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“Human Rights Vetting: Nigeria and Beyond”



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Mr. Chairman, Ranking Member Bass, and distinguished Members of the subcommittee, thank you for inviting me to testify today. I am very pleased this subcommittee is taking a closer look at human rights vetting, otherwise known as the “Leahy Law,” and its application. I will focus my remarks today on what security force abuse actually looks like in Nigeria – and elsewhere – and why the Leahy Law is a key tool to address it.

This is a timely hearing given the impending US redeployment from Afghanistan and the inevitable shift in resources and priorities that will occur. In fact, this shift has already begun with President Obama’s recent creation of a Counterterrorism Partnership Fund and other correlated efforts to strengthen the capabilities of foreign military partners. This renewed and expanded approach to security assistance reinvigorates the importance of the Leahy Law as it will be critical to find the right balance between incentivizing institutional reform and addressing ongoing and systematic abuses that undermine larger strategic US goals.

As you know, the Leahy Law was introduced by Senator Patrick Leahy in 1997 and prohibits US assistance to foreign security force units that the US government credibly believes have committed gross human rights violations. By restricting funds that many foreign governments would like to receive, it also serves as a lever to reform: security assistance can be restored to the offending unit when the partner government undertakes a credible investigation into the alleged abuses and begins a legitimate justice process.

In the grand scheme, the law is actually quite minimal – its baseline for not providing assistance is “gross violations of human rights” – which include crimes in violation of international law, including torture and other ill-treatment, extrajudicial killings, enforced disappearances, prolonged detention without charge, and politically motivated rape. There is no reason the United States should seek to affiliate with those who commit such egregious abuses.

In practice, there are only a small number of units that don’t pass vetting annually. According to the State Department, in 2012, 90 percent of the 162,491 cases vetted were approved – only 1 percent was rejected and 9 percent suspended. In 2013, the percentages were about the same. These numbers make clear the Leahy Law isn’t the obstacle some have portrayed it to be when it comes to providing security assistance.

Simply put, the Leahy Law is an important means to ensure that the US does not become complicit in grave human rights abuses abroad *and* that it upholds its international legal obligations. In and of itself, this would be a laudable goal. But it also makes sense within the larger foreign policy context since militaries that commit abuses can also exacerbate long-

standing grievances, escalate atrocities, foment political instability, and provide abusive armed opposition groups and terrorist organizations with a very powerful recruiting tool.

Instead of pushing for waivers or looking to minimize the Leahy Law's reach, Congress and the administration should embrace the law and look for opportunities to strengthen and implement it robustly, within the context of broader governance and institutional reform. Such a path would uphold US moral and legal obligations while also contributing to the national security goal of supporting professional, accountable, and effective military partners – from Nigeria to Iraq.

## **I. Nigerian security force abuses**

Since long before the Chibok abductions and #Bringbackourgirls campaign captured the world's attention, Human Rights Watch has been reporting on the crisis in northern Nigeria, and the serious abuses the security forces have perpetrated in responding to it. In 2009, we denounced the government's killing, while in custody, of Boko Haram leader Mohammed Yusuf and many others, acts which are widely believed to have spurred further violence by the group.

In October 2012, we released a report that looked not only at Boko Haram's atrocities but also the impact of Nigeria's heavy-handed security response. We found that in an attempt to halt increasingly violent attacks, between 2010 and 2012, Nigeria's security forces – comprised of military, police, and intelligence personnel, known as the Joint Military Task Force (JTF) – killed hundreds of Boko Haram suspects along with members of the local communities who were apparently attacked at random. Our research made clear that members of the JTF used excessive force, were physically abusive, detained suspects secretly, stole money, and burned houses.

In May 2013, Human Rights Watch issued another report examining massive destruction to the northern town of Baga. We used satellite imagery and witness evidence to confirm that while Boko Haram did attack a military patrol, kill one soldier and wound five others, the government's response was directed at the local community as government forces burned homes and killed local residents. Nigerian officials claimed they only destroyed 30 homes but community leaders told us that immediately after the attack, they counted 2,000 burned homes and 183 bodies. Our satellite images actually indicated higher levels of building destruction but because we were not able to visit the north, we could not independently confirm the death figures.

Security force abuse in Nigeria is not limited to the Boko Haram crisis in the northern part of the country – it is deeply systemic. Over the years, we have documented many cases of abusive and apparently indiscriminate or excessive use of force outside of insurgency-related situations – from the oil-producing Niger Delta region to arbitrary killings in response to inter-communal violence in Nigeria's middle belt to political violence that often accompanies elections at all levels of government to smaller events such as one that occurred this July 4 in the city of Lagos, where it appears soldiers went on a bus-burning rampage, randomly beating and harassing city residents after a bus ran over and killed one of their fellow fighters earlier that morning.

The abusive conduct of Nigeria's security forces completely undermines their effectiveness and creates strong resentment within the communities they are ostensibly there to protect. In the case

of Boko Haram, many Nigerians have expressed a reluctance to share any information that might help stop the group because they're afraid it will be used against them. Worse still, the Nigerian government has largely failed to undertake any kind of credible investigation into the ongoing and pervasive security force abuses that have been repeatedly brought to their attention – a problem that only aggravates the underlying governance problems that enable groups like Boko Haram to thrive. More than 10 years on, the government has still not held members of the security forces accountable for the 2001 massacre of more than 200 people in Benue State.

Ultimately, the Chibok kidnappings have made clear to the world that Nigeria is confronted with a major security challenge where military action alone will not solve the problem. Similarly, the Leahy Law is not a panacea that can “fix” the Nigerian security forces but it can play a crucial and positive role in helping the Nigerian government take steps to reform their security forces so down the road the US can engage more extensively.

## **II. Other security force abuses**

As you well know, abusive and undisciplined security forces are not unique to Nigeria. They are a problem in many countries where corruption is widespread and governance is weak. Notably, these are also some of the conditions that give rise to or allow violent extremism to thrive.

One example is Kenya, where over the past five years the police have been responsible for hundreds of extrajudicial killings, torture, and other gross human rights violations. Kenyan authorities did prosecute about six people associated with the 2007-2008 post-election violence that nearly plunged the country into a protracted conflict. But compared to the 5,000 case files that were collected in 2011 by the Director of Public Prosecutions to review, it has barely made a dent. As a result, underlying concerns that led to the violence remain unaddressed, as do many of the surface level tensions.

Kenyan police, in particular its Anti-Terrorism Police Unit (ATPU), have also been implicated in dozens of cases of extrajudicial killing, enforced disappearance, and torture of terrorism suspects in Nairobi and the Coast in recent years.

In addition, Kenyan police and security authorities, including the ATPU, have cracked down harshly on ethnic Somali Kenyans and Somali refugees in large-scale, abusive operations, notably in Eastleigh in operations in 2012-2013 and 2014. In interview after interview, Human Rights Watch learned how the police enter homes, steal money, arbitrarily detain people in horrible, degrading conditions and then threaten to charge them – without any evidence – of terrorism.

Human Rights Watch has also documented police and military abuses against Somali Kenyans and Somali refugees in the former North Eastern Province, where police regularly intercepted thousands of asylum seekers, mostly women and children, fleeing conflict in Somalia and beat, raped, and/or deported or detained those who could not pay bribes on false charges of unlawful presence in Kenya. In 2012, police and military personnel took part in roundups and beatings of civilians in the northeastern city of Mandera.

Another example is Iraq, where Prime Minister Nouri al-Maliki's heavy-handed approach to security has exacerbated sectarian tensions, perpetuated impunity, and undermined the rule of law. In January 2013, the prime minister promised to reform the criminal justice system, but a year later nothing had been done and the brutal tactics of his security forces remained essentially the same. In late May – just before the initial advance of the Islamic State of Iraq and Sham (ISIS) – Human Rights Watch documented how Iraqi security forces were dropping barrel bombs on populated areas and attacking hospitals in Fallujah as the government intensified its campaign against a broadly defined group of insurgents. This is not to say that Iraq hasn't been grappling with some very serious threats. Unfortunately, the government's excessive use of force in law enforcement situations and violations of the laws of war hindered, rather than helped, the country's counterterrorism efforts. By killing hundreds of civilians and terrifying thousands more, the government alienated affected populations – many of which constituted potential allies – in the name of “combatting terrorism.” Aggressive discrimination by government officials, state security forces, and the Shia militias they have been working alongside for the past several years has polarized the population and amplified sectarian tensions. Such unlawful tactics do little to reduce violence but instead may make the situation worse. It comes as no surprise to many experts that despite their numerous horrific abuses, ISIS has been able to advance so quickly in Iraq.

In both of these examples, a cautious approach to security assistance combined with robust Leahy vetting is essential given the body of objective evidence implicating security forces in gross human rights abuses. Otherwise, as the *Washington Post* editorial board wrote earlier this week, “if US-backed forces commit human rights abuses, the damage is twofold: the fight against insurgents is compromised, and so is support for alliance with the United States.”

### **Recommendations**

In the nearly 20 years since the Leahy Law became law and as the administration places greater emphasis on building the capacity of foreign security forces, it is entirely appropriate for the administration and Congress to explore how to make improvements so the law can be more effective. Specifically, we are concerned that human rights vetting remains deeply underfunded, that many within the US government, as well as other governments, don't understand the law or its implications, and that the executive branch hasn't provided sufficient policy guidance on steps other governments can take to address problems of abuse within their security forces.

To that end, Human Rights Watch would like to recommend a few steps forward.

First, Congress should appropriate sufficient funds to support the Leahy vetting process. Currently, the US government vets approximately \$15 billion of US security assistance (between State Department and Defense Department funded aid) annually. The FY15 House Foreign Operations Appropriations includes \$2.75 million appropriated in support of the Leahy Law while the Senate version increases the amount to \$5 million. Human Rights Watch urges you to support the Senate amount, as increased funds are crucial to support staffing and computer infrastructure in Washington. In key embassies around the globe – where vetting begins – these funds will help expedite and strengthen the process.

Second, Congress should press the administration to develop clear policy guidance on how diplomats and military officials can support foreign governments to promote accountability for

abuses committed by foreign security forces. The Leahy Law requires the administration to offer assistance in remediation, but this area of the law and associated policy are woefully underdeveloped. In some countries, such as Colombia and Bangladesh, there have been efforts to support an attempt to clean up the abusive units unable to receive funds, but this approach is all too rare. The US government should build out this central tenet of the Leahy Law by capitalizing on the wide-ranging in-house expertise on developing and supporting judicial mechanisms for accountability and the rule of law.

Finally, the administration should publicly embrace the principles of the Leahy Law by clearly and transparently communicating its requirements and consequences to all partner nations. As a law reaching beyond US borders, US ambassadors and their staff need to understand the law's implications, explain it to foreign governments, and clarify what assistance could be available if they reform abusive units. This will entail publicly articulating which units are barred from receiving US security assistance, why, and precisely what reform efforts a government must undertake to reverse the ban. Doing this would make a positive and lasting contribution to accountability and the rule of law by showing US commitment to upholding and improving respect for international human rights, and expecting its partners to do the same.

Thank you Mr. Chairman. I'm happy to answer your questions.