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Statement on Treasury Guidance for Humanitarian Nongovernmental Organizations

Charity & Security Network calls for stronger administration policy to facilitate U.S. nonprofits ability to work in global hot spots

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Coming three years after the bungled U.S. government response to the 2011 famine in Somalia, where legal restrictions on aid groups caused delays that contributed to more than 250,000 deaths, the Department of Treasury's release of *Guidance Related to the Provision of Humanitarian Assistance by Not-for-Profit Non-Governmental Organizations* is a disappointment. U.S. charities and donors are looking for fixes to the system Treasury's Office of Foreign Assets Control (OFAC) uses to process the licenses they need to operate in conflict zones where terrorist groups are present. But the Guidance is mostly clarification of current policy, rather than an effort to address systemic problems.

While this Guidance is a good start, much more needs to be done to address U.S. legal restrictions on nonprofit organizations responding to humanitarian crises. It is in our own interest to do so, as the efforts of humanitarian, peacebuilding and other nonprofits yield benefits beyond life-saving assistance to individuals and communities by increasing human security and providing a counterpoint to violent extremism.

The Guidance is both a glass half empty and a glass half full. Constructively, it provides some helpful clarification, extends the policy that inadvertent leakage of aid is "not a focus of enforcement" from Somalia to humanitarian assistance generally, and reflects some level of understanding that problems with the licensing system must be addressed.

The Guidance also has serious flaws:

- Is informational only and **"does not have the force of law."** Its policies could change at any time, without warning, giving humanitarian groups that rely on it only limited assurance that they will not be subject to sanctions or prosecution in the future.
- It is **limited to humanitarian assistance**, excluding important nonprofit activities such as peacebuilding support, development aid, philanthropy and human rights defense.
- It **politicizes humanitarian assistance**, which is supposed to be neutral in conflicts and based on need alone, by saying OFAC's approach to humanitarian licenses is "consistent with foreign policy." This imposes political decision making criteria that go beyond need, and results in inconsistent and discriminatory approaches to civilian populations. For instance, a starving child in Somalia is just as hungry as a starving child in Syria, but Treasury's response to the Syria

conflict was more timely and flexible than it was in Somalia. The only explanation given was that the type of sanctions program differs. This has no relationship to humanitarian need.

- **It does not address the role of the State Department** in licensing. Many of the delays that have so plagued the system are the result of inaction at State and lack of clarity about its role in the process.
- **It fails to address fundamental systemic problems** with the licensing system, including the need for clear criteria for OFAC decisions, timelines for the process and a requirement that license applicants get contact information for OFAC staff handling their requests.
- It continues the **unrealistic policy of requiring advance approval**, on a case by case basis, for humanitarian organizations to make minimal, incidental payments to a listed group in order to provide urgently needed humanitarian assistance. This is not a question of paying bribes for access, which we oppose, but of not **delaying emergency assistance over small payments**, such as border crossing tolls or utility bills that are a mere fraction of the worth of aid provided.
- While it repeats OFAC's oft-stated commitment to deal with humanitarian licensing requests expeditiously, in the **absence of timelines** this has proved to be an empty promise and nothing in the Guidance indicates that will change.

In issuing this Guidance, the Treasury Department took the weakest of the several policy options that were available to it. Going forward, **the administration should take stronger steps to facilitate U.S. nonprofit programs:**

- **Support the Humanitarian Assistance Facilitation Act (HR 3526)** which sets out clear and strict standards for humanitarian groups to engage with listed groups when necessary to access civilians in need, and allows communications aimed at ending armed conflict and civilian suffering.
- **Issue an Executive Order** that sets out clear criteria, procedures and timelines for civil society activities in global hot spots, whether in a country subject to sanctions or an area where listed armed groups are active.
- **Discontinue the practice of routinely cancelling the humanitarian exemption** in Executive Orders imposing sanctions. These are made without explanation or reference to realities on the ground.
- Issue a **Treasury General License with concrete standards** for decision making and specific **timelines** for decisions to be made.
- Issue a **"Statement of Licensing Policy"** that would acknowledge the **presumption in favor of humanitarian assistance** in international humanitarian law and authorize OFAC to only impose limits to the extent necessary and in a specific, proportionate and temporary manner.

We hope the administration will continue its efforts to address these problems and explore more effective approaches. This would be consistent with the President's commitment to an enabling environment for civil society, as reflected in the White House Memorandum – Civil Society and Fact Sheet, issued on Sept. 23 this year. **The first step is to broaden the dialog to include a more representative group of nonprofits**, such as Muslim charities, peacebuilding, development, philanthropic and human rights organizations. The dialog also needs to be broadened to **address nonprofit activities beyond humanitarian aid.**