

# HARVARD LAW SCHOOL

## Program on International Law and Armed Conflict

### THE COSTS OF COMPLIANCE WITH COUNTERTERRORISM MEASURES

At least as of September 2017, famine threatened populations in four countries—Nigeria, Somalia, South Sudan, and Yemen—with, in total, over 20 million people in need of immediate, life-saving assistance. These critical situations have been compounded by protracted armed conflict involving non-state armed groups. States and international bodies have designated many of these groups, including the Islamic State of Iraq and Syria and al-Qaeda affiliates, as “terrorist” and have imposed corresponding measures against them. These designated entities—which often control access to certain civilian populations, restricting or preventing humanitarian assistance from reaching those in need—are active in at least three of the four famine-risk countries.

The grave situation in these countries exemplifies a broader challenge facing civilians, states, donors, and humanitarian actors in a seemingly ever-growing number and variety of contexts. That challenge arises where counterterrorism approaches seeking to suppress “support” to designated groups intersect with the humanitarian imperative, which demands that aid and assistance be delivered on an impartial basis irrespective of terrorist or other such designations. This tension may manifest most sharply where the presence of designated terrorist groups implicates an array of international and domestic counterterrorism laws. That is because many of those laws impose diverse, multi-faceted, and far-reaching requirements on humanitarian actors. The rationale underlying these laws is that all actors—including humanitarians—must take sufficient steps to ensure that resources, funding, and other forms of support and assistance do not directly or indirectly benefit individuals and groups designated as “terrorist.” The implementation of those laws may pose conceptual and operational challenges for principled humanitarian actors seeking to access and assist populations most in need, especially where those populations are under the *de facto* control of a designated group.

Over many years, the Harvard Law School Program on International Law and Armed Conflict (HLS PILAC) has extensively studied the effect of counterterrorism laws on principled humanitarian action. As part of these efforts, HLS PILAC conducted the first pilot empirical study on the impact of counterterrorism laws on humanitarian action. This study found that humanitarian actors report a real and tangible impact of counterterrorism laws on their work. The study also found that, in some instances, counterterrorism laws present costs, in both time and resources, to humanitarian actors. What remains unclear, or unknown, following the pilot

empirical study, is the actual financial costs borne by humanitarian organizations to comply with counterterrorism measures, and how those costs may be experienced within an organization, in terms of staffing, resources, and time.

Compliance with any anti-diversion (or pro-beneficiary/end-user) regulations necessarily entails financial and other costs. A risk in the current funding and operational environment is that those costs cannot be accurately and comprehensively evaluated due to lack of valid data. Because compliance costs are seemingly often spread throughout organizations and carried out by a range of actors, the precise scope of these costs is currently unknown to the vast majority of (and potentially all) organizations and across the humanitarian sector more broadly. These costs also appear to be largely (and, at times, fully) unknown to donors—including the cost of compliance with their own regulations and those of their co-donors. We suspect that, as a result of these data and knowledge gaps, many decisions are made on the basis of abstract assessments without the benefit of sound empirical evidence. Moreover, many large humanitarian actors operate under different and overlapping domestic counterterrorism regimes, in addition to those mandated by the United Nations Security Council. In this context, data about the costs of abiding by relevant counterterrorism frameworks could strengthen the analytical basis for formulating and implementing policy.

Our research aims to identify the monetary and other costs to principled humanitarian organizations that arise as those organizations seek to comply with counterterrorism laws and regulations. We anticipate that our analysis will include observations on the data along with possible policy implications for states, donors, and international bodies.

The timing of and need for this information has become critical. Information on compliance costs may provide additional evidence on which to guide decision-making about the impacts of counterterrorism laws on principled humanitarian assistance. Such information may also inform dialogue between humanitarian actors, donors, and multilateral and intergovernmental bodies, as well as strengthen those entities' analytical basis to formulate internally- and externally-facing policies. Finally, that information may also serve to inform developments concerning counterterrorism legal and regulatory frameworks.

## RESEARCH ACTIVITIES

### *Primary Research Question and Anticipated Outcome*

HLS PILAC researchers aim to identify the monetary and other costs to principled humanitarian organizations that arise as those organizations seek to comply with counterterrorism laws and regulations. Our research will not seek to evaluate the “effectiveness” of compliance programs, or to inquire about sensitive details, such as the safety

and security measures that they may entail. Rather, our research aims to understand and document the relevant costs—both direct and indirect, from staffing, to time, and to other resources—that organizations experience in developing, implementing, and maintaining their counterterrorism-related compliance programs. The project will culminate in a report detailing HLS PILAC’s findings.

### ***Methodology***

HLS PILAC researchers will contact humanitarian organizations regarding their possible participation in the study. If an organization is willing to participate, HLS PILAC researchers will interview relevant staff for information regarding the organization, its compliance measures, and any associated costs. The research was reviewed by the Committee on the Use of Human Subjects. Information shared with HLS PILAC researchers will be kept confidential in line with relevant Harvard University [guidelines](#), and information shared in HLS PILAC’s final report will be anonymous. We will identify the names of organizations participating in the research in an appendix to the final report.

## **INITIAL RESOURCE LIST**

### ***Academic Analyses and Policy Resources***

- Abdul Latif Jameel Poverty Action Lab (J-PAL), Massachusetts Institute of Technology (MIT), *Conducting Cost-Effectiveness Analysis (CEA)*, <https://www.povertyactionlab.org/research-resources/cost-effectiveness>.
- Jonathan Bauchet and Jonathan Morduch, *Selective Knowledge: Reporting Biases in Microfinance Data*, Perspectives on Global Development and Technology, Vol. 9, Issue 3 (2010), <https://www.nyudri.org/research-index/2010/selectiveknowledge>.
- Christopher Blattman et al., *Measuring the measurement error: A method to qualitatively validate survey data*, 120 Journal of Development Economics 99 (2016), <https://chrisblattman.com/documents/research/2016.MeasuringMeasurementError.JDE.pdf>.
- InterAction, *NGOs and Risk: How International Humanitarian Actors Manage Uncertainty*, February 2016, <https://www.interaction.org/document/ngos-and-risk-how-international-humanitarian-actors-manage-uncertainty>.
- Morten Jerven, *Development by Numbers: A Primer*, Development Research Institute Working Paper, New York University (NYU) (2016), <https://www.nyudri.org/research-index/2016/developmentbynumbers>.
- Norwegian Refugee Council, *Risk Management Toolkit in Relation to Counterterrorism Measures*, December 2015, <https://www.nrc.no/globalassets/pdf/reports/nrc-risk-management-toolkit-2015.pdf>.

## CONTACT

For more information about this project, please contact HLS PILAC's Law and Policy Associate Jessica Burniske (jburniske [at] law.harvard.edu).

## RELATED HLS PILAC PROJECTS AND PUBLICATIONS

- Counterterrorism and Humanitarian Engagement Project, <https://pilac.law.harvard.edu/counterterrorism-and-humanitarian-engagement-project>.
- Pilot Empirical Survey Study on the Impact of Counterterrorism Measures on Humanitarian Action and Comment on the Study, <https://pilac.law.harvard.edu/pilot-empirical-survey-study-and-comment>.
- Understanding Humanitarian Exemptions: U.N. Security Council Practice and Principled Humanitarian Action, [http://blogs.harvard.edu/pilac/files/2016/04/Understanding\\_Humanitarian\\_Exemptions\\_April\\_2016.pdf](http://blogs.harvard.edu/pilac/files/2016/04/Understanding_Humanitarian_Exemptions_April_2016.pdf).
- Counterterrorism and Humanitarian Engagement Project, “An Analysis of Contemporary Counterterrorism-related Clauses in Humanitarian Grant and Partnership Agreement Contracts,” Research and Policy Paper, May 2014, [http://blogs.law.harvard.edu/cheproject/files/2013/10/CHE\\_Project\\_-\\_Counterterrorism-related\\_Humanitarian\\_Grant\\_Clauses\\_May\\_2014.pdf](http://blogs.law.harvard.edu/cheproject/files/2013/10/CHE_Project_-_Counterterrorism-related_Humanitarian_Grant_Clauses_May_2014.pdf).
- Counterterrorism and Humanitarian Engagement Project, “An Analysis of Contemporary Anti-Diversion Policies and Practices of Humanitarian Organizations,” Research and Policy Paper, May 2014, [http://blogs.law.harvard.edu/cheproject/files/2013/10/CHE\\_Project\\_-\\_Anti-Diversion\\_Policies\\_of\\_Humanitarian\\_Organizations\\_May\\_2014.pdf](http://blogs.law.harvard.edu/cheproject/files/2013/10/CHE_Project_-_Anti-Diversion_Policies_of_Humanitarian_Organizations_May_2014.pdf).
- Counterterrorism and Humanitarian Engagement Project, “Enterprise Risk Management: A New Approach to Managing the Risks Posed by Counterterrorism Regulations,” Research and Policy Paper, March 2013, <http://blogs.law.harvard.edu/cheproject/files/2012/10/CHE-Project-ERMI.pdf>.

## RESEARCH ASSISTANT

- Anika Khan