



UN PARTNERSHIP AGREEMENTS

NGO REVIEW

MAY 2019



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INTRODUCTION

The Grand Bargain was first proposed by the former UN Secretary General's High-Level Panel on Humanitarian Financing in its report "Too Important to Fail: addressing the humanitarian financing gap" as one of the solutions to address the humanitarian financing gap. The Grand Bargain includes a series of changes in the working practices of donors and aid organisations to get more means into the hands of people in need and to improve the effectiveness and efficiency of humanitarian action.

International NGOs and NGO networks have undertaken a review of UN contracts and partnership agreements with UNFPA, UNHCR, UNICEF, UNOCHA and WFP to identify opportunities to address Grand Bargain workstream commitment 4 to 'reduce duplication and management costs', and workstream commitment 9 to 'harmonize and simplify reporting requirements'.

As a starting point, we have identified the most challenging contract clauses and proposed a range of constructive solutions to address these issues. Our propositions here include suggested contractual amendments and requests for further policy directives from UN partners as to how these clauses should be interpreted. We also believe there are learnings and best practices found that should be shared between UN agencies through the harmonization platform.



A GLOBAL NGO NETWORK
FOR PRINCIPLED AND EFFECTIVE
HUMANITARIAN ACTION



1. DATA PRIVACY, PROTECTION AND INTELLECTUAL PROPERTY

Clause	Issue	Recommendation
<p>OCHA: Article XI.2: Audit, Monitoring and Investigation Requirements</p> <p>UNHCR: (Appendix 2 Standard General Provisions) Article 4.18 Maintenance of Records under this Agreement; Article 4.39 Inspection, Monitoring, Audit and Investigation; Article 10.1, 10.3 and 10.4 Copyright, Patents and other Proprietary Rights; Article 11.4 Confidentiality; Article 12.6, 12.7, and 12.8 Personal Data Protection</p> <p>UNICEF: Article 8 Copyright, Patents and other Proprietary Rights; Confidentiality</p> <p>UNFPA: Article 21 Copyright, Patents and other Proprietary Rights</p> <p>WFP: Article 2.1 (G) Obligations of the Cooperating Partner</p>	<p>Obligations to share personal data with UN agencies related to inspection, audit, monitoring and investigation, and services to persons of concern</p> <p>There is a lack of clarity regarding how the current information management, data protection and privacy policies of UN agencies relate to the legal obligations of partners under the EU General Data Protection Regulation (GDPR).</p> <p>There are concerns regarding the safety, privacy, control, and ownership of personal data collected and stored in UN databases such as UNHCR's ProGres and WFP's SCOPE.</p> <p>Illustrative example: In Somalia one partner has received complaints from community leaders / elders regarding the use, control and ownership of personal data collected by WFP through the SCOPE database.</p> <p>UNHCR (Article 12.6) requires that partners notify them of any "actual, suspected or threatened data breach". It is not practicable for partners to notify UNHCR of suspected data breaches.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> Recommend UN agencies amend agreement clauses relating to the collection, use and sharing of personal data to include "to the extent permitted by law". Recommend UN agencies amend agreement clauses to include principles of lawfulness, fairness and transparency; purpose limitation; data minimization; accuracy; storage limitation; integrity and confidentiality; and accountability in line with GDPR as the global leading standard in data privacy. Recommend UNHCR amend Article 12.6 to remove "suspected". <p>Policy directive</p> <ul style="list-style-type: none"> Recommend UN agencies explore opportunities to harmonize data privacy policies and practices. Recommend UN agencies collaborate with partners to publish updated and / or additional internal guidance to support the implementation and monitoring of these policies, such as UNHCR's FAQ on data protection (draft). <p>Recommend UN agencies collaborate with NGO partners to review the use of databases such as UNHCR's ProGres and WFP's SCOPE to identify data sharing processes, improvements and protocols as appropriate.</p>

		<p>UNHCR IPMS the article 12.3 is under “personal Data protection”-in consultations with Alex (DIP)</p> <p>UNHCR’s PPA already responds to / meets the first two points (address data protection in a PPA and address it with reference to GDPR principles). In fact, and as pointed out at several occasions, alignment to the GDPR was one key rationale for the 2019 revision. On the third suggestion (remove “suspected” in Article 12 (6)), We agree with this. There is no parallel to this wording in Article 33 GDPR. It now deleted.</p> <p>On the suggestions related to Annex F (page 5 and 6):</p> <p>(1) Recommend UNHCR amend PPA Annex F to include standardised clauses on data protection.</p> <p>This may be problematic. In fact, the standardized clauses on data protection are to be found in Article 12 Appendix 2. Because more precise rules require the specific context of each PPA, all what could be envisaged is model language that could only be part in additional Guidance documentation, for instance a FAQ (see the point below).</p>
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		<p>(2) On the second point (policy directive), We agree to the joint elaboration of additional Guidance (FAQ – see a reference already in the text above on page 5: “internal guidance to support the implementation and monitoring of these policies, such as UNHCR’s FAQ on data protection (draft).” Although I would omit the term ‘monitoring’. FAQs would only serve to assist the implementation. We (UNHCR DIP/LAS) would welcome a ‘data protection contact group’ from selected NGO partners to work on this.</p> <p>(3) With regard to the observation that “partners are often requested to provide UNHCR COs with details of personal and identifiable protection case management data” (second column on page 6), Reference is made to point 4 of Annex F (on UNHCR access to personal data collected by the partner), which should be jointly developed. Where such practice exists, it is not based in the PPA.</p> <p>One last point on the definition of personal data in the definitions part in Appendix 1: I would be in favor moving from the current UNHCR DPP definition (which somehow combines an earlier definition of the ICDPPC and the UK law, before the entering into force of the GDPR) to the more and more current</p>
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		<p>definition of the GDPR, also adopted by the UN HLCM principles: “personal data means any information relating to an identified or identifiable natural person (‘data subject’)”. Definition is now amended.</p>

<p>UNHCR: Annex F: Processing and Protection of Personal Data and Persons of Concern</p>	<p>Obligations regarding UNHCR's Annex F: Processing and Protection of Personal Data and Persons of Concern, and UNHCR's Guidance on the <i>Protection of Personal Data of Persons of Concern</i></p> <p>UNHCR's Annex F template includes mandatory headings, with content to be completed by UNHCR personnel specific to each grant. This results in complex and lengthy negotiations and poses an additional administrative burden on UNHCR country office (CO) and partner personnel.</p> <p>UNHCR CO and partner personnel often do not have the required technical knowledge and training needed to ensure that UNHCR's data protection policies and international best practice standards are reflected in the completion of Annex F. As such, there is inconsistent practice and implementation of these provisions as Annex F is negotiated individually for each grant. In addition, partners are often requested by UNHCR COs to sign the PPA prior to Annex F being completed, which creates uncertainty regarding the expectations and requirements of the grant.</p> <p>Despite provisions outlined in UNHCR's Guidance on the <i>Protection of Personal Data of Persons of Concern</i> to <i>UNHCR; partners are often requested to provide UNHCR COs with details of personal and identifiable protection case management data. This runs counter to survivor-led approaches promoted by the Inter-Agency Standing Committee (IASC) and UNHCR's own policies; which include provisions to ensure the sharing of data upholds principles including confidentiality, legitimacy, necessity, and proportionality.</i></p> <p>Illustrative example: <i>It has taken one partner over five months to obtain agreement from the UNHCR CO on the completion of Annex F, leading to significant delays.</i></p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> Recommend UNHCR amend PPA Annex F to include standardised clauses on data protection.
		<p>Policy directive</p> <ul style="list-style-type: none"> Recommend UNHCR work with partners to create and publish additional internal guidance, and facilitate training for UNHCR COs, to support the implementation and monitoring of UNHCR's Guidance on the <i>Protection of Personal Data of Persons of Concern</i> to UNHCR. <p>UNHCR IPMS- Any change related to article 12 (personal Data protection is to be discussed with Alex. Annex F was introduced in March 2019, impossible that any office has taken 5 months to discuss it (we are in June).</p>

<p>UNHCR: (Appendix 2 Standard General Provisions) Article 10.1 and 10.3 Copyright, Patents and other Proprietary Rights</p> <p>UNICEF: Article 8.1 Copyright, Patents and other Proprietary Rights; Confidentiality</p> <p>UNFPA: Article 21 Copyright, Patents and other Proprietary Rights</p>	<p>Requirements for UN agency to retain all intellectual property and other proprietary rights for the project</p> <p>UNHCR, UNICEF and UNFPA are entitled to all intellectual property and other proprietary rights including patents, copyrights, trademarks and databases produced during the agreement. This limits the ability of partners to share learning and best practice across programmes and donors, and provides a disincentive for partners to invest in innovation and research and development.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> Recommend UNHCR, UNICEF and UNFPA amend agreement clauses to include provisions for joint intellectual property and other proprietary rights. <p>UNHCR IPMS. The article 10.1 already provides room to share intellectual property when Partner has made meaningful contribution. Given the specific UN immunities and privileges current article should be permissible, as it allows flexibility and acknowledges partners contribution.</p>
<p>UNHCR: (Appendix 2 Standard General Provisions) Article 4.18 Maintenance of Records under this Agreement and Article 12.8 Personal Data Protection</p>	<p>Obligation to maintain a separate Agreement File for the project</p> <p>UNHCR requires that partners “maintain a separate Agreement File” however, it is unclear what structure this Agreement File should take as partners have different systems for storing narrative, financial and personnel data. It is unclear whether the Agreement File is required to be accessed by or shared with UNHCR, as this has implications for data protection and privacy, and GDPR.</p> <p>The obligation under Article 4.18 to retain the Agreement File “for at least seven years from the date of the signature of the agreement” also appears to contradict Article 12.8 which states “after termination of this Agreement, the Partner shall return all Personal Data collected for the performance of this Agreement to UNHCR and delete existing copies”.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> Recommend UNHCR amend agreement clauses to clarify the structure the Agreement File should take and specific whether this information is required to be stored together in one physical or electronic file. Recommend UNHCR amend agreement clauses to clarify the requirements for retention of data related to Article 4.18 and Article 12.8. <p>UNHCR IPMS – the definition of Agreement file is clarified as below:</p> <p>“Agreement File means a holder, be it paper-based or electronic, that partner maintains for the records of this Agreement (together with its annexes and appendices) and all other essential records and documentation related to this Agreement in an organized and accessible manner for seven years from the date of signature of the Agreement. The records on the Personal Data of Person of Concern is dealt separately under articles related to Personal Data Protection.”</p>

<p>UNHCR: (Appendix 2 Standard General Provisions) Article 12.5 Personal Data Protection</p>	<p>Obligation for partners to operate in compliance with best industry standards</p> <p>UNHCR requires partners establish and maintain appropriate technical and organizational measures “in compliance with best industry standards”. Partners may be in breach of this requirement if a new technical or organization measure is established but not implemented within the programme.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> Recommend UNHCR Article 12.5 be adjusted to read “in alignment with best industry standards”.
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2. MISCONDUCT AND PREVENTION OF SEXUAL EXPLOITATION AND ABUSE

Clause	Issue	Recommendation
<p>OCHA: Article IV.2, 4, 6 & 7 Personnel and Ethical Requirements and Article V.3 Supplies, Equipment, Materials, Procurement and Sub-Contracting</p> <p>UNHCR: (Appendix 2 Standard General Provisions) Article 4.35 and Article 4.8 Partner Personnel, and Article 5.2 and 5.13 Integrity, Ethical and Professional Conduct</p> <p>WFP: Article 9.2 Prevention of Sexual Exploitation and Abuse</p>	<p>Obligations to guarantee or ensure the conduct of personnel</p> <p>Partners are required to “ensure” or “guarantee” the conduct of personnel related to “moral and ethical standards”, “conflict of interest” or “not using resources to provide support to terrorism”. It is reasonable for partners to have written policies in place and demonstrate evidence of the implementation of these policies. However, the current language suggests a zero-tolerance approach to implementation of these policies that implementing partners will not be able to guarantee is followed by all personnel or local partners.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> Recommend OCHA, UNHCR and WFP amend agreement clauses to require that partners have written policies in place that outline expectations regarding the conduct of personnel, and demonstrate evidence of the implementation of these policies. <p>UNHCR IPMS-revised (the blue, underlined is the new reading)</p> <p>5.2 <u>The Parties shall commit to put in place policies that outline expectation regarding the conduct of personnel and demonstrate evidence of implementation of these polices, including that their personnel do not derive personal benefit as a result of their involvement in activities and work for the Partner and/or for UNHCR.</u></p>

		<ul style="list-style-type: none"> • Recommend UNHCR amend Article 4.35 to include “as far as possible”. - UNHCR IPMS-This is a key PPA article, requiring IPs to ensure compliance with all elements of the PPA. The NGO review asks UNHCR to add the disclaimer, “as far as possible”. As this may interpreted to mean that that Partners would not have to meet minimum standards on PSEA and this may risk diluting the obligation to fully comply with all provisions of the PPA, we would kindly recommend preserving simpler language, as follows: “The Partner shall be fully responsible for all services performed by Partner Personnel and ensures that each member of Partner Personnel complies with this Agreement.” • Recommend UNHCR amend Article 5.13 to refer to “reasonable” measures taken by partner. <p>UNHCR IPMS</p> <ul style="list-style-type: none"> - We also had some concerns with the explanatory notes on page 8 of the NGO review, which appears to disagree with a zero-tolerance policy to breaches of “moral and ethical standards”, by stating: “[T]he current language [of the UNHCR PPA] suggests a zero-tolerance approach to implementation of these policies that implementing partners will not be able to guarantee is followed by all personnel or local partners”. This statement from the NGO review would seem inconsistent with
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		<p>UNHCR's clear position of zero tolerance for SEA.</p> <p>Adding the word "reasonable" here could make this provision more open to varied interpretation, and thereby be interpreted as diluting the obligation to take measures to prevent related violations. Hence the original reading of article is maintained.</p> <p>5.13 The Partner's failure to take effective measures to prevent SEA, fraudulent acts, corruption, or any other form of misconduct, or failure to investigate allegations or to request UNHCR investigative support in this regard, and to take disciplinary and corrective actions when misconduct is found to have occurred, shall constitute grounds for termination of this Agreement under Art.18 below.</p> <p>Policy directive</p> <ul style="list-style-type: none"> • Recommend UN agencies provide a harmonized definition for the term 'misconduct' to assist the implementation of these policies. • Recommend UN agencies provide a harmonized definition for 'support to terrorism', and clarify this includes any individual that appears on a list maintained by the Security Council Sanctions Committee, to assist the implementation of these policies. • Recommend UN agencies explore opportunities to harmonize policies and practices on misconduct
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		and the prevention of sexual harassment, exploitation and abuse.
<p>UNHCR: (Appendix 2 Standard General Provisions) Article 4.29 Partner Personnel, Article 5.12 Integrity, Ethical and Professional Conduct</p> <p>UNICEF: Article 14.5 Sexual Exploitation and Abuse; Child Safeguarding Violations and Article 15.4 Audit</p> <p>UNFPA: Article 28.5 Protection from Sexual Exploitation and Abuse</p>	<p>Obligations regarding internal recruitment procedures and screening of employees for involvement or alleged involvement in misconduct; and obligations to share data and information with UN agencies</p> <p>Partners are required to disclose any past allegations of sexual exploitation and abuse related to personnel and the outcomes thereof. However, in line with the <u>Inter-Agency Misconduct Disclosure Scheme</u>, partners are only required to disclose substantiated cases of sexual misconduct, not allegations of sexual misconduct.</p> <p>It is also unclear which specific documentation must be retained pertaining to Partner Personnel “evidence of screening and other processes relating to recruitment”.</p> <p>In addition, there is a lack of clarity regarding how the current information management, data protection and privacy policies of UN agencies relate to legal obligations under GDPR.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> Recommend UNHCR, UNICEF and UNFPA amend agreement clauses to limit reporting to substantiated cases of sexual misconduct. <p>- UNHCR IPMS- We felt this recommended change is not advisable. The investigative capacity of our IPs varies significantly, and some IPs may struggle considerably with carrying out prompt and effective investigations. Hence, limiting reporting to substantiated cases risks masking the problem, which carries reputational risk as well as risks for persons of concern. Secondly, having information on allegations is important in assessing access the extent to which safe and appropriate reporting channels are in place, irrespective of whether the allegations are ultimately substantiated. Third we are required to report to the SG on allegations of ourselves and our partners. In addition, under new donor agreements donors</p>

		<p>are requiring us to report on all allegations, including partners.</p> <ul style="list-style-type: none"> • Recommend UNHCR, UNICEF and UNFPA amend agreement clauses relating to the collection, use and sharing of personal data to include “to the extent permitted by law”. • Recommend UN agencies reflect a survivor-led and do no harm approach in agreement clauses related to the reporting and investigation of allegations of misconduct and sexual harassment, exploitation and abuse. <p>UNHCR IPMS-Check with Inter-agency (UNICEF and UNFPA)</p> <p>Policy directive</p> <ul style="list-style-type: none"> • Recommend UNHCR, UNICEF and UNFPA publish additional internal guidance to support the implementation and monitoring of this policy. • Recommend UNHCR facilitate joint training sessions for UNHCR and partners on the implementation of Appendix 3: Standards for Managing Misconduct. <p>IPMS-Check with Inter-agency (UNICEF and UNFPA)</p>
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<p>UNHCR: Article 5.8 Integrity, Ethical and Professional Conduct</p> <p>UNICEF: Article 28.3 and 28.4 Protection from Sexual Exploitation and Abuse</p>	<p>Obligation to ensure personnel have undertaken and successfully completed training on the prevention of sexual harassment, exploitation and abuse</p> <p>The timeframe for completion of this training, as well as its content, is unclear vis-à-vis signing the agreement.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> Recommend UNHCR and UNICEF amend agreement clause to include an expected timeframe (i.e. 90 days) for the completion of this training vis-à-vis signing the agreement. UNHCR IPMS: change introduced: The Partner shall provide to UNHCR supporting documentation in relation to regular training offered to its Partner Personnel on prevention and response to SEA within the expected timeframe of 90 days of signing the agreement. <p>Policy directive</p> <ul style="list-style-type: none"> Recommend UN agencies explore opportunities to harmonize expectations regarding personnel training on the prevention of sexual harassment, exploitation and abuse, and the development of common training materials and resources. UNICEF's focal points discussion on preventing sexual exploitation and abuse may be a useful starting point.
<p>UNFPA: Article 24.2.5 Termination</p>	<p>Right to suspend or terminate agreement if partner personnel have engaged in sexual exploitation and abuse</p> <p>Partners are strongly committed to preventing and responding to issues of sexual exploitation and abuse in our organizations and programmes, and have clear structures and procedures for ensuring a zero-tolerance approach. However, partners are concerned that this clause could</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> Recommend UNFPA amend Agreement Article 24.2.5 to include right to suspend or terminate if the partner fails to take effective measures to prevent misconduct or abuse, fails to investigate allegations, or fails to take disciplinary and corrective actions when misconduct is found to have occurred.

	prevent partners from reporting instances of sexual exploitation and abuse to UNFPA.	
<p>OCHA: Article XI Audit, Monitoring and Investigation Requirements</p> <p>UNHCR: (Appendix 2 Standard General Provisions) Article 4.38 Partner Personnel and Article 5.10 Integrity, Ethical and Professional Conduct</p>	<p>Obligations regarding the planning and conduct of investigations or administrative action in response to misconduct or sexual harassment, exploitation and abuse</p> <p>OCHA and UNHCR require partners to provide full transparency and close coordination regarding the reporting, investigation and outcome of allegations of misconduct and sexual harassment, exploitation and abuse. Partners are also required to share the full reports of investigations conducted, unless in the case of UNHCR “or a redacted summary...if advised by legal counsel that sharing the full report could jeopardize the partner’s attorney-partner privilege”.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> Recommend OCHA and UNHCR amend agreements to limit the sharing of information relating to allegations of misconduct or sexual harassment, exploitation and abuse to those allegations “arising under the agreement”. <p>UNHCR IPMS: We found this suggestion problematic, reflecting on some key field realities. In the Syria 3RP, for instance, most IPs are funded by a broad range of UN agencies to provide a complementary array of services (PSS, CP, WASH, etc.) to the same population of concern, and indeed to the same individuals. It would be unworkable if a UNHCR IP does not report SEA allegations/investigations to us simply because the misconduct against a refugee technically “arose under a different agreement” because the particular staff member or project involved was funded by a different UN agency. The comments in the previous para also relate vis a vis reporting to the SG and to donors.</p> <p>Recommend OCHA and UNHCR amend agreement to include “to the extent permitted by law”.</p>

		<ul style="list-style-type: none"> • Recommend OCHA and UNHCR reflects a survivor-led and do no harm approach in agreement clauses related to the reporting and investigation of allegations of misconduct and sexual harassment, exploitation and abuse.
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3. REPORTING: NARRATIVE AND FINANCIAL

Clause	Issue	Recommendation
<p>OCHA: Article IX.1, 2, & 3 Interim and Final Substantive Reports</p> <p>UNHCR: Article 5 Project Reporting</p> <p>UNICEF: Article X Reporting Requirements</p> <p>UNFPA: Implementing Partner Agreement General Terms and Conditions Article 12 Progress Reporting</p> <p>WFP: Annex 2.7 Reporting</p>	<p>Quantity and frequency of interim and final narrative reports required</p> <p>A lack of, or inconsistent application and interpretation of, contract clauses regarding interim and final narrative reports. UNICEF and UNFPA require partners to submit quarterly narrative progress reports; and UNICEF also reserves the right to request ad hoc reporting. OCHA, UNHCR and WFP include provisions for discretionary narrative reporting.</p> <p>Requirements for narrative reporting can be disproportionate to the nature or value of the programme, and can be administratively burdensome, time consuming and expensive. There are often delays in receiving feedback on reports which means there are limited opportunities for partners to address any feedback or concerns prior to the next report, limiting any value of requests for additional reports.</p> <p>Illustrative example: In 2018 one partner was required to provide UNHCR with monthly narrative reports for over 50 per cent of their programmes, and quarterly reports for over 80 per cent of their programmes.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> • Recommend UN agencies amend agreements to standardize the format and frequency of narrative reporting to support commitments to harmonization of donor reporting under the Grand Bargain. • Recommend UN agencies amend agreements to limit narrative reporting to interim and final narrative reports. • Partners welcome OCHA and UNHCR's confirmation that the 8+3 standard narrative reporting template is now mandatory for all partners. Recommend UNICEF, UNFPA and WFP also adopt the use of the 8+3 standard narrative reporting template to support commitments to harmonization of donor reporting under the Grand Bargain.

<p>OCHA: Article X, 1, 2 & 3 Interim and Final Substantive Reports</p> <p>UNHCR: Article 5 Project Reporting</p> <p>UNICEF: Article X Reporting Requirements</p> <p>UNFPA: Implementing Partner Agreement General Terms and Conditions Article 12 Progress Reporting</p> <p>WFP: Annex 2.7 Reporting and Annex 4: Budget</p>	<p>Quantity and frequency of interim and final financial reports required</p> <p>A lack of, or inconsistent application and interpretation of, contract clauses regarding interim and final financial reports. UNICEF and UNFPA require partners to submit quarterly financial reports. OCHA requires financial reports to accompany each request for a subsequent instalment; at the end of the calendar year; and within two months of the completion of the project. UNHCR and WFP include provisions for discretionary financial reporting.</p> <p>Experiences from partners demonstrate that requirements for financial reporting can be disproportionate to the nature or value of the programme, and can be administratively burdensome, time consuming and expensive.</p> <p>In addition, there is often inconsistent application and use of budget templates by WFP COs and the templates do not include a section to evidence partner contributions. Inconsistent application and use of budget templates can also be burdensome to navigate and often requires additional time to communicate with WFP CO personnel and partners.</p> <p>Illustrative example: In Malawi and Mozambique one partner was requested to use different budget templates by WFP. The same partner has also experienced challenges with WFP's budget template in Rwanda and Uganda where WFP COs have</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> Recommend UN agencies amend agreements to standardize the format and frequency of financial reporting to support commitments to harmonization of donor reporting under the Grand Bargain. Partners welcome OCHA and UNHCR's confirmation that the 8+3 standard narrative reporting template is now mandatory for all partners. Partners are also supportive of the development of a standardised financial template across UN agencies, similar to the 8+3 harmonized narrative reporting template. <p>UNHCR IPMS: the reporting requirement if further clarified in the agreement. UNHCR has simplified the periodic reporting, and its frequency limited to midyear, and the final using 8+3 templates. We further clarified in the agreement. However, since not all our donors have signed to 8+3 and there are increasing donors that require specific reports, there are situations whereby UNHCR is obliged to report more frequently than the standard. The room for such situations has to be made. Hence, it stipulated that partner and UNHCR in the field to agree and include in the partnership agreement.</p>
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	<p>'locked' the budget template so partners are unable to cross-reference their calculations. As such, in the event of an error in the template, the WFP CO and partner are often required to engage in protracted negotiations to resolve.</p>	<p>Policy directive</p> <ul style="list-style-type: none"> • Recommend WFP amend Budget template to include a section on CP match contributions. • Recommend WFP provide additional internal guidance to all COs on the standard usage of the budget template and monitor adherence to this guidance.
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4. FINANCIAL MANAGEMENT

Clause	Issue	Recommendation
<p>OCHA: Article VII.2: Financial and Operational Arrangements</p> <p>UNHCR: (PPA) Article 4.6 Use of Resources</p> <p>UNICEF: Programme Cooperation Agreement template</p> <p>UNFPA: Implementing Partner Agreement template</p>	<p>Inflexibility and inconsistency of budget lines for programming, including staff and personnel costs</p> <p>There is a lack of, or inconsistent application and interpretation of, contract clauses regarding flexibility of budget lines. OCHA allows for budget variations of up to 15 per cent on any budget category in the approved budget, excluding staff and personnel costs. UNHCR allows for budget variations of up to 20 per cent, including staff and personnel costs; however, UNHCR's PPA Annex E Partner Personnel Lists limits budget flexibility for partner personnel to additional positions / months, it does not allow for increases to the agreed UNHCR contributions per position / month.</p> <p>UNICEF does not include reference to budget flexibility or staff and personnel costs. UNFPA does not include reference to budget</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> • Recommend UN agencies amend or add agreement clauses to provide partners with 20 per cent flexibility of budget lines, including staff and personnel costs, to allow for the objectives of the programme to be achieved. <p>UNHCR IPMS- Additional positions and months –yes, already permissible and there is flexibility. We cannot agree on increases to agreed UNHCR contribution levels per position/month-Annex E has further details. Annex E has been further clarified for better understanding</p>

<p>WFP: Article 2.1 (B) Obligations of the Cooperating Partner</p>	<p>flexibility, however in practice UNFPA country offices appear to refer to an internal guidance document titled Policy and Procedures for Preparation and Management of Workplans (December 2014) which specifies that revisions may be agreed to in writing.</p> <p>WFP does not include reference to budget flexibility or staff and personnel costs. WFP's requirement for partners to submit gender-disaggregated personnel lists for the programme prior to signing the FLA can also pose challenge for partners prior to the confirmation of funding.</p>	<p>Policy directive</p> <ul style="list-style-type: none"> • Recommend UN agencies publish additional internal guidance to support the implementation and monitoring of this policy.
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<p>UNHCR: Appendix 1 Definitions</p> <p>UNICEF: Article VI.2: Responsibilities of UNICEF and Annex 3 Article 36 Headquarters Support Costs</p> <p>UNFPA: Article 7 Support Costs</p> <p>WFP: Annex 4 Budget</p>	<p>Issues related to the calculation of eligible project headquarters support costs</p> <p>For INGO partners, UNHCR allows for project headquarters support costs (PHSCs) at an applicable rate of 7 per cent of the direct cost of the approved budget, excluding allocations for cash / voucher assistance, microfinance / microcredit, and bulk procurement. UNICEF allows for PHSCs at an applicable rate of 7 per cent and UNFPA allows for PHSCs at a discretionary rate, excluding Goods in Kind. WFP's 7 per cent headquarters support costs exclude Goods in Kind such as food or cash distributions. These exclusions mean that partners are often claiming significantly less than the eligible PHSCs and incur costs to which UN agencies do not contribute, which is financially unsustainable for many partners.</p> <p>Illustrative example: For recent UNHCR programmes (2017 & 2019) in Bangladesh, one partner has only received 5 per cent and 4 per cent respectively for PHSCs, due to exclusions related to bulk procurement costs.</p> <p>Lack of, or inconsistent application and interpretation of, contract clauses related to eligible project headquarters support costs</p> <p>UNICEF allows for PHSCs at an applicable rate of 7 per cent, however in practice UNICEF COs often challenge the eligibility of these costs. UNFPA includes provisions for discretionary headquarters support costs "as agreed between the Parties", the negotiations for which can absorb significant UNFPA CO and partner personnel resources.</p> <p>Illustrative example: For a recent UNICEF programme in Democratic Republic of Congo, the UNICEF CO approved PHSCs of 5 per cent; while in Central African Republic the same partner was only approved to claim PHSCs of 3 per cent.</p> <p>Note: National NGO partners frequently receive significantly lower, if any, rates for covering project support costs.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> • Recommend UNHCR amend Appendix 1 Definitions to remove PHSC exclusions for cash / voucher assistance, microfinance / microcredit, and bulk procurement. • Recommend UNICEF and UNFPA amend agreement clauses to include 7 per cent PHSCs against the total value of cash and goods in kind combined. • UNHCR IPMS- UNHCR has already issued new policy on PICSC <p>Policy directive</p> <ul style="list-style-type: none"> • Recommend UNHCR, UNICEF and UNFPA publish additional internal guidance to support the implementation and monitoring of this policy. • Recommend UNFPA clarify whether the Guidance Note on Implementing Partner Support Costs resource is still current and share an easily accessible link to this resource for partners on UNFPA's webpage.
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<p>OCHA: Article VII.2: Financial and Operational Arrangements</p> <p>UNICEF: 2015 Guidance for CSOs Partnering with UNICEF</p>	<p>Eligibility of expenditure prior to date of signature on the agreement</p> <p>OCHA is not liable for “any expenditure or obligations made before the date of IP’s signature” of the Agreement; which does not allow for flexibility in the start-up and mobilization of programming, particularly in rapid onset humanitarian crises.</p> <p>UNICEF’s 2015 Guidance for CSOs Partnering with UNICEF “defines an organizational benchmark of 30-45 days to formalize partnership with CSOs”. However, in practice negotiations on the Programme Document often extend beyond the 45-day benchmark, resulting in significant gaps in service delivery and financial implications for partners.</p> <p>In some instances where partners are renewing agreements with UNICEF, partners have been expected to continue to implement programme activities during this period, without a valid PCA in place.</p> <p>Illustrative example: For one partner, it took over 15 submitted versions of the UNICEF PCA and 6 months to finalize and approve the agreement. Another programme with the same partner took over 9 months to finalize and approve the UNICEF PCA. The same partner was also expected to continue to implement programme activities in South Sudan for four months at the request of the UNICEF CO, without a valid PCA in place.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> • Recommend OCHA and UNICEF amend agreement clauses to provide partners with flexibility to claim reasonable expenditure prior to the date of signature on the Agreement.
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<p>UNICEF: Article VIII.2 Inputs by UNICEF towards implementation of Programme Documents</p> <p>UNFPA: Article 5.4: Cash Transfer by UNFPA to/ on behalf of IP – Specific Cash Transfer procedures for each Cash Transfer Modality</p> <p>WFP: Article 31 (Field Level Agreement, Annex 1-A) Food Distribution and Related Activities and Article 5.1 (Field Level Agreement, General Conditions): Payments</p>	<p>Lack of clarity, flexibility, or inconsistent application and interpretation, of contract clauses regarding instalment schedule for disbursements, reimbursements and cash transfer procedures</p> <p>UNICEF and UNFPA state that the second and subsequent instalments may not be paid before prior expenditure has been reported. As such, partners are regularly requested to return unspent funds on a quarterly basis before the next instalment of funds will be transferred.</p> <p>In contradiction to this, UNICEF's AGORA HACT training states that partners can request two instalments (6 months) before a report must be submitted. When not followed correctly, lack of adherence to these HACT Guidelines results in inefficiency and lack of timely cash flow to deliver effective programmes.</p> <p>Illustrative example: In 2018, one partner with a UNICEF programme in East Africa was £0.30 underspent between instalments. The partner was requested by the UNICEF CO to return the funds or submit an additional FACE Form to account for the underspend.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> • Recommend UNICEF and UNFPA amend agreement clauses to enable quarterly under and over spends to be carried forwards to the next quarter. • Recommend UNICEF amend PCA clause to align with HACT Guidelines and training. • Recommend UNICEF amend HACT Guidelines to enable quarterly under and over spends to be carried forwards to the next quarter.
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<p>OCHA: Article VII.4: Financial and Operational Arrangements and Article VIII.1 and 2: Maintenance of Records</p> <p>UNHCR: (PPA) Article 6.9 Resource Requirements and Financial Arrangements</p>	<p>Requirements regarding the use of separate bank accounts</p> <p>OCHA and UNHCR require the use of a separate interest-bearing account, unless prior authorization is agreed to use a sub-account. This requirement creates additional and unnecessary administrative and financial burdens for partners.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> • Recommend OCHA and UNHCR amend agreement clauses to allow partners to use a pooled bank account (providing the deposit and the use and interest of the grant remain traceable) as standard practice rather than negotiable on a case-by-case basis. <p>UNHCR IPMS-The change on the requirement for use of pooled accounts was already activated since early this year</p>

<p>UNICEF: 2015 Guidance for CSOs Partnering with UNICEF: Partner Cost-Sharing Practices</p> <p>WFP: Annex 1-D Special Conditions for Implementation and Monitoring of Cash and Vouchers Activities</p>	<p>Inconsistent application and interpretation of contract clauses regarding partner cost-sharing methodologies</p> <p>UNICEF often applies inconsistent acceptance of partner cost-sharing methodologies, which is inefficient and time consuming for UNICEF CO and partner personnel.</p> <p>In some instances, partners may be providing match funds to a WFP programme, which are used to cover costs such as monitoring and evaluation activities as part of a broader programme which includes other funding contributions and third parties. When undergoing an audit, partners are required to evidence the total value of the programme.</p> <p>Therefore, for programmes with a cash component, partners require information on the value (transferred and redeemed) of a cash programme delivered by a third party who has been engaged by WFP. If this evidence is not available, then the partner may face an audit finding.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> • Recommend WFP amend FLA to include an additional clause for WFP to provide authorized reports on cash distributions delivered by third-parties using partner match funds, on a monthly basis. <p>Policy directive</p> <ul style="list-style-type: none"> • Recommend UNICEF agrees to foundational principles of fair-share cost allocation methodologies and provide global approval to partners that follow the foundational principles. • Recommend UNICEF publish additional internal guidance to support the implementation of this agreement by UNICEF HQ and COs, resulting in increased efficiencies for UNICEF and partner personnel.
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<p>UNICEF: 2015 Guidance for CSOs Partnering with UNICEF: Procurement Regulations</p> <p>UNFPA: Article 5.5.5: Terms and conditions applicable to all Cash Transfer Modalities</p>	<p>Obligations related to procurement of goods</p> <p>Partners are unable to independently procure items such as tents; education in emergency, recreation and reintegration kits; medicines and therapeutic goods, relying instead on submitting requests to UN partners to procure Goods in Kind on the partners' behalf.</p> <p>Partners regularly experience challenges related to the timeliness, quality, and quantity of the Goods in Kind procured through UNICEF supply chains. This has a detrimental impact on programme delivery, programme quality, and the reputation of both UNICEF and the partner.</p> <p>Illustrative example: In 2017 one partner with a health and nutrition programme in East Africa was affected by an undersupply of UNICEF venereal disease research laboratory (VDRL) tests in health clinics. This impacted on the ability of the partner to deliver the programme. In total 518 pregnant women were screened for syphilis, against a target of 1,250.</p> <p>UNFPA's agreement currently does not include reference to the procurement of contraceptives. However, in practice, partners have found that UNFPA country offices refer to an internal guidance document titled Policy and Procedures for Preparation and Management of Workplans (December 2014) which specifies that the procurement of contraceptives is strictly limited to UNFPA implementation only.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> • Recommend that UNICEF allow partners with a low-risk HACT Capacity Assessment rating to procure their own goods in kind items. • Recommend that if the procurement of contraceptives is ineligible by partners, UNFPA amend agreement clause to reflect correct guidance. • Recommend UNFPA allow partners with a low-risk HACT Capacity Assessment rating to be able to procure their own items including contraceptives. <p>Policy directive</p> <ul style="list-style-type: none"> • Recommend UNICEF and UNFPA publish additional internal guidance to support the implementation and monitoring of these policies.
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<p>UNICEF: Article 15.1 Assurance Activities – Audit</p> <p>UNFPA: Article 15.1 Assurance Activities – Audit</p>	<p>Inconsistent application and interpretation of contract clauses regarding audit requirements</p> <p>There is often inconsistent application and interpretation of contract clauses during audits by external auditors, particularly related to UNICEF and UNFPA agreements. In addition, final audit reports are often unclear.</p> <p>Illustrative example: In 2016 UNICEF provided one partner country office just two weeks’ notice of an audit on two contracts. No detailed timeframe for the audit process was communicated or agreed. No transaction sample was given or agreed, and the auditors reviewed every transaction for the two contracts. The audit report also didn’t distinguish between practice that could be improved (categorization of staff accommodation costs), and disallowances. As a result, UNICEF did not accept the expenditure and as of 2019 UNICEF and the partner continue to negotiate these disallowances.</p>	<p>Policy directive</p> <ul style="list-style-type: none"> • Recommend UNICEF and UNFPA publish additional internal guidance to support the implementation and monitoring of this policy. This should include revision of the HACT audit procedures to outline minimum standards for each stage of the process (such as notification, sample sizes, procedure related to disallowances). • Recommend UNICEF and UNFPA facilitate training for audit firms engaged by UNICEF and UNFPA to ensure they are familiar with minimum standards.
<p>WFP: Article 31 (Field Level Agreement, Annex 1-A): Food Distribution and Related Activities</p>	<p>Requirements related to tracking of commodities</p> <p>WFP requires that partners “implement and use an appropriate Commodity Tracking System for the purpose of monitoring the activities associated with the reception, storage, handling, transport and distribution of the Commodities”. In some countries, there is also an inconsistent application by WFP COs of tonnage and voucher rates in reimbursement calculations.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> • Recommend WFP include an additional clause for WFP to provide authorized commodity summary statements to partners outlining details of commodities distributed by WFP. • Recommend amending FLA Clause 25 to indicate that WFP should “provide documentation stating the value of such commodities at the handover point” on a monthly, rather than annual, basis.
<p>UNHCR: (Appendix 2 Standard General Provisions) Article 6.1 Assignment to a Third Party – Non-Commercial Entities</p>	<p>Obligations regarding sub-contracting</p> <p>UNHCR requires that “unless agreed in advance by both Parties in writing, the Partner cannot delegate...any aspect of implementation in this Agreement to a third party that is not a signatory to this Agreement”.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> • Recommend UNHCR amend Article 6.1 to include “as far as reasonably practicable” to the requirement that partners shall ensure that sub-contractors or third parties do not further sub-contract”.

<p>UNICEF: 2015 Guidance for CSOs Partnering with UNICEF: Partner Contributions</p>	<p>Lack of alignment between Value for Money Framework and the 2015 Guidance for CSOs Partnering with UNICEF on partner financial contributions</p> <p>There is a lack of alignment between UNICEF's Value for Money (VfM) Framework, which indicates strict thresholds for financial contributions from partners in the budget, and the 2015 Guidance for CSOs Partnering with UNICEF, which does not specify detailed expectations. The VfM Framework also puts significant and unsustainable financial pressure on partners by requesting partners to provide financial contributions of up to 30 per cent of the total budget and to dramatically cut operating costs in country by enforcing low eligible cost levels.</p>	<p>Contractual amendment</p> <ul style="list-style-type: none"> • Recommend UNICEF amends the requirements in its VfM Framework to align with the expectations laid out in the updated Guidance for CSOs Partnering with UNICEF. • Recommend UNICEF review the VfM Framework, particularly regarding expectations for partner financial contributions and eligible operating costs in high-risk contexts. In close consultation, UNICEF and partners can agree on a realistic, country-specific percentage for partner budget support and determine realistic, context and risk specific eligible cost thresholds. <p>Policy directive</p> <ul style="list-style-type: none"> • Recommend UNICEF publish additional internal guidance to support the implementation of the revised VfM Framework. In practice, non-financial contributions should be considered as equal value to financial contributions. • Recommend that UNICEF regularly report to partners on the process and content of its reports to back donors on partner financial contributions. • Recommend UNICEF include this issue for discussion at the upcoming Regional Consultations.
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