



# ICRC

## **ICRC Submission to the Standing Committee on Foreign Affairs and International Development regarding its Study of Canada's Sanctions Regime**

September 2023

The International Committee of the Red Cross (ICRC) welcomes the opportunity to share our views and experiences related to the intersection of sanctions and humanitarian action with the House of Commons Standing Committee on Foreign Affairs and International Development. A neutral, independent, and impartial humanitarian organization, the ICRC carries out humanitarian activities throughout the world to reach vulnerable populations affected by armed conflict and other situations of violence, including in contexts where sanctions apply.

Over the past years, the ICRC has noted an increase in sanctions and counterterrorism-related regulations in contexts where we operate. While we do not question the legitimacy of States and International Organizations to employ such measures, we believe they must include safeguards to minimize any adverse impacts on the ability of impartial humanitarian organizations to respond to the needs of persons affected by armed conflict and other situations of violence in accordance with humanitarian principles.

The ICRC has been engaging with States at the national, regional, and multilateral level to ensure that sanctions are developed in line with their obligations under international humanitarian law (IHL) and in a manner that does not impede principled humanitarian action. The ICRC believes that well-framed and standing humanitarian carveouts for exclusively humanitarian activities undertaken by impartial humanitarian organizations, in line with international law, including IHL, are the most appropriate way to comply with international law and facilitate humanitarian activities without undermining the objectives of sanctions regimes.

Adoption of the standing humanitarian carveout across all UN sanctions regimes in United Nations Security Council Resolution (UNSCR) 2664 (2022) demonstrates the acceptance of this approach for facilitating humanitarian activities. While the obligation to implement the UNSCR 2664 humanitarian carveout may only apply to certain sanctions, UNSCR 2664 nonetheless provides a framework for implementing humanitarian carveouts across all domestic sanctions regimes. The ICRC urges all States to fully implement UNSCR 2664 and adopt appropriate domestic measures to give it full legal effect.

### **Challenges and Impacts of Sanctions**

Sanctions can impact humanitarian organizations in various ways, often leading to operational delays or limitations on humanitarian activities. The ICRC has faced the following impacts from sanctions:

- **Private Sector De-Risking and Overcompliance:** Humanitarian organizations rely upon private sector actors such as suppliers and financial institutions to carry out humanitarian activities. However, private sector actors have become increasingly hesitant to support humanitarian activities in certain contexts because of sanctions risks, particularly in contexts where there are overlapping sanctions regimes. Even where there may be humanitarian carveouts in sanctions in place, many private sector actors nonetheless take an “overcompliance” approach to working in contexts with sanctions risks. This means that time and resource consuming negotiations with banks, suppliers, and logistics companies

are often still required before they will proceed with working with the ICRC in certain contexts.

- **Reduced Number of Suppliers:** The ICRC has found there are a decreasing number of suppliers willing to support humanitarian activities in contexts perceived to be high sanctions risk. This de-risking from suppliers means suppliers refuse to work in certain contexts, resulting in contract cancellations, limited responses to tender requests, and extended procurement timelines, all of which impact the ICRC's ability to effectively respond to needs. The ICRC has experienced this in relation to activities in Syria, Afghanistan, and Iran for a variety of items needed to support humanitarian assistance and water and sanitation activities.
- **Increased Risks Hinder Impartial Humanitarian Action and Funding:** Impartial humanitarian organizations must engage with governmental entities and non-state armed groups to carry out their work providing aid based upon needs. When these entities are designated under sanctions, there are increased risks – legal, operational, and duty of care to staff – for impartial humanitarian organizations. Humanitarian personnel also risk possible prosecution for carrying out humanitarian activities. These increased risks, unless adequately mitigated, can restrict and negatively impact exclusively humanitarian activities, ultimately hindering humanitarian organizations and personnel from carrying out their activities as permitted and protected under IHL and reaching vulnerable populations affected by armed conflict and violence. Relatedly, the increased risks may also restrict the ability of donors to fund impartial humanitarian organizations in certain contexts, which can limit aid to vulnerable populations, particularly those located in contexts targeted by sanctions or under the control of designated groups.

### **Recommendations to Mitigate the Impact of Sanctions**

#### **Implement United Nations Sanctions Humanitarian Carveouts**

The ICRC calls on all States to implement all UN sanctions humanitarian carveouts in their domestic sanctions framework, particularly given the carveouts adopted across all UN sanctions with UNSCR 2664. The ICRC welcomes Canada's implementation of the humanitarian carveouts in UNSCR 2664, along with the humanitarian carveout in UNSCR 2615 under the Taliban sanctions regime, in the *United Nations Act* sanctions. The implementation of these humanitarian carveouts is a positive step to ensure Canada's domestic sanctions framework is in line with UN sanctions. However, the ICRC notes that the *United Nations Act Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* does not include a humanitarian carveout. Based on the rationale of UNSCR 2664 and its operational paragraph 4, the ICRC considers that the humanitarian carveout established in UNSCR 2664 should be extended to the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*.

#### **Standardize Humanitarian Carveouts Across Canadian Sanctions**

Canadian sanctions are implemented through various sanctions regimes that have different regulations and, in some cases, humanitarian carveouts. These sanctions regimes often overlap in certain contexts, which can create a situation where one sanctions regime may have a humanitarian carveout while another applicable regime may have a different humanitarian carveout (or possibly no applicable carveout). Such a scenario creates uncertainty for humanitarian organizations, donors, and private sector actors around whether there may be sanctions risks with carrying out humanitarian activities, even if such activities may be covered by a carveout. Recommendation 1 of the Committee's 2017 study of Canada's sanctions regimes highlights this challenge. Standardization of humanitarian carveouts across all of Canada's sanctions regimes would provide the clarity and certainty needed to safeguard humanitarian activities, especially for private sector actors to ensure they can continue supporting humanitarian organizations.

A standard humanitarian carveout should safeguard principled humanitarian action. In situations of armed conflict, IHL outlines a framework for humanitarian access and humanitarian activities to address the needs of persons affected by armed conflict. Humanitarian carveouts should be in line with this framework permitting the humanitarian activities of impartial humanitarian organizations. The ICRC has the same position for counterterrorism legislation and regulations, which may have humanitarian carveouts separate from those included in sanctions regimes. When such counterterrorism measures overlap with sanctions, humanitarian carveouts should be aligned to ensure activities permitted under one carveout are also covered in other applicable carveouts. This alignment will safeguard humanitarian action by avoiding a scenario where certain humanitarian activities may fall within the humanitarian carveout of one regime but not others, putting at risk those humanitarian activities.

#### **Clarify Carveouts Allow for All Transactions Related to Humanitarian Activities**

An important consideration for humanitarian carveouts is to ensure all transactions related to humanitarian activities are authorized, meaning the administrative transactions required to implement these activities are included in the carveout. Such a clarification could specify that all transactions necessary for humanitarian activities, such as paying staff salaries, renting office space, maintaining a bank account, and contracting private suppliers for the procurement of goods and services, are excluded from the scope of sanctions. This would ensure that private sector actors such as financial institutions and suppliers that humanitarian organizations rely on to carry out their activities can support such activities without sanctions risks.

#### **Recognize that Humanitarian Activities Go Beyond Meeting Basic Needs**

Humanitarian carveouts are often framed in terms of permitting lifesaving humanitarian assistance or projects that meet basic human needs. While these authorizations are helpful, they can be limited in scope and exclude other humanitarian activities, such as protection activities related to visiting detainees, clarifying the fate and whereabouts of missing persons, or disseminating IHL to weapons bearers, which are permitted under IHL. Especially in protracted conflict situations, humanitarian activities are often broader than solely addressing the immediate needs of affected populations and can include support to essential services through water, sanitation, and health projects. The scope of humanitarian carveouts should cover this range of activities carried out by humanitarian organizations.

#### **Provide Policy Guidance Affirming Canadian Sanctions Should Not Impede Humanitarian Activities**

Such policy guidance would provide additional clarity and certainty for all stakeholders and complement humanitarian carveouts adopted in sanctions regulations. Specific policy guidance directed at the private sector would be helpful for mitigating against private sector de-risking and could signal that transactions related to humanitarian activities are permitted under Canadian sanctions.