

# Increasing policy coherence between sanctions, anti-money laundering, and countering the financing of terrorism measures

## Outcome note

Alexandra Spencer<sup>ID</sup> and Helen Alderson

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**International dialogue series on easing the financial access challenges faced by humanitarian actors in contexts regulated by sanctions or counterterrorism measures**

### Key messages

There is a discrepancy between states' obligations under international humanitarian law to facilitate impartial humanitarian activities and their duty to prevent terrorism financing. Policy incoherence also exists between sanctions regimes, many of which contain a humanitarian exemption, and anti-money laundering and countering the financing of terrorism measures, which mostly don't.

Introducing a humanitarian exemption to criminal law creates greater coherence yet does not necessarily eliminate the incongruence between criminal law and administrative law.

The lack of humanitarian exemptions in export controls and trade sanctions restricts non-profit organisations (NPOs) from accessing essential equipment. Expanding these exemptions would greatly enhance their operations.

Promoting an effective, streamlined, risk-based approach would help counter NPO de-risking. Regulatory inspections should place greater emphasis on whether a financial institution (FI) manages risks in a way that prevents de-risking of NPOs, enhancing financial inclusion and supporting humanitarian assistance - by, for example, penalising over-compliance.

## Key messages (continued)

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More must be done to engage independent financial regulators to ease the financial access challenges faced by FIs and NPOs. The revision of the Financial Action Task Force Recommendations and the issuance of guidance need to be complemented by greater outreach in order to change the behaviour and practice of financial regulators.

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Tri-sector groups (TSGs) are effective platforms for understanding and finding solutions to practical issues at a national level. They should be established in countries facing NPO de-risking and should include independent financial regulators where this would lead to better financial access for NPOs. Existing national TSGs can support the creation of new ones.

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## About this publication

The US Agency for International Development's (USAID's) Bureau for Humanitarian Assistance commissioned HPG at ODI Global to convene a series of dialogues on the financial access challenges faced by aid organisations in complex humanitarian settings in which financial regulations limit humanitarian operations.

This publication summarises the discussion from the third dialogue, held on 17 September 2024, which explored the need to increase policy coherence between sanctions and anti-money laundering/countering the financing of terrorism measures.

## About the authors

ORCID numbers are given where available. Please click on the ID icon next to an author's name in order to access their ORCID listing.

**Alexandra Spencer**<sup>ID</sup> is a Senior Research Officer with HPG.

**Helen Alderson** is a Senior Research Associate with HPG.

# Acronyms

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<b>AML</b>	anti-money laundering
<b>CFT</b>	countering the financing of terrorism
<b>CT</b>	counterterrorism
<b>FATF</b>	Financial Action Task Force
<b>FI</b>	financial institution
<b>GL</b>	general licence
<b>IHL</b>	international humanitarian law
<b>NGO</b>	non-governmental organisation
<b>NPO</b>	non-profit organisation
<b>TSG</b>	tri-sector group
<b>UNSC</b>	United Nations Security Council
<b>USAID</b>	United States Agency for International Development

# Glossary

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**Comfort letters** include factual information about what the funds are intended for, information on the non-profit organisation (NPO) and the relationship between the donor and the NPO. These letters aim to provide relief from enforcement actions, should inadvertent violations take place, to financial institutions who provide banking services to NPOs in good faith and meet certain criteria.

**De-risking** is the phenomenon of financial institutions indiscriminately terminating or restricting business relationships with clients or categories of clients to avoid, rather than manage, risk.

**Independent financial regulators** are established, normally at national level, to oversee the functioning and fairness of financial markets and the firms that engage in financial activity.

**International humanitarian law (IHL)** is a set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict. IHL is also known as ‘the law of war’ or ‘the law of armed conflict’. It is part of public international law, which is made up primarily of treaties, customary international law and general principles of law.

**The Financial Action Task Force (FATF)** is the global money laundering and terrorist financing watchdog. It sets international standards that aim to prevent these illegal activities and the harm they cause to society. The FATF notably provides comprehensive international standards through its Forty Recommendations on Combating Money Laundering and the Financing of Terrorism and Proliferation.

**Tri-sector groups/dialogues (TSGs)** bring together representatives from governments, financial institutions and non-profit organisations at the national level. The term ‘tri-sector’ is used generically throughout this document. These groups have different names in different countries: tri-sector, multisector, roundtable, etc. There are a number of active groups including in the United States, United Kingdom and the Netherlands, and significant effort underway to (re)establish other groups in more countries.

**United Nations Security Council Resolution 2664** refers to the ‘humanitarian carve-out’ adopted by the Security Council. It is a standing exemption to the asset-freeze measures imposed by United Nations sanctions regimes. It specifies that ‘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 are permitted and are not a violation of the asset freezes imposed by that organ or its sanctions committees’ (UN, 2022).

**US general licences** are a type of standing licence that allows transactions that would otherwise be prohibited to be processed. General licences authorise ‘a particular type of transaction for a class of persons without the need to apply for a license’ (OFAC, 2016).

## Executive summary

This outcome note summarises discussions and recommendations from HPG's recent international dialogue, held on 17 September 2024, which examined opportunities to increase policy coherence between sanctions regimes and anti-money laundering/countering the financing of terrorism (AML/CFT) measures.

Whilst the adoption of the United Nations Security Council (UNSC) Resolution 2664, approving a humanitarian carve-out to asset freezes in current and future UNSC sanctions, has facilitated a more conducive environment for humanitarian action, significant challenges remain due to the discrepancies between legal frameworks. These start at the highest level with the discrepancy between, on the one hand, states' obligations under international humanitarian law (IHL) to facilitate impartial humanitarian activities and, on the other hand, their duty to control and constrain activities seen as providing support to terrorism. Policy incoherence also exists between sanctions regimes that contain a humanitarian exemption and AML/CFT measures which mostly have no exemptions, as well as between financial sanctions and trade sanctions, which affect financial flows and the flow of goods, respectively.

The trend towards the designation of terrorist groups at the regional level represents a critical evolution and an opportunity for greater alignment between countries where there is a degree of political will to ensure implementation of a humanitarian exemption.

Certain countries, such as Switzerland and Canada, have included a humanitarian exemption in their Criminal Code, thus creating greater coherence at the legislative level. Yet this does not necessarily eliminate the incongruence between criminal law and administrative law (covering sanctions), due to the possibility that an activity could still be considered in breach of administrative law while being protected by criminal law.

At the national and international levels, the need to align policy for trade sanctions and the flow of goods with the policy for financial sanctions and financial flows should be addressed as a matter of priority, building on the progress made on the UNSC Resolution 2664 humanitarian exemption to asset freezes in sanctions regimes.

Peacebuilding work is different from but complementary to humanitarian work in that it contributes to violence reduction by addressing the causes and drivers of conflict, yet some states may not consider peacebuilding activities as being part of the United Nations (UN) exemption. Peace mediation requires engagement with all sides to a conflict. It can often necessitate engagement with proscribed terrorist organisations and sanctioned entities, and should therefore be included within the scope of UN and domestic exemptions that apply to 'activities supporting basic human needs'.

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An effective risk-based approach would help address the continual de-risking of non-profit organisations (NPOs) due to the coexistence of multiple regulatory frameworks. The Financial Action Task Force (FATF) Recommendations play a key role in this regard. Notably, Recommendation 8, dedicated specifically to NPOs, has led to unintended consequences of over-compliance on the part of regulators, thus further hampering NPO activities. This recommendation was recently revised, but needs to be complemented with greater outreach and training in order to change the behaviour and practice of regulators and bank supervisors.

In addition, a more effective risk-based approach should be considered for regulatory inspections, whereby the questions asked by supervisors would seek to ascertain whether a financial institution (FI) has been able to effectively manage risk in a way that prevents de-risking of NPOs, and enables greater financial inclusion and the facilitation of unimpeded humanitarian assistance.

The importance and usefulness of national tri-sector groups (TSGs) that bring together representatives from the different stakeholders was emphasised. Yet they exist in too few countries, and in those where they are established, they rarely include all relevant financial regulators, who hold some of the key levers to reduce de-risking of NPOs. Greater effort should be placed into creating TSGs where they do not exist and where there are de-risking issues for NPOs, as well as incorporating financial regulators into TSGs where this would lead to better financial access for NPOs.

# Introduction

Financial regulations linked to sanctions, anti-money laundering/countering the financing of terrorism (AML/CFT) and other illicit finance are having a paralysing and chilling effect on the banking sector. This impacts the ability of aid organisations to deliver humanitarian operations in insecure settings. The adoption of the United Nations Security Council (UNSC) Resolution 2664, approving a humanitarian carve-out to asset freezes in current and future UNSC sanctions regimes, has facilitated a more conducive environment for humanitarian action. However, significant challenges remain, among which is the policy incoherence between sanctions regimes and AML/CFT measures. A series of discrepancies between these frameworks exists, at both the national and international levels. The dialogue explored these discrepancies and the need for more aligned exemptions and licensing frameworks. It also considered the effectiveness of a risk-based approach to operating in the context of sanctions and counterterror legislation.

The United States Agency for International Development's (USAID's) Bureau for Humanitarian Assistance commissioned the Humanitarian Policy Group at ODI Global to convene a series of dialogues on the financial access challenges faced by aid organisations in complex humanitarian settings in which financial regulations limit humanitarian operations.

The purpose of these dialogues is to:

1. identify, share and learn lessons and/or good practice from working groups, dialogues and policy processes in different settings related to financial access, which could be amplified or built upon;
2. identify opportunities for more collective, collaborative and/or multistakeholder engagement on specific topics relating to financial access;
3. foster new connections and deeper engagement amongst key international stakeholders actively engaged in financial access.

The third international dialogue, held on 17 September 2024 examined opportunities to **increase policy coherence between sanctions and AML/CFT measures**, focusing specifically on:

- greater understanding of these discrepancies in policy, implementation and enforcement, and the need to address them to have a real impact on de-risking;
- sharing examples that address these discrepancies at legislative and policy level as well as in practice;
- greater understanding of how to work towards a risk-based approach.

The meeting was held in a hybrid roundtable format. It was a closed-door meeting held under the Chatham House Rule of non-attribution. Participants represented governments, multilateral institutions, non-profit organisations (NPOs), financial institutions (FIs), the United Nations (UN) and think tanks.



# Summary of discussion

Participants explored a series of challenges shared by speakers from across the tri-sector constituencies. These included policy incoherence amongst legal frameworks, the need for more aligned exemptions and licensing frameworks, moving towards a more effective risk-based approach and, lastly, how national tri-sector groups (TSGs) can prove to be an effective platform for engagement across sectors on these issues.

## Inconsistencies in legal frameworks

### At the international level

On the one hand, international humanitarian law (IHL) requires states to facilitate the humanitarian activities carried out by impartial humanitarian organisations, and on the other hand, there are measures taken by states to control and constrain activities seen as providing support to terrorists. These measures impact the ability of aid organisations to deliver humanitarian operations. This discrepancy is compounded by financial regulations linked to sanction regimes, counterterrorism (CT) legislation, AML and other illicit finance.

The international legal framework governing CFT obliges states to adopt CT laws and measures intended to deny terrorist groups safe haven and resources.<sup>1</sup> Other norms include the Financial Action Task Force (FATF) Recommendations. The sanctions legal framework is made up of UNSC resolutions, regional sanctions and national sanctions regimes. In an attempt to address the chilling effect of UN sanctions, on 9 December 2022 the UNSC passed Resolution 2664, adopting a humanitarian carve-out to asset freezes in current and future UNSC sanctions regimes. By explicitly excluding humanitarian action from the scope of current and future UN financial sanctions, this marked a shift towards a standing humanitarian exemption as the new standard in the design of such sanctions.

However, other significant uncertainties and inconsistencies remain. UNSC Resolution 2664's application to the Islamic State of Iraq and the Levant (ISIL) and al-Qaida sanctions regime (UNSC Resolution 1267) is time-limited, and 'if it is not extended on December 9, 2024, the normative and operational framework will fracture, potentially undermining part of the resolution's humanitarian intent [and effectiveness]' (Lewis et al., 2024: i).

Furthermore, the broader application of the resolution to CT measures beyond specific sanctions remains a challenge. The humanitarian carve-out in UN and some autonomous sanctions regimes is an important achievement, but it is not sufficient in and of itself to facilitate financial access for humanitarian organisations and FIs processing transactions, because they must also comply with

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<sup>1</sup> Outlined in the International Convention for the Suppression of Terrorism Financing (1999) and relevant UNSC resolutions, including 1373 (2001).

restrictive criminal and terrorism laws. For example, if an entity is designated under sanctions and also proscribed under CT laws, organisations may get comfort from the exemption but cannot benefit from it unless it also applies across the CT measures. This raises questions about a coherent multilateral approach to humanitarian action in conflict situations that are also considered CT situations. Additionally, the time-limited duration of the UN exemption to UNSC Resolution 1267 does not provide sufficient time or urgency for NPOs and FIs to update their systems, or provide UN member states with an urgency to implement the carve-out in domestic sanctions regimes.

Moreover, these different legal frameworks (IHL, sanctions, AML/CFT) create inefficiencies and do not provide sufficient legal protection for organisations working in hard-to-reach, complex and dangerous environments. As long as the criminal legal framework governing CT does not contain exemptions, the chilling effect on FIs and NPOs will persist, despite humanitarian carve-outs in sanctions regimes. The multilateral approach should ensure in practice that all CFT and sanctions measures comply with states' obligations under international law, including IHL, international human rights law and international refugee law.

### At the national level

At the national level, there is often a lack of harmonisation within the same jurisdiction when a group is both designated under sanctions (which, for the most part, benefit from a humanitarian exemption) and as a proscribed group under criminal CT laws, for which, in most countries, there are no exemptions.

This is exemplified by the view expressed by the UK Independent Reviewer of Terrorism Legislation, who notes that:

counter-terrorism sanctions are viewed alongside policies relating to terrorist financing under the Terrorism Act 2000 (TACT). There may be nervousness that humanitarian exemptions to the UK's autonomous CT sanctions regimes would imply a wider change of policy to the operation of TACT or otherwise lead to what officials call 'policy dissonance' (Hall, 2023: 20).

### Examples of legislative amendments to address discrepancies

The dialogue explored government efforts to address these discrepancies, such as amendments to national legal frameworks to facilitate humanitarian activities.

As part of amendments to strengthen Switzerland's legal framework to combat terrorism, in 2020, Switzerland added a provision to its Criminal Code (Article 260<sup>ter</sup>, paragraph 2) providing an exemption to the criminalisation of support to a criminal or terrorist organisation. Thus, the related prohibition does not apply for 'humanitarian services provided by an impartial humanitarian organisation, such as the International Committee of the Red Cross, in accordance with the common Article 3 of the Geneva Conventions of 12 August 1949' (Government of Switzerland, 2024: 110).

This provision completes an earlier exemption introduced in the Swiss Criminal Code in 2003 that relates to the financing of terrorism. It states that the provision criminalising the financing of terrorism ‘does not apply if the financing is intended to support acts that do not violate the rules of international law on the conduct of armed conflicts’ (Article 260<sup>quinquies</sup>, paragraph 4 in Government of Switzerland, 2024). These humanitarian exemptions in the Swiss Criminal Code predate UNSC Resolution 2664.

Other exemptions considered included the example of Canada, which incorporated UNSC Resolution 2664 into national law and simultaneously amended its financing-of-terrorism provisions in its Criminal Code, to include a statutory ‘exception for humanitarian assistance activities conducted under the auspices of impartial humanitarian organisations in accordance with international law while using reasonable efforts to minimize any benefit to terrorist groups’ (Government of Canada, 2024).

Whilst the inclusion of a humanitarian exemption in criminal law can provide protection to NPOs, even this level of improved coherence of the legislative framework does not automatically eliminate the incongruence between sanctions regimes and CT legislation. For example, an activity that is not exempt by a specific sanctions regime could constitute a breach of this regime and lead to an administrative penalty, yet might not incur criminal liability thanks to a humanitarian exemption on terrorism financing in the Criminal Code.

The United Kingdom (UK) Crown Prosecution Service Guidance of 2022 is a good example of guidance to prosecutors in contexts where there is no legal exemption in criminal law. The guidance is explicit that ‘counter-terrorism legislation is not intended to prevent or to hinder humanitarian, development and peace building organisations from operating overseas’ (CPS, 2022). Likewise, the UK Government Guidance on operating within CT legislation, CT sanctions and export control explains the defence contained in the 2000 Terrorist Act permitting ‘genuinely benign’ meetings (where terrorist activities of the group are not promoted or encouraged) with proscribed groups. These two documents are not specific to financial flows and nor do they provide a legal exemption, but they give guidance on public interest factors that prosecutors may consider (Government of the United Kingdom, 2023).

### **Need for more aligned licensing frameworks**

The multiplicity of financial regulations within and between jurisdictions, including the discrepancies between sanctions regimes and AML/CFT measures, create enormous complexity, a heavy regulatory burden and additional cost, leading to a chilling effect and the de-risking of NPOs. This impacts the ability of humanitarian, development, peacebuilding and civil society organisations to operate, notably when engaging with persons or groups who may be on sanctions or terrorist lists, which is essential to being able to deliver their programmes.

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Participants explored the trend towards designations of terrorist groups at the regional level in addition to the existing UN designations. This represents a critical evolution and an opportunity for greater alignment between jurisdictions, and notably within the G7, for those operational contexts where there is a degree of political will to ensure implementation of a humanitarian exemption.

Yet too few countries have licensing frameworks to allow for legitimate humanitarian activities that may otherwise be in scope of sanctions and AML/CFT restrictions. Those licensing arrangements that do exist for sanctions regimes tend to differ from one jurisdiction to the other, which adds an additional layer of complexity for FIs trying to process transactions which cross multiple jurisdictions and for NPOs planning and implementing programming. In all cases, such frameworks can also have unintended consequences. For example, one country issued a list of approved operating partners in Gaza in an attempt to provide comfort and facilitate financial transactions for those organisations. However, the unintended consequence of this meant that transactions for organisations not on the list were blocked. Another example relates to an increase in requests or use of comfort letters for transactions to high-risk jurisdictions. This threatens to weaken the impact of UNSC Resolution 2664 and similar national exemptions because these mechanisms already provide the legal authorisation needed by FIs to carry out such transactions.

In addition, participants raised the particular need to align policy for the flow of goods (for which export control and trade sanctions continue to impact humanitarian activities) with the policy for financial flows. The humanitarian exemption to asset freezes in sanctions regimes should therefore be expanded to export controls and other trade sanctions. This will offer significant improvement for NPOs that are currently constrained by such restrictions. While some carve-outs exist for certain goods, such as food and medicine, other items (such as computers and vehicles) have no exemptions. For example, there are US Department of Commerce restrictions on commercial goods for certain countries, requiring separate licences. Such sanctions on trade and certain goods can also prevent targeted countries from receiving goods that maintain essential infrastructure, such as food, water, sanitation, health (including medicines) or electricity supply systems (OHCHR, 2021). To date, very limited attention has been devoted to these types of restrictions.

Additionally, participants referenced the need to expand the scope of exemptions and licensing frameworks to include other activities beyond humanitarian assistance. The US non-governmental organisation (NGO) general licence (GL) issued in December 2022 was touted as a ‘best case’ example of inclusive coverage going beyond the UN exemption, covering activities that are not strictly humanitarian. For example, the US NGO GL covers democracy building; education; non-commercial development projects directly benefiting civilians; environmental and natural resource protection; and disarmament, demobilisation and reintegration programmes and peacebuilding.

Peacebuilding was specifically discussed during the meeting. Long-term peacebuilding work helps reduce violence by addressing the causes and drivers of conflict. Peace mediation requires engagement with all parties to conflict and can necessitate engagement with proscribed

organisations. It also involves facilitating payments that cannot easily equate to humanitarian assistance (such as travel costs, per diems, etc.). National and international peacebuilding organisations are often smaller than humanitarian and development organisations and the compliance burden is proportionately higher. As a result, unless peacebuilding is explicitly mentioned in licensing frameworks and exemptions, peacebuilding organisations de-risk themselves by, for example, avoiding certain donors or by not working in areas where their activities risk being criminalised.

In addition to including peacebuilding in exemptions and licences, it would also be advisable to include an exemption in the domestic CT legislation of states. Taking the Swiss Criminal Code as an example, activities with a view to establishing peace could be added to acts carried out to establish democracy, rule of law and human rights, as activities not constituting the financing of a terrorist offence (see Article 260<sup>quinquies</sup>, paragraph 3). Specific sanction regimes do also contain exemptions based on these elements.

### **A risk-based approach is a more effective approach**

The de-risking of NPOs continues to demonstrate a lack of effectiveness in a system where multiple regulatory frameworks coexist, and policy incoherence is frequent. An important step in overcoming this challenge is to change the narrative on the regulatory inspections to enhance a more effective risk-based approach. Participants explored several strategies, including those of the Netherlands and the FATF, as well as structural changes to embrace a more risk-based approach.

### **The Netherlands' risk-based approach**

The Dutch Anti-Money Laundering and Anti-Terrorist Financing Act allows, to a large extent, for institutions to decide on the risk they want to take. This choice then determines which mitigation measures they must put in place.

In other words, Dutch FIs are left to identify, assess and understand the money laundering and terrorist financing risk to which they are exposed, and take the appropriate mitigation measures in accordance with the level of risk. The Dutch Banking Association has adopted industry baselines, including those specific to NPOs, that set out clear principles for the risk-based approach and interpretations of the open norms in the law for client due diligence processes by banks (Dutch Banking Association, 2023). These baselines are endorsed by the Dutch banking supervisor, the Dutch Central Bank, and the Ministry of Finance.

The Netherlands also provides an example of an effective coordination mechanism with its Financial Expertise Centre (FEC), a collaboration between supervisory, monitoring, prosecution and investigative authorities within the financial sector, with the justice and finance ministries as observers. The FEC also collaborates with FIs on AML/CFT and is considering extending this collaboration to sanctions.

### Implementation of FATF's risk-based approach

The FATF is the international standard-setting body and a key player in addressing financial access challenges for NPOs in the AML/CFT space. The FATF provides comprehensive international standards through its forty recommendations on Combating Money Laundering and the Financing of Terrorism and Proliferation, which it continues to refine and strengthen (FATF, 2023a).

However, the interpretation of and compliance with the FATF AML/CFT Recommendations by states and private actors, which often push for a 'zero risk' approach, have caused harm to civil society in the aid sector in particular. This is notably due to the NPO sector being singled out by the FATF, receiving a recommendation of its own (Recommendation 8). Realising this, the FATF has taken corrective measures which include the Unintended Consequences project (examining the harms caused by de-risking, financial exclusion, undue targeting of NPOs, and curtailment of human rights), and two rounds of revisions to Recommendation 8, most notably the 2023 revision to address its misapplication and misinterpretation. Similarly, the FATF is currently updating Recommendation 1 on financial inclusion.

In November 2023, the FATF issued its comprehensive *Best Practices Paper, Combating the terrorist financing abuse of non-profit organisations*, to help countries, NPOs and FIs understand how best to protect relevant NPOs from abuse for terrorist financing, without unduly disrupting or discouraging legitimate NPO activities (FATF, 2023b). Helpfully, the paper also includes examples of bad practice.

Yet neither the revision of FATF Recommendation 8 nor the issuance of best practices automatically translate into changed behaviour, which is currently too often characterised by over-compliance. This continues to have a chilling effect, leading to bank de-risking of NPOs. As examination procedures only rarely deal with humanitarian exemptions, it is understandable that supervisors may lack the necessary understanding of this particular issue. Participants acknowledged the urgent need for more outreach and training of supervisors to ensure that their practice is aligned with the updated rules and guidance. National TSGs could have a role in this regard.

It was also proposed that the FATF further facilitates the adoption of additional effective risk-based practices. For example, they might 'reward' positive measures that demonstrate adequate risk mitigation – such as simplified due diligence and guidance for banking regulators regarding NPOs classified as having limited or no risk in terms of AML/CFT – or call out bad practice and misuse of its standards through over-compliance and over-reach.

In addition, participants recommended that the FATF includes in its Recommendations specific reference to IHL and to the humanitarian exemption as provided for by UNSC Resolution 2664 and its applicability to UNSC Resolution 1267. Notably, Recommendations 5 and 6 relate to terrorist financing and should be revised to include this. Given the FATF's role to mitigate undue NPO targeting, it is suggested to include the FATF Recommendations and/or engagement in all national TSG meetings.

## Structural changes

Beyond discussing existing efforts to embrace a risk-based approach, participants explored additional solutions. The first was the introduction of a new type of regulatory inspection framework. This framework would change the questions that supervisors ask during their examination process. It is anticipated that this would improve effectiveness and provide greater comfort to FIs to process transactions while encouraging them to facilitate humanitarian transactions at the same time. For example, they might ask questions to ascertain whether an FI has been able to effectively prevent de-risking, enable more financial inclusion and facilitate humanitarian assistance.

Similarly, participants suggested restructuring the enforcement process by regulatory agencies to consider whether enforcement is needed once supervisors are content with the due diligence carried out by FIs and NPOs. This could relieve some of the financial access constraints and facilitate a greater number of transactions to jurisdictions affected by crisis.

## Engagement across sectors

The international dialogue explored the state of play and current workplans for national TSGs and reiterated the importance of engagement across sectors to solve financial access challenges.

The case for the different sectors (government, FIs, NPOs and regulators) to talk to each other was strongly made. National TSGs exist in too few countries and while they bring together governments, FIs, NPOs, charity and sanctions regulators, they mostly do not include all relevant financial regulators (with the exception of the Netherlands and the newly formed Multisector Working Group in Nigeria). More must be done to routinely engage financial regulators to ease the financial access challenges faced by FIs and NPOs.

Participants confirmed that national TSGs are an appropriate platform to move the dialogue forward on measures to increase effectiveness and change the narrative around regulatory inspections.

Participants were reminded of the impact and importance of collective advocacy, whether through TSGs or as NPOs working together as a group. As an example, the ability of NPO advocacy to influence political will was demonstrated by the humanitarian exemption inserted into the Swiss Criminal Code. The Swiss parliament was sensitive to the arguments of Swiss NGOs and academic institutions and decided to include an explicit humanitarian exemption, basing it on IHL. NPOs should consider similar strategies regarding export control and trade sanctions as well as CT. Similarly, the importance of departments of trade/commerce and justice was also considered in the TSGs, as they play important roles in the issuance of commercial licences and in criminal prosecution, respectively.

## Recommendations

In order to increase the policy coherence between sanctions regulations and AML/CFT measures, participants made the following recommendations.

### **States should work towards greater policy and legislative coherence at multilateral and national levels**

- The multilateral approach should ensure in practice that all sanctions regulations and AML/CFT measures comply with states' obligations under international law, including IHL, international human rights law and international refugee law.
- States should seek to include humanitarian exemptions in their CT legislation, which would create greater coherence with sanctions regulations and provide the necessary legal certainty for those organisations working in the most dangerous and complex environments.
- Building on the progress made since UNSC Resolution 2664, specific attention should be placed as a matter of priority on the role of trade and sectoral sanctions that often limit the ability of organisations to operate and also prevent countries from receiving goods necessary to essential infrastructure. This will align policy for the flow of goods with policy for financial flows.
- States should include peacebuilding activities within the scope of exemptions, given their contribution to reducing violence by addressing the causes and drivers of conflict and that this can therefore necessitate engagement with proscribed terrorist organisations and sanctioned entities.

### **Stakeholders should work together towards a more effective risk-based approach**

- States are encouraged to consider the applicability of the Dutch model whereby the collaboration between banks (with support of the regulator) to work out the risk-lowering and risk-heightening factors for NPOs allowed banks to lower the risk profile of many NPOs, with the confidence that the rationale behind these decisions was supported by the regulator.
- The FATF is urged to include in its relevant Recommendations specific reference to IHL and to the humanitarian exemption provided for by UNSC Resolution 2664 and its applicability to UNSC Resolution 1267. Notably, Recommendations 5 and 6, related to terrorist financing, should be revised to include this.
- The FATF should consider measures that would facilitate the adoption of additional effective risk-based practices. For example, they might 'reward' positive measures that demonstrate adequate risk mitigation, such as simplified due diligence and guidance for banking regulators regarding NPOs classified as having limited or no risk in terms of AML/CFT, or call out bad practice and misuse of its standards through over-compliance and over-reach.



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- Stakeholders should work with regulators to develop a new type of regulatory inspection framework with the aim of improving effectiveness and providing greater comfort to FIs to process transactions while encouraging financial inclusion and facilitating humanitarian transactions. This would add confidence and comfort to FIs.
- The enforcement process by regulatory agencies should be reviewed to consider whether enforcement is needed once supervisors are content with the due diligence carried out by FIs and NPOs.

### **Greater investment should be made into training for and awareness-raising of the relevant frameworks for all stakeholders**

- As the regulatory framework continues to evolve, it is essential that all stakeholders are kept abreast of developments. Policymakers should make specific efforts to disseminate such changes to FIs and NPOs.
- There is an urgent need for more outreach and training of independent financial regulators to provide them with greater understanding and confidence regarding humanitarian exemptions. This would also ensure that their practice is aligned with the updated rules and guidance. National TSGs have a role in this regard.

### **Cross-sector dialogue and collaboration should be enhanced**

- National TSGs should be set up in countries where there are issues of de-risking and financial access for the NPO sector. Existing TSGs have a role to provide support to and build capacity of new TSGs.
- As a matter of priority, TSGs are encouraged to include relevant financial regulators alongside charity and sanctions regulators, in contexts where their inclusion would be constructive and would lead to better financial access for NPOs. Similarly, the inclusion of departments of trade/commerce and justice should also be considered.

# References

- CPS – Crown Prosecution Service** (2022) ‘Humanitarian, development and peacebuilding work overseas’. CPS, 3 October ([www.cps.gov.uk/legal-guidance/humanitarian-development-and-peacebuilding-work-overseas](http://www.cps.gov.uk/legal-guidance/humanitarian-development-and-peacebuilding-work-overseas)).
- Dutch Banking Association** (2023) ‘Sector industry baseline: not-for-profit organisations (NPO)’. Amsterdam: Dutch Banking Association ([www.hscollective.org/assets/nvb-sector-standard-not-for-profit-organisations-npo\\_eng.pdf](http://www.hscollective.org/assets/nvb-sector-standard-not-for-profit-organisations-npo_eng.pdf)).
- FATF – Financial Action Task Force** (2023a) ‘International standards on combating money laundering and the financing of terrorism & proliferation’. Paris: FATF ([www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html](http://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html)).
- FATF** (2023b) ‘Best practices on combating the abuse of non-profit organisations’. Paris: FATF ([www.fatf-gafi.org/en/publications/Financialinclusionandnpoissues/Bpp-combating-abuse-npo.html](http://www.fatf-gafi.org/en/publications/Financialinclusionandnpoissues/Bpp-combating-abuse-npo.html)).
- Government of Canada** (2024) ‘Criminal code: terrorism’. Justice Laws Website, 19 June (<https://laws-lois.justice.gc.ca/eng/acts/C-46/page-9.html>).
- Government of Switzerland** (2024) ‘Swiss Criminal Code’. Fedlex. Version: 01.07.2024 ([www.fedlex.admin.ch/eli/cc/54/757\\_781\\_799/en](http://www.fedlex.admin.ch/eli/cc/54/757_781_799/en)).
- Government of the United Kingdom** (2023) ‘For information note: operating within counter-terrorism legislation, counter-terrorism sanctions and export control’. Updated 13 April ([www.gov.uk/government/publications/operating-within-counter-terrorism-legislation/for-information-note-operating-within-counter-terrorism-legislation](http://www.gov.uk/government/publications/operating-within-counter-terrorism-legislation/for-information-note-operating-within-counter-terrorism-legislation)).
- Hall, J.** (2023) *Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Counter-terrorism (International Sanctions) (EU Exit) Regulations 2019*. London: UK Government ([www.gov.uk/government/publications/review-of-the-operation-of-the-counter-terrorism-international-sanctions-eu-exit-regulations-2019](http://www.gov.uk/government/publications/review-of-the-operation-of-the-counter-terrorism-international-sanctions-eu-exit-regulations-2019)).
- Lewis, D.A., Kapoor, R. and Modirzadeh, N.K.** (2024) *Resolution 2664 (2022) and counterterrorism measures: an analytical frame for states*. Cambridge, MA: Harvard Law School (<https://pilac.law.harvard.edu/res-2664-and-counterterrorism-measures>).
- OFAC – Office of Foreign Assets Control** (2016) ‘OFAC licenses’. Webpage. US Treasury, 16 June (<https://ofac.treasury.gov/faqs/topic/1506>).
- OHCHR – United Nations Human Rights** (2021) ‘Unilateral sanctions hurt all, especially women, children and other vulnerable groups – UN human rights expert’. Press release, 8 December ([www.ohchr.org/en/press-releases/2021/12/unilateral-sanctions-hurt-all-especially-women-children-and-other-vulnerable](http://www.ohchr.org/en/press-releases/2021/12/unilateral-sanctions-hurt-all-especially-women-children-and-other-vulnerable)).
- UN – United Nations** (2022) ‘Adopting Resolution 2664 (2022), Security Council approves humanitarian exemption to asset freeze measures imposed by United Nations sanctions regimes’. Press release, 9 December (<https://press.un.org/en/2022/sc15134.doc.htm>).

# Selected publications and additional resources for wider reading

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Sources are sorted alphabetically in each category.

## Guidance and best practice

**FATF** (2023) *BPP – Combating the terrorist financing abuse of non-profit organisations*. Paris: (www.fatf-gafi.org/en/publications/Financialinclusionandnpoissues/Bpp-combating-abuse-npo.html).

**GCTF – Global Counterterrorism Forum** (2021) *Good practices memorandum for the implementation of countering the financing of terrorism measures while safeguarding civic space*. GCTF (www.thegctf.org/Portals/1/Documents/Links/Meetings/2021/19CC11MM/CFT%20GP%20Memo/CFT%20Memo\_ENG.pdf?ver=fahs72ucLyyYOTj7WDwBkQ%3D%3D).

**UK Crown Prosecution Service** (2022) ‘Legal guidance for humanitarian, development and peacebuilding work overseas’. London: UK Crown Prosecution Service (www.cps.gov.uk/legal-guidance/humanitarian-development-and-peacebuilding-work-overseas).

## Reports and blogs

**ACAMS** (2024) *ACAMS Global AFC Threats Report 2024*. ACAMS (www.acamstoday.org/global-afc-threats-report/).

**CNCDH – French National Consultative Commission on Human Rights** (2024) *Opinion on humanitarian exemptions in sanctions regimes and counter-terrorism measures*. Paris: CNCDH (www.cncdh.fr/sites/default/files/2024-09/A%20-%202024%20-%206%20-%20EN%20-%20CNCDH%20-%20Opinion%20humanitarian%20exemptions%2C%20june%202024\_1.pdf).

**Doyle, C.** (2023) *Terrorist material support: an overview of 18 U.S.C. §2339A and §2339B*. Washington DC: Congressional Research Service (https://crsreports.congress.gov/product/pdf/R/R41333#:~:text=Violations%20of%20%2C%2A7%202339A%20are,some%20victims%20under%2018%20U.S.C.).

**FATF** (2021) *High-level synopsis of the stocktake of the unintended consequences of the FATF Standards*. Paris: FATF (https://fatfplatform.org/news/high-level-synopsis-of-the/).

**Fink, N.C.** (2022) ‘Mind the gap: UNSC counterterrorism, sanctions, and humanitarian action’. IPI Global Observatory, 1 December (https://theglobalobservatory.org/2022/12/unsc-counterterrorism-sanctions-and-humanitarian-action/).

**Gillard, E.-C.** (2021) *IHL and the humanitarian impact of counterterrorism measures and sanctions: unintended ill effects of well-intended measures*. London: Chatham House (www.chathamhouse.org/2021/09/ihl-and-humanitarian-impact-counterterrorism-measures-and-sanctions).

**MSF – Médecins Sans Frontières** (2021) *Adding salt to the wound: the experience of MSF frontline workers providing impartial healthcare in counter-terrorism environments*.

Geneva: MSF ([www.msf.org/adding-salt-wound-counter-terrorism-and-healthcare](http://www.msf.org/adding-salt-wound-counter-terrorism-and-healthcare)).

**Reimer, S.** (2024) *Weaponisation of the FATF standards: a guide for global civil society*. London: Royal United Services Institute ([www.rusi.org/explore-our-research/publications/special-resources/weaponisation-fatf-standards-guide-global-civil-society](http://www.rusi.org/explore-our-research/publications/special-resources/weaponisation-fatf-standards-guide-global-civil-society)).

**van Broekhoven, L., Goswami, S. and Malmberg, T. with Knoote, F.** (2023) 'The future of FATF Recommendation 8: a foresight piece'. The Hague: Human Security Collective ([https://fatfplatform.org/news/foresight-piece-on-the-future-of-fatf-recommendation-8/#:~:text=This%20foresight%20piece%20sets%20out,been%20subjected%20over%20the%20past](https://fatfplatform.org/news/foresight-piece-on-the-future-of-fatf-recommendation-8/#:~:text=This%20foresight%20piece%20sets%20out,been%20subjected%20over%20the%20past).)).

### Toolkits

**Action Against Hunger, Médecins du Monde (Doctors of the World), Humanity & Inclusion** (2020) 'The impacts of sanctions and counterterrorism measures: data collection toolkit' ([www.protecthumanitarianspace.com/toolkits/impacts-sanctions-and-counterterrorism-measures-data-collection-toolkit](http://www.protecthumanitarianspace.com/toolkits/impacts-sanctions-and-counterterrorism-measures-data-collection-toolkit)).

**NRC – Norwegian Refugee Council** (2015) 'Risk management toolkit in relation to counterterrorism measures'. Oslo: NRC ([www.nrc.no/resources/reports/nrc-risk-management-toolkit-2015/](http://www.nrc.no/resources/reports/nrc-risk-management-toolkit-2015/)).

**NRC** (2020) 'Toolkit for principled humanitarian action: managing counterterrorism risks'. Oslo: NRC ([www.nrc.no/toolkit/principled-humanitarian-action-managing-counterterrorism-risks](http://www.nrc.no/toolkit/principled-humanitarian-action-managing-counterterrorism-risks)).



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**Humanitarian Policy Group**

ODI Global  
203 Blackfriars Road  
London SE1 8NJ  
United Kingdom

Tel: +44 (0) 20 7922 0300  
Fax: +44 (0) 20 7922 0399  
Email: [hpgadmin@odi.org](mailto:hpgadmin@odi.org)  
Website: [odi.org/hpg](http://odi.org/hpg)

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