
U.S. REPORT ON THE IMPACT OF TERRORISM LAWS ON CHARITIES AND HOW THE WORK OF CHARITIES CAN COUNTER TERROR

*By Terrance S. Carter and Sean S. Carter**

A. INTRODUCTION

On December 10, 2009, the Washington based Charity and Security Network (“the Network”), a collaboration of charities, grant-makers and advocacy groups, released a report based on a March 20, 2009 panel discussion entitled, *How the Work of Charities Can Counter Terror: And How U.S. Laws Get in the Way* (“the Report”).¹ The Report argues that charities, foundations, development groups, human rights advocates and other nonprofits have all been targeted by anti-terrorism legislation and that there is little recourse for those organizations whose operations have been shut down by these laws. The Report urges, particularly in the context of anti-terrorism legislation in the United States, that legislators stop viewing charities and non-profits as potential collaborators in terrorist activities and instead take advantage of “the experience, capabilities and willingness of non-profit organizations to address the key factors that contribute to global terrorism.”² The Report recognizes that the roots of terrorism are complex, including poverty, identity and cultural domination issues, as well as frustration resulting from being unable to participate in political processes. In light of this, the Report seeks to highlight the role that charities and non-profits can play in directly combating the very roots of terrorism, thereby improving security. The Report also focuses on illustrating how anti-terrorism laws in the United States have “complicated program operations” for

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¹ Online at: www.charityandsecurity.org/studies/Charity_and_Security_Network_How_the_Work_of_Charities_Can_Counter_Terror.

² Report, *supra*, note 2, at page 18.

nonprofits and how U.S. national security laws have been “abused as vehicles for suppressing political opposition and human rights activities.”³ The Report brings to light the reality of the impact of anti-terrorism laws on the work of charities, a reality that is very similar to that which is faced by Canadian charities and non-profits.

B. SUMMARY OF PRESENTATIONS

The panellists from the March 20, 2009 discussion represented different perspectives from the not-for-profit sector in different areas of the world, including the United States, Columbia, the Philippines and Palestine. In general the representatives reported that counter-terrorism measures across the globe discourage aid, development and human rights work in the places that need it the most, which in turn restricts nonprofits from tackling the symptoms of terrorism. Counter-terrorism measures in countries like Ethiopia and Uganda were given as examples where counter-terrorism measures have been extremely repressive.

Outside the United States in countries like Columbia, counter-terrorism measures have been used to criminalize civil protest and label nonprofits as “extremists” when they make complaints about the state. The Network argues that this tends to, “ignore the social injustice and marginalization that often leads to violence.” A case study from Columbia highlights how, in acting as an intermediary for peace between the government and an organization like the Revolutionary Armed Forces of Columbia, the work of a nonprofit would be considered illegal in the United States, which would forbid such activity as “material support” of terrorism.⁴ These types of examples are equally applicable to Canadian charities and non-profits, as Canada has its own sweeping anti-terrorism legislative regime that would put the organization working in Columbia at risk of contravening anti-terrorism laws, particularly the “facilitation” of terrorist activities under s. 83.19 the *Criminal Code*.

Counter-terrorism measures also make it difficult to partner with groups already operating in hotspots in need of aid, because it can be unclear which groups the US government considers to be supporting terrorism. Some nonprofits and charities working in Palestine often have to go without funding from the United States Agency for International Development (“USAID”), because of the requirement to sign an Anti-Terror

³ *Supra*, note 2, at page 4.

⁴ *Ibid*, at page 8.

Certificate as part of any grant agreements. Doing so might take away from the neutrality of the non-profit because signing the certificate could be “perceived as a statement of allegiance to a foreign government.”⁵

Additionally, some speakers on the panel attacked the assertion that charities are a significant source of funding for terrorism. Of 1.8 million charitable organizations in the United States, the US Treasury Department has moved against only seven.⁶ The Report also highlights the call for the removal of the Treasury Departments *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S Based Charities* (“Treasury Guidelines”), for failing to recognize the diversity of the sector and applying a one-size-fits-all approach.⁷ It is worth noting that the Canada Revenue Agency (“CRA”) on their *Checklist for Charities on Avoiding Terrorist Abuse*⁸ recommends the Treasury Guidelines for Canadian charities to use as best practice in good governance.

Speakers on the panel were also critical of the US Partner Vetting System (“PVS”) proposed by USAID, which requires grantees to provide detailed information about their partners to USAID. This information is then checked against intelligence databases not available to the public and assessed in the context of national security. The PVS is criticized for failing to provide any due process to grantees of USAID money, which will be provided with no explanation as to who on their list is considered a terrorist if rejected, and targets members of partner boards of directors, people least likely to commit actual acts of terror.

C. OVERVIEW OF REPORT

The Report argues generally that counter-terrorism measures in the United States are, “based on flawed strategies that hinder the work of nonprofits and that are counterproductive from a security standpoint.”⁹ The response to terror has focused more on creating watch lists and programs targeting charitable funding, “that

⁵ *Ibid*, at page 9.

⁶ *Ibid*.

⁷ For more information regarding the Treasury Guidelines, please see *Anti-terrorism and Charity Law Alert No. 9* available online at: <http://www.carters.ca/pub/alert/ATCLA/atcla09.pdf>

⁸ Canada Revenue Agency, *Checklist for Charities on Avoiding Terrorist Abuse*, available online at: <http://www.cra-arc.gc.ca/tx/chrts/chcklsts/vtb-eng.html>. See *Anti-Terrorism and Charity Alert No. 17* for commentary, at: <http://www.carters.ca/pub/alert/ATCLA/ATCLA17.pdf>.

⁹ Report, *supra*, note 2, at page 14.

ignore the urgent need for philanthropy, development and human rights advocacy as part of a response to combating terror.”¹⁰

The Report argues further that rules meant to prevent terrorist financing have resulted in a chilling effect on both donors and charities, leaving vulnerable beneficiaries without aid. The Treasury Guidelines are also criticized because they imply that charities are to act as intelligence gatherers for US law enforcement and regulatory agencies. In addition, the requirement that the Treasury Guidelines requires the US charity to ask about whether or not the grantee organization has registered charity status under the government where they are located, can lead to stifling non-profit activities, since in some countries that information is not public. Although these comments are specific to the US charitable sector, the same can be said in Canada, particularly given that the new T3010B annual return for charities in Canada requires them to list their intermediaries overseas, which is made available to the public on the CRA website.

The Report also argues that nonprofits, long before the post-9/11 era, developed familiarity with local populations and cultures in the areas in which they operate. The Network is critical of the idea that using “error-ridden databases” and watch lists to determine who non-profits can partner with is wasteful, rather than relying on the sectors established expertise in that area. As noted above, the PVS would also detract from the perception of neutrality that is often necessary for nonprofits to operate. Members of the Network point out that this “endangers the lives of aid workers who rely on political neutrality to conduct their operations.”¹¹ The costs involved with the PVS system would also take funds away from the beneficiaries of the nonprofit sector towards the information gathering it would require.

As an alternative, the Report proposes that instead of the Treasury Guidelines, counter-terrorism measures that, “affirms the usefulness of charities and nonprofits and the values they embrace,”¹² as illustrated by the United Nations *Global Counter-Terrorism Strategy* (“Strategy”) should be adopted. The UN Strategy aims to prevent extremism and violence in the long-term, as opposed to through short term military victories. The Strategy does so by recognizing that acts of terrorism do not spring from a vacuum, and that the conditions which are conducive to the spread of terrorism, and the respect for human rights must be part of any plan to

¹⁰ *Ibid.*

¹¹ *Ibid.*, at page 16.

¹² *Ibid.*, at page 18.

address terror. The Network notes that, “Nonprofits share these values and have the expertise and desire to help in places where government actors cannot or will not go.”

D. CONCLUSION

While the Report focuses mainly on US counter-terrorism measures, many of the same comments can be applied to anti-terrorism laws in Canada. Many Canadian charities carry on important work overseas and have also felt the effects of anti-terror legislation. However, their work goes a long way towards eradicating terrorism by providing valuable aid to those in need, which enhances Canada’s international reputation and improves national security. One of the central conclusions of the Report, that charities and non-profits need to be perceived as “a valuable ally in the fight against violent extremism” rather than a target of sweeping anti-terrorism laws, is a particularly poignant message for Canadian legislators and administrators alike.