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Counterterrorism and Humanitarian Engagement Project

An Analysis of Contemporary Anti-Diversion Policies and Practices of Humanitarian Organizations

Research and Policy Paper

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HOW TO USE THIS REPORT

Humanitarian organizations have long developed internal policies and practices to help ensure that aid and assistance reach intended beneficiaries. By identifying and examining contemporary anti-diversion policies and practices of humanitarian organizations, this report aims to document, contextualize, and analyze how those organizations are currently approaching and responding to increasing donor and public scrutiny regarding particular fields of concern—namely, bribery, corruption, fraud, money laundering, and terrorism financing.

This report was written with three general audiences in mind: humanitarian organizations (especially legal and policy advisors, grant officers, compliance officers, and regional and national coordinators); donors (especially general counsel, policymakers, and grant officers); and beneficiary communities. The various parts of the report may be of more or less interest to the different audiences. This report is intended to be read alongside the CHE Project’s report on contemporary counterterrorism-related clauses in humanitarian grant and partnership agreement contracts.¹

The **Executive Summary** provides a high-level overview of the main research elements, observations, and findings of the report by excerpting the most salient portions. The **Glossary** defines the key terms used in the report, and the **Acronyms** section explains the abbreviations employed in the report. The **Methodologies** section outlines what types of research and evidence—including interviews, on the phone and in person (in Geneva, Nairobi, New York, and Washington, D.C.), desk research, and other stakeholder engagement—underlies the report.

The **Introduction and Context** section describes the impetus for this research project, and briefly defines the three general fields of anti-diversion concern: anti-bribery and anti-corruption; anti-fraud and anti-money-laundering; and anti-terrorism-financing. The section sketches some of the broader themes, topics, and trends in the humanitarian sector and in the anti-diversion domain, highlighting, for example, the expansion and decentralization of humanitarian organizations; perceptions that certain donors have a disproportionate impact on standards-setting; and growth in the complexity, scope, and number of anti-diversion regulations and enforcement bodies.

Against the backdrop of the previous section, the **Anti-Diversion Policies and Approaches** section outlines some of the most salient characteristics of humanitarian organizations’ contemporary anti-diversion policies and practices identified in the research. One of the key findings is that, in line with their central objective, humanitarian organizations have long developed internal policies—including through program design, risk assessment and analysis, and monitoring and evaluation—aimed at ensuring that aid and assistance reach intended beneficiaries. The section discusses both internally

¹ 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, available online at: <http://blogs.law.harvard.edu/cheproject/>.

developed policies and those imposed by external sources. The section then explores how anti-diversion policies are formulated, disseminated and inculcated, and enforced.

The **Observations** section identifies four interrelated sets of anti-diversion trends and trajectories identified during the research, exploring frameworks and threshold concerns; the multiplicity and complexity of anti-diversion policies; engagement with donors and other stakeholders; and organizational structures, cultures, and resources. The **Conclusion** briefly notes that with rising pressure from legal and regulatory mechanisms, humanitarian organizations are devoting more resources to the administrative, policy, operational, and legal components of anti-diversion compliance. And they are doing so, in many respects, with fewer resources and under increasingly greater scrutiny from donors and the media.

The **Bibliography** lists the sources cited and many of the sources reviewed for this report. Finally, the **Annexes** provide excerpts of resources identified during the research, including examples of risk assessments, internal guidance on screening software, and fraud indicators.

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I. EXECUTIVE SUMMARY

Seeking to ensure that humanitarian assistance reaches intended beneficiaries is at the core of the humanitarian enterprise. Indeed, **humanitarian organizations have long developed internal policies and practices in line with humanitarian principles and across all parts of the relief cycle**, including program design, risk assessment and management, and monitoring and evaluation. Increasingly, however, **government and private donors are imposing**, through grant and partnership agreement contracts and other instruments, **particular anti-diversion obligations on humanitarian organizations, such as in the fields of anti-bribery, anti-fraud, and anti-terrorism-financing**. While humanitarian organizations already undertake many of these obligations as part of their internal policies and practices, and while humanitarian organizations have long acknowledged governments' legitimate concerns in these areas, **the “anti-diversion” framing and the imposition of different or heightened standards by certain donors have raised challenges and concerns for many humanitarian organizations**.

Without prescribing or proscribing certain approaches or responses, **this report aims to identify and analyze key aspects of contemporary anti-diversion policies and practices of humanitarian organizations**. For the purposes of this paper, **anti-diversion activities are understood to encompass measures involved in the formulation and implementation of policies aimed at ensuring to the extent feasible in the prevailing circumstances that humanitarian aid and assistance reach intended beneficiaries**. In contradistinction, diversion, in this context, means actions that change or alter the course of, or otherwise disrupt or delay, the provision of humanitarian aid and assistance from reaching its intended beneficiaries.

Anti-diversion policies, while not always expressly falling under that umbrella term, have long guided the programming of humanitarian organizations throughout the lifecycle of relief actions—from **strategic program planning to risk assessment and management, from making needs assessments to identifying beneficiary populations, from procuring goods and services to delivering assistance, from monitoring and evaluation to reporting to donors and beneficiary populations**. Today, many large humanitarian organizations have taken numerous steps to formulate and execute a collection of anti-diversion policies.

The research revealed **three often interrelated and linked general types of anti-diversion fields of concerns** among humanitarian organizations and donors: anti-bribery and anti-corruption; anti-fraud and anti-money laundering; and anti-terrorism-financing.

Respondents identified an assortment of anti-bribery- and anti-corruption-related policies and procedures. More so than the other anti-diversion fields of concern, **anti-bribery and anti-corruption were often referenced in context-specific terms**, with the

local culture being perceived as a predominant factor in determining the level and type of risk, as well as in what constituted bribery and corruption.

Every humanitarian organization that provided information for this report has implemented anti-fraud and anti-money-laundering policies and procedures. For the most part, interviewees indicated that their organizations' anti-money-laundering/fraud programs long preceded their anti-bribery/corruption and anti-terrorism-financing programs. Across the board, the organizations that took part in this research indicated an increase in recent years in resources dedicated to preventing, detecting, stopping, and punishing fraud and money laundering. **Internal controls against fraud and, increasingly, money laundering are part and parcel of all of the organizations surveyed for this research project.**

Nearly every organization surveyed for this research undertakes some form of anti-terrorism-financing activities. The organizations that do not stated that they had received the permission of their donors to refrain from doing so. **Most of the organizations that took part in the research indicated that they had stronger concerns about other forms of diversion than about anti-terrorism-financing.** The predominant concern voiced among participants in the broader counterterrorism realm was the requirement to screen staff, partners, and, sometimes, ultimate beneficiaries against the numerous lists of designated entities.

Every organization surveyed for this research indicated that it takes a shared approach to allocating responsibility for anti-diversion policies and practices between headquarters, regional and national offices, and local partners. Yet for nearly every organization surveyed, even those that professed to have a relatively "flat" organizational structure, a **tension emerged between the lawyers and policy advisors at the "hub" office and the coordination and assistance operators at the "spoke" offices.**

The increase in the size of pooled UN funds, especially the Central Emergency Response Fund (CERF), the Common Humanitarian Funds (CHF), and Emergency Response Funds (ERF), has had a significant impact on anti-diversion policies and practices, according to respondents. These pooled funds typically use a standardized project implementation agreement template across programs and countries. The importance of the standards set out in that template become predominant for hundreds, if not thousands, of organizations who become subject to the terms of that template.

A near-constant theme running throughout the interviews for this research was **donors' demands for more due diligence, reporting, risk mitigation, and the like alongside perceived flat or decreasing overhead contributions.** This theme corresponded with a move, which a few respondents noted, by donors to increasingly fund local NGOs, which typically require less-expensive overhead expenditures and which typically have less well-developed internal anti-diversion policies. Nearly all interviewees stated that their organizations allocate more resources now than before on anti-diversion polices and

practices. A few interviewees noted that donors are aware of the increased administrative burden and that donors have taken steps to streamline those obligations.

One of the most important trends identified by respondents was a **growth in the complexity, scope, and number of anti-diversion regulations and enforcement bodies**. Certain donor governments—especially in the U.S. and the U.K.—were singled out for promulgating laws and regulations that require humanitarian organizations (and other individuals and entities operating abroad) to undertake steps to curb corruption, bribery, money laundering, fraud, and terrorism financing. Within some donors, multiple agencies and departments have a hand in formulating and implementing anti-diversion policies.

Many interviewees mentioned that, especially over the last five to ten years, donors—both government donors and private foundations—have in their anti-diversion discussions and requirements **focused disproportionately on anti-terrorism-financing**. Respondents singled out donors in the U.S., Canada, U.K., and Australia in this regard.

Nearly all of the respondents perceived an **increased level of scrutiny of their organizations' activities by external authorities and the media**. Humanitarian organizations and other NGOs have come under increasing scrutiny in relation to various anti-diversion fields, including anti-bribery/corruption, anti-money-laundering/fraud, and anti-terrorism-financing. Participants drew attention to leaks of draft UN reports; congressional inquiries and audits; regulatory actions; and media reports as examples of heightened scrutiny concerning alleged diversion of humanitarian aid and assistance.

Respondents also indicated that humanitarian organizations are **increasingly adopting, and being expected to adopt, risk-based programming frameworks**. In particular, humanitarian organizations—including those in the UN system as well as private NGOs—are utilizing generally formulated international standards, especially the ISO3000:2009 Enterprise Risk Management (ERM) Standard. That standard defines risk as the effect of uncertainty on objectives and promotes an organization-wide approach to identifying and managing risk.

One of the most pronounced themes and trends identified as part of the research was the **large increase in use of list-checking commercial software programs to comply with anti-diversion policies**. Many respondents mentioned that they had spent significant time examining potential list-checking software programs. These programs range in price, and there is no free, open-source version on the market. One program reportedly checks against more than 170 lists spanning the globe—not only U.S., U.K., and UN counterterrorism lists, for instance, but also against World Bank anti-bribery lists and many other lists.

Whether internally developed or externally imposed, most humanitarian organizations' anti-diversion policies and standards identified in the research arose or were refined through **years of experience with program design, risk assessment and analysis, and monitoring and evaluation programs, guided fundamentally by humanitarian principles**.

That is, these policies and standards did not emerge in a legal or operational vacuum. Rather, they are the result of concerted internal and sector-wide discussions and experience, as well as engagement with donors, regarding how best to ensure that aid and assistance reach intended beneficiaries in light of all of the risks associated with relief actions undertaken in volatile, dangerous, and shifting operational contexts.

All of the organizations that took part in this research indicated that they have at least one full-time staff member whose primary responsibility concerns compliance with anti-diversion policies, most often in the form of a grant officer, a financial program associate, or a legal counsel. **Many organizations had multiple full-time staff members dedicated to anti-diversion policies and practices**, and the range of internal staff resources dedicated to anti-diversion varied significantly. One international humanitarian NGO noted that its headquarters office has six staff members working full-time on grant compliance and reporting relating to anti-diversion policies (two of those staff members spend the majority of their time screening potential and current partners against procurement, counterterrorism, and other lists).

Every organization surveyed as part of this research indicated that they engage in some form of anti-diversion-related due diligence, most often framed in terms of effective program design, risk assessment and analysis, and monitoring and evaluation. **The content and shape of that due diligence varied significantly between organizations.** No single due diligence standard emerged within any of the fields of concern.

In their partnership agreement contracts, nearly all of the organizations surveyed as part of this research indicated that they are required, as part of the contracts with donors, to **ensure that the anti-diversion obligations entailed in their contracts are transferred to their partners and other “subs.”** A number of lawyers and grant officers raised concerns about the clarity of guidance from donors about what constitutes a “sub,” however, as well as the feasibility of partners and “subs” actually implementing all of the applicable anti-diversion policies.

As part of their anti-diversion programs, the majority of organizations that receive U.S. government or private foundation funding **screen their staff and partners, as well as non-U.S. banks and other financial institutions that the organizations do business with, against, at a minimum, the U.S. SDN list and the UN 1267 List.** Respondents indicated that these screening programs undertaken as part of organizations’ due diligence and risk management programs raised significant operational challenges. These challenges include that the programs require substantial administrative resources; the programs are more difficult to administer in places with low Internet connectivity rates, where many relief actions take place; and the programs may contribute to staff security concerns.

All of the respondents indicated that their organizations have **developed internal auditing systems, and most of the organizations also have external auditors regularly review their financial records** (typically, at least once a year). A large number of humanitarian

organizations mentioned that they had established independent whistle-blowing and community-complaint mechanisms.

Only one of the organizations surveyed had developed a comprehensive internal anti-diversion policy, while the rest of the organizations had developed policies concerning certain, or multiple, fields of anti-diversion concern. According to many respondents, the process of developing and implementing such a comprehensive policy—and its translation into a donor explanatory note—may prove useful.

A spectrum of approaches to framing anti-diversion policies and practices emerged in the research. At one end of the spectrum, some organizations **robustly and proactively framed their anti-diversion policies in terms of humanitarian principles**. On the other end of the spectrum, at least a few of the organizations that took part in this research framed their anti-diversion policies less in terms of humanitarian principles and more in terms of **complying with best business practices**, including those drawn from commercial sectors.

A number of organizations noted that, by attempting to impose standards drawn from commercial sectors, **donors are not adequately recognizing important distinctions between humanitarian organizations and commercial entities, especially the public policy objective underlying humanitarian response**. Respondents noted that, unlike commercial service providers, humanitarian organizations need to be able to speak with all armed actors, even designated terrorists, in order to obtain access and deliver assistance.

All of the humanitarian organizations that took part in the research indicated a **desire for increased clarity around donors' anti-diversion policies and standards**. In this connection, many of the respondents stated that their programming would be more effective if the various donors would clarify, simplify, and standardize their approaches to anti-diversion within their own agencies and also do so among donors. A number of organizations voiced concern that donors do not take sufficient steps to ensure that their anti-diversion requirements are standardized across the various relevant government agencies, thus creating a latticework of disparate standards or at least different levels of enforcement and scrutiny.

According to numerous interviewees, the **increase in donor-imposed anti-diversion requirements on humanitarian organizations have apparently not been matched by a proportionate increase in overhead allocations**. In discussing this issue with donors, organizations have attempted to focus on providing facts and figures that describe the impacts that increasingly burdensome anti-diversion obligations have on programming effectiveness, including increased demands on staff and the need for additional other resources, such as commercial software programs.

Numerous organizations noted a strong sense of **concern with openly discussing their approaches to formulating and implementing anti-diversion policies**. At times, this concern seemed to stem from the conception that exposing these policies to public light

will bring unwanted attention on the organization, and that it would be better to discuss the definitions and expectations around anti-diversion only when necessary.

In sum, the research undertaken for this report revealed, first, that humanitarian organizations have **long developed internal policies and practices** aimed at ensuring that aid and assistance reach intended beneficiaries, and, second, that many humanitarian organizations are **grappling with how best to adapt additional, externally imposed anti-diversion policies in light of changing operational circumstances and heightened donor demands and scrutiny.**

II. GLOSSARY²

Anti-Bribery Activities — Actions involved in the formulation and implementation of policies aimed at preventing, stopping, and punishing bribery that has the capacity to result in the diversion of humanitarian aid or assistance.

Anti-Corruption Activities — Actions involved in the formulation and implementation of policies aimed at preventing, stopping, and punishing corruption that has the capacity to result in the diversion of humanitarian aid or assistance.

Anti-Diversion Activities — Measures involved in the formulation and implementation of policies aimed at ensuring to the extent feasible and in light of the prevailing circumstances that humanitarian aid and assistance reach intended beneficiaries.

Anti-Fraud Activities — Actions involved in the formulation and implementation of policies aimed at preventing, stopping, and punishing fraud that has the capacity to result in the diversion of humanitarian aid or assistance.

Anti-Money-Laundering Activities — Actions involved in the formulation and implementation of policies aimed at preventing, stopping, and punishing money laundering that has the capacity to result in the diversion of humanitarian aid or assistance.

Anti-Terrorism-Financing Activities — Actions involved in the formulation and implementation of policies aimed at preventing, stopping, and punishing terrorism financing that has the capacity to result in the diversion of humanitarian aid or assistance.

Audit — An examination of financial records and accounts to check their accuracy against a standard.

Bribery — The corrupt payment, receipt, or solicitation of a private favor for official action.³

Code of Conduct — A set of rules outlining the responsibilities of and proper practices for a humanitarian organization.

Corruption — An abuse of a position of trust in order to gain an undue advantage.⁴

² The definitions in this Glossary were drafted in relation to the particular research and themes in this report.

³ *Black's Law Dictionary*, 9th Edition (ed. Garner), 2009, p. 217; see also Model Penal Code § 240.1.

⁴ Derived in part from *Black's Law Dictionary*, 9th Edition (ed. Garner), 2009, p. 396 (“2. The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary’s or official’s use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others.”).

Diversion — Actions that, by altering the course of relief actions, result in humanitarian aid and assistance not reaching, or being delayed in reaching, intended beneficiaries.

Due Diligence — A set of four cumulative elements: a statement of policy articulating the organization’s commitment to anti-diversion policies; periodic assessment of actual and potential impacts of organizational activities and relationships on humanitarian aid and assistance reaching intended beneficiaries; integrating these commitments and assessments into internal control and oversight systems; and tracking and reporting performance.⁵

Enhanced Due Diligence — The set of heightened anti-diversion prevention, deterrence, and response standards imposed on humanitarian organizations by the U.S. in relation to Somalia.⁶

Fraud — A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.⁷

Humanitarian Assistance — Aid and action designed to save lives, alleviate suffering, and maintain and protect human dignity during and in the aftermath of armed conflicts and other emergency situations.⁸

Money Laundering — The act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced.⁹

Terrorism Financing — Actions involved in the solicitation, collection, or provision of funds with the intention that those funds may be used to support acts of terrorism.

⁵ Derived in part from the definition of “human rights due diligence” in the Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, “Business and Human Rights: Further steps toward the operationalization of the ‘protect, respect and remedy’ framework,” UN Doc. A/HRC/14/27, April 9, 2010, para. 83. Compare with, for example, the definition provided in ECHO, Guidelines for the award of Procurement Contracts within the frameworks of Humanitarian Aid Actions financed by the European Union (“Humanitarian Aid Guidelines for Procurement”), May 31, 2011, p. 13, available online at http://ec.europa.eu/echo/files/partners/humanitarian_aid/Procurement_Guidelines_en.pdf: “Due diligence refers to carrying out duties professionally, carefully and thoroughly, going well beyond the minimum effort.”

⁶ See 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, Annex 2g, available online at: <http://blogs.law.harvard.edu/cheproject/>.

⁷ *Black’s Law Dictionary*, 9th Edition (ed. Garner), 2009, p. 731.

⁸ Derived in part from Global Humanitarian Assistance, “Defining humanitarian assistance,” (undated) available online at: <http://www.globalhumanitarianassistance.org/data-guides/defining-humanitarian-aid>.

⁹ *Black’s Law Dictionary*, 9th Edition (ed. Garner), 2009, p. 1097; see also 18 USC § 1956.

III. ACRONYMS

1267 List — The list of individuals and organizations designated by the Sanctions Committee pursuant to the UN Security Council Resolution 1267 *et seq.* travel ban and asset freezing measures against members of al-Qaeda (and, formerly, the Taliban)

AML — Anti-Money Laundering

AusAID — Australian Agency for International Development (now part of the Australian Department of Foreign Affairs and Trade (DFAT))

CCEW — Charity Commission for England and Wales

CERF — UN Central Emergency Response Fund

CHF — UN Common Humanitarian Funds (country level)

CIDA — Canadian International Development Agency (now part of the Canadian Department of Foreign Affairs, Trade and Development)

CTF — Combating terrorism financing

DFID — United Kingdom Department for International Development

ECHO — European Commission, European Community Humanitarian Office

EPLS — Excluded Parties List (reportedly discontinued in 2012; now apparently part of the System for Award Management)

ERF — Emergency Response Funds

FATF — Financial Action Task Force

OFAC — United States Department of the Treasury, Office of Foreign Assets Control

OFDA — United States Agency for International Development, Bureau of Democracy, Conflict and Humanitarian Assistance, Office of Foreign Disaster Assistance

SAM — System for Award Management

SDC — Swiss Agency for Development and Cooperation

SDN — Specially Designated Nationals List (of individuals and entities designated by OFAC)

SIDA — Swedish International Development Cooperation Agency

UNSC — United Nations Security Council

USAID — United States Agency for International Development

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The CHE Project team received support for its research from dozens of legal advisors, grant officers, policy advisors, security advisors, regional and national coordinators, logisticians, compliance officers, controllers, auditors, and others. These individuals provided their time, information, and materials to the research. The CHE Project gratefully appreciates their support and assistance. The CHE Project team is indebted to Elizabeth Holland of Foley Hoag, LLP, for her thoughtful feedback and comments and to the staff of the Harvard Law School Library who helped identify and obtain numerous resources.

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The CHE Project team is grateful to the participants at a private March 2014 Workshop at Harvard Law School, who provided critical feedback on drafts of the reports on counterterrorism-related contract clauses and on anti-diversion policies of humanitarian organizations.

V. METHODOLOGIES

Without prescribing or proscribing certain approaches or responses, this report aims to identify and analyze key aspects of contemporary anti-diversion policies and practices of humanitarian organizations. The report is a result of field and desk research, informal consultations, and other research activities. The CHE Project team sought information and resources regarding contemporary policies, practices, and approaches to anti-diversion from a range of organizations and stakeholders, including United Nations system bodies, funds, programmes, and specialized agencies; international non-governmental organizations; local NGOs; foundations; donor governments; and intergovernmental organizations.

Desk research examined extant analyses and evidence regarding anti-diversion policies of humanitarian organizations alongside related topics. A researcher conducted nearly four-dozen interviews over the phone and in person; each interview ranged from 20 minutes to one hour. These interviews included questions relating both to the formulation, negotiation, and implementation of counterterrorism-related contract clauses in humanitarian grants and partnership agreements and to anti-diversion policies and practices of humanitarian organizations. The researcher conducted in-person interviews in Washington, D.C.; New York City; Geneva, Switzerland; and Nairobi, Kenya. The focus of the interviews was on capturing information and analysis from senior humanitarian practitioners, general counsels and legal advisors, donors, security personnel, and grant officers regarding current approaches, challenges, and opportunities with respect to counterterrorism-based clauses in humanitarian grant and partnership agreement contracts and anti-diversion policies and practices of humanitarian organizations.

The desk research included analyzing materials from comparative or analogous industries, such as for-profit commercial entities operating in conflict situations or areas with seemingly endemic corruption. In addition, the research looked into how other industries have approached these types of policies. Resources and analysis were also sought from external experts in various aspects of administrative law, regulation, and contract law, as well as financial controls.

To obtain critical feedback on drafts of the reports, in March 2014 the CHE Project hosted a one-day, private Workshop with participants from humanitarian INGOs and the UN Secretariat, as well as, for part of the day, a representative from USAID.

VI. INTRODUCTION AND CONTEXT

Seeking to ensure that humanitarian assistance reaches intended beneficiaries is at the core of the humanitarian enterprise.¹⁰ Indeed, humanitarian organizations have long developed internal policies and practices in line with humanitarian principles and across all parts of the relief cycle, including program design, risk assessment and management, and monitoring and evaluation. Increasingly, however, government and private donors are imposing, through grant and partnership agreement contracts and other instruments, particular anti-diversion obligations on humanitarian organizations, such as in the fields of anti-bribery, anti-fraud, and anti-terrorism-financing. While humanitarian organizations already undertake many of these obligations as part of their internal policies and practices, and while humanitarian organizations have long acknowledged governments' legitimate concerns in these areas, the "anti-diversion" framing and the imposition of different or heightened standards by certain donors have raised challenges and concerns for many humanitarian organizations.

Humanitarian organizations have undertaken a number of initiatives to examine and formulate guidance regarding specific fields of anti-diversion concern, such as anti-bribery/corruption and the impact of donors' counterterrorism measures on principled humanitarian action.¹¹ Yet to date, no specific initiative has identified and analyzed the set of anti-diversion concerns collectively. This report seeks to help fill this gap by identifying and developing an overview and analysis of themes in and trends concerning contemporary anti-diversion policies and practices of humanitarian organizations.¹²

At the outset, it is important to define what is meant in this report by "anti-diversion." As noted above, humanitarian organizations have long developed internal policies and

¹⁰ Kate Mackintosh and Patrick Duplat, "Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action," United Nations Office for the Coordination of Humanitarian Affairs and the Norwegian Refugee Council, 2013, pp. 119–20, available online at: https://www.nrc.no/arch/_img/9682778.pdf ("Humanitarian action is never intended to benefit the parties to an armed conflict and humanitarian organisations have put in place standards and procedures that seek to prevent aid diversion and ensure the impartial delivery of aid.").

¹¹ See, e.g., Transparency International, *Handbook of Good Practices for Preventing Corruption in Humanitarian Operations*, January 2010, available online at: http://www.transparency.org/whatwedo/pub/handbook_of_good_practices_preventing_corruption_in_humanitarian_operations; Kate Mackintosh and Patrick Duplat, "Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action," United Nations Office for the Coordination of Humanitarian Affairs and the Norwegian Refugee Council, 2013, pp. 119–20, available online at: https://www.nrc.no/arch/_img/9682778.pdf.

¹² See recommendation 6 in Kate Mackintosh and Patrick Duplat, "Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action," United Nations Office for the Coordination of Humanitarian Affairs and the Norwegian Refugee Council, 2013, p. 119, available online at: https://www.nrc.no/arch/_img/9682778.pdf ("Humanitarian organisations should work together to more effectively demonstrate and strengthen the implementation of the different policies, procedures and systems used to minimize aid diversion to armed actors, including those designated as terrorist, and better communicate how they weigh such efforts against programme criticality and humanitarian need.").

practices that aim to ensure that aid reaches intended beneficiaries, including through program design, risk assessment and management, and monitoring and evaluation. There is no generally agreed upon definition of the term “anti-diversion” within the humanitarian community, and indeed some of the research participants preferred not to use the term as an overarching category, since it frames the obligations in terms of a negative (anti-diversion instead of pro-beneficiary) and it subsumes distinct categories of programming under a single heading. The anti-diversion framing has the merit of underscoring the importance of seeking to ensure that humanitarian aid and assistance is not diverted from its intended course. For the purposes of this paper, anti-diversion activities are understood to encompass measures involved in the formulation and implementation of policies aimed at ensuring to the extent feasible in the prevailing circumstances that humanitarian aid and assistance reach intended beneficiaries.¹³ In contradistinction, diversion, in this context, means actions that change or alter the course of, or otherwise disrupt or delay, the provision of humanitarian aid and assistance from reaching intended beneficiaries.

Anti-diversion policies, while not always expressly falling under that umbrella term, have long guided the programming of humanitarian organizations throughout the lifecycle of relief actions—from strategic program planning to risk assessment and management, from making needs assessments to identifying beneficiary populations, from procuring goods and services to delivering assistance, from monitoring and evaluation to reporting to donors. Today, many large humanitarian organizations have taken numerous steps to formulate and execute a collection of anti-diversion policies concerning, for example, anti-corruption/bribery, anti-fraud/money laundering, and anti-terrorism financing. Without identify best practices or formulating guidance, this report aims to ascertain and analyze some of the key steps humanitarian organizations are taking to ensure that aid and assistance reach intended beneficiaries.

A. Fields of Concern

In addition to the broader areas of program design, risk assessment and analysis, and monitoring and evaluation, the research revealed three often interrelated and linked specific types of anti-diversion fields of concerns among humanitarian organizations and

¹³ For a discussion of the definitional elements of humanitarian assistance under international humanitarian law, see, e.g., Kay Guinane, Karen Siciliano Lucas, and Elizabeth Holland, “Safeguarding Humanitarianism in Armed Conflict: A Call for Reconciling International Legal Obligations and Counterterrorism Measures in the United States,” Charity and Security Network, 2012, pp. 38–42, available online at: <http://www.charityandsecurity.org/system/files/Safeguarding%20Humanitarianism%20Final.pdf>. Notwithstanding this report’s focus on humanitarian organizations, many of the observations may be of interest and relevance to other actors, including those in the development and peace-building sectors.

donors: (1) anti-bribery and anti-corruption; (2) anti-fraud and anti-money laundering; and (3) anti-terrorism-financing.¹⁴ Each field of concern is briefly described below.

1. Anti-Bribery and Anti-Corruption

For the purposes of this research paper, bribery is generally defined as the corrupt payment, receipt, or solicitation of a private favor for official action that results or may result in the diversion of humanitarian aid or assistance, and corruption is generally defined as an abuse of a position of trust in order to gain an undue advantage that results or may result in the diversion of humanitarian aid or assistance.¹⁵ Accordingly, for the purposes of this paper, anti-bribery and anti-corruption activities are respectively understood to encompass the formulation and implementation of policies aimed at preventing, stopping, and punishing bribery and corruption that have the capacity to result in the diversion of humanitarian aid or assistance.

Respondents identified an assortment of anti-bribery- and anti-corruption-related policies and procedures. More so than the other anti-diversion fields of concern, anti-bribery and anti-corruption were often referenced in context-specific terms, with the local culture being perceived as a predominant factor in determining the level and type of risk, as well as what constituted bribery and corruption.

One of the biggest challenges identified by respondents in relation to anti-bribery/corruption was having colleagues working in endemically corrupt areas. This challenge pointed to a broader theme in this area, namely the importance of undertaking, to the extent feasible in the prevailing circumstances, context-specific approaches to anti-bribery and anti-corruption policies, though certain legal regimes do not permit any bribery-related diversion regardless of the context. While not unique to humanitarian organizations, these concerns arise frequently for humanitarian organizations due to the nature and location of their work.

Numerous interviewees singled out Somalia as a context that presents particularly difficult anti-bribery and anti-corruption challenges for humanitarian organizations. Informal rules about taxation, for instance, have given rise to complex programming and policy challenges.¹⁶ According to respondents, anti-bribery and anti-corruption concerns are more likely to arise in situations where an organization engages in remote

¹⁴ While bribery and corruption are not analogous, nor are money laundering and fraud, in general these two sets of concerns are clustered together in the policies and practices of most of the humanitarian organizations that took part in this research.

¹⁵ These definitions are derived in part from definitions in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted 1997); The Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1, et seq.); Bribery Act 2010 (c.23) (United Kingdom); and United Nations Convention against Corruption (entry into force: December 14, 2005).

¹⁶ See, in general, Laura Hammond and Hannah Vaughan-Lee, "Humanitarian space in Somalia: a scarce commodity," HPG Working Paper, April 2012, available online at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7646.pdf>.

programming due to the relative lack of control of operations and reviews. These and other themes are explored in more detail throughout the report.

2. Anti-Fraud and Anti-Money-Laundering

For the purposes of this research report, fraud is generally defined as a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment, and money laundering is generally defined as the act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced. Accordingly, for the purposes of this paper, anti-fraud and anti-money-laundering activities are respectively understood to encompass the formulation and implementation of policies aimed at preventing, stopping, and punishing fraud and money laundering that have the capacity to result in the diversion of humanitarian aid or assistance.

Every humanitarian organization that provided information for this report has implemented anti-fraud/money-laundering policies and procedures. For the most part, interviewees indicated that their organizations' anti-money-laundering/fraud programs long preceded their anti-bribery/corruption and anti-terrorism-financing programs. Generally, the larger the donor, the more detailed anti-fraud requirements are imposed on recipients. Many larger donors have published anti-fraud handbooks and other forms of guidance for recipients.

Across the board, the organizations that took part in this research indicated an increase in resources dedicated to preventing, detecting, stopping, and punishing fraud and money laundering in recent years. Internal controls against fraud and, increasingly, money laundering are part and parcel of all of the organizations surveyed for this research project. The type and extent of these internal controls ranged depending on factors such as the location of the projects, the applicable legal frameworks, and donors' policies.

3. Anti-Terrorism-Financing

For the purposes of this report, terrorism financing is generally defined as involving the solicitation, collection, or provision of funds with the intention that those funds may be used to support terrorist acts or organizations.¹⁷ Accordingly, for the purposes of this report, anti-terrorism-financing activities encompass the formulation and implementation of policies aimed at preventing, stopping, and punishing terrorism financing that has the capacity to result in the diversion of humanitarian aid or assistance.

¹⁷ Derived in part from International Monetary Fund, "Anti-Money Laundering/Combating the Financing of Terrorism - Topics," (undated), available online at: <http://www.imf.org/external/np/leg/amlcft/eng/aml1.htm>. Whether the receipt of funds from designated entities may also constitute diversion is a contested issue. In any event, donors, including the United States, generally prohibit the receipt of property and money from listed entities. See, e.g., Executive Order 13224 and 31 CFR 594.

Nearly every organization surveyed for this research undertakes some form of anti-terrorism-financing activities. The organizations that do not stated that they had received the permission of their donors to refrain from doing so.

Most of the organizations that took part in the research indicated that they had stronger concerns about the impact on programming of other forms of diversion than they did about anti-terrorism-financing. The predominant concern voiced among participants in the broader counterterrorism realm was the requirement to screen staff, partners, and, sometimes, ultimate beneficiaries against the numerous lists of designated entities maintained by donors.

B. Key Trends in the Humanitarian Sector

The various armed conflicts and other emergency situations in which humanitarian organizations provide relief present multifaceted challenges to effective and principled humanitarian action. A collection of internal and external factors has contributed to the various formulations and implementations of anti-diversion policies by humanitarian organizations. The promulgation and implementation of humanitarian organizations' anti-diversion policies have occurred against the backdrop of broader structural, political-economic, and historical changes, including within the humanitarian sector and with respect to donor policies attempting to prevent and punish bribery, corruption, fraud, money laundering, and terrorism financing. The themes, topics, and trends identified below, many of which are interrelated and mutually reinforcing, are presented to provide context to help understand the formulation and implementation of anti-diversion policies by humanitarian organizations.

1. Expansion and decentralization of humanitarian organizations

Over the years, many large humanitarian organizations—including international non-governmental organizations, United Nations system agencies and bodies, and intergovernmental organizations—have grown significantly in size and in operational presences and have in the process established decentralized operational structures. Numerous humanitarian organizations now effectively operate under a system in which a primary “hub” office (or set of offices) coordinates activities among multiple regional or national “spoke” offices with respect to programming components such as fundraising, policy-making, logistics, procurement, legal review, and operations. It is not uncommon among these large humanitarian organizations for a headquarters office to organize fundraising, policy-making, and legal review while regional and national offices implement or manage service and assistance delivery. In short, these “spoke” offices generally have a form of delegated responsibility to implement policies as directed and funded by headquarters. Among those interviewed for this research report, a general consensus emerged that the headquarters office typically has a disproportionately greater role in developing policies and attempting to coordinate those policies across the organization than the spoke offices. As demonstrated below, this imbalance creates

complications for comprehensive and effective anti-diversion policy-making and implementation.

Every organization surveyed for this research indicated that it takes a shared approach to allocating responsibility for anti-diversion policies and practices between headquarters, regional and national offices, and local implementers and partners. Yet for nearly every organization surveyed, even those that professed to have a relatively “flat” organizational structure, a tension emerged between the lawyers and policy advisors at the “hub” office, on the one hand, and the coordination and assistance operators at the “spoke” offices, on the other hand. The programming implementers in the “spoke” offices, while recognizing the challenges faced by the lawyers and policy advisors at the “hub” office, almost universally indicated that the lawyers and policy advisors do not appear to fully understand or appreciate the operational realities and that the policies developed at the “hub” office therefore do not fully reflect the challenges facing them in the field. This disconnect may entail significant consequences for effective formulation and coordination of anti-diversion policies within humanitarian organizations and across the humanitarian sector.

In addition, due to their organizations’ decentralized structure, some interviewees perceived a gulf developing within their organizations between those people tasked with specific areas of anti-diversion. That is, instead of vesting the responsibilities for developing and implementing, for instance, the organization’s anti-terrorism-financing, anti-fraud, and anti-bribery in one individual, these organizations disperse these responsibilities across staff. In terms of organizational cultural, for more than one organization surveyed it became obvious during the interviews that not everyone within the organization was held in the same level of esteem: sometimes, the policy or legal advisors would see their work as more intellectually demanding than their counterparts in the grant management or human resources departments.

2. Reliance by governments on humanitarian organizations to deliver aid and assistance

Many donor governments rely extensively on humanitarian organizations to deliver aid and assistance in relation to numerous situations of armed conflict and other emergencies. Donors whose foreign policy objectives include providing humanitarian aid and assistance do not usually have sufficient internal resources to provide all of that assistance through state channels alone and instead rely on partnerships with humanitarian organizations and other implementers. For instance, the U.S. State Department’s Bureau of Population, Refugees, and Migration “funds NGO programs designed to fill critical gaps in humanitarian assistance and protection programs. We rely on the fast, flexible, and targeted response of NGOs in emergencies as well as their continued commitment to assist refugee and other populations in protracted situations. Not only are NGOs crucial for assistance delivery, they also provide critical information and analysis for policy

development and advocacy.”¹⁸ The militaries of certain donor governments also provide aid and assistance in situations of armed conflict, but those relief actions do not typically conform with humanitarian principles and instead may be focused on winning the “hearts and minds” of the local population.¹⁹

3. Perceived “politicization” of humanitarian aid and assistance as a policy instrument of donors

Some donors have long been said to “politicize” or “instrumentalize” humanitarian aid and assistance.²⁰ These critiques may arise in contexts where the donor government both provides support to humanitarian relief actions and is also a party to the conflict. Recent mergers of foreign aid and foreign trade departments within a government—as occurred in Canada and in Australia—have raised concerns that foreign assistance may be increasingly used as a tool for channeling aid.²¹

Donor governments have multifaceted foreign policy platforms that include a range of objectives and corresponding instruments and measures to meet those objectives. Major humanitarian donor governments are not monolithic, and indeed they often have to coordinate their funding and policy approaches across, for instance, diplomatic, aid, development, military, and intelligence agencies. As one respondent put it, “even donors have donors,” underscoring that USAID, for instance, is ultimately accountable to the U.S. Congress.

During the research for this paper, the “politicization” concern emerged particularly in relation to U.S. partner-vetting programs in Afghanistan, the West Bank/Gaza, and the five pilot USAID Partner Vetting System and State Department Risk Analysis and Management countries.²² Numerous respondents stated that these programs lead to

¹⁸ United States, State Department, Bureau of Population, Refugees and Migration, “General NGO Guidelines for Overseas Assistance,” January 14, 2014 (updated), available online at: <http://www.state.gov/j/prm/funding/index.htm>; see also Rhoda Margesson, “International Crises and Disasters: U.S. Humanitarian Assistance Response Mechanisms,” Congressional Research Service Report, August 1, 2013, available online at: <https://www.fas.org/sgp/crs/row/RL33769.pdf>.

¹⁹ In relation to Afghanistan, for instance, see Ashley Jackson and Simone Haysom, “The search for common ground: civil–military relations in Afghanistan, 2002–13,” HPG Working Paper, April 2013, available online at: <https://docs.unocha.org/sites/dms/Documents/130424%20The%20Search%20for%20Common%20Ground%20Civ-Mil%20Relations%20in%20Afghanistan%202002-13%20HPG%20Work%20Paper.pdf>.

²⁰ For a perspicacious commentary, see Jakob M. Kellenberger, “Politicisation of humanitarian work?,” in DARA, *The Humanitarian Response Index 2010: The problems of politicisation*, 2010, pp. 12–15, available online at: http://daraint.org/wp-content/uploads/2010/10/Complete-report_HRI-2010.pdf.

²¹ Lee Berthiaume, “CIDA officially no more,” June 27, 2013, available online at: <http://o.canada.com/news/cida-officially-no-more>; Australia News Network, “Australian government criticised over AusAID merger,” September 19, 2013, available online at: <http://www.abc.net.au/news/2013-09-19/an-ausaid-merger-reaction/4966976>.

²² Counterterrorism and Humanitarian Engagement Project, “Partner Vetting in Humanitarian Assistance: An Overview of Pilot USAID and State Department Programs,” Research and Policy Paper, November

stakeholders, including local authorities, armed actors, and beneficiary communities, seeing humanitarian organizations as aligned with one of the parties to the conflict and therefore as not neutral.²³ The issue of screening staff, partners, contractors, and, potentially, ultimate beneficiaries against counterterrorism and security blacklists raised varying levels of concern among respondents.²⁴

A related theme that came up in numerous interviews discussing anti-diversion policies of humanitarian organizations is the definition of “humanitarian,” especially donors’ and organizations’ potentially divergent understandings of the term. Relatedly, interviewees from regional and national “spoke” offices raised the question of whether we are seeing the end of the humanitarian era. A few participants voiced particularly strong concerns that donors are increasingly removing the barriers between politics and humanitarianism, and that as a result humanitarian organizations are increasingly perceived as deputized organs of donor governments. In at least a few reported instances, donors are apparently approaching private, non-humanitarian, commercial organizations to undertake aid and assistance operations in areas of Somalia and elsewhere.²⁵ A few respondents drew attention to the fact that not all organizations who consider themselves humanitarian adhere to the principle of neutrality in all circumstances, though all surveyed organizations reportedly adhere to the principle of impartiality.

4. Competition within the humanitarian community, use of private non-humanitarian contractors, and remote programming

Despite the increase in recent decades of funding for humanitarian aid and assistance, many respondents noted both a perceived competition within the humanitarian sector for limited funds and the increased reliance by donor governments on private, non-humanitarian contractors, which may underbid humanitarian organizations for the same services. One interlocutor also noted that social impact investing is increasingly competing with humanitarian aid and assistance for similar services. These perceived forms of competition for funding have reportedly contributed to an environment where

2013, available online at: <http://blogs.law.harvard.edu/cheproject/files/2013/10/CHE-Project-Partner-Vetting-in-Humanitarian-Assistance-November-2013.pdf>.

²³ Ashley Jackson and Antonio Giustozzi, “Talking to the other side: Humanitarian engagement with the Taliban in Afghanistan,” HPG Working Paper, December 2012, available online at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7968.pdf>.

²⁴ See 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, available online at: <http://blogs.law.harvard.edu/cheproject/>.

²⁵ See, e.g., United Kingdom Department for International Development, Operational Plan 2011-2015 DFID Somalia, Updated June 2012, available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67414/somalia-2011.pdf (noting that “DFID does not have staff based in Somalia although we are making arrangements for staff to be able to spend short periods there more frequently. We work mainly through a range of trusted UN and non-governmental implementing partners, who are able to operate on the ground across much of Somalia, and whose work is subject to scrutiny. We are working to diversify this by using more private contractors and other partners.”).

humanitarian principles are less likely to be preserved and are more likely to be seen as malleable in order to obtain funding.

For some surveyed organizations, the perception that donors are seeking political outcomes through support to relief actions has created a nearly existential dilemma. Respondents repeatedly drew attention to the situation in Somalia, in which donors relied on private, non-humanitarian American and British contractors to deliver aid and assistance to particular communities. Some respondents noted that humanitarian organizations purportedly have much greater respect for local cultures and cultural dynamics, are more likely to speak local languages, and are more likely to have a commitment to sustainable approaches than their private, non-humanitarian counterparts.

With respect to certain contexts, especially Somalia and Syria, which raise particularly difficult challenges for access and staff security, some humanitarian organizations have increasingly adopted remote-programming approaches.²⁶ For instance, according to an interviewee, all water and sanitation activities in many parts of Syria rely on contracting companies. Respondents indicated that remote programming poses a particularly difficult set of challenges in terms of maintaining control and knowing your partner. As many respondents noted, remote programming generally requires that the organization rely more on the good faith and the commonsense of partners and local staff.

5. Use of pooled funds

The increase in the size of pooled UN funds, especially the Central Emergency Response Fund (CERF), the Common Humanitarian Funds (CHF), and Emergency Response Funds (ERF), has had a significant impact on anti-diversion policies and practices, according to respondents.²⁷ These pooled funds typically use a standardized project implementation agreement template across programs and countries. The importance of the standards set out in that template become predominant for hundreds, if not thousands, of organizations who become subject to the terms of that template. The requirements imposed by one donor in a template agreement can thereby have significant effects by revising the requirements of all donors to and recipients of the pooled funds. That is, if one donor had a principled objection to a particular set of obligations or framing approaches—for example, with respect to how “terrorism” is defined or the corruption standard in the contract—it would be pose a conflict with the approach of the donor who inserted the language into the template.

²⁶ See Joe Belliveau, “Remote management’ in Somalia,” *Humanitarian Exchange Magazine*, January 2013, available online at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-56/remote-management-in-somalia>.

²⁷ For information on the size and allocation of resources on these funds, see Financial Tracking Service, UN OCHA, available online at: <http://fts.unocha.org/>.

6. Increased administrative burdens

A near-constant theme running throughout the interviews was donors' demands for more due diligence, reporting, risk mitigation, and the like alongside perceived flat or decreasing overhead contributions. This theme corresponded with a move, which a few respondents noted, by donors to increasingly fund local NGOs, which typically require less-expensive overhead expenditures and which typically have less developed anti-diversion policies. Nearly all interviewees stated that their organizations allocate more resources now than before on anti-diversion policies and practices. Yet a few interviewees noted that donors are aware of the increased administrative burden and that donors have taken steps to streamline those obligations.

7. Perception that certain donors have a disproportionate impact on standards-setting

Numerous respondents indicated that certain donors exert a disproportionate impact on the standards of different areas of anti-diversion policy. Interviewees singled out Canada and the U.S. with respect to anti-terrorism-financing; the Netherlands, the U.K., and the U.S. with respect to anti-fraud/money laundering; and Norway, Sweden, the U.K., and the U.S. with respect to anti-bribery/corruption. A number of organizations indicated that they have declined funds from certain donors due to the perception that the donors' anti-diversion requirements would impair the organizations' capacity to effectively deliver assistance.

8. Internal and external scrutiny of the humanitarian sector

Humanitarian organizations as well as external analysts continue to robustly scrutinize a number of the tenets, frameworks, and assumptions underlying humanitarian action.²⁸ These analyses have helped shape public perceptions about the strengths and weakness of the humanitarian sector. In addition, a number of debates have arisen within the humanitarian community, including around accountability.²⁹

C. Key Trends concerning Anti-Diversion Policies and Frameworks

This subsection identifies and discusses contemporary themes and potential trends concerning the formulation and implementation of anti-diversion policies by humanitarian organizations, governments, intergovernmental bodies, and other donors.

²⁸ See, e.g., *The golden fleece: manipulation and independence in humanitarian action*, (ed. Antonio Donini), Kumarian Press, 2012; Linda Polman, *The crisis caravan: what's wrong with humanitarian aid?*, (transl. Liz Waters), Metropolitan Books, 2010; *Humanitarian Negotiations Revealed: The MSF Experience* (eds Claire Magone, Michael Neuman, and Fabrice Weissman), Columbia University Press, 2011.

²⁹ See, e.g., Norwegian Minister of Foreign Affairs, Statement on "The values and purpose of humanitarian action," Principles in Practice: Safeguarding Humanitarian Action Norwegian Refugee Council Conference, High-level panel, Brussels, December 4, 2012. http://www.regjeringen.no/en/dep/ud/Whats-new/Speeches-and-articles/e_speeches/2012/brussel_nrc.html?id=709219155.

Drawing on desk research, as well as interviews and consultation with stakeholders, the subsection aims to provide key background information to understand the context of the specific anti-diversion policies and practices of humanitarian organizations identified in a subsequent subsection of the paper.

1. Growth in the complexity, scope, and number of anti-diversion regulations and enforcement bodies

One of the most important trends identified by respondents was a growth in the complexity, scope, and number of anti-diversion regulations and enforcement bodies. Certain donor governments—especially in the U.S. and the U.K.—were singled out for promulgating laws and regulations that require humanitarian organizations (and other individuals and entities operating abroad) to undertake steps to curb corruption, bribery, money laundering, fraud, and terrorism financing. Within some donors, multiple agencies and departments have a hand in formulating and implementing anti-diversion policies. Interviewees emphasized the complexity of navigating the U.S. system, where, for instance, organizations may need to comply with regulations devised and enforced by USAID, the Commerce Department, and OFAC. In addition, respondents noted that a number of international bodies, perhaps most significantly the Financial Action Task Force, have created an additional layer of administrative concern for identifying and complying with relevant standards.

2. The clarity and feasibility of donor standards and guidance

Alongside the growth in the complexity, scope, and number of anti-diversion regulations and enforcement bodies, respondents indicated a perceived lack of clarity of donors' anti-diversion standards and a perception that many donors' anti-diversion standards may not be feasible to implement in certain contexts. A number of interviewees stated that donors' (and some humanitarian organizations' internal) anti-diversion standards are unworkable—or, as one interviewee put it, those standards are “far from the realities on the ground.” Another respondent suggested that donors consider adopting in the realm of anti-diversion policies an approach similar to that undertaken with respect to Environmental Impact Plans, which, according to the respondent, are clearer, more workable, and easier to adopt in various contexts.

A large set of interviewees voiced concern over the use of “enhanced due diligence” standards, noting confusion around what this standard entails and concern that this standard may “go global” (that is, be applied across all humanitarian programs instead of just with respect to programing in relation to Somalia).

3. Certain donors' focus on anti-terrorism-financing

Many interviewees mentioned that, especially over the last five to ten years, donors—both governments and private foundations—have in their anti-diversion discussions and requirements focused disproportionately on anti-terrorism-financing. Respondents

singled out donors in the U.S., Canada, U.K., and Australia in this regard. This perceived focus on counterterrorism-related measures, according to some interviewees, was misplaced in the sense that the greatest anti-diversion challenges arise in contexts that do not present significant anti-terrorism-financing concerns, such as the Democratic Republic of Congo and the Central African Republic—contexts, in other words, where relatively endemic corruption and the lack of robust financial controls and systems contribute to greater challenges to ensure that relief reaches intended beneficiaries.

4. Enforcement actions against diversion-related activities

Many legal advisors in humanitarian organizations, especially those with headquarters or funding offices in the U.S. or the UK, underscored the importance of actions enforcing the U.S. FCPA and the UK Anti-Bribery Act.³⁰ These enforcement actions have spurred a concerted response to ensure compliance with these laws. These responses are reportedly quite resource-intensive, especially in terms of time, labor, and financing. A few organizations, including some based in the U.S. and the U.K., noted that they had hired or retained outside legal counsel to help navigate these legal requirements.

5. Conditioning funding on adoption of anti-diversion policies

Donors have long implemented their policies in the selection and allocation of funding resources. Increasingly, government and private donors are electing to implement anti-diversion policies through their funding arrangements. In particular, respondents identified a large increase in certain donors tying grant funds to the implementing organization expressly adopting, or at least recognizing, the donors' policies concerning anti-bribery/corruption and anti-terrorism-financing. For organizations receiving funding from multiple donors, these requirements have resulted in those organizations adopting sometimes incongruent sets of policies, which have caused confusion among grant officers and policy advisors within and across offices.

6. Scrutiny of donor funds and humanitarian organizations

Nearly all of the respondents perceived an increased level of scrutiny of their organizations' activities by external authorities and the media. Humanitarian organizations and other NGOs have come under increasing scrutiny in relation to various anti-diversion fields, including anti-bribery/corruption, anti-money-laundering/fraud, and anti-terrorism-financing. Participants drew attention to leaks of draft UN reports;³¹

³⁰ For an overview of recent trends on FCPA enforcement, see, e.g., Sherman & Sterling LLP, "FCPA Digest: Recent Trends and Patterns in the Enforcement of the Foreign Corrupt Practices Act," January 2014, available online at: <http://www.shearman.com/~media/Files/Services/FCPA/2014/FCPADigestTPFCPA010614.pdf>.

³¹ Jeffrey Gettleman and Neil MacFarQuhar, "Somalia Food Aid Bypasses Needy, U.N. Study Says," *New York Times*, March 9, 2010, available online at: http://www.nytimes.com/2010/03/10/world/africa/10somalia.html?_r=0.

congressional inquiries and audits;³² regulatory actions;³³ and media reports³⁴ as examples of heightened scrutiny concerning alleged diversion of ostensibly humanitarian aid and assistance.

7. Use of “risk”-based approaches and units

Respondents indicated that humanitarian organizations are increasingly adopting, and being expected to adopt, risk-based programming frameworks.³⁵ In particular, humanitarian organizations—including those in the UN system as well as NGOs—are utilizing generally formulated international standards, especially the ISO3000:2009 Enterprise Risk Management (ERM) Standard. That standard defines risk as the effect of uncertainty on objectives and promotes an organization-wide approach to identifying and managing risk.³⁶ In 2011, the UN established the Risk Management Unit (RMU) in Somalia, which adopted an ERM approach, promoted common due diligence measures, and conducted monitoring and surveillance on UN entities.³⁷ Interviewees’ views of the RMU varied considerably. Some voiced concern that the RMU operated without a sufficient level of transparency. Others noted with approval that the RMU model may be adopted in relation to other contexts, such as Afghanistan and Mali.³⁸

³² USAID Office of Inspector General, *Audit of the Adequacy of USAID’s Antiterrorism Vetting Procedures*, Audit Report No. 9-000-08-001-P, November 6, 2007, available online at: <http://oig.usaid.gov/sites/default/files/audit-reports/9-000-08-001-p.pdf>; USAID Office of Inspector General, *Summary: Audit of USAID’s Compliance with Executive Order 13536 prohibiting Support to al-Shabaab in Somalia*, Audit Report No. 4-649-13-011-P, September 17, 2013, available online at: <http://oig.usaid.gov/sites/default/files/audit-reports/4-649-13-011-p.pdf>.

³³ Charity Commission for England and Wales, “Watchdog opens investigation into two charities set up to help deliver aid to Syria,” January 29, 2014, available online at: <https://www.charitycommission.gov.uk/news/watchdog-opens-investigation-into-two-charities-set-up-to-help-deliver-aid-to-syria/>.

³⁴ Associated Press, “Turkish anti-terrorist police raid aid agency near Syrian border,” January 14, 2014, available online at: <http://www.reuters.com/article/2014/01/14/us-turkey-ngo-idUSBREA0D0JI20140114>.

³⁵ See generally Victoria Metcalfe, Ellen Martin, and Sara Pantuliano, “Risk in humanitarian action: towards a common approach,” HPG Commissioned Paper, January 2011, available online at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6764.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, available online at: <http://blogs.law.harvard.edu/cheproject/files/2012/10/CHE-Project-ERM1.pdf>.

³⁶ ISO 31000:2009, *Risk Management — Principles and Guidelines* (“Enterprise risk management is an organization-wide process that includes the implementation of a risk management framework, which is a set of components that provide the foundations and organizational arrangements for designing, implementing, monitoring, reviewing and continually improving risk management throughout the organization. The foundations include the policy, objectives, mandate and commitment to manage risk. The organizational arrangements include plans, relationships, accountabilities, resources, processes and activities. The risk management framework is embedded within the organization’s overall strategic and operational practices and policies.”).

³⁷ UN doc. S/2014/177, paras 14–18.

³⁸ See, e.g., Mark Yarnell, “Gatekeepers and Evictions: Somalia’s Displaced Population at Risk,” Refugees International, November 1, 2011, available online at: http://www.refintl.org/sites/default/files/110112_Gatekeepers_and_Evictions%20letterhead.pdf; Counterterrorism and Humanitarian Engagement Project,

Commentators have raised the question of whether generally formulated, non-sector-specific risk-management standards—such as ISO3000:2009—can be effectively adopted by the humanitarian sector. Some analysts have emphasized that the humanitarian imperative should determine how risks are prioritized and managed, as well as what residual risks are deemed acceptable. These commentators note that there is no comparative moral imperative in commercial action (and thus, as one research participant noted, “decisions around risk are based primarily on profit and commercial actors may stay or go depending on a profitability cost-benefit analysis alone”). Along similar lines, “the concept of transferring risk, as understood in the commercial sector, holds little resonance in the humanitarian community – a legal agreement regarding transfer of risk is insufficient for most humanitarian organisations, many of whom continue to regard themselves as having a strong moral responsibility for the safety and security of the partner or contractor, and for ensuring the eventual delivery of assistance to beneficiaries.”³⁹

Interviewees generally affirmed commentators’ analysis that there is a “particularly striking (...) difference in prioritisation and balancing of risks between different groups within the sector,” especially that the “differences between donors and operational agencies (UN and NGOs) are particularly wide, with a far greater emphasis on managing fiduciary risks on the part of donors, and a greater prioritisation of security risks by operational agencies.”⁴⁰ Managing “these priorities also creates tensions: many operational agencies have criticised increasingly stringent financial reporting requirements as an unnecessary and impractical burden. Conversely, operational agencies may underestimate the links between financial accountability and transparency and their own operational security.”⁴¹

8. Donors’ knowledge of anti-diversion policies and standards

Many organizations noted that, in recent years, donors—from representatives at headquarters, to embassy staff, to auditors—have become increasingly knowledgeable about anti-diversion standards and about the operational environments in which those standards are applied. The level of discussion between donors and humanitarian organizations has reportedly risen as a result. Nonetheless, a few interviewees noted that donors’ knowledge could vary significantly depending on the context and the specific donor staff. In some contexts, organizations have reportedly identified donor staff members who are particularly attuned to humanitarian organizations’ concerns, and the

“Enterprise Risk Management: A New Approach to Managing the Risks Posed by Counterterrorism Regulations,” Research and Policy Paper, March 2013, available online at: <http://blogs.law.harvard.edu/cheproject/files/2012/10/CHE-Project-ERM1.pdf>.

³⁹ Victoria Metcalfe, Ellen Martin, and Sara Pantuliano, “Risk in humanitarian action: towards a common approach,” HPG Commissions Paper, January 2011, pp. 5–6, available online at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6764.pdf>.

⁴⁰ *Id.* at 6.

⁴¹ *Id.*

organizations attempt to channel all of their donor-relationship activities through those staff members.

9. Use of internal resources to prevent and address diversion

All organizations that took part in the research indicated, to varying degrees, an increase in the number and type of internal resources dedicated to preventing and addressing diversion of humanitarian aid and assistance. Some organizations had established, for instance, positions dedicated solely to screening procurement and anti-terrorism-financing databases. Depending on the organization, a range of employees contributed to formulating and implementing anti-diversion policies, such as legal counsel, policy advisors, boards of directors/senior management groups, grant officers, compliance officers, regional coordinators, national coordinators, human resources officers, financial controllers, accountants, and risk officers.

10. Use of compliance software programs

One of the most pronounced themes and trends identified as part of the research was the large increase in use of list-checking commercial software to comply with anti-diversion policies. Many respondents mentioned that they had spent significant time examining potential list-checking software programs. These programs range in price, and there is no free, open-source version on the market. One program reportedly checks against more than 170 lists spanning the globe—not only U.S., U.K., and UN counterterrorism lists, for instance, but also against World Bank anti-bribery lists and many other lists. Numerous respondents stated that their organization felt obliged to screen not only senior management but all staff across all programming environments, such as cooks, cleaners, and drivers in remote parts of the world. Nearly all organizations reportedly screen banks and other financial institutions against these lists.

VII. ANTI-DIVERSION POLICIES AND APPROACHES

This section describes and examines the most salient components of the anti-diversion policies of humanitarian organizations identified in the research. It bears emphasis that humanitarian organizations have long developed internal policies—spanning program design, risk assessment and analysis, and monitoring and evaluation—to help ensure that aid and assistance reach intended beneficiaries. Against that backdrop, the section first identifies the types of sources—both those internally developed and those that are externally imposed—of anti-diversion policies. It then describes some of the most prominent elements of anti-diversion policies, practices, and procedures uncovered during the research. The information in this section aims to provide an outline of the key components of the anti-diversion programs developed and deployed by the humanitarian organizations that took part in the research. The range of identified anti-diversion policies and practices is not meant to be exhaustive in the sense of identifying all relevant policies of all humanitarian organizations. Additional details and examples are included in the references and annexes.

A. Sources of humanitarian organizations' anti-diversion policies and standards

The research revealed two general sources of anti-diversion policies and approaches: first, policies developed within and at the impetus of humanitarian organizations; and second, policies developed in response to external requirements, such as donor laws or regulations. Overlap between the two sets of sources was common. Often, internal policies were developed in light of or were informed by an external requirement, and some donors' requirements were apparently devised in consultation with humanitarian organizations.

Whether internally developed or externally imposed, most humanitarian organizations' anti-diversion policies and standards identified in the research arose or were refined through years of experience with program design, risk assessment and analysis, and monitoring and evaluation programs, guided fundamentally by humanitarian principles. That is, these policies and standards did not emerge in a legal or operational vacuum. Rather, they are the result of concerted internal and sector-wide discussions and experience, as well as engagement with donors, regarding how best to ensure that aid and assistance reach intended beneficiaries in light of all of the risks associated with relief actions undertaken in volatile, dangerous, and shifting operational contexts.

1. Internally developed policies

The research revealed three general sets of actors charged with devising humanitarian organizations' internal anti-diversion policies: the Senior Management Group or Board of Directors; the legal counsel (whether in-house counsel or external counsel) and policy advisors; and the grant officers or other implementation team members. Across

organizations, respondents indicated a significant range of involvement of each set of actors in formulating internal anti-diversion policies.

In general, most organizations indicated that, at a minimum, their general counsel or external legal advisors crafted at least some of the elements of their anti-diversion policies. A gap emerged among many respondents—especially between the surveyed in-house counsel, grant officers, and field coordinators—regarding the level of understanding by the legal advisors of the most salient issues for implementing anti-diversion policies from the perspective of field operators. In short, the non-lawyers who took part in this research indicated in general that while the lawyers attempted to provide feasible and principled guidance, often that guidance seemed unworkable in certain respects and did not always reflect an understanding of the realities on the ground. This critique was especially pronounced in organizations where outside legal counsel with relatively little experience in high-risk areas (or humanitarian operations in general) contributed to the anti-diversion policies.

A number of respondents drew attention to the involvement, or not, of the Senior Management Group or Board of Directors (or equivalent) in devising an organization’s anti-diversion policies. In general, the stronger the involvement and oversight of the Board in devising an organization’s anti-diversion policies, the more likely the grant officers and field coordinators were to indicate that the policies were feasible and reflected the nuances and challenges of implementing the range of anti-diversion policies on the ground. A handful of organizations noted that they have an international management team with working groups that look at anti-diversion issues in high-risk countries, especially fragile states. A few respondents noted that the “tone from the top” was integral to effectively formulating and implementing anti-diversion policies.

Most of the grant officers, regional and national coordinators, and field operators who provided their perspectives indicated that they would prefer to have more—and, sometimes, significantly more—input in the formulation of their organizations’ anti-diversion policies.

2. External sources

The research identified three (often interrelated and mutually reinforcing) types of external sources of anti-diversion policies: international, regional, and domestic laws; administrative regulations; and donor policies.

a. International, regional, and domestic laws

All of the donor governments reviewed for this research—including Australia, Canada, the Netherlands, the United Kingdom, the United States, Sweden, and Switzerland—have enacted domestic laws aimed at curbing at least one of the types of diversion under

review (anti-bribery/corruption; anti-money-laundering/fraud; and anti-terrorism-financing).⁴²

No interviewees stated that their organization had adopted the standards set by the Financial Action Task Force (those standards bind contracting states). A few respondents noted that, as a prominent international governmental policy-making body charged with devising and monitoring the implementation of certain types of anti-diversion policies, the FATF is increasingly becoming part of discussions with donors on what type of standards may be established.

b. Administrative regulations and bodies

The Charity Commission for England and Wales (CCEW) was singled out among respondents for the scope of its regulatory powers; its relatively sophisticated understanding of the issues facing charities; and its relatively proactive and specific guidance. A few respondents emphasized that the CCEW had a relatively long history of publishing documents and guidelines and promoting accountability and transparency within the sector, far before the more recent emphasis among regulators on anti-terrorism-financing and anti-bribery, for instance. After the UK, Australia was recognized among respondents as the state dedicating the most significant amount of resources and attention to constructively and cooperatively developing regulation to oversee humanitarian organizations and other non-governmental organizations.

c. Donor policies

In addition to the laws and regulations of donor governments, many donors have developed policies on anti-diversion. While not legally binding in themselves, these policies become binding on humanitarian organizations when those organizations become parties to grant and partnership agreement contracts with donor governments.

B. Policies, Procedures, and Practices

This subsection identifies and surveys the policies, procedures, and practices humanitarian organizations undertake in relation to anti-diversion programming. The section looks at how humanitarian organizations formulate anti-diversion policies of humanitarian organizations and how those policies are disseminated. The section then

⁴² See, e.g., Kate Mackintosh and Patrick Duplat, “Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action,” United Nations Office for the Coordination of Humanitarian Affairs and the Norwegian Refugee Council, 2013, pp. 19-43, available online at: https://www.nrc.no/arch/_img/9682778.pdf; OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted 1997); The Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1, et seq.); Bribery Act 2010 (c.23) (United Kingdom); United Nations Convention against Corruption (entry into force: December 14, 2005).

identifies various elements of the reported compliance programs and concludes by examining ways that humanitarian organizations approach sanctions with respect to anti-diversion policies.

1. Formulation

For all of the surveyed humanitarian organizations, formulating anti-diversion policies takes place within the broader context of strategically thinking about program design, risk assessment and analysis, and monitoring and evaluation, all with a view toward ensuring aid and assistance reach intended beneficiaries. This subsection outlines some of the key areas humanitarian organizations consider when formulating these policies.

a. Risk assessment and analysis

Nearly all organizations that took part in the research undertook, at some level and at varying degrees of frequency, a risk analysis concerning anti-bribery and anti-corruption activities. These risk analyses typically included a review of the relevant legal requirements of donor governments, transit governments (e.g., territories through which goods or services are transferred), and host state governments, as well as donor policies and industry standards (if any) from other sectors. Numerous respondents indicated that the promulgation of domestic laws had catalyzed their organizations to develop more robust anti-diversion programming. Interviewees identified the United Kingdom and the United States as the governments with the most restrictive anti-bribery and anti-corruption regimes. Australia, the Netherlands, Spain, Sweden (implemented by SIDA), and Switzerland (implemented by SDC) were recognized as occupying something of a middle ground in terms of the level of obligations. Canada has reportedly taken a more general approach by setting out broad guidelines.

Numerous interviewees noted that their organizations had adopted a “deter, detect, prevent, and respond” anti-fraud framework. While the shape and content of those frameworks varied from organization to organization, the “deter, detect, prevent, and respond” framework was perhaps the most commonly identified set of guiding principles of any of the fields of concern examined for this research.

For many organizations, the primary risk factors concerning anti-bribery and anti-corruption were potential legal action, ranging from fines to revocation of operating licenses to criminal prosecution—all of which could result in reputational harm. The UK Bribery Act and, to a lesser extent, the U.S. Foreign Corrupt Practices Act were noted as key external risk factors. Multiple interviewees mentioned that their organizations have taken extensive steps to comply with these regimes, often at considerable cost.

In making risk assessments and analyses, all of the surveyed organizations identify the relevant contextual factors regarding each field of potential diversion—anti-fraud/money laundering; anti-bribery/corruption; and anti-terrorism-financing—and based on that analysis adapt their broader anti-diversion policies to the specifics of the situation. In a

comment that resonated with views mentioned by other participants, one respondent emphasized that each country has its own “flavor” of anti-diversion risk that the team needs to identify and address. Numerous organizations stated, for instance, that it is nearly impossible to engage in effective humanitarian programming in relation to Somalia without using local partners. Organizations’ anti-diversion policies therefore must adapt to the relevant factors in that situation, which can take time and other resources, including developing networks of local partners. Organizations with stronger ties to local communities indicated that they believe they are better positioned than their counterparts to engage in effective screening and anti-diversion activities. Such knowledge allows the organization to reportedly draft policies that more closely align with the realities on the ground.

Another key element in identifying and assessing risk for some organizations was the potential for adverse media attention, which could harm the organization’s ability to raise funds; to operate in particular contexts; and to maintain its operating licenses.

b. Sector-wide standards

The research revealed that no single set of anti-diversion standards is considered by the surveyed organizations to constitute an industry-wide standard. Nonetheless, a number of organizations referenced standards drawn from initiatives of humanitarian organizations or from other industries. More general standards, such as the “Do No Harm” guidance, were also mentioned as touchstones in framing anti-diversion policies.⁴³

With respect to anti-fraud/money-laundering activities, a few organizations referenced the *Transparency International Handbook of Good Practices for Preventing Corruption in Humanitarian Operations* (and its shorter companion publication, the *TI Pocket Guide of Good Practices for Preventing Corruption in Humanitarian Operations*).⁴⁴ These materials were extolled by interviewees for their reportedly clear and helpful guidance on numerous facets of anti-corruption programming. The *Pocket Guide*, in particular, drew strong praise as reflecting a workable and principled balance calibrated by anti-corruption experts working in consultation with humanitarian officers. Interviewees also mentioned that many donors promulgate their own procurement standards.⁴⁵ The FATF’s anti-money-laundering standards were also referenced, though less frequently, by participants.

⁴³ See, e.g., CDA Collaborative Learning Projects, *The Do No Harm Handbook*, November 2004, available online at: <http://www.phibetaiota.net/wp-content/uploads/2013/07/2004-DoNoHarmHandbook.pdf>.

⁴⁴ Transparency International, *Handbook of Good Practices for Preventing Corruption in Humanitarian Operations*, January 2010, available online at: http://www.transparency.org/whatwedo/pub/handbook_of_good_practices_preventing_corruption_in_humanitarian_operations; Transparency International, *Pocket Guide of Good Practices: Preventing Corruption in Humanitarian Operations*, February 2010, available online at: http://www.transparency.org/whatwedo/pub/pocket_guide_of_good_practices_preventing_corruption_in_humanitarian_operat.

⁴⁵ ECHO, Guidelines for the award of Procurement Contracts within the frameworks of Humanitarian Aid Actions financed by the European Union (“Humanitarian Aid Guidelines for Procurement”), May 31, 2011, available online at http://ec.europa.eu/echo/files/partners/humanitarian_aid/Procurement_Guidelines_en.pdf.

A number of organizations noted that, as members, they comply with InterAction's more general financial good practices standards.⁴⁶ Several organizations mentioned that they seek to conform to the standards established by the Association of Certified Fraud Examiners.

With regard to anti-bribery/corruption activities, the majority of legal advisors interviewed for this research indicated that their organizations consider the parameters of the UK Bribery Act and the U.S. FCPA to constitute a minimum set of standards they pursue with respect to all of their programming, even where the programming is not subject to UK or U.S. law. Numerous respondents emphasized the administrative burden of meeting these standards, and multiple organizations mentioned that they had hired external UK and/or U.S. legal counsel to help comply with the relevant legal requirements. Some organizations mentioned that they drew upon guidance and principles produced by NGOs, such as the resource created by a Bond-established Working Group of UK NGOs.⁴⁷ A few organizations mentioned that they had established policies on gifts and hospitality in order to help ensure that their employees have clear anti-bribery/corruption guidelines.

Organizations surveyed for this research were less likely to identify potential industry-wide standards or best practices with respect to anti-terrorism-financing than they were with respect to the other fields of anti-diversion concern. Most organizations stated that they screen at least their employees and some of their partners against some of the counterterrorism lists.

c. Pre-established emergency procedures and derogations

A few interviewees mentioned the importance of pre-established emergency procedures concerning anti-bribery and anti-corruption activities. Some organizations voiced a desire for emergency derogations for other anti-diversion fields of concern—for example, during first the three months of armed conflict or disaster the organization would not have to operate with full set of counterterrorism obligations. Other respondents, however, emphasized that by definition the work of humanitarian organizations takes place in emergency situations and that program design, especially risk assessment and analysis procedures, should already incorporate what in other contexts would be emergency procedures.

⁴⁶ InterAction, PVO Standards, rev. March 2, 2013, section 4 ("Finance"), available online at: <http://www.interaction.org/sites/default/files/PVO%20Standards%20%20%20March%202%2C%202013.pdf>.

⁴⁷ See, e.g., Bond for International Development, Transparency International UK, and Mango, "Anti-Bribery Principles and Guidance for NGOs," June 2011, available online at: http://www.bond.org.uk/data/files/Bond_Anti-Bribery_Principles_and_Guidance_for_NGOs.pdf; see also Daniel Maxwell and Peter Walker, "Confronting corruption in humanitarian aid: Perspectives and options," Chr. Michelsen Institute, U4 Brief, No. 3, March 2009, available online at: <http://www.u4.no/publications/confronting-corruption-in-humanitarian-aid-perspectives-and-options/#sthash.WAGMHYi0.dpuf>.

2. Dissemination and inculcation of policies

Respondents identified a number of ways that their organizations disseminate and inculcate their organizations' anti-diversion policies. Many organizations mentioned that the "tone from the top" and the involvement of senior leadership in general were central to formulating and implementing, in particular, effective anti-bribery and anti-corruption activities.

a. Channels

Two primary policy-dissemination channels were identified: codes of conduct and staff and partner trainings.

i. Codes of conduct

Numerous respondents, especially compliance officers, mentioned the critical importance of a clear and well-publicized code of conduct to effectively formulating and implementing anti-bribery and anti-corruption activities.⁴⁸ A clear statement of policy reflected in the code of conduct reportedly provides a strong reference point for those engaged in anti-bribery and anti-corruption activities. A few interviewees mentioned that their organizations' codes of conduct had not included a clear statement of policy regarding financial transactions with armed groups, and that the lack of this guidance had presented an obstacle to effective policy advising and operational programming.

ii. Staff and partner training

The majority of respondents indicated that one of the most important tools to effectively implement anti-bribery and anti-corruption policies is regular training of staff and partners. These trainings typically took the form of in-person classes (either conducted by internal staff or externally) or online modules. Respondents identified a number of training tools, and a few highlighted the free online anti-corruption/anti-bribery training produced by the Gates Foundation.⁴⁹

⁴⁸ See, for instance, International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross, "Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief," 1994, available online at: <http://www.icrc.org/eng/assets/files/publications/icrc-002-1067.pdf>; International Rescue Committee, "The IRC Way," (undated), available online at: <http://www.pseataaskforce.org/uploads/tools/1351714378.pdf>.

⁴⁹ Tamara Driscoll and Meghan Hanson, "Anti-bribery/Anti-corruption Rules for Private Foundations," Bill and Melinda Gates Foundation, 2010, available online at: <http://learnfoundationlaw.org/courses-anti-bribery.html#.U2F30a1dXSs>.

b. Challenges

Two of the biggest challenges identified by respondents to effectively disseminating and inculcating anti-diversion policies were staff turnover and different orientations across offices.

i. Staff turnover

A few respondents emphasized that high staff turnover rates have made it difficult to effectively implement anti-diversion policies. Especially in relation to emerging and high-risk conflict situations, where staff members are likely to have relatively shorter assignments, the issue of staff turnover presents significant challenges to establishing organization-wide understandings of anti-diversion policies.

ii. Different orientations to anti-diversion across offices

Many respondents mentioned that regional and national offices have different orientations to anti-diversion policies—in terms of assumptions, vocabularies, and expectations—than their colleagues in headquarters. These varying orientations present challenges to establishing organization-wide standards.

3. Program characteristics

Nearly all of the organizations that took part in this research indicated that they had established anti-diversion due diligence, risk assessment and analysis, and monitoring and evaluation programs. These programs typically included a set of policies and procedures to ensure as a general matter that, as much as possible, aid and assistance reach intended beneficiaries. The range and complexity of these compliance programs were remarkable. For example, one organization mentioned that over the last year its compliance program included 20-30 different reporting frameworks to satisfy its various donors. Below, some of the most salient and common characteristics of identified compliance programs are outlined.

a. Staff resources

All of the organizations that took part in this research indicated that they have at least one full-time staff member whose primary responsibility concerns compliance with anti-diversion policies, most often in the form of a grant officer, a financial program associate, or a lawyer. Many organizations had multiple full-time staff members dedicated to anti-diversion policies and practices, and the range of internal staff resources dedicated to anti-diversion varied significantly. One international humanitarian NGO noted that its headquarters office has six staff members working full-time on grant compliance and reporting relating to anti-diversion policies (two of those staff members spend the majority of their time screening potential and current partners against procurement, counterterrorism, and other lists). All of the respondents indicated that their

organizations have only added staff resources to anti-diversion compliance; none had decreased staff resources for these programs.

b. Due diligence

Every organization surveyed as part of this research indicated that they engage in some form of anti-diversion-related due diligence, most often framed in terms of effective program design, risk assessment and analysis, and monitoring and evaluation. The content and shape of that due diligence varied significantly between organizations. No single due diligence standard emerged within any of the fields of concern. With respect to anti-terrorism-financing activities, most organizations indicated that they screen staff and partners against, at a minimum, the U.S. SDN and UN 1267 lists. A number of organizations have had to undertake “enhanced due diligence” in relation to Somalia. Respondents uniformly emphasized that to be effective and practicable due diligence standards must be context-dependent.

One organization noted that it has developed a document outlining its due diligence and risk-mitigation policies and measures. The document has reportedly proved useful in educating donors about the organization’s due diligence programming. In addition to describing program design—especially area context and risk-assessment analysis—and prohibited-parties list-checking modalities, the document details a range of due diligence activities the organization performs concerning sub-grantees, vendors, contractors, and suppliers. With respect to sub-grantees, the organization performs initial due diligence in the form of community-level verification measures, review of past performance, pre-award assessment of financial capacity, verification of the identity of key individuals and staff, and written sub-grant agreement and clauses. Ongoing due diligence concerning sub-grantees includes training, list checking and monitoring, distribution of funds in tranches and financial reporting, and program monitoring. The organization’s additional due diligence relating to vendors, contractors, and suppliers includes community-level verification measures, verification of company registration, performance review, verification of key individuals’ identities, and written contracts with supporting documentation.

c. Transfer of obligations to “subs” and others

In their partnership agreement contracts, nearly all of the organizations surveyed as part of this research indicated that they are required, as part of the contracts with donors, to ensure that the anti-diversion obligations entailed in their contracts are transferred to their partners and other “subs.” A number of lawyers and grant officers raised concerns about the clarity of guidance from donors about what constitutes a “sub,” however, as well as the feasibility of partners and “subs” implementing all of the applicable anti-diversion requirements. One organization reportedly refused a donor’s flow-down clauses because those clauses were too restrictive and infeasible for the partners to implement.

The extent to which humanitarian organizations dedicate resources to subgrant monitoring was a relatively contentious topic. Many organizations mentioned that, while they have established subgrant-monitoring policies, those policies are not always fully enforced, and those policies present particularly sensitive issues for engagement with donors and partners.

d. Licenses

A number of organizations detailed the processes they have undertaken to obtain operating licenses, for example from the U.S. Department of Commerce and the U.S. Department of the Treasury, in order to engage in relief actions in places such as Somalia and Syria. Significant internal resources are reportedly dedicated to obtaining, negotiating, monitoring, and implementing these licenses. National and regional coordinators, as well as grant officers, voiced concern that it may take significant time before a license becomes available.⁵⁰

e. Screening staff and partners

As part of their anti-diversion programs, the majority of organizations that receive U.S. government or private foundation funding screen their staff and partners, as well as non-U.S. banks and other financial institutions that the organizations do business with, against, at a minimum, the U.S. SDN list and the UN 1267 List. Organizations noted remarkable differences with respect to the minimum transaction amount that needed to be screened, ranging from \$125 to \$25,000. Some participants distinguished between excluded parties (those disbarred or suspended and who therefore cannot receive funds) and blocked parties (those sanctioned by OFAC, the UN Security Council, or national, regional, or international bodies).

Respondents indicated that these screening programs undertaken as part of organizations' due diligence and risk mitigation can raise significant operational challenges. These challenges include that the programs require substantial administrative resources; the programs are more difficult to administer in places with low Internet connectivity rates, where much humanitarian programming takes place; and the programs may contribute to staff security concerns.⁵¹

Not all of the organizations that took part in the research undertake screening—even of the organization's staff or implementing partners—as part of their anti-diversion compliance programs. One organization indicated that it informs donors that it will not

⁵⁰ For information on the parameters of OFAC licensing regimes, see Counterterrorism and Humanitarian Engagement Project, "OFAC Licensing," Background Briefing, March 2013, available online at: <http://blogs.law.harvard.edu/cheproject/files/2012/10/CHE-Project-OFAC-Licensing.pdf>.

⁵¹ Counterterrorism and Humanitarian Engagement Project, "Partner Vetting in Humanitarian Assistance: An Overview of Pilot USAID and State Department Programs," Research and Policy Paper, November 2013, available online at: <http://blogs.law.harvard.edu/cheproject/files/2013/10/CHE-Project-Partner-Vetting-in-Humanitarian-Assistance-November-2013.pdf>.

undertake any anti-diversion-related screening practices, and that the donors have so far not required otherwise. (Making such a notice to donors does not absolve the organization of potential criminal and/or civil liability under national laws in the event that the organization engages in prohibited transactions.)

Most organizations stated that they had, in screening their staff and potential partners, experienced a “positive hit” against the U.S. SDN list (no organizations surveyed as part of this research indicated that they had experienced a “positive hit” against any of the other anti-diversion screening lists). Upon following up, the organizations realized that the positive hit was in fact a false-positive hit—a relatively common name where the individual at issue was not the person listed by OFAC. Some of the respondents who experienced these “positive hits” mentioned that clearer guidance from donors on what steps are necessary to take in such a context would be helpful in designing compliance programs.

One respondent mentioned that a member of the board of that humanitarian organization has the same name as one of the people on the SDN list. Due to a perceived fear that maintaining his position on the board would endanger the organization’s ability to function, he elected to resign his position from the board.

A few organizations mentioned that some local implementing partners had declined to work with the organizations because the local partners refused to provide a list of their board members out of fear about what the organization, or the donor, would do with that information.

f. Procurement

Every organization that provided information for this research indicated that they have developed anti-diversion policies and procedures concerning procurement. Many of the organizations incorporate list-checking screening software programs into their procurement procedures. Procurement-related practices were identified by participants as one of the highest administrative burdens among anti-diversion compliance program elements. A number of organizations indicated that they screen all banks and financial institutions against a range of lists. Thresholds of procurement that trigger various levels of scrutiny varied widely within (especially in relation to various country offices) and between organizations, with some local offices having a much higher “risk threshold” than others. Respondents indicated that procurement standards are some of the most detailed guidelines provided and enforced by donors.⁵² On a practical level, a number of

⁵² See, e.g., ECHO, Guidelines for the award of Procurement Contracts within the frameworks of Humanitarian Aid Actions financed by the European Union (“Humanitarian Aid Guidelines for Procurement”), May 31, 2011, available online at http://ec.europa.eu/echo/files/partners/humanitarian_aid/Procurement_Guidelines_en.pdf; see also Annex III: Principles and Procedures applicable to Procurement Contracts Awarded within the Framework of Humanitarian Aid Actions Financed by the European Union, January 1, 2014, available online at: http://dgecho-partners-helpdesk.eu/_media/annexiii_en_131112.pdf. Many organizations referenced the recently elaborated Office of Management and

regional and national coordinators, as well as grant officers, noted a desire for more comprehensive databases of entities that have been “cleared” for procurement.

i. “Know your supplier” principle

For many of the organizations surveyed, the “know your supplier” principle guided their procurement-related compliance programming. The steps organizations took to implement this principle ranged based on such factors as whether the organization itself undertook most procurement within the organization; the size and cost of the activities; and the organization’s familiarity with the relevant country contexts and operating environments.

ii. Hawala systems

Respondents, especially those with programs relating to Somalia, repeatedly raised the importance of and challenges associated with hawala systems for effective anti-diversion programming. Interviewees indicated that most financial transfers to and from Somalia take place through hawala systems, and these transfers are reportedly under significantly more donor scrutiny than financial transactions made through other banking systems.⁵³

4. Enforcement of policies

a. Internal and external audits

All of the respondents indicated that their organizations have developed internal auditing systems, and most of the organizations also have external auditors regularly review their financial records (typically, at least once a year). Interviewees identified an array of auditing standards imposed by various donors, such as ECHO, DFID, (formerly) AusAID, USAID, and (formerly) CIDA. In addition to the primary fields of anti-diversion concern raised in this report, theft is also folded into the audits of many of the surveyed organizations.

Generally, according to respondents, the larger the organization the more internal auditors it hires, though there was significant variability on the far ends of the spectrum with respect to how many internal auditors had been hired. Depending on the organization, a combination of various positions took part in the audit, such as financial controllers, accountants, general counsel, contract service coordinators, or grant officers. All of the surveyed organizations coordinated audits from headquarters. The per-transaction threshold for triggering an audit ranged among the surveyed organizations, from \$1,000 to around \$25,000.

Budget, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance, Fed. Reg. Vol. 78, No. 248, 78590, December 26, 2013.

⁵³ See Manuel Orozco and Julia Vansura, “Keeping the lifeline open: remittances and markets in Somalia,” Oxfam, July 2013, available online at: <http://www.oxfamamerica.org/static/oa4/somalia-remittance-report-web.pdf>.

While the bulk of internal and external audits discussed as part of this research concern anti-fraud and anti-money-laundering activities, a few humanitarian organizations also mentioned that they run internal and external audits on their anti-bribery and anti-corruption compliance programs. One organization reportedly invested very heavily in anti-corruption auditing recently, after the organization grew suspicious that less corruption-related diversion was reported than was likely happening in practice.

One organization, which has two full-time auditors based out of its headquarters office, has developed a “risk-based auditing” program. That program entails a large matrix into which the auditors enter various criteria relating to the potential scope of the audit. Based on this matrix and a corresponding index, the auditors determine a potential level of corruption and other risk, and areas with higher identified risk potential are subject to greater scrutiny, including additional field visits.

b. Whistle-blowing and community-complaint mechanisms

A large number of humanitarian organizations mentioned that they had established independent whistle-blowing and community-complaint mechanisms. These mechanisms allow and encourage employees, contractors, beneficiaries, and others to provide information on any form of potential diversion. A few of the organizations had established, or were in the process of establishing, anonymous call hotlines to report potential diversion.

VIII. OBSERVATIONS

This section offers some observations about the themes, trends, and trajectories relating to the anti-diversion policies and practices of humanitarian organizations identified in this report. While some of the details regarding donor expectations and sector-wide standards relating to anti-diversion policies appear to be in flux, the most general observation is that humanitarian organizations have extensive experience developing internal policies—especially in the areas of program design, risk assessment and analysis, and monitoring and evaluation—aimed at ensuring that humanitarian aid and assistance reach intended beneficiaries.

The observations below identify and analyze the trends that emerged from the research. The observations are not meant to provide prescriptive or proscriptive guidance. Rather, they are provided to suggest areas of potential focus and engagement among the humanitarian community (and, for some areas, engagement with donors and other stakeholders); to propose areas for additional research and analysis; and to highlight areas of particular concern and opportunities flowing from the research findings.

A. Frameworks and Threshold Concerns

1. Framing

No organization surveyed for this research framed their policies in terms of “anti-diversion” as such. Rather, most organizations identified their policies in terms of effective program design, risk assessment and analysis, and monitoring and evaluation programs.

Only one of the organizations surveyed had developed a comprehensive internal anti-diversion policy, while the rest of the organizations had developed policies concerning certain, or multiple, fields of anti-diversion concern. According to many respondents, the process of developing and implementing such a comprehensive policy—and its translation into a donor explanatory note—may prove useful. The various types of existing ways that organizations frame their sets of anti-diversion approaches have the potential to affect how other humanitarian organizations, donors and other stakeholders, the media, and the general public perceive humanitarian organizations, including how they perceive those organizations’ ability to effectively implement programming in high-risk areas and those organizations’ susceptibility to diversion.

A spectrum of approaches to framing anti-diversion policies and practices emerged in the research. At one end of the spectrum, some organizations robustly and proactively framed their anti-diversion policies in terms of humanitarian principles. This approach emphasized that by their nature humanitarian organizations are guided by the humanitarian imperative and, accordingly, their activities aim to alleviate suffering in line

with humanitarian principles of impartiality, humanity, independence, and neutrality (though not all organizations surveyed adhere to the principle of neutrality in all circumstances). These principles provide a framework for developing anti-diversion policies through effective program design, risk assessment and analysis, and monitoring and evaluation programs.

On the other end of the spectrum, at least a few of the organizations that took part in this research framed their anti-diversion policies less in terms of humanitarian principles and more in terms of complying with best business practices, including those drawn from commercial sectors. These organizations often drew not only practices but also language and descriptions from other business fields that work in high-risk areas. While recognizing certain unique elements of the humanitarian enterprise, these organizations emphasized the common nature of the anti-diversion-related concerns of operating in such contexts irrespective of organizational objective.

2. Public policy objective of humanitarian assistance

A number of organizations noted that, by attempting to impose standards drawn from commercial sectors, certain donors are not adequately recognizing important distinctions between humanitarian organizations and commercial entities, especially the public policy objective underlying humanitarian response. Respondents noted that, unlike commercial service providers, humanitarian organizations need to be able to speak with all armed actors, even designated terrorists, in order to obtain access and deliver assistance. Many of the organizations called for a greater respect among donors of this fundamental distinction between humanitarian organizations and the commercial sector. It bears emphasis that many major donor governments have, as one of their foreign policy objectives, prioritized respect for the humanitarian imperative.

3. Screening ultimate beneficiaries

One of the areas of greatest contention among the surveyed organizations is whether to screen ultimate beneficiaries of humanitarian aid and assistance. Nearly all of the organizations stated that they had an informal policy of never screening ultimate beneficiaries. Yet many organizations emphasized pressure from the U.S. government and from certain private foundations to demonstrate and certify compliance with all relevant U.S. counterterrorism laws, including laws that require organizations not to provide any material support or resources (except medicine or religious materials) to designated individuals or organizations. The pilot USAID PVS and State Department RAM programs—and the already existing partner-vetting programs in West Bank/Gaza and Afghanistan—have raised concerns that the U.S. and potentially other major donors will increasingly impose anti-diversion policies that endanger staff and coopt the organizations into donors' security frameworks.

B. Multiplicity and Complexity of Anti-Diversion Policies

1. Sector-wide standards

No sector-wide anti-diversion standards or best practices emerged during the research. Organizations took different approaches to preventing, stopping, and punishing potential and actual diversion of humanitarian aid and assistance. The lack of sector-wide anti-diversion standards may stem in part from a fundamental disagreement over how best to frame humanitarian action and the sources underlying its legitimacy.

In some of the anti-diversion fields of concern, however, a number of organizations had adopted similar practices. Nearly all of the organizations screen at least some of their staff and partners against one or more anti-diversion lists, such as the U.S. SDN List, the 1267 List, or the System for Award Management (SAM) list. Most organizations that receive U.S. government funding screen financial institutions against those lists.

All of the surveyed organizations that have offices in the U.K. or that receive grants from UK funders have adopted policies, procedures, and practices to comply with the UK Bribery Act. To a slightly lesser extent, a majority of organizations that are subject to U.S. law or that receive U.S. government funding had taken steps to comply with the FCPA.

During the interviews, concerns arose about setting sector-wide standards that may be inflexible or that could be set too high for all organizations to meet in all circumstances. In addition, a few organizations voiced concern about the desirability, feasibility, and, in some instances, morality of transferring all of an organization's anti-diversion obligations onto its partners and other "subs."

2. Due diligence standards

In general, interviewees indicated that they approach due diligence in terms of meeting their humanitarian objective and not necessarily in terms of assisting anti-terrorism-financing or other fields of concern, though that may be a byproduct of such due diligence practices. The relevant standard depended on the context, and depending on the context the diligence due could be quite different. The imposition by the U.S. of "enhanced" due diligence in relation to humanitarian programming in Somalia raised concerns among respondents that this heightened level of diligence may be imposed in other contexts.

3. Levels of comprehension within organizations

The levels of comprehension of internal anti-diversion policies varied enormously within and between organizations. In general, the drafters of the anti-diversion policies were typically general counsel, policy advisors, or Board members. Individuals charged with implementing the policies but who typically did not help formulate the policies—such as grant officers, as well as regional and national coordinators—indicated lower levels of

comprehension of the policies. Those who implemented the policies almost uniformly indicated a desire for more involvement in formulating the policies, and many of those implementing the policies voiced concern that the general counsels and others who draft the policies do not have a sufficiently realistic sense of the concerns and challenges of implementing the policies in the field. Implementers most strongly criticized the use of outside legal counsel in drafting the policies on the basis that those counsel typically have less understanding of the relevant operating environment.

A few respondents suggested that, by increasing their own understanding of external and internally devised anti-diversion policies, donors have an opportunity to raise the level of comprehension of anti-diversion policies across the humanitarian sector. Respondents noted that donors and partners exhibit a range of levels of sophistication and understanding around anti-diversion policies.

4. Remote programming

Organizations engaged in remote programming, especially in relation to Somalia, reportedly received significantly higher scrutiny of the activities they undertook to fulfill their counterterrorism-related contract obligations. Two organizations reported that a donor government strongly encouraged organizations to quickly engage in cross-border, remote programming in relation to Syria, and then six months later both organizations reported that the donor audited their remote-programming operations concerning Syria. These sorts of donor responses and orientations have, according to interviewees, raised concerns among humanitarian organizations.

C. Engagement with Donors and other Stakeholders

1. Diversity of focuses among government donors

Throughout the interviews, respondents identified a diversity of anti-diversion-related focuses among donors. Some donors focused particularly on anti-bribery/corruption, while others placed stronger emphasis on anti-terrorism-financing. Among the various donors identified for this research, the U.S., the U.K., and ECHO emerged as the donors with the most robust and expansive set of obligations concerning anti-diversion. Compared to donor governments, private foundations were less likely to impose a full array of anti-diversion policies on the organizations surveyed for this research.

2. Clarity and coherence of donor policies

Nearly all of the humanitarian organizations that took part in the research indicated a desire for increased clarity around donors' anti-diversion policies and standards. In this connection, many of the respondents stated that their programming would be more effective if the various donors would clarify, simplify, and standardize their approaches to anti-diversion within their own agencies and also do so among donors. A number of organizations voiced concern that donors do not take sufficient steps to ensure that

their anti-diversion requirements are standardized across the various relevant government agencies, thus creating a latticework of disparate standards or at least different levels of enforcement and scrutiny. A few respondents called for more collaboration among donors, in particular the U.S., the U.K., ECHO, and Canada.

3. Understanding of what humanitarian organizations do

A number of respondents indicated that donors in particular and the public in general do not always understand what humanitarian organizations do. While some donors have a solid understanding of humanitarian action, the reported lack of awareness and knowledge on the part of many donors can lead them to fail to apprehend humanitarian organizations' already-existing anti-diversion policies and practices.

4. UN partnership/project templates

The research revealed that the terms of UN contract templates have a significant effect on the scope and content of anti-diversion obligations. Those templates ultimately form the contract basis on which hundreds, if not thousands, of implementing partners operate. The importance of these templates should therefore not be underestimated. Those templates also form the basis for the use of pooled funds, which increasingly support relief actions in armed conflicts and other emergency situations.

D. Organizational Structures, Cultures, and Resources

1. Board and executive-level involvement

A large range of board and executive-level involvement in formulating and implementing anti-diversion policies emerged during the research. Organizations with relatively stronger board and executive-level involvements seemed to evince a more coherent and comprehensive set of internal standards and vocabularies around anti-diversion concerns. The depth of involvement and focus by senior managers within an organization on anti-diversion policies seemed to have a strong influence on the approaches and focuses of regional and national coordinators, as well as grant officers.

2. Administrative burdens

According to numerous interviewees, the increase in donor-imposed anti-diversion requirements on humanitarian organizations have apparently not been matched by proportionate increases in overhead. In discussing this issue with donors, organizations have attempted to focus on providing facts and figures that describe the impacts that increasingly burdensome anti-diversion obligations have on programming effectiveness, including increased demands on staff and the need for additional other resources, such as commercial software programs. All organizations surveyed as part of this research indicated an increased administrative burden in recent years to comply with anti-diversion policies.

3. Openness and transparency

Numerous organizations noted a strong sense of concern with openly discussing their approaches to formulating and implementing anti-diversion policies. At times, this concern seemed to stem from the view that exposing these policies to public light will bring unwanted attention on the organization, and that it would be better to discuss the definitions and expectations around anti-diversion only when necessary. Notably, a few organizations take a different approach, in which they are, at least in comparison to other organizations, engaging in a public discussion of how best to approach anti-diversion policies. The gap between these approaches seems to be expanding.

4. Staff training

Ensuring that all staff who have a role in formulating or implementing anti-diversion policies seems, according to many respondents, to be a central element of effective programming. No organization surveyed for this research, however, indicated that it has established a sufficiently comprehensive staff training programming around all relevant anti-diversion issues. To increase the effectiveness of staff trainings, it may be useful for organizations to consider having grant officers and other implementers provide trainings and advice to general counsel, policy advisors, and others involved in the formulation of anti-diversion policies.

IX. CONCLUSION

With rising pressure from legal and regulatory mechanisms—including the UK Bribery Act and the U.S. FCPA, alongside many states’ increasing engagement with monitoring bodies such as FATF—humanitarian organizations are devoting more resources to the administrative, policy, operational, and legal components of anti-diversion compliance. And they are doing so, in many respects, with fewer resources and under increasingly greater scrutiny from donors and the media.

Numerous interviewees raised concerns that donors and the general public do not sufficiently understand what humanitarian organizations do, why humanitarian principles are so important, and why it may not be advisable to transfer standards wholesale from the commercial sector to the humanitarian sector. Many large humanitarian organizations voiced a strong interest in devising strategies to better communicate their extant policies and procedures aimed at ensuring that aid and assistance reach intended beneficiaries in high-risk environments.

In sum, the research undertaken for this report revealed, first, that humanitarian organizations have long developed internal policies and practices aimed at ensuring that aid and assistance reach intended beneficiaries, and, second, that many humanitarian organizations are grappling with how best to adapt to additional, externally imposed anti-diversion policies in light of changing operational circumstances and heightened donor demands and scrutiny.

X. SELECT BIBLIOGRAPHY

David Ariosto, “U.S. trucking contracts funded Taliban, source says,” CNN, July 25, 2011, available online at: <http://www.cnn.com/2011/WORLD/asiapcf/07/25/afghanistan.us.funds.taliban/>.

Associated Press, “Turkish anti-terrorist police raid aid agency near Syrian border,” January 14, 2014, available online at: <http://www.reuters.com/article/2014/01/14/us-turkey-ngo-idUSBREA0D0JI20140114>.

Associated Press, “UN investigates theft and sale of Somalia famine food aid,” *The Guardian*, August 15, 2011, available online at: <http://www.theguardian.com/world/2011/aug/15/un-theft-somalia-food-aid>.

Australian Council for International Development, “Code of Conduct,” 2010, available online at: <http://www.acfid.asn.au/code-of-conduct/files/code-of-conduct>.

Australian Department of Foreign Affairs and Trade, “Guidelines for Strengthening Counter-Terrorism Measures in the Australian Aid Program,” September 2004, available online at: http://aid.dfat.gov.au/Publications/Documents/ctm_guidelines.pdf.

Joe Belliveau, “Remote management’ in Somalia,” *Humanitarian Exchange Magazine*, January 2013, available online at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-56/remote-management-in-somalia>.

Bribery Act 2010 (c.23) (United Kingdom).

Bond for International Development, Transparency International UK, and Mango, “Anti-Bribery Principles and Guidance for NGOs,” June 2011, available online at: http://www.bond.org.uk/data/files/Bond_Anti-Bribery_Principles_and_Guidance_for_NGOs.pdf.

CDA Collaborative Learning Projects, *The Do No Harm Handbook*, November 2004, available online at: <http://www.phibetaiota.net/wp-content/uploads/2013/07/2004-DoNoHarmHandbook.pdf>.

Neal Cohen, Robert Hasty, and Ashley Winton, “Implications of the USAID Partner Vetting System and State Department Risk Analysis and Management System under European Union and United Kingdom Data Protection and Privacy Law,” Counterterrorism and Humanitarian Engagement Project, Research and Policy Paper, March 2014, available online at: <http://blogs.law.harvard.edu/cheproject/files/2013/10/CHE-Project-US-Partner-Vetting-under-EU-and-UK-Data-Protection-and-Privacy-Law.pdf>.

Charity Commission of England and Wales, “Protecting charities from harm: compliance toolkit,” (undated), available online at: <http://www.charitycommission.gov.uk/detailed-guidance/protecting-your-charity/protecting-charities-from-harm-compliance-toolkit/>.

Charity Commission for England and Wales, “Raising Funds for and/or Carrying Out Humanitarian Operations in Response to the Crisis in Somalia and East Africa,” 2011, available online at: http://www.humanitarianforum.org/data/files/ccomm_e_africa_crisis_guidance_for_charities.pdf.

Charity Commission for England and Wales, “Watchdog opens investigation into two charities set up to help deliver aid to Syria,” January 29, 2014, available online at: <https://www.charitycommission.gov.uk/news/watchdog-opens-investigation-into-two-charities-set-up-to-help-deliver-aid-to-syria/>.

CNN, “US Trucking Contracts Funded Taliban, Source Says,” July 25, 2011, available online at: <http://www.cnn.com/2011/WORLD/asiapcf/07/25/afghanistan.us.funds.taliban/>.

Sarah Collinson and Mark Duffield (with Carol Berger, Diana Felix da Costa and Karl Sandstrom), “Paradoxes of presence: Risk management and aid culture in challenging environments,” HPG/ODI, March 2013, available online at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8428.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, available online at: <http://blogs.law.harvard.edu/cheproject/files/2012/10/CHE-Project-ERM1.pdf>.

Counterterrorism and Humanitarian Engagement Project, “OFAC Licensing,” Background Briefing, March 2013, available online at: <http://blogs.law.harvard.edu/cheproject/files/2012/10/CHE-Project-OFAC-Licensing.pdf>.

Counterterrorism and Humanitarian Engagement Project, “Partner Vetting in Humanitarian Assistance: An Overview of Pilot USAID and State Department Programs,” Research and Policy Paper, November 2013, available online at: <http://blogs.law.harvard.edu/cheproject/files/2013/10/CHE-Project-Partner-Vetting-in-Humanitarian-Assistance-November-2013.pdf>.

The golden fleece: manipulation and independence in humanitarian action (ed. Antonio Donini), Kumarian Press, 2012.

Tamara Driscoll and Meghan Hanson, “Anti-bribery/Anti-corruption Rules for Private Foundations,” Bill and Melinda Gates Foundation, 2010, available online at: <http://learnfoundationlaw.org/courses-anti-bribery.html#.U2F30a1dXSs>.

Sophia Dunn, Mike Brewin, and Aues Sceek, “Final monitoring report of the Somalia cash and voucher transfer programme, Phase 2: April 2012–March 2013,” Cash and Voucher Monitoring Group, HPG/ODI, available online at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8521.pdf>.

ECHO, Guidelines for the award of Procurement Contracts within the frameworks of Humanitarian Aid Actions financed by the European Union (“Humanitarian Aid Guidelines for Procurement”), May 31, 2011, available online at http://ec.europa.eu/echo/files/partners/humanitarian_aid/Procurement_Guidelines_en.pdf.

Jan Egeland, Adele Harmer, and Abby Stoddard, “To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments,” OCHA, 2010, available online at: https://docs.unocha.org/sites/dms/Documents/Stay_and_Deliver.pdf.

Financial Action Task Force, “International standards on combating money laundering and the financing of terrorism & proliferation: The FATF recommendations,” February 2012, available online at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

The Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1, et seq.).

Antonio Galli, “Negotiating humanitarian access with Hamas in Gaza,” *Humanitarian Exchange Magazine*, Issue 58, July 2013, available online at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-58/negotiating-humanitarian-access-with-hamas-in-gaza>.

Bryan A. Garner, *Garner’s Dictionary of Legal Usage*, Oxford University Press, 2011.

Jeffrey Gettleman and Neil MacFarquhar, “Somalia Food Aid Bypasses Needy, U.N. Study Says,” *New York Times*, March 9, 2010, available online at: http://www.nytimes.com/2010/03/10/world/africa/10somalia.html?_r=0.

Global Humanitarian Assistance, “Defining humanitarian assistance,” (undated) available online at: <http://www.globalhumanitarianassistance.org/data-guides/defining-humanitarian-aid>.

Kay Guinane, Karen Siciliano Lucas, and Elizabeth Holland, “Safeguarding Humanitarianism in Armed Conflict: A Call for Reconciling International Legal Obligations and Counterterrorism Measures in the United States,” Charity and Security Network, 2012, available online at: <http://www.charityandsecurity.org/system/files/Safeguarding%20Humanitarianism%20Final.pdf>.

Samina Haq, “How Islamic Relief is working across Syria’s borders,” *Humanitarian Exchange Magazine*, Issue 59, November 2013, available online at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-59/how-islamic-relief-is-working-across-syrias-borders>.

Laura Hammond and Hannah Vaughan-Lee, “Humanitarian space in Somalia: a scarce commodity,” HPG Working Paper, April 2012, available online at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7646.pdf>.

Dana Hedgpeth, “\$13 Billion in Iraq Aid Wasted or Stolen, Ex-Investigator Says,” *Washington Post*, September 23, 2008, available online at: <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/22/AR2008092202053.html>.

Humanitarian Accountability Partnership, “The 2010 HAP Standard in Accountability and Quality Management,” 2010, available online at: <http://www.hapinternational.org/pool/files/2010-hap-standard-in-accountability.pdf>.

InterAction, PVO Standards, rev. March 2, 2013, available online at: <http://www.interaction.org/sites/default/files/PVO%20Standards%20%20%20March%202%2C%202013.pdf>.

International Committee of the Red Cross, “International Humanitarian Law and the challenges of contemporary armed conflicts,” doc. 31IC/11/5.1.2, November 2011, available online at: <http://www.icrc.org/eng/resources/documents/report/31-international-conference-ihl-challenges-report-2011-10-31.htm>.

International Peace Institute, “Egeland: Detoxify Counterterrorism Measures,” Panel Discussion, September 17, 2013, available online at: <http://www.ipinst.org/events/panel-discussions/details/476-egeland-detoxify-counterterrorism-measures.html>.

International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross, “Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief,” 1994, available online at: <http://www.icrc.org/eng/assets/files/publications/icrc-002-1067.pdf>.

International Monetary Fund, “Anti-Money Laundering/Combating the Financing of Terrorism - Topics,” (undated), available online at: <http://www.imf.org/external/np/leg/amlcft/eng/aml1.htm>.

International Rescue Committee, “The IRC Way,” (undated), available online at: <http://www.pseataaskforce.org/uploads/tools/1351714378.pdf>.

International Organization for Standardization, *ISO 31000:2009, Risk Management — Principles and Guidelines*, 2009.

IRIN News, “Somalia: Insurgents divert famine IDPs from aid,” September 6, 2011, available online at: <http://www.irinnews.org/report/93670/somalia-insurgents-divert-famine-idps-from-aid>.

Ashley Jackson, “Humanitarian negotiations with armed non-state actors: key lessons from Afghanistan, Sudan and Somalia,” HPG Policy Brief, ODI/HPG, Number 55, March 2014, available online at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8847.pdf>

Ashley Jackson, “Taliban policy and perceptions towards aid agencies in Afghanistan,” *Humanitarian Exchange Magazine*, Issue 58, July 2013, available online at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-58/taliban-policy-and-perceptions-towards-aid-agencies-in-afghanistan>.

Ashley Jackson and Abdi Aynte, “Talking to the other side: Humanitarian negotiations with Al-Shabaab in Somalia,” HPG Policy Brief, ODI/HPG, December 2013, available online at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8744.pdf>.

Ashley Jackson and Antonio Giustozzi, “Talking to the other side: Humanitarian engagement with the Taliban in Afghanistan,” HPG Working Paper, December 2012, available online at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7968.pdf>.

Ashley Jackson and Simone Haysom, “The search for common ground: civil–military relations in Afghanistan, 2002–13,” HPG Working Paper, April 2013, available online at: <https://docs.unocha.org/sites/dms/Documents/130424%20The%20Search%20for%20Common%20Ground%20Civ-Mil%20Relations%20in%20Afghanistan%202002-13%20HPG%20Work%20Paper.pdf>.

Harry Johnstone, “Humanitarian negotiations in Afghanistan: WFP’s experience,” *Humanitarian Exchange Magazine*, Issue 58, July 2013, available online at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-58/humanitarian-negotiations-in-afghanistan-wfps-experience>.

Jakob M. Kellenberger, “Politicisation of humanitarian work?,” in DARA, *The Humanitarian Response Index 2010: The problems of politicisation*, 2010, pp. 12–15, available online at: http://daraint.org/wp-content/uploads/2010/10/Complete-report_HRI-2010.pdf.

Catherine Longley, Sophia Dunn and Mike Brewin, “Final monitoring report of the Somalia cash and voucher transfer programme, Phase I: September 2011–March 2012,” Cash and Voucher Monitoring Group, HPG/ODI, September 2012, available online at: <http://adesoafrika.org/wp-content/uploads/2012/03/CVMG-Somali-cash-transfer-program-report1.pdf>.

Kate Mackintosh and Patrick Duplat, “Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action,” United Nations Office for the Coordination of Humanitarian Affairs and the Norwegian Refugee Council, 2013, available online at: https://www.nrc.no/arch/_img/9682778.pdf.

Rhoda Margesson, “International Crises and Disasters: U.S. Humanitarian Assistance Response Mechanisms,” Congressional Research Service Report, August 1, 2013, available online at: <https://www.fas.org/sgp/crs/row/RL33769.pdf>.

Daniel Maxwell and Peter Walker, “Confronting corruption in humanitarian aid: Perspectives and options,” Chr. Michelsen Institute, U4 Brief, No. 3, March 2009, available online at: <http://www.u4.no/publications/confronting-corruption-in-humanitarian-aid-perspectives-and-options/#sthash.WAGMHYi0.dpuf>.

Daniel Maxwell, Peter Walker, Cheyanne Church, Paul Harvey, Kevin Savag, Sarah Bailey, Roslyn Hees, and Marie-Luise Ahlendorf, “Preventing Corruption in Humanitarian Assistance: Final Research Report,” Transparency International, July 2008, available online at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1836.pdf>.

Gerard McHugh and Simar Singh, “Preserving the integrity of humanitarian negotiations,” *Humanitarian Exchange Magazine*, Issue 58, July 2013, available online at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-58/preserving-the-integrity-of-humanitarian-negotiations>.

Ken Menkhaus, “Stabilisation and humanitarian access in a collapsed state: the Somali case,” *Disasters*, Volume 34, Number 3, 2010, pp. 1-22.

Naz K. Modirzadeh, Dustin A. Lewis, and Claude Bruderlein, “Humanitarian engagement under counter-terrorism: a conflict of norms and the emerging policy landscape,” *International Review of the Red Cross*, Volume 93, Number 883, September 2011, available online at: <http://www.icrc.org/eng/resources/documents/article/review-2011/irrc-883-modirzadeh-lewis-bruderlein.htm>.

Michael Neuman and Benoit Leduc, “Somalia: Everything is Open to Negotiation,” in *Humanitarian Negotiations Revealed: The MSF Experience* (eds Claire Magone, Michael Neuman, and Fabrice Weissman), Columbia University Press, 2011, pp. 77-94.

Norwegian Minister of Foreign Affairs, Statement on “The values and purpose of humanitarian action,” Principles in Practice: Safeguarding Humanitarian Action Norwegian Refugee Council Conference, High-level panel, Brussels, December 4, 2012. http://www.regjeringen.no/en/dep/ud/Whats-new/Speeches-and-articles/e_speeches/2012/brussel_nrc.html?id=709219155.

Manuel Orozco and Julia Vansura, “Keeping the lifeline open: remittances and markets in Somalia,” Oxfam, July 2013, available online at: <http://www.oxfamamerica.org/static/oa4/somalia-remittance-report-web.pdf>.

Linda Polman, *The crisis caravan: what's wrong with humanitarian aid?*, (transl. Liz Waters), Metropolitan Books, 2010.

Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, “Business and Human Rights: Further steps toward the operationalization of the ‘protect, respect and remedy’ framework,” UN Doc. A/HRC/14/27, April 9, 2010.

Xan Rice, “WFP halts food aid in south Somalia,” *The Guardian*, January 5, 2010, available online at: <http://www.theguardian.com/world/2010/jan/05/somalia-food-aid-suspended>.

Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, “Report of the Monitoring Group on Somalia Pursuant to Security Council resolution 1853 (2008),” UN doc. S/2010/91, March 10, 2010, available online at: <http://www.un.org/sc/committees/751/mongroup.shtml>.

Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, “Report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 1916 (2010),” UN doc. S/2011/433, July 18, 2011, available online at: <http://www.un.org/sc/committees/751/mongroup.shtml>.

Sherman & Sterling LLP, “FCPA Digest: Recent Trends and Patterns in the Enforcement of the Foreign Corrupt Practices Act,” January 2014, available online at: <http://www.shearman.com/~media/Files/Services/FCPA/2014/FCPADigestTPFCPA010614.pdf>.

Hugo Slim and Emanuela-Chiara Gillard, “Ethical and legal perspectives on cross-border humanitarian operations,” *Humanitarian Exchange Magazine*, Issue 59, November 2013, available online at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-59/ethical-and-legal-perspectives-on-cross-border-humanitarian-operations>.

Transparency International, *Handbook of Good Practices for Preventing Corruption in Humanitarian Operations*, January 2010, available online at: http://www.transparency.org/whatwedo/pub/handbook_of_good_practices_preventing_corruption_in_humanitarian_operations.

Transparency International, *Pocket Guide of Good Practices: Preventing Corruption in Humanitarian Operations*, February 2010, available online at: http://www.transparency.org/whatwedo/pub/pocket_guide_of_good_practices_preventing_corruption_in_humanitarian_operat.

United Kingdom Department for International Development, Operational Plan 2011-2015 DFID Somalia, Updated June 2012, available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67414/somalia-2011.pdf.

United Nations Convention against Corruption (entry into force: December 14, 2005).

United Nations General Assembly, “The United Nations Global Counter-Terrorism Strategy Review,” UN doc. A/RES/66/282, July 12, 2012.

United Nations Office for the Coordination of Humanitarian Affairs, “World humanitarian data and trends 2013,” available online at https://docs.unocha.org/sites/dms/Documents/WHDT_2013%20WEB.pdf.

United Nations Relief and Works Agency for Palestine Refugees, “UNRWA and Neutrality,” March 2011, available online at: <http://www.unrwa.org/userfiles/2011033075942.pdf>.

United Nations Security Council, Resolution 1267 (1999), UN doc. S/RES/1267, October 15, 1999.

United Nations Security Council, Resolution 1269 (1999), UN doc. S/RES/1269, October 19, 1999.

United Nations Security Council, Resolution 1333 (2000), UN doc. S/RES/1333, December 19, 2000.

United Nations Security Council, Resolution 1368 (2001), UN doc. S/RES/1368, September 12, 2001.

United Nations Security Council, Resolution 1373 (2001), UN doc. S/RES/1373, September 28, 2001.

United Nations Security Council, Resolution 1390 (2002), UN doc. S/RES/1390, January 28, 2002.

United Nations Security Council, Resolution 1455 (2003), UN doc. S/RES/1455, January 17, 2003.

United Nations Security Council, Resolution 1526 (2004), UN doc. S/RES/1526, January 30, 2004.

United Nations Security Council, Resolution 1617 (2005), UN doc. S/RES/1617, July 29, 2005.

United Nations Security Council, Resolution 1624 (2005), UN doc. S/RES/1624, September 14, 2005.

United Nations Security Council, Resolution 1735 (2006), UN doc. S/RES/1735, December 22, 2006.

United Nations Security Council, Resolution 1822 (2008), UN doc. S/RES/1822, June 30, 2008.

United Nations Security Council, Resolution 1904 (2009), UN doc. S/RES/1904, December 17, 2009.

United Nations Security Council, Resolution 1916 (2010), UN doc. S/RES/1916, March 19, 2010.

United Nations Security Council, Resolution 1989 (2011), UN doc. S/RES/1989, June 17, 2011.

United Nations Security Council, Resolution 2083 (2012), UN doc. S/RES/2083, December 17, 2012.

United Nations Security Council, Resolution 2129 (2013), UN doc. S/RES/2129, December 17, 2013.

United States Code of Federal Regulations, 29 CFR 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

U.S. Department of Justice and the U.S. Securities and Exchange Commission, A Resources Guide to the U.S. Foreign Corrupt Practices Act, 2012, available online at: <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>.

United States, State Department, Bureau of Population, Refugees and Migration, “General NGO Guidelines for Overseas Assistance,” January 14, 2014 (updated), available online at: <http://www.state.gov/j/prm/funding/index.htm>.

U.S. Department of the Treasury, Office of Foreign Assets Control, “Frequently Asked Questions Regarding Private Relief Efforts in Somalia,” August 4, 2011, available online at: http://www.treasury.gov/resource-center/sanctions/Programs/Documents/somalia_faq.pdf.

USAID Office of Inspector General, *Audit of the Adequacy of USAID’s Antiterrorism Vetting Procedures*, Audit Report No. 9-000-08-001-P, November 6, 2007, available online at: <http://oig.usaid.gov/sites/default/files/audit-reports/9-000-08-001-p.pdf>.

USAID Office of Inspector General, *Summary: Audit of USAID’s Compliance with Executive Order 13536 prohibiting Support to al-Shabaab in Somalia*, Audit Report No. 4-649-13-011-P, September 17, 2013, available online at: <http://oig.usaid.gov/sites/default/files/audit-reports/4-649-13-011-p.pdf>.

Peter Walker and Catherine Russ, “Professionalising the Humanitarian Sector: A scoping study,” 2010, available online at: http://fic.tufts.edu/assets/Professionalising_the_humanitarian_sector.pdf.

Mark Yarnell, “Gatekeepers and Evictions: Somalia’s Displaced Population at Risk,” Refugees International, November 1, 2011, available online at: http://www.refintl.org/sites/default/files/110112_Gatekeepers_and_Evictions%20letterhead.pdf.

XI. ANNEX 1: ECHO DUE DILIGENCE IN PROCUREMENT TABLE⁵⁴

Table - Tips Before launching a procurement procedure

Do you know what, when and how goods, services and works will be required for the implementation of the Action?	
Yes Go to the next question	No You should have completed your Action planning before submitting a funding request to DG ECHO
Maybe you already have what you need? (stocks) Is your organisation using stocks set before the submission of the funding request to DG ECHO?	
No Go to the next question	Yes Inform DG ECHO in the Single Form
Has DG ECHO signed the Agreement? Only the signature of the agreement secures DG ECHO funding for the Action. Partners should have economic capacity to finance the award and signature of contracts before the signature of the agreement with DG ECHO.	
Do you have the money available for awarding the procurement?	
Yes Go to the next question	No The procurement procedure can be launched but the planning should also identify when the money should be available so that the contract can be awarded without impact on the Action. Such conditions have to be mentioned explicitly in the Single Form
A number of questions have been taken into account, such as: the Control mechanism applied to the Action, the Estimated value of the contracts, the relevance of Special Rules (e.g. quality assurance for the procurement of medicines or food) when drafting your procurement plan.	
Do you know the procedures to be followed for the award of contracts?	
Yes Go to the next question	No A procurement plan is compulsory for operations under an "A" Control mechanism and is strongly recommended in any case.
Is there a Framework Contract that you can use?	
No Go to the next question	Yes Specific contracts based on previously concluded Framework Contracts speed up and simplify the procurement process in a significant way.
Do you envisage placing orders with a Humanitarian Procurement Centre?	
No You should start launching your procurement procedures	Yes Resorting to HPC is an option that should not be overlooked as it enjoys a simplified procurement procedure.

⁵⁴ ECHO, Guidelines for the award of Procurement Contracts within the frameworks of Humanitarian Aid Actions financed by the European Union ("Humanitarian Aid Guidelines for Procurement"), May 31, 2011, available online at http://ec.europa.eu/echo/files/partners/humanitarian_aid/Procurement_Guidelines_en.pdf.

ANNEX 2: EXAMPLE SCREENING SOFTWARE PROGRAM INSTRUCTIONS

WorldTracker Topic - General

Question: Can countries specify a specific person to send the monthly Worldtracker CD to?

Answer: Yes. Email [contact] to request that the Worldtracker CD included in the monthly mail packet from [organizational] HQ be addressed to a specific individual in your office.

Question: We don't run Worldtracker on beneficiaries. What if we are providing economic support to a business. Is the business a beneficiary? Do we need to run Worldtracker? Or to an individual, to support them starting a business? Is the individual a beneficiary? Do we need to run Worldtracker?

Answer: If we are providing funds to a business or individual where there are conditions on the future use of the funds provided (unlike cash-for-work, for instance), we need to execute a written agreement on the future use. Depending on the entity type and purpose of the funding, the written agreement will be either a subaward, or some form of a contract. If the agreement mechanism is a subaward, Worldtracker should be run in accordance with the requirements for a subaward. If a contract is used, Worldtracker should be run in accordance with the requirements for a vendor if the contract is not with an individual, and in accordance with the requirements for a consultant if the contract is with an individual.

Question: If I have a "false" positive match, do I need to write on the Worldtracker report the reason why it is a false positive?

Answer: Yes, you need to write your name and how the potential match was determined not to be an actual match.

Question: Some names get a positive match when we run the individual names; however, the same names get different result "no match found" when we run the scan file names (run the names in a batch). Which report should we consider to be the correct one?

Answer: The results should not be different between the two ways to run a WorldTracker check. Likely, when running the individual name, the country is also being entered (which isn't an option when running batches). Certain countries will always return a "possible match"; therefore, we do not enter the country when running a WorldTracker check.

Question: If we use a photocopy of a passport or CV to show that a potential match is a false positive, should we attach the document to the Worldtracker report?

Answer: Yes, if a separate document is used to clear a potential match, attach a copy of the document to the Worldtracker report (and still note on the Worldtracker report the reason it is a false positive and sign).

WorldTracker Topic - Employees

Question: Does a temporary employee need to be employed for a specific period before a Worldtracker check needs to be run on the employee?

Answer: All employees, including temporary employees need to be check with Worldtracker prior to hire, irrespective of anticipated length of service.

Question: If we have annual employee contracts, do we need to check the employee each time we renew the contract? What if we do an extension/addition to a contract with a vendor or a consultant?

Answer: WorldTracker should be run if we are executing a **new** contract with the employee (even if they had a contract for the prior year). Worldtracker does not need to be run if we are extending the existing contract.

WorldTracker Topic - Banks

Question: How often do we run Worldtracker on the banks where [our organization] has accounts?

Answer: [Organizational] policy is to run Worldtracker on the bank every time a **new** bank account is open. There is not a requirement for periodic checks of the bank(s) where we maintain bank accounts (unless you become aware of the bank being added to a list of ineligible entities).

Question: What if we did not know the bank that would receive a wire transfer until the vendor upon presented the invoice, and the bank is an ineligible organization (a match)?

Answer: We should try to stipulate the method of payment in the contract, and if by wire transfer, include the vendor's bank information in the contract, if possible (for multiple reasons).

If a bank is a match, we cannot make payment to/through an ineligible bank. Negotiate with the vendor to make payment to another bank or through another payment method other than by bank transfer.

Question: Do we need to run WorldTracker on the Board of Directors for a bank when opening an account or making a transfer to the bank?

Answer: No, only the Bank name needs to be checked in WorldTracker.

Question: Each month, when we pay our payroll, we transfer over \$5,000 in salary payments to another bank where employees have accounts. Do we need to do a Worldtracker check on that bank each month?

Answer: Yes, since we are transferring more than \$5,000 to a bank, the receiving bank needs to be checked in WorldTracker before each transfer, regardless of the purpose of the transfer.

Question: If a vendor uses the same bank where [our organization] has an account, do we need to perform a WorldTracker check on the bank before transfer \$5,000 or more to the vendor's account?

Answer: We do not need to perform a WorldTracker check on the bank before the transfer if [our organization] already has an account at that bank.

Question: Worldtracker has to be run on the bank before opening a new bank account. Does this mean opening a new bank account at a bank where [our organization] has not previously had an account, or does this mean Worldtracker needs to be run before opening a new bank account at a bank where [our organization] has existing bank accounts?

Answer: Worldtracker needs to be run on the bank before [our organization] opens a new bank account, even if [our organization] already has existing bank accounts at the bank.

WorldTracker Topic - Procurement

Question: Do we need to run Worldtracker on a vendor again when we have a new \$5,000 transaction, if we had run it on the vendor the previous month for a different \$5,000 transaction?

Answer: Yes, Worldtracker needs to be run on the vendor for every new transaction of \$5,000 or more.

Question: What do you do when you engage a consultant under a year contract, and no match is found at the time the contract is issued, but during the year the consultant is added to a list and becomes ineligible?

Answer: Do not make further payments and suspend the consulting agreement. Inform your Country Director, who will inform the HQ Program Officer. HQ will advise next steps.

Question: Do we need to run Worldtracker on all the companies that submit a bid under a tender, or only on the vendor that is selected?

Answer: Only the vendor selected needs to be check through WorldTracker.

Question: If we have an actual match on a vendor, and therefore don't enter into a contract with the vendor, do we still need to report the match to HQ?

Answer: Yes, even if we don't enter into a transaction with the vendor, the Country Director should be informed of the match. The Country Director will then inform the HQ Program Officer.

Question: If we need to check consultants, regardless of the amount of contract, would we need to check a driver on a short term contract for less than \$5,000?

Answer: Good question. Since a driver is contracted using a service contract (as opposed to a consulting contract), WorldTracker only needs to be run if the service contract for the driver is for \$5,000 or more.

Question: Do we need to run WorldTracker on the vendor's business name, or on the name of the owner of the business?

Answer: Worldtracker would be run on the entity we will be paying (as that is the entity receiving "support"). Normally, payment would be to the business (the check is made out to the business, or the bank transfer is to the business' account), but if payment is made directly to the owner, the owner's name should be check in WorldTracker.

WorldTracker Topic - Subawards

Question: If during the period of a subaward, a subrecipient changes/adds a board member, do we run Worldtracker on a new board member? What if the subrecipient doesn't inform us of the change?

Answer: Yes, if we are informed that a subrecipient has a new board member, Worldtracker should be run on the board member and the Worldtracker report filed in the subaward file.

If we are not informed of the new board member, Worldtracker should be run when we become aware of the new board member. If the board member is a true match, inform your country director, who will inform the HQ Programs Officer.

Question: Do we share Worldtracker with our subrecipients? Otherwise, how are they supposed to perform checks?

Answer: We can't share our Worldtracker software with subrecipients. The terms of our license to use Worldtracker does not permit us to share the software with anyone outside of [our organization]. The links to specific lists the subrecipient is supposed to check should be stated in the subaward agreement (different donors require different lists to be checked). The subrecipient can directly check those lists.

Question: Do we need to do a WT check when providing a cash grant to a cooperative, and the amount is less than \$5,000?

Answer: A cash grant to a cooperative is a subaward. Follow the Worldtracker procedures for subawards.

Question: Sometimes a subrecipient is reluctant to provide the names of their board members. If the subrecipient doesn't want to provide the Board Member names, what needs to be done?

Answer: It would be very unusual for a subrecipient not to want to provide the names of board members. Most board members are proud of their service. This would definitely raise a red flag about the subrecipient (hidden conflicts of interest, etc). Unless there are specific security concerns around the personal safety of a board member (in which case contact HQ for guidance), the subrecipient needs to provide the names of all board members.

Question: If we enter into a subaward agreement with an organization in January and perform the required WorldTracker checks, and then enter into a new separate subaward agreement with the same organization in February, do we need to run the WorldTracker checks on the organization again, before signing the second subaward?

Answer: Yes, the subrecipient needs to be checked in WorldTracker prior to each new subaward, regardless of length of time elapsed since the subaward to that subrecipient.

ANNEX 3: EXCERPT OF THE FINANCIAL ACTION TASK FORCE'S 2012 RECOMMENDATIONS⁵⁵

B. MONEY LAUNDERING AND CONFISCATION

3. Money laundering offence

Countries should criminalise money laundering on the basis of the Vienna Convention and the Palermo Convention. Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences.

4. Confiscation and provisional measures

Countries should adopt measures similar to those set forth in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention, including legislative measures, to enable their competent authorities to freeze or seize and confiscate the following, without prejudicing the rights of bona fide third parties: (a) property laundered, (b) proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences, (c) property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations, or (d) property of corresponding value.

Such measures should include the authority to: (a) identify, trace and evaluate property that is subject to confiscation; (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (c) take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation; and (d) take any appropriate investigative measures.

Countries should consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction (non-conviction based confiscation), or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.

C. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

5. Terrorist financing offence

⁵⁵ Financial Action Task Force, "International standards on combating money laundering and the financing of terrorism & proliferation: The FATF recommendations," February 2012, available online at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

Countries should criminalise terrorist financing on the basis of the Terrorist Financing Convention, and should criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts. Countries should ensure that such offences are designated as money laundering predicate offences.

6. Targeted financial sanctions related to terrorism and terrorist financing

Countries should implement targeted financial sanctions regimes to comply with United Nations Security Council resolutions relating to the prevention and suppression of terrorism and terrorist financing. The resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity either (i) designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations, including in accordance with resolution 1267 (1999) and its successor resolutions; or (ii) designated by that country pursuant to resolution 1373 (2001).

7. Targeted financial sanctions related to proliferation

Countries should implement targeted financial sanctions to comply with United Nations Security Council resolutions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. These resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds and other assets are made available, directly or indirectly, to or for the benefit of, any person or entity designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations.

8. Non-profit organisations

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (a) by terrorist organisations posing as legitimate entities;
- (b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- (c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

**ANNEX 4:
FATF RECOMMENDATIONS,
INTERPRETIVE NOTE TO RECOMMENDATION 8 (NON-PROFIT
ORGANISATIONS), SECTION C(5)(B)⁵⁶**

Supervision or monitoring of the NPO sector

Countries should take steps to promote effective supervision or monitoring of their NPO sector. In practice, countries should be able to demonstrate that the following standards apply to NPOs which account for (1) a significant portion of the financial resources under control of the sector; and (2) a substantial share of the sector's international activities.

(i) NPOs should maintain information on: (1) the purpose and objectives of their stated activities; and (2) the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information should be publicly available either directly from the NPO or through appropriate authorities.

(ii) NPOs should issue annual financial statements that provide detailed breakdowns of incomes and expenditures.

iii) NPOs should be licensed or registered. This information should be available to competent authorities.[footnote omitted]

(iv) NPOs should have appropriate controls in place to ensure that all funds are fully accounted for, and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities.

(v) NPOs should follow a "know your beneficiaries and associate NPOs" rule, which means that the NPO should make best efforts to confirm the identity, credentials and good standing of their beneficiaries and associate NPOs. NPOs should also undertake best efforts to document the identity of their significant donors and to respect donor confidentiality.

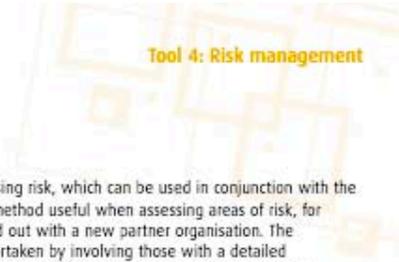
(vi) NPOs should maintain, for a period of at least five years, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation, and should make these available to competent authorities upon

⁵⁶ Financial Action Task Force, "International standards on combating money laundering and the financing of terrorism & proliferation: The FATF recommendations," February 2012, available online at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

appropriate authority. This also applies to information mentioned in paragraphs (i) and (ii) above.

(vii) Appropriate authorities should monitor the compliance of NPOs with the requirements of this Recommendation.[Footnote omitted] Appropriate authorities should be able to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of these NPOs.[Footnote omitted]

ANNEX 5: RISK MATRIX CHARITY COMMISSION OF ENGLAND AND WALES⁵⁷



Risk Matrix

A Risk Matrix is another common method for assessing risk, which can be used in conjunction with the SWOT and PESTLE analyses. Trustees may find this method useful when assessing areas of risk, for example when planning a new project to be carried out with a new partner organisation. The identification of appropriate risks may be best undertaken by involving those with a detailed understanding of the charity's operations and work and/or detailed knowledge of the particular operating environment or the nature of particular projects.

The level of risk should be measured by both the likelihood of something occurring and the severity of impact if it were to happen. The risk matrix can subsequently be used as a risk register for ongoing monitoring and review of risk throughout the life of a project. An example of a section of a risk matrix can be found below:

Risk Matrix

Areas	Risks	Likelihood	Impact	Controls
Reputation	A real or perceived link or association between the charity and terrorist activity damages the charity's reputation	LOW	HIGH	<ul style="list-style-type: none"> • Draw up detailed partnership agreements • Review partner's governance structures • Review project audit and monitoring, including field visits • Include an impact and risk assessment for all projects • Take references and contact other affiliates of the partner for recommendations • Request standard documentation and invoices • Check the consolidated list of designated individuals and entities (see Chapter 1 of toolkit)

⁵⁷ Charity Commission of England and Wales, "Protecting charities from harm: compliance toolkit," (undated), available online at: <http://www.charitycommission.gov.uk/detailed-guidance/protecting-your-charity/protecting-charities-from-harm-compliance-toolkit/>.

Areas	Risks	Likelihood	Impact	Controls
Financial/ Criminal	Financial loss, fraud, money laundering, terrorist financing.	MEDIUM	HIGH	<ul style="list-style-type: none"> • Clear responsibilities and segregation of duties • Scheme of delegation • Developing and implementing a fraud policy • Purchases and tender controls, reconciliations of cash book to petty cash and bank, expenses procedures and authorisation limits • Monitor exchange rate losses or gains and review impact on expenditure and income. • Use appropriate bank accounts and procedures • Quarterly project financial reviews and project reports • Documented financial procedures • Regular budget monitoring and forecasting and grant management
	Failure to comply with UK, International or local regulations.	HIGH	MEDIUM	
	Exchange rate losses or gains	MEDIUM	MEDIUM	
	Funds or assets provided are not used for the intended project or misappropriated	LOW	MEDIUM	
Security	<p>Risk to staff and/or beneficiaries.</p> <p>Obstacles to the effective delivery of services.</p> <p>Areas of conflict, political instability, hostile government</p>	HIGH	HIGH	<ul style="list-style-type: none"> • Country specific security risk assessment • Crisis management policy and procedures • Health & Safety and security training

Compliance Toolkit: Protecting Charities from Harm

Chapter 2: Due Diligence, Monitoring and Verification of End Use of Charitable Funds
 Tool 4: Risk management

ANNEX 6: RISK ASSESSMENT CHARITY COMMISSION OF ENGLAND AND WALES⁵⁸



Tool 5: Risk management

Risk Assessment checklist – things to think about

The activity/project

- Is the activity clearly within the charity's objects?
- Are proper policies and procedures in place to prevent beneficiaries being put at risk?
- Are partners/staff/volunteers sufficiently trained to be able to carry out the work?
- What lessons has the charity learnt from its own previous experience, or that of other organisations working in the same area and/or type of activity?

Comments

Legal

- Are there any specific laws and requirements to be aware of in carrying out the activity?
- Are there any UK and/or local sanctions in force?

Comments

⁵⁸ Charity Commission of England and Wales, “Protecting charities from harm: compliance toolkit,” (undated), available online at: <http://www.charitycommission.gov.uk/detailed-guidance/protecting-your-charity/protecting-charities-from-harm-compliance-toolkit/>.

Finance

- What is the charity's financial position and is there enough money available to support the proposed activity?
- Will there be an impact on tax (for example, VAT implications)?
- How will the money get to the project site? Will it go through bank accounts direct to the recipient?
- Will Money Service Businesses be used?
- Will cash couriers be required?

Comments**Partners**

- Are partners being used? What risks does this pose?
- Have these partners been used before?
- Will a written agreement be in place?
- What are the risks of the partner not delivering?
- Can money be recovered if necessary? What problems might there be?

Comments

External Factors

- What factors are outside the trustees' direct control?
- Charities working internationally should ensure their risk assessment takes account of any relevant circumstances arising in their particular country or region of operation. Specific risks could arise from working in an area where there may be:
 - internal conflict or other violent or military action
 - known terrorist or criminal activity
 - poor infrastructure in remote or sparsely populated areas
 - changes in government/political environment
 - lack of banking facilities
 - high levels of bribery and corruption.

Comments

**ANNEX 7:
USAID OFFICE OF INSPECTOR GENERAL/INVESTIGATOR
FRAUD INDICATORS⁵⁹**

Criminal and Regulatory Violations by Employees

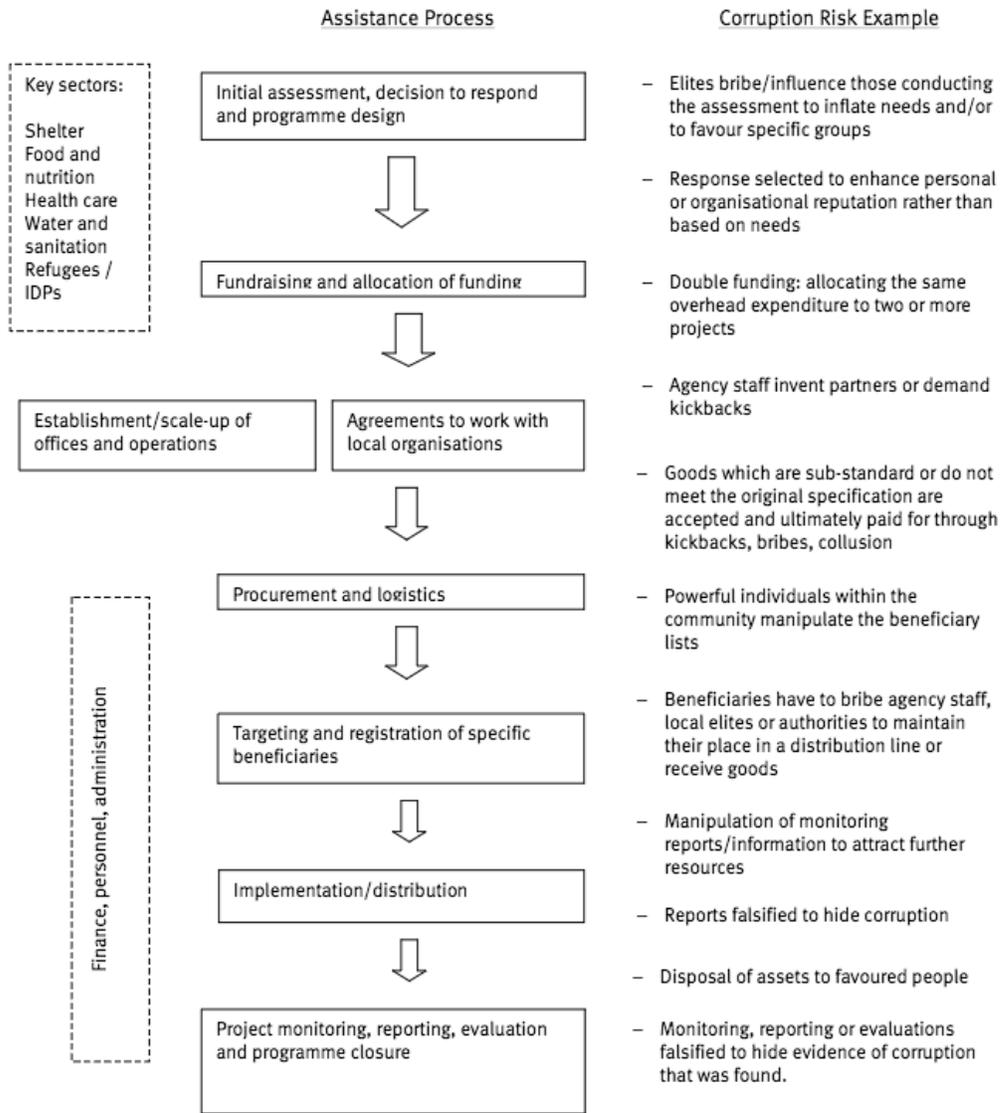
Fraud indicators include:

1. Employees, including contractors and foreign nationals, who continually circumvent established procedures.
2. Employees who initiate actions without proper prior approval.
3. Sloppy handling of cash or commodities should always be an area of concern.
4. The awarding of a contract in any fashion outside of the letter and spirit of established procedures.
5. Improper access to computer terminals or data.
6. Unusual or extravagant behavior or spending.
7. Unusual patterns of taking leave.
8. Unusual or extravagant amount of mail sent to particular employees.
9. Cash not turned in properly.
10. Actions that tend to obstruct an audit trail.
11. Unusual or unauthorized interaction between an employee and bidder or contractor.
12. Frequent or unusual and/or unexplained travel.
13. Unusual and/or unexplained possession of large amounts.
14. Abrupt change in living style.
15. In short, actions that are contrary to regulation, good business practice, or commonsense can be indicators that something may be wrong.

⁵⁹ USAID Office of Inspector General/Investigations, Fraud Indicators, undated, p. 17, available online at: http://oig.usaid.gov/sites/default/files/fraud_awareness_handbook_052201.PDF.

ANNEX 8: MAP OF CORRUPTION RISKS IN HUMANITARIAN ASSISTANCE⁶⁰

Figure 2: Map of Corruption Risks in Humanitarian Assistance



⁶⁰ Pete Ewins, Paul Harvey, Kevin Sage, and Alex Jacobs, "Mapping the Risks of Corruption in Humanitarian Action," July 2006, Figure 2, available online at: http://dochas.ie/Pages/Resources/documents/Corruption_Humanitarian_Action.pdf.

ABOUT

The Project on Counterterrorism and Humanitarian Engagement (CHE Project) is based at the Harvard Law School. The CHE Project undertakes legal research, policy analysis, and engagement initiatives in order to identify and develop — as well as to facilitate networks to support — sustainable, principled, and practical solutions to the challenges of large-scale humanitarian operations conducted in areas where listed armed groups are active and counterterrorism laws affect humanitarian action.

This publication is part of the CHE Project's Research and Policy Paper series, which is intended to inform the humanitarian community regarding critical issues of law, policy, and practice related to counterterrorism and humanitarian action.

The CHE Project seeks to inform and shape debate regarding the intersecting trajectories of counterterrorism norms and humanitarian action. The Project does so principally by:

- Producing independent analyses of emerging and foundational challenges and opportunities concerning humanitarian engagement in situations involving listed non-state armed actors; and
- Engaging actors across international humanitarian NGOs, intergovernmental agencies, academic centers, and governments to capture, examine, and inform their perspectives and approaches.

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