Counter-terrorism vs humanitarian aid

As the net of counter-terrorism law grows ever wider, concern grows over its impact on charities endeavouring to deliver humanitarian aid in areas of conflict.

Augustus Della-Porta looks at recommendations which would protect charities operating in this difficult area

Counter-terrorism legislation includes a breathtakingly wide net of activities that could constitute terrorism and has a huge impact on charities delivering aid to areas controlled by proscribed (terrorist) groups. The legislation is also extremely complex, and with very little statutory guidance, leaving many areas of its application open to wide interpretation. No provision is made for humanitarian aid or conflict resolution. It also appears to override the principle under international humanitarian law that civilians on all sides of a conflict have a right to material assistance.

Proscribed groups such as ISIS now control vast geographical areas where millions of civilians are trying to survive. These hard to reach areas are often where humanitarian need is the greatest. The practical reality of delivering food, medicine and other essential aid to civilian populations living in such areas means that interaction with proscribed groups is sometimes essential in order to operate safely and effectively. Yet, as it stands, the law potentially criminalises such interaction. The explanatory note to the Terrorism Act 2000 suggests that the law is not intended to criminalise ‘genuinely benign meetings’, but no further guidance or explanation is given as to the types of circumstances in mind. David Anderson QC, the Independent Reviewer of Terrorism Legislation, raised concern at this uncertainty in his 2014 report.

Uncertainty in the law, coupled with statements from global and national policy makers such as the Financial Action Task Force suggesting that the not-for-profit sector is particularly vulnerable to abuse by terrorists, has bred a wider climate of apprehension, which has contributed to a risk-averse approach by banks. Charities, particularly Muslim charities that are increasingly relied upon by non-Muslim or secular agencies to deliver aid, have had their accounts closed or frozen, financial transfers challenged or services curtailed.

As well as being potentially discriminatory to these charities, such an approach is itself counterproductive, encouraging the use of less formal money transfer mechanisms such as money service bureaux or even cash couriers, which are more vulnerable to abuse by terrorists and put staff and volunteers of charities at greater personal risk.

The Charity Commission’s ‘zero tolerance’ approach to Islamic extremism has raised concern that the new powers being sought by the Commission (see preceding article) may give it carte blanche to act now and ask questions later.

The Bond submission to the joint parliamentary committee on the draft Protection of Charities bill set out a number of recommendations including enshrining legal protections for charities working in conflict-affected areas and, potentially, fast-track licensing processes for humanitarian actions where relevant. Legislators could look at how other jurisdictions have dealt with this; Australia and New Zealand, for example, have built into their counter-terrorism legislation certain exemptions for humanitarian assistance.

The submission also recommended that prosecutorial guidance should be issued on how the law should be interpreted and applied to humanitarian actors operating in these areas. There is already such guidance on the Bribery Act 2010, which states that public interest considerations will be a significant factor in deciding whether or not to prosecute.

Bond also reiterated the recommendation by David Anderson QC that there is continuing dialogue between charities and policy makers to explore how the objectives of counter-terrorism law can be met without unnecessarily prejudicing the ability of charities to operate in these areas.

Government and regulators should be leading a wider dialogue with banks and the public, championing the vital lifesaving work these charities carry out rather than creating or reinforcing obstacles that prevent aid from reaching those who most need it.

Find out more
A Demos report published in December 2014 looked at the impact of stricter counter-terrorism measures on charities struggling to operate in the front line of conflict and terrorist-controlled areas www.oneworld.org/2014/12/30/counter-terrorism-strategy-is-costing-charities-millions/