



# PRACTICAL GUIDE

## PROJECT CYCLE MANAGEMENT AND COUNTERTERRORISM RISKS

**This practical guide draws on content from NRC's 'Toolkit for principled humanitarian action: managing counterterrorism risks'. It outlines the origin and impact of counterterrorism measures and proposes actions for humanitarian organisations to consider throughout the programme cycle to help manage and mitigate counterterrorism-related risks.**



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## WHERE DO COUNTERTERRORISM MEASURES COME FROM?

Counterterrorism measures are introduced through:

- 1 UNSC resolutions and other international instruments
- 2 Regulations introduced by regional bodies such as the European Union (EU)
- 3 States' domestic laws

Once introduced, these measures are often reflected in donor grant agreements. These measures include a variety of approaches, including designating groups or individuals as terrorist, and criminalising the provision of financial and other types of support to those designated as terrorist, or those 'associated with terrorism'.

## WHY ARE THESE MEASURES RELEVANT FOR HUMANITARIAN ORGANISATIONS?

Humanitarian organisations often operate in conflict-affected environments in which counterterrorism measures may apply; for example, where one or more parties to a conflict is a designated terrorist group (DTG). In accordance with international humanitarian law and the humanitarian principles, organisations should make decisions regarding where to operate based on assessments of needs. Engaging with DTGs may be necessary to secure access to people in need of assistance. Counterterrorism measures may impede organisations' ability to engage with these groups, and may result in penalties being imposed on organisations that do.



## WHAT ARE THE RISKS FOR HUMANITARIAN ORGANISATIONS?

Risk Category	Operational Impact
<b>Criminal</b>	<p><b>Prosecution over the provision of support to DTGs:</b> The broad definition of support for terrorism that some states have adopted makes this a risk for humanitarian organisations and staff who carry out certain activities.</p> <p><b>Criminalisation of staff:</b> Criminal laws designed to counter terrorism have the potential to criminalise humanitarian workers. Local staff members may be particularly exposed to risks under the host country's counterterrorism legislation.</p>
<b>Security</b>	<p><b>Insecurity:</b> Engaging with non-state armed groups (NSAGs), regardless of whether or not they are DTGs, is a key element of gaining and maintaining secure access to people in need. Engagement also helps to establish consent and acceptance for humanitarian organisations' activities, which is vital to ensure staff safety. Counterterrorism measures can create uncertainty for organisations about whether contact with NSAGs that are also DTGs is permissible.</p>
<b>Contractual</b>	<p><b>Delay:</b> The inclusion of counterterrorism clauses in grant agreements can delay the implementation of humanitarian initiatives while organisations work with donors to try to negotiate changes or seek clarity about vague wording. Some requirements, including screening and/or vetting procedures, may also delay the provision of assistance. Delays can also occur as a result of bank derisking, which happens when banks refuse, or take longer than expected to provide transfers to locations perceived as high risk, in order to minimise their own exposure to accusations of facilitating terrorist financing.</p> <p><b>Lower quality of response:</b> Compliance with donor counterterrorism requirements may reduce the quality of an organisation's response by causing it to choose modalities perceived as lower risk even if they are less appropriate and effective for a particular context.</p> <p><b>Risk transfer to staff:</b> Counterterrorism-related wording in grant agreements can be vague and difficult to interpret. It is not uncommon for humanitarian organisations to accept these clauses without fully understanding the requirements involved. Staff tasked with implementing a project under a grant agreement may have had no involvement in negotiating it, but they shoulder the burden of complying with the requirements.</p> <p><b>Risk transfer to local partners:</b> International NGOs (INGOs) often pass on donor counterterrorism requirements to local partners in the form of "flow-down clauses" without ensuring they understand what signing the clause entails, or that they have the resources and capacity to comply. Local partners may accept requirements that are impossible for them to adhere to or that endanger their staff as a result.</p> <p><b>Establishing a precedent:</b> This can occur when one organisation accepts a counterterrorism clause that others deem unacceptable. Some organisations may choose to negotiate more favourable terms, but their leverage and ability to do so is weakened if others have already accepted the requirements.</p> <p><b>Loss of funding:</b> Some organisations have refused donor funding as a result of uncertainty about, or unwillingness to accept the terms of counterterrorism measures required of them. Expenditure may also be disallowed under a contract if an organisation does not comply with all donor regulations.</p>
<b>Humanitarian principles</b>	<p><b>Compromised principles:</b> In order to minimise exposure to counterterrorism risks, organisations may choose not to provide assistance in areas controlled by NSAGs that are also DTGs, regardless of the humanitarian needs there. This compromises the impartiality and needs-based nature of their response and leaves affected populations without the assistance they need simply because of their location. If an organisation is not perceived as impartial, its acceptance by NSAGs and local communities may be impacted. This can limit access and put staff safety at risk.</p>



## HOW CAN HUMANITARIAN ORGANISATIONS MITIGATE THESE RISKS?

Humanitarian organisations can mitigate these risks by ensuring they have the following in place:

- ➔ A risk management framework
- ➔ An established process for reviewing counterterrorism clauses in grant agreements and clear red lines outlining the language and conditions that are not acceptable
- ➔ Internal policies providing staff with guidance on counterterrorism measures and on engagement with NSAGs that may be DTGs, including red lines to ensure adherence to the humanitarian principles
- ➔ Project cycle management (PCM) guidelines that consider counterterrorism risks

PCM guidelines that consider counterterrorism risks can help ensure that organisations identify, evaluate and mitigate these risks effectively during the program cycle. The PCM guidelines below are designed to help humanitarian organisations approach project design and implementation in a principled way in contexts where counterterrorism measures may pose challenges to principled humanitarian action.

Note that risk management cannot eliminate counterterrorism risks; it can only reduce the likelihood of occurrence and mitigate against potential impacts. Organisations should identify and take reasonable actions to manage risks, and after having done so, decide if the remaining 'residual' risks are acceptable or not. This decision should be based on a program criticality assessment, which weighs the residual risks against the severity of needs and the expected humanitarian results.

# PROJECT CYCLE MANAGEMENT FOR COUNTERTERRORISM RISKS

## PHASE ONE: PROGRAMMING

### Main programme activities at this point might include:

- Determination of overall programme strategy
- Development of context analysis
- Development of risk analysis

### Phase one checklist

#### Context analysis and stakeholder mapping:

- ❓ Does your organisation have a risk management framework in place? Are staff aware of the components relevant to their roles, such as policies related to counterterrorism measures and engagement with NSAGs, sanctions, counterterrorism legal frameworks your organisation may be required to comply with, and donor conditions related to counterterrorism that it may have already committed to?
- ❓ Have you carried out a context analysis for your country of operation, including an updated stakeholder mapping?
- ❓ Have you filled in a context-specific risk register to identify and evaluate operational risks related to counterterrorism, including risks to your organisation's ability to adhere to the humanitarian principles and the principle of "do no harm"? Have you identified options for mitigating these risks? A risk register template can be found [here](#)

## PHASE TWO: IDENTIFICATION

### Main programme activities at this point might include:

- Identification and verification of needs, target areas and beneficiary groups
- Identification of funding opportunities
- Development of project log frame
- Decision on whether to proceed with development of proposal

### Phase two checklist

#### Targeting:

- Refer back to the context analysis and risk register from phase one and update according to the proposed programme and target area.
- Identification of current risks: Is your choice of modality or target area, or your beneficiary targeting influenced by counterterrorism measures? If yes, revisit your decisions to ensure they are in line with a principled approach and adhere to your organisation's red lines.
- Does your stakeholder mapping reveal the presence of groups in the target area who are designated as terrorist or sanctioned by your potential donor(s) and/or the host state? If so, how will you ensure you are able to engage with them in a principled way?
- Identification of mitigation measures: Define different options available.

## Funding:

- ➡ Donor conditions related to counterterrorism are not always known in advance of responding to a call for proposals, but it is important to consider them as early as possible.
  - If you are considering a funding opportunity from a new donor, have you reviewed the standard grant agreement carefully for counterterrorism requirements?
  - Existing donors can change counterterrorism requirements without notifying partners. Have you reviewed the specific grant agreement before signing

## RISKS RELATED TO DONOR COUNTERTERRORISM CONDITIONS:

Donors have different approaches to counterterrorism clauses in grant agreements – some do not include specific language on counterterrorism, but will include language addressing the need to prevent diversion, fraud and corruption. Others include strict requirements specifically related to counterterrorism. An example is USAID's Anti-Terrorist Certification (ATC), which must be signed by grantees and states to certify that, 'The Recipient, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts'.

The risks associated with signing this certification became clear in 2018, when USAID claimed that because the INGO Norwegian People's Aid (NPA) provided 'training and expert advice or assistance' to DTGs in the course of programmes in Iran and Gaza, its certification to USAID that it did not knowingly provide material support or resources to any prohibited parties was false.

NPA contested these claims, stating that it had not provided support to 'terrorism', and that it did not receive USAID funding in Gaza or Iran. NPA had signed an ATC to accept USAID funding in South Sudan. USAID argued that, once signed, the ATC applied globally to any projects that USAID grantees implemented, anywhere in the world, irrespective of the donor. This interpretation indicated that USAID had significant influence over projects funded by other donors. Although NPA disagreed on the fairness of USAID's claims, due to the estimated costs, resources and time necessary to take this case to trial, NPA concluded that the most reasonable option was to agree on a settlement. NPA agreed to pay US\$2.025 million to the U.S. Government.

## PHASE THREE: FORMULATION

### Main programme activities at this point might include:

- Development of project proposal and budget
- Development of an M&E matrix and assessment of M&E quality
- Decision on whether to proceed, taking donor conditions and programme criticality into account

### Phase three checklist

#### Proposal planning and development:

- Does your proposal take the previously identified risks related to counterterrorism into account?
- Have you included all potential counterterrorism-related risks and mitigation measures in your risk register and risk matrix?
- Do you intend to work with local partners? If yes:
  - Have you talked to your potential partner about counterterrorism-related risks?
  - Have you considered the possibility that you may transfer risks to the local partner, and how you can share them rather than passing them on?
  - Have you assessed the local partner's capacity to manage risks and comply with contractual requirements related to counterterrorism?

#### Review of donor contract:

- Have you identified a counterterrorism clause in your donor contract? If so, does it prevent or impede a principled humanitarian approach? Has a legal adviser reviewed the clause? See Annex 1: "Reviewing counterterrorism clauses" for more guidance.
- Decide whether to proceed with the funding opportunity.

#### M&E assessment:

- Taking the risks identified in your register into account, assess whether you will be able to achieve minimum M&E standards.
- Assess the quality of your M&E processes to establish how successful they are likely to be in mitigating the risk of diversion and, in the case of it occurring, identifying where.
- Share the results of your assessment with your potential donor if necessary, to ensure they are aware of the M&E quality expected.

#### Program criticality decision making:

- Depending on the counterterrorism risks and mitigation measures identified in your risk register and the quality of your M&E processes, you may need to take a decision based on programme criticality.
  - Have you weighed the severity of needs and the expected humanitarian results of the project against the risks associated with achieving that objective? This type of assessment can be done using a tool such as the [UN's programme criticality assessment](#). The resulting decision should be documented and followed through careful monitoring of project implementation and changes in the operating environment.



## PHASE FOUR: IMPLEMENTATION

### Main programme activities at this point might include:

- Development of work plan
- Grant opening meeting
- Monitoring
- Progress review

### Phase four checklist

#### Grant opening meeting:

- Have you confirmed that the project team is aware of counterterrorism-related risks and mitigation measures identified in the risk register and matrix?
- Have you confirmed that staff are aware of any counterterrorism-related compliance requirements imposed by the donor?
- Have you confirmed that the project team understands your organisation's red lines in terms of the humanitarian principles?

#### Periodic project review:

- Have you evaluated the current situation against the risks previously identified? Have any of the risks materialised and if so, what have their impacts on the project been?
- Do you need to revise or update the risk register to reflect unforeseen challenges related to counterterrorism or changes in the operating environment?
- Do any changes in the operating environment related to counterterrorism require you to inform or consult internal and external stakeholders, including donors?
- Have you crossed any of your organisation's red lines in relation to counterterrorism and principled humanitarian action? If so, document how these decisions were made and monitor and record their impact on your project, and any wider impacts in terms of reputation and staff security.
- If your donor has imposed counterterrorism-related compliance requirements, have these impeded project implementation, including adherence to the humanitarian principles?





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## **PHASE FIVE: EVALUATION AND AUDIT**

### **Main programme activities at this point might include:**

- ➔ Grant closure meeting
- ➔ Internal reporting
- ➔ Reporting to donors

### **Phase five checklist**

#### **Grant closure meeting:**

- ➔ Have you systematically reviewed challenges related to counterterrorism, including those related to access and adherence to the humanitarian principles, and the decisions made to deal with these challenges?
- ➔ Have you documented the impact counterterrorism measures may have had on project implementation, and any wider impacts in terms of your organisation's reputation and staff security?
- ➔ Have you documented and reported challenges and decisions to internal stakeholders?
- ➔ Have you ensured these are filed together with all other documentation related to the project for audit purposes?
- ➔ Have you identified lessons learned to inform the development and implementation of future projects?

## RISKS RELATED TO INDIRECT SUPPORT TO A DTG:

Humanitarian organisation Global Solidarity works in Area X, which is controlled by local authorities who have strong links with a group designated as terrorist by the UNSC. Owing to security considerations, operations in Area X are managed remotely. Global Solidarity undertook a tendering process for the provision of water trucking for Area X. After the bid process, which the remote management team administered, one of the bidders alleged that contractors had to pay 3 per cent of the contract value to the local authorities in order to obtain approval to operate in Area X. Global Solidarity's staff in Area X confirmed that this was accurate. None of the detailed bids for any of Global Solidarity's previous projects had included any mention of this fee. These fees crossed Global Solidarity's red line in relation to facilitation payments, and potentially posed a counterterrorism risk, owing to the relationship between the local authorities and the DTG. The remote management team immediately suspended new contract signings until the matter could be fully investigated. A report was handed over to Global Solidarity's regional anti-corruption adviser, who launched an internal investigation. Associated donors were informed and external legal advice was sought.

Global Solidarity engaged with the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), requesting that they intercede to obtain a waiver from local authorities exempting all humanitarian organisations from these fees to ensure programs could continue. The waiver was successfully obtained.

Global Solidarity engaged the donor that funded the water trucking project in discussions on risk sharing. The donor agreed that there was no fault on Global Solidarity's side and commended the organisation for its transparency on the issue. However, the donor still chose to classify the costs as non-reimbursable and therefore subject to repayment.

This incident reflects the obstacles faced in providing aid in environments where local authorities and DTGs may be linked, and the additional challenges related to managing operations remotely. Coordination and collaboration can bring about solutions when these issues arise, but ultimately the burden of risk is borne entirely by humanitarian organisations, reflecting the importance of anticipating and planning for these kinds of challenges before they arise.

Note: This case study describes actual events but has been anonymised.

PCM guidelines like those above form one component of a risk management framework that can help an organisation to identify, evaluate and mitigate potential counterterrorism-related risks effectively throughout the different PCM phases. By mainstreaming consideration of these risks, organisations can ensure they are better prepared to deal with them when they arise. Consult NRC's 'Toolkit for principled humanitarian action: managing counterterrorism risks' for more information.

## ANNEX 1: REVIEWING COUNTERTERRORISM CLAUSES

It is vital organisations review each grant agreement thoroughly before signing to ensure they are aware of what they are agreeing to, regardless of whether they have signed previous agreements with the same donor or not. Donors are not obliged to inform partners when they change the wording of counterterrorism clauses or introduce new clauses. These clauses are not always found in the sections of grant agreements where they might be expected. A complete review, which might include searching the agreement for relevant terms, helps to ensure that any problematic language is identified in time to seek clarity from the donor or try to renegotiate wording.

### Questions to consider

**The following checklist is not exhaustive:**

- ❓ Does the agreement refer to international conventions or treaties, UNSC resolutions, donor policies, domestic or international laws or donor state regulations?
- ❓ Does the counterterrorism clause include the terms “intent”, “knowledge”, “knowingly” or “reasonableness”?
- ❓ Does the clause include language that is vague or unclear, such as “associated with” or “directly or indirectly”?
- ❓ Would the recipient be required to vet or screen staff, partners or beneficiaries against lists of DTGs?
- ❓ Does the agreement include specific requirements or language on the recruitment of staff?
- ❓ Does the counterterrorism clause oblige the recipient to incorporate the same clause in sub-agreements?
- ❓ Would complying with the agreement impede the recipient’s ability to adhere to the humanitarian principles?
- ❓ Would complying with the counterterrorism clause affect the recipient’s acceptance among affected populations and parties to the conflict?
- ❓ Would the recipient be unable to give staff and partner organisations clear instructions about how to comply with the obligations?



## If any answer to the questions above is “yes”

### ❶ Clarify the obligations and terms of the partnership agreement

- Consult internally with senior management, policy advisers, legal personnel and others.
- Consult an external legal adviser for an interpretation of the clause.
- Consult other organisations that receive funds from the same donor or partner.
- Ask the donor or partner for their own interpretation of the clause, the degree of liability inferred and the obligations to ensure compliance.

### ❷ 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 advisers, legal personnel and other relevant departments.

- Identify areas of potential conflict between the terms of the agreement and the organisation's policies, operational capacity and humanitarian principles.
- Establish a position on which terms of the agreement are acceptable or unacceptable.
- Clarify the above position with the donor or partner.
- Share existing or planned risk management policies and practices.

If the answer to any of the initial questions is still “yes” after negotiation, the organisation's management will have to assess the risks and liability involved for the organisation itself, its potential partners and sub-contractors and other humanitarian organisations before deciding whether or not to sign the agreement.