



# COUNTER-TERRORISM POLICY AND PRACTICE REVIEW REPORT

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**ACTION  
AGAINST  
HUNGER**



**MONTREAL INSTITUTE FOR GENOCIDE  
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# 1. INTRODUCTION

The proliferation of anti-terrorism legislation has dramatically risen since 9/11, producing multi-layered, overlapping and sometimes conflictual legal frameworks at the international, regional and national levels. Counterterrorism laws are putting strains on humanitarian NGOs, making operations more complicated and expensive, while adding additional pressures for both management and the beneficiaries of humanitarian aid. Indeed, the impetus for Action Against Hunger to commission this report is due to an increasing concern by humanitarian organisations of the adverse effects of counter terrorism legislation and clauses on their operations.

Indeed, it would seem incumbent on each organisation to educate itself on what national legislation, as well as international law, has to say about supporting terrorism. Not only do humanitarian organisations have to abide by the laws and rules of the country in which their resources are deployed but they have to be aware of national criminal codes. Organisations headquartered (or with a presence in a given country) will be held accountable to the laws of that land. In addition, employees who are citizens of that country can also be charged in extraterritorial fashion if found in contravention of counter terrorism laws put forth by donor countries

Ironically, these developments are taking place in parallel with the “Grand Bargain”, an international agreement which seeks to facilitate humanitarian funding.<sup>1</sup> Initially proposed by the UN High-Level Panel on Humanitarian Financing, more than 20 of the largest governmental donors and over 30 humanitarian organisations, including UN agencies and NGOs, agreed to a series of changes in the working practices between them, including increasing cash programming, funding and cutting bureaucracy.

Despite working towards the Grand Bargain, counterterrorism legislation is increasingly affecting humanitarian actors’ capacity to conduct operations in accordance with long standing humanitarian principles. Furthermore, national legislation and donor agreements run the risk of entering in conflict both with the mandate of humanitarian aid organisations and with international humanitarian law. The U.S., in particular, has increasingly been imposing stringent counterterrorism regulations on humanitarian NGOs. With these developments Agnes Callamard, the Special Rapporteur on extrajudicial, summary or arbitrary executions at the Office of the United Nations High Commissioner for Human Rights, has publically pronounced that the counterterrorism legislation applied to humanitarian aid is “out of control” and leading to the “arbitrary deprivation of life” in her report “Saving lives is not a crime.”<sup>2</sup>

The aim of this report is to look at the embedded web of counterterrorism legislation, sanction regimes and donors agreements, and to examine their impact on humanitarian NGOs. This report focuses on seven important donor countries, as well as the UN and the European Union. While similar research has already been conducted by organisations such as the Norwegian Refugee Council (NRC), the UN Office for the Coordination of Humanitarian Assistance (OCHA) and Chatham House, the rapidity at which new count-terrorism regulations is introduced requires NGOs to be constantly aware of the changes. Furthermore, the overall objective of this report is not to provide legal advice but to identify current trends and to provide recommendations on possible policies and measures that humanitarian NGO’s may consider in order to continue to uphold their humanitarian principles in the years ahead.

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1 “Grand Bargain,” Agenda for Humanity, United Nations Office for the Coordination of Humanitarian Affairs, accessed September 8, 2018, <https://www.agendaforhumanity.org/initiatives/3861>

2 Parker, Ben. “US tightens counter-terror clampdown on Syria aid”, IRIN News, September 21, 2018. Accessed September 22, 2018, <https://www.irinnews.org/news/2018/09/21/us-tightens-counter-terror-clampdown-syria-aid>

This report identifies common principles, operational implications, red lines and considerations that humanitarian organisations must take into account with respect to counterterrorism legislation impacting programming worldwide, in particular in fragile states where designated terrorist groups operate and, in some cases, control territory. Indeed, many civilians living in extreme poverty do live under the control of designated terrorist organisations such as Hamas in the Gaza Strip, Al-Qaeda in the Arabian Peninsula in Yemen, and Boko Haram in Nigeria.

The report identifies general current trends and challenges to humanitarianism in the age of counterterrorism, violent non-state actors and global conflicts, including the criminalisation of aid. The report examines the national legislation, sanction regimes and donor agreements of some of the biggest donors as well as several other multilateral entities. These include the United States, Canada, France, Germany, Sweden, the United Kingdom, the EU, the United Nations, and the Financial Action Task Force. In addition, the report maps out officially designated terrorist groups, as listed by donor governments, to help humanitarian organisations to understand the environment in which they operate and in which geographic areas non-state armed groups are present. The report sections explore the operational challenges of counterterrorism regulations and the reaction of humanitarian actors to donor legislation, and how counterterrorism conflicts with humanitarian international law and humanitarian principles. Lastly, the report outlines redlines and advocacy positions that organisations could consider in the future as counterterrorism measures continue to expand.

## 2. CURRENT ISSUES

### FACING HUMANITARIANISM IN AN AGE OF COUNTER TERRORISM, GLOBAL CONFLICTS AND VIOLENT NON-STATE ACTORS

From the Middle East to West Africa, from South Asia to the Sahel, humanitarian NGOs are operating in conflict zones where non-state armed actors are present, some of which are designated terrorist groups under national and international sanctions and counterterrorism regimes. Recent examples of such areas include Mali, Yemen, Syria, Somalia, and Gaza, where non-state armed groups designated as official terrorist entities control territory and are de facto governmental authorities. A number of studies conducted by the UN Office for Coordination of Humanitarian Affairs<sup>3</sup>, the Norwegian Refugee Council<sup>4</sup> and Chatham House<sup>5</sup>, have shown that counterterrorism measures have a considerable impact on the operations of humanitarian NGOs. However, despite recommendations to donor governments made in these reports and the development of toolkits for NGOs, counter terrorism legislation and requirements continues to impact humanitarian action.

The “Pilot Empirical Survey Study on the Impact of Counterterrorism Measures on Humanitarian Action”, conducted by the Harvard Law School Program on International Law and Armed Conflict (HLS PILAC) sought to measure the “chilling effect” that counterterrorism laws, policies and donor regulations have had on humanitarian action. Targeting humanitarian aid workers and NGOs, the study found that 53% of respondents agreed that counterterrorism legislation affected both their work as individuals and the work of their organisations. In addition, 91% of the respondents claimed that counterterrorism legislation weakened their organisation’s commitment and adherence to humanitarian principles.

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#### A. THE CRIMINALISATION OF AID AND THE “CHILLING” EFFECT

In the report “The Criminalisation of Healthcare”, Dainius Pūras, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, sees the criminalisation of aid as a clear tendency that puts NGO staff increasingly at risk of prosecution under counterterrorism laws. This, he notes, is leading to a “chilling effect” on the provision of humanitarian assistance.<sup>6</sup> Looking at the criminalisation of healthcare within the domestic legal framework of 16 countries, Pūras found that

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- 3 Mackintosh, Kate and Patrick Duplat, Study of the Impact of Donor Counter Terrorism Measures on Principled Humanitarian Action, Office for the Coordination of Humanitarian Affairs and the Norwegian Refugee Council (July 2013), Accessed August 23, 2018, [https://www.unocha.org/sites/unocha/files/CounterTerrorism\\_Study\\_Full\\_Report.pdf](https://www.unocha.org/sites/unocha/files/CounterTerrorism_Study_Full_Report.pdf)
  - 4 Norwegian Refugee Council, Principles under Pressure: the impact of counterterrorism measures and preventing/countering violent extremism on principled humanitarian action, Norwegian Refugee Council (12 June 2018). <https://www.nrc.no/resources/reports/principles-under-pressure/>
  - 5 Gillard, Emanuela-Chiara, Recommendations for Reducing Tensions in the Interplay Between Sanctions, Counterterrorism Measures and Humanitarian Action, International Security Department & International Law Programme, Chatham House, the Royal Institute of International Affairs (London: August 2017), [https://www.chathamhouse.org/sites/default/files/publications/research/CHHJ5596\\_NSAG\\_iv\\_research\\_paper\\_1708\\_WEB.pdf](https://www.chathamhouse.org/sites/default/files/publications/research/CHHJ5596_NSAG_iv_research_paper_1708_WEB.pdf)
  - 6 Buissonniere, Marine, Sarah Woznick, and Leonard Rubenstein, The Criminalisation of Healthcare, University of Essex (Essex: June 2018), accessed September 3, 2018, <https://www1.essex.ac.uk/hrc/documents/54198-criminalisation-of-healthcare-web.pdf>

while no regulations explicitly refer to the provision of medical care as forbidden nor being conceded as support to terrorism, the vague definitions opened the door to interpretations that could delegitimise medical care. Marine Buissonnière, who co-wrote the report, the former Secretary-General of Médecins Sans Frontières/Doctors without Borders, recently stated that “the act of providing impartial medical services inevitably becomes criminalised, perpetuating a chilling effect on the provision of impartial care that is detrimental not only to those banned or to those listed as terrorists but detrimental, at the end of the day, to us all.”<sup>7</sup> Yves Daccord, Director-General of the ICRC, argued that this also infers the idea that some victims deserve to be helped while other do not, which clearly undermines long-established humanitarian principles.

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## B. TENSIONS BETWEEN COUNTER-TERRORISM LEGISLATION AND HUMANITARIAN ACTION

At the heart of the matter is a growing consensus that counter terrorism legislation and laws are increasingly at odds with international humanitarian law. This is very relevant to the work of front line emergency organisations that strive to protect civilian populations from hunger and malnutrition, often in conflict situations. While donor governments support this work and see such organisations as important partners that can operate in highly complex emergencies and dangerous situations, organisations must be diligent in operating according to their charters, including where relevant the principles of independence, neutrality, non-discrimination, free and direct access to victims, professionalism, and transparency. However, the respect of these principles is at risk of being eroded if careful understanding is not given to how counter terrorism legislation is evolving and might impact humanitarian organisations’ work.

### 1) INTERNATIONAL HUMANITARIAN LAW

Indeed, many NGOs’ guiding principles are grounded in international humanitarian law (IHL). In brief, IHL forms a set of rules that seek to limit the effects of armed conflict on civilians. It applies to two distinct situations: 1) international armed conflicts where at least two states are involved, and 2) non-international armed conflicts where fighting takes place on the territory of a single state involving regular armed forces fighting groups of armed dissidents, or armed groups fighting each other.

IHL prohibits means and methods of warfare that: 1) fail to discriminate between those taking part in fighting and those, such as civilians, who are not, the purpose being to protect the civilian population, individual civilians and civilian property; 2) cause superfluous injury or suffering; 3) cause severe or long term damage to the environment.

The four humanitarian principles of humanity, impartiality, independence and neutrality also find their basis in IHL and are universally enshrined by the General Assembly and Resolutions 46/182 and 58/114. As mentioned, the four principles are integral to the charter of principles of many humanitarian organisations. The main objective of humanitarian assistance is to provide assistance to civilians in need on that basis alone and without discrimination or consideration for other factors. In 2003, 16 donor governments, the OECD, the ICRC, the European Commission and NGO representatives reiterated their support of the principles in the “23 principles of Good Humanitarian Donorship.”<sup>8</sup>

What humanitarian organisations are currently dealing with is the fact that compliance to humanitarian principles as rooted in IHL may lead to violations of counterterrorism laws. First, the nature of the laws is different. While IHL can find its source back to 1864

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7 *Safeguarding the Space for Principled Humanitarian Action in Counterterrorism Contexts*, International Peace Institute, last modified on May 23, 2018, accessed August 25, 2018, <https://www.ipinst.org/2018/05/poc-counterterrorism-contexts#11>

8 “23 principles of Good Humanitarian Donorship,” European Civil Protection and Humanitarian Aid Operations, last updated July 19, 2018, [https://ec.europa.eu/echo/partnerships/relations/ghd\\_en](https://ec.europa.eu/echo/partnerships/relations/ghd_en)

and is legally binding by treaty, counterterrorism legislation is created for urgency and immediate response, and is rooted in UN Security Council resolutions. As a result the same conflict situation may be seen through very different lenses: where IHL sees humanitarian assistance and protection of civilian populations as legitimate and mandatory, counterterrorism legislation may understand the same purport as dangerous as it is seen as freeing up resources of designated groups. Humanitarian groups that are accused of not complying with counterterrorist legislation, despite respecting IHL, may risk the dismissal of staff members, the suspension of operations and criminal proceedings.

## II) DISMISSAL OF STAFF MEMBERS

NGOs accused or found guilty of contravening counterterrorism legislation will likely face the dismissal of staff members involved. One such example is the recent USAID audit of the Catholic Relief Services' (CRS) food aid program in Syria.<sup>9</sup> As related by IRIN, "USAID's inspector general, reporting to Congress, first in March<sup>10</sup> and with more details released in July, said that staff of an unnamed non-profit added "fighters" of armed group Hay'at Tahrir Al-Sham to lists of civilians eligible for food packages and then covered up the records. The US government regards HTS as a successor to the al-Qaeda-affiliated Nusra Front.<sup>11</sup> Apparently the NGO's local staff falsified records under duress. Action was taken after the fact to dismiss the staff members involved.

## III) SUSPENSION OF OPERATIONS

Alongside the dismissal of staff members, NGOs may be required to suspend their operations if they are found to be contrary to counterterrorism measures. Similar to CRS, the Irish NGO GOAL has become the second US-funded organisation to halt food assistance programs in Syria this year. An IRIN report reveals that GOAL suspended its operations in Idlib in February 2018 but it has only become known to the public in September.<sup>12</sup> Idlib is an area that is partially controlled by al-Qaeda affiliate Hay'at Tahrir Al-Sham. The group is listed by the US government as a designated terrorist organisation. Official UN statistics show that the number of civilians receiving food aid in this region of Syria dropped from over 216,000 beneficiaries in January 2018 to just 107,000 two months later. Of all the humanitarian NGOs operating in Syria, GOAL was the second largest recipient of US funding and had been supporting 250,000 civilians across the country.

## IV) CRIMINAL PROCEEDINGS

NGOs may finally risk legal action and criminal proceedings if they continue to operate and distribute aid in areas with designated terrorist organisations. NGOs must not only be conscious of the laws of the territories in which aid is distributed, they must equally abide to the laws of the country in which they are headquartered or have a given presence. For example, the Norwegian People's Aid (NPA), funded by the U.S., has been accused of providing material support to Iran, Hamas, the Popular Front for the Liberation of Palestine, and the Democratic Front for the Liberation of Palestine, which are designated terrorist organisations under US law. In April 2018, the NPA settled a civil-fraud suit of \$2 million with the US for violating the US False Claims Act.

9 Parker, Ben. "Syrian militants served American food aid: US watchdog," *IRIN News*, article published on August 23, 2017, accessed September 15, 2018 <https://www.irinnews.org/news/2018/08/23/syrian-militants-served-american-food-aid-us-watchdog>

10 Office of the Inspector General, *Semi-annual Report to Congress October 1, 2017–March 31, 2018*, U.S. Agency for International Development, accessed August 23, 2018, [https://oig.usaid.gov/sites/default/files/2018-06/sarc\\_03312018.pdf](https://oig.usaid.gov/sites/default/files/2018-06/sarc_03312018.pdf)

11 Office of Foreign Assets Control, *Sanctions List Search*, Office of Foreign Assets Control, last updated November 8, 2018, accessed August 23, 2018. <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=4024>

12 Parker, Ben. "Another Syria aid operation on hold in rebel stronghold Idlib," *IRIN News*, article published on September 21, 2018, accessed September 26, 2018 <https://www.irinnews.org/news/2018/09/21/another-syria-aid-operation-hold-rebel-stronghold-idlib>

It is worth noting that the private sector is also coming under scrutiny for its business dealings in conflict affected states. The French company Lafarge was recently indicted by the French courts for financing terrorist groups in Syria.<sup>13</sup> Social media companies as well are under great scrutiny as designated terrorist groups continue to use their platforms to plan attacks and incite violence.

The above examples demonstrate the growing risks – dismissal of staff, suspension of operations, suspension of funds, criminal proceedings – that humanitarian organisations that operate in countries in which designated terrorist groups are present could potentially face. These countries and areas include Syria, Iraq, Lebanon, the Palestinian Territories, Egypt, Mali, Chad, Burkina Faso, Niger, Nigeria, Cameroon, Somalia, Kenya, Afghanistan, Pakistan, Bangladesh, Indonesia, and the Philippines.

It is therefore perfectly reasonable for international NGOs to be concerned that in their humanitarian efforts to help the most vulnerable civilians, they might inadvertently run afoul of counter terrorism measures. The multitude of international counterterrorism conventions, and national, regional and international legislations and measures to prevent terrorism, has created multi-layered and intricate sets of guidelines and regulations that complicates humanitarian action and at times are contrary to, or contravene, International Humanitarian Law.

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### **C. THE IMPACT OF COUNTER-TERRORISM LEGISLATION AND ANTI-TERRORISM STRATEGIES ON DONOR REQUIREMENTS**

Considering that Western governments are some of the humanitarian sector's biggest donors, it is important to note that they both play an important role in driving the global agendas related to the funding of humanitarian aid and the development of counterterrorism policies and strategies. Not only do they have the greatest number of counter terrorism laws, they are also the largest funders of humanitarian aid programs and the UN system. The US, France and the UK, as permanent members of the UN Security Council, play a major role in shaping UN Security Council discussions and upholding international legal instruments.

In general, there are several sources of obligations related to counterterrorism that humanitarian actors should pay attention to: international law (including UN Security Council resolutions, the UN Charter, international conventions, international humanitarian law); and domestic counterterrorism-related laws, followed by donor policies and agreements. To comply with UN Security Council resolutions (see section 4), states have had to adapt their domestic legal frameworks to prohibit the provision of material support or resources to designated terrorist groups. Humanitarian agencies therefore have no choice but to take into account international and national regulations when they conduct their operations.

UN Security Resolutions and domestic legislation have a direct impact on donor agreements with humanitarian agencies, and several governments have started to include clauses that put strains on activities fundamental to humanitarian action. This is particularly true for financial sanctions. Asset freezes that, among other things, require member states to ensure that funds, financial assets or economic resources are not made available to, or for the benefit of, designated entities, can have a real impact on the prompt delivery of humanitarian assistance. Furthermore, sanctions regimes can vary from country to country, complicating things for humanitarian NGOs. Since 2011, counterterrorism legislation at the international and national levels has focused primarily on financial

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13 Alderman, Liz, "French Cement Giant Lafarge Indicted on Terror Financing Charge in Syria," *The New York Times*, June 28, 2018, accessed August 24, 2018, <https://www.nytimes.com/2018/06/28/business/lafarge-holcim-syria-terrorist-financing.html>

legislation (financing of terrorism), particularly through the Financial Action Task Force (FATF).<sup>14</sup> Financial institutions are more risk-averse and prone to de-risking.

Several donor governments include counterterrorism clauses in donor agreements to give effect to their obligations under international and national sanctions and counterterrorism measures. Furthermore, contracts often include so-called “flow-down clauses” that require the organisation to ensure that sub-agreements and contracts with other entities include the same counterterrorism obligations. The U.S., the U.K. and Canada in particular include extensive counter-terrorism clauses.

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## D. MAPPING OF DESIGNATED TERRORIST GROUPS

When an international NGO receives funding from a national government, they are in turn expected by the government in question to both comply with counter terrorism legislation, and be aware of which organisations are on official proscribed terrorist lists. As of September 2018, a total of 167 terrorist organisations are listed by top donors including the United Nations.

Across these lists, there are two types of organisations noted. The first are active and violent terrorist groups, while the second are organisations that fund terrorism (charities, NGOs and money transfer offices). These organisations are generally only recognised by the UN, unless the offices are located specifically in the country that is recognising them.

It is important for humanitarian organisations to recognise that there are numerous groups that most (if not all) donor countries have red flagged. Furthermore, many of the designated terrorist organisations are ubiquitous in countries and regions where international NGOs operate. The principle organisations that have been listed as terrorists groups are mapped out and described below.

Not surprisingly, Al Qaeda (including its factions and manifestations in different regions) is listed by most, if not all, of these donors. These factions include: Abdallah Azzam Brigades, including the Ziyad al-Jarrah Battalions (AAB) (Al Qaeda in Lebanon), Al Qaeda in the Arabian Peninsula, Al Qaeda in the Indian Subcontinent, Al Qaeda in Iraq and Al Qaeda in the Islamic Maghreb. Al Qaeda hence operates worldwide but is predominantly present in Yemen, Saudi Arabia, Iraq, Afghanistan, India, Pakistan, Bangladesh, Algeria, Mali, Mauritania, Morocco, Niger, and Tunisia. Al Qaeda in the Islamic Maghreb has been behind attacks against the UN in Algeria and UN peacekeepers in Mali, and has also carried out attacks against civilians and western citizens, including humanitarian aid workers, in Burkina Faso, Mali and Ivory Coast.

Al Shabaab (based in Somalia), has the aim of establishing a fundamentalist Islamic state through violent means. The organisation has also publicly pledged its allegiance to Osama Bin Laden and has announced an intention to combine its campaign in the Horn of Africa with Al Qaeda’s aims of global jihad. The group has carried out attacks against civilians in Somalia, Uganda and Kenya, against the Somali government and African Union peacekeeping soldiers stationed in the country.

Groups operating in the Palestinian Territories (with networks in surrounding countries such as Syria, Lebanon and Egypt) have been considered terrorist organisations by most if not all of the top humanitarian donors. These groups include the Palestine Liberation Front (PLF), Palestinian Islamic Jihad - Shaqaqi (PIJ), Popular Front for the Liberation of Palestine-General Command (PFLP-GC), Popular Front for the Liberation of Palestine (PFLP), Hamas (Harakat Al-Muqawama Al-Islamiya) (Islamic Resistance Movement) and the Hamas Izz

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14 Financial Action Task Force, *Best Practices on Combating the Abuse of Non-Profit Organisations* (Recommendation 8), Financial Action Task Force (Paris, France: 2015), accessed September 5, 2018, <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>

al-Din al-Qassem Brigades. Given that Hamas forms the government in the Gaza strip, humanitarian NGOs must tread carefully in their operations there.

Islamic State of Iraq and the Levant (ISIL) also known as Dawlat al-'Iraq al-Islamiyya, Islamic State of Iraq (ISI), Islamic State of Iraq and Syria (ISIS) and Dawlat al Islamiya fi Iraq wa al Sham (DAESH) and the Islamic State in Iraq and Sham - is recognised as a proscribed terrorist organisation by all of the donor countries listed. ISIS has proven to be one of the most violent non-state armed groups to emerge in recent memory and has committed genocide against minority religious groups in areas under its control, according to various experts, governments and regional bodies such as the Council of Europe's Assembly. It has destroyed UNESCO cultural heritage property, kidnapped and murdered humanitarian aid workers and journalists, used chemical weapons, conducted attacks against the citizens of many western donor countries and has created a digital network that continues to empower the group as it loses physical ground in Iraq and Syria but expands to new countries. These other ISIS affiliated groups are also on all of these donors' proscribed terrorist lists: Abu Sayyaf, unofficially known as the Islamic State of Iraq and the Levant – Philippines Province, Islamic State – Khorasan Province (ISKP), Islamic State Bangladesh, Islamic State Greater Sahara, Islamic State West Africa, Islamic State – Sinai Province (ISSP), and the Islamic State of Iraq and the Levant's Branch in Libya (ISIL Libya). ISIS has also been growing in Indonesia and Afghanistan.

Boko Haram, a jihadist military organisation operating in Nigeria, Chad, Niger and northern Cameroon, which has affiliations with ISIS, is also a listed terrorist organisation. The group has, for example, attacked the United Nations, kidnapped school children and destroyed schools, while effectively engaging in a violent insurgency that has contributed to creating a major humanitarian disaster in Northern Nigeria, and neighbouring countries.

Groups that are active in Pakistan and Jammu and Kashmir have been listed as terrorist organisations across most donor countries. These include: Harakat-UI-Mujahideen/Alami (HuM/A) and Jundallah/Harakat Mujahideen (HM) and Jaish e Mohammed (JeM) and splinter group Khuddam UI-Islam (Kul).

In South Asia Tehrik-e Taliban Pakistan (not affiliated with the Taliban in Afghanistan) is recognised as a terrorist organisation by USA, UK, Canada and the UN.

Groups that are active in South East Asia have been listed by all these donor countries including: Jeemah Islamiyah (JI) which is active in Indonesia, Singapore, Malaysia and the Philippines with connections to Al Qaeda and the Communist Party of the Philippines.

While the vast majority of terrorist groups on donors' lists are Sunni Muslim extremist groups, a very small number on the list are not. These include:

- Sikh Separatist Groups active in India are listed by the USA, UK, EU and Canada including: Babbar Khalsa and the International Sikh Youth Federation (ISYF).
- Kurdish militant groups that have been recognised by the USA, UK, EU and Canada include The Kurdistan Freedom Hawks (TAK), and the Kurdistan Workers Party (PKK). Both groups are active in Turkey with the PKK also active in Iraq.
- Epanastatikos Agonas (Revolutionary Struggle) (RS) - which are active in Greece, specifically Athens.
- Revolutionary Armed Forces of Colombia (FARC) - which was active in the Colombian armed conflict.

A list of the geographic location of officially designated terrorist groups by major institutional donor are listed in Appendix B of this report.

## 3. CHALLENGES

### TO ONGOING HUMANITARIAN ACTION IN A COUNTER-TERRORISM CONTEXT

In the 2016 global report conducted for Action Against Hunger titled “How will the international counterterrorism architecture evolve in the next 5 years and in what way does it affect humanitarian action?”, the Institut des Relations Stratégiques et Internationales expresses worry that there could be the “co-option of humanitarian organisations into the War on Terror through the expectation that they subordinate the primacy of their principles to the foreign and security policy of donor governments,” therefore putting humanitarian principles at risk and “could result in diminished access to aid for some of the most vulnerable.” Since the possibility of influencing counter-terror legislation is low and humanitarian organisations are dependent on donor governments funds, the report lists future trends and comes to the conclusion that the system of sanctions and counterterrorism legislation will only get more complex as Western governments continue to react to terrorist attacks, while at the same time governments of countries in terror hotspots will tend to impose expansive and potentially abusive laws.

International humanitarian NGOs that are working in conflict zones to provide needed services understand the risk that staff members might be exposed to. Active combat means that aid workers can be killed in air or drone strikes, by weapons or in ‘friendly fire’ incidents. Employees are also exposed to unsafe conditions more generally – food, water and shelter. They are also at risk of abduction and being held for ransom or executed by violent extremist groups. In August 2017 three aid workers with Catholic Relief Services (CRS) were gunned down in central Afghanistan while, at the same time, UK and US authorities warned that the terrorist group Boko Haram would likely target aid workers for kidnapping, as this is “highly lucrative and is a major source of funding for terrorist activity.” It is a testimony to these organisations that they persist in maintaining a presence in these dangerous areas.

At the same time, however, employees and/or employers could face legal sanction for the work they do if it is perceived as contrary to anti-terrorism legislation. Many countries have passed laws that outline exactly what constitutes terrorism, what constitutes support for terrorism, and the penalties that accompany such acts. For example, it is important to look at how a handful of Western nations frame this problem and discuss the risk for aid agencies and NGOs working in parts of the world where terrorism is all too pervasive.

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#### A. NATIONAL LAWS AND EXEMPTIONS

When we look at counterterrorism legislation in the US, Canada, Germany, France, Sweden, the UK and the EU, we see that they all have some version of a prohibition on ‘financing, aiding, collecting and/or providing funds, and engaging in business practices’ that assist a terrorist organisation or terrorist activity in general. Most add that such assistance can be ‘direct or indirect’ and state that this assistance has to be done ‘knowingly’ (although the UK frames this as “or reasonable cause to suspect” and Germany has a clause that speaks to ‘recklessness’ – the belief that one cannot turn a blind eye to obvious terrorist use of funds or aid). Sweden states that organisations must practice ‘enhanced due diligence’ in areas where the risks of money laundering or terrorist financing are high. Many pieces of legislation also act extraterritorially over terrorist acts and terrorist financing/material support, creating potential criminal and civil exposure for national or/and non-national banking institutions, companies and individuals acting overseas, or foreigners that come within the geographical limits of the State. This is

particularly the case for the U.S. and Commonwealth nations.

Complicating matters is the provision in some jurisdictions, such as New Zealand and Australia, of humanitarian exemptions in domestic criminal codes.<sup>15</sup> This would include for example life-saving goods or services. The U.S. can provide exemptions but to a very limited extent (medicine and religious materials). The EU will provide exemptions under special circumstances in the case of payments for foodstuffs, medicines and treatment. Obvious questions are raised on how these exemptions are obtained, who they concern (case-by-case basis, exemptions for humanitarian actors or to the humanitarian sector) and when they can be negotiated (possibility of post hoc exemptions).<sup>16</sup> The question also is whether exemptions could be broader-based and involve the U.N. and other larger organisations.

Certain states are now considering travel bans for their citizens in zones with high levels of terrorism activity, regardless if the intent is to deliver aid. Under the UK's recently proposed Counter-Terrorism and Border-Security Bill, aid workers ran the risk of being jailed up to ten years for simply entering designated conflict zones.<sup>17</sup> Though amendments exempting aid workers and journalists have been introduced, the bill remains indicative of the future legal barriers potentially facing humanitarian organisations.

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## B. NON-STATE ARMED GROUPS

Compliance to counterterrorism legislation is increasingly challenged when NGOs and aid agencies are present in conflict zones that are witnessing the rise and growth of non-state armed groups. Certain organisations now operate in areas of the world where a non-state armed group (listed or not – see discussion below) acts as the de facto government. At its height Islamic State group provided services consistent with a state – education, garbage collection, tax collection, etc. – in parts of Iraq and Syria (that it was not a 'normative state' is irrelevant). A similar situation occurs in Afghanistan under Taliban influence. If aid organisations are present in these areas and cooperate with local officials (willingly or by force), which happen to also be designated terrorist organisations, such collaboration could be construed as material support for terrorism and charges could be laid.

Perhaps the most obvious example is that of Hamas in the Gaza Strip. Hamas has been the governing body in that area from 2007 to 2014 and from 2016 to the present. As such it is responsible for providing daily services to the inhabitants of Gaza. At the same time, Hamas is considered by many to be a terrorist group. Another analogy would be Hezbollah in Lebanon. In Gaza there are dozens of aid groups active on the ground. In 2016 Israel accused World Vision, a U.S.-based Christian humanitarian organisation, of funneling aid money to Hamas. The director of World Vision's Gaza office was arrested on accusations of diverting up to \$50 million over the course of seven years. The Shin Bet, Israel's internal security service, claimed that the money was used to dig cross-border attack tunnels and build bases. The agency also claimed that food parcels meant for needy families, and even bags of toiletries, were diverted to Hamas militants. This was a serious allegation with serious consequences. Any NGO that worked alongside Hamas could be accused of supporting terrorist activity.

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15 Burniske J., Naz Modirzadeh and Dustin Lewis, *Counter-terrorism Laws and Regulations: What Aid Agencies Need To Know*, Humanitarian Practice Network, Network Paper 79 (November 2014), accessed September 5, 2018, [https://odihpn.org/wp-content/uploads/2014/11/NP\\_79\\_crc\\_string\\_FINAL.pdf](https://odihpn.org/wp-content/uploads/2014/11/NP_79_crc_string_FINAL.pdf)

16 King, Katie, Naz K. Modirzadeh, Dustin A. Lewis, *Understanding Humanitarian Exemptions: UN Security Council Sanctions and Principled Humanitarian Action*, Harvard Law School Program on International Law and Armed Conflict Counterterrorism and Humanitarian Engagement Project, <http://nrs.harvard.edu/urn-3:HUL.InstRepos:29998395>

17 Dearden, Lizzie. "Aid workers fear jail for entering conflict zones under new terror laws proposed by government". *The Independent*, November 30, 2018, accessed January 22, 2019, <https://www.independent.co.uk/news/uk/home-news/terror-laws-isis-counter-border-security-bill-aid-workers-jail-designated-areas-human-rights-syria-a8661836.html>

## C. TERRORIST LISTINGS

Another consideration is the panoply of listed terrorist entities, as laid out in Appendix B and Section 2. D of this report.<sup>18</sup> Many nations have their own such designation: Canada, the US, the EU, Australia, etc. (the UN does not have an analogous list but rather several lists). While most designated terrorist organisations find themselves on multiple national lists, there are exceptions. For instance, while the EU list contains 21 groups, Australia's has 26 and the US document lists 67 groups. While designated organisations can be 'de-listed' at any time, it is an extremely difficult and long process to do so. In Canada, the People's Mujahedin Organisation of Iran (PMOI, also known by its Farsi name Mujahedin-e-Khalq) was listed for years but had its name removed by the Canadian government in 2012.

It is important for NGOs and aid agencies to keep abreast of changes to terrorist listings. The process by which groups are added or removed will vary from jurisdiction to jurisdiction (in Canada for instance, the entire list is reviewed every two years). A group considered terrorist in nature at one time can find itself no longer considered so, and vice versa. It is not clear whether connections to a given group whose status is changed could be seen as support before and/or after such a change. Regardless, in every country where international NGOs operate, management and staff must become familiar with these lists.

## D. DEFINING TERRORISM

Above all these considerations is the high variability of defining what constitutes 'terrorism' since it depends on the politics and national interests of individual countries. The reality is that there is no one definition (European scholar Alex Schmidt once wrote that there were over 100 descriptions). The UN settled on a text that includes a clause outlining an act intended to kill or cause serious bodily harm in order "to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act." In the Canadian Criminal Code terrorism is not defined but terrorist activity is: "an act...that is committed in or outside Canada in whole or in part for a political, religious or ideological purpose, objective or cause." Other nations frame it differently. In the end, while there are some commonalities, confusion reigns. However, ignorance of the law is seldom a good defense.

## E. INFRINGEMENTS OF COUNTERTERRORISM LEGISLATION ON INTERNATIONAL HUMANITARIAN LAW

However, the overriding dilemma that organisations in the humanitarian sector must confront is the extent to which counterterrorism legislation takes precedence over international humanitarian law (IHL). Although the tensions between IHL and counterterrorism legislation were previously touched upon in section 2 of the report, it is a point that bears repeating. The 2018 UN report "Saving Lives is not a Crime" drafted by the UN Special Rapporteur of the Human Rights Council on Extrajudicial, Summary or Arbitrary Execution draws a clear portrait of the frictions between IHL and counterterrorism laws.<sup>19</sup> While several experts and NGOs have already made this clear, the fact that this comes from a U.N. Rapporteur is important. The report clearly states that "it bears repeating that international humanitarian law continues to apply to conflicts, notwithstanding the incidence of acts of terrorism; the occurrence of such acts does not displace international humanitarian law."<sup>20</sup> International humanitarian law imposes an

18 A table of top donors' terrorism lists is available in Appendix B

19 Callamard, Agnes, *Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions*, A/73/314 (New York: 6 August 2018), available from [https://www.ohchr.org/Documents/Issues/Executions/A\\_73\\_42960.pdf](https://www.ohchr.org/Documents/Issues/Executions/A_73_42960.pdf)

20 Ibid. p. 10.

obligation to respect and protect populations in need and humanitarian actors: “Under international human rights law, the absolute right to life entails a negative obligation on the State not to engage in acts - such as the prohibition, criminalisation or impediment of humanitarian actions - that would jeopardise the enjoyment of that right.”<sup>21</sup> However when counterterrorism measures are applied in times of war, they enter into conflict with IHL and put at risk the delicate balance between security and humanitarian imperatives.

The “Saving Lives is not a Crime” report argues that counter terrorism laws imposed by states can violate the international obligation to preserve the right to life and duty to care: “a state has two sets of obligations: a positive obligation to agree to and facilitate such services and a negative obligation not to impede the offer and provision of humanitarian services to individuals and populations in need,”<sup>22</sup> and thus “acts prohibiting otherwise impeding humanitarian services violate the obligation of states to respect the right to life.”<sup>23</sup> The report refers to the well-known case of Somalia in 2010/11 where response to the famine in the al-Shabaab region was slowed down by counterterrorism measures, leading to the loss of thousands of lives.<sup>24</sup> The UN report concludes that “by failing to clearly exempt humanitarian actors from anti-terrorism statutes, Governments are knowingly reducing the provision of life-saving aid to desperate people. Such responses to terrorism also risk unwittingly eroding a normative pillar of international law.” NGOs and fellow aid organisations must therefore consider how counterterrorism laws, as imposed by states and other multilateral agencies, may now run counter to their core humanitarian principles.

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## F. LISTED IMPACTS OF COUNTERTERRORISM LEGISLATION AND DONOR CLAUSES ON OPERATIONS

As NGOs become further entangled in a complex web of counterterrorism legislation imposed by national and international legislation as well as donor agreements, they must now face a new set of operational challenges. As mentioned above, compliance to counterterrorism legislation is further complicated since it implies compromises on humanitarian principles. Alongside changes made to their operations- or programming- NGOs are likely to be obligated to make revisions their structural (i.e. humanitarian) and internal (i.e. administrative) workings, with more detailed information being listed in Appendix C.

The operational impacts stem from the high demands of compliance asked by donors, which places high administrative burden and therefore delays programs, can compromise the organisation’s neutrality or increase risks, such as security, reputational and financial.

Below are some of the concrete impacts of counterterrorism laws and donor clauses on operations:

**VETTING AND SCREENING:** Counterterrorism clauses increasingly demand that staff, partners and subcontractors and sub-grantees be screened and vetted. This is particularly the case for the US. Individuals may be screened against U.N, E.U. and domestic counterterrorism databases and the aim is to guarantee that prospective staff and partners do not appear on lists of suspected terrorists. Vetting is the process by which entities perform a background check on individuals before they are offered employment or a contract. This is a more in-depth and demanding exercise than screening. To conduct screening operations, many humanitarian organisations use commercial software, such

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21 Ibid, p. 7.

22 Callarmard, p. 6.

23 Callarmard, p. 7.

24 “Safeguarding Space for Medical Care and Humanitarian Action in UN Counterterrorism Activity”, International Peace Institute (October 17, 2018), <https://www.ipinst.org/2018/10/safeguarding-medical-care-and-humanitarian-action-event>

as Watchdog. Although screening and vetting rarely includes local partners or beneficiaries/ recipients of aid, some countries appear to be pushing for it, including the U.S. This seems to be on the rise: according to the HLS PILAC study, 62% of the respondents stated that their organisation had to vet local partners and/or recipient of aid.

Screening and vetting can create the following challenges:

- **Administrative burden:** Cause delays and compromise the timely delivery of humanitarian aid due to cumbersome bureaucratic process and substantial administrative resources required. The financial costs are also high.
- **Privacy:** Can lead to a reputational risk since organisations are required to provide personal information about their staff and partners (and potentially recipients). Since it is unclear with whom the information will be shared, it causes privacy issues since the organisation might violate national or European legislation on privacy.
- **Security and neutrality:** the sharing of personal information can put the neutrality of organisations in question and can increase security risks, especially in an era where humanitarians are increasingly targeted by armed groups.
- **Neutrality:** The sharing of information with donor states may question the neutrality of the NGO since it is seen as acting in alignment with the policies of the donor. NGOs may be perceived as intelligence services.
- **Reputational costs:** these costs stem from a misperception of lack of impartiality and neutrality.

The vetting of beneficiaries is regarded as a red line by many NGOs, both logistically and ethically.

**FLOW-DOWN CLAUSES:** Flow-down clauses require that implementing partners such as sub-contractors apply the same counterterrorism measures required in the contract and legislation as the humanitarian organisation. However, local partners may not necessarily have the capacity and ability to implement them, which could lead humanitarian organisations to turn down local partners. The responsibility placed on local partners and sub-contractors is therefore high. Furthermore, subcontractors will include stricter clauses into their own sub-contracts, which lead to very tight and non-negotiable clauses.

**CONFLICTING LEGISLATION:** Conflicts between national or regional legislation and donor agreements of different countries are increasingly problematic. According to the Counterterrorism and Humanitarian Project (CHE Project) which states that “the activities of USAID’s Partner Vetting System and the State Department’s Risk Analysis and Management are in direct conflict with European and UK data protection and privacy laws.”<sup>25</sup> Indeed, European privacy laws are stricter than U.S. privacy laws. This is relevant when it comes to vetting and screening of staff and partners as NGOs who receive funding from both European and U.S. donors may act against European law when implementing the demands of their North American donor. The CHE Project recommended that an agreement be found between the EU and the U.S. so as not to force organisations “to choose between breaching European data protection and privacy law and forgoing USAID and State Department grants or other assistance.”<sup>26</sup>

25 Cohen, Neal, Robert Hasty and Ashley Winton, *Implications of the USAID Partner Vetting System and State Department Risk Analysis and Management System under European Union and United Kingdom Data Protection and Privacy Law*, Counterterrorism and Humanitarian Engagement Project (March 2014), p. 3, <https://phap.org/system/files/ext-resources/CHE-Project-US-Partner-Vetting-under-EU-and-UK-Data-Protection-and-Privacy-Law.pdf>

26 Ibid. p. 18.

**BEST PRACTICES:** In light of the above, aid agencies that operate in conflict zones where designated terrorist groups are known to be active should take the following precautions immediately:

- 1 Maintain awareness of national and international law on what constitutes aid to terrorist groups. All staff at headquarters and at field offices should review Appendix A in this report that details the counter terrorism legislation of several top donors.
- 2 Maintain awareness of listed terrorist entities across multiple jurisdictions. All headquarters staff and staff in the field should familiarise themselves with Appendix B in this report that details all designated terrorist groups by several institutional donors and in which countries these groups are located.
- 3 Seek current threat and risk assessments of situations in conflict zones particularly with respect to terrorist groups operating in those zones.
- 4 Maintain lists of the nationalities of NGO employees to make sure that they do not unknowingly cooperate with an individual of a group considered as a terrorist entity by that employee's home country as he/she may be charged upon return home.
- 5 Meet with local authorities as well as national or international bodies present in conflict zones in order to explain the NGOs activities and areas of work and to receive current intelligence on risk areas.

## 4. EMERGING REDLINES AND ADVOCACY

### A. IMAGINING CURRENT AND FUTURE REDLINES

Nothing is more challenging for humanitarian NGOs than establishing redlines where an organisation must decide to halt operations in the field, push back against donor requests, or turn down a funding contract. Action Against Hunger's 2016 report on humanitarian action and counter-terrorism did not set out any concrete "red lines" that organisations across the board must adhere to and take principle stands. Given the reality that counterterrorism legislation will not decrease or be repealed in the near future, humanitarian workers and organisations shall continue to face a dilemma. It is therefore important for humanitarian organisations to establish possible red lines that should not be crossed from the perspective of principled humanitarian action in striving for compliance. It is important to note that, in any circumstances, humanitarian organisations put the protection of staff and beneficiaries as the priority.

Several organisations have refused funding as a result of strict counterterrorism laws and clauses, or due to the lack of clarity of the donor agreements.<sup>27</sup> 38% of the respondents in the [HLS PILAC survey](#) stated that counterterrorism laws have caused their organisation to forgo, alter, or cease activities and programming.<sup>28</sup> The financial and administrative burdens brought on by the new measures can also lead an organisation to select which crises to respond to. Furthermore, the lack of clear language in the legislation may lead organisations to mitigate risks by over-regulating. The administrative burden has also caused delays, thereby reducing the quality and quantity of the assistance. Furthermore, as numerous emerging cases from Syria and Gaza in 2018 come to be made public, lessons must be learned and shared across the sector.

Taking the above into account, it appears that there are several redlines that might be considered. They are:

- 1 **SCREENING OF BENEFICIARIES:** Vetting and screening beneficiaries is a red line that many NGOs do not want to cross. The system of vetting and screening appears to be one of the most contentious issues linked to counterterrorism and core humanitarian principles, both in terms of administration and ethics/security. While contracts and grant agreements rarely extend to beneficiaries, organisations should give consideration as to whether it wants to mark this as a red line, especially since it seems to be a growing demand among donors. We do have some concerns in particular with cash based programming many financial institutions do screen their clients that are opening bank accounts, and most possibly do the same with cash beneficiaries. Some donors do request beneficiaries' information, and this would require a consent by the beneficiary and/or a clearer position of the organization.
- 2 **INCREASING RISKS FOR THE NGO TO TAKE WHEN WORKING IN CONFLICT AREAS WHERE TERRORIST ORGANIZATIONS ARE ACTIVE AND WHERE THERE ARE HIGHER HUMANITARIAN NEEDS. THIS MIGHT LEAD TO RISK AVERSION AND FRONT LINE NGO ACTORS THAT FASE OUT OF THE AREA:** Compliance with counterterrorism laws may lead organisations to selectively respond to populations in need, which goes against the humanitarian principle of impartiality. This includes the refusal to

27 See, for example, Norwegian Refugee Council, Principles under pressure."

28 HLS Pilac, p. 7.

adopt programming of a political nature and which favours one community over another. At a counterterrorism workshop in Rome in September 2018, numerous Action Against Hunger staff noted that the provision of assistance to children, no matter who their parents are, is certainly a main principle that could not be contradicted. The real life dilemma of assisting family members, including children, who have a direct family link with individual members of the designated terrorist organisation known as ISIS, is a case in point that some NGOs operating in Iraq are confronted with.

- 3 **AVOID PUTTING THE SECURITY/SAFETY OF STAFF, LOCAL PARTNERS AT RISK, ESPECIALLY WHERE SOME LISTED TERRORIST ORGANIZATIONS ARE ACTIVE AND FORMALLY OR INFORMALLY RULING/GOVERNING THE AREA WHERE WE WORK:** Our acceptance strategy as a humanitarian organization is under threat and we are increasingly seen locally, as having a hidden political agenda. This brings at risk the safety of our staff members and local partners. counter terrorism legislation and protocols need to be communicated to the local staff and partner organizations due to data protection legislation and transparency, and might add up to this acceptance risk, which is key to have a safe access.
- 4 **REFUSING TO IMPLEMENT PROJECTS THAT ARE OPPOSED TO INTERNATIONAL HUMANITARIAN LAW OR OTHER RELEVANT LEGISLATION:** One of the possible red lines discussed at the Action Against Hunger workshop held in Rome was the growing conflict between donor legislation and other laws, such as the EU's privacy law or, most importantly, international humanitarian law. Complying with counter terrorism laws must never jeopardise the primary humanitarian objective of protecting civilians in conflict situations. The fact that an organisation agrees to comply with counterterrorism laws of the donor government, especially considering screening of beneficiaries, may compromise its neutrality in the eyes of host governments, authorities, and parties to the conflict, who may then decide to limit their access to affected populations or diminishes the level of acceptance both among the parties to the conflict and the population. It affects both the reputation and the security of humanitarian groups. Under international humanitarian law, governments do not have the right to criminalise, prohibit or block humanitarian aid. The time has come to speak truth to power.

In regards to future redline considerations, organisations might want to discuss the feasibility of establishing standards across all countries where they operate. However, it is important to recognise that the majority of listed terrorist groups are concentrated in several regions and countries of the world, notably the Middle East, Africa and South Asia. These conflict environments are different and may require different responses. Red lines must also be considered for the complexity of international NGOs' layered programs and financial transfers.

Something that must be considered for the future is that governments or donors such as USAID, DFID and the EU are shifting their funding modalities and disbursement, and leaning towards issuing large scale contracts that must be delivered by a consortium, which passes on increased management responsibilities and risk to all partners. An entire consortium is at risk if one partner does not perform or fails to comply with counter terrorism regulations.

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## B. FUTURE ADVOCACY RECOMMENDATIONS

It bears repeating that states have been able to largely set the terms of the dialogue on counterterrorism measures and humanitarian action. Moving forward, however, it appears that the Action Against Hunger staff who gathered in Rome in September 2018 had consensus in one overriding issue: with the rise of counter terrorism legislation, the priority must be in maintaining and supporting international humanitarian law. Front line humanitarian NGOs cannot and should not permit, in public or in private, security related

legislation from normalising treating civilians as suspects undeserving of humanitarian aid, especially in cases where famine and food insecurity threatens them.

Given these concerns, presented here is a list of advocacy recommendations that humanitarian organisations, could consider adopting if they wish to ground their work on humanitarian principles as set by international humanitarian law.

- 1 **HUMANITARIAN ORGANISATIONS SHOULD PROVIDE CONCRETE PROOF OF THE IMPACT OF COUNTERTERRORISM LEGISLATION ON THEIR ACTIVITIES.** Despite dialogues with government, humanitarian actors have perhaps yet to clearly articulate concrete and specific activities that are, or might be, compromised by counterterrorism legislation. It is crucial that international NGOs adopt a key advocacy message that reinforces the above point. It is also important to bring the victims back into the discourse who are being denied assistance when counterterrorism regulations delay or prohibit the delivery of assistance.
- 2 **HUMANITARIAN ORGANISATIONS SHOULD ARTICULATE A COHERENT SET OF REQUESTS FOR REFORM OF COUNTERTERRORISM LEGISLATION OR THE SETTING IN PLACE (IF ANY) OF EXEMPTIONS.** Pressure points can be applied to donor countries at the global level but also, very often it is more effective to conduct parallel advocacy campaigns in the capital cities of donor governments. Closed door advocacy must take place but should move beyond discussion with counterparts in the diplomatic service or official aid agencies, and nurture increased relations with officials who are higher up the political food chain, including the executive and legislative branch of governments.
- 3 **HUMANITARIAN ORGANISATIONS SHOULD CONTINUE TO RAISE AWARENESS AMONG DONORS ABOUT THE SOLID POLICIES, INSTRUMENTS AND VETTING SYSTEMS ALREADY PUT IN PLACE.** In order to comply with anti-terrorism provisions set out in contracts, certain organisations have taken a series of anti-fraud and anti-diversion measures, including list checking suppliers, contracting partners, employees and service contracts.
- 4 **HUMANITARIAN ORGANISATIONS SHOULD CONTINUE DEVELOPING INFORMATION ABOUT COUNTERTERRORISM LAWS AND POLICIES, TRAINING MATERIALS AND GUIDANCE,** and communicate that information to donors to increase trust, while communicating how its compliance efforts require additional personnel, expertise, and time.
- 5 **HUMANITARIAN ORGANISATIONS OUGHT TO ADVOCATE FOR AMENDMENTS TO BE MADE TO COUNTERTERRORISM LEGISLATION SO THAT ORGANISATIONS ARE EXEMPTED FROM HAVING TO COMPLY WITH COUNTERTERRORISM MEASURES.** Any new counterterrorism legislation must include acknowledgement, affirmation, and, where appropriate, exemptions that shield actions from legislation and exclude impartial activities from counterterrorism frameworks. These exemptions seem to be the best solution for dealing with the conflict between IHL and counterterrorism legislation. Exemption clauses must have clearly defined parameters and be based on humanitarian needs. The international and regional counterterrorism architecture is extremely multi-layered and involves numerous actors, therefore the best solutions for agencies is to work with donor governments to negotiate contracts/donor agreements and demand clarity over the terms of the agreement. "One size fits all" solutions appear impossible in this context. National legislation will be difficult to change in the short-term, even though harmonisation across Ministries and government agencies is needed. In the long-term, national legislation and donor agreements should include exemptions for humanitarian action. Although difficult to achieve in the current context, these exemptions exist in New Zealand, for example.
- 6 **HUMANITARIAN ORGANISATIONS OUGHT TO DECIDE IF COUNTERTERRORISM WILL BECOME A SIGNATURE ISSUE IN THEIR ADVOCACY CAMPAIGNS.** If so, the

organisations will need to elaborate a long term strategy with key institutional donors. It is abundantly clear that the challenge is not going away and most likely will continue to expand, meaning a well thought out and long term strategy is needed. Face to face meetings with mid-level diplomats in national capitals may not result in the policy changes humanitarian NGO's would like to see materialise, most notably the exemption of humanitarian action from counter terrorism action and the repealing of contract clauses and associated obligations that render humanitarian NGO's work more bureaucratic and time consuming. Therefore NGO's should ramp up national advocacy campaigns for each of their main institutional donors, putting priority on the largest donors first.

- 7 In efforts to reverse the negative impacts of counterterrorism legislation on their operations, **HUMANITARIAN ORGANISATIONS OUGHT TO CONTINUE TO ENHANCE THEIR RELATIONSHIPS THAT SHAPE POLICY AND HAVE THE POWER TO INFLUENCE HIGH LEVEL GOVERNMENT DECISION-MAKERS** (senior civil servants and the executive branch of government). Individuals to engage include the office of prime ministers and presidents (including political aides), the ministers responsible for foreign affairs and international development assistance, as well as official opposition members in legislatures.
- 8 In a similar vein, it is also imperative that **ORGANISATIONS IDENTIFY AND BUILD RELATIONSHIPS WITH MEDIA PROFESSIONALS** who have a personal interest in international humanitarian law, humanitarian affairs and human rights. The media should be an important ally in mobilising political will to amend legislation and policies.
- 9 **HUMANITARIAN ORGANISATIONS SHOULD CONSIDER APPROACHING A WELL-KNOWN PUBLIC PERSONALITY IN EACH OF THEIR TOP DONOR COUNTRIES** who could assist in bringing gravitas to the issue at hand, assisting in opening doors to the halls of political power, while simultaneously acting as a magnet for public and media attention.
- 10 **HUMANITARIAN ORGANISATIONS SHOULD ADVOCATE AMONG THEIR INSTITUTIONAL DONORS TO AMEND ALL COUNTER TERRORISM LEGISLATION** so that no organisation or person providing humanitarian relief should be punished on account of providing such services to an alleged terrorist or a person who is a member of, associated with, or supportive of a terrorist group. Any new counterterrorism legislation should include the acknowledgement, affirmation or exemptions that exclude the impartial activities of humanitarian assistance and provision of humanitarian services and the protection of humanitarian access. New Zealand and the European Union's 2017 Directive mentioned earlier in this report can serve as examples and best practices that other governments could emulate. While U.S. legislation and USAID donor agreements remain extremely strict, the European Union has been more open to negotiations and some sanctions and counterterrorism measures have been adjusted to exclude humanitarian action from the scope of the prohibitions. Exemptions appear to be the best pathway forward in reducing the friction and contradictions between international humanitarian law and counter terrorism legislation.
- 11 **HUMANITARIAN ORGANISATIONS SHOULD URGE THEIR DONORS TO FACILITATE REGULAR DIALOGUE BETWEEN THEMSELVES AND BANKS, FINANCIAL REGULATORS AND OTHER GOVERNMENT DEPARTMENTS** to limit the impacts of counter-terrorism de-risking. Banking institutions have little knowledge of the humanitarian sector in general. Donor government could facilitate talks and raise awareness among financial institutions to guarantee the humanitarian actors can receive the funds necessary to operate.

In addition to the above, a larger and more strategic discussion is needed. Modern conflicts are becoming more complex and many of the designated terrorist groups, who are on some of the top donor official terrorist lists, appear to be growing in strength and

expanding into new areas. West Africa, the Sahel and the Middle East are expected to see more conflict and instability, producing more humanitarian crises where food insecurity and malnutrition will be prevalent.

This means that humanitarian organisations also need to reflect and take stock of the question as to whether the larger humanitarian community should coalesce and develop a common position on the impact of terrorism measures and the need to develop a common advocacy strategy. Engaging other leading humanitarian actors (NGOs and UN agencies) with the goal of presenting a common position to advance a humanitarian wish list is a worthwhile idea that could pool resources and strengthen the message. There is truth to the statement “strength in numbers”.

It would be very strategic to consider developing a pan-humanitarian coalition to speak with one voice and launch a global dialogue about the impacts of counter-terrorism measures on humanitarian action and the challenges to the wider humanitarian community. While humanitarian exemptions from prosecution have been adopted by some states, there is a clear need for additional voices to merge together and advocate for this issue at global level. Likewise, pressure could be applied to ask the UN Security Council to adopt a resolution that exempts the humanitarian community from counterterrorism measures. This grouping could work to ensure the humanitarian community be included in the global discussions on countering terrorism to ensure humanitarian principles are upheld and that future decisions equally support international humanitarian law and the needs of vulnerable civilian populations. This would permit the humanitarian community to develop sector-wide policies, proposals and advocacy positions on minimising the impact of counter terrorism laws that currently have a negative on humanitarian access and the delivery of life saving assistance. In dialogue with governments, particularly at the multilateral level, including the FATF and the UN Counter Terrorism Executive Directorate, humanitarian actors have largely not articulated a coherent set of requests for reform or specific examples of the kinds of exemptions (if any) that they might find constructive.

## 5. APPENDICES

### APPENDIX A: TABLE OF EXISTING COUNTERTERRORISM LEGISLATION BY DONOR COUNTRIES AND MULTILATERAL INITIATIVES

#### 1.1 UNITED STATES

The USA Patriot Act introduced the prohibition of material support to terrorism. U.S. Code § 2339A on “Providing material support to terrorists<sup>29</sup> and U.S. Code § 2339B - Providing material support or resources to designated foreign terrorist organisations<sup>30</sup> makes it unlawful for a person in the US or subject to the to the jurisdiction of the US to knowingly provide or “material support or resources” to a designated foreign terrorist group or attempts or conspires to do so. Material support is understood as “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel or more individuals who maybe or include oneself), and transportation, except medicine or religious materials.” The Code also prohibits training and providing expert advice or assistance (advice or assistance derived from scientific, technical or other specialised knowledge). U.S. Code § 2339B was specifically adopted because Congress feared that terrorist organisations may use their charitable or humanitarian status to raise funds within the U.S. The provision therefore criminalised support to these groups, even for humanitarian purposes - the only exception is medicine and religious material.

U.S. Code § 2339C - Prohibitions against the financing of terrorism<sup>31</sup> specifically mentions the type transactions and funds prohibited. Finds means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including coin, currency, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit.”

The U.S. has its own sanction regime maintained by the U.S. Treasury.<sup>32</sup> The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury “administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.”<sup>33</sup> All U.S. persons must comply with the regulations, including all U.S. citizens and permanent residents, all persons and entities within the U.S., including their foreign branches, must comply with the regulations. Under the International Emergency Economic Powers Act there is an exception for “donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering.”<sup>34</sup> The exception can nonetheless be overridden.

29 18 U.S. Code § 2339A - Providing material support to terrorists

30 18 U.S. Code § 2339B - Providing material support or resources to designated foreign terrorist organisations”

31 18 U.S. Code § 2339C - Prohibitions against the financing of terrorism”

32 U.S. Department of the Treasury, Consolidated Sanctions List Data Files, U.S. Department of Treasury, last modified November 5, 2018, <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/consolidated.aspx>

33 Office of Foreign Assets Control, U.S. Department of Treasury, last modified February 6, 2018, <https://www.treasury.gov/about/organisational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

34 United States Code Annotated Title 50. War and National Defense Chapter 35. International Emergency Economic Powers

Among the countries studied for this report, U.S. legislation has had the most impact on humanitarian actions due to the threat of criminal sanctions. The OFAC's sanctions regime is rigid and violations of OFAC sanctions are subject to civil and criminal penalties. OFAC provides country-specific regulations for humanitarian aid groups in Sudan, Darfur, South Sudan, Somalia, Iran and Syria, and in which cases OFAC sanctions are enforced.<sup>35</sup> This includes matters such as making cash payments in areas under the control of Al-Shabaab in Somalia.

USAID awards funding through U.S. federal grants and agreements. The agency requires all funding recipients to sign an Anti-Terrorism Certification that confirms that the organisation does not provide material support or resources to terrorist entities or individuals, as well as a Certification Regarding Terrorist Financing, Implementing Executive Order.<sup>36</sup> The U.S. also included clauses in its donor agreements with NGOs, which can be more or less specific depending on the geographical location of the operation. In the agreement, the NGO agrees not to provide resources and support to terrorist entities or individuals. The provision must also be included in subcontracts. Government contract also include the False Claim Act, a federal statute that imposes liability for knowingly presenting false claim to the U.S. or for defrauding governmental programs. USAID can also include special provisions when the organisation operates in high-risk countries such as Syria, particularly regarding the total number of staff on the ground and the need to use armed private security personnel.

Particularly contentious is USAID's enhanced vetting procedure known as PVS 2.0, a database "that supports vetting of NGOs and individuals to ensure that USAID-funded assistance does not inadvertently provide support to entities or individuals associated with terrorism."<sup>37</sup> Implementing partners are responsible for collecting information on any U.S. citizens, the directors, officers and key employees of contractors, sub-contractors, grantees and sub-grantees. Vetting may also go down to the beneficiary level, depending on the agreement.

In its agreements, USAID has increasingly included country-specific demands. For Nigeria and across the Lake Chad Basin specifically, the USAID agreement states "The Recipient must obtain the prior written approval of the USAID Agreement Officer before providing any assistance made available under this Award to individuals whom the Recipient knows to have been formerly affiliated with Boko Haram or the Islamic State of Iraq and Syria (ISIS)-West Africa, as follows: fighters, non-fighting members, individuals who may have been kidnapped by Boko Haram or ISIS-West Africa but held for periods greater than 6 months, and those under the control or acting on behalf of the same." The agreement states that this does not include "civilian populations who only resided in areas that were, at some point in time, controlled by the groups" and adds that "under no circumstances will the Recipient be obliged in this context to share any individual/personalised beneficiary data with the US Government."

In light of the situation in Syria, USAID recently introduced new restrictions on aid operation, which already includes extensive vetting of recipients, sub-recipients and sub-contractors.<sup>38</sup> US-funded organisations need to get special permission to provide relief in areas controlled by designated extremist groups, including in Idlib which is under the control of an armed group sanctioned by the US. The new demands require rigorous risk

35 "OFAC FAQs: Other Sanctions Programs," U.S. Department of the Treasury, last modified November 1, 2018, accessed August 27, 2018, [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_other.aspx](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx)

36 United States Agency for International Development, *Certifications, Assurances, Representations, and Other Statements of the Recipient. A Mandatory Reference for ADS Chapter 303*, USAID (6 July 2018), available on <https://www.usaid.gov/sites/default/files/documents/1868/303mav.pdf>

37 "Partners Vetting System (PVS)," USAID, last modified November 08, 2018, <https://www.usaid.gov/data/dataset/ba474f32-c345-4821-8b9a-67951cdfad3>

38 Parker, Ben." US tightens counter-terror clampdown on Syria aid," IRIN News, article published on September 21, 2018, accessed September 22, 2018 <https://www.irinnews.org/news/2018/09/21/us-tightens-counter-terror-clampdown-syria-aid>

assessment and mitigation strategies.<sup>39</sup> With the regulations, USAID also reserves the right to undertake “terrorist vetting of current or proposed recipients, sub-recipients or sub-contractors.” In Kurdish areas of Syria some of the requirements are less stringent: “With the exception of activities outlined in the Program Description to be implemented in YPG/PYD controlled areas only, no funds under this award may be used to support activities implemented in areas controlled by ISIS, YPG/PYD, JKW, or HTS without additional written approval of the Agreement Officer.” New risk assessment and mitigation requirements have also been applied to: Afghanistan, Iraq, Libya, Northeast Nigeria, Lac Chad, Diffa (Niger), Far North Cameroon, Non-Government Controlled Areas of Ukraine, Somalia, Syria, Venezuela regional crisis, and Yemen. For example, USAID/OFDA-funded NGOs working in these areas must provide a detailed list of measures taken to “prevent direct or indirect benefits to sanctioned groups and individuals through commercial activities that result in the payment of taxes, fees, tolls, etc., to a sanctioned group or individual.”<sup>40</sup>

## Summary

### Financial and other material support to terrorism

- Definition of support

U.S. Code § 2339A on Providing material support to terrorists: Unlawful for a person in the US or subject to the jurisdiction of the US to knowingly provide “material support or resources” to a designated FTO.

U.S. Code § 2339B - Providing material support or resources to designated foreign terrorist organisations

U.S. Code § 2339C - Prohibitions against the financing of terrorism

Material support to terrorist crimes: any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who maybe or include oneself), and transportation, except medicine or religious materials.”

- Knowledge and intent

Knowledge or intention that support will be used for terrorist act

Knowledge that the organisation is a designated terrorist organisation or has or is engaged in terrorist.

US has jurisdiction over US nationals and residents + perpetrators who enter US territory

Exemptions

One: medicine and religious materials only. Not medical treatment

### Counterterrorism sanctions

- Sanctions list

UNSC Res 1267 lists.

List of Foreign Terrorist Organisations (FTOs) maintained by Secretary of State

Applies to all US citizens, permanent residents, and US entities

- Waivers

Exemption for “donations ... of articles, such as food, clothing and medicine, intended to relieve human suffering”.

39 United States Agency for International Development, “USAID/OFDA Proposal Guidelines Risk Mitigation for High-Risk Environments,” USAID (May 2018), [https://www.usaid.gov/sites/default/files/documents/1866/USAID-OFDA\\_Risk\\_Mitigation\\_May\\_2018\\_0.pdf](https://www.usaid.gov/sites/default/files/documents/1866/USAID-OFDA_Risk_Mitigation_May_2018_0.pdf)

40 Ibid. A full list of the new requirements is available [here](#).

Exemptions in US law can be overridden by President

### Donor arrangements with NGOs

USAID/OFDA primarily awards funding through US federal grants and cooperative agreements.

OFAC can issue licenses in exceptional cases to deal with designated individuals/entities on list.

USAID's requires partners to sign a number of Certifications and Assurances, including the Certification and Assurances regarding terrorist financing in addition to other laws and regulations

USAID requires all funding recipients to sign an Anti-Terrorism Certification (ATC) confirming that they do not provide material support or resources to any terrorist individual or entity.

"The Recipient, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to..."

Ex - "The Recipient is reminded that U.S. Executive Order and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organisations associated with terrorism. It is the legal responsibility of the Recipient to ensure compliance with these Executive Orders and laws. This provision must be included in all sub-contracts/sub-awards issued under this agreement."

"The recipient must not engage in transactions with, or provide resources or support to (...)

"This provision must be included in all subawards and contracts issued under this award."

Partner Vetting System: enhanced vetting procedure. USAID's implementing partners responsible for collecting information on any US citizens, the directors, officers and key employees of contractors, sub-contractors, grantees and sub-grantees. Vetting may go down to the beneficiary level

## 1.2 CANADA

Terrorism and terrorist activity are defined in Canada's Criminal Code.<sup>41</sup> The Code understands that a terrorist group means "an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity, or a listed entity, and includes an association of such entities." Canada's Department of Public Safety is responsible for maintaining the country's [list of terrorist entities](#).<sup>42</sup> Under the Criminal Code, it is a crime to provide or make available property or financial or other related services or terrorist purposes but the provider must either intend or know that the resources will be used for terrorist purposes: "Everyone who, directly or indirectly, collects property, provides or invites a person to provide, or makes available property or financial or other related services (a) intending that they be used, or knowing that they will be used, in whole or in part, for the purpose of facilitating or carrying out any terrorist activity, or for the purpose of benefiting any person who is facilitating or carrying out such an activity, or (b) knowing that, in whole or part, they will be used by or will benefit a terrorist group."<sup>43</sup>

Although there are no exemptions for humanitarian agencies specifically, according to section 83.09 (1) of the Criminal Code, the Minister of Public Safety has the ability to "authorize any person in Canada or any Canadian outside Canada to carry out a specified activity or transaction" or "deal directly or indirectly in any property that is owned or controlled by or on behalf of a terrorist group."<sup>44</sup>

41 Canada, Justice Canada, Criminal Code (R.S.C., 1985, c. C-46), Financing of Terrorism (Ottawa), last amended October 27, 2018, <https://laws-lois.justice.gc.ca/eng/acts/C-46/page-12.html>

42 "Listed Terrorist Entities", Canada, Public Safety Canada, last modified February 15, 2018, <https://www.publicsafety.gc.ca/cnt/ntnl-scrnt/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx>

43 Canada, Justice Canada, Criminal Code (R.S.C., 1985, c. C-46), List of Entities (Ottawa), last amended October 27, 2018, <https://laws-lois.justice.gc.ca/eng/acts/C-46/page-12.html>

44 Canada, Justice Canada, Criminal Code (R.S.C., 1985, c. C-46) Forfeiture of Property, (Ottawa), last amended October 24, 2018, <https://laws-lois.justice.gc.ca/eng/acts/c-46/page-14.html?wbdisable=true>

The Canadian Anti-Terrorism Act 2001 amended the Criminal Code, including by implementing international conventions and creating offences related to terrorism, such as financing, participation and facilitation of terrorist activities. The Act also introduced new provisions to regulate charities through the Charities Regulation (Security Information) Act: “The regime is specifically designed to detect and deter terrorism funding and is administered and enforced through a horizontal structure that unites nine federal departments and agencies including the Canada Revenue Agency – Charities Directorate in a coordinated effort.”<sup>45</sup> The Charities Directorate therefore undertakes significant compliance measures.

Global Affairs Canada requires partners to be aware of national anti-terrorism law as well as the list of designated terrorist groups and individuals. Since 2005, all funding agreements have been amended by the Canadian government to include a clause on compliance with anti-terrorism measures. This includes screening, due diligence, monitoring, and rules of engagement to mitigate risks. The clause states that: “The Organisation declares and guarantees that the funding for the purposes of the Project shall not knowingly be used to benefit terrorist entities as defined in the Criminal Code or individual members of those groups, or for terrorist activities, either directly or indirectly. The Canadian government lists of terrorist entities or individuals can be found.”<sup>46</sup> The provisions included in the agreement are applicable to subcontractors and sub-agreements. We mention the clauses in this report because they appear to be one of the reasons why certain organisations decide not to seek funds as compliance measures would compromise humanitarian principles.

## Summary

### Financial and other material support to terrorism

- Definition of Support

Canadian Criminal Code

Providing or making available property or financial or other related services, directly or indirectly

- Knowledge and intent

Must either intend or know that the resources will be used for terrorist activity or know that they will be used by or for the benefit a terrorist group or of a person carrying out a terrorist activity

“Knowingly”: collaborating, instructing, facilitating, concealing/harboring”

Canada has extra-territorial jurisdiction over own citizens/residents

- Exemptions

No exemptions for humanitarian agencies specifically but Possibility under section 83.09 if authorisation is given by Public Safety Minister

Anti-Terrorist Act 2001 introduced new provisions to regulate charities through the Charities Regulation (Security Information) Act and the Public Safety and Anti-Terrorism privacy impact assessment (PIA)

### Counterterrorism sanctions

45 “Charities - Public Safety and Anti-Terrorism. Privacy Impact Assessment (PIA) summary - Review and Analysis Division”, Government of Canada, last modified April 11, 2017, <https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/protecting-your-privacy/privacy-impact-assessment/charities-public-safety-anti-terrorism-privacy-impact-assessment-smmmary-review-analysis-division.html>

46 Canada, Justice Canada, Criminal Code (R.S.C., 1985, c. C-46) Financing of Terrorism  
Marginal note: Providing or collecting property for certain activities, last amended October 24, 2018, <https://laws-lois.justice.gc.ca/eng/acts/C-46/page-12.html>

- Sanction lists

UNSC Res. 1267 lists

UN Res. 1373

National list established by Governor General in Council.

Applicable to Canadian citizens and to any person in Canada, which includes both individuals and entities

- Licences/waivers

Foreign Minister can offer licences to deal with entities on the list

#### **Donor arrangements with NGOs**

Charities Directorate of the Canada Revenue Agency undertakes significant compliance measures

CIDA requires partners to be aware of national anti-terrorism law and the list of designated terrorist groups and individuals.

Canada includes specific counter-terrorism clauses in all funding agreement. Includes screening, due diligence, monitoring, and engagement.

“The Organisation declares and guarantees that the funding for the purposes of the Project shall not knowingly be used to benefit terrorist entities as defined in the Criminal Code or individual members of those groups, or for terrorist activities, either directly or indirectly. The Canadian government lists of terrorist entities or individuals can be found”

The provisions are applicable to sub-contracts and sub-agreements

### **1.3. FRANCE**

The French Code Criminel defines and prohibits terrorism and terrorist financing. The loi n°86-1020 du 9 septembre 1986 has been amended several times following terrorist attacks on French territory, which has led to the penalisation of recruitment, incitement of terrorism, possessing objects and substances, training, collecting information on terrorist acts with the aim of facilitating them, consulting terrorist websites, and travelling and staying in terrorist territory. Article 421-2-2 of 2001 defines financing of terrorism as providing, collecting or managing funds, securities or any property or giving advice to this end but it is important to note that the financing of terrorism is only considered as a terrorist act when it is intentional.<sup>47</sup> Exemptions are available under specific conditions and procedures, as required by EU law. The donor requirements do not include a clause related to counterterrorism.

The French Department of the Treasury provides a consolidated UN, EU and national sanctions list. The minister of economy and the minister of the interior have the power to make decisions regarding the freezing of assets and transfer of funds. The French Ministry for the Economy and Finance also provides a code of conduct for NGOs and charities, particularly those operating in conflict zones, which outlines risks and lists recommendations, laws, and rules that organisations must follow or have knowledge of.

#### **Summary**

##### **Financial and other material support to terrorism**

- Definition of Support

Code Criminel

Loi n° 86-1020 du 9 septembre 1986 relative à la lutte contre le terrorisme

Financing of terrorist organisations, defined as providing, collecting or managing funds, securities or any property or giving advice to this end

47 République Française, Code Pénal, Article 421-2-2, Loi n°2001-1062 du 15 novembre 2001 - art. 33 JORF 16 novembre 2001, <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006418433&cidTexte=LEGITEXT000006070719>

- Knowledge and intent

Must either intend or know that the resources provided will be used to commit an act of terrorism

Extra-territorial jurisdiction no matter where the offences were committed and whatever the nationality of the offender if the individual is on French territory

- Exemptions

No but level of knowledge and intent must be high

#### Counterterrorism sanctions

- Sanctions list

EU (EU regulations 881/2002 and 2580/2001) and UN sanctions list (UNSCR 1267 list)

The French Finance Minister can create a national list of persons and entities connected with terrorism.

- Licences/waivers

Exemptions are available under specific conditions and procedures (same as EU)

#### Donor arrangements with NGOs

No clause

### 1.4. GERMANY

German Constitutional law prohibits support of terrorism and terrorist entities (Section 129a)<sup>48</sup> while the German Criminal Code criminalises terrorism financing in Paragraph 89c.<sup>49</sup> Several anti-terrorism acts followed, particularly after 9/11. The 1993 Act on Money Laundering was amended in 2002 ('Act on the Improvement of the Suppression of Money Laundering and Combating the Financing of Terrorism')<sup>50</sup> defines financing terrorism as collecting or providing funds in the knowledge that will be used to commit a terrorist offence. The person committing such acts must share the goals of the entity, know that the money will be used for a terrorist offence, or at least have foreseen that the logistical or financial resources would be used to commit a terrorist act. The possibility of this being applicable to humanitarian agencies is therefore low even though no exemptions pertaining NGOs exist. Under EU law, exemptions exist under specific conditions and procedures. Finally, Germany adheres to the EU and UN sanctions lists.

In regards to donor requirements, German humanitarian agencies are bound to the anti-terrorism provisions set out in the donors' funding contract. The German Foreign Office does not include a counter terrorism clause, using the terms "prevention of corruption" and states that the partner organisation is responsible for prevention of money laundering. However, the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ) includes such a counterterrorism clause that requires that local partners be verified against the EU and UN sanctions lists.

#### Summary

##### Financial and other material support to terrorism

- Definition of support

Germany use common Constitutional Law to define and prosecute terrorism - Terrorist organisations: section 129a

48 Bundesministerium der Justiz und für Verbraucherschutz, Strafgesetzbuch, § 89c *Terrorismusfinanzierung*.

49 Bundesministerium der Justiz und für Verbraucherschutz, Strafgesetzbuch, § 129a *Bildung terroristischer Vereinigungen*.

50 Bundesministerium der Justiz und für Verbraucherschutz, GWG: Gesellschaft für wissenschaftliche Gerichte, *Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten* (Geldwäschegesetz - GwG)

Supporting a terrorist organisation (no clear definition but probably same as below)

Several Anti-terrorism Act followed, esp after 9/11

1993 Act on Money Laundering amended in 2002: Financing of terrorism: provision or collection of funds that will be used to commit a terrorist act

- Knowledge and intent

Supporter must share the goals of the org; be at least reckless as to whether the aims of the group and specific terrorist acts will occur

Knowledge that the money will be used to commit a terrorist offence is required

Germany has extra-territorial jurisdiction over offences against German / internationally protected legal interests.

- Exemptions

No but level of knowledge and intent must be high. Application to humanitarian NGO unlikely

#### Counterterrorism sanctions

- Sanctions list

EU and UN Sanctions

UNSCR 1267 lists and UNSCR 1373

- Licences/waivers

Exemptions are available under specific conditions and procedures (same as EU)

#### Donor arrangements with NGOs

Clause not necessarily included in contracts: Foreign Office (Auswärtiges Amt) only mention prevention of corruption. Responsibility to prevent corruption

Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ) - German development agency includes prevention of terrorism in its contracts. Local partners must be verified.

### 1.5. SWEDEN

In terms of the sanction regime, Sweden adheres to the UN and EU terrorist lists but does not have its own nationally-adopted sanctions or list. The Act on Criminal Responsibility for Terrorist Offences adopted in 2003 and amended in 2016 relies on the EU's Framework Decision on Combating Terrorism.<sup>51</sup> The Act defines and lists a number of acts that constitute terrorist offences. The Criminal Responsibility for Public Provocation, Recruitment and Training concerning Terrorist Offences and other Particularly Serious Crime Act adopted in 2010 focuses on incitement of terrorism, recruitment, and training or providing instruction to commit terrorist offence.<sup>52</sup> Finally, the Act on Measures against Money Laundering and Terrorist Financing, also based on EU directives, defines terrorism financing as "the collection, provision or receipt of assets for the purpose of them being used or in the knowledge that they are intended to be used to commit such crimes (...)." The Act places emphasis on knowledge and intent of the "customer," and demands due diligence and enhanced measures to prevent terrorist financing. Although humanitarian agencies are not specifically listed, the Act applies to a large scope of Act business undertakings and persons, including banking institutions.

#### Summary

51 Regeringskansliet, Ministry of Justice Sweden, Division for Criminal Law, *Act on Criminal Responsibility for Public Provocation, Recruitment and Training concerning Terrorist Offences and other Particularly Serious Crime* (2010:299).

52 Regeringskansliet, Ministry of Justice Sweden, Division for Criminal Law, *Act on Criminal Responsibility for Terrorist Offences* (2003:148).

### Financial and other material support to terrorism

- Definition of support

Act on Criminal Responsibility for Terrorist Offences

Swedish law on terrorism and terrorist offences relies on EU directives. Council of Europe Convention on the Prevention of Terrorism and the 2008 Council Framework. Act imposes criminal liability on : incitement of terrorism, recruitment, provide or seek to provide instruction to commit terrorist offence.

2010: Act on Criminal Responsibility for Public Provocation, Recruitment and Training concerning Terrorist Offences and other Particularly Serious Crime

Act on Measures against Money Laundering and Terrorist Financing: Swedish law also relies on European directives

Parties engaged in business activities are asked to take enhanced due diligence when risk of money laundering and terrorist financing are high

- Knowledge and intent

Emphasis on intent of the person/group or the knowledge of the terrorist offences.

- Exemptions

No

### Counterterrorism sanctions

- Sanctions list

UN and EU Sanctions regimes

Does not have its own nationally-adopted sanctions or list.

- Licences/waivers

Exemptions are available under specific conditions and procedures (same as EU)

### Donor arrangements with NGOs

None

## 1.6. UNITED KINGDOM

The UK Terrorism Act 2000 is the first of a number of terrorism acts passed by the Parliament of the UK. The Act defines terrorism as the use of threat of certain types of action where “the use of threat is designed to influence the government or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.”<sup>53</sup> The UK has its own sanctions regime controlled by the Home Office (Home Office Proscribed Organisations List) and the Treasury (HM Treasury Designated Organisations and Individuals Consolidated List).

The Terrorism Act 2006 includes offences concerned with the preparation and commission of terrorist acts, including “assisting the commission or preparation by others of such acts or offences”<sup>54</sup>; providing training for terrorism or receiving training, including attending a place where terrorism training is being conducted, whether in the UK or elsewhere; encouraging terrorism.

Terrorist Asset Freezing Act 2010 includes offences such as making funds, financial services or economic resources available to or for the benefit of a designated person; dealing with funds or economic resources owned, held or controlled by a designated person.<sup>55</sup> The Counter Terrorism and Security Act 2015 also introduced a new requirement

53 Terrorism Act 2000, 2000 c. 11, Part I, Section 1, *Terrorism: interpretation*.

54 Terrorism Act 2006, 2006 c. 11, Part I, Preparation of terrorist acts, Section 6, *Training for terrorism*

55 Terrorist Asset-Freezing etc. Act 2010, 2010 c. 38, Part I, *Terrorist Asset-Freezing*

based on the UK counter-terrorism PREVENT program. The aim is to assess the risk of radicalisation in a charity by developing strategies and training staff to recognise signs, establish a referral mechanism and maintain records to show compliance.

The UK Government's department for International Development (DFID) includes clauses within its Memorandum of Understanding with partner organisations, which states that the grant recipient and DFID are committed to take appropriate steps to ensure that funds provided are not used to assist terrorists or terrorist organisations, directly or indirectly. DFID has established a Due Diligence Assessment Framework as a risk management tool meant to guarantee the capacity and capability to deliver DFID aid. Module 8 specifically deals with counterterrorism and asks the organisation to consider the country in which they operate, the status of the implementing partner, the reliability of downstream partners, as well as compliance with UK legislation.<sup>56</sup> The Due Diligence Framework encourages conducting checks on implementing partners (including trustees and senior members of staff) against the Home Office Proscribed Organisations List and the HM Treasury Designated Organisations and Individuals (Consolidated) List. DFID also lists two screening risk-intelligence systems, "World Check" and "Know Your Partner," that NGOs must use. These systems could prove time-consuming and expensive for NGOs.

## Summary

### Financial and other material support to terrorism

- Definition of support

UK Terrorism Act 2000

Terrorism Act 2006

Terrorist Asset Freezing etc Act 2010

Provision of money or other property for the purposes of terrorism

Entering into an arrangement where money is made available to another for the purposes of terrorism

- Knowledge and intent

Knowledge or "reasonable cause to suspect" that the money or other property will be used

Extra-territorial jurisdiction over own nationals

- Exemptions

No

### Counterterrorism sanctions

- EU and UN sanctions lists

National list maintained of designated persons (not groups). UK has its own sanctions list of asset freeze targets, and a list of persons subject to restrictive measures.

Home Office Proscribed Organisations List; HM Treasury Designated Organisations and Individuals (Consolidated) List

Also includes acts outside of UK territory for UK nationals + companies

- Licenses/waivers

UK Treasury can grant licenses to deal with entities or individuals on sanction list

### Donor arrangements with NGOs

DFID includes specific clauses within the MoU with partner organisations: the grant recipient and DFID are committed to taking appropriate steps to ensure that funds provided by the government are not used to provide assistance or support terrorists or

56 Department for International Development, Risk and Control Unit, *Due Diligence Guide/Framework*, p. 24.

terrorists organisations, directly or indirectly.

The Due Diligence Framework encourages conducting checks on implementing partner against Home Office Proscribed Organisations List and HM Treasury Designated Organisations and Individuals (Consolidated) List. DFID also lists two screening system: “World Check” and “Know your Partner.”

Charity Commission in the UK also provide guidance in line with UK legislation, based on the UK’s Counter-Terrorism Strategy CONTEST

## 1.7. EUROPEAN UNION

EU regulations require member states to criminalise a range of acts related to terrorist groups and activities: inciting, aiding and abetting and attempting a terrorist attack; supplying information/material resources/funding activities. The Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism, *inter alia*, gives effect to Security Council Resolution 1373 for the EU and its member states.<sup>57</sup> It requires the European Community to ensure that funds, financial assets or economic resources or financial or other related services will not be made available, directly or indirectly, for the benefit of designated persons, groups and entities

The recently passed Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism is a new instrument that now constitutes the main counterterrorism its main legal instrument.<sup>58</sup> The latter defines “terrorist offence” and calls on Member States to improve and develop national prevention policies to prevent recruitment and terrorism training. Of relevance to humanitarian agencies is ‘terrorist financing,’ defined as intentionally ‘providing or collecting funds, by any means, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to commit or to contribute to any of the offences’ defined as terrorist. The European Commission’s 2017 Directive on combating terrorism notes that: “The provision of humanitarian activities by impartial humanitarian organisations recognised by international law, including international humanitarian law, do not fall within the scope of this Directive, while taking into account the case-law of the Court of Justice of the European Union”. This exemption has been welcomed by humanitarian NGOs because it goes beyond humanitarian material and also includes funds and other expenses.<sup>59</sup> France Commission Nationale Consultative des droits de l’homme has recommended that this exemption known as Para. 38 become a global exemption.

The European Civil Protection and Humanitarian Aid Operations (ECHO) set the guiding principles and policies of the EU humanitarian aid in its European Consensus on Humanitarian Aid signed by the Council, European Parliament and European Commission in 2007 and which is legally binding for all member states. The document states that humanitarian aid is based on the four fundamental humanitarian principles and call on member states to comply with international humanitarian law. Funding agreements do not include counterterrorism clauses.<sup>60</sup>

57 European Union Law, The Council of the European Union, Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP)

58 European Union Law, The European Parliament and the Council of the European Union, Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

59 Commission Nationale Consultative des droits de l’homme, République Française.”Statement of opinion on the impact o counter-terrorism legislation on humanitarian action,” published, October 2, 2018, <https://www.cncdh.fr/fr/publications/statement-opinion-impact-counter-terrorism-legislation-humanitarian-action>

60 Impartiality means that humanitarian aid must be provided solely on the basis of need, without discrimination between or within affected populations.

## Summary

### Financial and other material support to terrorism

- Definition of support

The EU adopted new strategy in 2005: prevent, protect, pursue, and respond.

May 2015: the Council and the European Parliament adopted new rules to prevent money laundering and terrorist financing.

July 2016: European Commission proposal to amend the existing rules to further strengthen the fight against terrorism financing - currently under review

Member States must criminalise a range of acts including participation in the activities of a terrorist group appearing on the EU list

Member States must criminalise a range of acts related to terrorist groups and activities: inciting, aiding and abetting and attempting a terrorist attack; supplying information/material resources/funding activities

- Knowledge and intent

Requires knowledge that resources will contribute to activities of the terrorist group

- Exemptions

No

### Counterterrorism sanctions

EU list - Regulation (EC) 2580 /2001.

UNSC Res. 1267 lists implemented by Regulation (EC) 881/2002

Applicable in all EU Member States

Applicable within territory of the EU and to any EU national and to any legal person or entity incorporated or constituted under the law of an EU country or doing business within the EU

Exemptions available under specific conditions and procedures (payments for foodstuffs, medicines and treatment)

### Donor arrangements with NGOs

European Commission's Director General for Humanitarian Aid and Civil Protection (ECHO) sets guiding principles and policy scope of EU humanitarian aid.

No counter-terrorism clauses included in funding agreements.

ECHO has sought to reduce the negative impact of counter-terrorist policies and counter-terrorist legislation to enable access

## 1.8. THE UNITED NATIONS

Stemming the flow of funds to organisations designated as terrorist is a core component of the international community's counterterrorism strategy, particularly since 9/11.

First, the UN has sanctions regimes adopted under Chapter VII of the UN Charter, which requires UN Member States to implement travel bans, asset freezes and arms embargo on persons or/and entities designated by the United Nations Security Council (UNSC). The list is currently comprised of 263 individuals and 82 entities.<sup>61</sup>

Second, the main instruments of the UN are the 1999 International Convention for the Suppression of the Financing of Terrorism and UN Security Council Resolution 1373 (2001). It must be noted that although the International Convention for the Suppression of Terrorist Financing defines terrorism, there is no internationally-agreed definition of the

61 "Consolidated United Nations Security Council Sanctions List", Security Council Committee, <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list#entities>

term. This in itself constitutes a problem for humanitarian agencies as states each adopt their own.

UNSC resolution 1973 specifically demands that Member States criminalise the financing of terrorism, including the provision of “material support” to terrorist groups or individuals, and other activities that could facilitate the commission of terrorist acts.<sup>62</sup> The resolution also created the Counter-terrorism Committee assisted by the Counter-Terrorism Committee Executive Directorate responsible for monitoring the implementation and impact of the resolution. The UN Global Counter-Terrorism Strategy adopted in September 2006 affirms that member states must comply with the international human rights and humanitarian law when combating terrorism, but the Strategy also underlines the role of international organisations and civil society groups in helping curb extremism.

Potential liability under these instruments is more narrowly defined than in relation to sanctions. Offences are only committed if assets are collected or provided with the intent or in the knowledge that they will be used for the commission of acts of terrorism. Neither the 1999 Convention nor Resolution 1373 refers to humanitarian action even though UN resolutions usually demand that member states respect international humanitarian law when implementing counterterrorism measures.

Furthermore, UNSC resolution 2199 (2015) expressed worry over the fact that donations have “played a role in developing and sustaining ISIL and ANF”<sup>63</sup> and benefit terrorist groups. The resolution exhorts States to enhance vigilance of the international financial system and to work with NGOs and charities to ensure financial flows through charitable giving are not diverted to terrorist groups. However, in its July 2016 Resolution 70/291 on the UN Global Counter-Terrorism Strategy, the General Assembly urged states “to ensure, in accordance with their obligations under international law and national regulations, and whenever international humanitarian law is applicable, that counterterrorism legislation and measures do not impede humanitarian and medical activities or engagement with all relevant actors as foreseen by international humanitarian law.”<sup>64</sup>

## Summary

### Financial and other material support to terrorism

- Definition of support

UN Security Council Res. establish a baseline of counterterrorism measures that UN Member states must implement

UN Security Council Resolution 1373 obliged Member States to implement measures to combat and prevent acts of terrorism: criminalizing the financing of terrorism; freezing funds of individuals; denying financial support to terrorist groups; cooperating with other governments on intelligence

Resolution created the Counter-Terrorism Committee to monitor the implementation. CTED was established to support the CTC

- Knowledge and intent

Knowledge

- Exemptions

Left to Member states to decide

62 United Nations Security Council Resolution 1973, S/RES/1973 (17 March 2011), available from [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1973%20%282011%29](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1973%20%282011%29).

63 United Nations Security Council Resolution 1267, S/RES/1267 (12 February 2015), p. 6, available from [https://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1267%20%282015%29](https://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1267%20%282015%29)

64 United Nations General Assembly Resolution 70/291, *The United Nations Global Counter-Terrorism Strategy Review*, A/RES/70/291, (1 July 2016), p. 8, available from [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/291](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/291)

### Counterterrorism sanctions

- Sanctions list

UN Security Council resolutions 1267 etc require UN member states to freeze funds and other financial resources of the Taliban, al Qaeda and affiliated individuals and groups, and designate specific individuals and groups as sanctioned.

- Waivers

### Donor arrangements with NGOs

The UN Global Counter-terrorism Strategy emphasizes that member states must comply with international human rights and humanitarian law when they combat terrorism.

## 1.9. FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an informal group of states and an initiative of the G7 to combat money laundering. It was extended to combating of financing of terrorism after 9/11 and issued nine special recommendations in 2001. In 2012 report titled "International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation", Recommendation 8 is specifically concerned with ensuring the NPOs cannot be misused to finance terrorism and calls on member states to review the adequacy of laws and regulations:

"Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused: (i) by terrorist organisations posing as legitimate entities; (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations."<sup>65</sup>

In the 2012 report, FATF cited a number of examples of NGOs raising funds for or transfer of funds to terrorist organisations and therefore identified them as particularly vulnerable. Based on existing research as well as our discussions with Action Against Hunger staff, the assessment of the FATF has been particularly damaging for the reputation of humanitarian NGOs among donors and the general public.

Today, the FATF recognises that humanitarian organisations have put in place systems to combat corruption and money laundering which comply with the standards of the sector. Recommendation 8 relating to non-profit organisations has been reviewed and now explicitly refers to proportionality and the risk-based approach:

"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."<sup>66</sup>

The FATF also drafted a Best Practice paper that encouraged measures focusing on financial transparency and administration of NGOs that reiterates these terms.<sup>67</sup> Nonetheless, the original 2012 report and recommendation brought greater scrutiny on humanitarian agencies as banks believe that they are high-risk customers.

65 FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, updated October 2016, FATF (Paris, France: 2012), available from [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf)

66 Ibid, p. 13.

67 FATF, *Best Practices Paper on Combating the Abuse of Non-Profit Organisation, Recommendations 8*, FATF (Paris, France: 2015), p. 4, <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>

## APPENDIX B: TABLE OF DONOR DESIGNATED TERRORIST ORGANISATIONS AND COUNTRIES OF OPERATION

| GROUP   | COUNTRIES OF OPERATION  | COUNTRIES OF TERRORIST DESIGNATION               |
|---|---|--|
| Abdallah Azzam Brigades, including the Ziyad al-Jarrah Battalions (AAB) | Lebanon, Syria, Pakistan (2009)   | USA, UK, Canada, UN                              |
| Abu Nidal Organisation Abu Nidal Organisation (ANO)                     | Palestine   | UK, Canada, EU, France, Sweden, Germany          |
| Abu Sayyaf Group (ASG)  | Philippines   | USA, UK, Canada, UN                              |
| Afghan Support Committee  | Pakistan, Afghanistan   | UN   |
| Ajnad Misr (Soldiers of Egypt)  | Egypt   | UK   |
| Al-Ashtar Brigades  | Bahrain   | USA, UK  |
| Al-Aqsa Martyrs' Brigades   | Palestine   | USA, Canada, EU, France, Sweden, Germany         |
| Al-Aqsa Foundation  | Palestine (offices in Netherlands, Denmark, Belgium, Sweden, Pakistan, South Africa, Yemen) | USA, UK, Canada, EU, France, Sweden, Germany, UN |
| Al Ghurabaa   | UK  | UK   |
| Al-Haramain Foundation  | Saudia Arabia   | UN, US   |
| Al-Haramain Islamic Foundation  | Somalia, Bosnia and Herzegovina   | UN   |
| Al Itihaad al-Islamiya (AIAI)   | Somalia, Ethiopia, Eritrea  | USA, UK, UN                                      |
| AL-Kawthar Money Exchange   | Iraq  | UN   |
| Al Murabitun/ Al Mouakao-une Biddam/Those Who Sign in Blood             | Mali, Algeria   | UK, Canada, UN                                   |
| Al Moulathamound  | Mali, Niger, Algeria  | USA, UN  |
| Al-Mukhtar Brigades including Saraya al-Mukhtar                         | Bahrain   | UK   |
| All-Muwaqi'un Bil Dima (MBD)  | Mali, Algeria   | Canada   |
| Al-Nusrat Front for the People of the Levant                            | Iraq, Syria   | USA, UN  |
| Al Rashid Trust   | Pakistan, Afghanistan, Kosovo, Chechnya   | UN   |
| Al Akhtar Trust International   | Pakistan, Afghanistan   | UN   |
| Al-Qaeda (AQ)   | Afghanistan   | USA, UK, Canada, France, UN                      |
| Al-Qaida in the Arabian Peninsula (AQAP)                                | Yemen, Saudi Arabia   | USA, Canada, UN                                  |
| Al-Qaida in the Indian Subcontinent (AQIS)                              | Pakistan, India, Bangladesh   | USA, Canada                                      |
| Al-Qaida in Iraq  | Iraq  | USA, UN  |
| Al-Qaida in the Islamic Maghreb (AQIM)                                  | Algeria, Mali, Mauritania, Morocco, Niger, Tunisia  | USA, Canada, UN                                  |
| Al Shabaab  | Somalia   | USA, Canada, UK                                  |
| Al-Gama'a al-Islamiyya (AGAI)   | Egypt   | USA, UK, Canada, EU, France, Sweden, Germany     |

|  |   |  |
|--|---|--|
| Al-Takfir and al-Hijra   | Egypt                                     | EU, France, Sweden, Germany              |
| Ansar Al Islam (AI)  | Iraq                                      | USA, UK, Canada, UN                      |
| Ansar Eddine   | Mali                                      | USA, UN                                  |
| Ansar al-Sharia-Benghazi (AAS-B)   | Libya                                     | USA, UK, UN                              |
| Ansar al-Sharia Derna (Ansar al-Sharia Darnah)   | Libya, Tunisia                            | USA, UN                                  |
| Ansar Al Sharia-Tunisia (AAS-T) -  | Tunisia                                   | USA, UK                                  |
| Ansar Al Sunna   | Iraq                                      | UK                                       |
| Ansar Bayt al-Maqdis (ABM)   | Egypt                                     | UK                                       |
| Ansarul Muslimina Fi Biladis Sudan, (Vanguard for the protection of Muslims in Black Africa) | Nigeria                                   | USA, UK, UN                              |
| Armed Islamic Group (Groupe Islamique Armée) (GIA)   | Algeria                                   | UK, Canada, UN                           |
| Army of Islam (AOI)  | Gaza Strip                                | USA                                      |
| Asbat Al-Ansar   | Lebanon                                   | USA, UK, Canada, UN                      |
| Aum Shinrikyo (Aum)  | Japan                                     | USA, Canada, EU, France, Sweden, Germany |
| Cooperativa Artigiana Fuoco ed Affini - Occasionalmente Spettacolare                         | Italy                                     | EU, France, Sweden, Germany              |
| Nuclei Armati per il Comunismo   | Italy                                     | EU, France, Sweden, Germany              |
| Babbar Khalsa (BK)   | India                                     | UK, Canada, EU, France, Sweden, Germany  |
| Basque Homeland and Liberty/'Euskadi Ta Askatasuna'/'Tierra Vasca y Libertad' - 'E.T.A.'     | Spain, France                             | UK, Canada, EU, France, Sweden, Germany  |
| Baluchistan Liberation Army (BLA)  | Pakistan, Afghanistan, Iran               | UK                                       |
| Benevolence International Foundation   | USA, Sudan, Bangladesh, Gaza Strip, Yemen | UN                                       |
| Boko Haram (Jama'atu Ahli Sunna Lidda Awati Wal Jihad) (BH)                                  | Nigeria                                   | USA, UK, Canada, UN                      |
| Cellula Contro Capitale, Carcere i suoi Carcerieri e le sue Cella (CCCCC)                    | Spain                                     | EU, France, Sweden, Germany              |
| Communist Party of the Philippines', including 'New People's Army' - 'NPA';                  | Philippines                               | USA, EU, France, Sweden, Germany         |
| Continuity Irish Republican Army' - 'CIRA  | Ireland                                   | USA, EU, France, Sweden, Germany         |
| Djamat Houmat Daawa Salafia (DHDS)   | Algeria                                   | UN                                       |
| Eastern Turkistan Islamic Movement (EITM)  | China, South Asia, Central Asia           | UN                                       |
| Egyptian Islamic Jihad (EIJ) - Proscribed March 2001   | Egypt                                     | UK, UN                                   |

|  |   |  |
|--|---|--|
| Ejército de Liberación Nacional (ELN)  | Colombia  | USA, Canada, EU, France, Sweden, Germany |
| Epanastatikos Agonas (Revolutionary Struggle) (RS)   | Greece  | USA, EU, France, Sweden, Germany         |
| Revolutionary Armed Forces of Colombia (FARC)  | Colombia  | USA, Canada, EU, France, Sweden, Germany |
| Global Islamic Media Front (GIMF) including GIMF Banlga Team also known as Ansarullah Bangla Team (ABT) and Ansar-al Islam | Bangladesh  | UK                                       |
| Global Relief Foundation   | USA, Afghanistan, Bangladesh, Eritrea, Ethiopia, India, Iraq, West Bank and Gaza, Somalia and Syria | UN                                       |
| Groupe Islamique Combattant Marocain (GICM)  | Morocco   | UK, UN                                   |
| Grupos de Resistencia Antifascista Primero de Octubre' - 'G.R.A.P.O.' ('Antifascist Resistance Groups First of October')   | Spain   | EU, France, Sweden, Germany              |
| Gulbuddin Hekmatya Hezb-e Islami Gulbuddin (HIG)   | Afghanistan   | Canada                                   |
| Hanifa Money Exchange Office (Branch Located in Albu Kamal, Syrian Arab Republic)  | Syria   | UN                                       |
| Hamas (Harakat Al-Muqawama Al-Islamiya) (Islamic Resistance Movement)  | Syria, Palestine  | USA, Canada, EU, France, Sweden, Germany |
| Hamas Izz al-Din al-Qassem Brigades  | Palestine   | UK, EU, France, Sweden, Germany          |
| Harakat-UI-Jihad-UI-Islami (HUJI)  | Pakistan, India, Afghanistan  | USA, UK, UN                              |
| Harakat-UI-Jihad-UI-Islami (Bangladesh)  | Bangladesh  | USA, UK                                  |
| Harakat-UI-Mujahideen/Alami (HuM/A) and Jundallah/Harakat Mujahideen (HM)  | India, Pakistan   | USA, UK, Canada, UN                      |
| Harakat Sham Al-Islam  | Morocco   | UN                                       |
| Haqqani Network  | Afghanistan   | USA, UK, Canada, UN                      |
| Hasam including Harakat Sawa'd Misr, Harakat Hasm and Hasm   | Egypt   | UK                                       |
| Hay'at Tahrir al-Sham (HTS)/ Al-Nusrah Front For The People Of The Levant  | Syria, Iraq   | Canada, UN                               |
| Hizballah and Hizballah Military Wing  | Lebanon, Iraq, Palestine  | USA, UK, Canada                          |
| Hilal Ahmar Society of Indonesia (HASI)  | Indonesia   | UN                                       |
| Hizbul Mujahideen  | Jammu, Kashmir  | USA, EU, France, Sweden, Germany         |
| Hofstadgroep   | Netherlands   | EU, France, Sweden, Germany              |
| Holy Land Foundation for Relief and Development  | US  | EU, France, Sweden, Germany              |

|   |  |                                     |
|---|--|-------------------------------------|
| Imarat Kavkaz (IK) also known as the Caucasus Emirate                                     | Russia, Afghanistan, Pakistan                        | UK, Canada, UN                      |
| Indian Mujahideen (IM)  | India  | USA, UK, Canada                     |
| International Relief Fund for the Afflicted and Needy - Canada (IRFAN - CANADA)           | Canada   | Canada                              |
| International Sikh Youth Federation (ISYF)  | India (branches UK and Canada)                       | Canada, EU, France, Sweden, Germany |
| Solidarietà Internazionale  | Italy  | EU, France, Sweden, Germany         |
| Islamic Army of Aden (IAA)  | Yemen  | UK, UN                              |
| 'İslami Büyük Doğu Akıncılar Cephesi' - 'IBDA C' ('Great Islamic Eastern Warriors Front') | Turkey   | EU, France, Sweden, Germany         |
| Islamic International Brigade (IIB)   | Chechnya   | UN                                  |
| Islamic Jihad Union (IJU) also known as Islamic Jihad Group (IJG)                         | Afghanistan, Pakistan                                | USA, UK, UN                         |
| Islamic Movement of Uzbekistan (IMU)  | Uzbekistan   | USA, UK, Canada, UN                 |
| The Islamic Revolutionary Guard Corps' Qods Force   | Iran   | Canada                              |
| Islamic State of Iraq and the Levant (ISIL/ISIS, formerly al Qa'ida Iraq)                 | Iraq, Syria  | USA, UK, Canada                     |
| Islamic State - Khorasan Province (ISKP)  | Afghanistan, Pakistan                                | USA, Canada                         |
| Islamic State Bangladesh  | Bangladesh   | USA                                 |
| Islamic State Philippines   | Philippines  | USA                                 |
| Islamic State Greater Sahara  | Burkina Faso, Niger, Mali                            | USA                                 |
| Islamic State West Africa   | Nigeria  | USA                                 |
| Islamic State - Sinai Province (ISSP)   | Egypt  | USA, Canada                         |
| Islamic State of Iraq and the Levant's Branch in Libya (ISIL Libya)                       | Libya  | USA                                 |
| Jaish e Mohammed (JeM) and splinter group Khuddam Ul-Islam (Kul)                          | Pakistan   | USA, UK, Canada, UN                 |
| Jam'yah Ta'awun Al-Islamia  | Afghanistan  | UN                                  |
| Jamaah Anshorut Daulah  | Indonesia  | UK                                  |
| Jamaat ul-Ahrar (JuA)   | Pakistan, India                                      | UK, UN                              |
| Jammat-ul Mujahideen Bangladesh (JMB)   | Bangladesh   | UK                                  |
| Jamaat Ul-Furquan (JuF)   | India  | UK                                  |
| Jaysh al Khalifatu Islamiya (JKI)   | Syria  | UK                                  |
| Jaysh Al-Muhajirin Wal-Ansar (JMA), The Army of Emigrants And Supporters                  | Syria  | Canada, UN                          |
| Jaysh Rijal al-Tariq al Naqshabandi (JRTN)  | Iraq   | USA                                 |
| Jeemah Islamiyah (JI)   | Singapore, Malaysia, Indonesia, Southern Philippines | USA, UK, Canada, UN                 |

|  |                              |  |
|--|------------------------------|--|
| Jemmah Anshorut Tauhid (JAT)   | Indonesia                    | USA, UN                                      |
| Jund al Khalifa-Algeria  | Algeria                      | UK, UN                                       |
| Jundallah (People's Resistance Movement of Iran (PRMI))                                | Iran                         | USA  |
| Jaysh Khalid Ibn al Waleed   | Iraq                         | UN   |
| Jund al-Aqsa (JAA)   | Iran                         | UK, UN                                       |
| Kahane Chai (Kach)   | Israel                       | USA, Canada, EU, France, Sweden, Germany     |
| Kateeba al-Kawthar (KaK) also known as Ajnad al-sham and Junud ar-Rahman al Muhajireen | Syria                        | UK   |
| Kata'ib Hizballah (KH)   | Iraq, Syria                  | USA  |
| Khatiba Imam Al-Bukhari (KIB)  | Afghanistan, Pakistan, Syria | UN   |
| Khalistan Zindabad Force' - (KZF)  | Jammu, Kashmir               | EU, France, Sweden, Germany                  |
| Partiya Karkeren Kurdistan (PKK)   | South East Turkey            | USA, UK, Canada, EU, France, Sweden, Germany |
| Lashkar-e-Jhangvi (LJ)   | Pakistan                     | USA, Canada, UN                              |
| Lashkar-e-Tayyiba (LeT)  | Pakistan                     | USA, UK, Canada, UN                          |
| Liberation Tigers of Tamil Eelam (LTTE)  | Tamil, Sri Lanka             | USA, UK, Canada, EU, France, Sweden, Germany |
| Libyan Islamic Fighting Group (LIFG)   | Libya                        | UK, UN                                       |
| Liwa al-Thawra   | Egypt                        | UK   |
| Loyalist Volunteer Force' - 'LVF'  | Northern Ireland             | EU, France, Sweden, Germany                  |
| Makhtab Al-Khidamat  | Afghanistan                  | UN   |
| Minbar Ansar Deen (also Ansar al-Sharia UK)  | UK                           | UK   |
| Moroccan Islamic Combatant Group   | Morocco                      | UN   |
| The Movement for Oneness and Jihad in West Africa                                      | Algeria, Mali, Niger         | UK, Canada, UN                               |
| Muhammad Jamal Network (MJN)   | Egypt, Libya, Mali           | UN   |
| Mujahidin Indonesia Timur (MIT)  | Indonesia                    | UK, UN                                       |
| Mujahidin Shura Council in the Environs of Jerusalem (MSC)                             | Egypt, Palestine             | USA  |
| National Action  | UK                           | UK   |
| Orange Volunteers  | Northern Ireland             | EU, France, Sweden, Germany                  |
| The Palestine Liberation Front (PLF)   | Palestine, Israel, Lebanon   | USA, Canada, EU, France, Sweden, Germany     |
| Palestinian Islamic Jihad - Shaqafi (PIJ)  | Palestine, Israel            | USA, UK, Canada, EU, France, Sweden, Germany |
| Popular Front for the Liberation of Palestine-General Command (PFLP-GC)                | Syria, Palestine, Israel     | USA, UK, Canada, EU, France, Sweden, Germany |

|   |                       |  |
|---|-----------------------|--|
| Popular Front for the Liberation of Palestine (PFLP)  | Palestine             | USA, Canada, EU, France, Sweden, Germany |
| Rabita Trust  | Pakistan              | UN                                       |
| Rajah Solaiman Movement   | Philippines           | UN                                       |
| Real IRA  | Northern Ireland      | USA, EU, France, Sweden, Germany         |
| Brigate Rosse per la Costruzione del Partito Comunista Combattente  | Italy                 | EU, France, Sweden, Germany              |
| Red Hand Defenders' - (RHD)   | Northern Ireland      | EU, France, Sweden, Germany              |
| Revival of Islamic Heritage Society   | Pakistan, Afghanistan | UN                                       |
| Revolutionary Nuclei  | Greece                | EU, France, Sweden, Germany              |
| Dekati Evdomi Noemvri' ('Revolutionary Organisation 17 November')   | Greece                | EU, France, Sweden, Germany              |
| Revolutionary Peoples' Liberation Party - Front (Devrimci Halk Kurtulus Partisi - Cephesi) (DHKP-C)   | Turkey                | USA, EU, France, Sweden, Germany         |
| The Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs (RSRSBCM)   | Russia                | UN                                       |
| Salafist Group for Call and Combat (Groupe Salafiste pour la Predication et le Combat) (GSPC) (Al Qaida in the Islamic Maghreb)   | Algeria               | USA, UK                                  |
| Saved Sect or Saviour Sect  | UK                    | UK                                       |
| Selselat Al-Thahab  | Iraq                  | UN                                       |
| Sendero Luminoso (SL)   | Peru                  | Canada, EU, France, Sweden, Germany      |
| Sipah-e Sahaba Pakistan (SSP) (Aka Millat-e Islami Pakistan (MIP) - SSP was renamed MIP in April 2003 but is still referred to as SSP) and splinter group Lashkar-e Jhangvi (LeJ) | Pakistan              | UK                                       |
| Shining Path (The Communist Party of Peru)  | Peru                  | USA, EU, France, Sweden, Germany         |
| Special Purpose Islamic Regiment  | Chechnya              | UN                                       |
| Taibah International - Bosnia Offices   | Bosnia                | UN                                       |
| Taliban   | Afghanistan           | Canada                                   |
| Tehrik Nefaz-e Shari'at Muhammadi (TNSM)  | Afghanistan           | UK                                       |
| Tehrik-e Taliban Pakistan (TTP)   | Pakistan              | USA, UK, Canada, UN                      |
| Teyre Azadiye Kurdistan (TAK)   | Turkey                | UK, EU, France, Sweden, Germany          |
| Tunisian Combatant Group  | Tunisia               | UN                                       |

|   |  |                             |
|---|--|-----------------------------|
| Turkestan Islamic Party (TIP) also known as East Turkestan Islamic Party (ETIP), East Turkestan Islamic Movement (ETIM) and Hizb al-Islami al-Turkistani (HAAT) | China, Central Asia, South Asia, Syria           | UK                          |
| Turkiye Halk Kurtulus Partisi-Cephesi (THKP-C) is also known as the Peoples' Liberation Party/Front of Turkey, THKP-C Acilciler and the Hasty Ones              | Turkey   | UK                          |
| Brigata XX Luglio' ('Twentieth of July Brigade')  | Italy  | EU, France, Sweden, Germany |
| Ulster Defence Association/ Ulster Freedom Fighters - (UDA/UFF)   | Northern Ireland                                 | EU, France, Sweden, Germany |
| Ummah Tameer E-Nau (UTN)  | Afghanistan                                      | UN                          |
| Autodefensas Unidas de Colombia' - (AUC) ('United Self Defense Forces/Group of Colombia')   | Colombia   | EU, France, Sweden, Germany |
| Federazione Anarchica Informale - (F.A.I.) ('Unofficial Anarchist Federation')  | Italy  | EU, France, Sweden, Germany |
| Wafa Humanitarian Organisation  | Pakistan, Saudi Arabia, Kuwait, UAE, Afghanistan | UN                          |
| World Tamil Movement  | Canada   | Canada                      |

## APPENDIX C: OPERATIONAL CHALLENGES

Counterterrorism laws have impacted NGOs on at least three levels outlined below: structural (humanitarian assistance), operational (programming) and internal (administrative).

### STRUCTURAL: HUMANITARIAN ACTION

- Ability of NGOs to appear impartial: security concerns as to whether terrorist groups will perceive humanitarian actors and aid recipients as partial, blurring the lines between humanitarian action and political objectives. Higher risk of being politically targeted if acting against government agendas.
- Ability of NGOs to be seen impartial by host country, particularly as counterterrorism legislation increases there. NGO facing greater scrutiny and suspicion from host government.
- Reputational harm and relationships with local partners and local communities if perceived as politically motivated and not independent. Potential pressure screen of beneficiaries also exists.
- Reputational harm among donors and media. Confidence and transparency in the humanitarian sector has deteriorated as media and government have become more suspicious. More media and government scrutiny.
- Ability to access areas without violating counterterrorism legislation related to negotiating with armed groups and providing “material support.” No clear criteria established for the acceptable level engagement according to the door’s standard.
- Reputational challenges and media attention: risk of scandal is high when counterterrorism is involved. Greater attention from the media and general public.

### OPERATIONAL AND PROGRAMMATIC RISKS

- Legal compliance and threat of criminal proceedings: risk aversion and anxiety with regard to potential legal liability arising from the proliferation of material support prohibitions.
- Ability to comply with donor reporting and monitoring requirements, particularly when demands vary greatly from donor to donor.
- Conflicting between donor legislation making financial transactions difficult
- Clauses of material support may include actions considered fundamental to humanitarian action
- High-level of uncertainty and lack of clarity: Ambiguity of terms used by donors, clauses becoming a basic part of the contracts; impossibility to negotiate with donor; lack of exemptions, in many cases; variety of interpretation of “material support”
- Ability to prevent diversion or material support to terrorist groups in high-risk conflict areas is not one hundred percent guaranteed
- Ability to design programming based on needs alone leads to

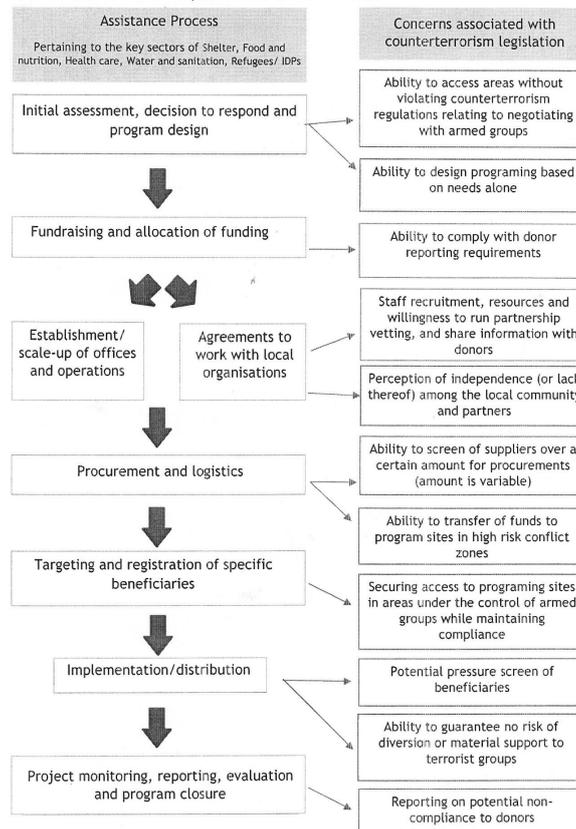
self-censorship as NGOs operate in fear on financial and legal repercussions.

- As banks must comply with the same prohibitions, some institutions are effectively dictating where humanitarian agencies can operate.
- Ability to transfer of funds to program sites as a result of risk-averse banking institutions
- Differences of ideas and sensibility between headquarters where contracts are signed and the staff who executes them

**INTERNAL: ADMINISTRATIVE BURDEN**

- Increased administrative requirements, reporting burden, which can slow down operations and increase costs
- Human resources and willingness to screen staff, run partnership vetting, and share information with donors undermines staff and suppliers recruitment
- Organisations needs to take into account the country specific labor laws and ensure compliance.
- Ability to continually consider the applicable definitions of who is a terrorist entities and persons “associated” with terrorist groups.
- Logistical ability to screen suppliers, subcontractors, and potentially beneficiaries
- Financial costs to meet compliance: screening software, legal counsel and staff training

Map of assistance with the implications of counterterrorism<sup>62</sup>



## APPENDIX D: EXAMPLE OF CONTRACT CLAUSES

### GRANT AGREEMENT - FOREIGN AFFAIRS CANADA

In the grant agreement, DFATD and the organisation (co-signer) agree as follows:

#### “13. Anti-Terrorism

13.1 The Organisation declares and guarantees that the funding for the purposes of the Project shall not knowingly be used to benefit entities as defined in the Criminal Code or individual members of those groups, or for terrorist activities, either directly or indirectly. The Canadian government lists of terrorist entities or individuals can be found at the following web address:

<http://www.osfi-bsif.gc.ca/Eng/fi-if/amlc-clrpc/atf-fat/Pages/default.aspx>

<https://www.publicsafety.gc.ca/cnt/ntnl-scrnt/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx>

13.2 The Organisation is responsible to consult the lists in order to keep itself current of the listed terrorist entities or individuals during the period of the Agreement;

13.3 The Organisation shall include a corresponding provision in any Sub-Contract or Sub-Agreement that the Organisation enters into for the purposes of the Project.”

### GRANT AGREEMENT - U.S. DEPARTMENT OF STATE

XXXII. Blocking Property and Prohibiting Transactions Who Commit, Threaten To Commit, or Support Terrorism, Executive Order 13224.

Executive Order 13224 designated certain individuals and entities that commit or pose a significant risk of committing terrorist acts and authorised the Secretary of State to designate additional individuals and entities.

The Order also authorised the Secretary of the Treasury to designate additional individuals and entities that provide support or services to, are owned or controlled by, act for or on behalf of, or are “otherwise associated with,” an individual or entity who has been designated in or under the order. All property and interests in property of the individual or entity in the United States or in the possession or control of United States persons are blocked. The order prohibits all transactions and dealings in blocked property or interests in the United States or by United States persons, and also prohibits transactions with, and provision of support for, individuals or entities listed in or subject to the Order.

Non-Federal entities should be aware of Executive Order 13224 and the names of the individuals and entities designated thereunder. A list of these names can be found in the exclusions section of the SAM.gov. The web site is: <http://www.sam.gov>

Non-Federal entities are reminded that U.S. Executive Order and U.S. laws prohibit transactions with, and the provision of resources and support to, individuals and organisations associated with terrorism. It is the legal responsibility of the non-Federal entity/contractor to ensure compliance with these Executive Orders and laws.”

## GRANT AGREEMENT - USAID

“The recipient must not engage in transactions with, or provide resources or support to, , individuals and organisation associated with terrorism, including those individuals and entities that appear on the Specially Designated National and Blocked Persons List (online at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>) maintained by the U.S. Treasury or the United Nations Security Designation list (online at: [https://www.un.org/sc/suborg/en/sanctions/1267/aq\\_sanctions\\_list](https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list)).”

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## APPENDIX E: NGOS ACCUSED OF HELPING TERRORIST ENTITIES

Source: Norwegian Refugee Council (NRC) "Principles under Pressure: the impact of counterterrorism measures and preventing/countering violent extremism on principled humanitarian action." 01 June 2018, available at <https://www.nrc.no/resources/reports/principles-under-pressure/>

- A 2010 US Supreme Court Judgement in the case of Holder v. Humanitarian Law Project highlighted that the definition of material support is broad, covering training even in benign topics such as international humanitarian law. The decision underscored the fact that the provision of any kind of material support or resources to DTGs would violate US counterterrorism laws, which have broad extraterritorial reach, regardless of whether it would actually assist in a terrorist attack. This was a quasi-advisory ruling; no individuals were prosecuted.
- In 2016, the Israeli government accused World Vision's operation manager in Gaza of diverting funds to Hamas. Australia, the largest donor to World Vision's Gaza program, suspended funding for the organisation in Palestine. A subsequent investigation led by the Australian government concluded that there was no evidence to suggest any diversion of government funds. A forensic audit was commissioned by World Vision, and according to most recent reports, it did not uncover any evidence of aid diversion.
- In 2017, the American University of Beirut reached a settlement of \$700,000 with the IS government after it was accused of providing training and expert advice to representatives of three entities from the DTG list in a civil suit. The lawsuit charged the AUB provided media training to representatives of two media outlets under US sanctions. It was also accused of listing a third organisation, also under US sanctions, in its NGO database. This was found to be in violation of the False Claims Act, because, as the USAID grantee, AUB signed sworn certification that it had not provided material support or resources to DTGs in the previous 10 years, and that it would take all reasonable steps to ensure that it did not do so.
- In a similar civil case brought by a private citizen in 2018, Norwegian People's Aid (NPA) reached agreement on a settlement with the U.S. authorities and will pay \$2 million under the False Claims Act for providing material support to DTGs though its work with a democracy-building project for young people in Gaza between 2012 and 2016, and a demining project in Iran that ended in 2008. NPA had also signed the USAID certification. The organisation had not accepted USAID funding in either country, and disputed the fairness of the claim on the basis that it had believed certification applied only to countries in which it had accepted such funding. The outcome indicates that USAID's anti-terrorist certification on providing material support to designated people and entities applies not only to countries where US funding is accepted, but to all work USAID grantees carry out.

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