

Countering the Financing of Terrorism with Respect for Human Rights Principles Meeting Note

11 March 2019

The Global Center on Cooperative Security, in cooperation with the Permanent Mission of France to the United Nations, convened a group of experts on 11 March 2019 to discuss the development and implementation of effective and targeted countering the financing of terrorism (CFT) measures in accordance with human rights and financial inclusion principles and inform ongoing discussions regarding CFT, including an upcoming UN Security Council open debate on the topic on 28 March 2019. The meeting included representatives of UN counterterrorism-adjacent entities, member states, the private sector, and civil society.

The Global Center presents the following key discussion points based on the meeting and its longstanding work in the field on anti-money laundering and countering the financing of terrorism (AML/CFT).

- 1. Meaningfully addressing financial inclusion (or de-risking) consequences of CFT measures.** Regulatory frameworks intended to combat the abuse of non-profit organizations for terrorism financing have had lasting and significant consequences, including constraints on operations and the delivery of humanitarian aid. Most recently, this has taken the form of de-risking, or the denial or interruption of financial services to categories of clients perceived to be high-risk, including non-profits, correspondent banks, and money service businesses.¹ De-risking has significant operational and reputational effects, including gender and human rights implications. The FATF is undertaking efforts to revise its guidance related to terrorism financing risks in the non-profit sector. In the absence of binding international mechanisms, however, these efforts have yet to sufficiently recalibrate risk perceptions, especially in light of increasing compliance costs and rising fines for non-compliance. The UN is well-positioned to set normative standards to address de-risking challenges globally, including by not stigmatizing the activities conducted in the informal financial sector, prioritizing humanitarian principles relative to non-profit operations, reaffirming the right of assembly, protecting the work of human rights defenders and humanitarian actors, and emphasizing financial inclusion principles.
- 2. Assessing compliance with international human rights law in the application of CFT measures.** Recent UN resolutions include language urging member states to implement measures in accordance with international law, including international human rights, humanitarian law and refugee law. In practice, there is a widespread gap in the implementation of human rights laws, which has resulted in the criminalization or targeting of non-profit organizations, the provision of humanitarian assistance, and the activities of political dissidents and human rights defenders, among others. There is a need to prioritize rights considerations specifically emerging from CFT measures. This includes overbroad

¹ For more information, see Tracey Durner and Liat Shetret, "[Understanding Bank De-Risking and Its Effect on Financial Inclusion](#)," The Global Center on Cooperative Security, November 2015; Sue Eckert with Kay Guinane and Andrea Hall, "[Financial Access for U.S. Nonprofits](#)," Charity and Security Network, February 2017; "[Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security](#)," Duke Law, International Human rights Clinic, and Women Peacemakers Program, March 2017.

definitions of terrorism and its constitutive elements, including unqualified “material support” provisions and low intent thresholds for terrorism financing. Non-conviction based asset freezing and confiscation measures give rise to issues relating to the right to property. Further, the expansion of administrative measures in counterterrorism and CFT is increasingly circumventing the full judicial process without proper consideration of stigmatization and other human rights issues. Additional guidance should be provided to member states to ensure that the implementation of CFT measures comply with the principles of proportionality and legality, and adhere to fundamental human rights.

- 3. Focus on preventing terrorism-related financing is negatively affecting financial transparency and reducing the availability of critical information to support terrorism investigations and prosecutions.** While the ultimate goal of CFT measures is to prevent terrorism-related entities from raising and moving funds, current responsibilities and expectations are mis-calibrated across stakeholders. The financial sector is expected to serve as the frontline of defense against terrorism financing, collecting information and alerting authorities to suspicious transactions. The changing nature of terrorism operations, including the declining cost of executing terrorist attacks, makes it virtually impossible to distinguish a terrorism financing transaction from a legitimate one. To do so requires a dynamic and nuanced understanding of the terrorism landscape and context around a particular transaction. This is typically the responsibility of law enforcement and intelligence agencies, but financial institutions are increasingly being asked to play a more active role. This misalignment of responsibilities has resulted in financial institutions adopting defensive filing practices that create a volume of reports that obscure legitimately suspicious transactions, or disengaging entirely. As a result, there has been a reduction in the overall financial transparency as transactions are increasingly forced out of the financial system, and a resulting decline in the availability of critical financial information that can provide the “missing link” in terrorism investigations. There is a need to emphasize the importance of financial information in achieving counterterrorism objectives, including establishing clearly demarcated responsibilities and procedures for handling financial information in compliance with consumer protection and privacy rights, generating financial intelligence by the appropriate authorities, and translating financial data into evidence for use in rule of law compliant prosecutions.
- 4. Supporting procedural reforms and application of UN Sanctions regimes in conformity with the rule of law.** Sanctions are a core tool used by the international community to curb the financing of terrorism and to freeze assets of entities designated as affiliated with terrorism. However, several human rights are implicated in the listing and delisting process, including the right to judicial review, the right to be heard, and the rights to privacy, property, a fair process, and an effective remedy. The public nature of designation can also significantly limit individuals’ ability to travel and gain or maintain employment and financial access. The UN, through its Office of the Ombudsperson to the ISIL (Da’esh) and Al-Qaida Sanctions Committee, provides an independent and impartial arbitrator to review delisting petitions. However, there remains a lack of judicial review on the Ombudsperson’s decisions and non-disclosure of confidential or classified information underpinning the listing decision. Many domestic designation systems also fail to provide adequate redress or a substantive right to judicial review, and in some cases, human rights advocates or political dissidents have been targeted. UN entities should support member states in establishing avenues for redress and safeguards to protect against arbitrary screening and designation mechanisms.
- 5. Maximizing the benefit of alternative financial services while ensuring appropriate safeguards against their abuse.** At their core, AML and CFT frameworks are flawed because they center on the traditional (or “formal”) financial system. The primacy of the formal sector is not universal in economies around the world, particularly in countries that experience the brunt of terrorist activity or operations and in more remote

areas. In those areas, cash and so-called informal financial systems are the cornerstone of economic activity, with key characteristics being flexible, readily accessible, and cost effective. As technological advancements spread across the world, informal financial systems now include money service businesses, mobile money operators, and digital fiat currencies, as well as the potential for cryptocurrencies looming on the horizon. These are vibrant and growing financial products that offer significant promise for expanding financial inclusion in under-banked areas. Trying to fit these products, as well as what is traditionally referred to as “informal finance,” into the existing regulatory system is not the answer to improving the effectiveness of CFT measures. Current frameworks are not built to handle the emerging risks in a way that will not stymie their growth. The international community needs to consider new and innovative approaches built specifically for emerging technologies, and ensure that financial inclusion, data protection, and economic empowerment principles are the core foundation of regulatory policy.

The Global Center expands upon many of these points in a recent policy brief, [Untangling a Marriage of Convenience: Anti-Money Laundering and Countering the Financing of Terrorism](#). This brief examines where and how AML frameworks are fit for purpose relative to CFT and considers where additional CFT-specific efforts are necessary. It begins with a brief summary of the evolution of money laundering and terrorism financing policies, discussing the unification of the two fields and the key differences between the motivations and typologies of money laundering and terrorism financing crimes. Against that backdrop, it explores the four objectives of CFT efforts (prevent, detect, freeze, and trace) to identify areas where existing unified AML/CFT frameworks are working and areas where more nuance is required to effectively combat threats specific to terrorism financing. The brief concludes with recommendations on how current CFT policy discourse and evolution can meaningfully support broader counterterrorism objectives.