. Of course there is no way of guaranteeing this, as this has nothing to do with our reality. Organizations who operate in the parts controlled by ISIS cannot access any funds anymore. This cripples them even more.

Second, such lack of funding significantly undermines the sustainability of women’s peacebuilding and other activities. The

351 STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES, *supra* note 164, at 72.

352 *Id.*

353 See *supra* note 40 and accompanying text.

354 Counter-terrorism and humanitarian action, *supra* note 162, at 23; Joshua Hersh, *Why Humanitarians Talk to ISIS*, DAILY BEAST, (Oct. 24, 2014), <http://www.thedailybeast.com/articles/2014/10/24/why-humanitarians-talk-to-isis.html>.

355 See *supra* note 277 and accompanying text.

356 STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES, *supra* note 164, at 94–95; VICTORIA METCALFE-HOUGH ET AL., HUMANITARIAN POLICY GRP., UK HUMANITARIAN AID IN THE AGE OF COUNTER-TERRORISM: PERCEPTIONS AND REALITY 5 (2015), available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9479.pdf>.

357 UK HUMANITARIAN AID IN THE AGE OF COUNTER-TERRORISM: PERCEPTIONS AND REALITY, *supra* note 356, at 5 (noting that several British INGOs have “suspended humanitarian operations in areas of Syria that had come under the control of Islamic State or other proscribed groups in large part because of the risk of exposure to prosecution in the UK or elsewhere.”). See also EVA SVOBODA & SARA PANTULIANO, HPG WORKING PAPER, INTERNATIONAL AND LOCAL/DIASPORA ACTORS IN THE SYRIA RESPONSE 20 (2015), <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9523.pdf>. See further *Aid Policy: Crippled by counter-terrorism laws*, IRIN NEWS (Oct. 20, 2011), <http://pictures.irinnews.org/printreport.aspx?reportid=94015>.

358 DE-RISKING: GLOBAL IMPACT AND UNINTENDED CONSEQUENCES, *supra* note 190, at 23.

359 See *supra* notes 289–290 and accompanying text.



Members of civil society protest in Peshawar, Pakistan against the Taliban's killing of school children and staff members in a local public school (December 17, 2014).

Credit: Asianet-Pakistan/Shutterstock.com

result, in some cases, is that “[w]omen peacebuilders are . . . caught between the rising tide of extremism in their communities, and the constraints placed upon their work by counter-terrorism policies that restrict their access to critical funds and resources.”³⁶⁰ From both a human rights and national security perspective, this result is incoherent: “Grassroots organizations, especially progressive women’s groups, are at the front line, not just defending communities under attack, but also preventing violent extremism. The irony is that US counterterrorism finance regulations are getting in the way of supporting the very people who are countering terrorism.”³⁶¹

We work in areas under ISIS control, with women who provide secular education to children, to counter the ISIS-run schools. But donors do not want to support any projects in ISIS-controlled areas. That endangers the sustainability of those small community-run projects, which are very much countering terrorism and extremism. Especially U.S.-based donors have stopped their support, as it is made illegal by the U.S. government to support anyone financially in those areas.

Women’s organization working in Syria

This lack of funding to women’s groups in such settings creates a growing mismatch between the areas with the greatest financial, humanitarian, and other needs and where donor money currently goes and women’s organizations work.

It is difficult to respond to those issues, as you do not want to become a target and face even more negative impact. In that sense it had an impact on whom we hire and whom we work with, as we have to be very careful. This makes it impossible to work for example on peacebuilding in Afghanistan or Syria.

Women’s organization headquartered in Western Europe

This mismatch has distinct gender effects, including because of the particular vulnerabilities of women and girls in areas under terrorist control³⁶² and the fact that women’s groups are often best placed to access these areas and, in some cases, may actually be the only actors with such access.³⁶³

Third, where women’s rights organizing and women’s rights organizations do continue to operate in such geographic areas of conflict or where terrorist groups are active or in control of territory, strictures of the countering terrorism financing regime can create additional threats from both State and non-State groups. With regard to the authorities, the prospect of sanctions for non-compliance with countering terrorism financing rules looms large. For example, according to one women’s organization headquartered in Western Europe: “We work in many conflict areas. It could very well happen that an armed group would divert food or other aid, which, if it would come out, we would have a big problem.” With regard to threats from non-State groups, countering terrorism financing measures have contributed to “an already polarised environment in which humanitarian actors are not perceived as neutral, impartial or independent.”³⁶⁴ This polarization amplifies the gendered securi-

360 PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 14.

361 Jillian Schwedler, “ISIS Is One Piece of the Puzzle:” *Sheltering Women and Girls in Iraq and Syria*, MIDDLE EAST RESEARCH AND INFO. PROJECT (Oct. 28, 2015), <http://www.merip.org/mer/mer276/%E2%80%9Cone-piece-puzzle%E2%80%9D> (based on an interview with Yifat Susskind, Executive Director of MADRE).

362 See *infra* notes 400–402 and accompanying text.

363 See, e.g., INTERNATIONAL AND LOCAL/DIASPORA ACTORS IN THE SYRIA RESPONSE, *supra* note 357, at 9 (noting that working with local Syrian organizations has become “a necessity as issues of access and insecurity effectively make it very difficult if not at times impossible for ‘traditional’ humanitarian players to operate on the ground.”).

364 IRIN, *Counter-terrorism Laws can Stifle Humanitarian Action, Study Shows*, GUARDIAN (London) (July 25, 2013), <https://www.theguardian.com/global-development/2013/jul/25/counter-terrorism-humanitarian-aid-study>.

ty challenges that women’s human rights defenders, politicians, organizations, and leaders already face when working in areas where terrorists and violent extremist groups operate or are in control.³⁶⁵

Donor preference for larger, well-known international organizations to the detriment of grassroots women’s rights organizations

Countering terrorism financing measures have also contributed to a trend where “[s]everal large donors limit their partnerships to a few larger organisations who can absorb large donations and are seen as having the capacity to mitigate the risk, excluding other smaller partners and programmes which they might otherwise have funded.”³⁶⁶ This preference for “safer,” often international, partners (e.g., the U.N. and other international organizations) is “to the detriment of smaller or local NGOs”³⁶⁷ and cuts off funding for women’s organizing and women’s rights organizations because: The small-scale and grassroots nature of such organizations means that they present a greater “risk” to foreign donors who are increasingly choosing to fund a limited number of centralized, large-scale organizations for fear of having their charitable donations stigmatized as financing of, or material support to, terrorism.³⁶⁸

With the war in Syria, donors are hesitant to invest in organizations working in Syria, and the number of donors supporting Syrian organizations has in general decreased. Those who do, have increased the control and their regulations to fund, which makes it difficult for smaller, local organizations to actually access those funds.

Women’s organization working in Syria

Small organizations cannot receive funding anymore, only big organizations can have funds and open bank accounts. However, human rights defenders are not big organizations, and thus have no financing for their work. There is no sustainable activism.

Women’s organization working in Libya

Big international organizations are currently eating up all the funds, as women’s organizations, which are always smaller organizations, cannot access the funds and cannot meet the high standards set by the donors.

Women’s organization working in Pakistan

We know we won’t get direct funding because of our size. They usually give to big international organizations, that’s more convenient and comfortable for them.

Women’s organization headquartered in Sub-Saharan Africa

Those national organizations, the “established” ones often do not have the support of the communities, they do nothing on the ground, you do not see the work. But they get the big money from the international community. While we, small, grassroots organizations only get small, short-term funds for our work, if at all.

Women’s organization working in Libya

There is less and less money available unless you have been around for a long time and you have good relations with the donors. The number of donors have become fewer too. Many donors that used to be more supportive have less and less. Movements exist because they are needed. We don’t know what is coming along, so we can’t make longer-term plans either. We don’t have the time to be managing large amounts. Because of all the restrictions we face in these country, movements, the INGOs [international NGOs] end up having so much money, but we cannot do this. If we were to receive money here we have to go through all those hurdles, like banks charging us for the transfers. INGOs don’t have that problem, because of the large amounts of money that they have in the bank they can often come to more advantageous agreements with them. INGOs come to our country and they become our spokespersons. We have to be begging and trying to convince them to do the right thing to help the grassroots organizations. Grassroots organizations in these cases are mostly led by women.

Women’s organization working in El Salvador

The counter-terrorism measures will become the number one challenge in the MENA region in the upcoming time, and it will kill local initiatives, which are important to fight terrorism in the long run.

Women’s organization working in Syria

This trend undermines the key assets and advantages of existing on-the-ground local actors.³⁶⁹ In addition, an overriding risk mentality to go with the safe option is detrimental for building social change movements, where there is a need for constant growth, flexibility, and support for the feminist mobilization strategies and actors that often exist outside of the larger, well-estab-

365 See, e.g., PEACEBUILDING DEFINES OUR FUTURE NOW, *supra* note 282 (noting that Syrian women’s groups that have emerged since the start of the conflict “work under constant security threats, and battle financial limitations” (*id.* at 37) and must not only contend with the ongoing violence and conflict, but also must “overcome society’s patriarchal attitudes towards women and their involvement in the public domain, and outwit the many restrictions imposed on their movements, as well as the hostile view on activism in general, where extremist armed groups like IS or the Al-Nusra Front are in control.” (*id.* at 5)).

366 STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES, *supra* note 164, at 100 (see also *id.* at 70-71); *Counter-terrorism and Humanitarian Action*, *supra* note, at 24 (“Local NGOs may also be excluded as some donors focus on larger, international partners which are seen as better able to implement counter-terrorism precautions.”).

367 A/70/371, *supra* note 107, at ¶ 41.

368 A/64/211, *supra* note 4, at ¶ 42.

369 See, e.g., *Rethink Needed on Humanitarian Funding for National NGOs*, IRIN News (Sept. 15, 2014), <http://www.irinnews.org/analysis/2014/09/15/rethink-needed-humanitarian-funding-national-ngos>.

lished civil society space.³⁷⁰ As such the bias of donors toward repeat players and larger, international organizations operates to the detriment of existing women's rights organizations, but it also stymies the development of new organizations and "overlooks" those doing innovative work and seeking to cause change through burgeoning social movements.³⁷¹

I see the impact especially in how we have to compromise our freedom as organizations, as the government used counter-terrorism to create stress and fear among NGOs. This leads to loss of potential and quality in our work, as we have to keep the government happy. The groups, who should benefit from the work of NGOs, especially the women on the ground, are not reached anymore to the extent as they should be reached. Programs of NGOs are often superficial, as peace has become a sensitive topic to work on (also in relation to gender). The pressure from the government, including close monitoring and surveillance of NGOs, has led to organizations being scared to try out something new, being innovative. Programs have become repetitive, strategies are repetitive, doing what has been done many time before, to be safe. Also in regards to donors, they now tend to fund the same organizations they have funded before, as they do not want to take any "risks," rather avoiding new partners. Funding criteria have slowly changed in the way that smaller organizations, which are often doing innovative work, cannot apply anymore. Only big, established organizations have access to the international funds.

Women's organization headquartered in South Asia

Countering terrorism financing rules that are "geared toward recognizing established organizations with extensive and verifiable track records," can exclude women's rights organizing and women's rights organizations because they are often nascent and working below the radar (e.g., to protect confidential information).³⁷² For example, in the Syrian context, at the start of the Syrian conflict, "one criterion for receiving funding from traditional donors was that the organisation had to have been in existence for at least three years and undergone a number of audits."³⁷³ However, women's activism in Syria prior to 2011 was restricted to "a tightly held state patronage or, for the few organizations and activists that managed to remain rather independent, a heavy monitoring"³⁷⁴ and it was only "with the outbreak of protests against the Syrian regime, that civil society, including old and new women civil activism started to grow and diversify."³⁷⁵

We need to look at alternatives to give funds to human rights defenders and the youth movement which does not require them to get "established." Getting "established" is too much of a hassle for these individual, small organizations and activists. Donors need to understand this and find an alternative.

Women's organization working in Libya

Trend toward larger and fewer grants to the detriment of women's rights organizations

Donors, who themselves are facing increased due diligence and compliance requirements, as well as concerns about risk analysis and mitigation, are moving towards funding behavior that involves giving larger and fewer grants. Survey respondents noted this pressure; as one women's organization working in Libya noted, it meant they were unable to "function independently from other organizations, we are forced into partnerships which takes more time. In addition, all the bureaucracies take more time and leads to much insecurity." Small women's rights organizations are overlooked in this funding trend because they may lack the absorption capacity that is necessary for large infusions of income or the infrastructure to implement large and complex grants.

Donors also are putting the minimum amount organizations have to apply for higher and higher, which I think has also to do with counter-terrorism, as bigger, international organizations are easier to go along with their counter-terrorism regulations, and smaller, national NGOs are more difficult to control and check out for a foreign donor, or they do not have the track record asked for, and foreign donors want to be on the safe side, so do not fund those small organizations. So we often cannot apply any more, as the minimum amounts are too high in those calls.

Women's organization headquartered in South Asia

It is important for donors to understand the limitations and changing situation in Pakistan. Bigger organizations are in an advantage, because of access to government and access of money. Women's organizations do not have that leverage to apply for bigger funds.

Women's headquartered in South Asia

In addition to effects on small organizations, mid-sized organizations are also adversely impacted by the trend toward giving larger and fewer grants to large, well-established and often international organizations.³⁷⁶

370 See *supra* notes 293–294 and accompanying text.

371 See, e.g., Maina Kiai, *From Funding Projects to Funding Struggles: Reimagining the Role of Donors*, OPENDEMOCRACY.NET (Jan. 17, 2017) ("[D]espite their transformative power, social movements are currently overlooked in donor priorities. The opportunity cost of this business model is far from benign. Social movements that have the genuine capacity to address structural inequalities in society—from labour unions to pro-democracy protest movements—are overlooked, ignored and underfunded. Their galvanising potential can be lost, often before it is able to properly form.")

372 See A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 74.

373 INTERNATIONAL AND LOCAL/DIASPORA ACTORS IN THE SYRIA RESPONSE, *supra* note 357, at 17.

374 PEACEBUILDING DEFINES OUR FUTURE NOW, *supra* note 282, at 4.

375 *Id.*

376 For example, in the humanitarian sector, more than 85 percent of all first-level direct funding, as reported to the U.N. Office for the Coordination of Humanitarian Affairs Financial Tracking Service went to just "29 humanitarian agencies, governments and institutions, which . . . constitute less than 4% of the recipients of humanitarian funding." (FUNDING OF LOCAL AND NATIONAL HUMANITARIAN ACTORS, *supra* note 33, at 2). These 29 agencies include the 14 largest international NGOs and, for the other 96 percent of humanitarian actors, they must either vie for the remaining 15 percent of direct humanitarian funding or enter into sub-grantee agreements with those larger NGOs and U.N. agencies. *Id.*

Sub-contracting and the impact on the work of grassroots women's rights organizations

Countering terrorism financing rules can also make it risky for international organizations receiving these larger grants to partner with local organizations.³⁷⁷ As a result, such international organizations can turn to "implementing all their programmes directly through their own staff,"³⁷⁸ thus overlooking or even undermining the contribution of local, grassroots women's rights organizing and organizations. Even if such large organizations do engage in local partnerships, such sub-contracting arrangements can exclude the perspectives of women's organizations, including because of a "collective failure to recognize the ability of local civil society organizations and women and girls to act as partners with valuable knowledge and experience . . ."³⁷⁹

Where women's rights organizations are sub-contractors, countering terrorism financing rules can exacerbate existing challenges and create new hurdles. In particular, as project implementation is pushed further down the line, so too are the potential risks,³⁸⁰ including of violating, or being perceived to violate, "material support" parameters. Costs related to sub-contracting (e.g., overhead and administrative costs) are already often significant and reduce the amount of funds available for actual programming.³⁸¹ Where women's rights groups assume countering terrorism financing obligations as sub-grantees,³⁸² they can incur further resource burdens because they take on a host of due diligence and other compliance responsibilities that are often not covered by grant funding.³⁸³

Sub-contracting arrangements under such conditions compound existing concerns that women's groups have that they are perceived to be "working merely as silent implementers for international NGOs."³⁸⁴ As such there is a risk that these sub-contracting arrangements move women's rights organizations and

organizing away from their "downward" accountability to their grassroots constituencies and beneficiaries³⁸⁵ toward a focus on implementing projects of larger, international organizations and following the countering terrorism financing procedures and standards embedded in such sub-contracting arrangements.

It means we need to work more via intermediates . . . than directly with these kind of donors, while we wish to work more directly. I guess it is kind of a tactic to have more control and less risks for fraud, or corruption, or funding terrorist activities, and not empower civil society much.

Women's organization headquartered in MENA

One organization in the EU contacted us, they had never contacted us before, they said this money was available, and that we could qualify to requires funds, but part of the requirements was to do an alliance with a EU organization. They wanted to be partners with us. We could do a project here and they would charge for administering us. We discussed it. We didn't want to do it because it's just maintaining the system as it is. We told them that this is not the way that we work and we did not want to accept that. We would only end up justifying or maintaining that fallacy. It would just be a big lie.

Women's organization working in El Salvador

Self-censoring and women's rights organizing and organizations

As the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism notes counter-terrorism measures, including those directed at terrorism financing:

[H]ave also contributed to a self-imposed restriction by civil society actors of their own space. It is unsurprising that, given the complexities involved in operating in or around areas where terrorist groups are active, some NGOs have preferred to reorient their operations to areas where there are fewer risks of prosecution or have refused to take funding from certain donors.³⁸⁶

377 UK HUMANITARIAN AID IN THE AGE OF COUNTER-TERRORISM: PERCEPTIONS AND REALITY, *supra* note 356, at 5 (noting that such organizations "no longer work with local partners in Syria due to the risks (and the time and cost involved in assessing these risks) that they may be linked to proscribed groups or individuals."). See also INTERNATIONAL AND LOCAL/DIASPORA ACTORS IN THE SYRIA RESPONSE, *supra* note 357, at iii ("Making genuine partnerships work will require flexibility and adaptability from traditional donors and international aid agencies. This does not mean doing away with all procedures and standards, but rather adapting them as far as possible to the realities on the ground.").

378 UK HUMANITARIAN AID IN THE AGE OF COUNTER-TERRORISM: PERCEPTIONS AND REALITY, *supra* note 356, at 5.

379 PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 88.

380 See generally LESS PAPER MORE AID, *supra* note 505, at 7.

381 Heba Aly, *Editor's Take: What hope for reform?*, IRIN NEWS (Aug. 5, 2015), <http://www.irinnews.org/opinion/2015/08/05/editors-take-what-hope-reform> (observing "a circuitous route of sub-contracting (Donor - UN agency - international NGO - national NGO - community-based organisation) in which each actor in the supply chain takes a cut for overhead costs and influences the direction of the assistance - leaving the local people who are actually affected with little say and less money. Aid efforts are often inappropriate for the needs or culture of the communities they target, and sometimes they sideline them altogether.").

382 See, e.g., STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES, *supra* note 164, at 104 ("[I]nternational actors are resentful for passing on counter-terrorism obligations to sub-grantees, at the request of donors, and including counter-terrorism provisions in agreements with local organisations.").

383 See FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 88 ("Donors, including government donors, generally have not increased funding to account for this additional overhead in their grants.").

384 Louise Redvers, *Syrian Aid Groups Seek Greater Role*, IRIN NEWS (Mar. 18, 2015), <http://www.irinnews.org/analysis/2015/03/18/syrian-aid-groups-seek-greater-role>.

385 See generally Alnoor Ebrahim, *Accountability in Practice: Mechanisms for NGOs*, 31(5) WORLD DEV., 813-829, 814-15 (2003) (addressing "downward" accountability of NGOs to beneficiaries and more broadly to communities and potentially regions in which they work).

386 A/70/371, *supra* note 107, at ¶ 40; see also *Counter-terrorism and Humanitarian Action*, *supra* note 162, at 24 ("In some cases, programmes exclude whole groups of people on the basis of their geographic location. The role of Palestinian NGOs has also diminished, with some refusing grants due to counter-terrorism clauses.").

Indeed, women's rights organizations have engaged in a series of self-censoring practices to avoid the attention of governments. While these may be short-term protection measures, they have long-term adverse impacts on women's rights organizing, women's rights organizations, and gender equality, including by creating additional stress and internal pressure on groups,³⁸⁷ as well as reducing the profile of these organizations in ways that may place them outside of the narrowed risk appetite and preference of donors and financial institutions to fund long-established and well-known organizations.³⁸⁸

Organizations are scared to attract unwanted attention of the government, so they are careful. We are afraid. And that donors want to take less and less risk to support critical civil society has a negative impact too on the number of people speaking up.

Women's organization working in Turkey

We have tried to be transparent about our work and our funds to the government, so far that has helped us, as they see that we are no direct threat to the government.

Women's organization headquartered in South Asia

We try to frame our work as apolitical as possible, to not attract the attention of the government.

Women's organization working in Pakistan

We got used to working with so many prevention measures, that sometimes we are not aware of it anymore. We are not too vocal; we try to avoid certain work in order to be safe. We tend to keep a low profile, this has been our strategy to continue working without prosecution. Because we got used to this, we do not analyze this specifically. And then governments complain about not having women in the public eye. There are invisible obstacles.

Women's organization working in Colombia

Diminished assistance to beneficiaries, including to women and girls, in areas under terrorist control

Countering terrorism financing rules limit the resources and operating space of women's rights organizing and organizations as actors, as well as adversely impact the human rights of women and girls as beneficiaries of those organizations.³⁸⁹ Indeed, given the significant contribution of women's rights organizing and women's rights organizations in areas such as conflict mitigation, peacebuilding, promotion of human rights, the discontinuation or circumscribing of activities impacts not just these organizations, but the enjoyment of human rights for everyone in affected communities.

In addition, countering terrorism financing rules particularly impact populations living in areas under terrorist control or where terrorist groups are active.³⁹⁰ These impacts range from delays³⁹¹ to "no or diminished access to humanitarian assistance and protection"³⁹² in the very areas where humanitarian needs are often most acute³⁹³ and "even if its [the assistance] value in the name of life-saving intervention is little in dispute."³⁹⁴ Such impacts can result from an array of factors, including "because fewer funds are available, because of conditions attached to funding or because operational agencies are unwilling to run perceived or actual legal risks."³⁹⁵

It slows us down. It reduces funding. It strains relationships between organizations, donors, and partners. It also impacts the beneficiaries. If you're doing humanitarian work and can't send it to where it is needed, they suffer. It also limits the creativity and flexibility of those on the ground to come up with solutions . . . Donors, banks, and governments need to stop transferring the risks.

Women's organization headquartered in Western Europe

We don't reach vulnerable groups this way. We now have a fear for doing projects or asking for money for projects in places like Eritrea and South Sudan

Women's organization headquartered in Sub-Saharan Africa

It crippled the work of the organization, all service-related activities stopped. We had to downsize, going from 75 to five staff.

Women's organization working in Ethiopia

387 See *infra* Section IV.5.

388 See *supra* notes 366–375 and accompanying text.

389 See A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 77 ("[R]estrictions on humanitarian relief and peace-building efforts impact women both as victims of humanitarian crisis and activists seeking to mitigate its impacts."); A/HRC/23/39, *supra* note 222, at ¶ 9 ("[A]ccess to resources is important, not only to the existence of the association itself, but also to the enjoyment of other human rights by those benefiting from the work of the association.")

390 A/HRC/33/29, *supra* note 43, at ¶ 40 (noting that countering terrorism financing impacts are "particularly great on organizations operating in contexts in which groups considered 'terrorist' or 'violent extremist' are active, thereby having a negative impact on the delivery of much-needed assistance to populations present in such territories."). See also *supra* note 277 and accompanying text.

391 A/70/371, *supra* note 107, at ¶ 43.

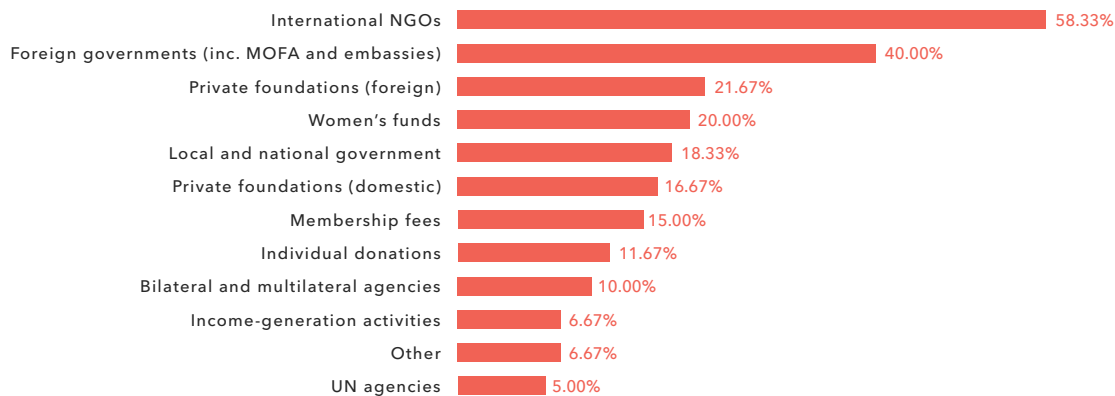
392 STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES, *supra* note 164, at 12. See also *Counter-terrorism Laws can Hurt Humanitarian Action*, IRIN NEWS (July 22, 2013), <http://www.irinnews.org/news/2013/07/22/counter-terrorism-laws-can-hurt-humanitarian-action>.

393 STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES, *supra* note 164, at 12.

394 *Why Humanitarians Talk to ISIS*, *supra* note 354. See also DONOR CONDITIONS AND THEIR IMPLICATIONS FOR HUMANITARIAN RESPONSE, *supra* note 170, at 2 ("It is harder for humanitarian organizations to adapt to changing humanitarian priorities, provide timely needs-based responses, and maximise cost efficiencies when they have to internally juggle funding sources to ease the effects of funding gaps and restrictions."); *Counter-terrorism and Humanitarian Action*, *supra* note, at 24 (noting that in Gaza, for example, programs are frequently developed "firstly to avoid contact with or support to Hamas, and only secondly to respond to humanitarian needs. In some cases, programmes exclude whole groups of people on the basis of their geographic location.")

395 STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES, *supra* note 164, at 12.

SOURCES OF FUNDING



The gender impacts of failures in delivery of humanitarian and other assistance in areas where terrorist or violent extremist groups are active or in control are acute. First, women and girls can bear the brunt of such restrictions on aid because they are disproportionately impacted by humanitarian crisis.³⁹⁶ As the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism notes: “The need to ensure accessible, safe and effective channels for donation to such [gender equality] organizations is particularly acute in situations of humanitarian crisis, which, as noted earlier, often have disproportionate impacts on women and girls.”³⁹⁷ Second, governments may deny humanitarian assistance to women and girls as a form of collective punishment for their male family members’ purported links to terrorism. For example, it has been observed that in the Mindanao region of the Philippines: “Displaced women are often refused access to humanitarian assistance because their men are considered terrorists who are hiding in the mountains. Even in distress the terrorism argument is used against them. Nevertheless it is mainly women who socially wage the fight against injustice.”³⁹⁸

Third, in cases of restrictions on external aid, terrorist or violent extremist groups may themselves take on the role of provision

of goods and services in areas in which they are active or in control, including to enhance the legitimacy and popularity of the organization.³⁹⁹ Where terrorist or violent extremist groups increase their legitimacy and reach, the human rights of women and girls suffer whether through direct targeting or through impacts experienced as members of the civilian population. On the former, “[a]cross religions and regions, a common thread shared by extremist groups is that in each and every instance, their advance has been coupled with attacks on the rights of women and girls—rights to education, to public life and to decision-making over their own bodies.”⁴⁰⁰ On the latter, “[i]n areas where terrorist groups operate, it is inevitably the civilian population that suffers the most”⁴⁰¹ and it has been noted, including by the U.N. Security Council, that women and girls bear disproportionate impacts as part of that civilian population.⁴⁰²

Fourth, in those cases where terrorist or violent extremist groups do take on distribution of aid and other service provision, they may also introduce gender-based restrictions on the provision of such assistance to women and girls, such that within terrorist-controlled areas, women and girls may be deprived of basic services on a discriminatory basis, including for example in access to food.⁴⁰³

³⁹⁶ A/64/211, *supra* note 4, at ¶142.

³⁹⁷ *Id.*

³⁹⁸ A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 76 (quoting Raissa Jajurie, Mindanao, Philippines, Lawyer and legal aid worker, lawyer for the Alternative Legal Assistance Centre/Saligan).

³⁹⁹ See, e.g., A/70/674, *supra* note 4, at ¶ 22 (“Violent extremist groups actively interfere with the provision of international humanitarian assistance, including food and vital medical aid, to populations in need by limiting the access of humanitarian actors to the areas controlled by those groups, or by seizing relief supplies.”); OVERSEAS DEV. INST., AL-SHABAAB ENGAGEMENT WITH AID AGENCIES 4 (Dec. 2013), available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8749.pdf> (noting that “Al-Shabaab’s reasons for regulating agencies,” included that it “saw itself as a ‘government in waiting’, coopting aid agencies furthered its self-image and demonstrated that it had something positive to offer civilians.”); Armin Rosen, *Here’s how ISIS Abuses Humanitarian Aid*, BUSINESS INSIDER (Mar. 3, 2015), <http://www.businessinsider.com/how-isis-abuses-humanitarian-aid-2015-2> (“ISIS has decided that aid advances its state-building project and deepens the group’s control over the estimated 3.6 million people living under the ‘Caliphate.’”); OVERSEAS DEV. INST. & IRIN NEWS, AID AND THE ISLAMIC STATE 4 (Dec. 2014), available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9390.pdf> (“IS knows that it needs to support communities in its territories if it is to win them over. It is therefore capitalising on its role as a conduit for aid distributions to project the image of a group that is not only engaged in an armed struggle, but also providing for people living under its control.”).

⁴⁰⁰ PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 223 (see also *id.* at 223–25). See also A/70/674, *supra* note 4, at ¶ 19 (“There is credible information indicating that terrorists and violent extremist groups like ISIL and its affiliates may have committed serious violations of international law, including genocide, crimes against humanity and war crimes. These groups also violate the rights of women and girls, including through sexual enslavement, forced marriages and encroachment on their rights to education and participation in public life . . . Torture, and sexual and gender-based violence, are also reportedly widespread.”); U.N. S.C. Rep. of Secretary-General on Women and Peace and Security, ¶ 3, U.N. Doc. S/2014/693 (Sept. 23, 2014) (“Other developments of concern include targeted violence and human rights violations linked to terrorism committed against women and girls, violent extremism and transnational organized crime . . .”).

⁴⁰¹ A/68/841, *supra* note, at ¶ 11.

⁴⁰² S.C. Res. 2170, preambular ¶ 16, U.N. Doc. S/RES/2170 (Aug. 15, 2014) (“Urging all parties to protect the civilian population, in particular women and children, affected by the violent activities of ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida, especially against any form of sexual violence.”)

⁴⁰³ See, e.g., *Al-Shabaab Engagement with Aid Agencies*, *supra* note 399, at 12 (noting that Al-Shabaab in Somalia “often prohibited [aid] agencies from making contact with Somali women or employing them in any capacity. Al-Shabaab also often prohibited agencies from making contact with Somali women or employing them in any capacity.”); see also *infra* notes 400–421 and accompanying text.



Somali women and their children queue to receive food relief from Al-Shabaab outside Mogadishu (August 12, 2010).

Credit: Feisal Omar/Reuters/Alamy Stock Photo

Box 7: Case study: women and girls and the 2011 famine in Somalia

The situation of women and girls during the 2011 famine in Somalia exemplifies the ways in which women are often squeezed—as victims and as advocates—between terrorism and countering terrorism financing measures.

In terms of countering terrorism financing measures, between March 2008, when the U.S. government designated Al-Shabaab as a foreign terrorist organization,⁴⁰⁴ and 2010, there was an 88 percent decrease in earmarked U.S. aid to Somalia.⁴⁰⁵ In early 2011, as the famine in Somalia intensified, “American officials withheld aid from parts of the country that were controlled by the terrorist group Al Shabab.”⁴⁰⁶ Such limits had specifically gendered effects. The “USG’s significant cuts to humanitarian aid to Somalia (for fear it would be diverted to Al-Shabaab), . . . wreaked havoc on the humanitarian crisis there, with disproportionate impact on women and girls.”⁴⁰⁷ According to the World Food Programme (WFP), while such cuts “affect[] everyone in Somalia, the particular vulnerabilities of women and children (particularly girls) in crisis means that they feel the burden of the cuts.”⁴⁰⁸ For example, WFP cut 12 feeding

centers for mothers and children due to budget shortfalls.⁴⁰⁹ Additionally, women and children comprised the majority of those forcibly displaced as a result of the famine and humanitarian shortfalls, such that “approximately 70 percent of those arriving at the camps in Dadaab [we]re women-headed households” for the first half of 2011.⁴¹⁰ Amongst those displaced, women forced to flee areas under Al Shabaab control faced “greater risk of gender-based violence and robbery as they travelled to Kenyan refugee camps” and “[r]eports of rape and attack when approaching Dadaab camps and chronic insecurity in the camps indicate[d] significant unmet protection needs.”⁴¹¹

Aside from direct cuts in humanitarian assistance, lack of clarity and delay—particularly from the U.S. government—in providing guidance on the implications of countering terrorism financing measures for groups working in Somalia contributed to confusion regarding permissible actions and fatal delays. Despite indications of possible famine as early as August 2010,⁴¹² it was not until August 2011 that the U.S. Department of State sought “to reassure our humanitarian assistance partners, implementing partners, that they need not fear prosecution under OFAC regulations as long as they are engaged in good-faith efforts to deliver food to people in need.”⁴¹³ Two days

404 *Foreign Terrorist Organizations*, U.S. DEP’T OF STATE, <http://www.state.gov/j/ct/rls/other/des/123085.htm>.

405 *STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES*, *supra* note 164, at 82.

406 *Why Humanitarians Talk to ISIS*, *supra* note 354. See also U.S. DEP’T OF STATE, *BACKGROUND BRIEFING ON SOMALIA AND DELIVERY OF HUMANITARIAN ASSISTANCE* (Aug. 2, 2011) (noting that “[s]ince January 2010, many of the large international UN and NGO agencies have not been operating in southern Somalia.”).

407 *A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM*, *supra* note 6, at 23.

408 *Id.* at 79.

409 Martin Plaut, *WFP to Shut Somalia Food Centres*, BBC NEWS (Sept. 14, 2009), <http://news.bbc.co.uk/2/hi/africa/8256031.stm>.

410 *Responding to Drought and Famine in the Horn of Africa: Hearing Before the Subcomm. on African Affairs of the S. Comm. on Foreign Relations*, 112th Cong. 200 45 (Aug. 2011) (statement of Wouter Schaap, Asst. Country Dir., CARE Somalia).

411 Hugo Slim, *IASC Real-Time Evaluation of the Humanitarian Response to the Horn of Africa Drought Crisis in Somalia, Ethiopia and Kenya Synthesis Report*, INTER-AGENCY STANDING COMM. 15 (June 2012).

412 USAID FAMINE EARLY WARNING SYSTEMS NETWORK (FEWS NET), *Somalia Food Security Alert: Humanitarian Crisis in Somalia Persists, Despite Good Rains* (Aug. 23, 2010).

413 *BACKGROUND BRIEFING ON SOMALIA AND DELIVERY OF HUMANITARIAN ASSISTANCE*, *supra* note 406 (according to one senior administration official, “[t]he details of [the reassurances] I think are going to be worked out on a - sort of an evolving basis . . . But the concern about diversion to al-Shabaab I think has made some humanitarian assistance organizations feel a bit constrained, and we’re trying to help them not feel constrained, trying to help them move the food to where it’s most desperately needed.”).

later, the U.S. Department of the Treasury backpedaled slightly on this announcement, limiting this exemption “from the prohibition on making certain cash payments to al-Shabaab” to only “the Department of State and USAID and their contractors and grantees.”⁴¹⁴ In Somalia, delayed response to the famine—including those occasioned by lack of regulatory clarity on countering terrorism financing rules—resulted in “higher impacts on women. Family caring responsibilities become more onerous; women frequently eat last and least.”⁴¹⁵

In addition to adverse impacts of government aid policies, Al-Shabaab itself sought to impose gendered restrictions on international aid delivery, including prohibitions on female aid workers.⁴¹⁶ Such efforts to restrict female aid workers further compounded Somali women’s access to aid due to “their inability to access assistance from male aid workers because of rules imposed by al-Shabaab.”⁴¹⁷ In 2011, Al-Shabaab released a statement “permanently revok[ing] the permissions” of 16 U.N. and international NGOs from working in Somalia.⁴¹⁸ Absent U.N. and international aid agencies’ aid delivery, Al-Shabaab “mov[ed] into the humanitarian vacuum in Somalia, distributing aid and cash to drought victims in an attempt to win hearts and minds.”⁴¹⁹ This, in turn, “rais[e]d a number of gender concerns, given the myriad ways in which al-Shabaab has been restricting women’s rights.”⁴²⁰ For example, Somali women faced increased restrictions on their freedom of movement, and “[i]n some cases, pregnant women, reluctant to be seen in public . . . failed to get medical attention, increasing the number of miscarriages in the country.”⁴²¹

Women’s rights organizations and organizing were also squeezed between the actions of Al-Shabaab and government

measures to cut off financing to the group. On the one hand, “Somali women are . . . at the forefront of challenging Al-Shabaab’s restrictions on aid in areas under its control”⁴²² and also “women lead the majority of local organizations handling humanitarian assistance, [although] they are all but invisible in the political leadership.”⁴²³ For example, SAACID, a Somali women’s organization working in Somalia for more than 20 years, including in Al-Shabaab-controlled areas,⁴²⁴ was “during the height of the fighting in Mogadishu in recent years, . . . literally the only entity that was present in all 16 of the capital’s districts, providing some 80,000 2,000-calorie meals daily to some of the most vulnerable residents.”⁴²⁵

However, such actors face a series of constraints under the rubric of countering terrorism financing. SAACID was “falsely accused . . . in a U.N. report of having made payoffs to al-Shabaab”⁴²⁶ and while the organization was “exonerated in the subsequent U.N. followup report,” it still “meant 18 months where they were cut off from the international funding. And those were 18 months they lost.”⁴²⁷ One surveyed women’s organization headquartered in Western Europe noted that “in Somalia we could not get the funds, due to the US partner vetting, and the danger that materials could potentially reach armed groups which were banned.” Another women’s organization headquartered in Western Europe stated in relation to Somalia that “the problem is that they have closed many of the remittances, so there are not many other options for getting money to those who need it there.” Cash-carrying also may not be a viable alternative given the safety implications for women; according to the latter organization this is “because it’s risky, if you are caught with a lot of cash coming into Somalia from Kenya, or if you’re caught in Somalia with a lot of cash it is risky too.”

414 U.S. DEP’T OF THE TREASURY, OFFICE OF FOREIGN ASSETS CONTROL, FREQUENTLY ASKED QUESTIONS REGARDING PRIVATE RELIEF EFFORTS IN SOMALIA 2 (Aug. 4, 2011), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/somalia_faq.pdf. In November 2011, in response to a request from InterAction, an alliance of U.S.-based international NGOs, for a general license to operate in Somalia, OFAC Director Adam Szubin stated that “[t]his situation does not lend itself to a broad general license” and OFAC will only “work with U.S. NGOs on a case-by-case basis.” (Letter from Adam J. Szubin, Director, Office of Foreign Assets Control, Dept. of Treasury to Samuel Worthington, President and CEO, InterAction (Nov. 11, 2011), <http://www.charityandsecurity.org/system/files/Somalia%20General%20License%20Denial.gif>).

415 OXFAM AND SAVE THE CHILDREN, *Dangerous Delay: The Cost of Late Response to Early Warnings in the 2011 Drought in the Horn of Africa*, Joint Agency Briefing Paper 11 (June 2012), available at <https://www.oxfam.org/sites/www.oxfam.org/files/bp-dangerous-delay-horn-africa-drought-180112-en.pdf>.

416 Xan Rice, *WFP Halts Food Aid in South Somalia*, GUARDIAN (London), (Jan. 5, 2010), <https://www.theguardian.com/world/2010/jan/05/somalia-food-aid-suspended> (“Besides the insecurity problems, the Shabaab had demanded that the UN agency remove all women from their jobs and pay \$20,000 (£13,000) every six months for ‘security’ in some of the region’s controls. When the WFP refused, it was given a deadline of 1 January to cease operations.”).

417 Lama Fakh, *Soft Measures, Real Harm: Somalia and the US “War on Terror,”* in GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES, *supra* note 6, 183, at 195.

418 Clar Ni Chonghaile, *Al-Shabaab Bans Aid Agencies in Somalia and Raids Offices*, GUARDIAN (London) (Nov. 28, 2011), <https://www.theguardian.com/world/2011/nov/28/al-shabaab-bans-aid-agencies-somalia>.

419 Jamal Osman, *Al-Qaida Targets Somalia Drought Victims with Cash Handouts*, GUARDIAN (London) (Nov. 1, 2011), <https://www.theguardian.com/world/2011/nov/01/al-qaida-somalia-drought-victims>.

420 Fakh, *Soft Measures, Real harm: Somalia and the US “War on Terror,”* *supra* note 417, at 195.

421 *Id.*

422 A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 79 (citation omitted).

423 Michelle Chen, *Famine Devastates Somalia in the Shadow of U.S. Domination*, COLORLINES (Aug. 10, 2011), <http://www.colorlines.com/articles/famine-devastates-somalia-shadow-us-domination>.

424 Oren Dorell, *Terror Group Blocking Aid to Starving Somalis*, USA TODAY (Aug. 17, 2011), http://usatoday30.usatoday.com/news/world/2011-08-14-somalis-famine-terrorists-block-aid-groups_n.htm.

425 *Responding to Drought and Famine in the Horn of Africa: Hearing before the Subcomm. on African Affairs of the S. Comm. on Foreign Relations*, 112th Cong. 200 40 (Aug. 2011) (statement of Dr. J. Peter Pham, dir. of the Michael Ansari Africa Ctr. of the Atl. Council, and a former professor of justice studies, political science, and Africana studies at James Madison Univ.).

426 *Id.* at 51.

427 *Id.*

Limits on programs supporting female victims of terrorism and violent extremism



Displaced Yazidi women who fled the violence in the Iraqi town of Sinjar take part in a demonstration at the Iraq-Syria border crossing in Fishkhabour, Dohuk province, demanding protection and evacuation from Iraq to safer areas such as Europe and the United States (August 13, 2014).

Credit: Youssef Boudlal/Reuters/Alamy Stock Photo

Terrorist and violent extremist groups regularly target women and girls, including through gender-based violence.⁴²⁸ Such targeting often extends to women's rights defenders and women's civil society; for example, one women's organization headquartered in South Asia described how "one of our offices in the rural area was burned because we wouldn't give money to the rebels." Under international human rights law, States are required to prevent, investigate, and provide redress for these victims.⁴²⁹ However, in some instances, rules to counter terrorism financing—particularly the over-breadth of rules proscribing material support—have meant that States have failed to meet these obligations to victims, instead further squeezing them between violent groups and the State.

Such circumstances may arise, for example, as follows:

- **Failure to provide support to female victims of terrorism because they are located in geographic areas under terrorist control or where terrorist groups are active:** In many cases, victims may still be in, or be proximate to, geographic areas under terrorist control or where such groups are active. In such instances, donors' reluctance to fund assistance programs and/or service providers in terrorist-controlled areas due to concerns that such assistance will be diverted to or exploited by terrorist and/or violent extremist groups⁴³⁰ inevitably penalizes female victims.
- **Failure to provide support to female victims because of perceived or actual difficulties in determining their status:** In addition, governments or donors may be reluctant to fund assistance programs where they perceive a difficulty in determining whether someone is actually a victim or potentially affiliated with a terrorist or violent extremist group.⁴³¹ In such cases, overly-broad definitions of "material support," as well as the threat of sanctions, can incentivize government and private donors and service providers to err on the side of caution and not support female victims; where this involves State donors and/or service providers this contravenes their obligation under international law to assist victims.⁴³² This risk is particularly acute when governments label or otherwise effectively treat victims as criminals or terrorists, such as forcing women to apply for amnesty in reconciliation processes.⁴³³
- **Labelling or treatment of female victims as terrorists—including by forcing them to undergo "de-radicalization" programs—that makes it more difficult to provide assistance:** The treatment of women and girl victims of Boko Haram in Nigeria is illustrative of this phenomenon. According to the Nigerian government, "no fewer than 22 women and girls, recruited as suicide bombers by Boko haram, were undergoing rehabilitation . . . after voluntarily embracing its de-radicalisation programme."⁴³⁴ Other reports indicate a

428 See *supra* notes 308–309 and accompanying text.

429 See *infra* notes 617–625 and accompanying text.

430 See *supra* notes 390–395 and accompanying text. See also FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 89 ("One NPO reluctantly decided it would no longer be able to support Sudanese orphans because of financial access-related issues: 'In trying to prevent money laundering and terrorism finance, restrictions on sending money are resulting in the death of persons, particularly the victims of terrorism.'") (citation omitted).

431 See, e.g., Letta Tayler, *The Kurdish Government Is Torturing Boys*, FOREIGN POL'Y (Feb. 1, 2017), <http://foreignpolicy.com/2017/02/01/the-kurdish-government-is-torturing-boys-islamic-state-kr-asayish/> (referring to the situation of 180 Iraqi boys detained in Erbil "as alleged Islamic State members," and finding that "these children were victimized twice—first by the Islamic State, which they said was constantly trying to enlist them as fighters, and then by members of Asayish.").

432 See *infra* notes 617–625 and accompanying text.

433 See, e.g., VIRGINIE LADISCH, INT'L CTR. FOR TRANSITIONAL JUSTICE, FROM REJECTION TO REDRESS: OVERCOMING LEGACIES OF CONFLICT-RELATED SEXUAL VIOLENCE IN NORTHERN UGANDA 10 (2015), available at <https://www.ictj.org/sites/default/files/ICTJ-Report-Uganda-Children-2015.pdf> (noting the "incongruity" of giving amnesty to "formerly abducted young mothers" in Northern Uganda as a way that the "government is putting the blame on those it failed to protect and in a way further distancing itself from accepting responsibility for failing to protect them from violations.").

434 See *President Buhari Assures Victims of Insurgency of Government Support*, NIGERIAN TIMES (June 30, 2015), <http://nigeriantimes.ng/news/buhari-assures-victims-of-insurgency-of-government-support/>.

larger number that includes those “rescued”⁴³⁵ by the government and also abductees of Boko Haram that communities want to go through a de-radicalization process because of their “fear that their return to the environment from where they were abducted could re-traumatise and ‘radicalise’ them.”⁴³⁶ For example, the U.N. Office of the High Commissioner for Human Rights has reported that “as of June 2015, 307 rescued women and children were enrolled in a Government-run ‘de-radicalization programme.’”⁴³⁷ Such women and girls are doubly punished. First, treating female victims as criminals implicates a range of human rights concerns, violating the State’s obligation to provide remedies to victims.⁴³⁸ Second, because some governments’ material support laws in practice may make it difficult for donors to fund, and NGOs to access, individuals in such programs,⁴³⁹ their needs continue to remain unidentified and unmet.

- **Neglect of geographic areas under terrorist control that makes women and girls dependent on violent groups for service provision:** Lack of assistance to geographic areas under terrorist control lead all in the population to depend on terrorist organizations for essential services but have particular adverse gendered effects, given the extent to which the needs of women and girls are deprioritized, or their rights violated in such contexts.⁴⁴⁰
- **Penalizing female refugees and asylum-seekers for “material support” provided under duress:** Material support bars in the refugee and asylum-seeking context may operate to penalize women and girls forced into providing services for proscribed organizations (e.g., providing cooking or sexual services). As noted by the U.N. Special Rapporteur on the promotion and protection of human rights

and fundamental freedoms while countering terrorism, “[s]ome jurisdictions also provide non-criminal sanctions that may affect civil society personnel, including their immigration status,”⁴⁴¹ and “forced domestic service for actors considered to be terrorists has been understood to count as ‘material support’ to terrorism, therefore barring successful asylum claims by women who have suffered this abuse.”⁴⁴²

Challenges in disengagement, rehabilitation, and reintegration programs for women

The international community has recognized the need for gender-sensitive and human rights-based disengagement, rehabilitation, and reintegration programs that address the specific needs of women and girls who have engaged in or supported terrorist or violent extremist groups.⁴⁴³

While such programs can implicate a series of human rights concerns,⁴⁴⁴ rules to counter terrorism financing may also inhibit this imperative of ensuring effective and human rights compliant disengagement, rehabilitation, and reintegration. For example, in relation to such reconciliation activities and work with proscribed groups and individuals, the U.S. government has noted that “Presidential Executive Orders and U.S. law prohibit transactions with, and the provision of resources and services to, individuals and organizations associated with terrorism”⁴⁴⁵ and has not provided any guidance on how such programs might proceed in ways that then strictly comply with U.S. law. As such, in addition to such over-breadth and lack of transparency, processes to mitigate the risks that such programs infringe material support rules may, in practice, also be particularly burdensome. For example, in relation to U.S. government-funded reconciliation activities that involve the Revolutionary Armed Forces of

435 Office of the U.N. High Comm’r for Human Rts., *Rep. of the United Nations High Commissioner for Human Rights on Violations and Abuses Committed by Boko Haram and the Impact on Human Rights in the Affected Countries*, Human Rights Council, 30th Sess., ¶ 31, U.N. Doc. A/HRC/30/67 (Sept. 29, 2015).

436 INT’L ALERT & UNICEF NIGERIA, “BAD BLOOD”: PERCEPTIONS OF CHILDREN BORN OF CONFLICT-RELATED SEXUAL VIOLENCE AND WOMEN AND GIRLS ASSOCIATED WITH BOKO HARAM IN NORTHEAST NIGERIA 18 (2016), available at http://www.international-alert.org/sites/default/files/Nigeria_BadBlood_EN_2016.pdf.

437 A/HRC/30/67, *supra* note 435, at ¶ 31. See *id.* at ¶ 32 (“OHCHR observed an insufficient number of female counsellors and that informed and voluntary consent of beneficiaries of programme, seemed not to have been systematically requested.”).

438 See *infra* notes 617–625 and accompanying text.

439 See *infra* notes 443–438 and accompanying text.

440 See *supra* note 403 and accompanying text.

441 A/70/371, *supra* note 107, at ¶ 34.

442 A/64/211, *supra* note 4, at ¶ 50. See further A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 100 (“Under U.S. law, coerced and/or de minimus support to any non-State armed group is construed as ‘material support’ to terrorism. These over-broad material support provisions fail to recognize female vulnerability to coerced domestic service and sexual assault, and have resulted in already-victimised female asylum seekers, refugees, and green-card applicants having their petitions and applications denied or placed on hold.” (citations omitted)).

443 A/70/674, *supra* note 4, at ¶ 29 (for example, the U.N. Secretary-General’s *Plan of Action to Prevent Violent Extremism* states that “more attention needs to be paid to devising efficient gender- and human rights-compliant reintegration strategies and programmes for those who have been convicted of terrorism-related offences as well as returning foreign terrorist fighters.”); GOOD PRACTICES ON WOMEN AND COUNTERING VIOLENT EXTREMISM, *supra* note 41, at 6; PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 231 (recommending that Member States and the U.N. should “[d]evelop gender-sensitive disengagement, rehabilitation and reintegration programmes that address the specific needs of women and girls.”).

444 See, e.g., A/HRC/31/65, *supra* note 4, at ¶ 44 (noting in respect of “programmes to counsel, support and mentor individuals who are considered ‘at risk’ of or ‘vulnerable’ to violent extremism. A primary concern is how those individuals are identified, what indicators are taken into consideration, and who is qualified to refer. Independent evaluations of the programmes’ effectiveness is scarce, largely due to a lack of transparency in their implementation. Yet their impact on a number of rights, including the right to freedom of thought, religion, privacy and non-discrimination can be important.” (citation omitted)).

445 USAID, COLOMBIA, NOTICE OF FUNDING OPPORTUNITY 20 (Sept. 18, 2015), <https://www.usaid.gov/sites/default/files/documents/1862/NOFO%20Reconciliation%20Activity.pdf>.

Colombia (FARC)—an entity which has been listed as a FTO since October 1997⁴⁴⁶—USAID has stated that “[a]ssistance to individuals, who were previously members of a terrorist organization, but have truly and completely severed all ties with the organization, will not be considered to be prohibited assistance to individuals or organizations associated with terrorism.”⁴⁴⁷ However, to ensure individuals have completely severed any terrorist ties, USAID encourages “rigorous vetting,” written renunciation by the individual, “[m]onitoring mechanisms” to ensure non-return to FARC, [a]udit mechanisms, and in-kind rather than cash assistance.⁴⁴⁸

3. Financial exclusion and restrictions on access to financial services

Gender and the causes and impacts of de-risking

Financial institutions’ de-risking practices, including those pursuant to countering terrorism financing, have had exclusion costs that undermine the ability of women’s rights organizing and organizations to access financial services and, as a result, to more broadly carry out their activities. However, the gender-specific nature of these financial inclusion concerns is rarely fully acknowledged. In part, this is because financial inclusion is sometimes discussed in relation to the narrow question of the risks for the integrity of the financial system of driving banking services underground, rather than including financially excluded and underserved groups.⁴⁴⁹ Additionally, to the extent that the latter is taken into account, the focus tends to be on “low income, rural sector and undocumented groups,”⁴⁵⁰ despite the highly gendered nature of financial exclusion⁴⁵¹ and the ways in which de-risking practices can further limit financial services to women’s rights organizations and their beneficiaries.

This Section identifies these impacts on women’s rights organizing, women’s rights organization, and gender equality, that, taken

as a whole suggest that in many cases the goal of countering terrorism financing has been given preference over that of financial inclusion. Before addressing the nature of these overarching restrictions on services to women’s rights organizations and their effects, it is also important to identify some core reasons why such limits result. These include:

- **Lack of civil society expertise within financial institutions, particularly women’s organizations:** Financial institutions often have a general lack of expertise concerning the civil society sector, including particularly women’s rights organizing, women’s rights organizations, and gender equality, as well as limited engagement with these entities. It is rare for even the large banks to have specific capabilities in banking civil society customers (e.g., Barclays has a Charities and Not-for-Profit team).⁴⁵² Often it is suggested that one way to increase banks’ risk appetite for banking NGO clients is for the individual NGO to engage early and often; however, this strategy is often not available to women’s rights organizing and organizations, particularly those working at the grassroots and therefore outside of financial centers (e.g., of London or New York) and in environments marked by gender-based financial exclusion.
- **Reliance on risk management software populated with open source information that may contain adverse information on women’s rights defenders and organizations:** In the absence of appropriate expertise concerning women’s rights organizing and organizations (e.g., that might explain why women’s groups’ public advocacy profile is slender compared to their actual activities), financial institutions rely on risk management software that may in turn lower their risk appetite for banking women’s rights organizing and organizations. In particular, the reliance on private sector compliance tools such as the World-Check database,⁴⁵³ that are populated by open-source and potentially unreli-

446 Pursuant to section 219 of the Immigration and Nationality Act, 8 U.S.C. § 1189, the U.S. Secretary of State designated FARC as a Foreign Terrorist Organization in October 1997 (*Foreign Terrorist Organizations*, U.S. DEP’T OF STATE, available at <https://www.state.gov/j/ct/rls/other/des/123085.htm>). On October 31, 2001, FARC was additionally designated by the Department of State as a Specially Designated Global Terrorist under Executive Order 13224 (*Individuals and Entities Designated by the State Department under E.O. 13224*, U.S. DEP’T OF STATE, <https://www.state.gov/j/ct/rls/other/des/143210.htm>).

447 USAID, NOTICE OF FUNDING OPPORTUNITY, *supra* note 445, at 20.

448 *Id.*

449 See, e.g., REPORT ON THE G20 SURVEY IN DE-RISKING ACTIVITIES IN THE REMITTANCE MARKET, *supra* note 193, at 4; WITHDRAWAL FROM CORRESPONDENT BANKING: WHERE, WHY, AND WHAT TO DO ABOUT IT, *supra* note 193, at 9-10. See also GLOBAL CTR. ON COOPERATIVE SEC., ET AL., HANGING BY A THREAD: THE ONGOING THREAT TO SOMALIA’S REMITTANCE LIFELINE 13 (2015), available at https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bn-hanging-by-thread-somalia-remittances-190215-en.pdf [hereinafter HANGING BY A THREAD].

450 See FATF GUIDANCE, ANTI-MONEY LAUNDERING AND TERRORIST FINANCING MEASURES AND FINANCIAL INCLUSION 5 (2013), http://www.fatf-gafi.org/media/fatf/documents/reports/AML_CFT_Measures_and_Financial_Inclusion_2013.pdf.

451 See *supra* note 303 and accompanying text.

452 UNCHARITABLE BEHAVIOR, *supra* note 103, at 58 (“While some UK banks have capabilities, such as the Barclays Charities and Not-for-Profit Team, which appear to have the appetite and expertise to assist a very limited number of NGOs with their banking requirements, internationally operating NGOs present particular challenges for banks.”). See also FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 68 (“Several FIs [financial institutions] noted unfamiliarity generally regarding how the NPO sector operates and the specific nature of NPO work. The degree to which there is little awareness of what and how NPOs function is not surprising, as there is not widespread understanding of the unique circumstances of delivering humanitarian relief, something most FIs have no expertise with.”).

453 Founded in 1999, World-Check is used by 49 of the 50 largest banks, nine of the ten largest law firms, and “is considered the gold standard in PEP monitoring, AML screening and financial crime control.” (THOMSON REUTERS, WORLD-CHECK, FIND HIDDEN RISK 3-4 (2015), <http://financial.thomsonreuters.com/content/dam/openweb/documents/pdf/governance-risk-compliance/fact-sheet/world-check-risk-screening-fact-sheet.pdf>). According to World-Check, “25% of World-Check data is derived from information on sanctions, watch or regulatory and law enforcement lists. The remaining 75% consists of PEP information as well as individuals and entities not found on official lists, but who instead are reported to be connected to sanctioned parties, or reported to have been investigated for, or convicted of engaging in, financial crime related activities. World-Check provides the reputable media sources upon which the information has been based.” (*id.* at 3-4). See also Marieke de Goede & Gavin Sullivan, *The Politics of Security Lists*, 34 ENV’T & PLAN. D: SOC’Y & SPACE 78 (2016) (“Whilst about 10-20% of World-Check’s records are based on formal security lists, for example, the remaining 80% is drawn from court records and other open-source information.”). Further, “[i]n the post 9/11 world, banks are required to know their customers and can be held responsible if their clients are involved in financing terror or money-laundering. To avoid this, the banks rely heavily on databases like World-Check.” (Peter Osborne, *Why did HSBC Shut Down Bank Accounts?*, BBC News (July 28, 2015), <http://www.bbc.com/news/magazine-33677946>). In addition, the “proliferation of unregulated private sector tools like World-Check ha[ve] increased account closures, particularly if the client in question is of limited profitability. Banks are not legally obliged to tell their customers why they have closed their accounts and World-Check binds its users to secrecy about use of the database.” (Nimir Shabibi & Ben Bryant, *Vice News Reveals the Terrorism Blacklist Secretly Wielding Power over the Lives of Millions*, VICE News (Feb. 4, 2016), <https://news.vice.com/article/vice-news-reveals-the-terrorism-blacklist-secretly-wielding-power-over-the-lives-of-millions>).

able information (e.g., including blogs),⁴⁵⁴ can be of particular concern for women's groups and women's rights defenders, who are regularly subject to accusations in public fora, as well as, in some cases, to the criminalization of legitimate activities of women's rights defenders as "terrorism."⁴⁵⁵

■ **Women's organizations as low-profit, high-risk clients:**

In a context where, "[g]enerally speaking, NGOs are unattractive clients for banks because of the combination of risk perception, fear of fine and censure, and limited relationship profitability,"⁴⁵⁶ there are limited incentives for banks to provide financial services to women's rights organizations, which, as noted above, are particularly low-profit clients.⁴⁵⁷

■ **Flow-on effects of de-risking correspondent banks for women's groups:**

Financial institutions' de-risking practices have involved withdrawal from correspondent banking relationships,⁴⁵⁸ which has flow-on effects for the ease with which money can be sent to the accounts of women's organizations in countries outside of financial centers. When the correspondent bank (often a large international bank) sends money to the respondent bank, it is required to do customer due diligence on that respondent bank, including a requirement that banks assess the respondent institutions' AML/CTF controls.⁴⁵⁹ While the reasons for withdrawal of correspondent banks from foreign CBRs are complex, one factor is that in addition to doing this due diligence on the respondent bank ("Know Your Customer" or KYC), in practice, many banks also do due diligence further down the line on the respondent bank's customer (also known as KYCC for "Know Your Customer's Customer") even though this is not required, just to be on the "safe side."⁴⁶⁰ The

de-risking of correspondent banking relationships means that there are either delays or closure of relationships with respondent banks, such that respondent bank customers (e.g., charities, embassies) are "excluded from access to the official financial system."⁴⁶¹

■ **Gender impacts of closures of money services businesses:**

Financial institutions' de-risking practices have also led to the closure of the accounts of MSBs or money transfer operators (MTOs), circumscribing the ability of communities to send and receive remittances.⁴⁶² According to the U.N. Independent Expert on the situation of human rights in Somalia, "all governments concerned have a duty to make sure that legitimate funds can continue to flow to the people of Somalia, whose livelihoods stand to suffer if these remittances are curtailed."⁴⁶³ Yet, instead, "[t]he vital flow of remittances from diaspora countries into Somalia is under threat as a result of necessary, but inadequately thought-through counter-terrorism measures."⁴⁶⁴ As such, account closures of Somali MTOs in countries such as Australia, the United Kingdom, and the United States have had a "direct and significant impact on the enjoyment of a wide range of human rights of Somali-Americans as well as people living in Somalia, including the rights to equality, culture, food, education, health and life."⁴⁶⁵ The closing of MSBs or MTOs additionally has gendered effects because in many contexts like Somalia, as more than half are remittance recipients and are the main caregivers in their families.⁴⁶⁶ For example, in Somalia, remittances "constitute an estimated 25 to 45 percent of the country's GDP and serve as a key source of income for more than 40 percent of its vulnerable population."⁴⁶⁷ In many contexts, "[r]emittances are

454 See FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 66 ("[M]any of the private utilities have come under increased scrutiny for including unreliable information.").

455 See, e.g., A/HRC/23/39, *supra* note 222, at ¶ 21.

456 UNCHARITABLE BEHAVIOR, *supra* note 103, at 58.

457 See *supra* notes 289–292 and accompanying text.

458 See generally WITHDRAWAL FROM CORRESPONDENT BANKING - WHERE, WHY, AND WHAT TO DO ABOUT IT, *supra* note 193.

459 See FATF RECOMMENDATIONS, *supra* note 84, Rec. 13.

460 WITHDRAWAL FROM CORRESPONDENT BANKING - WHERE, WHY, AND WHAT TO DO ABOUT IT, *supra* note 193, at 38–39. This kind of checking can cause additional "complexity and difficulty" (DE-RISKING: GLOBAL IMPACT AND UNINTENDED CONSEQUENCES, *supra* note 190, at 10) and delays in any inter-bank activity, but it can also lead to correspondent banks refusing to provide services to respondent banks because it is "not always possible" to know the respondent banks' customer (WITHDRAWAL FROM CORRESPONDENT BANKING - WHERE, WHY, AND WHAT TO DO ABOUT IT, *supra* note 193, at 38).

461 DE-RISKING: GLOBAL IMPACT AND UNINTENDED CONSEQUENCES, *supra* note 190, at 13.

462 See REPORT ON THE G20 SURVEY IN DE-RISKING ACTIVITIES IN THE REMITTANCE MARKET, *supra* note 193, at 20; WITHDRAWAL FROM CORRESPONDENT BANKING: WHERE, WHY, AND WHAT TO DO ABOUT IT, *supra* note 103, at 23–24.

463 Press Release, Office of the U.N. High Comm'r for Human Rts., Counter-terrorism Measures Threaten Money Sent Home by Somali Diaspora, UN Rights Experts Warn, U.N. Press Release (Jan. 18, 2016).

464 *Id.*

465 See, e.g., Human Rights Council, *Communications Report of Special Procedures*, ¶ 46, U.N. Doc. A/HRC/32/53 (May 27, 2016) (detailing communications sent on January 13, 2016, by the mandates of the Special Rapporteur on extreme poverty and human rights; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Independent Expert on the situation of human rights in Somalia; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to the Governments of Australia, the Kingdom of Great Britain and Northern Ireland, Somalia, and the United States addressing how closure of accounts of Somali money transfer operators "may have a direct and significant impact on the enjoyment of a wide range of human rights of Somali-Americans as well as people living in Somalia, including the rights to equality, culture, food, education, health and life.").

466 HANGING BY A THREAD, *supra* note 449, at 4 ("Although statistics are scarce, it appears that more than half of Somali women receive remittances.").

467 UNDERSTANDING BANK DE-RISKING AND ITS EFFECTS ON FINANCIAL INCLUSION, *supra* note 199, at 6.



Somalis upset with Wells Fargo Bank for its refusal to handle some of the community's money transfers to Somalia demonstrated and closed personal accounts in downtown Minneapolis, United States (May 11, 2012).

Credit: Marlin Levison, Copyright 2012, Star Tribune

often the only funds that female caregivers are able to access and control, making them a vital tool for women's economic empowerment, which in turn boosts the ability of women to claim their social and political rights.⁴⁶⁸ In addition, this "[r]emittance de-risking also impacts charities as they will often use money transfer operators to move funds into areas with limited banking infrastructures."⁴⁶⁹

- **Low financial resilience of women's organizations and gendered financial exclusion:** Women's rights organizations tend to receive project support rather than long-term, core flexible funding⁴⁷⁰ which makes it more difficult to have the capacity to comply with onerous information and other requests that often accompany risk-averse approaches of financial institutions. Difficulties, delays, and denials in the transfer, receipt, and release of funds, as well as the actual and constructive closure of and refusal to onboard accounts, can present particular threats to programs and beneficiaries—and even to the organization's existence—given that women's organizations typically have low financial resilience⁴⁷¹ to mitigate restrictions to financial access. Small size,⁴⁷² limited financial inclusion and financial competencies, as well as underlying environments of discrimination and inequality, may also circumscribe the extent to which women's rights organizers and organizations are in a position to productively engage with financial institutions to mitigate the impacts of adverse banking decisions.

Difficulties and delays in transfer, receipt, and release of funds

As has been noted by the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

Counter-terrorism concerns have also affected civil society access to financial services In effect, this means no longer processing transactions involving high- risk environments or actors. Some NGOs have found that their ability to access financial services, including banking services, has been severely impaired, while others have seen their bank accounts closed altogether . . . the restrictions faced by NGOs in countries deemed sensitive include the inability to open bank accounts, arbitrary closure of accounts, inordinate delays or termination of transactions, onerous obligations requiring detailed knowledge of donors and beneficiaries, and vulnerability to accusations of terrorist links.⁴⁷³

In the survey conducted for this report, 56.67 percent of respondents indicated that they had experienced "delays in, or not receiving, funds from domestic or foreign donors."⁴⁷⁴ In addition, 16.67 percent of respondents had experienced "other issues with the transfer or receipt of domestic or foreign funds" and 5.00 percent had experienced "other withdrawal of banking services to civil society." In terms of the timeframe involved in delay, delays ranged from weeks to months to years, with delays so extensive that in some cases they amount to a constructive refusal to provide banking services. For example, in one instance, a women's organization working in Egypt notes that "in 2011 we

468 HANGING BY A THREAD, *supra* note 449, at 4. See also *id.* at 5.

469 DE-RISKING: GLOBAL IMPACT AND UNINTENDED CONSEQUENCES, *supra* note 190, at 23.

470 See *supra* note 282 and accompanying text.

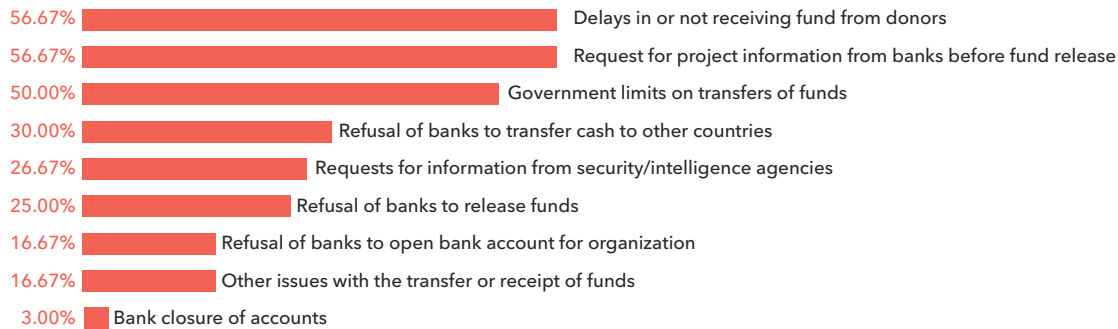
471 See *supra* note 290 and accompanying text.

472 See generally FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 44 ("Size matters not only because banks might respond more positively to larger organizations . . .").

473 A/70/371, *supra* note 107, at ¶¶ 42–43. See, further, e.g., *Cautious Banks Hinder Charity Financing*, *supra* note 315 (noting that according to an informal survey of humanitarian organizations by the Charity & Security Network in late 2013 "more than half the 51 respondents faced delays or denials in moving money abroad and 15% had their accounts closed.").

474 See also FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 46 (indicating that a survey of U.S. nonprofits working abroad demonstrated that 49.6 percent of transfers to local community organizations were delayed).

IMPACTS ON FINANCIAL ACCESS



had nine grants from different donors, all postponed or frozen with no response. Some donors waited for two years for us, but it's hard to explain and many donors do not understand."

Delays are a part of it, through the screening process. The money can be held for a long time, you don't know what the banks will do with the money. Sometimes they keep it for up to four weeks.

Women's organization headquartered in Sub-Saharan Africa

I was working with [a donor], receiving a grant from them, and it took six months to receive the funds. It got stuck somehow.

Women's organization working in the Democratic Republic of Congo

Funds take very long to be released by banks, even if it is for a consultancy assignment. We try to deal with it via Western Union, or direct transfers to the hotel or venue of the activity by the donor. However, if a Western Union transfer is more than a certain amount, it will also be monitored.

Women's organization working in Libya

It takes a lot of time because of security checks and all the documents are being double checked. We also face many difficulties in regards to corruption.

Women's organization headquartered in South Asia

They don't refuse to release but they just keep it for a longer period, and don't provide a reason for why.

Women's organization working in Sri Lanka

There is a lot of tension, and work to get transfers done. We also experience other problems, for example if our board membership changes, the bank makes it difficult to change the names related to bank accounts.

Women's organization headquartered in North America

We do face lots of delays. Mainly it seems to get stuck in the central banks, which are under the government's control. We also deal with international banks that are causing delays.

Women's organization headquartered in MENA

Denials in transfer, receipt, and release of funds

In terms of the denial of services, 25.00 percent of respondents had experienced the "refusal of banks to release domestic or foreign funds." In addition, 30.00 percent had experienced "refusal of banks to transfer cash to other countries." One women's organization working in Iraq noted: "We face difficulties to receive funds in general or at least on time" and "funds take very long, sometimes only after inquiring from our side or the side of the partner organization doing the transfer to us we get more information about the whereabouts, and it often has taken several weeks to arrive. Now it is even more difficult, we sometimes cannot receive money as an organization based in Iraq." Remarkably, in some cases, banks that will not release funds, also refuse to allow the funds to be returned to the donor. For example, one women's organization working in Libya noted the refusal of banks to transfer money, stating that: "Everything in Libya is stuck. We cannot give donors their money back, as banks refuse such transfers. The donors do not know what to do as there is no alternative."

Account closure and refusal to open new accounts

Existing information on account closures of civil society tends to focus on the experience of civil society organizations in the United States and United Kingdom, and to a lesser extent other European countries and Australia, particularly those that have programming in Syria.⁴⁷⁵ In part, these patterns in account closures occur because these accounts are located in countries (e.g., the United States) where the legal and regulatory framework is "particularly vigilant."⁴⁷⁶ For example, a recent survey found that 6.3 percent of U.S.-based NPOs operating internationally had experienced account closures.⁴⁷⁷

The survey undertaken for this Report was predominantly addressed to women's organizations at the grassroots and local level, 3.33 percent of whom had experienced banks' closing of organizational accounts. The fear of having an account closed was also reported. For example, when asked whether their organization had "been concerned about harassment or prosecution

⁴⁷⁵ See, e.g., *Cautious Banks Hinder Charity Financing*, *supra* note 315. See also UNCHARITABLE BEHAVIOR, *supra* note 103, at 71-76.

⁴⁷⁶ DE-RISKING: GLOBAL IMPACT AND UNINTENDED CONSEQUENCES, *supra* note 190, at 23.

⁴⁷⁷ FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 41.

(e.g., material support) under counter terrorism financing measures,” one women’s organization working in Libya responded affirmatively, stating: *“Afraid that they will close our bank account, but also specific attacks on me personally.”*

While account closure has been indicated as a problem for women’s groups, it appears that an even greater problem is the refusal—actual or constructive—of banks to open accounts for women’s groups. For example, 16.67 percent of survey respondents indicated that there had been a “refusal of foreign or local bank to open bank account for your organization or grantee.” In a number of instances, there has also been constructive refusal, meaning that while the bank does not explicitly refuse to open an account, the requirements are so onerous, it is effectively not possible to meet them.

They do not say that we refuse the request, but they create delays in issuing the account so that in a sense that is a refusal, because legally they can’t refuse, until you give up.

Women’s organization working in Pakistan

We could not open a bank account as nongovernmental organization, and they were asking a lot of questions about the work we do. In the end we had to register as a trust fund to be able to open a bank account. They were saying that those procedures were in place for “security reasons,” so I am sure they were linked to the counter terrorism work.

Women’s organization working in Pakistan

[B]anks have increased the scrutiny of opening new accounts . . . We are not able to open a new bank account anymore . . . It is not that the bank officially refuses us the bank account, but they have made the process for opening the bank account so heavy, with so many regulations, verifications and documents we need to provide, that it has become totally impossible for us to comply with all that. We cannot fulfil those. Especially small organizations cannot open accounts anymore.

Women’s organization working in Pakistan

We could not open a bank account, as the bank was asking for so many documents to be provided by us: donor reports, official approval by our government for our organization to carry out our work, and financial accounts. We could not provide everything they were asking from us.

Women’s organization working in Afghanistan

We had problems opening a new account. They did not officially refuse it, but the regulations to get the approval to open

a new account are impossible for us, in regards to the papers we have to provide, the information we have to give. And within the bank, there seems to be no one who can explain the regulations to us.

Women’s organization working in Turkey

In other cases, the requirements for opening an account can be so onerous that women’s organizations simply decide not to open an account. For example, according to one women’s organization working in Libya: *“We tried opening a bank account in Egypt, but first we had to register in Egypt as a NGO, but that process proved too difficult.”* Another women’s organization headquartered in North America also notes that: *“Not a refusal, but looked into opening local bank accounts, but this was too much of a hassle and advised against by partners due to bureaucracy requirements.”*

Onerous information requests and other burdens faced

As mentioned above, the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has noted that civil society has sometimes faced “onerous obligations requiring detailed knowledge of donors and beneficiaries.”⁴⁷⁸ Indeed, “[i]n response to regulatory and legal concerns banks are increasingly seeking reassurances from charities on a number of fronts.”⁴⁷⁹

In the survey conducted for this Report, 56.67 percent of respondents indicated that their organization had experienced “requests for project or other information from banks before funds’ release” and 25.00 percent of respondents had experienced “requests for project or other information from security or intelligence institutions before funds’ release.”

The banks will delay the release of funds until we provide them with information on what the funds will be used for. There is no legal basis for this request, and usually if we ask them for written requests they will release the funds.

Women’s organization headquartered in North America

We have to go through a complicated and time-consuming process. Banks ask for background information, on the board of directors, project agreements, budgets, staff information. The banks do not maintain this kind of information, so every time we have to hand in all of the information. We don’t know if it’s a competency problem or if it’s intentional. This makes it difficult for us to access grants. Banks in developing countries have government informants. They are under pressure, and information is leaked.

Women’s organization headquartered in Sub-Saharan Africa

478 A/70/371, *supra* note 107, at ¶ 43.

479 DE-RISKING: GLOBAL IMPACT AND UNINTENDED CONSEQUENCES, *supra* note 190, at 20. See also Tom Esslemont, *Syrians Suffer as Anti-terror Laws Squeeze Charities – Survey*, THOMSON REUTERS FOUND. (Feb. 24, 2016), <http://news.trust.org/item/20160224000357-rtjoh/?source=fiHeadlineStory> (citing a Thomson Reuters Foundation survey of 21 international and national NGOs that determined that “government donors and banks were also demanding more in-depth audits in the two years since jihadi group Islamic State (ISIS) took root, sending costs spiraling.”).

In a number of cases, this distinction between requests for project or other information from banks versus from governments was a distinction without a difference. This is because often a pre-requisite for being able to gain access to financial services is providing information from the governments (e.g., proof of registration).

Every six months we have to register with the government and take the proof of registration to the bank for larger transactions over \$2000, we need to have a signature of the board members, project proposals, and contracts.

Women's organization working in Afghanistan

When we go to the bank, they ask us for a letter from the government, the department which is working on the NGOs. The letter has to state that the needed information has been provided, so the funds can be withdrawn. To get this letter takes a lot of time, so the whole process gets delayed. We experience an increased demand for documentation from the government. We need to provide more and more information before we get the approval.

Women's organization working in Kenya

When the transfer reaches them, they call us, they don't put it in our account until we provide the documents. You need to send them the proposal. After ISIS and all this counter-terrorism, you need to also show them the original copy of our contracts with donors, and we also have to deliver a scanned or printed copy to them. Once a year you need to provide your budget, with donor list, to the bank. . . . They make it very difficult. . . . Now it has gotten even worse, the banks are asking for another NGO to verify that the other NGO is reliable so that they can open a bank account.

Women's organization working in Iraq

In other cases, it is difficult to distinguish the source of information requests because of the close relationship between governments and financial institutions. For example, as noted by one women's organization working in Libya: "The government, intelligence and banking system are very interlinked, so we do not know who is behind requests."

In terms of the types of information required, this includes the following information types, some of which implicate privacy concerns,⁴⁸⁰ such as the funds' intended use;⁴⁸¹ letters from donors;⁴⁸² "questions for donors about the supported projects;"⁴⁸³ "information from foreign trips and travel" such that "even getting a reimbursement transferred and released is difficult;"⁴⁸⁴ detailed project information, "the bank sent letter asking for project name, period, budget, and activities;"⁴⁸⁵ letters from the funder's bank;⁴⁸⁶ "who the money is coming from and what it will be used for;"⁴⁸⁷ "the contracts, or terms of references for consultants. They even asked for my marriage license;"⁴⁸⁸ donor contracts;⁴⁸⁹ information about donors;⁴⁹⁰ "names of the people we are working with;"⁴⁹¹ and "the donor contract, objectives of the activity we want to carry out, the localization of the activity, and the budget."⁴⁹²

Adverse interactions of regulatory authorities and financial institutions and services

To ascertain the impact of governments on determining access to financial services, the survey also asked respondents whether their organization had experienced "government limits on transfers and/or receipt of domestic or foreign funds." Fifty percent of respondents reported such limits. For example, one women's organization working in Morocco notes: "We have faced delays, but especially linked to the complexity of information we have to provide to the government. That has worsened since the terrorist attacks in Morocco . . . The government said to us by receiving money from outside the country, we would endanger the security of our country."

Some of these challenges arise in the context of banking relationships with state-controlled banks. For example, according to one women's organization working in Uzbekistan: "All NGOs need to have a local bank account with one of two local state-controlled banks. The banks have a commission that decides if you are allowed to access your donor money. It can sometimes take up to one year before this is decided on, and at that point they can also decide to return the money to the donor."

480 See generally FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 84 ("Providing identifying information can link individuals with foreign funding and endanger NPO staff and beneficiaries.").

481 Women's organization working in Iraq.

482 Women's organization working in Iraq.

483 Women's organization working in Syria.

484 Women's organization working in Libya.

485 Women's organization working in Chechnya.

486 Women's organization working in Israel.

487 Women's organization working in Iraq.

488 Women's organization headquartered in MENA.

489 Women's organization working in Iraq.

490 Women's organization working in Colombia.

491 Women's organization headquartered in MENA.

492 Women's organization working in Uganda.

However, the problem is not limited to state-controlled banks. According to a women's organization headquartered in MENA: "We do face lots of delays. Mainly it seems to get stuck in the central banks, which are under the government's control. We also deal with international banks that are causing delays."

In other cases, specific problems arise from having multiple financial institutions involved in transactions (e.g., correspondent banking relationships).⁴⁹³ For example, one women's organization headquartered in MENA notes, "we do not transfer a lot of funds, as we are not a funder . . . When we do, it takes quite some

time before the money arrives. Palestine is very difficult to make transfers to, the bank keeps asking for more information. I think it is not one bank causing this; it is a result of the complexity with multiple banks being involved."

We are working with a Swiss organization. Receiving money that was supposed to come in 2015, but they didn't manage to get the approvals on the Swiss banking side. This is a problem for us because it was counted in our audit and budget, now it will arrive in February 2016. We need to modify all of this when it comes to our projects now too.

Women's organization working in Iraq

Box 8: Impacts from restrictions on financial services to women's rights organizing and organizations

De-risking impacts that cause restrictions on access to financial services have further flow on effects, including to:

- Drive women's rights organizations out of the formal financial sector.⁴⁹⁴
- Compromise the ability of women's rights organizations to pursue new banking arrangements as "the withdrawal of banking services by one bank has a knock-on effect as other banks follow suit."⁴⁹⁵
- Create reputational and efficacy risks for women's groups given that "NPOs rely on trust; public and institutional confidence in them is much reduced by de-banking, reducing their effectiveness in all areas of operation."⁴⁹⁶
- Cause life-threatening delays in delivery of aid and services and increase safety risks, including "increased physical risk to staff and offices (with larger amounts of cash being transported and used)"⁴⁹⁷ as women's rights organizations resort to an array of adaptive measures to receive funds that themselves create further insecurity.
- "[T]hreaten both the operations of organizations and even their very existence . . . [and] the denial of banking facilities, including bank accounts and funds transfer facilities, without reasonable suspicion that the targeted organization or trans-

action constitutes support of terrorism or money-laundering, is incompatible with the right to freedom of association."⁴⁹⁸

- Create extra costs by encouraging donors and civil society to transfer funds in currency other than USD (e.g., Euros) and to apply to donors in locations outside of the United States.⁴⁹⁹
- Create additional time and other resource burdens for women's rights organizations that distract from their core work, such that according to one women's organization working in Pakistan: "The bank makes it difficult to do our work, we always have to be careful what we do in terms of transaction, to avoid getting a lot of hassle."
- Limit programming undertaken by women's rights organizations. For example, rules that control funding to civil society may place thresholds on amounts of financial transfer that mean that in some cases donor organizations send small grants that inherently limit the programming that can be undertaken by women's groups.
- Place women's rights organizations in further debt. According to one women's organization headquartered in MENA: "Sometimes we have to wait for six to seven months before the money arrives, which puts us in deficit. It is a vicious circle. How do you pay for your staff meanwhile? You end up having to borrow money." In other cases, delays in funding mean that projects have to be modified or in some cases, dropped altogether.

493 FATF RECOMMENDATIONS, *supra* note 84, at 115; UNCHARITABLE BEHAVIOUR, *supra* note 103, at 48.

494 See *supra* note 449 and accompanying text.

495 UNINTENDED CONSEQUENCES OF ANTI-MONEY LAUNDERING POLICIES, *supra* note 182, at 38. See also DRIVERS AND IMPACTS OF DERISKING, *supra* note 184, at 60.

496 UNINTENDED CONSEQUENCES OF ANTI-MONEY LAUNDERING POLICIES, *supra* note 182, at 38.

497 A/70/371, *supra* note 107, at ¶ 42.

498 *Id.* at ¶ 43.

499 UNCHARITABLE BEHAVIOR, *supra* note 103, at 42-43 ("[D]espite sometimes incurring extra costs, NGOs often transmit funds in euros or sterling so their bankers avoid the risk of extra-territorial intervention created by transacting with partner banks scrutinised by the US authorities."); GETTING AID TO SYRIA, *supra* note 254, at 11 (advising humanitarian agencies wanting to work in Syria to "[c]onsider the currency in which payments are to be effected, as this will have an impact on the applicable sanctions legislation.").

4. Prohibitive costs of due diligence and other administrative burdens

Increased administrative burdens affecting operational capacity

Due diligence and other administrative burdens (e.g., reporting requirements) to ensure compliance with CTF laws are heavy,⁵⁰⁰ due to the “multiplicity and complexity of CT regimes;”⁵⁰¹ the fact that organizations may receive grants from multiple donors, each with separate requirements;⁵⁰² and the lack of clarity of many rules that “creates confusion and uncertainty;”⁵⁰³ all of which may mitigate in favor of over-compliance with such rules. The failure of governments with particularly restrictive laws to provide appropriate legislative or other reassurance that civil society groups will not be prosecuted for material support if they act in good faith, similarly contributes to civil society undertaking heightened due diligence and other compliance burdens.⁵⁰⁴ Such onerous requirements mean that often in practice, “funds are not directed just based on needs, but also on whether a certain activity can fulfil donor requirements.”⁵⁰⁵ These increased administrative burdens consume finance and other resources, as well as undermine programming and assistance to beneficiaries.⁵⁰⁶

WHERE ARE THESE DEMANDS COMING FROM?



Women’s rights organizations similarly experience these increased demands. In the survey undertaken for this Report, 85 percent of respondents indicated that they had “experienced increased demands on your organization (e.g. growing administrative burden due to transparency requirements) in terms of the conditions you need to comply with to receive/ transfer funds from/to third parties.” In terms of the source of these demands, the majority came from donors (61.67 percent), followed by governments and bank at 58.33 percent and 36.67 percent, respectively.

For women’s rights organizations, heavy compliance requirements “paralyze[] our work even more.”⁵⁰⁷ As one women’s organization working in Nigeria explained, “for smaller women’s groups this is really obstructing their work on the ground. We do not have the structure to set up all those mechanisms for reporting. We do not have huge financial departments. Sometimes organizations cannot get registered with the government, or do not want to, because the work they do is very critical, often towards the government.” Such increased requirements have involved additional workload, delays in receipt of funds, and a reduced capacity to apply for further funds, to the detriment of work in the field.

We are afraid of the impact of counter-terrorism, so we work on our toes, and we have an extra workload through all the requirements by the government to provide information.

Women’s organization working in Uganda

You have to put in more work to prove what you are doing. Partners being accused of diversion means you have to put so much effort into proving their innocence (and our innocence by association) that we have less time to apply for other funds.

Women’s organization headquartered in Western Europe

500 See, e.g., *Syrians Suffer as Anti-terror Laws Squeeze Charities - Survey*, *supra* note 479.

501 PROSCRIBING PEACE, *supra* note 171, at 5.

502 See Maureen Quinn, *Where Do Humanitarians Fit in Fight Against Extremism?: Q&A with Naz Modirzadeh*, IPI GLOBAL OBSERVATORY (Feb. 2, 2016), <https://theglobalobservatory.org/2016/02/terrorism-violent-extremism-humanitarian-syria-modirzadeh/> (emphasizing that “actors on the ground often face multiple counterterrorism regulations emanating from individual government donors as well as from UN agencies and bodies that engage and contract with partners. This often results in tremendous confusion, with humanitarian actors unsure of exactly where the legal lines are drawn and frequently forced to come up with responses in real-time, all with limited and sometimes conflicting information.”).

503 PROSCRIBING PEACE, *supra* note 171, at 5.

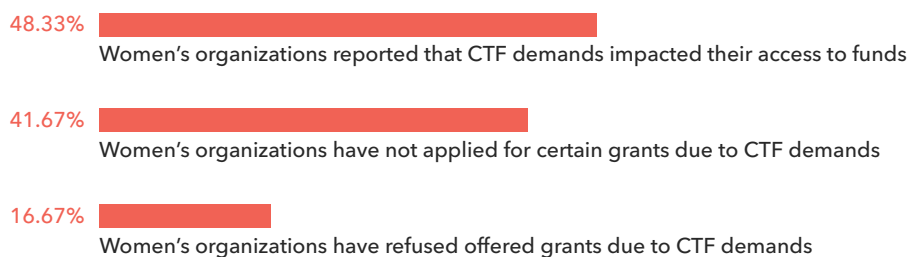
504 See, e.g., U.S. DEP’T OF THE TREASURY, OFFICE OF FOREIGN ASSETS CONTROL, GUIDANCE RELATED TO THE PROVISION OF HUMANITARIAN ASSISTANCE BY NOT-FOR-PROFIT NON-GOVERNMENTAL ORGANIZATIONS 1-2 (2014), available at https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/ngo_humanitarian.pdf (“This memorandum is intended to clarify the reach of economic sanctions for those non-governmental organizations involved in the provision of humanitarian assistance . . . This guidance is provided for informational purposes and does not have the force of law.” (emphasis in original)); PROSCRIBING PEACE, *supra* note 171, at 5 (noting that “[t]he absence of prosecutions of peacebuilding and mediation organisations in the US, UK or EU Member States is neither reassurance of protection under the law, nor proof that terrorist listing and associated legislation is not having a negative impact.”); *Statement by 66 Organizations in Support of The Humanitarian Assistance Facilitation Act Of 2013*, INTERACTION (Nov. 19, 2013), <https://www.interaction.org/document/statement-66-organizations-support-humanitarian-assistance-facilitation-act-2013> (expressing support for the bipartisan Humanitarian Assistance Facilitation Act (HAFA) introduced in the U.S. House of Representatives on November 13, 2013 which sought to ensure that “humanitarian organizations, acting in good faith and with the appropriate restrictions and controls in place . . . [are not] prevented, directly or indirectly by Executive orders or counterterrorism laws, from accessing and providing aid to civilian populations before or early on in humanitarian crises” (see H.R. 3526, 113th Cong. § 3 (1st Sess. 2013)), but which did not pass (see H.R. 3526, 113th Cong., Overview (1st Sess. 2013)). In 2015, “a coalition of nonprofit organizations” drafted and proposed the Humanitarian Assistance and Peacebuilding Protection Act (HAPPA), largely based on HAFA, though the legislation was unable to attract a congressional sponsor: see Andrea Hall, *New Legislation Would Create Space for Peacebuilding*, ALLIANCE FOR PEACEBUILDING (July 29, 2015), <http://www.allianceforpeacebuilding.org/2015/07/new-legislation-would-create-space-for-peacebuilding-summer-2015>; *Humanitarian Assistance and Peacebuilding Protection Act (HAPPA) Would Remove Barriers to Charity and Peacebuilding*, CHARITY & SECURITY NETWORK (2015), <http://www.charityandsecurity.org/HAPPA>.

505 CECILIA ROSELLI ET AL., LESS PAPER MORE AID: REPORTING, PARTNER CAPACITY ASSESSMENT AND AUDIT 23 (2016), available at <http://lesspapermoreaid.org/documents/lpma-reporting.pdf> [hereinafter LESS PAPER MORE AID].

506 A/70/371, *supra* note 107, at ¶ 41 (“Civil society groups have also highlighted the financial and resources implications of the increased time that is now spent on administrative requirements, complying—and proving compliance—with counter-terrorism material support legislation, which in turn has an inevitable impact on their operational capabilities and thus impedes delivery to beneficiaries.” (citations omitted)).

507 Women’s organization headquartered in South and South East Asia.

IMPACTS ON ACCESS TO RESOURCES



The government is using the laws to hinder the work of women's organizations, and use up our resources and time by using different controlling tools. Also the money can often not reach where it is needed, or only after a lot of delay.

Women's organization headquartered in South and South East Asia

Not applying for funding from donors that impose a high compliance burden

As has been previously noted, “[w]omen’s . . . organizations tend to decline USG funds because grant conditions endanger them and undermine their work;” this is because “certification and due-diligence requirements can suggest undue closeness to the United States,” such that “requiring non-profit organizations to conduct background checks on partners risks them being labeled U.S. agents or spies.”⁵⁰⁸ Women’s organizations may additionally decline USG funding from a “principled position that all humanitarian work should be impartial, as well as a belief that it is virtually impossible to guarantee that funds will not inadvertently support terrorism.”⁵⁰⁹

These concerns have unique gender dimensions, as “[w]hile these concerns apply to almost all USG-backed NGOs working on the counter-terrorism agenda and/or in areas considered to have high terrorist activity, women and LGBTI activists are doubly at risk because their work for gender equality is often already maligned by terrorists as ‘Western’ and foreign.”⁵¹⁰ Indeed, as noted by one women’s organization working in Azerbaijan: “Projects addressing peace, domestic violence and women’s issues are very sensitive, and therefore should not have the

same bureaucracy and financial requirements as other projects. The risks of this work should be taken into consideration with flexible requirements.”

In practice, however, donors’ and regulatory authorities’ responses to principled and other concerns regarding due diligence and other compliance requirements (e.g., on signing contracts with counter-terrorism clauses)⁵¹¹ often do not match these operational realities. For example, one such response is that “organisations stick to their principles, explain them well and demonstrate clear operational plans in an effort to anticipate and alleviate any suspicions or doubts about their motives and ability on the ground.”⁵¹² Such a recommendation presupposes a stronger bargaining position and access to legal and other compliance resources than most women’s rights organizations possess.⁵¹³ It also does not alter the reality that donors still might “only accept partners whose risk level they find acceptable.”⁵¹⁴

Nearly 50 percent of surveyed women’s organizations stated that these increased demands have impacted their access to funds. Significantly, despite the dire funding landscape for women’s rights organizing, women’s rights organizations, and gender equality,⁵¹⁵ 41.67 percent of surveyed organizations for this Report have not applied for certain grants and 16.67 percent have refused offered grants “because of countering terrorism financing rules (e.g., requests for detailed project information, partner vetting, administrative burden).” Some organizations,

508 A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 75 (citations omitted). See further RISK MANAGEMENT TOOLKIT IN RELATION TO COUNTER-TERRORISM MEASURES, *supra* note 163, at 10 (noting reputational and other risks, e.g., of vetting, for humanitarian organizations).

509 A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 75 (citations omitted).

510 *Id.*

511 See *supra* notes 161–171 and accompanying text.

512 Kristina Thorne, *Terrorist Lists and Humanitarian Assistance*, HUMANITARIAN PRACTICE NETWORK, 37 HUMANITARIAN EXCHANGE 14 (Mar. 2007), available at <http://odihpn.org/wp-content/uploads/2007/04/humanitarianexchange037.pdf>.

513 A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 74.

514 LESS PAPER MORE AID, *supra* note 505, at 29.

515 See *supra* notes 289–292 and accompanying text.

particularly in the Syrian context, “have decided to only accept funding from sources with fewer requirements, like Gulf donors, who do not have these reporting requirements.”⁵¹⁶

Making more conservative choices of grantees and partners to simplify compliance processes

Onerous due diligence and other compliance requirements mitigate in favor of more “conservative” partner choices, meaning those organizations with the capacity to implement counter-terrorism grant conditions.⁵¹⁷ This trend has a gendered effect because the small-size of women’s rights organizations means they “often lack the necessary capacity to navigate legal and financial requirements and comply with rigorous auditing and reporting procedures,”⁵¹⁸ that CTF legal and regulatory systems require. In addition, many due diligence and compliance conditions either explicitly, or in practice, require registration of an organization as one indicia of their low risk profile.⁵¹⁹

Yet, “women’s and LGBTI organizations which, because of unfavorable local conditions (including fear of being penalized by overly broad counter-terrorism laws), may be unregistered, have had their registration significantly delayed, or have a slim public profile compared to their actual advocacy history.”⁵²⁰ This pattern is borne out by the recent experience of women’s organizations in Syria who are not able to obtain registration in Syria or in neighboring countries, and are therefore often unable to receive grants.⁵²¹ Indeed, as USAID’s Office of Gender Equality & Women’s Empowerment has previously observed in respect of countering terrorism financing rules, “sometimes it is hard to fund small organizations without a track record”⁵²² and it can be particularly difficult to “find[] ways to certify NGOs after conflict situations because more groups spring up.”⁵²³ Paradoxically, while women’s rights organizing and organizations, particularly those emerging in conflict and post-conflict settings, are critical to ensuring a robust and evolving civil society, it is this very dynamism and adaptability—and the repressive conditions un-

der which they operate—that can make it more difficult for such groups to access funds.

Diversion of limited resources to satisfy compliance requirements

While there is little empirical data that quantifies the compliance time and other costs that civil society—or particular segments of civil society—bears in relation to CTF rules, one 2016 study shows that “40 man hours” were spent by an organization on a waiver request for a single counter-terrorism clause in a donor contract, which had to be repeated for every contract with that donor.⁵²⁴ In addition, a 2014 survey of international humanitarian organizations found that “[m]any organizations had multiple full-time staff members dedicated to anti-diversion policies and practices . . . One international humanitarian NGO noted that its headquarters office has six staff members working full-time on grant compliance and reporting relating to anti-diversion policies.”⁵²⁵ Training staff to undertake the necessary steps for compliance (e.g., to use commercial software for screening) is “labor- and time-intensive.”⁵²⁶ Confusion regarding legal liability under counter-terrorism regulations is such that often “[l]ocal/diaspora groups lack this experience and the skills and staff required to navigate complex and at times ambiguous legal texts.”⁵²⁷

As women’s rights organizations are characteristically small, they experience similar capacity challenges.⁵²⁸ Yet, at the same time, they often do not receive operational, long-term funding that could support the development of capacity to meet increasingly onerous compliance burdens.⁵²⁹ Donors may contribute to this problem by “transfer[ing] risk down the line of implementation without providing adequate support to manage it.”⁵³⁰ Additional costs may then be incurred when organizations—including women’s groups—engage outside legal counsel to navigate legal concerns. As noted by one women’s organization headquartered in MENA:

We are concerned about it here in Turkey. The laws in regards to counterterrorism regulations are very vague, we only know about laws once they close down an organization, and then we

516 LESS PAPER MORE AID, *supra* note 505, at 23.

517 DONOR CONDITIONS AND THEIR IMPLICATIONS FOR HUMANITARIAN RESPONSE, *supra* note 170, at 4.

518 A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 74.

519 FATF RECOMMENDATIONS, *supra* note 84, Interpretive Note to Rec. 8, ¶ 6(b)(i) (noting, for example, registration was referenced in the recent revisions to FATF Interpretive Note No. 8, as being one example of measures applicable to NPOs, such that “depending on the risks identified . . . NPOs could be required to license or register. This information should be available to competent authorities and encouraged to be available to the public.”).

520 A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 74.

521 PEACEBUILDING DEFINES OUR FUTURE NOW, *supra* note 282, at 24 (“Lack of registration was one reason mentioned by the women’s groups for why their funding applications were turned down. This is a huge obstacle because they are not able to register in Syria, and countries hosting groups working from outside Syria either prohibit such registration or make it extremely difficult to achieve. In addition, groups were suspicious of grant applications with preconditions that they thought could interfere with their policies and alter their activities.”).

522 See A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 74.

523 *Id.*

524 NORWEGIAN REFUGEE COUNCIL, INSTITUTIONAL DONOR REQUIREMENTS, REPORT ON SECTORAL CHALLENGE 15 (2016), available at <https://www.nrc.no/globalassets/office/whs/institutional-donor-requirements-report-on-sectoral-challenges-21.05.pdf>.

525 COUNTERTERRORISM & HUMANITARIAN ENGAGEMENT PROJECT, AN ANALYSIS OF CONTEMPORARY ANTI-DIVERSION POLICIES AND PRACTICES OF HUMANITARIAN ORGANIZATIONS 4 (2014), available at <https://phap.org/system/files/ext-resources/An%20Analysis%20of%20Contemporary%20Anti-Diversion.pdf>.

526 AN ANALYSIS OF CONTEMPORARY COUNTERTERRORISM-RELATED CLAUSES IN HUMANITARIAN GRANT AND PARTNERSHIP AGREEMENT CONTRACTS, *supra* note 165, at 35.

527 INTERNATIONAL AND LOCAL/DIASPORA ACTORS IN THE SYRIA RESPONSE, *supra* note 357, at 20.

528 A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 74.

529 See *supra* notes 282–283 and accompanying text.

530 LESS PAPER MORE AID, *supra* note 505, at 7. See also FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 88.

hear about it, and hear about the law they used against that NGO. We are now hiring a lawyer to go with us through all the laws and regulations. But that costs money.

When CTF legal and regulatory systems set the bar for compliance capacity unreasonably high—for example, a Thomson Reuters Foundation survey of 21 international and national NGOs determined that “bureaucratic workload had risen by an average of 7,000 extra man hours per charity in the two years since ISIS had taken root, the equivalent of three full-time staff”⁵³¹—this *de facto* excludes many women’s rights groups from receipt of donor funds. Indeed, in general terms, such requirements add to the shift away from small, grassroots NGOs with informal administrative structures toward international or Northern-based NGOs that may be able to “better absorb” compliance costs related to multiple and complex due diligence requirements from regulators, donors, and financial institutions.⁵³²

“Don’t ask, don’t tell” and decreased information-sharing amongst organizations and with donors

Countering terrorism financing rules have contributed to a “don’t ask, don’t tell approach” with donors on some aspects of due diligence (e.g., screening) processes⁵³³ and reporting processes (e.g., asking for oral reports to avoid written records).⁵³⁴ In practice, particularly when sub-contracting arrangements are in place, this is another way in which burdens of compliance and also “[l]iability is being delegated from donors to INGOs and then further down the chain.”⁵³⁵ This can lead to the under-reporting and under-recognition of an organization’s work, which in turn may reduce their ability to attract support. This is a challenge that is already experienced by women’s rights organizations that, as noted above, sometimes “have a slim public profile compared to their actual advocacy history,”⁵³⁶ including because of security and confidentiality concerns.

Such rules also discourage critical information-sharing amongst civil society. In Syria, for example, restrictions on, or fear of, sharing information—“due in part to language and cultural barriers but also to concerns around terrorism”⁵³⁷—has reduced transparency and contributed to “parallel and duplicated operations”⁵³⁸ as well as “a general feeling of mistrust.”⁵³⁹ This, in turn, has limited pooling of information and other resources amongst orga-

nizations, including on how they approach their due diligence and compliance burdens. In some circumstances, for example, in Syria, “international NGOs do not reveal their local partners to donors and often contractually the local partners are not allowed to say which NGOs they are working for.”⁵⁴⁰ Yet, as noted by one women’s organization headquartered in MENA, who was not allowed to publicly name their main funder, “[t]his put us, as small civil society organization, in a very difficult position. We need their support—not only their financial support—but also their solidarity and support on other levels.”

Instead of transparency, a highly-active rumor mill exists that tends to cause alarm and further contribute to the chilling effect of countering terrorism financing rules on civil society, leading to heightened stress on frontline personnel such as women peace-builders and women’s rights organizations that are already operating in insecure contexts. As noted by one women’s organization headquartered in North America what is needed is: “Greater transparency from the State Department, as well as education on the procedures. We need easy access to information to reduce the fear and secrecy of the laws. We need gender consultation when making the laws and take into account how laws play out.”

5. Insecurity and adaptive measures

Finally, this section explores the cumulative impact of all above-mentioned factors on the overall safety and security for women’s rights organizing, women’s organizations, and gender equality.

Surveillance, harassment, and the fear of both under counter-terrorism rules, including to counter terrorism financing

In some cases, governments have utilized countering terrorism funding restrictions as a tool for harassment, intelligence gathering, and surveillance of women’s rights organizing and women’s rights organizations.⁵⁴¹ In terms of harassment under counter-terrorism measures, for example, one women’s organization working in Pakistan reported fear of “*intimidation from government as they might label us or our partners as terrorists, if we come too much in the limelight.*” According to another women’s organization working in Uganda: “*Our colleagues in other organizations have experienced this, so we are afraid. They have been taken to court in the name of security under those count-*

531 *Syrians Suffer as Anti-terror Laws Squeeze Charities - Survey*, *supra* note 479.

532 A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 74.

533 AN ANALYSIS OF CONTEMPORARY COUNTERTERRORISM-RELATED CLAUSES IN HUMANITARIAN GRANT AND PARTNERSHIP AGREEMENT CONTRACTS, *supra* note 165, at 31.

534 PROSCRIBING PEACE, *supra* note 171, at 6.

535 *Id.*

536 A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 74.

537 *Syrian Aid Groups Seek Greater Role*, *supra* note 384.

538 *Id.*

539 *Id.*

540 *Id.*

541 See Hayes, *Counter-Terrorism, “Policy Laundering,” and the FATF: Legalizing Surveillance, Regulating Civil Society*, *supra* note 226, at 24 (noting that countering terrorism finance measures have “put the surveillance of the NPO sector firmly onto the counter-terrorism agenda.”).

er-terrorism regulations, they have been attacked physically. We know it can always happen to us." A women's organization working in Syria also notes that: "With the regional tensions and the war in Syria, we know that organizations working in Syria are very much watched in regards to possible links to terrorists."

In the survey conducted for this Report, 15 percent of survey respondents indicated that they had experienced harassment or prosecution under countering terrorism financing measures specifically, and four times that percentage—60 percent—expressed that they have been concerned about harassment or prosecution under countering terrorism financing measures specifically. The latter speaks to the extensive chilling effects of these rules.

In addition, the implementation of foreign funding rules or other rules concerning funding sources—including under the guise of security or counter-terrorism—has provided a basis for increased scrutiny of women's rights organizations.

They are now investigating us for "suspicious foreign funding." Which does not make sense because we are already registered with them. The investigator came to the office recently, took almost 50 folders of our activities and even took all of the original paperwork of ours like our approved statutes, and licenses. They didn't want the notarized copy, but they wanted the originals. They froze my private account and the organization's account. Even the things that have nothing to do with the organization, my Visa card as well. They didn't notify me. They also put a travel ban for me. I cannot leave the country. This trend is ongoing for almost two years, with lots of CSOs, with human rights foundations that had their headquarters here and left. The problem with this is even the bigger, international organizations can't stay, there is little hope for the smaller ones.

Women's organization headquartered in Caucasus & Central Asia

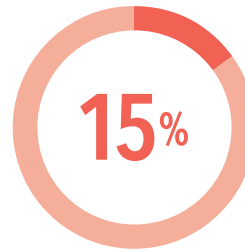
If we receive any funding we get a request from the intelligence agency; they request all information on the project. The . . . finance ministry tracks all international funding coming to the country.

Women's organization working in Chechnya

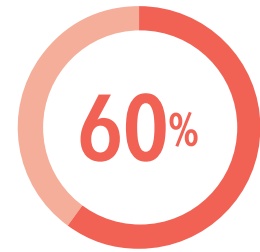
We have not been openly harassed, but I know we are being watched and monitored. Colleagues, who worked in the field have also shared stories on how they were questioned by the local police on what they were doing there, and mainly about where they received their funding from.

Women's organization headquartered in South Asia

FEARS OF HARASSMENT AND PROSECUTION



Of surveyed women's organizations experienced harassment or prosecution under countering terrorism financing measures



Of surveyed women's organizations are concerned about harassment or prosecution (e.g. material support) under countering terrorism financing measures

In addition, in practice interactions between women's rights organizations and financial institutions can provide an additional site for pseudo-surveillance and harassment of legitimate organizations by authorities. This is particularly a concern with state-run or state-controlled banks. Additionally, several survey respondent organizations reflected on how close relationships between financial institutions and authorities relate to requests for information before funds' release, particularly where "the banks and the security services are linked to each other."⁵⁴² In addition, a women's organization working in Libya noted, the "government, intelligence and banking system are very interlinked so we do not know who is behind requests." In some contexts, the close association between banks and ruling elites can also mean that banks—either in reality or perception—engage in information-gathering that may be on behalf of and/or accessible to governments. As noted by one women's organization working in Azerbaijan: "All banks are under control of the government, because the funders of the bank belong to the ruling elites and government."

Safety concerns arising from compliance with countering terrorism financing rules

There are a number of safety issues that arise in the context of compliance—and in some cases, over-compliance—of civil society, donors, and financial institutions with countering terrorism financing rules. First, as has been previously noted, overly extensive and inflexible due diligence and other compliance obligations—including those arising from donors' counter-terrorism contract clauses,⁵⁴³ anti-terrorism certification requirements,⁵⁴⁴ and the vetting, for example, of "employees of NGOs and local partner organizations,"⁵⁴⁵ can create particular security concerns for women's rights organizations.⁵⁴⁶ As with other

542 Women's organization headquartered in MENA.

543 See *supra* notes 161–166 and accompanying text.

544 See, e.g., CERTIFICATIONS, ASSURANCES, OTHER STATEMENTS OF THE RECIPIENT AND SOLICITATION STANDARD PROVISIONS, *supra* note 167, at 4.

545 See further Letter from Adam Motiwala to Desk Office for U.S. Dep't of State 3 (Feb. 17, 2012), available at <http://www.charityandsecurity.org/sites/default/files/Adam%20Motiwala%20comments%20opposing%20PVS.pdf> ("If aid groups and their employees are perceived to be part of the wider foreign policy agenda by their beneficiaries and local partners, as well as by militant groups in the area, the risk of violence increases and the assistance programs will not produce their desired results.").

546 A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 75 (citations omitted).

civil society actors, such rules can undermine groups' organizational neutrality and impartiality⁵⁴⁷ and suggest that they have been "cast as sub-contractors of government policy,"⁵⁴⁸ particularly U.S. foreign policy.⁵⁴⁹

The international community has to start to listen to us soon. They have to take us seriously in their needs assessments. I, as a Libyan activist, should not listen to rules made at a desk in Europe or the United States. They do not know our context at all, the way we have to work to get things done. The danger those regulations put us in. But we need the funds, there is no other way, so we have to follow their rules. They have no idea what is going on here. Their approach is not working in my eyes, this way we will never achieve anything here in Libya.

Women's organization operating in Libya

These risks are particularly acute for women's rights organizing and organizations that are already often accused—by State and non-State actors—of being aligned with foreign agendas, including because of their progressive work for women's rights.⁵⁵⁰ More generally, women's organizations rely on the maintenance of relationships of trust "built on independence, confidentiality and impartiality"⁵⁵¹ in their work on sensitive issues in often volatile operating environments. Such risks may be particularly acute for women's peacebuilders that engage with non-State armed groups and face immediate physical risks as a result.⁵⁵²

Second, limited access to financial services has meant that women's rights organizations may be unable to effectively implement their activities and may face additional safety concerns as a result (e.g., threats due to failure to pay suppliers). For example, according to a recent report, "[f]requently working in dangerous and uniquely challenging environments, NPOs' staff and contractors can face real physical jeopardy when funds are not available. One recounted a situation in the field where people expecting to be paid showed up with guns."⁵⁵³

Third, delays or non-receipt of funds jeopardize the safety of women's rights organizing and organizations working at the community level that are dependent on their local support base

to continue their critical work. For example, according to one women's organization headquartered in MENA: "Everyone is looking for funds. Donors withdraw their support to Yemen and Libya. Our partners are more in danger now than before . . . Because our partners cannot offer anything to the local community anymore, they are losing their support base." In addition, such delays or non-receipt of funds can jeopardize relationships that have been—not always readily—formed with local authorities and/or village elders, such that organizations risk "los[ing] the conducive environment that was created for the project."⁵⁵⁴

Fourth, safety issues may also arise in contexts where delays or other challenges with access to financial services require women's organizations to make multiple trips to the bank. According to one women's organization working in Libya, even going to the bank "has to be planned well, and bears a lot of personal danger, as queues are long and there have been many incidences where people started shooting into the queue within the banks." Another women's organization working in El Salvador echoed this safety concern, stating that "many people have experienced heavy armed assault and robberies after going to the bank. We therefore try to avoid as much as possible to go to the bank." Alongside such physical risks, the psychological effects of the stress and burnout of operating in such insecure contexts—including that stress and burnout occasioned by counter-terrorism measures and related funding restrictions—are acute.

Coping mechanisms for women's rights organizing and organizations

To be able to undertake programming and, in some cases ensure the continued existence of organizations, civil society actors are increasingly resorting to "self-censorship and other negative coping strategies."⁵⁵⁵ This trend is evident in relation to women's rights organizing, women's rights organizations, and the promotion of gender equality. Respondents surveyed for this Report repeatedly noted that they need to "find a way around"⁵⁵⁶ or "get creative"⁵⁵⁷ in order to survive, as they feel they "are at the end of the food chain."⁵⁵⁸

547 See, e.g., RISK MANAGEMENT TOOLKIT IN RELATION TO COUNTER-TERRORISM MEASURES, *supra* note 163, at 8 (noting that partner vetting and other screening processes "can also be a potential security risk in highly contested or insecure settings if the neutrality of the organisation comes into question.").

548 PROSCRIBING PEACE, *supra* note 171, at 8.

549 Sandi Halimuddin, *U.S. Counterterrorism Laws Block International Humanitarian Aid*, WORLD POLICY BLOG (Dec. 18, 2013), <http://www.worldpolicy.org/blog/2013/12/19/us-counterterrorism-laws-block-international-humanitarian-aid>.

550 See, e.g., A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 75 (citations omitted).

551 PROSCRIBING PEACE, *supra* note 171, at 3.

552 *Id.*

553 FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 82.

554 Roya Rahmani, *Donors, Beneficiaries, or NGOs: Whose Needs Come First? A Dilemma in Afghanistan*, 22(3) DEV. IN PRAC. 295, 300 (2012) ("Similarly, NGOs often have to negotiate with the village authorities and elders to secure their support before they can implement a project. If there is a substantial delay in the project implementation because their donors have not released the funds on time, NGOs will lose the conducive environment that was created for the project.").

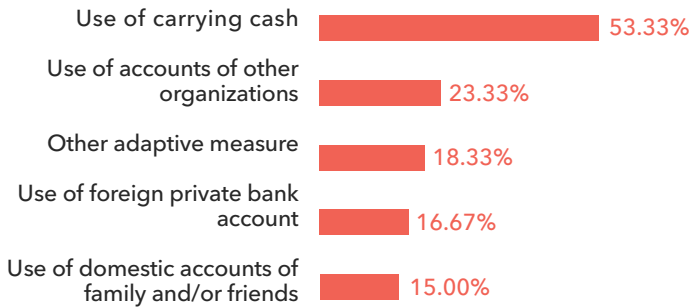
555 STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES, *supra* note 164, at 7.

556 Women's organization working in Libya.

557 Women's organization headquartered in North America.

558 Women's organization headquartered in MENA.

ADAPTIVE MEASURES



Examples of such adaptive strategies raised by local women's rights organizations to ensure continued funding include:

- Cash-carrying:** Where all options for engaging with the formal financial sector are closed, organizations may be driven into informal financial transactions, including cash-carrying.⁵⁵⁹ In a 2013 study commissioned by the United Nations Office for the Coordination of Humanitarian Affairs and the Norwegian Refugee Council, "[g]overnment and civil society representatives interviewed noted the increasing concern of charitable funds being moved through cash and outside of bona fide humanitarian actors so as to circumvent government regulation."⁵⁶⁰ The 2017 Charity and Security Network report that surveyed U.S.-based NPOs that work abroad, found that "42% of NPOs resort to carrying or sending cash when traditional banking channels become unavailable. This tactic entails significant risk for all parties, especially for those operating in conflict zones. There is the physical risk to NPO staff and beneficiaries and the associated liabilities of cash."⁵⁶¹

Cash-carrying was the most common adaptive measure raised by respondents in the survey undertaken for this Report, with 53.33 percent of surveyed women's organizations stated that they had resorted to cash-carrying. This was highest in the Central Asia and Sub-Saharan Africa where cash-carrying was reported by 87.50 percent and 66.67 percent of respondents, respectively.

According to a women's organization working in Iraq, one European NGO with which they work has "now decided to transfer money by cash to Iraq by flying personnel to Iraq, each can carry 50,000 Euros, for a project of 5 million Euros." Another organization working in Sudan stated that "when we travel to Sudan we will each with-

draw the maximum of 10,000 Euros and take the cash with us there. This poses a risk, but there is no other way to get the money there that is needed to implement our projects." Such risks that arise from cash-carrying practices exacerbate the already often-precarious safety and security situation of women's rights organizations and defenders, adding to their concerns about being targeted.⁵⁶²

- Use of other or multiple banks and accounts, including in foreign countries:** For example, organizations such as Oxfam America have reported having "to jump through hoops to transfer funds recently to one East African country . . . Oxfam's accounting department had to arrange fund transfers through multiple countries when its international bank cut off relations with a local bank as part of a broader withdrawal to lower its risk exposure to terrorist financing."⁵⁶³ Women's rights organizations may be forced to take similar steps, although not always with success. One women's organization headquartered in Sub-Saharan Africa found they could not "transfer money to Uganda and Sudan because there were almost no banks. The bank that was there was a Western-based bank and they said that the reason they wouldn't transfer it was because it was too risky." As a result, staff within the women's organization carried "thousands of dollars on our back to a bank in Liberia." A women's organization working in Iraq "tried to open a bank account from the same bank but a branch in a different country because of the volatile situation of the branch in Iraq," but even then found they were not able to make the transfer for security reasons. Amongst surveyed organizations for this Report, 23.33 percent adapted through use of the bank account of other organizations while 15.00 percent used domestic accounts of family or friends. Of all surveyed women's organizations, 16.67 percent of all surveyed women's organizations reported using foreign bank accounts to access funding.

- Use of Western Union and money services businesses:** One women's organization working in Libya noted that: "We try to deal with it with Western Union transfers, but many donors are not flexible in this." Even with Western Union, transfers are increasingly monitored or declined. For example, in 2015, the women's funders group MADRE was unable to transfer funds to Iraq for their gender-based-violence programs and their "transfer agent Western Union without explanation refused to handle funds it had routinely processed for an employee on their books since 2003."⁵⁶⁴ Money services businesses that continue to transfer to Somalia are increasingly "shut out of the international banking system" and left to "ferr[y] cash by hand" through Dubai and other informal networks.⁵⁶⁵

559 A/70/371, *supra* note 107, at ¶ 42.

560 STUDY OF THE IMPACT OF DONOR COUNTER-TERRORISM MEASURES, *supra* note 164, at 62.

561 FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 48.

562 See *supra* note 332 and accompanying text.

563 Stella Dawson, *Anti-terrorist Finance Rules Exact Toll on Aid to Conflict Zones*, REUTERS (Jun. 11, 2015), <http://www.reuters.com/article/us-aid-counterterrorism-idUSKBN0OR22E20150611>.

564 *Id.*

565 *Losing Count: U.S. Terror Rules Drive Money Underground*, *supra* note 208.

- **Borrowing money:** Where funding transfers are delayed, borrowing of money results. As noted by a women's organization headquartered in MENA: *"Sometimes we have to wait for six to seven months before the money arrives, which puts us in deficit. It is a vicious circle. How do you pay for your staff meanwhile? You end up having to borrow money."*
- **Avoiding NGO registration:** To avoid the impact of repressive NGO legislation—including that related to countering terrorism financing—local women's rights organizations may avoid formally registering as an NGO. For example, some organizations in Uganda, "do not seek registration because of the fear that harsh anti-terrorism laws will be used to criminalize their activities."⁵⁶⁶ Under Taliban-controlled Afghanistan, "some women managed to organise home study groups, sewing centres and community development councils underground, which after the Taliban's demise were then able to formally register."⁵⁶⁷ Organizations operating in areas under *de facto* control of designated terrorist entities may additionally be reluctant or unable to register as NGOs due to required NGO registration fees, which may be interpreted as providing "material support."⁵⁶⁸ According to one women's organization headquartered in South Asia:

The government very much monitors the NGO sector, trying to control it and prevent any anti-governmental activities. I know of many NGOs, who have suffered due to the fact that they registered as NGOs, and then had to constantly provide information and updates to the government on their work. We therefore have not registered as a NGO, but as a media association, as a so-called non-profit company, which means there is less governmental control, and we have to report less often.

In other contexts, NGOs might instead register as a limited liability company (LLC) or other private corporation.⁵⁶⁹ However, in practice, increased government monitoring of all non-governmental spaces may make it difficult for civil society to disguise their activities as that of the private sector, and makes them more susceptible for crackdown once their activities are identified. Additionally, registering as a private company is also often only a temporary fix because it means that an organization is often then not eligible for certain tax exemptions and many donors are unwilling to pay these local taxes. For example, one



Signs advertising Western Union money transfer services in Kumbakonam, India (October 11, 2013).

Credit: ClaudineVM/iStockphoto

surveyed organization working in Azerbaijan noted that, as a result of donor refusal to pay taxes, *"we cannot participate in U.N. or E.U. calls for applications anymore."*

Safety and security risks resulting from coping mechanisms

These adaptive measures, while vital for women's rights organizations to continue to exist, create threats to the safety of staff members and can paradoxically make legitimate women's organizations look more suspect to governments.⁵⁷⁰ Cash-carrying, in particular, has inherent security risks, particularly for women traveling across borders, through security checkpoints, or through areas under the control of terrorist or violent extremist groups, or in conflict or post-conflict environments more generally. For example, one women's organization headquartered in Sub-Saharan Africa was unable to transfer money to Uganda and Sudan and *"so we had to carry the money, thousands of dollars, on our back to the bank to Liberia for the gender department. We said never again, because we put ourselves at great risk*

566 A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 74.

567 Jude Howell & Jeremy Lind, *'Civil Society with Guns is not a Civil Society': Aid, Security and Civil Society in Afghanistan* 13 (London School of Economics, Non-Governmental Pub. Action Programme, Working Paper Series, 2008).

568 Mark Tran, *Counter-Terrorism Laws Taking their Toll on Humanitarian Action*, GUARDIAN (London) (Oct. 17, 2011), <https://www.theguardian.com/global-development/2011/oct/17/counter-terrorism-laws-impact-humanitarian-action>.

569 COUNTERTERRORISM MEASURES AND THEIR EFFECTS ON THE IMPLEMENTATION OF THE WOMEN, PEACE AND SECURITY AGENDA, *supra* note 1, at 8 ("In Egypt NGO registration is very difficult and foreign funds sent to NGOs are scrutinized by the government; groups register as limited liability companies and with them service contracts are signed in order to transfer funds.")

570 See, e.g., FINANCIAL ACCESS FOR U.S. NON-PROFITS, *supra* note 42, at 87 ("To hedge against potential account closures, NPOs reported that sometimes they open and maintain multiple bank accounts. The irony, however, is that multiple accounts can be a liability, making banks suspicious and increasing the likelihood of account closures. In addition, spreading assets among multiple accounts also makes each one less profitable for FIs, also potentially leading to terminations.")

by doing that.” For a women’s organization working in Libya: “When carrying a lot of cash when travelling to the projects outside Tripoli, where there are a lot of checkpoints, which constantly check us. We have to invent stories why we are travelling there, and are in constant fear that they might search our car.” In addition, according to a women’s organization headquartered in North America: “We discussed alternatives, taking cash, and individual bank accounts. We have accountability mechanisms . . . but these might look shady to the outside. We feel double vulnerable since as a coping mechanism, we carry cash and are subjected to crackdowns.”

Stress and burnout in insecure environments

Women’s rights groups also spoke of the adverse psychological and even physical impacts in operating under this constant state of fear and anxiety, including that occasioned by counter-terrorism measures and related funding restrictions. Women’s organizations and advocates regularly internalize the problem, resulting in less-visible impacts, an overall chilling effect, and the wearing down of already fragile organizations. Fear of surveillance is a predominant concern, contributing to anxiety.

We are in a constant state of stress, the pressure is high, as we have to make sure they do not find out . . . I have a burnout every few months. But I have to do this work; there is no other way, I think. What else would I have to do? Sit here and wait for things to get better? They will not. We have to do this work.

Women’s organization working in Libya

Also, people experience stress and danger. This makes them go into survival mode. How can we address this?

Women’s organization headquartered in North America

Our work on the empowerment of women supports the prevention of violent extremism, as women are playing an important role in society, in the families. I am an outspoken woman, I am speaking up, I do not have many supporters. It is a sacrifice we women activ-

ists have to make. We are tired, we are working for almost nothing in terms of payment. Big organizations and men who work in big organizations get the money, the international funds. But women work so much, but we cannot get to the money.

Women’s organization working in the Democratic Republic of Congo

It is a challenging situation for us as women activists. Sometimes I feel like it is becoming too much working on those topics, which are very critical towards society and the government. We should have more back support from our donors, especially when we are working on human rights, but we do not see a strong commitment from the donors. They are too afraid to get into difficulties with our government, I think. We are facing a serious lack of funding, we often cannot pay out salaries, people with a lot of experience leave because they find another job that pays. This harms the organization. We are very tired now, we are supporting others, the women on the ground, but no one is supporting us. But we have to carry on, we have no choice.

Women’s organization working in Afghanistan

According to one women’s organization working in Afghanistan, a female employee “was being visited so often at work by security officials asking her questions such as where she was from, to see her papers, where her husband was, why she was here, that she left the organization. “For a women’s organization working in Libya, this has “brought a high rate of burnout and suicide attempts in our organization” and “we actually started to include self-care in our trainings.”

There is a certain factor of fear that things can change, and though so far nothing happened to us as organization or individuals, this can always change. This also affects our work, as people are more careful in what they do, and how they do it.

Women’s organization working in South Asia

Uncertainty and fear, with the questions whether we will be able to continue this or not. The rules and funding situation changes all the times, which builds on the uncertainty.

Women’s organization headquartered in South Asia

V. INTERNATIONAL HUMAN RIGHTS FRAMEWORK RELATED TO GENDER AND COUNTERING TERRORISM FINANCING

While States have a responsibility to set up the necessary legal and regulatory environment to combat terrorism financing, this is not an unlimited prerogative. As with all measures taken to counter-terrorism and, increasingly to prevent and counter violent extremism, States must ensure that their measures are in compliance with their international law obligations, in particular international human rights law and international humanitarian law.⁵⁷¹ Indeed, as specifically noted by the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

Any effective counter-terrorism strategy must include measures to address the financing of terrorism and to prevent organizations and groups from providing financial and other support for acts of terrorism or for terrorist groups. At the same time, all measures adopted must comply with States' international obligations, including human rights and humanitarian law obligations.⁵⁷²

Compliance with these international obligations includes compliance with human rights guarantees related to gender equality, women's rights organizing, and women's rights organizations. Accordingly, U.N. Security Council Resolution 2242 (2015):

Urges Member States and requests relevant United Nations entities, including [the Counter-Terrorism Committee Executive Directorate], within its existing mandate, and in collaboration with UN-Women, to conduct and gather gender-sensitive research and data collection on . . . the impacts of counter-terrorism strategies on women's human rights and women's organizations, in order to develop targeted and evidence-based policy and programming responses, and to ensure United Nations monitoring and assessment mechanisms and processes mandated to prevent and respond to violent extremism, which can be conducive to terrorism, have the necessary

gender expertise to fulfil their mandates, including relevant sanctions experts groups and bodies established to conduct fact finding and criminal investigations.⁵⁷³

According to the U.N. Office of the High Commissioner for Human Rights:

Continual monitoring of the human rights impact of measures to prevent and counter violent extremism, in particular on women, children, and ethnic and religious communities, and meaningful and independent oversight, are crucial to safeguarding human rights. This is particularly important considering that there seems to be insufficient information available with respect to the effectiveness, and the gender and human rights impact, of some newly set up policies.⁵⁷⁴

This obligation to assess gender and human rights impacts of security policies is also anticipatory. As noted by the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: "Whenever rights-limiting measures are considered, their potential impact on women, children, ethnic and religious communities or any other specific group must be considered."⁵⁷⁵

In assessing and remedying existing or future impacts, the relevant international human rights legal framework related to gender and countering terrorism financing includes requirements that States:

- **Prohibit discrimination (both direct and indirect) on proscribed grounds, including of sex and gender:**⁵⁷⁶ This includes addressing how discrimination on the basis of sex and gender intersects with other prohibited grounds of discrimination, such as race, religion, and class and addressing these effects.⁵⁷⁷ On the latter, even though it is often stated that "violent extremism, in all its forms and manifes-

571 See, e.g., A/70/371, *supra* note 107, at ¶ 11; A/HRC/33/29, *supra* note 43, at ¶ 40 ("States have the responsibility to set up the necessary regulatory and operational framework to ensure that non-profit organizations are not misused for the financing of terrorism. However, measures taken in this regard, in particular when paired with overly broad definitions of material support to terrorism, have in some countries resulted in restrictions on civil society funding"); A/HRC/23/39, *supra* note 222, at ¶ 22 ("The Special Rapporteur is aware that States have an interest in protecting 'national security or public safety', which are legitimate grounds for restricting freedom of association, but he underscores that there is also need for States to comply with international human rights law while countering terrorism.").

572 A/70/371, *supra* note 107, at ¶ 11.

573 S.C. Res. 2242, U.N. Doc. S/RES/2242 ¶ 12 (Oct. 13, 2015).

574 A/HRC/33/29, *supra* note 43, at ¶ 27.

575 A/HRC/31/65, *supra* note 4, at ¶ 56(c).

576 For the principle of non-discrimination on the basis of "sex" and "gender," see, e.g., International Covenant on Civil and Political Rights, art. 2(1), Dec. 6, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 99 U.N.T.S. 171 [hereinafter ICCPR] (see also H.R. Comm., *General Comment No. 18: Non-Discrimination*, 37th Sess., U.N. Doc. HRI/GEN/1/Rev.1 (Nov. 10, 1989) and H.R. Comm., *General Comment No. 28: Equality of Rights Between Men and Women*, art. 3, ¶¶ 5, 8, 17, 24, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000) [hereinafter H.R. Comm., *General Comment No. 28*]); International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967) 993 U.N.T.S. 3 [hereinafter ICESCR] (see also Comm. on Economic, Social and Cultural Rights, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights*, 34th Sess., ¶ 14, U.N. Doc. E/C.12/2005/4 (Aug. 11, 2005); Comm. on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights*, ¶ 20, U.N. Doc. E/C.12/GC/20 (July 2, 2009)); Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW] (see also Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 28: The Core Obligations of States Parties Under Article 2 of the Convention on the Eliminations of All Forms of Discrimination against Women*, 47th Sess., ¶ 5, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010) [hereinafter CEDAW, *General Rec. No. 28*]). See also International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195 (see also Comm. on the Elimination of Racial Discrimination, *General Recommendation No. 25: Gender related Dimensions of Racial Discrimination*, 56th Sess., ¶ 4, U.N. Doc. A/55/18, annex V (Mar. 20, 2000)).

577 In relation to the concept of "intersectionality" and proscribed grounds of discrimination, see, e.g., H. R. Comm., *General Comment No. 28, supra* note 576, at ¶ 30; Comm. on the Elimination of Racial Discrimination, *General Comment No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of Racial Discrimination*, 75th Sess., ¶ 7, U.N. Doc. CERD/C/GC/32 (Sept. 24, 2009); Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 25: Temporary Special Measures*, art. 4(1), 30th Sess., ¶ 12 (2004) [hereinafter CEDAW, *General Rec. No. 25*]; CEDAW, *General Rec. No. 30, supra* note 41, at ¶ 7.

tations, cannot and should not be associated with any religion, nationality, civilization or ethnic group,⁵⁷⁸ in practice States have often focused on particular religions, cultures, nationalities, ethnicities and races, in particular on Muslim communities.⁵⁷⁹ This means that counter-terrorism or P/CVE measures that implicate women's civil society in these communities should be particularly examined for potential discriminatory aspects or effects. States' obligations to ensure non-discrimination on the basis of sex and gender are infringed, for example, by the "use of vague and broad definitions of 'terrorism' to punish those who do not conform to traditional gender roles and to suppress social movements that seek gender equality in the protection of human rights"⁵⁸⁰ or the "criminalization . . . of peaceful activities, such as . . . non-discrimination and equality or promotion of gender equality."⁵⁸¹ Alongside direct gender or sex-based targeting, international law also prohibits indirect discriminatory impacts on women's civil society and hindrance of the rights of women and girls; meaning that these effects flow from gender- or sex-neutral laws that nonetheless have adverse impacts because "of a failure to consider the underlying gender dynamics in the operating environments in which measures are being implemented."⁵⁸² For example, while "anti-terrorism financing and material support rules and policies are ostensibly gender-neutral, in practice they can often be gender discriminatory" because they "favor large, well-known organizations and require strict reporting and auditing requirements, whereas, in practice, women's organizations are small, informal, may need to operate below the radar due to local safety concerns, and often do

not have the administrative infrastructure necessary to comply with these reporting and auditing requirements."⁵⁸³

- **Ensure equality, both formal (*de jure*) and substantive (*de facto*) between men and women in the enjoyment of all civil, political, economic, social, and cultural rights, including in relation to access to, and use of, financial services:**⁵⁸⁴ The obligation to ensure equality also includes a requirement to recognize "that traditional stereotypes and attitudes (e.g., cultural attitudes) undermine the enjoyment of rights of women and ensure that such stereotypes are not used to justify violations of equality."⁵⁸⁵ In the context of countering terrorism financing, it has been noted that "applying an overly cautious approach to AML/CFT safeguards can have the unintended consequence of excluding legitimate businesses and consumers from the formal financial system."⁵⁸⁶ Because there is already "a significant gender gap in account ownership, savings, credit, and payments behavior,"⁵⁸⁷ the financial exclusion that can result from the application of CTF legal and regulatory frameworks can map onto existing gender-based patterns of financial exclusion. This means that that "de-risking practices will likely result in the further isolation of vulnerable communities, particularly women, from the formal financial sector and may have wide-ranging humanitarian, economic, and security implications."⁵⁸⁸ Such impacts of CTF on women's financial inclusion implicate States' obligations to ensure equality not only because financial inclusion⁵⁸⁹—for which "[a]ccess to a transaction account is a first step"⁵⁹⁰—is critical for the achievement of women's empowerment and

578 U.N. Doc. A/HRC/30/L.25/Rev.1 preambular ¶ 9 (Oct. 1, 2015).

579 See, e.g., A/HRC/31/65, *supra* note 4, at ¶ 43 ("On paper, most strategies to counter violent extremism are generic. In practice, however, they tend to target specific groups determined to be most 'at risk' of being drawn to violent extremism.").

580 A/64/211, *supra* note 4, at ¶ 27. See also A/HRC/33/29, *supra* note 43, at ¶ 21.

581 A/HRC/23/39, *supra* note 222, at ¶ 21.

582 Huckerby, *Feminism and International Law in the Post-9/11 Era*, *supra* note 582, at 568.

583 *Id.* at 568-69.

584 The obligation to ensure equality is referenced, for example, in ICCPR, *supra* note 576, art. 3; ICESCR, *supra* note 576, art. 3; and CEDAW, *supra* note 576, art. 3. See generally H.R. Comm., *General Comment No. 28*, *supra* note 576; Comm. on Economic, Social and Cultural Rights, *General Comment No. 16*, *supra* note 576; CEDAW, *General Rec. No. 25*, *supra* note 577.

585 See A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 6, at 16. See further H.R. Comm., *General Comment No. 28*, *supra* note 576, at ¶ 5; CEDAW, *supra* note 576, art. 5(a) (requiring States Parties to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women"); CEDAW, *General Rec. No. 25*, *supra* note 577, at ¶ 7.

586 ANTI-MONEY LAUNDERING AND TERRORIST FINANCING MEASURES AND FINANCIAL INCLUSION, *supra* note 450, at 5. See also UNDERSTANDING BANK DE-RISKING AND ITS EFFECTS ON FINANCIAL INCLUSION, *supra* note 199, at 3-4 ("Policymakers, regulators, banks, and other stakeholders have not shown the necessary accountability and leadership to address de-risking from a structural and systemic position . . . De-banked customers are left without clear expectations and unable to anticipate and protect themselves against impending account closures.").

587 *Financial Inclusion Data - Gender*, *supra* note 303.

588 UNDERSTANDING BANK DE-RISKING AND ITS EFFECTS ON FINANCIAL INCLUSION, *supra* note 199, at 19.

589 *Financial Inclusion - Overview*, *supra* note 303 ("Financial inclusion means that individuals and businesses have access to useful and affordable financial products and services that meet their needs - transactions, payments, savings, credit and insurance - delivered in a responsible and sustainable way.").

590 *Id.*

gender equality,⁵⁹¹ but also because States are required to ensure gender equality in the access to, and use of, financial services.⁵⁹² Where countering terrorism financing rules create additional barriers to women's financial inclusion or fail to mitigate existing barriers, both of these components of States' obligations are unmet. In addition, CTF legal and regulatory frameworks may implicate an "emerging right to banking facilities which, where recognized, can benefit NGOs and other legal entities that have been deprived of bank accounts or have been refused banking services."⁵⁹³

- **Ensure human rights of women and girls are ends in themselves:** The U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has noted that States "must respect, protect and promote the rights of all individuals regardless of any broader agenda. Human rights are and must be viewed as fundamental ends in themselves, even if their promotion is also a means in a wider agenda"⁵⁹⁴ and that the "broad-brush 'securitization' of human rights, international development, humanitarian assistance, education, community integration, gender or any other agenda by the State or the international community must be avoided."⁵⁹⁵ While it may well be that reform of countering ter-

rorism financing rules is key to enable the mainstreaming of gender and participation of women in counter-terrorism and P/CVE, States must "[p]rotect women's and girls' rights at all times"⁵⁹⁶ and "not just as a means for CVE."⁵⁹⁷

- **Ensure participation of women and women's rights organizations in all areas of decision-making—including in relation to policies aimed at countering terrorism and P/CVE—and that the rationale for inclusion is on the basis of non-discrimination and equality and is rights protective:**⁵⁹⁸ This means, for example, ensuring that women and women's organizations are consulted on potential programs aimed at countering terrorism financing.⁵⁹⁹ Importantly, women's engagement should be on the basis of non-discrimination and equality. In contrast, a number of efforts to engage women and women's civil society in national security policy have "tended to emphasize their engagement only at the informal or local level and often in ways that use and reinforce gender stereotypes (women as victims of terrorism; women as mothers)."⁶⁰⁰ Participation should also go beyond the informal or community or local level, to ensure that women's participation is facilitated at the national and international level and in international organizations,⁶⁰¹ such as FATF. The obligation to ensure participation, including on the ground of

591 See, e.g., U.K. DEPT OF INT'L DEV., PROMOTING WOMEN'S FINANCIAL INCLUSION - A TOOLKIT 14-18 (2013), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213907/promoting-womens-financial-inclusion-toolkit.pdf; SMRITI RAO, UPU & UN WOMEN, GENDER AND FINANCIAL INCLUSION THROUGH THE POST 4-5 (2015), available at <http://www2.unwomen.org/~media/headquarters/attachments/sections/library/publications/2015/discussion-paper-gender-and-financial-inclusion-through-the-post.pdf?v=1&d=20151023T143008>; *Empowering Women through Financial Inclusion*, WORLD BANK (Aug. 5, 2015), <http://www.worldbank.org/en/news/feature/2015/08/05/empowering-women-through-financial-inclusion> ("With access to financial services (bank accounts, loans, etc.) women's bargaining power in society increases as they are equipped with the tools that help them earn and maintain a living. Additionally, studies overwhelmingly show women are more likely to save, allocate, and invest money in order to be protected against unexpected expenses, and in their children's education; giving an opportunity for a better livelihood to the next generation.").

592 See, e.g., CEDAW, *supra* note 576, art. 13(b) ("States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (b) The right to bank loans, mortgages and other forms of financial credit"); Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 21: Equality in Marriage and Family Relations*, ¶ 7, U.N. Doc. A/49/38 (1994) ("When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy"); Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 34 on the Rights of Rural Women*, ¶ 15, U.N. Doc. CEDAW/C/GC/34 (Mar. 4, 2016) ("State parties should similarly ensure that older rural women have access to social services and adequate social protection, as well as economic resources and the empowerment to live life with dignity, including through access to financial services and social security.").

593 A/70/371, *supra* note 107, at ¶ 44.

594 A/HRC/31/65, *supra* note 4, at ¶ 50.

595 *Id.* at ¶ 56(d).

596 Good Practices on Women and Countering Violent Extremism, *supra* note 41, at 2; see also PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 231 (recommending that governments should "[d]etach programming on women's rights from counter-terrorism and extremism, and all military planning and military processes" and to "[p]rotect women's and girls' rights at all times and ensure that efforts to counter violent extremism strategies do not stereotype, instrumentalize or securitize women and girls"); Huckerby, *Feminism and International Law in the Post-9/11 Era*, *supra* note 582, at 582.

597 GOOD PRACTICES ON WOMEN AND COUNTERING VIOLENT EXTREMISM, *supra* note 41, at 2.

598 See ICCPR, *supra* note 576, art. 25(a); see also H. R. Comm., *General Comment No. 28*, *supra* note 576, at ¶ 29 ("The right to participate in the conduct of public affairs is not fully implemented everywhere on an equal basis"); H. R. Comm., *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 57th Sess., vol. I, U.N. Doc. A/51/40 (July 12, 1996). See International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(c), Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter ICERD]. See also CEDAW, *supra* note 576, art. 7; Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 23: Political and Public Life*, 16th Sess., U.N. Doc. A/52/38 (1997).

599 See, e.g., A/HRC/33/29, *supra* note 43, at ¶ 35 ("Consultations with local women's groups when drafting programmes will help in finding ways to address these challenges.").

600 A/HRC/31/65, *supra* note 4, at ¶ 53. See also A/HRC/33/29, *supra* note 43, at ¶ 35 ("Some efforts in that regard have tended to emphasize women's engagement in ways that have reinforced gender stereotypes or have led to women being perceived as mere tools of national security." (citations omitted)); Huckerby, *Feminism and International Law in the Post-9/11 Era*, *supra* note 582, at 556 (noting that such initiatives "rarely reflect the fact that women have a right to equality and non-discrimination in participating in all areas of decision-making, including those aimed at countering violent extremism.").

601 See, e.g., CEDAW, *supra* note 576, Art. 8; CEDAW, *General Rec. No. 23*, *supra* note 598, at ¶¶ 35-40.

non-discrimination, also includes ensuring that existing countering terrorism financing measures do not undermine the ability of women's rights organizing and women's organizations to contribute to all areas of public life.

- **Ensure that in formulating and implementing CTF measures, there is no arbitrary or unlawful interference with the right to privacy, including by relying on "amorphous concept[s] of national security":**⁶⁰² The right to privacy must be guaranteed on the basis of non-discrimination,⁶⁰³ such that "measures should be taken to ensure that any interference with the right to privacy complies with the principles of legality, proportionality and necessity, regardless of the nationality or location of the individuals whose communications are under direct surveillance."⁶⁰⁴ The right to privacy applies online,⁶⁰⁵ including for example in relation to "mass surveillance, the interception of digital communications and the collection of personal data."⁶⁰⁶ Right to privacy protections on digital communications extend to "the interception or collection of data about a communication" (or metadata) as well the content of the communication.⁶⁰⁷ Guarantees of the right to privacy—including online in an era where States have increased capacity to conduct "simultaneous, invasive, targeted and broad-scale surveillance"⁶⁰⁸—are essential to the achievement of

other human rights,⁶⁰⁹ including the right to freedom of expression,⁶¹⁰ that are critical for creating an operating environment for women's civil society.⁶¹¹ Where, for example, States utilize "surveillance of telecommunications networks to target political opposition members and/or political dissidents,"⁶¹² these human rights guarantees are infringed. Similarly, States should ensure that private actors do not interfere with the privacy rights of individuals either arbitrarily or unlawfully,⁶¹³ including for example when financial institutions seek to request information on the intended beneficiaries of their NGO clients. In addition, non-State actors such as financial institutions have a responsibility to respect human rights⁶¹⁴ and that "responsibility to respect human rights applies throughout a company's global operations regardless of where its users are located, and exists independently of whether the State meets its own human rights obligations."⁶¹⁵ Where such non-State actors fail to exercise the responsibility to respect human rights, the relevant "remedy should include information about which data have been shared with State authorities, and how."⁶¹⁶

- **Exercise due diligence to prevent, investigate, and punish actions by non-State actors that circumscribe women's rights organizing, women's rights organizations, and gender equality:** Under international human rights

602 ICCPR, *supra* note 576, art. 17(1) ("No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."); Convention on the Rights of the Child, art. 16, Nov. 20, 1989, 1577 U.N.T.S. 3; International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, art. 14, Dec. 18, 1990, 2220 U.N.T.S. 3. See also Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Rep. of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 58, U.N. Doc. A/HRC/23/40 (Apr. 17, 2013) ("Vague and unspecified notions of 'national security' have become an acceptable justification for the interception of and access to communications in many countries."); *id.* at ¶ 60 ("The use of an amorphous concept of national security to justify invasive limitations on the enjoyment of human rights is of serious concern.")

603 U.N. High Comm'r for Human Rts., *The Right to Privacy in the Digital Age: Rep. of the U.N. Office of the High Comm'r for Human Rts.*, ¶ 36, U.N. Doc. A/HRC/27/37 (June 30, 2014) ("International human rights law is explicit with regard to the principle of non-discrimination . . . These provisions are to be read together with articles 17 . . .").

604 H.R. Comm., *Concluding Observations on the Fourth Periodic Report of the United States of America*, ¶ 22(a), U.N. Doc. C/PR/C/USA/CO/4 (Apr. 23, 2014).

605 G.A. Res. 68/167, ¶ 3 U.N. Doc. A/RES/68/167 (Jan. 21, 2014) ("Affirms that the same rights that people have offline must also be protected online, including the right to privacy;").

606 A/HRC/27/37, *supra* note 603, ¶ 14.

607 *Id.* at ¶ 19.

608 *Id.* at ¶ 14.

609 Special Rapporteur on the Right to Privacy, *Rep. of the Special Rapporteur on the Right to Privacy*, ¶ 8, U.N. Doc. A/HRC/31/64 (Mar. 8, 2016) (identifying "privacy as an essential right which enables the achievement of an over-arching fundamental right to the free, unhindered development of one's personality."); A/HRC/27/37, *supra* note 603, at ¶ 14 ("These include the rights to freedom of opinion and expression, and to seek, receive and impart information; to freedom of peaceful assembly and association; and to family life – rights all linked closely with the right to privacy and, increasingly, exercised through digital media . . . There are credible indications to suggest that digital technologies have been used to gather information that has then led to torture and other ill-treatment.")

610 A/HRC/23/40, *supra* note 602, at ¶ 24 ("The right to privacy is often understood as an essential requirement for the realization of the right to freedom of expression.")

611 See *infra* notes 626–645 and accompanying text.

612 A/HRC/27/37, *supra* note 603, at ¶ 3.

613 ICCPR, *supra* note 576, art. 17(2); H.R. Comm., *General Comment No. 16: The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, ¶ 9, U.N. Doc. HRI/GEN/1/ (Apr. 8, 1988) ("States parties are under a duty themselves not to engage in interferences inconsistent with article 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons."); *id.* at ¶ 10 ("The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law.")

614 See *infra* notes 671–675 and accompanying text.

615 U.N. Doc. A/HRC/27/37, *supra* note 603, at ¶ 43.

616 *Id.* at ¶ 46.

law, States have an obligation to protect individuals against human rights abuse by private or non-State actors.⁶¹⁷ A State's obligations of due diligence apply without discrimination to all individuals within its jurisdiction, including citizens and non-citizens.⁶¹⁸ Where a State fails to exercise due diligence, it incurs international responsibility, meaning that the State must then provide an effective remedy for affected victims.⁶¹⁹ In the context of assessing State's obligations in developing countering terrorism financing, this means that States have an obligation to prevent, investigate, and punish any actions of businesses (e.g., such as banks and corporations that develop compliance and other tools) that circumscribe women's rights organizing, women's rights organizations, and gender equality.⁶²⁰ The content of the due diligence obligation in such circumstances can include, for example, early engagement with financial institutions to help identify and prevent the human rights-related risks of their activities in conflict-affected areas.⁶²¹ In addition, States should integrate their obligations to protect into a full range of regulatory activities, including "policies, legislation, regulations and adjudication."⁶²²

In addition, as noted by the U.N. Office of the High Commissioner for Human Rights:

The duty of States to exercise due diligence in ensuring that the human rights of individuals or groups are not subject to abuse by non-State actors includes the duty to provide the requisite conditions and safe space for civil

society organizations to be able to carry out their work. These organizations face particularly difficult challenges when engaged in a context or territory where violent extremist groups are present. In such cases, initiatives to preserve or widen civil society space may be further developed.⁶²³

The U.N. Committee on the Elimination of Discrimination against Women has noted the "targeted violence and human rights violations linked to terrorism committed against women and girls, violent extremism" and other threats, as areas of concern.⁶²⁴ Indeed, it is increasingly recognized that violent extremist and terrorist groups commit "serious human rights abuses and violations of international humanitarian law," including "abuse of women and children."⁶²⁵ This means that where, in practice, efforts to counter terrorism financing fail to interrupt terrorist financing and/or actually hinder rather than assist the activities of women's rights organizing and women's rights organizations—including in their own efforts to resist terrorism and violent extremism—States have failed to exercise due diligence as required under international human rights law.

- **Ensure freedom of association, assembly, and expression and on the basis of non-discrimination,⁶²⁶ including through ensuring access to financial resources such as from foreign funding:** As with all counter-terrorism measures, States should ensure that countering terrorism financing rules are consistent with "civil society's rights to freedom of association, expression, assembly, and privacy, and that

617 See, e.g., H.R. Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 80th Sess., ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (May 26, 2004); Comm. on Economic, Social and Cultural Rights, *General Comment No. 12: Right to Adequate Food*, 20th Sess., ¶ 15, U.N. Doc. E/C.12/1999/5 (1999); Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against Women*, 11th Sess., ¶ 9, 1992 [hereinafter CEDAW, *General Rec. No. 19*]; CEDAW, *General Rec. No. 28*, *supra* note 576, at ¶ 19; CEDAW, *General Rec. No. 30*, *supra* note 41, at ¶ 15; Comm. Against Torture (CAT), *General Comment No. 3: Implementation of Article 14 by States Parties*, ¶ 7, U.N. Doc. CAT/C/GC/3 (Nov. 19, 2012); Comm. Against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties*, ¶ 18, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007); Comm. on the Rights of the Child, *General Comment No. 13: The Right of the Child to Freedom from all Forms of Violence*, ¶ 5, U.N. Doc. CRC/C/GC/13 (April 18, 2011). See also, e.g., *Young, James & Webster v. United Kingdom*, 44 Eur. Ct. H.R. (ser. A) 49 (1981); *X & Y v. Netherlands*, 91 Eur. Ct. H.R. (ser. A) 27 (1985); *Velásquez-Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (July 29 1988); African Commission on Human and Peoples' Rights, app. 74/92, *Commission Nationale des Droits de l'Homme et des Libertés v Chad*, 9th Annual Activity Report of the ACHPR (1995-96); 4 IHRR 94 (1997); African Commission on Human and Peoples' Rights, app. 55/96, *SERAC and CESR v Nigeria*, 15th Annual Activity Report of the ACHPR (2002), ¶ 46.

618 See CEDAW, *General Rec. No. 28*, *supra* note 576, at ¶ 12; H.R. Comm., *General Comment No. 31*, *supra* note 617, at ¶ 10.

619 CAT, *General Comment No. 3*, *supra* note 617, at ¶ 7; H.R. Comm., *General Comment No. 31*, *supra* note 617, at ¶ 8.

620 See, e.g., Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, Human Rights Council, 70th Sess., Principle 1, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) (States are required to take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication").

621 *Id.*, Principle 7 ("Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by: (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;").

622 *Id.* Principle 1, Commentary.

623 A/HRC/33/29, *supra* note 43, at ¶ 39 (citations omitted).

624 Letter from Yoko Hayashi, Chairperson, Comm. on the Elimination of Discrimination against Women, to Radhika Coomaraswamy, Lead author on Global Study on the Implementation of Resolution 1325 2 (Mar. 6, 2015), available at <http://www.ohchr.org/Documents/HRBodies/CEDAW/OpenLetterGlobalStudy1325.pdf>.

625 A/HRC/30/L.25/Rev.1, *supra* note 578, preambular at ¶ 13.

626 See, e.g., ICCPR, *supra* note 576, arts. 19, 21, 22, 25; ICESCR, *supra* note 576, arts. 8, 15; CEDAW, *supra* note 576, art. 3; ICERD, *supra* note 598, art. 5; Convention on the Rights of the Child, *supra* note 602, arts. 13, 15; Convention on the Rights of Persons with Disabilities, arts. 21, 29, 30, Dec. 13, 2006, 2515 U.N.T.S. 3; International Convention for the Protection of all Persons Against Enforced Disappearance, art. 24(7), Dec. 20, 2006 2716 U.N.T.S. 3; and International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, *supra* note 602, art. 26. See further, e.g., H.R. Comm., *General Comment No. 34: Freedoms of Opinion and Expression*, Art. 11, U.N. Doc. CCPR/C/GC/34; H.R. Comm., *General Comment No. 25*, *supra* note 598.

the principles of necessity, proportionality and non-discrimination are respected,⁶²⁷ as well as the principle of legality. In practice, however, counter-terrorism rules, including specifically funding restrictions purportedly put in place for “national security” or counter-terrorism reasons, have violated these human rights protections.⁶²⁸ States’ measures to “facilitate, promote and protect civil society space” consistent with international human rights law,⁶²⁹ include a requirement that the “safe and enabling” environment for civil society be non-discriminatory, including by ensuring specific attention to ensuring the work of women’s human rights defenders.⁶³⁰ States must also ensure that all provisions affecting access of civil society to funding comply with international human rights law obligations,⁶³¹ because under international law, the right to freedom of association “not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources—human, material and financial—from domestic, foreign, and international sources.”⁶³² This means that States should both

“facilitate access to funding” and “avoid placing restrictions” regarding access to resources.⁶³³

Measures invoked to counter terrorism financing that either directly or indirectly, for example: crackdown and restrict the access to resources and space of civil society;⁶³⁴ cause “the suppression of legitimate human rights and humanitarian initiatives;⁶³⁵ restrict access to financial services (e.g., banking facilities) by women’s rights organizations;⁶³⁶ use “funding restrictions that impede the ability of associations to pursue their statutory activities;”⁶³⁷ and/or “limit[ing] foreign funding to registered associations only,”⁶³⁸ therefore implicate State’ international human rights obligations regarding freedom of association, assembly, and expression, as well as the human rights of the intended beneficiaries of the work of those associations.⁶³⁹

Just as “fundraising activities are protected,” by the right to freedom of association,⁶⁴⁰ donors “also have responsi-

627 A/HRC/31/65, *supra* note 4, at ¶ 22.

628 See further A/HRC/33/29, *supra* note 43, at ¶ 21 (“In some jurisdictions, counter-extremism legislation has reportedly been used to unduly restrict human rights, such as freedom of expression, peaceful assembly and religion or the right to privacy.”); A/70/371, *supra* note 107, at ¶ 46(b) (urging States to “ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds”); Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Rep. of the Special Rapporteur on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, transmitted by Note of the Secretary-General*, ¶ 11, U.N. Doc. A/61/267 (Aug. 16, 2006) (“In his review of counter-terrorism legislation, the Special Rapporteur has seen numerous instances where limitations to the rights to freedom of association and assembly clearly went beyond the scope necessary to counter terrorism and could in actual fact be used to limit the rights of political parties, trade unions or human rights defenders”); A/HRC/23/39, *supra* note 222, at ¶¶ 22–26.

629 A/HRC/27/L.24, *supra* note 17, preambular ¶ 9 (“Mindful that domestic legal and administrative provisions and their application should facilitate, promote and protect an independent, diverse and pluralistic civil society . . .”).

630 A PRACTICAL GUIDE FOR CIVIL SOCIETY, *supra* note 13, at 7 (“States’ international legal obligations require them to create conditions - economic, political, social, cultural, legal - that actively support the ability and capacity of persons, individually or in association with others, to engage in civic activities.”); Human Rights Council, *Civil Society Space*, 32d Sess., ¶ 3, U.N. Doc. A/HRC/32/L.29 (June 23, 2016) (“Urges States to create and maintain, in law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity.”); A/HRC/25/55, *supra* note 9, at ¶ 61 (“The Special Rapporteur has repeatedly underlined the need to create and consolidate a safe and enabling environment for defenders and has elaborated on some of the basic elements that she believes are necessary in this regard. These elements include a conducive legal, institutional and administrative framework; access to justice and an end to impunity for violations against defenders; strong and independent national human rights institutions; effective protection policies and mechanisms paying attention to groups at risk; specific attention to women defenders; non-State actors that respect and support the work of defenders; safe and open access to international human rights bodies; and a strong and dynamic community of defenders.”).

631 See, e.g., A/HRC/32/L.29, *supra* note 630, at ¶ 8 (“Calls upon States to ensure that domestic provisions on funding to civil society actors are in compliance with their international human rights obligations and commitments and are not misused to hinder the work or endanger the safety of civil society actors, and underlines the importance of the right and ability to solicit, receive and utilize resources for its work”).

632 A/HRC/23/39, *supra* note 222, at ¶ 8. See further, e.g., Human Rights Council, *Protecting Human Rights Defenders*, 22d Sess., ¶ 9(b), U.N. Doc. A/HRC/RES/22/6 (Apr. 12, 2013) (calls upon States to ensure that “that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto”); Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Art. 6(f) (the right to freedom of thought, conscience, religion or belief shall include, inter alia, the freedom “to solicit and receive voluntary financial and other contributions from individuals and institutions”); H.R. Comm., Communication No. 1274/2004, ¶ 7.2, U.N. Doc. CCPR/C/88/D/1274/2004 (2006) (“[T]he right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association . . .”); Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, art. 13, U.N. Doc. A/RES/53/144 (Mar. 8, 1999) (“[E]veryone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration”).

633 A/HRC/23/39, *supra* note 222, at ¶ 18.

634 A/70/371, *supra* note 107, at ¶ 10; A/HRC/23/39, *supra* note 222, at ¶ 9 (“Legal frameworks and policies related to resources have a significant impact on the freedom of association; they can strengthen the effectiveness and facilitate the sustainability of associations or, alternatively, subjugate associations to a dependent and weak position.”).

635 A/70/371, *supra* note 107, at ¶ 10.

636 *Id.* at ¶ 43.

637 A/HRC/23/39, *supra* note 222, at ¶ 16.

638 *Id.* at ¶ 17.

639 A/HRC/23/39, *supra* note 222, at ¶ 9.

640 *Id.* at ¶ 16.

bilities,⁶⁴¹ and “should pay due attention to the local political, social and economic context in which associations operate, particularly associations working with grassroots communities, marginalized and vulnerable peoples, and on ‘unpopular’ or cutting-edge issues,⁶⁴² which includes women’s rights organizing, women’s rights organizations, and gender equality. Associations themselves also have obligations to “ensure that funds are used for the purposes intended and that they are transparent and accountable to their donors, according to the terms of their funding agreements.”⁶⁴³

Finally, while international law does provide for some potential restrictions on the rights to freedom of assembly and association, the “right must remain the rule and any restriction the exception”⁶⁴⁴ and in practice, the circumstances in which national security can be so used as a basis for such limitation will be very circumscribed. National security can never be “used as a pretext to constrain dissenting views or independent civil society.”⁶⁴⁵

- **Guarantee human rights in conflict prevention, conflict, and post-conflict contexts:** In situations of armed conflict, international human rights law and international humanitarian law “apply concurrently and their different protections are complementary, not mutually exclusive.”⁶⁴⁶ The implementation of the women, peace, and security agenda as expressed in various thematic resolutions of the U.N. Security Council, in particular 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), and 2242 (2015), must be consistent with international human rights law. As noted by the U.N. Committee on the Elimination of

Discrimination Against Women, “all the areas of concern addressed in those resolutions find expression in the substantive provisions of the Convention.”⁶⁴⁷ Indeed, as stated in the *2015 Global Study on the Implementation of U.N. Security Council Resolution 1325*: “Resolution 1325 is a human rights mandate. It must not be forgotten that resolution 1325 was conceived of and lobbied for as a human rights resolution that would promote the rights of women in conflict situations. Any policy or programme on women, peace and security must be conducted with this in mind.”⁶⁴⁸

In addition, in situations of armed conflict, rules to counter terrorism financing must also comply with State obligations under international humanitarian law concerning humanitarian access and engagement, including in relation to providing humanitarian assistance.⁶⁴⁹ Within this framework, such countering terrorism financing rules particularly implicate international law and policy developments that *inter alia*:

- “Allow humanitarian organizations to offer their services to NSEs [non-State entities];
- Promote humanitarian access and assistance;
- Encourage NSEs to comply with international norms; and
- Recognize the centrality of engagement and negotiation with NSEs to promote protection of civilians.”⁶⁵⁰

641 *Id.* at ¶ 14.

642 *Id.*

643 *Id.* at ¶ 13.

644 A/61/267, *supra* note 628, at ¶ 15. See also A/HRC/23/39, *supra* note 222, at ¶ 18.

645 A/HRC/23/39, *supra* note 222, at ¶ 23 (stating that it is “a violation of international law for counter-terrorism or ‘anti-extremism’ measures to be used as a pretext to constrain dissenting views or independent civil society . . . Laws drafted in general terms limiting, or even banning funding under the justification of counter-terrorism do not comply with the requisites of ‘proportionality’ and ‘necessity’”); *id.* at ¶ 30 (“Affirming that national security is threatened when an association receives funding from foreign source is not only spurious and distorted, but also in contradiction with international human rights law.”). See also A/61/267, *supra* note 628, at ¶ 19 (national security “cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order or used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse”); *id.* at ¶ 20 (“State shall not invoke national security as a justification for measures aimed at suppressing opposition or to justify repressive practices against its population”).

646 See CEDAW, *General Rec. No. 30*, *supra* note 41, at ¶ 20. See also CEDAW, *General Rec. No. 28*, *supra* note 576, at ¶¶ 11-12; CEDAW, *General Rec. No. 19*, *supra* note 617, at ¶ 7; H.R. Comm., *General Comment No. 31*, *supra* note 617, at ¶ 11; Comm. On Economic, Social and Cultural Rights, 29th Sess., *General Comment No. 15: The Right to Water* ¶ 22 U.N.Doc. E/C.12/2002/11 (Jan. 20, 2003).

647 See CEDAW, *General Rec. No. 30*, *supra* note 41, at ¶ 26.

648 PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 6, at 15.

649 See, e.g., in situations of international armed conflict, *Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War*, art. 23, 75 U.N.T.S. 287; *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, art. 70(1), 1125 U.N.T.S. 3; *id.*, art. 70(2). In situations of non-international armed conflict, see *Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* art. 3, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, art. 18(2), June 8, 1977, 1125 U.N.T.S. 609. See also Jean-Marie Henckaerts & Louise Doswald-Beck, *Customary International Humanitarian Law*, INT’L COMM. OF THE RED CROSS, Rule 55 (3 vols. 2006), available at <https://www.icrc.org/eng/resources/documents/publication/pcustom.htm> (“The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.”).

650 *Humanitarian Action under Scrutiny: Criminalizing Humanitarian Engagement* i (Harvard University, Program on Humanitarian Policy and Conflict Research (HPCR), Working Paper, 2011).

In addition, international humanitarian law, “recognizing their specific needs and vulnerabilities, . . . grants women a number of further specific protections and rights.”⁶⁵¹ As a result, in implementing countering terrorism financing rules “[t]he specific protection, health and assistance needs of women affected by armed conflict must be respected.”⁶⁵²

- **Guarantee the right to remedy:** Under international law, the obligation to provide remedies is a consequence of an internationally wrongful act of a State.⁶⁵³ State responsibility to provide a remedy arises when the relevant acts or omissions can be attributed to the State and the acts or omissions constitute a breach of the State’s international obligations.⁶⁵⁴ Under certain circumstances, the acts or omissions of private entities might be attributed to the State, such as if non-State actors are empowered to exercise governmental authority; is acting on the instruction of or under the direction or control of a State; or where the State acknowledges and adopts such violations as its own conduct.⁶⁵⁵ In the context of countering terrorism financing, one important example of where the actions of financial institutions can be attributed to the State is in the case of state-owned or state-controlled enterprises.⁶⁵⁶ Indeed, “[d]espite numerous privatizations over the past decade, publicly owned banks and other state-owned financial institutions still serve the majority of individuals in developing countries.”⁶⁵⁷ And such, as reflected in the *U.N. Guiding Principles on Business and Human Rights*:

Where a business enterprise is controlled by the State or

where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State’s own international law obligations. Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State’s policy rationale becomes for ensuring that the enterprise respects human rights.⁶⁵⁸

As noted above, in addition to the obligation to respect human rights, States must also protect against human rights abuse within their territory and/or jurisdiction by third parties, such as business enterprises that are not State-controlled.⁶⁵⁹ While these human rights abuses by private actors cannot be attributed directly to States, States nonetheless bear legal responsibility “where they fail to take appropriate steps to prevent, investigate, punish and redress private actors’ abuse.”⁶⁶⁰ This means that State responsibility to provide redress to victims also arises when the State is not directly implicated in the harm but fails to exercise due diligence regarding violations by non-State actors (e.g., private financial institutions).⁶⁶¹ In substance, adequate reparations include “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”⁶⁶² This right to an effective remedy should be interpreted and applied without discrimination.⁶⁶³

- **Ensure the above obligations apply extraterritorially to those within the State’ jurisdiction, including when acting individually or as members of international or inter-governmental institutions:** Under international

651 *Customary International Humanitarian Law*, *supra* note 649, at 475 (Rule 134 provides that “[t]he specific protection, health and assistance needs of women affected by armed conflict must be respected”). See further *Geneva Convention (I)*, *supra* note 649, art. 12, ¶ 4; *Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, art. 12, ¶ 4, Aug. 12, 1949, 75 U.N.T.S. 85; *Geneva Convention (III) Relative to the Treatment of Prisoners of War*, art. 14, ¶ 2, Aug. 12, 1949, 75 U.N.T.S. 135; *Geneva Convention (IV)*, *supra* note 649, art. 27, ¶ 2; *Protocol I*, *supra* note 649, art. 76(1). See also *Geneva Convention (IV)*, *supra* note 649, arts. 14, 38(5), 50.

652 *Customary International Humanitarian Law*, *supra* note 651, at 475 (Rule 134).

653 Int’l Law Comm., Draft Articles on Responsibility of States for Internationally Wrongful Acts, arts. 1, 31, U.N. Doc. A/56/10 (Nov. 2001) [hereinafter ILC Draft Articles on Responsibility of States].

654 ILC Draft Articles on Responsibility of States, *supra* note 653, art. 2; CAT, *General Comment No. 3*, *supra* note 617, at ¶ 7.

655 See Comm’n to the Gen. Assembly, *Rep. on the Work of its Fifty-Third Session*, 26, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2) (2001).

656 See, e.g., ORG. FOR ECON. CO-OPERATION AND DEV., OECD GUIDELINES ON CORPORATE GOVERNANCE OF STATE-OWNED ENTERPRISES 15 (2015), available at <http://www.oecd.org/daf/ca/OECD-Guidelines-Corporate-Governance-SOEs-2015.pdf> (defining State-owned enterprise as constituting: “Any corporate entity recognised by national law as an enterprise, and in which the state exercises ownership, should be considered as an SOE [State-owned enterprise]. This includes joint stock companies, limited liability companies and partnerships limited by shares . . . The Guidelines apply to enterprises that are under the control of the state, either by the state being the ultimate beneficiary owner of the majority of voting shares or otherwise exercising an equivalent degree of control.”). This definition is adopted by the Working Group on human rights and transnational corporations and other business enterprises when discussing the human rights obligations of state-owned enterprises: see Human Rights Council, *Rep. of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises: “Leading by example - The State, State-owned Enterprises, and Human Rights,”* 32d Sess., ¶¶ 9-11, U.N. Doc. A/HRC/32/45 (May 4, 2016).

657 *The Future of State-Owned Financial Institutions*, BROOKINGS INSTITUTE, <https://www.brookings.edu/research/the-future-of-state-owned-financial-institutions/>.

658 A/HRC/17/31, *supra* note 620, Principle 4, Commentary.

659 See *infra* notes 671-675 and accompanying text.

660 A/HRC/17/31, *supra* note 620, Principle 1, Commentary.

661 CAT, *General Comment No. 3*, *supra* note 617, at ¶ 7; H.R. Comm., *General Comment No. 31*, *supra* note 617, at ¶ 8.

662 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, 60th Sess., ¶ 18, U.N. Doc. A/RES/60/147 (Mar. 21, 2006).

663 *Id.* at ¶25; CAT, *General Comment No. 3*, *supra* note 617, at ¶32.

human rights law, States' human rights obligations apply extraterritorially to those individuals and entities within their jurisdiction.⁶⁶⁴ Such jurisdiction is established when States exercise "effective control"⁶⁶⁵ either when acting "individually, for example in unilateral military action, or as members of international or inter-governmental organizations and coalitions, for example as part of an international peacekeeping force,"⁶⁶⁶ and applies in a range of settings, including in "bilateral or multilateral donor assistance . . . for humanitarian aid."⁶⁶⁷ The human rights obligations of States apply extraterritorially at all times—in peace, conflict, and post-conflict⁶⁶⁸—and include their due diligence obligations with regard to non-State actors.⁶⁶⁹ This means, for example, that States are required to regulate the activities of domestic financial institutions that operate extraterritorially.⁶⁷⁰

In addition to the human rights obligations of States in regard to gender, human rights, and countering terrorism financing, relevant non-State actors in the CTF legal and regulatory environment may themselves have additional responsibilities. The first way is through the "human rights due diligence process" of corporations to respect human rights.⁶⁷¹ This process is un-

derstood within the business community as a voluntary commitment or "expected conduct"⁶⁷² that is a core component of the responsibility of business enterprises to respect human rights that extends beyond the activities of the core company to include harmful activities of affiliates and of business relations.⁶⁷³ In the context of financial institutions and CTF, such a human rights due diligence process should, for example, "identify, prevent, mitigate and account for how they address their impacts on human rights,"⁶⁷⁴ including by "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed."⁶⁷⁵ The second way to assess responsibility of non-State actors is that even though non-State actors cannot become parties to international human rights treaties, they may be still obliged to respect international human rights, such that "under certain circumstances, in particular where an armed group with an identifiable political structure exercises significant control over territory and population, non-State actors are obliged to respect international human rights."⁶⁷⁶

664 See, e.g., H.R. Comm., *General Comment No. 31*, *supra* note 617, at ¶¶ 10, 12; CAT, *General Comment No. 2*, *supra* note 617, at ¶¶ 7, 16; CEDAW, *General Rec. No. 30*, *supra* note 41, at ¶¶ 8-10, 15; International Court of Justice, *Armed Activities in Territory of the Congo (Dem. Rep. Congo v. Uganda)*, 2005 I.C.J. 168 (Dec. 19), ¶¶ 177-79, 220, and ECtHR, *Jaloud v. The Netherlands*, App. No. 47708/08, Eur. Ct. H.R. (2014), ¶¶ 135-39, 152-53.

665 CEDAW, *General Rec. No. 30*, *supra* note 41, at ¶ 8.

666 *Id.*

667 *Id.* at ¶ 9.

668 See, e.g., CEDAW, *General Rec. No. 30*, *supra* note 41, at ¶ 9; CAT, *General Comment No. 2*, *supra* note 617, at ¶ 16.

669 See, e.g., CEDAW, *General Rec. No. 30*, *supra* note 41, at ¶¶ 8-10.

670 See, e.g., *id.* at ¶ 10.

671 A/HRC/17/31, *supra* note 620, Principle 17 and Commentary.

672 *Id.*, Principle 11, Commentary.

673 For further examples of voluntary commitments of business enterprises on human rights see, e.g., ORG. FOR ECON. CO-OPERATION AND DEV., *GUIDELINES FOR MULTINATIONAL ENTERPRISES V. ¶ 5* (2011), available at <http://www.oecd.org/corporate/mne/48004323.pdf> ("Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations: . . . Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.") and *id.* at ¶¶ 45-46; *The Ten Principles of the UN Global Compact*, UN GLOBAL COMPACT, Principles 1 and 2, <https://www.unglobalcompact.org/what-is-gc/mission/principles>. In addition, in 2014, the U.N. Human Rights Council "establish[ed] an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights; whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises;": see Human Rights Council Res. 26/9, ¶ 1, U.N. Doc. A/HRC/RES/26/9 (June 26, 2014).

674 A/HRC/17/31, *supra* note 620, Principle 15(b).

675 *Id.*, Principle 17.

676 See CEDAW, *General Rec. No. 30*, *supra* note 41, at ¶ 16. See further Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, *Civil and Political Rights, Including the Question of Disappearances and Summary Executions: Extrajudicial, Summary or Arbitrary Executions - Rep. of the Special Rapporteur, Philip Alston - Addendum - Mission To Sri Lanka*, Human Rights Comm., 62d Sess., ¶¶ 25-27, U.N. Doc. E/CN.4/2006/53/Add.5 (Mar. 27, 2006); Human Rights Council, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council," 2d Sess.*, ¶ 19, U.N. Doc. A/HRC/2/7 (Oct. 2, 2006) (Philip Alston (Special Rapporteur on extrajudicial, summary or arbitrary executions); Paul Hunt (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health); Walter Kälin (Representative of the Secretary-General on human rights of internally displaced persons); and Miloon Kothari (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living)).

RECOMMENDATIONS

Multilateral institutions

- **Support the development of an inclusive banking system, including through enhanced guidance and support to countries and financial institutions in ensuring that the design and implementation of CTF measures is consistent with ensuring financial inclusion, including to address gendered financial exclusion gaps.** This includes emphasizing that the risk-based approach should be interpreted consistently with a gender and human rights-based approach.
- **Provide detailed guidance to international, regional, and national bodies on how to identify existing, and anticipate future, adverse impacts in the implementation of CTF policies and safeguard the diversity of civil society space, including to recognize the crucial role of women’s rights organizing and women’s organizations in ensuring stable, safe, and peaceful societies.** This includes providing gender and human rights-informed trainings to regulatory authorities on how to anticipate and assess the impacts of CTF on different sectors of civil society and their financial inclusion.
- **Ensure gender and human rights expertise (e.g. through dedicated personnel) within multilateral counter-terrorism entities (e.g., the U.N. Counter-Terrorism Executive Directorate (CTED), Counter-Terrorism Implementation Task Force (CTITF), and Office on Drugs and Crime (UNODC)).**
- **Ensure substantive engagement with civil society organizations—including grassroots women’s groups—on an inclusive and diverse basis, in the design, implementation, and assessment of CTF measures.** This includes, for example, ensuring the participation of women’s rights organizations in processes at FATF Secretariat and regional bodies and in peer-to-peer FATF evaluation processes and in CTED assessments of national-level measures designed to address terrorism financing.
- **Realize obligations to promote human rights (including gender equality) and the women, peace, and security agenda,** including in the mainstreaming of gender and promoting the role of women in P/CVE, recognizing that in many contexts, CTF measures in practice can operate in contradiction to these obligations.
- **Ensure evaluations of CTF measures (e.g., in FATF’s mutual evaluation methodologies that *inter alia* address the implementation of revised Recommendation No.**

8) measure compliance with a State’s human rights obligations, including non-discrimination and equality. This might include the adoption of a human rights compatibility assessment and the presence of a human rights and/or gender rights expert in evaluation processes.

- **Ensure that revisions to FATF Recommendation No. 8 and its Interpretive Note are fully integrated at the country, regional, and international level, including in FATF mutual evaluation methodology.** In particular, this involves emphasizing that NPOs are not “particularly vulnerable,” that approaches to the sector must be targeted and proportionate, that NPOs should not be held to the same standards as financial institutions, and that any implementation of CTF must be consistent with international human rights law. In addition, further FATF guidance on the application of the risk-based approach and ensuring that States undertake participatory risk assessments, can help to ensure that CTF measures are consistent with international human rights.

States

- **Ensure measures on countering terrorism financing—including, e.g., criminalization of terrorism financing, sanctions and freezing of assets, and the implementation of international standards such as FATF Rec. 8—are fully compliant with international human rights and humanitarian law, including non-discrimination and equality.** For example, CTF measures that inhibit the realization of women’s rights (e.g., that cut off support for female victims of terrorism and violent extremism or reduce remittance flows to women) are inconsistent with a State’s obligations under international law.
- **Ensure counter-terrorism measures, including CTF, are consistent with creating an enabling environment essential to civil society** (e.g., by guaranteeing the freedom of association and assembly, including by ensuring that associations can seek, receive and use funding), with particular attention to ensuring the diversity of the civil society sector and enabling conditions for women’s rights organizing and women’s rights organizations. In particular, States should recognize fundamental distinctions between civil society and the commercial sector and civil society organizations should not face greater restrictions on financial access than the private sector (e.g., when there are no restrictions on businesses for foreign funding, the same should be for civil society organizations).
- **Investigate, document, monitor, and redress all gendered impacts of existing CTF measures and when future CTF measures are considered, assess their po-**

tential impact on women’s rights organizing, women’s rights organizations, and gender equality. This includes addressing the gender and human rights impacts of government CTF measures, as well as exercising due diligence to prevent, investigate, and punish acts of non-State actors (e.g., financial institutions) that interfere with the human rights framework relevant to women’s rights organizing, women’s rights organizations, and the achievement of gender equality. For example, where women’s rights organizations experience financial exclusion—including that which arises from the denial in access to financial services due to counter-terror financing rules—redress must be ensured.

- **Ensure that CTF measures do not undermine humanitarian principles of neutrality, impartiality, independence, and humanity** (e.g., by exempting principled humanitarian action from prosecution under CTF laws), and do not impede peacebuilding or human rights engagement with non-State armed groups that in practice circumscribe the activities of women’s rights organizations or negatively affect programs for women and girls.
- **Ensure substantive engagement with civil society organizations—including grassroots women’s groups—on an inclusive and diverse basis, in the design, implementation, and assessment of CTF measures.**
- **Realize obligations to promote human rights (including gender equality) and the women, peace, and security agenda**, including in the mainstreaming of gender and promoting the role of women in P/CVE, recognizing that in many contexts, CTF measures in practice can operate in contradiction to these obligations.
- **Develop a mutual understanding with civil society, financial institutions, and supervisory authorities of the appropriate implementation of a risk-based approach that is consistent with gender and human rights obligations and facilitates financial inclusion objectives.** This includes emphasizing that NGOs should not be held to the same standards as financial institutions and identifying how facially gender-neutral aspects of CTF (e.g., emphasizing the importance of registration of associations) can have adverse gender and human rights impacts because of the operating environment in which they are implemented. It can also include the convening of a multi-stakeholder dialogue (e.g., between regulatory authorities, financial institutions, multilateral organizations, and civil society), ensuring that such dialogue includes a diverse range of civil society actors, including women’s rights organizations.
- **Provide regulatory clarity to financial institutions on**

how to approach CTF compliance in ways that ensure the provision of financial services to women’s rights organizations, promote the implementation of a risk-based approach that is gender-sensitive and human rights compliant, and reduce compliance costs. This includes in particular emphasizing that consistent with revised FATF Recommendation No. 8 NGOs are not “particularly vulnerable,” that the standard of due diligence in the RBA is not one of “zero tolerance,” and that due diligence does not require NGO clients to provide specific information on individual beneficiaries of programs. Regulatory authorities should consider incentives for financial institutions to provide financial services to women’s rights organizations (e.g., tax credits) and also conduct outreach that emphasizes the importance and benefit of financial institutions providing financial services to civil society, including women’s groups. In many contexts, in addition to regulatory clarity and incentives, the creation of “safe harbor” protections for financial institutions that bank civil society organizations in good faith might also be required.

- **Ensure that regulatory authorities recognize a broader meaning of “de-risking” that goes beyond wholesale closure of accounts to address the range of ways in which financial institutions’ reduced risk appetite limits access to financial services for women’s rights organizations and organizing**, including through delays in transfers of funds, refusal (actual or constructive) to open bank accounts, and the imposition of onerous information requests that *de facto* can have the same effects as an account closure.

Civil society

- **Conduct evidence-based awareness-raising and advocacy amongst States, donors, multilateral entities, financial institutions, and the public on ways in which CTF has impeded women’s rights organizing, women’s rights organizations, and gender equality and the need to engender CTF requirements, including those related to due diligence and other compliance requirements.** For example, towards States this includes advocating for changes in restrictive NGO legislation caused by CTF; towards multilateral institutions such as FATF, this includes proactively engaging with FATF mechanisms and processes (e.g., mutual evaluations at the country level and civil society consultations); towards financial institutions, this can include informing banks about the direct and indirect effects of CTF and the relationship of these effects to corporate social responsibility and financial inclusion objectives; toward donors, this includes raising awareness on the prohibitive costs of compliance, the need to engender grant requirements so that women’s rights organi-

zations have direct access to funding rather than through sub-contracting arrangements, the importance of small and mid-size grant funding mechanisms being available, and the extent to which multi-year and core funding is necessary, including to support compliance capacity, as well as informing donors about problematic CTF clauses and negotiating for more favorable language in donor contracts; toward the public, this can include campaigns and developing a public monitoring tool that tracks how banks do or do not provide financial services to further women's financial inclusion, including in peace and security contexts.

- **Reinforce and support inclusive network- and movement-building among civil society, including through strengthening information-sharing between human rights and humanitarian groups seeking to mitigate adverse impacts of CTF.** This includes, for example, ensuring the participation of women's organizations in NGO platforms developed to address the adverse impacts of CTF to ensure the gendered impacts of CTF are recognized and addressed adequately and having larger NGOs provide compliance or other support to smaller, newer organizations seeking to meet CTF requirements imposed by regulatory authorities, financial institutions, and donors. In addition, developing shared positions (e.g., on "red lines" for organizations, such as checking of beneficiaries) and common messaging in approaches to donors can enhance such network- and movement- building, as well as the capacity to induce changed behavior of States, donors, and financial institutions.
- **Build capacity, information-sharing, peer-to-peer learning and networking amongst civil society, including women's rights organizations, to raise awareness and address gender and human rights impacts of CTF requirements.** This can include considering pooled funds and/or resources for women's rights organizations and organizing to address CTF requirements, particularly those from donors, including through the sharing of due diligence and other compliance tools, as well as good practices. Efforts to create an NGO repository or utility that financial institutions can use to simplify due diligence should be undertaken on the basis of consultation with women's rights organizations, with attention to ensuring the inclusion of small, grassroots organizations operating at the local level.
- **Engage in systematic independent documentation, monitoring, assessment, and advocacy concerning gender and human rights impacts of CTF, including through engaging with multilateral organizations and processes focused on human rights (e.g., treaty monitoring bodies, Charter-based bodies (e.g., the U.N. Human Rights Council and its special procedures and Universal Periodic Review (UPR)), and U.N. agencies (e.g., UN Women)), as well as**

financial inclusion (e.g., World Bank) and counter-terrorism and P/CVE (e.g., CTITF, CTED, FATF). This can include preparation and submission of civil society material to ensure compliance with international human rights obligations, including on non-discrimination and equality.

Donors

- **Clarify, simplify, and standardize approaches to CTF within governments' own agencies and across donors, moving away from a one-size-fits-all approach to compliance processes (e.g., on due diligence and reporting).** This includes requiring explicit acknowledgement and consideration of the nature of women's rights organizations and organizing and the conditions under which women's rights organization operate (e.g., better tailoring compliance requirements based on the size of the organization and/or the size of the grant). In some contexts, in addition to clarified procedures for compliance, simplified measures providing adequate safe harbor protections for activities undertaken in good faith (e.g., waivers, indemnifying contract clauses) might also be required.
- **Invest in feminist research and data collection, network and movement building, and capacity building (e.g., on reporting) that supports the autonomy of women's rights organizations to address and mitigate threats to their operating space and access to resources, including those caused by CTF.** This includes, for example, support for independent local, national, regional, and international platforms for exchange of information on challenges and good practices in navigating the CTF legal and regulatory environment.
- **Increase responsiveness to requests for guidance on the content, scope and application of CTF measures in specific contexts to address and mitigate impacts on women's rights organizing, women's rights organizations, and gender equality.** This includes clarifying, for example, that due diligence (including vetting) on individual beneficiaries is not required for CTF compliance purposes.
- **Increase predictable, accessible, and flexible funding for women's civil society with simplified procedures to ensure the sustainability of women's rights organizations and organizing at all levels (local, national, regional, and international), but with a particular focus on the local level.** This can include providing multi-year and core funding and less earmarked funds, providing funding according to different organizational modalities (e.g., seed funds to newly-established organizations, small grants with minimal compliance requirements to small organizations, and mid-size grants to larger organiza-

tions). Additionally, donor States should adopt the U.N.'s 15 per cent gender-funding target of all funding relating to peace and security to address women's specific needs and advance gender equality with this percentage being the first not final target. Direct funding mechanisms (e.g., that avoid heavy reliance on sub-contracting or consortia arrangements as the source of funding for women's groups) to increase local and national-level funding is critical to ensure bottom-up, grassroots and independent advocacy, including through embassies. Women's funds in particular are critical to ensuring support to grassroots women's organizations and being attentive to the profile of women's rights organizing and organizations that make them susceptible to the adverse effects of CTF measures.

- Reject the use of "white lists" of civil society grantees approved by government(s) or multilateral institutions, including on the basis that such lists are likely to exclude those women's rights organizations that are small, grassroots, critical of governmental policy and/or working on sensitive or controversial issues.

Financial institutions

- **Track patterns in de-risking effects on civil society (e.g., by sector type and by including women's rights organizations as a category), including the reasons for account exiting, failure to onboard clients, and other interruptions in the provision of financial services to organizations.** This includes consideration of the impacts of de-risking involving withdrawal from correspondent

banking relationships and closure of accounts of money services businesses. Such documentation is core to monitoring nature and scope of de-risking effects and the extent to which such effects impact financial inclusion goals.

- **Review, revise, and implement practices (e.g., in procedures, manuals, and in trainings of staff) toward civil society, including women's rights organizations, in line with enhanced regulatory clarity** e.g., that NGOs are not "particularly vulnerable," that the standard of due diligence in the RBA is not one of "zero tolerance," and that due diligence does not require NGO clients to provide specific information on individual beneficiaries of programs.
- **Engage in closer collaborations between the banking industry, authorities (including regulatory authorities, as well as a broader range of actors, such as departments of foreign affairs and development agencies), and civil society (including women's rights organizations) to ensure that NGOs have the banking services they need, as well as to understand emerging issues of concern in relation to CTF.** This includes having dedicated staff with skills to understand and engage with NGOs and to recognize that there are limits to the steps that NGOs may take to facilitate their own access to financial services, often dictated by the contexts in which they operate.
- **Establish clear and easily accessible complaints mechanisms** to increase transparency and accountability in cases where CTF affects the access to financial services of civil society entities and to ensure that civil society organizations are better able to maintain banking relationships.

In the aftermath of the events of September 11, 2001, the international community brought a new focus and urgency to prioritizing countering terrorism financing, including through criminalization, sanctions and freezing of assets, and de-risking. To date, the gender and human rights implications of these countering terrorism financing policies have escaped scrutiny. *Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security* represents the culmination of research, interviews, surveys, and statistical analysis carried out by the International Human Rights Clinic at Duke University School of Law and the Women Peacemakers Program to begin to fill this gap in understanding how responses to terrorism and violent extremism may in practice squeeze women's rights and their defenders between terror and counter-terror. As a direct and indirect result of these rules, women's rights organizations have lost critical access to resources, as well as the ability to fully use banking facilities, all of which circumscribes how, where, and in some cases, even if, women's rights organizations can undertake their core work on mobilizing human rights, gender equality, and advancing the women, peace, and security agenda.
