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 nonviolent 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

www.law.duke.edu/humanrights


© Duke Law International Human Rights Clinic and Women Peacemakers Program
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledgements</td>
<td>5</td>
</tr>
<tr>
<td>Acronyms</td>
<td>6</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>8</td>
</tr>
<tr>
<td>Methodology</td>
<td>10</td>
</tr>
<tr>
<td>Survey of women’s organizations</td>
<td>10</td>
</tr>
<tr>
<td>Geographic focus</td>
<td>10</td>
</tr>
<tr>
<td>Survey procedure</td>
<td>10</td>
</tr>
<tr>
<td>Interviews</td>
<td>11</td>
</tr>
<tr>
<td>Consultative meetings</td>
<td>11</td>
</tr>
<tr>
<td>Review</td>
<td>11</td>
</tr>
</tbody>
</table>

## SECTION I. Toward a Gender and Human Rights-Based Approach to Countering Terrorism Financing 12

1. Why gender and human rights matter in countering terrorism financing 12
2. Current landscape for promoting gender equality and women’s rights organizing and organizations 14
   - The essential role of women’s rights organizing and organizations 14
   - Funding crisis of women's rights organizing, women's rights organizations, and gender equality 14
   - Squeezing of women's rights organizing and organizations between terror and counter-terror 15
3. Policy incoherence in countering terrorism financing and promoting women’s rights organizing and organizations and gender equality 16
   - Countering terrorism financing and gender mainstreaming in counter-terrorism and P/CVE 16
   - Women's rights organizing and the donor shift toward localization 17

## SECTION II. Countering Terrorism Financing: Legal, Regulatory, and Institutional Framework 20

1. Overview and the post-9/11 context 20
   - What is terrorism financing and countering terrorism financing? 20
   - Key government and inter-governmental stakeholders in countering terrorism financing 21
2. Methods of countering terrorism financing 23
   - Criminalizing terrorism financing 23
   - Sanctions and freezing of assets 25
3. Additional aspects of countering terrorism financing affecting civil society 26
   - Donor requirements 26
   - Financial institutions: reduced risk appetite, increased de-risking 27
   - Undue focus on risk of terrorism financing abuse of civil society 31

## SECTION III. Beyond Homogeneity: Women’s Rights Organizing, Women’s Rights Organizations, and Gender Equality 36

1. Differential impacts of countering terrorism financing rules on organizations and rights: general 36
2. Profile of women’s rights organizing, women’s rights organizations, and gender equality 37
3. Toward a gender and human rights analysis of countering terrorism financing: understanding scale and causation 40
SECTION IV. Impacts of Countering Terrorism Financing on Women’s Rights Organizing, Women’s Rights Organizations, and Gender Equality

1. Use of countering terrorism financing to reduce resources and operating space
   - Counter-terrorism and targeting of women’s rights organizing and organizations
   - Labelling women’s rights organizing and organizations as “terrorism”
   - Reduced resources for women’s rights organizing, women’s rights organizations, and gender equality
   - Limiting women’s rights organizations’ access to foreign funding under the guise of countering terrorism
   - Squeezing of women’s rights organizing and organizations, including failure to stem terrorism financing

2. Programmatic, partner, and beneficiary impacts
   - Limited funding and sustainability of women’s rights organizing and organizations working in “at risk” areas
   - Donor preference for larger, well-known international organizations to the detriment of grassroots women’s rights organizations
   - Trend toward larger and fewer grants to the detriment of women’s rights organizations
   - Sub-contracting and the impact on the work of grassroots women’s rights organizations
   - Self-censoring and women’s rights organizing and organizations
   - Diminished assistance to beneficiaries, including to women and girls, in areas under terrorist control
   - Limits on programs supporting female victims of terrorism and violent extremism
   - Challenges in disengagement, rehabilitation, and reintegration programs for women

3. Financial exclusion and restrictions on access to financial services
   - Gender and the causes and impacts of de-risking
   - Difficulties and delays in transfer, receipt, and release of funds
   - Denials in transfer, receipt, and release of funds
   - Account closure and refusal to open new accounts
   - Onerous information requests and other burdens faced
   - Adverse interactions of regulatory authorities and financial institutions and services

4. Prohibitive costs of due diligence and other administrative burdens
   - Increased administrative burdens affecting operational capacity
   - Not applying for funding from donors that impose a high compliance burden
   - Making more conservative choices of grantees and partners to simplify compliance processes
   - Diversion of limited resources to satisfy compliance requirements
   - “Don’t ask, don’t tell” and decreased information-sharing amongst organizations and with donors

5. Insecurity and adaptive measures
   - Surveillance, harassment, and the fear of both under counter-terrorism rules, including to counter terrorism financing
   - Safety concerns arising from compliance with countering terrorism financing rules
   - Coping mechanisms for women’s rights organizing and organizations
   - Safety and security risks resulting from coping mechanisms
   - Stress and burnout in insecure environments
SECTION V International Human Rights Framework Related to Gender and Countering Terrorism Financing

Recommendations

Multilateral institutions

States

Civil society

Donors

Financial institutions

Charts

Chart 1 - Countries of operation

Chart 2 - Organization headquarters

Chart 3 - Women, peace, and security, counter-terrorism, and P/CVE

Chart 4 - Knowledge of countering terrorism financing rules

Chart 5 - Reason for impacts on financial access

Chart 6 - Increased compliance demands

Chart 7 - Sources of funding

Chart 8 - Impacts on financial access

Chart 9 - Where are these demands coming from?

Chart 10 - Impacts on access to resources

Chart 11 - Fears of harassment and prosecution

Chart 12 - Adaptive measures

Text Boxes

Box 1 - Defining civil society, women’s rights organizing, women’s rights organizations, and gender equality

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

Box 3 - What is the Financial Action Task Force?


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

Box 6 - Profile of women’s rights organizing, women’s rights organizations, and gender equality

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

Box 8 - Impacts from restrictions on financial services to women’s rights organizing and organizations
ACKNOWLEDGEMENTS

The International Human Rights Clinic (IHRC) at Duke University School of Law and the Women Peacemakers Program (WPP) acknowledge the following individuals for their contributions in the preparation of this report.

Principal Authors and Researchers
Jayne Huckerby, Clinical Professor of Law, Director, IHRC, Duke University School of Law
Sarah Adamczyk, Supervising Attorney/Lecturing Fellow, IHRC, Duke University School of Law
Isabelle Geuskens, Executive Director, Women Peacemakers Program
Merle Gosewinkel, Senior Program Officer, Women Peacemakers Program
Thalia Malmberg, Program Officer, Women Peacemakers Program

Duke Law IHRC Student Researchers
Eleni Bakst, Spring 2016, IHRC, Duke University School of Law
Gaia Barcilon Brambilla, Spring 2016, IHRC, Duke University School of Law
Nathan Blakney, Fall 2016, IHRC & Spring 2017, Advanced IHRC, Duke University School of Law
Amy Cattle, Fall 2015, Advanced IHRC, Duke University School of Law
Theresa Deegan, Spring 2016, IHRC, Duke University School of Law
Glenda Dieuveille, Fall 2016, IHRC & Spring 2017, Advanced IHRC, Duke University School of Law
John Epling, Fall 2016, IHRC, Duke University School of Law
Tolu Falode, Spring 2016, IHRC, Duke University School of Law
Agustín Grández Mariño, Spring 2016, IHRC, Duke University School of Law
Cameron Hammel, Fall 2016, IHRC, Duke University School of Law
Rym Khadhraoui, Spring 2017, IHRC, Duke University School of Law
Cindy Li, Spring 2016, IHRC & Fall 2016, Advanced IHRC, Duke University School of Law
Ashley Lin, Spring 2016, IHRC, Duke University School of Law
Nicholas Lippolis, Fall 2015, IHRC, Duke University School of Law
Wojciech Maciejewski, Spring 2017, IHRC, Duke University School of Law
Brian McCracken, Fall 2015, IHRC, Duke University School of Law
Meaghan Newkirk, Spring 2017, IHRC, Duke University School of Law
Christine Ryan, Fall 2015, IHRC, Duke University School of Law
Wafaa Saadeh, Spring 2016, IHRC, Duke University School of Law
Sara Salama, Fall 2015, IHRC & Spring 2016, Advanced IHRC, Duke University School of Law
Khahilia Shaw, Fall 2016, IHRC, Duke University School of Law
Ashley Walker, Fall 2015, Advanced IHRC, Duke University School of Law

Additional Research, Production, and/or Other Assistance
Theresa Deegan, Summer 2016, Research Assistant
Ali Prince, Program Coordinator, Center for International and Comparative Law, Duke University School of Law

Reviewers
Jessica Burniske, Law and Policy Associate, Program on International Law and Armed Conflict (PILAC), Harvard Law School
John J. Byrne, Esq., CAMS, Executive Vice President, Association of Certified Anti-Money Laundering Specialists (ACAMS)
Kay Guinane, Director, Charity & Security Network
Ben Hayes, Fellow, Transnational Institute
Kate McGrane, Humanitarian Policy Advisor, Norwegian Refugee Council
Lia van Broekhoven, Executive Director, Human Security Collective

Data Analysis and Visualization
Kyle Endres, Ph.D., Postdoctoral Associate, Duke Initiative on Survey Methodology
Shaoji Li, MSS Student, Department of Statistical Science, Duke University
Xichu Liu, MSS Student, Department of Statistical Science, Duke University
Eric Monson, Ph.D., Data Visualization Analyst, Data and Visualization Services, Duke University

Report Design, Layout, and Graphics
Daniel Alcala, www.danalcala.com

Cover Photo
Aslan Alphan/iStock.com

Photographs
Asianet-Pakistan/Shutterstock.com
Youssef Boudlal/Reuters/Alamy Stock Photo
Luc Gnago/Reuters
Hadrian/Shutterstock.com
Marlin Levison, DML/Minneapolis Star Tribune
Feisal Omar/Reuters/Alamy Stock Photo
ClaudineVM/iStock.com

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

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AEDPA</td>
<td>Anti-Terrorism and Effective Death Penalty Act 1996</td>
</tr>
<tr>
<td>AML</td>
<td>Anti-Money Laundering</td>
</tr>
<tr>
<td>AML/CTF</td>
<td>Anti-Money Laundering/Countering Terrorism Financing</td>
</tr>
<tr>
<td>AWID</td>
<td>Association for Women’s Rights in Development</td>
</tr>
<tr>
<td>BBA</td>
<td>British Bankers’ Association</td>
</tr>
<tr>
<td>BSA</td>
<td>Bank Secrecy Act</td>
</tr>
<tr>
<td>CBR</td>
<td>Correspondent Banking Relationship</td>
</tr>
<tr>
<td>CDD</td>
<td>Customer Due Diligence</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination Against Women</td>
</tr>
<tr>
<td>CFT</td>
<td>Countering the Financing of Terrorism</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil Society Organizations</td>
</tr>
<tr>
<td>CT</td>
<td>Counter-Terrorism</td>
</tr>
<tr>
<td>CTED</td>
<td>Counter-Terrorism Executive Directorate</td>
</tr>
<tr>
<td>CTF</td>
<td>Countering Terrorism Financing</td>
</tr>
<tr>
<td>CTITF</td>
<td>Counter-Terrorism Implementation Task Force</td>
</tr>
<tr>
<td>CVE</td>
<td>Countering Violent Extremism</td>
</tr>
<tr>
<td>EDD</td>
<td>Enhanced Due Diligence</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FATF</td>
<td>Financial Action Task Force</td>
</tr>
<tr>
<td>FIU</td>
<td>Financial Intelligence Unit</td>
</tr>
<tr>
<td>FTO</td>
<td>Foreign Terrorist Organization</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
</tr>
<tr>
<td>IEEPA</td>
<td>International Emergency Economic Powers Act</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>INGO</td>
<td>International NGO</td>
</tr>
<tr>
<td>INR.8</td>
<td>Interpretive Note for FATF Recommendation No. 8</td>
</tr>
<tr>
<td>IRTPA</td>
<td>Intelligence Reform and Terrorism Act of 2004</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
</tr>
<tr>
<td>---------</td>
<td>-----------</td>
</tr>
<tr>
<td>ISIL</td>
<td>Islamic State in Iraq and the Levant</td>
</tr>
<tr>
<td>KYC</td>
<td>Know Your Customer</td>
</tr>
<tr>
<td>MENA</td>
<td>Middle East and North Africa</td>
</tr>
<tr>
<td>MSB</td>
<td>Money Services Business</td>
</tr>
<tr>
<td>MTO</td>
<td>Money Transfer Operator</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>NPO</td>
<td>Non-Profit Organization</td>
</tr>
<tr>
<td>OECD DAC</td>
<td>OECD Development Assistance Committee</td>
</tr>
<tr>
<td>OFAC</td>
<td>Office of Foreign Assets Control</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
</tr>
<tr>
<td>P/CVE</td>
<td>Preventing/Countering Violent Extremism</td>
</tr>
<tr>
<td>PEP</td>
<td>Politically Exposed Persons</td>
</tr>
<tr>
<td>PVS</td>
<td>Partner Vetting System</td>
</tr>
<tr>
<td>RAM</td>
<td>Risk Analysis and Management</td>
</tr>
<tr>
<td>RBA</td>
<td>Risk-Based Approach</td>
</tr>
<tr>
<td>SDGT</td>
<td>Specially Designated Global Terrorist</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations International Children’s Emergency Fund</td>
</tr>
<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
</tr>
<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
</tr>
<tr>
<td>UNSCR</td>
<td>United Nations Security Council Resolution</td>
</tr>
<tr>
<td>USA PATRIOT ACT</td>
<td>Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001</td>
</tr>
<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
</tr>
<tr>
<td>USD</td>
<td>United States Dollar</td>
</tr>
<tr>
<td>USG</td>
<td>United States Government</td>
</tr>
<tr>
<td>VfM</td>
<td>Value for Money</td>
</tr>
<tr>
<td>WFP</td>
<td>World Food Programme</td>
</tr>
<tr>
<td>WPS</td>
<td>Women, Peace, and Security</td>
</tr>
</tbody>
</table>
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 averse 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 counter 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 counter-terrorism 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 financial 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 organizations 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 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, on 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.


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.

**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**

<table>
<thead>
<tr>
<th>CAUCASUS &amp; CENTRAL ASIA</th>
<th>NORTH AMERICA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenia</td>
<td>Cuba</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>Mexico</td>
</tr>
<tr>
<td>Belarus</td>
<td>United States</td>
</tr>
<tr>
<td>Chechnya</td>
<td></td>
</tr>
<tr>
<td>Georgia</td>
<td></td>
</tr>
<tr>
<td>Uzbekistan</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LATIN AMERICA</th>
<th>MIDDLE EAST &amp; NORTH AFRICA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colombia</td>
<td>Afghanistan</td>
</tr>
<tr>
<td>El Salvador</td>
<td>Egypt</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Iran</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SOUTH, CENTRAL, EASTERN EUROPE</th>
<th>SOUTH &amp; SOUTH EAST ASIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bosnia &amp; Herzegovina</td>
<td>Afghanistan</td>
</tr>
<tr>
<td>Ukraine</td>
<td>Ethiopia</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SUB-SAHARAN AFRICA</th>
<th>WESTERN EUROPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
<td>Netherlands</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>Burundi</td>
<td></td>
</tr>
<tr>
<td>Cameroon</td>
<td></td>
</tr>
<tr>
<td>Cape Verde</td>
<td></td>
</tr>
<tr>
<td>Cote d’Ivoire</td>
<td></td>
</tr>
<tr>
<td>Djibouti</td>
<td></td>
</tr>
<tr>
<td>Djibouti</td>
<td></td>
</tr>
<tr>
<td>Djibouti</td>
<td></td>
</tr>
<tr>
<td>Eritrea</td>
<td></td>
</tr>
<tr>
<td>Ethiopia</td>
<td></td>
</tr>
<tr>
<td>Guinea</td>
<td></td>
</tr>
<tr>
<td>Guinea Bissau</td>
<td></td>
</tr>
<tr>
<td>Guinea Bissau</td>
<td></td>
</tr>
<tr>
<td>Guinea Bissau</td>
<td></td>
</tr>
<tr>
<td>Turkey</td>
<td></td>
</tr>
<tr>
<td>Ukraine</td>
<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td></td>
</tr>
</tbody>
</table>


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.
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 looked. 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 the 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) (stating the relationship as follows, “violent extremism, which can be conducive to terrorism.”). “Terrorism” itself is a broad term that can be misappropriated 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.


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.


10 See infra Section II.2.

11 For examples of gender and human rights-based analyses of counterterrorism 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.”

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).”

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

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.”

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.”

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].
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, in particular 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,” 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.”

What works in achieving all of these goals is “feminist mobilization in civil society,” 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.”

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.” In humanitarian contexts, “ensuring 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.”

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.”

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.

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.”

According to the OECD DAC Network on Gender Equality (Gendernet), “in 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. . .” Additionally, “just 1 per cent of all funding to fragile states in 2015 went to women’s groups or governments’ ministries of peace.”

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.”).
19 A/RES/68/181, supra note 18, at preambular ¶ 18.
21 Andrea Cornwell, 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 Thaisse 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.”).
24 Preventing Conflict, Transforming Justice, Securing the Peace, supra note 6, at 16.
25 Id. at 383.
27 OECD DAC Network on Gender Equality (Gendernet), Donor Support to Southern Women’s Rights Organisations 4 (2016).
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.”

29 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)).
30 Watering the Leaves, Starving the Roots, supra note 12, at 30.
31 Id. at 19.
33 See, e.g., U.K. DEPT 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)).
34 Watering the Leaves, Starving the Roots, supra note 12, at 125.
36 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 gender 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.

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.” 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.

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, 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. 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.”

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.” 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.


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-TERORISM, 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 rollback 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, 54(d); GLOBAL COUNTERTERRORISM FORUM, GOOD PRACTICES ON WOMEN AND COUNTERING VIOLENT EXTREMISM 2 (2015), available at https://www.thegecf.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.”).


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.


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."

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, 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 place 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]lmost 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.” In contrast, approximately 18 percent goes directly to NGOs, “of which the vast majority was initially channelled through international NGOs.”

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,” 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.” 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.” 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;”
- “[i]ncrease multi-year, collaborative and flexible planning and multi-year funding instruments;”
- “[r]educe the earmarking of donor contributions;” 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.”

46 Id.
47 See infra notes 274-278 and 366-375 and accompanying text.
48 See infra notes 289-299 and accompanying text.
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/075d4c18b12e0853e3d393e90af18ac734bf29?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 Panels 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 multyear 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.
## Encouraging women’s empowerment and participation in counter-terrorism and P/CVE

<table>
<thead>
<tr>
<th>Efforts to integrate WPS and the counter-terrorism and P/CVE agendas</th>
<th>Encouraging women’s empowerment and participation in counter-terrorism and P/CVE</th>
</tr>
</thead>
</table>
| **Box 2: Key U.N. statements on mainstreaming gender and promoting the participation of women 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.  
| **S.C. Res. 2250, U.N. Doc. No. S/RES/2250 ¶ 16 (Dec. 9, 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 Nations’ 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. 2195, U.N. Doc. No. S/RES/2195 preambular ¶ 14 (Dec. 14, 2014)** | **Encourages** Member States to engage relevant 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 counter narratives that incite acts of violent extremism and promoting social inclusion and cohesion.  
| **S.C. Res. 2242, U.N. Doc. S/RES/2242 preambular ¶ 14 (Oct. 13, 2015)** | **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. 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.  
| **G.A. Res. 68/276, U.N. Doc. A/RES/68/276 preambular ¶ 20 (June 24, 2014)** | **Encourages** Member States to engage with 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.  
<table>
<thead>
<tr>
<th>Linking gender inequality to terrorism and violent extremism</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>

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 level\(^{63}\) 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 “[funds] may stem from both legal and illicit sources.”\(^{70}\) In some cases, when funding has come from legal or legitimate sources, terrorist 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-

---


59 Gurulé, supra note 58, at 4.


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.


71 Ryder, supra note 58, at 5.

72 See infra notes 88-60 and accompanying text.
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), 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, as well as jurisdiction over a broad range of financial transactions and institutions. 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. For example, more than 99 percent of all U.S. dollar-clearing transactions—which involves the conversion of payments on behalf of clients into U.S. dollars from a foreign currency—pass through clearing networks in New York, exposing all such transactions to U.S. jurisdiction and potential prosecution. It is more generally critical for financial institutions to have a “fully operational banking presence” in the United States, which includes international banks that maintain “a bank account at a financial institution in the United States.” 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.”

**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,” with its Secretariat housed at the headquarters of the OECD in Paris, France. It is comprised of 35 Member States, two regional bodies (the European Commission and the Gulf Co-operation Council), and several associate members. In addition, more than twenty international organizations including the International Monetary Fund (IMF) and the World Bank have observer status.

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. On October 30, 2001, during a FATF Special Plenary held in Washington, D.C., FATF expanded its remit to cover counter-terrorism and added Eight Special Recommendations specifically addressing terrorist financing. A ninth recommendation was later added in October 2004. In February 2012, the FATF Rec...
Recommendations were consolidated into 40 recommendations, and subsequently updated in February 2013, October 2015, June 2016, and October 2016. These Recommendations set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing. 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. 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.

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". The FATF Standards have additionally been incorporated in multilateral instruments, including U.N. Security Council resolutions and are utilized by entities such as the World Bank and IMF. 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).

At the domestic level, they are used by FATF in its mutual evaluations "of its members' levels of implementation of the FATF Recommendations" and countries deemed non-compliant face various adverse consequences, including isolation from global financial markets.

These Recommendations essentially end up "creating a web of obligations around the world," thus requiring human rights analysis of both the Recommendations and their implementation internationally, regionally, and domestically. Of these, Recommendation No. 8 on "Non-profit organisations" (NPOs) 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. 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."
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

---

109 Id. at art. 4.
110 Id. at art. 2 (1).
111 Id. at art 12.
112 Id. at ¶ 18.
114 Ryder, supra note 58, at 50.
115 S.C. Res. 1373, supra note 60, at ¶ 1(1(b).
116 Id. at ¶ 1(d).
117 See supra notes 88-95 and accompanying text.
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.

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. 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.” 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...” Under this Section 2339B, “a person must have knowledge that the organization is a designated terrorist organization,” 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. 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.” However, this exemption was deleted under AEDPA in 1996 and replaced by a narrower exception for “medicine or religious materials.” The term “material support or resources” is defined by statute to include “property,” “financial services,” “lodging,” “expert advice or assistance,” “training,” and “personnel.” As noted above, U.S. laws proscribing material support to terrorism apply extraterritorially.

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;” had a “chilling effect on NGO operations;” and also had “a very significant potential impact on humanitarian, human rights and advocacy organizations around the world.” 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.” Plaintiffs did not deny knowledge that the PKK and LTTE were listed as prohibited...
foreign terrorist organizations (FTOs) 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.” The particular speech proposed by plaintiffs entitled 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.” 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.”

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.”

Sanctions and freezing of assets

Prior to 9/11 and on October 15, 1999, UNSCR 1267 created a sanctions regime against the Taliban in Afghanistan. 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. In the aftermath of the events of 9/11 and building on UNSCR 1267 and on the basis of UNSCR 1373, paragraph 1 (c), Member States and regional entities 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) and the Al-Nusrah Front, wherever located. As of 2010, “there were more than 200 different ‘terrorist’ lists across the world.”

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.

---

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 1182a(3)(B) of this title or terrorism (as defined in section 2656f(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.


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 . . . .”


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.

149 The Islamic State in Iraq and the Levant (ISIL, also known as Da’esh) and the Al-Nusrah Front, wherever located. As of 2010, “there were more than 200 different ‘terrorist’ lists across the world.”


In particular, the wide scope of UNSCR 1373 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.” 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” and more broadly for the due process deficits inherent in the Council’s Al-Qaida sanctions regime” that stems from the Resolution.

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.” If such threat is formally declared, IEEPA grants authority to, inter alia, seize and freeze assets. 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 as terrorist groups.”

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.” Such clauses generally require grant recipients:

- To 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.

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)).
158 Executive Order 13224, U.S. DEP’T OF STATE, OFFICE OF THE COORDINATOR OF COUNTERTERRORISM, https://www.state.gov/j/tls/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.
160 Rensselaer Lee, CONS. 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%20he%20s%20and%20international%response.pdf (“Most controversial of all, perhaps, have been the U.S. freezing orders against Islamic charities and other non-governmental organizations (NGOs).”)
161 A/70/371, supra note 107, at ¶ 33. See also FINANCIAL ACCESS FOR U.S. NON-PROFITS, supra note 42, at 76 (“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.”).
sub-grantees of that primary NGO. On the government level, these clauses are utilized, for example, by Australia, Canada, and the United States, while the United Kingdom reserves “dis-
cretion to insert clauses in ‘high-risk’ contexts.” 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 un-
der this agreement.

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.

In addition to counter-terrorism clauses, some government do-
ners 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 certif-
icates 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) ), including longer-standing rules governing the provision of USAID assistance in the West Bank and Gaza Strip. This increase in donor regulations—particularly contract counter-terrorism clauses—has been well documented in the humanitarian space, and also has an adverse impact on peacebuilding and other civil society groups.

### 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 ser-
tices to civil society affects a range of human rights, including the right to freedom of association. Financial institutions are at...
the forefront of enforcing CTF legal and regulatory rules, applying a risk-based approach (RBA)\textsuperscript{173} to “identify, assess and take effective action to mitigate their money laundering and terrorist financing risks,”\textsuperscript{174} including through heightened requirements following the 9/11 attacks.\textsuperscript{175} Countries, in turn, also subject banks to “adequate regulation and supervision” for their anti-money laundering (AML)/CTF measures.\textsuperscript{176} The risk management practices of financial institutions primarily address five areas:

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

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

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_Mar_2014_v2.pdf See also Bank Secrecy Act, OFFICE OF THE COMPTROLLER OF THE CURRENCY, http://www.occ.treas.gov/topics/compliance-bsa/bsaindex-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.”)).
179 id. at 10.
180 Id. at 11.
181 See 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.”).
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.
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.”

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), “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.” 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,” 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%).” 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).

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, 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.” In practice, however, de-risking is much broader than wholesale closure of accounts, such that “[t]otal withdrawal from a specific sector or customer group is at the farthest end of the de-risking spectrum.” Instead, “more frequent” examples of financial crime risk management include: limiting services (e.g., cash clearing activity, bank notes) offered to certain relationships, curtailing certain products and services in and for certain countries and customer sectors, and limiting exposure to certain higher risk customer sectors. 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, often excluding an assessment of how...

---


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.”).


191 FINANCIAL ACCESS FOR U.S. NON-PROFITS, supra note 42, at 38.

192 Id. at 39.


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.”).


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 Turner & Liia Shetreg, 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/r-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,” including the exclusion of entire categories that “are likely to share certain characteristics of geography, sector, business type,” 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,” 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.”

Because a full account of the adverse impacts of counterterrorism 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, 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,” such that “[g]overnment points to the private sector, banks point at regulators, and NPOs are frustrated and left without financial services.” On the one hand, as mentioned above, financial 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.” 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.”

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.”

In other cases, regulatory authorities and banks can speak at cross-purposes. For example, while international regulators such as FATF and domestic regulators such as the U.K.’s Financial Conduct Authority 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.'” This mismatch means that banks’ perception of the high risk of regulatory enforcement action—a key driver of banks’ low risk appetite—remains unchanged.

Between regulatory confusion and a tendency to point fingers at...
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 for example, be responsible for the “diversion of funds” to terrorism funding of terrorists, terrorist acts, and terrorist organizations. 219 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:

  [While 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.”

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 DERSKING, supra note 184, at 27 (“Banks 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 See Information on updates made to the FATF Recommendations, supra note 92. See further UNCHARITABLE BEHAVIOR, supra note 103, at 30.

218 See TYPOLOGIES REPORT, supra note 105, at ¶ 86.

219 See also 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/Join%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.”

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,”

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.

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.

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,”

providing an opportunity for “restrictive measures . . . which have been misused by States to violate international law.”

According to the U.N. Special Rapporteur, “thereby (!$\text{FATF}$ and other similar regulations . . . pos[e] a serious, disproportionate and unfair threat to those who have no connection with terrorism, including civil society organizations.”

In this respect, it is also relevant that in mutual evaluations, FATF “has rarely crit-

ized overregulation and lack of respect for human rights, focusing instead on cases of insufficient regulation.”

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.”

Similarly, the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has noted that the:

[Ab]sence 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.

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 . . . .”

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.


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'ts 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).

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 line with the findings set out in the FATF Typologies Report on Risk of Terrorist Abuse of NPOs of June 2014 and the FATF Best Practices on Combating the Abuse of NPOs 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 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.

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.”

- **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, meaning one that involves “effective and proportionate measures, which should be commensurate to the risks identified through a risk-based approach.”

The revised Recommendation No. 8 and its Interpretative Note were revised to bring them more in line with the findings set out in the FATF Typologies Report on Risk of Terrorist Abuse of NPOs of June 2014 and the FATF Best Practices on Combating the Abuse of NPOs of June 2015.

---

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.

235 Typologies Report, supra note 105.

236 Best Practices Paper, supra note 104.

237 FATF Recommendations, supra note 84, Rec. 8.

238 id., Interpretive 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, Interpretive 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, Interpretive 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 beneficiaries and to ensure 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=v0JxQamBWsk&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 Counterrorism-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’ts 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’ts of the Treasury and State 2 (July 16, 2016), http://www.charityandsecurity.org/system/files/CSN%20Response%20to%20StTreasLtr%20%281%29%20July%20%202016.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). For example, the U.S. government has stated that banks are expected to “understand . . . basic beneficiary information,” 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.”

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. Since then, the Global NPO Coalition on FATF has continued to meet with and advise FATF on unintended impacts on civil society and had proposed revisions to Recommendation No. 8. Though civil society has largely welcomed the July 2016 revisions, 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, 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.

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’ts of Treasury & State May 2016 Letter, supra note 221, at 2.


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 sanctions to the direct or indirect targeting of civil society in ways that narrow their operating space.

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 law 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, but also by rights to freedom of association, assembly, and expression. Importantly, as discussed below, international law prohibits direct or intentional discriminatory impacts on organizations, but also indirect adverse impacts on women’s civil society and gender equality that flow from gender- or sex-neutral laws and policies. 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.”

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 States and in Europe. In Europe, for example, “[s]ur-
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}
- 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}
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, 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. 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.” 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).

- **Reliant on foreign funding:** The ability to “direct[ly] access… funding is getting more difficult for women’s organizations.” 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. 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, this particularly requires compliance with “particularly vigilant” 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 Peace Activism in Syria estimated the size, income level, and financial resilience of women’s organizations in the survey was USD 22,750. Limited resourcing...
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. . . .” Women’s rights organizations are also often at the forefront 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.

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, grassroots and/or those organizations working in areas or communities “at risk” of terrorism 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 identified 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 counterterrorism finance rules—is high and potentially only likely to increase.

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. 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.” 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.

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.” 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.” 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.
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, supra note 303.
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 counterterrorism financing: understanding scale and causation

To address the adverse impacts of counterterrorism 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 counter-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 pursues 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.
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.”).
309 See, e.g., A/64/211, supra note 4, at ¶ 27. See also A/HRC/33/29, supra note 43, at ¶ 21.
311 COUNTERTERRORISM MEASURES AND THEIR EFFECTS ON THE IMPLEMENTATION OF THE WOMEN, PEACE AND SECURITY AGENDA, supra note 1, at 6.
312 Id.
313 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.").
314 See, e.g., Rob Barry & Rachel Louise Ensign, Cautious Banks Hinder Charity Financing, WALL STREET J. (Mar. 30, 2016), https://www.wsj.com/articles/cau-tious-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.
315 See supra note 278 and accompanying text; A/64/211, supra note 4, at ¶ 27.


Within these limits, some general observations on the nature of effects and on causation can nonetheless still be made. 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. Similarly, while changes in donor funding patterns and priorities are not exclusively the result of CTF measures, 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.” 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”—are all, to varying levels, themselves influenced and triggered by countering terrorism financing measures and concerns.

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.”

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. 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. Similarly, while changes in donor funding patterns and priorities are not exclusively the result of CTF measures, 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.” 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”—are all, to varying levels, themselves influenced and triggered by countering terrorism financing measures and concerns.

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.”

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.

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.

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.

This has happened in Somalia, where banks where 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.
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)(“Between 2004 and 2010, more than fifty countries considered or enacted measures restricting civil society.”).
329 Shackled Freedoms: WHAT SPACE FOR CIVIL SOCIETY IN THE EUROMed, supra note 264, at 8. See also Human Rights Council Res. 25/18, preambular ¶ 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 preambular ¶ 15. See also A/HRC/22/L.13, supra note 18, at preambular ¶ 11.
Tightening the Purse Strings  |  43

and non-State actors, from whom “women human rights defenders are at risk of and suffer from violations and abuses,” 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.”

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

States have also utilized broad definitions of terrorism and violent extremism—as well as used expansive approaches to counter incitement to terrorism 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.”

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.
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.

INCREASED COMPLIANCE DEMANDS

85%

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.

REASON FOR IMPACTS ON FINANCIAL ACCESS

50%

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.
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 terrorism 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/SC/SOC/2015_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” and because women’s rights organizing and women’s rights organizations rely heavily on foreign funds. 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. 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.

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 285–286 and accompanying text.

349 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.” 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.”

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. 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.

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. 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. 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. 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.

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. 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

352 Id.
353 See supra note 40 and accompanying text.
355 See supra note 277 and accompanying text.
358 De-risking: Global Impact and Unintended Consequences, supra note 190, at 23.
359 See supra notes 289–290 and accompanying text.
result, in some cases, is that “[w]omen peacebuilders are . . .
cought between the rising tide of extremism in their communi-
ties, and the constraints placed upon their work by counter-
terrorism policies that restrict their access to critical funds and
resources.” 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.”

We work in areas under ISIS control, with women who pro-
vide 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 do-
ners have stopped their support, as it is made illegal by the
U.S. government to support anyone financially in those areas.

This lack of funding to women’s groups in such settings creates
a growing mismatch between the areas with the greatest finan-
cial, 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.

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

Third, where women’s rights organizing and women’s rights or-
ganizations 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 organi-
ization 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 hu-
manitarian actors are not perceived as neutral, impartial or in-
dependent.” This polarization amplifies the gendered securi-

---

360 Preventing Conflict, Transforming Justice, Securing the Peace, supra note 6, at 14.
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.”).
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 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.

lished civil society space. 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.

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

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.

See supra notes 293-294 and accompanying text.

See, e.g., Maina Kiai, From Funding Projects to Funding Struggles: Reimagining the Role of Donors, OPENDEmOCRy.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.”).

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

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

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

See supra note 293.

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 beneficiaries 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

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.
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 resented 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.”).
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, 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.

Organizations are scared to attract unwanted attention of the government, so they 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.

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 not direct threat to the government.

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

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. 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.

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. 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. These impacts range from delays to “no or diminished access to humanitarian assistance and protection” in the very areas where humanitarian needs are often most acute and “even if its [the assistance] value in the name of life-saving intervention is little in dispute.” 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.”

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 cannot 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.

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.

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

Note: See infra Section IV.5. See supra notes 366–375 and accompanying text.

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 (“Access to resources is important, not only to the existence of the association itself, but also to the enjoyment of other human rights by those benefitting 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.
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.”).
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 ¶42.
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. & 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.”);
401 A/68/841, supra note, at ¶ 11.
402 S.C. Res. 2170, preamble ¶ 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.
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, and 2010, there was an 88 percent decrease in earmarked U.S. aid to Somalia. 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.” 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.” 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.” For example, WFP cut 12 feeding centers for mothers and children due to budget shortfalls. 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 [were] women-headed households” for the first half of 2011. 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.”

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, 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.”

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.
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 revoking” 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 “moved 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, “raise[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. DEPT’ 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, 2001), http://www.charityandsecurity.org/system/files/Somalia%20General%20License%20Denial.gif). 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, 2001), http://www.charityandsecurity.org/system/files/Somalia%20General%20License%20Denial.gif).


421 Id.

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


424 id.

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.
Terrorist and violent extremist groups regularly target women and girls, including through gender-based violence. 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. However, in some instances, rules to counter terrorism financing—particularly the over-breadth of rules proscribing material support—have meant that States are 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. In such cases, overly-broad definitions of “material support,” as well as the threat of sanctions, can incentivize governments 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. 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.

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-radicalization programme.” Other reports indicate a
larger number that includes those “rescued” 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.” 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.’” 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. 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, 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.

- **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, 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.”

### 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.

While such programs can implicate a series of human rights concerns, 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” 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...
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.448 Additionally, to the extent that the latter is taken into account, the focus tends to be on “low income, rural sector and undocumented groups,”449 despite the highly gendered nature of financial exclusion450 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 beneficiaries, 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 slen- der 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 1997.446 USAID has stated that “[a]ssistance to individ- uals, who were previously members of a terrorist organization, but have truly and completely severed all ties with the organiza- tion, will not be considered to be prohibited assistance to in- dividuals or organizations associated with terrorism.”447 However, to- ensure individuals have completely severed any terrorist ties, USAID encourages “rigorous vetting,” written renunciation by the individ- ual, “[m]onitoring mechanisms” to ensure non-return to FARC, [a]udit mechanisms, and in-kind rather than cash assistance.448


448 Id.; supra note 103 and accompanying text.


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 EM¥’S & PLAN. D: SOCY & 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 Oborne, 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 have[en] 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.” (Namir Shahibii & 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), 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.”

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,” there are limited incentives for banks to provide financial services to women’s rights organizations, which, as noted above, are particularly low-profit clients.

Flow-on effects of de-risking correspondent banks for women’s groups: Financial institutions’ de-risking practices have involved withdrawal from correspondent banking relationships, 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. While the reasons for withdrawal of correspondent banks from foreign CBRs are complex, one factor is that in addition to 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.” 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.”

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. 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.” 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.” 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.” 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. 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.” 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.”).
456 See supra notes 289–292 and accompanying text.
457 See generally Withdrawal from Correspondent Banking: Where, Why, and What to Do About it, supra note 193.
458 See FATF Recommendations, supra note 84, Rec. 13.
459 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 correspondent 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).
463 Id.
464 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.”).
465 Hanging by a Thread, supra note 449, at 4 (“Although statistics are scarce, it appears that more than half of Somali women receive remittances.”).
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. 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.”

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 funding 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 resilience to mitigate restrictions to financial access. Small size, 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.

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.” 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

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>56.67%</td>
<td>Delays in or not receiving fund from donors</td>
</tr>
<tr>
<td>56.67%</td>
<td>Request for project information from banks before fund release</td>
</tr>
<tr>
<td>50.00%</td>
<td>Government limits on transfers of funds</td>
</tr>
<tr>
<td>30.00%</td>
<td>Refusal of banks to transfer cash to other countries</td>
</tr>
<tr>
<td>26.67%</td>
<td>Requests for information from security/intelligence agencies</td>
</tr>
<tr>
<td>25.00%</td>
<td>Refusal of banks to release funds</td>
</tr>
<tr>
<td>16.67%</td>
<td>Refusal of banks to open bank account for organization</td>
</tr>
<tr>
<td>16.67%</td>
<td>Other issues with the transfer or receipt of funds</td>
</tr>
<tr>
<td>3.00%</td>
<td>Bank closure of accounts</td>
</tr>
</tbody>
</table>

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. 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.” For example, a recent survey found that 6.3 percent of U.S.-based NPOs operating internationally had experienced account closures.

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
(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 fulfill 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.” Indeed, “[i]n response to regulatory and legal concerns banks are increasingly seeking reassurances from charities on a number of fronts.”

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=fHeadlineStory (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 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, such as the funds’ intended use; letters from donors; “questions for donors about the supported projects;” “information from foreign trips and travel” such that “even getting a reimbursement transferred and released is difficult;” detailed project information, “the bank sent letter asking for project name, period, budget, and activities;” letters from the funder’s bank; “who the money is coming from and what it will be used for;” “the contracts, or terms of references for consultants. They even asked for my marriage license;” donor contracts; information about donors; names of the people we are working with; and “the donor contract, objectives of the activity we want to carry out, the localization of the activity, and the budget.”

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 arises from having multiple financial institutions involved in transactions (e.g., correspondent banking relationships). 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.
- 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.”
- 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.”
- 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)” 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 transaction constitutes support of terrorism or money-laundering, is incompatible with the right to freedom of association.”
- 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.
- 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 fulfill 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?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Donors</td>
<td>61.67%</td>
</tr>
<tr>
<td>Government</td>
<td>58.33%</td>
</tr>
<tr>
<td>Banks</td>
<td>36.67%</td>
</tr>
</tbody>
</table>

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 (HAAPPA), 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 (HAAPPA) Would Remove Barriers to Charity and Peacebuilding, CHARITY & SECURITY NETWORK (2015), http://www.charityandsecurity.org/HAPPA.


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.
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.”

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.”

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.”

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) 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.”

Such a recommendation presupposes a stronger bargaining position and access to legal and other compliance resources than most women’s rights organizations possess. It also does not alter the reality that donors still might “only accept partners whose risk level they find acceptable.”

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, 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,
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."

**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. 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,” that CFT 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.

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." 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. 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” and it can be particularly difficult to “find[] ways to certify NGOs after conflict situations because more groups spring up.” 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 under 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. 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.” Training staff to undertake the necessary steps for compliance (e.g., to use commercial software for screening) is “labor- and time-intensive.” 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.”

As women’s rights organizations are characteristically small, they experience similar capacity challenges. 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. Donors may contribute to this problem by “transfer[ring] risk down the line of implementation without providing adequate support to manage it.” 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.
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.
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 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 organizations, 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

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.”

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, anti-terrorism certification requirements, and the vetting, for example, of “employees of NGOs and local partner organizations,” can create particular security concerns for women’s rights organizations. As with other
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 “losing 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.
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.
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.”).
556 Women’s organization working in Libya.
557 Women’s organization headquartered in North America.
558 Women’s organization headquartered in MENA.
ADAPTIVE MEASURES

<table>
<thead>
<tr>
<th>Use</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use of carrying cash</td>
<td>53.33%</td>
</tr>
<tr>
<td>Use of accounts of other organizations</td>
<td>23.33%</td>
</tr>
<tr>
<td>Other adaptive measure</td>
<td>18.33%</td>
</tr>
<tr>
<td>Use of foreign private bank account</td>
<td>16.67%</td>
</tr>
<tr>
<td>Use of domestic accounts of family and/or friends</td>
<td>15.00%</td>
</tr>
</tbody>
</table>

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 funder 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.
562 See supra note 332 and accompanying text.
564 Id.
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 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 in 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.
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 activists 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.”

Women’s organization working in South Asia

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
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 prescribed 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.


\(^{574}\) A/HRC/33/29, supra note 43, at ¶ 27.

\(^{575}\) A/HRC/31/65, supra note 4, at ¶ 56(c).


tions, cannot and should not be associated with any religion, nationality, civilization or ethnic group.\textsuperscript{578} in practice States have often focused on particular religions, cultures, nationalities, ethnicities and races, in particular on Muslim communities.\textsuperscript{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”\textsuperscript{580} or the “criminalization . . . of peaceful activities, such as . . . non-discrimination and equality or promotion of gender equality.”\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{583}

- **Ensure equality, both formal (\textit{de jure}) and substantive (\textit{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:**\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{586} Because there is already “a significant gender gap in account ownership, savings, credit, and payments behavior,”\textsuperscript{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.”\textsuperscript{588} Such impacts of CTF on women’s financial inclusion implicate States’ obligations to ensure equality not only because financial inclusion\textsuperscript{589}—for which “[a]ccess to a transaction account is a first step”\textsuperscript{590}—is critical for the achievement of women’s empowerment and

\begin{itemize}
\item \textsuperscript{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.”).
\item \textsuperscript{580} A/64/211, supra note 4, at ¶ 27. See also A/HRC/33/29, supra note 43, at ¶ 21.
\item \textsuperscript{581} A/HRC/23/39, supra note 222, at ¶ 21.
\item \textsuperscript{582} Huckerby, Feminism and International Law in the Post-9/11 Era, supra note 582, at 568.
\item \textsuperscript{583} Id. at 568-69.
\item \textsuperscript{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.
\item \textsuperscript{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. 16(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 stereotype roles for men and women”); CEDAW, General Rec. No. 25, supra note 577, at ¶ 7.
\item \textsuperscript{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 19.
\item \textsuperscript{587} Financial Inclusion Data - Gender, supra note 303.
\item \textsuperscript{588} Understanding Bank De-risking and its Effects on Financial Inclusion, supra note 199, at 19.
\item \textsuperscript{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.”).
\item \textsuperscript{590} Id.
\end{itemize}
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 terrorism 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


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. 25, supra note 576, art. 7; Comm. on the Elimination of Discrimination against Women, General Recommendation No. 28, supra note 576, at ¶ 56(d).


594 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.”).

595 See ICCPR, supra note 576, 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.”).

596 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.”**

  The right to privacy must be guaranteed on the basis of non-discrimination, 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.” The right to privacy applies online including for example in relation to “mass surveillance, the interception of digital communications and the collection of personal data.” 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. 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”—are essential to the achievement of other human rights including the right to freedom of expression, that are critical for creating an operating environment for women's civil society. Where, for example, States utilize “surveillance of telecommunications networks to target political opposition members and/or political dissidents,” 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, 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 rights 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.” 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.”

- **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

---


605 A/HRC/27/37, supra note 603, ¶ 14.

606 Id. at ¶ 14.

607 Id. at ¶ 14.

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/1/1 (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.


616 Id. at ¶ 46.
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.

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. 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.”

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, 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

law, States have an obligation to protect individuals against human rights abuse by private or non-State actors. A State’s obligations of due diligence apply without discrimination to all individuals within its jurisdiction, including citizens and non-citizens. 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. 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. 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. In addition, States should integrate their obligations to protect into a full range of regulatory activities, including “policies, legislation, regulations and adjudication.”


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.


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 possible stage 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.


the principles of necessity, proportionality and non-discrimination are respected;\textsuperscript{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.\textsuperscript{628} States’ measures to “facilitate, promote and protect civil society space” consistent with international human rights law,\textsuperscript{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.\textsuperscript{630} States must also ensure that all provisions affecting access of civil society to funding comply with international human rights law obligations,\textsuperscript{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.”\textsuperscript{632} This means that States should both “facilitate access to funding” and “avoid placing restrictions” regarding access to resources.\textsuperscript{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;\textsuperscript{634} cause “the suppression of legitimate human rights and humanitarian initiatives;\textsuperscript{635} restrict access to financial services (e.g., banking facilities) by women’s rights organizations;\textsuperscript{636} use “funding restrictions that impede the ability of associations to pursue their statutory activities;”\textsuperscript{637} and/or “[limit[ing] foreign funding to registered associations only,”\textsuperscript{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.\textsuperscript{639}

Just as “fundraising activities are protected,” by the right to freedom of association,\textsuperscript{640} donors “also have responsi-

\textsuperscript{627} A/HRC/31/65, supra note 4, at ¶ 22.

\textsuperscript{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.

\textsuperscript{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 . . . .”).

\textsuperscript{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/25/25, 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.”).

\textsuperscript{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”).

\textsuperscript{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/22/16 (Apr. 12, 2013) (“calls upon States 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) (“The 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) (“Everyone 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”).

\textsuperscript{633} A/HRC/23/39, supra note 222, at ¶ 18.

\textsuperscript{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.”).

\textsuperscript{635} A/70/371, supra note 107, at ¶ 10.

\textsuperscript{636} Id. at ¶ 43.

\textsuperscript{637} A/HRC/23/39, supra note 222, at ¶ 16.

\textsuperscript{638} Id. at ¶ 17.

\textsuperscript{639} A/HRC/23/39, supra note 222, at ¶ 19.

\textsuperscript{640} Id. at ¶ 16.
bilities," 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," 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."  

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" 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."  

**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." 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 humanitarian 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." 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."  

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. Within this framework, such countering terrorism financing rules particularly impact 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."  

---  

641 Id. at ¶ 14.  
642 Id.  
643 Id. at ¶ 13.  
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").  
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").  
In addition, international humanitarian law, “recognizing their specific needs and vulnerabilities, . . . grants women a number of further specific protections and rights.” As a result, in implementing counterterrorism financing rules “[t]he specific protection, health and assistance needs of women affected by armed conflict must be respected.”

- **Guarantee the right to remedy:** Under international law, the obligation to provide remedies is a consequence of an internationally wrongful act of a State. 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. 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. In the context of counterterrorism 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. 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.” 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.

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. 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.” 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). In substance, adequate reparations include “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.” This right to an effective remedy should be interpreted and applied without discrimination.

- **Ensure the above obligations apply extraterritorially to those within the State’s jurisdiction, including when acting individually or as members of international or inter-governmental institutions:** Under international

---


652 *Customary International Humanitarian Law*, supra note 651, at 475 (Rule 134).


654 ILC Draft Articles on Responsibility of States, supra note 653, art. 2; CAT, General Comment No. 3, supra note 617, at ¶ 7.


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.


663 Id. at ¶ 25; CAT, General Comment No. 3, supra note 617, at ¶ 32.
human rights law, States’ human rights obligations apply extra-
territorially to those individuals and entities within their jurisdic-
tion. Such jurisdiction is established when States exercise “ef-
fective control” 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, and applies in
a range of settings, including in “bilateral or multilateral donor
assistance . . . for humanitarian aid.” The human rights ob-
ligations of States apply extraterritorially at all times—in peace,
conflict, and post-conflict—and include their due diligence
obligations with regard to non-State actors. This means, for
example, that States are required to regulate the activities of
domestic financial institutions that operate extraterritorially.

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 envi-
noment may themselves have additional responsibilities. The
first way is through the “human rights due diligence process”
of corporations to respect human rights. This process is un-
derstood within the business community as a voluntary commit-
ment or “expected conduct” 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 in-
clude harmful activities of affiliates and of business relations.

In the context of financial institutions and CTF, such a human
rights due diligence process should, for example, “identify, pre-
vent, mitigate and account for how they address their impacts
on human rights,” including by “assessing actual and potent-
tial human rights impacts, integrating and acting upon the find-
ings, tracking responses, and communicating how impacts are
addressed.” The second way to assess responsibility of non-
State actors is that even though non-State actors cannot be-
come parties to international human rights treaties, they may be
still obliged to respect international human rights, such that “un-
der certain circumstances, in particular where an armed group
with an identifiable political structure exercises significant con-
trol over territory and population, non-State actors are obliged
to respect international human rights.”

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.
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 MULTI-
recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations: . . . Car-
ry 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
(June 26, 2014).
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
(Special Rapporteur on extrajudicial, summary or arbitrary executions); Paul Hunt (Special Rapporteur on the right of everyone to the enjoyment of the highest attain-
able 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-terrorism 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-
Engage in systematic independent documentation, 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., CTIF, 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 (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-
Tightening the Purse Strings

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.