



**What Funders Need to Know About U.S. Counter-Terrorism Measures:
Charity & Security Network's Report on *Safeguarding Humanitarianism in Armed Conflict***

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Human Rights Funding News, IHRFG e-Newsletter, November 29, 2012

Many human rights grantmakers direct their funding to situations of armed conflict. It is in these settings where access to humanitarian aid is often restricted or denied, and human rights are invariably compromised.

In its 25-year history, the Global Fund for Women (GFW) has funded women's rights organizations and initiatives in almost all areas of the world experiencing conflicts or their aftermath, including Sri Lanka, Bosnia and Herzegovina, Chechnya, Palestine, Iraq, Afghanistan, and Colombia. We have found that even if our grantees are not in the business of providing humanitarian aid, they play leading roles in humanitarian crises, particularly to ensure that domestic and international laws are upheld and human rights are respected. However, many organizations have refused U.S. government funding, even in these times of need, because they perceive the strings attached to this funding to be burdensome, discriminatory, and infringing upon their independence from government. Identifying and reforming the barriers created by U.S. counter-terrorism measures (CTMs) is essential to meet the needs and protect the human rights of people in crises around the world.

To learn more about how U.S. counter-terrorism measures and enforcement policies stack up against American obligations under international humanitarian law, the Charity & Security Network (CSN) conducted a review of U.S. law and regulatory policy, the Geneva Conventions, customary international law, and United Nations resolutions. The result of that research was *Safeguarding Humanitarianism in Armed Conflict*. This report examines the requirement in international humanitarian law that warring parties allow humanitarian actors access to civilians trapped in harm's way to offer assistance. It also explains how U.S. counter-terrorism measures restrict the capacity of independent nongovernmental organizations (NGOs) to provide humanitarian protection and assistance to civilians affected by armed conflict.

One critical component of U.S. counter-terrorism measures is the prohibition against providing "material support" to organizations designated as "terrorist groups" by the U.S. government. The prohibition applies even when some form of contact with the "terrorist group" is necessary to reach civilians in territory the group controls, exempting only religious materials and medicine. Thus, in places where these groups are active, offering medical services or providing non-medicinal necessities such as clean water, food, or blankets is effectively barred.

Fundamental to international humanitarian law¹ is the idea that civilian populations in need have a right to request humanitarian assistance, and that governments and armed groups may not refuse humanitarian NGOs' offers to provide such assistance.

But U.S. law does not reflect these principles or take into account the realities of aid delivery in war zones or after a natural disaster strikes. For instance, the "material support" statute does not have an intent requirement. This means the government may assert that, unbeknownst to the foundation, its grantee or an overseas financial institution involved in the grant transfer is connected to a designated "terrorist group" therefore subjecting them to regulatory or legal sanctions.

In areas where contact with terrorist groups is often unavoidable, such as Somalia and Pakistan, meeting the needs of vulnerable populations is delayed, limited, or prevented entirely. One example from the report demonstrates the devastating impact of these counter-terrorism measures:

"As the hunger crisis developed in Somalia in 2009, some U.S.-based NGOs were working with USAID on guidelines to implement programs there. At one point in the negotiation, USAID proposed monitoring requirements to implement OFAC [Office of Foreign Assets Control] licensed programs, so that if USAID funded a program drilling wells, there would be a requirement to monitor the wells so that if a member of al Shabaab drank from the well, the NGO would have to report it to the U.S. government. That standard was impossible to implement, so the NGOs were unable to proceed."

Not long after this incident, drought and famine struck in Somalia. How many lives could have been saved if these wells had been built and people had been able to grow food?

The "right of initiative" by entities offering to help civilians caught in crises is a fundamental protection under international humanitarian law. Although there may be security-related reasons for temporarily restricting or suspending humanitarian operations, no government may categorically deny access to its civilian population. CSN members are urging the U.S. government to work closely with the nonprofit sector to develop comprehensive approaches that align U.S. counter-terrorism measures with international humanitarian law and the values of generosity and humanity long espoused by the United States.

There are many ways foundations can help, including:

- Raising awareness of this issue by publicizing instances where counter-terrorism measures prevent aid from reaching civilians in need. Funders can help by hosting events and discussion panels, writing op-eds and letting contacts in government know about your concerns. (A simple statement of concern to a member of Congress, even with an example, does not constitute lobbying.)

¹ The basic instruments of international humanitarian law are the four Geneva Conventions of 1949 and their Additional Protocols.

- Supporting efforts to permit humanitarian access for delivery of aid to civilians when such aid is conducted in accordance with long-accepted standards of charitable practice, such as the Code of Conduct for the International Red Cross Red Crescent Movement. By providing resources for government officials, journalists and other key actors to be briefed on international humanitarian law a foundation could foster better understanding of the issues.
- Under the current prohibitions, organizations must obtain a license from the Treasury Department waiving the restrictions imposed by U.S. counter-terrorism measures in order to operate in locations where “terrorist groups” are known to operate. However, this process is slow, ineffective and costly. Therefore, funders can encourage initiatives that call for reforming or eliminating these Treasury license requirements. For example, a foundation could act as a “convener” between nonprofits and government officials, providing a forum for off-the-record brainstorming on ways to ensure access to civilians in conflict zones.

Additional Resources:

- IHRFG’s Telebriefing on “The Implications of Counter-Terrorism Measures for Conflict Resolution and Human Rights Work,” September 15, 2010. <http://ihrf.org/events/ihrf-psfg-telebriefing-implications-counter-terrorism-measures-conflict-resolution-and-human>
- CSN: *Safeguarding Humanitarianism in Armed Conflict* (June 2012) <http://www.charityandsecurity.org/SafeguardingHumanitarianism>
- CSN: *Deadly Combination: Disaster, Conflict and the U.S. Material Support Law* (April 2012)
This report considers two cases: The 2011 famine in Somalia and the summer 2010 floods in Pakistan. In both cases, U.S. law and military objectives impaired effective aid delivery and exacerbated the hardship for civilians.
http://www.charityandsecurity.org/studies/Deadly_Combination
- A panel discussion with nonprofit and legal experts discussing humanitarian codes and how charitable groups and donors are harmed by U.S. laws and regulations
<http://www.charityandsecurity.org/csnevents>
- Code of Conduct for the International Red Cross Red Crescent Movement
<http://www.ifrc.org/Docs/idrl/I259EN.pdf>