

RISK CATEGORIES AND OPERATIONAL IMPACTS

TOOL 1

Risk category	Operational impact
CRIMINAL	<p>Prosecution over the provision of support to designated terrorist groups (DTGs): The broad definition of support for terrorism that some states have adopted makes this a risk for humanitarian organisations and their staff if they are deemed to have provided support for DTGs by carrying out certain activities. For example, the US Supreme Court ruled in 2010 that training DTG members in international humanitarian law (IHL) was classed as material support and so prohibited.</p> <p>Criminalisation of staff: Criminal laws designed to counter terrorism have the potential to criminalise humanitarian workers. Local staff members may be particularly exposed to risks under the host country's counterterrorism legislation. Potential offences that could involve criminal responsibility include presence in an area of designated terrorist activity, the indirect financing of terrorism and broad forms of association with proscribed groups.</p>
SECURITY	<p>Insecurity: Engaging with non-state armed groups (NSAGs), regardless of whether they are DTGs, is a key element of gaining and maintaining secure access to people in need. Engagement also helps to establish consent and acceptance for humanitarian organisations' activities, which is vital to ensure staff safety. Counterterrorism measures can create uncertainty for organisations about whether contact with NSAGs that are also DTGs is permissible.</p> <p>Some organisations refrain from engaging with these groups as a result. Organisations that fail to engage with NSAGs because of counterterrorism concerns risk negative perceptions of partiality and non-neutrality, which in turn puts staff at risk. Other organisations do engage with these groups, but do not provide staff with support and guidance about how to do this. This can create a "don't ask, don't tell" approach whereby field-based staff engage without the knowledge of senior management, and feel unable to openly discuss dilemmas and risks.</p>

<p>CONTRACTUAL</p>	<p>Delay: The inclusion of counterterrorism clauses in grant agreements can delay the implementation of humanitarian initiatives while organisations work with donors to try to negotiate changes or seek clarity about vague wording. The fact that donors do not always inform organisations when they introduce a new counterterrorism clause or change the wording of existing clauses only increases the likelihood of delays. Some requirements, including screening and/or vetting procedures, may also delay the provision of assistance.</p> <p>Delays can also occur as a result of bank de-risking, which happens when banks refuse, or take longer than expected to provide transfers to locations perceived as high risk in order to minimise their own exposure to accusations of facilitating terrorist financing.</p> <p>Lower quality of response: Compliance with donor counterterrorism requirements may reduce the quality of an organisation’s response by causing it to choose modalities perceived as lower risk even if they are less appropriate and effective for a particular context.</p> <p>Risk transfer to staff: Counterterrorism-related wording in grant agreements can be vague and difficult to interpret. It is not uncommon for humanitarian organisations to accept these clauses without fully understanding the requirements involved. Staff tasked with implementing a project under a grant agreement may not have been involved in negotiating it, but they shoulder the burden of complying with the requirements, and organisations often do not provide the necessary guidance or support on how to do so.</p> <p>Risk transfer to local partners: International NGOs often pass on donor counterterrorism requirements to local partners in the form of “flow-down clauses” without ensuring they understand what signing the clause entails, or that they have the resources and capacity to comply. Local partners may accept requirements that are impossible for them to adhere to or that endanger their staff as a result.</p> <p>Establishing a precedent: This can occur when one organisation accepts a counterterrorism clause that others deem unacceptable. Some organisations may choose to negotiate more favourable terms, but their leverage and ability to do so is weakened if others have already accepted the requirements.</p> <p>Loss of funding: Some organisations have refused donor funding as a result of uncertainty about, or unwillingness to accept the terms of counterterrorism clause required of them. Expenditure may also be disallowed under a contract if an organisation does not comply with all donor regulations.</p>
<p>HUMANITARIAN PRINCIPLES</p>	<p>Compromised impartiality: In order to minimise exposure to counterterrorism risks, organisations may choose not to provide assistance in areas controlled by NSAGs that are also DTGs, regardless of the humanitarian needs there. This compromises the impartiality of their response and leaves affected populations without the assistance they need simply because of their location. If an organisation is not perceived as impartial, it can also put staff safety at risk.</p>