



# GLOBAL NONPROFIT INFORMATION NETWORK

## 1. OVERVIEW OF U.S. COUNTERTERRORISM POLICIES IMPACTING CHARITIES

*In response to the attacks of Sept, 11, 2001, the Bush Administration took steps to control what it described as a widespread and significant flow of funds from U.S.-based charities<sup>1</sup> to terrorist organizations. Serious research now demonstrates that the role of charities in terrorist financing was greatly exaggerated by the Bush Administration – since 9/11, no charity has been convicted of materially aiding terrorists. Instead, some of the Administration’s counterterrorism programs designed to increase homeland security are having the opposite effect. The penalties threatened and burdens imposed by the U.S. government actively discourage charities from doing vital work in the world’s most trouble areas, places where a positive U.S. presence would support an American message of tolerance and compassion, and better protect global security.*

**The sanctions that now impede the legitimate work of charities began with a tangle of well-intentioned but out-dated laws.** The Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, amended by the USA PATRIOT Act in 2001 and again in 2004, authorizes the Secretary of State to designate “foreign terrorist organizations,” and makes it a crime for anyone to knowingly support even the wholly lawful, nonviolent activities of those organizations.<sup>2</sup> The statute does not require any showing that the defendant intended their support to be used for any illicit purpose.

The government also penalizes support of terrorists under the International Emergency Economic Powers Act (IEEPA).<sup>3</sup> This statute was originally enacted to regulate the President’s power to impose economic embargoes on foreign nations. After the attacks of 9/11, President Bush invoked IEEPA to name 27 “specially designated global terrorists.”<sup>4</sup> He offered no explanation for these designations, and specified no criteria for making future determinations. At the same time, he authorized the Secretary of the Treasury to designate still others using extremely broad criteria. Designation has the effect of freezing all the entity’s assets in the United States and making it a crime for anyone in the United States to engage in any transactions with or on behalf of the entity, whether or not that transaction supports terrorism.

Changes to the law have been accepted and endorsed

by Congress virtually without considerations for the impact on legitimate charitable activity. Since then, the absence of any effective oversight has given the Executive Branch a free hand for suspect and arbitrary action.

Groups (as well as individuals and whole nations) that Treasury determines are terrorists are designated as Specially Designated Global Terrorists (SDGT) and are listed on the Department’s Office of Foreign Assets Control’s (OFAC) Specially Designated Nationals (SDN) list. Once listed, there is no practical appeal, and a group’s assets can be frozen and its officers prosecuted.

**Charities face two challenges: the first is avoiding actions that will get them shut down for “supporting terrorism.” The second is clearing their names after an accusation is made and they are added to the SDGT list.** As a result, charities are changing their behaviors in ways that are detrimental to their missions and their capacities.

The government has made avoiding legal sanction difficult in a number of ways. Most notably, it requires neither the intent to support terrorism nor even knowledge that an organization or individual with whom a charity is working supports terrorism. A charity can be shut down for innocent dealings with an individual who in turn has only the most tenuous contact with an

individual who in turn has only the most tenuous contact with an organization on the SDGT list. The Treasury Department's "Anti-Terrorist Financing Guidelines: Voluntary Best Practices" (the Guidelines) place the burden of government-style investigation on charitable organizations and convey no presumption of innocence even if the Guidelines are followed to the letter. Placing the investigative burden on charities also damages the grantor-grantee relationship that is the best guarantee that grant money is appropriately spent. Treasury has also produced a "Risk Matrix for the Charitable Sector" (the Matrix) that is "designed to provide charities with an understanding of the risks that they should consider in the course of conducting their due diligence." However, instead of resolving questions of risk in the charitable sector, the Matrix both pulls charities away from traditional and very effective vetting strategies and discourages them from working with new organizations and organizations focused on troubled regions of the world.

The upshot has been to move charities and their supporters away from work with new and innovative groups, regions in conflict, and anything to do with the Muslim world.

The second challenge is even more problematic. Treasury has frozen the assets of seven U.S. charities. The government need not prove that its seizure of these charities' assets was based on solid evidence of terrorist support, yet it may hold their assets, essentially, forever. There is no mechanism for charities to clear their names, retrieve their assets or resume their missions. This is a profoundly un-American and ineffective way to protect America's freedom.

**The government has never provided evidence that money channeled through U.S. charitable organizations has significantly supported anti-American terrorism.** In fact, it has never won a conviction in court when it has charged either the charities or their officers with support of terrorism. On the other hand, by restricting the ability of charities to address the root inequalities that breed terrorism, and by affecting a palpably anti-Muslim stance, the government has handed our enemies a significant propaganda victory and the support that follows. The current regime has backfired.

A new strategy based on the principles of openness, fairness and justice would simultaneously meet our homeland security needs and free charities to carry our message of compassion to the places where it most needs to be heard.

**Charity and security are not mutually exclusive. In fact, today, they depend on one another.**

- 
- <sup>1</sup> "Charities" refers to direct service organizations, advocacy organizations, foundations, and organizations supporting social change.
  - <sup>2</sup> See 8 U.S.C. § 1189 and 18 U.S.C. § 2339B.
  - <sup>3</sup> See 50 U.S.C. §§1701-1706 (2000).
  - <sup>4</sup> Executive Order 13224 (Sept. 18, 2001).

---

The Global Nonprofit Information Network (GNIN) was launched in March 2007 to foster information sharing focused on counterterrorism measures affecting charitable organizations and global civil society. The GNIN initiative is co-hosted by Grantmakers Without Borders ([www.gwob.net](http://www.gwob.net)), OMB Watch ([www.ombwatch.org](http://www.ombwatch.org)) and Urgent Action Fund for Women's Human Rights ([www.urgentactionfund.org](http://www.urgentactionfund.org)).



---

- August 2008 -

*(This is part one in GNIN's seven part series on charities and counterterrorism policy.)*