



MA'AN Development Center

Position Paper:

Matrix of Control: *The Impact of Conditional Funding on Palestinian NGOs*

Ramallah-Palestine

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Introduction

The Occupied Palestinian Territories and the Palestinian people have for too long been suffering from the occupation and systematic destruction. As a result of the political regime implemented by the occupying state of Israel, including a dismal human rights record with regards to, among other things, access to services and resources and demolitions of homes and other structures, the conditions of the Occupied Palestinian Territories are facing immense difficulties. The Palestinian people are suffering severe poverty as a result of the occupation. In addition, the possibilities for a well structured Palestinian state to emerge without heavy dependency on international donors are dwindling by the day. International donating bodies have a long-standing relation with Palestinian Non-Governmental Organizations (PNGOs). However, recently the direct implementation of projects for the future Palestinian state and the Palestinian people have been without a partnership with local organizations. This has been a growing trend in the post 9/11 2001 world as the international focus on terrorism increased resulting in stricter auditing procedures from donors, which has caused a schism between international donors, and the local organizations.

Due to the increased concern of providing funding to organizations defined as terrorist, the United States Agency for International Development (USAID) in 2002 included the *Anti-Terrorist Clause* (ATC) in their contract with potential implementing partners. The Mission Order 21, in which the ATC is included, specifically targets the USAID Mission to the West Bank and Gaza projecting a distortion of the Palestinian people as terrorists through a disproportionate allocation of space towards Palestinian political parties, organizations, and people. What is more worrisome is that additional big donor organizations have included similar conditions, as exemplified through the Ford Foundation. These include, but are certainly not limited to, UNESCO, UN Women, and UNDF. In this light MA'AN, as part of the Palestinian NGO Network (PNGO), fears the propagation of this trend among international donors leading to a destructive impact on Palestinian NGOs. This paper reiterates PNGO's position, previously announced in 2003, where the rejection of including conditions for providing financial support to PNGOs was stated.

The citizens of Palestine have been suffering the occupation and struggling for self-determination for the last 44 years. Local NGOs have been working tirelessly towards ending the occupation and legal violations through non-violent means. The PNGO Network position issued in 2003 and reiterated in 2011 called for the halting of conditional support however, on the contrary, the number of donors including these types of conditions in their grants has increased. We can now see disturbing effects of the ATC on Palestinian NGOs and the fear of further donor organizations including these types of conditions is apparent. Should additional donating agencies pursue the policy of including similar conditional funding to those of USAID in their contracts, devastating financial effects for high-quality Palestinian NGOs would occur, leading to their marginalization from the state-building efforts. This would evidently work counterproductive in the development of a functioning Palestinian state and on the sustainability of the development work by PNGOs.





Background to External Funding of Palestinian Non-Governmental Organizations

Historically, Palestinian civil society organizations have played a key role in the socio-economic development of Palestinian society. Before the Oslo Accords, these organizations filled the vacuum of absent state institutions and during the post-Oslo era they complemented the institutions of the Palestinian National Authority (PNA). In addition the Palestinian NGOs were a key component of maintaining the national struggle and social fabric of Palestinian society that was under occupation. In the 1990s the number of Palestinian Non-Governmental Organizations (PNGOs) was increased dramatically, primarily because organizations were tolerated to a point and because of the specialization of many organizations. In addition to PNGOs flourishing during this time, many Inter-Governmental Organizations (IGOs, such as the UN, International Monetary Fund, World Bank Group, EU, etc.) and International Non-Governmental Organizations (INGOs) also flourished in the West Bank and Gaza. In the early 2000s, the number of PNGOs started to increase again covering important segments of social services such as health, education, agriculture, environment, and youth and also the promotion and implementation of human rights, good governance and democracy. The PNA's clear dependency on external aid together with its inability to provide funds for civil society organizations left PNGOs with no other choice but to seek funding elsewhere. However, despite the fact that the sustainability of these organizations is dependent on external aid and that 78% of the revenues of PNGOs are generated from external donors, they only received 10% of the complete external

aid distributed to the West Bank and Gaza between 1999 and 2008. Thus, similar to the PNA, the Palestinian civil society has become dependent on external aid due to its inability to generate local funds.¹

Political upheavals have influenced the amount as well as the type of donor funding in Palestine, affecting both the PNA and PNGOs. Traditionally, international aid to the Occupied Palestinian Territories has been channelled through civil society organizations. This however changed following the Oslo Accords, whereby direct and bilateral funds were given to PNA institutions and PNGOs. This policy of increased international bilateral funding became more apparent in 2007 after the appointment of Dr. Salam Fayyad as Prime Minister and Minister of Finance. The second Intifada beginning in September 2000 demarcated the shift in donor policy from funding development projects to funding emergency and relief assistance. In addition, external funding was transferred from funding PNGOs to funding INGOs and IGOs in order to avoid being associated or accused of perpetuating the conflict or funding 'terrorist' organizations and activities. The change in funding policy also comprised a shift from bilateral donors to multilateral agencies being involved in the direct implementation of projects and assistance. Nevertheless, as stability started to pervade in 2004 and 2005; an increase in external funding to PNGOs ensued, especially within the fields of governance, democracy and human rights.²

United States Agency for International Development (USAID) Funding to the Palestinian Civil Society Sector

The US government is one of the largest single donor countries that have provided assistance to the Palestinians and the world in general. Currently USAID has access and distribution over \$50 billion dollars for international aid.³ Since the Oslo Accords in 1993 and the establishment of the PNA in 1994 until late 2009, more than \$4 billion has been disbursed in bilateral economic assistance to the Palestinians.⁴ In June 2010, President Barak Obama pledged \$400 million to projects in the West Bank and Gaza that were expected to address critical aspects of life such as clean water, job creation, building schools, housing, health and infrastructure. Only \$160 million were to be channelled through USAID contractors and INGOs in the form of humanitarian and project assistance. US assistance has usually been appropriated in the form of direct funds to sectors of concern in the PNA such as the security sector, justice sector, and direct budgetary assistance through project assistance administered by USAID.⁵

USAID provides project assistance to Palestinians through the Economic Support Fund (ESF) either to projects. This is implemented directly by US-based NGOs operating in the West Bank and Gaza through partnership with Palestinian local organizations or indirectly through partnership with INGOs. USAID's Mission in the West Bank and Gaza is comprised of five major programs namely; economic growth, youth and education, water resources and infrastructure, democracy and governance, and health and humanitarian assistance⁶.

According to a 1998 study by Sari Hanafi, the US was the largest single country

funding PNGOs in the period between 1995 and 1998. Today, USAID's support to PNGOs is channelled indirectly through IGOs and INGOs and only a small fraction is directed towards direct partnership with PNGOs. According to a study surveying external funding to PNGOs between 1999 and 2008, US aid to PNGOs has dropped from contributing to 12% of the total external funds in 1999 to 5% in 2008. In 2008 US funding amounted to 4.3% of the total amount of external aid to PNGOs. US bilateral aid and funds directed to PNGOs through INGOs accounted for 12%.⁷

The reason behind this significant drop is attributed to several reasons of which; the association of USAID to US foreign policy discouraged many PNGOs from accepting USAID funding, other NGOs refused to disclose their USAID funds in order to avoid being ostracized within the PNGOs community; and most importantly the strict measures required by USAID with regards to the *Anti-Terrorist Certification* (ATC) and its accompanying measures such as vetting which will be more closely elaborated below.

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Conditional Funding and Donor Bodies

Conditional funding is by nature implying that the donor is taking a more aggressive part in shaping the agenda of its recipients. For donor organizations to include a condition on non-involvement of what they subjectively define as terrorism contravenes NGO independence and the facility of Palestinians to resist the illegal occupation. The inclusion of the ATC is not only rejected due to political reasons but also the apparent issue of legality for Palestinian NGOs. USAID including the ATC in their contracts and making it conditional for partnership has brought on serious consequences for PNGOs because, according to the PNGO Law Chapter 7-Article 32, it is illegal for PNGOs to sign and accept anything but unconditional funding.⁸

In addition to the explicit inclusion of the ATC by USAID a terrible trend is occurring whereby several big international organizations are following suit and making their grants conditional. The Ford Foundation made its grants conditional in 2004. Albeit the conditional clause of Ford Foundation as well as other donor organizations is shorter than and not as extensive and restrictive as USAID's conditions remain with regards to terrorism.

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Legal framework of USAID

The legal framework of USAID is extensive. Following the ratification of the Oslo accords, President Bill Clinton issued an Executive Order (EO) classifying some organizations as terrorist organizations and prohibited transactions with such organizations that “disrupt the Middle East Peace Process.” Following this EO, the United States has taken several steps to ensure that U.S. resources, including aid to the West Bank and Gaza, do not support terrorist activities. Following September 11, 2001, President Bush prohibited, through EO 13224 issued on September 23, 2001, any support to any of the individuals or organizations that were designated as terrorists. The term terrorism and terrorists were then, as now, extremely problematic terms as discussed in this paper. The EO is not a law, however it carries the force of law due to its representation of the President's exercise of statutory authority granted by Congress under the International Emergency Economic Powers Act and the National Emergencies Act.⁹ The above-mentioned EO is only one out of many orders included in **Mission Order 21** which in part specifically target the USAID Mission to the West Bank and Gaza. The foundation of the *conditional nature* of USAID as a donating body is the Antiterrorism Certification (ATC).

The ATC was initially issued in Acquisition and Assistance Policy Directive (AAPD) 02-19 on December 31, 2002 making it mandatory for both U.S. and non-U.S. organizations to sign the certification before being awarded a grant or cooperative agreement, for them to certify that the organization does not provide material support or resources for terrorism. The recipients of grants were specifically asked to screen organizations and names against the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC)

list and the UN Security Council's Al-Qaida and Taliban Sanctions Committee Consolidated List (UN 1267 list) 10 before providing any material support or resources to an individual or entity. As well as "implementing reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity."¹⁰

The first essential part of the ATC is the paragraph pertaining 'knowledge' or 'intent', which states that:

The Recipient, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorism acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts, as that term is defined in paragraph 3.¹¹

This has a far-reaching significance for NGOs as grants awarded to NGOs can, due to this, be instantly frozen even if the organization in any way, even without intent or knowledge, is associated with any organization or individual defined as terrorist. The clause implies that applicants are expected to consider any type of public information about an entity's or individual's terrorist ties identified in public media and official publications but could also mean reputation in the community¹². The potential consequences can further be severe if a recipient at some point during the last ten years did provide material support to an individual or entity which was at that time not designated by the United States Government to any of the lists of terrorists. The fact that the grants that the NGO is potentially currently receiving can be frozen leaves NGOs receiving grants from USAID in a very uncertain situation. The situation is further exasperated if one takes into consideration what this does to

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aid beneficiaries and the punishment they are potentially receiving for this clause.

Initially, the Executive Order 13224 stated 28 individuals and entities designated as terrorists in comparison to today's hundreds of entries which is continuously amended by the Secretary of State and Secretary of Treasury. Until 2008, Nelson Mandela and the African National Congress were on this list. These are the people who peacefully struggle for the end of Apartheid in 1994 and they were on list, which raises many concerns about the legitimacy about said list.¹³

Mission Order 21 states that the USAID Mission to the West Bank and Gaza must vet certain non-U.S. recipients of USAID funding¹⁴. The vetting procedure was substantially amended in 2007 and is currently an extensive exercise, which involves inspecting recipients' names and other identification information against databases and other information sources to determine if they are involved with terrorism. The Program Support Unit (PSU) at the USAID Mission coordinates the vetting process for those requiring vetting. The procedures, which were strengthened in 2007, now include additional mandatory information with regards to all the subjects of the vetting exercise. In other words, all non-U.S. individuals or organizations





Ford Foundation

proposed for an award of a contract or subcontract in excess to US\$ 25,000. For clarification, vetting applies only to first-tier and second-tier recipients subjected to vetting and are limited to NGOs. The procedure of vetting was expanded as a new second specific vetting centre was established in Washington D.C. which means that vetting is now conducted in a two-step manner. As a further addition to the process, an automatic three-year vetting for each award was stated.

The Mission Order 21 further states that all contracts, subcontracts, grants, cooperative agreements and sub grants must include the mandatory *naming clause*. The naming clause states, among other things, “no assistance shall be provided under this contract or agreement for any school, community centre, or other facility that is named after any person or group that has advocated, sponsored, or committed acts of terrorism.” According to USAID, they may approve assistance to such a facility only if it determines that the purpose and practical effect of such assistance will not be to provide recognition to such a person or group. This infringes on the recipient’s freedom of speech and expression which are supposed to be staples of the American state.

Furthermore, the *antiterrorism clause* has to, without exceptions, be included in all solicitations and awards for contracts, grants and sub agreements. The clause is a reminder of what is required namely that “all USAID contracts and awards to include a provision requiring Contractors and Recipients to ensure compliance with Executive Orders and laws prohibiting transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism”¹⁵

Equally, the American Ford Foundation is a major source of funding for NGOs around the world as in the Middle East and for the Palestinian people. Its budget is currently over half a million dollars and has multiple projects totalling \$30 million in the Middle East.¹⁶

In 2004, The Ford Foundation included conditions in their grants letter;

By countersigning this grant letter, you agree that your organization will not promote or engage in violence, terrorism, bigotry or the destruction of any state, nor will it make sub-grants to any entity that engages in these activities.¹⁷

Should the grantee fail to comply with these instructions, this initial conditional document only mentions that the monitoring including audits, on-site audits can be done at any time during the implementation of the project as well as up to four years after completion of the grant. Moreover, in the case of non-compliance with the conditions, the Ford Foundation will have the organization repay the amount of grant funded. In 2007, an additional memorandum was written stating more specifically how the monitoring will be implemented and which references will be used in the determination of any terrorist activities. The last version of the Ford Foundation’s grant’s contract explicitly states that the receiving organization has to comply with U.S. Anti-Terrorism Financing Rules.

The foundation and other charitable organizations in the United States face penalties and potential criminal liability if grant funds are used to support acts of terrorism or to support persons or organizations that have been identified as terrorists or terrorist groups, including on lists published by the United States government.¹⁸

Although the text of the revised version highlights more specific details, the memorandum issued in 2004 is still considered the countersigned grant letter. The letter states, as mentioned above, “promotion or engagement in violence, terrorism, bigotry and destruction of any state” without any definition of these words or concepts making it vague and arbitrary.

There are numerous questions that arise from these definitions and agreements. First, the obvious lack of a definition of “engage” and “promote.” What constitutes each of these and are there acceptable degrees to them? What is meant by “bigotry” and how encompassing is this? Does this apply to a country such as Israel that has Parliamentarians who openly make racist comments against Palestinians and Arabs, and openly speak of ethnically cleansing them? When discussing the “destruction of a state,” does there need to be a capability to follow through or is the simple expression enough? If a Palestinian says he wishes for a secular democratic state in the area of Israel and the Occupied Palestinian Territories, is this calling for the destruction of Israel and the potential state of Palestine?

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Absence of a Universal Definition of Terrorism

During the past decade, the USAID conditions for financial support of PNGOs have been scrutinized and enhanced, in particularly strengthened with regards to terrorism. However, there are numerous definitions of what constitute a terrorist and terrorist activity. There are not only differences among leading organizations such as the United Nations and the European Union, however also within the U.S.

The United Nations

The United Nations and its numerous agencies lack a unified definition of terrorism. One of the definitions is from the Security Council. It was stipulated in 2004 and condemns terrorist acts as

criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.¹⁹

Various United Nations organizations, mentioned above, have their own specific clauses that are tied to aid. UN Women and UNESCO state:

The Contractor agrees to undertake all reasonable efforts to ensure that none of the UNIFEM funds received

under this Contract are used to provide support to individuals or entities associated with terrorism and that the recipients of any amounts provided by UNIFEM hereunder do not appear on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999). The list can be accessed via <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>. This provision must be included in all sub-contracts or sub-agreements entered into under this Contract.”

UNDF states:

The Applicant CSO/NGO does not intend to provide any type of support for any member, affiliate or representative of an organisation that recommends or is apologetic of the use of violent means in political action in general and of terrorism in all its forms and manifestations in particular, as stated in the 2005 World Summit Outcome Document (§81).

There are numerous implications and possible interpretations of these definitions and wordings. To begin, what constitutes a reasonable effort and its application? What sort of vetting procedure needs to be done that suffices for the UN? Why are we in charge of vetting, are we an investigative body? Do we have to open an investigation department just to receive aid? An organization would be tied to an agreement in which there is no concrete definition that could be interpreted in many different ways. Do we need to vet every person before we talk to them, or only if they gain our ‘support’ in whatever that means?

What constitutes support, is that just monetary based, or are educational and social benefits support? In addition to support, how does one define the providing

of support? As has been mentioned, is there a hierarchy or emphasis on specific types of undefined support? If a person who attends a sustainable agriculture meeting, produces more food and gives some to his neighbor, who was/is a member of a 'terrorist organization,' are we complicit and lose funding?

What does associated with terrorism mean, as there is no definition of association. What about voting and sympathy, do they have a direct correlation? If so, does this mean in the new Palestinian elections, which will have a unity government, that people voting for this party will be a terrorist? People who support Fatah will be voting for the Hamas-Fatah alliance, so does that prove association, who determines this? If you are doing a telephone survey about resistance to occupation and someone says they understand why violent resistance happens, is that support?

What does it mean to be apologetic? Who is in charge of determining this and what is the scale of it? If you say you understand why people may resort to violence in the face of occupation, are you an apologist?

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The European Union

The European Union defines terrorism for official purposes in Article 1 of the Framework Decision on Combating Terrorism stipulated in 2002. In this document, terrorist offences fall under criminal offences and are listed among other serious misdeeds against persons and property

[that] given their nature or context, may seriously damage a country or an international organization where committed with the aim of: seriously intimidating a population; or unduly compelling a Government or international organization to perform or abstain from performing any act; or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.²⁰

The broad EU definition of terrorism is similar to the UN Security Council, attempting to reach the largest consensus possible but there are fundamental questions one must ask about its meaning. First, beginning with the ending clause of 'seriously destabilizing or destroying the fundamental political, constitutional, economic, or social structures of a country or international organization,' does this mean Israel should have all its aid cut off from the European Union considering the damage that has been inflicted on the Occupied Territories, especially from September 2000 to present day? During Operation Cast Lead, Israel destroyed or damaged 11,152 houses, affecting 107,509 people, half of whom are children. In addition, the manufacturing industry saw massive loss due to the destruction inflicted on by bombings and by bulldozers. 75% of factory workers lost their job because of said destruction.²¹ Israel has been carrying out a massive campaign of economic strangulation in the Gaza Strip and chooses





which items are allowed in to just let the population survive. Yet somehow the Palestinians are the ones targeted with stipulations for aid?

Next the statement of “unduly compelling a Government or international organization to perform or abstain from performing any act” is curious. First, Israel has stated its desire to change the government of Gaza and has massive used resources to performing this goal. Starting with a massive closure regime, to financing opposition groups, to the death and destruction of Operation Cast Lead, these have all had the background of trying to bomb the Gazan population into voting different, but somehow the Palestinians need to sign this statement for aid while it is being done to them? Why are we holding NGOs to a higher standard, even if only pertaining to signing a piece of paper since they have no means, than states? States are the highest form of authority in the world system and there are rules for them to abide by and it is rare it is actually carried out. Yet we target NGO groups and tell them not to do something they are not even capable of.

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The United States

Terrorist acts have, for a long time, constituted a major concern for the international community and in particular for the USA. Ironically, there is a divergence within the U.S. government agencies with regards to the definition of terrorism as well as whom and which organizations are considered terrorists on the different lists exemplified below.

The frequently used practices in the US’s ‘fight against terrorism’ are lists of groups and individuals who are labelled terrorists. These lists, which can also be found in other countries around the world, show through their diverse listings a subjective definition of terrorists and terrorist groups. One organization might be labelled as a terrorist group by the US however, at the same time not by other international actors such as the UK, India or Russia, which is the case of Hamas, the Popular Front for the Liberation of Palestine (PFLP) and the Palestinian Liberation Front (PLF).

The diverse definitions and groups designated as terrorists do not only vary between countries but also between different agencies of the US. There are ranges of definitions of which some are listed below to highlight the discrepancy within the US:

U.S. Federal Criminal Code

The US defines terrorism under the Federal criminal code 18 U.S.C. §2331 as

[...] activities that involve violent [...] or life-threatening acts... that are a violation of the criminal laws of the United States or of any State and [...] appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping [...]²².

U.S. State Department

In addition to the U.S. Federal Criminal Code's definition of terrorist groups, the U.S. State Department further states that for an individual or organization to be defined as terrorist it must "threaten the security of U.S. nationals or the national security"²³ (national defence, foreign relations, or the economic interests) of the U.S. The State Department has issued a list of Palestinian organizations that are considered a threat, some of them democratically elected Palestinian political parties, who pose very little to no threat to the United States.

In the list can be found: Abu Nidal Organization, Al-Aqsa Martyrs' Brigades, Hamas, Islamic Jihad Group, Palestinian Liberation Front (PLF), Popular Front for the Liberation of Palestine (PFLP) and PFLP-General Command.²⁴

U.S. Department of Treasury

The U.S. Department of Treasury list contains "persons who commit, threaten to commit, or support terrorism."²⁵ The list of terrorists and terrorist organizations is much more extensive than the earlier mentioned and include charitable organizations such as:

Al Salah Association (affiliated to Hamas), Arab Palestinian Beit El-Mal Company, Holy Land Foundation for Relief and Development (funded Hamas between 1995 and 2001) and Kind Hearts for Charitable Humanitarian Development.²⁶

The absence of a universal unified definition of terrorism among global actors, international organizations and the international community but most importantly among the US government agencies as illustrated above makes us question the legitimacy of USAID's ATC vetting procedures and other measures. The inconsistency in defining terrorism and in drafting lists of terrorist organisations highlights the U.S.'s 'subjective vision' and lays the government open to charges

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that undermines its own counterterrorism efforts through the use of varying definitions across its agencies and when compiling the statistics attached to them.

In addition to the clear discrepancy among entities with regards to which groups and organizations fall into the definition of terrorists, the discrepancy between the actual intent and effect of the ATC must be discussed. As stated above, the effect of the inclusion of the ATC is harsh for PNGOs as they are facing increased marginalisation in the implementation of humanitarian aid in Palestine. Should more donor organizations include conditions to their funding, there will be a severe financial effect for the PNGOs as this is by law prohibited to accept. While the inclusion of the ATC has devastating effects on the PNGOs who are non-violently working for an improved peaceful Palestine, it has little effect on terrorism. The organizations the ATC is meant to target are not reliant or desiring to obtain funds from the United States. They have their own organizations for the procurement of monetary assistance; hence it is the secular, non-violent, and beneficial organizations that suffer the most from the ATC. Thus, it is crucial to look into the ATC





and how efficient this is as a tool when it comes to actual fighting of terrorism rather than what just looks appealing to the donor organizations on paper.

USAID's projects in the West Bank and Gaza are some of the most rigorously vetted, adhering to strict standards as mentioned in earlier sections. USAID's ATC and vetting measures infringe on the internationally recognized right of resistance of the Palestinian people.

When discussing the various applications by American organizations, who determines "life threatening," is that on the potential person who threatens or who is potentially being threatened? If an enemy combatant attacks US soldiers, is that terrorism under this definition since it mildly fulfills certain criteria of the definition? If an American is overseas, and a soldier puts his gun on him, is the army and government of that soldier now a terrorist organization for threatening a US national? What is national security, is this a fixed concept that never changes? Do relations between the US and other states and organizations never change? Is national security in itself something that can be calculated mathematically so an organization can find out if in fact they are terrorist?

In terms of threatening to commit, who gauges that? What constitutes a threat? Is there a necessity to prove that said threat has any potential for follow through? Does receiving of unemployment benefits from an organization involve support of said organization? Does attending a conference on a political issue where a member of an organization is speaking constitute support?

What is meant by coercion and intimidation of a government? If a social movement arises that tells its members in the government to vote a certain way or they will vote them out of office, does this constitute intimidation? What if the parliamentarian feels threatened by this and feels he cannot vote the way he wants to? Does that mean voters are now a terrorist organization?

Canadian International Development Agency (CIDA)

Canada is one of the largest donors of aid in the world. Within the Canadian government, CIDA controls about 75% of all aid going from Canada to the world. Their budget is just under \$4 billion dollars a year and they also include in all their aid that:

The *Anti-terrorism Act* adopted in 2001 amended the Canadian *Criminal Code* in order to establish provisions aimed at disabling and dismantling the activities of terrorist groups and those who support them. In particular, the Canadian *Criminal Code* makes it a criminal offence for anyone to directly or indirectly collect, provide or make available funds or property, intending that they be used, or knowing that they will be used, to carry out or facilitate terrorist activities, or knowing that the funds or property will be used or will benefit a terrorist group. "Terrorist group" is defined in the *Criminal Code* as any entity that has as one of its purposes the carrying out of terrorist activities or any entity that is listed under the *Criminal Code*.²⁷

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Canada is one of the largest donors of aid in the world. Within the Canadian government, CIDA controls about 75% of all aid going from Canada to the world. Their budget is just under \$4 billion dollars a year.

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The Canadian government's definition of terrorism was established in 2001 and is as follows:

"Terrorist activity" is an act or omission undertaken "in whole or in part for a political, religious, or ideological purpose, objective or cause" that is intended to intimidate the public or compel a person, government or organization to do or refrain from doing any act, if the act or omission intentionally causes a specified serious harm. Specified harms include causing death or serious bodily harm, endangering life, causing a serious risk to health or safety, causing substantial property damage where it would also cause one of the above listed harms and, in certain circumstances, causing serious interference or disruption of an essential service, facility or system, whether public or private.²⁸

As is evident from the Canadian definition, as all other definitions examined here, this could cover quite a bit. Since CIDA has the clause it does, the potential for requisitioning aid is always a possibility with such a loose definition. There have been discussions in the parliament about amendments regarding the input of "in whole or in part for a political, religious, or ideological purpose, objective or cause." Notable politicians in Canada have pointed out this is extremely troublesome and leads to discrimination and abuse of police powers.²⁹

In terms of possible interpretations of CIDA's definition, the term "collect" is curious. Does that mean if a person receives Zakah money from a mosque that is run by "terrorists" that this person has collected a benefit from that organization? What if one helps with the distribution, does that mean we are not longer able to help him learn how to irrigate his farmlands? If that same person just donates money to his mosque as is part of his religion, and someone in the mosque is in, or has a family member in Hamas, can we also not help him? If a person gets public or subsidized housing from the government that is considered

terrorist, are they now benefitting and no longer eligible for our aid and support?

What does "intent" actually mean? What proves intent? Who proves intent and within what framework? Is it the state whose legitimacy said group could be questioning? Is that not similar to having a defendant pick the judge in court by conveniently allowing only certain expressions to be made?

"Causing interference or disruption of an essential service, facility or system, whether public or private," does this mean a peaceful blocking of a main road now constitutes terrorism? It would be political, which would fulfill part one, it would be intended, since there is no specified definition we can interrupt it as we wish. It might cause someone to be late to work; hence harming them by potentially having their job lost which will make paying their bills impossible. In addition, the protestors would be at risk of being hit by a car, hence they would be endangering their own life. If someone gets in a car accident they will be causing a disturbance to public and private services, so can we not help that person since they are fulfilling a requirement of terrorism? How many of these requirements do they have to fulfill to be considered a terrorist, are there degrees?

.....

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.....





Australian Aid (AUSAID)

The Australian government is also a large donor of aid, spending over \$4 billion dollars last year alone, with around \$3.6 billion dollars were channeled through AUSAID.³⁰ Similar to other organizations mentioned, the Australian government has a definition of terrorism which is as follows:

The use or threatened use of violence to procure or attempt to procure the alteration, cessation or doing of any matter or thing established by a law of a legally constituted government or other political body...for the purpose of putting the public or a section of the public in fear or for the purpose of preventing or dissuading the public or a section of the public from carrying out, either generally or at a particular place, an activity it is entitled to carry out³¹

AUSAID has a conditional terrorism clause that is as follows:

Those in relation to organisations and individuals associated with terrorism, including ‘terrorist organisations’ as defined in Division 102 of the Commonwealth Criminal Code Act 1995 and listed in regulations made under that Act and regulations made under the Charter of the UN Act (Cth) 1945.

The Contractor must use their best endeavors to ensure that funds provided under this Contract, including sub-contracts do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform AusAID immediately.³²

The Australian definition of terrorism has many of the same issues that others have had. First, what is the definition of a “threat?” Must the “threatened” determine this, or the person making the assumed threat? How do you gauge fear of the public and what determines actual fear? This definition is just as elusive as the others and begs the same questions.

These problems carry over into the AUSAID conditional clause as it lacks much of the same clarification issues. What is meant by “best endeavors,” and does doing nothing fall under this category, if we do not have the resources to do so? What is meant by direct or indirect support and resources in regards to groups associated with terrorism? None of these important words have a definition or clarification and could potentially cover a great amount of people or organizations.

Implications of a Lack of a Common Definition

How many different aspects of the various definitions of terrorism does one need to fulfill before they are ineligible for aid, 1, 3, all? Is there a hierarchy of which are more emphasized in each of the dozen definitions? Are there varying degrees within each aspect of what makes terrorism, if so, where is the list? If we have two potential farmers looking to join meetings on sustainable agriculture and the needier one has a relative who is with Hamas, does that mean we have to tell him that he cannot yield better produce because of that? In Israeli jails where many Palestinians are imprisoned as political prisoners, new prisoners must choose a political party with whom to associate in said prison for benefits and protection. Prisoners who are independent in prison are potential targets for abuse and exploitation by the Israeli authorities. Potential benefits in Israeli prison include what is called the canteen system where your family pays a certain amount of money guarantee you a canteen. The political organizations control this and distribute or withhold distribution according to membership. Hamas is one of the largest ones and can allow for protection and potential benefits, so why wouldn't people want to join this in prison where they are held in inhumane conditions? So when they get out of jail we have to punish them further by not supply him with aid because he wanted to survive in prison and only in name was part of said organization? All this is very curious and very arbitrary, with no concrete definitions or foundation, but are taken very seriously. Why is it we are targeting and essentially punishing a population who wishes to benefit from education, access to social services, and utilization of potential for development? This is form of collective punishment on a vulnerable population for the perceived actions of a select few.

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ATC Distortion of Palestinian Right to Resistance

“The occupied people have the right to struggle by various means against colonial powers, which suppress their aspirations for freedom and independence Nations.”³³

Following the Second World War, the right of people to self-determination has been stipulated and reaffirmed by the United Nations. Through the UN Charter, two significant meanings to self-determination are stated. The first meaning is set on a state level and determines the state to have the right to choose freely its political, economic, social and cultural systems.³⁴ Secondly, the right to self-determination is further defined as the right of a people to constitute itself in a state or otherwise freely determine the form of its association with an existing state.³⁵

considering those who are involved in or were previously affiliated with resistance movements as terrorists, the USAID risks labelling a big chunk of the Palestinian people as terrorists, thus hindering potential aid benefits to disenfranchised people.

Furthermore, The UN General Assembly resolution 3070 stipulated on December 14, 1960 “reaffirms the legitimacy of the people’s struggle for liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle.” More specifically, in the same resolution can be read that “all Governments which do not recognize the right to self-determination and independence of [...] the Palestinian people” are condemned. The UN General Assembly resolution 3089 from December 7, 1973 “[e]xpresses once more its grave concern that the people of Palestine has been prevented by Israel from enjoying its inalienable rights and from exercising its right to self-determination.”

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In this view, the imposition of the ATC and the other strict conditional funding measures by USAID and other international organizations infringes on the Palestinian’s right to resist by not distinguishing the unique state of the Palestinian people given that they are still under occupation. By

The Position of the Palestinian Non-Governmental Organization's Network:

In light of the continued imposition of the ATC and the application of strict vetting procedures by USAID and other INGOs and IGOs, the PNGO Network reaffirms its previously stated position in 2003³⁶, and stresses its rejection of conditional funding for the following reasons:

- 1) The PNGO Network reiterates its position as regards to the rejection of any form of terrorism and any act of violence against civilians whether Israelis, Palestinians or internationals. This makes the signing of the ATC totally unnecessary and is on the contrary, undermining the cause and perpetuating the connection between Palestine and terrorism.
- 2) The PNGO Network believes that USAID and the Ford Foundation, together with other international and national donor organizations and countries, have been playing a very important role in funding Palestinian NGOs. However, the last four years (2007-2011) there has been a waning assistance and funding to PNGOs. Most of USAID support that was directed to the West Bank and Gaza was implemented through INGOs and IGOs resulting in a total exclusion of PNGOs and the loss of the local connection with projects implemented.
³⁷ The PNGO Network believes that including PNGOs in the project implementation is imperative and vital for any sustainable development and humanitarian intervention especially as local NGOs play a key role in contributing to a vibrant civil society and citizen participation.
- 3) The PNGO Network is concerned that the phenomenon of conditional funding will exacerbate the current marginalization of PNGOs refusing to adhere to USAID's conditional funding measures. USAID is leading a worrisome trend that encourages international and national donor organizations to include conditions and clauses dealing with terrorism and terrorist activities in any provision of financial support to Palestinian NGOs.
- 4) The PNGO Network is alarmed with the increased degree of international organizations directly implementing projects since INGOs are placing Palestinian NGOs in the periphery of the developmental work. Palestinian NGOs are developmental organizations that aid and empower Palestinian society through service oriented activities and awareness raising, based on the principles of democracy, social justice and respect for human rights. Social change and development of a society should come from within or at least be locally anchored. USAID is in this case replacing the role of service delivery, a role that has historically been played by Palestinian civil society organizations in fields covering various sectors of development such as infrastructure, education, health and governance.
- 5) The PNGO Network contends that the claim stating that the ATC regulation is implemented worldwide and therefore PNGOs are expected to abide by it falls short in identifying the unique situation of the Palestinian people whereby we still remain under occupation. The PNGO Network rejects equating legitimate resistance with terrorism.
- 6) The PNGO Network emphasizes that the endorsement of the ATC and other vetting measures are illegal and in contravention with the Palestinian





National Authority law prohibiting NGOs from accepting conditional aid.

- 7) The PNGO Network believes that in the context of the lengthy occupation of the Palestinian Territories, conditions such as the ATC have far reaching devastating consequences whereby local NGOs become sub-contracting service delivery agents operating in the absence of a Palestinian vision; corruption increases as only the signatory PNGOs monopolize resources in the development scene creating inequalities; fragmentation of the Palestinian civil society as smaller NGOs that accept the ATC and other terms replace the role of the bigger PNGOs; the dictation of the type of projects implemented by the PNGOs and the contracting INGOs among a few others.
- 8) The PNGO Network appreciates the donor community's funding, however rejects the distortion of the legitimate Palestinian right to resistance.
- 9) The PNGO reaffirms its belief that the United Nations should be bound by international law and any decisions adopted must be consistent with the norms and principles of international law and its different branches. The United Nations is considered as the body that oversees the formulation of these rules and regulations, entrusted with the follow up mechanisms ensuring the respect and execution of these resolutions and agreements.
- 10) The PNGO Network reaffirms that what has distinguished the United Nations from individual states is its absolute referral to the international law. Any decision adopted by any department or agency within the United Nations should rely on, be consistent with and abide by general international legal norms and resolutions.

- 11) The PNGO Network emphasizes that many international legitimacy resolutions have confirmed that the Israeli occupation is a denial of the Palestinian people's rights, as well as its use of force to suppress Palestinians aspirations towards freedom is a form of organized state terrorism.

MA'AN Development Center's Requests:

- 1) MA'AN calls upon all Palestinian Non-Governmental Organizations to take on a unified position as regards the rejection of the ATC clause, accompanying measures and conditional funding at large.
- 2) MA'AN calls upon the PNA to implement its regulation as regards to NGOs and conditional funding.
- 3) MA'AN calls upon the donor community to consolidate and empower the Palestinian civil society by working through them without imposing their dictations, agendas and conditions.
- 4) MA'AN calls upon the United Nations to strictly adhere to international law and all resolutions pertaining to the issue of Palestine and Palestinians.
- 5) MA'AN calls upon all donating agencies to take into consideration the unique situation of the Palestinian people who are under occupation and have international protection to resist said occupation.

Table of Donor Countries' Definition of Terrorism and the Donor Organizations' Clause Pertaining to Terrorism

Donor Country	United States	United Nations	CIDA	European Union	Australia
Definition Of Terrorism	[...] activities that involve violent [...] or life-threatening acts... that are a violation of the criminal laws of the United States or of any State and [...] appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping. (US Federal Law)	criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature. (Security Council 2004 Definition)	The <i>Anti-terrorism Act</i> adopted in 2001 amended the Canadian <i>Criminal Code</i> in order to establish provisions aimed at disabling and dismantling the activities of terrorist groups and those who support them. In particular, the Canadian <i>Criminal Code</i> makes it a criminal offence for anyone to directly or indirectly collect, provide or make available funds or property, intending that they be used, or knowing that they will be used, to carry out or facilitate terrorist activities, or knowing that the funds or property will be used or will benefit a terrorist group. «Terrorist group» is defined in the <i>Criminal Code</i> as any entity that has as one of its purposes the carrying out of terrorist activities or any entity that is listed under the <i>Criminal Code</i>	[that] given their nature or context, may seriously damage a country or an international organization where committed with the aim of: seriously intimidating a population; or unduly compelling a Government or international organization to perform or abstain from performing any act; or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization. (Article 1 of the Framework Decision on Combating Terrorism stipulated in 2002)	The use or threatened use of violence to procure or attempt to procure the alteration, cessation or doing of any matter or thing established by a law of a legally constituted government or other political body... for the purpose of putting the public or a section of the public in fear or for the purpose of preventing or dissuading the public or a section of the public from carrying out, either generally or at a particular place, an activity it is entitled to carry out
	<p>“threaten the security of U.S. nationals or the national security” (State Department)</p> <p>“persons who commit, threaten to commit, or support terrorism.” (Treasury Department)</p>		<p>“Terrorist activity” is an act or omission undertaken “in whole or in part for a political, religious, or ideological purpose, objective or cause” that is intended to intimidate the public or compel a person, government or organization to do or refrain from doing any act, if the act or omission intentionally causes a specified serious harm. Specified harms include causing death or serious bodily harm, endangering life, causing a serious risk to health or safety, causing substantial property damage where it would also cause one of the above listed harms and, in certain circumstances, causing serious interference or disruption of an essential service, facility or system, whether public or private</p>		






Organization's Donor Country	United States	United Nations	CIDA	Australia
Terms and conditions (specific name of donating organization)	The Recipient, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorism acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts, as that term is defined in paragraph 3. (USAID)	The Contractor agrees to undertake all reasonable efforts to ensure that none of the UNIFEM (now UN Women) funds received under this Contract are used to provide support to individuals or entities associated with terrorism and that the recipients of any amounts provided by UNIFEM hereunder do not appear on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999). The list can be accessed via http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm . This provision must be included in all sub-contracts or sub-agreements entered into under this Contract	The Consultant hereby certifies that it is not directly or indirectly linked to entities listed pursuant to the Government of Canada Anti-Terrorism Act	Those in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the Commonwealth Criminal Code Act 1995 and listed in regulations made under that Act and regulations made under the Charter of the UN Act (Cth) 1945. The Contractor must use their best endeavors to ensure that funds provided under this Contract, including sub-contracts, do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform AusAID immediately.
	By countersigning this grant letter, you agree that your organization will not promote or engage in violence, terrorism, bigotry or the destruction of any state, nor will it make sub-grants to any entity that engages in these activities. (Ford Foundation)	The Applicant CSO/NGO does not intend to provide any type of support for any member, affiliate or representative of an organisation that recommends or is apologetic of the use of violent means in political action in general and of terrorism in all its forms and manifestations in particular, as stated in the 2005 World Summit Outcome Document. (UNESCO)		

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- 8 Law of Charitable Associations and Community Organizations. Law No 1, 2000. Chapter 7 article 32.
- 9 International Emergency Powers Act, 50 U.S.C. 1701-1707; National Emergencies Act, 50 U.S.C. 1601-1651
- 10 GAO report number GAO-09-622
entitled 'Foreign Assistance: Measures to Prevent Inadvertent Payments to Terrorists under Palestinian Aid Programs Have Been Strengthened, but Some Weaknesses Remain' which was released on May 19, 2009
- 11 http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd04_07.pdf
- 12 Appendix to AAPD 04-14, issued September 24, 2004
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- 14 USAID/WBG Section 559 of the FY 06 Foreign Operations Appropriations Act entitled *West Bank and Gaza Program*
- 15 AAPD 02-04, issued March 20, 2002
- 16 http://www.fordfound.org/pdfs/ar08/FF_AR08.pdf

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- 18 Ensuring Grants Are Used for Charitable Purposes. December 2007
- 19 United Nations Security Council Resolution 1566, October 8, 2004.
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- 21 <http://www.alhaq.org/pdfs/gaza-operation-cast-Lead-statistical-analysis%20.pdf>
- 22 United States Federal criminal code. 18 U.S.C. §2331
- 23 <http://www.state.gov/s/ct/rls/other/des/123085.htm>
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