

SUBMISSION TO THE STANDING COMMITTEE ON FOREIGN AFFAIRS & INTERNATIONAL DEVELOPMENT

October 5, 2023



EXECUTIVE SUMMARY

The Canadian Red Cross (CRC), working with components of the Red Cross and Red Crescent Movement (the Movement), has extensive experience in responding to humanitarian needs in complex contexts, including in areas impacted by sanctions. As an organization dedicated to ensuring access to services for hard-to-reach communities and groups who are marginalized by our current legal and social structures, we advocate for the protection of neutral, impartial and independent humanitarian assistance. Canadian Red Cross has a unique mandate as Canada's National Society and we offer a wide variety of support ranging from domestic and international humanitarian response to working with the Government of Canada to ensure respect of IHL.

Even when humanitarian carve outs exist, sanctions and other regulatory frameworks can impede or delay the delivery of humanitarian aid in hard-to-reach and complex contexts. In humanitarian responses, particularly to large-scale events, the rapid mobilization of humanitarian aid is vital. Sanctions and other regulatory frameworks can create barriers for humanitarian actors when delivering impartial humanitarian assistance. To ensure that sanctions and other regulatory frameworks do not unduly impede or delay the delivery of impartial humanitarian assistance, the Canadian Red Cross recommends that the Standing Committee on Foreign Affairs and International Development in its study on sanctions undertakes the following:

1. The Committee includes in its recommendations that the Government of Canada (GoC) adopt clear, consistent humanitarian carve outs in line with international law and international humanitarian law in particular across all sanctions regimes.
2. The Committee encourages Parliament as well as Global Affairs Canada (GAC) to develop the practice of engaging in public communications (such as the US example post-Türkiye and Syria earthquake) that reinforce the apolitical nature of humanitarian assistance and the critical necessity of providing impartial humanitarian assistance to those in need.
3. The Committee to ask that all future humanitarian exemptions include reference to a holistic and realistic definition of humanitarian assistance and that such exemptions apply to impartial humanitarian organisations (not only the limited organisations which are currently listed).
4. The Committee recommends that all future humanitarian exemptions include reference to their application to third parties when they work with humanitarian organisations in situations governed by sanctions.
5. The Committee includes in its recommendations that the GoC issue clear policy guidance that speaks to industry as well as civil society about the application of humanitarian exemptions to their work.

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6. The Committee recommends that any regulations drafted to implement sanctions must clarify the application of exemptions to third parties.
7. The Committee recommends that the relevant government actors undertake additional efforts such as ongoing engagement with industry and civil society to answer questions and provide timely efficient and effective guidance to those involved in humanitarian assistance.
8. The Committee recommends to the Department of Justice, Public Safety and GAC that when they update or change the sanctions regimes in the future, functional interoperability with the other legislative frameworks which govern the humanitarian sector be improved.
9. The Committee should recommend that further efforts to reduce the unintended humanitarian consequences of sanctions must be undertaken at all levels including at the legislative stage in order to reverse this devastating trend.

ISSUE STATEMENT

The CRC wishes to highlight that unintended impacts of sanctions and other regulatory frameworks on the provision of humanitarian assistance can be avoided by taking steps to tailor the law to purpose and ensure alignment between regulatory systems. By taking these reasonable measures, sanctions regimes can achieve their goals while protecting the provision of humanitarian assistance and access to people in need. If these steps are not taken, sanctions and other related regulatory regimes impede the provision of humanitarian aid.

It is incumbent on all levels of the Government of Canada (GoC) to ensure that efforts to repress terrorist or criminal activity do not result in disproportionate impacts on already marginalized communities or the humanitarian organizations who serve them. In addition, the GoC must reverse the chilling effect of sanctions regimes on commercial entities who provide the logistical, financial and other technical support to humanitarian actors, who otherwise feel working with the humanitarian sector is too great a risk to their other business practices (also known as “de-risking”).

We are aware that some may be concerned that charities providing humanitarian assistance may somehow be taken advantage of when working in complex contexts. This viewpoint is not reflective of the experience of the informed, professional and highly regulated organizations, that carry out activities in these settings. Navigating through difficult bureaucracies or hostile authorities is nothing new for humanitarians but rather the work we do every day. Charities in Canada and other donor countries are highly regulated entities that plan, track and account for every donor dollar. Based on our extensive experience, we have seen no evidence that humanitarian carve outs provide loopholes in practice and if any such risk occurred, humanitarian organizations’ own, well-established oversight and accounting mechanisms to mitigate against diversion limits this possibility. The diversion of humanitarian assistance such as food, medicine

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as well as other humanitarian goods by other actors raises a great deal of concern within the humanitarian community. Because of the threat and persistence by some actors to divert assistance, humanitarian actors undertake a great deal of effort to limit such diversion. The possibility of diversion does not negate the need for humanitarian exemptions.

RECOMMENDATIONS

1. Protect the provision of neutral, impartial and independent humanitarian assistance to ensure access by communities in need to protect their well-being.

The ability to provide humanitarian assistance without hindrance must be protected. Based on our extensive experience working with those in need during crises, we know that a singular event can cause different impacts due to pre-existing risks and vulnerabilities. Highly marginalized populations can be made more vulnerable if humanitarian activities are not able to take place or are significantly delayed, resulting in severe consequences. The ability to provide assistance is made more challenging by the dramatic increase in need in situations of armed conflict such as Syria, Ukraine and Sudan. In keeping with international humanitarian law, civilians are entitled to receive humanitarian relief and the unimpeded provision of impartial humanitarian assistance is provided for under this legal framework.

Furthermore, as sanctions often arise from highly political contexts where there is a high level of public scrutiny, it is incumbent that governments demonstrate their support of the unfettered provision of humanitarian assistance to those who need it. They can do so, for example, by taking steps to remind both governments and non-government actors that neutral, impartial, and independent humanitarian action is apolitical and ensures that those who are already victimized are not denied assistance.

One example of an effort to avoid politicization is the Government of the United States' press release after the Syrian earthquake which stated, "[while] sanctions relief alone cannot reverse longstanding structural challenges and the brutal tactics of the Assad regime, it can ensure that sanctions do not inhibit the life-saving assistance needed following this disaster."

Recommendations:

1. The Committee to recommend that the GoC adopt clear, consistent humanitarian carve outs in line with international law and international humanitarian law in particular, across all sanctions regimes.
2. The Committee to encourage Parliament as well as GAC to develop the practice of engaging in public communications (such as the US example post-Türkiye and Syria

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earthquake) that reinforces the apolitical nature of humanitarian assistance and the critical necessity of providing impartial humanitarian assistance to those in need.

3. The Committee to ask that all future humanitarian exemptions include reference to a holistic and realistic definition of humanitarian assistance and that such exemptions apply to impartial humanitarian organisations (not only the limited organisations which are currently listed).

2. Ensure sanctions and other regulatory regimes do not impede access to those in need, even with humanitarian exemptions and carve outs.

Sanctions can present barriers to the timely provision of humanitarian assistance because while the exemption is applied to organizations like the CRC, other companies and suppliers that support our work are not covered. Put simply, sanctions result in all activities and actions – from accessing fuel, medicine and payments to deploying personnel, crossing borders and providing supplies –in being slower, less predictable, and more costly. It has been our experience that companies and suppliers wish to avoid any perceived support or facilitation in jurisdictions subject to sanctions, even if the work is humanitarian in nature. This occurs in part because these measures generate what is known as a “de-risking” by suppliers and service providers. This meaning that, when faced with the lack of a clear carve out for their supporting work, companies choose to avoid providing goods and services in geographies where sanctions apply. For instance, banks have imposed restrictions on the services they offer to humanitarian actors in countries they perceive as high risk especially as there is no incentive for assuming the risk.

Recommendations:

4. The Committee recommends that all future humanitarian exemptions include reference to their application to third parties when they work with humanitarian organisations in situations governed by sanctions.
5. The Committee includes in its recommendations that the GoC issue clear policy guidance that speaks to industry as well as civil society about the application of humanitarian exemptions to their work.
6. The Committee recommends that any regulations drafted to implement sanctions must clarify the application of exemptions to third parties.
7. The Committee recommends that the relevant government actors undertake additional efforts such as ongoing engagement with industry and civil society to answer questions and provide timely, efficient and effective guidance to those involved in humanitarian assistance.

3. Take a holistic approach recognizing that humanitarian actors navigate and comply with multiple regulatory regimes such as financial rules and counter-terrorism laws.

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Humanitarian actors must contend with a broad range of regulatory barriers that are interconnected, requiring a coordinated and coherent approach, especially in complex settings. For example, sanctions intersect with and can be used to implement a government's counter-terrorism responsibilities and though sanctions can include a carve out for certain humanitarian actors, these exemptions do not absolve the same actors (or type of activities) from prosecution under the *Criminal Code's* antiterrorism provisions. When updating or changing the sanctions regimes, functional interoperability with the other legislative frameworks which govern the humanitarian sector must be considered and improved to provide clarity and consistency to civil society; and ensure effective and efficient responses to those impacted by conflict or disaster.

Recommendation:

8. The Committee recommends to the Department of Justice, Public Safety and GAC that when they update or change the sanctions regimes in the future, functional interoperability with the other legislative frameworks which govern the humanitarian sector be improved.

4. Undertake ongoing efforts to facilitate humanitarian efforts and continue to undertake efforts to adopt best practices and ensure alignment with international law and international humanitarian law in particular.

The CRC commends the work of the GoC in implementing UNSC Resolution 2664 in the *United Nations Act*. These legislative changes have already proven to be worthwhile. It represents a step in the right direction and the CRC suggests to the Committee that they encourage further initiatives to create such clarity in our legislation.

Future changes to the sanctions regimes should reflect best practice from around the world that recognises the legal, political and social benefits of protecting humanitarian space. For example, in the immediate aftermath of the earthquake that hit Syria and Türkiye, the United Kingdom and the United States both issued general licences to authorize humanitarian organizations to do activities that would otherwise be prohibited in order to facilitate earthquake relief activities. As mentioned previously, the United States also issued a statement recognizing the contribution of certain businesses towards the movement of humanitarian funds, people and goods into sanctions-impacted areas and to reassure them that exemptions for humanitarian purposes would also apply to their supporting work. These additional efforts by governments were undertaken, even though like other regulatory contexts, the existing sanctions measures were never intended to hamper humanitarian aid in the first place.

Exemptions and humanitarian carve outs to sanctions regimes are critical enablers of humanitarian action (though they do not fully remove all barriers). The Canadian Red Cross, as a member of the Red Cross and Red Crescent Movement, is an exempted humanitarian organization from the application of many global as well as domestic sanctions. Without these

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types of humanitarian carve outs to the sanctions regimes, access and therefore our ability to provide neutral and impartial humanitarian assistance, would be almost impossible. We operate within a global network of humanitarian assistance as envisioned under international law and our recommendations are to further this work. This includes by allowing others who fall under the definition of impartial humanitarian actors to also be included in the exemptions. Humanitarian exemptions represent a critical means by which to help those most in need. Without them Canada contributes to the denial of humanitarian assistance from reaching those in need when they need it most.

Recommendation:

9. The Committee should recommend that further efforts to reduce the unintended humanitarian consequences of sanctions be undertaken at all levels in order to reverse this devastating trend.