

Policy Statement

PEAS is determined that all its funds and resources should only be used to further its mission and shall not be subject to diversion by any third party nor used or abused for any illegal purpose, in particular terrorist activity. In order to prevent diversion and abuse and in response to specific regulatory challenges posed by national and international regulations on terrorism and sanctions, staff, supporters and all members of PEAS will:

- Implement the minimum corporate standards set out in this policy in all countries of Operation;
- Implement the enhanced due diligence standards and management controls set out in this policy in all operational countries categorized as “high risk” (see section B.1)
- Report to the Chief Operating Officer any breaches of the policy;
- Where appropriate, link counter terrorism awareness raising, training and reporting with other policies and training taken to prevent other forms of financial abuse such as fraud, theft and loss and cross reference procedures in this policy to school operational policies
- Take any other appropriate measures to ensure that the affiliate is compliant with the laws of its country of origin and the host country within which it operates

Associated Policies, Procedures and Precedence

- PEAS Anti-Corruption Policy
- PEAS Risk Management Policy
- PEAS Internal Audit Charter
- PEAS Financial Management Procedures
- PEAS Procurement and Logistics Policy
- PEAS Human Resource Manuals / Handbooks

Where there is a conflict between this policy and any other policy, this policy takes

precedence. **Definitions**

- “Designated” terrorist group – means any individual, group or entity listed on the UK Proscribed Terrorist Groups of Organisations list.
- “Relevant global terrorist list” – means any relevant list recommended by the PEAS Board of Directors or lists relevant to each Country of operation arising from their contractual or legal obligations.

See Appendix 1 for a definition of “terrorism” and “terrorist act”

NB for application of this definition see procedures for due diligence on individuals in aid programmes.

Application

This policy establishes PEAS wide minimum standard operating practices to ensure consistent practice with regard to due diligence of partners and suppliers and risk management in the normal course of work in all programmes.

Each Country Programme will be subject to the regulation in their country of registration and regulations in host countries will vary. Institutional donors may impose standards of due diligence or reporting which lie outside the scope of this policy.

Since no single policy can document or anticipate the full range of regulations, due diligence, monitoring or reporting requirements that individual governments or donors may seek to impose on their citizens or in

their funding contracts, PEAS may impose standard operating procedures which exceed the standards set out in this policy where these are necessary to meet a regulatory or contractual obligation.

Section 1: Roles and Responsibilities

1.1 PEAS Board of Directors

This policy has been approved by the Board of PEAS. It is the responsibility of the Board of Directors to ensure that the policy is kept under review, and implementation is periodically reviewed across PEAS.

1.2 Country Directors

It is the Country Director's responsibility to:

- Ensure the minimum standards in this policy are implemented
- Ensure any training required by staff is provided
- Ensure that where the country is identified under this policy as "high risk" that the enhanced due diligence procedures are implemented and risk is kept under continuous review
- Ensure that, where any requests are made by "designated" terrorist groups for payments related to programme delivery, the procedures laid out in this policy are followed
- Ensure that, where their country is subject to international sanctions, these sanctions are observed and no breaches of sanctions incurred
- Report any breaches and suspected breaches of this policy the COO, whose responsibility is to:
 - Be the point of contact to whom any breaches of policy can be communicated from within the country programme and
 - Ensure that the policy is disseminated to all country offices
 - Ensure that any training required within provided
 - Ensure that, in coordination with the relevant Heads of Partnerships, breaches of contractual obligations to donors are reported to the relevant institutional donor

NB, resources and support will be made available to support the Country Director in this role

1.3 Managers - Generic

In departments / teams under their responsibility, line managers are responsible for:

- Ensuring that "terrorist" threats in countries/regions where their departments / teams operate are kept under continuous review
- Providing support to a Country Director whose country is subject to an international sanctions regime or which is designated as "high risk".
- Ensuring their staff and associated personnel have access to the policy, plans and procedures. Identifying staff security training, learning and development needs and ensure access to the training (including appropriate planning and resourcing)
- Ensuring the minimum standards (and enhanced due diligence for "high risk" geographies) in this policy are implemented, and compliance is monitored
- Reporting breaches up and down their management line

1.4 Institutional Fundraisers and Grant Managers

It is the responsibility of Fundraising and Grant Management Departments to:

- Ensure that clauses in donor contracts relating to compliance with counter terrorism regulations are communicated to relevant line management
- Ensure that where breaches of donor contracts occur relating to counter terrorism or sanctions clauses they coordinate with the relevant Country Director and ensure the breach is reported to the relevant donor.

Section 2: Procedures to Implement the Policy

A. Minimum Due Diligence for all countries

A.1 Issues addressed by procedures

The approach taken by the policy is risk based and proportionate. The threat of aid diversion by designated “terrorist” groups is largely geographic. There are both corporate risks (PEAS moves staff and cash around the world) and contractual obligations (some donors insist on corporate-wide compliance standards over and above conditions associated with their funding). This then requires a corporate wide approach to meet corporate risk, and donor requirements, while minimising the operational and financial costs associated with due diligence procedures.

Minimum Due Diligence standards

A.2 Governance: checking affiliate governance bodies and senior staff

Country Programs should ensure that the following individuals are checked against relevant global terrorist lists prior to appointment and at a minimum annually thereafter:

- All members of their Boards
- All members of their Senior Leadership Teams
- All Country Directors

A.3 Checking Partners

A.3.1 Checking partner staff and management committee members and the collection of Enhanced Personal Data

PEAS will generally not collect enhanced personal data (that is personal data specified by, and gathered at the request of, a government or governmental institution) or accept funding that requires partner submission of such data to donors for the explicit purpose of that government checking the data against lists of “designated” terrorist’s groups.

Exceptions to the above are:

- Where there is a legal obligation to do so, or
- Where the exception is approved by the Directors in the parent country (PEAS UK) or the Global Board of Trustees

A.4 Checking beneficiaries

PEAS will generally not check the names of beneficiaries against any list of “designated” terrorists except under the following circumstances:

- It is an explicit term in a donor or supplier contract and there are no alternative donors or suppliers who do not stipulate such terms and,
- The beneficiaries are informed as to the use made of their personal data prior to that information being collected
- Where substantial grants or training are to be provided to individuals (e.g. this applies where the individual is not an incidental beneficiary to a wider programme but has been selected to receive a cash grant, scholarship by way of bursary or specialist training)

A.5 Checking Suppliers

PEAS Country Offices will include in all supplier contracts a clause which explicitly states that contracts with suppliers will be invalidated if suppliers are found to be on the UK Proscribed Terrorist Groups of Organisations list. If at any point a country has any suspicion that a supplier may have involvement with a member of the list, a check will be made and appropriate action taken.

A.6 Clauses in Contracts of goods and service

PEAS Country Offices will ensure that they include in contracts, letters of agreement or partner

MoUs, induction process, staff offers letters, clauses that pertain to implementation of this policy and its practice.

A.7 Risk Assessments

Where PEAS Country Offices undertake risk assessments at country or global level, threats relating to terrorism should be included for consideration. Results of these risk assessments can then be used for assessing level of risk and the response plan.

B. Enhanced Due Diligence for High Risk Countries

This section applies to those countries designated under this policy as “high risk”.

B.1 Designating High Risk Countries

There are a number of potential definitions of a “high risk” country: (i) a country or sub-region of a country where access to beneficiaries is controlled by a “designated” organisation, (ii) a country where there is a significant, clear, and present threat to programmes or beneficiaries from “designated” organisations, (iii) a country in which a significant number of “designated” persons or entities are located, (iv) a country subject to national or international sanctions regimes.

B.2 Enhanced due diligence for partners in “high risk” countries – count terrorism standards PEAS

Country Offices are responsible for ensuring that, in “high risk” countries where they manage or fund programmes, that the Country Director implements enhanced due diligence standards. These may vary dependent on donor requirements or the regulatory obligations or the requirements of the host country. However, the minimum additional due diligence standards for schools/partners are:

- Obtaining and checking the names of the Management Committees/Boards of Schools/partners
- Identifying if partners/schools are controlled or subject to direction by a third party, if so check the status of the third party
- Checking suppliers used by schools/partners for major purchases
- Check how funds are transferred to schools/partners and to sub-grantees especially if not via a bank

Enhanced due diligence for programmes in sanctioned countries is dependent on the nature of the sanctions regime and may also be influenced by demands from affiliate banks who may require assurances as to end use and partners prior to agreeing to transfer funds.

C. Process for checking and matches

C.1 Systems for Checking entities

PEAS will use the UK Proscribed Terrorist Groups of Organisations list, and any relevant list from the host country, to check partner entities.

The Country Director will review how checks are undertaken and where records of checks will be held and make recommendations as to how to ensure there is consistency of approach and checks are undertaken in a cost-effective manner.

C.2 Procedures for reporting matches

Where a match regarding a partner or individual is made with an entity or individual on a relevant country’s “terrorism” list, and the Country is confident that the match is not a “false positive” this should be reported to the Country Director and the COO who will report to the Board of Trustees and the statutory authorities.

In the event of a match being confirmed then any payments or funding due to the entity or individual will

immediately cease and the match reported to the appropriate national authorities. No information regarding the match will be released to the entity or individual subject to positive match unless with the consent of the appropriate authorities.

D. Monitoring implementation of “enhanced due diligence”

It is recommended that Country programmes in “high risk” countries appear on PEAS corporate risk register and that:

- The engagement strategy should be communicated through line management by report on compliance with enhanced due diligence in “high risk” countries, plus a risk assessment of “terrorism” risks in their region and these reports should be submitted to the COO
- These reports should be based on periodic audit spot checks of record keeping of enhanced due diligence
- That where internal audit teams exist that they give consideration to providing independent audit checks on compliance of enhanced due diligence in “high risk” countries

E. Applying for licences

E.1

Many countries with counter-terrorism and sanctions regimes authorise the issue of licences to individuals or organisations to make funds, economic resources or the provision of training and expertise or other goods and services available to sanctioned countries or designated persons and entities. These can be general licences which apply to anyone providing particular types of goods and services, such as food or medical supplies. Such licences are common in US sanctions regimes. Specific licences can be issued to named organisations or individuals and typically relate to the provision of limited goods or services. The only known instance of a specific licence authorising transactions with a “designated” terrorist group was issued in 2011 by the US Government to allow USAID and the State Department and its implementing partners to engage in transactions with Al Shabaab that were necessary and incidental to life-saving operations. Applying for such a licence is therefore an option open to PEAS to carry out its work. This section proposes a procedure regarding licences.

E.2

Where the contact strategy in F.3 identifies that essential services are required and/or donors wish services to be delivered in areas subject to the control of a “designated” group then the CEO will agree whether the terms of any such licence are within policy. Grounds for considering a licence could be

- PEAS’s presence in a country/region is threatened if payment to a “prohibited” group is not made

F. Procedures for Engagement with Prohibited Groups

F.1 Issues addressed by procedures

Where a “designated” terrorist group controls access to populations and is either the de facto government, military power or administration in the area or the group forms part of a government or has a “social wing”, then it is very unlikely that any access by either PEAS or its partners can be achieved without some form of contact with the “designated” terrorist group. These procedures set out the parameters of such contact.

F.2 Legal position

At the date of this policy, while there may be certain prohibitions on dealing with sanctioned governments or designated individuals or entities, it may be possible and appropriate to meet with or talk to representatives of designated individuals or entities. Advice should be obtained from the affiliate’s legal advisors or through the shared legal service. NB Host country laws may differ and must be checked by

Country Directors prior to recommending any engagement between PEAS or an agent or intermediary acting on behalf of PEAS

F.3 Rationale and authorisation for talking to representatives of prohibited groups

Where PEAS (or an PEAS partner or representative) wishes to talk to a representative of a “designated” terrorist group then the following guidelines should be followed:

- An engagement strategy should be produced by the Project Manager (Director of Programmes or Director of Operations) which should include beneficiary needs, programme requirements, level of contact requested, types of requests anticipated and transactions that may be necessary to achieve programme goals, who should be authorised to attend the meeting, contact strategies of other agencies (including security and access issues) whether specific categories of staff should be excluded from contact, e.g. staff whose governments prohibit any support or transactions, contact, back donor policies and any relevant host government policies or regulations
- The engagement strategy should be approved by the Country Director;
- Meetings should be attended by more than one person and preferably representatives from other agencies
- Notes of meetings should be made and placed on file as soon as possible following any such meeting
- PEAS staff (including the officers, directors and employees of the PEAS affiliate) whose governments operate “no contact policies” should not be involved in meetings with “designated” groups or individuals without prior approval by their affiliate’s legal counsel
- Where access to beneficiaries can be negotiated without compromising programme objectives or the payment of fees or taxes then negotiations can be concluded
- Where the “designated” group seeks to direct the programme, select beneficiaries or request payments then further advice should be sought and care taken that no assets are transferred to the “designated” group in breach of regulations. Any attempt to influence the selection of beneficiaries is unacceptable to PEAS.

NB., such contact strategies or initial meetings can be used to assess whether an application for a licence for a humanitarian exemption is required.

G. Investigation of alleged breaches of policy or regulations

G.1

PEAS will investigate all allegations of breaches of counter terrorism regulations or the abuse of PEAS’ assets and funds by “designated” terrorist groups or by any individual or entity for terrorist or other criminal activities. Partners will report such allegations to their appropriate regulatory bodies in coordination with the Chief of Operations in the UK.

NB., Country Directors should take legal advice as to reporting obligations which apply in their respective countries. In some jurisdictions it is a criminal offence for an individual or corporate body (or both) not to report a suspicious transaction which involves either “designated” terrorist group or where there is a cause to suspect that a transaction may be for a terrorist purpose to the appropriate authorities.

G.2

Where credible evidence is provided or identified that funds have been diverted to a designated entity and all funding to the individuals or entities involved will immediately cease until such time as PEAS is confident that no further diversion of funds will take place.

G.3

Where allegations are found to be baseless then a record of PEAS’s review of the information and its decision not to suspend funding will be kept on file and where necessary reports filed with the relevant

affiliates regulatory body

H. Training, awareness raising and support

H.1 It is the responsibility of the Country Director working with a designated person in whose role this sits to ensure that:

- Basic information on counter terrorism and sanctions issues is made available to all staff, especially those in programme delivery roles
- Key staff in countries are provided with training and support materials and a central source of information on counter terrorism and sanctions issues

Appendix One: Definitions of Terrorism*

There is no internationally-agreed definition of terrorism. Some of the more significant definitions are listed here, including references to the prohibition of acts of terrorism under International Humanitarian Law. Central to most definitions is the concept of an act of terrorism being an act of violence aimed at a civilian population intended to intimidate a population or compel a government to do some act, or abstain from doing an act which they would otherwise have done.

The following examples provide a range of definitions.

A) The International Convention for the Suppression of the Financing of Terrorism³⁰ (adopted by the UNGA on 9 December 1999) defines terrorism for the purposes of the convention in Article 2:

Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- I. An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
- II. Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.

B) The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has suggested the following model definition of terrorism:

Terrorism means an action or attempted action where:

1. The action:

- (a) Constituted the intentional taking of hostages; or
- (b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or
- (c) Involved lethal or serious physical violence against one or more members of the general population or segments of it; and

2. The action is done or attempted with the intention of:

- (a) Provoking a state of terror in the general public or a segment of it; or
- (b) Compelling a Government or international organization to do or abstain from doing something; and

3. The action corresponds to:

- (a) The definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or
- (b) All elements of a serious crime defined by national law.” (A/HRC/15/61 §28)

C) UNSC Resolution 1566 (2004) – has identified conduct which is to be prevented and punished as part of the fight against international terrorism

“criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, [which] are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature...” (S/RES/1566 §3)

D) International Humanitarian Law

Specifically prohibits the terrorising of civilians in armed conflict, as well as a range of other acts, such as deliberate attacks on civilians and civilian objects, that would commonly be deemed ‘terrorist’ if committed outside armed conflict. Specific references to terror relate to “acts or threats of violence the primary purpose of which is to spread terror among the civilian population” (prohibited in international armed conflict by Additional Protocol I to the Geneva Conventions, article 51(2), and in non-international conflict by Additional Protocol II to the Geneva Conventions, article 13(2)), and to “collective penalties and likewise all measures of intimidation or of terrorism” (prohibited by Article 33 of Geneva Convention IV). According to the International Committee of the Red Cross (ICRC) the first prohibition is also a rule of customary international humanitarian law applicable in both international and non-international conflicts.

E) The EU Council Framework Decision on Combatting Terrorism defines terrorism

As a range of intentional acts or threats to commit these acts, such as attacks on life, seizure of aircraft, kidnapping or hostage taking,

“which, given their nature or context, may seriously damage a country or an international

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organization where committed with the aim of seriously intimidating a population, or unduly compelling a Government or international organization to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization” (Article 1).

*This is an edited version of the definitions of terrorism which appears in Study of the Impact of Donor Counter Terrorism Measures on Principled Humanitarian Action OCHA/NRC July 2013 p 21