

The Humanitarian Assistance and Peacebuilding Protection Act of 2015

Section by Section Summary June 2015

Purpose

To permit humanitarian assistance and peacebuilding to civilian populations in areas of conflict or disaster without risk of criminal prosecution in order to provide services to prevent or alleviate the suffering of civilian populations, and for other purposes when carried out in good faith and with certain safeguards.

Section 1. Short Title

The Humanitarian Assistance and Peacebuilding Protection Act of 2015.

Section 2. Findings

The number of people affected by armed conflict and humanitarian crises has almost doubled over the past decade. At the same time, terrorist threats and violent extremism are on the rise. Laws and Executive Orders have cancelled legal protections for humanitarian operations in areas controlled by U.S.-designated terrorist organizations. These **restrictions prohibit and/or discourage donors from contributing to aid efforts to keep civilians alive or promote nonviolence for entire geographic areas** within which designated groups operate.

While U.S. humanitarian organizations can obtain permission from the Department of the Treasury's Office of Foreign Assets Control (OFAC) to legally operate in areas controlled by a U.S.-designated terrorist organization, this **"licensing" process is lengthy, standards are unclear, and it can cause significant delays in crisis situations.** The 2011–2012 famine in East Africa exemplified this challenge. Due to legal restrictions, aid organizations were unable to respond in a timely fashion and much needed assistance was not provided in areas controlled by al Shabaab, a designated terrorist organization. Four million Somalis were affected by the drought and famine in the region and several million remain vulnerable to this day.

When humanitarian and peacebuilding organizations are unable to access civilians in need of lifesaving assistance or peacebuilding support, communities are more vulnerable to manipulation or recruitment by terrorist and extremist organizations. When crises occur in terrorist-controlled areas, humanitarian presence becomes even more vital. Humanitarian and peacebuilding organizations have developed robust area-specific due diligence policies to monitor the activities of local partners and manage and mitigate the risk of aid diversion.

Furthermore, the criminal prohibition on material support of terrorism in the Antiterrorism and Effective Death Penalty Act restricts both free speech and communications aimed at reducing violent conflict and protecting civilians and humanitarian operations. In the 2010 case *Holder v. Humanitarian Law Project*, the Supreme Court ruled that Congress has the authority to permit or restrict communications with designated organizations in the form of technical advice, training or services that are aimed at preventing, reducing or resolving conflict.

It is **vital that U.S. counterterrorism efforts be effective while avoiding unintended consequences that further human suffering, exacerbate conflict or further propel vulnerable populations into extremist movements.**

Section 3. Sense of Congress

"... [N]onprofit organizations contribute to human security through their work to provide humanitarian assistance to civilian populations and to prevent or end armed conflict. U.S. law should provide an enabling environment for such good works."

Section 4 (a). Amendment to the International Emergency Economic Powers Act

The first part of this section would permit U.S. "persons, including charities, to engage in transactions that are "customary, necessary, and incidental to the donation or provision of goods or services...to civilian populations to prevent or alleviate the suffering of such civilian populations" subject to the following conditions:

- The charity must act in good faith, without intent to further the goals of the listed organization
- The charity must use best efforts to minimize such transactions¹
- The goods or services must not be capable of being used to carry out terrorist activities
- Notice is filed with the Secretary of State within ten days of the first transaction with the listed group, and reports are filed summarizing the program operations at least annually
- No person in the organization be suspended or debarred from receiving funding from the United States government

The second part of this section permits speech or communications with the listed group when it is meant to "reduce or eliminate the frequency and severity of violent conflict and reducing its impact on the civilian population" or gain access to civilians in order to prevent or alleviate suffering.

Section 4(b). Advisory Council

The bill creates an Advisory Council to Prevent and Alleviate Human Suffering in Areas Under the Control of Certain Sanctioned Foreign Persons. Its 15 members, experts in NGO operations appointed by the Secretary of State, will review existing laws, regulations and Executive Orders, conduct research and make recommendations on the "most efficient and effective means of limiting diversion of humanitarian aid and development assistance while also preserving the impartiality of humanitarian aid and development assistance..."

Section 5. Amendments to the Material Support Statute

The bill would add the same provisions enabling humanitarian organizations to provide aid to alleviate the suffering of civilian populations and work to reduce violence, subject to the same restrictions listed in Section 3, to the criminal statute prohibiting material support of terrorism.

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¹ 'Best efforts' reflect the highest legal standard in the industry