



THE PERMANENT MISSION
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

May 13, 2016

OHCHR REGISTRY

13 MAY 2016

Recipients : SPB
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Mr. Philip Alston
Special Rapporteur on Extreme Poverty and Human Rights
Geneva, Switzerland

Mr. Dante Pesce
Chairperson of the Working Group on the Issue of Human Rights and
Transnational Corporations and Other Business Enterprises
Geneva, Switzerland

Mr. Bahame Nyanduga
Independent Expert on the Situation of Human Rights in Somalia
Geneva, Switzerland

Mr. Ben Emmerson
Special Rapporteur on the Promotion and Protection of Human Rights and
Fundamental Freedoms while Countering Terrorism
Geneva, Switzerland

Dear Mr. Alston, Mr. Pesce, Mr. Nyanduga, and Mr. Emmerson:

This letter responds to your January 12, 2016 joint communication concerning “the termination of accounts of Somali money transfer operators (MTOs) by commercial banks in the United States as a consequence of government anti-money laundering and counter-terrorism measures.”

The United States recognizes the important role that remittances play in meeting the needs of the residents of Somalia as well as the importance of financial access for money services businesses (MSBs) more broadly. We are also aware that a number of money transmitters sending funds to Somalia are experiencing difficulties in maintaining bank accounts and banking relationships in the United States. However, we also understand from discussions with international organizations and the private sector that remittances continue to flow to Somalia.

While we take the issues that you raised seriously, the United States has concerns with a number of the key elements of your letter, including its description of U.S. obligations under the International Covenant on Civil and Political Rights (ICCPR) and as a signatory of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as its characterization of the duties set out in the UN Guiding Principles on Business and Human Rights (UNGPs), as they relate to Somali remittances. In addition, we disagree with your

letter's implication that the sole cause of account closures related to Somalia lies with the implementation and enforcement of anti-money laundering and combatting the financing of terrorism (AML/CFT) laws, along with the regulatory environment in the United States.

As the joint communication notes, remittance flows from the Somali diaspora to recipients in Somalia have developed in the absence of a regulated financial system in Somalia, where the majority of remittance recipients lack bank accounts and where the Central Bank of Somalia (CBS) has yet to develop the capacity to adequately supervise financial institutions. The nascent and unsupervised nature of Somalia's financial sector, the lack, until recently, of any AML/CFT law and regime in Somalia, reports regarding the potential use of certain Somali remitters to send funds to al-Shabaab, and al-Shabaab's control over parts of Somalia are all significant factors contributing to the assessments of many banks that Somalia is an extremely high-risk jurisdiction with insufficient controls in place to mitigate the risks associated with money laundering and terrorist financing.

The U.S. government has made clear on numerous occasions that we expect financial institutions to implement a risk-based approach to identifying and mitigating their risks – including with respect to Somali remittances – and to apply effective AML/CFT measures commensurate to those risks in accordance with their legal obligations. We continue to emphasize – through regulatory guidance and in ongoing discussions with financial institutions – that banks should assess the risks posed by money transmitter clients, including Somali remitters, on a case-by-case basis, and that banks should not engage in the wholesale termination of customer accounts without individualized risk analysis.

The U.S. government believes that, given the risks associated with Somalia, the best way to facilitate remittance flows is for Somalia to develop a functioning and well-regulated financial system that also ensures adequate risk-based supervision of money transmitters. We are coordinating closely with the World Bank, the International Monetary Fund (IMF), the African Development Bank, the Financial Stability Board, the Financial Action Task Force, the G-20, the Government of Somalia, and other international partners to help build capacity in Somalia and develop an effective regulatory and supervisory framework for financial institutions in Somalia. Such an effective framework is essential for financial institutions in the United States and in other jurisdictions to enjoy sufficient comfort in doing business with Somali remitters given the associated money laundering and terrorist financing risks. These ongoing efforts include:

Providing technical assistance to Somalia. The U.S. government is providing the Central Bank of Somalia with training on risk-based supervision and technical assistance to help build capacity to implement banking regulations and to carry out examination and supervision procedures. Additional U.S. technical assistance projects are underway to strengthen Somali governance and financial oversight, develop a customer identification and verification system in Somalia, and support financial sector infrastructure development and overall AML/CFT compliance. Through the U.S. Agency for International Development's (USAID) Strengthening Somali Governance program, the U.S. government also provides technical assistance and training to Somalia's legislative and executive branches to develop the legislative framework necessary to implement public financial management, fiscal

reform, and fiscal transparency, and to support the Ministry of Finance in implementing basic accounting and budgeting processes.

Additionally, the U.S. government strongly supports efforts by the World Bank, in partnership with the Government of Somalia and the United Kingdom, to employ a trusted agent to assist the Central Bank of Somalia in building its supervisory and regulatory capacity, with a specific focus on money transmitters. We are also providing funds to the IMF through its Somalia multi-donor trust fund to deliver technical assistance and training to Somalia over the next three years (2016-2018) to: (1) build state capacity in key institutions, including the Central Bank of Somalia; (2) develop a macroeconomic framework for monetary and fiscal policy formation in Somalia, including the production of macroeconomic statistics; and (3) strengthen tax and customs policy, administration, and public financial management in Somalia. Building capacity in key Somali institutions is an essential aspect of any long-term solution to this issue and is vital to the development of a stable and transparent financial system in Somalia through which legitimate remittances can flow.

Engaging with international institutions and partners. The U.S. government actively participates in the Somalia Remittances Stakeholder Advisory Council, which includes representatives from the U.S. Department of the Treasury, U.S. Department of State, USAID, United Kingdom, World Bank, IMF, African Development Bank, Central Bank of Somalia, and Central Bank of Kenya, to coordinate multilateral efforts on the Somalia remittances issue.

Working with the Somali-American community. The U.S. government routinely engages with the Somali-American community, including representatives of money transmitters serving the Somali community, non-governmental organizations serving East Africa, and regional banks, on Somalia remittances and the importance of long-term capacity-building in Somalia.

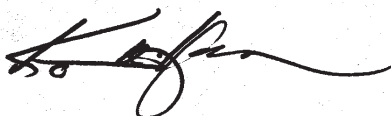
Preserving financial access for MSBs. The U.S. government has also taken a number of steps in the past few years to support access to financial services in the United States for the MSB industry as a whole, which includes money transmitters, and to clarify the expectations for banks with MSB customers. As the joint communication notes, President Obama signed the Money Remittances Improvement Act into law on August 8, 2014 to allow the U.S. Department of the Treasury to rely on U.S. state examinations for certain financial institutions and to improve oversight of the U.S. MSB industry. In November 2014, the Financial Crimes Enforcement Network issued a statement on providing banking services to MSBs in order to reiterate banking institutions' obligations under the Bank Secrecy Act and to encourage banks to assess clients on a case-by-case basis, rather than declining banking services to entire categories of clients. In January 2015, the U.S. Department of the Treasury hosted a roundtable discussion on financial access for MSBs to engage in open dialogue directly with industry stakeholders. Additionally, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation have issued statements to provide clarification to banks on supervisory expectations with regard to offering banking services to MSBs.

Providing humanitarian assistance to Somalia. We appreciate the role that remittances can play in supporting micro-enterprise and building up the resilience of households and communities through supporting small business activities and enhancing community lending in times of crisis. We also care deeply about the humanitarian challenges the population is currently facing, which have been exacerbated by the effects of El Niño. The United States has carefully tracked the early-warning signals of El Niño's impact across Africa and has been at the forefront of raising international awareness, while partnering with governmental and non-governmental aid operations to prevent, mitigate, and respond to the resulting emergency needs, such as food, water, and health. In addition to strengthening financial institutions in Somalia, the U.S. government has provided \$270.5 million in humanitarian assistance since October 2014, supporting emergency food assistance, nutrition interventions, and health care programs, among other life-saving assistance, protection activities for vulnerable populations and conflict victims, and has invested in resilience programming to help bolster households and communities to better respond to such shocks.

In conclusion, the United States recognizes the importance of this issue and remains committed to ensuring financial access for MSBs, including Somali remitters sending funds from the United States to Somalia. The U.S. government continues to monitor developments in Somalia, and we welcome the recent adoption of an AML/CFT law by the Somali government. This new law is an important step toward establishing a robust AML/CFT regime in Somalia.

Despite this progress and the various ongoing capacity building efforts by the U.S. government and our partners, Somalia still faces many challenges, including corruption, security, and governance issues as well as ones relating to hiring and training staff in key government agencies. It is critical for Somalia to implement additional significant changes to strengthen government institutions and develop a fully-functioning financial system that includes a comprehensive AML/CFT regime. This will not be an easy task and will require a sustained international effort focused on long-term solutions. The United States remains dedicated to this effort and to helping Somalia build strong, stable, and transparent systems that can meet both the needs of the Somali people in Somalia and Somali-Americans in the United States.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Harper', with a stylized flourish extending to the right.

Keith M. Harper
Ambassador
U.S. Representative to the UN Human Rights Council