Review of the legal framework for autonomous sanctions

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

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ACKNOWLEDGEMENTS

Save the Children is a global child rights organisation, with over 25,000 staff across 118 countries. We respond to major emergencies, deliver innovative development programmes, and ensure children's voices are heard. Save the Children's humanitarian response policy and advocacy efforts aim to influence governmental, the United Nations (UN) and other relevant actors to deliver policies and practices that protect children in emergencies and crisis-affected countries, helping them to survive, learn and be protected. Save the Children is operating in countries where Australia imposes sanctions and played an important role in advocating to United Nations Security Council members to pass Resolution 2664 that provides a humanitarian exemption to all United Nations Security Council (UNSC) sanctions regimes.

Save the Children Australia acknowledges Aboriginal and Torres Strait Islander peoples as the traditional owners and custodians of the land on which we work. We pay our respect to their Elders past and present.

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Executive Summary

The Review of Australia's Autonomous Sanctions Framework (the Review) provides a welcome opportunity for the Australian Government to put in place measures to enhance sanctions as a tool to protect and promote the rights of children, and to ensure that Australia has a global best practice autonomous sanctions model. This is ever more important as a rise in the number and intensity of conflicts has led to record high numbers of children being killed, injured, displaced, and without their basic needs. At the same time, constraints around humanitarian actors' ability to provide assistance, in some cases due to sanctions, makes it increasingly difficult for children in these areas to the receive the life-saving assistance they need. To best support children living through crisis and conflict, changes to Australia's autonomous sanctions framework should be grounded in the principles of international humanitarian law, as they relate to accountability and humanitarian access.

Sanctions play an important role in holding perpetrators of crimes, including violations of international laws, to account. Historically, sanctions have been used as a tool by states to influence and enforce international norms and laws, and to maintain or restore international peace and security. Today the most commonly identified rationale for imposing sanctions is broadly seeking improvements in human rights and the restoration of democracy.[1] The threat of sanctions measures, including restrictions on travel, trade or the seizure or freezing of property of individuals and entities, can help deter violations of rights, laws, and international norms. Sanctions are often also used in response to violations, to hold perpetrators to account and to ensure impunity does not prevail.

While sanctions are an important accountability tool, if used without the right safeguards in place they can cause significant harm to children. Without a standing humanitarian exemption in place across all current and future autonomous sanctions, critical services that can be a lifeline for children in times of crisis may be unavailable or delayed. Just as sanctions are an important tool, so is the process to applying them. As it stands, there is very little transparency in the decision-making process, and very few opportunities to engage with civil society. Civil society organisations and diaspora groups often have access to valuable information that could support the Government in their decision to impose sanctions and monitor ongoing human rights abuses. This is particularly important to support the Government's capacity in considering marginalised groups, including children.

As Australia moves to reform the Autonomous Sanctions Framework and join like-minded countries in developing a more sophisticated tool to better hold human rights violators to account, it must ensure that all changes consider the protection and promotion of child rights, including the rights of those that live in conflict zones. Australia has an opportunity to develop a global best practice Autonomous Sanctions Framework through this Review.

[1] UNICEF, *Global Insights: Sanctions and Children 2022.* Available at: https://www.unicef.org/globalinsight/media/2531/file/%20UNICEF-Global-Insight-Sanctions-and-Children-2022.pdf

Summary of recommendations

As outlined in the following proposal, Save the Children recommends the Australian Government take the following actions to reform and improve the Autonomous Sanctions Framework.

1. To better protect and promote child rights, changes to the Autonomous Sanctions Framework should be grounded in the principles of international humanitarian law, as they relate to accountability and humanitarian access.
2. Greater clarity on the reason and justification for the use of sanctions should be provided, including the international laws that have been violated, as well as information about which stakeholders were engaged in the decision-making process, and what criteria was used.
3. When targeting entities, the Australian Government should ensure that fulsome research is undertaken to ensure the relevant subsidiary holdings are covered. Additionally, when looking at armed groups and militaries, the Australian Government should ensure that divisions and other relevant groups involved in serious violations of human rights law and international humanitarian law are targeted.
4. There should be more transparency in granting permits on the grounds of national interest, which should be further strengthened by a statement from the Minister outlining the strategic objectives, policy goals and relevant human rights frameworks to contextualise the imposition of sanctions on individuals and entities. The Australian Government must not rely on permits for humanitarian activities, these should be enabled through a standing humanitarian exemption.
5. A standing humanitarian exemption should be applied to all current and future autonomous sanctions to ensure that whenever sanctions are applied there are sufficient humanitarian safeguards built into their operations, opposed to relying on a permit from the Foreign Minister.
6. A review mechanism for designations and declarations could be strengthened through ensuring listings are not automatically renewed and an independent advisory body is established to advise the Foreign Minister as the decision maker on nominations for targets, consider them, and review relistings.The Australian Government should provide financial support for the development of a stand-alone civil society contact point.
7. To support more constructive engagement with civil society, an independent advisory panel should be established, a consultation mechanism should be incorporated into legislation, quarterly meetings with civil society should be established, as well as responsive consultative meetings, secure communication mechanisms should be used and a strategy and guidelines for civil society engagement should be developed. In addition.

Sanctions and child rights

Children are disproportionately affected by conflict and violence, and are among the principal victims of violations of international human rights law and international humanitarian law.[2] This is particularly true in conflict environments - research from Save the Children shows that children in conflicts are more at risk of harm now than any other time in recorded history. Every day, around 22 children are killed or injured in conflict.[3] The most recent Children and Armed Conflict Report of the Special Representative of the Secretary-General for Children and Armed Conflict shows that there were 23,982 grave violations against children committed in 2021.[4] Each violation represents a child killed, maimed, recruited or used by an armed group, abducted or sexually abused, or large groups of children denied aid or whose schools and hospitals have come under attack. Last year, 8,070 children were killed or maimed, 6,310 children were recruited and used by armed groups and there were 3,945 incidents of denial of humanitarian access. In some conflicts, children intentionally targeted, or harmed in indiscriminate attacks.

Sanctions, accountability, and child rights

A critical part of supporting child rights in conflict affected areas is to ensure those committing, overseeing and ordering violations against children are held accountable for their actions. However, currently many perpetrators of violations of child rights have little reason to fear being held accountable for their actions. Even when crimes are publicly condemned and receive international media attention, many do not face any real political, economic or legal consequences for their actions. While international legal measures may be taken by the International Criminal Court, the International Court of Justice or the UNSC, such mechanisms may not have the expertise, scope or capacity to investigate and prosecute crimes specifically relating to children. Further, they involve lengthy processes that can take years to deliver outcomes, or in some cases, are undermined through a state's failure to ratify a treaty. The use of targeted sanctions is therefore an important tool to hold human rights abusers accountable, with the ultimate goal of deterring violations.

Trends in the use of sanctions over time show there has been an incremental rise in the number of sanctions since 1950, that the use of sanctions shifted over the same time period, and that there has been a shift in the scope of measures applied to sanctioned territories, individuals and entities – with the introduction of targeted sanctions in recent years.[5] This new approach has gained momentum over the last decade, with sanctions targeted at the abusers of rights themselves, rather than the state. This has also been reflected in the development of Australia's sanctions regime, with the recent introduction of the *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021* (the Act) *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Regulations 2021* (the Regulations) in December 2021.

No jurisdiction, including Australia, has used sanctions to respond to abuses that target children exclusively. While sanctions laws are drafted in a way that can capture abuses against children,

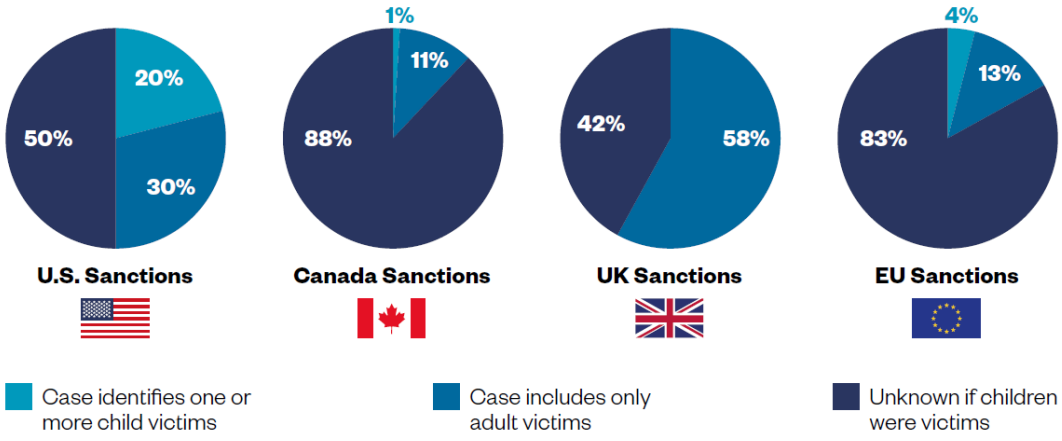
[2] Save the Children, University of Oxford, Advancing Justice for Children: Innovations to strengthen accountability for violations and crimes affecting children. Available at: https://resourcecentre.savethechildren.net/pdf/advancing_justice_for_children_0.pdf/

[3] Save the Children, Stop the War on Children: The forgotten ones. Available at: https://resourcecentre.savethechildren.net/document/stop-the-war-on-children-the-forgotten-ones/

[4] Children and armed conflict Report of the Special Representative of the Secretary-General for Children and Armed Conflict, Human Rights Council Fifty-second session 27 February–31 March 2023. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/619/10/PDF/N2261910.pdf?OpenElement

[5] UNICEF, *Global Insights: Sanctions and Children 2022.* Available at: https://www.unicef.org/globalinsight/media/2531/file/%20UNICEF-Global-Insight-Sanctions-and-Children-2022.pdf

there are no specific words or phrases in any targeted sanctions laws that specifically refers to children. In Australia, a media release that accompanied the Foreign Minister's announcement of sanctions in Myanmar cited "evidence of thousands of civilians, including children, have been tortured or killed," however did not make any reference to children, or grave violations committed against them, in the official information available on DFAT's website, including the *Myanmar Sanctions Snapshot* brief.[6] Furthermore, research from Human Rights First, Open Society Foundation (OSF), Raoul Wallenberg Centre and Redress, has found that sanctioning countries rarely mention children as a marginalised group.[7] The US is a positive example, in its attention on child victims as noted in the chart below.[8]



Sanctions, humanitarian, access, and child rights

While sanctions are an important accountability tool, if used without the right safeguards in place they can cause significant harm to children. In recent years, there have been numerous incidents of humanitarian actors being constrained or unable to respond due to sanctions. Without a standing humanitarian exemption in place, critical services that can be a lifeline for children in times of crisis may be unavailable or delayed. This was the case in Afghanistan when delays on the UNSC Taliban Sanctions regime exemption left donor governments and humanitarian responders hamstrung, while a hunger, health and economic crisis unfolded. Even with an exemption, sanctions can impact the price of food and basic goods, impact labour markets and household income, as well as disrupt the provision of government services – all of which have a profound impact on children.[9]

These challenges were recently recognised in a UNSC Resolution 2664 that provides a humanitarian exemption to all UNSC sanctions regimes. As Australia considers a humanitarian exemption for autonomous sanctions, it must consider the changing nature of crises, as well as the activities and actors that should be considered exempt. Critically, this should ensure that local organisations are among the actors able to respond, and that activities go beyond immediate humanitarian response and consider longer term development actions to support needs in a protracted crisis.

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[6] Foreign Minister, Media Release, Targeted sanctions in response to human rights violations in Myanmar and Iran. Available at: https://www.foreignminister.gov.au/minister/penny-wong/media-release/targeted-sanctions-response-human-rights-violations-myanmar-and-iran

[7] Human Rights First, Open Society Foundations, Raoul Wallenberg Centre for Human Rights, and REDRESS, Multilateral Magnitsky Sanctions at Five Years. Available at: https://www.raoulwallenbergcentre.org/en/press-releases/2022-11-15

[8] Ibid, p44.

[9] UNICEF, *Global Insights: Sanctions and Children 2022.* Available at: https://www.unicef.org/globalinsight/media/2531/file/%20UNICEF-Global-Insight-Sanctions-and-Children-2022.pdf

Recommendation: To better protect and promote child rights, changes to the Autonomous Sanctions Framework should be grounded in the principles of international humanitarian law, as they relate to accountability and humanitarian access.

Key Recommendations

1. Streamlining the legal framework for sanctions (ToR 1,3,9)

As acknowledged by Department of Foreign Affairs and Trade (DFAT) in the Issues Paper[10], the Autonomous Sanctions Framework should be clearer and more accessible for members of the public, including diaspora groups, to optimise their engagement. Save the Children has worked with members from several diaspora communities who have found significant challenges in accessing or understanding information about sanctions related to their home country. This includes measures outlined on DFAT's website, such as the types of sanctions measures, or specific terminology, as well as measures that fall outside the scope of Australia's sanctions regime but directly impact the community, for example, de-risking measures taken by banks that prevent the transfer of funds even though it does not break sanctions laws.

The lack of transparency around how sanctions decisions are made, and which stakeholders are engaged, contributes to confusion and misunderstanding. DFAT should take measures to ensure there is greater clarity on the reasons and justification for autonomous sanctions being imposed. To date, information provided on autonomous sanctions measures lacks important detail, for example, the two-page "snapshot" briefs follow a similar format, but they lack detail on the criteria and evidence used. Explanations as to why sanctions have been imposed are generally no more than two sentences, and there is no consideration of violation of certain international laws.

An example of this is the *Snapshot Zimbabwe Sanctions Regime* brief, which indicates that Australia imposed autonomous sanctions in Zimbabwe in 2002, and adjusted in 2012 and 2013, which reflect "concerns about political violence and human rights violations".[11] More recently, under the "why sanctions were imposed" heading on the *Snapshot Iran Sanctions Regime* brief, autonomous sanctions were described as complimenting UNSC sanctions, with no further rationale or explanation.[12] More detail should be given about the types of violations, the criteria, and evidence used in deciding to impose sanctions, through both the material available on DFAT's website (including the Snapshot briefs) as well as the explanatory statement issued by the Foreign Minister. Press releases issued when sanctions are imposed often contain a brief explanation and rationale, which is helpful but should not be the only place where this information can be found.

Recommendation: Greater clarity on the reasons and justification for sanctions being imposed should be provided, including the international laws that have been violated, as well as information about which stakeholders were engaged in the decision-making process and what criteria was used.

[10] DFAT, Issues Paper Review of Australia's Autonomous Sanctions Framework. Available at: https://www.dfat.gov.au/sites/default/files/issues-paper-review-of-australias-autonomous-sanctions-framework.pdf
[11] DFAT, Snapshot Zimbabwe Sanctions Regime, Available at: https://www.dfat.gov.au/sites/default/files/sanctions-snapshot-zimbabwe.pdf
[12] DFAT, Snapshot Iran Sanctions Regime, Available at: https://www.dfat.gov.au/sites/default/files/sanctions-snapshot-iran-unsc-and-autonomous.pdf

2. Scope of sanctions measures (ToR 2,3,9)

A powerful component of autonomous sanctions is the ability to target individuals, as well as entities. Often the focus is given to high profile individuals, including those that might be responsible for orchestrating or overseeing widespread abuse and atrocities. The ability to sanction entities provides a powerful tool to the government to target the revenue streams of human rights abusers, including those in authoritarian regimes that might have command over business empires and entire sectors. In some cases, particularly where authoritarian regimes or similar governing structures have control over the business sector, an intentional lack of transparency that can allow assets to be hidden, through subsidiaries.

Subsidiaries are not automatically sanctioned when the parent company is sanctioned, and would not appear on the lists so require a separate designation. However, if the parent company owns 50 per cent or more of the subsidiary, and has control over operations, then it would be a "frozen asset". The same applies to directors and managers – who are not automatically sanctioned if a company is sanctioned, unless there is enough information to indicate that people occupy the position (such as a job title, control and influence of the entity).

Entities are not just limited to businesses, but also encompass armed groups, military divisions, governance bodies, departments within governance structures and more. This can be a powerful tool for targeting human rights abusers for atrocities committed, not just those higher up the chain of command. The US has, for example, sanctioned divisions, units and regiments of militaries that have violated international laws, including the excessive use of force against civilians. For example, in June 2022, the US imposed sanctions against the three Russian Federation military units, the 76th Guards Air Assault Division and its subordinate 234th Guards Airborne Assault Regiment, as well as the 64th Separate Motorized Rifle Brigade, for various human rights violations in Bucha, Ukraine, including the torture and execution of civilians.[13]

The targeting of a military division as an entity, opposed to the individuals who controlled it (or comprise it), can send a powerful message about accountability, and helps to cause disunion amongst its ranks. While Save the Children is not using this submission to identify or make arguments about specific listings, consistent with the terms of reference, such issues should be considered as part of the scope of sanctions measures.

Recommendation: When targeting entities, the Australian Government should ensure that fulsome research is undertaken to ensure the relevant subsidiary holdings are covered. Additionally, when looking at armed groups and militaries, the Australian Government should ensure that where relevant, divisions and other relevant groups involved in serious violations of human rights law and international humanitarian law are targeted.

3. Permit powers (ToR 4,9)

As it stands, if the Minister deems it is in Australia's national interest, they may grant a permit to authorise otherwise sanctioned activities. Specifically, regulation 19 of the Regulations states that the Minister may waive the operation of a declaration: (a) on the grounds that it would be in the

[13] U.S. Department of State, Targeting Russia's War Machine, Sanctions Evaders, Military Units Credibly Implicated in Human Rights Abuses, and Russian Federation Officials Involved in Suppression of Dissent, 28 June 2022, available at: https://www.state.gov/targeting-russias-war-machine-sanctions-evaders-military-units-credibly-implicated-in-human-rights-abuses-and-russian-federation-officials-involved-in-suppression-of-dissent/.

national interest; or (b) on humanitarian grounds. This can either be in response to an application, or the Minister's own decision.

When on humanitarian grounds, as outlined in the Humanitarian Exemption section of this submission (below), granting "permits" (or waivers) on a case-by-case basis can be time consuming and inefficient for humanitarian action.[14] Applying for a permit is a lengthy process, and not an efficient use of time for a humanitarian organisation that is responding to a crisis and delivering aid, where response times are measured in hours and days. The chilling effect of sanctions can often take place before permits have been issued, and can cause length delays on the provision of assistance. As per the following section, Save the Children recommends that the Australian Government apply a standing humanitarian exemption across all current and future autonomous sanctions, so that humanitarian assistance is not hindered or delayed.

While Save the Children acknowledges the provision of waivers on national interest grounds that are available to the Minister, it is essential that there is more transparency in the process, and better avenues for engagement with the Australian Sanctions Office (ASO) on permit issues. In line with more transparency, the Minister should share a clear strategy to accompany sanctions. This shouldn't name particular targets, whether individuals or entities, but it should outline policy goals, relevant legal frameworks, principles for their use, objectives and priorities. This can operate in a similar way to the development of strategies on other related human rights issues, whether that is human trafficking or on the death penalty. Development of such a strategy would also help respond and counter risks of them being used as an "economic weapon" as Nicholas Mulder referred to in his recent book "The Rise of Sanctions as a Tool of Modern War", minimising the potential for political and economic disintegration.

Recommendation: There should be more transparency in granting permits on the grounds of national interest, which should be further strengthened by a statement from the Minister outlining the strategic objectives, policy goals and relevant human rights frameworks to contextualise the imposition of sanctions on individuals and entities. The Australian Government must not rely on permits for humanitarian activities, these should be enabled through a humanitarian exemption.

4. Humanitarian exemption (ToR 2,4,5,9,10)

In times of crisis, it is critical that humanitarian operations can start or be continued without delay or disruption caused by sanctions. This is particularly important for children who are more vulnerable to health and protection risks. In a rapid onset crisis, like the recent earthquake in Türkiye and Syria, the speed of response is essential to save lives in the immediate aftermath. Hours matter, and delays that last days or even weeks can cause widespread harm. As stated in the previous section on permit powers, permits (or waivers) for certain activities or actors severely impact humanitarian organisations ability to respond in crises. The lengthy process of applying for a permit causes significant delays to the delivery of humanitarian aid, is a resource drain on responding organisations, and can have a "chilling effect" of de-risking measures.

A standing humanitarian exemption across all current and future autonomous sanctions would provide administrative, legal, and procedural clarity, and predictability that enables effective humanitarian operations. Such an exemption would reduce the likelihood of humanitarian

[14] In the US context in particular, see Centre for Humanitarian Leadership, Dr Nazanin Zadeh-Cummings and Lauren Harris, 'Humanitarian Aid in North Korea: Needs, Sanctions and Future Challenges', April 2020, available at: https://centreforhumanitarianleadership.org/wp-content/uploads/2020/04/CHL_North-Korea-Report_Final.pdf.

operations being paused, delayed or suspended, which is essential to maximising the response to a rapid on-set emergency. In some cases, a lack of clarity leads to private financial institutions halting or engaging in prohibitively lengthy reviews of fund transfers for payment humanitarian activities, including staff salaries.

A standing humanitarian exemption would further address financial de-risking practices, as banks and other private sector actors restrict services to humanitarian organisations because of mis-guided concerns they will breach sanctions, or because determining whether or not they breach sanctions is too timely. This results in humanitarian organisations being unable to transfer funds to "high risk environment" or to be able to access liquidity in-country. This forces organisations to rely on informal systems, such as hawalas or physically carrying cash – methods that carry inherent risk and safety concerns. De-risking also disproportionately impacts local and national NGOs, as they generally only have access to domestic bank accounts in their home country. Members of the Syrian diaspora community have raised concerns with Save the Children and other NGOs about the inability to transfer funds to family members and local charities, as banks are unable or unwilling to host transfers to Syria.

Ultimately, ensuring a standing humanitarian exemption is applied across all autonomous sanctions will protect humanitarian organisation's ability to respond to need in line with humanitarian principles, and will establish an important standard for the use of sanctions in Australia's foreign policy. As the government looks to streamline the autonomous sanctions framework, it should ensure that a humanitarian exemption is placed in the Act, rather than subordinate regulations.

What should a humanitarian exemption cover?

- A standing humanitarian exemption should cover all humanitarian activities ordinarily carried out under humanitarian response plans (HRPs) and other UN coordinated appeals such as flash appeals or specific refugee response plans, as well as other activities that support basic human needs, such as support to the delivery of basic services normally carried out by host State, local authorities, or communities.
- The inclusion of 'humanitarian assistance and other activities that support basic human needs' sometimes referred to as "humanitarian plus", provides a good basis for a transverse humanitarian exemption because: (a) these activities are critical to meeting the strategic objectives of humanitarian response plans and similar appeals (e.g. supporting primary and tertiary health care, as well as education, protection-related services, etc.); (b) these activities promote early recovery and can mitigate the emergence of new or additional humanitarian needs; (c) these activities are essential to operationalise interventions that bring together humanitarian, development and peacebuilding approaches in order to more effectively address the root causes of humanitarian needs and reduce humanitarian caseloads.
- The European Union applied this approach in Afghanistan, with the allocation of 250 million Euros to "humanitarian plus" work which includes maintain education, sustaining livelihoods and protecting public health. This is reflective of a shift in donor approaches that go beyond conventional humanitarian aid, and support activities that protect livelihoods and support activities that contribute to stability and well-being.
- In developing a standing humanitarian exemption, Australia should consider exemptions applied by other jurisdictions, and ensure coherence between the activities and actors covered. This is to better support humanitarian organisations working in areas impacted by sanctions, so they can streamline compliance and risk management measures.
- The Act and the Regulations must avoid providing a narrow, limitative list of specific types of activities to be covered, or any restrictive definition of humanitarian action. To prevent over compliance and maximise efficiency, the standing exemption should also explicitly

specify that all transfers and services that are necessary and ordinarily incident to the main covered activities, including the processing of funds, insurance and transportation services, as well as administrative and operational costs such as registration fees and taxes, also fall within the scope of the exemption.

Who should the exemption apply to?

- Under international humanitarian law, humanitarian activities can be undertaken by impartial humanitarian organisations to provide relief for victims of armed conflict. A standing exemption should clearly and unambiguously cover all impartial humanitarian organisations participating in these operations, including international, national and local implementing partners. At the same time, the scope should be defined in a way that is specific enough to avoid major divergences of interpretation among organisations and commercial providers, counter risks of abuse by organisations claiming to be humanitarian, and allow effective oversight from a risk management perspective.
- Categories of organisations to be included in a standing humanitarian exemption must go beyond those stated in paragraph 63(a) of the Issues Paper – which is incredibly limited and directly contradicts Australia's commitment to support locally-led humanitarian responses. Further, paragraph 63(b) refers to a "sanctioned country" which fails to account for all sanctionable circumstances, it should instead refer to "countries or areas impacted by sanctions". Furthermore, there should be flexibility to ensure that persons or entities can be added to a standing exemption, as the nature and response of crises change and evolve over time.
- While Save the Children recommends the Government is not limited by fixed categories, it encourages consideration of organisations that fall into the following broad groups:
    - All impartial humanitarian and/or development organisations – including international, national and local partners. This includes organisations that have been accredited by DFAT, (which include those who are part of the Australian Humanitarian Partnership, and Australian NGO Cooperation Program), as well as their local partners, and humanitarian organisations that have observer status with the United Nations General Assembly.
    - All UN entities (including UN programs, funds and other entities and bodies, as well as specialised agencies and related organisations)
    - All staff, volunteers, grantees, members, contractors, subsidiaries, and national and local and implementing partners, of organisations listed above (all of whom are subject to stringent selection, reporting, monitoring, and other risk management obligations/ codes of conduct as explained in the section above on vetting mechanisms).
- Special provisions should be made so that a standing humanitarian exemption appropriately accommodates requirements to support local actors. As Australia is a signatory to the Grand Bargain, and an advocate for localisation, the exemption should ensure that local organisations can easily access information and participate in relevant coordination mechanisms.

Recommendation: A standing humanitarian exemption should be applied to all current and future autonomous sanctions to ensure that whenever sanctions are applied that humanitarian safeguards are built into their operations, opposed to relying on a permit from the Foreign Minister.

5. Review mechanism for designations and declarations (ToR 4,8)

The nature of sanctions is temporary, and considerations for when listings expire, or are renewed, must take into account due process rights. For sanctions to achieve their objective, while upholding human rights and the rule of law, then they must include greater safeguards otherwise their purpose will be undermined. Given the rapidly evolving nature of conflicts, it is important that resources are made available for DFAT to review and consider renewing designations. In line with other recommendations in this submission, it is critical that the process associated with designating, delisting or relisting is transparent, and that information is readily accessible for civil society.

To be acceptable under international human rights law, sanctions must seek to achieve a legitimate objective, as well as being reasonable, necessary and proportionate in achieving their objective. There is no requirement that in making a designation to consider whether it is proportionate to the anticipated effect on an individual's private and family life. There is also no process for merits review of the Minister's decision and limited procedural safeguards.

Save the Children notes the listing mechanism for terrorist organisations under the *Criminal Code Act 1995* gives the ability to list an organisation for three years. After that time, the terrorist organisation can be relisted.[15] The relisting process is helpful to re-evaluate the listing, including whether new information has come to light that would warrant either relisting or delisting. Save the Children acknowledges that the volume of terrorism relistings is of a much lower number than under the Autonomous Sanctions Framework, and that gap is likely to grow. Notably though, and relevant for the ASO's consideration, there is a mechanism in Section 102.1A of the *Criminal Code Act 1995*, which enables a review function to be undertaken by the Parliamentary Joint Committee on Intelligence and Security. For example, over November 2022 to February 2023, a review of the relisting of four terrorist organisations took place, providing the opportunity for submissions to be made by CSOs and other interested parties.

Save the Children considers that an advisory body, independently of the ASO, should be established. It should have the capability to consider potential listings as well as the relisting of persons or entities. It would not be compulsory for the independent review panel or committee to consider all relistings, but it could consider those which are more complex and contentious. This builds upon, and is consistent with, recommendation 12 from the Joint Standing Committee on Foreign Affairs, Defence and Trade - Human Rights Sub-committee Inquiry into whether Australia should examine the use of targeted sanctions to address human rights abuses (the Targeted Sanctions Parliamentary Inquiry).[16]The advisory body would then report their recommendations to the Foreign Minister as the decision maker. This would be part of a broader reforms to the review of sanctions process, including strengthening parliamentary oversight, as outlined in the next section of this submission.

While Save the Children acknowledges the concerns expressed in paragraph 69 of the Issues Paper regarding resource burdens, it is not of the view that replacing the relisting mechanism with a requirement that every five years there is a public notification process is sufficient. Save the

[15] For further information, see: https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations.
[16] Joint Standing Committee on Foreign Affairs, Defence and Trade - Human Rights Sub-committee, Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?, December 2020, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/MagnitskyAct/Report.

Children is of the view that further measures should first be put in place to ensure greater transparency and consultation through the nominations, decision making and relisting process.

Recommendation: A review mechanism for designations and declarations could be strengthened through ensuring listings are not automatically renewed and an independent advisory body is established to advise the Foreign Minister as the decision maker on nominations for targets, consider them, and review relistings.

6. Regulatory functions of the Australian Sanctions Office (ToR 7):

Under the Act and the Regulations, there is a lack of provision for civil society engagement in the application of sanctions. There has long been challenges with how DFAT has worked with civil society on sanctions developments. In many cases, CSOs have access to valuable information and possess on-ground capacity in documenting human rights violations and corrupt practices. This can fill the gaps where there are insufficient intelligence capabilities or a lack of open-source material. Further, CSOs may have greater capacity to assess and monitor violations against certain groups, for instance children or minority groups. However, this information is often underutilised by DFAT.

Australia should ensure consultation with CSOs is incorporated into legalisation and regulations as a requirement for the Minister to consider. Australia contrasts in other jurisdictions, for example, in the US, there have been regular meetings between the US State Department and the US Treasury Department, including annual forums, which are well attended and provide a forum to build up trust and share information. The US recognises the need for input from civil society in targeting rights-based sanctions and gathering information "from the ground". Section 1263 (c) of the Global Magnitsky Act 2016 (United States) provides that: "[i]n determining whether to impose sanctions…the President shall consider…credible information obtained by other countries and nongovernmental organizations that monitor violations of human rights." In addition, the US State Department, joined by other relevant departments, organises annual meetings with civil society organisations to discuss application of *the Global Magnitsky Act 2016* (United States), share information and identify possible sanctions targets. These meetings provide a valuable forum to have candid and confidential discussions, complementing information that the US State Department receives through other mechanisms.

To better support DFAT in this area, the Australian Government should provide financial support for the development of a stand-alone civil society contact point. In the US and UK, Human Rights First and Redress, as well as Open Society European Policy Institute in the EU, have operated as a clearing house and contact point, supporting with skills development. It does not mean that all sanctions proposals need to go through such a body, but it does provide a means where experts can provide support through templates for submitting evidence, preparing fact sheets and other material. In the case of Human Rights First in the US, by their count, approximately one third of designations under the U.S. Global Magnitsky program have a basis in its coalition focused activity. They have also helped minimise the resource implications on governments.

DFAT should establish quarterly consultation meetings with CSOs to allow them to share information, identify possible targets and hold confidential discussions. There are many formats for holding consultations, drawing on best practices from other CSO forms of engagement, meetings are most fruitful when held regularly, in confidence, and provide an open space for discussion. Meetings should have a standing agenda, noting that "responsive consultations" may be called as situations arise. In recognition of the real risks for CSOs, whether operating within Australia or in

other countries, in advocating for sanctions, DFAT should establish secure communication mechanism including encrypted email to protect CSO representatives. National security legislation in some jurisdictions, such as The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (2020), can lead to significant jail time and may have extraterritorial application. Secure mechanisms, including encrypted email, for communication between DFAT and CSOs should be established to increase safety.

There should also be greater parliamentary oversight in decisions around designations. There is significant danger that targeted sanctions can be used as a tool not for upholding and promoting human rights, but of propagandist support for a government's foreign policy. One of the mechanisms to minimise that from happening is ensuring that there is sufficient parliamentary oversight for decision making processes. Unlike the US, there is no annual reporting requirement, nor unlike Canada, is there a referral mechanism towards committees in the parliament. There should be an annual report which is prepared by DFAT on the use of targeted sanctions, which is tabled in parliament. Further, a three-year implementation review conducted by a parliamentary committee, as well as a mechanism enabling a parliamentary committee to provide a sanctions proposal, as well as recommend that individuals or entities should no longer be listed, with a requirement that the Minister and/or their delegate to respond within 30 days. Finally, this should include a means by which civil society organisations can also make a proposal to a parliamentary committee.

Several of these measures remain outstanding arising from the Targeted Sanctions Parliamentary Inquiry,[17] and the passage of the *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021* and Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Regulations 2021.[18]

Recommendation: The Australian Government should provide financial support for the development of a stand-alone civil society contact point.

Recommendation: To support more constructive engagement with civil society, an independent advisory panel should be established, a consultation mechanism should be incorporated into legislation, quarterly meetings with civil society should be established, as well as responsive consultative meetings, secure communication mechanisms should be used and a strategy and guidelines for civil society engagement should be developed.

[17] Joint Standing Committee on Foreign Affairs, *Defence and Trade - Human Rights Sub-committee, Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?*, December 2020, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/MagnitskyAct/Report.

[18] Ibid. See also, Save the Children, Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into whether Australia should enact legislation comparable to the United States Magnitsky Act 2012, 21 February 2020, available at: https://www.savethechildren.org.au/getmedia/ed6c9486-1242-4061-937b-604b2f99ff54/save-the-children-magnitsky-act-submission-(february-2020).pdf.aspx, and Save the Children, Supplementary Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into whether Australia should enact legislation comparable to the United States Magnitsky Act 2012, 8 May 2020, available at: https://www.savethechildren.org.au/getmedia/68eb904a-99c0-4cda-a7f2-96137deeb216/47-1-sub-not-pub-supplementary-save-the-children.pdf.aspx.