

NGOs' DUE DILIGENCE AND RISK MITIGATION: A HOLISTIC APPROACH



Authored by Shukri Muhomed, Jerome Puri, Helen Stickler and Divya Sugand

(Image Citation: Yales Clusman)

MARCH 2021

ACKNOWLEDGEMENTS

The authors would like to thank all interview participants for their insightful and honest answers. The authors would also like to thank Andrea Hall at the Charity & Security Network and Naomi Pendle, Stuart Gordon and Alice Robinson at the London School of Economics for their support and guidance throughout the project.



DISCLAIMER

This report is submitted in partial fulfilment of the DV453 International Development Consultancy Project and MSc Programme in International Development and Humanitarian Emergencies at the London School of Economics (LSE). The research has been completed on behalf of the Charity & Security Network (C&SN). The views and opinions expressed in this report are those of the authors and do not reflect or represent the views of the C&SN or the LSE.

All rights reserved. No part of this publication may be reproduced, published, stored in a physical or electronic database, or distributed via electronic or physical means without consent from the C&SN and subject to full attribution to the individual authors.

TABLE OF CONTENTS

ACRONYMS	4
EXECUTIVE SUMMARY	5
INTRODUCTION	7
<i>Methodology</i>	8
<i>Limitations</i>	9
LITERATURE REVIEW	10
<i>Conceptual Framework</i>	10
CHAPTER I: CONTEXT.....	13
<i>CTF Legislation</i>	13
<i>Risk Management</i>	15
CHAPTER II: SELF REGULATION AND INTERNAL CONTROLS.....	18
<i>Organizational Integrity: Governance and Ethics</i>	19
<i>Internal Controls: "The First Line of Defense"</i>	20
<i>Policies and Procedures</i>	21
<i>Staff Training</i>	22
<i>Segregation of Duties</i>	23
<i>Record Keeping</i>	23
<i>Audits</i>	24
<i>Program Monitoring</i>	24
CHAPTER III: DUE DILIGENCE.....	26
<i>Definitions and Requirements</i>	26
<i>The Two-Stage Process</i>	28
CONCLUSION.....	33
RECOMMENDATIONS	34
REFERENCES	37
APPENDICES.....	47

ACRONYMS

ACAMS	Association of Certified Anti-money Laundering Specialist
AML	Anti-Money Laundering
C&SN	Charity & Security Network
CTF	Counter-Terrorism Financing
DTGs	Designated Terrorist Groups
FATF	Financial Action Task Force
GLs	General Licenses
GPS	Global Positioning System
ICVA	International Council of Voluntary Agencies
INGO	International Non-Governmental Organization
KYC	Know Your Customer
NGO	Non-Governmental Organization
NRC	Norwegian Refugee Council
NSAGs	Non-State Armed Groups
OFAC	Office of Foreign Asset Control
OFDA	The Office of US Foreign Disaster Assistance
SAMS	System for Award Management
SDGT	Specially Designated Global Terrorist
SDN	Specially Designated Nationals and Block Persons List
TRWC	Thomson Reuters World Check
UNSCR	United Nations Security Council Resolution
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

In 2017, an empirical study by the Charity & Security Network (C&SN) found that **two-thirds of US-based non-governmental organizations (NGOs) had experienced banking issues ranging from delayed wire transfers to the closure of accounts**. This “de-risking” phenomenon – which refers to the “trend of financial institutions terminating or restricting business relationships to avoid rather than manage risk” (FATF, 2014) – remains a profound challenge for NGOs (Gordon, 2020). At least in part, “de-risking” has been driven by the complexity of compliance, including the difficulty of navigating laws surrounding countering the financing of terrorism (CTF) (C&SN, 2017).

Amongst banks and regulators, there remains a **limited understanding of the risk mitigation and due diligence procedures that NGOs have in place to comply with CTF laws and manage risk more broadly across their operations** (Walker, 2017:60; Keatinge and Keen, 2017:19; C&SN, 2021). As a result of this limited awareness, the C&SN commissioned this report to demonstrate the common risk mitigation and due diligence procedures that NGOs have in place to counter-terrorism financing.

The findings presented in this report are based on an extensive literature review and **19 in-depth interviews** with NGOs operating in fragile and conflict affected states, with a particular focus on Somalia. Indeed, it is in **countries such as Somalia, Syria and Yemen where the humanitarian need is profound but CTF laws and “de-risking” amongst banks is restricting NGOs’ ability to respond** (Walker, 2020).

The main findings are that NGOs have instituted **robust risk mitigation and due diligence procedures to comply with CTF laws**. These measures are embedded within a broader risk management framework which NGOs have increasingly adopted over the last decade (Gordon, 2020). Many large NGOs have invested heavily in software, systems and highly qualified governance, legal and finance professionals to ensure compliance. **In part, this reflects NGOs’ acceptance of the need for risk mitigation and due diligence measures and the transition towards a “participatory” approach, which combines elements of both compliance and opposition, towards CTF laws** (Bloodgood and Tremblay-Boire, 2010).

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

In addition, this report highlights the importance of NGOs' voluntary self-regulatory and ethical standards which are designed to ensure the principled delivery of humanitarian assistance – or, as one interviewee described it, the “self-hygiene” within the sector (Interviewee K). At the same time, however, NGOs remain concerned with the complex and often ambiguous nature of the legal framework and the onerous requirements of banks. In particular, the administrative and financial burden of risk mitigation and due diligence is having a detrimental effect in some instances, especially on smaller NGOs.

The report identifies the following four recommendations:

1. Increase Multi-Stakeholder Dialogue

- Implement a multi-stakeholder forum in the United States similar to the United Kingdom's Tri-Sector Working Group between NGOs, banks, regulators and donors.

2. Reassess 'Best Practice Guidance'

- Regulators need to provide clearer guidance on how to interpret CTF laws and the level of due diligence and risk mitigation required by both banks and NGOs.

3. Increase Investment in NGO Due Diligence and Risk Management

- Government donors should allocate a portion of NGO funding to the implementation of due diligence and risk management mechanisms.

4. Increase Co-ordination of Risk Management

- There is a need for more coordination between NGOs in terms of risk management and information sharing.

INTRODUCTION

The state response to 9/11 and specifically the intensification of counter-terrorism financing (CTF) has had a “chilling effect” on humanitarian action (Mackintosh and Duplat, 2013; Eckert et al, 2017; Burke, 2017; Walker, 2017). The ambiguity of CTF laws and concerns over heavy fines and prosecution has forced banks to adopt “quasi-regulatory roles” (Gordon, 2020:316). This has been coupled with the notion, perpetuated by the Financial Action Task Force (FATF), that the NGO sector is “particularly vulnerable” to terrorist abuse. Consequently, banks have adopted a “de-risking” approach towards NGOs (C&SN, 2017) with profound consequences for the delivery of humanitarian assistance (Taraboulsi-McCarthy, 2018).

The phenomenon of “de-risking” and the challenges for NGOs’ financial access has been greatest amongst those operating in fragile and conflict affected states with proscribed terrorist groups, such as Somalia, Syria and Yemen (Keatinge and Keen, 2017). In such contexts, NGOs face multiple risks from security and safety to diversion and corruption (Stoddard Haver and Czwarno, 2016). Consequently, NGOs operating in these environments are required to undertake “enhanced due diligence” (Harvard Law School, 2014). It is, therefore, fragile and conflict affected states that are the concern of this study, with a particular focus on Somalia.

This study has a twofold aim. Firstly, it aims to unveil the most common risk mitigation and due diligence procedures that NGOs have in place to prevent the diversion of funds to terrorist organizations. Secondly, the report aims to highlight the challenges that NGOs encounter when trying to both decipher risk mitigation and due diligence obligations and implement those requirements. In doing so, this report answers calls for there to be more detailed and concrete studies on the procedures that NGOs have in place to comply with CTF laws and prevent diversion (Walker, 2017:60; Keatinge and Keen, 2017:19).

Two main arguments surface in this report. Firstly, CTF risk management and due diligence is just one aspect of a broader and more holistic approach to risk management adopted by NGOs and must, therefore, be viewed within this context. Secondly, the organizations interviewed have adopted a “participatory approach” towards compliance (Bloodgood and Tremblay-Boire, 2010).

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

After the methodology and limitations, this report explains the conceptual framework through which NGOs' risk mitigation and due diligence procedures are assessed. Following that, chapter I contextualizes the report by outlining the emergence of CTF legislation and the professionalization of risk management. Chapter II discusses NGOs' voluntary self-regulatory standards and their internal controls. Chapter III covers NGOs' due diligence procedures with regards to external partners, suppliers and subcontractors. Finally, the report concludes with four recommendations.

Methodology

This report utilizes a qualitative research method that include an extensive literature review, based on both academic and grey literature, and 19 semi-structured interviews. Those interviewed included individuals from legal, governance, finance and program departments within large and small international NGOs and the banking sector.¹

- 11 Large NGOs operating in *several* fragile and conflict affected states.
- 4 Small NGOs operating in only *one* fragile and conflict affected state.
- 3 Interviewees from the banking sector.
- 1 Independent consultant working at the intersection between financial Institutions and NGOs.

Interviewees were located via referral and based on an opportunistic sampling method. All the interviews were conducted online and lasted for one hour on average. Questions were tailored to the interviewee depending on their professional background and the size of their organization. The interviewees will be referred to by codes for anonymity and confidentiality. Where appropriate, the report will highlight

¹ The term NGO is used as an umbrella term, encompassing all NGOs and a distinction between smaller and larger NGOs is made where appropriate.

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

the country being referred to by the interviewee. All procedures were conducted following the LSE Research Ethics Policy and Code of Research Conduct.

Limitations

This study adopts a breadth over depth perspective of NGOs' risk management and due diligence procedures. This is primarily because of the challenges encountered when trying to find a large enough sample to conduct an in-depth study on one country. In addition, the majority of NGOs interviewed were operating in several fragile and conflict affected states, including countries such as Somalia, Syria and Yemen, and would often provide examples from across these jurisdictions. The findings presented in this report are indicative of the good practices being adopted by NGOs operating in high-risk jurisdictions, but due to the limited sample size the findings should not be seen as representative of the NGO sector in its entirety.

LITERATURE REVIEW

Since 9/11, NGOs have been constructed as a “second-order” threat through a process of securitization that legitimizes extraordinary measures to promote state security interests (Sidel, 2006; Howell, 2014). Consequently, governments have adopted an ambiguous bifurcated strategy of containment and engagement towards NGOs due to the misguided perception that NGOs are a major source of terrorist financing (Howell, 2014). The securitization literature problematizes this perception by demonstrating that an insignificant proportion of terrorist financing has come through illegitimate charities (Howell, 2014; Turkmani, 2015; Gordon et al, 2018; Taraboulsi-McCarthy, 2018). This is also supported by evidence from the US Government that shows how domestic charities are no longer considered a high-risk source of terrorist financing, with no charities being designated under E.O. 13224 since 2009 (C&SN, 2016). Nevertheless, CTF laws have become increasingly prohibitive on humanitarian action as legitimate charities continue to be misrecognized as particularly vulnerable to terrorist abuse and NGOs continue to experience “de-risking” (Metcalf-Hough et al, 2015; Eckert et al, 2017; Taraboulsi-McCarthy, 2018; Gordon, 2018, 2020).

Conceptual Framework

This research adopts a conceptual framework that builds upon the securitization literature through the theories of new institutionalism and the new economics of organizations. These theories assess how organizations respond to regulatory changes and enhanced regime complexity (Cooley and Ron, 2002; Betts, 2003; Barnett, 2009; Bloodgood and Tremblay-Boire, 2010). It considers how organizations behave and pursue their objectives in response to the uncertainty (and risk) created by the constraints of an overarching regulatory framework. In particular, the literature identifies five paradigmatic organizational responses (Bloodgood and Tremblay-Boire, 2010):

Five Paradigmatic Organizational Responses

- The first response is “hiding” which refers to minimal compliance with regulations.
- The second response is “shirking” which is a passive form of resistance involving deliberate non-compliance.
- The third response is “vocal opposition” which involves a combination of regulatory compliance alongside public and private protest.
- The fourth response is “participation” which refers to active compliance with regulations while collaborating with political institutions, regulators, banks and other NGOs to

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

change CTF laws from within rather than from the outside. Importantly, participatory NGOs are committed to preventing diversion but consider CTF laws overly restrictive.

- The final response is “litigation” which is confrontational, akin to vocal opposition, that challenges regulations legally.

Our research did not observe any “hiding” or “shirking” behavior from the NGOs interviewed. The NGOs expressed a willingness to comply with CTF laws and had robust risk management and due diligence procedures in place to prevent the diversion of funds to terrorist organizations. At the same time, they explained that current CTF laws negatively impact programming and expressed frustration at the down-streaming of risk to NGOs. Consequently, the organizations seek to challenge these laws while simultaneously complying with them. Therefore, this research advances the concept of a participatory approach as the most common organizational response. As previously stated, this participatory approach represents a combination of an operational commitment to preventing diversion and compliance with CTF laws combined with opposition to over-restrictive regulations.

Many of the organizations interviewed had previously engaged in vocal opposition and/or litigation against overly restrictive CTF laws. However, many were shifting towards more participatory forms of engagement with regulators, legislators and banks to build understanding and encourage a more inclusive regulatory framework. This participatory engagement is fundamental for organizations' long-term risk management strategies. It is an approach that seeks to develop clarity around ambiguous laws, such as “material support”, which will allow organizations to undertake more informed risk management while safeguarding humanitarian principles and beneficiaries' rights to assistance (Walker, 2016, 2020). Indeed, a lawyer at an Islamic NGO represents a view held by most interviewees' when he articulated ambitions of changing the law through a participatory approach:

“We are advocating for change, but to do this you have to work with the enforcers and legislators...We're working with the regulators here in the US to help open their eyes to the fact that we are no greater risk...we have tried to bring our procedures to them and to educate them about our work and how we work... in terms of improving compliance and sharing information the solution is changing the law itself, right? We're in a democracy and have the opportunity to advocate for our position and show the benefits to National Security” (Interviewee A, emphasis added).

NGOs' participatory approach is the product of both bottom-up processes embedded in principled humanitarian action and top-down processes of compliance with regulations. Indeed, this study emphasizes that the aim of humanitarian organizations “is to ensure humanitarian assistance reaches its intended beneficiaries” (Walker, 2020:9). This involves

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

embedding risk management within all organizational practices while opposing laws that prevent assistance from reaching legitimate beneficiaries (Metcalf et al, 2011; Stoddard, et al 2016). This report calls on government actors to respond positively to NGOs' increasingly participatory approach. Indeed, investment, collaboration and knowledge-sharing – currently undermined by risk aversion – would improve accountability and coordination in preventing diversion and safeguarding beneficiaries (Everett and Freisen, 2010; Transparency International, 2016).

CHAPTER I: CONTEXT

This chapter contextualizes the report by briefly outlining the emergence of CTF legislation and the adverse impact it has had on NGOs. In addition, the chapter also discusses the professionalization and institutionalization of risk management, demonstrating how CTF risk management and due diligence is just one aspect of a broader and more holistic approach to risk management adopted by NGOs (Egeland, Harmer and Stoddard, 2011; Stoddard, Haver and Czwarno, 2016).

CTF Legislation

Following 9/11, new regulations and policies were adopted to combat the “global war on terror” (Howell, 2006:126). There is already a substantial amount of literature that details the development of CTF legislation in the aftermath of 9/11 (Howell, 2006, 2014), banks’ response to this legislation (Mackintosh and Duplat, 2013; Keatinge, 2014) and its impact on NGOs (Metcalf-Hough, Keatinge and Pantuliano, 2015; Taraboulsi-McCarthy, 2018; Gordon, Robinson, Goulding and Mahyub, 2018). It is important to note, however, that the new regulations brought in after 9/11 were not a radical development per se, but an intensification of previous policies which moved terrorism financing from a “side-issue to front stage” (Brzoska, 2011:5; see also Daher et al, 2020). This was witnessed in the adoption of UNSCR 1373 which, while largely motivated by the 9/11 attacks, had a predecessor in UNSCR 1267 of 1999 as well as other activities in the United Nations Security Council (Messmer and Yordan, 2010). Similarly, the Financial Action Task Force (FATF) – which was initiated by the G-7 states in 1989 and originally established to tackle money laundering – added terrorism financing to its agenda following the 9/11 attacks. The FATF became a powerful organization adopting nine Special Recommendations (2001 and 2004) on combatting terrorism financing.

The Adverse Effects of CTF Legislation and “De-Risking” on NGOs

- Two-thirds of U.S. based non-profit organizations (NPOs) working abroad experience financial access problems.
- The most common problems include delays of wire transfers (37%), unusual documentation requests (26%) and increased fees (33%).
- 15% of NPOs reported experiencing these problems constantly or regularly.
- Transfers were impacted globally not limited to conflict zones or fragile states.
- Smaller organizations are almost twice as likely to receive unusual additional documentation requests.
- NPOs, categorically treated as high-risk, are sometimes forced to move money through less transparent, traceable and safe channels as a result of delays in wire transfers and requests.

Taken from Eckert, S. E., Guinane, K., and Hall, A. (2017). Financial Access for U.S. Non-profits. Washington, DC: Charity & Security Network.

FATF: The Perception of NGOs as 'High-Risk'

The financial access issues experienced by NGOs (C&SN, 2017) are partly rooted in the pervasive stigma surrounding NGOs as “uniformly being at higher risk” to terrorist financing abuse (Lowery and Ramachandran, 2015:35). This narrative was cemented by FATF’s original Recommendation VIII which stated that NGOs are “particularly vulnerable” to abuse by terrorist organizations (FATF, 2001:3). This perception heavily influenced banks’ responses to NGOs and contributed towards “de-risking” whereby banks restricted and, in many instances, terminated their relationships with NGOs – especially those operating in fragile and conflict affected states (Keatinge and Keen, 2017). Despite the recent revision to Recommendation VIII which acknowledges that “not all NPOs are high risk, and some may represent little or no risk at all” (FATF,2015:7) the original statement by FATF continues to cast a shadow over NGOs. Indeed, despite this revision, bankers interviewed for this research highlighted how guidance from regulators remains highly ambiguous: “We get contradictory statements from the government. In one section [of a report] they say positive things about charities, and then in the next they say charities are high risk” (Interviewee J). Therefore, the implementation of CTF regulations and the uniform approach often adopted has impacted both “the innocent and the guilty in equal measure” (Keatinge, 2014:15). CTF regulations have dramatically increased NGO operating costs, reduced accessible funding for beneficiaries, slowed down agency response and eroded trust between NGOs, donors and local communities (Gordon, 2018).

A Recent Example of CTF Legislation: The Houthi Terrorist Designation

The recent designation of the Houthis in Yemen is an example of the adverse impact of CTF legislation on the delivery of humanitarian assistance. On January 19th 2021, the U.S State Department under President Trump designated the Houthis in Yemen as a Foreign Terrorist Organization under Section 219 of the Immigration and Nationality Act and a Specially Designated Global Terrorist (SDGT) Group under the authority of Executive Order 13224. Following the designation, the U.S Treasury Office of Foreign Asset Control (OFAC) issued five General Licenses (GLs) to permit certain activities in and exports to the country, with GL 13 authorizing all transactions with Ansarullah (the Houthis) for one month.

As the people of Yemen are facing the “world’s worst humanitarian crisis” (UN, 2021), the designation was vehemently opposed by NGOs operating in Yemen and government officials from across the political spectrum. As one interviewee explained: “the Houthi designation was a complete blanket approach...that completely misjudged and did not appreciate just how controlling Ansarullah are. We were facing the possibility of closing down all our operations in Yemen. The cost and the resources it took to navigate the designation was incredible” (Interviewee G).

Indeed, David Beasley – Head of the World Food Programme – expressed similar concerns, stating the designation needed to be reversed as “we are struggling now without the designation. With the designation, it’s going to be catastrophic” (UN 2021). The Houthi designation illustrates that, at times, NGOs continue to express vocal opposition to CTF legislation, especially in instances when policy changes create new risks and hinder the delivery of vital humanitarian assistance (Bloodgood and Tremblay-Boire, 2010).

On February 16th 2021, the Houthi designation was reversed under the Biden administration because of the “dire humanitarian situation in Yemen” and the concern that it would have a devastating impact on Yemenis (U.S. Department of State, 2021).

The Professionalization and Institutionalization of Risk Management

Over the last decade, International NGOs have adopted an increasingly professionalized approach to risk management (Stoddard, Haver and Czwarno, 2016). Indeed, risk management – which is defined as the professional and rigorous process of undertaking coordinated activities to reduce exposure to risk by identifying, monitoring and tackling key risk factors (United Nations, 2015) – has emerged as a “central organizing principle of programming” (Gordon, 2020:316). NGOs are regularly mapping and analyzing risks, often following risk management frameworks adopted from the private sector (NRC, 2015; Transparency International, 2017; Kelly, 2019). As one large NGO stated:

“Risk management is a part of our processes, before implementing any project we have to do a risk assessment and put in place a risk management plan. We assess for all sorts of risks and we categorize these risks into different levels based on their seriousness and probability. If there is a high likelihood of risk, then we change the program implementation plan to try and minimize the risk” (Interviewee I).

This response is also echoed in a 2016 report on INGOs operating in Afghanistan, the Central African Republic, the Iraq/Syria region, Somalia, South Sudan and Yemen which found that thirteen out of fourteen organizations had “widely embraced the concept of risk management” (Stoddard, Haver and Czwarno, 2016:13). For these organizations, safety and security were the main concern but fiduciary risk management, in other words the prevention of fraud and diversion, was their second top-priority (Stoddard, Haver and Czwarno, 2016:13). The various risks often managed by NGOs are detailed in the diagram below:



Adapted from NRC (2020).

CTF risk management has to be situated within this broader and more holistic approach to risk management which, as one individual stated, has “permeated NGO culture” (Interviewee K; see also Egeland, Harmer and Stoddard, 2011). Interviewees rarely discussed risk pertaining to CTF in isolation, instead they referred to risk more broadly. One individual in particular stated that: “when I talk about risk, I talk about all risk” (Interviewee Q). This demonstrates how NGOs have situated CTF risk management within a broader organizational risk management framework.

The Rhetoric of Zero Tolerance

Despite the professionalization of risk management and due diligence, a number of organizations emphasized their discomfort with the “zero-tolerance” approach towards diversion adopted by banks and regulators. The rhetoric of zero-tolerance has long been criticized as “unrealistic” (Haver and Carter, 2016:50) due to the “impossibility” of preventing all forms of diversion when operating in fragile and conflict affected states (see for example United Nations Security Council Report on Somalia, 2013, 2014, 2015, 2016, 2017).

The zero-tolerance stance presents a “moral hazard” (Stoddard, Haver and Czwarno, 2016) for humanitarian organizations and can force them to choose between secrecy or inaction (Haver and Carter, 2016). Those interviewed spoke of an implicit “don’t ask, don’t tell” (Interviewee O and L) approach adopted by government donors which stifles transparency and undermines institutional reporting mechanisms.

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

In addition, the rhetoric of zero-tolerance coupled with the permeation of risk management and concerns over compliance has led some NGOs to adopt a “precautionary” approach (Gordon, 2020:316). As one NGO stated:

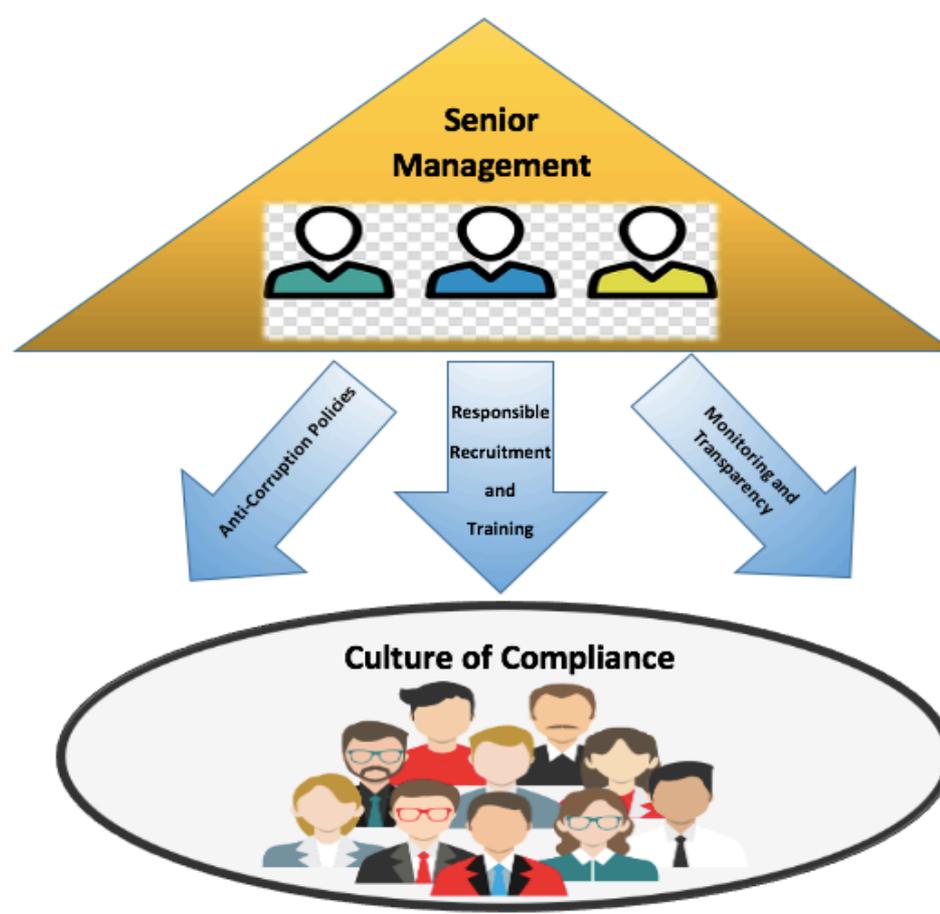
“Organizations have pre-emptively started withdrawing from certain areas. All kinds of organizations are making decisions on where to work sometimes based on the fact that they know it's going to be almost impossible to work in a certain place just logistically, financially and with all of the due diligence requirements required by donors or their bank”
(Interviewee L).

Thus, there is some evidence to suggest that NGOs have become more risk-adverse, operating in areas more suited to their banks' risk appetite, with worrying consequences for those needing humanitarian assistance in areas occupied by terrorist groups (Gordon, 2020). Indeed, the zero-tolerance approach has also been criticized by Mark Lowcock, the United Nations Under-Secretary-General for Humanitarian Affairs, who stated that “The only thing that is zero risk is not to do anything. And, of course, that's not zero risk either, because the cost of inaction is often substantial” (cited in ICVA, 2020:6).

Thus, a zero-tolerance approach is counterproductive because it prevents transparency and precludes meaningful discussions on how to prevent diversion. Furthermore, there is an important caveat here. While humanitarian organizations have extensive risk mitigation and due diligence procedures in place, they “cannot eliminate all risk” (Interviewee G). They can, however, minimize the risk of diversion and the remainder of this report details how humanitarian organizations are doing that.

CHAPTER II: SELF REGULATION AND INTERNAL CONTROLS

This chapter emphasizes the importance of NGOs' voluntary self-regulatory and ethical standards – or the “self-hygiene” (Interviewee K) within the sector – which are designed to ensure the principled delivery of humanitarian assistance. It argues that self-regulation should be interpreted as an essential component of NGOs' risk management, particularly in terms of shaping their attitude towards compliance. In addition, this section also details NGOs' multiple internal controls which constitute the “first line of defense” (United States Government Accountability Office, 2016:11) against fiduciary risks, including that of diversion. Ultimately, these components of NGOs' risk management have been largely overlooked by banks and regulators but for NGOs they are essential. Indeed, as one large NGO operating in Syria stated: “the challenge is persuading banks that these types of safeguards [i.e., building awareness around managing diversion risks, project monitoring, evaluation of beneficiary selection processes, and putting in place whistle-blowing mechanisms] are a valid alternative to screening” (Walker, 2016:20).



Adapted from Principles of International Charity, 2005

Organizational Integrity: Governance and Ethics

The voluntary self-regulatory and ethical standards that many NGOs comply with shape their attitudes towards risk mitigation and the procedures they adopt. The organizations interviewed demonstrated a willingness to comply with CTF legislation, and often stated that preventing diversion was fundamental to their *modus operandi* (see also: Principles of International Charity, 2005; NRC, 2020; ICVA, 2020). As a lawyer for a large NGO said, “no one wants to see their money diverted, that is fundamental to everything we do” (Interviewee G). This was echoed by another individual who stated that “we take great pride that the money goes to beneficiaries. It’s something to be proud of” (Interviewee N).

NGOs’ risk management systems should be seen as both a product of bottom-up voluntary processes related to principled humanitarian action and top-down processes related to regulatory compliance. As one large NGO stated: “a lot of these things [risk mitigation and due diligence] we do anyway, because we don’t want to be actually making matters worse – under the humanitarian principle of Do No Harm” (Interviewee O). Indeed, the appeal to humanitarian principles and voluntary procedures in explaining their reasons for undertaking risk management was a common response amongst those interviewed. For example, one large NGO explained that “if [banks] would listen there is already a lot of self-hygiene in the sector, self-regulation and self-mitigation...on all risks, not just money-laundering and terrorist financing” (Interviewee K). In practice, NGOs’ internally driven commitments to risk management inform their participatory approach towards compliance.

NGOs’ participatory approach is also encouraged by the management of reputational risks. Maintaining a public humanitarian image is critical to NGOs (Cottle and Nolan, 2009; Othman and Ameer, 2014; Stoddard et al, 2016). As two interviewees put it: “our real asset is our reputation and trust” (Interviewee E) and “trust is the capital of any non-profit organization” (Interviewee C). Consequently, reputational management is an important feature of NGOs governance and contributes to organizations’ commitment to preventing diversion (Gordon et al, 2018).

Outside of the sector, however, these ethical standards are often misunderstood. Regulators and banks appear unaware that humanitarian principles are not necessarily sources of risk but are embedded with obligations to mitigate risks and avoid harm (Do No Harm, 2004; Gordon and Donini, 2015). This was confirmed by a banker who stated that until recently “we really didn’t know about the voluntary guidelines that NGOs often adhere to. Knowing this makes the communication a lot easier” (Interviewee J).

It is important to note, however, that even if more banks do become aware of NGOs’ self-regulatory and ethical standards, some banks will continue to lack the “attitude or willingness” to engage with NGOs due to their risk appetite (Interviewee H). Indeed, de-risking amongst banks can be arbitrary at times, based more on biases than actual evidence.

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

This is demonstrated by an example provided by one NGO that had recently changed its name due to the risks associated with the region identified in its name (Interviewee P). The organization had experienced severe and frequent de-risking prior to its name change, but reported that financial transactions are now much quicker, despite having the same risk mitigation and due diligence procedures in place.

Although humanitarian principles can facilitate a compliant attitude towards risk mitigation, they can also form the foundation of NGOs' resistance to certain due diligence requirements. This is especially true for beneficiary screening. An interviewee noted that "[beneficiary screening] is an ethical risk for us" (Interviewee G). Another stated that because of "humanitarian principles – of being impartial and neutral – there's risks involved in providing [beneficiaries'] names" (Interviewee M). This identifies a key disparity between what organizations see as ethical and effective, and what donors and regulators are increasingly viewing as the future of risk management (FATF, 2015: 57; Metcalfe-Hough et al, 2015; UNSC, 2016; Daher et al, 2020; Mitchell et al, 2020). Organizations have sought to protect their humanitarian principles by participating in advocacy to improve regulations; however, governments should do more to reconcile safeguarding beneficiaries with CTF laws.

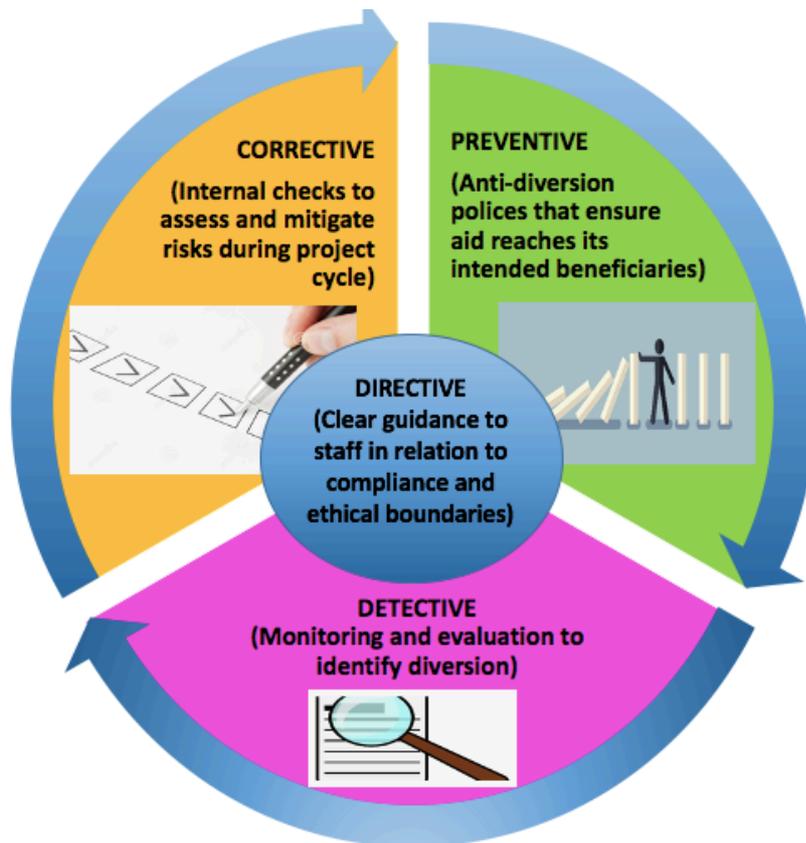
Overall, the NGOs interviewed claimed that preventing diversion was integral to their programming because ensuring assistance reaches intended beneficiaries was the reason for their organizations' existence. In this sense, preventing diversion is a part of an "overarching quality assurance approach" (Kelly, 2019). In addition, and as the remainder of this report demonstrates, NGOs have instituted additional risk mitigation and due diligence procedures in response to regulatory changes alongside these self-regulatory and ethical standards.

Internal Controls: "The First Line of Defence"

Alongside NGOs' self-regulatory and ethical standards, their internal controls function as the "first line of defence" against diversion (United States Government Accountability Office, 2016:11). Internal controls include, but are not limited to, written policies, staff training, the segregation of duties, proper record keeping, financial transparency and auditing, and finally supervision and monitoring (Othman and Ameer, 2014; Transparency International, 2017). All of these processes were evident in the organizations interviewed for this research.

This culture of compliance is embedded in the codes of conduct, principles and policies that encompass the preventative and directive dimensions of the NRC's "Three-lines of Defense - Model".

THREE LINES OF DEFENCE



Adapted from NRC, n.d

 *Policies and Procedures*

Policies and procedures are vital preventive and directive controls (NRC, 2020). As one large NGO stated, “the most important thing to prevent diversion is processes and systems” (Interviewee G). NGOs continue to demonstrate a professionalized approach towards risk management and have continuously refined their internal policy instruments. A report by Stoddard, Haver and Czwaro (2016:16) found that US-based NGOs had over four times as many written policies compared to European NGOs, with fiduciary risk management receiving the most attention in these policies. As the report states, “this suggests that the US-based INGOs may be particularly concerned with financial and fiduciary compliance and systems” (Stoddard, Haver and Czwaro, 2016:16). These policies help to ensure organizational integrity and are often embedded in a wider risk management framework (Transparency International, 2017).

NGOs’ external partners and suppliers are also required to abide by these policies: “We have written policies over financing terrorism – all staff, banks, suppliers, and so on have to comply.

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

We do the vetting and then before we enter into a contract, they have to agree to CTF terms” (Interviewee I). The inclusion of standard clauses in contracts – which command partners to comply with all “sources of counterterrorism-related legal and/or policy obligations from multiple types of sources, such as government donors’ domestic criminal and civil laws and the UN Security Council 1267 list” (Harvard Law School 2014:23) – is common amongst NGOs. It is important to note, however, that the asymmetrical power relations between government donors and NGOs can produce restrictive clauses that operate against humanitarian principles of neutrality and independence (Howell 2014; Gordon 2018, 2020). For example, one organization stated that they felt USAID contracts had become too politicised, forcing them to cut ties with the donor (Interviewee Q).

Staff Training

Although policies are an essential tool, their existence alone is not enough to prevent diversion. To be effective, policies have to be applied through staff training and awareness-building (Transparency International, 2017). The research for this report revealed that organizations are demonstrating a clear commitment to staff training, including on how to identify risks and conflicts of interest, strategies to prevent diversion, and understanding the local and cultural context. As one interviewee explained: “[We do] A lot of training and understanding of the compliance issues for our staff, at all levels, from staff working at the community level to staff working in the finance section...all the staff are properly trained on our policies” (Interviewee Q).

Related to this, organizations have also established whistle-blowing mechanisms and are raising staff awareness around these mechanisms. This provides a channel for staff to report suspected diversion activities confidentially (see also, Othman and Ameer 2014; Kelly, 2019). The fact that interviewees at various levels – including lawyers, field staff and trustees – were aware of their organizations’ objectives, policies and compliance mechanisms demonstrates the effectiveness of NGOs’ awareness-building across their organizations. This further suggests that the organizations interviewed have adopted a participatory approach towards compliance with attempts to embed these compliance mechanisms throughout their organizations.



Segregation of Duties

The segregation of duties and responsibilities is an important tool for preventing and detecting fiduciary risks (Othman and Ameer, 2014; FATF 2015; Curwell, 2020). The organizations interviewed detailed their multi-step verification processes and the segregation of duties utilized to ensure accountability and transparency, to mitigate the risk of illegitimate transfers and to verify that funds had been received by the appropriate functionary. In most instances, large sums of money had to be verified by three people from different departments, including senior management. For example, the Head of Finance at the Somali Headquarters of a large NGO described how, before payments are released, there is a 23-step procedure involving community-engagement, departmental collaboration, auditing of beneficiary lists and photographic evidence for continuing projects (Interviewee I).

Indeed, similar findings are evident elsewhere. A report by Transparency International (2017) on Somalia and Afghanistan found that the rotation of staff is an important tool for detecting instances of fraud and diversion. For example, one organization in Somalia required staff from one part of the country to visit and monitor programmes in another part of the country (Transparency International, 2017). Such an approach can be vital for combating all forms of fiduciary risks, including diversion and corruption.



Record Keeping

The collection and retainment of records is essential for financial transparency and the auditing process. The organizations interviewed had written records of all their financial accounts. One NGO stated that they “required all expenses spent on projects to have supporting documents such as receipts, contracts, pictures, and sometimes video clips” (Interviewee C). These records were retained for at least five years and in some instances up to seven years. Furthermore, many of the organizations had upgraded and digitized their financial systems. For example, the Somali Office of a large NGO had recently transitioned from paper to digital accounts to improve its financial transparency.

Detailed and quality recording keeping, however, is challenging in fragile and conflict affected states. As the same individual explained, “There are challenges. Most of our records were paperwork and keeping those documents for 7 years is challenging in Somalia, especially if you have to move locations regularly due to the security context” (Interviewee I).

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach



Financial audits and reporting are essential tools for demonstrating the integrity of humanitarian responses. All the organizations utilized external auditing bodies for an “added level of scrutiny” (Interviewee K). External auditors from government-approved lists were hired to conduct in-depth assessments of organizations’ implementation of anti-diversion policies and the transparency of their financial accounts (see also Burke, 2013; UNSC, 2015). As one small NGO operating in Somalia explained: “the auditors go one step further, [it’s] not just about policy but do you implement the policy, are they reflected in the process of project implementation from A to Z, from request to payment. They are a key part of the process for us” (Interviewee Q).

Another NGO also explained that the auditing process is essential because “it makes sure the books and records are all accurate, that the donations made are acknowledged and there are receipts, that it goes through legal and formal banking channels...” (Interviewee N). This finding is echoed by Transparency International’s (2017:33) assertion that “humanitarian responses are audited more than any other aid activities”. Overall, the organizations appear to have instituted transparent financial systems.



Planning, monitoring and evaluation are central detective and corrective components of risk management (NRC, 2015). Monitoring involves tracking the implementation of projects to ensure that resources are not being diverted (Somalia Humanitarian Fund, 2018). Previous research on monitoring reveals that organizations in fragile and conflict affected states conduct a variety of activities ranging from capacity assessments of partners, spot-checks, field visits and third-party monitoring (Majid et al, 2018; Streets et al, 2016), to relatively new tools such as web-based monitoring, biometrics, GPS tracking and satellite imagery for remote management (Howe et al, 2015; Haver and Carter, 2016; Sagmeister and Ruppert, 2016; Sagmeister and Streets, 2016).

In high-risk contexts, organizations have adopted mechanisms that enable remote management. In particularly insecure regions, such as South-Central Somalia or North-East Syria, NGOs are utilizing remote beneficiary feedback systems and third-party monitoring mechanisms. For example, one large NGO operating in Syria explained how they have “a beneficiary complaint mechanism in place” (Interviewee P). Some organizations in Somalia were using multiple methods including both direct and third-party monitoring to triangulate their information (Interviewee I) – this reflects the “gold standard” for NGOs (Howe et al,

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

2015:7; see also UNSC, 2012). Others, however, felt that the risk of being unable to directly monitor local partners in some contexts was too high. Consequently, these organizations had stopped working with external partners in high-risk environments and opted instead for direct implementation (Interviewees A, C, Q).

Although monitoring was interpreted as an essential tool for preventing and detecting diversion, it bears emphasising that those interviewed often stated that the ultimate aim of monitoring was to ensure funds were being used "in the way we intended and that they're having the impact on the community that we're hoping for" (Interviewee A). Thus, reminding us of the importance of principled humanitarian action and the "overarching quality assurance approach" (Kelly, 2019) in which CTF risk mitigation is embedded.

Chapter II: Summary

This chapter has detailed NGOs' commitment to voluntary self-regulation and ethical standards that ensure humanitarian assistance reaches its intended beneficiaries (Principles of International Charity, 2005). Self-regulation and risk management are central to NGOs' operating cultures, reflecting a commitment to preventing diversion while safeguarding beneficiaries (Walker, 2020). It has been emphasised that NGOs' participatory approach to risk management is a product of both a bottom-up commitment to principled humanitarian action and top-down compliance with regulations. The chapter also outlined several internal control mechanisms that constitute NGOs' "first line of defence" against fiduciary risks that emphasize accountability and transparency. The internal controls described in this section are indicative of those included in the FATF's (2015:25-26) quadruple model designed for NGOs' robust internal governance practices as an effective shield against terrorist abuse. Building on this, the next chapter details the due diligence procedures adopted by NGOs to verify the legitimacy of staff, partners and suppliers.

CHAPTER III: DUE DILIGENCE

The aim of this chapter is twofold. Firstly, it seeks to describe the procedures and systems that NGOs have in place to conduct due diligence on employees, partners and suppliers. In doing so, this section addresses calls for NGOs to demonstrate to banks and regulators the systems at their disposal to prevent diversion (Walker, 2017:60; Keatinge and Keen, 2017:19). Secondly, this section also highlights the complexity of compliance and the practical challenges that NGOs encounter when trying to both decipher due diligence requirements and implement those requirements. Ultimately, this section further demonstrates the adoption of a participatory approach by NGOs (Bloodgood and Tremblay-Boire, 2010). NGOs' methods of due diligence have become increasingly professionalized with considerable investments being made in software, systems and staff. At the same time, however, all NGOs expressed concern with and opposition towards the stringent and often ambiguous nature of CTF requirements.

Overview of Due Diligence: Definitions, Requirements and Challenges

Firstly, it is important to emphasize that for NGOs due diligence encompasses more than screening (the checking of names of prospective staff, partners, money agents, suppliers and contractors against counterterrorism and sanctions lists) which tends to be the method prioritised by banks (Walker, 2016). The Norwegian Refugee Council (2015) defines due diligence as "assessing the ability of an organization 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". The ultimate aim is to ensure that humanitarian assistance reaches the intended beneficiaries (Norwegian Refugee Council, 2015). In comparison, the FATF (2015:22) states that "Due diligence is the range of practical steps that need to be taken by NPOs so that they are reasonably assured of the provenance of the funds given to the NPO; confident that they know the people and organizations the NPO works with; and able to identify and manage associated risks". The point is not to suggest that such definitions are at odds with one another but rather that they emphasize different aspects.

For humanitarian organizations, due diligence involves multiple methods (McEvoy, 2013; Harvard Law School, 2014). Thus, in the same way that CTF risk management is embedded in a much broader risk management framework, so is due diligence. Indeed, several organizations highlighted the importance of due diligence for "organizational fit" or what has also been referred to as "integrity due diligence" (Curwell, 2020). As one large NGO stated of their due diligence process on partner organizations:

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

“There are multiple assessments that occur. There is a broad value-based assessment, we want to know if the organization fits with our values, culture and ethos. Then there is a programmatic assessment, do they have the capability and the expertise to deliver a project. And then there is a long structural assessment, which covers their history, governance, policies and procedures” (Interviewee G).

A review of available due diligence assessment guidelines by NGOs recommends that due diligence includes the following:

- Details of the organization (e.g., name, location, mandate, history, registration and legal status, website, senior staff names and qualifications, copies of passports, services offered, type of entity).
- Obtain copies of documentation, including written policies and procedures, accounting systems, job descriptions and auditor’s reports.
- Visit field offices to interview personnel, observe operations, test systems and control mechanisms.
- Conduct a capacity assessment, including organizational, operational, financial and logistical.
- Screening against terrorist/sanctions lists.
- Triangulate data, including obtaining references from donors or other NGOs who have previously worked with the organisation.

Compiled using McEvoy, 2013; Norwegian Refugee Council, 2015; CARE, 2017; Khah, 2020.

In high-risk jurisdictions, NGOs are required to undertake extensive screening as a part of “enhanced due diligence” (Harvard Law School, 2014:25). However, the exact expectations of what that entails remain ambiguous. A profound challenge facing NGOs, as highlighted by those interviewed, was the lack of clear guidance from banks and regulators about the precise level of due diligence required (see also Gordon and McCarthy, 2018; Walker, 2020). As one large NGO stated: “It’s a huge challenge trying to determine when enough a due diligence is enough...nobody knows how far down the food chain you have to go [in terms of screening]” (Interviewee O).

Although banks could certainly provide clearer guidelines on the level of due diligence required, the fault does not lie entirely with them. Interviews conducted with individuals in the banking sector revealed that banks feel they have been “unfairly” given the role of suspecting terrorist transactions (Interview J; see also Sinha, 2013). Indeed, financial institutions have regularly and consistently critiqued the ambiguity of the guidance provided by regulators (Metcalf-Hough, Keatinge and Pantuliano, 2015; Scieurba, 2018; Walker, 2020). One large NGO, for example, explained that “the challenge [for both NGOs and banks] is the lack of clarity about what the expectations are....banks are saying that they don’t know how to interpret the guidance” (Interviewee G).

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

In sum, there is ambiguity over what exactly constitutes due diligence, banks often prioritize screening while NGOs pursue holistic procedures that go beyond screening to ensure assistance reaches its intended beneficiaries (Walker, 2020). However, there is a lack of clarity over how much information is actually required by banks due to the down streaming of risk by regulators and governments. The next section details the two-stage due diligence process adopted by NGOs to navigate CTF requirements.

Due Diligence: A Two-Stage Process

The due diligence process implemented by NGOs can be broken down into two-stages. The first stage is an initial assessment conducted by in-country staff and the second is an extensive review conducted by the legal, finance and compliance team at an organization's Headquarters.

Initial Assessment

The initial assessment is conducted by in-country teams and consists of the collection of information required by their Headquarters – such as the “name of bank/supplier/partner, names of the senior management, their dates and places of birth, their ownership structure, and proof of identification” (Interviewee P) – and also involves site visits, an in-depth review of an entity's systems, operations and documentation, and interviews with key staff. As one in-country finance officer of a large NGO summarised it:

“We do checks here on the ground. Before engaging with another entity, we visit their premises, sit down with their management, review their structures, their procedures and policies. We therefore do internal checks and balances at the Somalia level. Once we are confident, we then engage with our Headquarters for them to do the big vetting”
(Interviewee I).

Alongside the methods outlined above, the in-country teams also emphasized the importance of triangulating the information they collected. The ability of in-country teams to collect and triangulate information relies heavily on trust networks. Information about potential staff, partners and suppliers is cross-checked with trusted “community networks” (Interviewee Q) and, often “informally” (Interviewee I), with other NGOs in the county who may have prior experience of working with the individual or entity in question (see also Transparency International, 2017:29). This finding is similar to that of Howe, Stites and Chudacoff (2015:8) who highlighted the importance that in-country teams in Syria, especially in comparison to their international counterparts, place on the role of trust in partnerships.

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

Similarly, the importance of understanding the context and the operating environment was seen as essential to the due diligence process on the ground. Those in Headquarters highlighted how their program teams were the “best positioned” (Interviewee A) to conduct the initial assessments based on their enhanced understanding of the context. Indeed, as one small NGO operating in Somalia stated: “knowledge of the local context plays an important role in identifying and avoiding such organizations [that have violated CTF legislation] before even these organizations are listed formally” (Interviewee C). Thus, there is an extensive formal, and in some sense informal, due diligence process that often happens in-country.

For in-country teams, however, the requirements to collect an extensive amount of documentation and information on potential partners and suppliers does pose several challenges. One individual based in Somalia stated that: “It is not easy to get the information needed [by Headquarters], people are so sensitive. People are worried about confidentiality and what the information will be used for. The mentality and fear that it will be used negatively is there” (Interviewee I). Thus, there are concerns that extensive due diligence is undermining trust between NGOs and local communities (Howell, 2006; Howe, Stites and Chudacoff, 2015; Stoddard, Haver and Czwarno, 2016).

The Challenges of Hawala

In fragile and conflict affected states, NGOs sometimes have to transmit funds through hawala systems due to the lack of extensive formal banking structures (Taraboulsi-McCarthy, 2018; Daher et al, 2020; Walker, 2020). The use of such systems makes maintaining end-to-end transparency over payments challenging for both humanitarian organizations and banks, and difficulties in acquiring information on Hawala companies' ownership structure and registration has made banks reluctant to engage with such entities (Walker, 2016). Indeed, Hawala systems are often perceived as informal and unregulated systems that lack professional risk management and due diligence procedures (Baron, 2004; Sciuba, 2018; Bureau of Counterterrorism, 2019; HM Treasury Office of Financial Sanctions Implementation, 2020). However, there is evidence – from both previous reports and our own interviews – that many of these services have improved their due diligence procedures and now “maintain above-industry standard AML/CTF compliance mechanisms” (Oxfam 2015:9; see also Taraboulsi-McCarthy, 2018). One individual explained that a number of large Hawala services, such as Dahabshiil, “have done a lot on their own due diligence and compliance, they have entire units focused on this, they do better KYC (Know Your Customer)...they have digitized all their records and the flow of money is quick, visible and easy to track” (Interviewee Q).

Extended Assessment

The “big vetting” done by Headquarters involves an extensive review of the documentation provided by in-country teams and the screening of individuals and entities. Large NGOs have instituted robust due diligence procedures with dedicated compliance departments, professional and experienced staff, and sophisticated software. All of the large NGOs interviewed for this study were conducting extensive screening, often using the same software as international banks. One such example is the Thomson Reuters World Check (TRWC) database. The TRWC monitors more than 600 sanction, regulatory, watch and law enforcement lists alongside media reports and government records (Gordon et al, 2018). One large NGO interviewed explained how they use the TRWC database to screen all employees across their operations, all of their suppliers, the individual board members of partner organizations, their partner’s subgrantees and suppliers (Interviewee O).

The extensive screening conducted by large NGOs demonstrates the adoption of a participatory approach towards compliance with CTF laws. This extensive screening can be compared to a 2004 survey conducted by the Chronicle of Philanthropy which revealed that large NGOs were either “hiding or shriking” by not verifying and checking all their employees or partners against terrorist lists as often or as quickly as required (cited Bloodgood and Tremblay-Boire, 2010). Large private screening databases have, however, been heavily criticized (see box below).

Thomson Reuters World Check Database and ‘Unofficial Information’

A number of NGOs emphasized their concern with the systems they have become “reliant” (Interviewee G) on to screen individuals and entities. The disparity between various multinational and national sanctions lists has resulted in the emergence of a number of private companies offering screening, but a profound challenge with these screening sites is their use of unofficial information (Lowery and Ramachandran, 2015). As the C&SN noted in 2016, “the last ten years has seen rapid growth of private companies that sell lists of people and organizations that are either on a government terrorist list or have been mentioned in news stories, blogs and unverified online sources as having suspected ties to terrorists”.

In particular, the TRWC website states that their proactive approach allows them to “identify high-risk entities months or years before they are listed” (quoted in Metcalfe-Hough, Keatinge and Pantuliano, 2015:14). This approach, however, has resulted in numerous organizations being identified as ‘at risk’ which has resulted in “de-risking”. Indeed, this has had a profoundly disproportionate impact on Islamic charities and has contributed towards a “logics of exclusion” (Favarel-Garrigues, Godefry and Lascoumes, 2011; Valkanov, 2019). Previous reports have uncovered the use of Islamophobic news channels and blogs as sources of information on screening sites such as TRWC (BBC News, 2015; C&SN, 2016). In addition, TRWC has been sued in the UK for defamation. One NGO interviewed stated that “Due diligence software and databases are causing so many problems, especially for Islamic charities. These sites are using unreliable information on the web...there is often no legal and often no factual basis for the inclusion of some individuals and organizations in these databases” (Interviewee E).

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

As the preceding paragraphs have demonstrated, due diligence is an involved process that requires considerable input from in-country teams and Headquarters. At both the country level and at Headquarters, interviewees spoke of the consistent cross-checking of information across different departments from the program and operations teams, to the legal and financial departments. As one large NGO summarised it: "We have multiple people looking at it with different sets of eyes to make sure it's getting done properly" (Interviewee A).

Naturally, such extensive due diligence and screening in particular is expensive and resource intensive. While the need for due diligence was not disputed, all organizations interviewed spoke of the substantial cost of compliance (see also Keatinge and Keen, 2017; Walker, 2017; Gordon and McCarthy, 2018; Stoddard, Czwarno and Hamsik, 2019). TRWC, for example, charges at per number of units screened. The cost of using such databases is also increased by the number of "false positives" that are caught by the system which require additional checks. One large NGO explained how they do extra due diligence – which often involves requesting more information – on individuals or companies who have an 80 percent or higher match score. Thus, NGOs will often critically review any matches. However, previous reports have highlighted how banks rarely take this additional step due to the extra costs involved (Metcalf-Hough, Keatinge and Pantuliano, 2015:14).

The cost of compliance and the subsequent investments required in highly trained staff and systems has had a disproportionate impact on smaller NGOs (Metcalf-Hough, Keatinge and Pantuliano, 2015; Transparency International, 2017; Daher et al, 2020). The smaller NGOs interviewed for this study were far more likely to use free versions of these datasets and screen against individual lists such as the US Government's System for Award Management (SAM) or the Treasury Department's Specially Designated Nationals and Blocked Persons List (SDN). Nevertheless, all NGOs complained about the limited financial support from government donors for due diligence. The large NGOs expressed frustration with the fact that "all of this due diligence isn't funded by the donor" (Interviewee O). For smaller NGOs, who may not have the same overheads available, the financial costs are more damaging. One small NGO stated that they are "never given money to resource these processes, we are told to do a lot with almost nothing" (Interviewee Q).

Chapter III: Summary

This chapter has shown that NGOs are committed to comprehensive due diligence practices that extend beyond the screening requirements of banks (Walker, 2020). This reflects NGOs' participatory approach to risk management that involves holistic procedures to verify the legitimacy and organizational fit of employees, partners, and suppliers. NGOs have adopted a two-stage due diligence process that involves multiple levels within an organization, from an initial assessment by in-country staff to an extended assessment by Headquarters.

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

Community networks and contextual knowledge play a significant role in these assessments that often capture information missed by sanctions lists (Haver and Carter, 2016; Curwell, 2020). However, there remains significant problems with the resource-burden of screening, the ambiguity of CTF requirements and misinformation within certain sanctions lists (e.g., TRWC). These issues are having a damaging effect on principled humanitarian action and inform NGOs opposition to CTF laws in their current form, as part of the participatory approach. Governments should clarify for banks and NGOs how much information is required during due diligence, allow adequate latitude in contracts to cover due diligence costs, and work to improve information on sanctions lists which can be discriminatory.

CONCLUSION

This report has demonstrated the most common risk mitigation and due diligence procedures that NGOs operating in fragile and conflict affected states have in place to prevent the diversion of funds to terrorist organizations. Simultaneously, this report has also highlighted the challenges that NGOs encounter when trying to implement the requirements of banks and regulators.

For regulators and banks, screening has been the most prioritized form of due diligence and risk mitigation. While large NGOs have certainly invested heavily in software, systems and highly qualified staff to ensure compliance and oversee extensive screening, this report has sought to demonstrate that for NGOs risk mitigation and due diligence is a far more holistic and encompassing process.

Many NGOs' are subjected to sectoral self-regulatory and cultural standards which are aimed at ensuring the principled delivery of humanitarian assistance – a key aspect of which is preventing diversion to ensure that funds reach intended beneficiaries. In addition, NGOs have a number of internal controls that function as vital preventative and detective methods of minimising risks. The challenge, however, remains one of informing and convincing regulators and banks of the importance of these alternative forms of risk mitigation and due diligence (Walker, 2016).

Overall, the report argues that NGOs have adopted a participatory approach towards compliance. The NGOs interviewed demonstrated an increasing acceptance of the need for risk mitigation and due diligence procedures whilst also challenging some of the more restrictive and ambiguous elements of the legal framework and banks' requests. This participatory approach is the product of both bottom-up processes embedded in principled humanitarian action and top-down processes of compliance with regulations.

Nevertheless, NGOs continue to encounter several challenges. The principal challenge, for both NGOs and banks, remains one of ambiguity and interpretation. In particular, NGOs and banks are both confronted with the challenge of deciphering when enough due diligence is enough. Due to the regulatory risks involved, this report acknowledged that it is unlikely that policy-makers and regulators will provide precise and specific guidance to banks and NGOs on the level of risk mitigation and due diligence required but pragmatic discussions between the three actors are necessary to find a degree of clarity. Doing so will better facilitate the delivery of vital humanitarian assistance

RECOMMENDATIONS

Based on the findings, this report has identified four recommendations to aid discussions surrounding NGOs' due diligence and risk management to create the conditions for an effective and coordinated response to de-risking.



Increase Multi-Stakeholder Dialogue

There is a critical need for more open dialogue between NGOs, banks, regulators and donors to identify the "key bottlenecks" in NGOs' financial transactions, address legal ambiguities and identify effective solutions to reduce de-risking (Walker, 2020:28). The desire for more dialogue was common amongst NGOs, with one individual stating that "the solution is a three-way triangle trying to understand how we can work together, the system needs to be more fluid and transparent for everyone" (Interviewee E).

This report recommends that the U.S. Treasury implements a multi-stakeholder forum similar to the United Kingdom's Tri-Sector Working Group. The Tri-Sector Working Group has proved successful in increasing communication between the actors, as one interviewee stated: "in the UK we have started to all sit around the table and we are hoping this process will spread" (Interviewee E; C&SN, 2021). To be successful it should be a continuous consultation process that ensures that all stakeholders are actively involved in not only identifying key issues but devising solutions to ensure suitability, effectiveness and transparency. Initially, the dialogue should centre around the lack of clear guidance from regulators about the level of due diligence required to comply with CTF legislation, the administrative and financial burden due to the cost of compliance and the need to safeguard beneficiaries from the adverse effects of CTF legislation.

There are steps that regulators, donors and NGOs can take to facilitate this process:



What regulators should do: Reassess 'Best Practice Guidance'

As previously stated, regulators – including the U.S. Treasury (the Office of Foreign Assets) and the Financial Action Task Force (FATF) – need to provide clearer guidance on how to interpret CTF laws and the level of due diligence and risk mitigation required by both banks and NGOs. Due to the complex nature of operating in fragile and conflict states, interviewees emphasized the need for more context-specific best practice guidance to accurately assess individual operational circumstances and mitigate risks. A reassessment of "best practice guidance" issued by FATF is needed to move away from the current "one-size-fits-all

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

approach” as “the operational guidance for each context can be different” (Interviewee G). This will go a long way in providing clarity on the level of standards required.



What donors should do: *Increase Investment in NGO Due Diligence and Risk Management*

Government donors should allocate a portion of NGO funding to the implementation of due diligence and risk management mechanisms. An important challenge encountered by all NGOs was the substantial costs involved in conducting extensive due diligence and risk mitigation. In particular, the overheads needed to conduct extensive screening “legitimize some NGOs and exclude others” – this invariably favours larger NGOs who have the organizational capacity, financial resources and legal knowledge to meet such requirements (Gordon, 2020:315-6). As one interviewee explained: “there is a capacity gap between [our organization] and local NGOs...we can afford to conduct these detailed assessments, but it is much harder for local NGOs” (Interviewee I). Therefore, to strengthen risk management and due diligence mechanisms more financial resources and support from donors is required.

Additionally, donors could work with third-party training providers – such as the Association of Certified Anti-Money Laundering Specialists (ACAMS) or the Financial Action Task Force (FATF) – to provide training programs to NGOs to increase their knowledge of, and capacity to meet, due diligence and risk management standards. If adopted, this recommendation could help advance commitments to the Humanitarian Grand Bargain and its localization agenda by increasing smaller/local NGOs familiarity with the laws, terminologies and best practices associated with the CTF laws (Mohamed-Saleem, 2020).



What NGOs should do: *Increase Co-ordination of Risk Management*

There is a need for more coordination between NGOs in terms of risk management and information sharing. The examples given throughout this report are those of individual efforts on the part of organizations. Indeed, there was very little evidence of organizations collaborating or sharing lessons with regards to risk management and due diligence. This is problematic because different standards of risk management within the same context can create operational difficulties (Kelly, 2019). It is important to note, however, that collaboration and transparency between NGOs has been impeded by the threat of criminal sanctions and the zero-tolerance approach that has created a climate of fear and secrecy (Pantuliano, 2011).

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

The coordination of risk management could be achieved through the use of specialized risk management units, taking lessons from the UN Risk Management Unit in Somalia and the Risk Management Office in Nepal (Kelly, 2019). This could facilitate the adoption of a more coordinated approach to the identification and management of risks within particular contexts and may prove particularly helpful for smaller organizations.

REFERENCES

- Barnett, M. (2009). Evolution without Progress? Humanitarianism in a World of Hurt. *International Organization*, 63(4), 621-663.
- Baron, B. (2004). Detering Donors: Anti-Terrorist Financing and America Philanthropy. *The International Journal of Not-for-Profit Law*, 6(2), 1-12.
- BBC News. (2015). Why did HSBC shut down bank accounts? Retrieved from <https://www.bbc.co.uk/news/magazine-33677946> (last accessed 20th March 2021).
- Betts, A. (2003). Public goods theory and the provision of refugee protection: The role of the joint-product model in burden-sharing theory. *Journal of refugee studies*, 16(3), 274-296.
- Bloodgood, E.A., and Tremblay-Boire, J. (2010). NGO responses to counterterrorism regulations after September 11th. *The International Journal of Not-for-Profit Law*, 12(4), 5-19.
- Brzoska, M. (2011). The Role of Effectiveness and Efficiency in the European Union's Counterterrorism Policy: The Case of Terrorist Financing. *Economics of Security Working Paper Series*, 51: 1-17.
- Burke, A. (2013). *Donor Approaches to Risk in Fragile and Conflict Affected States. Case Study: Somalia*. The Policy Practice. Retrieved from https://assets.publishing.service.gov.uk/media/57a08a0e40f0b652dd000536/61064-Somalia_case_study_010713.pdf (last accessed 20th March 2021).
- CARE. Due-Diligence Assessment Development, Instructions for Staff. Retrieved from <https://www.careemergencytoolkit.org/wp-content/uploads/2017/03/Annex-12.6-Due-Diligence-Assessment-CUSA.pdf> (last accessed 20th March 2021).
- Cash Learning Partnership. (2018). *CTP in Challenging Contexts: Case Study on CTP and Risks in Northern Mali*. Retrieved from <https://www.calpnetwork.org/wp-content/uploads/2020/03/160818calp-mali-case-studyfinalenweb-1.pdf> (last accessed 20th March 2021).

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

Charity & Security Network. (2016). World Check: The Dangers of Privatizing Terrorist Lists. Retrieved from https://charityandsecurity.org/financial-access/worldcheck_private_databases_raise_concerns/ (last accessed 20th March 2021).

Charity & Security Network. (2020). Congress Enacts Partial Fix to Anti-Terrorism Clarification Act. Retrieved from https://charityandsecurity.org/news/sres_171_aid_palestine/ (last accessed 20th March 2021).

Charity & Security Network. (2021). *Proposals for New Congress and Biden Harris Administration to Support and Facilitate Humanitarian and Peacebuilding Operations Through NGOs*. Retrieved from https://charityandsecurity.org/wp-content/uploads/2021/03/CSN-Transition-Memo_V4.pdf (last accessed 20th March 2021).

Cooley, A., and Ron, J. (2002). The NGO Scramble: Organizational Insecurity and the Political Economy of Transnational Action. *International Security*, 27(1), 5-39.

Curwell, P. (2020). Due diligence. In *Terrorist Diversion: A Guide to Prevention and Detection for NGOs*. London: Routledge.

Daher, J., and Moret, E. (2020) *Invisible Sanctions: How over-compliance limits humanitarian work on Syria Challenges of Fund Transfer for Non-Profit Organizations Working on Syria*. IMPACT. Retrieved from https://impact-csrd.org/reports/Invisible_Sanctions_IMPACT_EN.pdf (last accessed 20th March 2021).

Eckert, S., Guinane, K., and Hall, A. (2017). *Financial Access for U.S. Nonprofits*. The Charity & Security Network. Retrieved from [https://charityandsecurity.org/system/files/FinancialAccessFullReport_2.21_\(2\).pdf](https://charityandsecurity.org/system/files/FinancialAccessFullReport_2.21_(2).pdf) (last accessed 20th March 2021).

Egeland, J., Harmer, A., and Stoddard, A. (2011). *To Stay and Deliver: Good practice for humanitarians in complex security environments*. Office for the Coordination of Humanitarian Affairs. Retrieved from https://www.unocha.org/sites/dms/Documents/Stay_and_Deliver.pdf (last accessed 20th March 2021).

FATF. (2001) *FATF IX Special Recommendations*. Retrieved from <https://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Standards%20-%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf> (last accessed 20th March 2021).

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

FATF. (2014). *Risk of Terrorist Abuse in Non-Profit Organisations*. Retrieved from <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf> (last accessed 20th March 2021).

FATF. (2015). *Combating the abuse of non-profit organisations (Recommendation 8)*. Retrieved from <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf> (last accessed 20th March 2021).

Favarel-Garrigues, G., Godefry, T., and Lascoumes, P. (2011). Reluctant partners? Banks in the fight against money laundering and terrorism financing in France. *Security Dialogue*, 42(2): 179-196.

Featherstone, A. (2019). *OCHA Evaluation of Country-Based Pooled Funds: Somalia Country Report*. UN OCHA. Retrieved from <https://www.unocha.org/sites/unocha/files/2019%20OCHA%20Evaluation%20of%20CBPFs%20-%20Somalia%20Report.pdf> (last accessed 20th March 2021).

Gordon, S. (2020). Regulating Humanitarian Governance: Humanitarianism and the 'Risk Society'. *Politics and Governance*, 8(4), 306–318.

Gordon, S. (2018). Terrorism. In Allen, Macdonald, Radice ed. *Humanitarianism a Dictionary of Concepts*. London: Routledge. 309-327

Gordon, S., and Donini, A. (2015). Romancing principles and human rights: Are humanitarian principles salvageable? *International Review of the Red Cross*, 97(897-8), 77-109.

Gordon, S., and El Taraboulsi-McCarthy, S. (2018). *Counter-terrorism, bank de-risking and humanitarian response: A path forward. Key findings from four case studies*. Overseas Development Institute. Retrieved from <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12368.pdf> (last accessed 20th March 2021).

Gordon, S., Robinson, A., Goulding, H., and Mahyub, R. (2018). *The impact of bank de-risking on the humanitarian response to the Syrian crisis*. Overseas Development Institute. Retrieved from <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12376.pdf> (last accessed 20th March 2021).

Hamsik, L. (2019). *NGOs & Risk: Managing Uncertainty in Local-International Partnerships. Case Studies of Northeast Nigeria & South Sudan*. InterAction and

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

Humanitarian Outcomes. Retrieved

from https://www.humanitarianoutcomes.org/sites/default/files/publications/ngorisk2_cases_tudies.pdf (last accessed 20th March 2021).

Harvard Law School. (2014). *An Analysis of Contemporary Counterterrorism-Related Clauses in Humanitarian Grant and Partnership Agreement Contracts*. Counterterrorism and Humanitarian Engagement Project. Retrieved

from <https://reliefweb.int/report/world/analysis-contemporary-anti-diversion-policies-and-practices-humanitarian-organizations> (last accessed 20th March 2021).

Haver, K., and Carter, W. (2016). *What it Takes: Principled pragmatism to enable access and quality humanitarian aid in insecure environments*. Secure Access in Volatile Environments. Retrieved

from https://assets.publishing.service.gov.uk/media/5f82c645d3bf7f6ba2c19f01/SAVE_2016_Principled_pragmatism_to_enable_access_and_quality_humanitarian_aid_in_insecure_environments.pdf (last accessed 20th March 2021).

HM Treasury Office of Financial Sanctions Implementation. (2020). *Charity Sector Guidance: Financial Sanctions Guidance for Charities and Other Non-Governmental Organisations (NGOs)*. Retrieved

from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957850/OFSI_Guidance_-_Charity.pdf (last accessed 20th March 2021).

Howe, K., Stites, E., and Chudacoff, D. (2015). *Breaking the Hourglass: Partnerships in Remote Management Settings – The Cases of Syria and Iraqi Kurdistan*. Feinstein International Center. Retrieved from https://fic.tufts.edu/assets/Breaking-the-Hourglass_Syria_Iraqi-Kurdistan.pdf (last accessed 20th March 2021).

Howell, J., (2006). The global war on terror, development and civil society. *Journal of International Development: The Journal of the Development Studies Association*, 18(1), 121-135.

Howell, J. (2014). The securitisation of NGOs post-9/11. *Conflict, Security & Development*, 14(2), 151-179.

ICVA. (2020). *Risk and Humanitarian Culture: An ICVA Briefing Paper*. Retrieved

from <https://reliefweb.int/report/world/risk-and-humanitarian-culture-icva-briefing-paper-january-2020> (last accessed 20th March 2021).

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

Jackson, A. (2014). *Humanitarian negotiations with armed non-state actors: key lessons from Afghanistan, Sudan and Somalia*. Overseas Development Institute. Retrieved from <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8847.pdf> (last accessed 20th March 2021).

Keatinge, T. (2014). *The Role of Finance in Defeating Al-Shabaab*. Royal United Services Institute. Retrieved from https://rusi.org/sites/default/files/201412_whr_2-14_keatinge_web_0.pdf (last accessed 20th March 2021).

Keatinge, T., and Keen, F. (2017). *Humanitarian Action and Non-State Armed Groups. The Impact of Banking Restrictions on UK NGOs*. Chatham House. Retrieved from <https://www.chathamhouse.org/2017/04/humanitarian-action-and-non-state-armed-groups-impact-banking-restrictions-uk-ngos> (last accessed 20th March 2021).

Kelly, L. (2019). *Lessons on the effectiveness of risk management units in reducing fiduciary risk. Knowledge, evidence and learning for development*. Knowledge, Evidence and Learning for Development. Retrieved from https://assets.publishing.service.gov.uk/media/5d711b68ed915d08f7111e1e/643_risk_management.pdf (last accessed 20th March 2021).

Lowery, C., and Ramachandran, V. (2015). *Unintended Consequences of Anti-Money Laundering Policies for Poor Countries*. Centre for Global Development. <https://www.cgdev.org/sites/default/files/CGD-WG-Report-Unintended-Consequences-AML-Policies-2015.pdf> (last accessed 20th March 2021).

Mackintosh, K., and Duplat, P. (2013). *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action*. UN OCHA and Norwegian Refugee Council. Retrieved from https://www.unocha.org/sites/dms/Documents/CT_Study_Full_Report.pdf (last accessed 20th March 2021).

Majid, N., Abdirahman, K., Poole, L., and Willitts-King, B. (2018). *Funding to local humanitarian actors: Somalia case study*. Overseas Development Institute. Retrieved from <https://www.odi.org/publications/11212-funding-local-humanitarian-actors-somalia-case-study> (last accessed 20th March 2021).

Mc Evoy, C. (2013). *Risk management and accountability practices among NGOs working in Somalia*. Somalia NGO Consortium. Retrieved from <http://somalianngoconsortium.org/download/578571d6a969f/> (last accessed 20th March 2021).

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

Messmer, W.B., and Carlos, Y.L. (2010). The Origin of the United Nations' Global Counter-Terrorism System. *Historia Actual Online, Forthcoming*, 22: 1-20.

Metcalfe-Hough, V., Keatinge, T., and Pantuliano, S. (2015). *UK humanitarian aid in the age of counterterrorism: perceptions and reality*. Overseas Development Institute. Retrieved from <https://www.odi.org/publications/9301-uk-humanitarian-aid-age-counterterrorism-perceptions-and-reality> (last accessed 20th March 2021).

Mitchell, P., Bumbacher, S., and Yoshikawa, L. (2020). *Cash and Voucher Assistance and Risk in Financial Management and Compliance*. The Cash Learning Partnership. Retrieved from <https://reliefweb.int/sites/reliefweb.int/files/resources/1575312843.CaLP%20CVA%20Financial%20Management%20Compliance%20FINAL.pdf> (last accessed 20th March 2021).

Mohamed-Saleem, A. (2020). Localising Humanitarianism, Peace Making, and Diplomacy: The Challenges Facing Muslim INGOs. *Journal of Peacebuilding & Development*, 15(2), 178-191.

Nolan, D. and Cottle, S. (2009). *How the media's codes and rules influence the ways NGOs work*. Nieman Journalism Lab. Retrieved from <https://www.niemanlab.org/2009/11/simon-cottle-and-david-nolan-how-the-medias-codes-and-rules-influence-the-ways-ngos-work/> (last accessed 20th March 2021).

Norwegian Refugee Council. (n.d.). Counterterrorism and Risk Management Frameworks. Retrieved from <https://www.nrc.no/shorthand/stories/counterterrorism-and-risk-management-frameworks/index.html> (last accessed 20th March 2021).

Norwegian Refugee Council. (n.d.). Managing Counterterrorism Risks: Examples of Counterterrorism Clauses. Retrieved from https://www.nrc.no/globalassets/pdf/reports/toolkit/nrc_toolkit_02_examples-of-counterterrorism-clauses.pdf (last accessed 20th March 2021).

Norwegian Refugee Council. (2015). *Risk Management Toolkit in Relation to Counterterrorism Measures*. Retrieved from <https://www.nrc.no/globalassets/pdf/reports/nrc-risk-management-toolkit-2015.pdf> (last accessed 20th March 2021).

Norwegian Refugee Council. (2019). Counter-terrorism and humanitarian action: the perils of zero tolerance. Retrieved from <https://www.nrc.no/opinions-all/counter-terrorism-and-humanitarian-action-the-perils-of-zero-tolerance/> (last accessed 20th March 2021)

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

Norwegian Refugee Council. (2020). Toolkit for Principled Humanitarian Action: Managing Counterterrorism Risks. Retrieved from <https://www.nrc.no/toolkit/principled-humanitarian-action-managing-counterterrorism-risks/> (last accessed 20th March 2021)

Othman, R., and Ameer, R. (2014). Institutionalisation of risk management framework in Islamic NGOs for suppressing terrorist financing. *Journal of Money Laundering Control*, 17(1): 96-109.

Principles of International Charity. (2005). *Principles of International Charity* (developed by the Treasury Guidelines Working Group of Charitable Sector Organizations and Advisors). Retrieved from https://www.icnl.org/research/library/transnational_principles/ (last accessed 20th March 2021).

Sagmeister, E., and Steets, J. (2016). *The use of third-party monitoring in insecure contexts: Lessons from Afghanistan, Somalia and Syria*. Secure Access in Volatile Environments. Retrieved from <https://www.gov.uk/research-for-development-outputs/the-use-of-third-party-monitoring-in-insecure-contexts-lessons-from-afghanistan-somalia-and-syria> (last accessed 20th March 2021).

Sciurba, M. (2018). The Heart of Know Your Customer Requirements: The Discriminatory Effect of AML and CTF in Times of Counterterrorism in the UK. *European Journal of Crime, Criminal Law and Criminal Justice*, 26(3), 222-235.

Sidel, M. (2006). The Third Sector, Human Security, and Anti-Terrorism: The United States and Beyond. *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 17(3), 199-210.

Sinha, G. (2013). AML-CTF: a forced marriage post 9/11 and its effect in financial institutions. *Journal of Money Laundering Control*, 16(2), 142-158.

Somalia Humanitarian Fund. (2018). *Annual Report*. Retrieved from https://reliefweb.int/sites/reliefweb.int/files/resources/Somalia_HF_Annual_report_2018.pdf (last accessed 20th March 2021).

Steets, J., Sagmeister, E., and Ruppert, L. (2016). *Eyes and Ears on the Ground: Monitoring aid in insecure environments*. Secure Access in Volatile Environments. Retrieved from https://www.gppi.net/media/SAVE_2016_Monitoring_aid_in_insecure_environments.pdf#:~:text=Eyes%20and%20Ears%20on%20the%20Ground:%20Monitoring%20aid,hu-

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

[%20manitarian%20action%20amid%20high%20levels%20of%20insecurity](#). (last accessed 20th March 2021).

Stoddard, A. (2020). Organizational Impediments. In *Necessary Risks* (pp. 113 – 134). Palgrave Macmillan: Cham.

Stoddard, A., Haver, K., and Czwarno, M. (2016). *NGOs and Risk: How international humanitarian organisations manage uncertainty*. InterAction and Humanitarian Outcomes. Retrieved from https://www.humanitarianoutcomes.org/sites/default/files/publications/riskii_partnerships_global_study.pdf (last accessed 20th March 2021).

Taraboulsi-McCarthy, S.E. (2018). *The challenges of informality: counter-terrorism, bank de-risking and financial access for humanitarian organisations in Somalia*. Overseas Development Institute. Retrieved from <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12258.pdf> (last accessed 20th March 2021).

Taraboulsi-McCarthy, S.E., Majid, N., and Willitts-King, B. (2017). *Private sector engagement in complex emergencies: case studies from Yemen and southern Somalia*. Overseas Development Institute. Retrieved from <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11354.pdf> (last accessed 20th March 2021).

Transparency International. (2016). *Collective Resolution to Enhance Accountability and Transparency in Emergencies: Southern Somalia Report*. Retrieved from https://images.transparencycdn.org/images/CREATE_Somalia_report_2016.pdf (last accessed 20th March 2021).

Transparency International. (2017). *Collective Resolution to Enhance Accountability and Transparency in Emergencies: Synthesis Report*. Retrieved from https://images.transparencycdn.org/images/2017_CREATE_Synthesis_EN.pdf (last accessed 20th March 2021).

Turkmani, R. (2015). *ISIL, JAN and the War Economy in Syria*. London School of Economics. Retrieved from <http://www.securityintransition.org/wp-content/uploads/2015/08/ISIL-JAN-and-the-war-economy-in-Syria1.pdf> (last accessed 20th March 2021).

U.S. Department of State. (2021). Revocation of the Terrorist Designations of Ansarallah Press Statement. Retrieved from <https://www.state.gov/revocation-of-the-terrorist-designations-of-ansarallah/> (last accessed 20th March 2021)

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

United Nations. (2015). *Somalia: Risk Management for NGOs*. Risk Management Unit. Retrieved from https://www.undp.org/content/dam/unct/somalia/docs/rmu/Risk%20Management%20For%20NGOs_English.pdf (last accessed 20th March 2021).

United Nations Security Council. (2013). Letter dated 12 July 2013 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council. Retrieved from https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_415.pdf (last accessed 20th March, 2021)

United Nations Security Council. (2014). Letter dated 10 October 2014 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council. Retrieved from https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2014_727.pdf (last accessed 20th March 2021)

United Nations Security Council. (2015). Letter dated 9 October 2015 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council. Retrieved from http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_801.pdf (last accessed 20th March 2021)

United Nations Security Council. (2016). Letter dated 7 October 2016 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council. Retrieved from https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_920.pdf (last accessed 20th March 2021)

United Nations Security Council. (2017). Letter dated 2 November 2017 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council. Retrieved from https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2017_925.pdf (last accessed 20th March 2021)

United Nations. (2019). *Risk Management Unit, Somalia*. Retrieved from <https://somalia.un.org/sites/default/files/2020-01/RMU.PDF> (last accessed 20th March 2021).

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

United States Government Accountability Office. (2016). *Syria Humanitarian Assistance: Some Risks of Providing Aid Inside Syria Assessed, but U.S. Agencies could Improve Fraud Oversight*. Retrieved from <https://www.gao.gov/assets/gao-16-629.pdf> (last accessed 20th March 2021).

Valkanov, N. (2019). Smart Compliance or How New Technologies change Customer Identification Mechanisms in Banking. *Electronic Journal of Economics and Computer Science*, 2: 12-19.

Walker, J. (2016). *Humanitarian Impact of Syria-Related Unilateral Restrictive Measures*. Office of the United Nations Resident Coordinator in the Syrian Arab Republic. Retrieved from https://www.voltairenet.org/IMG/pdf/Humanitarian_Impact_of_Syria-Related_Unilateral_Restrictive_Measures.pdf (last accessed 20th March 2021).

Walker, J. (2017). *Examining Viable Banking and Payment Options for the Movement of International Humanitarian Funds into Syria*. United Nations Economic & Social Commission for Western Asia. Retrieved from https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/200526-risk-management-guide_en_0.pdf (last accessed 20th March 2021).

Walker, J. (2020). *Risk Management Principles Guide for Sending Humanitarian Funds into Syria and Similar High-Risk Jurisdictions*. Retrieved from https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/200526-risk-management-guide_en_0.pdf (last accessed 20th March 2021).

APPENDICES

Appendix 1: Revised Terms of Reference

Organization and Department	Charity & Security Network
<p>Project Working Title</p>	<p>The Due Diligence and Risk Mitigation Programmes at US-based Humanitarian Aid Organizations working in fragile and conflict-affected states.</p>
<p>Background: Two short paragraphs. In the first, please provide a brief description of your organization and its objectives. In the second, please provide a brief introduction to the topic to be addressed by the project. Why is the organization interested? Why is the subject itself interesting?</p>	<p>C&SN is a resource and advocacy centre working at the intersection of non-profit rights and national security. Current work includes financial access for NPOs, advocacy at with the Financial Action Task Force, reform of the US material support law, and politically motivated attacks against NPOs.</p> <p>This project would capture the most common aspects of NPOs' due diligence and risk mitigation programs designed to counter the finance of terrorism (CFT). C&SN would like to use this data to enhance its advocacy efforts with the US Treasury Department, as well as dialogue with financial institutions, which often do not understand what is already in place to prevent diversion of funds. This has led to bank "derisking" of NPOs, particularly with significant delays in international wire transfers.</p>
<p>Questions: (One or two sentences. What is the motivating question? What is it, specifically, that your organization would like to know?)</p>	<ol style="list-style-type: none"> 1. What due diligence and risk mitigation programs do these NGOs have in place? 2. What are some of the difficulties around implementing regulators' and banks' requirements for due diligence and risk mitigation?
<p>Objective: (Short paragraph that explains what you hope to get out of the answer and how you may use the students' work to advance organizational objectives.)</p>	<p>This research project aims to inform and enhance C&SN's advocacy work and potentially help facilitate the international transfer of funds by providing C&SN with a better understanding of the due diligence and risk mitigation programmes that NPOs have in place, this information can then be shared with the US Treasury and financial institutions.</p>
<p>Methodology: How the students are expected to answer the question. E.g., desk research, interviews, survey, review of internal documents, etc. If you wish the students to define the methodology, please say so.</p>	<p>The research methodology will consist of both a desk-based literature review (grey literature, policy papers and peer reviewed literature) and semi-structured interviews with NPOs operating in fragile and conflict-affected states.</p>

Contact: (The name and contact information of the person within your organization who will be responsible for liaising with the students.)

Andrea Hall, Policy Counsel

Appendix 2: Original Terms of Reference

Organization and Department	Charity & Security Network
Project Working Title	Due Diligence and Risk Mitigation programs at humanitarian aid and development organizations, with an emphasis on US-based organizations working internationally
Background: Two short paragraphs. In the first, please provide a brief description of your organization and its objectives. In the second, please provide a brief introduction to the topic to be addressed by the project. Why is the organization interested? Why is the subject itself interesting?	<p>C&SN is a resource and advocacy centre working at the intersection of non-profit rights and national security. Current work includes financial access for NPOs, advocacy at with the Financial Action Task Force, reform of the US material support law, and politically motivated attacks against NPOs.</p> <p>This project would capture the most common aspects of NPOs' due diligence and risk mitigation programs designed to counter the finance of terrorism (CFT). C&SN would like to use this data to enhance its advocacy efforts with the US Treasury Department, as well as dialogue with financial institutions, which often do not understand what is already in place to prevent diversion of funds. This has led to bank "derisking" of NPOs, particularly with significant delays in international wire transfers.</p>
Question: (One or two sentences. What is the motivating question? What is it, specifically, that your organization would like to know?)	What are NPOs doing to prevent diversion of funds to terrorists? What due diligence and risk mitigation programs are commonly in place at these organizations?
Objective: (Short paragraph that explains what you hope to get out of the answer and how you may use the students' work to advance organizational objectives.)	This data could inform and enhance C&SN's advocacy and ultimately help facilitate international funds transfers. We would share the data with both US Treasury and financial institutions in order to move the dial on current conversations around risk in the NPO sectors.
Methodology: How the students are expected to answer the question. E.g. desk research, interviews, survey, review of internal documents, etc. If you wish the students to define the methodology please say so.	The outdated information on C&SN's website could serve as a starting point, and students would want to be familiar with C&SN's 2017 study on Financial Access for U.S. Non-profits. Desk research may or may not prove fruitful, although there may be sector initiatives that are publicly available. Most research would be via interviews with various humanitarian and development orgs.
Contact: (The name and contact information of the person within your organization who will be responsible for liaising with the students.)	Andrea Hall, Policy Counsel

Terms of Reference Process of Change:

Over the course of the project, the research team has made a number of changes to the original terms of reference. Primarily, the team has tried to narrow the scope of the project to make it feasible within the timeframe. Initially, we decided to focus on Somalia but we faced considerable difficulties in finding enough participants who were both operating in Somalia and willing to discuss their risk mitigation and due diligence procedures. Consequently, we decided to broaden the terms of reference by focusing instead on fragile and conflict affected states with designated terrorist groups. This was because those interviewed were often working in several high-risk jurisdictions and would often use examples from across these countries.

Additionally, our decision to include a question on the challenges faced by NGOs in implementing regulators' and banks' requirements was because all interviewees brought up the challenges they face. For them, it was of vital importance that alongside a detailed discussion of the good practices they have in place the research also highlights the difficulties they face.

Appendix 3: Interviewee List

The research team conducted 19 semi-structured interviews with individuals from legal, governance, finance and program departments within large and small international NGOs, and the banking sector. The interviewees all requested anonymity.

Interviewee	Role	Organization	Date
A	General Counsel	Large NGO (US-based)	03/02/2021
B	General Counsel	Large NGO	08/02/2021
C	Executive Director	Small NGO (US-based)	23/02/2021
D	Independent Consultant	NA (US-based)	08/02/2021
E	Chief Executive Officer	Large NGO	22/02/2021
F	Program Coordinator	Large NGO	
G	Head of Governance	Large NGO	10/02/2021
H	Director	Financial Institution (US-based)	07/02/2021
I	Head of Finance (in-country)	Large NGO	03/02/2021
J	Head of Compliance	Financial Institution (US-based)	04/02/2021
K	Advocacy and Communications Officer	Large NGO	10/02/2021
L	Program Officer	Large NGO	10/02/2021
M	International External Relations	Large NGO	09/02/2021
N	Founder	Small NGO	06/02/2021
O	Compliance Policy Advisor	Large NGO (UK/US-based)	22/12/2020
P	Head of Programs	Large NGO	04/03/2021
Q	Executive Director	Small NGO (US-based)	03/02/2021
R	Director	Small NGO	12/03/2021
S	Executive Vice President	Financial Institution (US-based)	04/02/2021

Appendix 4: Interview Questions

The interview questions were tailored to the interviewee depending on their professional background and the size of their organization. Below is an indication of the questions asked.

1. What challenges has your organization faced with regards to bank-de-risking?
2. Do you think that it is fair that banks deem charities/NPOs as being 'high-risk'?
3. What internal mechanisms do NGOs have in place to comply with CTF legislation?
4. How do you conduct due diligence on external partners, suppliers and subcontractors?
5. What are some of the challenges around risk mitigation and due diligence?
6. Do you think such procedures are common amongst all NGOs, irrespective of size?
7. Do you think the 'best practice' guidance from ACAMS or FATF is realistic?
8. Do you think a 'gap' exists between regulators' requirements and the current due diligence and risk mitigation programs currently in place at NGOs? If so, how do you think the 'gap' can be bridged?

Appendix 5: Glossary of Key Terms

De-risking: The “trend of financial institutions terminating or restricting business relationships to avoid rather than manage risk” (FATF, 2014).

Diversion: When any resources, including cash or in-kind assistance, fails to reach the intended recipient(s) because of “an abuse of entrusted power for private gain” (Kelly, 2019:6).

Due diligence: “Assessing the ability of an organization 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” (NRC, 2015).

Fragile and conflict affected states: Countries or territories that have been classified by the World Bank’s Fragile, Conflict and Violence Group based on their financial and security status.

Humanitarian principles: Humanitarian principles are the self-regulatory ethical standards NGOs hold themselves to in the delivery of humanitarian aid. Impartiality refers to the provision of assistance based solely on need, irrespective of an individual’s identity. Neutrality refers to non-partisanship in the delivery of aid. Humanity refers to the equal treatment of all human beings. Independence refers to the autonomy of NGOs’ decision-making from politics and government.

Large NGO: Humanitarian non-governmental organization operating in several fragile and conflict affected states with Headquarters outside of the jurisdiction.

Participatory approach: A combination of compliance with CTF laws and opposition to aspects of those laws that restrict the delivery of principled humanitarian action. Importantly, this opposition takes the form of collaboration with legislators, regulators and banks, rather than confrontation.

Regulators: Bodies tasked with the supervision of global money laundering and terrorist financing. They perform a watchdog role by overseeing organisations’ commitments to CTF laws.

Risk appetite: The degree of risk that an organization is willing to accept.

Risk management/mitigation: “Risk management is an approach which attempts to reduce exposure to the most serious risks by identifying, monitoring and tackling key risk factors” (NRC, 2015)

NGOs' Due Diligence and Risk Mitigation: A Holistic Approach

Screening: The checking of names of prospective staff, partners, money agents, suppliers and contractors against counterterrorism and sanctions lists.

Small NGO: Humanitarian non-governmental organization operating in one fragile and conflict affected state with Headquarters outside of the jurisdiction.

Terrorist financing: The illicit use of funds for terrorist purposes, including collecting, providing or diverting funds to designated groups.