



COUNTER-TERRORISM POLICY AND PRACTICE REVIEW REPORT



**ACTION
AGAINST
HUNGER**



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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 this report is due to an increasing concern by humanitarian organizations of the adverse effects of counter terrorism legislation and clauses on their operations.

Indeed, it would seem incumbent on each organization to educate itself on what national legislation, as well as international law, has to say about supporting terrorism. Not only do humanitarian organizations 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. Organizations 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.¹ Initially proposed by the UN High-Level Panel on Humanitarian Financing, more than 20 of the largest governmental donors and over 30 humanitarian organizations, 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 organizations 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.”²

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 organizations 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 to consolidate the counterterrorism policy and advocacy work that has been done by Action Against Hunger over the past years and to develop operational and advocacy guidance based on the current counter terrorism legislation of its core institutional donors. The aim is not to provide legal advice but to identify current trends and to provide recommendations to reflect on and adopt new policies and measures to continue to uphold the humanitarian principles in the years ahead.

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 organizations must take into account with respect to counterterrorism legislation impacting its programming worldwide, in particular in fragile states where designated terrorist groups operate and, in some cases, control territory. Indeed, many civilians who are suffering from malnutrition, food insecurity or famine do live under the control of designated terrorist organizations 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 criminalization of aid. The report examines the national legislation, sanction regimes and donor agreements of some of Action Against Hunger's 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 organizations 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 organizations could consider in the future as counter-terrorism measures continue to expand. The recommendations and strategic advice questions raised in this report are meant first and foremost for Action Against Hunger, but could equally be applied to other NGOs that work at the frontlines of complex emergencies.

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 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 Affairs³, the Norwegian Refugee Council⁴ and Chatham House⁵, 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 organizations. In addition, 91% of the respondents claimed that counterterrorism legislation weakened their organization’s commitment and adherence to humanitarian principles.

A. THE CRIMINALIZATION OF AID AND THE “CHILLING” EFFECT

In the report “The Criminalization of Healthcare”, Dainius Pūras, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, sees the criminalization of aid as a clear tendency that puts NGO staff increasingly risk of prosecution under counterterrorism laws. This, he notes, is leading to a “chilling effect” on the provision of humanitarian assistance.⁶ Looking at the criminalization of healthcare within the domestic legal framework of 16 countries, Pūras found that while no regulations explicitly refer to the provision of medical care as forbidden nor

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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
 - 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
 - 6 Buissonniere, Marine, Sarah Woznick, and Leonard Rubenstein, The Criminalization of Healthcare, University of Essex (Essex: June 2018), accessed September 3, 2018, <https://www1.essex.ac.uk/hrc/documents/54198-criminalization-of-healthcare-web.pdf>

being conceded as support to terrorism, the vague definitions opened the door to interpretations that could delegitimize 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 criminalized, 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.”⁷ 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.

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 organizations that strive to protect civilian populations from hunger and malnutrition, often in conflict situations. While donor governments support this work and see such organizations as important partners that can operate in highly complex emergencies and dangerous situations, organizations 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 of how counter terrorism legislation is evolving and might impact humanitarian organizations’ 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 sever 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 like-minded organizations. 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.”⁸

What humanitarian organizations 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 and is legally binding by treaty, counterterrorism legislation is created for urgency and

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

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 for civilian population 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.⁹ As related by IRIN, "USAID's inspector general, reporting to Congress, first in March¹⁰ 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.¹¹ 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 organization 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.¹² 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 organization. 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 organizations. 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 organizations 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

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.¹³ 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 organizations 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. According to their 2017 annual report, based on number of people assisted Action Against Hunger's largest operations are: Nigeria (6.3 million), Syria (1.6 million), Bangladesh (1.2 million), Ethiopia (988 thousand), Pakistan (931 thousand), and Somalia (700 thousand). Nigeria, Syria and Somalia in particular are home to multiple non-state armed actors that are designated as official terrorist groups by many of Action Against Hunger's top donors.

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 or contravene international humanitarian

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

Considering that Western governments are some of the 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.

As of 2016, the Action Against Hunger's largest governmental donors, in order of institutional funding, are¹⁴: 1) the European Union (Euro 109.3 million), 2) the U.S. (Euro

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>

14 According the Action Against Hunger's 2017 annual report, the UN is listed as the NGO's largest donor, amounting to UN Euro 109.3 million in 2016.

44 million), 3) the United Kingdom (Euro 22.1 million), 4) Sweden (Euro 17.5 million), 5) Canada (Euro 13.4 million), 6) France (Euro 8 million), and 7) Germany (Euro 2.7 million).¹⁵

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 legislation (financing of terrorism), particularly through the Financial Action Task Force (FATF).¹⁶ 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 organization 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 that Action Against Hunger management should make itself familiar with.

D. MAPPING OF DESIGNATED TERRORIST GROUPS: WHO AND WHERE TOP DONOR LEGISLATION IS TARGETING

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

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

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

15 Detailed information regarding the counterterrorist strategies and legislation of the Action Against Hunger’s largest governmental donors can be found in appendix 1.

16 Financial Action Task Force, Best Practices on Combating the Abuse of Non-Profit Organizations (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-organizations.pdf>

Al Shabaab (based in Somalia), has the aim of establishing a fundamentalist Islamic state through violent means. The organization 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 organizations by most if not all of the top 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 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 recognized as a proscribed terrorist organization 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 organization operating in Nigeria, Chad, Niger and northern Cameroon, which has affiliations with ISIS, is also a listed terrorist organization. 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 neighboring countries.

Groups that are active in Pakistan and Jammu and Kashmir have been listed as terrorist organizations 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 organization 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 recognized 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 full list of the geographic location of all officially designated terrorist groups by Action Against Hunger's institutional donors are listed in Appendix 2 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 organizations 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 organizations 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 a “highly lucrative and is a major source of funding for terrorist activity.” It is a testimony to these organizations 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.

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 organization 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 organizations 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.¹⁷ 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 materials¹⁸). 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).¹⁸ The question also is whether exemptions could be broader-based and involve the U.N. and other larger organizations.

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.¹⁹ Though amendments exempting aid workers and journalists have been introduced, the bill remains indicative of the future legal barriers potentially facing humanitarian organizations.

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 organizations 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 organizations are present in these areas and cooperate with local officials (willingly or by force), which happen to also be designated terrorist organizations, 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 organization, 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.

17 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

18 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>

19 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 2 and Section 2. D of this report.²⁰ 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 organizations 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 organizations can be 'de-listed' at any time, it is extremely difficult and long process to do so. In Canada, the People's Mujahedin Organization 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 organization 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 organizations 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.²¹ 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

20 A table of Action Against Hunger's top donors' terrorism lists is available in appendix 3
 21 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

displace international humanitarian law.”²² International humanitarian law imposes an obligation to respect and protect population in needs 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, criminalization or impediment of humanitarian actions - that would jeopardize the enjoyment of that right.”²³ 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,”²⁴ and thus “acts prohibiting otherwise impeding humanitarian services violate the obligation of states to respect the right to life.”²⁵ 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.²⁶ 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 organizations must therefore consider how counterterrorism laws as imposed by states and other multilateral agencies may now run counter to their core humanitarian principles.

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 3.

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 organization’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 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 organizations use commercial software, such 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 organization had to vet local partners and/or recipient of aid.

22 Ibid. p. 10.

23 Ibid, p. 7.

24 Callarmard, p. 6.

25 Callarmard, p. 7.

26 “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>

Screening and vetting can create the following challenges:

- **Administrative burden:** Cause delays and 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 organizations 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 organization might violate national or European legislation on privacy.
- **Security and neutrality:** the sharing of personal information put the neutrality of organizations 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 organization. However, local partners may not necessarily have the capacity and ability to implement them, which could lead humanitarian organization 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 leads 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.”²⁷ 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. be found so as not to force organizations “to choose between breaching European data protection and privacy law and forgoing USAID and State Department grants or other assistance.”²⁸

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 1 in this report that details the counter terrorism legislation of several top donors.

27 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>

28 Ibid. p. 18.

- 2 Maintain awareness of listed terrorist entities across multiple jurisdictions. All headquarters staff and staff in the field should familiarize themselves with Appendix 2 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 organization 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 organizations 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 organizations shall continue to face a dilemma. It is therefore important for humanitarian organizations 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 organizations put the protection of staff and beneficiaries as the priority.

Several organizations have refused funding as a result of strict counterterrorism laws and clauses, or due to the lack of clarity of the donor agreements.²⁹ 38% of the respondents in the [HLS PILAC survey](#) stated that counterterrorism laws have caused their organization to forgo, alter, or cease activities and programming.³⁰ The financial and administrative burdens brought on by the new measures can also lead an organization to select which crises to respond to. Furthermore, the lack of clear language in the legislation may lead organizations 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 to consider. They are:

- 1 **REFUSING TO SCREEN 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, organizations 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.
- 2 **REFUSING TO COMPLY WITH ANY ACTIVITY THAT JEOPARDIZES HUMANITARIAN PRINCIPLES OF NEUTRALITY AND IMPARTIALITY:** Compliance with counterterrorism laws may lead organizations to selectively respond to populations in need, which goes against the principle of impartiality. This includes the refusal to adopt programming of political nature and which favors 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 organization known as ISIS, is a case in point that some NGOs operating in Iraq are confronted with.

²⁹ See, for example, Norwegian Refugee Council, Principles under pressure."

³⁰ HLS Pilac, p. 7.

- 3 **REFUSING TO CONDUCT ANY SECURITY SCREENINGS THAT WILL JEOPARDIZE THE SAFETY OF STAFF.**
- 4 **REFUSING TO TAKE ON ANY NEW DONOR FUNDED PROJECTS THAT PRESSURE ORGANIZATIONS TO SEND STAFF INTO GEOGRAPHIC AREAS WHERE SAFETY CANNOT BE ASSURED:** The security of the staff is the primary concern of humanitarian organizations and in certain past situations organizations have turned down funding or pushed back against donor pressure to operate in areas where staff might be at risk of harm due to insecurity. More general thought should equally be given to the question as to whether organizations should ever turn down money. If yes, the organization must identify in what situations and for what reason. Context-specific guidelines can be developed to adapt to the demands of the donors and the reality on the ground.
- 5 **REFUSING TO IMPLEMENT ANY ACTIVITIES THAT ARE OPPOSED TO INTERNATIONAL HUMANITARIAN LAW:** One of the main red lines identified at the 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 jeopardize the primary humanitarian objective of protecting civilians in conflict situations. The fact that an organization agrees to comply with counterterrorism laws of the donor government 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 criminalize, prohibit or block humanitarian aid. The time has come to speak truth to power.

In regards to future redline considerations, organizations might want to discuss the feasibility of establishing standards across all countries where it operates. However, it is important to recognize 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 done as 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.

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 normalizing 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 organizations, could consider adopting if they wish to ground their work on humanitarian principles as set by international humanitarian law.

- 1 **HUMANITARIAN ORGANIZATIONS 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 ORGANIZATIONS 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 ORGANIZATIONS 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 organizations have taken a series of anti-fraud and anti-diversion measures, including list checking suppliers, contracting partners, employees and service contracts.
- 4 **HUMANITARIAN ORGANIZATIONS 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 ORGANIZATIONS OUGHT TO ADVOCATE FOR AMENDMENTS TO BE MADE TO COUNTERTERRORISM LEGISLATION SO THAT ORGANIZATIONS 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 framework. These exemptions seem to be the best solution for dealing with the conflict between IHL and counterterrorism legislation. Exemption clauses must be 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 contacts/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 harmonization 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 ORGANIZATIONS OUGHT TO DECIDE IF COUNTERTERRORISM WILL BECOME A SIGNATURE ISSUE IN THEIR ADVOCACY CAMPAIGNS. IF SO, THE ORGANIZATIONS 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 will not result in the policy changes Action Against Hunger would like to see materialize, most notably the exemption of humanitarian action from counter terrorism action and the repealing of contract clauses and associated

obligations that render Action Against Hunger work more bureaucratic and time consuming. Therefore Action Against Hunger 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 ORGANIZATIONS 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 ORGANIZATIONS 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 mobilizing political will to amend legislation and policies.
- 9 **HUMANITARIAN ORGANIZATIONS 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 ORGANIZATIONS SHOULD ADVOCATE AMONG THEIR INSTITUTIONAL DONORS TO AMEND ALL COUNTER TERRORISM LEGISLATION SO THAT NO ORGANIZATION 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 ORGANIZATIONS SHOULD URGE THEIR DONORS TO FACILITATE REGULAR DIALOGUE BETWEEN ITSELF 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 organizations 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 present 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 minimizing 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.

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