

Oct 24 2011

U.S. Material Support Laws: The Next Don't Ask-Don't Tell?

Posted by AD Brown



U.S. Supreme Court building
© Hisham F. Ibrahim/Getty
Images

In late September the United States formally ended its “Don't Ask-Don't Tell” (DADT) policy for gays and lesbians in military service, ending a policy criticized for many years as discriminatory and leading to unequal enforcement. But the DADT concept appears to be alive and well. U.S. enforcement policy on the extremely broad definition of prohibited material support to terrorism in the context of humanitarian aid and efforts to end violent conflict is quickly evolving into a DADT approach.

Since the Supreme Court's June 2010 decision in [Holder v. Humanitarian Law Project](#), which upheld application of the material support prohibition to peacebuilding groups that want to train and advise terrorist groups on the use of non-violent means to address their grievances, there has been increasing evidence that, in this context, the law is having counterproductive impacts. Similar problems have arisen for humanitarian aid groups, which cannot negotiate access to civilians in territory controlled by terrorist groups like al Shabaab without risking criminal prosecution back home.

The law is so broad that it cannot be enforced without sweeping in activities aimed at reducing violence and relieving human suffering. In situations where the humanitarian imperative should be paramount, such as the famine in Somalia or post-tsunami aid in Sri Lanka, U.S. government officials are reported to turn a blind eye to aid groups that do what needs to be done to save lives. A [report](#) by the Feinstein International Center at Tufts University examining the response and reconstruction phase of the post-2005 earthquake in Pakistan found:

Some interviewees noted that the US adopted a constructive low key “don't ask, don't tell” approach to the presence of banned Islamist groups. Even after formally raising its objections to the presence of these groups with the GoP the US did not actively pursue the matter when the government refused to close them down.

This trend continues six years later with efforts to address the humanitarian crisis in Somalia. Even officials at the United States Agency for International Development held back on vital aid to Somalia until it could convince the Department of Treasury to [issue a limited license](#) allowing projects it funds to go forward. By the time the license was issued in July, nearly 30,000 children under the age of five had died. Programs funded by private charitable dollars are still excluded from license protection but some aid groups are reported to be working in Somalia, heeding the humanitarian imperative.

DADT is not a practical or appropriate solution to the problems the current overly broad material support law creates. It leads to uneven and discriminatory enforcement. Worst of all, it discourages charities and peacebuilding groups from taking on the important work that needs to be done. Aid workers and peacebuilders should not have to choose between saving lives at the risk of going to jail or withholding their services. The problem will not be fixed by turning a blind eye to it.

Civil society groups in the U.S. are calling for reform of the law, and there is indication of bipartisan interest in doing so. Members of both houses of Congress have expressed concern. [In a September statement Sen. Patrick Leahy](#), a Democrat and chairman of the Senate Judiciary Committee, urged the Department of Justice to “remove the uncertainty” surrounding the material support statute that restricts U.S. groups from conducting peacebuilding activities and responding to emergencies like the famine in southern Somalia. On the House side, [Rep. Christopher Smith](#), a Republican and chair of the House Foreign Affairs Subcommittee on Africa, Global Health and Human Rights, said in a hearing he intends to introduce legislation to address the problem of humanitarian access to Somalia.

DADT did not work well for the military, and it will not work as a strategy for addressing problems created by the material support law. The Congress and Obama administration can take steps now to ensure that the law is changed so that all civil society organizations can do what they do best: promote peace and prosperity and relieve suffering.

Kay Guinane is program manager for the [Charity and Security Network](#).



Tweet



About Posted by AD Brown

Adam Brown is editorial manager for the War on Terror blog series at the London School of Economics and Political Science. He holds a BA in International Relations and a MSc in Human Rights with a focus on cyber security and rights.

[View all posts by Posted by AD Brown](#)

This entry was posted in [Global war on terror blog series](#), [Kay Guinane](#). Bookmark the [permalink](#).