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Counter-terrorism, bank de-risking and humanitarian response: a path forward

Key findings from four case studies

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Following the events of 11 September 2001, many countries have adopted strict Anti-Money Laundering and Combatting the Financing of Terror (AML-CFT) regulations for fund transfers. This process – 'de-risking' – has increased the costs of complying with regulatory requirements, and imposed significant penalties for non-compliance (Plaza, 2014).[1] While preventing or stemming flows of funds to designated terrorist organisations is clearly in the interests of the states that have adopted these measures, they have also had 'far-reaching and unintended consequences' (Keatinge, 2014: 15),[2] including for the ability of humanitarian organisations to reach people in need, particularly in areas under the control of proscribed groups.

The (unclear) implications of these regulations for the transfer of humanitarian funds into areas deemed to be high-risk – both for banks and for humanitarian organisations – have led to heightened due diligence requirements from donors and banks, extensive and invasive security checks for local partners and implementing actors, restrictions on staff travel and greater government scrutiny of the staff of national and regional aid organisations (Fowler, 2004; McMahon, 2007).[3] Banks have become increasingly wary in their dealings with humanitarian organisations; accounts have been closed, and transactions delayed or blocked. As well as their implications for the delivery of humanitarian assistance, these blockages within the formal international financial system have had the unintended consequence of forcing increasing volumes of funds through informal channels, including *hawala* money transfer networks.

1 Plaza, S. (2014) 'Anti-money laundering regulations: can Somalia survive without remittances?', *World Bank* (http://blogs.worldbank.org/peoplemove/anti-money-laundering-regulations-can-somalia-survive-without-remittances).

2 Keatinge, T. (2014) 'Counter terrorism finance efforts threaten NGO financial access', *Huffington Post* (www.huffingtonpost.co.uk/tom-keatinge/counterterror-finance-eff_b_5618223.html).

3 Fowler, A. (2004) *Assessing the impact of counter-terrorism measures for nongovernment organizations.* London: INTRAC; McMahon, J. (2007) *Developments in the regulations of NGOs via government counter-terrorism measures and policies.* INTRAC.

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THE HUMANITARIAN FORUM
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This HPG series[4] has looked at the operation and implications of bank de-risking measures for humanitarian NGOs in four contexts: the occupied Palestinian territory (OPT)[5], Somalia[6], Syria[7] and Yemen[8]. While each has features particular to itself, this research highlights a number of common aspects, set out below, along with a set of recommendations for action.

1. **The global counter-terrorism regime has created an environment where security is prioritised over the humanitarian imperative. Bank de-risking is one aspect of this prioritisation, where local organisations have been denied access to much-needed humanitarian and development funds. Some humanitarian communities have also taken a precautionary approach to the risks (including reputational risks) generated by regulatory mechanisms.**

   NGOs in the West Bank, and particularly in Gaza, are unable to play a leading role in developmental and humanitarian projects due to banking restrictions. They are also unable to deploy the organisations best placed to respond to a particular community problem because of these restrictions and their associated administrative burdens. According to one non-profit professional, the number of operational NGOs has been 'reduced and as a result, [we] they have lost the best implementers within the sector'. Because of delays in receiving funds and the financial losses incurred, projects lose some of their significance to beneficiaries. This is particularly the case with 'seasonal' projects and those linked to particular occasions.

   In Somalia, local NGO representatives pointed out that, while their bank accounts had not been closed, transactions were delayed or frozen without any clear explanation as to why. Delays were common, with processing times for transfers as much as 20 times longer than normal. One organisation faced delays that extended for three years. As one respondent described: 'We are offered no explanation why the money is delayed. It is arbitrary and usually described as the bank's "internal process".

   There are contradictions and there is no rationale to it. If you are able to wait, you just wait and eventually, it will show up'. To cope with these delays, humanitarian organisations have called on Somalis in the diaspora to send funds through the *hawala* system, rather than through banks. Another alternative is to borrow money locally. In Yemen, the head of finance at a humanitarian organisation in Sanaa, established in 2011 following the outbreak of the Arab uprisings, described how, in the case of one food assistance project, the first of three funding instalments from a European bank to the organisation's local bank account in Yemen had been delayed for more than a month. Despite this, the organisation started distributing the assistance as it was already in storage via an agreement with the trader that he would eventually get his money when the funds were deposited in the organisation's account. A second transaction was also delayed, this time for two months.

   In Syria, echoing the findings of other studies, all respondents claimed that bank de-risking had resulted in a 'chilling effect' on humanitarian action, meaning that programmes had often been delayed to the point where they were no longer relevant. However, it was also clear that the overwhelming majority of NGOs sought 'workarounds' – replacing money promised but held up by the banking system with the organisation's own reserves or with commodities and in-kind deliveries bought from other funds. Occasionally programmes were discontinued, but even where the organisation substituted in-kind assistance for cash, they found that the original programme's aims were not fully met.

2. **Muslim charities (or those with a Muslim name) have faced the greatest obstacles in accessing financial services. This is despite non-Muslim and secular agencies being forced to rely increasingly on Muslim charities to deliver assistance in places such as Afghanistan, Somalia, Syria and Yemen.**

   In the West Bank and Gaza, delays are more likely when recipient organisations have an Islamic name or affiliation. Resolving these blockages is time-consuming and the bureaucratic burden high. As one respondent belonging to a local humanitarian organisation stated: 'We spend about 25% of a full-time employee's time in answering inquiries about bank transfers and donations'. In the case of one organisation included in the focus group

4 www.odi.org/projects/2919-understanding-impact-de-risking-humanitarian-aid

5 www.odi.org/publications/11174-humanitarian-sector-debt-counter-terrorism-bank-de-risking-and-financial-access-ngos-west-bank-and.

6 www.odi.org/publications/11142-challenge-informality-counter-terrorism-bank-de-risking-and-financial-access-humanitarian.

7 www.odi.org/publications/11177-impact-bank-de-risking-humanitarian-response-syrian-crisis.

8 www.odi.org/publications/11020-counter-terrorism-de-risking-and-humanitarian-response-yemen-call-action.

discussion, it took three months to unblock a transfer from occupied Palestinian territory (OPT) to another NGO in Italy. This was 'after many consultations and the sending of project documents to the bank'.

In Somalia, respondents from local NGOs viewed bank de-risking as a Western 'attack' on or conspiracy against Muslims or Africans. One respondent described how de-risking was preventing Muslims from carrying out their religious duty to give money to charity: 'The most painful statement I heard so far was when a desperate donor said: "Our hands have forgotten what it's like to pay *sadaqqa* (alms)". Because of the restrictions created by de-risking, this donor has failed many times to send donations to the poor'.

Syrian NGOs based in Turkey in particular reported widespread de-banking by Turkish banks as well as blockages in the transfer of money from abroad, particularly when the Syrian organisation used 'Syria' or 'Sham' (referencing 'Damascus' and its environs) in their title. For example, one Turkish-registered but Syrian-staffed NGO described how they were de-banked and were then unsuccessful in gaining access to banking services for several months. Only when they changed their name and logo, removing any indication that this was an Islamic or Syrian organisation, and ensured that their trustees were known as secular rather than religious personalities were they able to obtain banking services again. Several of the NGOs who went through this process opened accounts with the Turkish state-owned Zirat Bank and suggested that the authorities were keen to encourage NGOs to bank with state owned institutions as a part of a plan to increase state control over the sector.

3. **Global counter-terrorism measures have been adopted locally (and sometimes over-compensated for) by governments and authorities in a number of countries in the Middle East. This has resulted in a narrowing of regional philanthropic practices and, in turn, limited the availability of funds for local humanitarian and development organisations in several crisis-affected countries.**

A number of Arab governments have also imposed restrictions on regional and international philanthropy, thereby forcing philanthropists to invest locally and not regionally, and restricting the nature and scope of projects they can fund if they want to avoid reputational risk. For example, projects run by Islamic organisations, and sometimes even by non-faith-based organisations with an Islamic name, are more likely than other projects to be viewed with suspicion by banks. Even local funding has become challenging because Arab governments seem to have adopted those measures and implemented them locally. In Kuwait, for instance, several domestic banks have pre-emptively severed links with some charities and foreign exchange houses to avoid perceptions of risk that could prompt global banks to cut relations with them. In Saudi Arabia, the government has centralised all overseas funding through the King Salman Humanitarian Aid and Relief Center or the Saudi Fund for Development. As a result, individual philanthropists struggle to fund projects in other countries because of government restrictions as well as banking restrictions.

4. **Reputational harm to NGOs, donors and local banks seriously increases the chances of bank de-risking.**

In the West Bank and Gaza, respondents saw the sudden and 'unjustified' closure of bank accounts and delays in transactions as a reputational risk for NGOs. Being denied a transaction by an international bank, according to a respondent from a local humanitarian organisation, renders them suspect and puts them at risk of not being awarded grants by donors. Donors seem to be responding to bank de-risking by selecting regions and organisations that present as little bureaucratic burden and reputational risk as possible. Certain forms of assistance have also been restricted; cash assistance to families, for example, has become very limited because, according to interviews with local organisations, donors view it as 'most risky' in light of global counter-terrorism measures. The reasoning is that beneficiaries have more freedom to use the money according to their own priorities and needs – a positive development in humanitarian terms but a negative one in managing the risk of money reaching proscribed groups and individuals.

In Somalia, a representative of a bank that had accounts closed felt that the bank's reputation had been compromised, and it lost a large number of clients as transactions were blocked by the correspondent bank. Delays and procedural complications can also make it more challenging for a bank to serve its clients: 'Procedures for transferring money are extremely difficult. Because of those delays, we have put a burden on our clients; actually, every single day we call them to provide answers to new questions provided by the corresponding bank'.

In Syria, a number of INGOs as well as Syrian NGOs confirmed to us that they were unwilling to work in areas controlled by proscribed armed groups specifically because they were concerned that this would result in their inclusion on 'international blacklists'. Senior NGO staff privately told us: 'We cannot work there. We will be listed and not able to work in Turkey or Syria'. Another NGO's financial controller told us that: 'We know our bank will not let us move money for these areas so we do not'.

5. **Bank de-risking is contributing to war economies and the expansion of informal and potentially corrupt channels for financial access and the transfer of funds.**

   In cases where Syrian NGOs utilised money from a European INGO partner, the transactions were far more likely to get through the international financial system than if they received donations from elsewhere (such as the Middle East). This created high degrees of dependency between Syrian NGOs and their European partner NGO, allowing the latter far greater degrees of control over programming decisions. In their words, encouraging 'the projects that the [name of European donor NGO] think comply'. This created very rigid forms of programming. Equally it led to the European NGOs favouring programmes which used existing logistics partnerships and delivery chains. This emphasis limited Syrian NGOs' ability to respond flexibly to new problems or support new geographical areas. In effect, assistance strategies ossified along the lines of least resistance and greatest transparency in delivery chains – i.e. 'acceptable' partnerships and 'legitimate' receipts – rather than focusing on areas with the most uncertainty and pressing need, where risk of falling foul of compliance procedures was greatest.

   In Yemen, restrictions on legitimate transactions have contributed to the creation of a black market trade in food and fuel and the expansion of other transfer routes that rely on networks of unregulated and potentially corrupt money brokers. One participant at a focus group discussion described it as the 'door to corruption'. According to one Yemeni banker based in Sanaa, 'The *sarafeen* [money brokers] have more than doubled. They are the only source of local and external distribution of cash. We cannot survive without them'.
   In Somalia, a counter-terrorism regime that prioritises compliance over the humanitarian imperative has affected local organisations' access to transparent and formal banking: 'Money Transfer Operators are de facto banks. You cannot transfer money internationally through the banking system so you have to work with MTOs', said a Somali humanitarian worker. Local humanitarian organisations are unable to rely on banks for their transactions so they resort to the private sector either through MTOs or mobile banking. A humanitarian worker from an international organisation operating in Somalia claimed that more than 70% of the population used mobile money 'which is completely unregulated. You have millions of dollars floating everywhere but it works, and is central to the humanitarian response'.

Path forward: towards a proportionate risk-based approach

To bankers and regulators:

1. *Discuss de-risking globally, but with an understanding of local realities.*

   A recurring theme in the interviews conducted for this study was the unpredictability and lack of consistency in the delay and blocking of transactions. Respondents highlighted that US banks are more restrictive than European ones, but it is often a mystery why some transactions are delayed and others are not. Respondents consistently argued for a more predictable, uniform and consistent framework for banking sector responses to counter-terrorism measures.

2. *Regulators and banks should agree on a due diligence code of conduct for NGOs, specifying the type of information they need and what constitutes 'sufficient' information. Banking regulatory handbooks need to reflect the demands of the risk-based approach encouraged by the Financial Action Task Force.*

   A concerted international effort among regulators needs to be made to interpret counter-terrorism regulations to NGOs, international and local, especially those operating in countries that are considered at risk of terrorism. How can local organisations be compliant? A common message from the interviews conducted for this study is that there is a strong desire to be 'compliant' and 'transparent', but that it is difficult to understand what compliance actually entails. One explained the situation, saying: 'There has to be a way to have financial access, to have financial coverage, without causing harm. Regulators need to be clear about what they want and need from our end. We want to be transparent, we do, but it is useless. We have tried everything but we still get delays'.

3. *Provide technical support to strengthen the banking sector in crisis-affected countries. Place* hawala *banking channels on a clearer regulatory basis in conditions where this is the only viable means of moving money into areas of significant humanitarian need.*

To NGOs and civil society:

1. *Increase awareness of counter-terrorism and anti-money laundering regulations.*

   Bankers interviewed for this study called on NGOs to ensure that they are registered and have adequate documentation of the overseas financial transactions they make or receive from donors to support requests for transfers through banks. Using auditors to increase the transparency of financial transactions was also suggested.

2. *To international NGOs – unite with NGOs from the global South to advocate for coherent financial regulations and for flexible funding streams to local humanitarian and development NGOs.*

   There is a need for concerted advocacy by organisations and foundations from the global North and South to make a case for regulating the sector in a proportionate manner that does not render vulnerable populations even more so.

To donors and international humanitarian organisations:

1. *Discuss risk management: its opportunities and limitations.*

   Building the capacities of local partners to manage risk and the development of risk registers to monitor potential sources of risk can help prepare donors and the humanitarian sector for potential challenges in a humanitarian response. It also helps in managing donor expectations. In a context like Somalia, where corruption and aid diversion are well-documented, risk management should be at the core of the response.

2. *Donors should recognise that there are higher overhead costs associated with operating in fragile and conflict-affected states (and in accordance with banking regulatory requirements) and enhance their coverage of these costs for local NGOs.*