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May 6, 2013

Rep. Bob Goodlatte
2309 Rayburn House Office Building
Washington, DC 20515

Rep. John Conyers
2416 Rayburn House Office Building
Washington, DC 20515

Rep. Ed Royce
2185 Rayburn House Office Building
Washington, DC 20515

Rep. Eliot Lance Engel
2161 Rayburn House Office Building
Washington, DC 20515

Dear Rep. Goodlatte, Rep. Conyers, Rep. Royce and Rep. Engel,

I am writing to ask that you use your leadership positions on the House Committee on the Judiciary and Committee on Foreign Affairs to conduct oversight hearings into the role U.S. legal restrictions played in the tragic outcome of the famine in Somalia in 2011 and early 2012.

On May 2 a study¹ commissioned by the United States Agency for International Development's Famine Early Warning Systems Network (FEWSnet) and the United Nations Food and Agriculture Organization (FAO) estimated that between October 2010 and April 2012 nearly five percent of Somalia's population and 10 percent of its children died because of severe food shortages. This is the first scientific study of the casualty rate from the 2011 famine and it shows the death rate to be much higher than previously known.

Specifically, the study estimated that during this period there were 258,000 excess deaths in southern and central Somalia, "of which 52% (133,000) among children under 5 years old." [p. 8] That figure represents 17 percent of children under the age of five. During the main famine period, between May and October 2011, there were more than 20,000 excess deaths per month in southern and central Somalia. [p. 9] To put this in perspective, the report notes that this rate of child deaths is "two to three times the annual amount in all industrialised countries combined." [p. 10]

Significantly, the study also makes it clear that legal restrictions on humanitarian assistance played a role in the tragedy. It said "that limited access to most of the affected population,

¹ London School of Hygiene and Tropical Medicine and the Johns Hopkins University Bloomberg School of Public Health, "Mortality among populations of southern and central Somali affected by severe food insecurity and famine during 2010-2012", May 2, 2013. Available online at http://www.fews.net/docs/Publications/Somalia_Mortality_Estimates_Final_Report_1May2013_upload.pdf

resulting from widespread insecurity and operating restrictions imposed by several relief agencies, was a major constraint.” [p. 5] The presence of al-Shabab, a group on the U.S. terrorist list, in famine affected areas made legal restrictions an issue.

The legal restrictions arise from the combined effect of the prohibition on material support of terrorism (18 U.S.C. 2339 B) and Executive Orders 13536 and 13620, which impose economic sanctions administered by the Department of Treasury pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and the National Emergencies Act (50 U.S.C. 1601 *et seq.*). These laws limit the ability of charities subject to U.S. jurisdiction to engage with groups on U.S. terrorist lists, such as al-Shabaab, even for the purpose of accessing civilians in need of humanitarian assistance.

Between the time al-Shabaab was first listed as a Foreign Terrorist Organization by the Department of State in 2008 and the formal UN declaration of famine in July 2011 there was ample warning that a food crisis was nearing. FEWSnet issued several warnings in 2010, and in January that year the UN High Commissioner for Refugees (UNHCR) called the drought and potential famine in Somalia the “worst humanitarian disaster in the world.” In Somalia drought and man-made causes, including instability from armed conflict and al-Shabaab’s banning of western aid agencies, were major contributing factors in the growing crisis.

In addition U.S. counterterrorism policy played a role. After al-Shabaab was put on the U.S. terrorist list in 2008, the U.S. drastically cut back its aid to Somalia, going from \$237 million in 2008 to \$20 million in 2011; an 88 percent reduction. This included suspension of the U.S. government’s funding to the UN World Food Program (WFP) in December 2009, despite the UN’s estimate that over three million Somalis were at risk of food shortages.

At the same time U.S. charities’ efforts to use their resources were hampered by the legal restrictions and the failure of the Office of Foreign Assets Control (OFAC) at the Department of Treasury to process and issue licenses in a timely and effective manner. OFAC refused to issue a General License that would have outlined conditions for charities to operate in Somalia, instead requiring case-by-case applications that took so long and became so burdensome that the crisis grew while applications languished.²

It was not until the beginning of August 2011, after famine had been declared and many lives lost, that the Departments of State and Treasury partially loosened restrictions by extending a license for USAID grantees. This left the significant resources of private donors unavailable to assist in the crisis. Now some of those USAID grants are running out. Although the famine has formally ended, the UNHCR reported in February that one million Somalis remain food insecure, with another 1.7 million in danger of falling back into crisis.

² See testimony of Jeremy Konyndyk of MercyCorps before the Senate Foreign Relations Committee, Aug. 3, 2011, p. 11, available online at <http://www.foreign.senate.gov/imo/media/doc/Konyndyk%20testimony.pdf>

U.S. legal restrictions were clearly not the only or even the major cause of deaths in the Somali famine. Al-Shabaab and the warlords who expelled aid organizations or stole aid consignments should be held to account. But that does not change the inescapable fact that U.S. law is partly to blame. It is unacceptable on humanitarian grounds that our laws should contribute to such death and suffering of innocent people, especially children. Undoubtedly it was not the intent of Congress in crafting these laws.

Given what we now know, the Charity & Security Network asks that you hold hearings to determine how both the letter and implementation of the law failed in this instance and determine how it can be changed to avoid any repetition of this tragedy.

Yours truly,

A handwritten signature in cursive script that reads "Kay Guinane". The signature is written in black ink and is positioned below the text "Yours truly,".

Kay Guinane, Director