



**Statement Submitted to the OSCE Human Dimension Implementation
Meeting by the American Civil Liberties Union on:
Charitable Giving and Religious Freedom in the U.S.**

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My name is Jamil Dakwar and I am Director of the Human Rights Program at the American Civil Liberties Union (ACLU). The ACLU is the largest civil liberties organization in the United States, with offices in 50 states and over half a million members. Since the tragic events of 9/11, a core priority of the ACLU has been to stem the backlash against human rights in the name of national security. We are honored to address this important forum as part of our commitment to ensure that the U.S. government complies with universally recognized human rights principles, in addition to upholding the U.S. Constitution.

One human rights principle that the United States must honor is the right to freedom of religion or belief. The United States has long been regarded as a beacon of religious freedom, and since the 1940s, the United States has played a prominent role in promoting religious freedom in the international arena. Yet U.S. terrorism financing laws and policies developed under the Bush Administration are inhibiting American Muslims' ability to freely and fully practice their religion.

U.S. terrorism financing laws cover (i) schemes under which the U.S. government may designate organizations as terrorist through an administrative action in which the government shuts organizations down, often without allegations of criminal wrongdoing (criminal charges are not always brought in such cases), and (ii) criminal prosecutions for

material support for terrorism or to a terrorist organization. These regimes raise different issues, but have in common a lack of fundamental due process safeguards and impose guilt by association. As a result, American Muslim organizations and individuals are unfairly targeted in violation of their rights to freedom of religion, freedom of association, and freedom from discrimination.

U.S. terrorism financing laws expanded after September 11, 2001 provide executive branch officials with virtually unchecked power to designate charities as terrorist organizations and seize all their assets, effectively shutting them down. Today, terrorism financing laws are overly broad and lack procedural safeguards that would protect American charities against government mistake and abuse. These laws authorize executive branch officials to target groups on the basis of secret evidence and without notice, charges, opportunity to respond, or meaningful judicial review. The federal government's enforcement of these laws has disproportionately affected Muslim charities: nine American Muslim charities located in Texas, Michigan, Missouri, Illinois, Oregon, Ohio, Massachusetts, and New York have closed as a result of government action or investigation. An estimated \$20.7 million in frozen funds, which includes Zakat donations, remains blocked by the U.S. Treasury.

U.S. laws prohibiting material support for terrorism are in desperate need of re-evaluation and reform to make them fair and effective. Intended as a mechanism to starve terrorist organizations of resources, these statutes instead effectively impose guilt by association and do not provide guidance about what is and is not prohibited. Because the material support statutes impose punishment without regard for the intent or character of the support provided, these statutes punish wholly innocent assistance to arbitrarily blacklisted individuals and organizations, undermine legitimate humanitarian efforts, and can be used to prosecute innocent donors who intend to support only lawful activity through religious practice, humanitarian aid, speech, or association. Because the material support statute contains no general exception for humanitarian assistance, many benign

activities that are crucial for humanitarian aid and disaster relief are labeled material support, including provision of food aid, latrines, blankets, clothing, or tents.¹

Despite the often weak nature of its evidence, the Bush Administration publicly trumpeted its actions as successes and made inflammatory and unfounded or exaggerated allegations when it designated Muslim charities as terrorist, indicted them criminally, or raided them. These government actions have created a general climate in which law-abiding American Muslims fear making charitable donations in accordance with their religious beliefs. Other specific federal law enforcement practices, including widespread interviews of Muslim donors about their donations without evidence of wrongdoing, also intimidate American Muslims and discourage them from making charitable donations. The government's actions have chilled American Muslims' free and full exercise of their religion through charitable giving, or Zakat, one of the core "five pillars" of Islam and a religious obligation for all observant Muslims.

In the first comprehensive report that documents the serious effects of Bush administration terrorism finance laws on Muslim communities across the United States, the ACLU documented the effect of U.S. government actions on American Muslims' exercise of their right to profess and practice their religion through charitable giving.² The ACLU's research shows that U.S. terrorism financing policies and practices are seriously undermining American Muslims' protected constitutional liberties and violating their fundamental human rights to freedom of religion, freedom of association, and freedom from discrimination.

Following his last official mission to review U.S. counterterrorism practices, in November 2007 the UN Special Rapporteur on Human Rights while Countering Terrorism, Martin Scheinin, condemned the Bush Administration's expansion of the material support for terrorism laws and expressed concern about the application of

¹ The only exceptions to the ban on "material support or resources" provision are for medicine and religious materials. 18 U.S.C. § 2339B(j).

² American Civil Liberties Union (ACLU), *Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the "War on Terrorism Financing,"* June 2009, available at www.aclu.org/muslimcharities.

material support laws to donors of Muslim charities.³ Mr. Scheinin found that the provision expanding forms of conduct that can amount to material support of terrorism,

...is expressed in terms that are not exclusive and thereby renders the expression “material support” too vague. This lack of precision is particularly problematic for communities, including Muslim ones, which are unable to determine whether the provision of funds by them to what they may believe are charities or humanitarian organizations abroad will be treated as material support to a terrorist entity.⁴

Mr. Scheinin urged that the United States restrict its definition of material support to terrorist organizations “in a way that is precise and restricted to the type of conduct identified by the Security Council as conduct to be suppressed in the fight against terrorism.”⁵ Mr. Scheinin also recommended that “any determination of proscribed status of organizations, including purported charities, should be public, transparent, non-retroactive and reasoned.”⁶

Last February and after a three-year investigation of the worldwide impact of counterterrorism laws in 40 countries, the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights convened by the International Commission of Jurists (ICJ) noted the chilling effect and instances of serious abuse of pursuit of offenses such as providing material support. The Eminent Jurists Panel concluded, “States have to ensure appropriate safeguards against such human rights violations, and must take precautions not to destroy the lives and reputations of individuals who may come to be publicly portrayed as dangerous terrorist associates, despite having no actual involvement in terrorist activities.”⁷

³ UN Commission on Human Rights, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, Martin Scheinin, A/HRC/6/17/Add.3, Nov. 22, 2007, paras 41, 47.

⁴ *Id.* at para. 41.

⁵ *Id.* at para. 64.

⁶ *Id.* at para. 41.

⁷ Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, International Commission of Jurists (ICJ), *Assessing the Damage, Urging Action* 134, Feb. 16, 2009. In a positive development, last July, the UN Al-Qaida and Taliban Sanctions Committee removed two individuals from the UN Terrorism List following a ruling by the U.N. Human Rights Committee in October 2008, which found Belgium to have violated their rights to freedom of movement and to privacy following their inclusion in the UN Terrorism Lists.

The United States should ensure basic due process to charities and individuals, to avoid the mistaken or abusive application of terrorism financing laws. Such a process should also include meaningful judiciary review of executive agency action. Last month, federal judge in the State of Ohio ruled for the first time that the government cannot freeze an organization's assets under a terror financing law without obtaining a warrant based upon probable cause. The court also found that the government must give the organization, KindHearts for Charitable Humanitarian Development, Inc. notice of the basis for freezing its assets and a meaningful opportunity to defend itself.⁸

We call on the United States to reform its terrorism financing laws and policies in order to bring these laws and policies into compliance with international standards, and meet its human rights commitments to better protect and promote religious freedoms of Muslims and non-Muslims alike.

In his speech in Cairo, President Obama not only acknowledged problems with the current laws, but went further, calling for and committing to change these policies and enhance protections for charitable giving. The ACLU applauds the President's commitment and looks forward to working with his Administration to address this acute problem. Post-9/11 policies have created a climate of fear that prevents Muslims from practicing their religion and non-Muslim charities from conducting their legitimate humanitarian work, and unless the Obama Administration and U.S. Congress take action, this legacy of the Bush Administration will persist.

In sum, we believe new rules governing charitable giving and operations must address systemic problems in order to achieve the following benchmarks:

⁸ The U.S. Treasury Department's Office of Foreign Assets Control (OFAC) froze KindHearts' assets three-and-a-half years ago without a warrant, notice or a hearing, based simply on the assertion that OFAC was investigating whether the charity should be designated as a "specially designated global terrorist (SDGT)." <http://www.aclu.org/safefree/discrim/40774prs20090819.html>

- Provide clear standards for permissible charitable and development activity that are consistent with long-standing norms for humanitarian operations, such as the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief;
- Provide a fair opportunity for charities accused of supporting terrorism to defend themselves;
- Protect charitable assets from indefinite freezing and allow these resources to further the charitable mission donors intended to support;
- Withdraw the Treasury Department's Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-based Charities.

We are hopeful that the U.S. government will take the necessary measures to ensure American Muslims can freely and fully exercise their religion while protecting charities from mistaken targeting and abuse, and promoting national security and humanitarian aid.

Thank you.

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