

Examples of humanitarian safeguards in sanctions, counterterrorism measures and donor clauses

TOOL 3

Following a decade of advocacy, sanctions and counterterrorism measures increasingly include a range of safeguards to protect principled action. This tool provides you with examples of humanitarian ‘safeguards’ in both sanctions, criminal laws and donor clauses, as well as a checklist of elements to consider to ensure that a humanitarian safeguard is as protective as possible.

A. HUMANITARIAN SAFEGUARDS IN SANCTIONS

United Nations Security Council (UNSC) Resolution 2664 (2022) created a standing humanitarian exemption for all current and future United Nations (UN) asset freeze measures, which countries must transpose in their national laws that give force to UN sanctions. As a welcome step, some countries took a step further and included exemptions in their own ‘autonomous’ sanctions (i.e. sanctions imposed by that country alone). However, in doing so, they often included new criteria or elements of language. As a result, different models of humanitarian exemptions now coexist, some of which are more protective than others.

Example 1: UNSC Resolution 2664 (2022)¹

“Decides 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 by:

- the United Nations, including its Programmes, Funds and Other Entities and Bodies, as well as its Specialized Agencies and Related Organizations,*
- international organizations,*
- humanitarian organizations having observer status with the United Nations General Assembly and members of those humanitarian organizations,*
- bilaterally or multilaterally funded non-governmental organizations participating in the United Nations Humanitarian Response Plans, Refugee Response Plans, other United Nations appeals, or OCHA-coordinated humanitarian “clusters,”*
- or their employees, grantees, subsidiaries, or implementing partners while and to the extent that they are acting in those capacities,*

(...) are permitted and are not a violation of the asset freezes imposed by this Council or its Sanctions Committees.”

¹ UN Security Council, Resolution 2664 adopted on December 9th 2022 ([S/RES/2664](#)).

Example 2: UNSC Resolution 2615 (Afghanistan) (2022)²

“Decides that humanitarian assistance and other activities that support basic human needs in Afghanistan are not a violation” and “the processing and payment of funds, other financial assets or economic resources, and the provision of goods and services necessary to ensure the timely delivery of such assistance or to support such activities are permitted.”

Example 3: United States sanctions, Global Terrorism Sanctions Regulations³

(a) (...) all transactions prohibited by this part that are ordinarily incident and necessary to the activities described in paragraph (b) of this section by a nongovernmental organization are authorized (...)

(b) The activities referenced in paragraph (a) of this section are noncommercial activities designed to directly benefit the civilian population that fall into one of the following categories:

- (1) Activities to support humanitarian projects to meet basic human needs, including disaster, drought, or flood relief; food, nutrition, or medicine distribution; the provision of health services; assistance for vulnerable or displaced populations, including individuals with disabilities and the elderly; and environmental programs;*
- (2) Activities to support democracy building, including activities to support rule of law, citizen participation, government accountability and transparency, human rights and fundamental freedoms, access to information, and civil society development projects;*
- (3) Activities to support education, including combating illiteracy, increasing access to education, international exchanges, and assisting education reform projects;*
- (4) Activities to support non-commercial development projects directly benefiting civilians, including those related to health, food security, and water and sanitation;*
- (5) Activities to support environmental and natural resource protection, including the preservation and protection of threatened or endangered species, responsible and transparent management of natural resources, and the remediation of pollution or other environmental damage; and*
- (6) Activities to support disarmament, demobilization, and reintegration (DDR) programs and peacebuilding, conflict prevention, and conflict resolution programs.*

(c) This section does not authorize funds transfers initiated or processed with knowledge or reason to know that the intended beneficiary of such transfers is a person blocked pursuant to this part, other than for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services.

(d) Specific licenses may be issued on a case-by-case basis to authorize nongovernmental or other entities to engage in other activities designed to directly benefit the civilian population, including support for the removal of landmines and economic development projects directly benefiting the civilian population.

² UN Security Council, Resolution 2615 adopted on December 22th 2021 ([S/RES/2615](#)).

³ Code of Federal Regulation, Title 31, Subtitle B, Chapter V, §594.520§ 594.520: [Authorizing Certain Transactions in Support of Nongovernmental Organizations' Activities](#).

Example 4: Humanitarian exemption in EU restrictive measures⁴

“(...) the prohibitions set out in Article (x)) shall not apply to the making available of funds or economic resources necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs where such assistance and other activities are carried out by:

- (a) the United Nations, including its programmes, funds and other entities and bodies, as well as its specialised agencies and related organisations;*
- (b) international organisations;*
- (c) humanitarian organisations having observer status with the United Nations General Assembly and members of those humanitarian organisations;*
- (d) bilaterally or multilaterally funded non-governmental organisations participating in United Nations Humanitarian Response Plans, United Nations Refugee Response Plans, other United Nations appeals or humanitarian clusters coordinated by the United Nations Office for the Coordination of Humanitarian Affairs;*
- (e) organisations and agencies to which the Union has granted the Humanitarian Partnership Certificate or which are certified or recognised by a Member State in accordance with national procedures;*
- (f) Member States’ specialised agencies; or*
- (g) the employees, grantees, subsidiaries or implementing partners of the entities referred to in points (a) to (f) while and to the extent that they are acting in those capacities.”*

Example 5: Humanitarian derogation in EU restrictive measures

“(...) by way of derogation from Article (x) the competent authorities of a Member State may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the provision of such funds or economic resources is necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs.”

B. HUMANITARIAN SAFEGUARDS IN CRIMINAL LAWS

A few countries have also adopted safeguards to protect humanitarian action in their criminal laws, including:

Example 1: Chad’s 2020 law on the repression of terrorist acts

“The exclusively humanitarian and impartial activities conducted by neutral and impartial humanitarian organizations are excluded from the scope of application of this law.”

Example 2: Philippine Republic Act No. 11479, 2020

“Humanitarian activities undertaken by the ICRC, the Philippine Red Cross (PRC), and other state-recognized impartial humanitarian partners or organizations in conformity with the International Humanitarian Law (IHL), do not fall within the scope of Section 12 of this Act [i.e. material support to terrorists].”

⁴ [Horizontal approach regarding humanitarian clauses in certain EU regimes of restrictive measures.](#)

Example 3 - Ethiopia's Anti-terrorism Act

“A humanitarian aid given by organizations engaged in humanitarian activities or a support made by a person who has legal duty to support other is not punishable for the support made only to undertake function and duty”.

Example 4: Australia Criminal Code

“This section [associating with a terrorist organisation]- does not apply if: “(...) the association is only for the purpose of providing aid of a humanitarian nature.”

C. HUMANITARIAN SAFEGUARDS IN DONOR CLAUSES

Some donors have also included or referenced existing humanitarian safeguards in their grant agreements.

Example 1: ECHO Model Grant Agreement (2021)⁵

“The beneficiaries must ensure that the EU grant does not benefit any affiliated entities, associated partners, subcontractors or recipients of financial support to third parties that are subject to restrictive measures adopted under Article 29 of the Treaty on the European Union (TEU) or Article 215 of the Treaty on the Functioning of the EU (TFEU). The need to ensure the respect for EU restrictive measures must not however impede the effective delivery of humanitarian assistance to persons in need in accordance with the humanitarian principles and international humanitarian law. Persons in need must therefore not be vetted.”

Example 2: AFD methodological guide for CSOs receiving public funds (2023)⁶

Compliance with [the prohibition to provide funds or economic resources to designated person / groups] is subject to adjustment in two cases:

a. Humanitarian exemption and derogation obtained from the competent authorities

- *a) If the project can claim a humanitarian exemption: if the country where the funding is deployed is covered by a Humanitarian Response Plan (HRP) or a UN flash appeal (OCHA or UNHCR) and the project falls within the areas covered by this HRP or flash appeal, or:*
- *b) If the CSO can claim a derogation obtained from the National Competent Authority on sanctions (ANC) and is able to provide the relevant authorization to the AFD group.*

Example 3: Anonymous

“The need to ensure respect for counter-terrorism legislation and sanctions regulations should not impede the timely delivery of humanitarian assistance or other activities that support basic human needs in accordance with humanitarian principles, international humanitarian law and human rights law. The Partner is therefore not expected to screen end-beneficiaries. The Partner and any Downstream Partners are also not precluded from liaising with designated persons or members of designated entities and proscribed groups to implement the activities funded by this Arrangement”.

⁵ ECHO, [Humanitarian Model Grant Agreement 2021-2027](#).

⁶ <https://tinyurl.com/4rh5ewfc>