



Safeguarding Charity in the War on Terror

Anti-terrorism Financing Measures & Nonprofits
October 2005

This report is part of an OMB Watch project focusing on philanthropy in an age of terrorism. It reflects the critical thinking of a number of outside experts who, from disparate organizational and even philosophical viewpoints, have studied federal policy toward charities and grant-making foundations functioning in the midst of the war on terror.

On June 14, the Georgetown Public Policy Institute's Center for Public & Nonprofit Leadership sponsored a colloquium, which addressed the failures and fault-lines in the body of anti-terrorist financing regulations and guidelines that effect nonprofit organizations.

Their statements and observations make clear that there are serious defects in the government's approach that render elements of the financial war on terror ineffective and pose significant threats to the work of nonprofit organizations throughout the world. This is a terribly consequential outcome.

The 9/11 Commission eloquently emphasized the growing importance of international charitable activities to address the underlying conditions of poverty and oppression that lead people to embrace terrorism.

Rather than imposing unreasonable, unwarranted burdens, government policy should support and encourage the work of the nonprofit sector.

We are pleased to offer this report as a resource to policymakers, thinkers, and actors in the anti-terrorism and non-profit worlds.

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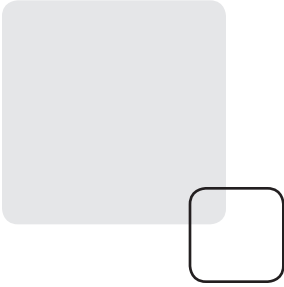


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Executive Summary

Since the 9/11 terrorist attacks, U.S.-based charities have become targets, rather than partners, in the government's war on terror financing. Ineffective federal measures have imposed organizational and social costs far beyond the administrative burdens of compliance. This report addresses the critical lack of balance in the body of anti-terrorist financing regulations and guidelines that effect nonprofit organizations and begins to explore ways of bringing balance and clarity so that nonprofit organizations and grant-making foundations can proceed with certainty to pursue legitimate charitable activities.

This report is based on a June 14, 2005 panel sponsored by the Georgetown Public Policy Institute's Center for Public & Non-profit Leadership. The panelists talked about the underlying laws that seek to curtail the financing of terrorism; President Bush's Executive Order 13224, which addresses terrorism financing and identifies lists of individuals and organizations suspected of terrorism; and the Treasury Department's *Anti-Terrorist Financing Guidelines, Voluntary Best Practices for U.S. Based Charities*. The nonprofit sector has focused on the Treasury Department's Guidelines; and, although they are voluntary, they have sparked a number of actions by grant-making institutions, including list-checking and certifications. Yet even those actions do not ensure that the government will not seize or freeze assets. These policies, created behind closed

doors without input from charities or foundations, lack a basic understanding of how nonprofits function, and ultimately do not help -- and may even hinder -- the global war on terror.

The testimony of the scholars and nonprofit practitioners on the Georgetown University panel provides insight into the problems of, and threats posed by, the new security regime and paves the way for more effective policy approaches. Their comments expose three prevailing myths that obscure the true nature and impact of current policy:

THE MYTH OF

"VOLUNTARINESS." The threat of government investigation and asset seizure effectively bestows the weight of law on problematic, government-prescribed "voluntary best practices." In other words, the government guidance is anything but voluntary.

THE MYTH OF UTILITY. Policies such as the Treasury Guidelines for U.S.-based charities are ineffective as counter-terrorism measures, displacing energy and resources from more useful targets and activities in the war on terror.

THE MYTH OF MINIMAL

IMPACT. The consequences of these regulatory developments go beyond high administrative costs, posing far-reaching threats to the nature and capacity of the nonprofit sector, including grant-making and delivery of services.

In the absence of clear, sensible guidance and information from government about what is legally

required, confusion and fear are driving the response of the nonprofit sector in the campaign against terror financing. Foundations and grantees alike have widely adopted practices such as terror list checking and certification -- a process requiring signatures from grantees, employees, partner organizations, and even vendors -- without consideration of the consequences to civil liberties and without assurance that these steps will offer protection from legal sanction. Charities are also increasingly fearful that continuing to provide legitimate services and activities might cost them funding from either foundations or the government.

Looking forward, the nonprofit sector's response to anti-terrorist financing policy requires greater vision, clarity, and coordination. It is in the interest of both the nonprofit sector and government to strike an appropriate, effective balance between preventing abuse of charities and fostering charitable outreach both domestically and abroad. A reform agenda should aim for clear guidance for charities that ensures following selected actions will protect the institution from unfair intrusions. It should incorporate measures that introduce due process into the government's treatment of individuals and organizations in the fight against terrorism, allow for correcting potential problem situations, and provide meaningful safeguards for legitimate charitable activity. This report is the first in a series of actions to begin moving toward such clarity.

The Nonprofit Sector & the Financial War on Terror

Although the first bombs did not fall on Afghanistan until October of 2001, the war on terror started less than two weeks after the 9/11 attacks when President Bush signed Executive Order 13224. The order took aim at the shadowy terrorist financing networks that had fueled the attacks, making it illegal to aid or associate with those on a 'black list' of individuals and organizations suspected of terrorism. Less than a month later, the USA PATRIOT Act gave the government additional powers to investigate and prosecute those suspected of providing material support to individuals and orga-

nizations who appear on terror watch lists.

Investigations, including the 9/11 Commission, have indicated that most terrorist organizations such as Al Qaeda are funded through an illicit web of smuggling and other criminal activities. Regardless, legal U.S. nonprofits, particularly Muslim charities, immediately became the target of federal investigations. Amidst news stories of frozen assets and investigations, a group of Muslim charities petitioned the Treasury Department for a set of standards to follow to avoid government sanction. In late

2002, the Treasury Department issued *Anti-Terrorist Financing Guidelines, Voluntary Best Practices for U.S.-based Charities* (hereafter referred to as the Treasury Guidelines). Yet far from offering guidance or safe harbor, the procedures outlined in this document are widely regarded as unreasonable and counterproductive. Drafted and released without meaningful consultation with the nonprofit sector, the Treasury Guidelines prescribe onerous and misplaced obligations while failing to either effectively target terrorist financing or offer nonprofit organizations protection from legal sanction.

Diverse Voices on the Issue

Sector Responses, Panelist Presentations

The Treasury Guidelines have proven troublesome across a wide range of nonprofit activity. Organizations that support international groups and programs point to the problem of new grantee reporting requirements, as comprehensive and detailed information about prospective grantees is not always available and is often difficult to collect in the developing world. Small U.S.-based organizations -- ill-equipped to handle additional administrative costs -- cite the overwhelming burden to their overall operating capacity. Large foundations, meanwhile, have been criticized for their compliance strategies. In seeking to protect themselves and their siz-

able assets against liability, many charge that these foundations are dangerously close to becoming a policing arm of government.

At the same time, the vague, sweeping language of the Treasury Guidelines raises the specter of unfettered government power and threats to civil liberties. For a sector steeped in the ethos of social justice, there are also larger concerns with the steady erosion of due process and discrimination against Muslim individuals and organizations.

After a meeting with officials of the Treasury Department in the spring of 2004, a group of nonprofit organizations con-

vened the Treasury Guidelines Working Group to address the shortcomings of current policy. In March of 2005, this working group published the *Principles of International Charity*, a document intended to serve as the basis for revisions to the Treasury Guidelines. While the Treasury Department has pledged to issue new guidance, taking the Principles into account, no further information has been shared and no revisions have been released as of this report's publication. This lack of transparency in the revision process leaves the outcome uncertain. Meanwhile, with no official developments since the Treasury Guidelines were released in 2002, these suggested

measures have taken root as de facto requirements, altering the practices and priorities of U.S.-based charities.

Increasing frustration added weight and urgency to the testimony of panelists who gathered at Georgetown University on June 14 to address the growing threats anti-terrorist financing policies pose for the nonprofit sector.

HERE is a summary of their comments:

TERESA ODENDAHL, the 2004/2005 Waldemar A. Nielsen Chair in Philanthropy at the Georgetown Public Policy Institute's Center for Public and Nonprofit Leadership (CPNL), opened the discussion with the charge that charities have been inaccurately identified as significant sources of terrorist financing and unfairly targeted in the war on terror. Drawing from interviews conducted over the past year with senior executives and compliance managers at ten of the largest international grant-making foundations, she reported that the Treasury Guidelines have created an environment of confusion and fear within the philanthropic community. Foundations now commonly check terror watch lists and some have adopted new anti-terrorism language into their grantee letters. Such steps are often seen as administrative formalities unlikely to yield either effective results in preventing diversion of funds to terrorism or legal protection

against forced shut down of an organization.

Odendahl also noted that present policies have led to both the targeting of U.S. Muslim charities and the de-funding of organizations due to heightened concern over the risks involved in working in certain regions or issue areas.

DAVID COLE, a professor of law at the Georgetown University Law Center, gave an overview of the constitutional rights and freedoms at stake in the government's war on terror. He reported that guilt by association has been resurrected from the McCarthy era with our return to a "preventive paradigm" of preemptively weeding out threats to national security. While it was illegal in the 1950's to be a member of the Communist Party, it is now a crime to support an individual or organization on a terror watch list, although the government can designate and freeze assets without presenting evidence of actual ties to terrorism or illegal acts.

Cole noted that, in addition to use of security legislation such as the USA PATRIOT Act and the International Emergency Economic Powers Act (IEEPA), immigration law is now employed to enforce this standard of guilt by association, as an immigrant cannot support any group that has ever even threatened to use a weapon. In fact, because this law is retroactive, support for an organization such as the African National Congress that was legal

at the time is an offense that could lead to deportation.

Beyond these statutory tools, Cole cited increasing government use of public-private partnerships to reinforce and broaden the impact of its anti-terrorism policies. Just as the 1950's House Un-American Activities Committee once relied on the private sector to mete out punishment through the destruction of reputations and careers, today anti-terrorism financing measures turn funders into the new enforcers. In this light, he said, the nonprofit sector has an obligation to resist such a partnership with government.

NANCY BILLICA, a political advisor to the Urgent Action Fund for Women's Human Rights, drew from her experience working with a small international grantmaker. She pointed out that the very fact that she is working with an international organization with no lobbying interests and no political agenda is a sign of the "deep concern" felt by many organizations over an increasingly uncertain and threatening regulatory environment. She noted that current policies have a disproportionate impact on both small organizations with few resources and organizations engaged in international philanthropic efforts, forcing them to divert an increasing share of their already limited resources to administrative overhead, even though such steps ultimately provide no meaningful protection against legal sanction and investigation.

Billica also addressed the Treasury Guidelines' impact on traditional foundation due diligence, a process used by grantmakers to collect information on grantees to assure funds will be spent only for charitable purposes. This process can involve a variety of methods, such as site visits and financial reviews, depending on the nature of the grant and the size of the organization. Billica pointed out current federal anti-terrorist financing policy has largely reduced due diligence to list checking, a narrow and ineffective approach that treats grantmakers as extensions of the U.S. government and threatens the ability of organizations to develop grantee relationships built on respect and trust. Furthermore, she noted that this approach has led groups to suspend international partnerships and stifle innovation and experimentation in their grantmaking. In contrast to the one-size-fits-all approach of the Treasury Guidelines, she said the process of oversight and due diligence should be tailored to fit the different goals of grantmaking organizations and programs.

DAN MITCHELL, the McKenna Senior Fellow in Political Economy at the Heritage Foundation, addressed the issue within the context of a principled cost-benefit analysis, noting that "this is not an ideological issue." He pointed out that the anti-terrorist financing campaign has cost the private sector billions of dollars and has entailed a sweep-

ing invasion of privacy, yet there is "nothing much to show for it." The government's approach defies common sense and has turned the traditional approach to law enforcement upside down. To this end he said the FBI has not been able to develop a financial profile of a terrorist that is any different from a regular banking customer. In the absence of a strategy to target its efforts, Mitchell argued, government is overwhelmed with data it cannot use and the banking sector has effectively been "looking for a needle in a haystack." Similarly, in terms of the new administrative burdens facing charities, there is no reason to believe that there is anything in the Treasury Guidelines that could prevent a terrorist from forming a front group and complying. Thus, short of reading people's minds, he said, there is no way to systematically track down terrorists or terrorist financing sources this way, and pursuing such a strategy is a waste of valuable resources.

LAILA AL-MARAYATI, Chairperson of KinderUSA, discussed the disproportionate effects anti-terrorist financing policies have had on Muslim organizations in the United States. She argued that the government uses anti-terrorist financing program as a political tool to profile and discriminate against Muslim charities. To date, the only domestic

groups targeted and shut down have been Muslim. Out of the ten U.S. Muslim charities involved in international programs, she pointed out, four are now closed and two are under investigation. The results of this campaign against Muslim charities were clearly illustrated in the tsunami relief effort: not one Muslim charity appeared on the U.S. government's list of approved organizations to deliver relief.

Al-Marayati argued further that the USA PATRIOT Act undermines due process, giving government the right to freeze assets while an investigation is pending and to use secret evidence against a charity. Yet for all of these new

powers to investigate and prosecute, there has not been a single conviction related to Al Qaeda or the 9/11 attacks. She said government has never been able to make the case that the money

trail leads to charities, noting that the Government Accountability Office (GAO), an arm of the U.S. Congress, has said that terrorist funding comes mainly from criminal activity. However, many Muslims are afraid to give for fear that they will unwittingly support a group that may someday be declared a terrorist organization. For this reason, she said there is a pressing need for "safe harbor" provisions that would grant legal protections to organizations and donors alike.

From Myths to Facts

These diverse but interlocking perspectives lend themselves to an integrated understanding of the myths and facts at the heart of current policy. These myths impede the will and ability of the sector to mobilize for change by perpetuating the image that the Treasury Guidelines are voluntary, effective counter-terrorism measures posing no substantial threat to the nonprofit sector. The panelists' critiques of the government's approach to charities and anti-terrorist financing thus uncover underlying truths and point the way toward better, alternative approaches.

MYTHS

Myth of "Voluntariness"

While the International Emergency Economic Powers Act (IEEPA), the USA PATRIOT Act, and executive orders carry the weight of law, the Treasury Guidelines—the centerpiece of the government's efforts to "protect" charities from abuse by terror financiers—are technically voluntary measures. Yet the threat of investigation and asset seizure contained in current statutes effectively bestows the weight of law on what the Treasury Department erroneously identifies as best practices for U.S.-based charities. As Billica pointed out, "to choose to proceed without compliance is to increase the vulnerability of many already vulnerable programs. A lawsuit or investigation, even if completely unfounded, would present itself as a huge cost burden."

Closure of U.S. Muslim Agency Harms Charity Home in Kenya

Anne Owiti, the director of the Kibera Community Self Help Programme in Nairobi, Kenya, was counting on a grant from the American based Islamic American Relief Agency (IARA) to help fund a children's charity home. But in October 2004, the FBI and U.S. Treasury Department agents raided IARA's offices and froze the agency's funds—including the money earmarked for Kenya. Owiti has appealed to the U.S. government to release these funds, noting that the unexpected drain on resources has forced her group to scale back much-needed services and aid for children living in the Kibera slum district.

"This is going to affect the children adversely," she told a reporter. "These children live in the slums where survival in normal circumstances is difficult, not to mention that the majority of them are orphaned by HIV/AIDS." To date Treasury has taken no action to release the funds.

From the World News Connection, June 21, 2005

The threat of potential closure fundamentally alters the calculus behind compliance decisions, pitting an organization's mission against its desire to reject Treasury's one-size-fits-all "voluntary" guidelines and use other approaches, such as those included in the *Principles of International Charity*. Oden Dahl commented that this threat has led most corporate funders, major foundations, international relief organizations, and large nonprofits to pay "serious attention" to these and other government recommended procedures, although there is no safe harbor. Mitchell quipped that the voluntary guidelines are "voluntary in the same sense that the Internal Revenue Code is voluntary." Yet unlike the Internal Revenue Code, compliance with the Treasury Guidelines does not insure protection. An organization may make every effort to comply and still face investigation and sanction.

This trend of assigning de facto legitimacy to the Treasury Guidelines is problematic given their questionable legal foundation. Cole contends that the government has taken considerable liberties in its use of the pre-existing legal framework for the campaign against money laundering and terror financing. For example, the International Emergency Economic Powers Act (IEEPA), designed to allow government embargos on foreign nations, is now used to embargo individuals suspected of supporting terrorism. This point is also evident in the discriminatory application of immigration law. Such "coerced" compliance is threatening because it effectively legitimizes government overstepping.

Myth of Utility

There is a real and pressing need for effective counter-terrorism measures aimed at dismantling terrorist financing networks. Yet

the current regulatory regime, as it applies to U.S.-based charities, is crippled by the government's fundamental lack of understanding of how the nonprofit sector works. This has led to policies that fail to offer increased protection against abuse of charities by money launderers and terrorists. As a few of the panelists asked, what would stop a terrorist from signing a certification letter?

Many new practices adopted by the sector in response to the Treasury Guidelines may even prove counterproductive. As noted above, Billica made the case that the current focus on list checking institutes a narrow and ineffective approach to due diligence at odds with traditional standards. For nonprofit organizations, due diligence has historically involved conversation, reference checking, consultation with colleagues in the field, and relationships of mutual trust and respect. This approach yields far more utility than list checking in terms of familiarizing a grantmaker with their grantee and insuring knowledge of how funds are being used. In fact, intrusive, meaningless procedures, such as list checking, are poor substitutes for due diligence standards and systematically undermine the relationships at the heart of due diligence.

As a tax economist, Mitchell approached the issue of utility by applying a principled cost-benefit analysis that illustrates how current policy wastes critically needed resources. "Treasury officials say 99.9 percent of the

foreign criminal and terrorist money presented for deposit in the United States gets into secure accounts," he said. "That means anti-money laundering efforts fail 99.9 percent of the time. According to government statistics, only 2,000 people are convicted of money laundering offenses every single year. And about half of those, the money laundering offense is just an add-on to some underlying criminal offense. And that's the benefit side of it..."

Myth of Minimal Impact

The topic of the costs, intentional and unintentional, financial and substantive, immediate and far-reaching, calls for careful examination by the nonprofit sector and by government decision makers. It is clear that these costs are high. Each speaker on the Georgetown Panel attacked the pervasive myth that the anti-terrorist financing campaign has only impacted a small group of individuals and organizations. In reality, these regulations apply to all U.S.-based foundations and charitable organizations. They force charities to incur organizational and social costs far beyond the administrative burdens of compliance, and result in wider costs to society as a whole.

COSTS to the nonprofit sector include:

- **ALTERED PROCESSES AND PRIORITIES**

Drawing from her research on some of the largest international grantmakers, Odendahl addressed unspoken changes in the

processes and priorities of foundations in light of the growing threat of government sanction. For example, although widely considered useless, administrative formalities, the foundation community has adopted such practices as list checking despite apprehensions over the legitimacy, accuracy and utility of the lists.

- **IMPEDIMENTS TO CAPACITY AND CHARACTER**

Many of the changes in nonprofit operations generated by federal anti-terrorist policy pose a substantial threat to the character and makeup of nonprofit America in the long-term. "These conditions of great uncertainty and administrative burden have been overwhelming for many organizations," Billica explained. As a result, "some of the more experimental and innovative programs are being dropped and creativity is being stifled in the interest of avoiding scrutiny. Some organizations in response have suspended program activities with international partners."

Ultimately, when the nonprofit sector is targeted, so are the people and communities around the world that depend on the relief and services they provide. "If we had decided that Americans should limit their involvement in world affairs, then shutting down international organizations in the name of increased security is the right approach. But if we believe that American citizens should be actively engaged in the world, then this is truly a loss," she said.

THE WIDER COSTS to society include:

- **SQUANDERED RESOURCES**

Current policies are not only ineffective, but massively inefficient. As Mitchell pointed out, “First and foremost is the common sense principle of cost benefit analysis.” Given the goal of reducing the likelihood of terrorist attacks, he asked, “what are the best ways to allocate our resources so that that actually happens?” He called current policies a systematic waste of both government and nonprofit finances, pointing out that “we’re not getting good bang for the buck.” This inefficiency ultimately leads to a costly and danger-

ous drain on finite anti-terror resources.

- **THE EROSION OF PROBABLE CAUSE AND DUE PROCESS**

Scrutinizing the general population and sifting through the events of daily life to identify criminal activity is an inefficient approach to security, and marks a departure from the traditional, rights-protective approach to law enforcement. The American legal system is based on principles that prevent abuse of power. Yet much of this legal foundation has been eroded in the war on terror by “updated” standards of probable cause and due process. For example, Cole cited the lack of due process in placing individu-

als or organizations on terrorist watch lists. Without notification requirements and a system for quickly correcting mistakes, the lists effectively circumvent legal rights and set a dangerous “guilty until proven innocent” precedent.

In a similar fashion, the laws that allow an organization’s assets to be seized or frozen during the course of an investigation based on a secret showing of probable cause also amount to a “guilty until proven innocent” standard. Organizations are even denied the right to effectively defend themselves, as government agencies now carry out secret investigations into charities and submit sealed evidence inaccessible to a charity during a legal proceeding. To date, the government has been unable to convict any U.S.-based charities on terrorism charges. Yet these inconclusive investigations usually result in a charity being permanently shut down.

- **CURTAILED FREEDOM OF ASSOCIATION**

The dangers involved in abandoning a focus on individual culpability do not stop at the erosion of due process and probable cause. Building on this concern over the consequences to our legal system and democratic society, Cole argued that administrative measures are being employed to legislate away other seminal, constitutional rights such as freedom of association. Widespread compliance with a host of measures such as list checking and certification erects what Cole

Vital Outreach Efforts Targeted by The USA PATRIOT Act

The Humanitarian Law Project (HLP) is a non-profit organization dedicated to protecting human rights and promoting the peaceful resolution of conflict through the use of international humanitarian law. When they sought to provide training in nonviolent dispute resolution to the Partiya Karkeran Kurdistan (PKK) and the Liberation Tigers of Tamil Eelam (LTTE), they found that this effort would violate the prohibition against providing “material support” to groups designated as terrorist organizations by the U.S. government.

The “material support” provision in the USA PATRIOT Act is one of the most troublesome aspects of national security legislation. It prohibits providing material support or resources to designated foreign terrorist organizations, regardless of the nature or intent behind the support. HLP filed suit challenging the provision, and in July 2005, U.S. District Court Judge Audrey Collins ruled in their favor, concluding that “the terms ‘training’ and ‘expert advice or assistance’ in the form of ‘specialized knowledge’ and ‘service’ are impermissibly vague under the Fifth Amendment.”

While Judge Collins’ injunction against enforcement of the specified sections applies only to the two organizations named in the suit, it is a vital first step toward greater protection of the rights of individual philanthropists and US-based organizations involved in international outreach efforts. “I’m pleased that the court has recognized that people have a right to support lawful, non-violent activities of groups the secretary of state has put on a blacklist,” said Professor David Cole, who argued the case on behalf of the Humanitarian Law Project.

refers to as an inappropriate public/private partnership in the war on terror financing. This public/private partnership institutes a “guilt by association” standard, attaching criminal, social, and economic consequences to legitimate support or association with blacklisted groups.

This can lead not only to the curtailment of constitutional rights and freedoms, but to situations that actually undermine efforts to promote peace and security. Cole cited the Humanitarian Law Project’s peacekeeping assistance to the Partiya Karkeran Kurdistan (PKK)—the primary political representative of the Kurds in Turkey—as an example. Under the material aid statutes of the USA PATRIOT Act, it is illegal to help PKK identify and pursue legal, nonviolent means of resolving disputes with the Turkish government because they are on the terror lists. In July 2005, Federal U.S. District Court Judge Audrey Collins ruled for a second time that the language that criminalizes this type of “material support” is unconstitutionally vague. This ruling was widely seen as an important first step in rectifying the troublesome implications and sweeping scope of such material aid policies, as well as an acknowledgement that it is counterproductive to criminalize activity that is a vital and productive means of alleviating global violence and terrorism.

Muslim Charities Fearful of Forced Closures

Kinder USA, an organization that delivers food and aid to children in war zones, is one of many Muslim charities involved in the massive relief effort to help victims of Hurricane Katrina. Yet their donors, their employees, and their board remain fearful that the organization may soon be shut down in the course of an ongoing government investigation. Last January, a federal grand jury issued a subpoena for the group’s tax returns and other documents. The board promptly suspended all fundraising activities, fearful that funds intended to aid children would be entangled in the ensuing investigation. Yet for months, the FBI released no further information. Kinder USA resumed fundraising four months later to support its ongoing charitable activities.

The charity and its supporters still have cause for concern. In testimony given in July of 2005 before the Senate Committee on Banking, Housing, and Urban Affairs, Steven Emerson, director of the Investigative Project on Terrorism, charged that a handful of new Islamic charities including KinderUSA are filling the “void” created by the closures of other Muslim charities. To date, the government has frozen the assets of five Muslim charities, although there has been no resolution to any of these cases.

• INFRINGEMENTS ON RELIGIOUS FREEDOM

Discrimination against Muslims has proven to be another devastating social cost of current policy. Drawing from her experience in the Muslim philanthropic community, Al-Marayati framed the issue as a targeted curtailment of religious freedom. “We need to be able to give without fear,” Al-Marayati explained. “We want to give, we need to give; it is our right as Americans and our duty as Muslims.” This philanthropic duty has become increasingly fraught with risk in recent years. Since 2001, three of the largest Muslim organizations have been labeled “terrorist organizations” and have had their assets frozen, and dozens of prominent community leaders associated with these groups have been the targets of investigations that have often ended in deportation. There is a growing need

for guidance and protection for legitimate Muslim charities. Yet the Treasury Guidelines cause further harm to these faith-based organizations due to the absence of reasonable, effective standards and safe harbor to protect against unwarranted investigation and prosecution.

FACTS

Current government strategy in the financial war on terror is ineffective and poses significant threats to the work of nonprofit organizations throughout the world. In casting nonprofit organizations in the untenable role of terrorism and money-laundering investigators, the Treasury Guidelines introduce a major shift in the mission and ideology of the sector—a shift that threatens to impede the capacity and the will of nonprofits to perform their primary, historical role.

Far from undermining national security, charities play a vital, preventive role in the war on terror. The 9/11 Commission eloquently emphasized the growing importance of international charitable activities to address the underlying conditions of poverty and oppression that lead people to embrace terrorism. In the context of developing nations and conflict situations, the need to target vulnerable populations around the globe cannot be

overstated. Rather than imposing unreasonable, unwarranted burdens upon it, government policy should support and encourage the work of the nonprofit sector. Yet according to the Foundation Center's latest report on International Grantmaking, "78 percent of foundations agree with the statement 'It is now more difficult to fund internationally due to a more demanding and uncertain regulatory environment.'"

Through improved communication and much needed policy reform, the nonprofit sector could play an even greater role in the effort to maintain international security. "No one is arguing that terrorism is not a real and dangerous threat," said Odendahl in her remarks on June 14. "But by enforcing elaborate, draconian rules, Washington is doing mightily what it claims to be against: harming charities and the people they serve while doing little to stem terrorism."

Looking forward

Since 9/11, honest and understandable fear has taken the campaign to crack down on terrorist financing in unintended and ineffective directions, at the same time that meaningful disagreements are discouraged by those in political power. Forums such as the Georgetown University event are a necessary start to a conversation on the nature of policies that disrupt the charitable work of the nonprofit sector.

To date, most discussions about the changing environment and its implications for nonprofits have taken place within organizations and for the purpose of identifying compliance strategies. While a few nonprofit associations have issued position statements on the Treasury Guidelines and other anti-terrorist financing regulations, there has not been nearly enough sector-wide debate and discussion.

It is instructive to look at the contrasting response of the financial sector to perceived government overstepping in new money laundering regulations. The financial sector has excelled at vocalizing coherent, consistent, and common concerns with the Bank Secrecy Act (BSA) and USA PATRIOT Act provisions and engaging the media to publicize the damaging ripple effects of new anti-terror financing laws.

The nonprofit sector must address this issue with vision, clarity, and coordination moving forward. On one hand, it is clear that U.S.-based charities are largely inappropriate as targets for government action in the war on terror financing. Yet we should be willing to take any and all reasonable, effective steps to assist the government in this vital campaign. Unfortunately, current policies aimed at charities,

whether required or voluntary, are neither reasonable nor effective.

Our first challenge, therefore, lies in spelling out common priorities and identifying viable policy alternatives. What goals are realistic? What changes make sense? What can or should be achieved in the next five years? Ten years? Given the concerns expressed at the Georgetown University forum, general directions for initiative and change should include:

REFORMING THE LAW TO PROTECT LEGITIMATE CHARITIES. There is a pressing need for meaningful government guidance to charities on how to comply with the law, as well as protection against unfair or inappropriate harassment. Such protection could come in the form of a safe harbor. Can a definitive safe harbor be enacted into law? Is it possible to translate

the *Principles of International Charity* or other items into legislative language that defines due diligence? Should a process that allows foundations and charities an opportunity to cure problems be established in law or regulation?

Vague material support statutes should also be revised so that they provide clear definitions for what constitutes terrorism and support for terrorism. These definitions should narrowly target only those individuals, organizations, and activities that perpetuate violence and threaten international security. They should not infringe on our ability and capacity to support positive reform, development, and peace-building efforts.

ADDING DUE PROCESS PROTECTIONS FOR PHILANTHROPY AND CHARITIES. Current policy needs to include processes for correcting problems, the right to learn and confront evidence used against a charity, and appeal rights. There need to be concrete standards and greater transparency in terror list designations. Ex post facto application of laws should be ended.

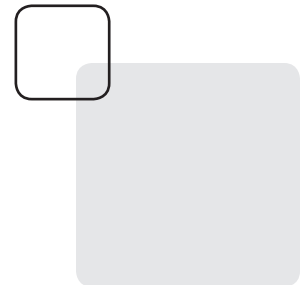
Due process will also be well served by requirements that ensure that charitable funds that are frozen or seized during an investigation can continue to be distributed for the charitable purposes for which they were intended. What process should govern this distribution? Should

government or another entity distribute frozen or seized assets consistent with the charitable purposes of the organization that is under investigation or has been shut down?

ADDRESSING THE NEED FOR AUTHENTIC SECTOR REFORM. The current crises we are facing may illustrate some much needed areas of reform, and offer an opportunity for us to come together to address these issues. While it is clear that list-checking should not supplant traditional standards of due diligence, perhaps these standards should be further codified to provide safeguards against both abuse by terrorist financiers and unwarranted scrutiny by government.

Conclusion

Current government policy on nonprofits and anti-terrorist financing is ineffective at addressing the real threat of terrorism and detrimental to the sector's charitable mission. Charities play a vital role fostering peace and development worldwide. Instead of impeding this important work, the government should recognize the positive role nonprofits play in the campaign against international violence and terrorism. Moving forward, the nonprofit sector should come together to identify priorities, set an agenda, and stand up for the rights of donors, grantees, and the individuals and communities dependent on the work of charities worldwide.



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