

POLICY G012: COUNTER TERRORISM POLICY

Responsible person:	CEO	Version:	1.1
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PREAMBLE

This policy was written by So They Can (International) in Australia for use across all So They Can entities. So They Can operates five entities registered in each of Australia, Kenya, Tanzania, New Zealand and USA, which are part of the So They Can Global Alliance.

In this policy, 'CEO' means CEO of So They Can (International), So They Can Kenya and So They Can Tanzania. Unless specified otherwise the 'Board' refers to the relevant So They Can board of the entity in which you are employed or located.

INTRODUCTION

So They Can renounces all forms of terrorism and will never knowingly support, tolerate or encourage terrorism or the activities of those who embrace terrorism and will make every effort to ensure that its resources are not used to facilitate terrorist activity.

This policy sets out So They Can's response to the risk of dealing with individuals and organisations associated with terrorism and Australia Government legislation associated with this.

The Australian government has enacted legislation consistent with a number of international counter-terrorism treaties designed to combat terrorism. There are two separate legislative mechanisms directly prohibiting activities in relation to individuals and organisations associated with terrorism.

Relevant legislation can be found in:

- Part 5.3 of the Criminal Code Act 1995 ('the Criminal Code'); and
- Part 4 of the Charter of 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 (section 102.6), 'providing support to a terrorist organisation' (section 102.7) and 'financing terrorism' (section 103.1). A list of 'terrorist organisations' for the purposes of the Criminal Code is available on the National Security Australia website <http://www.nationalsecurity.gov.au/Listedterroristorganisations>.

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 in the aid context due to its very wide definition of asset. A list of proscribed persons and entities is available from DFAT at:

<http://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx>

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In addition So They Can will check the following two lists to ensure it doesn't deal with any listed terrorist organisations and/or proscribed persons or entities.

- [World Bank Listing of ineligible firms and individuals;](#)
- [Asian Development Bank Sanctions List;](#)

DEFINITIONS

So They Can Representatives – are all individuals and institutions who act on behalf of So They Can regardless of whether or not there is a formal legal agreement between them and So They Can. This includes, but is not limited to, all trustees, members, directors, employees, contractors, consultants, advisors, volunteers, and implementing partners irrespective of which country their role is situated. In this document So They Can refers any or all of the international So They Can entities registered in Australia, New Zealand, Kenya, Tanzania and USA.

Using its “**best endeavours**” means that So They Can has a positive obligation to act. In particular it will ensure that it:

- a) knows the persons/organisations that it is directly assisting;
- b) makes sure the people/organisations that it is directly assisting are not on either of the lists before assistance is provided; and
- c) makes 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

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1. So They Can acknowledges that Australian Government legislation prohibits dealing with listed terrorist organisations and/or proscribed persons or entities. So They Can will at all times adopt measures intended to facilitate compliance with this legislation.
2. So They Can will confirm the identity, credentials and good standing of the people or organisations it supports and will check that these people or organisations are not on the lists maintained by the Australian Government.
3. So They Can will use its best endeavours to ensure that all activities (including those carried out by a partner or affiliate organisation delivering aid) comply with relevant Australian laws and regulations (and those of the country in which the aid is being delivered), including but not limited to:
 - a) 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 Criminal Code and listed in regulations under the Criminal Code and regulations made under the UN Chart Act; and
 - b) Those in relation to corrupt practices, in particular the bribery of public and foreign officials.
4. So They Can will not knowingly remit any funds to known or suspected terrorist organisations or individuals.
5. So They Can will report any known or suspected terrorist links to the relevant national authority.
6. So They Can will use its best endeavors to ensure that overseas recipients of So They Can's funds will adopt policies and procedures that enable them to comply with relevant Australian anti-terrorist legislation.

PROCEDURES

1. So They Can representatives must know the identity, credentials and good standing of their partners and recipient organisations (i.e. what they do, where they operate, who are their key decision makers and staff).

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2. Prior to signing any partnership agreement, MOU or funding So They Can representatives will check that these people or organisations and their office bearers are not on the Australian Government lists of terrorists and proscribed organisations.
3. So They Can will only transmit funds using reputable banks and other financial institutions for this purpose and observing procedures defined in So They Can Financial Manual and So They Can Inter Entity Transaction Policy.
4. A section on counter terrorism will be included within So They Can Risk Management section of every Project Plan document.
5. To the extent possible, all So They Can's project partners will be made aware of So They Can's obligations under Australian law and undertake to adopt similar measures in respect of funds from Australian sources. So They Can will immediately withdraw all support, including provision of resources, if it has reason to believe that a ministry or project partner has breached the requirements of this policy.
6. As far as practicable, any MOU, partnership or funding agreement will include wording that requires the recipient organisation to adopt policies and procedures consistent with Australian Government requirements. DFAT suggested wording is:

“The Organisation acknowledges that the Australian Government has adopted a policy and laws consistent with relevant international counter-terrorism Treaties and UN Security Council Resolution 1373 (2001) of not providing direct or indirect support or resources to organisations and individuals associated with terrorism.

The Organisation must use its best endeavours to ensure that funding provided under this Agreement is expended in a manner consistent with the UN Security Council Resolution and related Australian laws. If, during the course of this Agreement, the Organisation discovers any link whatsoever with any organisation or individual associated with terrorism it must inform the Australian Federal Police and/or AusAID immediately.”
7. Funding recipients will be required to provide detailed accounting report showing how funds have been spent, at least annually.
8. Where recipient organisations or individuals are found to be on either list, forwarding funds will cease and the national security hotline on 1800 123 400 will be informed immediately.

RELATED DOCUMENTS

- Guidelines for Strengthening Counter-Terrorism Measures in the Australian Aid Program (AusAID 2004), found at: http://aid.dfat.gov.au/Publications/Pages/3068_5667_7689_8674_4936.aspx
- So They Can Policy and Manual Register
- So They Can Financial Manual
- So They Can Inter Entity Transaction Policy
- So They Can Project Plans