

# Can stakeholder dialogues help solve financial access restrictions faced by non-profit organizations that stem from countering terrorism financing standards and international sanctions?

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## Abstract

*Counterterrorism architecture has grown exponentially in the last two decades, with counterterrorism measures impacting humanitarian, development, peacebuilding and human rights action across the world. Addressing and mitigating the impact of these measures take various forms in different contexts, local and global. This article will*

*address one particular form of engagement and redressal—that of the multi-stakeholder dialogue process—to deal with the unintended consequences for civil society of countering the financing of terrorism rules and regulations. The impact is seen in the difficulties that non-profit organizations face across the world in terms of financial access. Involving civil society, banks, government, financial intelligence, regulators, supervisors and banking associations, among others, in a dialogue process with clearly defined objectives is considered by policymakers and civil society to be the most appropriate and effective form of engagement for dealing with and overcoming this particular set of challenges. Multiple examples are provided of ongoing initiatives, with the nuances of each drawn out for a closer look at the conditions needed to sustain such dialogue, and an examination of whether such stakeholder dialogue processes are fit for purpose for solving the seemingly intractable problem at hand.*

**Keywords:** counterterrorism measures, stakeholder dialogues, development, peacebuilding, human rights, financial access, de-risking.

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## Introduction

The chilling effect of global counterterrorism measures on the operating environment of civil society is affecting humanitarian, development, peacebuilding and human rights actors across the world. The measures have legal, financial and operational implications for civil society, and are felt in their day-to-day operations. The need to address the problems they experience, stemming from the implementation of counterterrorism measures, is now widely acknowledged amongst policymakers. In this article, the rubric non-profit organization (NPO) is used for civil society and humanitarian organizations.

The counterterrorism ecosystem is vast and complex. Authoritative policymakers in the international realm have shown an eagerness to regularly identify new threats, primarily related to violent radicalization and more so since the attacks of 11 September 2001 (9/11) and the rise of Daesh. This has resulted in a steady growth of international rules to address these threats. There has been much less incentive for policymakers to address the underlying causes of the growth of terrorism or the rise of terrorist threats or, indeed, of applying existing laws and measures to mitigate these threats. The expansiveness of this ecosystem or architecture has resulted in the growth of private and public organizations, and public–private partnerships that have been mandated to implement and help shore up counterterrorism measures. And because humanitarian and other civil society organizations often operate in areas where terrorist or non-State armed groups are active, they are considered to be vulnerable and at risk, and therefore in need of protection. The rapid expansion of large commercial companies that sell terrorist risk profiles for customer- or partner-vetting purposes so that

material support does not end up in the wrong hands, or that offer to conduct the screening process for public and private stakeholders, illustrates that measures to counter terrorism threats are part of profitable business models.<sup>1</sup>

The acknowledgement of the impact of counterterrorism measures on civil society has so far not resulted in the termination or withdrawal of these measures. To the contrary, new laws and more complicated measures have been invoked, leading to a piling up of regulation. Very few governments have commissioned an independent assessment of the effectiveness of existing rules and regulations to address existing and new terrorist threats, prior to calling for and implementing more measures. The flexing of political muscle to insist on new legislation, measures or policy for the control of endlessly evolving threats has been deemed more important than informed decisions on the use of existing regulations and policies to address terrorism or violent extremism.<sup>2</sup>

These developments mean that NPOs have to constantly navigate an increasingly complex landscape of stringent regulations and opaque policies. There has been limited choice for NPOs but to adapt to a reality where counterterrorism measures determine their operational scope and environment to a large extent. NPOs are currently walking a tightrope between complying with these measures and deciding not to give in to demands or requests by authorities and donors that would undermine their role and mandate. Humanitarian organizations like the Norwegian Refugee Council and Islamic Relief Worldwide that have engaged on the issue over the past ten to fifteen years have increasingly been more vocal about compromising their humanitarian principles due to counterterrorism measures.<sup>3</sup> The demand by some donors to screen beneficiaries against designated terrorist lists is clearly a red line for these and other

- 1 Charity & Security Network, “World-Check: The Dangers of Privatizing Terrorist Lists”, 11 February 2016, available at: [https://charityandsecurity.org/financial-access/worldcheck\\_private\\_databases\\_raise\\_concerns/](https://charityandsecurity.org/financial-access/worldcheck_private_databases_raise_concerns/); Tamsin Allen, “World Check Database: Due Diligence or Blacklist?”, Bindmans, 27 September 2016, available at: <https://inform.org/2016/09/27/world-check-database-due-diligence-or-blacklist-tamsin-allen/>; Peter Osborne, “Why Majed al-Zeer’s Case Against World-Check Matters”, *Middle East Eye*, 21 January 2019, available at: <https://www.middleeasteye.net/opinion/why-majed-al-zeers-case-against-world-check-matters>; Tom Keatinge, “Who Checks World-Check? It’s High Time Someone Did”, *Middle East Eye*, 2 February 2017, available at: <https://www.middleeasteye.net/opinion/who-checks-world-check-its-high-time-someone-did> (all internet references were accessed in December 2021).
- 2 Fiona de Londras, “Politics, Accountability and Counter-Terrorism Review”, *University of Birmingham Blogs*, 26 July 2018, available at: <https://blog.bham.ac.uk/counterterrorismreview/2018/07/26/politics-accountability-and-counter-terrorism-review/>; Fionnuala Ní Aoláin, “My Priorities as UN Special Rapporteur on Counter Terrorism: The Problem of Permanent Emergencies”, *Just Security*, 9 October 2017, available at: <https://www.justsecurity.org/45640/priorities-special-rapporteur-counter-terrorism-problem-permanent-emergencies/>; Ben Saul, “The Legal Black Hole in United Nations Counterterrorism”, *IPI Global Observatory*, 2 June 2021, available at: <https://theglobalobservatory.org/2021/06/the-legal-black-hole-in-united-nations-counterterrorism/>.
- 3 The Norwegian Refugee Council and Islamic Relief Worldwide are members of the Global NPO Coalition on the Financial Action Task Force (FATF). This is a loose coalition of over 300 NPO networks and organizations that engages the FATF to ensure that countries apply the FATF AML/CFT standards in a proportionate and effective manner based on a risk-based and not a rule-based approach. See Global NPO Platform on FATF, “Global NPO Coalition on FATF (Financial Action Task Force)”, available at: [www.fatfplatform.org](http://www.fatfplatform.org).

humanitarian organizations.<sup>4</sup> For counterterrorism policymakers, the probability of terrorists mingling with refugees or forcibly displaced persons, and the need to detect and prosecute them, trumps the mandate of humanitarian organizations to deliver aid and protect civilians and State and non-State armed actors, including terrorists.<sup>5</sup>

Fortunately, the engagement between civil society and policymakers to address the impact of counterterrorism measures on the operational space of NPOs has increased over the past years, ranging from one-off consultations to sustained dialogue to everything in between. Within this typology of engagement, sustained multi-stakeholder dialogue processes/forums or stakeholder roundtables (stakeholder dialogues, in short), with clearly defined objectives, are considered by policymakers and civil society to be the most appropriate form for dealing with and overcoming the challenges that counterterrorism measures pose.<sup>6</sup>

This article specifically focuses on stakeholder dialogues that have been set up to address the effects of the countering the financing of terrorism (CFT) standards and terrorism financing sanctions on the ability of NPOs and humanitarian organizations to carry out their work. The misinterpretation or abuse of CFT standards by government authorities is the driver for some of the most impactful effects of overall counterterrorism measures on NPOs. The effects are broadly two-fold:

1. Overregulation of NPOs under the pretext of the entire sector being at risk for terrorism financing abuse without the necessary evidence to justify it, and
2. Financial access restrictions stemming from bank supervisor guidance for retail banks on due diligence requirements for NPO clients, which often classifies, in broad brushstrokes, NPOs as being at risk for terrorism financing abuse. NPOs have been greatly affected by these measures, leading to restrictions on the

4 Norwegian Refugee Council, “Counterterrorism Measures”, Position Paper, January 2019, Humanitarian Principles section, p. 2, available at: [https://www.nrc.no/globalassets/pdf/position-papers/counterterrorism-measures\\_position-paper.pdf](https://www.nrc.no/globalassets/pdf/position-papers/counterterrorism-measures_position-paper.pdf).

5 Overseas Development Institute (ODI), “Humanitarian Negotiations with Armed Non-State Actors: Key Lessons from Afghanistan, Sudan and Somalia”, 18 March 2014, available at: <https://odi.org/en/publications/humanitarian-negotiations-with-armed-non-state-actors-key-lessons-from-afghanistan-sudan-and-somalia/>; Eva Svoboda, “Strengthening Access and Proximity to Serve the Needs of People in Conflict”, Humanitarian Policy Group, 2015, available at: <https://cdn.odi.org/media/documents/9737.pdf>; Voluntary Organisations in Cooperation in Emergencies (VOICE), “The Impact of EU Sanctions and Restrictive Measures on Humanitarian Action”, Workshop Report, 2019, p. 16, available at: <https://www.dgecho-partners-helpdesk.eu/download/dgechoblock/2188>.

6 Global Center on Cooperative Security, “Ensuring the Effective Implementation of Countering the Financing of Terrorism Measures While Ensuring Civic Space”, Concept Note, October 2020, available at: <https://www.globalcenter.org/project-descriptions/ensuring-the-effective-implementation-of-countering-the-financing-of-terrorism-measures-while-safeguarding-civic-space/>; International Committee of the Red Cross, “Counter-Terrorism Measures must not Restrict Impartial Humanitarian Organizations from Delivering Aid”, 12 January 2021, available at: <https://www.icrc.org/en/document/counter-terrorism-measures-must-not-restrict-impartial-humanitarian-organizations>; Emile van der Does de Willebois, “De-Risking Impedes Access to Finance for Non-Profit Organizations”, *World Bank Blogs*, 24 February 2017, available at: <https://blogs.worldbank.org/psd/de-risking-impedes-access-finance-non-profit-organizations>.

collection and disbursement of funds in support of their operations, their partners and beneficiaries.

An example of over-regulation is the obligation set out for all foundations and associations to register gifts over €100 from donors with competent authorities.<sup>7</sup> An example of a broad-brush approach is the Netherlands Central Bank guidance for banks on screening charity foundations that provide humanitarian aid:

Charity foundations are crucial for providing humanitarian help to people in need. There are strong indications that terrorists and terrorist organisations are abusing these organisations to finance their activities. Gaining an understanding of the risks and adequately monitoring the financial flows of such organisations is not only essential, but should be a regular component of an (financial) institution's sound and ethical operational management.<sup>8</sup>

Some lessons from past and ongoing stakeholder dialogues can already be drawn, and because the organization that the authors belong to, the Human Security Collective (HSC), is a co-convenor of the Round Table on Financial Access in the Netherlands, lessons learnt from this particular dialogue are central to the article. The analysis of and reflections on stakeholder dialogues are the authors' and HSC's alone. The insights provided are largely based on discussions about financial access restrictions stemming from the framework of the Financial Action Task Force (FATF) standards – the global standard setter on anti-money laundering and countering the financing of terrorism (AML/CFT). The HSC is co-chair of the Global NPO Coalition on the FATF – a loose network of diverse NPOs advocating for the effective, risk-based implementation of the FATF standards affecting NPOs, and aiming to mitigate the unintended consequences of AML/CFT policies on civil society in order that legitimate charitable activity is not disrupted – and hosts the website of the Coalition.<sup>9</sup> In this capacity, the HSC has, along with other members of the Coalition been engaging in discussions with FATF and other stakeholders on financial access restrictions facing NPOs for the last six years. Another important driver for financial access restrictions of NPOs is terrorism financing sanctions, including those that are part of broader economic and trade-based sanctions imposed by States or multilateral entities such as the United Nations (UN) or the European Union (EU). These will be mentioned where relevant to highlight lessons learnt from stakeholder dialogue processes.

7 Regarding regulatory requirements for NPOs under AML/CFT laws in Spain, see Hanna Surmatz, “EFC/WINGS Webinar – November 8th: How Can Philanthropy Engage Around FATF Money Laundering and Terrorism Financing Policy and Implementation?”, available at: <http://wings.issuelab.org/resources/29200/29200.pdf>.

8 De Nederlandsche Bank, “Customer Due Diligence on Foundations with Respect to Terrorist Financing”, 21 June 2018, available at: <https://www.dnb.nl/en/sector-information/supervision-laws-and-regulations/laws-and-eu-regulations/anti-money-laundering-and-anti-terrorist-financing-act/customer-due-diligence-on-foundations-with-respect-to-terrorist-financing/>.

9 Global NPO Platform on FATF, above note 3.

A granular look at the drivers of financial access restrictions will be presented first, followed by the perspectives of and actions taken by NPOs, international organizations and governments to address the growing obstacles for humanitarian organizations and NPOs to secure services from financial service providers.

## Financial access restrictions faced by non-profit organizations

Restrictions experienced by humanitarian and other civil society organizations to access financial service providers also go by the term “de-risking”. De-risking is defined as the practice of financial service providers declining and exiting relationships with and closing the accounts of customers considered “high risk”. Regular delays in transferring funds to high-risk or sanctioned areas, or a bouncing back of these funds, also qualify as de-risking. Together with NPOs, money service businesses (MSBs) and correspondent banks also fall within the ambit of entities that face de-risking.<sup>10</sup>

De-risking of MSBs, such as Western Union, and correspondent banks has been researched extensively in macro-policy studies by the World Bank, amongst others.<sup>11</sup> Correspondent banks are third-party banks, who act as middlemen between different financial institutions. They provide services such as funds transfer, wire transfer and currency exchange between sending and receiving banks. They are the cornerstone of the global payment system, designed to serve the settlement of financial transactions across country borders. The decline of correspondent banks has affected the transfer of funds in support of humanitarian work, with the driver being the decisions by global banks over the last decade to tighten their operations in light of AML/CFT compliance.

10 HSC, “Queen Maxima Discusses De-Risking of NPOs”, available at: <https://www.hscollective.org/news/timeline/queen-maxima-discusses-derisking-of-npos/?acceptCookies=60a37eee04d6c>; World Bank Group and ACAMS, “Stakeholder Dialogue on De-Risking: Findings and Recommendations”, 2016, available at: <http://documents1.worldbank.org/curated/en/397411476868450473/pdf/109337-WP-StakeholderDialogueonDerisking-PUBLIC-ABSTRACT-SENT.pdf>. De-risking of NPOs documentation focuses primarily on cross-border and international payments. It should be noted that it also occurs within countries. On this issue in this empirical study carried out in Brazil, Mexico and Ireland, see Global NPO Coalition on FATF, “New HSC/ECNL Research Report: Understanding the Drivers of ‘De-Risking’ and the Impact on Civil Society Organizations”, 20 April 2018, available at: <https://fatfplatform.org/news/new-hsc-ecnl-research-report-understanding-the-drivers-of-de-risking-and-the-impact-on-civil-society-organizations/>. Financial Conduct Authority, “De-Risking: Managing Money-Laundering Risk”, 24 February 2016, available at: <https://www.fca.org.uk/firms/money-laundering/derisking-managing-risk>.

11 Bank of International Settlements Committee on Payments and Market Infrastructure, “Cross-Border Retail Payments”, February 2018, available at: <https://www.bis.org/cpmi/publ/d173.pdf>; World Bank, “Defying Predictions, Remittance Flows Remain Strong During COVID-19 Crisis”, 12 May 2021, available at: <https://www.worldbank.org/en/news/press-release/2021/05/12/defying-predictions-remittance-flows-remain-strong-during-covid-19-crisis>; World Bank, “Migration and Remittances Data”, available at: <https://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>; Global NPO Platform on FATF, “De-Risking & Financial Access”, available at: <https://fatfplatform.org/issues/over-regulation-2/>.

Studies related to the de-risking of MSBs illustrate that the volume of remittance financial flows has not been significantly affected by the de-risking of money transfer agencies or correspondent banks. This is because there has been a continual development of innovative and new transaction channels for remittances, offering remitters an opportunity to secure their financial transactions.<sup>12</sup> NPOs, largely speaking, do not have the option to resort to other banks or alternative payment channels once they have been de-risked. If an NPO is de-risked by a bank, other banks will not want to have them as a customer. Without a bank account, NPOs are unable to collect and disburse funds. The stringent compliance requirements from donors and other requirements from NPO oversight bodies concerning governance, accountability and transparency oblige NPOs to open and maintain a bank account. Transactions via payment service providers, if used by NPOs, are subject to the same if not more rigorous countering terrorism financing, AML and sanctions compliance requirements by banks. Thus, for NPOs, banks are and remain a lifeline. NPOs have resorted to using unregulated channels or carrying cash into conflict and high-risk zones, thereby increasing the probability of abuse by criminals and terrorist groups and of reputational damage.<sup>13</sup>

Due to the absence of meta-level policy studies that generate longitudinal quantitative facts and figures for the de-risking of NPOs, partly because of the costs involved, the issue has been less visible to policymakers and regulators in treasury departments. However, it has been the subject of numerous, and no less significant, smaller-scale quantitative and qualitative studies conducted by think-tanks, universities and NPOs.<sup>14</sup>

- 12 Blessing Adada Gaiya, “Issues in the Compilation and Analysis of Remittances in BPM6”, Bank for International Settlements, 17–18 February 2020, available at: [https://www.bis.org/ifc/publ/ifcb52\\_11.pdf](https://www.bis.org/ifc/publ/ifcb52_11.pdf).
- 13 Lia van Broekhoven, Vanja Skoric and Ben Hayes, “De-Risking and Non-Profits: How do You Solve a Problem That No-One Wants to Take Responsibility For?”, 11 July 2017, available at: <https://www.opendemocracy.net/en/de-risking-and-non-profits-how-do-you-solve-problem-that-n/>; Lia van Broekhoven, “Derisking and Civil Society: Drivers, Impact and Solutions”, HSC, 2018, available at: <https://www.hscollective.org/news/timeline/article-derisking-and-civil-society-drivers-impact-and-solutions/>.
- 14 The bibliography of NPOs and financial access-related reports is available upon request; see HSC website, available at: [www.hscollective.org](http://www.hscollective.org). The most significant recent publications concerning de-risking of humanitarian NPOs include amongst others: InterAction, “Detrimental Impacts: How Counter-Terror Measures Impede Humanitarian Action”, April 2021, available at: <https://www.interaction.org/wp-content/uploads/2021/04/Detrimental-Impacts-CT-Measures-Humanitarian-Action-InterAction-April-2021.pdf>; VOICE, “Adding to the Evidence: The Impact of Sanctions and Restrictive Measures on Humanitarian Action”, 29 March 2021, available at: [https://voiceeu.org/publications?string=The+impact+of+sanctions+and+restrictive+measures+on+humanitarian+action&start\\_date=&end\\_date=](https://voiceeu.org/publications?string=The+impact+of+sanctions+and+restrictive+measures+on+humanitarian+action&start_date=&end_date;); Khaleel Desai, “Vulnerable People are Paying the Price as Bank ‘De-Risking’ Undermines Humanitarian Aid”, *Islamic Relief Worldwide Blogs*, 2020, available at: <https://www.islamic-relief.org/vulnerable-people-are-paying-the-price-as-bank-de-risking-undermines-humanitarian-aid/>; Alice Debarre, “Making Sanctions Smarter: Safeguarding Humanitarian Action”, International Peace Institute, 19 December 2019, available at: <https://www.ipinst.org/2019/12/making-sanctions-smarter-safeguarding-humanitarian-action>; Sherine El Taraboulsi-McCarthy, “Counter-Terrorism, Bank De-Risking and Humanitarian Response: A Path Forward”, Overseas Development Institute, 22 August 2018, available at: <https://odi.org/en/publications/counter-terrorism-bank-de-risking-and-humanitarian-response-a-path-forward/>.

## **Financial access restrictions: the Financial Actions Task Force anti-money laundering and countering the financing of terrorism standards and banks' customer due diligence procedures**

Why do financial service providers de-risk NPOs? In theory, the goals of financial inclusion and compliance with AML/CFT standards for global financial integrity are aligned. The assumption underlying the theory is that the use of formal financial services leads to transparency and thereby to a reduction in the use of informal services or channels. AML/CFT standards stipulate that financial institutions and payment service providers are obliged entities, meaning that they are required by national and international law to report suspicious transactions of their customers to competent authorities, like the Financial Intelligence Unit. Customers that use formal banking and payment systems are thus subject to due diligence procedures with the aim of identifying terrorism financing and money laundering. Less misuse of financial resources coupled with enhanced customer due diligence (CDD) by banks should only strengthen the formal banking sector and help in meeting financial inclusion goals. However, things look very different in practice. AML/CFT standards, codified in bodies like the FATF and transposed into laws and regulations at the national level, have led instead to financial exclusion of certain classes of customer, NPOs being one.<sup>15</sup>

Banks, like other vital sectors that safeguard international financial integrity such as money transfer businesses, lawyers, trusts and company service providers, are obliged entities under the FATF standards. Analyses conducted by the Financial Intelligence Unit based on suspicious transaction reports filed provide insight and evidence for the prevention, investigation and prosecution of financial crime. Financial Intelligence Units share financial intelligence through the Egmont Group, the international network of Financial Intelligence Units and through FIU.net which is hosted by EUROPOL.<sup>16</sup> The FATF recommends that countries establish a Financial Intelligence Unit with three core functions: the collection, analysis and dissemination of information regarding money laundering and terrorism financing. In practice, Financial Intelligence Units have, in many countries, become the State authority responsible for the compliance with the FATF AML/CFT standards as a whole.<sup>17</sup>

Financial service providers are legally obliged to carry out extensive due diligence on their customers to fulfil AML/CFT compliance and sanctions-related requirements. They face large fines if they are found to be in contravention of

15 FATF website, available at: <https://www.fatf-gafi.org/>; Mark T. Nance, "Re-Thinking FATF: An Experimentalist Interpretation of the Financial Action Task Force", *Crime, Law and Social Change*, Vol. 69, 2018.

16 Egmont Group, "About the Egmont Group", 2021, available at: <https://egmontgroup.org/en>; EUROPOL, "Financial Intelligence Units – FIU.net", 7 December 2021, available at: <https://www.europol.europa.eu/about-europol/financial-intelligence-units-fiu-net>.

17 Caribbean Financial Action Taskforce, "Recommendation 29: Financial Intelligence Units", June 2021, available at: <https://www.cfatf-gafic.org/index.php/documents/fatf-40r/395-fatf-recommendation-29-financial-intelligence-units>.

any of these regulations. Many NPOs, especially but not necessarily those that work in or around conflict zones, have fallen foul of these stringent requirements. After the takeover of Afghanistan by the Taliban in September 2021, some humanitarian organizations with long years of presence in the country have resorted to using unregulated *hawala* and other informal channels to enable payments of their local staff and continue with their projects on basic service delivery such as health and education. They have had very few other alternatives in the short term, especially once their banks stopped wire transfers to the country due to the designation by the UN and the United States (US) of Taliban members in government and central bank positions.<sup>18</sup> And this, coupled with the fact that NPOs are not banks' most profitable customers, has led to de-risking. The FATF issued a statement concerning humanitarian aid to Afghanistan and the prevention of terrorism financing.<sup>19</sup>

The FATF reiterates the utmost importance of ensuring non-profit organisations (NPOs) and all other humanitarian actors can provide the vital humanitarian assistance needed in the region and elsewhere, without delay, disruption or discouragement. The FATF calls on all jurisdictions to protect NPOs from being misused for terrorist financing. This includes competent authorities conducting sustained and targeted outreach, consistent with the FATF Recommendations, while respecting human rights and fundamental freedoms.

Banks have to comply with national laws and regulations that stem from the FATF standards and the EU Anti-Money Laundering and Countering the Financing of Terrorism Directive, as well as with US and international terrorism financing-related sanctions. The latter includes the US Treasury Economic and Trade Sanctions Program and UN Security Council counterterrorism sanctions. In their CDD process for NPOs at the onboarding stage or for transaction monitoring to high-risk and sanctions countries, banks check the national AML/CFT laws, tax laws, bank supervisor guidance on terrorism financing and money laundering risks for NPOs, as well as the sanctions regimes. They do not check what Recommendation 8 of the FATF standards (the standard related to NPOs) encompasses, unless the Recommendation, with all its nuances, has been adequately transposed into national laws and regulations. Also, this rarely happens, and if it does—for example, if it is included in the guidance from the bank supervisor/s—it very seldom adequately represents the significance of the Recommendation.

FATF Recommendation 8 lays out the policy for governments to protect NPOs from terrorism financing abuse: “Governments need to regulate NPOs which a country has identified as being vulnerable to terrorist financing abuse” and emphasizes that this has to happen “through focused and proportionate

18 Information from a meeting with the Financial Intelligence Unit, compliance officers of banks and NPOs under Chatham House Rule in a European country.

19 FATF, “FATF Public Statement on the Situation in Afghanistan”, October 2021, available at: <https://www.fatf-gafi.org/publications/fatfgeneral/documents/afghanistan-2021.html>.

measures, in line with the risk based approach”. In other words, banks only need to conduct extensive due diligence on NPOs at risk, not on all NPOs.

A risk-based approach to determine which NPOs are at risk for terrorism financing abuse became FATF policy in 2016. From then onwards, NPOs were no longer considered particularly vulnerable to terrorism financing abuse. Until the revision (and since the incorporation by the FATF of counterterrorism financing recommendations in the wake of the events of 9/11), NPOs were singled out as a sector for their vulnerability to terrorism financing. The change in policy was the result of years-long engagement by the Global NPO Coalition on the FATF with the Task Force. The amendment was also supported by some FATF members as it had, in practice, caused impediments for humanitarian action and other legitimate charitable activity. NPOs had resorted to using unregulated channels for money transfers, such as money mules and hand-carrying cash, because of restrictive counterterrorism financing due diligence processes by banks. These practices were exactly the opposite of what the FATF standards were supposed to achieve: a mitigation of terrorism financing risk.

Prior to the revision, NPOs that collected and disbursed funds for “good works” were considered to be particularly vulnerable for terrorism financing abuse. Typologies of abuse included the setting up of sham organizations—organizations established with the aim of collecting and disbursing funds to support terrorist activities. Another form of abuse is the use of charitable funds by an employee in support of terrorism without the organization or co-workers being aware of this. Governments across the world interpreted this Recommendation in a way that put humanitarian and other NPOs in the spotlight. They applied a rule-based approach to prevent NPOs from becoming abused for terrorism financing. Laws were enacted and regulations put in place that affected the entire non-profit sector, without any sort of distinction made between organizations that were genuinely at risk and those that were not at all or hardly at risk for terrorism financing abuse. Humanitarian organizations that operate in risky contexts where non-State armed actors or terrorist organizations are active fell, by the very nature of their work, in the “particularly vulnerable for risk of abuse” category.

Despite the revision of Recommendation 8 very few governments, banks regulators and supervisors have revised their policies and guidance according to the revised Recommendation. They so far have shown little or no interest in the various guidance papers issued by the FATF for an adequate implementation of the Recommendation such as the recognition that zero-risk, when it comes to mitigating terrorism financing, is not feasible. Governments across the world have, wittingly and unwittingly, interpreted and implemented the Recommendation in a way which has curtailed the operational space of humanitarian and other civil society organizations. In practice the effects of a rule-based instead of a risk-based application of the Recommendation can mainly be seen in the over-regulation of NPOs through onerous registration and reporting requirements and the overzealous application of due diligence protocols by banks when accepting NPOs as their clients or when transferring money to high-risk areas. In countries led by governments that distrust independent civil society, Recommendation 8 has been

used as a pretext to clamp down on humanitarian, human rights or anti-corruption organizations. In these countries Recommendation 8 has become another mechanism in the playbook of governments to push back on civil society that oftentimes speaks truth to power by labelling them as “foreign agents” or “terrorists”. A few recent examples include Serbia, Uganda, Turkey and Israel.<sup>20</sup>

The FATF evaluates countries for compliance with their forty AML/CFT standards every eight to nine years. A national money laundering and terrorism financing risk assessment in which the NPO sector is featured or a separate, NPO-focused, sectoral risk assessment is the basis on which the FATF assesses countries for compliance with Recommendation 8 and for the effectiveness of the measures taken to prevent NPOs at risk from being abused for terrorism financing.<sup>21</sup> The FATF country evaluations or assessments and their outcome determine a country’s international financial standing. Repetitive non-fulfilment with and failure to fix shortcomings of the standards places a country on the FATF grey- or blacklist, and impacts its index and credit ratings, influencing trade and investment prospects. Currently more than 200 countries and jurisdictions are committed to implementing the FATF standards.

The practice of countries conducting a risk assessment of the non-profit sector is only slowly gaining ground. Countries, by and large, have little understanding on how to conduct such an assessment. Methodologies developed to help countries implement an NPO-specific risk assessment by a United Kingdom (UK) consultancy firm and the World Bank both aim to stress the importance of conducting such an assessment in collaboration with civil society

- 20 On Serbia, see United Nations Office of the High Commissioner for Human Rights, “Serbia’s Anti-Terrorism Laws Being Misused to Target and Curb Work of NGOs, UN Human Rights Experts Warn”, 11 November 2020, available at: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=26492&LangID=E>; on Uganda, see Kenneth Kazibwe, “Govt Unfreezes Accounts of NGOs Accused of Terrorism Funding”, *NilePost*, 27 February 2021, available at: <https://nilepost.co.ug/2021/02/27/govt-unfreezes-accounts-of-ngos-accused-of-terrorism-funding/>; on Turkey, see Jonathan Spicer, “Finance Watchdog ‘Grey Lists’ Turkey in Threat to Investment”, *Reuters*, 21 October 2021, available at: <https://www.reuters.com/business/finance-watchdog-grey-lists-turkey-threat-investment-2021-10-21>; on Israel, see United Nations Security Council, “Identical Letters Dated 1 November 2021 From the Permanent Representative of Israel to the United Nations Addressed to the Secretary-General and the President of the Security Council”, 1 November 2021, available at: <https://undocs.org/pdf?symbol=en/S/2021/915>; and United Nations Office of the High Commissioner for Human Rights, “Israel’s ‘Terrorism’ Designation an Unjustified Attack on Palestinian Civil Society – Bachelet”, 26 October 2021, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27708&LangID=E>.
- 21 HM Treasury and Home Office, UK, “National Risk Assessment of Money Laundering and Terrorist Financing 2017”, October 2017, available at: <https://www.gov.uk/government/publications/national-risk-assessment-of-money-laundering-and-terrorist-financing-2017>; Henk van der Veen, Lars Franciscus Heuts and Erik Leertouwer, “Dutch National Risk Assessment on Terrorism Financing 2019”, WODC, November 2020, available at: [https://www.researchgate.net/publication/348382454\\_Dutch\\_National\\_Risk\\_Assessment\\_on\\_Terrorist\\_Financing\\_2019](https://www.researchgate.net/publication/348382454_Dutch_National_Risk_Assessment_on_Terrorist_Financing_2019); German Federal Ministry of the Interior, Building and Community, “Sectoral Risk Assessment: Terrorist Financing Through (the Abuse of) Non-Profit Organisations in Germany 2020”, 2 March 2021, available at: [https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2020/sectoral-risk-assessment.pdf?\\_\\_blob=publicationFile&v=5](https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2020/sectoral-risk-assessment.pdf?__blob=publicationFile&v=5); Global NPO Coalition on FATF, “Stories: Tunisia: Lessons of a Successful Multi-Stakeholder Engagement Process”, 2021, available at: <https://fatfplatform.org/stories/tunisia-lessons-in-a-successful-multistakeholder-engagement-process/>.

organizations. Without an NPO sectoral risk assessment, the FATF evaluation or assessment team is not able to assess the country for an effective compliance with Recommendation 8. If a country has not conducted a sectoral risk assessment, the evaluators will, under the current round of evaluations, rate the country as non-compliant for Recommendation 8, forcing the country to perform such an assessment in the follow-up of the evaluation.<sup>22</sup> The FATF does not prescribe how a country should carry out a risk assessment. It does, however, stress that a money laundering and terrorism financing risk assessment should be conducted regularly to ensure that the laws, regulations and practices to mitigate these risks are sufficiently robust to deal with evolving or new threats and vulnerabilities.

The issue of de-risking on NPOs has been given insufficient attention in risk assessments so far. Notable exceptions are countries like Tunisia and Kosovo where members of the Global NPO Coalition have been actively involved in the risk assessment exercise. The shadow NPO and terrorism financing risk assessment conducted by the German NPO umbrella organization, VENRO, was incorporated in the German 2021 National Risk Assessment.<sup>23</sup> A report by the Centre for Global Policy published in 2019, which analysed FATF country evaluation reports over the preceding four years, concluded that FATF assessors hardly ever address the issue of NPO de-risking. The main reason lies in the phrasing of the immediate outcomes in the FATF evaluation methodology, which do not mention de-risking as a consequence of the interpretation and implementation of Recommendation 8 by governments. These immediate outcomes, as formulated by the FATF, guide the assessment team during the FATF Mutual Evaluation Review of a country.<sup>24</sup> In the report, the author recommends that questions concerning NPO de-risking should be incorporated in assessor training and training manuals/modules produced by the FATF.<sup>25</sup> Awareness of FATF evaluators around the drivers of de-risking of humanitarian and other civil society organizations could lead to a critical reflection about terrorism financing risk guidance from bank regulators and supervisors to financial service providers. If the guidance does not reflect the spirit of Recommendation 8, and is not based on an inclusive NPO risk assessment,

22 If a country has performed an assessment that concludes that the entire sector is at risk for terrorism financing and has been broadly regulated to prevent abuse, the evaluators will criticize the methodology applied for having been insufficiently specific to determine which sub-set is at risk. This happened to Australia in their country evaluation in 2014. See FATF and Asia/Pacific Group on Money Laundering (APG), “Terrorist Financing and Financing of Proliferation”, in *Anti-Money Laundering and Counter-Terrorist Financing Measures – Australia, Fourth Round Mutual Evaluation Report*, FATF, Paris and APG, Sydney, 2015, available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/4-Terrorist-Financing-and-financing-proliferation-Mutual-Evaluation-Australia-2015.pdf>.

23 German Federal Ministry of the Interior, Building and Community, above note 21.

24 FATF, “FATF Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems”, November 2020, available at: <https://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html>.

25 Michael Pisa, “Does the FATF Help or Hinder Financial Inclusion? A Study of FATF Mutual Evaluation Reports”, Center for Global Development, 23 May 2019, available at: <https://www.cgdev.org/publication/does-financial-action-task-force-fatf-help-or-hinder-financial-inclusion-study-fatf>.

resulting in risk aversion by banks to provide services to NPOs, the FATF could decide to take this omission into account when grading a country for compliance with the standard.

## **Non-profit organization due diligence to address risk associated with terrorism and sanctions**

The intricate regulatory system to prevent terrorism financing that has evolved since 9/11 has prompted some humanitarian organizations to design their own due diligence methods to address the risks associated with terrorism and sanctions. The application of their own assessment methods to mitigate the potential risk of their activities, partnerships, and delivery of services in high-risk areas could, in their view, complement the due diligence on terrorism financing and sanctions carried out by banks and donor governments. Being able to show financial service providers and donors that one is aware of terrorism and terrorism financing risks, and of requirements posed by sanctions regimes, and having practical tools to mitigate these risks, such as the vetting of service delivers and local partners, could contribute to the comfort that banks and donors would need for their own due diligence processes. This assumption has proved to be correct, as banks and donors not only value organizational risk mitigation measures put in place by NPOs, but increasingly a certification from a fundraising or NPO regulator that validates the quality of such risk mitigation is becoming obligatory in order to open a bank account.<sup>26</sup>

NPOs such as the humanitarian organization the Norwegian Refugee Council have developed a risk management toolkit for addressing the different risks associated with terrorism.<sup>27</sup> The Start Network is a group of humanitarian organizations which, in collaboration with TechSoup, and the UK Foreign, Commonwealth and Development Office, has developed a self-assessment tool for humanitarian and development organizations which encompasses dimensions of governance, personnel management and financial (fraud, corruption) related risks. The application of the tool facilitates access to funding from governments and other donors. Most donors require grantees to comply with counterterrorism, including countering terrorism financing, requirements. The self-assessment tool allows for an inclusion of risks associated with terrorism financing and other financial crime risks that would help banks facilitate the necessary due diligence for NPOs.<sup>28</sup> Lexis Nexis (a company specializing in data analytics supporting

26 Accountancy Van Morgen, “Rabobank Must Accept Palestinian Aid Foundation to Provide Auditor’s Report”, 3 September 2021, available at: <https://www.accountancyvanmorgen.nl/2021/09/03/rabobank-moet-palestijnse-hulpstichting-als-klant-houden-door-accountantsverklaring/>.

27 Norwegian Refugee Council, “Toolkit for Principled Humanitarian Action: Managing Counterterrorism Risks”, 27 May 2020, available at: <https://www.nrc.no/toolkit/principled-humanitarian-action-managing-counterterrorism-risks/>.

28 The self-assessment tool has not yet been made public; see Start Network, “A New Era of Humanitarian Action”, available at: <https://startnetwork.org/>. TechSoup presented the tool in this recording during Humanitarian Networks and Partnerships Week (HNPW): Islamic Relief Worldwide, “HNPW:

compliance, among others) and a group of NPOs are developing a risk compliance assessment tool to address AML/CFT requirements that empowers NPOs to become active contributors to compliance, thereby mitigating the risks associated with bank customer and extended CDD procedures, leading to de-risking. The Association of Certified Anti-Money Laundering Specialists (ACAMS), a network of specialists dedicated to fighting financial crime, and The Graduate Institute, Geneva (IHEID) have produced risk compliance guidance for humanitarian organizations active in Syria.<sup>29</sup>

These developments show that NPOs have had to spend more time on terrorism- and terrorism financing-related compliance to be able to provide comfort to donors and financial institutions. That this has come with incrementally more cost is apparent from studies like the one commissioned by Voluntary Organisations in Cooperation in Emergencies (VOICE), an NPO network promoting effective humanitarian aid worldwide. Titled “Adding to the Evidence”, and launched in 2021, it addressed the impact of sanctions and restrictive measures on humanitarian action. The aim was to obtain a clearer understanding of the way VOICE members have been affected by sanctions and counterterrorism (financing) measures and what actions they have undertaken to mitigate these measures. One of the many significant findings of the study was that resources that could have been otherwise spent on the organization’s mandate and mission now have to be dedicated to providing evidence to assuage banks and donors that it manages risks.<sup>30</sup>

The effort involved in understanding and complying with the non-risk-based requirements of financial service providers and (intermediate) donors has resulted in a disproportionate burden of proof being placed on smaller organizations. They have fewer resources to deal with these onerous requirements, while ironically, it is they and their local partners who are often the ones operating on the frontlines of crises. De-risking is undermining localization of humanitarian aid objectives as local organizations are not in a position to comply with these burdensome requirements.<sup>31</sup>

## **De-risking of non-profit organizations: recognition by international organizations, donors and governments**

International bodies like the International Monetary Fund, the World Bank and the FATF have been noting the practice of extended CDD by banks as a driver

Financial De-risking & Humanitarian Impact – Protecting NGOs Ability to Support the Vulnerable”, available at: <https://www.youtube.com/watch?v=NOzLXamQ2g8>.

29 Global Governance Centre at The Graduate Institute, Geneva, “Compliance Dialogue on Syria-Related Humanitarian Payments”, available at: <https://www.graduateinstitute.ch/research-centres/global-governance-centre/compliance-dialogue-syria-related-humanitarian-payments>; Justine Walker, “Risk Management Guide for Sending Humanitarian Funds to Syria and Similar High-Risk Jurisdictions”, May 2020, available at: [https://ec.europa.eu/info/sites/default/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/200526-risk-management-guide\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/200526-risk-management-guide_en_0.pdf).

30 VOICE, above note 14.

31 K. Desai, above note 14.

for the de-risking of NPOs. The FATF has issued guidance on CDD for financial service providers with the aim of avoiding the wholesale de-risking of specific customers.<sup>32</sup> In their 2018 report to the Group of 20 (G20) Member States, the Task Force stressed that de-risking remains a challenge and that loss of access to banking services for some remittance service providers and NPOs remains a key concern for the global community.<sup>33</sup>

De-risking remains a challenge for the countries affected. Loss of access to banking services for some remittance service providers and non-profit organizations remains a key concern for the global community. This has a wider impact on financial inclusion and efforts of governments and business sector to provide essential services to those who need help around the world.

When the COVID-19 pandemic started, the FATF issued a statement in support of the work that NPOs and charities do, and the need for charitable donations to be processed without disruption. It stressed that NPO money transfers should proceed expeditiously through legitimate and transparent channels without disruption. The Task Force also emphasized that their standards do not require all NPOs to be considered high risk and most NPOs carry little or no risk for terrorism financing.<sup>34</sup>

This global public health emergency has highlighted the vital work of charities and non-profit organizations (NPOs) to combat COVID-19 and its effects. (...). The aim of the FATF Standards is not to prevent all financial transactions with jurisdictions where there may be high ML/TF [money laundering and terrorism financing] risks, but rather to ensure these are done through legitimate and transparent channels and money reaches its legitimate intended recipient. National authorities and financial institutions should apply a risk-based approach to ensure that legitimate NPO activity is not unnecessarily delayed, disrupted or discouraged. FATF encourages countries to work with relevant NPOs to ensure that much needed aid is getting to its intended recipients in a transparent manner.

This year, the Task Force has initiated a workstream that addresses the unintended consequences of the AML/CFT standards. De-risking of NPOs and financial inclusion are topics under review, as are the suppression of NPOs and human rights. The workstream is led by the Vice-President of the FATF and is part of FATF Plenary discussions, the forum where Member States discuss strategic issues. The HSC is co-chair of the Global NPO Coalition of the FATF and, in that capacity, has coordinated and submitted the Coalition's submissions to the workstream. The first phase of the workstream (up to June 2021) is a stocktaking exercise on trends and patterns regarding the topics under review, which will be followed by a second phase where options for solutions and

32 FATF, "FATF Guidance: Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion, With a Supplement on Customer Due Diligence", available at: <http://www.fatf-gafi.org/media/fatf/Updated-2017-FATF-2013-Guidance.pdf>.

33 FATF, "FATF Report to the G20 Leaders' Summit", November 2018, para. 32, available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/Report-G20-Leaders-Summit-Nov-2018.pdf>.

34 FATF, "Statement by the FATF President: COVID-19 and Measures to Combat Illicit Financing", available at: <https://www.fatf-gafi.org/countries/a-c/china/documents/statement-covid-19.html>.

mitigating measures will be compiled, analysed and discussed. The Global NPO Coalition is the liaison for NPO submissions to and discussions with the FATF Secretariat and the members of the project team, which includes Member States and observers. The US Treasury and the World Bank are the penholders on the streams on de-risking of NPOs and financial inclusion, respectively.<sup>35</sup>

A World Bank employee official blog post recognized the paradox of the negative impact of AML/CFT standards on the operational space of NPOs: “(.....) a cruel irony if, in seeking to combat terrorist financing, financial institutions were simultaneously harming those best placed to address the root causes of terrorism (...)”. The actions by banks to de-risk NPOs which leads to their financial exclusion, and the remarkably persistent idea that all NPOs pose a high risk for terrorism financing, is counterproductive to humanitarian and other actions that intend to help those harmed by terrorist groups:<sup>36</sup>

If you’ve opened a bank account in the last few years, you likely had to answer a bunch of more or less intrusive questions about yourself, your background and why you wanted to open the account. Annoying, but part and parcel of Anti-Money Laundering/Combating the Financing of Terrorism (“AML/CFT”) rules that all banks in all parts of the world are subject to. The ostensible purpose is to enable banks to prevent bad actors using the financial system to launder their funds and, where bad actors are not identified at entry, to detect any suspicious financial activity and provide appropriate background to competent authorities. (Whether they are successful in this endeavour is another question.) (...). One of the sectors particularly affected are non-profit organizations (NPOs). This is an unfortunate consequence of the mistaken and remarkably persistent idea that all NPOs pose a high AML/CFT risk. (...). It is precisely the peacebuilding and humanitarian work that NPOs do, that helps those harmed by terrorist groups and undermines the terrorist narrative. It would be a cruel irony if, in seeking to combat terrorist financing, financial institutions were simultaneously harming those best placed to address the root causes of terrorism (...).

At the country level, too, governments such as those of the UK and Germany underscore the counterproductive effects of bank de-risking on NPOs, stressing in their National Risk Assessments the negative consequences of NPO de-risking on the beneficiaries of humanitarian and other civil society organizations. The German government approaches the issue as a donor government, and the negative consequences de-risking has on funds for beneficiaries which have to then be disproportionately used for risk mitigation to comply with terrorism financing and sanctions rules. The German government also emphasizes the reputational risk that NPOs may suffer, leading to a drop in public financial support for the causes they espouse.<sup>37</sup>

35 FATF, “Mitigating the Unintended Consequences of the FATF Standards”, available at: <https://www.fatf-gafi.org/publications/financialinclusionandnpoissues/documents/unintended-consequences-project.html>.

36 E. van der Does de Willebois, above note 6.

37 German Federal Ministry of the Interior, Building and Community, above note 21, p. 49.

If an NPO is abused as a cover for terrorist financing, its reputation can suffer greatly as a result. If the public loses trust in the integrity of an NPO, this may result in loss of income through donations or government funding. At the same time, pressure may grow for additional monitoring mechanisms to be introduced to protect against terrorist financing, making business processes more complicated and raising the administrative costs of preventive measures. Loss of trust can also destroy relationships with institutions in the financial sector. Loss of support from banks can prevent an NPO from achieving its aims and severely compromise its success. (...). For donors, the abuse of an NPO represents a loss because money they donate is not used as they intended. People who work for the NPO as employees rather than volunteers may lose their jobs. If the NPO's business is compromised, this may be to the disadvantage of the very people the NPO is trying to help (the target group). If aid deliveries or financial support are no longer forthcoming, this could have serious consequences for those in need such as the deterioration of health.

The UK government approaches the issue from an angle of risk, which increases if humanitarian and other civil society organizations have to resort to transferring funds via unregulated channels. This undermines not only the purpose of financial crime regulations but also the credibility, transparency and accountability of donor government funding. Aid funds may ultimately end up in the wrong hands if NPOs continue to experience difficulty with accessing formal banking services:<sup>38</sup>

In recent years, in some jurisdictions many charities have experienced transaction delays or denials or account closures by their banks due to concerns around terrorist financing risk. If this trend persists, de-risking may have the effect of pushing charities out of more intensely regulated areas of activity and into higher risk ways of working, such as transacting through physical cash or unregulated MSBs, thereby increasing the risks in the sector. The potential use of physical cash, particularly in high-risk jurisdictions, may make it challenging to ensure that funds are reaching the intended recipients and not directly or indirectly falling into the hands of terrorists, and presents a higher risk for charities operating this way.

## **Key conditions needed for and enabling stakeholder dialogues**

The recognition by international organizations and governments that humanitarian and other civil society actions are hindered by de-risking, coupled with studies about the impact of financial access restrictions on NPOs, as well as NPOs collectively and coherently sounding the alarm bell about the impact of de-risking on their work and daily practice, were key enablers for multi-stakeholder dialogue processes or roundtables (or stakeholder dialogues, in short) being set up to address the issue. These dialogues differ in their mandates, missions and goals. Some are still ongoing, others have been ended and others may soon be set up.

38 HM Treasury and Home Office, UK, above note 21, para. 12.8.

The UK Trisector Working Group, ongoing since 2014, was established by the Ministry of Home Affairs to address the impact of counterterrorism and counterterrorism financing measures on NPOs working internationally. It is a mechanism for dialogue between government, NPOs and financial institutions for resolving practical issues arising for international NPOs working in high-risk jurisdictions and for banks that provide the financial services to facilitate that work. Besides mounting evidence about non-profit de-risking and a growing critique from a wide representation of the sector that the issue needed to be addressed by the government and by banks, an important external enabler was the pressure that came from a report by an independent reviewer of terrorism legislation. The report recommended that a dialogue needed to be initiated to address the financial access restrictions being faced by NPOs. The dialogue needed to explore how to implement anti-terrorism laws without unnecessarily prejudicing the ability of NPOs to deliver humanitarian aid and engage in peacebuilding in parts of the world where designated and proscribed groups are active.<sup>39</sup> The Working Group has four workstreams encompassing key thematic areas including: research and innovation, legislative guidance, operational guidance, and communications, and is underpinned by a set of non-binding principles that provide a basis for dialogue and collaboration, and for any guidance or measures produced by the Working Group.

The World Bank–ACAMS Financial Access Stakeholder Dialogue (2017–2018) set out to identify practical solutions to address de-risking of humanitarian and civil society organizations in the US with activities outside the country.<sup>40</sup> A report by the Charity & Security Network provided quantitative and convincing evidence, illustrating that two-thirds of all US NPOs that worked abroad experienced financial access problems, from transfer delays to the closing of accounts.<sup>41</sup> In earlier meetings at the World Bank about the negative consequences of de-risking for money transfer businesses and correspondent banks when it came to the achievement of the Sustainable Development Goals, banks and NPOs stressed the issue of de-risking for their work. The report and these events eventually led to a stakeholder dialogue in which government entities, regulators and NPOs were invited to participate. The World Bank took on the role of convener and facilitator of a series of meetings to identify solutions which were developed along four workstreams: facilitating information and understanding of NPOs for government and bank regulators, exploring technical

39 David Anderson QC, Independent Reviewer Of Terrorism Legislation, “Terrorism Prevention and Investigation Measures in 2012”, March 2013, available at: [https://www.legislationline.org/download/id/4605/file/terrorism%20prevention%20and%20investigation%20measures%20in%202012\\_independent%20reviewer\\_2013.pdf](https://www.legislationline.org/download/id/4605/file/terrorism%20prevention%20and%20investigation%20measures%20in%202012_independent%20reviewer_2013.pdf).

40 World Bank Group and ACAMS, “Stakeholder Dialogue on De-Risking: Supporting Financial Access for Humanitarian Organizations and Charities”, 2017, available at: <https://documents1.worldbank.org/curated/pt/538271487141265874/pdf/112804-WP-SupportingFinancialAccessforHumanitarianOrganizationsandCharities-PUBLIC-ABSTRACT-SENT.pdf>.

41 Sue E. Eckert, Kay Guinane and Andrea Hall, “Financial Access for U.S. Nonprofits”, Charity & Security Network, February 2017, available at: [https://www.charityandsecurity.org/system/files/FinancialAccessFullReport\\_2.21%20\(2\).pdf](https://www.charityandsecurity.org/system/files/FinancialAccessFullReport_2.21%20(2).pdf).

solutions to facilitate NPO transfers, clarifying regulatory requirements and risk guidance, and enhancing understanding, communication, and outreach about the issue and the solutions being developed. The dialogue had a fixed project term with set objectives that were determined in collaboration with the philanthropic donor. The dialogue may not have delivered fully on the perhaps high expectations that some of the participants may have had at the start of the project. The Charity & Security Network and ACAMS produced a guidance paper for NPOs about challenges that financial services providers and civil society organizations encounter when applying financial crime rules and how to mitigate these obstacles.<sup>42</sup> Another positive effect of the dialogue was the interest in the issue by influential policy research institutes like the Center for Global Development, which resulted in studies that helped showcase the issue internationally as well as raise awareness among US government policymakers that de-risking was an international phenomenon that required international solutions. The drawback was the lack of interest on the part of bank regulators in addressing the bank supervisors' guidance and manual concerning NPOs, which posit that NPOs are high risk for terrorism financing. The dialogue took place in a political context (during the then Trump administration) that was not conducive to addressing financial access restrictions of humanitarian and other NPOs. On the contrary, the US government of the time, also in its capacity as president of the FATF in 2018–2019, imposed more anti-terrorism-related sanctions, leading to further restrictions for humanitarian action. At the time of writing, a new stakeholder dialogue in the US has been initiated by the Center for International and Strategic Studies with support from the United States Agency for International Development.

At the start of 2018, the World Bank, together with the Dutch Ministry of Finance and the HSC, organized a first international stakeholder dialogue in The Hague as part of the understanding, communication and outreach workstream. The objective was two-fold: outreach to relevant European institutions, European Member States and international stakeholders like the FATF about the usefulness of this type of dialogue to help solve financial access restrictions, and showcasing to the stakeholders that the drivers and consequences of bank de-risking needed to be addressed at national and international levels as these are intimately linked in terms of policy, regulation and operations. The international stakeholder dialogue offered up the opportunity for the Netherlands Stakeholder Roundtable, which had been established and co-convened by the Ministry of Finance and the HSC since 2017, to boost its own objectives. The international dialogue resulted in the formalization of the Dutch Stakeholder Dialogue in 2019, which is underpinned by a formal agreement in which the background, objectives, expected outcomes, roles, responsibilities, resources required and commitments of the participating organizations, the Ministries of Finance and Foreign Affairs, the

42 Consortium for Financial Access, "Banking Nonprofit Organizations – The Way Forward", Charity & Security Network, June 2019, available at: [https://www.moneylaundering.com/wp-content/uploads/2019/06/ACAMS.Report.NPOs\\_060119.pdf](https://www.moneylaundering.com/wp-content/uploads/2019/06/ACAMS.Report.NPOs_060119.pdf).

Dutch Banking Association and the HSC, are specified. The Dutch Roundtable is characterized by its commitment to addressing de-risking-related issues that affect a wide range of civil society organizations, from small voluntary foundations with a social mission to large multi-mandated organizations. Due to the COVID-19 pandemic, a public launch of the Roundtable had to be postponed.<sup>43</sup>

More recently, the dialogue between the French government, the French National Bank, banks and NPOs in the country (ongoing since 2020) was established with the impact of the FATF standards and international sanctions on humanitarian actors in mind. The Swiss government, ACAMS, the EU and the IHEID co-convene the Syria Risk Compliance Dialogue (2019–2020) and the ACAMS International Sanctions Compliance Task Force—a humanitarian technical dialogue workstream (2020–ongoing)—both focus on the impact of international sanctions on the ability of humanitarian actors to access financial services in sanctioned and high-risk countries. The German Ministry of Finance and VENRO, a membership organization of humanitarian and multi-mandated NPOs, are currently exploring a stakeholder dialogue to address the de-risking of NPOs, and Swedish NPOs have informed the HSC that there is interest from the Swedish International Development Cooperation Agency and a number of Swedish NPOs for a multi-stakeholder roundtable to discuss obstacles in the transfer of humanitarian funds to Syria.

Two country dialogue processes in North Macedonia and Kosovo, facilitated by members of the Global NPO Coalition on the FATF, focus specifically on the impact of the FATF standards on civil society banking access in these countries. A similar process is planned for Tunisia.

Moreover, the HSC, the International Center for Not-for-Profit Law network and Islamic Relief Worldwide have co-convened—in collaboration with local NPO colleagues, commercial banks and government delegates—side events at the G20 through the Civil Society 20 (C20) mechanism in Buenos Aires in 2018, Osaka in 2019 and Riyadh in 2020 (the last, virtually). The connection with the G20 was made to place the issue of de-risking of NPOs on the agenda of the Global Partnership for Financial Inclusion, an inclusive platform for all G20 countries, interested non-G20 countries and relevant stakeholders to carry forward work on financial inclusion, including implementation of the G20 Financial Inclusion Action Plan, endorsed at the G20 Summit in Seoul.<sup>44</sup>

43 Netherlands Ministry of Finance, World Bank Group and HSC, “International Stakeholder Dialogue: Ensuring Financial Services for Non-Profit Organizations”, 15 February 2018, available at: [https://fatfplatform.org/assets/Final-Report\\_Feb-15.pdf](https://fatfplatform.org/assets/Final-Report_Feb-15.pdf) and at: [https://www.hscollective.org/assets/Final-Report\\_Feb-15.pdf](https://www.hscollective.org/assets/Final-Report_Feb-15.pdf).

44 Global NPO Coalition on FATF, “High-Level Discussion on De-Risking, Side Event at G20 Summit”, 11 December 2018, available at: <https://fatfplatform.org/news/high-level-discussion-on-de-risking-side-event-at-g20-summit/>; Global NPO Coalition on FATF, “C20 Japan: Financial and Security Constraints for CSOs”, 14 May 2019, available at: <https://fatfplatform.org/news/5122-2/>; HSC, “C20 Panel on the Financial Integrity/Financial Inclusion Conundrum”, 11 November 2020, available at: <https://www.hscollective.org/news/timeline/c20-panel-on-the-financial-integrityfinancial-inclusion-conundrum/>; Global Partnership for Financial Inclusion, “G20 2020 Financial Inclusion Action Plan”, October 2020, available at: <https://www.gpfi.org/sites/gpfi/files/sites/default/files/G20%202020%20Financial%20Inclusion%20Action%20Plan.pdf>.

The make-up of the aforementioned stakeholder dialogues may be different in terms of localization (national, regional or international), ownership, convening, visibility, frequency, participation (types of NPOs, government departments, financial institutions), and specific issues discussed, but they have two things in common: (1) all three requisite sectors have to take part: government, financial institutions and NPOs; and (2) participants must commit to identifying solutions that are tangible and feasible within the legal and regulatory frameworks. The participation in the dialogues is voluntary and based on an intrinsic motivation to collectively help solve the problem.

In the stakeholder dialogues mentioned in this article, government, financial institutions and NPOs have all been present. The crux to developing solutions to help resolve financial access restrictions lies in the participation of and contribution by each one of these stakeholders. All three have a role to play. The roles come with different responsibilities. The key responsibility lies with governments, and the intergovernmental organizations they are part of, in their capacity to adapt or eventually change financial crime policies. This particular stakeholder is best represented by the different departments, who need to work together to help resolve the issue. As a rule, the ministries of Finance, International Development Cooperation and Foreign Affairs need to be present given they hold responsibility for policies that regulate the financial sector, determine donor support and decide on the implementation of terrorism-related sanctions. It remains problematic in terms of the development of solutions that the mandates and policies of the different ministries are, in practice, difficult to reconcile. For example, there is, as a rule, policy incoherence between government donor policy in support of humanitarian action grounded in humanitarian principles, and policies that support the prevention of terrorism and terrorism financing, aiming to prevent terrorist actions. Despite the FATF guidance that zero risk does not exist, that most NPOs do not pose a risk for terrorism financing, and that facilitating transfers for humanitarian action through regulated channels is important to prevent risk of abuse, donor governments have, overall, remained very cautious when exploring solutions that NPOs would like to see implemented, such as humanitarian exceptions for transfers to high-risk countries. Some governments provide so-called “letters of comfort” to banks to facilitate humanitarian payments to high-risk and sanctioned countries. This is as far as most governments want to go in terms of taking on a shared responsibility for complying with counterterrorism financing and sanctions-related rules.

Stakeholder dialogues are helpful as they bring different government departments to the table, who are then encouraged to have an inter-departmental conversation about the issue and to start thinking about ways of reconciling conflicting policies that hinder the development of solutions. A key stakeholder is the Netherlands Central Bank, the country’s monetary policy regulator and supervisor of financial institutions. It has proven hard but not impossible to convince this institution to take part in the stakeholder dialogues. It will more often than not stress its independent position concerning the oversight of banks,

and likely find discussions with banks about the need for more precise guidance from them about NPOs at risk uncomfortable to a degree.

The participation and commitment of international banks, who may also perform a role as a correspondent bank, are prerequisites for success in these stakeholder dialogues. These banks provide the infrastructure for payments within and across borders. Banks have different departments, ranging from compliance to financial crime to those focusing on charitable clients, that need to work together to prevent the unnecessary de-risking of NPOs. Banks with a charity department perform better on providing services to humanitarian and other civil society organizations. However, they often mandate significant financial thresholds for NPOs to be able to access the services of a dedicated relationship or account manager, meaning that smaller organizations get left out.<sup>45</sup> Due diligence on high-risk clients costs banks, leaving smaller organizations dependent on outsourced customer services for their onboarding and transaction services. These services typically have very little knowledge about civil society organizations. The result is that smaller NPOs, especially those with activities that customer services are not familiar with or that are implemented in high-risk countries, are de-risked. This issue has been raised in all the stakeholder dialogues showcased in this article. Banks are at liberty to refuse as clients organizations they deem to be too costly in terms of compliance for the revenue they will accrue. However, the Roundtable in the Netherlands resulted in one bank starting an internal discussion on whether refusing services to civil society organizations would not be in contravention of the bank's implementation of the UN Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises.<sup>46</sup>

With regard to delays of transfers for larger humanitarian organizations to high-risk or sanctioned countries, the discussions in the stakeholder dialogues revolve around the need for solutions that would prevent correspondent banks in the US that facilitate international US dollar transactions from carrying out enhanced due diligence on customers. It is unlikely that a solution will be reached within the current system where the regulators and supervisors of US financial institutions hold authoritative regulatory and judicial powers.

The participation of a diverse group of NPOs is of importance to address the different problems that are experienced and to develop solutions that are adequate for all. A growing number of NPOs, especially those operating in high-risk areas, have to deal with stringent financial crime-related requirements from their banks and donors. They have a responsibility to show their supporters and their financial service providers that the financial support for their activities does

45 Netherlands Ministry of Finance, World Bank Group and HSC, above note 43.

46 See HSC, "New Report: A Business and Human Rights Perspective on Bank De-risking of Non-Profit Clients", 2021, available at: <https://www.hscollective.org/news/timeline/new-report-a-business-and-human-rights-perspective-on-bank-de-risking-of-non-profit-clients/>; and NYU Paris EU Public Interest Clinic, "Bank De-Risking of Non-Profit Clients: A Business and Human Rights Perspective", June 2021, available at: [https://www.hscollective.org/assets/Uploads/NYU-HSC-Report\\_FINAL.pdf](https://www.hscollective.org/assets/Uploads/NYU-HSC-Report_FINAL.pdf).

not contribute to terrorism or money laundering. They also have a right to carry out their mission. Stakeholder dialogues, if executed in a participatory way, could provide a space where the dilemmas and challenges around this oftentimes precarious balance can be openly and safely discussed. In the UK, within the Trisector Working Group, this type of discussion has, as mentioned, resulted in workstreams that focus on legislative and operational guidance.

Larger organizations that are overall better resourced to carry out due diligence requirements, and have access to banking or other services that facilitate the navigation of the complex regulatory landscape, may be well positioned to support smaller organizations that operate in environments where non-State armed actors and designated groups are active. What we often see, however, is larger organizations transferring the risk down the chain to their sub-contracted, smaller partners working on the frontline. The intermediate donor is not always willing to help the sub-contracted partners with banking access. This carrying over or down-streaming of risk, instead of the sharing of it between NPOs, and between them and governments and banks, is an item that is regularly discussed in the stakeholder dialogues, with very little progress made so far.<sup>47</sup>

It may be too early to conclude which stakeholder dialogues have so far accomplished results that have contributed to an actual alleviation of the de-risking problems experienced by NPOs. Two types of consultations can be distinguished on both sides of the spectrum: international dialogues focused on technical solutions and national dialogues focused on legal, regulatory, practical and innovative solutions.

## International and national stakeholder dialogues

The international technical dialogue to address humanitarian compliance with sanctions regimes requirements

The dialogue has a specific set of objectives that need to be achieved within a specific timeframe. The expected outcome is a set of tools or guidance that humanitarian organizations can apply to facilitate compliance with CFT and broader sanctions requirements based on government sanctions and CFT policies, laws and regulations. The focus is on larger humanitarian organizations with the expertise and resources to develop risk compliance methodologies. Through the course of the dialogue, a common understanding is expected to be developed between NPOs, regulatory authorities, donor governments, and banks around ways to

47 Duke Law and Women Peacemakers Program, “Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security”, March 2017, available at: <https://law.duke.edu/sites/default/files/humanrights/tighteningpursestrings.pdf>; Gender, Peace & Security Working Group of WO=MEN Dutch Gender Platform and HSC, “Protecting us by Tying our Hands: Impact of Measures to Counter Terrorism Financing on Dutch NGO’s Working on Women’s Human Rights and Gender Equality”, April 2019, available at: <https://www.hscollective.org/assets/Uploads/2019-04-Protecting-us-by-tying-our-hands.pdf>.

collaborate to enable the delivery of humanitarian aid to populations in need in high-risk and sanctioned countries. Additionally, it discusses existing exceptions and support mechanisms by donor governments to enable financial flows to these communities.

The dialogue addresses restrictions for a limited number of countries based on which generic guidelines are developed. It is co-convened by recognized and trustworthy experts on the issue and a donor government(s) that is committed to identifying concrete and tangible solutions. The co-conveners are able to tap into their networks to ensure that the best possible group of donor and government representatives, regulatory authorities, international policymakers, affected NPOs and representatives of financial institutions participate. Participants commit to investing time in preparation, discussions and reviewing draft versions of the guidance. They agree to submitting real-life cases, which are then sanitized and used as workshop material in order to provide a better understanding of the workarounds needed to navigate the complex legal and regulatory requirements. This dialogue is premised on the understanding that AML/CFT frameworks and sanctions regimes are dynamic systems that are here to stay, that the (geo) political decisions that drive these systems need to be taken as a given, and that technical solutions need to be framed within these systems and based on the mandates of distinct groups. The assumption by the organizers and conveners is the ability of all stakeholders to collectively identify solutions in a safe space, a space that ensures that everyone can be open and candid about their practices, challenges and ideas. During the course of the meetings rapport is built between participants, creating a certain measure of trust between them. This type of stakeholder dialogue produces helpful guidance for problem-solving “within the existing regulatory countering the financing of terrorism and sanctions system” through a process of guided and facilitated co-creation. It does not pretend to address or revise systemic drivers of financial access and other terrorism financing- and sanctions-related restrictions.

The national technical and policy stakeholder dialogue, that addresses practical issues that arise for non-profit organizations active in high-risk and risky jurisdictions and banks that provide financial services to facilitate their work

This type of dialogue takes place at the national level and addresses legal and operational bottlenecks that NPOs encounter in sanctioned or high-risk countries where terrorist groups, non-State armed actors or criminal networks are active, across the borders, and where authorities push back with counterterrorism (financing) measures. The objective is to produce, in a collaborative spirit, legal and operational guidance and innovative solutions to enable international NPOs to carry out their work in high-risk/risky jurisdictions. It convenes all relevant government departments, regulatory authorities and NPOs that are affected by rules and regulations that aim to push back on financial crime. Due to the variety of the topical issues under discussion, the diversity of the participating NPOs –

humanitarian, multi-mandated, development, peacebuilding, human rights, faith-based—and the conflicting mandates of and interests between government ministries, this dialogue requires a longer process of trust building and a laying of the groundwork prior to deciding on concrete workstreams to be pursued by the stakeholders.

The dialogue provides stakeholders with a platform where sensitive and complex CFT and counterterrorism challenges can be understood and discussed. It fulfills the need of NPOs to be informed about policies and regulations that do not necessarily concern their day-to-day mandate. It may take NPOs time to comprehend the counterterrorism architecture and sanctions regimes, and the ways in which these impact national laws and regulations that have such influence on the operational space of civil society. For Ministries of Finance and Justice, for example, it may be the first time they are engaging with NPOs, their activities and the way they perceive counterterrorism measures. For banks, the dialogue with NPOs on policy choices and compliance practices leading to de-risking may initially feel uncomfortable but provides them with an opportunity to express their own challenges and limitations in terms of offering solutions, while at the same time triggering ideas on how to address internal compliance and other practices that result in NPO de-risking.

The national stakeholder dialogues, as illustrated in the examples from the UK, the US and the Netherlands, differ with regard to the structure, roles and responsibilities of the participating stakeholders and the objectives and outcomes they set out to achieve. They also differ because not all national contexts allow for a dialogue that addresses such sensitive issues as counterterrorism (financing) measures and sanctions. Moreover, some national contexts have a tradition of government, civil society and private sector/financial institutions engagement on issues other than CFT and sanctions-related issues, while this may be a novelty in other contexts.

We can broadly distinguish three types of national dialogues based on their structure: (1) the government convenes; (2) government, NPOs and banks co-convene; or (3) impartial and/or expert organizations convene. The first two have their strengths and weaknesses, which are outlined below. The third is advantageous in that it can convene a wide range of stakeholders, as the World Bank and ACAMS-convened dialogues in the US illustrated, but it can also become too technocratic or overly pragmatic in its approach, with insufficient room for addressing the systemic drivers of de-risking.

### A top-down approach

The first approach can be characterized as top-down, with high-level political and executive support. This could be both a strength and a weakness. The strength is that there is a bigger probability of a legal and regulatory revision that would result in a more conducive operational environment for NPOs than in the other approach that is, in essence, bottom-up. The weakness may be that NPOs and banks and the Banking Association are more circumspect and guarded because of

the dynamics between regulatory authorities, the donor government and other relevant government authorities with their different, and possibly conflicting, mandates and policy agendas. NPOs that receive government funding are more guarded, given that they are competitors for government subsidies and are engaging on a sensitive topic that requires them to provide an insight into their own governance and accountability structures. A set of jointly formulated principles for guiding the dialogue can be helpful to clarify roles, responsibilities and expectations.

It is important to understand the mandate, interest and convening power of the government department(s) that bring the participants to the dialogue together. The participation of relevant government departments, regulatory authorities, the Financial Intelligence Unit and inter-governmental structures to address counterterrorism and CFT measures gives NPOs insight into the complex nature of counterterrorism (financing) measures and international sanctions, which are the remit of multiple authorities, as well as into the lengthy process for legal and regulatory problem solving. While this may help create some understanding amongst NPOs about the complexity of identifying solutions, some NPOs may not have the stamina, patience or resources to commit to such a long-term engagement and drop out because tangible solutions take too long to develop. They may feel that the dialogue takes more from them than it gives them. A top-down approach gives the government the authority to act as the sole gatekeeper, deciding who can and cannot participate. This can be especially problematic for NPOs that are more vulnerable to (unfounded) criticism and allegations concerning their support for listed terrorist groups. The approach is also more vulnerable to political and policy setbacks due to the volatility of the political processes in a country.

### A bottom-up approach

When all three relevant stakeholders – government, banks and NPOs – co-convene the dialogue, it can create conditions for a more creative and practical problem-solving approach. Conditional to this approach is a framework agreement that sets out the rationale for the dialogue, roles and responsibilities of each one of the stakeholders, objectives, ways of communication and representation, and resources to initiate projects and activities coming out of the dialogue. In this model, the absence of high-level political buy-in allows for a more open atmosphere for discussion and exchange. The drawback is that legal and regulatory revisions or relevant draft laws cannot be automatically discussed, let alone taken up for further higher-level action through the bureaucratic system by the government participants.

In this approach the government departments take it upon them to use their leverage to invite other government stakeholders or authorities, such as the Financial Intelligence Unit or the Netherlands Central Bank, to take part in the dialogue. The Association of Banks together with the Ministry of Finance reaches out to commercial and retail banks, inviting them to participate. The NPO or NPO coalition or NPO umbrella body with expertise on the subject uses its

convening influence to ensure the participation of a broad cross-section of civil society. The NPO should not receive funds from the government for its work. The agenda for the dialogue is determined by the needs of NPOs. They share the challenges they face with regard to onboarding, crowdfunding and transactions to certain risky or high-risk countries, as well as with regard to contractual counterterrorism (financing) requirements from donors. The government and banks provide information and explain the legal, regulatory and policy requirements they have to adhere to and challenges they face with regard to other commitments they have, such as adhering to “principles of good donorship”, and “a duty of care to customers”. These discussions lead the way to the placing of specific and topical issues on the agenda that participants care to address, ranging from practical steps to accessing banking services through to, for example, an online portal to helping facilitate this access; from a better understanding of new AML/CFT-related laws and regulations to counterterrorism clauses in donor contracts; from exploring technology-driven solutions to discussing sectoral terrorism financing risk assessments and the FATF country evaluations; from the initiation of studies to address certain deficiencies in the existing knowledge about de-risking to developing practical guidance to address internal bank practices which lead to the de-risking of smaller organizations.

A drawback of this approach is that the enabling environment for NPOs to address many issues necessitates a structure of smaller dialogues to address specific issues. While this can facilitate a deeper dive into the specific problem and trigger a more tailor-made solution, it also requires more of the already-scarce time and other resources from the co-conveners. Moreover, the connection between dialogues in a smaller setting and the bigger stakeholder dialogue also needs to be maintained.

Whether the approach is top-down or bottom-up, or a mix of the two, there are a few common threads around lessons learnt:

1. The high turnover amongst government, NPO and bank staff demands the designation of certain persons/organizations (especially on the part of NPOs) who can safeguard institutional memory. For this and other reasons as elaborated on above, having a framework document or document with principles underpinning the dialogue is imperative;
2. Due to the complex nature of the issue, stakeholders need to be represented by the appropriate persons, ideally a mix of financial and policy/strategic staff that then commit to circulating the information and reports of the stakeholder dialogues to relevant colleagues in their organizations or networks;
3. The sensitivity of the issues discussed have often resulted in the decision not to publicize the ins and outs of national stakeholder dialogues so far. In view of accountability to a broader group of civil society, it merits exploring ways for more openness, for example through a website/platform. Such a platform would also act as a repository of information, which is helpful for newcomers when

participants are transitioning, and for the openness and accessibility of information and knowledge gathered in and through the dialogues;

4. The conveners or co-conveners need to manage expectations of what a stakeholder dialogue can realistically achieve. Expectations differ between the different government stakeholders, across NPOs and amongst banks. The Foreign Affairs department responsible for security and counterterrorism policy may have other expectations than the department in charge of Humanitarian Aid and Social Development. Civil servants implementing security policy may expect that the dialogue will offer up an opportunity to obtain information from NPOs about those in the sector who are at risk of terrorism financing. With this information, they might hope to address these potential risks with NPO regulators. Their colleague in the Humanitarian and Social Development departments may be primarily interested in safeguarding humanitarian principles and the operating space of civil society. Larger NPOs may have found workarounds to address extended CDD by their banks, while smaller ones with a faith-based or voluntary background struggle with collecting and disbursing funds because banks and payment service providers refuse to provide them with financial services. The non-committal role that bank supervisors prefer to take creates a serious obstacle in coming up with solutions to the issue of de-risking. It may require bilateral conversations between regulatory authorities and ministries of Foreign Affairs to convince supervisors to issue banks and bank examiners with CDD guidance for NPOs based on the FATF standards;

5. To address the international drivers of CFT and sanctions regimes, and their impact on NPOs, lessons learnt from national and international stakeholder dialogues need to be leveraged through to an international mechanism that will allow for an institutionalized and sustained dialogue.

The ACAMS-led International Sanctions Compliance Task Force, focusing on the development of technical risk guidance and being developed in co-creation sessions with relevant stakeholders, is an example of an international mechanism that is helpful for generating practical and tangible solutions. Addressing the systemic drivers of and the policies on CFD through an international roundtable approach or model would need further exploration in terms of the institution or the type of institutional collaboration that may facilitate it. Such a stakeholder model would provide added value to the ACAMS initiative as it would allow for discussions concerning the need to enable humanitarian aid and protection, the implementation of the sustainable development goals, and the protection of human rights, while addressing the current international obstacles stemming from global AML/CFT standards and sanctions regimes in a systemic manner.

In this regard, ongoing initiatives like the Unintended Consequences Workstream of the FATF,<sup>48</sup> the Global Counterterrorism Forum “Good Practices

48 FATF, “Mitigating the Unintended Consequences of the FATF Standards”, 2021, available at: <http://www.fatf-gafi.org/publications/financialinclusionandnpoissues/documents/unintended-consequences-project.html>.

Memorandum for the Implementation of Countering the Financing of Terrorism Measures while Safeguarding Civic Space”,<sup>49</sup> and the international and US dialogue processes co-convened by the World Bank provide those of us involved in national and international dialogues with practices to explore an approach or model for an international dialogue that would be fit for purpose.

## **Are the stakeholder dialogues that are being set up to address financial access restrictions facing non-profit organizations fit for purpose? Some concluding remarks**

To try to answer the question of whether the stakeholder dialogues set up to address financial access restrictions facing NPOs are fit for purpose, we are reminded of a question and a statement by participants to a roundtable: “Why is it difficult to execute solutions based on sensible ideas?”, and “De-risking is everyone’s problem and no-one’s responsibility”.

What the practice of the stakeholder dialogues, the setting out of the FATF Unintended Consequences Workstream, and the issuing of the Global Counterterrorism Forum memorandum illustrate is a growing awareness amongst relevant policymakers that sensible ideas to resolve financial access restrictions need to be implemented. Some donor governments have stepped up their efforts to share in the risk burden through, for example, issuing comfort letters which act as a guarantor for a light-regime/simplified CDD by the bank. It is a small step towards risk sharing, for a problem that has so far been shouldered largely by NPOs and, to some extent, by financial service providers. It is true, however, that much more needs to be done to share risks that emanate from international counterterrorism (financing) rules and regulations and which compromise other global agreements, such as the achievement of the Sustainable Development Goals, as well as undermining the principles underpinning international humanitarian law and international human rights law.

The stakeholder dialogues or roundtables have proven to be helpful, even with all their shortcomings and potential for improvement, because they enable all relevant stakeholders to engage in a process of mutual understanding and trust building, which are the foundations for technical and systemic problem solving. They are fit for purpose but that is not to say that they are a panacea for solving all the intended and unintended consequences that stem from the AML/CFT standards, the international sanctions regimes and counterterrorism measures.

We have witnessed the incremental growth of global counterterrorism (financing) laws, rules and regulations over the past twenty years that have impacted NPOs through intricate measures and policies—something which

49 Global Counterterrorism Forum, “Good Practices Memorandum for the Implementation of Countering the Financing of Terrorism Measures While Safeguarding Civic Space”, September 2021, available at: [https://www.thegctf.org/Portals/1/Documents/Links/Meetings/2021/19CC11MM/CFT%20GP%20Memo/CFT%20Memo\\_ENG.pdf?ver=fahs72uclyyYOTj7WDwBkQ%3d%3d](https://www.thegctf.org/Portals/1/Documents/Links/Meetings/2021/19CC11MM/CFT%20GP%20Memo/CFT%20Memo_ENG.pdf?ver=fahs72uclyyYOTj7WDwBkQ%3d%3d).

cannot be easily undone. They can, however, be revised and the harms mitigated, and the revision of the UN's Global Counter Terrorism Strategy, the FATF Unintended Consequences Workstream and the Global Counterterrorism Forum's Good Practices memorandum provide a few avenues with which to do this. The COVID-19 pandemic and its consequences for global health—along with poverty, food insecurity, the growing social and economic gap, and climate change that exacerbate the negative effects of the pandemic—have opened up the opportunity to put humanitarian relief, the Sustainable Development Goals, peacebuilding and human rights at the forefront of commitments that the international community needs to deliver on. There is traction to change the political and security discourse and the policies that have for so many years allowed for the sprawling of counterterrorism (financing) measures, to the detriment of the development agenda. At the same time, developments driven by nationalist and nativist populist ideologies, movements and authoritarian leaders and policymakers will influence the agenda of those of us that want to safeguard and protect space for humanitarian relief, development aid and human rights. Stakeholder dialogues have a role to play to address these developments but can only do so if they are opened up to involve not only legal, financial and regulatory experts and policymakers and the large NPOs, but also smaller organizations active on the frontlines who are currently bearing almost the entire brunt of the legal, regulatory and other risks, but are less visible when it comes to determining/engaging in the discourse. A more open and accountable approach would be a step in the right direction.