



**GLOBAL
INITIATIVE**

AGAINST TRANSNATIONAL
ORGANIZED CRIME

ZERO RISK MENTALITY

The damaging effect of AML/CFT
measures for civil society



**RESILIENCE
FUND**

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SUMMARY

Despite the threats, intimidation and violence perpetrated by organized criminal groups, there are courageous groups of people all over the world who put themselves at great risk to support and protect their communities in the face of criminal governance. However, for many of these organizations, as well as other non-profit organizations (NPOs) worldwide, it has become increasingly challenging to access funds as they have faced operational and legal restrictions as a consequence of the tightening rules around countering terrorism financing (CFT) and anti-money

laundering (AML) measures. This challenge has grown after some governments increasingly see the money flows received and sent by NPOs as a potential source for the financing of terrorism. Recommendation 8 of the Financial Action Task Force – the recognized global standard setter seeking to combat money laundering and terrorism financing – has played a major role in creating this perception. This paper explores the key challenges faced in this regard by The Global Initiative Against Transnational Organized Crime's Resilience Fund recipients.

Key points

- Reasons why banks adopt stronger AML/CFT procedures include government regulation, international rules, general profit concerns and fear of reputational damage. Compliance requirements stemming from these multiple policies lead to de-risking decisions at the bank level.
- The organizational profile of those working on resilience building as a response to organized crime has much in common with the profile of smaller grassroots organizations in general. Smaller organizations tend to particularly encounter more financial access problems, due to their short-term project funding, lack of flexibility in dealing with financing delays or with unexpected challenges.
- An important consequence of financial access issues is the impact they have on the operation of grassroots and civil society organizations themselves. One significant change is the further downstreaming of risks to local grantees or partners by donors. Among other issues, organizations face onerous additional information requests and limitations or restrictions on making overseas payments.
- Around the world, it is women that lead resilience initiatives to organized crime in their communities. Challenges in accessing funds due to AML/CFT measures are clearly gendered, as women-led organizations face additional obstacles.



ACRONYMS AND ABBREVIATIONS

AML	anti-money laundering
CFT	countering finance of terrorism
CSO	civil society organization
FATF	Financial Action Task Force
NGO	non-governmental organization
NPO	non-profit organization
UNODC	United Nations Office on Drugs and Crime



INTRODUCTION

▲ International measures to counter terrorism financing and money laundering have left civil society organizations economically vulnerable.

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What we know of organizations that respond to organized crime through building community resilience¹ is that they face pressure from many sides. Communities and organizations respond to both stressors (long-standing negative situations, such as corruption or lack of funding) as well as immediate negative impacts (such as intimidation campaigns).² For those at most risk of direct violence from organized crime, the nature of their work is perilous. But in environments where there are numerous criminal groups, non-governmental organizations (NGOs) may also face additional barriers to their ability to operate and support their communities.

In countries where civic space is generally not nurtured or supported, they may face overly restrictive legislation. Furthermore, in cases of state complicity with organized crime, NGOs who investigate or expose those links risk being delegitimized by being characterized as ‘terrorists’, implying that they are threats to national security or enemies of the state.³ This means they often have to face structural stressors that make them more vulnerable in the face of shocks.

One example of a structural stressor is the increasing challenge of accessing funds, associated with the implementation of international countering finance of terrorism (CFT) and anti-money laundering (AML) measures. Non-profit organizations (NPOs) around the world have faced operational and legal restrictions as a consequence of the tightening rules around terrorism financing and money laundering. This challenge has grown after some governments increasingly see the money flows received and sent by NPOs as a potential source for the financing of terrorism.

Recommendation 8 of the Financial Action Task Force (FATF) – the recognized global standard setter seeking to combat money laundering and terrorism

financing – has played a major role in creating this perception. A vast number of studies have indicated that this recommendation has led to NPOs experiencing limitations on the transfer of money, increased administrative burdens and reporting requirements, freezing of assets and closure of bank accounts, and in some cases exclusion from financial and legal services. These requirements have been shown to pose a severe constraint on organizations' financial resilience.

While these measures pose serious issues for civil society organizations (CSOs) and NPOs in general,⁴ they are particularly acute in contexts where levels of criminal violence and criminal governance are high (i.e. the places where the Resilience Fund grantees work), challenging the resilience of organizations whose mission it is to tackle organized crime. The financial resilience of initiatives combating organized crime is crucial to their ongoing ability to respond to it. But many are faced with a situation where international regulations and standards meant to combat organized crime and terrorist financing are being used by some states to target and shut down those very grassroots organizations that are doing their best, in difficult circumstances, to address the very issue of organized crime.

This twisted application of regulations has the effect of making it easier for organized crime and corruption to prosper, as civil society actors best placed to challenge the dominance of organized crime are less able to do their important work. These organizations are often female-led grassroots initiatives, meaning they face particular vulnerability risks.

In light of these challenges, the Global Initiative Against Transnational Organized Crime (GI-TOC) has conducted a short analysis of the situation faced by grassroots organizations and human rights defenders as a consequence of CFT and AML regulations. The paper includes a presentation of findings on the challenges experienced by CSOs and human rights defenders, supported by existing evidence; an analysis of their effects on women's organizations; an explanation of the CFT/AML frameworks and their key actors; and, to conclude, policy and advocacy recommendations.

Methodology

This paper is based on several sources: a desk review of academic literature and policy frameworks; CSO papers on the topic of de-risking and AML/CFT regulation impacts; and ten interviews with CSOs from Asia, sub-Saharan Africa, the Middle East and the Balkans, as well as with experts on de-risking and CFT regulation, and GI-TOC staff.

The number of interviews does not allow for a representative sample or a complete picture of the experiences of CSOs or members of the GI-TOC Resilience Fund. The gathered experiences were however used to illustrate common issues that CSOs face and that have been documented in other research over the past few years. Given the sensitivity of the information and the reservations of many organizations to publicly discuss these issues and their coping strategies, names have not been given and countries and recounted experiences have been changed to ensure anonymity. The authors are grateful to those organizations that were willing to share these often alarming experiences and situations.

Non-profit organizations around the world have faced operational and legal restrictions as a consequence of the tightening rules on terrorism financing and money laundering.



THE CONTEXT IN WHICH CSOS OPERATE

▲ The work undertaken by Resilience Fund grantees makes them vulnerable to those who perceive them as a threat, both criminal groups and state actors.

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Before delving into the impacts of CFT regulation, it is important to highlight the diversity that constitutes civil society and how their different profiles may affect the severity of these impacts. Although civil society is often referred to as one homogeneous group, what we know is that civil society contains a number of different individuals. Vast differences in themes, locations, composition and budgets can place some organizations at opposite extremes from one another. Truly understanding these differences means considering how they affect the way that organizations are able to operate and, additionally, how government, bank and donor measures impact them in different ways.

The organizational profile of those working on resilience building as a response to organized crime has much in common with the profile of smaller grassroots organizations in general. All of the organizations we spoke with for this report were medium- to small-sized organizations, with an average of four or five staff members. They mostly receive short-term project funding, which makes them less flexible in dealing with financing delays or with unexpected challenges. They also often have limited organizational capacity, in general and also in terms of financial-compliance personnel, because the nature of current donor project funding often means a strict limit on what can be spent on overheads. These organizations usually also have less name recognition and influence. What we have seen from various research done on the topic of CFT and AML is that smaller organizations tend to particularly encounter more financial access problems.⁵

In addition to the challenges faced more generally by smaller, grassroots organizations, the GI-TOC's Resilience Fund grantees face additional hurdles. Research has shown that NPOs working in or around conflict zones and the more 'political' (or politicized) causes within the non-profit sector have been hardest hit by CFT and changed financial regulation.⁶ As mentioned in the introduction, these organizations are actively challenging established powers: they are working to address systemic issues that keep criminal violence and criminal governance in place. This tension is at the very core of their work – it makes them vulnerable to outright targeting by criminal groups and those who perceive their work as a threat, including state actors.

It is important to keep this organizational context in mind when considering the financial access difficulties faced by Resilience Fund grantees because it influences how severely the impact of certain measures are felt for a particular organization.

Smaller organizations tend to encounter more financial access problems.

Resilience of women's organizations

Women and women's organizations play a key role not only in fighting organized crime but also in conflict prevention and post-conflict settings.⁸ Around the world, it is women that lead resilience initiatives to organized crime in their communities.⁹ Similarly, in humanitarian contexts, focusing on women's rights has accelerated the 'transition from humanitarian action to recovery' and has helped build the resilience needed to reduce 'the likelihood of recurrence of humanitarian crises'.¹⁰

Research conducted in 2017 by Duke Law International Human Rights Clinic and the Women Peacemakers Program uncovered the impact that CFT and changed financial rules have had on women's rights organizations worldwide, finding that the profile of women's rights organizations had a lot to do with the way that they experienced these rules.¹¹ It is precisely women and women's organizations that face the brunt of the consequences of CFT/AML regulation, in the sense that it affects their already limited financial resilience.¹²



Name recognition and influence



Flexibility of budgets and financial resilience



Number of dedicated staff



Working on political issues or around conflict

FIGURE 1 Factors influencing financial resilience of women's rights organizations.

As is generally the case with organizations working on organized crime, women's organizations often are small in size, operate on small budgets,¹³ work under the radar,¹⁴ are highly reliant on foreign funding¹⁵ and, more generally, already face a number of obstacles to financial inclusion because of their gender. The Alliance for Financial Inclusion noted that the implementation of AML and CFT frameworks 'can have an unintended negative impact on women's financial inclusion',¹⁶ as do broader social constraints, limiting women's economic empowerment.¹⁷ Figure 1 shows the key features of women's rights organizations and how CFT affects them.



POLICY CONSEQUENCES AND IMPACTS

The AML and CFT marriage of convenience

Although there are clear differences between the fight against money laundering related to organized crime and the one against terrorism financing, they also have much in common. The methods employed by financial institutions to assess and manage the risks posed by both use much of the same information and rely on similar processes. For this reason, AML and CFT have often been grouped together, despite their distinctiveness.

According to the United Nations Office on Drugs and Crime (UNODC), money laundering is 'the method by which criminals disguise the illegal origins of their wealth and protect their asset bases, so as to [...] prevent leaving a trail of incriminating evidence'.¹⁸ Likewise, terrorist organizations 'will also seek to conceal the origins of the money allowing it to be used to further terrorist activity or be re-invested to increase their funds seek to conceal the allocation of funding obtained, employing techniques similar to those used by money launderers to hide their money'.¹⁹ Given these similarities, policymakers have

▲ Chairs of UN Security Council committees engaged in countering the financing of terrorism host a briefing with the president of the FATF, November 2013, New York.
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treated AML and CFT as comparable issues, as counter measures for both focus on tracing the financial trail to identify and restrict members of criminal and terrorist networks.²⁰

After the 9/11 terrorist attacks, AML policies became a much higher priority both in the US and among its allies, 'allowing investigators to use the tools that were already available to investigate organized crime and drug trafficking' to 'detect and prevent terrorism, including terrorism financing.'²¹ These actions largely influenced the international system: in 2001, the UN Security Council adopted Resolution 1373, calling for all member states to 'establish a system for freezing "without delay" the assets of persons who commit or attempt to commit terrorist acts or participate in or facilitate the

commission of terrorist acts.'²² As described in one recent insightful article, this 'successfully cemented the global marriage between AML and CFT.'²³

Yet an important difference between the two is that AML, in most cases, focuses on money that has been obtained as a result of crime, while terrorism financing is considered a crime regardless of what the money was used for – the mere fact of who it was sent to makes it a crime in itself. Therefore, some argue that combining AML and CFT puts an 'undue burden on the private sector to understand the intent of criminals behind the actual transactions'²⁴ and has additionally led to ineffective and harmful results.²⁵ With this context in mind, the next section provides an overview of how this regulation is being implemented in practice.

Overregulation

In 1989, the G7 established the FATF to fight the financial flow from organized crime and the drugs trade. The FATF's 1990 recommendations focused on three priorities: the improvement of national legal AML systems, the strengthening of international cooperation, and the enhancement of the role of the financial system in the fight against money laundering.²⁶

Following the 9/11 terrorist attacks, the FATF's mandate was expanded to include CFT as well as AML – an expansion criticized by CSOs, as there was no consultation with civil society on implementation.²⁷ Despite the FATF being a task force and not a treaty body, it has become hugely influential and currently has over 200 countries and jurisdictions committed to upholding its standards.²⁸

Through its resolutions and sanctions regimes, the UN provides the overarching counterterrorism structure. However, in practice, the FATF's standards can be said to have the most influence on CFT/AML matters as they are more strictly enforced through a peer-reviewed mutual evaluation process. The outcomes of these peer reviews greatly impact countries' financial standing, trade and investments. Countries are evaluated on an ongoing basis to check compliance, and poor evaluations have an adverse impact on a country's financial development.

FATF recommendation 8

Of the FATF's 40 recommendations established in 1990, recommendation 8 requires to regulate the non-profit sector as a whole for greater transparency and accountability. The money flows received and sent by NPOs are thus seen as a potential source for the financing of terrorism, and the recommendation indicates that countries need to 'protect the sector against such abuse, and (...) to identify and take effective action against those NPOs that either are exploited by, or actively support, terrorists or terrorist organisations.'²⁹ The way that this recommendation has been translated into national laws differs per country, but has often led to restrictions on civil society and on the ability of NPOs to operate.

Growing research on the topic including by institutions such as the US Department of the Treasury, the European Commission, the World Bank and even the FATF's own mutual evaluations has demonstrated that CSOs actually 'pose little to no risk for terrorist financing'.³⁰ However, the measures advocated by recommendation 8 constrained the operating space for civil society worldwide. It led to increased financial surveillance and profiling of activists and CSOs, increasingly complicated financial processes and even loss of financial access.

Several countries saw a rise in restrictive CSO policies and legislation leading up to, or right after, a FATF evaluation, such as reported in 2015.³¹ Some governments seeking to limit the activism of critical CSOs have regularly done so in the name of combating terrorist financing and complying with the recommendations of the FATF. At the time, the evaluation mechanism of the FATF was effectively rewarding countries for clamping down on their civil society.

A 2012 report analyzed the outcomes of mutual evaluations and found that Tunisia and Egypt were two of the only five countries out of 159 to be

assessed as 'compliant' under recommendation 8.³² At the time, both countries were still under authoritarian rule and had one of the most restrictive laws with regards to civil society, making it nearly impossible to register as an independent CSO. In contrast, Norway was assessed as being 'non-compliant'.

Two years later, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, expressed concern that recommendation 8 and the FATF's assertion of NPO vulnerability posed 'a serious, disproportionate and unfair threat to those who have no connection with terrorism, including civil society organizations'.³³

Box 1 FATF Recommendation 8: Revised text as of 2016

'Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse, including:

- a. by terrorist organisations posing as legitimate entities;
- b. by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- c. by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.'

Source: FATF, International standards on combating money laundering and the financing of terrorism & proliferation: The FATF recommendations, 2020, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/fatf%20recommendations%202012.pdf>.

Former executive secretary of the FATF, Rick McDonell, speaks at a meeting of the UN Security Council's counterterrorism committee, November 2012, New York.

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Box 2 Some examples of over-regulation

- Restrictions on the formation of organizations: introducing burdensome or even prohibitive licencing and governance requirements.
- Restrictions on the ability to advocate for change: limiting the ability of NPOs to associate, and the branding of human rights defenders as terrorists.
- Restrictions on the access to information and communication technology.
- Legal barriers impeding the ability of NPOs to access foreign funding in the form of grants and donations or otherwise.

Recommendation 8 changed in 2016, as seen in Box 1, and the FATF now requires that countries adopt a risk-based approach in which they collaborate with civil society to assess the risk the sector poses for terrorism financing and money laundering. Countries also need to show that the measures they are taking to combat terrorism financing and money laundering are proportional to this risk. In line with this new approach, in March 2021 the FATF's executive secretary, David Lewis, said that the task force had agreed to 'a new work stream on the unintended consequences of poorly implemented AML/CFT measures – from financial exclusion to the abuse of counterterrorism measures to suppress civil society'.³⁴ Although these steps are in the right direction, much harm has already been done.

During the years that the FATF labelled NPOs as particularly vulnerable, this designation trickled down into the fabric of how financial institutions view the organizations. It has informed government policy as well as training manuals for financial regulators, which often still include NPOs in a higher-risk category. This has encouraged countries to clamp down on their civil society and some governments have restricted any form of dissent in the name of countering the financing of terrorism and organized crime.

This has had a negative effect on NPOs' abilities to implement activities and protect the needs of beneficiaries, especially in crisis or conflict areas. Overly broad laws have dire consequences. For example, a US law that prohibits the provision of 'material support' to terrorism has strongly restricted the ability of NGOs to work in conflict zones where foreign terrorist organizations operate.³⁵ In addition, some critical NGOs, including those working on organized crime, have previously been designated as terrorist groups themselves.³⁶ In Serbia, for example, the administration for the prevention of money laundering has asked all banks in the country for financial data³⁷ about 20 individuals and 37 NGOs 'to determine whether the listed organizations and individuals have anything to do with terrorist financing or money laundering'.³⁸

As the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, said: '[i]t is no coincidence that the proliferation of security measures to counter terrorism and to prevent and counter violent extremism, on the one hand, and the adoption of measures that restrict civic space, on the other, are happening simultaneously'.³⁹ More examples of overregulation relevant to the Resilience Fund can be found in Box 3 below.

De-risking by banks

Financial institutions themselves have come under increased scrutiny by regulators to conduct extensive due diligence on their customers and transactions to ensure that they do not facilitate terrorist activity. As per the FATF, countries need to apply a risk-based approach to 'identify, assess and take effective action to mitigate their money laundering and terrorist financing risks'.⁴⁰ Banks themselves are therefore given specific directives issued by central banks on how these rules should be applied in practice and on enforcement actions. This has invoked liability of banks for breaching the sanctions regimes or for failure to conduct due diligence.⁴¹

Box 3 Country examples of overregulation relevant to Resilience Fund recipients

Serbia, the Philippines and India have recently widened the scope of their counterterrorism laws, some of which deeply worries activists and civil society, in terms of how such laws can be used to silence human rights defenders and others.

According to the UN Human Rights Council, in 2020, Serbian authorities were using their oversight powers created to target the financing of terrorism to obtain banking information of 50 NGOs, media associations and other non-profit organizations. Those targeted worked on human rights and researching the government's work.⁴²

In the Philippines, the 2020 anti-terrorism law uses an overbroad definition of terrorism that carries significant penalties, and a special body composed mainly of cabinet officials appointed by the president would provide the authority to enforce the law. The way that

this will be enforced on civil society and humanitarian groups is concerning, and it has already had negative effects. For example, members of the National Council of Churches in the Philippines have been victims of harassment by the government and have been considered to be fronts for terrorist organizations.⁴³

In India, an amendment to the Indian Foreign Contributions Act, which oversees foreign funding to NGOs, now makes it more difficult for NGOs to access foreign contributions. According to the new rules, an NGO is now prohibited from transferring funds to another NGO, a biometric ID is mandatory for registration and permission is required to receive foreign funds. Human rights defenders have criticized this amendment, stating that civil space in India is 'severely shrinking' and the work of NGOs is being 'unlawfully obstructed'.⁴⁴

Being low-revenue customers, CSOs experience the consequences of de-risking in a particularly impactful way.

Fines and lawsuits brought by victims of terrorism claiming that due diligence failures amounted to complicity have been the result of this.⁴⁵ In fact, a World Bank study commissioned by the G20 in 2015 found that 'large banks mentioned both AML/CFT recommendations and sanctions [...] as drivers for de-risking.'⁴⁶ This, in combination with the FATF's statement that CSOs are particularly vulnerable to terrorist abuse, has led to multiple well documented consequences for banking and the financial access of civil society.⁴⁷

In fact, the majority of respondents interviewed for this paper said that their banking problems had worsened in the last few years and that they had been facing multiple financial issues for a long period of time. The two issues most commonly faced by CSOs included onerous additional information requests and limitations or restrictions on making overseas payments, which in some cases lead to higher costs.

In addition, drastic increases in banking costs and difficulty or refusal in opening accounts were reported. As one respondent said: 'It is not as easy as it used to be. There are lots of questions involved in the process. We had to open a [new account for the organization], they asked so many questions, it took a long time compared to other years.'⁴⁸

Finally, in a few extreme cases, respondents reported denial in transfers. Some indicated that this also is an issue that has become worse in the past year. One interviewee even stated: 'We simply cannot make overseas payments, we can only receive them. This is related to anti-corruption attempts that the government is taking.'⁴⁹

These experiences are in line with other research conducted. In a 2017 study by Duke University and the Women Peacemakers Program, more than half of respondents indicated that they had experienced delays in receiving funds from domestic or foreign donors, and sometimes they had not obtained the funds at all. A similar percentage indicated that their organization had received 'requests for project or other information from banks before funds' release.'⁵⁰ In a 2019 study conducted by the Human Security Collective and WO=MEN on organizations in the Netherlands, findings also revealed that 85 per cent faced stronger compliance demands and problems in transferring funds, 'constantly having to provide the same information'.⁵¹

Importantly, the size of the organizations appears to matter in the extent to which issues are faced. Another study found that, in the US, smaller organizations are increasingly facing financial difficulties: 'NPOs with 500 or fewer staff are more likely to encounter delayed wire transfers, fee increases, and account closures. Most significantly, smaller organizations are almost twice as likely to receive unusual additional documentation requests. The smallest NPOs (those with 10 or fewer employees) are having the most trouble opening accounts.'⁵² This is particularly relevant for the recipients of the Resilience Fund, which are often smaller grassroots organizations.

Explanations for lack of access to funding

Respondents shared their observations as to what was causing the obstacles they faced. Having a better relationship with a particular bank representative appeared to sometimes contribute to slightly better circumstances for CSOs, as they were informed more specifically on new regulations about to be implemented. In these cases, the banker would have more information available about the NPO's core business and how they operate, which made the process smoother. However, the opposite may occur if there is no close relationship with bank officers and a lack of knowledge on how NPOs operate: 'The problem is that they [banks] have no experience with CSOs. A special officer is not there for CSOs. Sometimes in a small bank the officer does not have enough knowledge [of how] to deal with NGOs [or] how they operate.'⁵³

Respondents also said that all banks justified their information requests. Details differed from county to country, ranging from 'standard operating procedure' to 'government legislation' or 'coming from the registrar/the central bank' and 'CFT rules'. One said that: '[The] bank manager informed us unofficially. When we asked the bank officially they said they don't have permission to give us any information because of the laws on terrorism.'⁵⁴ Although not all respondents specified CFT as being the reason for these issues, all indicated that they were aware that information requests were caused by new regulations.

It is clear that there are several reasons why banks adopt such procedures. They are influenced by government regulation, international rules, general profit concerns and fear of reputational damage. Compliance requirements stemming from these multiple policies lead to de-risking decisions at the bank level. They adopt a conservative position towards providing financial services and 'de-risk' by ceasing to engage in types of activities that are seen to be higher risk in general, rather than judging the risks of clients on a case-by-case basis.⁵⁵ While CSOs by no means bear the brunt of this legal and regulatory environment alone, by often being low-revenue customers they experience the consequences of this approach in a particularly impactful way.

Donors

For many civil society organizations working around the world, being able to access funding is key in their organization's resilience, as it allows them to sustain and scale up the work that they are doing. What this study has shown is that access to funding for smaller organizations is a persistent challenge. For example, last year, only 1% of gender equality funding went to women's organizations,⁵⁶ and a 2015 report found that less than 2% of all humanitarian funds go directly to local NGOs.⁵⁷

All of the respondents we spoke to dealt with increasing administrative burdens from their donors. One said that due to the fact that they are only eligible for smaller project funding, they apply to various donors. The standardization that many donors have adopted to grantmaking means that each donor has their own budgeting process, reporting requirements and financial templates. They noted the burden this puts on a small organization.

Finding the balance of distributing limited resources and personnel time becomes even more challenging when having to constantly apply for funds. One respondent said that they try to keep their staff costs as low as possible so more money can go to work on the ground. The high costs of even applying for funds means that some organizations will not consider many of the grants.

Some organizations indicated that they spend around half of their time managing the donor's requirements in terms of reporting. This increased administrative burden faced by many organizations is often not met with additional financial organizational support. One respondent said: 'All donors have rules for salaries (not more than 15%). This means that the same person does all the administration and all activities in the field.'⁵⁸

Risk avoidance: the 'chilling effect'

Over the years, the international donor landscape has undergone many changes. One significant change is the further downstreaming of risks to local grantees or partners. Despite agreements made under the Grand Bargain,⁵⁹ there still seems to be a preference for bigger, more well-established grantees, to the detriment of smaller organizations. As one study found, this is because the small-scale and grassroots nature of such organizations means that they present a greater 'risk' to foreign donors 'of having their charitable donations stigmatized as financing of, or material support to, terrorism'.⁶⁰

According to a report released by the UN Office for the Coordination of Humanitarian Aid and the Norwegian Refugee Council, this is a global phenomenon: 'Several large donors limit their partnerships to a few larger organizations who can absorb large donations and are seen as having the capacity to mitigate the risk, excluding other

smaller partners and programs which they might otherwise have funded.' The report also noted that these counterterrorism measures may have a 'chilling effect' on humanitarian actors considering implementing programmes in higher-risk areas.⁶¹

This mentality means that some donors seek to mitigate the risks through requirements in contracts to their grantees. Grantees are then required to sign counterterrorism financing clauses and are pressed to vet their own staff and board members of sub-grantees and partner organizations. Some donors even go as far as requesting beneficiary vetting.⁶² One of our respondents said that, 'all [of our] grants from the US funds include this [CFT] clause. We are required to vet every single person that is involved in the project ... It's mainly the US funds; recently the French also ask for this.'⁶³ Some CSOs who receive funding from many donors at a time said they sometimes overcompensate and do the maximum in terms of compliance rather than figuring out 'which donor requires what'.⁶⁴

Another report found that international NGOs' security risk considerations were often superficial, and that national NGOs carried the brunt of the legal and operational risks because they are less able to cope with unforeseen costs or delays. The legal risk mitigation requirements put on NGOs by the donors add to that burden.⁶⁵

Another challenge mentioned by respondents was the level of donor knowledge and understanding of the local context and its limitations. One said: 'When working with international donors that are not physically present in [our country], they just don't have enough information ... Sometimes we can't get [the required] documents from the government ... If the office [were] here they [would] know this better.'⁶⁶



THE IMPACT ON CSOS

The impacts of de-risking and increased donor requirements are felt differently by each organization. In particular, what differs are the mechanisms that organizations use in order to deal with issues of financial access.

Most notably, as a consequence of limitations in sending and receiving transfers, respondents to this study explained two main alternatives: taking out donations in cash in case they lost access to their account, and transferring money to different bank accounts, such as those of other organizations, personal bank accounts or those of friends.

Previous studies confirm that organizations around the world face similar issues. Carrying cash was mentioned in several studies to the extent that larger CSOs travel with cash to reach their partner organizations: 'According to a women's organization working in Iraq, one European NGO with which they work has "now decided to transfer money by cash to Iraq by flying personnel to Iraq, each can carry 50 000 Euros, for a project of 5 million Euros."' ⁶⁷ The use of personal bank accounts is also mentioned in other studies, highlighting the personal risk that this entails. ⁶⁸

If options for engaging with bank accounts and the formal financial sector become limited, organizations and individuals are driven into informal financial transactions and methods, but these alternative methods are unsustainable. Carrying large amounts of cash poses an extra risk to individuals and goes directly against the goals of the global financial inclusion agenda. ⁶⁹ For this reason, the FATF has pledged to 'continue to work to ensure that financial inclusion and AML/CFT objectives do not conflict and will keep financial inclusion issues on its agenda'. ⁷⁰ This report and reports cited in this paper question whether this effort has been successful.

▲ Alternatives to work around financial access issues have devastating impacts on the operation of grassroots and civil society organizations.

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Organizations are trapped in a framework where they are constantly fundraising, making it difficult to pursue their priorities and respond to the needs of their community.

In addition, carrying cash and using private accounts runs counter to the goal of the CFT/AML agenda itself (which is to use financial trails to identify criminal or terrorist networks),⁷¹ as it pushes organizations further under the radar. It also often creates a position of dependency for smaller organizations as they increasingly have to build on larger ones to receive and send funds, which is not a long-term solution.⁷²

The most important consequence of financial access issues and the alternatives employed, however, is the impact they have on the operation of grassroots and civil society organizations themselves. Respondents indicate a range of effects stemming from these difficulties, such as having stopped donations and expressing concerns over the donor's own access to finances due to banking issues. In addition, two organizations that were interviewed for this paper have already had to limit or stop programmes, while others have had to restrict programmes in particular fields or regions of work. One organization has stopped applying for donor funds altogether and receives private donations to stay under the radar.

Previous research has found how civil society organizations that are experiencing limitations to transfer money to partners pose unintended consequences for the sector, including operational difficulties, limitations of beneficiary reach and impacting freedoms of association and expression.⁷³ In this case, if a grassroots organization faces issues with overseas payments and at the same time increased administrative tasks to comply with donor requirements or with the amount of paperwork that banks require, it has the potential to seriously impact the existence of the organization.

The overall biggest impacts of all the issues described above are therefore found in the increased workload – valuable time that could be spent elsewhere. Even though many of the respondents say they do not face higher costs directly, the time spent on administration costs them a lot of staff time, which reduces time spent on project implementation. Some highlight the trouble in finding administrative staff for these tasks: 'We are frustrated. We have no money to pay the same salaries as the business sector ... That [money would be taken] away from projects.'⁷⁴

The cumulative effects of these impacts mean that small, grassroots organizations find it difficult to grow. Organizations are trapped in a framework where they are constantly fundraising with different organizations, all with different priorities, making it difficult to pursue their own priorities and respond to the needs of their community. Considering the crucial role civil society plays in creating community resilience against organized crime, it is even more imperative that they are able to do their work in responding to the need.



CONCLUSION: SHARING THE RISK

The CFT and AML arena has grown exponentially over the past twenty years. Terminology, policy and practice relating to counterterrorism is now embedded within the UN – to the extent that it has been called the UN's 'fourth pillar' –,⁷⁵ within national institutions and new and non-institutional international bodies. Yet the lack of semantic clarity on what is meant by terrorism, extremism or even organized crime means that countries are open to interpret it in whatever way they see fit. 'There is a sense of an international counter-terrorism regime out of control, its tentacles reaching every facet of political, financial and civic life,'⁷⁶ said Agnes Callamard, former UN Special Rapporteur on extra-judicial, summary or arbitrary executions.

It is necessary to remain sceptical of attempts to further securitize human rights, development and humanitarian work under the lens of counterterrorism, and be mindful of further enlarging this exemption regime. Considering the freedom that governments appear to obtain when implementing policies under the frame of counterterrorism, reframing parts of this strategy so that they are more in line with organized crime issues is needed. CSOs could benefit from an organized crime lens being applied. This would also include untangling the 'marriage of convenience' between AML and CFT.⁷⁷ For years, organizations have worked towards ensuring that the rule of law has protections in place to avoid abuse of power and misuse. Bypassing this by using a framework with much less protections (such as the counterterrorism approach) does not pay off in the long run.

▲ Civil society organizations working in difficult areas often do not have the capacity to carry the risk alone.

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Long-term stressors that CSOs are experiencing – such as difficulty in accessing funding, burdensome national legislation and a chronic under-capacity – lower their resilience in such a way that it becomes much more difficult to deal with shocks like denied transfers, closing of bank accounts, threats to personnel, government investigations or sudden changes in circumstance or programming.

This lack of resilience is especially ironic in the case of organizations that are working on community resilience to organized crime. It highlights a policy incoherence on the national and international arena: the very organizations whose mandate is to fight organized crime, corruption or terrorism are being hampered in their valuable work by CFT/AML regulations, the risk aversion of donors, and in more extreme cases are being themselves labelled as terrorists or criminals.

Furthermore it is important to acknowledge the well-documented challenges of the interaction of CFT/AML with gender equality. CFT/AML regulation fails to take into account the particular financial resilience issues that women's organizations already face. They may not be able to weather resource constraints due to delays and obstacles, nor may they be able to apply for, or to process, complex grants.⁷⁸ The reason for these challenges is the particular nature of women's rights organizations, as they are often small in size, have limited access to finance due to their gender and often operate below the radar. Policy responses to global AML/CFT standards have the potential to make a positive contribution to women's financial inclusion and, in turn, to gender equality and empowerment. However, this will require the adoption of proportionate risk-based approaches to implementing AML/CFT standards to overcome the challenges faced by women who are financially excluded or underserved.⁷⁹

For donors, addressing these resilience challenges means better understanding the obstacles their

grantees face and demonstrating solidarity and support in how to deal with them. It also means ensuring that their requirements in terms of reporting are proportionate compared to the funding they provide.

Zero risk does not exist, so accepting that, it then becomes a question of 'who carries the risk?'. Throughout the inception and initial operative years of the Resilience Fund, the GI-TOC has effectively taken on some of the risks involved. This is necessary due to the grassroots nature and reality of many of the individuals and organizations part of the Resilience Fund, and is a consequence of the GI-TOC's founding ethos of supporting those in difficult situations, including those not already receiving funding from international donors.

Resilience Fund staff help grantees negotiate financial regulations and systems, and find creative solutions to ensure that grantees can receive their financial support safely and legally. The Resilience Fund is playing a buffering role between CSOs and donors and is essentially onboarding the due diligence and risk component. However, ensuring that the financial resilience and access of the organizations is supported, despite the increasingly difficult barriers that are faced, inevitably creates cost and risk implications also on the part of the Resilience Fund and of comparable grantmaking mechanisms, which at some point may not be sustainable.

Civil society organizations working in difficult areas often do not have the luxury to de-risk and do not have the capacity to carry the risk alone. When they are faced with the possibility of not being able to deliver the necessary assistance to their communities, they seek ways around the growing restrictions. In many countries these securitized responses to civil society are increasing, and it is imperative that all donors engage with local organizations in risk sharing rather than passing the burden onto those that already carry so much.



RECOMMENDATIONS

For this section, the authors reviewed recommendations suggested in previous reports and included those where the GI-TOC's influence would be most beneficial. The essence of the recommendations reflect this shared view: that financial crime policies should not lead to undermining those that suffer the most from financial crime and are often at the frontlines of attempts to push back against organized crime.

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The GI-TOC

- The GI-TOC is well positioned to push back on the ever expanding use of counterterrorism framing, and to play a role in bridging the AML/CFT space particularly because the organization can help frame contexts from the global organized crime lens. The securitized counterterrorism lens adds an extra layer with its own complexities, while in many countries organized crime is more of a threat than terrorism.
- The Resilience Fund plays a buffering role between CSOs and donors, essentially onboarding the due diligence and risk component. This results in far higher administrative costs for the Fund than for normal grantmaking programmes, which may in the end not be sustainable. In its advocacy efforts, the GI-TOC should therefore encourage the relevant donor, UN and EU actors to adopt the risk-sharing approaches and recommendations that are laid out below.
- The GI-TOC should engage with platforms already working on negative consequences of organized crime and CFT regulations, and who engage with the FATF, such as the NPO Coalition on the FATF and other relevant organizations working at the UN and EU level. It should also support local organizations when they wish to engage with the FATF risk assessment

and/or mutual evaluation process. The newly announced 'work stream on the unintended consequences of poorly implemented AML/CFT measures' could be a key target for advocacy and discussion within these engagements.⁸⁰

- In addition, when engaging at the G20 level, the GI-TOC can support the call by the NPO Coalition on the FATF to include the importance of a balanced financial integrity and financial inclusion approach to the G20's Global Partnership for Financial Inclusion.
- The GI-TOC should continue to document and provide evidence on the experiences of its grantees so that it can support their financial resilience and add to the global body of evidence on the effects of de-risking.
- Stakeholder round tables on this topic have been developed by the World Bank, the Trisector Working Group in the UK, the Dutch Ministry of Finance and Human Security Collective, the Swiss government and the EU. They have convened stakeholders to raise awareness about challenges and opportunities of each stakeholder group to address financial integrity and financial inclusion, and to identify tangible and systemic solutions to the problems. The GI-TOC may be interested in assessing the practices of each of these round tables with the objective of formulating a set of principles for effective round tables.

UN agencies and diplomatic missions to the UN

- Building on its existing efforts and experience, the UNODC should ensure maximum transparency in the advice and support that it offers to governments, including through the systematic inclusion of civil society actors in those conversations, and they should ensure the consideration by countries of the harmful (unintended) consequences of their CFT and AML regulations, emphasizing proportionality and the do-no-harm principle. The UNODC's 2021–2025 Strategy emphasizes the convening

power that it has as an institution and the importance of creating multi-stakeholder platforms that include civil society.⁸¹ Including the consequences of CFT regulation could and should be added as a topic of concern.

- The UN should mandate a regular internal learning exercise to troubleshoot harmful counterterrorism programming to assess its impact on peace, rights and development, as well as develop a stronger review processes for more thorough, inclusive strategic reflections on the role of the UN in organized crime and the role that CFT regulation plays in obstructing the work of actors fighting organized crime.
- Member states could adopt a resolution in one of the principle UN policymaking bodies dealing with organized crime: the UN Commission on Crime Prevention and Criminal Justice or the Conference of Parties to the UN Convention against Transnational Organized Crime. Similar to the emphasis on civil society in the UNODC's 2021–2025 strategy, this would set out the importance of civil society organizations as part of holistic society-wide efforts to prevent and counter organized crime, and recommend that implementation of CFT/AML regulations does not hamper the work civil society does in that regard. This would be through consultative and open processes and inclusion of civil society in implementation plans. This resolution should be in line with the UN Guidance Note on Protecting and Promoting Civic Space – adopted in September 2020, under the leadership of the Secretary-General – which commits the UN system to taking concrete steps in protecting and promoting civic space at the global and country levels.⁸²

Regional bodies

- The EU should meaningfully engage with a broad representation of civil society when

drafting their new comprehensive AML/CFT regulations, ensuring that lessons learned from the recommendation 8 process are taken into account and that there is an adherence to a proportional risk-based approach rather than an overbroad rule-based approach.

- Acknowledging that the work of peacebuilding and community resilience is never completely risk-free, the EU (as well as other regional bodies) should encourage risk sharing among donors, financial institutions and civil society, rather than pushing the risk onto smaller organizations.
- The EU, other regional bodies and national governments should ensure that measures on CFT (including the freezing of assets) are compliant with international human rights law and do not inhibit freedom of association or the realization of women's rights or women's financial inclusion.

Donors

- Donors should adopt a risk-sharing approach with their grantees acknowledging the often challenging environments in which they work, and strive to offer them reasonable requirements that are commensurate with the type of work they offer.
- The provision of flexible, multi-year and core funding is crucial to allow flexibility to respond to changing circumstances, which ultimately enhances impact. Donors should allow organizations to have more ownership

in spending their funding so that they are able to adapt to the immediate needs and situation on the ground. They should also ensure that budgets can be reviewed and adapted on a yearly basis.⁸³

- Donors should focus on lifting the barriers on direct funding of smaller grassroots organizations – including women human rights defenders – and also decrease the administration and bureaucracy around smaller funds to make these accessible for grassroots human rights defenders.⁸⁴
- Gender-aware resilience programming should engage closely at an early stage with the specific challenges faced by resilience actors to ensure that financial transactions are structured to avoid delays and blocks. Where necessary and feasible, this should include support to resilience actors in navigating compliance requirements and avoiding transaction structures that are likely to raise compliance concerns.⁸⁵
- Financial support should be flexible and tailored to the needs of the resilience actor, while enshrining compliance with donor accountability requirements. In some contexts, it may be necessary to use the services of international transfer companies rather than mainstream banking institutions, engage third-party trusted intermediaries to act as primary recipients of international transactions, which then pass on the funding to the relevant actors, or otherwise restructure support to ensure it is accessible and enhances rather than diminishes the financial resilience of stakeholders.⁸⁶

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