

Whose risk? Bank de-risking and the politics of interpretation and vulnerability in the Middle East and North Africa

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Abstract

Following the events of 11 September 2001, measures aimed at countering the financing of terrorism (CFT) were intensified by States. Many countries around the world adopted strict anti-money laundering and CFT regulations for the transfer of funds globally. This process increased the costs of complying with regulatory requirements and imposed high penalties on banks for non-compliance. As a result, preventive measures – often known as “de-risking” – were taken up by banks, including terminating the accounts of clients perceived as “high-risk” for money laundering or terrorist financing, and delaying transfers. These measures, however, have had negative consequences, reducing financial access for local civil society organizations in conflict-affected contexts that are deemed high-risk for terrorist

activities. Drawing on five years of research to understand the impact of de-risking on conflict-affected contexts from a local perspective, this paper reflects on the local political economy of CFT, with a focus on the Middle East and North Africa. It explores two key areas of inquiry. The first of these is the politics of interpretation—how counterterrorism as a discourse and a set of practices, of which CFT is one, gets interpreted by local authorities and banks, and subsequently gets reinterpreted to the population. This also has implications for which local actors are better positioned to access funds than others, and why. The second area of inquiry is the politics of vulnerability—how the local political economy impact of CFT can increase the social and economic vulnerabilities of some groups more than others. This paper demonstrates that under the guise of “counterterrorism”, local authorities in conflict-affected contexts have used CFT to restrict the non-profit and philanthropic space and are using banking regulations to shape that space in ways that are bound to have negative medium- and long-term implications for it.

Keywords: counterterrorism, countering the financing of terrorism, political economy, Middle East and North Africa, humanitarian engagement, philanthropy, civil society, banks, de-risking.

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Introduction

“A diamond may be forever, but terrorism, promiscuously funded, will be too”, remarked comedian Bill Maher in his book on the “War on Terror”.¹ While delivered in a satirical tone, his statement reflects the zeitgeist at the time, with growing concerns following the events of 11 September 2001 about the intersections between flows of funds through the formal financial sector and terrorist financing. In response to these concerns, the Bush administration quickly signed Executive Order 13224 with the aim of launching “a strike on the financial foundation of the global terror network” in order to “starve the terrorists of funding”.² Several countries around the world followed suit and adopted strict anti-money laundering (AML) and combatting the financing of terror (CFT) regulations for the transfer of funds globally. This process increased the costs of complying with regulatory requirements³ and imposed high penalties

1 Bill Maher, *When You Ride Alone You Ride with Bin Laden: What the Government Should Be Telling Us to Help Fight the War on Terrorism*, New Millennium Press, Beverly Hills, CA, 2002, p. 112.

2 Aimen Dean, Edwina Thompson and Tom Keatinge “Draining the Ocean to Catch One Type of Fish: Evaluating the Effectiveness of the Global Counter-Terrorism Financing Regime”, *Perspectives on Terrorism*, Vol. 7, No. 4, 2013, p. 4.

3 The cost of non-compliance for banks is significant. For example, between 2018 and 2019, [global regulators levied a near-record \\$10 billion worth of fines](#) against banks, and by summer 2020, these same regulators [had already issued \\$5.6 billion in fines](#) against financial institutions. See Jeff John Roberts, “A Near Record Year for Money Laundering: Banks Hit with \$10 Billion in Fines”, *Fortune*, 11 March 2020, available at: <https://tinyurl.com/2hdbuczv> (all internet references were accessed in

for non-compliance on banks.⁴ As a result, banks adopted preventive measures⁵ – often known as “de-risking” – that included terminating the accounts of those considered high-risk for money laundering or terrorist financing, and delaying transfers.⁶ As several analysts and commentators have pointed out, however, these measures have also had negative consequences, “impacting the innocent as much as the guilty”,⁷ and have resulted in reduced financial access for local civil society organizations in conflict-affected contexts that are deemed high-risk for terrorist activities.⁸ While there is a significant body of literature that documents the adverse implications of bank de-risking on humanitarian and development operations in conflict-affected contexts,⁹ this paper considers how the global counterterrorism regime, of which CFT measures are part, manifests itself at the local level in conflict-affected contexts in the Middle East and North Africa, how local regulatory authorities, banks and civil society professionals are adapting to and adopting the counterterrorism regime within their own contexts, and the broader implications on the non-profit and philanthropic space in those countries.

This paper draws on the author’s five years of research and engagement at the Overseas Development Institute (ODI) on local experiences of bank de-risking, a review of the literature and a series of key informant interviews with civil society professionals and philanthropists in the Middle East and North Africa conducted in April 2021.¹⁰ It reflects on the local political economy of CFT in the region,

November 2021); Ascent, “The Not So Hidden Costs of Compliance”, 30 June 2020, available at: www.ascentregtech.com/blog/the-not-so-hidden-costs-of-compliance/

4 See J. J. Roberts, above note 3.

5 It is worth noting here that financial firms spend significant sums on ensuring compliance. For example, the Asia-Pacific, European, Middle Eastern and African, Latin American, and North American markets spend about \$181 billion per year on maintaining financial crime compliance. See Ascent, above note 3.

6 While “terrorist finance” is usually understood as money and as such, approaches to countering the financing of terrorism have been mainly about disrupting the flow of money for terrorist organizations or those suspected on terrorism. Wittig argues that the term is best understood as “exchange of value in any form”, with money being only one such form. See Timothy Wittig, “Terrorist Finance: Myth and Reality”, in T. Wittig, *Understanding Terrorist Finance*, Palgrave Macmillan, London, 2011.

7 Tom Keatinge, *Uncharitable Behaviour*, Demos, London, 2014, p. 130, available at: <https://demosuk.wpengine.com/files/DEMOSuncharitablebehaviourREPORT.pdf>.

8 Jim Woodsome, Vijaya Ramachandran, Clay Lowery and Jody Myers, *Policy Responses to De-Risking: Progress Report on the CGD’s 2015 Recommendations*, Center for Global Development (CGD), London, 2018, available at: www.cgdev.org/sites/default/files/policy-responses-de-risking.pdf; Stuart Gordon and Sherine El Taraboulsi-McCarthy, “Counter-Terrorism, Bank De-Risking and Humanitarian Response: A Path Forward”, Policy Brief No. 72, Humanitarian Policy Group (HPG), Overseas Development Institute (ODI), London, 2018, available at: <https://odi.org/en/publications/counter-terrorism-bank-de-risking-and-humanitarian-response-a-path-forward/>.

9 See T. Keatinge, above note 7; S. Gordon and S. El Taraboulsi-McCarthy, above note 8; Samantha Bricknell, “Misuse of the Non-Profit Sector for Money Laundering and Terrorism Financing”, *Trends & Issues in Crime and Criminal Justice*, No. 424, September 2011; Radiah Othman, “Institutionalization of Risk Management Framework in Islamic NGOs for Suppressing Terrorism Financing”, *Journal of Money Laundering Control*, Vol. 17, No. 1, 2014; Sherine El Taraboulsi-McCarthy and Camilla Cimatti, *Counter-Terrorism, De-Risking and the Humanitarian Response in Yemen: A Call for Action*, HPG Working Paper, ODI, London, 2018, available at: <https://odi.org/en/publications/counter-terrorism-de-risking-and-the-humanitarian-response-in-yemen-a-call-for-action/>.

10 All interview respondents in this paper are anonymized because of the sensitivity of the topic and to alleviate concerns about reputational risk.

with a focus on bank de-risking and the various interests that underpin its implementation in policy and regulatory frameworks in the Middle East. De-risking is the focus here because it is a key outcome of the pressure on banks and other financial institutions to maintain CFT regulatory compliance, and it has had a significant impact on the capacity of non-profits to operate in crisis-affected contexts.¹¹ To understand the local political economy of CFT, the paper focuses on two areas. The first of these is the politics of interpretation and how counterterrorism more broadly, as a discourse and a practice, gets interpreted by local authorities and banks, and subsequently gets reinterpreted to the population. This also has implications for which local actors are better positioned to access funds than others, and why. The second area of focus is the politics of vulnerability and how the local political economy of CFT is increasing the social and economic vulnerabilities of some groups more than others within conflict-affected contexts in the Middle East and North Africa. Examples will be drawn from Yemen, Libya, Syria, the West Bank and Gaza, among others. This paper demonstrates that under the guise of “counterterrorism”, local regulatory authorities in many contexts in the Middle East are restricting the space for civil society organizations, and that banking regulations have been used to shape this space in ways that are bound to have negative medium- and long-term implications for the non-profit and philanthropic sectors more broadly. It also shows that the practice of CFT and its knock-on effects contradict the objective of counterterrorism – i.e., to stem the threat of terrorism globally – and in fact create an environment where economic and social vulnerabilities are exacerbated. Finally, the paper concludes with a call for a reconceptualization of “risk” to include the perspective of the global South as the foundation for a CFT regime that is more targeted and effective in reducing violence globally.

The paper is divided into two substantive sections and a conclusion. The first section addresses the inherent complexity of the role of banks as a security actor and the conflict that results from being expected to strike a balance between the risks and costs of client relationships, while at the same time fearing the consequences of de-risking clients or keeping them.¹² The second section highlights important gaps in the debate on the adverse implications of the global counterterrorism regime and, particularly, bank de-risking. It reflects on the local political economy implications of the securitized role of banks, with a particular focus on the impact of de-risking on the scope of associational life in conflict-affected contexts.

11 Princess Bazley-Bethea and Selena Bridges, “De-Risking: A Product of Avoidance”, *InterAction*, 15 November 2019, available at: www.interaction.org/blog/de-risking-a-product-of-avoidance/.

12 Anthony Scott, “If Banks Can’t Solve the Derisking Dilemma, Maybe the Government Will”, *American Banker*, Vol. 1, No. 60, 2015.

Banks as gatekeepers of global security

As early as the 1980s, analysts were reflecting on pathways to stem the threat of terrorism by tracking and blocking financial flows.¹³ Terrorist attacks that took place in the 1990s, such as the 1993 bombing of the World Trade Center, the 1995 Sarin gas attack in the Tokyo subway and the 1995 bombing of the federal building in Oklahoma City, all signalled the emergence of what was described at the time as the “new terrorism”, which was instigated by religious fervour and was arguably significantly more lethal than previous, State-sponsored forms of terrorism. A key distinguishing feature of these attacks was the diversity of funding sources that were available to the terrorists, and this diversity later manifested itself in the 9/11 terrorist attacks in New York. As explained by Giraldo and Trinkunas, “[t]he portrait of terrorism financing that has emerged since the September 2001 attacks on the United States is of a formal and informal global financial system that terrorists can manipulate with ease”. Moreover, they add that “diverse and dispersed sources of funding and methods of transferring funds are exploited by equally decentralized and flexible terrorist networks that can easily shift from one means to another in response to efforts to thwart their activities”.¹⁴

To exercise control over the movement of funds, banks around the world have become a fixture of the global counterterrorism regime and, in turn, have found themselves at the heart of debates on global security. Banks have a responsibility to detect and report illicit activities, freeze the assets of designated terrorists and enforce government-imposed sanctions. The practice of “de-risking” covers a range of actions and measures, including delaying transfers, and withdrawing or terminating correspondent banking relationships in response to heightened regulatory compliance expectations and increased enforcement actions and penalties.¹⁵ A study by the Charity and Security Network pointed out that for US non-profit organizations (NPOs) that work internationally, the two most commonly encountered problems are delayed wire transfers, affecting 37% of NPOs, and increased fees, affecting approximately 33%.¹⁶ These restrictions are often explained in light of the requirements of the Financial Action Task Force

- 13 See, for example, US Congress, “International Terrorism, Insurgency, and Drug Trafficking Present Trends in Terrorist Activity – Joint Hearings Before the Senate Committee on Foreign Relations and the Committee on the Judiciary, May 13, 14, and 15, 1985”, 1985, available at: www.ojp.gov/ncjrs/virtual-library/abstracts/international-terrorism-insurgency-and-drug-trafficking-present-0; Neil C. Livingstone, *Fighting Back: Winning the War against Terrorism*, Heath, Lexington, MA, 1987; Rachel Ehrenfeld, *Narco-Terrorism: How Governments around the World Have Used the Drug Trade to Finance and Further Terrorist Activities*, Basic Books, New York, 1990; Thomas Petzinger Jr., “We Clean Cash! Pakistan Pitches Money-Laundering in the U.S.”, *Wall Street Journal*, 18 March 1992; Bruce Hoffman, *Inside Terrorism*, Columbia University Press, New York, 2006.
- 14 Jean K. Giraldo and Harold A. Trinkunas, *Terrorism Financing and State Responses: A Comparative Perspective*, Stanford University Press, Stanford, CA, 2007, p. 11.
- 15 Michaela Erbenová *et al.*, *The Withdrawal of Correspondent Banking Relationships: A Case for Policy Action*, International Monetary Fund (IMF), 2016, available at: www.imf.org/external/pubs/ft/sdn/2016/sdn1606.pdf.
- 16 Sue Eckert, Kay Guinane and Andrea Hall, *Financial Access for US Non-Profits*, Charity and Security Network, 2017, available at: [www.charityandsecurity.org/system/files/FinancialAccessFullReport_2.21%20\(2\).pdf](http://www.charityandsecurity.org/system/files/FinancialAccessFullReport_2.21%20(2).pdf).

(FATF)¹⁷ regime and, specifically, its Forty Recommendations.¹⁸ According to the Human Security Collective, however, the FATF standards “do not always provide clear and illustrative guidance for implementation, thus creating space for misinterpretation and, most worryingly, for misuse by national regulators”.¹⁹ Cutting off the flow of funds to prevent criminal or terrorist activities seems to be a logical measure – but at what cost?

First, as argued by Favarel-Garrigues *et al.*, the global counterterrorism regime has given banks a role they were not established for.²⁰ Banks fear reputational damage and substantial fines, and “find it difficult to ‘profile’ NPOs whose activities appear more ‘random’ than their other commercial clients”. This is made more difficult by the fact that banks “do not necessarily receive any regulatory guidance from Central Banks on how to deal with NPOs”.²¹ As a result, serious errors occur, with grievous consequences for financial access especially for vulnerable groups such as those disadvantaged by their socioeconomic situation or other forms of marginalization (on account of ethnicity or regional affiliation, for example), and assessments of “risk” tend to be subjective rather than based on rigorous analysis and comprehensive information-gathering. How banks understand “risk”, and how decisions to close bank accounts are made, remain unclear. Risk-based approaches to financial crime usually define risk through a set of variables that include “sector, occupation, [and] types of business; geography and jurisdiction risk; political risk; distribution channels; and product or services that [the] customer requires or uses”.²² There is, however, no generally agreed methodology for assessing

17 The FATF is an inter-governmental body established in 1989 by the ministers of its member jurisdictions. The mandate of the FATF is to “set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system”. The FATF also collaborates with other international stakeholders and works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse. See FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations*, p. 7, 2012, available at: www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html.

18 The original FATF Forty Recommendations were drawn up in 1990 as an initiative to combat the misuse of financial systems by persons laundering drug money. The Recommendations were revised for the first time in 1996 to reflect evolving money laundering typologies. In 2001, the FATF expanded its mandate to deal with the issue of the funding of terrorist acts and terrorist organizations, and created the Eight (later expanded to Nine) Special Recommendations on Terrorist Financing. The FATF Recommendations were revised a second time in 2003, and these, together with the Special Recommendations, have been endorsed by over 180 countries, and are universally recognized as the international standard for AML/CFT. See *ibid.*

19 Human Security Collective (HSC), “Impact of CFT Measures on Civil Society”, 2021, available at: www.hscollective.org/our-work/working-themes/impact-of-cft-measures-on-civil-society/

20 Gilles Favarel-Garrigues, Thierry Godefroy and Pierre Lascoumes. “Reluctant Partners? Banks in the Fight against Money Laundering and Terrorism Financing in France”, *Security Dialogue*, Vol. 42, No. 2, 2011.

21 Human Security Collective (HSC) and European Center for Not-for-Profit-Law (ECNL), *At the Intersection of Security and Regulation: Understanding the Drivers of “De-Risking” and the Impact on Civil Society Organizations*, 2018, p. 7, available at: www.hscollective.org/assets/Uploads/Reports/8f051ee3cb/Understanding-the-Drivers-of-De-Risking-and-the-Impact-on-Civil-Society-Organizations_1.pdf.

22 David Artingstall, Nick Dove, John Howell and Michael Levi, *Drivers and Impact of Derisking: A Study of Representative Views and Data in the UK for the Financial Conduct Authority*, John Howell & Co.,

financial crime risk, and “it is difficult to determine to what extent the data are sufficient for this purpose, other than to make a broad subjective assessment”.²³ Based on a series of interviews with compliance officers whose duties include responsibility for AML/CFT activities, a study by Favarel-Garrigues *et al.* on de-risking practices in French banks has shown the extent to which these banks have invested in watch lists and various software-based profiling tools to perform this role. Using these instruments, compliance officers have the power to decide whether particular customers should be included in or excluded from banking operations. Nevertheless, the study also highlights that processes of information-gathering are often lacking in rigour and, as such, are not reliable.²⁴ As noted in a 2018 study by the Woodrow Wilson Center, banks also lack incentives to improve the quality of the data they are collecting, since their primary concern is avoiding potential fines: “One particularly pernicious effect of the status quo is that financial institutions do not have an incentive to adopt innovative techniques or practices that might enhance the quality of information needed by law enforcement officials.”²⁵ A Center for Global Development report confirms this view that the fear of potential fines is a key determining factor in shaping a bank’s de-risking practices; it points out that the rate of CFT- and AML-related enforcement actions does not necessarily decrease following clarifications of regulatory policy, and that “[t]he key analytical point is that *uncertainty* over the prospect of future fines may be affecting bank behaviour, despite clarifying statements from regulators”.²⁶

Second, lack of clarity on what constitutes terrorist financing “risk”²⁷ has created a situation where banks are cutting ties not just on a case-by-case basis but wholesale, withdrawing from entire categories of customers, business lines or regions. This has resulted in the financial exclusion of specific social groups.²⁸ Moreover, de-risking “disproportionately affects smaller organizations who are unable to meet a bank’s extended due diligence requirements and have no recourse to remedy when derisked”.²⁹ This has posed a risk to “international financial integration, financial inclusion, and financial transparency—and by

Shamley Green, 2016, p. 8, available at: www.fca.org.uk/publication/research/drivers-impacts-of-derisking.pdf.

23 See *ibid.*.

24 See G. Favarel-Garrigues, T. Godefroy and P. Lascoumes, above note 20.

25 James A. Haley, *De-Risking of Correspondent Banking Relationships: Threats, Challenges and Opportunities*, Woodrow Wilson International Center for Scholars, Washington, DC, 2018, p. 12, available at: www.wilsoncenter.org/sites/default/files/media/documents/article/2018_haley_report-edits-2-2018-final.pdf.

26 *Ibid.*, p. 12, fn. 24 (emphasis in original).

27 It is important to note that the argument here is not to say that the threat of terrorism is not real. In the UK, horrific attacks on London and Manchester in 2017 are examples of the continued threat that terrorism poses. The argument here is about proportionality—that is, ensuring that counterterrorism measures are not victimizing the innocent and that conceptualizations of risk adequately encompass contextual factors.

28 IMF and Union of Arab Banks, *The Impact of De-Risking on MENA Banks*, Joint Survey, Washington, DC, 2015, available at: https://uabonline.org/wp-content/uploads/2020/06/De-Risking_on_the_MENA_Region.pdf.

29 HSC and ECNL, above note 19, p. 7.

extension, to economic growth and poverty reduction”.³⁰ Humanitarian and development operations in conflict-affected contexts in particular continue to suffer because of these measures, which have caused significant harm to local non-profit and philanthropic actors. Financial access is essential to the local humanitarian response.

The Syrian conflict is an example of the failure of global financial systems to enable local and international humanitarian actors to respond in a timely fashion.³¹ One analyst has described the refugee crisis as a direct outcome of the financial disenfranchisement of the Syrian population:

[T]he hidden story behind this movement of people was, in part, the failure of the world’s financial institutions to engage with transactions linked to Syria. This included opening bank accounts for aid agencies and charities, facilitating payments and the transfer of funds, as well as the payment of aid agency staff, and others engaged in humanitarian support.³²

As argued by Gordon *et al.*, in the case of Syria, de-risking practices hindered the ability of NPOs to cooperate with donors in the United States and Western Europe because the NPOs were unable to receive funds. Almost a third of all money destined for Syria was held in a permanent limbo because of blockages in the correspondent banking system.³³

A study by the present author on the implications of bank de-risking for the humanitarian sector in Somalia points out the deep interconnectedness between the two. As one respondent from Somalia stated: “If we want the humanitarian sector to work well, we need a banking sector in Somalia.”³⁴ Another Somali humanitarian worker described how banking is essential to business, and in turn to creating livelihood opportunities for Somalis and facilitating a transition from humanitarian response to recovery. A functioning banking sector will give a more “secure footing” for businesses by providing them with access to international financial services.³⁵ Moreover, research by the ODI, in partnership with the

30 J. Woodsome *et al.*, above note 8.

31 This is particularly true today as cross-border delivery of humanitarian aid becomes significantly more difficult, threatening lives and putting people at risk of acute food insecurity. Unlocking financial flows can help relieve the humanitarian crisis by allowing Syrians to have access to funds. See Alan Shaw-Krivosh, “UN Mandate for Cross Border Aid to Syria to Expire Today”, *Foreign Brief*, 10 July 2021, available at: www.foreignbrief.com/daily-news/un-mandate-for-cross-border-aid-to-syria-to-expire-today/.

32 James King, “How Derisking Became a Humanitarian Issue”, *The Banker*, 1 February 2017, available at: [www.thebanker.com/World/How-derisking-became-a-humanitarian-issue/\(language\)/eng-GB](http://www.thebanker.com/World/How-derisking-became-a-humanitarian-issue/(language)/eng-GB).

33 Stuart Gordon, Alice Robinson, Harry Goulding and Rawwad Mahyub, *The Impact of Bank De-Risking on the Humanitarian Response to the Syrian Crisis*, HPG Working Paper, 2018, available at: www.syrialearning.org/system/files/content/resource/files/main/the-impact-of-bank-de-risking-on-the-humanitarian-response-to-the-syrian-crisis.pdf.

34 Sherine El Taraboulsi-McCarthy, *The Challenge of Informality: Counter-Terrorism, Bank De-Risking and Financial Access for Humanitarian Organizations in Somalia*, HPG Working Paper, ODI, London, 2018, p. 1, available at: <https://odi.org/en/publications/the-challenge-of-informality-counter-terrorism-bank-de-risking-and-financial-access-for-humanitarian-organisations-in-somalia/>.

35 Sherine El Taraboulsi-McCarthy, “Philanthropy in Captivity: Counter-Terrorism Measures and Arab Philanthropy” *Alliance*, 2 May 2018, available at: www.alliancemagazine.org/blog/philanthropy-captivity-counter-terrorism-measures-arab-philanthropy/.

London School of Economics and Political Science, has pointed out that bank de-risking is contributing to war economies that seek to sustain existing violence, as in the case of Yemen, and the expansion of informal and potentially corrupt channels for financial access and the transfer of funds.³⁶

The political economy of CFT in the Middle East and North Africa

While the previous section has addressed some of the challenges that result from the securitization of the role of banks globally, this section addresses the political economy implications of this securitization for local actors, with a focus on banks, government authorities and NGOs in the Middle East and North Africa. This is to situate the analysis within an understanding of the broader political and economic context in the region. The point of departure here is that the securitization of banks within the region is the outcome of a twofold process. As discussed in the previous section, it is the result of a global counterterrorism regime that emerged as a reaction to the events of 9/11 and through which banks have become wary in their dealings with individuals and organizations based in countries deemed high-risk. Equally important, however, is the recognition that this securitization is also influenced by the local sociopolitical environment, which is itself influenced by the broader counterterrorism regime, and this is especially the case in conflict-affected contexts. As noted by Modirzadeh *et al.*, the global counterterrorism regime has spawned a parallel regime whereby a number of States have issued their own domestic criminal laws “prohibiting material support to listed terrorist entities”, as well as multilateral laws and policies, thereby presenting “serious but little-discussed concerns for those engaged in the provision of life-saving humanitarian assistance in armed conflicts”.³⁷ This means that in order to understand the implications of bank de-risking, it is important to take into account both spaces within which the securitization process takes place: the global and the local. This also necessitates understanding the securitization process less as a fixed process and more as a fluid and “intersubjective” one that requires “negotiation” between the securitizing actor and a significant audience.³⁸ In this case, banks are both securitizing actors in their own right and significant audiences to the international counterterrorism environment and local securitization forces. Another significant audience is the non-profit and philanthropic space and associational life more generally. So far, the majority of existing analysis on CFT and its implications for conflict-affected contexts has not fully taken into account the intersubjective nature of exchanges between various actors and the impact of

36 See S. Gordon and S. El Taraboulsi-McCarthy, above note 8.

37 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*, Vol. 93, No. 883, 2018, p. 624.

38 Odysseas Christou and Constantinos Adamides, “Energy Securitization and Desecuritization in the New Middle East”, *Security Dialogue*, Vol. 44, No. 5–6, 2013, p. 509.

those exchanges on the capacity of CFT measures to result in a meaningful decrease in terrorist financing.

The Middle East and North Africa has been particularly vulnerable to de-risking, with implications for financial access especially for vulnerable groups in conflict-affected contexts in the region. The humanitarian and developmental crisis in Yemen is an example of how bank de-risking can significantly exacerbate existing vulnerabilities and even create risks. In February 2017, Deutsche Bank and Commerzbank closed the bank accounts of almost 100 Yemeni students, businesspeople and diplomats in Germany without any explanation. It later became clear that this wave of cancellations was not just targeting individuals – transactions with Yemeni banks had been blocked as well.³⁹ Recent discussions with Yemeni civil society leaders have highlighted that long delays in receiving transfers have become the norm and that financial access remains a problem.⁴⁰ This has further weakened Yemen's banking sector in the eyes of the regional and international financial system and has contributed to its marginalization and financial exclusion.⁴¹ More generally in the region (including beyond conflict-affected contexts), in a study that surveyed 216 banks in the region, 39% of participant banks indicated that they had experienced a significant decline in the scale and breadth of correspondent banking relationships, while 55% reported no significant change and 5% indicated an increase. The study also pointed out that the number of accounts being closed appeared to be increasing, with 63% of participant banks reporting the closure of correspondent bank accounts in 2015 versus 33% in 2012.⁴²

Based on data collected for this paper and a review of the literature, this section zooms in on two main areas through which the local political economy of CFT manifests itself quite distinctly: the first is that of regulatory interpretations to clients, and the second is related to the implications of limited or non-existent financial access for vulnerability in the region, especially in conflict-affected contexts.

“Power plays” and the politics of interpretation

The local political economy of CFT manifests itself in the ways through which counterterrorism and AML regulations get interpreted by banks in the region and then reinterpreted for their clients, and the consequences of those processes of interpretation on conceptualizations of “risk”. As pointed out by the Human

39 Benjamin Bathke, “German Bank Blacklist of Yemeni Nationals Widens”, *DW*, 10 March 2017, available at: www.dw.com/en/germanbank-blacklist-of-yemeni-nationals-widens/a-37839413.

40 S. El Taraboulsi-McCarthy, Yazeed Al Jeddawy and Kerrie Holloway, *Accountability Dilemmas and Collective Approaches to Communication and Community Engagement in Yemen*, HPG Commissioned Report, ODI, London, 2020, available at: <https://odi.org/en/publications/accountability-dilemmas-and-collective-approaches-to-communication-and-community-engagement-in-yemen/>.

41 See S. El Taraboulsi-McCarthy and C. Cimatti, above note 9.

42 Arab Monetary Fund, IMF and World Bank Group, *Withdrawal of Correspondent Banking Relationships in the Arab Region: Recent Trends and Thoughts for Policy Debate*, 2016, available at: www.amf.org.ae/sites/default/files/Files/content/CBRs%20in%20the%20Arab%20Region%20Survey_FINAL%20Report_Final.pdf.

Security Collective, the FATF regulations single out the non-profit sector as being vulnerable to terrorism financing abuse despite a lack of evidence, and as a result, there is a growing number of countries that are enacting laws which restrict the legitimate activities of NPOs.⁴³ It is worth noting here that while the FATF standards were amended in 2016 to indicate that risk to terrorist financing is not inherent to the sector, but is instead experienced by some NPOs based on their characteristics and operations, the misconception has continued to linger in the minds of regulatory authorities.⁴⁴ If we accept that the goal of regulations related to the broader counterterrorism regime, of which CFT is part, is to reduce the risk of terrorist activities, then by looking closely at the consequences of CFT measures from a local perspective, we can infer that those measures exacerbate risks, especially for humanitarian actors and the non-profit sector, while ostensibly preventing risks associated with terrorist financing and other criminal activities.⁴⁵ Based on an analysis of how de-risking is carried out in conflict-affected contexts and its implications, it is clear that there is a lack of clarity in how those regulations are understood and interpreted, and this has created an opportunity for this space to become increasingly politicized. A review of experiences of bank de-risking in the region shows that incentives to enforce counterterrorism measures can be deeply political, and the consequences of enforcing those measures are political too.

A key area in which the politics of interpretation manifests itself is where documentation and regulatory requirements are concerned. Most of the interviews conducted for this study with local NGOs and philanthropists from the Middle East and North Africa pointed out that the regulatory requirements enforced by banks on clients were not uniform. It is also important to note that in a number of countries in the region, governments also require additional documentation and clearances for funds to be cleared by banks, and this has meant that recipients of international transfers have had to negotiate access to funds through both entities: the banks and their own governments. The knock-on effect has been a significant tightening of the non-profit and philanthropic space—as described by a number of Palestinian humanitarian actors, a state of “siege”.⁴⁶ The challenge of financial access in the West Bank and Gaza is an

43 HSC, above note 19.

44 FATF, “Outcomes of the Plenary meeting of the FATF, Busan Korea, 22–24 June 2016”, 24 June 2016, available at: www.fatf-gafi.org/publications/fatfgeneral/documents/plenary-outcomes-june-2016.html.

45 Clive Walker, “Terrorism Financing and the Governance of Charities”, in Colin King, Clive Walker and Jimmy Gurulé (eds), *The Palgrave Handbook of Criminal and Terrorism Financing Law*, Palgrave Macmillan, Cham, 2018; Ben Hayes, Lia van Broekhoven and Vanja Skoric, “De-Risking and Non-Profits: How Do you Solve a Problem that No-One Wants to Take Responsibility For?”, *OpenDemocracy*, 13 July 2017, available at: www.tni.org/my/node/23602; CGD Working Group, *Unintended Consequences of Anti-Money Laundering Policies for Poor Countries*, Washington, DC, 2015, available at: www.cgdev.org/publication/unintended-consequences-anti-money-laundering-policies-poor-countries.

46 Sherine El Taraboulsi-McCarthy, “A Humanitarian Sector in Debt”: *Counter-Terrorism, Bank De-Risking and Financial Access for NGOs in the West Bank and Gaza*, HPG Working Paper, ODI, London, 2018, p. 5, available at: <https://odi.org/en/publications/a-humanitarian-sector-in-debt-counter-terrorism-bank-de-risking-and-financial-access-for-ngos-in-the-west-bank-and-gaza/>.

important case in point. According to a 2018 study by the present author,⁴⁷ because of the compound realities of Israeli occupation, the fragmentation of the Palestinian leadership between the Palestinian Authority in the West Bank and Hamas⁴⁸ in Gaza, and the land, air and sea blockade on Gaza enforced by Israel and Egypt, financial access for Palestinian NGOs is blocked on three levels: international, regional and local. Internationally, CFT and AML regulations have slowed down and often blocked the transfer of funds to NGOs in the West Bank and Gaza. Regionally, a number of Arab governments have placed restrictions on the transfer of funds to Palestinian NGOs to avoid any reputational threats related to engagement with Hamas. Locally, there is administrative and bureaucratic oversight placed on local organizations by the Palestinian Authority in Ramallah, and Hamas in Gaza.⁴⁹

In an interview with the head of an organization in Jordan, “power plays” by local government officials to secure access to funds were mentioned as a key barrier for his organization as well as others. Securing approvals from several ministries and lengthy meetings of committees to decide whether or not an NGO could have access to funds were examples of how counterterrorism was interpreted locally in a way that restricted the operations of the non-profit sector. Respondents from local NGOs and foundations highlighted that in order to access financial transfers, they were asked to provide detailed information on a number of issues such as what the funds were to be used for and by whom, and one respondent mentioned that information requested included details about staff salaries within the respondent’s organization. Requests for details were not always the same, however, and it seems that they largely depended on the person that each respondent was dealing with at the bank. Interviews with Yemeni humanitarian actors indicated that delays in receiving funds continue to feel haphazard and the reasons for them are not always understood; organizations still struggle to access funds, and regardless of how thorough the documents they provide to the bank are, it takes months for the funds to arrive. Respondents also highlighted that this has meant that clients had to visit the banks in person, with specific compromising effects on their health because of the looming COVID-19 pandemic. Overall, difficulties in interpreting adequate documentation to satisfy a bank’s concerns regarding terrorism or money laundering have meant added costs for humanitarian staff and continued delays in receiving funds. Many organizations interviewed for this study stated their interest in moving out of the region altogether, or at least moving their headquarters to the United States and/or Europe in order to facilitate access to funds.

Another area where the politics of interpretation are manifest is related to money flow disruptions that are specific to Islamic NGOs or NGOs that have an Islamic name. Islamic NGOs have been particularly affected by counterterrorism

47 *Ibid.*

48 Hamas, which took control of Gaza following elections in 2006, is considered a terrorist organization by a number of Western and Middle Eastern countries.

49 For a more detailed account of the interlocking challenges faced by Palestinian NPOs, see *ibid.*

measures, both global and local. In the United States and United Kingdom, these NGOs have been subjected to “the discriminatory and disproportionate application of freezing orders, police raids, media attacks, and regulatory investigations”.⁵⁰ In the Middle East, Islamic NGOs or those with an Islamic name have been targeted by local authorities in addition to already existing disruptions in resource flows from the West. The aforementioned 2018 study by the present author points out that delays can last up to six months or sometimes longer and are more likely in relation to transactions to Gaza than to the West Bank because of Gaza’s association with Hamas, which in 2003 was designated as a terrorist organization and subjected to sanctions.⁵¹ Delays are quite common, and as a result, organizations are put in situations where they look for other local resources, accruing debt, to meet the costs of their operations.⁵² In addition to delays through international banking, local NGOs in Gaza are under pressure to satisfy the bureaucratic requirements of Hamas, the Palestinian Authority in Ramallah and the international banking regime. According to the study, the existence of more than one governing body has imposed on NGOs a number of contradictory bureaucratic procedures and has led to delays in accessing funds. These organizations perform a vital role in providing services to Palestinians in lieu of the government, including health care, rehabilitation and special education.⁵³

A third area is that of increased policing of NPOs by government bodies. Confusion about how “risk” can be interpreted has created an opportunity for governments to increase their control over the civil society space. As mentioned in the previous section, in the West Bank and Gaza, the adoption of the global counterterrorism regime that has informed bank de-risking has provided fertile ground for the Palestinian Authority to enforce further restrictions on local Palestinian NGOs’ access to international grants. This has also led to a perception within the Palestinian non-profit sector that the Palestinian Authority is actively competing against local NGOs for international grants, with

50 Radiah Othman and Rashid Ameer, “Institutionalization of Risk Management Framework in Islamic NGOs for Suppressing Terrorism Financing”, *Journal of Money Laundering Control*, Vol. 17, No. 1, 2014, p. 106.

51 S. El Taraboulsi-McCarthy, above note 46. Hamas was listed as a terrorist organization in 2003 and is subject to sanctions by a number of Western States, including includes Australia, Canada, Japan, the United States and countries of the European Union. See 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 Norwegian Refugee Council, 2013, p. 87, available at: www.nrc.no/globalassets/pdf/reports/study-of-the-impact-of-donor-counterterrorism-measures-on-principled-humanitarian-action.pdf; Omar Shaban, “Unlocking the Gaza Strip’s Economic Potential and Fostering Political Stability: Europeans should Seize the Opportunity of the Rapprochement between Fatah and Hamas”, SWP Comments No. 42, German Institute for International and Security Affairs, October 2017, p. 2, <https://tinyurl.com/5rmy4bp>. No-contact policies have also been introduced with regard to members of the Hamas-led cabinet. Canada was the first Western State to introduce such a policy, followed—among others—by the United States under the Palestinian Anti-Terrorist Act, passed in May 2006. This stipulates that “no officer or employee of the US Government should negotiate or have substantive contacts with members of the Palestinian terrorist organizations” (K. Mackintosh and P. Duplat, above, p. 90).

52 See S. El Taraboulsi-McCarthy, above note 46.

53 See *ibid.*

regulations requiring funding authorization from the Prime Minister's Office and approval by the Ministry of Interior and relevant line ministries.⁵⁴ Another example is Jordan, where operational foundations and NGOs that receive grants from international donors have been required to secure approvals from a number of ministries, resulting in a state of "paralysis" until those approvals are secured.⁵⁵

In Saudi Arabia, the government, in an effort to stamp out terrorism after the events of 9/11, has centralized all overseas funding through two government-led entities: the King Salman Humanitarian Aid and Relief Center, and the Saudi Fund for Development. As a result, individual philanthropists struggle to fund projects in other countries because of government restrictions as well as banking restrictions.⁵⁶ In the Syrian context, Syrian NGOs based in Turkey in particular have reported widespread de-risking and closure of bank accounts by Turkish banks as well as blockages in the transfer of money from abroad, particularly when the organization uses "Syria" or "Sham" (referencing Damascus) in its title. For example, in a 2018 study by Stuart Gordon and the present author, staff at one Turkish-registered but Syrian-staffed NGO described how the organization was de-banked and was then unsuccessful in gaining access to banking services for several months. Only when the organization changed its name and logo, removing any indication that it was an Islamic or Syrian organization, and ensured that its trustees were known as secular rather than religious personalities was it able to obtain banking services again. Several of the NGOs that went through this process opened accounts with a State-owned Turkish bank and suggested that the Turkish authorities were keen to encourage NGOs to bank with State-owned institutions as part of a plan to increase State control over the sector.⁵⁷

The politics of vulnerability

The knock-on effect of delayed transfers, increased bureaucratic red tape and frozen bank accounts has been a deepening of the social and economic vulnerabilities of particular social groups. Interviews conducted with humanitarian and development actors for this study pointed out that delays in receiving funds meant that programmes and projects are either cancelled or delayed to the point where they lose relevance. In the aforementioned study by Stuart Gordon and the present author, respondents described the adverse impact of delayed transfers as a "chilling effect" on humanitarian action. They also made it clear that the majority of NGOs looked for alternative routes to find the necessary funds, either relying on the organization's own reserves or through commodities and in-kind deliveries bought from other funds.⁵⁸ This has resulted in negative coping mechanisms by populations who cannot access funds through the formal banking

54 See *ibid.*

55 See S. El Taraboulsi-McCarthy, above note 35.

56 See *ibid.*

57 See S. Gordon and S. El Taraboulsi-McCarthy, above note 8.

58 See *ibid.*

sector and serious implications for humanitarian and development action in conflict and post-conflict societies.

A key area for understanding the politics of vulnerability resulting from bank de-risking is the reputational risk that organizations and individuals experience as a result of being exposed to delays or freezing of bank accounts, which can contribute to a disenfranchisement of those organizations in the long term. In the West Bank and Gaza, local organizations face an “international, regional and local blockade, both as an intentional policy and as an unintended consequence of counter-terrorism measures”.⁵⁹ As a result, NGOs have been starved of much-needed funds. This has also rendered them more vulnerable because of the reputational risks associated with those delays. Getting denied a transaction by an international bank “renders the affected NGO suspect”, and this could mean that the organization is excluded from other grants, especially as donors become increasingly wary of counterterrorism measures themselves. For their part, donors seem to be responding to bank de-risking by selecting regions and organizations that present “as little bureaucratic burden and reputational risk as possible”.⁶⁰ Moreover, while investigations by governments and the media help to ensure the sector’s transparency, these same public platforms can be used to make unproven and unverified accusations that could damage an organization’s reputation and funding prospects.⁶¹

Another area where the politics of vulnerability are manifest is related to negative coping strategies by affected individuals and organizations. As CFT measures cause de-risking, the practice ends up undercutting CFT aims by reducing transparency and accountability within NPO transactions considered vulnerable for abuse. In Yemen, as noted in a study by the present author and Camilla Cimatti,⁶² de-risking and the consequent restrictions on legitimate transactions have contributed to the creation of a black market trade in food and fuel, and the absence of a functioning formal banking system has led to the expansion of other money transfer routes. This has been described as a “door to corruption”, as these other routes rely on networks of money brokers (such as the traditional *hawala* system) that are unregulated and often perceived as corrupt. One Yemeni banker based in Sanaa stated: “The *sarafeen* [money brokers] have more than doubled. They are the only source of local and external distribution of cash. We cannot survive without them.”⁶³ Humanitarian assistance can also find its way onto the black market, for instance to meet urgent needs for cash in the context of Yemen’s liquidity crisis, or because the assistance provided may not meet people’s needs.⁶⁴

A third and less well-trodden area where the politics of vulnerability is visible is that of perceived discrimination by organizations and individuals alike.

59 See S. El Taraboulsi-McCarthy, above note 46, p. vii.

60 See *ibid.*, p. 6.

61 See *ibid.*

62 S. El Taraboulsi-McCarthy and C. Cimatti, above note 9.

63 *Ibid.*, p. 10.

64 *Ibid.*

In the aforementioned study by the present author on the implications of bank de-risking in Somalia, while Somalian bankers saw the merits of bank de-risking insofar as it seeks to combat financial crime, some viewed it as inherently “malicious” and “discriminatory” because “policies are not well defined and it causes harm and destitution to many people, just because of a few bad apples”. Some also saw de-risking as an attack on Muslim nations; one banker described it as “a financial embargo to weaken Muslim nations” and dismissed counterterrorism as “the brainchild of the West”. Another described de-risking as Islamophobic.⁶⁵

Conclusion: Reconceptualizing risk from the perspective of the global South

A common message from the interviews conducted for this study and the literature is that there is a strong desire to be “compliant” and “transparent”, but that it is difficult to understand what compliance actually entails or how it can be attained. This confirms earlier studies on the impact of CFT on conflict-affected contexts. One study respondent explained the situation by saying:

There has to be a way to have financial access, to have financial coverage, without causing harm. Regulators need to be clear about what they want and need from our end. We want to be transparent, we do, but it is useless. We have tried everything but we still get delays.⁶⁶

As discussed in this paper, the global counterterrorism regime is localized in different ways, and in order to strike a balance between managing risk and ensuring financial access for much-needed humanitarian and development engagement, it is essential to gain an understanding of the global and local political economy implications of counterterrorism. A “Southern” perspective on CFT remains limited in global conversations.

To address issues related to the interpretation of regulatory frameworks, cross-stakeholder engagement at the international, regional and local levels is important. Banks need to be able to interpret counterterrorism regulations clearly and consistently to themselves and their clients. Moreover, the role of governments and authorities in enforcing and interpreting those regulatory frameworks needs to be investigated on a case-by-case basis. As for concerns about exacerbating vulnerabilities, international and regional actors need to ensure that their engagement helps support financial access for local organizations and actors. They also need to keep putting pressure on regulatory bodies in the West to continue revising their tools, programmes and measures for countering terrorist financing, especially where conflict-affected contexts and humanitarian crises are concerned.

65 See S. El Taraboulsi-McCarthy, above note 34, p. 7.

66 See S. Gordon and S. El Taraboulsi-McCarthy, above note 8, p. 5.