



RISK MANAGEMENT TOOLKIT

**IN RELATION
TO COUNTERTERRORISM MEASURES**

December 2015

Study commissioned by



NRC

NORWEGIAN
REFUGEE COUNCIL



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The **Norwegian Refugee Council (NRC)** is an independent, international, humanitarian non-governmental organisation, which provides assistance, protection and durable solutions to refugees and internally displaced worldwide.

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Disclaimer

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Foreword

This toolkit has been independently commissioned by Norwegian Refugee Council (NRC) as part of the workplan of the Inter-Agency Standing Committee (IASC). Its purpose is to outline a range of counterterrorism measures and their links to humanitarian action and share practical examples and methods employed by organisations to address the impacts of these measures, especially with respect to risk management procedures.

The humanitarian principles of humanity, impartiality, neutrality and independence, are the basis of principled humanitarian action. At the heart of the humanitarian principles and the core motivation for humanitarian actors is the principle of humanity, which encompasses respect for human dignity and the imperative to alleviate human suffering and respond to the needs arising from crisis. Together, the principles also represent tools for navigating today's complex humanitarian environment to meet the needs of affected populations, as detailed in NRC's "Tools for the job: supporting principled humanitarian action" (2012). Humanitarian principles can support the acceptance and trust of humanitarian actors and mitigate corruption and aid diversion. In addition, they require that populations suffering from the effects of violence and conflict are entitled to the humanitarian assistance and protection essential to their wellbeing, irrespective of which entity may control or be active in the territory where they reside.

At the same time, states and multilateral bodies are taking significant measures to address the proliferation of terrorism, especially since the attacks of 11 September 2001 in the US. UN Security Council (UNSC) resolution 1373 (2001) and subsequent international instruments oblige states to incorporate measures within their domestic jurisdiction to combat terrorism.

As illustrated in the study commissioned by the UN Office for the Coordination of Humanitarian Affairs (OCHA) and NRC on the impact of donor counterterrorism measures on principled humanitarian action (2013), these measures have affected the ability of humanitarian organisations to effectively meet the needs of affected populations in a principled manner, including:

- increased administrative requirements to meet counterterrorism related contractual requirements, which can slow down operations and increase costs
- decreased funding, which may have an impact on organisations including national and local frontline responders and, especially, Islamic charities
- increased uncertainty, risk aversion and anxiety with regard to potential legal liability arising from the proliferation of material support prohibitions
- reduced information-sharing and trust among humanitarian actors and more self-censorship
- substantial security concerns as to whether terrorist groups will perceive humanitarian actors and aid recipients as partial

This toolkit is intended to contribute to an increased understanding of the connection between counterterrorism measures and humanitarian action and highlight steps that humanitarian organisations can take and are taking to address some of the main challenges and risks associated with these measures. The starting point is that principled humanitarian actors should seek to place their risk management procedures in relation to counterterrorism measures within the framework of the humanitarian principles and not vice-versa.



Jan Egeland
Secretary General, Norwegian Refugee Council

List of Abbreviations

CDI	Conflict Dynamics International
CHS	Core Humanitarian Standards
DTG	Designated Terrorist Group
ERM	Enterprise Risk Management
EU	European Union
FDFA	Federal Department of Foreign Affairs
GPS	Global Positioning System
IASC	Inter-Agency Standing Committee
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
M&E	Monitoring and Evaluation
NGO	Non-Governmental Organisation
NMFA	Norwegian Ministry of Foreign Affairs
NRC	Norwegian Refugee Council
OCHA	Office for the Coordination of Humanitarian Affairs
PRM	Population, Refugees and Migration
PVS	Partner Vetting System
RAM	Risk Analysis Management
UK	United Kingdom of Great Britain and Northern Ireland
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
USA	United States of America
USAID	United States Agency for International Development
WASH	Water, Sanitation and Hygiene

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SECTION I

INTRODUCTION

RATIONALE

When responding to the needs of populations affected by crisis, humanitarian actors often work in unpredictable and insecure settings where terrorists may be active. At the basis of humanitarian action, and critical to how humanitarian organisations work in these settings, are the humanitarian principles of humanity, impartiality, independence and neutrality.¹ The principles of humanity and impartiality provide the foundation of principled action, recognising fundamental human dignity and the imperative to relieve suffering wherever it is found, according to the needs and vulnerabilities of affected populations. Neutrality and independence provide tools which humanitarians employ to obtain acceptance from parties to a conflict in order to facilitate the implementation of operations and access or proximity to affected populations.

Meanwhile, inter-governmental bodies and states have increasingly taken steps to address the threat of terrorism through wide-ranging counterterrorism measures at the international and national levels. Although not generally the main focus of these measures, humanitarians have become increasingly concerned with the impact of the measures on principled humanitarian action and actors. Examples include the sanctions imposed on Al-Shabab during the Somalia drought of 2009 and the spread of counterterrorism clauses in donor agreements.

The IASC consequently asked the Norwegian Refugee Council (NRC) and the UN Office for the Coordination of Humanitarian Affairs (OCHA) to commission a study on the impact of donor coun-

terterrorism measures on principled humanitarian action (2013).² The study found a number of distinct yet interrelated areas of impact and risk for humanitarian actors from donor counterterrorism measures and proposed seven recommendations to mitigate these impacts including that humanitarian actors should:

- › work together to more effectively demonstrate and strengthen the implementation of the different policies, procedures and systems used to minimise aid diversion to armed actors, including those designated as terrorist, and better communicate how they weigh such efforts against programme criticality and humanitarian need.³

Taking forward this recommendation, NRC commenced work on this toolkit in 2014, with the financial support of the Norwegian Ministry for Foreign Affairs (NMFA). Development formed part of the 2014 and 2015 work plans of the IASC Task Team on Principled Humanitarian Action, and was subsequently endorsed by the IASC Working Group. An expert advisory group was established with representatives from organisations participating in the IASC task team on principled humanitarian action who helped guide the research and drafting.

SCOPE

This risk management toolkit in relation to counterterrorism measures should be read against the backdrop of the humanitarian principles. To support or endorse an armed group in their political or security aims, including through the provision

of aid, contravenes the humanitarian principles of impartiality, neutrality and independence. As such, most humanitarian actors have well developed policies, procedures and systems covering security, human resources, finance and administration to prevent this from occurring. Decades of experience within the humanitarian sectors and most recently, the drive towards enhanced professionalism, has generated standards such as the Sphere projects Humanitarian Charter and Minimum Standards in Humanitarian Response⁴ and the Core Humanitarian Standards⁵ (CHS), which also aim to help humanitarian actors to strengthen adherence to the humanitarian principles and enhance their risk management. The broader procedures and systems against which principles have been incorporated collectively and organisationally by humanitarian actors are detailed in NRC's "Tools for the job: supporting principled humanitarian action" (2012).⁶

Two areas that require further investigation in relation to the coverage of this toolkit are training for strengthening compliance with international humanitarian law, and the provision of medical support for wounded combatants who may be considered members of DTGs. Further work in these areas is recommended. A useful resource, however, is "Medical care in armed conflict: International humanitarian law and state responses to terrorism" (2015), by the Harvard Law School Program on International Law and Armed Conflict. Most humanitarian actors strongly dispute that such activities, designed and implemented with a humanitarian purpose, could, or should be deemed to be support for DTGs, rather than essential programmes to strengthen civilian protection and provide essential medical care without discrimination in accordance with international humanitarian law (IHL) and medical ethics. However, in some jurisdictions, these may be defined as falling foul of counterterrorism measures, which is problematic for humanitarian actors and action.

This toolkit is directed at decision makers including those with operational and risk management responsibilities and policy-makers within humanitarian

organisations, in headquarters and/or field locations. It has two objectives:

- To provide an understanding of current counterterrorism policies and their potential impact on principled humanitarian action, while directing users to additional resources and information.
- To provide a collation of the risk management procedures, policies and practices employed across the humanitarian sector.

This toolkit is not prescriptive or intended to serve as legal or professional guidance for humanitarian organisations. Nor is it intended to establish an interagency standard regarding risk management in relation to counterterrorism. It is based on the policies and practices used by some humanitarian organisations and provides an amalgamation of examples and the procedures employed by the many organisations which directly and indirectly fed into the development of the toolkit. The toolkit focuses mainly on counterterrorism measures imposed by donors, rather than those imposed by states hosting affected populations.

In part 1 of section II, the toolkit briefly summarises the counterterrorism policy environment. There are numerous research and policy papers which examine aspects of counterterrorism in more detail. There are links to these publications in the bibliography. It also includes an overview of the relationship between counterterrorism measures and IHL, UN Security Council (UNSC) resolutions related to counterterrorism and a sample of counterterrorism laws introduced by some member states.

Part 2 provides an outline of counterterrorism clauses placed by donors within partnership agreements, highlighting areas that may require further consideration by humanitarian organisations, including negotiating donor agreements, while part 3 looks at risk management and mitigating risk.

Section III sets out ideas and methods for a risk management framework based on the methods, tools and

procedures employed by those who contributed to this toolkit. This section also covers enterprise risk management (ERM) and monitoring and evaluation (M&E).

The annexes include a compendium of policies that an organisation can refer to while developing a set of risk management policies, additional resources for information and a list of key terms.

For the purpose of the toolkit, “humanitarian actors” mainly refers to national and international NGOs and UN agencies. The term “partnership agreement” is used to refer to agreements including but not limited to contracts, cooperative agreements and grant agreements between two or more organisations.

Finally, the toolkit focuses only on situations of armed conflict, although it should be noted that counterterrorism measures apply to conflict and non-conflict settings and humanitarian and development activities.

METHODOLOGY

The development of this toolkit was informed by desk research, focus group discussions and interviews with state, academic and humanitarian representatives during three field missions, two workshops and expert feedback from an advisory group, made up of member organisations of the IASC task team on principled humanitarian action. Interviewees were principally selected through snowball sampling, whereby an initial group of interview subjects nominated fur-

ther participants in the research. In summary, the development process involved:

- ▶ A desk review of legal instruments and policies pertaining to counterterrorism and/or humanitarian action and previously published material as set out in the bibliography.
- ▶ Field consultations conducted in Afghanistan, Jordan and Kenya, including two group workshops.
- ▶ Interviews with representatives working in Afghanistan, Central African Republic, Iraq, Jordan, Kenya, Lebanon, Somalia, Syria and Turkey and, including international and national staff of international and national NGOs, UN agencies, the International Red Cross and Red Crescent Movement, diplomats and donors.
- ▶ Consultations and interviews with humanitarian actors and academics in, Boston, Geneva, London, New York, Paris and Rome. Interviewees also included independent risk management, security and legal experts.
- ▶ An advisory group of thirteen members of the IASC task team on principled humanitarian action engaged in the review of different versions of the toolkit and helped with identification of interviewees. The advisory group was composed of representatives from UN agencies, NGOs and the International Red Cross and Red Crescent Movement.

The information contained in the toolkit is anonymised except where the information is publicly readily available.

SECTION II

COUNTERTERRORISM POLICY AND LAWS

INTRODUCTION

This section discusses the legal and policy environment governing counterterrorism in relation to principled humanitarian action. The bibliography contains links to sources offering a more comprehensive policy and legal analysis.

It is important to note that the laws and policies related to counterterrorism continue to evolve, as do their potential relevance for humanitarian action. The toolkit does not provide professional and/or legal advice and where further interpretation of law or advice are required, users should refer to qualified, professional legal counsel.

WHAT IS TERRORISM?

There is no consensus or universally agreed definition of “terrorism”. International and national laws may attempt to define terrorism, but most jurisdictions seek instead to define certain acts as “acts of terrorism”. One of the more authoritative definitions is provided by the UNSC in resolution 1566 (2004)⁷ which refers to terrorism as:

- ▶ criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act.

Rule 2 of customary IHL states that: “Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”⁸

PART 1

LAWS AND RESOLUTIONS RELATED TO COUNTERTERRORISM

UNSC Resolutions and State Laws Related to Counterterrorism

◀ a ▶ UNSC Resolutions Related to Counterterrorism

The first legal instruments aimed at preventing terrorist acts were established in 1963.⁹ Later, a series of high-profile terrorist attacks including the 1998 bombings of the US embassies in Kenya and Tanzania and the attacks of 11 September 2001 on the US brought further attention to counterterrorism efforts. International bodies, led by the UNSC, adopted a series of resolutions in an attempt to deter and punish terrorist acts, and prevent terrorist groups from accessing resources.

Resolutions such as UNSC resolutions 1267 (1999) and 1390 (2002) introduced sanctions against al-Qaeda, the Taliban, their affiliates and individuals belonging to these groups. These resolutions were the first to introduce sanctions against DTGs and individuals (hence the status of a “DTG”), and to oblige UN member states to freeze the funds and assets of these groups.

Similarly, UNSC resolution 1373 (2001) and subsequent related resolutions, require UN member states to adopt laws and measures that deny individuals or entities engaged in terrorism access to funds, financial assets or goods and services. This resolution has had a significant influence on national counterterrorism laws and policies and compliance by member states is monitored the by UN counterterrorism committee.¹⁰

More recently, UNSC resolution 2178 (2014) requires UN member states to prevent individuals from travelling overseas with the intention of perpetrating, planning, or participating in terrorist acts. As a result, foreign travellers, including foreigners working for humanitarian organisations, can face additional scrutiny if they venture into or work in countries with ongoing conflicts such as Syria and Afghanistan, where DTGs may be active.

◀b> Some examples of state laws related to counterterrorism

The above-mentioned UNSC resolutions were adopted under chapter VII of the UN Charter, meaning that they are binding on all UN member states. States failing to comply could face serious consequences, in accordance with the UN Charter.¹¹ Accordingly, following the adoption of UNSC resolution 1373 (2001), many states were quick to adopt new laws or amend existing ones criminalising support for terrorism.

While the laws adopted by states and regional bodies such as the EU vary, the most relevant laws for the purpose of this toolkit, as they relate to humanitarian actors, are those adopted by the large donor states, which mostly criminalise terrorist acts and acts preparatory to or in support of terrorism. Examples for this chapter have been selected from major donor states in different regions. These examples relate to the law as it stood in June 2015. Even though it is outside the scope of this toolkit, the following merit closer examination: The potential impacts on principled humanitarian action of national counterterrorism laws; policies of states hosting operational humanitarian actors and populations affected by crisis; policies of states hosting representational offices of humanitarian organisations; the risk management frameworks required to deal with these measures.

◀c> Examples of counterterrorism measures

1. Material assistance

Various states and jurisdictions have criminalised material assistance to DTGs, with different definitions of the term. US law criminalises the provision of “material support”¹² to a DTG, with a broad requirement of intent and contains an exemption for medi-

cines. Australia, meanwhile, prohibits any association with DTGs. However, the prohibition does not apply where such association is for the purpose of providing humanitarian assistance.¹³ The 2002 EU Council framework decision on combating terrorism criminalises acts where information, material resources or funding are supplied to terrorist groups, with the knowledge that such support will contribute to the criminal activities of that group. Other jurisdictions, such as the United Kingdom, require a lower level of knowledge and intent.¹⁴

US law pertaining to material support is wider in its scope and the related prohibitions create some risks for humanitarian actors – particularly as the prohibition of material support involves extraterritorial jurisdiction and, therefore, applies to organisations and individuals regardless of where the alleged crime was committed, the nationality of the perpetrator, their country of residence, or source of funding.

Compliance with these provisions has become a contractual obligation for all organisations choosing to receive funds from the US government. Notably, counterterrorism laws apply to all recipients of funds irrespective of the obligations contained in their partnership agreement. In short, an organisation or individual is not able to contract out of the scope and reach of US counterterrorism law.

2. Sanctions

In addition to laws that regulate criminal liability for “support” for terrorists or terrorist acts, a number of states have introduced sanctions targeted at a variety of terrorist groups and affiliated individuals. These groups and individuals are designated as terrorists on lists that are created and maintained by the government of each state and/or the UNSC. These lists vary according to each state’s definition of terrorism and its particular political or security considerations. They introduce various measures (depending on the laws of a particular state) against the DTGs that are designed to freeze their assets and that prohibit anyone under the jurisdiction of that state from making any resources available to DTGs. The US treasury department’s foreign asset control office is

one example of a governmental entity charged with maintaining such lists. One of the key concerns of humanitarian organisations is the administrative burden of staying cognisant of and compliant with all the different lists published by each state and regional and international body.

3. Foreign terrorist fighters

In addition, some states have acted pursuant to UNSC resolution 2178 (2014) on “foreign terrorist fighters” and have introduced laws criminalising travel for the purpose of perpetration, planning, preparation of, or participation in terrorist acts or the providing or receiving of terrorist training. At the time of publication, the effects of these laws are unclear. However, laws related to foreign terrorist fighters are expected to affect principled humanitarian action in different ways including heightened travel restrictions, increased visa controls and/or decreased access to financial services. Further information can be found in “Suppressing Foreign Terrorist Fighters and Supporting Humanitarian Action: A Provisional Framework for Analyzing State Practice” (2015), by the Harvard Law School Program on International Law and Armed Conflict.

The Relevance of Counterterrorism to International Humanitarian Law (IHL)

The main body of law governing humanitarian action in situations of armed conflict is international humanitarian law. IHL is a set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict, including the means and methods of warfare.

◁ a ▷ IHL and humanitarian principles

Humanitarian principles are reflected in the 1949 Geneva Conventions and their additional protocols,¹⁵ which refer to impartial humanitarian organisations. In 1965, the International Red Cross and Red Crescent Movement also formally adopted its seven “fundamental principles”.¹⁶ Over the last 50 years, humanitarian principles have continued to be referred to in a number of conventions, various legal and policy frameworks and institutional mandates, as discussed earlier in this section.

Humanitarian principles of humanity, impartiality, neutrality and independence, are guiding principles for humanitarian action. These principles are supported by IHL and various policy frameworks. They are also included in humanitarian standards and institutional mandates. While IHL does not explicitly specify the principles of neutrality and independence, these principles enable humanitarian actors to provide humanitarian and impartial assistance in highly complex and political operating environments and are often reflected in organisational codes of conduct, internal guidance and operational guidance. IHL promotes the notion that humanitarian assistance should be available to affected populations on the basis of need and without discrimination of nationality, race, gender, religious belief, class, political opinions (or similar criteria).¹⁷

◁ b ▷ Tension between counterterrorism measures, IHL and humanitarian principles

The definition of terrorism and how the definition is used by states can be one of the most difficult areas for humanitarian actors implementing principled action. Engagement with all parties to a conflict by humanitarian actors is often necessary. For example, gaining access to areas where affected populations require assistance and protection can require humanitarian actors to engage with parties to the conflict who may control such areas. IHL endeavours to regulate the conduct of hostilities by parties to a conflict and, in doing so, recognises certain types of “protected persons”, including civilians, who must be respected and protected and may not be targeted for attack. Typical acts of terrorism, especially those which deliberately target a civilian population, generally involve methods and means which violate IHL. Some states, however, have sought to use counterterrorism laws to denounce and criminalise armed opposition groups who may arguably be political rivals rather than a group which systematically engages in international terrorism. Other concerns also exist, but in short, criminalising armed groups in armed conflict can place humanitarian actors and those who benefit from their assistance and protection in a situation where they also fall foul of these laws.

The provision of humanitarian assistance in accordance with the principles of humanity, neutrality and impartiality, was recognised by UN General Assembly resolution 46/182 (1991). The criminalisation of the provision of support for DTGs can be in tension with the principles of impartiality, which requires that assistance is provided on the basis of needs and vulnerability.¹⁸ Humanitarian assistance and services, however, if provided to members of DTGs, could be in violation of international and national counterterrorism laws. These may include, for example, providing assistance to detainees suspected of being members of a DTG, or the provision of food to internally displaced people suspected of having an association with DTGs. This tension has a chilling effect¹⁹ in practice on the provision of humanitarian assistance. This occurs when humanitarian organisations choose not to provide assistance in a particular area controlled by DTGs, because of uncertainty about the allowable level of engagement with DTGs. Although engagement with DTG's is not prohibited by IHL or currently by any donor country counterterrorism clauses, this uncertainty by humanitarian actors can lead to over self-regulation whereby humanitarian actors choose not to provide assistance in areas with affected populations who require assistance. The risks of diversion of aid by DTGs may also lead to reluctance from donors to support humanitarian activities in areas where DTGs are assumed to be operating.²⁰

The Relevance of Counterterrorism Measures for Humanitarian Action

Humanitarian action is motivated by the humanitarian imperative to alleviate human suffering,²¹ support the preparedness of populations, and provide protection for affected populations. This includes ensuring that affected populations have access to principled humanitarian assistance and protection.

Strict compliance with humanitarian principles may lead to violations of counterterrorism laws. Conversely, ensuring compliance with counterterrorism measures could lead to compromising humanitarian principles.

The potential impact of counterterrorism measures on humanitarian action in accordance with humanitarian principles includes:

- › **Reduced needs based assistance:** Adhering to counterterrorism measures may require humanitarian organisations to selectively respond to the needs of affected populations, in contradiction to principles of humanity and impartiality. This can lead to organisations withholding assistance from certain beneficiaries linked with, or residing in areas controlled by DTGs, rather than providing assistance where it is needed most. This in turn may impact the impartiality of the organisation.
- › **Excessive risk aversion by humanitarian actors:** Humanitarian actors expressed uncertainty and a lack of clarity regarding the parameters of counterterrorism clauses and counterterrorism measures introduced by donors. This lack of clarity leads some organisations to mitigate risks by self-imposed over-regulation.²² Several humanitarian organisations that have sought clarity or sought to negotiate in respect of counterterrorism contractual clauses, reported delays and additional administrative procedures while awaiting such information.²³ There are examples of humanitarian organisations choosing not to accept funding from donors, as a result of uncertainty about the donors' counterterrorism clauses and what is required to comply with such clauses, meaning that identified affected populations are at risk of reduced assistance and/or protection.
- › **Compromising staff members' and partners' right to privacy:** The counterterrorism clauses included in donor partnership agreements are varied. Part II of this section provides an overview of donor counterterrorism clauses and their links to principled humanitarian action. Some donor contractual clauses extend further than others. For example, US contracts can require grantees to comply with vetting programmes such as Partner Vetting System (PVS) and Risk Analysis and Management (RAM). These systems require organisations to enter the personal data of key personnel, other key individuals and sub-grantees, sub-contractors, and

other partners²⁴ into a government database. This is considered by many as compromising staff and partners' right to privacy. In some jurisdictions staff have a legal right to privacy or personal information may only be used under safeguards. Such systems can also be a potential security risk in highly contested or insecure settings if the neutrality of the organisation comes into question.

- › **Concern over prosecution of humanitarian actors:** There are a range of criminal statutes which

impose criminal and civil liability for a variety of activities relating to terrorist acts. Although there are few examples of humanitarian actors being prosecuted under such statutes, fear of prosecution has been identified as a legitimate concern of humanitarian actors.²⁵

There follows below a case study of how one organisation was affected by a counterterrorism clause. All identifying details such as name and locations have been changed.

CASE STUDY 1: THE IMPACT OF COUNTERTERRORISM

MEASURES ON HUMANITARIAN ACTORS²⁶

World Solidarity is a leading international humanitarian organisation responding to humanitarian crises worldwide. World Solidarity manages large humanitarian programmes in areas affected by conflict. One of those areas is controlled by the Liberators. The Liberators is a listed DTG by a donor state financing World Solidarity programmes.

During the humanitarian response in an area under their control, the Liberators demanded a portion of the humanitarian assistance from World Solidarity's programme which was intended for local populations affected by the conflict.

World Solidarity's management team met to decide the way forward. They chose to attempt to negotiate with the Liberators and agreed that a negotiation meeting should be held in a neutral venue with senior members of the Liberators.

Prior to this incident, however, World Solidarity had signed a contract with a donor which included a clause related to counterterrorism. This clause stemmed from a law prohibiting the provision of material support for DTGs. World Solidarity was concerned that if they paid for the travel expenses

of the Liberators' representatives to a neutral venue for the purposes of negotiation discussions, this would be in violation of the law.

To mitigate this risk, World Solidarity persuaded a third party organisation to finance the transport and accommodation expenses of the Liberators' representatives to attend the negotiation. The extraterritorial jurisdiction of the clause prohibiting the provision of material support for DTGs, meant that this third party would also be subject to the same restriction. By agreeing to finance those expenses, that third party accepted to bear the risk of violating a counterterrorism measure.

Negotiations were eventually held with financial support from the third party organisation and World Solidarity secured the continued implementation of its programme in areas controlled by the Liberators. While negotiations were taking place between World Solidarity and the Liberators, however, several months passed without beneficiaries receiving humanitarian assistance from World Solidarity. World Solidarity's senior management acknowledged that it could not depend on the continued good will of the third party organisation to resolve similar problems with the Liberators in the future.

PART 2

DONOR PARTNERSHIP AGREEMENTS AND COUNTERTERRORISM CLAUSES

Where are Donor or Partner Counterterrorism Clauses found?

Counterterrorism clauses are one of the many clauses that may be found in contractual agreements with donors or humanitarian organisations. Often placed in sections of a contract covering anti-bribery, anti-fraud and anti-corruption clauses, or within the general conditions of an agreement, counterterrorism clauses are contractual obligations. Donors may include counterterrorism clauses within their contracts in order to comply with their own national laws and policies. Humanitarian organisations may also include counterterrorism clauses within their partnership agreements.

Organisations may seek to find alternative means to address counterterrorism requirements, which mainly involves negotiating with the donor or organisation or demonstrating risk management procedures which can substitute for the counterterrorism clause. Where they do exist, the content and scope of counterterrorism clauses vary substantially. For an excellent analysis of counterterrorism clauses refer to the counterterrorism and humanitarian engagement project “An Analysis of Contemporary Counterterrorism-related Clauses in Humanitarian Grant and Partnership Agreement Contracts research and policy paper” (2014).²⁷

In summary, counterterrorism clauses can be found in the following types of partnership agreements:

- Partnership agreements between a donor state and a humanitarian organisation, where the donor is a state government agency, department or unit and/or where the donor administers humanitarian assistance programmes on behalf of the state and requires the organisation to comply with a counterterrorism clause when signing an agreement.²⁸

- Humanitarian pooled funds agreements, where the pooled funds are financed by donor states. In these cases, the counterterrorism clauses of those donor states may be replicated in clauses of humanitarian pooled funds agreements.

- Partnership agreements between humanitarian organisations, where:

- 1) The contracting organisation is the recipient of bilateral funds from a donor state that requires the organisation to include counterterrorism clauses within their sub-agreements for that project. It is worth noting that if the clause exists in the original contract but does not request the grantee to include it in sub-agreements, the grantee will still be responsible if the sub-grantee puts the grantee in breach of their agreement with the donor.

- 2) The contracting organisation includes counterterrorism clauses in their sub-agreements as an organisational policy, usually reflected in organisational partnership template agreements. For example, the larger UN agencies all have counterterrorism clauses within their partnership templates.

Please refer to annex 3 for a sample of counterterrorism clauses that are more fully discussed in the counterterrorism and humanitarian engagement project “An Analysis of Contemporary Counterterrorism-related Clauses in Humanitarian Grant and Partnership Agreement Contracts” (2014).

Understanding Counterterrorism Clauses

Signatories to contractual agreement are obliged to comply with all clauses contained within them. Managers of humanitarian organisations should, therefore, thoroughly read existing and proposed partnership agreements to check for the existence of such clauses and their terms before signature. Organisations should seek legal advice where there is uncertainty and staff should always seek guidance from headquarters if there is no organisational policy.

SCREENING STAFF, PARTNER STAFF AND/OR BENEFICIARIES

Counterterrorism clauses are sometimes inserted into agreements which require recipient humanitarian organisations to screen their staff, the staff of partner organisations and in some cases beneficiaries. Notably, the request to screen beneficiaries is rare. Where screening is required, individuals may be screened against UN, regional (EU, for example) and/or domestic counterterrorism databases. Counterterrorism clauses will often include an obligation to screen sub-grantees and contractors of the same award.

Screening

In the context of this toolkit, screening is understood to be the action conducted by an organisation to ensure that their prospective partner or members of staff do not appear on lists of suspected terrorists such as those maintained by the relevant donor or host government and/or by institutions such as the UN or EU. Names are entered into a database and checked against such DTG lists. Further information is not, however, sought from individuals and personal details are not shared with donors or their states.

Vetting

This toolkit takes vetting to be the process of performing a background check on individuals prior to offering them employment or a contract. Vetting is a more in-depth exercise than screening and can include verification of past employment, academic verification, criminal history check and character reference check. Where vetting is conducted according to the terms of an organisation, the results are not shared with donors or their states.

Many organisations do not engage in vetting, but may engage in screening. In cases where it is carried out, vetting is often performed as a donor requirement. However, it may also be performed at the initiative of the humanitarian organisation.

Vetting differs from the Partner Vetting System administered by USAID, which requires applicants for certain contracts to enter the personal details of individuals into an online government system, as discussed in section II.

Screening and vetting can create dilemmas for humanitarian organisations, including:

- ▶ Screening requirements can compromise operations by causing delays and affecting the timely delivery of humanitarian assistance. This occurs when cumbersome bureaucratic procedures are required to complete the screening process.
- ▶ It may be unclear with whom the information will be shared, thus creating a further dilemma about the security of information provided.
- ▶ Vetting creates a reputational risk for humanitarian organisations. This occurs when organisations are required to provide personal information about their staff and/or partners and/or beneficiaries to the donor state in order to comply with a vetting clause in the donor agreement. Vetting beneficiaries is a red line which most organisations will not agree to conduct. Vetting can compromise the right to privacy of the people whose personal information is being shared and it may violate national data privacy laws. These are also red lines for most organisations. When a humanitarian organisation also shares this information with donor states, it may lead to questions about the neutrality of the organisation and their perceived alignment with the policies of said donor state. This perception may in turn create a security risk for the humanitarian organisation and their staff. As a result of these risks, a number of organisations choose not to engage in this practice.

What to look for in Counterterrorism Clauses

<a> Definitions and scope of terminology: Humanitarian organisations have reported difficulty interpreting the meaning and/or implications of counterterrorism clauses appearing in their partnership agreements.²⁹ Counterterrorism clauses may use phrases such as:

1. “Employ all reasonable efforts to ensure”³⁰ and “apply the highest reasonable standard of diligence to ensure”³¹ that assistance is not diverted³² to DTGs. This means that the organisation is obliged to take measures to ensure that assistance is not diverted, and that they will be held liable in the event that their assistance is diverted to DTGs. The specific wording used may determine the degree of liability if humanitarian assistance is diverted.
2. An organisation must “commit to the war against terror”, which raises concerns as to the neutrality of an organisation if it is perceived as being linked to a party to a conflict, and engaged in support for a war. This could have security implications for how the organisation, and its partners, staff and sub-contractors, may be viewed by DTGs in operational locations. Similarly, it may undermine the organisation’s commitment to independence, or require a partial response.
3. Organisations are prohibited not only from providing material support for DTGs but also those “associated with” them. Such prohibitions lead to concerns around where the boundaries of this terminology are applied and the resulting impact on an organisation’s commitment to impartial response. For example, whether family members of DTGs or communities where DTGs are active, fall into the category of “associated with”.

** “Knowledge” and “intent”**

If humanitarian assistance is diverted to DTGs, the humanitarian organisation responsible for that assistance may not be aware of the diversion at the time, or intend the assistance to be diverted. The counterterrorism clauses within partnership agreements may indicate whether “knowledge” and “intent”

are relevant to the clause, and this terminology will have an impact on the level of liability.

<c> Flow-down clauses

Humanitarian actors often include counterterrorism clauses within their sub-contracts in order to comply with the requirements of their donors, either on a bilateral basis for individual projects or within organisational templates. As a result, counterterrorism clauses can “flow down” or “flow across” large number of humanitarian actors and sub-contractors even if only a few states require their inclusion. There is a concern that these clauses can also affect the independence of organisations and present security concerns in locations where DTGs may access the contracts.

<d> Vetting and screening

Refer to the “screening staff, partner staff and/or beneficiaries” box above.

General Processes to Understand and Address Counterterrorism Clauses

Prior to signing any partnership agreement, humanitarian organisations must be aware of their obligations under the terms of the agreement. Therefore, the meaning and implications of the agreement should be understood in advance. Some humanitarian organisations have put in place processes similar to those outlined below:

1. Senior management, policy and legal personnel and other departments as needed within the organisation should review the entirety of the partnership agreement.
2. The organisation should develop procedures for signing partnership agreements and country-based and headquarters-based senior management should respect them. These should include processes for understanding the terms of the agreement. This may mitigate the possibility of misinterpretation of contractual obligations.
3. Internal organisational policies should be reviewed, including existing codes of conduct,

anti-corruption policies, risk management policy and any other relevant policies. The organisation should establish whether any counterterrorism clauses are consistent with organisational policies and values. This should involve a focused review of the organisational policies and values by senior management in consultation with a legal adviser and comparison with the counterterrorism clause.

4. The organisation should consult its legal adviser for an interpretation of the clauses. If the organisation does not have its own legal adviser it should engage the services of an external adviser.
5. The organisation should consult other humanitarian organisations that receive funds from the same donor.
6. The organisation should consider asking the donor directly for its interpretation of the clauses and the degree of liability inferred thereby. It should consider asking what the organisation has to do to ensure its compliance with all clauses. This interpretation should be provided to the recipient organisation in writing.
7. The organisation should consider if it needs additional organisational resources to meet the obligations under the agreement, and if its existing capacity to provide humanitarian assistance will be affected. If it needs additional capacity and it agrees to the terms of the agreement, it should make staff aware of these obligations.

Negotiating Partnership Agreements

As mentioned above, the specific phrasing of a partnership agreement clause may determine the level of liability of a recipient organisation that is in breach of a clause. Donors may adopt a standard form of clause inserted into all draft contracts. Alternatively, donors may adapt their clauses depending on the context, the humanitarian programme, or the recipient of funds.

Negotiating the terms of a partnership agreement to a level which is favoured by the humanitarian organisation may not always be possible. There are, however, examples where humanitarian organisations have succeeded in negotiating the terms of their agreements with their donors.³³

Prior to entering into a negotiation with a donor regarding the terms of a partnership agreement, it is important to establish an internal organisational position. These positions should establish which terms of an agreement will be deemed acceptable by the organisation, and which terms will constitute a breach of organisational policies and values. Demonstration of a robust risk management framework, as outlined in part II of the section, can contribute to partnership agreement negotiations.

While agreements can be negotiated to the satisfaction of both parties, the laws of the donor state will prevail over the negotiated terms of the agreement. In other words, regardless of the partnership agreement text, the agreement and those signing it will be subject to the laws of the donor state, and therefore can still be held criminally liable if the donor state law prohibits that activity.

AN EXAMPLE OF NEGOTIATING A PARTNERSHIP AGREEMENT

In one instance, a humanitarian organisation was presented with a partnership agreement which included the following statement: "X agrees that it shall not use any portion of the grant to engage in, support or promote violence, [or] terrorist activities."

The organisation in question was concerned by the wording which suggested that they would be liable even if assistance was diverted without their knowledge. The organisation negotiated with their donor to insert "knowingly" as follows: "X agrees that it shall not knowingly use any portion of the grant to engage in, support or promote violence, [or] terrorist activities." Although this amendment does not account for the element of "intent", both parties deemed this insertion acceptable.

Reviewing Partnership Agreements

Questions to consider

The considerations below are not exhaustive. Humanitarian organisations consider additional questions when reviewing their partnership agreements.

- › Does the partnership agreement refer to any international conventions or treaties, UNSC resolutions, donor policies, domestic or international laws or regulations of the donor state?
- › Does the agreement include language concerning “intent”, “knowledge”, “knowingly”, or “reasonableness”?
- › Does the agreement include language that may be confusing, or unclear, such as “associated with” or a commitment to “war against terror”?
- › Is the humanitarian organisation required to screen staff and/or vet the staff of partner organisations and/or beneficiaries against lists of DTGs?
- › Do the counterterrorism clauses include an obligation for the humanitarian organisation to incorporate the same clauses in sub-agreements?
- › Does the agreement include requirements or language with regard to combating corruption? Does it include specific requirements or language regarding the recruitment of staff?
- › Are the terms of the agreement in tension with humanitarian principles? May the impartiality and neutrality of the humanitarian organisation be questioned if the clauses of the agreement are accepted?
- › Will acceptance of the humanitarian organisation by affected populations be impeded, if the organisation agrees to the terms of the agreement?
- › Are the obligations of the agreement unclear to the humanitarian organisation?
- › Do terms of the agreement contradict the policies and values of the organisation?

If any or all answers to the questions above are ‘yes’

1: Clarify the obligations and terms of the partnership agreement

- › Consult senior management, policy-makers, legal personnel and other departments as needed within the organisation.
- › Consult a legal adviser, for an external interpretation of the clause.
- › Consult other humanitarian organisations receiving funds from the same donor or partner.
- › Request an interpretation of the clause from the donor or partner directly, the degree of liability inferred by the clause, and the obligations on the organisations to ensure compliancy with all clauses. This interpretation should be provided to the recipient organisation in writing.

2: Negotiate the terms of the agreement

As a result of the above consultations, the organisation may choose to negotiate terms of the partnership agreement. This decision should be agreed by senior management, policy-makers, legal personnel and other relevant departments within the organisation prior to any negotiation with the donor/partner.

- › Identify areas of potential conflict between organisational policies, values, operational capacity, humanitarian principles, and the terms of the agreement.
- › Establish an organisational position regarding which terms of the agreement will be deemed acceptable or, conversely, not acceptable.
- › Clarify the above position with the donor/partner, with reference to organisational policies, codes of conduct and the humanitarian principles or any other supplementary documentation as needed.
- › Share existing or planned risk management policies and practices (to be discussed further in part II of section III)

If any answer to the questions outlined in “Questions to consider” is “yes” after the negotiation with the donor/partner, senior management of the humanitarian organisation must agree whether or not to sign the partnership agreement and recognise the risks and liability to the organisation and potentially their partners/sub-contractors and to other humanitarian organisations, by accepting such terms..

PART 3

RISK MANAGEMENT AND MITIGATING RISK

This section will explore practical aspects of risk management and steps which humanitarian organisations can take to strengthen organisational risk management policies and practices.³⁴ This section will discuss the process of enterprise risk management (ERM) and consider such components of risk management as codes of conduct, due diligence, human resources, standard operating procedures, and monitoring and evaluation (M&E). In accordance with all content included in this toolkit, this section is not intended to reflect the practices or policies clauses of all humanitarian actors.

Many of the counterterrorism clauses included in donor partnership agreements are intended to address concerns related to the diversion of humanitarian assistance to DTGs.³⁵ For decades, however, humanitarian organisations have been developing and implementing risk management approaches to address concerns of diversion of humanitarian assistance, long before the establishment of DTG lists. Organisations developed many practical measures to mitigate the possibility of diversion related to other types of entity and it is possible to apply many of these same measures to mitigate the possibility of diversion related to DTGs. Evidence of robust risk management policies and

practices that address concerns over diversion of assistance may facilitate the negotiation with donors of counterterrorism clauses within partnership agreements.

This toolkit draws on the experience and a selection of the tools used by humanitarian actors to strengthen risk management and mitigate the likelihood of diversion of humanitarian assistance. Diversion of humanitarian assistance in this toolkit is understood to mean the diversion of humanitarian assistance away from affected populations.

Risks in Relation to Counterterrorism Measures

In the context of humanitarian action and for the purpose of this toolkit, risk is described as: “the uncertainty surrounding events and their outcomes, may have a significant impact, either enhancing or inhibiting any area of a charity’s operations”³⁶. These risks include the possibility of diversion of humanitarian assistance to DTGs, which has been identified as the concern of counterterrorism clauses.

The risks that humanitarian actors encounter in relation to counterterrorism measures may be categorised as criminal, contractual and/or a risk to upholding the humanitarian principles. The following table lists examples of such risks:

Category of Risk	Operational Impact
Criminal	Prosecution: To date, there have been few prosecutions of humanitarian actors related to counterterrorism laws and donor/partner requirements. Nevertheless, there remains a risk of prosecution to humanitarian actors, and their staff, for inadvertently and indirectly providing support for DTGs. There is also a risk of prosecution, if privacy and/or data protection laws are violated as a result of vetting.

Category of Risk	Operational Impact
Criminal	<p>Insecurity: Many humanitarian actors adopt an acceptance approach to security management, whereby good relations are cultivated with local communities, parties to the conflict and other stakeholders. Those entities accept and provide consent to humanitarian organisations to implement their activities.³⁷</p> <p>Contact with DTGs is not prohibited by counterterrorism laws. A lack of clarity, however, about the counterterrorism measures contained within partnership agreements causes uncertainty for organisations regarding what is considered to be permissible contact with DTGs. Therefore, some organisations refrain from any engagement with DTGs. Establishing consent and acceptance for the role and activities of humanitarian organisations requires continuous dialogue with all parties to a conflict, including DTGs. This dialogue is vital to manage the security of humanitarian operations and to establish and maintain access to affected populations.</p>
Contractual	<p>Delay: Screening and/or vetting procedures resulting from counterterrorism clauses (which are additional to any existing organisational screening processes) may affect the programmatic response and may delay the provision of assistance. This is particularly problematic during emergencies with sudden impacts.</p> <p>Harm to local partner organisations and beneficiaries: This can occur when screening and/or vetting processes are included in partnership agreements, as discussed in part 1 of section II. Depending on the terms of the clause, sharing personal information with donors as part of partner vetting requirements may compromise the right to privacy of partners, staff members and beneficiaries.</p> <p>Establishing a precedent: This can occur when one organisation accepts certain counterterrorism clauses but another organisation deems them unacceptable. Other organisations may choose to negotiate more favourable terms, but their ability to do so is more restricted when an organisation has already accepted those same clauses.</p> <p>Loss of funding: Humanitarian organisations have reported an impact on funding as a result of counterterrorism measures. Some organisations have refused donor funding as a result of uncertainty about, or unwillingness to accept the terms of counterterrorism measures required of them. Additionally, expenditure may be disallowed under a contract where an organisation does not comply with all donor regulations..</p>
Humanitarian principles	<p>Compromising humanitarian principles: As a result of over self-regulation, organisations may choose not to provide assistance in areas controlled by DTGs. As such, they may be perceived as being aligned with the political objectives of a donor government, thus compromising perceptions of their neutrality and independence, in addition to compromising the impartiality of their response including the humanitarian.³⁸</p> <p>Access: If the neutrality of a humanitarian organisation has been compromised, or has been perceived to have been compromised this can affect the ability of that organisation to gain access to affected populations and/or may result in limited levels of acceptance by those affected populations and by parties to the conflict.</p>

Risk Management

Humanitarian actors endeavour to prevent and alleviate human suffering and ensure that needs based humanitarian assistance is accessible to affected populations. While doing so, humanitarian actors are committed to taking measures to protect affected populations, staff and the resources entrusted to them. A thorough risk management approach can strengthen the ability of humanitarian actors to fulfil these aims, and enhance principled humanitarian action.

Risk management is an approach which attempts to reduce exposure to the most serious risks by identifying, monitoring and tackling key risk factors. It is not just about risk reduction or avoidance: it involves balancing risk and opportunity, or one set of risks against another.³⁹ A risk management framework consists of a series of management policies and practices adopted by an organisation to manage such risks and minimise their impact on principled humanitarian action.

AN EXAMPLE OF A RISK MANAGEMENT FRAMEWORK

ENTERPRISE RISK MANAGEMENT

What is enterprise risk management?

Enterprise Risk Management (ERM) is a framework which communicates risk throughout the organisation to senior leadership in easy-to-understand terms. ERM contains two central elements:

1. It suggests that organisations should integrate risk as a factor to be managed and that they should measure risks only in terms of their potential impact on an organisation's goals.
2. ERM should be developed and managed by senior management, rather than specialised departments, because senior management is best positioned to coordinate risk management strategies throughout the organisation.

How does ERM differ from other risk management frameworks?

ERM makes senior management responsible for risk management within an organisation. It emphasises the importance of internal coordination and communication between senior management figures and departments. This differs from the standard approach to risk management, which

places the primary responsibility for managing risks within each department. For example, according to some standard risk management approaches the human resources department is responsible for human resources policies and practices independently of other departments and independent of a coordinated senior management. This can lead to difficulties in ensuring that an organisation will have a coherent risk management approach.

Key considerations for developing and implementing ERM?

To be effective, ERM must be implemented throughout the entire organisation. While this has proven to be particularly challenging for larger organisations with multiple offices, it has been successfully implemented. Organisations of all sizes may face the challenge of all offices and departments adopting the ERM framework, including open communication with leadership and regular (and simultaneous) risk assessment.

There is further information on the implementation of ERM in annex 1.

Components of a Risk Management Framework

A risk management framework comprises several elements, each of which will be further explored here. As proposed in the ERM framework, senior

management should be responsible for ensuring that all departments within an organisation respect risk management policies and procedures.

The following policies contribute to an organisational risk management framework:



1. Codes of conduct and counterterrorism policies

Codes of conduct can establish standards of behaviour for an organisation and its staff and mitigate the likelihood of compromising humanitarian principles. These codes commonly express a humanitarian organisation's commitment to humanitarian principles. Counterterrorism policies are focused on ensuring organisational compliance with humanitarian principles and counterterrorism laws.

"I think we overlook it most of the time, but when we had to make a (funding) decision it was useful to consult our code [of conduct] and our principles."⁴⁰ (Project officer, NGO)

While codes of conduct are non-binding, they are often included in staff contracts, in which case they become a set of obligations that staff must observe. Some organisations provide training and written guidance to staff on how to implement codes of conduct.

Codes of conduct may also include control and oversight mechanisms, such as disciplinary proceedings, hotlines and organisational ombudspersons.

In addition to codes of conduct, some organisations have developed specific counterterrorism policies. These policies are developed with respect to articulating organisational mandate, humanitarian principles, IHL, and other relevant domestic laws. In many cases, they include an overview of the measures the organisation has put in place to address concerns over diversion of humanitarian assistance, including diversion to DTGs.

2. Due diligence

This is the set of policies and measures designed to ensure that humanitarian assistance reaches affected populations. It includes assessing the ability of an organisation to conduct its work, assessing the robustness of its systems and tracking how its activities and relationships, for example with local

partners, sub-contractors and vendors, could affect its humanitarian activities.

Proper due diligence requires careful background checks on potential bidders, e.g. performance history, ownership, financial capacity, corporate facilities and reputation for integrity, visit bidder offices and verify references, create and disseminate a list of corrupt suppliers, debarring them from future bidding.⁴¹

Due diligence also includes reviewing past performances of a prospective partner, and its affiliations.

We check all our vendors...we want things to be standardised, don't want every donor to be coming with their conditions. We want to ensure all donors have the confidence that [our

organisation] takes these matters seriously, so they don't come with specific requirements on what should be done.⁴²
(Staff member, UN field office)

Due diligence is often conducted prior to engaging into agreements with new partner organisations. Effective due diligence is informed by a sound understanding of the environment in which the organisation is operating. Staff from the country of operation often have an enhanced understanding of the cultural and contextual environment and are a key resource.

Due diligence is a good practice tool by itself. Negotiations between humanitarian organisations and donors regarding counterterrorism donor or partner

CASE STUDY 2

THE RELEVANCE OF A RISK MANAGEMENT APPROACH

A humanitarian organisation won a contract to manage a nutrition project in an area controlled by a DTG. The senior management team of the organisation signed the contract with a donor. The senior management team was located in its regional office outside the country of operation. The organisation had weak and non-standardised human resources procedures and recruited a local programme manager on the basis of recommendations by another NGO working in the same area. The newly recruited programme manager was entrusted with recruiting local staff to complete the project team.

One year later, the senior management team commissioned a report to evaluate the progress of the programme. The evaluators found that programme staff were paying a 10 per cent income tax to the DTG and its contractors were also paying assorted other taxes to the DTG. Based on the findings of the evaluation report, the donor terminated funding to the organisation. Its principal reason for this course of action was that its funds were being used to fund a DTG, in violation of its laws and

of its contract with the humanitarian organisation which contained a counterterrorism clause.

As a consequence of this experience, the senior management team adopted a risk management framework. It changed its human resources policies to ensure its recruitment procedures would be transparent and that the opinions of local stakeholders would be considered. Eventually, the organisation hired a project manager respected by the local population and the DTG alike, which enabled the project staff to resist DTG pressure pay taxes. It additionally sought guarantees from the DTG that it would not demand that staff or contractors pay taxes or fees. The humanitarian organisation began screening prospective staff members for membership of the DTG. The results of the screening exercise would not be shared with donors.

These risk management measures introduced by the management improved its programming and restored the confidence of the donor sufficiently for it to restore funding to the organisation.

clauses, can also be supported when a humanitarian organisation can demonstrate effective due diligence policies and measures.

3. Human resources policies

Humanitarian organisations should ensure that they implement transparent and competitive recruitment protocols and human resources policies and clearly communicate them to staff. Human resources policies contain rules for recruiting, dismissing, remunerating, training, appraising and disciplining staff, among other actions. They are applied by humanitarian organisations and are frequently included in staff contracts as a legally binding set of obligations that staff and the organisation are expected to observe.

*“When hiring staff, our team does a lot of research and obtains references. Although they do that for reasons unrelated to counterterrorism issues, it’s an effective measure for mitigating counterterrorism-related risks as well”.*⁴³ (Senior lawyer, NGO)

When implemented, effective human resources policies and practices allow for transparent and thorough recruitment. This may include academic, professional and character checks, as mentioned in the due diligence section. In some countries, security checks are also conducted as part of the recruitment process. Comprehensive human resources policies and practices may serve as evidence of an organisational risk management approach and reassure donors of sound risk management practices.

4. Anti-diversion policies

These are policies that are adopted and implemented to mitigate the likelihood of diversion of assistance away from affected populations. These policies can include:

- measures to limit the likelihood of fraud and corruption
- procedures which regulate financial management
- guidance regarding access negotiations
- measures to reinforce the effective implementation of policies such as training, information-sharing, disciplinary investigations and monitoring

*“Our policies, such as the ones against fraud and corruption, are the basis of our programming.”*⁴⁴ (Programme manager, NGO)

Robust risk management policies and practices help humanitarian organisations identify and analyse risks and implement risk mitigation actions into their programming. Conversely, a lack of risk management policies and practices in some organisations has made them more susceptible to such risks. The following example illustrates the vulnerabilities of not having sound risk management policies and practices.

Below is a real-life example of the relevance of adopting a risk management approach. All groups and locations have been anonymised.

5. Monitoring and Evaluation

*We focus a lot on monitoring and how we do it to mitigate risks of aid diversion, fraud and misuse of resources in areas where we are not physically present, where we might use a third party or a partner that has exclusive access to an area; (the question there is) how do we get independent verification or data triangulation?*⁴⁵ (Senior official, UN agency)

M&E is an integral part of the humanitarian programme cycle. As such, it is not primarily intended as a risk management tool. It does, however, include important management oversight and compliance tracking which are valuable within a risk management framework. It contains critical tools that:

1. allow organisations to recognise the likelihood of diversion, fraud and misuse of resources in advance, and to intervene quickly if necessary
2. allow organisations to determine whether humanitarian assistance is reaching affected populations, or whether it has been diverted
3. identify best practices to improve operations

These three aspects contribute vital information to an organisation’s risk management framework. Humanitarian actors have strengthened M&E practices in recent years. This also lends itself to reassuring donors and other external actors of the reduced risk of diversion. In high-risk areas where organisations operate remotely, organisations regularly revise and strengthen their robust monitoring policies.

SECTION III

RISK MANAGEMENT TOOLS

The information in the following boxes is a sample of actions which can be taken by humanitarian actors, although the list is not exhaustive.

CODES OF CONDUCT AND COUNTERTERRORISM POLICIES

What should be included in a review of an organisation's codes of conduct and counterterrorism policies?

- › Codes of conduct and policies reflecting the principles and laws governing the organisation and their consistency with IHL and humanitarian principles
- › Individual codes of conduct
- › Organisational counterterrorism policies

Who is responsible for reviewing and/or developing codes of conduct and counterterrorism policies?

- › A senior management representative should be the focal point responsible for the development or revision of codes of conduct and counterterrorism policies. Departments within the organisation at headquarters and field level will be tasked with carrying out practices such as training, producing written guidance and control mechanisms such as audits.
- › The legal department should be consulted in the development of codes of conduct and counterterrorism policies.
- › Individuals and departments across the organisation should be involved in providing feedback on the policies.

What is included in the codes of conduct and counterterrorism policy?

- › The principles and mandate to which the organisation is committed
- › The laws binding an organisation (IHL, the domestic law in the country of registration, and the laws of the host country where an organisation has a presence, for example)
- › The principles and commitments of staff members (ethical behaviour or a commitment to anti-diversion, for example)
- › An overview of the measures that organisations have in place to provide principled humanitarian assistance, such as: robust programme cycle management, codes of conduct with oversight mechanisms, anti-corruption procedures, procedures for selection and screening of partners, staff, financial and procurement controls
- › A statement of "red lines" which will be considered breaches of policy

How can codes of conduct and counterterrorism policies be implemented?

- › All staff must review and sign codes of conduct.
- › Train staff in codes of conduct and counterterrorism policy.
- › Produce written guidance to staff on codes of conduct and counterterrorism policy.
- › Develop control and oversight mechanisms, such as disciplinary proceedings and hotlines for violations of the code.

How frequently are codes of conduct and counterterrorism policies revised?

- › Organisational and individual codes of conduct are intended to be authoritative statements of principles and ethics, signed and endorsed by senior management. Codes of conduct are, therefore, rarely revised. Counterterrorism policies, on the other hand, may need to be revised as counterterrorism measures evolve and their impact on principled humanitarian action changes.

› DUE DILIGENCE

What information is needed to conduct due diligence on potential partner organisations?

- › Basic facts (name, location, mandate, registration and legal status, contacts and website)
- › Key staff of the organisation (names of the board and management and their backgrounds)
- › Review of past performance (how effectively the prospective partner previously implemented projects)
- › Assessment of the financial capacities (financial procedures, audits, safeguards against fraud and corruption and capacities to absorb and deliver donations). This includes a review of the prospective partner's financial procedures, audited accounts of its performance, its bank accounts, its safeguards against fraud and corruption and its capacities to absorb donations.
- › Verification of previous partnership agreements
- › Capacity assessment (refer to existing internal capacity assessment tool, or develop an organisational capacity assessment tool)
- › Review of the governance structure and funding base of the organisation
- › Review of its operating processes (logistics or M&E, for example)

Who is responsible for developing and implementing due diligence practices?

- › Responsibility for developing due diligence policies lies with senior management. Responsibility for carrying out due diligence practices, however, including capacity assessment, partner verification, spot checks and collecting information lies with the department (procurement or human resources, for example) dealing with the partner organisations in question.
- › The most constructive help in developing and implementing due diligence policies can be provided by the organisation's legal department if it has one, particularly in light of the legal implications of practices such as vetting.

What needs to be considered when conducting due diligence?

- › Due diligence is in the interest of humanitarian organisations. Due diligence can help organisations strengthen risk management by carefully establishing partnerships and mitigating criminal, contractual or reputational risks.
- › If an organisation chooses to vet prospective partner's staff members in accordance with its own procedures, that organisation should determine the most appropriate vetting model that is coherent with principled humanitarian action.

How can due diligence be implemented?

- › Collect information directly from the prospective partner (details of the organisation's staff, its legal status and other basic facts, its financial and technical capacities and its partnership agreements).
- › Collect information from other sources (prospective partner's other partners, independent research).

▶ HUMAN RESOURCES POLICIES

What should be included in a review of existing policies and practices?

- ▶ Recruitment of staff: Human resources policies determine staff recruitment procedures, which should be transparent. These policies are intended to ensure that the best-qualified and most suitable candidates are recruited for positions within the organisation, and candidates undergo references verification, employment verification and other checks as contained in the human resources policy.
- ▶ Staff development: In good practice, human resources policies contain a professional development plan for each staff member to improve the particular skills and knowledge required in relation to their position.
- ▶ Disciplining staff: Human resource policies provide procedures and clear rules for disciplining staff for violations of organisational policies.
- ▶ Periodic assessments and appraisals of staff: Human resources policies detail the manner in which staff are appraised, and the frequency of appraisals.

Who is responsible for reviewing and/or developing human resources policies?

- ▶ Senior management, in consultation with the human resources department, is responsible for developing and ensuring implementation of human resources policies.
- ▶ The legal department should be consulted during the development of human resources policies.

What needs to be considered when implementing human resources policies?

- ▶ How to recruit, dismiss, remunerate, train, and appraise staff
- ▶ How to develop a staff member's skills for the purposes of his or her position
- ▶ Procedures for disciplining staff for violations of organisational policies

How can human resources policies be implemented?

- ▶ Clearly communicate the policies to all staff.
- ▶ Train all staff on human resources policies.
- ▶ Develop and implement control and oversight mechanisms, such as disciplinary and other proceedings.
- ▶ Implement a confidential complaints or feedback mechanism.

How frequently are human resources policies revised?

- ▶ There is no set schedule for revising human resources policies. Many organisations revise them periodically or during a change in circumstances for the organisation.

› ANTI-DIVERSION POLICIES

What should be included in a review of anti-diversion policies and practices?

There are no standard sets of “anti-diversion” policies. Existing areas that they tend to address include the following:

- › Fraud and embezzlement: The aim of anti-fraud policies is to minimise the risk of staff diverting the organisation's financial resources. This could happen either through embezzlement and appropriation of goods for personal gain, or fraud (such as deception by, for example, falsifying records to exaggerate the number of staff employed or beneficiaries covered in a project).
- › Corruption: The aim of anti-corruption policies, including those regarding whistle-blowers, is to ensure the organisation's staff act ethically and that the organisation does not engage in corruption or bribery.
- › Money laundering: These policies focus on preventing the laundering of money which was obtained through criminal, terrorist or other illegal activities.
- › Access: Access policies might guide how humanitarian organisations should engage with armed groups and negotiate humanitarian access.

Who is responsible for developing and reviewing anti-diversion policies and practices?

- › The overall responsibility for developing and ensuring the implementation of anti-diversion policies and practices rests with senior management. Responsibility for carrying out anti-diversion practices such as training, producing written guidance and control mechanisms such as audits is assigned to the relevant departments within an organisation (human resources or finance department, for example).
- › Field staff have a key role to play during the policy development phase. They should be consulted during the policy development phase to ensure that policies are relevant, realistic and implementable.
- › The legal department should be consulted.

What content should be included in the anti-diversion policy?

- › Statements of principles and definitions of terms (corruption, fraud, embezzlement)
- › Procedures for preventing diversion, containing a number of elements: how the organisation should maintain and standardise its bank records; how to standardise its accounting practices (such as account codes and donor codes); how to classify costs (for instance, direct/indirect costs); what the system of internal control should look like (segregating duties between staff responsible for procurement, finance, disbursing cash, payroll, liquidations); financial reporting requirements.

How can anti-diversion policies and practices be implemented?

- › Train all staff on organisational anti-diversion policies.
- › Develop and disseminate written guidance for staff on how to implement anti-diversion policies.
- › Control and oversight mechanisms, such as audits, spot checks, and regular reports

How frequently are anti-diversion policies and practices revised?

- › There is no set schedule for revising anti-diversion policies. Many organisations revise anti-diversion policies periodically every few years or if they are found to be no longer fit for purpose.

Key Terms and Definitions

A single globally accepted definition does not necessarily exist for each of the key terms listed below and organisations define some terms differently. The definitions used below are for the purpose of this toolkit only.

Access – Humanitarian organisations' access to the affected populations for the purpose of providing humanitarian assistance and the right of affected populations to access assistance.

Anti-diversion policies and practices – Policies and practices aimed at preventing diversion and ensuring that humanitarian assistance reaches intended beneficiaries.

Code of conduct – A set of principles elaborated and adopted by an organisation designed to maintain standards of behaviour.

Counterterrorism measures – The international, regional and national legal instruments and policies related to counterterrorism that are relevant to humanitarian action.⁴⁶

Designated terrorist group (DTG) – A group or organisation that has been listed as a terrorist group by a government pursuant to its national law or by an international body pursuant to international law.

Due diligence – The implementation of organisational policy and organisational controls, designed to assess and track how organisational activities and relationships affect its humanitarian activities, throughout a project life cycle.⁴⁷

Enterprise risk management (ERM) – A proactive risk management framework that communicates risk throughout the organisation to senior leadership in easy-to-understand terms. It places senior leadership in a better position to identify, prioritise and coordinate a response to the greatest risks facing the organisation. It thereby helps alleviate the reactionary, compartmentalised approach to risk management that occurs in some organisations.⁴⁸

Evaluation – A learning process that seeks to systematically assess the efficiency, effectiveness, relevance, sustainability and impact of an activity, project or programme. It focuses on assessing outcomes rather than outputs.

Fraud – A deception practised to secure unfair or unlawful gain.

Monitoring – The continuous and systematic oversight of the implementation of an activity, which is used to measure the achievement of objectives in the use of allocated funds.

Partner vetting system (PVS) – A pilot USAID programme which vets key individuals of NGOs and sub-contractors, sub-awardees, vendors, and beneficiaries.⁴⁹

Risk management – An attempt to reduce exposure to the most serious risks by identifying, monitoring and tackling key risk factors. It is not just about risk reduction or avoidance: It involves balancing risk and opportunity, or one set of risks against another.⁵⁰

Sanctions – Restrictions imposed by one or more countries upon another country for political reasons. They may take a number of forms, including economic and targeted sanctions.⁵¹

Screening – The action conducted by an organisation to ensure their prospective partners or members of staff do not appear on lists of suspected terrorists such as those maintained by the relevant donor or host government or by institutions such as the UN or EU.

Annex 1

IMPLEMENTATION OF ENTERPRISE RISK MANAGEMENT

How is ERM implemented?

ERM includes implementation of the following practices:

- › An ongoing and regular (for instance, two-yearly) risk assessment process at the level of the whole organisation. The first step is for departments within the organisation at the departmental/country level to identify and communicate new and emerging risks to senior management. These risks are then aggregated into a common risk framework at the country level or at the overall level of the organisation and are analysed and evaluated in terms of their impact.
- › Subsequently, the organisation agrees risk mitigation responses at the organisational level. The organisation then periodically evaluates these risk mitigation responses in order to manage and respond to every risk.

Who is responsible for reviewing and/or developing ERM policies and practices?

- › Responsibility for developing and reviewing M&E policies lies with the organisation's senior management.
- › ERM must be implemented throughout the organisation. This has proven to be challenging for larger organisations with multiple offices. They are faced with the challenge of having the entire organisation adopt the ERM framework. This includes establishing open communication with leadership to raise areas of concern related to risk, and regular (and simultaneous) risk assessments.

For further information:

Counterterrorism and Humanitarian Engagement Project. Enterprise Risk Management: A New Approach to Managing the Risks Posed by Counterterrorism Regulations, Research and Policy Paper, March 2013, available online at: <http://goo.gl/ISgzjk>

United Kingdom Charity Commission. Charities and Risk Management, 2011, available online at: <https://goo.gl/R6jSNV>

UN Joint Inspection Unit. Review of Enterprise Risk Management in the United Nations System: Benchmarking Framework, 2010, available online at: <https://goo.gl/wzbNWP>

Annex 2

IMPLEMENTATION OF MONITORING AND EVALUATION

What should a review of existing policies and practices include?

- › **Monitoring:** Oversight of the implementation of an activity to measure the achievement of objectives.
- › **Evaluation:** Process of assessing the efficiency, effectiveness, relevance, sustainability and impact of an activity, project or programme.

Who is responsible for reviewing and/or developing M&E policies?

- › Ultimate responsibility rests with senior management in consultation with the M&E unit.
- › The legal department should be consulted for development of M&E policies.

What content should M&E policies include?

- › **Organisation and management:** Monitoring policies set out the operational and management structure of monitoring arrangements, the staffing of the organisation's monitoring system and the roles and responsibilities of staff. Practice has shown that organisations that have a dedicated M&E unit have demonstrated robust monitoring practices.
- › **Process:** Monitoring policies outline the steps that the organisation takes to monitor its activities. These range from general to precise measures. For example, some processes designed for monitoring the disbursement of aid include detailed steps such as which codes to include in commodities kits, how to use smart phones and who takes photos of beneficiaries and from which angle (ensuring that the consent of the beneficiary is sought first).
- › **Data collection, transfer and analysis:** Monitoring policies explain how monitors should collect, transfer and analyse data. These policies outline what data should be collected (for instance, some organisations choose not to collect the names of beneficiaries because this may put them in danger) and how, through various means such as special-purpose software on mobile phones; how data is transferred to those who analyse it, manually, electronically or otherwise, how it is analysed and used (for instance, how to use aggregated data to target assistance and make it more efficient) and how confidentiality is maintained, through confidentiality protocols. Organisations with sound monitoring practices use data triangulation, that is, the collection of data from more than one source to monitor the implementation of their programmes, especially those they manage remotely. This can, for instance, mean asking their staff and those of other organisations (peers) to monitor the distribution of assistance.
- › **Tools:** Needs assessments, beneficiary selection criteria, risk assessments and analysis, beneficiary lists, follow-up beneficiary surveys and spot-check checklists are all useful M&E tools that can help prevent diversion of aid to DTGs.

Evaluation policies focus on a range of elements, including:

- › **Impact:** This can include questions of whether there is evidence of the programme having a significant impact, what indicators are in place to assess impact and other questions related to impact.
- › **Effectiveness:** Questions can focus on the achievement of results and objectives, whether results were achieved according to schedule and the quality of the results.
- › **Sustainability:** Evaluation policies examine the ownership of affected populations regarding the project, whether the organisation has built the capacity of institutions that will resume with the project and other questions related to sustainability.

How can M&E policies be implemented?

- › Train staff on M&E policies. These typically occur through workshops, seminars, online tools and other means.
- › Develop and implement control and oversight mechanisms, such as control by third parties and by peer organisations.
- › Develop and implement confidential feedback and complaints mechanisms, such as telephone hotlines and anonymous complaints.
- › Conduct qualitative and quantitative surveys and consultations of staff, partners and beneficiaries.

How often are M&E policies revised?

There is no set schedule for revising M&E policies. Organisations could review their monitoring policies and practices when they are operating in high-risk areas or when they are managing programmes remotely or when circumstances change in existing areas of operation.

Annex 3

SAMPLE OF COUNTERTERRORISM CLAUSES WITHIN DONOR AGREEMENTS⁵²

Example A

Grantor: United Nations System Body, Fund, Programme, or Specialized Agency

Recipient: NGO

Geographic scope: general use clause

The Service Provider agrees to undertake all reasonable efforts to ensure that none of the funds received from [Grantor] under this Agreement are used to provide support to individuals or entities associated with terrorism, as included in the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999) located at <http://www.un.org/sc/committees/1267/consolist.shtml>. This provision must be included in all subcontracts or sub-agreements entered into under this Agreement.

Example B

Grantor: Foundation

Recipient: NGO

Geographic scope: indeterminate

8. Grant Restrictions. (...)

Grantee certifies that it has not provided and will not provide support or resources to any individual or entity that advocates, plans, sponsors, engages in, or has engaged in terrorist activity; or to anyone who acts as an agent for such an individual or entity. Support or resources include currency or other financial instruments, financial services, lodging, training, safe houses, false documentation or identification, communication equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and any other services or physical assets. Any violation of this certification is grounds for immediate termination of this Agreement and return to the Grantor of all funds advanced to Grantee under it.

Example C

Grantor: NGO

Recipient: NGO

Geographic scope: general use clause

Grantee is and will be in compliance with, and will cause its sub-grantees, sub-contractors, affiliates and agents to comply with, United States economic sanctions, import/export Regulations, anti-bribery Regulations, anti-terrorism Regulations and anti-money laundering Regulations, including but not limited to the USA PATRIOT Act, the Regulations administered by the United States Treasury Department's Office of Foreign Assets Control and Executive Order 13224.

Example D

Grantor: United Kingdom, Department of International Development

Recipient: NGO

Geographic scope: general use clause

12 - Information on Employees/Sub-contractors

12(1) the grantee shall provide to the Authority (the FCO) upon request and to the extent permitted by the Data Protection Act 1998 any and all information regarding each of its employees and sub-contractors (including confidential personnel information) as the Authority may require in order to carry out any checks which the Authority (in its absolute discretion) deems necessary.

Example E

Grantor: Australian Agency for International Development (now part of the Australian Department of Foreign Affairs and Trade (DFAT))

Recipient: NGO

Geographic scope: general use clause

The Contractor must in carrying out its obligations under this Contract comply with those laws in relation to organizations and individuals associated with terrorism, including 'terrorist organizations' as defined in Division 102 of the Criminal Code Act 1995 (Cth) and listed in regulations made under that Act and regulations made under the Charter of the Act 1945 (Cth). The Contractor must ensure that funds provided under this Contract do not provide direct or indirect support or resources to organizations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link whatsoever with any organization or individual associated with terrorism it must inform [the grantor] immediately.

Annex 4

SUPPLEMENTARY POLICIES AND RESOURCES

This annex features a compilation of sample policies and resources to complement the Risk management toolkit in relation to counterterrorism. These are not guidelines or standardised practices, and are not implemented or endorsed by all humanitarian actors.

Below is an example of a note on counterterrorism by an NGO:

COUNTERTERRORISM NOTE

Organisation X is required by domestic law to ensure that none of its funds or other assets are made available to persons or groups linked to the al-Qaeda terrorist network as designated by the committee established under UN Security Council Resolution 1267 in 1999. Many of Organisation X's donor states have also established their own "counterterrorism" frameworks of this kind, and may have a definition of terrorism which is not limited to al-Qaeda; these are relevant to Organisation X because it may have contractual obligations to these donors to comply with their national counterterrorism frameworks. In addition, Organisation X is bound by and must follow local laws in the countries in which it operates, and these countries may also have their own counterterrorism frameworks and/or significantly different definitions of terrorism. As a non-profit non-governmental humanitarian organisation, Organisation X is committed to acting in a manner consistent with international humanitarian law and to undertaking its activities in accordance with the principles of impartiality, neutrality and independence.

Organisation X has therefore put in place appropriate controls to prevent or mitigate the risk

of intentional and/or reckless diversion of aid to non-state armed groups (and in particular those groups or individuals designated as terrorist by the UNSC) in order to ensure that assistance and protection reaches those in most need. These controls include:

- ▶ An ethical Code of Conduct, enforced by clear disciplinary procedures, which is binding on all Organisation X staff and consultants, and includes obligations to safeguard Organisation X assets and to act strictly in accordance with humanitarian principles of neutrality and impartiality;
- ▶ Programme cycle management systems which require systematic needs assessments and robust post-distribution monitoring;
- ▶ Anti-corruption procedures which focus on preventing fraud, theft and waste, including the diversion of aid and funds;
- ▶ Internal procedures imposing tight financial and procurement controls, along with appropriate checks and balances, including internal and external auditing;

- › Procedures for the selection and management of implementing partner organisations, including compatibility and capacity assessments and contractual obligations to comply with all relevant Organisation X and donor requirements in relation to safeguarding project funds and assets;
- › Internal vetting, during recruitment and on an annual review basis, of all Organisation X international staff and all Finance or Logistics Managers against applicable UNSC terrorism lists;
- › On an exceptional basis, as approved by Organisation X's Director, provision of basic personal details of selected key staff to a donor government for external vetting (e.g. Organisation X's board of directors, the senior management group at Head Quarters, and Organisation X Regional/Country Directors) subject to such staff providing written consent to the process.
- › Internal vetting of contractors and implementing partner organisations (with Organisation X contracts of over USD X) against applicable terrorism lists; and
- › Inclusion of an appropriate counterterrorism "flow-down" clause in all relevant procurement and partnership contracts, if this is required in order to meet legal obligations imposed by a specific donor, or on an exceptional basis (as approved by Organisation X's Director) in certain high-risk contexts;

- › Mandatory internal requirements to report suspicious transactions involving criminal groups, which would include individuals and groups engaged in acts of terrorism.

Risk management is an integral part of all Organisation X operations, in order to ensure that activities and services reach those in most need and that activities occur in a safe and secure manner. Organisation X's board of directors and Director have overall responsibility for ensuring that the organisation manages risk appropriately and that all activities are undertaken in accordance with Organisation X's policies and procedures.

Organisation X remains committed to accountability and transparency in all of its operations and adheres to the principles of humanitarianism and 'Do No Harm' set out in:

- › The Code of Conduct of the International Red Cross/Red Crescent and NGOs in Disaster Relief
- › The 2010 Humanitarian Accountability Partnership Standard in Accountability and Quality Management
- › The SPHERE Humanitarian Charter and Minimum Standards in Humanitarian Response
- › The INEE Minimum Standards for Education in Emergency

Explanation of the guidance note

This guidance note is intended for use by Organisation X to clarify its position internally and with donors and other stakeholders to communicate Organisation X's counterterrorism and risk management procedures. The Organisation X "Counterterrorism Explanatory Note" ("Explanatory note") will provide additional explanation of the guidance note, and in-

clude specifics such as the draft standard Organisation X counterterrorism clause. Detailed changes to Organisation X's risk management and due diligence procedures will be required, and the draft "Organisation X Counterterrorism Internal Guidance for compliance" will guide these changes.

- › The due diligence requirements are elaborated further in the accompanying Explanatory Note.

The note sets out the general statements of salient points related to counterterrorism risk management in Organisation X and focuses on the main UNSC requirements regarding designated terrorist lists.

- A difficult area is choice of terms such as “terrorism”, “terrorist”, “designated terrorist” or “acts of terrorism”. There is often use of “individuals or groups designated as terrorist”. However, the criteria for designating who or what is a “terrorist” or “terrorist group” can vary depending on the national laws of states (host and donor), UNSC resolutions and applicable regional bodies. For example, some member states include “political activists” as terrorists, and individuals can be removed from lists to facilitate peace processes, rather than because they have committed or facilitated (or not) acts of terrorism. The choice of “terrorism”, “terrorist”, “designated terrorist” or “act of terrorism”, therefore, raises important political concerns and may impact local perceptions.
- An important consideration is the US Partner Vetting System/Risk Analysis Management system (PVS/RAM) which compels partners to provide personal information on “key” staff to USAID or

the Bureau for Population, Refugees and Migration (PRM) respectively, and the personal details of partners/local NGOs and sub-contractors. Currently a pilot in 5 countries, this system is under review. Currently limited to US contracts it could, if extended, have a “contaminating” effect on all UN contracts since the US is the largest humanitarian donor globally. Many countries are unaware of PVS/RAM and when it is discussed with them it raises concerns regarding the impact on their humanitarian funds including commitment to principled/needs based funding. Organisation X’s policy is that where Organisation X vets staff (or contractors) it will not provide the information to a foreign power impeding Organisation X’s ability to comply with the USAID/PRM pilot.

An additional area that will require further investigation in respect of staff and partner vetting involves privacy and data protection laws, especially where staff/partners/contractors are required to provide personal information as a prerequisite for receiving a contract, which may not qualify as “consent”. Similarly, data protection may prohibit exchange of personal information with foreign governments without guarantees regarding the storage and use of that information.

Due diligence – Example of checklist

ORGANISATION W'S CHECKLIST FOR DUE DILIGENCE OF POTENTIAL PARTNERS

Supplier name: _____ Type of business: _____
 Address: _____ Contact person: _____
 Phone/Mobile: _____ Email: _____
 Date: / /

Tick one of the boxes as appropriate to certify the status of each statement.

A) General information	Yes	No	N/A
1. The company is registered with government and maintains a valid business licence.			
2. The company operates as per the authorised business licence and has the appropriate professional infrastructure in place.			
3. The product/goods is/are of acceptable quality.			
4. The company is in good standing within the market. If no, please provide a note reflecting the situation in a separate paper and attach it herewith.			
5. The company's contingent liabilities. If yes, please list the information.			
B) Compliance	Yes	No	N/A
6. The company complies with all regulations enacted by the government including taxation.			
7. In the last 12 months the company has been subject to an accusation that it has violated any law or failed to possess any material licence, permit or other authority.			
8. The company maintains a proper track of financial statements.			
9. The goods or materials are not imported from countries restricted by US government.			
C) Significant contracts and commitments	Yes	No	N/A
10. The company had the following major contracts over the past six months (pick the three most recent). 1. _____ 2. _____ 3. _____			
11. Reference check carried out by phone/email. If email, please attach a copy.			
D) Verification	Yes	No	N/A
12. Due diligence visit carried out by an individual other than procurement staff.			
13. Due diligence visit carried out by a team other than procurement staff.			
14. Eligibility verification through Bridger (a verification software) conducted on date: / /			

Visit conducted by: _____ (Name/Title) (Signature) (Date)

Verified by: _____ (Name/Title) (Signature) (Date)

Approved by: _____ (Name/Title) (Signature) (Date)

Example of monitoring guidelines for Organisation XY, an NGO operating in Syria

ORGANISATION XY MONITORING GUIDELINES IN SYRIA

The following monitoring practices are currently being employed in Syria to ensure effective M&E of project activities:

- › **Process monitoring** – Monitoring checklists are used to monitor distribution processes at the distribution site. M&E assistants mainly assess the organisation of the distribution process and the presence of feedback mechanisms at the distribution point. Exit interview surveys with randomly selected beneficiaries are also conducted at the distribution points to assess beneficiary perceptions of the distribution.
- › **Post-distribution monitoring** – Post-distribution monitoring is conducted two to four weeks after distributions to collect data on coverage, targeting, effectiveness and impact of the distributed items. Quantitative (survey) and qualitative approaches are employed to collect data from beneficiaries and post-distribution monitoring reports are produced to inform decision makers mainly on the quality of the distributed items and timeliness of the distribution.
- › **Routine assessments** – M&E staff also conduct routine assessments to track higher-level intermediate programme results. Routine assessments are planned twice annually, to track progress towards achievement of outcomes and setting benchmarks. Meta evaluations will be conducted annually specifically for the production of child wellbeing outcomes reports highlighting the contribution of the response towards child wellbeing outcomes (custom outcomes).
- › **Stories of transformation** – Most significant change stories are being collected on a twice annually basis to capture the qualitative changes occurring in the lives of beneficiaries as a result of the project. Most significant change stories were introduced to capture both positive and negative feedback arising from Organisation A interventions and these are shared with donors (without including specific beneficiary identifying information) to showcase qualitative changes directly attributed to Organisation A interventions.
- › **Site monitoring visits** – Routine site monitoring visits are conducted by the M&E team and assistant engineers who are tasked with conducting physical verification of construction sites and site pictures are captured as evidence of progress on construction work. Site monitoring reports are compiled and shared with operations teams for tracking progress on construction activities.
- › **Complaints and feedback mechanisms** – Presently, beneficiaries are utilising complaints boxes and verbally with Organisation A staff in communicating complaints and any positive feedback for Organisation A.
- › **Peer to peer monitoring** – Peer to peer, or triangulated, local monitoring is undertaken by Organisation A with Organisation B, mainly for programme quality, triangulation, validation and accountability assurance, wherein all parties have to sign off on each project activity. Organisation B is conducting individual in-depth discussions with aid recipients for accountability and access to humanitarian assistance. Interviews are being conducted with doctors, camp elders; Water, Sanitation and Hygiene (WASH) engineers and relief councils to access the efficiency and effectiveness of projects. Project site visits, including health

facility visits and WASH facilities are being facilitated to track the delivery of services and assistance.

- › **Third party monitoring** – Independent/private contractors have been identified to broaden the scope of monitoring to include market monitoring and observing whether humanitarian supplies have reached beneficiaries as per beneficiary database and distribution registers. Independent contractors are crucial for verification of infrastructure development projects and health facilities that are supported by Organisation A and are referenced by the Global Positioning System (GPS). Third party monitors conduct on-site monitoring visits, including of health facilities, to assess quality of health services being delivered. In-depth individual discussions with patients are being conducted using patient exit interview questionnaires to examine patients' perceptions of the services being delivered by health facilities. GPS-referenced pictures are being gathered to assess the existence of facilities and services.
- › **GPS systems (geo-tagging)** – Depending on the security situation, GPS referencing will be used in interactive mapping systems, providing verification of project activities being undertaken in specific areas, particularly infrastructure development projects. Pictures with GPS coordinates that include distributions, health facilities and WASH activities will be maintained online to routinely track implementation and progress of project activities.
- › **Mobile data collection** – M&E staff equipped with multi-purpose Samsung Android phones will collect monitoring data, which is expected to improve efficiency, timeliness of data collection, data quality, data integrity, data completeness and elimination of "human errors" during manual data entry. Mobile phones will be used for the collection of survey data that include patient exit interviews, process monitoring and post-distribution monitoring.
- › **Visual documentation** – Photographs will be essential, primarily to show evidence of activities such as training activities, construction sites, distribution of items and delivery of services, such as clinics.
- › **Video monitoring** – Depending on the security situation, Organisation A will use videos to capture most significant change stories from beneficiaries, distributions, mini post-distribution monitoring, project events and other activities. Footage from filming will be used in project monitoring, in promotional videos for Organisation A's work and in accountability events for beneficiaries.
- › **Web-based remote management** – Organisation A is exploring the engagement of technical specialists to develop a projects tracking database, that is, a computer system to monitor project activities. For example, rather than sending staff out to verify whether WASH facilities are being built, independent contractors/project monitors will take pictures that are uploaded with GPS information. Evidence-based monitoring of construction, deliveries before, during, and after construction will be tied to the photographic evidence. This allows extensive storage of photos, mapping, basic data crosschecking, and access over the internet.
- › **Remote feedback and complaints mechanisms** – In addition to the current feedback mechanisms consisting of comment boxes and M&E staff, phone lines, text messaging and emailing systems will be introduced to allow the beneficiaries to voice their opinions directly to Organisation A. For transparency and accountability purposes, intended beneficiaries will be well notified in advance to expect the aid or

entitlements. Feedback forms will be distributed during distributions to capture beneficiary perceptions on the distribution process and the quality of items distributed. M&E staff will use complaints logbooks to capture complaints during distributions and monitoring visits from beneficiaries and these will be maintained in a complaints and feedback database which will be reviewed and analysed monthly.

- › **Communication systems** – Face-to-face interaction with project staff will be supplemented by regular email, Skype and telephone calls. Expatriate staff will routinely plan for direct face-to-face interaction with Syrian based staff for coordination, capacity building, reviews, technical discussions and forward planning in Turkey.
- › **Strengthening on-the-ground networks to enable accountability** – Organisation A will strengthen relationships with key stakeholders

on the ground that can enable remote verification and monitoring. These may include ties with local relief councils, local NGOs, community leaders or influential local people, such as doctors or camp elders, who can be contacted by phone to ensure that on-the-ground staff are continuing to provide aid and improving accountability.

- › **Monitoring procedures** – Collection of stories of transformation, post-distribution monitoring, process monitoring (exit interviews and distribution monitoring), and project monitoring visits will be conducted by M&E staff to track progress of implementation. Project indicator tracking tables will be updated monthly. Both qualitative and quantitative approaches will be used to monitor the progress of projects. Surveys, interviews, observation and documentation review are some of the specific data gathering tools that will be employed in collecting monitoring data.

Selected Bibliography

Sam Adelsberg, Freya Pitts, and Sirine Shebaya, "Chilling Effect of the Material Support Law on Humanitarian Aid: Causes, Consequences, and Proposed Reforms," *4 Harvard National Security Journal* (2012-2013), pp.282-319 available online at <http://harvardnsj.org/2013/05/the-chilling-effect-of-the-material-support-law-on-humanitarian-aid-causes-consequences-and-proposed-reforms/>

Jessica Burniske, Naz K. Modirzadeh, and Dustin Lewis, *Counterterrorism Laws and Regulations: What Aid Agencies Need to Know*, (2014), HPN Network Paper 79 (see <http://www.odihpn.org/hpn-resources/network-papers/counterterrorism-laws-what-aid-agencies-need-to-know>)

Jessica Burniske, Naz K. Modirzadeh, and Dustin Lewis, *Suppressing Foreign Terrorist Fighters and Supporting Humanitarian Action: A Provisional Framework for Analyzing State Practice*, (2015), Research Briefing, Harvard Law School Program on International Law and Armed Conflict, available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2673502

Charity Commission, *Charities and Risk Management*, (June 2010), available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398925/CC26_LowInk.pdf

Neal Cohen, 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, Research and Policy Paper, March 2014

Counterterrorism and Humanitarian Engagement Project, *An Analysis of Contemporary Anti-Diversion Policies and Practices of Humanitarian Organizations*, Research and Policy Paper, May 2014, available online at: <http://blogs.law.harvard.edu/cheproject/>

Counterterrorism and Humanitarian Engagement Project, *An Analysis of Contemporary Counterterrorism-related Clauses in Humanitarian Grant and Partnership Agreement Contracts*, Research and Policy Paper (May 2014), available online at: http://blogs.law.harvard.edu/cheproject/files/2013/10/CHE_Project_-_Counterterrorism-related_Humanitarian_Grant_Clauses_May_2014.pdf

Counterterrorism and Humanitarian Engagement Project, *Enterprise Risk Management: A New Approach to Managing the Risks Posed by Counterterrorism Regulations*, Research and Policy Paper (March 2013), available online at: <http://blogs.law.harvard.edu/cheproject/files/2012/10/CHE-Project-ERM1.pdf>

Counterterrorism and Humanitarian Engagement Project, *Partner Vetting in Humanitarian Assistance: An Overview of Pilot USAID and State Department Programs*, Research and Policy Paper (November 2013), available online at: <http://blogs.law.harvard.edu/cheproject/files/2013/10/CHE-Project-Partner-Vetting-in-Humanitarian-Assistance-November-2013.pdf>

Jan Egeland, Adele Harmer and Abby Stoddard, *To Stay and Deliver*, United Nations (2011), available online at: https://docs.unocha.org/sites/dms/Documents/Stay_and_Deliver.pdf

Huma Haider, *International Legal Frameworks for Humanitarian Action: Topic Guide*, (2013), Governance and Social Development Resource Centre (GSDRC), (see <http://www.gsdrc.org/docs/open/ILFHA.pdf>)

International Committee of the Red Cross. *ICRC Q&A and Lexicon on Humanitarian Access* (2014), (see <https://www.icrc.org/eng/assets/files/2014/icrc-q-and-a-lexicon-on-humanitarian-access-06-2014.pdf>)

Dustin A. Lewis, Naz K. Modirzadeh and Gabriella Blum, *Medical Care in Armed Conflict: International Humanitarian Law and State Responses to Terrorism* (8 September 2015). Harvard Law School Program on International Law and Armed Conflict (HLS PILAC), September 2015. Available at SSRN: <http://ssrn.com/abstract=2657036>

Dustin A. Lewis, Naz K. Modirzadeh and Claude Bruderlein, "Humanitarian engagement under counterterrorism: a conflict of norms and the emerging policy landscape," *International Review of the Red Cross*, Volume 93, Number 883 (September 2011), available online at: <https://www.icrc.org/fre/assets/files/review/2011/irrc-883-modirzadeh-lewis-bruderlein.pdf>

Ingrid Macdonald and Angela Valenza, *Tools for the Job: Supporting Principled Humanitarian Action*, (2012) (see https://www.nrc.no/arch/_img/9165703.pdf)

Kate Mackintosh, *The Principles of Humanitarian Action in International Humanitarian Law*, (2000), HPG Report 5 (see <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/305.pdf>)

Kate Mackintosh and Patrick Duplat, *Study of the Impact of Donor Counterterrorism Measures on Principled Humanitarian Action*, (2013), Norwegian Refugee Council and Office for the Coordination of Humanitarian Affairs, Annex A (see https://docs.unocha.org/sites/dms/Documents/CT_Study_Full_Report.pdf)

Victoria Metcalfe-Hough, Tom Keatinge and Sara Pantuliano, *UK Humanitarian Aid in the Age of Counterterrorism: Perceptions and Reality*, (March 2015), available online at: <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9479.pdf>

OECD. *Aid Risks in Fragile and Transitional States: Improving Donor Behaviour*, (2009), available online at: <http://www.oecd.org/dac/governance-peace/conflictandfragility/docs/49185677.pdf>

Sara Pantuliano, Kate Mackintosh and Samir Elhawary, *Counterterrorism and Humanitarian Action: Tensions, Impact and Ways Forward*, (2011), HPG Policy Brief 43 (see <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7347.pdf>)

Swiss Federal Department of Foreign Affairs (FDFA), the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), and Conflict Dynamics International (CDI), *Humanitarian Access in Situations of Armed Conflict: Practitioners' Manual* (Version 2, 2014), (see https://www.eda.admin.ch/content/dam/eda/en/documents/publications/Voelkerrecht/CDI_Access_Manual_Web_Dec5.pdf)

United Nations Office on Drugs and Crime (UNODC), *International Law Aspects of Countering Terrorism: Frequently Asked Questions*, (2009), UNODC, (see <http://www.unodc.org/documents/terrorism/Publications/FAQ/English.pdf> and <https://www.unodc.org/tldb/en/index.html>)

ENDNOTES

1. International Federation of Red Cross and Red Crescent Societies and the ICRC, *The Fundamental Principles of the Red Cross*, Vienna 1965, available online at: <https://www.icrc.org/eng/resources/documents/red-cross-crescent-movement/fundamental-principles-movement-1986-10-31.htm>
2. Kate Mackintosh and Patrick Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action* (July 2013), available online at: https://docs.unocha.org/sites/dms/documents/ct_study_full_report.pdf
3. *Ibid.*
4. Sphere Project, *Sphere Handbook: Humanitarian Charter and Minimum Standards in Disaster Response*, 2011, 2011, available online at <http://www.refworld.org/docid/4ed8ae592.html> [accessed 17 November 2015]
5. HAP International, People In Aid and the Sphere Project, *The Core Humanitarian Standard on Quality and Accountability*, 2014, available online at <http://www.corehumanitarianstandard.org/files/files/CHS%20in%20English%20-%20book%20for%20printing.pdf>
6. Ingrid Macdonald and Angela Valenza, *Tools for the Job: Supporting Principled Humanitarian Action*, 2012.
7. UN Security Council, Security Council Resolution 1566 (2004) Concerning Threats to International Peace and Security Caused by Terrorism, 8 October 2004, S/RES/1566 (2004), available online at: <http://www.refworld.org/docid/42c39b6d4.html>
8. International Red Cross and Red Crescent Societies and the ICRC. *Customary International Humanitarian Law, Rule 2. Violence Aimed at Spreading Terror Among the Civilian Population*, ICRC 2005, available online at <https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>
9. *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963. (Deposited with the Secretary-General of the International Civil Aviation Organization, available online at: <https://treaties.un.org/doc/db/Terrorism/Conv1-english.pdf>
10. Refer to <http://www.un.org/en/sc/ctc/resources/countryreports.html>
11. For further example please refer to articles 5, 6 and 24 of the UN charter.
12. Same Adelsberg, Freya Pitts and Sirine Shebaya, "Chilling Effect of the Material Support Law on Humanitarian Aid: Causes, Consequences, and Proposed Reforms," *4 Harvard National Security Journal*, pp. 282-319 (2012-2013), available online at <http://harvardnsj.org/2013/05/the-chilling-effect-of-the-material-support-law-on-humanitarian-aid-causes-consequences-and-proposed-reforms/>
13. *Ibid.*
14. Kate Mackintosh and Patrick Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action*, July 2013
15. International Red Cross and Red Crescent Societies and the ICRC, 1949 *Conventions and Additional Protocols, and their Commentaries*, ICRC 1949, available online at <https://www.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>
16. International Red Cross and Red Crescent Societies and the ICRC, *The Fundamental Principles of the International Red Cross and Red Crescent Movement*, ICRC 1965.
17. This section is principally drawn from *International Humanitarian Law and the challenges of armed conflicts* document prepared by the International Committee of the Red Cross <https://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-en.pdf>
18. The European consensus on humanitarian aid: Impartiality denotes that humanitarian aid must be provided solely on the basis of need, without discrimination between or within affected populations.
19. Refer to; Kate Mackintosh and Patrick Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action*, July 2013.
20. Such engagement may be considered a criminal offence on a number of jurisdictional bases: According to the laws of the country where the operations are taking place, the laws of the country of nationality of the staff or organisation, and/or the laws of a country that asserts universal jurisdiction.

21. International Federation of Red Cross and Red Crescent Societies and the ICRC, *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief*, December 1994, available online at: <https://www.icrc.org/eng/assets/files/publications/icrc-002-1067.pdf>
22. Kate Mackintosh and Patrick Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action*, July 2013
23. As identified during field discussions conducted as part of the research for this toolkit.
24. Neal Cohen, 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, Research and Policy Paper, March 2014.
25. As identified during field discussions conducted as part of the research for this toolkit.
26. The names of all organisations, groups and locations have been anonymised.
27. Counterterrorism and Humanitarian Engagement Project, *An Analysis of Contemporary Counterterrorism-related Clauses in Humanitarian Grant and Partnership Agreement Contracts*, Research and Policy Paper, May 2014, available online at: <http://blogs.law.harvard.edu/cheproject/>
28. This description is drawn from a sample of definitions used by large donors to describe state links.
29. As identified during interviews conducted as part of the research for this toolkit.
30. Quoted from WFP agreement clause.
31. Quoted from UNICEF agreement clause.
32. Donor contracts vary on the inclusion of “knowingly” transferring assistance to DTGs.
33. As identified during interviews conducted as part of the research for this toolkit.
34. As identified during the research conducted for this toolkit.
35. As evidenced by a sample of donor counter-terrorism clauses.
36. Charity Commission, *Charities and Risk Management*, June 2010, available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398925/CC26_LowInk.pdf
37. Jan Egeland, Adele Harmer and Abby Stoddard, *To Stay and Deliver*, United Nations, 2011, available online at: https://docs.unocha.org/sites/dms/Documents/Stay_and_Deliver.pdf
38. The concept of the humanitarian imperative expands the principle of humanity to include the right to receive and to give humanitarian assistance. It states the obligation of the international community to provide humanitarian assistance wherever it is needed.
39. OECD. *Aid Risks in Fragile and Transitional States: Improving Donor Behaviour*, 2009, available online at: <http://www.oecd.org/dac/governance-peace/conflictandfragility/docs/49185677.pdf>
40. NGO staff interviewed as part of the research for this toolkit.
41. Transparency International, *Preventing Corruption in Humanitarian Operations*, 2010, available online at: http://www.charity-andsecurity.org/system/files/Humanitarian_Handbook_cd_version%20%282%29.pdf
42. A representative of a UN agency field office interviewed during the research for this toolkit.
43. Senior lawyer, NGO, interviewed during the research for this toolkit.
44. Programme manager, NGO, interviewed during the research for this toolkit.
45. Senior official, UN Agency interviewed during the research for this toolkit.
46. This definition is in accordance with the definition of the same term used in the study; Kate Mackintosh and Patrick Duplat. *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action*, July 2013.
47. Derived from Counterterrorism and Humanitarian Engagement Project, *An Analysis of Contemporary Counterterrorism-related Clauses in Humanitarian Grant and Partnership Agreement Contracts*, Research and Policy Paper, May 2014, available online at: <http://blogs.law.harvard.edu/cheproject/>
48. Counterterrorism and Humanitarian Engagement Project. *Enterprise Risk Management: A New Approach to Managing the Risks Posed by Counterterrorism Regulations*, Research and Policy Paper, March 2013, available online at: <http://blogs.law.harvard.edu/cheproject/files/2012/10/CHE-Project-ERM1.pdf>

49. For further information, refer to the Federal Register of the US Government, <http://www.gpo.gov/fdsys/pkg/FR-2015-06-26/pdf/2015-15017.pdf>
50. OECD. *Aid Risks in Fragile and Transitional States: Improving Donor Behaviour*, 2009, available online at: <http://www.oecd.org/dac/governance-peace/conflictandfragility/docs/49185677.pdf>
51. Reliefweb Project. Glossary of Humanitarian Terms, Draft Version, August 2008, available online at: <http://www.who.int/hac/about/reliefweb-aug2008.pdf>
52. Extracted from Counterterrorism and Humanitarian Engagement Project, *An Analysis of Contemporary Counterterrorism-related Clauses in Humanitarian Grant and Partnership Agreement Contracts*, Research and Policy Paper, May 2014, available online at: <http://blogs.law.harvard.edu/cheproject/>

