



## Section iii. Suppression of Nonprofit Organizations (NPOs)

### Introduction

Security and respect for human rights and freedoms should go hand in hand. Our aim is to protect the NPO sector from abuse, while also ensuring legitimate activities are not disrupted. However, there is evidence from many countries on how counterterrorism and countering the financing of terrorism (CFT) measures are having increasingly negative implications for the NPO sector and for human rights, through poor design or intentional misuse. The 2019 report by UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism notes that 66 percent of all communications to the mandate are related to the (mis)use of CT, or security measures more broadly on the NPO sector. These vary from legal provisions that restrict rights, repressive measures against lawful, non-violent activities, limiting access to financial services, governmental smear campaigns with the objective of delegitimizing NPOs by loosely characterizing them as “terrorists” to implying that they are “threats to national security.” In addition, there is a prevalence of vague definitions – at both the international and national levels, leading to inconsistencies in the implementation of the standards or their use for restrictive purposes.

The drivers of this problem include:

- a perceived hierarchy of priorities between CFT obligations and international human rights and humanitarian law and a lack of clarity regarding CFT obligations and legal safeguards for civic space, NPOs and humanitarian action. The system (CFT/ ALM) as a whole is complex and is not adequately connected to human rights law. Institutionalizing human rights and international humanitarian law within discussions and standard setting on countering terrorism and its financing is critical to mitigate this.
- the urgency of countries to implement the FATF requirements, often those related to direct findings and recommendations in the mutual evaluation reports, and the lack of nuance as well as international human rights context when transposing the requirements of Recommendation 8 to the national context. Earlier ill-advised assessments by assessors have led to overzealous regulation. There is a pressing need for a more robust assessors and standards training on the framework of rights and freedoms that govern and protect NPOs and the TF risks within the FATF framework.
- laws that directly target NPOs and which are justified using the FATF AML/CFT framework but that are disproportionate to the risk and are intended to restrict NPO activities and/or suppress dissent.

CFT laws that apply broadly but lack adequate risk-based safeguards for civil society organizations result in disproportionate restrictions that disrupt the activities of legitimate organizations. This occurs because the formation and operation of NPOs necessarily involves rights of assembly, association and expression.



Finally, any effective counter-terrorism strategy must strengthen, not weaken, the NPO sector. Only then can we have a meaningful partnership to work towards a joint goal – which is a society free from terrorism and abuse.

**Here we list an illustration of examples for prevalent types of measures that lead to the suppression and overregulation of the NPO sector:**

**1. Lack of a clear and universally-accepted definition of terrorism**

- Broad definitions or the broad implementation of definitions of terrorism can be an obstacle for legitimate NPO activities. The implications of the absence of a universal definition of terrorism for legal purposes are wide-ranging. One is that the lack of a definition may facilitate the politicization and misuse of the term "terrorism" to curb non-terrorist (or sometimes even non-criminal) activities of NPOs and its members. In turn, this can result in countries violating the rights of their own or other citizens, including provisions laid out under international human rights law, in the course of their counter-terrorism efforts.
- In the United States, the definition of terrorism in criminal law and by sanctions authorities includes providing material support to terrorism. The definition is very broad: all knowing transactions with designated individuals or entities are prohibited, regardless of the size, purpose or nature of the transaction or the risk that the transaction will further a terrorist agenda.

**2. Restrictions on the exercising of the Right to Association**

- Barriers to registration: Laws granting broad discretion to deny registration on the basis of security and CT/CFT concerns without a clear burden of proof.
- Barriers to registration: Overly-complicated registration procedures, arbitrary denial of registration, annual registration, a ban on registration. For example: The Non-Profit Organizations Act in British Virgin Islands requires the annual (re)registration of all NPOs and imposes a high penalty for failing to do so. The Act states that the non-profit organization regime was evaluated as not being at the desired level by the FSRB assessment. Therefore, the government believed that adopting the Act would make the country more compliant with FATF standards.
- In Albania, a new draft-law On the Registration of NPOS was undertaken in 2020, in response to MONEYVAL recommendations for Albania. The draft law has some fundamental problematic issues that may lead to restrictions on the right to establish an NPO Law. The law imposes the obligation to register to all NPOs – contrary to the international standards on freedom of association.
- Interference in internal affairs or governance of organizations, including requirements relating to organizational structure, decision-making, and burdensome reporting requirements; these restrictions are often much more stringent than those imposed on business entities, with no proof that the CSOs carry a higher risk.
- Some countries have introduced provisions that interfere with the freedom of founders and members to regulate the organization's internal governance, especially in the case of organizations that receive foreign funding. For example: a law in Bangladesh requiring foreign-funded NPOs registered with the government office to establish a board of directors with at least 7 members and a general board consisting of 21 members. The law seeks to “eliminate militant and terror financing and ensure a terrorism-free country by 2021.”

- Onerous/redundant reporting requirements - several countries have introduced burdensome reporting requirements for NPOs and high penalties for non-compliance, including requiring special staff responsible for AML/CFT compliance, detailed activity reporting and assessment of work, compulsory annual auditing, and others. For example: in British Virgin Islands all NPOs are required to complete a detailed annual reporting form, which includes submission of full financial information on revenue and expenditure, including an itemization of wages, salaries paid by the organization. The country does not impose similar reporting requirements on all businesses in the territory. Furthermore, an NPO with more than five employees must appoint a Money Laundering Reporting Officer who is responsible for AML/CFT compliance. NPOs with five or fewer employees must designate a person to carry out AML/CFT compliance.
- In Cambodia, according to Prime Minister Hun Sen, the purpose of the Law on Associations and Non-Governmental Organizations (LANGO), adopted by the National Assembly in 2015, is to prevent terrorist financing. Authorities may conduct an audit or examination of an association or non-governmental organization "in case[s] of necessity." Furthermore, the law requires all NPOs to submit annual detailed financial reports to the government. Given that competences of authorities are defined very broadly within the law, this allows for different interpretations when it comes to inspecting NPOs and asking for information.
- In Venezuela, administrative ruling requires the registration of all natural or legal persons of a nonfinancial nature before May 1, 2021, emphasizing the participation of Non-Governmental Organizations (NGOs) for the surveillance and supervision of their work. The ruling would impose strict controls that include handing over NPO constitutive documentation, assembly notes, lists of members and personnel, lists of donors, registration of financial movements, and lists of all their beneficiaries and other organizations with which they work. The ruling operates under the presumption of committing crimes such as terrorism or that NGOs are vulnerable to these crimes because they are not subject to the supervision of a specific public body or regulated by a special law.

### 3. Restrictions on protected NPO activities

- *Limits on certain activities:* Barriers and restrictions to operate or carry out specific activities, burdensome licensing requirements, or vague grounds for dissolution or suspension of organizations that force CSOs to restrain their own activities out of fear of government action.
- Restricting humanitarian access to civilians: Incidental transactions with listed groups necessary to access civilian populations in need of aid is prohibited. In the United States the Antiterrorism and Effective Death Penalty Act (AEDPA) and the International Economic Emergency Powers Act (IEEPA) are the primary laws governing efforts to counter the financing of terrorism (CFT). They do not account for risk based on the type and character of transactions or activities, and lack adequate safeguards for NPOs. FATF's 2016 Mutual Evaluation of the U.S. recognized that its terrorist financing and sanctions violations "are strict liability offenses."<sup>1</sup> This amounts to a zero-tolerance policy that is inconsistent with the principle of proportionality and the requirements of international human rights and humanitarian law.
- Since 9/11, the humanitarian exemption in IEEPA has been routinely cancelled in Executive Orders designating terrorist organizations and individuals, essentially repealing it. (The

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<sup>1</sup> <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-states-2016.html> p. 88



sanctions statute (IEEPA) has a humanitarian exemption that bars the President from blocking “donations of food, clothing and medicine, intended to be used to relieve human suffering,” unless he or she determines that such donations would “seriously impair his ability to deal with any national emergency.”<sup>2)</sup>

- Under the AEDPA’s material support prohibition, all transactions with designated individuals or entities are prohibited, regardless of the size, purpose or nature of the transaction or the risk that the transaction will further a terrorist agenda. This blanket ban is also included in Executive Orders issued under IEEPA. It fails to distinguish between minimal and incidental transactions necessary to access civilians in need of humanitarian assistance and transactions that provide funding or weapons for terrorist activities. This strict approach produces outcomes that are not commensurate with the risks involved, especially when compared to the risks it creates, making them ineffective means of addressing terrorist financing. For example, it can fuel conflict by creating a humanitarian vacuum, where truly humanitarian organizations cannot engage in transactions necessary to access communities in need and terrorist groups fill the void, using aid as a wedge for propaganda and recruitment. A risk-based approach would consider the practical necessity for NPOs to engage in minimal transactions with FTOs controlling or active in territory in order to reach civilian populations. Instead, the bar on such transactions can lead to significant penalties, including prison sentences. Although the U.S. Treasury operates a licensing process that can allow otherwise prohibited transactions, the process is extremely cumbersome, slow and lacks clear standards for humanitarian circumstances. (For an analysis of these laws and how they impact humanitarian assistance see the report *Safeguarding Humanitarianism in Armed Conflict*, listed in the Annex.)
- The Somalia famine, starting in 2010, is a tragic example of how legitimate humanitarian efforts are disrupted by the material support prohibition.<sup>17</sup> When al-Shabaab, an al-Qaeda-linked terrorist group in Somalia, restricted access to famine-affected areas and threatened the safety of international humanitarian aid, NPOs were faced a difficult choice; they could pay a “tax” to al-Shabaab to access restricted areas and provide life-saving relief, or risk prosecution for providing “material support” in violation of AEDPA. A 2013 report commissioned by USAID and the UN found that legal restrictions contributed to the unusually high death rate in the famine, where 260,000 people died, over half of them children.
- The law has not changed since that time. As a result, in 2021 the new U.S. administration reversed the Foreign Terrorist Organization designation of the Houthis in Yemen in order to avert another humanitarian disaster. Despite the fact that the Treasury Department had issued broad licenses for aid delivery in Yemen, humanitarian groups were still vulnerable to criminal prosecution under AEDPA. Reversing the designation was the only way to resolve the problem. In this manner, the legal structure limits authorities’ options.
- Restriction on activities In addition, U.S. NPOs that focus on peacebuilding projects aimed at reducing armed conflict and its impact on civilian populations have been unable to directly engage designated terrorist organizations in peace processes or provide training in skills needed to seek political resolution of grievances. This is because the definition of material support of terrorism is applied to training and expert advice and assistance, including communications aimed at reducing violent conflict.

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<sup>2</sup> 50 U.S.C. § 1702(b)(2) (2102).



#### **4. Restrictions to NPOs Access to and Use of Funding**

- Legal barriers impeding the ability of NPOs to access funding, including the discretion of authorities to widely ban grants and donations from outside the country or from foreign entities inside the country.
- Broad discretion to seize or freeze the assets of civil society organizations and individuals without a prior court order or other due process. For example, in the United States counterterrorism sanctions laws allow authorities to freeze funds and seize physical assets of charities “pending an investigation” into whether or not they will be designated as supporters of terrorism. There is no mechanism to ensure these funds are ultimately used for charitable purposes and no deadline for when such an investigation must be completed. Appeal rights are limited (see Sec iv).
- In Pakistan, all foreign and foreign-funded NPOs have a blanket obligation to declare all foreign contributions and get their accounts annually audited by a registered chartered accounting firm. In addition, they need to submit independent or third party evaluations annually, including quantitative and qualitative assessments of their work, to the government – national, provincial and local – informing them about their ongoing programmes in that area.
- The new Foreign Agents Law is explicitly linked to and implemented in conjunction with the AML-CFT Law, effectively requiring all NPOs to obtain authorization to receive foreign funds or carry out activities with foreign support.
- According to the Kosovo Law on the Prevention of Money Laundering and Terrorist Financing, NPOs are not allowed to receive or disburse payments beyond very low thresholds, 1,000 EUR from a single source or 5,000 EUR to a single recipient, in a single day. NPOs seeking a one-time or recurring exemption have to file a written request with the Financial Intelligence Unit. Failure to respect these restrictions is considered a criminal offence. Business entities regulated under this law are not subject to this requirement.
- The law in Bangladesh requires all NPOs to register with the government office and obtain prior approval for the receipt of foreign funding for any voluntary activity on a project-by-project basis, in order to combat terrorism financing.
- The broad provisions of the Uganda Anti-Money Laundering Act allow the government to monitor the assets and business transactions of individuals and NPOs, under the guise of “public interest”. This Act coupled with the NPO Registration Act would allow the government enhanced scrutiny over all NPOs and give it the power to de-register NPOs that violate “any law” .
- Sri Lanka initiated amendments to the Law on Public Associations in response to recommendations from the Financial Action Task Force (FATF). The Law would require NPOs to register all aid in a special registry, requiring government approval. A statement from the Ministry of Defence and Urban Development supported oversight of the country’s NGOs as necessary for national security and to counter terrorism, emphasizing that: regulation, transparency and accountability of funding to NGOs and NPOs [non-profit organizations] is a pre-requisite in the interest of national security and counter-terrorism as recognized by states, and that obligation placed on states to adhere to the regulatory framework in compliance with 40 Recommendations of the Financial Action Task Force, makes it mandatory to monitor fund transfers of all financial institutions inclusive of NPOs and INGOs (associations) and other financial institutions, in countering financing of terrorism, money laundering or other related trans-national crimes. *(Sri Lanka Emphasizes Need for Regulation, Transparency, and Accountability in Funding to NGOs and NPOs, Ministry of Defence and Urban Development website (last updated June 25, 2013).)*



- New legislation in Turkey on NPOs adopted as part of the FATF compliance process, restricts freedom of association by putting burdensome and blanket requirements on NPOs without risk-based justifications. Legal barriers, under the pretext of AML/CFT, are impeding the ability of NPOs to access foreign funding in the form of grants and donations.

##### **5. Spurious Investigations / Intrusive Supervision**

- Launching (administrative) investigations against CSOs under the guise of AML/CFT compliance, but effectively conducting smear campaigns against those accused without concrete evidence.
- 47 prominent watchdog NPOs, media outlets and activists were investigated by the Serbia government for AML/CFT without a clear risk criteria or legal basis/reason. Official reasons included “risk assessment preparation analysis for NPO sector”, based on Moneyval requirement and MER follow up findings from 2018.
- Government in Uganda requested the freezing of bank accounts of prominent watchdog NPOs on ML/TF suspicions. It also detained leaders of NPOs under similar vague charges, which provoked an international outcry.
- Broad discretion to seize NPO assets - In some cases, CFT legislation provides overly-broad discretion to seize the property of NPOs without a prior court order. For example: The Turkey Law on Financing of Terrorism in one country allows alleged terrorist assets to be seized without obtaining a court order. It has been used to wrongly label NPOs as terrorists and freeze the assets of groups or individuals. In Sri Lanka, Suppression of Terrorist Financing Act gives authorities the power to seize property and other assets of suspected terrorist NPOs without obtaining a court order.
- Legal and Human Rights Centre’s (LHRC) Tito Magoti was arrested by the Tanzanian authorities in December 2019 and, in blatant contravention of international law, was not informed of the reason for his arrest, nor could he avail of his right to legal representation or the right to inform his family of his arrest or where he was being detained. It was only after LHRC filed an urgent petition (Habeas Corpus), that Mr Magoti was charged, four days later, with money laundering offences (among others). To read more on this growing trend in Tanzania, used to silence and threaten Human Rights activists, read LHRC’s [letter and advocacy position here](#).

##### **6. Forced NPO dissolution**

- New legislation on NPOs proposes to facilitate easier suspension and dissolution of NPOs without full judicial safeguards as a response to TF concerns (Turkey).
- Swedish NPOs report that in at least two countries the local partners they work with have been “blacklisted” for dubious reasons and dissolved by the regime. This only happens to opposition or independent organisations.

##### **7. Restrictions on peaceful assembly**

- Anti-Terror Law in Turkey provides for a one- to five-year prison sentence for anyone “who conceals or partially conceals their face during a demonstration or public assembly that turns into propaganda for a terrorist organization.” Similar regulation is found in Spain.
- A provision of the Anti-Terror Law in Turkey includes increased penalties for engaging in violent protest or protest which is not violent but is deemed to be “propaganda for terrorist organizations.”

##### **8. Restrictions on freedom of expression**



- Under the Anti-Terror Law in Turkey, if vaguely-defined terrorist propaganda is suspected to have been spread within the buildings, premises, offices or extensions belonging to associations and foundations, the penalty will be doubled. Through such a restriction under the law, NPOs are almost forced to be silent on political matters.
- Myanmar adopted new anti-terror legislation with the proclaimed aim of "dry[ing] up sources of funding for terrorism": however, it considerably limits freedom of expression. For example, it penalizes individuals who publish "false news" or data contradicting official government statements on terrorist attacks.

#### **9. Unclear or burdensome / inadequate AML requirements**

- Many countries in MENA, other parts of Africa and in Latin America, as well as in Europe have adopted overly broad AML requirements or restrictions on the NPO sector as a whole, based on the false interpretation of the FATF standards that NPOs should be considered "obliged entities". For example, in Guatemala, NPOs face excessive discretion exercised by IVE officials on AML requirements - once NPOs have completed the registration process they are officially informed of their AML legal obligations through a "confidential" letter from the IVE. Among the most problematic obligations is the requirement to verify that the organization's donors ("clients") are not on the UN Consolidated Sanctions List and National List of Terrorists within 24 hours of an official request. If an NPO does not comply with the requirement, it may be subject to a fine of \$25,000. Registered NPOs complained that the IVE tends to request such information during weekends and holidays, creating enormous pressure on the staff to respond in a timely manner. Most unregistered NPOs are not aware of these unpublished obligations, and the NPOs interviewed are reluctant to widely share the confidential letters they have received.
- Requirement to identify donors - The Anti-Money Laundering Law in Spain requires all foreign donors to NPOs to disclose personal data. All foundations have a blanket obligation to provide their by-laws as well as the personal identification information of their legal representatives, raising privacy concerns.

#### **10. Disregard for the Risk-Based Approach**

- Countries label NPO sector as high(er) risk despite a) lack of evidence or clear risk assessment report or findings, and b) contradicting their own risk assessment reports that find the NPO sector not at high risk as a whole.
- In 2016, Nigeria published the results of its NRA on money laundering and terrorism financing. Nigeria utilized the World Bank methodology to conduct its NRA, and the process included nine multi-disciplinary working groups coordinated by the Nigerian FIU. NPOs were not represented in any of the working groups. Under Nigerian legislation, NPOs are categorized as 'Designated Non-Financial Institutions' alongside other profit-making actors such as dealers in jewellery, cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing and settlement companies, legal practitioners, hotels, casinos, and supermarkets. The NRA admitted that the abuse of NPOs for ML may seem to be potentially low, and there was no available data on cases or assets frozen, seized, or confiscated related to ML in the non-profit sector. Despite this, it concluded that NPOs pose a medium-high risk "due to the fact that NPOs are not effectively regulated". However, Nigeria already had an elaborate body of laws and regulations designed to counteract the vulnerabilities identified in the NRA, including those related to the non-profit sector. Under existing Nigerian law, NPOs are subject to the regulatory oversight of multiple agencies and mechanisms and are obligated to comply with



stipulated reporting requirements. (<https://spacesforchange.org/unpacking-the-official-construction-of-risks-and-vulnerabilities-for-the-third-sector-in-nigeria/> )

**11. Stigmatization of NPO members**

- Branding of NPO members and employees as terrorists or other forms of sectoral stigmatization.

**12. Surveillance of NPOs**

- Global drive for high-tech biometric systems that are being or can be used for mass surveillance;
- Certain surveillance and tracking responses to Covid-19 amplify the erosions of human rights and civic space.



## Section iv: Human Rights

### Introduction

This submission includes information on how CFT measures impact human rights of people in their individual capacity and as actors in social movements and civil society. It addresses the problems created by lack of a clear definition of terrorism, due process and asset freezes.

Examination of the impact implementation of CFT measures has on human rights should emphasize that by associating together to form NPOs and exercising freedom on assembly and expression in carrying out their activities, both NPOs and the people participating in them are protected by Articles 19 and 20 of the UDHR. In addition, the International Covenant on Civil and Political Rights and UN Human Rights Committee jurisprudence provide protection for fundamental rights of freedom of assembly (Article 21), freedom of association (Article 22) and freedom of expression (Article 19).

In assessing unintended consequences, we urge FATF to bear in mind that CFT measures can only derogate these rights in exceptional and temporary circumstances. In a 2006 report by Martin Scheinin, then Special Rapporteur on protecting human rights while countering terrorism, noted when such limits are imposed “[T]he principles of *proportionality* and of *necessity* must be respected concerning the duration and geographical and material scope of the state of emergency as well as all the measures of derogation resorted to because of the state of emergency.” Furthermore, a State party to the ICCPR must fully respect its other international obligations whenever it derogates from the Covenant.....” (emphasis added)

Furthermore, in his 2013 report, Maina Kiai, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, explained that limitations on association and assembly must “not only pursue a legitimate interest but also be “necessary in a democratic society.” Kiai explains further that “In order to meet the proportionality and necessity test, restrictive measures must be the *least intrusive means* to achieve the desired objective and be limited to the associations falling within the clearly identified aspects characterizing terrorism only. They must not target all civil society associations...” (emphasis added)

### 1. Vague and overly broad definitions of terrorism

The combined effect of the lack of a universally recognized definition of terrorism and UN mandates that create binding obligations on states to criminalize terrorist financing and to impose sanctions on designated terrorist organizations, is to create an environment where severe, even draconian, measures can be taken without adequate protection of human rights. It is a situation that has led to abuse as well as unintended consequences. FATF standards have become another driver in this trend. The examples below illustrate this point.

#### Examples of how overly broad definitions can lead to violation of human rights:

- Indonesia Definition: Terrorism is defined as “an act which uses violence or threat of violence which causes a widespread atmosphere of terror or fear, which can cause mass



victims, and/or creates damages or destructions to strategic vital object, environment, public facility, or international facility with a motif of ideology, politic, security disturbance.”

- In the Philippines a vague and broad definition of terrorism is being used to detain people without charge for extended periods of time.
- Freedom of expression: CFT laws sometimes cite “radical” or “extremist” speech as indicators or risk of terrorism. This is a highly subjective standard that easily can incorporate protected speech. Since speech related factors are not generally relevant to terrorist finances or acquisition of tangible resources. Such expressive activities should be clearly beyond the scope of FATF’s mission abuse of the FATF process.
- **Rights of beneficiaries of humanitarian aid and other assistance**
- When CFT measures restrict delivery of humanitarian or development assistance they run afoul of three important human rights standards:
  1. The International Covenant Economic, Social, and Cultural Rights (ICESR) outlines fundamental rights as related to economic development, living standards, and health. It “obliges states to respect, protect, and fulfill the right to ‘the enjoyment of the highest attainable standard of physical and mental health,’ as well as the right to an adequate ‘standard of living’ that includes ‘adequate food.’ Parties to the convention are obliged to work toward the progressive realization of these rights over time ‘by all appropriate means’ and ‘to the maximum of its available resources.’” Additionally, it protects the rights of self-determinations and the right to “freely pursue their economic, social and cultural development,” which includes the ability to “freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”
  2. The Universal Declaration of Human Rights declares that everyone “has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”
  3. International Humanitarian Law provides for a “right of initiative” that allows impartial humanitarian organizations to offer their services to a party to the conflict. Common Article III of the Geneva Conventions, Additional Protocol II (a multilateral treaty that applies to non-international conflicts) and customary International Humanitarian Law are designed to balance humanitarian necessity and security considerations. However, unilateral sanctions in the U.S. do not incorporate these requirements. IHL deals specifically with the treatment of wounded or sick individuals. Common Article Three states “the wounded and sick shall be collected and cared for” without stating who can or must provide the medical assistance. A state may not erect barriers that make such activity by humanitarian organizations unnecessarily difficult or illegal. In addition IHL protects every individual’s right to receive medical assistance by prohibiting



punishment of anyone for “carry[ing] out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.”

- Examples of how beneficiary rights may be violated in the CFT context:  
Beneficiary vetting: At times some donors and regulators have imposed “vetting” requirements that would force NPOs delivery aid to screen potential beneficiaries against various terrorist lists. Sometimes such “lists” are not official, publicly known designations, but classified lists kept for other purposes. This violates beneficiary privacy rights and also can result in denial of aid based on factors other than need. International humanitarian law requires that aid be based on need alone. For instance, the children of a designated person must be provided aid under humanitarian principles.

## **2. Lack of due process in CFT regimes**

- Tanzania example Legal and Human Rights Centre’s (LHRC) Tito Magoti was arrested by the Tanzanian authorities in December 2019 and, in blatant contravention of international law, was not informed of the reason for his arrest, nor could he avail of his right to legal representation or the right to inform his family of his arrest or where he was being detained. It was only after LHRC filed an urgent petition (Habeas Corpus), that Mr Magoti was charged, four days later, with money laundering offences (among others).. To read more on this growing trend in Tanzania, used to silence and threaten Human Rights activists, read here: <https://www.fidh.org/en/region/Africa/tanzania/tanzania-human-rights-defender-tito-magoti-to-be-presented-for-the>
- US example – Between 2001 and 2009, the Department of Treasury shut down nine U.S. charities, freezing an estimated \$8 million in funds donated for humanitarian purposes, using powers in IEEPA. Two federal courts have found Treasury's process for listing and freezing assets to be unconstitutional as applied to two U.S. charities. In each case, the court found that the charity was not given sufficient notice of the accusations against it or an adequate opportunity to defend itself. However, the process remains unchanged. The designation process has extremely limited due process. Once an Executive Order designating a terrorist group has been issued the Treasury Department, in consultation with the Attorney General and the Secretary of State, can designate additional foreign and domestic individuals and organizations as terrorist or terrorist-affiliated. Treasury must base the designation on a “reasonable suspicion” that the individual or entity has or has supported a terrorist organization. This decision can be based on classified information, open source news reporting, and hearsay. Once an entity or individual has been designated (or subject to sanctions pending investigation into designation), there are limited opportunities for redress. In 2003 Treasury issued regulations that allow those designated to submit written requests for reconsideration and to petition for release of frozen property. There is no formal hearing or witness testimony. Although the designee may request an in-person meeting, Treasury is not required to grant the request. A statement of the reasons for designation has not always been provided to the listed person or entity. There is no deadline for Treasury to render its written decision, and some have taken years. If the reconsideration request is denied, designated entities can ask a federal district court to review the designation, but the court review is limited to the administrative record. This can



include classified information, but Treasury is only required to provide a designated entity the *unclassified* portion of the administrative record. NPOs are not entitled to cross-examine witnesses or to present witnesses of their own. Nor can NPOs present evidence on appeal to a federal court. The standard for judicial review is whether Treasury's action was arbitrary or capricious, despite the lack of due process protections normally afforded by the Administrative Procedure Act. In short, once a charity is designated, getting off the list is nearly impossible.

- The U.S. case of Kindhearts for Charitable Humanitarian Development illustrates the basis of the chilling impact. On Feb. 19, 2006, Treasury blocked Kindheart's assets and seized its records and property "pending investigation" into whether it had supported Hamas. In April that year Kindheart's attorney sought release of the assets. What followed was a procedural nightmare in which Kindhearts had to sue to get access to its own records and Treasury lost a 1,300+ page Kindhearts filing as part of its reconsideration request. The process led the judge in the Northern District of Ohio to declare that "KindHearts is not only blindfolded, but also has its hands tied behind its back."
- Swedish NPOs report that several leaders and other representatives of their partner organisations are currently in jail because they had another opinion than the ruling regime. The rule of law is often not respected and fair trials and transparent implementation of laws is set aside, rigged or simply not respected.

### **3. Assets freezes allowed "pending investigation", inadequate process to unfreeze,**

- Uganda example: Recent cases (pre-election, so December 2020) of NPO accounts being frozen (see [here](#) and [here](#)), including those involved in election monitoring such as the Uganda National NGO Forum (UGNNOF – a previous EEP grantee) and Uganda Women's Network (UWONET), whose banks were ordered by the Financial Intelligence Authority (FIA) to freeze their accounts on the basis that they were funding terrorism without providing either organisation with any direct communication or any evidence. Then Nicholas Opiyo, Executive Director of Chapter Four (one of Uganda's leading NGOs) was arrested on allegations of money laundering by a 'task team of security and financial intelligence'. In the run up to the elections of January 14<sup>th</sup>, amid a widening and serious crackdown on civic freedoms and human rights, the State was abusing ML and TF framework and laws. FATF reacted to this:

*"Uganda should continue to work to implement its action plan to address its strategic deficiencies, including by: ...implementing a risk based approach for supervision of its NPO sector to prevent abuse of the sector. The FATF is monitoring Uganda's oversight of the NPO sector.*

*Uganda is urged to apply the risk-based approach to supervision of NPOs in line with the FATF Standards."* The FIA thereafter (on Feb 19 2020) revoked its decision on freezing the NPO accounts.

- US example: Between 2001 and 2009, the Department of Treasury shut down nine U.S. charities, freezing an estimated \$8 million in funds donated for humanitarian purposes. Most of these funds have never been transferred or released for charitable purposes. Many of the U.S. charities that have been designated requested licenses for the release of the funds to other charities and, in one case, to the UN, so they could be spent for humanitarian purposes. For example, in 2002, the Benevolence International Foundation asked that its



funds be transferred to a children's hospital in Tajikistan and the Charity Women's Hospital in Daghestan, with safeguards to ensure safe delivery of the funds. In 2006, KindHearts for Charitable Humanitarian Development asked that its funds be transferred to the UN, USAID (a U.S. government agency), or an NPO, with priority given to refugees of the 2005 Pakistani earthquake, since most of the funds had been earmarked for that purpose.

## **CONCLUSION**

Based on the cases presented above, it is clear there is a gap between FATF's risk-based approach, as applied to NPOs, and implementation of FATF standards. This is a function of two factors:

- 1) The current methodology for FATF country evaluations lacks criteria that would signal over-regulation and inappropriate implementation of the risk-based approach, both in the technical and effectiveness components.
- 2) In the five years since revision of Recommendation 8, it has become clear that implementation of the new standard needs to be improved.

To address these gaps, we recommend that FATF establish mechanisms in the evaluation process that signal instances of over-regulation and misapplication of the risk-based approach in order to prevent and mitigate disproportionate and inadequate application of the standards. In addition, we urge FATF to make full use of the package of training materials for evaluators the Coalition has submitted. We also recommend capacity building for governments on the risk-based approach for R8 and other recommendations that impact NPOs, such as R24, where risk assessment find terrorist financing risks.

ANNEX – Example resources:

Resource	Source	Brief Description
<a href="#">The Doha Declaration, Promoting a Culture of Lawfulness</a>	UN ODC	Examines some of the principal reasons for, and implications of, the absence of a universally agreed definition of terrorism, including how key institutional and State actors have approached criminal justice solutions in the absence of one.
<a href="#">Egmont Group Chair statement on FIUs misusing their powers on combating ML and TF</a>	Egmont Group	Statement expressing deep concern regarding allegations pertaining to FIUs limiting or coercing civil society actors for their work and critiques of current governments in their jurisdictions.
<a href="#">NEW INDIAN FCRA AMENDMENTS IMPACT FOREIGN GRANTS TO INDIAN NGOS</a>	Council on Foundations	Describes a new law that took effect Sept. 29, 2020 that will greatly tighten and restrict the existing Foreign Contribution Regulation Act (FCRA). FCRA is the cornerstone law that regulates how nonprofits in India can receive foreign funding, including from U.S.-based foundations and corporations.
<a href="#">How India's move to change foreign funding rules for nonprofits could backfire</a>	Scroll.in	The recent amendments to the Foreign Contribution (Regulation) Act can have adverse implications for thousands of mid-sized and small NGOs aiding development.
<a href="#">Turkey: Law Amendments Stifle Philanthropy</a>	European Centre for Not for Profit Law	New counterterrorism law will limit online collections, increase government oversight and create possibilities for interference of authorities in the internal affairs of CSOs.

<p><a href="#">Backgrounder on the case of “The List” - the abuse of anti-money laundry legislation for the suppression of civic space in Serbia</a></p>	<p>Civic Initiatives</p>	<p>Summary regarding use of oversight powers designed to target the financing of terrorism to obtain banking information and information on the financial transactions of CSOs, investigative journalists, media associations and other groups working on human rights.</p> <p>The UN Special Rapporteurs expressed their concern <a href="#">here</a>, The FATF responded <a href="#">here</a>.</p>
<p><a href="https://defendersprotection.org/home/security-and-freedom-of-association-in-uganda-and-nigeria/">https://defendersprotection.org/home/security-and-freedom-of-association-in-uganda-and-nigeria/</a></p>	<p>Defenders Protection Initiative, Uganda</p>	<p>Explores the possible misapplication of AML/CFT rules and regulations in the upcoming election cycles in Africa, and includes an overview of key concerns as well as possible actions to ensure a resilient civic space.</p>
<p><a href="#">UNDER LAYERED SUSPICION A REVIEW OF CRA AUDITS OF MUSLIM-LED CHARITIES</a></p>	<p>Anver M. Emon, University of Toronto, Nadia Z. Hasan, National Council of Canadian Muslims</p>	<p>Muslim-led charities have for years expressed concerns about the selection, frequency, and reasoning behind audits of their organizations.</p> <p>The findings from Under Layered Suspicion suggest that there is a basis for these concerns. The report identifies whole-of-government policies and patterns of audit practices that together evince potential biases in Canada Revenue Agency (CRA) audits of Muslim-led charities</p>

<p><a href="#">AN ANALYSIS OF THE APPLICATION OF FINANCIAL ACTION TASK FORCE RECOMMENDATIONS AND ITS IMPLICATION ON CIVIL SOCIETY IN TURKEY</a></p>	<p>Third Sector Foundation of Turkey (TUSEV), with support from the European Center for Not-For-Profit Law Stichting (ECNL),</p>	<p>The Law on the Prevention on Financing of Proliferation of Weapons of Mass Destruction in Turkey is poised to stifle the operations and activities of CSOs. In that regard, it is not in compliance with the FATF standards and does not provide effective mechanisms to combat terrorist financing. TUSEV thus recommends the re-evaluation of Turkey’s mitigation strategies to comply with the FATF’s particular provisions regarding civil society.</p>
<p><a href="#">Regional Report Recommendation 8 January 2021</a> (Spanish and English tekst)</p>	<p>ICNL</p>	<p>Research conducted by FATF experts and experts from the Global Non-profit Organization (NPO) Coalition on FATF on the impact of the preventive framework against terrorist financing on the daily practice of organizations that exercise their freedom of association and contribute to the common good. So far, the debate on the problem of misuse of NPOs for terrorist financing in Latin America has been characterized by assertions based on generalizations rather than on data. Stakeholders have not been able to sit around the table to identify evidence of risk or discuss deficiencies in policies or procedures. The lack of a shared basic understanding of the proper implementation of Recommendation 8 is a major challenge.</p>



<p><a href="#"><u>UNINTENDED CONSEQUENCES OF FATF STANDARDS ON THE NPO SECTOR AND THE CIVIC SPACE IN NIGERIA</u></a></p>	<p>Spaces for Change S4C</p>	<p>Unintended consequences of FATF Standards manifests in four major ways in the local context:</p> <ul style="list-style-type: none"> <li>(a) through supervisory framework for NPOs</li> <li>(b) over-regulation of the NPO sector</li> <li>(c) regulatory measures to counter tech-based financing of terrorism;</li> <li>(d) over-stretching of money laundering, anti-terrorism and emergency laws and € evolution of security-based narratives to justify varying forms of dissent to constituted authority.</li> </ul>
<p><a href="#"><u>Safeguarding Humanitarianism in Armed Conflict</u></a></p>	<p>Charity &amp; Security Network</p>	<p>Examines where and how the international obligations of the U.S. conflict with domestic counterterrorism measures in the context of humanitarian action in armed conflict.</p>
<p><a href="#"><u>ADDING TO THE EVIDENCE THE IMPACTS OF SANCTIONS AND RESTRICTIVE MEASURES ON HUMANITARIAN ACTION</u></a></p>	<p>VOICE</p>	<p>This report captures the findings of an online survey on the impacts of sanctions and counterterrorism (CT) restrictive measures on VOICE member NGOs, and the VOICE Webinar on EU Restrictive Measures and Humanitarian Aid: Between a principled view for exemptions and a pragmatic approach for an effective derogation process.</p>



<p><a href="#">Input to the UN Counter-Terrorism Coordination Compact Working Groups on Criminal Justice, Legal Responses and Countering the Financing of Terrorism and Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism and Supporting Victims of Terrorism</a></p>	<p>Global NPO Coalition on FATF</p>	<p>While FATF standards and materials are a highly useful resource, these materials provide little concrete guidance on actual implementation of the mandate to make CFT consistent with IHRL and IHL. The UN should go beyond referring States to FATF standards and provide concrete guidance on <i>how</i> CFT measures can be made consistent with IHRL and IHL.</p>
<p><a href="#">Lat Am Risk Mapping</a></p>	<p>ICNL</p>	<p>In Spanish</p>

[1] Schenin, Martin, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 2006 [http://freeassembly.net/wp-content/uploads/2014/05/A61267\\_English.pdf](http://freeassembly.net/wp-content/uploads/2014/05/A61267_English.pdf)

[2] Kiai, Maina, UN General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, April 2013 para 23 [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39\\_EN.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf)

[3] Ibid

[4] Human Rights Watch (2019) "Maximum Pressure": US Economic Sanctions Harm Iranians' Right to Health"

[5] Peksen and Drury (2010) "Coercive or Corrosive: The Negative Impact of Economic Sanctions on Democracy" International Interactions, Vol. 36 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1630664](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1630664)

[6] See, e.g., Fourth Geneva Convention, article 3(2).

[7] Geneva Conventions, article 3.

[8] Additional Protocol II, article 10.