

## ***The Impact of Counter-Terrorism Measures on Civil Society***

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CTM area of INTRAC's website: <http://www.intrac.org/pages/noticeboard.html>

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The International NGO Training and Research Centre (INTRAC) is based in Oxford, England. INTRAC is an independent non-profit organisation working in the international development and relief sector. We support non-governmental organisations (NGOs) and civil society organisations (CSOs) around the world by helping to explore policy issues and by strengthening management and organisational effectiveness.

INTRAC works closely with a range of partners in the Arab World and recently published a background guide to the work of CSOs in the region and the many constraints they face. ([www.INTRAC.org/pages/PraxisPaper20.html](http://www.INTRAC.org/pages/PraxisPaper20.html)). Our website has an Arabic section ([www.INTRAC.org/pages/arabic\\_sitemap.html](http://www.INTRAC.org/pages/arabic_sitemap.html)).

INTRAC's interest in counter-terrorism measures has been driven by the concerns expressed by our partners across the globe. They have told us how CTMs – both those imposed by the United States and those introduced by governments using the 'war on terror' as a pretext to reduce the voice of CSOs. We are concerned that the actions of many governments seriously affect their capacity to deliver services and advocate on behalf of those marginalised from the development process. For the past two years we have been convening a series of regional workshops – including the Middle East – in which partners from 46 countries have presented evidence of the impact of CTMs. We are currently finalising a publication on CTMs and the misappropriation of development. Our website is the largest source of information on the global impact of CTMs on civil society.

I am going to talk about where CTMs have come from, their impact and the challenges they pose to civil society and international development.

CTMs are the product of a climate of fear. The international CTM regime is primarily shaped not by the international community or the United Nations, but by the USA. INTRAC believes it is therefore important to understand the nature of US CTMs and their global impact, particularly at a time when many major international NGOs – based in the USA and Europe – have chosen the path of silent compliance – despite

the substantial financial costs and breaches of trust with development partners – rather than challenge them.

Since the 9/11 terrorist attacks, US CSOs – and particularly those managed by Muslims or with programme partners in this region – have become targets, rather than partners, in the Bush Administration’s war on terror financing. Participants at the INTRAC workshop in Washington DC presented evidence that US CTMs are vague, fail to define what is meant by terrorism, are based on inaccurate perceptions, result in costly compliance and offer a pretext for the US government to shut down an NGO without any real proof. Nevertheless, they serve as the model for CTMs in other countries and are constraining basic freedoms of expression and association. The US is obliging many southern governments to sign up to the war on terror and CTMs without sufficient precautions to protect the rights of their citizens.

US NGOs have to deal with a bewildering variety of CTMs and to explain to the US government their choice of partners. Non-compliance can bring harsh civil and criminal penalties to agencies and their staff. No matter what effort NGOs or foundations may make to demonstrate good intent, they remain liable to regulatory or legal sanctions. Many are thus showing signs of self-censorship. Some observers say that inconsistencies among CTMs, and the magnitude of requirements, make full compliance impossible – no matter what effort an agency makes to exhibit the Enhanced Due Diligence demanded by the US Treasury. Some feel the Treasury simply views charities as an extension of the government.

The volume of legislation and administrative rules on CTMs is vast. There are currently 11 categories of US CTMs, with a total of almost 100 pieces of relevant legislation or explanatory documents. Executive Order 13224, made effective by President Bush immediately following the 9/11 attacks, allows the federal government to freeze all assets controlled by ‘terrorist’ entities and those who support them. The USA PATRIOT Act gives law enforcement agencies authority to gather and share evidence, control financial activities, create new crimes regarding terrorism and strengthen immigration enforcement.

The lists kept by the US government are more complex than those maintained by the UN or other governments and have global consequences. There are more than twenty such lists, the key ones being:

- The Foreign Terrorist Organizations list which designates foreign organisations allegedly involved in terrorist activities.
- The Travel Exclusion List (TEL) excludes those designated from entering the US and authorises their deportation. International mediators in peace processes in Nepal, Uganda, Palestine, Sri Lanka or eastern Turkey who have met anybody linked to TEL-designated entities in these countries can in theory be prosecuted should they go to the USA.
- The Executive Order 13224 List. Initially it had 27 names, but has now grown into a 123 page document.
- The Treasury Department's Specially Designated (SDN) list, maintained by the Office of Foreign Asset Control (OFAC), often referred to as the ‘Master List’, now runs to 313 pages.

The lists may have validity in US law but are, nevertheless, not transparent. The US has not established a single list for charitable organisations to check. There are no provisions for regular re-assessment of original designations. Critics say the lists are inaccurate. There may be many false positive names. No one knows how to request removal of a name once it is incorrectly added.

The key government agency overseeing CTMs is the US Department of the Treasury and its Office of Foreign Assets Control (OFAC). Created behind closed doors without input from charities or foundations, Treasury policies and practice indicate a basic misunderstanding of how non-profits function. The Treasury appears obsessed with the concept of “dual purpose” charities – charities allegedly engaged in charitable work and supporting terrorism – but has produced no evidence. Many US NGOs contend that the Treasury has little understanding of charitable intent, mission or grantmaking practices nor any willingness to engage in dialogue with civil society.

Vast data sets, no limit to the collection and monitoring of the quality of information together with the privatisation of the whole process greatly increases the likelihood of error. Many commercial groups have stepped in to help CSOs and US businesses with list checking. These firms run background checks on employees and vendors of all partners of US NGOs, wherever they may be in the world. Using sources which are not publicly available they allegedly identify those who, in the bizarre jargon surrounding the US CTM regime, are designated as PEPs – ‘politically exposed persons’.

In September 2006 the Treasury issued the third version of the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities*. The revised guidelines continue to provide only an unconvincing explanation of the government’s contention that abuse of charities by terrorists is a substantial problem. The guidelines present these steps as voluntary, but they are described as actions grantmakers “should” take. Failure to comply could become the basis for an investigation. The vague, sweeping language of the Treasury guidelines represents a major threat to civil liberties. The guidelines wrongly assume that detailed information about prospective grantees is available and can be readily collected in the developing world, takes a one-size-fits-all approach, and ultimately forces charities to become criminal investigators and enforcers of US law.

INTRAC partners in the USA question whether the guidelines are really ‘voluntary’. They point out that the good intent of an NGO does not prevent regulatory or legal sanctions, and the US government may freeze NGO assets for a violation of the CTMs even if the violation was made in good faith and without knowledge of wrongdoing. Some NGOs are angry that the US government claims they work cooperatively with the Treasury on CTM compliance. This, they argue, means that many international partners are unaware of the strong level of opposition to CTMs within the US NGO community.

In the absence of clear, sensible guidance and information from government about what is legally required, confusion and fear are driving the response of the nonprofit sector in the campaign against terror financing. Agencies have widely adopted the practice of certification – a process requiring signatures from grantees, employees, partner organisations and even vendors – without consideration of the consequences

to civil liberties and without assurance that these steps will offer protection from legal sanction. The language used by the Ford Foundation's grant agreement, which governs the use of the money it gives to more than 4,000 organisations it supports, is typical. "By signing this grant letter", asks Ford, "you agree that your organisation will not promote or engage in violence, terrorism, bigotry or the destruction of any state." Some partner NGOs of US agencies – including in Palestine and Lebanon – have declined funds rather than sign such 'certification.' US Quakers – the Friends Committee on National Legislation – have stated that anti-terrorism certification "offends the most basic principles of a free society. The process of certification has a chilling effect on dissent, and the right of vigorous dissent that is essential to a free democracy".

NGOs and other grantmakers are, in effect, being forced to support the US government, both at home and abroad. US NGOs note that when Southern counterparts become aware of the compliance activities they are undertaking there is anger and mistrust. Some NGOs have decided that the likely negative impact on partners and their in-country local staff is so great they it is best not to disclose that they are doing so. However, this silence may in itself be just as eroding of relationships.

In recent decades the best practice trend in aid has been for northern NGOs to move away from service provision and to partner with local NGOs who actually do the work. However, in the current climate the risk of partner selection is so great and demands from the government so onerous that many US agencies find that being a service provider is safer. Although those NGOs historically working internationally are continuing to do so there is some evidence that foundations or donors originally considering expansion to international work are more reluctant to do so. This hesitation seems based on legal advice and intimidation by CTMs. While many larger US NGOs accept substantial US government funding and do not publicly criticise CTMs, new NGOs and smaller emerging NGOs are losing out. NGOs based in the USA may decide to limit funding for international projects or avoid new programmes that place them at risk of CTM violation. A consequence can be the loss of funding to programmes in high conflict areas of great need. Project specific grants are regarded as less risky than general operating grants, making it harder for US NGOs to continue to invest in building organisational capacity of their partners.

CTM laws involve much additional expense. Unlike other donors, the US has accepted very high overhead levels – significantly above the global norm – due to elaborate auditing requirements. The danger for non-US NGOs is that their respective countries are pressured by the US to adopt CTMs but their donors are not willing or able to cover the additional costs of compliance.

A further burden on NGOs is likely as a result of the announcement by the US Agency for International Development in July 2007 of a new record-keeping procedure which it refers to as a "partner vetting system". As part of the PVS, information obtained from potential recipients of US government funding will be evaluated by USAID. Agencies seeking foreign aid funds will be required to give the government detailed information about officers, directors, programme managers, members of governing bodies and others who control the organisation or administer funds. This will include dates and places of birth, employment history, citizenship,

phone numbers and email addresses. The government would send that information to intelligence and law enforcement agencies, but would shroud the results in secrecy by not telling the groups deemed unacceptable why they were rejected. Charities say the most disturbing detail of the proposed programme is that USAID wants the PVS to be exempt from the Privacy Act, a 1974 law that prevents law-enforcement authorities from maintaining files on Americans not suspected of a crime. Since the screenings may be based on classified information USAID has reserved the right to neither confirm nor deny whether an individual has 'passed or 'failed' PVS screening. As a result of civil society advocacy, USAID appears to be initially restricting implementation of PVS to a pilot scheme affecting only organisations receiving USAID funds for programmes in Palestine.

All this matters to NGOs outside the USA because US CTMs cross borders.

The FBI can obtain court orders to access personal information held in the USA. This means, for example, that non-US organisations possessing databases of personal information, in paper or electronic format, that enter US jurisdiction or are on a computer server based in the USA can be accessed by the US government. As a result, any protection afforded by national privacy legislation for personal information is undermined.

The case of Interpal, a British charity providing support to Palestinian communities, illustrates the global reach of US CTMs. In 2003 Interpal was declared to be a Specially Designated Global Terrorist organisation for its alleged role in channelling funds to Hamas. After initially freezing its UK bank accounts in response to the US allegation the Charity Commission for England and Wales – the government regulator of NGOs – found no evidence of any illegal activity and indicated that the charity is 'well run and committed'. Despite this, and the persistent failure of the US authorities to produce any evidence it supports terrorism, Interpal is still being investigated. Interpal has been included on Australian and Canadian terror lists as a result of the US designation and Israeli lobbying.

Because of CTMs Muslim NGOs, both in the USA and elsewhere, are finding it harder to raise funds and fulfil their religious duty to assist others. Since 2001, three of the largest Muslim organisations in the USA have had their assets frozen. Prominent Muslim community leaders have been the targets of investigations that have often ended in deportation. The Muslim Public Affairs Council, which has sought and valued dialogue with the US Department of the Treasury, has regretted that while the Treasury has made numerous appearances before House and Senate Committees it has failed every single time to mention the contributions of the Muslim American community in combating terrorist financing.

Drastic sanctions in anti-terrorist financing laws are increasingly being used to shut down entire organisations, resulting in loss of badly needed humanitarian assistance around the world. Despite sweeping post-9/11 investigative powers, authorities have failed to produce significant evidence of terror financing by U.S.-based charities. Government action has created the perception of ethnic profiling and negatively impacted Muslim giving. Organisations and individuals suspected of supporting terrorism are guilty until proven innocent. Charitable funds have been withheld from people in need of assistance and diverted to help pay judgments in unrelated lawsuits,

violating the intentions of innocent Muslim donors. There is unequal enforcement of CTMs. Treatment of Muslim charities hurts, not helps, the war on terrorism

Many of you may be familiar with the way manufactured evidence and CTMs have been used to cripple what used to be the main US Islamic charity. The Holy Land Foundation for Relief and Development (HLF) used to not only provide humanitarian assistance to Palestinians but also provided support to victims of disasters and wars elsewhere –including in response to the Oklahoma City terrorist bombing. In December 2001, the Department of the Treasury designated the HLF as a Specially Designated Global Terrorist, prompting the European Union to follow suit and freeze its European assets. The Treasury maintained that HLF is the primary US fund-raising entity for Hamas in and that HLF funds were used by Hamas to support schools that encouraged children to become suicide bombers. The HLF website, together with those of hundreds of other US Islamic agencies who used the same web host, were closed down. In July 2004 a federal grand jury returned a 42 count indictment against the HLF including conspiracy, providing material support to a foreign terrorist organisation, tax evasion and money laundering. When the HLF criminal trial began in July 2007 the number of criminal counts had risen to 197. The case collapsed dramatically when the judge declared a mistrial. Jurors failed to reach a decision on any of the charges and acquitted three defendants on almost all counts. Many jurors have subsequently been quoted as being profoundly sceptical of evidence presented by the US government and the testimony given by Israeli agents using pseudonyms. Nevertheless, the Justice Department says it is considering retrying the case on the charges where the jury reached no verdict. Leading US newspapers and lawyers have noted that the verdict in the US's biggest terrorist finance case indicates the motivation behind the Bush Administration's order to shut down the foundation six years ago. If the government had begun with the criminal case, rather than use CTMs, the disputed evidence would have come to light years ago and the foundation's innocent beneficiaries would not have been denied humanitarian assistance.

It is important to note that NGOs are not able to look at any set of laws or procedures in isolation. An NGO may obtain funds from donors in several countries, receive those funds through its headquarters and pass them through financial institutions in another country. Funds from several countries may therefore pass through several jurisdictions, raising the question of which set of CTMs must be followed. In effect, there is no real answer.

The lack of an adequate definition of terrorism has laid civil society open to accusations of criminality, leaving CSOs and NGOs vulnerable to being stigmatised. Civil society's response to CTMs requires greater vision, clarity and coordination. It is in the interest of both the non-profit sector and governments to strike an appropriate, effective balance between preventing abuse of charities and fostering charitable outreach. A reform agenda should aim for clear guidance for charities that ensures selected actions will protect the institution from unfair intrusions. It should incorporate measures that introduce due process into the government's treatment of individuals and organisations in the fight against terrorism, allow for correcting potential problems and provide safeguards for legitimate charitable activity. NGOs must be able to clearly state the value that they add and not retreat from engagement in war zones, the Muslim world and other high-risk areas of the world.

The questions which US civil society has been asking about CTMs are of equal relevance in the Arab World:

- Are CTMs simply a means to crack down on civil society?
- Is full compliance feasible?
- Can civil society retain autonomy while working to comply with CTMs?
- How can agencies challenge the association of development work with terrorism risk?
- What can be done to stop the trend towards increasing support to large NGOs, leaving smaller, often more innovative agencies, un-funded?
- Should NGOs become instruments of government policy?
- How can NGOs demonstrate their own transparency?
- How can the trends towards self censorship and risk aversion be reversed?
- Can governments be persuaded to recognise that multiple lists, with their different implications, are confusing and vague?
- How can NGOs educate politicians and other policymakers? What key messages should be presented as part of a case for relaxing CTM limitations on humanitarian activities?

In conclusion, it is important to note the work of the main international body promoting CTMs. The Financial Action Task Force on Money Laundering (FATF) is based in Paris. Its members include 32 Northern governments and two regional bodies – the European Union and the Gulf Cooperation Council. As a result of the war on terror there are now eight mini FATFs – known as FATF-Style Regional Bodies. The regional FSRB – the Middle East and North Africa Financial Action Task Force (MENAFATF), is headquartered in Bahrain. Arab CSOs question whether MENAFATF wants to liaise with, learn about their work and their procedures or invite their input into plans to counter money laundering and the risk of diversion of funds for terrorist purposes. MENAFATF, they note, is Gulf-based, the region of the Arab World with the least experience of independent civil society and in which governments have the strongest apparent inclination to strictly control all aspects of the management, programmes and funding of civil society. FATF should not be used to criminalise and punish civil society, undermine *zakat* or be used ideologically as is clearly the case in Gaza. FATF mechanisms need to be regulated and controlled by an independent body with representatives both from governments and civil society.

INTRAC is grateful for this opportunity provided by the League of Arab States and the Friedrich Naumann Foundation to present the concerns of our partners. INTRAC will continue to work with its CSO and NGO partners to provide a voice for those whose work and plans are negatively impacted by CTMs. We would like to hear from those NGOs represented here whose work is being affected. Thank you.

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