

Policy Paper

CONSIDERATIONS ON SCREENING/VETTING PERSONS IN NEED OF HUMANITARIAN ASSISTANCE IN COUNTER- TERRORISM/SANCTIONS CONTEXTS

IASC Task Force 3 on Preserving Humanitarian Space

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Donors are required to implement and comply with counter-terrorism and sanctions measures enacted under their jurisdictions. They, therefore, may include within their contractual relationships with humanitarian organisations specific clauses to ensure that their funds do not end up benefiting individuals or groups designated 'terrorist' or otherwise sanctioned, sometimes having negative consequences beyond their domestic jurisdictions.

While providing principled and need-based humanitarian assistance, humanitarian organisations also have to comply with applicable counter-terrorism and sanctions measures based on the respective laws under which they fall and within the limits of their humanitarian mandate and applicable International Human Rights Law and Humanitarian Law. They may also decide to make concessions and voluntarily accept contractual clauses in this area. Donors have been requesting ever broader and more stringent due diligence measures from the recipients of humanitarian and development funding in counter-terrorism and/or sanctions contexts. Over compliance of counter-terrorism and sanctions measures could lead to unintended results regarding the availability and sustainability of humanitarian assistance. In some of these contexts, donors' counter-terrorism and sanctions-related requirements for humanitarian actors have jeopardized the ability of such organisations to continue providing assistance in line with humanitarian principles and in a manner consistent with their status, to the detriment of those in dire need of such assistance. Of particular concern are information-sharing or due diligence requirements aimed at ensuring that persons or entities designated under sanctions or counter-terrorism measures are excluded from assistance. This may take the form of clauses in institutional funding contracts that prohibit the provision, directly or indirectly, of **funds, assets, or support more broadly to such persons or entities. In other cases, it may take the form of extensive information-sharing requests on people in need to inform, in turn, decisions as to what, where, and how to fund.** A key challenge for humanitarian actors is the lack of clarity and adequate legal protection for carrying out humanitarian activities in countries subject to counter-terrorism and sanctions measures or areas in which designated entities operate.

Recently, the UNSC adopted a resolution (UNSC 2664/2022) that permits "the provision, processing or payment of funds, other financial assets, or economic resources, or the provision of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs by the United Nations [and other specific types of organisations, as well as their implementing partners]¹", even if UN sanctioned individuals incidentally benefit from the operation. This resolution demonstrates the Security Council's acknowledgment of the impact of sanctions and counter-terrorism measures on humanitarian action, and its view that humanitarian considerations justify such incidental benefits to sanctioned actors.

Such a view is still to be reflected in several sanctions-related and counter-terrorism measures, including in the practices and conditionality put forward by some donors. Broad interpretations of some counter-terrorism and sanctions measures can lead to excessive donor requirements that can, in some instances, be considered more stringent than what these measures do prescribe. This includes frequent requests by donors to screen persons in need of humanitarian assistance against UN, regional, and/or national counter-terrorism and/or sanction lists, and/or vetting and/or sharing sensitive information on persons in need of assistance and protection.

¹ UNSCR 2664 (2022), OP 1.

Terminology - when used in this document:

- **Screening** refers to the action of checking the identity of a person against a sanctions list to determine if the person is designated by a sanction or a counter-terrorism measure.²
- **Vetting**³: This goes further than screening, since it can include deeper background checks on specific individuals (normally including screening against sanction lists but not only) that could raise additional concerns regarding data protection and data sharing. Those background checks can be done by donors based on information shared by the subcontractor or by the subcontractor itself.

More practically, when it comes to persons in need of humanitarian assistance, humanitarian actors can face two issues:

- Donors requesting that people in need are screened against sanction lists, most of the time using software, with a view to exclude from or limit any risk that assistance be provided to persons listed on sanctions or counter-terrorism lists. This can cause important administrative burdens, costs, delays in assistance, and generate issues of acceptance among the community in which the organisation is working.
- Donors requesting names of persons in need of humanitarian assistance to conduct their own screening/vetting, with the same objective as above, which adds issues of data protection, confidentiality, and independence.

1. The screening of persons in need against Counter-terrorisms/sanctions lists impacts humanitarian principles.

Under international humanitarian law (IHL), the right for humanitarian organisations to offer their services to parties to conflict, as well as the obligations of the parties regarding the facilitation and protection of humanitarian activities, are conditional upon the impartial character of humanitarian assistance. Impartiality is one of the core humanitarian principles binding all humanitarian organisations that participate in UN-coordinated humanitarian operations under UNGA resolution 46/182⁴.

Impartiality means that assistance must be provided only on the basis of needs without any further consideration. Excluding from assistance individuals, who are entitled to it based on humanitarian needs, on the ground that they are on sanctions or counter-terrorism lists would not be in line with the sanctions or counter-terrorism measures because none of them are aimed at depriving listed individuals of the assistance and protection they are entitled to under IHL or to deprive them of their right to life or fundamental economic and social human rights⁵. On the contrary, as noted above, UNSC resolution 2664 (2022) explicitly permits “the provision, processing or payment of funds, other financial assets, or economic resources, or the provision of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs by the United Nations [and other specific types of organisations, as well as their implementing partners]”⁶, even if UN-sanctioned individuals or entities are involved. All UN sanctions regimes have long provided for a possibility to unfreeze funds of listed individuals/entities

² Diakonia, International humanitarian law center, Lebanon, fact sheet 4, screening of final beneficiaries of humanitarian programmes, August 2021, available [here](#)

³ Emanuela-Chiara Gillard, Sangeeta Goswami and Fulco van Deventer, Screening of final beneficiaries – a red line in humanitarian operations. An emerging concern in development work, International Review of the Red Cross, 2021 available [here](#)

⁴ UNGA resolution 46/182

⁵ Michael Bothe, Jennifer Ernst, Legal and policy issues concerning assistance to populations in need, December 2021

⁶ UNSCR 2664 (2022), OP 1.

and lift travel bans for humanitarian needs or religious purposes – which has effectively occurred in several cases.⁷

In other words, a vast majority of restrictive measures are in line with, or at the very least do not go against, the principle of impartiality, according to which, regardless of different organisation's practices and donors' requests, the action of screening and / or vetting people in need against sanctions or counter-terrorism lists cannot be a tool to decide whether a person is entitled to humanitarian assistance. This decision must be based on humanitarian needs only. Independence is also questioned when donors are requesting screening and/or vetting people in need of humanitarian assistance against sanction lists. Independence means the autonomy of humanitarian objectives from political, economic, military or other objectives. Assessing a person's humanitarian needs should only be based on an independent evaluation and political considerations cannot not be part of the equation when deciding on those needs.

2. The screening or vetting of people in need raises confidentiality issues and poses an ethical dilemma

As underlined in the *IASC Guidance on the Impact of Sanctions and Counter-terrorism Measures on Principled Humanitarian Action*⁸, screening/vetting people in need of humanitarian assistance against UN, regional, and/or national counter-terrorism and/or sanction lists also raises key confidentiality and privacy issues. Information on recipients of aid is sensitive and should be kept confidential to ensure community trust, in line with applicable IASC policies and international human rights standards. On a practical level, transferring information on recipients of aid to donors could undermine acceptance, the security of employees of humanitarian organisations and the security of recipients of assistance, hence humanitarian access. The risks are even more acute for local or national organisations who are in certain situations the only organisation able to reach people in need and even perceptions about sharing data on people in need of humanitarian assistance could result in jeopardizing their access, with highly detrimental consequences.

In addition, sharing personal data generally requires the informed consent of the individual. Obtaining such consent would require additional resources and time prior to the provision of humanitarian services. Beyond additional time and resources, there is a power imbalance where a person in need may not be able to genuinely consent, or where assistance is dependent on such consent, creating an ethical dilemma.

3. The evolution towards more efficient assistance modalities is put in jeopardy

In practice, beneficiary screening and vetting requests **hamper the implementation of Grand Bargain commitments and evolution towards assistance modalities that donors themselves have recognized as the most efficient**. Several examples can illustrate this.

Within the Grand Bargain, major donors, NGOs and UN agencies have committed to **“increase the use and coordination of cash-based programming”**.⁹ However, institutional donors tend to be more risk-averse when it comes to funding cash-based programs, thus including clauses in funding

⁷ Emanuela-Chiara Gillard, IHL and the humanitarian impact of counter-terrorism measures and sanctions Unintended ill effects of well-intended measures, Research Paper, International Law Program, Chatham House, September 2021 available [here](#)

⁸ IASC, Guidance on the impact of sanctions and counter-terrorism measures on humanitarian operations, September 2021, p.4 and references in footnote, available [here](#)

⁹ More details on this commitment of the Grand Bargain [here](#)

contracts for such programs requesting to screen people in need.¹⁰ The direct effect of these for the implementing partner is to convert cash-based program activities into in-kind programming during the negotiation of the contract to ensure that screening of people in need against sanction lists is not requested, despite the fact that cash programming is recognized to be safer to prevent aid-diversion as compared to moving in-kind assistance across a conflict zone. Including additional administrative requirements to a process that should improve the efficiency of the response, the empowerment of the affected population, and their dignity to choose how to use the money distributed to support their resilience affects efficiency and removes the benefit of these modalities of intervention.

In addition, major donors, NGOs and UN agencies have committed to **“enhance engagement between humanitarian and development actors”** to ensure that in protracted crises, for instance, humanitarian and development activities are conducted simultaneously to ultimately “shrink humanitarian needs over the long term with the view of contributing to the outcomes of the Sustainable Development Goals”¹¹. Screening people in need against sanction lists is in most of cases, a request made by “stabilization” or “development” donors, no matter the context of intervention. Many humanitarian donors have refrained from such conditionality, at least in writing. However, in many contexts, both development and humanitarian interventions are funded in parallel and often delivered by multi-mandate organisations, meaning that in the same context, a recipient organisation carrying out both development and humanitarian activities might be requested by development donors to screen people in need against sanctions or counter-terrorism lists regardless of humanitarian donors practices.

This situation poses a risk for multi-mandate organisations to hold off on applying for some grants to work on the preparedness or resilience of the population in contexts where the risks are *a priori* very limited. This decision would not be made based on a needs assessment, but it would be because the source of funding would require the organisations to go beyond of screening people in need against sanction lists.

Lastly, the inclusion of such demands within grant contracts is posing additional barriers to local responders to benefit from funding agreements preventing the localisation agenda to be implemented in line with commitments of the Grand Bargain: **“More support and funding tools to local and national responders”**¹². Local responders face the same issues as international organisations when it comes to beneficiary screening and/or vetting, including potential contradiction with humanitarian principles, administrative and financial burdens, and possible consequences in terms of acceptance and security. As a result, requirements to conduct screening, vetting or to share sensitive information about persons in need of humanitarian assistance can put in jeopardy their ability to deliver principled humanitarian action. The differences lie in 1) the degree of security risks that local responders are exposed to, which tends to be higher because local or national organisations are operating in some areas where INGOs might not have access and where the risks can be higher, and 2) the lack of resources to deal with the administrative burden that screening people in need can impose.

The IASC reaffirms that:

- Its members are committed to the humanitarian principles of humanity, neutrality, independence and impartiality. Regardless of different organisation's practices and the different requests of donors, the action of screening and / or vetting people in need against

¹⁰ The London School of Economics and Political Science, BOND, Oxfam, Beneficiary screening for humanitarian cash and voucher assistance : a comparative assessment, 2021, available [here](#)

¹¹ More detail on this commitment of the Grand Bargain available [here](#)

¹² More details on this commitment of the Grand Bargain available [here](#)

sanction lists cannot be a tool to decide whether a person is entitled to humanitarian assistance. This decision is based on humanitarian needs only.

- Its members are committed to establish, implement, and seek to continually improve, risk management and due diligence for humanitarian aid to reach intended people in need and to minimize the risk that funds or resources get diverted or misused in the process.
- Its members will continue to protect sensitive personal information of persons in need except in exceptional circumstances, as defined in applicable IASC policies.
- Its members will continue advocating with member states, as appropriate, to develop and implement humanitarian exemption clauses in counter-terrorism and sanctions measures.

Based on the above,

- The IASC recalls that under UNSC resolution 2664 (2022) if resources incidentally benefit sanctioned actors in the context of operations necessary to the timely delivery of humanitarian assistance or other activities that support basic human needs by covered organisations, this shall not constitute a breach of UN asset freezes or measures taken by States for their implementation. At the same time, UNSC resolution 2664 (2022) requests organisations included in its scope to take reasonable measures to minimize any accrual of benefits to UN sanctioned actors, including due diligence and risk mitigation measures.
- The IASC calls on donors to implement policies and practices that are based on risk-sharing, proportionate, consistent with international humanitarian and human rights law, and safeguard the sustainability and ability of recipient humanitarian organisations to provide humanitarian assistance impartially, including in sanctions and counter-terrorism context - in line with UNSC resolution 2462 (2019), UNSC 2664 (2022) and FATF recommendation 8.¹³
- The IASC calls on donors to avoid practices and contractual obligations that could prevent their grantees from delivering assistance in line with humanitarian principles.
- The IASC calls on donors to regularly review its policies and practices with a view to ensuring that any conditionalities are proportionate and do not generate unnecessary obligations on recipient humanitarian organizations, that risk diverting time and resources away from humanitarian implementation.

¹³ S/RES/2462(2019) : "Recognizes the vital role played by non-profit organisations in national economies and social systems, calls on Member States to periodically conduct a risk assessment of its non-profit sector or update existing ones to determine the organisations vulnerable to terrorist financing and to inform the implementation of a risk based approach, encourages Member States to work cooperatively with the non-profit sector in order to prevent abuse of such organisations including front organisations by and for terrorists, while recalling that States must respect human rights and fundamental freedoms and recalls the relevant recommendations and existing guidance documents of the FATF in that regard, in particular its recommendation 8;" (recital 24).