WHEN THE GIVING GETS TOUGH:

Navigating Risk in Sanctioned Locations

Executive Summary

This paper aims to provide donors, civil society practitioners, and other stakeholders with an overview of how U.S. sanctions are implemented, the challenges their implementation often poses for civil society organizations, and the risks associated with charitable giving in sanctioned locations—along with strategies for managing those risks.

The first section of the paper examines the legal bases for sanctions, such as the International Emergency Economic Powers Act (IEEPA) and the National Emergencies Act (NEA). It explains the varying types of sanctions, from the broader categories of primary and secondary sanctions, to sub-categories such as comprehensive and limited sanctions. It also explains the different ways sanctions can be implemented, including blocking sanctions that block a targeted person or organization's interest in property that comes into U.S. jurisdiction, trade and transaction restrictions, and banking restrictions. Lastly, this section unpacks the exemptions and licensing processes, explaining the differences between exemptions, general licenses, and specific licenses.

The second section of the paper addresses the harmful impacts of sanctions on civil society programs. It offers specific examples of the impact of sanctions on humanitarian access, peacebuilding programs, and financial access for civil society organizations. It also explains the challenges with the current licensing process and exemptions, from costs and delays associated with procuring specific licenses, to exemptions that are too narrowly tailored to provide meaningful protection for civil society programs.

The third section of the paper offers examples of the challenges faced by donors that work in sanctioned locations, and offers five key strategies for donors to manage the risks associated with charitable giving in sanctioned contexts. Specifically, it recommends that donors consider:

- Implementing a risk-based approach to their giving
- Documenting their due diligence processes
- Understanding bank policies on fund transfers to high-risk countries
- Working with an intermediary grantmaker
- Identifying an alternative grantee

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I. What are Sanctions?

Sanctions are a coercive legal tool generally imposed by the United States in the name of protecting U.S. national security and foreign policy interests, usually with the aim of compelling those targeted to change their behavior. Sanctions are also used to shield the U.S. financial system from malign actors and activity.

The U.S. operates a vast array of sanctions programs against countries, regions, economic sectors, non-state armed groups, individuals and entities. These programs are primarily administered by the U.S. Treasury's Office of Foreign Assets Control (OFAC).

U.S.-based nonprofit organizations (NPOs) that work abroad need to be cognizant of U.S. sanctions programs. Even if an NPO is not operating in a sanctioned country or region, its programs could be impacted by sanctions on non-state armed groups, economic sectors, individuals or entities. NPOs must be careful to check all their activities, partners, foreign employees and contractors, and others they interact with against U.S. sanctions lists. They should also be aware of any applicable humanitarian exemptions, as well as general licenses from OFAC allowing certain otherwise-prohibited transactions, and be prepared to apply for specific licenses as needed. U.S. persons[1] violating sanctions can face civil penalties, potential criminal prosecution and imprisonment.

Legal Authority to Impose and Enforce Sanctions

The legal authorities to impose U.S. sanctions are found in acts of Congress. The International Emergency Economic Powers Act (IEEPA) and National Emergencies Act (NEA) are the primary sanctions authorities, although Congress also passes sanctions laws intended to address specific situations, such as with the Caesar Syria Civilian Protection Act. IEEPA empowers the President to declare emergencies and impose sanctions, which is done through executive orders. NEA empowers the President to activate special powers, such as imposing sanctions, during a crisis, but imposes certain procedural formalities when invoking such powers.

OFAC administers and enforces sanctions programs. Executive orders establishing sanctions often authorize the Treasury Department to add people, organizations or entities to sanctions lists. In such cases, OFAC only needs "reasonable suspicion" that there is sanctionable activity before designating an individual or entity under one of its sanctions programs, or importantly for NPOs, as a supporter of a designated terrorist entity. There are no evidentiary standards—the finding can be based on anonymous tips, hearsay or blogs, for example. When reviewing designations, courts grant OFAC extreme deference. Getting delisted presents a very difficult hurdle—the party must show a mistake or a change in circumstances.

Types of Sanctions

Sanctions fall into one of two main categories—primary or secondary—based on the target of the particular sanctions program. The guiding question here is: who or what is being targeted or designated to a sanctions list? Primary sanctions targets are those deemed to be "bad actors"—an individual, entity or country—for example, Iran or al Qaeda. Secondary sanctions are placed on third parties that engage in transactions or activities with or provide support to a sanctioned entity or operate in a sanctioned sector.

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[1] A U.S. person is a U.S. citizen or permanent legal resident, located anywhere in the world, or anyone physically present in the U.S., or any entity formed under the laws of any jurisdiction of the U.S. and their foreign branches and affiliates.

SANCTIONS			ALSO KNOWN AS	EXAMPLES
PRIMARY	Comprehensive	Target countries, regions	Country- or region- based	Iran, Cuba, North Korea, and Syria (countries); Crimea(region)
PRIMARY	Limited	Based on conduct	Targeted/list-based	Terrorist groups, drug kingpins
PRIMARY	Limited	Based on relationships	Derivative/list-based	Affiliate of a sanctioned group
SECONDARY	Target 3rd parties based on activities with the target of primary sanctions		Sectoral/list-based	Sanctions violators

Primary Sanctions

Primary sanctions include comprehensive as well as limited sanctions. Comprehensive sanctions are usually imposed on a whole country (such as Cuba, Iran, Syria or North Korea), but can also be used to target regions (such as Crimea). Limited sanctions have targets that are narrower than countries or regions, such as individuals, entities (including non-state armed groups), economic sectors, conduct, or relationships. These sanctioned entities can be found on the Specially Designated Nationals (SDN) list, created and maintained by the U.S. Treasury. Those on the list may be involved in terrorism, narcotics trafficking, weapons proliferation, human rights abuses, genocide or transnational organized crime.

Limited sanctions can be further classified as targeted or derivative. Targeted sanctions identify targets engaged in conduct deemed problematic and therefore sanctionable. These can be applied to certain parties, conduct or economic sectors. Derivative sanctions derive from a relationship with a sanctioned person rather than conduct. For example, parties owned or controlled by, acting for or on behalf of, or providing support or services to a sanctions target may themselves be sanctioned.

Secondary Sanctions

Secondary sanctions, sometimes referred to as sectoral sanctions, are sanctions imposed on third-party individuals or entities for being engaged in significant activity with targeted persons or organizations or operating in a targeted sector of the economy (such as the Venezuelan oil industry). The difference between derivative and secondary sanctions is that derivative sanctions stem from a relationship while secondary sanctions stem from an activity with a sanctioned person or entity.

Sanctions Implementation

There are many ways to implement sanctions. The question here is: how are the sanctions carried out? Sanctions can block (or freeze) assets, impose restrictions on trade, or impose limits on banking services.

Blocking Sanctions

These sanctions block all of the targeted person or organization's interest in property that comes into U.S. jurisdiction (into the U.S. or within the possession of a U.S. person). The entity blocking the assets (such as a bank) must:

- Place the frozen assets in an interest-bearing account
- Report the blocked or rejected transaction to OFAC within 10 days
- File annual reports

An asset freeze is not supposed to be a seizure but can turn into a forfeiture through other laws and actions, such as civil suits. In order to use or deal with blocked assets, a license from OFAC is necessary.

Trade and Transaction Restrictions

Trade and transaction restrictions place a virtual ban on certain transactions. Once enacted, exports of goods or services to sanctioned persons or to persons in the sanctioned country are prohibited. This is perhaps the most important aspect of sanctions implementation for U.S.-based NPOs engaged in cross-border transactions or operating international programs. Because sanctions ban U.S. persons from transactions and trade with sanctioned entities, these NPOs must consider every aspect of their work—from donations, to grant agreements, to contracts, as well as all transactions and relationships/partnerships—to ensure that their transactions do not involve sanctioned parties. In theory, these restrictions do not prevent assistance provided in compliance with humanitarian principles and law, though in practice, they often do. The sanctions on terrorist groups and persons are of particular concern to NPOs working abroad, as there is often a need for charitable work in conflict areas with proximity to listed groups and persons. Although navigating these waters is tricky and must be approached with caution, it can be done with appropriate due diligence and risk management systems in place.

Banking Restrictions: Correspondent and Payable-Through (CAPTA) Sanctions

CAPTA sanctions, a rare form of secondary sanctions, put restrictions on foreign financial institutions that have engaged in or facilitated significant transactions on behalf of targeted persons or targeted activity. These sanctions prevent U.S. persons from opening or maintaining correspondent banking relationships on behalf of these foreign financial institutions. A foreign financial institution that has CAPTA sanctions placed upon it will not have access to U.S. banks or U.S. dollar clearance.

DEFINITIONS MAKE A DIFFERENCE

EXEMPTIONS: exclude certain activities, transactions or items from restrictive measures and therefore require no application to or approval from a government agency.

GENERAL LICENSES: allow anyone to engage in activities or transactions that would otherwise be prohibited by sanctions. Require no application to or approval from a government agency.

SPECIFIC LICENSES: allow a U.S. person that applies for and is granted a license to engage in activities or transactions that would otherwise prohibited

Exemptions and the Licensing Process

Many sanctions programs provide exemptions from the programs' prohibitions, allowing for some level of humanitarian activity. These provisions vary by sanctions program—there is no standard provision—so NPOs need to check the statute or executive order authorizing the sanctions to determine what part of their programs may qualify.

OFAC and the Commerce Department can also authorize certain activities that would otherwise be prohibited in sanctions programs through licenses. A general license grants the authorization to anyone. Specific licenses are issued in response to license applications and can be used only by the party requesting and receiving the license. The OFAC licensing process is known to be extremely slow, with applicants sometimes waiting months or even years to receive a response. To obtain specific guidance from OFAC, an NPO can request interpretive guidance, also known as a "comfort letter." Making the request through umbrella groups, industry associations or trade groups increases the likelihood that OFAC will respond.

In addition, OFAC sometimes issues Statements of Licensing Policy (SLP), reflecting the agency's internal policy on licensing within a particular sanctions program. These can be incorporated into regulations. Some practitioners see an SLP as an indication that OFAC will view license requests favorably.

In 2014, Treasury issued guidance on humanitarian assistance, but it fell short by failing to address the legal restrictions that NPOs face in aid delivery. Specifically, the guidance did not have the force of law, was limited to humanitarian assistance, politicized aid by making license applications subject to foreign policy considerations, and did not address systemic problems with the licensing process such as lengthy delays, among other problems.

II. Negative Impacts of Sanctions on Civil Society Organizations

Sanctions often create serious problems for civil society organizations. From comprehensive or broad-based sanctions that target entire countries or regions, to so-called limited sanctions that target armed groups, to sectoral sanctions that target broad economic sectors, sanctions can impose immense costs on NPOs by limiting their access to financial services and donations, by imposing fines, and by compelling programs to cease their activities in order to avoid the risk of fines or prosecution.

In countries where the U.S. has imposed nation-wide sanctions, or sanctions that target whole sectors of a nation's economy, the economic impacts of sanctions on the general population can be severe. For local civil society organizations, this can be a drag on organizational resources, limiting their ability to raise funds from a population experiencing economic hardship due to sanctions, and limiting the time and energy that staff and volunteers are able to dedicate to their work. Broad-based sanctions can also lead companies that would normally supply or support the delivery of humanitarian products, such as medical equipment providers or banking institutions, to reduce or cease business in sanctioned areas, even when such business is not expressly prohibited by sanctions.

Impeding Humanitarian Access

Sanctions often impede the delivery of essential humanitarian aid in sanctioned areas. Recently, certain U.S. counterterrorism sanctions have put a fine point on these concerns. Counterterrorism sanctions are generally triggered by designations of armed groups as Foreign Terrorist Organizations (FTOs) and/or Specially Designated Global Terrorists (SDGTs). These sanctions prohibit the provision of "material support" to designated groups, but the overly broad definition of material support effectively criminalizes even the most necessary, basic and incidental transactions with armed groups.

Most recently, the Taliban's status as an SDGT sent humanitarian aid groups, among other NPOs, into unknown territory when the Taliban completed its takeover and became the de facto government of Afghanistan. Aid organizations like the Norwegian Refugee Council for example had to temporarily pause their programs as they sought clarity from the administration on the implications of U.S. sanctions on the Taliban for their work. This disruption in aid came at a particularly inopportune time—when the Taliban took over, Afghanistan was already facing a major humanitarian crisis, with about one third of the population facing severe levels of food insecurity. Beyond questions around navigating the material support prohibition, sanctions on the Taliban have led to a cash flow crisis, making it hard for NPOs to access cash to pay staff and keep operations running.

In an initial effort to address these challenges, the Biden administration issued a specific license for U.S. government agencies and their grantees to continue delivering aid to Afghanistan. This approach was a start, but it did not protect non-U.S.-funded NPOs, and it required those groups that did qualify to individually apply for the license. A month later, responding to pressure from civil society groups to broaden protections for NPOs working in Afghanistan, Treasury issued two general licenses carving out much broader protections for humanitarian operations, but still omitting protections for peacebuilding, human rights, and development work.

In the case of Yemen, in one of the Trump administration's final acts, it designated Ansar Allah in Yemen as an FTO and SDGT, sparking fears that aid to millions of Yemenis already on the brink of famine would be cut off. Ansar Allah, also known as the Houthis, functions as the de facto government in much of Yemen, where they control territory that is home to roughly 80 percent of the population. But under the material support prohibition associated with the designations, nonprofit aid and peacebuilding groups working in Yemen were prohibited from engaging in even the most incidental of transactions with the Houthis, such as paying road tolls and payroll taxes.

Responding to humanitarian access concerns, the Treasury Department under President Biden issued four licenses to allow certain humanitarian activities to continue, followed by a fifth license theoretically allowing all transactions with the Houthis for one month. Yet even this fifth license was not enough to reassure aid groups that they would not face prosecution from the Justice Department, which has never issued a written assurance that it will not prosecute violators of the material support prohibition operating under treasury licenses. As a result of the designations and the failure of Treasury's licenses to offer sufficient reassurances to NPOs working in Yemen, many aid organizations had to put their operations on hold until the Biden administration ultimately reversed the designations.

In Iran, U.S. sanctions have made it impossible for an Iranian NPO that works with people who have a rare disease called epidermolysis bullosa (EB) to import special bandages designed to treat the disease. After filing a complaint with the Swedish company Molnlycke, which it had been purchasing the bandages from, the NPO was told that U.S. sanctions led Molnlycke to cease all business in Iran. At least 30 Iranians with EB have died since Molnlycke stopped selling these bandages, most of them children.

In North Korea, where only 17 percent of the largely mountainous country is well-suited for agriculture, sanctions have prevented aid organizations from importing agricultural tools such as shovels, which are considered to be dual-use items that could be repurposed in support of North Korea's nuclear weapons program because they contain metal.

In Cuba, U.S. sanctions have led to months-long delays in the provision of food aid. When the Mennonite Central Committee, a Christian faith-based humanitarian, peace and development organization, sought approval to ship 14,000 kgs of canned meat into Cuba to distribute among 4,500 Cubans, the U.S. Department of Agriculture (USDA) took four months to approve the shipment, despite the general license for humanitarian aid shipments to Cuba. While nothing about the shipment was prohibited by U.S. sanctions, the USDA's lack of familiarity with U.S. sanctions on Cuba meant that it had to seek guidance from other agencies at every step of the process, turning a process that should have taken days into a months-long endeavor.

Undermining Peacebuilding

Along with their humanitarian impacts, counterterrorism sanctions have also served to undermine peacebuilding efforts. Under the material support prohibition, peacebuilding groups cannot transact with groups designated as FTOs.

In Nepal, in the wake of a peace agreement between the government of Nepal and the Communist Party of Nepal, also known as the Maoists, the material support prohibition served to prevent U.S. government-supported projects from meeting with or offering assistance to Maoist members of the government, leading to a gap in skills and training between government factions and fueling grievances between them.

In Sri Lanka, a U.S.-funded project seeking to prevent violence and support dialogue between professionals was discontinued after the U.S. asked the program's director to certify that none of the participants were sympathetic to the Liberation Tigers or Tamil Eelam (LTTE). Because the LTTE was designated as an FTO, the U.S. refused to support any efforts to engage them, regardless of the program's peaceful intent.

In Afghanistan, the U.S. government repeatedly refused to designate the Taliban as an FTO out of concern for the impact the designation would have had on the peace process between the Taliban and the Afghan government. Not only would it have served to undermine the ability of peacebuilding NPOs to work with the Taliban, it also would have undermined the ability of U.S. diplomats to facilitate dialogue between all the parties to the conflict. **While the Taliban have never been designated as an FTO, their designation as an SDGT has still created problems for peacebuilding groups similar to those faced by humanitarian groups, as discussed above.** While the Biden administration issued general licenses to protect humanitarian aid, it has yet to do so for peacebuilding programs.

Hindering Financial Access

For local as well as international NPOs working in sanctioned countries or regions, broad-based sanctions also limit their ability to secure financial services from banks, which often pursue a troubling practice in response to sanctions known as de-risking. Rather than seeking to manage the potential risks involved in facilitating transactions such as loans and fund transfers in sanctioned areas, banks will often refuse to work with NPOs in those regions, or end their relationships once sanctions are imposed, even when such transactions are not expressly prohibited by sanctions.

In Syria, the high profile nature of the conflict paired with sweeping U.S. sanctions have made financial access for international NPOs a particular challenge. Aid organizations have had to prioritize compliance with banking regulations and procedures over getting aid to those who need it most. Areas with fewer restrictions end up receiving more attention, while areas that banks consider "high-risk"—often the areas most in need of assistance—receive less.

In North Korea, UN as well as U.S. sanctions have made securing access to financial services a persistent challenge for NPOs. Banks have blocked financial transactions not only within North Korea, but also outside of it out of concern for their relationships with other financial institutions.

To avoid this unintended consequence of sanctions,the U.S. government could do more to clarify what kinds of financial transactions are permitted under U.S. sanctions and could encourage financial institutions to manage risk (and provide them with tools for doing so) rather than avoid it entirely.

Current Exemptions and Licenses Do Not Fully Enable Humanitarian Activities

While the U.S. government has sought to address the impacts of sanctions on humanitarian aid and other nonprofit programs by issuing exemptions, general licenses, and specific licenses, these efforts have not fully mitigated the negative impacts on civil society created by sanctions.

The International Emergency Economic Powers Act (IEEPA) includes a broad exemption for "donations of food, clothing and medicine intended to be used to relieve human suffering," but it also allows the president to cancel it if he or she determines that such donations would "seriously impair his ability to deal with any national emergency." Every president since George W. Bush has routinely canceled the IEEPA humanitarian exemption in counterterrorism executive orders since 9/11 (see, for example, EO 13224), effectively nullifying it. This has had a significant impact on the ability of humanitarian organizations to carry out their programs abroad.

General licenses also do not fully protect humanitarian channels. As the situation created by the designation of Yemen's Houthi rebels as an FTO demonstrated, even the Treasury Department's issuance of a broad license allowing all activities with the Houthis was not enough to protect humanitarian access. Similarly, under President Trump's maximum pressure strategy towards North Korea, the general license for humanitarian aid in North Korea was weakened so as to only cover the shipment of food and medicine, requiring a specific license for anything else, such as agricultural products or medical supplies. And in Cuba as well, despite a general license authorizing humanitarian aid, the Mennonite Central Committee (MCC) had to secure approval from the USDA to deliver food aid.

Where specific licenses or approvals are necessary, the costs and delays associated with obtaining them create further barriers to the delivery of humanitarian aid. In MCC's case, the USDA took four months to approve its shipment of canned meat. As the American Friends Services Committee (AFSC) experienced in one instance, OFAC took over a year and a half to grant a specific license to ship 16 boxes of Arikara beans to North Korea.

Beyond the obvious impact of delays on those awaiting aid, these delays can impact the efficacy of aid by interfering with seasonal timetables for agricultural shipments, as well as donor-related timetables, undermining funding for NPOs. And for NPOs that lack the legal expertise to navigate the licensing procedures, the costs of hiring legal consultants further detracts from the resources available to carry out their missions.

III. Mitigating the Risk of Sanctions Enforcement – The Donor Perspective

Individuals under the jurisdiction of OFAC and subject to the terms of the sanctions regulations defined above face significant barriers to supporting charitable activities in countries experiencing comprehensive sanctions or with a high prevalence of sanctioned individuals and entities. The risks, added burdens, and associated consequences that should give any donor pause when working in such an environment range from reputational damage to financial penalties and legal liability.

Civil penalties for dealing with sanctioned individuals can result in fines of up to $1,000,000 and a prison sentence of up to 20 years, as well as the forfeiture of the funds or goods involved in the banned transaction. Criminal penalties are capped at the greater of $250,000 for individuals ($1,000,000 for corporations) or twice the gain/loss from the violating act. Needless to say, the consequences of sanctions noncompliance are significant.

Despite mechanisms that exist to navigate sanctions, a restrictive and seemingly arbitrary enforcement environment still creates a significant deterrent to cross-border giving; however, it is still possible to support charitable work in sanctioned locations if donors can follow the recommendations outlined below.

Types of Sanctions Risks for Donors

In some countries with a high number of Specially Designated Nationals (SDNs) (and even in lower risk countries), donors need to ensure careful due diligence of a charity's leadership and board of directors before making a grant. In Russia, for example, there is a high prevalence of sanctioned individuals, many of whom hold positions of power and influence in both business and politics. Given the number of local entities touched by SDNs, the barriers to ensuring that a donor's reputation will be protected are significantly greater.

To mitigate the sanctions risk when working in such countries, donors must conduct careful due diligence of the intended beneficiary organization's governing board and staff members with control or authority over how donations are spent.

It is harder to approve a grant to a potential beneficiary when sanctions target individuals within a country's government. Hong Kong is an example of this type of jurisdiction: While many officials of the Government of the Hong Kong Special Administrative Region (HKSAR) are SDNs, this does not preclude charitable giving into the HKSAR or interaction with any agency or organization that does not involve SDNs. That being said, even given Hong Kong's density of charitable organizations, donors may be surprised how difficult it is to find a grantee that is entirely free of sanctions risk.

In Palestine, the Office of Foreign Assets Control (OFAC) has determined that Hamas, a Department of State-designated foreign terrorist organization, has a direct interest in the transactions of the Palestinian government, the Palestinian Authority. Given that Hamas is a governing political party in Gaza, with connections across the rest of the Palestinian Territories, it is difficult to find partners who are completely dissociated from their activities.

Potential Palestinian grantee organizations are well aware of the barriers to charitable activity. In 2019, the U.S. government asked international banks to halt international transfers to the Palestinian Authority. Since then, there are only a limited number of international banks that Palestinian citizens and entities can access. Even if an organization can access one of these accounts, donors should note that Palestinian banks' KYC (know your customer) protocols are not required to comply with OFAC sanctions. Donors must remember that they still carry a burden of due diligence and compliance for their grants to jurisdictions like Palestine, even if it seems as though external institutions have vetted the beneficiary in question. Cross-border grants are the responsibility of the grantor, which is accompanied by all the consequences of noncompliance.

Sanctions on designated Palestinian entities like Hamas and the Popular Front for the Liberation of Palestine (PFLP) have also been used by a network of extremist "pro-Israel" groups in efforts to suppress Palestinian civil society and international organizations that operate or support programs in Palestine. A recent Charity & Security Network report, *The Alarming Rise of Lawfare to Suppress Civil Society: The Case of Palestine and Israel*[2], details these efforts, shining a light on the tactics and motivations behind them. Donors looking to support programs in Palestine should be aware of the lawfare and disinformation outfits detailed in this report, and be extremely wary of information and allegations put forward by these groups. Donors should also have confidence in their own due diligence and screening procedures and understand that external pressure from activist organizations may be the result of politically-motivated activities. It is important to do your own review to determine what might be politically-motivated versus an actual sanctions compliance issue.

Some of the most comprehensive sanctions regimes are in place for countries such as Iran, Syria, and Yemen. The Syria sanctions program initiated by OFAC in 2004 is one of the most comprehensive sanctions programs currently in place. In both Syria and Yemen, the national financial sectors are unreliable and only a select few organizations can successfully operate.

Not only does the lack of a stable financial system hinder an effective humanitarian presence in the region, but these heavy sanctions are directed toward the governing regime(s). For example, while Secretary of State Blinken revoked the designation of Ansar Allah (the leading organization in Yemen's Houthi movement) as a terrorist organization, the associated General Licenses were revoked as well. But this may have been premature: Ansar Allah's leadership still remains sanctioned under Executive Order 13611. The context creates detrimental challenges to international aid work as anyone could be connected to a sanctioned individual, directly or indirectly.

The sanctions directed toward the Government of Syria prevent any and all exportation of services indirect or direct from the U.S., as well as new investments in the country. The good news is that there is a General License for Syria that allows for "the export and re-export of services in support of humanitarian and other not-for-profit activities in Syria by U.S. and third-country non-governmental organizations." And from June 2021 there has been a license that allows for assistance to fight COVID-19 in the country. So there are ways to get donations into Syria while maintaining compliance with OFAC - but the secondary concerns outlined above still add complexity to the process. In these cases, donors must ensure that the work they are funding does not fall under the broad and changing reach of the relevant OFAC sanctions.

In Iran, even with General Licenses in place, NPOs face major obstacles due to the regime's relationship with the U.S. government. Multiple aspects of any Iran-registered organization will come under scrutiny and the organization must be well prepared to account for many items during a due diligence review. This includes an established mission statement and charitable activity history, clean background checks of staff, and thorough financial documentation. While an organization may meet all but one of these requirements, donors and intermediaries must be ready to accept the risk in proceeding despite it.

[2] "Lawfare" is broadly defined in the report as the abuse of laws and legal principles to harm or discredit political adversaries.

Navigating Sanctions — 5 Tips for Managing Risk

The goal for funders working in sanctioned environments is to ensure that their funding can continue to make an impact in communities they wish to support, without falling prey to the legal consequences of sanctions enforcement. This section provides guidance on how this is possible, through the design and implementation of a risk-based protocol for international grantmaking.

Implement a Risk-Based Approach

When conducting due diligence on an organization, donors should use a risk-based approach so that they can fully understand the risk landscape of the country in which the work will be carried out. A risk-based approach requires a comprehensive contextual understanding of the legal and geopolitical environment in which a potential grantee operates. This allows grantmakers to accept certain risks and implement additional oversight tools to manage others, and it leads to a more nuanced understanding of whether an organization could receive charitable funding. As discussed above, the current sanctions environment creates a good deal of ambiguity around risk and potential consequences. A risk-based approach minimizes uncertainty and increases the chance that a funder will be able to justify making the intended grant.

Document your Due Diligence Process

It is important that you ensure that you have a "paper trail" that documents the steps you have taken to verify whether your grantee or closely related entities are subject to any sanctions. As a best practice, this includes documenting your reliance on a General License for any specific grant in case it is called into question later. Your financial institution or payment processor may ask questions about the transaction, and having these documents on hand will make for more efficient processing times.

Understand your bank's policies on fund transfers to high risk countries

As described above in the section on the Negative Impacts of Sanctions, many financial institutions are attempting to avoid risk wherever possible, and this leads many banks to make the decision that they will not transact in certain currencies or certain countries regardless of whether there is a General License in place that allows those activities. It's a good idea to have these conversations with your bank ahead of time to understand their policies and whether you will need to provide additional documentation in order to undertake certain transactions. There are also scenarios where it is worth building relationships with a few different financial institutions, some of which may have different risk appetites than the others.

Work with an Intermediary Grantmaker

Intermediary grantmakers are charities in the US (and in select other countries whose laws allow it) that accept donations from domestic donors and specialize in granting those funds to foreign grantees in a regulatory-compliant manner. Typically, intermediaries assume all of the risks of the grants being made, so donors are insulated from personal legal liability. Using an intermediary also increases the chance that a grant will be made and that the organization funded is legitimate: as experts, they are knowledgeable in the nuances of international grantmaking and navigating difficult sanctions regimes.

Identify an Alternative Grantee

Intermediaries can be an effective solution for donors who want to grant to a specific organization that their protocol or board deems too high-risk. There may be circumstances in which even your chosen intermediary may not be able to grant to that same organization. In the interests of delivering support for a donor's targeted community, they can choose to grant to an alternate organization that is registered in a low-risk jurisdiction but operating in the sanctioned country. By keeping impact-oriented organizations in mind, donors can ensure that while they are not directly giving to their organization of choice, the alternate grantee will reach the same or similar underserved community in the desired way. For example, taking into consideration the Department of Treasury's risk matrix, the International Committee of the Red Cross works extensively in Syria and stands as a lower-risk option for giving directly into the country.

VI. Conclusion

Sanctions are often imposed in conflict zones and other fragile contexts, which means people living in sanctioned locations are often some of the most in need of support from the international community. Charitable giving is an essential means of aiding these populations, but sanctions create serious challenges for civil society groups and donors determined to work under them. This paper aims to offer donors and other stakeholders a practical guide to understanding the challenges created by sanctions and to navigating charitable giving in sanctioned contexts.

When the Biden administration took office, it committed to reviewing U.S. sanctions policy with an eye for addressing their harmful impacts, particularly around impediments to humanitarian aid and the global response to the COVID-19 pandemic. The U.S. Treasury Department recently released this sanctions review, but unfortunately it did not offer concrete policy steps to address the many harmful impacts of sanctions.

As organizations like the Charity & Security Network continue advocating for policy solutions to mitigate the harmful impacts of sanctions, civil society practitioners and the donors that support them must continue to be cognizant of the risks surrounding certain activities, transactions, and charitable giving in sanctioned contexts. However, they should not let those risks detract from their commitment to the populations they serve. This paper seeks to equip donors with the information they need to live up to those commitments.

About C&SN and CAF

The **Charity & Security Network** is a resource and advocacy center working to promote and protect the ability of nonprofit organizations to carry out peacebuilding, humanitarian, and human rights missions and to advance national security frameworks that support rather than impede this work. Learn more on C&SN's website at www.charityandsecurity.org.

The leader in international giving, **Charities Aid Foundation America (CAF America)** has been assisting corporations, foundations, and individuals for more than 29 years advising donors on making strategic, effective, and tax-advantaged grants internationally and domestically. Whether supporting organizations working in developing countries, providing swift responses to major disasters, or helping build connections between global communities, CAF America turns donors' visions into impact. In the last five years alone, CAF America has granted more than $2 billion in donor funds to foreign charitable organizations in 120 countries.