

Red lines and al-Shabaab: negotiating humanitarian access in Somalia

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■ Executive summary

There is no easy way for a Europe-based humanitarian organisation to negotiate access to areas controlled by an armed group whose ideology positions it in opposition to Western power and values. In Somalia between 2009 and 2013 al-Shabaab's violent and zealous religious disposition, rejection of foreign interference and distrust of non-governmental organisations (NGOs) seriously challenged humanitarian organisations' attempts to negotiate access.

Al-Shabaab's relationship with NGOs was ambivalent and always antagonistic to some degree. It largely viewed NGOs with suspicion, characterising them as spies or agents of foreign intervention, and yet at the same time sought to exploit their presence for material gain. But al-Shabaab was also discerning: it observed and passed judgement on organisations, granting access to some while denying it to others. Space to negotiate access existed, at least for some organisations and under certain conditions. At times, however, these conditions forced organisations to explore the limits of the compromises they were willing to make in pursuit of their humanitarian objectives.

During this period Médecins Sans Frontières (MSF), a medical humanitarian organisation, maintained and even modestly expanded humanitarian programmes in al-Shabaab-controlled areas. Focusing on one of MSF's project sites, this report describes some of the elements, patterns and dilemmas that characterised its experience of engaging with al-Shabaab during the latter's turbulent rule over a territory marked by chronic humanitarian crises and frequent medical emergencies. Negotiating access with al-Shabaab was ultimately as much about determining and managing MSF's own "red lines" as it was about negotiating as such.

Introduction: the rise of al-Shabaab

In January 2008 a targeted attack using a remotely detonated improvised explosive device killed three Médecins Sans Frontières (MSF) staff in the Somali port city of Kismayo.¹ This event marked a turning point for the organisation and for many others providing humanitarian aid in Somalia. By the end of 2008 most international humanitarian staff had withdrawn from the country, in some cases closing programmes, in others working via local organisations or leaving national staff to run programmes with guidance from remotely based international staff.

During this period al-Shabaab gained considerable strength and honed its expertise in the use of explosive devices (Bryden, 2014: 8). Indeed, the group was implicated in and publicly took responsibility for many of the attacks and kidnappings that multiplied across Somalia in 2008, prompting the U.S. government to designate it as a terrorist entity by October of that year.²

Al-Shabaab (the "Youth") was founded in 2005 as a wing of the Islamic Courts Union (ICU), but by 2007 declared its independence from the ICU, which had been militarily defeated by an international force led by the Ethiopians at

¹ Those responsible were never conclusively identified.

² The Australian government followed suit in 2009, and Britain and Canada in 2010.

the end of 2006. Many of al-Shabaab's founders had roots in the Islamist militant movement Al-Itihaad al-Islamiya, through which they had connections to al-Qa'ida, a link that encouraged some members to contribute to global jihad via combat operations in Afghanistan.

Al-Shabaab's core leadership hailed from several Somali clans. Yet despite internal clan-based and ideological rifts, the organisation maintained remarkable unity during the period under review (Bryden, 2014: 3; ICG, 2014: 4).³ These leaders infused al-Shabaab with a relatively clear ideology that was at once internationalist and pan-Islamic with its global jihadist rhetoric, and at the same time deeply Somali-focused with a national social reform agenda based on a strict implementation of Islamic law. Al-Shabaab's global jihad propaganda attracted foreign ideologically driven militants, but the group was also able to project an "image of pious and law-abiding individuals, and legal justice based on Islam", a characteristic that drew at least some popular support from Somali civilians (Hansen, 2013: 3, 10, 27).

During the period of Ethiopian occupation in Somalia from 2007 to 2009 popular anger toward Ethiopian interference, exacerbated by the latter's heavy and at times disproportionate use of violence, spurred al-Shabaab recruitment. The group opened training camps and expanded rapidly during this period (Gartestein-Ross, 2009). With al-Shabaab in a strengthened position, the withdrawal of Ethiopia forces from Somalia in 2009 paved the way for its rapid territorial expansion. By mid-2009 the group controlled most of southern Somalia with an estimated 5,000 men (Hansen, 2013: 82).

With territorial control came governance responsibilities. Al-Shabaab was quick to establish governance structures consisting of decentralised Islamic governorates theoretically consisting of a governor and various offices, including those dealing with social affairs, finance and justice, and a police unit. Each governorate had significant responsibility for resource management, but was guided by the dictates of a highly centralised *shura* (council) complemented by centralised religious and moral guidance (Hansen, 2013: 84).

Almost immediately, al-Shabaab established an extensive system of taxation that became one of its most important sources of income. It demanded taxes from multiple forms of activity, including port movements, commercial truck transport and all types of business activity, as well as from aid agencies and their staff.

Most governorate administrators, including humanitarian officers, were centrally appointed, deliberately chosen for being non-local and frequently substituted, all of which created major challenges for humanitarian agencies

seeking to form durable relations through which to sustain or expand their access. On the other hand, such administrators were often technocrats for whom "global jihad had little meaning", predisposing them toward somewhat greater tolerance of foreign humanitarian agencies (Hansen, 2013: 88).

Al-Shabaab was frequently suspicious of the motives and activities of aid organisations, accusing them of siding with and spying for foreign governments (Jackson, 2014: 2). Yet it was not uniformly opposed to international or Somali aid organisations, and was even "highly favourable toward many" of them (Hansen, 2013: 116). However, even in more favourable situations the operating conditions it imposed forced many organisations into dilemmas related to their ability to uphold humanitarian principles, especially the provision of independent and impartial assistance, and adhere to their own organisation's values and policies.

In August 2011 international forces backing Somalia's Transitional Federal Government forced al-Shabaab to withdraw from Mogadishu. The group subsequently lost much of the territory it had gained in 2009. With territorial loss, especially of urban centres, its governance structures largely disintegrated as it reverted to insurgency tactics. Nevertheless, it has remained a significant political and military force and a group that humanitarians cannot avoid or ignore. In February 2012 the group announced its formal merger with al-Qa'ida and by 2013 its more radical leaders purged the more tolerant elements in the group, leaving it firmly committed to global jihad and terrorist tactics (Bryden, 2014: 5-6). This shift closed off some of the negotiating space that had existed up to that time and was one of the factors prompting the project under review to close in 2013.⁴

Preconditions for negotiated access

Securing and sustaining access to al-Shabaab-controlled areas during the period 2009-13⁵ was extremely challenging for numerous humanitarian organisations. Al-Shabaab's antagonism toward humanitarians was displayed in its banning of organisations, demands for payments, looting of humanitarian goods, and kidnapping and killing of aid workers (BBC, 2010; Clarion Project, 2013; HRW, 2013; Karikari-apau, 2014; Straziuzo, 2011). However, al-Shabaab's treatment of NGOs varied. The project under review was not immune to the group's aggression, but did not experience it to the degree or frequency of many other projects. It is likely that the project would have experienced substantially more problems and may not have lasted as long as it did without the presence of three important factors: the programme existed before al-Shabaab arrived, it offered a "product" that was highly valued by the community, and it had experienced senior

3 This unity was maintained at least in part due to the regular payment of wages to its fighters, as well as to its internal intelligence and police unit, the Amniyaad, which enforced loyalty to al-Shabaab's emir (head) by harshly punishing dissenters and deserters (Bryden, 2014: 6; ICG, 2014: 15).

4 The project's location is withheld for security reasons.

5 The period 2009-13 spans the time from al-Shabaab's takeover of the area encompassing the project under review to the project's closure in 2013, when the organisation in question withdrew from all parts of Somalia following several critical security incidents involving its staff in other areas of the country.

national staff who could both run the project and represent the organisation. Together, these factors provided MSF⁶ with substantial negotiating leverage.

Who came first?

An essential factor in obtaining humanitarian access under al-Shabaab rule from 2009 to 2013 was the date of project inception. It was far easier to maintain a well-established project than to start up new projects in new areas. The project under review had been running since 1997 and had established firm roots in the community. The longevity of the programme, together with the fact that the humanitarian organisation had operated across Somalia for decades prior to al-Shabaab's existence, lent legitimacy to the former's reputation as neutral and committed to Somali welfare.⁷ These were important characteristics, given al-Shabaab's acute suspicion of humanitarians as agents of foreign political intervention.

Had the project not already been running, starting a new initiative under al-Shabaab rule would have been extremely difficult. During the UN-declared famine period of 2011, the humanitarian organisation's intense efforts to expand into new al-Shabaab governorates in critically affected areas were welcomed by the governorates themselves, but rejected at the central *shura* level. On the other hand, the organisation's efforts to negotiate access to new areas under the same al-Shabaab governorate as its existing project were more successful. Access to these areas was facilitated by the humanitarian organisation's established presence, which acted as a gateway and a credible anchor for modest expansion. However, being there first was not sufficient in itself to sustain access. Al-Shabaab ejected numerous organisations that had been running programmes prior to its takeover.⁸

A valued "product"

The second key factor was the "product" the organisation provided to the community. Over the years the project in question had methodically built up a medical humanitarian service that managed a high volume of patients with consistently good medical outcomes. The programme's medical services – hospital- as well as outreach-based – visibly saved lives and relieved suffering. The project managed more than 50,000 medical consultations on an annual basis, not including the significant spike during the 2011 famine. Throughout its existence the project had responded to dozens of medical emergencies ranging from individual maternity and surgical cases to spikes in

malnutrition, cholera and measles outbreaks, and mass displacement caused by flooding and violence. The local community valued these medical services tremendously and the project's positive reputation drew patients from hundreds of kilometres distance.

That the local community valued the organisation's product was undeniable, but this did not necessarily mean that al-Shabaab would. However, relative to other forms of assistance, al-Shabaab seemed to value medical programmes more highly. For example, it rejected several food-aid-focused organisations, claiming that they created dependency (Al Jazeera, 2010; Chonghaile, 2011). It also rejected non-Islamic educational programmes, at times openly attacking schools (HRW, 2012: 62-64). Medical aid, on the other hand, seemed less misaligned with al-Shabaab's goals and values. It was a product that the group could more easily accept, and indeed its members and their families directly benefitted from the humanitarian organisation's medical services.⁹ In late 2012 a high-level al-Shabaab delegation visited the project site for the first time and indicated its satisfaction that the project was producing tangible and valuable results. Medical projects were not immune to al-Shabaab rejection, but the concrete benefits of this project undoubtedly contributed to the group's generally tolerant stance.

Capable local staff

The third key precondition was the programme's Somali staff, particularly at the senior level. By the time the wave of violent attacks on foreigners, including humanitarians, hit Somalia in 2008 the project already had highly experienced and capable Somali staff. Owing to frequent evacuations of international staff in the preceding years, the Somali staff corps was already accustomed to a "remote management" modus operandi.¹⁰ With international staff only partially on site, Somali staff were well versed in the organisation's systems, procedures, standards and ethos, and at the same time accustomed to and capable of running the hospital with remote support.

Several senior employees were also respected members of the community and capable negotiators. Given al-Shabaab's general practice of ignoring the foreigners that funded, supported and ultimately managed the programme – insisting instead on communicating only with Somalis – the humanitarian organisation's experienced national staff gave it a distinct advantage in opening and maintaining negotiating channels.

6 Hereafter referred to as 'the organisation' or 'the humanitarian organisation' to keep the focus on this particular project's experience rather than on the organisation's experience in Somalia more generally.

7 The term "neutral" is met with suspicion among many Somalis, since they do not believe that people, or by extension organisations, can be politically unaligned. However, from an internal perceptions study conducted by the humanitarian organisation among staff and community members in 2010-11, it is clear that it was viewed favourably after demonstrating its commitment to Somalis on all sides of the conflict by providing services throughout the country over a long period of time.

8 In November 2011 al-Shabaab banned 16 aid agencies from working in areas under its control, some of which had established projects prior to the group's takeover (Irinnews, 2011). Prior to this it had already forced the closure of several UN and non-governmental agencies (Zimmerman, 2011). Islamic charities were also not immune to al-Shabaab ejection. Islamic Relief, for example, a large and influential humanitarian organisation, was banned in 2012 (Chonghaile, 2012).

9 Notably, medical aid is less easily converted into a conflict-fuelling resource than other forms of aid such as food. Although al-Shabaab most certainly viewed aid organisations as potential sources of revenue, its pattern of acceptance and rejection of such organisations suggests that this was by no means its sole motive.

10 At the time of al-Shabaab's takeover this was the humanitarian organisation's most frequently evacuated project worldwide.

These three preconditions proved essential in sustaining the project into the period of al-Shabaab control. The project was well enough rooted and respected such that by the time al-Shabaab took over in late 2009 it declared in a public community meeting its appreciation for the services provided by the humanitarian organisation and welcomed its continuation. Again in July 2011 al-Shabaab's Office for Supervising the Affairs of Foreign Agencies sent a letter to the humanitarian organisation acknowledging its medical assistance, and guaranteeing its staff's safety and the freedom to operate "without hindrance or persecution". The letter also stated that "The Administration grants access to the medical teams on the basis of impartiality, neutrality and political detachment", indicating a degree of acceptance of the humanitarian organisation on the basis that it perceived it as adhering to the core humanitarian principles. Al-Shabaab would at least tolerate the organisation's presence, but under what conditions?

The negotiating channel

The space for negotiating with al-Shabaab was less than ideal. There was little actual dialogue, exchange of views, or discussion of shared interests or options. Despite al-Shabaab's general tolerance of the humanitarian organisation and its activities, the negotiation channel was always weak, and by 2011 decision-makers on both sides no longer communicated directly.¹¹ Negotiations took place solely between local al-Shabaab representatives – primarily the humanitarian officer – and the humanitarian organisation's senior local staff. The process was characterised by avoidance, mutual distrust and, at times, antagonism. The negotiation process rarely resulted in clear positive conclusions and was characterised instead by prolonged periods in which the humanitarian organisation resisted or avoided demands and awaited responses to requests, while seizing the available space for its operations.

Although weak, a negotiation channel nonetheless existed and was vital to the humanitarian organisation's ability to sustain and to some degree expand access. Al-Shabaab's structure and hierarchy were rigid, and it deliberately narrowed the channel for negotiations to a single individual, the humanitarian officer. It appointed humanitarian officers, usually non-locals, to governorate posts where they were empowered to make most day-to-day decisions regarding humanitarian organisations (Jackson & Aynte, 2013: 2). Humanitarian officers were rarely receptive to the requests of humanitarian organisations, and the former's frequent and often purposeful turnover – as often as every three months – left little room to establish better negotiating relationships. Al-Shabaab's health officers were more receptive, but had little authority, leaving the humanitarian officer as the single critical actor.

The humanitarian organisation's pre-established presence meant that for the most part it could carry on its activities

without the need to negotiate. It could also use its existing and substantial operational space in the hospital and at outreach sites to adapt its activities to changing circumstances. For example, in the hospital medical teams were able to scale up their activities substantially in response to the huge spike in malnutrition in 2010 and 2011 without negotiating with al-Shabaab. However, negotiations were necessary and inevitable for more visible issues such as geographic expansion or visits of international staff, as well as for seeking corrective measures related to incidents perpetrated and demands issued by al-Shabaab. The humanitarian organisation's senior local staff frequently engaged the humanitarian officer and other lower-level al-Shabaab representatives on such issues with mixed success. For example, they pushed back against al-Shabaab members entering the hospital with arms and substantially reduced – although did not eliminate – such incursions. They also refused to provide food and medicine to al-Shabaab except via the same channels used for any other individual in need of medical assistance. However, many of the issues the humanitarian organisation was forced to negotiate created profound dilemmas that required it to confront its own "red lines".

Negotiating through red lines

Much of what characterised the humanitarian organisation's "negotiations" with al-Shabaab was its own internal assessment of the limits of what was acceptable – its red lines.

In November 2009, around the time that it took over the territory in which the humanitarian organisation operated, al-Shabaab distributed a list of 11 demands to organisations operating in the Bay and Bakool regions. Although the project under review was not in these regions and did not receive the list of demands directly, it is indicative of what al-Shabaab generally demanded of organisations at the time. Some of the demands included a prohibition on staff taking Sundays off; replacing female workers by males; prohibiting organisations from displaying their logos; approval by al-Shabaab for new activities and new staff; and the disclosure by organisations of personal information about local staff. Although not a written condition, international staff members were also barred from accessing al-Shabaab areas. Finally, perhaps the most difficult of all al-Shabaab's demands was that organisations must register with the governorate and pay registration fees.

Beyond issuing such demands, al-Shabaab's respect for humanitarian staff, space and assets was inconsistent. Although not frequent, it did at times loot the organisation's humanitarian items, issue threats and violate its medical space, all of which pushed the organisation closer to closing its doors. Al-Shabaab's demands and actions tested the limits of the humanitarian organisation's principles and values, and generated much internal debate

¹¹ Prior to that time, international staff based outside Somalia had mobile phone contact with the highest-level al-Shabaab representatives at the governorate level.

as to where those limits actually lay. It was at best an uncomfortable balancing act, at worst a brutal dilemma between impossible choices. The organisation was in a constant state of compromise, not able to operate according to its standard *modus operandi*, but the project's considerable life-saving impact tipped the balance toward remaining in operation so long as it could mitigate the compromises to at least a tolerable degree.

Remote management

At the time when al-Shabaab took over the territory in which the project operated in 2009, the latter had been running on a remotely managed basis for over a year due to increased insecurity for international staff.¹² During that time remotely based staff, including international staff, made infrequent "flash visits" (for a few hours up to a day). After al-Shabaab's takeover the remotely based team made one final flash visit. After that, and up until 2013, no more visits were possible due in part to al-Shabaab's denying permission and in part to the security risks of sending international staff to that location. This put the humanitarian organisation in a permanent state of compromise and a profound existential dilemma that simmered and at times erupted among its leadership. Much of its success over the years was attributed to its operational model in which usually a handful of international staff (in this project's case, up to ten) work alongside national staff (in this project's case approximately 150) in the field.

This model, among other things, helped safeguard the organisation's impartiality, reduce the security risks that national staff might otherwise be exposed to, facilitate resource accountability and ensure programme quality.¹³ Hence, many in the organisation opposed remote management (RM) on the grounds that the *a priori* compromises were too great.

By the middle of 2008, after several months of extended international staff evacuation, the project's leaders made an assessment that a return to the standard model was unlikely, but that before closing the project the organisation would explore all possibilities for designing a workable RM model. The crucial question in Somalia was whether or not a sufficiently robust RM system could prevent the organisation from systematically crossing its red lines. Essentially, the organisation grappled with the four main red-line issues described below.

Declining medical quality

The organisation assumed that over time, in the absence of international medical experts on site, medical quality would gradually diminish to an unacceptable degree. After some debate about loosening the organisation's medical standards for this project, it chose to keep the bar at the same level as for all its projects worldwide.

In order to avoid diminished medical quality, the project had to adjust. It created new systems and changed its working culture. The project boosted training opportunities for field staff, and remote staff worked closely with them by making direct contact multiple times daily to advise, discuss difficult cases, strategise, and check and cross-check medical outcomes. At its heart, the system sought to empower and support field staff while holding them strictly accountable through a robust system of information verification and cross-checking.

The system worked insofar as field staff remained motivated and capable of meeting medical quality standards. Medical indicators demonstrated acceptable outcomes. In 2012 medical quality was assessed by an external auditing team with the following judgement: "By and large, with some 'natural' variation, the Somali project [is] able to meet the set standards. And it is in particular good to note that there are no standards or indicators that are consistently low or can otherwise not be met because of RM."¹⁴

Staff protection

Without the presence of international staff at field level the potential for increased risk to national staff increased. The project was able to push back and avoid the impact of some of al-Shabaab's staff-related demands. For example, the project maintained female staff, despite al-Shabaab's demand to remove them, with the argument that female patients are better served by female health workers. The organisation also avoided providing personnel details to al-Shabaab beyond a list of staff names.¹⁵ But the clearest red line related to staff protection was the safety of senior staff who represented the organisation locally under RM.

In the organisation's standard projects, international personnel manage the activities and represent the organisation locally. They make – and are seen to make – decisions relating to such things as selecting local suppliers, hiring and firing local staff, selecting project activities, and so on. They are the ones who negotiate access. This system buffers local staff from the pressures and potential security risks generated from being the project's visible decision-makers. In RM, national staff, particularly those who take on visible decision-making roles, can face increased security risks.

¹² Remote management, as defined by the organisation, is an operational response to insecurity and denial of access for international staff. It involves withdrawing or drastically reducing international and sometimes regional staff in the field, transferring greater programme responsibility to local staff, and overseeing activities from a different location.

¹³ Since the early 2000s remote management (RM) has emerged as one of the main operational models for delivering humanitarian aid in conflict settings (Schreter & Harmer, 2013: 23). It is generally acknowledged that RM is a last resort option and that it entails risks similar to those outlined here; e.g. see ECHO (2013).

¹⁴ Note that this assessment could not be done on site.

¹⁵ For taxation purposes, al-Shabaab was able to obtain salary information directly from the mobile bank transfer company.

The organisation managed this primarily by clearly and openly shifting the decision-making locus for risk-inducing decisions to the remotely located team. While the day-to-day responsibilities of senior national staff increased significantly under RM, decisions related to the hiring, firing and disciplining of staff, as well as selecting and paying local suppliers, were shifted to the regional base outside Somalia.¹⁶ A retrospective review of all recorded and known security incidents in the project during the RM period shows that no staff members experienced security incidents resulting in injury or death during the period of al-Shabaab control. The most serious security incident in this period occurred when a senior staff member was briefly arrested for resisting a local contractor's demand for more money.¹⁷

Impartiality

Humanitarian action is rooted in humanitarian principles, one of the most fundamental of which is impartiality, or the prioritisation of assistance based solely on need. A substantial compromise of this principle would be a red line. Because local political and clan dynamics are always reflected in the national staff corps, there was a real risk that under RM certain people would be denied the project's services owing to biased treatment by local staff on the basis of their identity. For example, members of a particular clan, ethnic group, age or gender might be dissuaded or barred from accessing the project's services by staff who themselves may be pressured or influenced by their political or clan affiliates.

To mitigate this potential compromise of impartiality, even prior to RM the organisation had ensured a mix among the staff corps that more or less reflected a cross-section of local society. However, for one group in particular their low social status, and hence generally very low level of education, prevented them from occupying skilled or senior staff positions. As a result, the organisation was concerned that members of this group would be dissuaded or even barred from accessing the project's services. Apart from educating staff on the necessity of admitting patients solely on the basis of medical need, there was little the organisation could do to mitigate this particular risk. But it could at least monitor the risk through patient data, in particular patient and village names, to determine the proportion of patients from this group. This proportion roughly mirrored the size of their community, and remained consistent before and after RM.

Another facet of impartiality is the ability to adjust programme activities and locations in order to access those *most* in need of assistance. Al-Shabaab curtailed this ability. That the project as a whole was well placed to assist people in severe need was never in doubt: the area was

prone to violence, as well as frequent floods, food shortages leading to malnutrition, and disease outbreaks. It was also located where there were no other credible medical services within a radius of 150 kilometres. However, the project was limited in its ability to make changes both geographically and in terms of activities, raising questions as to whether it was consistently assisting those *most* in need. For example, the project was never able to conduct a vaccination campaign for measles – a disease that took many lives. The best it could achieve was the “passive” vaccination of all children arriving at its facilities. It also failed to negotiate access to some surrounding areas under the same governorate. But it did successfully negotiate access to other areas, particularly during the 2011 crisis, for nutritional programmes, cholera response, flood response and displacement. Although limited and not without delay, the project was thus able to realign its activities in order to address shifting patterns of morbidity.

More problematic was that expansion to new areas outside the area controlled by the same al-Shabaab governorate was not possible. This left many Somalis without the services they urgently needed. However, the organisation ultimately concluded that its failure to expand elsewhere would not constitute a red line *for this particular project*.

Resource diversion¹⁸

One of the most challenging red-line issues was ensuring that the organisation's resources were directed solely toward the project's medical humanitarian objectives. It is practically impossible to manage a large-scale humanitarian project under any circumstances without some portion of its resources accruing to local power actors. Broadly speaking, this can occur in one of three ways: as a spin-off effect of the intended and legitimate payment of salaries and local purchases; via insufficient control mechanisms that permit the “leakage” of cash or consumable items; or via the direct transfer of goods or cash to the controlling authority.

1) Spin-off effects

There is little an organisation can do to avoid resources accruing to those in power via staff salaries, engaging local contractors and making local purchases. Even if control measures are completely sound, injecting cash into the local economy cannot be done in isolation from local power structures. Al-Shabaab collected taxes from local staff and the businesses from which the organisation purchased local items and services.¹⁹ The alternative of avoiding local purchases by shipping all items in (at significant extra cost) would not have mitigated the problem, because al-Shabaab taxed all transporters in their areas of control. Thus a degree of spin-off benefits accruing to al-Shabaab was unavoidable, short of project closure.

16 Where possible, local payments were made directly from the remote location to the local supplier via money transfers.

17 Source: the organisation's security incident database, cross-checked with senior programme managers.

18 This is a red-line issue in itself, but can also lead to a secondary issue of increased security risk to international staff visiting the project in part to monitor resource flows. This latter issue is not discussed here.

19 Notably, the staff tax rate remained consistent with previous eras of authority (going back to the 1990s) at 5%.

2) Leakage

In order to minimise leakage resulting from weak points in chains of resource movements, the project invested heavily in reinforcing and adapting the control system under RM. In particular, it focused on strengthening and integrating financial, logistical and medical systems related to resource flows. For example, stock movements were reconciled by comparing stock-outs from the remote base to field warehouse counts, field pharmacy counts, and patient prescription and consumption records. Budget lines were disaggregated to highly detailed line items, each receipt was scrutinised and cross-checked for validity, and all purchases were approved and payments were paid directly to the supplier from the remote base. According to an audit conducted in 2012, “warehousing and stock management procedures [were] of high standards ... [and] the Remote Management model has not visibly increased the opportunity for staff to divert resources”.

3) Direct transfers

The demand for direct payments to al-Shabaab and confiscations by the group were acute red-line challenges. Although the organisation used private transport companies and was thus not involved in negotiations with al-Shabaab for the passage of humanitarian vehicles, the transporters made payments to al-Shabaab (the amounts were not known to the humanitarian organisation).

Even more difficult were al-Shabaab’s demands for semi-annual registration fees. Although the humanitarian organisation resisted and did not pay, on two separate occasions the fees were paid on its behalf, once by the local community collectively and once by a local business person. At times al-Shabaab also confiscated the organisation’s resources. In July 2010 armed men entered the hospital and stole some medicines and medical materials that were never recovered. Later, one whole truckload of therapeutic food was confiscated and never returned. On another occasion, a truckload was confiscated and 97 of 137 boxes of therapeutic food were returned.

The organisation pushed back on every instance of demands for payment and confiscation, and over the four-year period a tiny fraction of its resources was transferred into al-Shabaab’s hands in this way. Yet the issue has major ethical implications, even if the actual amounts are small. With the passage or strengthening of counter-terrorism laws in several countries, legal implications have also risen in recent years.²⁰

Of all the red-line issues, direct transfers proved the most challenging. The organisation was split on whether the few instances of direct transfer were sufficient to cross a red line. Individuals grappled with dilemmas around fuelling conflict, supporting designated terrorists (which involved

both ethical and legal concerns), and accepting what many perceived as a generally abusive relationship between the organisation and those controlling access. It concluded, not without significant discomfort and protracted debate, that the red line was not crossed for the following reasons: the transferred amounts were minimal; no direct cash payment was ever made; and in the case of confiscations, al-Shabaab’s leadership was partially sympathetic and responsive to the organisation’s demands for corrective action. In a project with less humanitarian impact, this conclusion would not likely have been reached, but the project’s large-scale life-saving impact helped tip the balance in favour of continuing.

Conclusion

Negotiating humanitarian access with al-Shabaab was highly challenging and may not have been possible without certain preconditions. These were primarily the humanitarian organisation’s long-established presence prior to al-Shabaab’s takeover, the high value of the product it provided to the community, and the experience and competence of the national staff that allowed a switch to RM. Nevertheless, these preconditions were insufficient in themselves. The organisation had to both negotiate exemptions to certain demands and expand its activities, and had to demand corrective action related to unacceptable actions against its staff, operating space and assets.

Ultimately, negotiating access under al-Shabaab was not about obtaining a green light to operate, but about whether the conditions for operation were acceptable. The humanitarian organisation exerted great effort, both on the negotiation front and on the part of its internal management, to prevent it from crossing the red lines that would otherwise have meant self-imposed project closure.

That some negotiating space existed indicates something about the nature of al-Shabaab. While the group persistently projected its commitment to global jihad and applied a harsh version of Islamic law, it was also committed to the Somali population and to effective governance. It acted like a legitimate governing authority that expected to remain so. This characteristic gave humanitarian organisations some negotiating leverage. As potentially useful service providers, humanitarians offered something of value in the eyes of at least some al-Shabaab leaders. Moreover, from al-Shabaab’s perspective aid organisations were also potential sources of revenue. But al-Shabaab was also loath to admit or foster dependence on foreign organisations, and remained highly suspicious of humanitarians as spies and agents of foreign intervention. Thus at its heart, al-Shabaab was deeply ambivalent about the presence and work of humanitarian organisations. Those organisations that found a space to maintain their operations confronted

²⁰ The U.S., Canada, Britain, Australia and others have developed robust anti-terror legislation, particularly since the terrorist attacks of September 11th 2001, and have designated al-Shabaab as a terrorist organisation. Although legislation varies, the common thread is that “material support” to designated groups is illegal, and in many such laws humanitarian intent does not provide exemption (e.g. see Duplat & MacKintosh, 2013). Counter-terrorism legislation thus creates a profound deterrent effect for humanitarians intending to work in areas controlled by groups designated as terrorists.

an antagonistic, demanding and at times hostile governing authority.

In an increasing number of conflict situations, humanitarians face the prospect of negotiating access with armed groups whose ideology generates hostility toward foreign humanitarian organisations. Yet their ideology may mask other motivations more favourable to humanitarian assistance. Some form of negotiating space may exist even if it is not evident, especially in situations in which the armed group believes itself to be, or aspires to be, a governing authority. This organisation's experience in Somalia suggests that those organisations best positioned to take advantage of such negotiations spaces will:

- be able to demonstrate through historical reference their impartial and neutral commitment to people in need, and will ideally already have a presence in the area prior to the arrival or emergence of the armed group;
- offer a "product" that is highly valued among the community and at the same time not easily "lootable";
- have cultivated a national staff corps that is not only competent to run programmes on a day-to-day basis, but also well versed in the organisation's values and ethos, and at least some of whom are capable negotiators with sufficient community-level respect; and
- be prepared as a last resort to implement less-than-ideal operational models – such as RM – while adequately mitigating the risks and compromises associated with the chosen model. For many organisations this may imply a more or less radical shift in the programme's operational culture, as well as its systems for quality and resource control. It also requires a transparent, thorough and ongoing review of the particular organisation's red lines, however contentious and uncomfortable this process may be.

Médecins Sans Frontières's experience does not suggest that humanitarians should be more willing to compromise the core humanitarian principles or their own values in order to gain access in territories controlled by ideologically driven armed groups. On the contrary, humanitarians must use the humanitarian principles and their own values to draw and defend their red lines, refusing to operate where these red lines are crossed or, more optimistically, finding new ways to make sure they are not.

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