

March 3, 2022

Honorable Brian E. Nelson
Under Secretary for Terrorism and Financial Intelligence
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Under Secretary Nelson,

I am writing on behalf of the Charity & Security Network (C&SN) to follow up on the *2022 National Terrorist Financing Risk Assessment (NTFRA)* published by the Department of Treasury on Mar. 1, 2022. C&SN has a long history of engagement with Treasury on issues relating to nonprofit organizations (NPOs) and the impact of counterterrorism measures (CTM), and we appreciate the NTFRA's recognition of the importance of the work of NPOs globally and of the diligent steps NPOs take to protect their programs and resources from abuse by terrorist organizations.

We are especially pleased to see recognition of the financial access challenges NPOs continue to experience, and Treasury's commitment to implementation of proportionate and risk-based measures to address that problem. Proportionality is central to the risk-based approach (RBA), as set out in the Financial Action Task Force's (FATF) Recommendation 8.¹ We appreciate the report's findings that "...Treasury and other U.S. government agencies note that most charities and NPOs fully comply with the law, that not all tax-exempt charitable organizations present the same level of TF [terrorist financing] risk, and that the vast majority of U.S.-based tax-exempt charitable organizations face little or no risk of being abused for TF."

In its announcement of the 2022 NTFRA and in a Feb. 11 roundtable with NPOs, Treasury stated that it will make recommendations to address issues highlighted in the report, incorporating feedback from stakeholders. Given Treasury's commitment referenced above, we encourage Treasury to take the time needed to engage the nonprofit sector on how measures to counter the financing of terrorism (CFT) can be made more proportionate and risk-based prior to finalizing its recommendations.

As the Press Release stated, Treasury intends to publish the 2022 National Strategy for Combatting Terrorist and Other Illicit Finance in the coming weeks. To facilitate stakeholder input we have listed three measures below that we believe would enhance the proportionality of CFT measures and avoid the kind of operational disruptions that result from the current framework. These recommendations are as follows:

- 1) Review CFT measures to improve alignment with international humanitarian, human rights and refugee law, per UN Security Council Resolutions 2462 and 2482.**

¹ Financial Action Task Force, "Best Practices: Combating the Abuse of Non-profit Organisations (Recommendation 8)" June 2015, <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>

In January this year the UN's Counterterrorism Executive Directorate (CTED) released a study, *The interrelationship between counter-terrorism frameworks and international humanitarian law*,² that addresses the negative impacts CTMs have on principled humanitarian action and calls on Member States to address the issue. It calls for stakeholder dialogue for this process; C&SN and its members stand ready to lend their experience and knowledge to such an effort.

Similarly, the 2020 report *Promotion and protection of human rights and fundamental freedoms while countering terrorism*³ by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, called for concerted and concrete action to uphold international human rights, humanitarian and refugee law when applying CTMs. She noted that broad and vague measures that lack clear implementation guidance can restrict access to populations in need in areas controlled by non-State armed groups and "can result in the arrest and prosecution of humanitarian, human rights and other civil society actors." This impedes life-saving activities that play an important role in peacebuilding, such as human rights representation, advocacy, training and conflict resolution, all of which build towards creating sustainable peace and prosperity.

A review of U.S. CFT measures to address these issues could result in greater clarity and proportionality that would enhance the work of NPOs.

2) Issue a Global General License to ensure humanitarian aid and peacebuilding activities can be carried out unfettered the moment a crisis breaks out.

This proposal has been raised in several outreach meetings Treasury has conducted with NPOs. A Global General License would create consistency between sanctions programs so that program beneficiaries receive assistance based on need alone, without distinction based on political considerations. As former President Ronald Reagan famously said, "A hungry child knows no politics."⁴

A Global General License would also avoid undue delay in response to humanitarian crises and the impact of conflict on civilians. It takes precious time for licenses to be issued when new sanctions situations arise. For example, without a Global General License, in Afghanistan General Licenses (GL) 14 and 15 were issued on Sept. 24, 2021. It took GL 20, released on Feb. 25, 2022 - six months into the devastating humanitarian and economic crisis - to fully protect civil society operations from the direct risks of sanctions.

A Global General License can draw on key features of recent GLs issued for programs in Afghanistan, Ethiopia and Yemen. It should ensure that the full range of civil society activities necessary to reduce suffering and violence can operate in an enabling legal environment. This includes humanitarian, development, peacebuilding and defense of human rights.

² United Nations Security Council Counter-Terrorism Committee Executive Directorate (CTED), "The interrelationship between counter-terrorism frameworks and international humanitarian law" January 2022 https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/files/documents/2022/Jan/cted_ihl_ct_jan_2022.pdf

³ Fionnuala Ní Aoláin, "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism" A/75/337, September 3, 2020 <https://undocs.org/pdf?symbol=en/A/75/337>

⁴ J. Brian Atwood and Leonard Rogers, "Rethinking Humanitarian Aid in the New Era" New York Times, March 12, 1997 <https://www.nytimes.com/1997/03/12/opinion/IHT-rethinking-humanitarian-aid-in-the-new-era.html>

3) Address financial access barriers for NPOs by making enforcement standards consistent with the risk-based approach.

U.S. law imposes strict liability for sanctions violations,⁵ which contributes to the risk-averse approach many financial institutions take regarding NPO customers. As the FATF's 2016 evaluation of the United States noted, "As violations of TF-related TFS [targeted financial sanctions] are strict liability offenses, the authorities should continue to work with the NPO community to understand and mitigate the real TF risks that exist, while engaging stakeholders on banking challenges that some NPOs may face when working in conflict zones."⁶

International standards have been moving toward a more proportionate and flexible RBA for over a decade, including FATF Recommendations 1 and 8.⁷ This approach, if implemented properly, is in line with international humanitarian and human rights law. On the other hand, strict liability standards are at odds with the RBA and contribute to barriers civil society organizations (CSO) experience accessing resources to carry out their work.

We look forward to ongoing dialogue and engagement with the Department of Treasury on these important issues and appreciate your consideration of this input.

Yours truly,

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⁵ United States Code, 1994 Edition, Supplement 1, "Title 50 – WAR AND NATIONAL DEFENSE" 50 U.S.C. § 1705, 1995, <https://www.govinfo.gov/content/pkg/USCODE-1995-title50/pdf/USCODE-1995-title50-chap35-sec1705.pdf>

⁶ Financial Action Task Force, "Anti-money laundering and counter-terrorist financing measures, United States Mutual Evaluation Report" December 2016, <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf>

⁷ Financial Action Task Force, "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, The FATF Recommendations" Updated October 2021, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>