

## The Need to Update Treasury's Terrorist Listing and Delisting Procedures

The U.S. terrorist listing process is designed to cut off funding to terrorists by freezing their funds and banning financial transactions with them. The President designates terrorist groups by Executive Order and authorizes the Treasury Department to list others that support them.<sup>1</sup> A lack of clear standards, transparency and oversight of the list<sup>2</sup> has raised serious concerns over the due process rights of those listed and the accuracy of the list itself.

Currently, **there is no formal review process** for those placed on the list. Federal regulations<sup>3</sup> do allow listed organizations or individuals to ask Treasury to reconsider, but there is no deadline for the decision, no independent review and no hearing. In addition, there have been numerous instances of bureaucratic sloppiness and ineptitude<sup>4</sup> and unequal enforcement.<sup>5</sup> No periodic review of the list is required.

### The Consequences of Being Listed are Severe

The listing process is classified, and once a U.S. person or organization is put on the list:

- All their assets and bank accounts are frozen and their property is seized indefinitely
- When charities are listed, humanitarian operations are shut down and innocent beneficiaries lose vital services
- It is illegal for any U.S. person to have any economic transactions with them and a travel ban is imposed (no international travel).

### Two Federal Courts Have Ruled the Process Treasury Used to List U.S. Charities is Unconstitutional

In the case of two U.S. charities the courts found Treasury's process lacks adequate notice of the reasons for the listing and does not provide an adequate opportunity to respond. Both courts also ruled that Treasury cannot freeze (seize) the assets of a charity without first getting a court order based on probable cause. Both cases were finalized in 2012.<sup>6</sup> To date, Treasury has taken no action to change its regulations to bring the process into line with these court rulings.

### Creating a Fair Process: Existing Law and Procedures Provide a Framework

New rules for delisting requests can be based on procedures with proven track records. The Classified Information Procedures Act<sup>7</sup> already provides protocols for handling secret evidence in proceedings similar to those involving listing and delisting. At the UN, an Ombudsperson office was created<sup>8</sup> to hear delisting appeals and the U.S. has endorsed this process.<sup>9</sup>

Updating the current process for listing and de-listing, to better respect due process rights and to allow for adequate reviews will strengthen the U.S. listing regime:

- More transparency and fairness increases public credibility for the listing system
- A more rigorous process will make the lists more accurate
- Shows the world U.S. has respect for the rule of law and human rights
- Innocent beneficiaries of humanitarian aid will not be denied vital services.

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<sup>1</sup> The International Emergency Economic Powers Act (IEEPA, U.S.C. 50 §1701-7) is the legislative authority for the sanction imposed by the Treasury terrorist lists. It authorizes the President to declare an emergency relating to the national security, foreign policy or economy of the United States. In 2001, the Patriot Act amended it to permit Treasury to designate and freeze assets “pending an investigation.”

<sup>2</sup> “Specially Designated Nationals List,” Treasury Department of the United States,

<sup>3</sup> 31 C.F.R. 501.807

<sup>4</sup> On Feb. 29, 2006, the Treasury Dept. froze the assets of KindHearts for Charitable Humanitarian Development Inc. (KindHearts), an Ohio-based charity, for support of Hamas. All property was blocked "pending investigation." KindHearts was told it could challenge action by sending a letter stating its position and providing evidence to the Director of the Office of Foreign Assets Control (OFAC) at Treasury. In 2007, KindHearts sent OFAC a 28 page submission and accompanying 1369-page document of supporting evidence in an attempt to address the reasons why it was shut down. Treasury never responded to the submission, and several months later admitted to having misplaced the nearly 1400 pages submitted. In reference to the Treasury roadblocks KindHearts was forced to navigate during the litigation, the judge quipped in his opinion, “KindHearts is not only blindfolded, it has its hands tied behind its back.” *KindHearts for Charitable Humanitarian Development v. Geithner, et.al.*, 710 F.Supp 2d (2010)

On Sept. 9, 2004 the Treasury Dept. designated Al Haramain Islamic Foundation Inc. (AHIF-OR) for allegedly diverting donations meant for refugees in Chechnya to support terrorism and Chechen leaders affiliated with al Qaida. Treasury sent Al Haramain a Blocking Notice, saying its assets were frozen but that it could ask the government to reconsider its decision. After more than two years of waiting and with no response from Treasury, AHIF-OR filed suit in federal court in August 2007. The court said that in seeking reconsideration in early 2005 "AHIF-Oregon repeatedly sought both an explanation for the designation and a final determination of its request for administrative reconsideration." *Al Haramain Islamic Foundation, Inc. et. al. v. U.S. Department of Treasury et. al.*, No. 07-155-K1 (November 6, 2008).

<sup>5</sup> Two high profile cases highlight the unequal enforcement of Treasury’s listing powers. Both Chiquita Brand International and HSBC were found to be engaged in terrorist financing, yet neither company was listed, had personnel imprisoned, or had funds frozen by Treasury. In contrast, [nine U.S. charities](#) have been shut down and had assets frozen, with no opportunity to remedy problems provided to these multi-national corporations.

- [In 2007](#), Chiquita Brands International agreed to pay a \$25 million fine after admitting it paid terrorists for protection in a dangerous region of Colombia. The payments, made between 1997 and 2004, continued despite the company's knowledge that they were illegal. The company was allowed to continue profitable production during the investigation.
- HSBC, Britain’s largest bank, and its U.S. affiliate [were found](#) to have engaged in money laundering and financial transactions with groups tied to terrorism. Rather than facing jail time, or having their assets frozen, the bank was able to pay a 1.2 billion dollar fine and enter into a deferred prosecution agreement.

<sup>6</sup> *Al Haramain Islamic Foundation, Inc. et. al. v. U.S. Department of Treasury et. al.*, 660 F.3d 1019 (2011) The Ninth Circuit Court of Appeals upheld a lower court’s ruling that said procedures used by Treasury to shut down the Al-Haramain Islamic Foundation of Oregon (AHIF-OR) violated the organization's Fifth Amendment and Fourth Amendment rights. In June 2012, the U.S. Solicitor General decided not to file a request for Supreme Court review of the Ninth Circuit Court of Appeals decision.

*KindHearts for Charitable Humanitarian Development v. Geithner, et.al.*, 710 F.Supp 2d (2010). In 2009 the federal district court for the Northern District of Ohio ruled that the process Treasury used to shut the charity down while investigating alleged ties to terrorism violated the constitution, and ordered further proceedings on what remedy Treasury should provide. On May 1, 2012, lawyers for KindHearts announced a settlement agreement with Treasury ending the litigation on terms favorable to the charity.

<sup>7</sup> 18 USC App III. According to a Department of Justice fact sheet, CIPA “balances the right of a criminal defendant with the right of the sovereign to know in advance of a potential threat from a criminal prosecution to its national security.”

<sup>8</sup> The Office of the Ombudsperson [makes recommendations](#) on the delisting of individuals and organizations on the UN’s Al Qaeda sanctions list.

<sup>9</sup> UNSCR 1904.