

Example engagement policy with non-state armed groups and de facto authorities considering sanctions and counterterrorism risks

TOOL 13

This provides a template policy that can be adapted as needed.

1. PURPOSE AND BACKGROUND

World Response is committed to ensuring that assistance reaches people most in need in line with the humanitarian principles of humanity, neutrality, impartiality, and independence. Engagement with all parties to a conflict is essential to secure and maintain access to people in need.

To provide protection and assistance to those in need, World Response may need to engage with non-state armed groups (NSAGs) and de facto authorities (DFAs) in the course of its operations. This may involve engaging with groups or individuals that have been designated under sanctions adopted by the United Nations, the European Union or individual states, or proscribed under counterterrorism measures.

World Response's engagement with these parties is consistent with the humanitarian principles of humanity, impartiality, neutrality and independence. International humanitarian law (IHL) permits humanitarian organisations to engage with all parties to a conflict.¹ World Response provides assistance to all those in need regardless of the authority in control, without taking sides in the conflict, and acts independently from political, military and economic objectives.

World Response acknowledges that legislation in its countries of registration, operation and donor funding places responsibilities and obligations on the organisation and its staff. World Response will remain compliant with these obligations including applicable sanctions and counterterrorism measures. This engagement policy is complemented by World Response's sanctions and counterterrorism policy.

This policy is intended to set out the main principles that enable World Response to engage with NSAGs and DFAs in accordance with its mandate while complying with relevant legal frameworks. It is also intended to provide guidance to staff who carry out this engagement.

2. KEY TERMS

Engagement: This refers to sustained interactions with parties to a conflict, including NSAGs and DFAs, for humanitarian purposes. This could be done to gain acceptance for humanitarian actors; to preserve humanitarian space; to gain access to people in need; or to promote awareness and respect for international humanitarian law. Interactions can take different forms such as negotiations, dialogue, or training. Engagement does not legitimise the activities of a group.

¹ Article 3 of the Geneva Conventions provides that humanitarian organizations may offer their services to "parties to the conflict", thus entailing engagement with all parties.

Non-state armed group (NSAG): There is no commonly accepted standard definition of an NSAG. IHL refers to ‘organised armed groups’ and outlines certain conditions for a group to qualify as a party to an armed conflict and for the provisions in IHL to be applicable (such as the level of organisation, the level of territorial control, etc). In the OCHA Glossary of Humanitarian Terms, NSAGs are defined as ‘armed actors engaged in conflict and distinct from a governmental force.’

De facto authority (DFA): IHL distinguishes between States that have ratified the Geneva Conventions and “parties to the conflict” which is a broader term encompassing both state and non-state parties. DFAs are not defined in the Geneva Conventions but have been defined as non-state entities which exercise effective authority over some territory, either during a conflict or during times of peace.² DFAs may not be recognised by the international community at large, but in having effective control over a territory or population they must still abide by IHL regardless of their status of international recognition.

3. MAIN PRINCIPLES

Purpose and type of engagement

The purpose of engagement with NSAGs/DFAs is generally to allow World Response to carry out its mandate, which may require the organisation to engage with any party to an armed conflict. In each context, World Response will identify and clarify the specific goal and scope of engaging NSAGs/DFAs in that context and will develop a tailored and context-specific engagement strategy to provide guidance to staff. Such guidance is essential to ensure the protection and safety of staff and partners

The designation of a NSAG/DFA as a ‘terrorist organisation’ or listing under sanctions has no effect on its status as a party to an armed conflict and the applicability of IHL, including the right for impartial humanitarian organisations to engage with all parties to an armed conflict. It should be noted that counterterrorism measures generally do not prohibit dialogue with a designated entity, but they do prohibit making resources or other support available.

Context-specific engagement guidance and sanctions and counterterrorism measures

World Response will provide staff with guidance on NSAG/DFA engagement tailored to the objectives of its operations in each relevant context. The guidance will identify any sanctions and counterterrorism measures relevant to the specific context, including donor requirements. XXX will be responsible for developing the guidance. The guidance should be approved by XXX.

Engagement strategies will include:

- ✔ Identification of who approves the engagement and whether there are any red lines, including identification of the circumstances under which the engagement would be terminated.
- ✔ Identification of suitable entry points for engagement.
- ✔ Identification of points of leverage for engagement and incentives for compliance.
- ✔ Identification of who undertakes the engagement and using what modalities, including whether such engagement should be carried out by local intermediaries, e.g. local community leaders.
- ✔ Identification of coordinated efforts on engagement with the group via Humanitarian Access Working Groups (HAWGs) and existing joint operating procedures (JOPs).
- ✔ Guidance on prioritisation of resources in the context of engagement, including in terms of the level of engagement and how such engagement will be sustained.

² Geneva Academy, Human Rights Obligations of Armed Non-State Actors: An Exploration of the Practice of the UN Human Rights Council, December 2016, P. 26. Available online at: <https://tinyurl.com/mwtxv59j>

- ✔ Guidance on the level of confidentiality of the engagement process and balancing such confidentiality with transparency about the engagement process and its objectives.
- ✔ Identification of the risks of this engagement for staff and for the organisation, including due to the possible reaction of the host state, and identification of risk-mitigation measures.

Sanctions

- ✔ Identification of whether any of the individuals or groups are designated under national or international sanctions regimes.
- ✔ If yes, identification of whether the applicable sanction regimes prohibit making funds or resources available directly or indirectly to the designated groups.
- ✔ If yes, identification of any exemptions or licenses that could be relied upon. If it is necessary to apply for a licence determine whether doing this would lead to delays in response and plan programming accordingly.

Counterterrorism measures

- ✔ Identification of whether the NSAG or DFA are proscribed under any applicable counterterrorism measures. If yes, identification of what the consequent restrictions are.
- ✔ Identification of any other restrictions in counterterrorism measures that might be applicable. These could be under the law of the host state, the states of nationality of staff, or a third state. Appropriate legal advice should be sought for this step.
- ✔ Identification of potential risks of engagements for staff and the organisation and development of risk mitigation measures.

Donor requirements

- ✔ Identification of whether any donor agreements for this context specifically prohibit engagement with NSAGs or designated entities or if they require particular due diligence steps.
- ✔ If the necessary engagement is prohibited, identify whether it is possible to negotiate with the donor.

Legitimacy

As an impartial humanitarian organisation, World Response is aware that engaging with NSAGs/DFAs may be perceived as providing legitimacy to these entities. World Response reaffirms that engagement with NSAGs/DFAs for humanitarian purposes does not affect the legal status of NSAGs/DFAs in accordance with IHL, in particular Common Article 3 to the Geneva Conventions. In addition, such engagement does not constitute an unlawful interference into the internal affairs of a state.

World Response has the following policies to mitigate the risk of providing legitimacy to NSAGs through its engagements with them:

- Code of conduct for staff
- Sanctions/Counterterrorism policy