

Counter-Terrorism Financing (CTF) Policy

1. Introduction

Action on Poverty (AOP) is an independent, secular, not for profit, non-governmental organisation (NGO). Founded in Australia in 1968, AOP was incorporated in the state of New South Wales in 1983. AOP works with partners and communities in Africa, Asia and the Pacific.

AOP is committed to development sector good practice, and holds full accreditation with the Australian Government through the Department of Foreign Affairs and Trade (DFAT). AOP is a signatory to the Australian Council for International Development (ACFID) Code of Conduct, which requires high standards of corporate governance, public accountability and financial management to be in place.

AOP Vision: For all people to transcend the injustice, indignity, and inequality of entrenched poverty.

AOP Mission: To empower local changemakers to break the cycle of poverty in their communities.

2. Purpose

This policy provides a framework to ensure that the Action on Poverty (AOP) is compliant with its Counter-Terrorism Financing obligations under Australian and international law, and that AOP is taking all reasonable efforts to ensure that aid funds are not used to support terrorism activities or organizations, either directly or indirectly.

The Australian Government has enacted legislation with a number of international counter-terrorism treaties designed to combat terrorism, including by starving individuals and organisations associated with terrorism of funds and resources. There are two separate legislative mechanisms directly prohibiting activities in relation to individuals and organisations associated with terrorism. They are:

- Part 5.3 of the Criminal Code Act 1995 ('the Criminal Code'; and
- Part 4 of the Charter of the United Nations Act 1945 ('the UN Charter Act').

Under the Criminal Code there are stringent penalties for, amongst other things, intentionally or recklessly 'getting funds to or from a terrorist organisation' (Code s102.6), 'providing support to a terrorist organisation' (Code s102.7) and 'financing terrorism' (Code s103.1).

Under the **UN Charter Act**, it is an offence to "directly or indirectly make any asset available to a proscribed person or entity". An asset is very broadly defined as "asset of any kind, or property of any kind, whether tangible or intangible, movable or immovable". While the UN Charter Act applies less stringent penalties, it has a much broader application capability in the aid context due to its very wide definition of asset.

The United Nations and Australian Government circulate updated lists of proscribed terrorist groups and individuals to which the Charter of the *United Nations Act 1945* and *Autonomous Sanctions Act 2011* applies, known as the DFAT Consolidated List, on regular basis. The AOP CEO circulates these updates to relevant staff. The most updated version of this list can be found at: <http://dfat.gov.au/international-relations/security/sanctions/pages/consolidated-list.aspx#list>

3. Scope

3.1 This policy applies to all AOP activities.

3.2 This policy applies to all board members, employees, and volunteers.

3.3 This policy must cascade and apply to AOP partners and be built into AOP agreements with partners and contractors.

3.4 This policy should be read in conjunction with AOP's Fraud policy, as well as AOP's CTF Risk Assessment Guideline.

4. Policy

4.1 AOP acknowledges its Australian and international legal obligations concerning Counter-Terrorism Financing, and will use its best endeavours to ensure that aid funds are not used to support terrorism activities or organizations, either directly or indirectly.

4.2 Explicit references to the law will be included in all AOP contracts and agreements by Annexing this Policy.

4.3 The legal obligation to comply with the law exists independently of the clause in the contract/agreement. The existence of this Policy does not release individuals or organisations from their legal obligations under Australian laws.

4.4 This Policy and the following clauses are applicable to agreements and contracts with AOP and require compliance by all AOP's partner organisations:

4.4.1 Commercial Contracts for implementation activities:

The Contractor must when providing any Services and procuring the Supplies have regard to and comply with, and use their best endeavours to ensure that all sub-contractors comply with, relevant and applicable laws, regulations and policies, both in Australia and in the Partner Country, including:

- a. Those in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the Commonwealth Criminal Code Act 1995 and listed in regulations made under that Act and regulations made under the *Chapter of the UN Act (Cth) 1945*.

The contractor must use their best endeavours to ensure that funds provided under this Contract, including sub-contracts, do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism, it must inform AOP immediately.

4.4.2 DFAT funded activities:

The Organisation must use its best endeavours to ensure that all Activities (including those carried out by a Delivery organisation) comply with relevant Australian and Partner Government laws and regulations as well as AOP Policies, including but not limited to:

- Those in relation to the proscription against providing direct or indirect support or resources to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the *Commonwealth Criminal Code Act 1995* and listed in regulations under the Act and regulations made under the *Charter of the United Nations Act 1945 (Cth)*; and

- Those in relation to corrupt practices, in particular the bribery of public and foreign officials; and

If, during the course of the agreement and/or contract, the Organisation discovers any link whatsoever with any organisation or individual listed by the Australian Government as associated with terrorism, it must inform AOP immediately.

Organisations must use their best endeavours to ensure that the Delivery Organisations for the approved Activity have the appropriate capacity to undertake the task and are in no way linked, directly or indirectly, to organisations and individuals associated with terrorism.

4.4.3 AOP funded activities:

The Organisation must use its best endeavours to ensure that all Activities (including those carried out by an in-country implementing partners) comply with relevant Australian and Partner Government laws and regulations as well as AOP Policies, including but not limited to:

- Those in relation to the proscription against providing direct or indirect support or resources to organisations and individuals associated with terrorism; and
- Those in relation to corrupt practices, in particular the bribery of public and foreign officials; and

Organisations must use their best endeavours to ensure that the Delivery Organisations for the approved Activity have the appropriate capacity to undertake the task and are in no way linked, directly or indirectly, to organisations and individuals associated with terrorism.

4.5 The Counter-Terrorism contract/agreement clauses have two key components. Firstly, they require the other party (be they contractor, partner NGO, or multilateral organisation) to use their “best endeavours” to comply with the law. Secondly, they require that the other party inform DFAT immediately if, during the course of the agreement, any link whatsoever to a proscribed person or entity is discovered.

4.6 The second aspect of the clause is the requirement to notify DFAT immediately if any link whatsoever between DFAT funds or a DFAT assisted organisation and a terrorist organisation is discovered.

For the purposes of this requirement, a “link” between AOP and persons/entities associated with terrorism, is understood in its broadest terms. The obligation to notify AOP does not however confer an active intelligence-gathering responsibility. It requires that AOP be informed as soon as information is discovered. AOP will then determine, in consultation with the funded organisation what, if any, actions are necessary.

4.7 Neither law is retrospective. If a new organisation or individual is included on the list subsequent to funds being released, no breach of the laws will have been committed. However, if notified that an organisation or individual has been subsequently added to the list, all assistance to that organisation or individual must cease and AOP must be advised immediately.

5. Policy Application

5.1 Reference to the CTF Risk Assessment must be given to ensure that best endeavours have been made to comply with this policy.

5.2 Direct funding is easily understood. Appropriate checking of the lists by AOP and our partners at appraisal and during implementation stages is a simple way to avoid providing direct funding, support or resources.

5.3 Guarding against indirect support is more difficult, but the risk of indirectly providing support or resources must be adequately assessed and managed in ways that are appropriate to the operating environment in all cases.

The actions required to satisfy the legal and contractual obligations may differ in each case depending on the particular circumstances.

Suggested strategies for managing risk could include, but may not be limited to:

- (a) Checking the DFAT Consolidated List, and ensuring updates are taken into account;
- (b) Before providing direct funding, support or resources, ensuring that the beneficiary is not included on the list;
- (c) Ensuring that organisations to whom funding, support **OR** resources are provided and who are themselves further distributing assets, know of, understand and comply with the legal and contractual requirements;
 - (i) AOP will provide them with the list and updates as required;
 - (ii) AOP will ensure systems are in place to ensure compliance and immediate notification if necessary.
- (d) Conducting spot checks or regular monitoring visits to ensure organisations to whom funding, support or resources are being provided downstream are not on the list; and that best endeavours are being made;
- (e) Informing AOP, and where appropriate the National Security hotline and the Australian Federal Police (**AFP**) whether in Australia or through their liaison officers in-Country located in the Australian embassies immediately if any credible information becomes available suggesting any links.

5.4 AOP, AOP proposals and project appraisals, and all project and program monitoring documentation, should include an assessment of the risks and an outline of the strategies proposed to manage the risks of support for proscribed entities/persons. Risk assessment and strategies for their management must be regularly updated. (For a more detailed approach to CTF Risk Management, please refer to the AOP Risk Assessment Guideline, attached as an Annex.)

5.5 New staff, Board members, volunteers, partners, suppliers and contractors should be checked against the Consolidated List at the outset of the relationship with AOP, and periodically in line with changing Risk Assessments.

4. Definitions

4.1 The following definitions apply unless the context requires otherwise.

AOP means Action on Poverty (ACN 002 568 005).

AOP Counter Terrorism Financing Policy means this policy, active from the Board approval date displayed in the footer and at the end of this policy.

Best endeavours is used in recognition of the difficulties that may be encountered in ensuring that indirect support is not provided, particularly when there are multiple layers of decision-making between AOP and the ultimate beneficiaries. The phrase denotes a positive obligation to act. The test of whether or not best endeavours have been used will be specific to the circumstances including the degree of risk in the particular operating environment. By way of a general guide AOP would expect all development partners at a minimum:

- To know the persons/organisations that are being directly assisted
- To make sure that people/organisations being directly assisted are not on the Consolidated List before assistance is provided

- To make sure that directly funded persons/organisations are aware of and obliged to comply with these laws, and that they in turn are obliged to make sure that their distribution of the funds or support is made on the same basis.

DFAT means the Department of Foreign Affairs and Trade, Australia.

Government means Australian Government

Government List means the Australian Government list of terrorist organisations.

Laws means any relevant Australian laws, foreign laws, regulations and conventions designed and targeting terrorist cells and terrorism. [In Australia those Laws include but are not limited to, *Commonwealth Criminal Code Act 1995*, the *Anti Money Laundering and Counter Terrorism Financing Act 2006 (Cth)*].

List means the Australian Government's "Consolidated List" which includes all persons and entities to which the *Charter of the United Nations Act 1945* and the *Autonomous Sanctions Act 2011* currently applies. This follows the transition of Australia's targeted financial sanctions from the *Banking (Foreign Exchange) Regulations 1959* to the *Autonomous Sanctions Regulations 2011*.

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