

May 12, 2010

President Barack Obama
The White House
1600 Pennsylvania Ave., NW
Washington, DC

Dear President Obama,

Restrictions by the U. S. Government on charitable giving practices continue to do irreparable harm to the work of our organizations and to our nation's image abroad. We write to you as representatives of a broad cross-section of U.S. nonprofit organizations, including charitable, development, faith-based, peacebuilding, human rights, civil liberties and civil rights organizations, to request reform of overly broad national security laws and policies that create unnecessary and counterproductive impediments to our legitimate and vital work.

Almost one year ago in Cairo you acknowledged that U.S. rules for charitable giving have created barriers to a wide range of charitable, development and other programs. Such an outcome violates the U.S. Constitution, principles of international humanitarian law, and treaty obligations. You said:

"Freedom of religion is central to the ability of peoples to live together. We must always examine the ways in which we protect it. For instance, in the United States, rules on charitable giving have made it harder for Muslims to fulfill their religious obligation. That's why I'm committed to working with American Muslims to ensure that they can fulfill zakat."

While the speech was given in the context of U.S. relations with the Muslim world, the problems you cited adversely impact all kinds of charities, humanitarian aid groups, grantmakers and donors. Overly broad laws intended to thwart financing terrorism are currently enforced with little transparency and virtually no due process protections, in violation of constitutional standards. Counterproductive enforcement policies occur in multiple federal agencies, making leadership from the White House a critical component in finding effective solutions. Hence we ask your administration to take concrete steps to remove such barriers to charitable giving and programs. Specifically, we seek a White House directive to all federal agencies mandating revision of their current policies and practices to conform to basic humanitarian principles.

Since the Reagan administration's declaration in 1984 that "a hungry child knows no politics,"¹ U.S. policy has been to provide humanitarian assistance on the basis of need, without regard to political affiliation, creed, race or the international status of the country or territory to which a person belongs. It is the Golden Rule of the American nonprofit sector as it provides humanitarian assistance all over the world. We urge your administration to uphold this cherished American principle.

¹ See Kathleen Teltsch, *U.S. Presses for Increased Relief Aid for Famine-Stricken Ethiopia*, N.Y. TIMES, Aug. 19, 1983, at A4.

To ensure an informed and thoughtful process, we ask that you direct your staff to consult with the U.S. nonprofit sector to explore solutions to the following deficiencies in the legal regime:

- Absence of clear standards for designating charities as terrorist organizations: There are no clear standards for what activities are and are not permissible for charities, grantmakers, development and other civil society organizations engaged in humanitarian, peacebuilding or other philanthropic work.
- Inadequate humanitarian exemptions to the laws banning material support to terrorism: Overly restrictive and impractical rules dictate when humanitarian aid can be delivered, especially in situations involving natural disasters, famine, refugee camps and conflict zones.
- No protections for good faith acts: There is no legal protection of charities acting in good faith.
- Absence of due process rights: There is no fair notice and process for listing and de-listing entities and individuals.
- Indefinite freezing of assets: Current indefinite freezes on charitable funds prevent using the funds for ongoing critical humanitarian needs.
- Harassment of donors and consequent chilling effect: Charitable donors continue to complain of harassment by law enforcement, including the FBI, regarding their legitimate donations, which has a documented chilling effect on charitable giving.

We have suggestions on practical and sensible solutions to these problems that can serve as a starting point for discussions on government reform efforts.

Representatives of the Department of Treasury recently indicated a desire to make measurable progress toward fulfilling the Cairo commitment on charities prior to the June 4 anniversary of your speech. While we welcome Treasury's interest in fulfilling your commitment, we oppose Treasury's out-dated and ill-advised Voluntary Guidelines because they have been misinterpreted as mandatory by the IRS, banking industry and others. Moreover, the Voluntary Guidelines impose inappropriate procedures that place charities in the role of government investigators. As a result, many groups have recommended withdrawing them. However, even if Treasury agrees to withdraw the Guidelines, serious and fundamental problems remain. For example, the process Treasury uses to designate charities and freeze their assets has been held unconstitutional by two federal courts.² Yet Treasury has taken no steps to remedy this problem.

The best way to mark the anniversary of your Cairo speech is to initiate a meaningful and sustained engagement effort with the U.S. charitable community focused on finding solutions that draw on the expertise of charitable organizations. Sensible, long-term solutions will boost the U.S. reputation abroad, open the door to aid and development programs that address causes of violent extremism and respect the rights U.S. charitable organizations guaranteed under the Constitution, the Convention for the Elimination of All Forms of Racial Discrimination, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Most importantly, it will be felt by the people that benefit from the services our sector provides.

² *KindHearts v. Geithner* Federal District Court for the Northern District of Ohio, Western Division, Case No. 3:08CV2400 and *Al-Haramain Islamic Foundation v. Treasury* United States District Court, District of Oregon, Case No. 07-1155-K1

We look forward to hearing from a representative of your office soon. The Charity and Security Network is coordinating logistics on behalf of the undersigned groups. The contact person is Kay Guinane, at 202 729 6791, or kguinane@charityandsecurity.org.

Thank you,

3D Security Initiative	Washington, DC
ACLU Washington Legislative Office	Washington, DC
American Jewish World Service	New York, NY
American-Arab Anti-Discrimination Committee	Washington, DC
Asia-Pacific Solidarity Coalition	Davao City, Philippines
Bill of Rights Defense Committee	Northampton, MA
Center For Constitutional Rights	New York, New York
Center for International Policy	Washington, DC
CIVICUS: World Alliance for Citizen Participation	Johannesburg, South Africa
Defending Dissent Foundation	Silver Spring, MD
Fund for Nonviolence	Santa Cruz, CA
Global Fund for Women	San Francisco, CA
Government Accountability Project	Washington, DC
Grantmakers Without Borders	San Francisco, CA
Grassroots International	Boston, MA
Initiatives for International Dialogue	Davao City, Philippines
KinderUSA	Dallas, TX
Life for Relief and Development	Southfield, MI
Malcolm X Center for Self Determination	Greenville, SC
Mindanao Peaceweavers	Davao City, Philippines
Muslim Consultative Network	New York, NY
Muslim Legal Fund of America	Richardson, TX
Muslim Public Affairs Council	Los Angeles, CA
OMB Watch	Washington, DC
Rule of Law Institute	Boston, MA

Sikh Coalition

South Asian Americans Leading Together

The Friends of Charities Association

The Moriah Fund

Weinberg & Jacobs, LLP

New York, NY

Takoma Park, MD

Washington, DC

Washington, DC

Rockville, MD