



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 12, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to the Attorney General dated August 3, 2011, regarding the famine in the Horn of Africa and the importance of effective interagency coordination to ensure that humanitarian assistance reaches those in need as soon as possible in a way that minimizes any risk of material support or resources reaching the al-Shabaab terrorist group.

We share your concern about the humanitarian emergency in the Horn. We want to assure you that there is an ongoing dialogue among relevant executive branch agencies and relief providers as you suggested in your letter. In the face of extreme humanitarian needs and an unpredictable situation on the ground, several U.S. agencies have collaborated to provide for greater flexibility in our fiscal sanctions to ensure that aid workers implementing U.S. foreign assistance are not in conflict with U.S. laws and regulations. The State Department and USAID are authorized to provide grants and contracts to fund nongovernmental organizations (NGOs) providing humanitarian assistance in Somalia, including in areas under the *de facto* control of al-Shabaab. The State Department and USAID requested and on July 29 received an expanded license from the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) to ensure that NGOs receiving funds from the U.S. Government are not in conflict with OFAC sanctions.

We believe that this expanded flexibility will significantly increase the range of urgent programming that we can fund within southern Somalia. At the same time, we continue to work closely with U.S. government partners to ensure that every possible precaution is taken to avoid the diversion of humanitarian funds to al-Shabaab.

We also have participated in an interagency meeting with NGOs affiliated with Interaction, which State, OFAC, and USAID representatives also attended. In addition, OFAC, in coordination with State and USAID, has made answers to frequently asked questions about humanitarian assistance to Somalia publicly available on its website. We will continue our dialogue with key NGOs about how they provide humanitarian assistance inside Somalia and how we can assist them.

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We will also continue to examine additional actions the U.S. Government might take to facilitate assistance to the people of Somalia in this time of urgent need. Your letter specifically urges use of the authority under current law to grant exemptions to humanitarian organizations. We note that 18 U.S.C. § 2339B(j) provides limited authority to the Secretary of State, with the concurrence of the Attorney General, to grant such exemptions. Under the law, only material support or resources consisting of “personnel,” “training,” or “expert advice or assistance” may be approved for exception under this subsection. The types of material support that may be provided to al-Shabaab in the course of providing assistance in Somalia in most instances would not be expected to include any of these three categories of support.

With regard to the broader impact of the material support law on legitimate humanitarian assistance and peace building efforts, we are mindful of the concerns that have been raised about possible prosecution under 18 U.S.C. § 2339B, particularly after the Supreme Court’s decision in *Holder v. Humanitarian Law Project*. As you know, the material support prohibition is an important counterterrorism tool that has proved critical in our efforts to protect the American people and bring terrorists and their supporters to justice. The Department of Justice has not prosecuted individuals or entities engaged exclusively in legitimate good-faith efforts to provide humanitarian assistance to needy populations or promote the peaceful resolution of conflicts. In this regard, it should be noted that the *Humanitarian Law Project* case involved not a criminal prosecution of the conduct at issue in that case, but rather an NGO’s unsuccessful challenge to the constitutionality of that statute.

The Department will continue to work with State, USAID, Treasury, and other relevant executive branch agencies to ensure the continued effective enforcement of counterterrorism laws in a manner that does not inadvertently impede the legitimate and important disaster relief activities described in your letter. Responding effectively to the drought and humanitarian crisis in Somalia and in the greater Horn of Africa is a critical objective. We will continue to seek solutions to ameliorate the suffering of drought-affected populations both inside Somalia and in neighboring countries.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,


for Ronald Weich
Assistant Attorney General

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cc: The Honorable Charles E. Grassley
Ranking Minority Member