



# Unintended Roadblocks

How U.S. Terrorism Restrictions Make It Harder to Save Lives

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# Introduction and summary

Over the last decade, a growing and convoluted number of U.S. counterterrorism measures have greatly restricted the work of humanitarian organizations working overseas. These groups are repeatedly subject to vaguely defined laws, a lengthening list of ever-evolving and almost Orwellian vetting requirements, and a stubborn reluctance by policymakers in Washington to issue clear guidance. The impact on the ground is profound—from significantly delayed service delivery to a complete inability to reach hundreds of thousands of people in need.

Aid groups that have long worked to help persecuted, displaced, and marginalized populations have zero desire to offer assistance or support to known terrorists. But the current U.S. regulatory regime is making it demonstrably more difficult for them to operate on the ground—even when their beneficiaries appear to have little or nothing to do with the fight against terrorism. Equally concerning is that many of the terrorism restrictions now being developed—including sprawling name-gathering databases by both the Department of Defense and the U.S. Agency for International Development—may not be very effective in actually combating terrorism.

This growing network of legal and practical restrictions present a host of expensive compliance challenges for relief groups already grappling with the complexities of trying to help vulnerable populations in places where designated terrorists are also located.

Aid groups often find themselves trapped between a rock and a hard place in such circumstances—wanting to do more but unable to do so because of the potential for such assistance, tangible and not, to become criminalized. In the absence of greater legal clarity, some organizations are scaling back and/or restricting their own programs.

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A few recent examples of these dilemmas include:

- In the aftermath of the 2006 election in which Hamas, a recognized terrorist group since 1993, became part of a unified Palestinian government, many aid organizations operating in Gaza stopped working with central and local government officials in order to continuing providing assistance in the region. If this step hadn't been taken the groups could have been found guilty of providing "material support" to a designated terrorist group.
- One aid group working in Afghanistan only accepts small U.S. government grants instead of larger, multiyear ones because doing so means they can avert the need to collect personnel information, which can undermine relationships with local communities. These programs, however, can have less of an impact because they reach less people and run for a shorter time period.
- A number of American NGOs seeking to scale up relief operations in parts of southern Somalia, which is controlled by the terrorist designated group al-Shabaab, remain unable to do so more than four months after a famine was declared because there have been no blanket humanitarian exemptions made. Legal guidance on what activities are permissible and what might run them afoul of the law remains ambiguous at best.

The complex legal prohibitions and web of U.S. government lists and regulations create a troubling climate of instability and unpredictability for aid groups. Elements of secrecy and perceived affiliations with the military make their job all that much harder. Indeed, without consideration for the broader foreign policy environment, the designation of entities as terrorist organizations undermines the work of relief groups. For those groups working in complex crises, such as Somalia, they are hit particularly hard because it's yet another hurdle to overcome.

One potential bright spot, however, is the recent terrorist designation of senior leaders in the Haqqani network, a deadly insurgent group that conducted international attacks throughout Pakistan and Afghanistan on multiple occasions.<sup>1</sup> While the designation of these top leaders sends a clear message that their support for violent terrorism is unacceptable, the administration's decision not to designate the entire network indicates a renewed potential for flexibility within the designation process.

With a future Afghan peace process requiring direct engagement with this network, the administration elected to keep the door open by not branding the entire group a terrorist organization. Given the Haqqani network's increasing role in fomenting violence in Afghanistan, their participation in any peace process will be important.

And while not the sole reason to keep them at bay, designating the entire group could have complicated efforts underway to realize such a process.

Remarkably, the same type of careful analysis is absent when it comes to more traditional humanitarian concerns, especially in parts of the world that are less prioritized. The policy priorities in Afghanistan and Pakistan certainly helped bring about an unusual flexibility. But it is a model worth considering for other settings as well. Such an approach is particularly relevant for the current crisis in Somalia, where hundreds of thousands of lives hang in the balance.

Of course, while Somalia remains in the spotlight, it certainly isn't the first time humanitarian and antiterrorism imperatives have clashed. The 2004 tsunami response in Sri Lanka and Indonesia, the 2006 conflict in south Lebanon, and the 2006 creation of the Hamas-Fatah unity government in the Palestinian territories all gave rise to similar concerns. The deteriorating political and humanitarian situation in Yemen is quite possibly the next front line.

The potential for more than 750,000 people in Somalia to be caught up in the current famine presents a fresh opportunity to look at the limits aid groups are facing and how they can be improved. Addressing bureaucratic bottlenecks in Washington certainly won't alleviate all obstacles for aid groups operating in complex environments. But it will help remove the ones controlled by the U.S. government.

This paper provides a comprehensive background on the terrorist-designation process, including the system—laws, lists, and policies—that enables the designation to occur and the authorities used to uphold it. It then explores the corollary mechanisms—such as USAID's growing information databases—that are increasingly billed as critical anti-terrorism tools but appear only tangentially related.

In each section, the paper explores the legal and practical implications of these regulations and how aid groups are dealing with the myriad challenges, some of which include:

- Reluctance to access needy populations in certain areas because of unclear legal guidance
- Delayed service delivery—often to devastating ends
- Difficulty expanding programs into new areas because of legal ambiguities
- Comprised organizational impartiality and neutrality
- Strained relations with local communities
- Unhelpful divisions within the aid community and reluctance to coordinate amongst each other because of vetting concerns
- Overburdened and exposed staff
- Delayed and/or dwindling resources focused on growing administration burdens, legal restrictions, and vetting requirements—instead of critically needed operations

Finally, the paper concludes with a list of recommendations to bring renewed attention to the ways in which current roadblocks could be improved and future ones prevented. These recommendations, fully discussed at the end of the paper, call on the administration to:

- Ensure USAID participates in all U.S. terrorist designations
- Amend the International Emergency Economic Powers Act
- Amend the material support statute
- Amend Executive Order 13324 and related orders
- Expedite the issuance blanket licenses for urgent cases
- Scrap the partner vetting system
- Consult regularly with nongovernmental organizations to determine the likely impact of any terrorist designation
- Compile empirical data for a report that would examine how field operations are affected by current laws and policies and whether the current approach to terrorist designations is the most appropriate tool
- Craft a more flexible policy framework

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