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HUMAN RIGHTS FIRST
HEARING ON

Human Rights Vetting: Nigeria and Beyond

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Subcommittee on Africa, Global Human Rights, and International Organizations

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Introduction

Thank you, Chairman Smith, Ranking Member Bass, and Members of the Subcommittee. I appreciate the opportunity to be here today to share our views on human rights vetting of potential recipients of U.S. security assistance and the critical role it plays in advancing human rights and U.S. national security.

We are grateful for your leadership, Mr. Chairman, on this and so many other important human rights issues. You came to Congress at about the same time that Human Rights First was born, and we've been working together ever since. No one in the Congress—and very few outside of it—can match your passion and persistence. You are a constant reminder to your colleagues that respect for human rights is not only the right thing to do; it's the smart thing, too.

Human Rights First, the organization it's my privilege to lead, is built on that idea. Our central mission is to foster American global leadership on human rights. We believe that upholding human rights is not only a moral obligation; it's a vital national interest. Our country is strongest when our policies and actions match our ideals. For 35 years, we have worked to ensure that the United States acts as a beacon on human rights in a world that sorely needs American leadership.

Human rights vetting requirements—known as the Leahy Laws—are absolutely critical to that leadership.

When Secretary of State John Kerry rolled out the State Department's Country Reports on Human Rights this year, he noted that, "The places where we face some of the greatest national security challenges today are also places where governments deny basic human rights to their nations' people, and that is no coincidence."

As the United States expands its partnerships with foreign military and security forces to counter new security threats—including terrorism—it's important to keep this in mind. Respect for human rights is neither a trump that beats other national interests, nor a "soft" concern that can be traded off or deferred without undermining those very interests. Respect for human rights is rather a cornerstone, a foundation on which to advance other national priorities.

While the United States serves its national interest when it lives up to ideals, the converse is also true: it is evident from years of experience that U.S. national security is degraded when our partners engage in abusive and predatory practices, as we've seen in many places, including Nigeria, Kenya, Colombia, and Iraq. Not only do such actions weaken U.S. moral authority—an increasingly under-valued resource—they alienate the civilian populations whose support is essential in the struggle against terrorism and are used by terrorists to validate grievances and recruit others to their cause.

The Leahy Laws prevent the United States from offering assistance to foreign military units if there is credible information that a member of the unit has committed a gross

violation of human rights—torture, rape, murder, or indefinite arbitrary detention—and has not been investigated or held accountable. It is a common-sense proposition, a way to ensure that lethal aid only goes to law-abiding, responsible partners. It's not only one of the most constructive pieces of human rights legislation we have, it's an insurance policy. Because of the Leahy Laws, American leaders don't run the risk of being exposed as collaborators with criminals.

The Leahy Laws reduce the chances that the United States will become complicit in human rights violations by keeping lethal equipment out of the hands of those with a history of abuse. And having that conditionality enshrined in law sends an important message to potential partners and others that the United States will not support or condone such violations. Under the U.N. Charter and the International Covenant on Civil and Political Rights (ICCPR), the United States is obligated “to promote universal respect for, and observance of, human rights, and freedoms.” The Leahy Laws help implement that obligation in a meaningful way.

I'd like to focus on two other strategic objectives of the Leahy Laws that underscore both its importance and its practical focus.

The Leahy Law Promotes Accountability

In any country, true accountability within security services depends on the capacity—and willingness—of civilian institutions to act. The Leahy Laws encourage respect for human rights by providing an incentive for foreign governments to bring violators in their security forces to justice.

The Leahy Laws set the standard. They establish in clear terms the professional, rights-respecting behavior the United States demands from its partners. But the law alone doesn't ensure that our security partners will hold abusive individuals and units accountable. For the law to be effective, the United States must embed it in a broader human rights strategy.

Proper training helps foster a culture of accountability, which is one of the reasons that professionalizing partner forces is a key component of our National Defense Strategy. Properly trained security forces will understand the negative ramifications of human rights abuses and will therefore be much less likely to commit them. Professionalism deters abuse. So the vetting process required by the Leahy Laws not only encourages the development of justice mechanisms, when paired with robust training and assistance programs it fosters professionalism within security forces that makes their reliance on those mechanisms a last resort.

In Bangladesh, for example, the United States carried out an interagency effort to assess the failure to investigate and prosecute human rights violations. The assessment focused on the Rapid Action Battalion, which was denied military assistance through the Leahy Laws because of clear evidence of human rights violations. The assessment represents a

solid first step to instill professionalization and allows Leahy-prohibited units to overcome aid sanctions by holding abusers accountable.

The Leahy Law Promotes U.S. Security

The other strategic value of the Leahy Laws are their contribution to the conduct of U.S. counterterrorism operations. This is because upholding human rights and safeguarding security are complementary objectives.

By encouraging foreign governments to institute counterterrorism policies premised on the rule of law—and by demanding accountability for human rights violations—the United States creates the legitimacy needed for effective counterterrorism operations and mitigates the conditions that help give rise to violent extremism. To be sure, terrorists may attempt to harm U.S. interests regardless of our conduct but, because of the Leahy Laws, they are denied the public relations benefit. It’s worth noting that Osama bin Laden cited United States support for regimes that violate human rights as a justification to attack us, calling the abusive governments “agents” of the United States.¹ Today, our largely unfettered aid to governments like Egypt is seen by many in the Middle East as approval of their abuses.

As stated by the U.N. Office of the High Commissioner for Human Rights, “effective counter-terrorism measures and the protection of human rights are complementary and mutually reinforcing objectives.”² Human rights-compliant counterterrorism addresses both the short-term threat of terrorism and works to remedy the underlying conditions that give rise to terrorism.

Consider Colombia, where the Leahy Laws have resulted in an improved human rights climate and “gains in security and stability.”³ Testifying before Congress this year, Admiral McRaven cited Colombia as the best example of a country where U.S. military assistance and training have helped reform an abusive and ineffective foreign military. Indeed, the situation in Colombia—a society plagued by government corruption and conflict between the government and a violent insurgency—reflects the challenges in many of today’s fragile states.

The U.S. Embassy in Bogotá has fully embraced the Leahy Laws, with two full-time staff positions dedicated to vetting 30,000 to 35,000 individuals annually.⁴ None of this was

¹ Observer Worldview, “Full text: bin Laden’s ‘letter to America’” The Guardian, November, 24, 2002, available at <http://www.theguardian.com/world/2002/nov/24/theobserver>

² UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 32, Human Rights, Terrorism and Counter-terrorism*, July 2008, No. 32, p. 19, available at <http://www.refworld.org/docid/48733ebc2.html>

³ John J. Hamre, forward to Peter DeShazo, Johanna Medelson Forman, Phillip McLean, *Countering Threats to Security and Stability in a Failing State: Lessons from Colombia* (Washington, D.C.: The CSI Press, 2009), p. v, available at http://csis.org/files/publication/090930_DeShazo_CounteringThreats_Web.pdf

⁴ Nina M. Serafino et al., “Leahy Law” *Human Rights Provisions and Security Assistance: Issue Overview* (Washington, D.C.: CRS, 2014), p. 15. available at <http://www.fas.org/sgp/crs/row/R43361.pdf>

easy, and Leahy vetting is not a panacea. But a decade of effort and targeted aid have spurred improvements as the Colombian Government continues to take action against many violators of human rights.⁵

The Leahy Law is Not an Obstacle to Pursuing our Security Goals

Some—including in the military and the Congress—have expressed concerns that the Leahy Laws create an obstacle to our security goals because they bar the United States from equipping security forces on the frontlines of conflicts, such as in Nigeria. The logic behind this position is that in some conflicts there are no good options, and that, in service of a larger objective against a bigger threat, the United States may need to tolerate units that have committed abuses.

With all due respect, Mr. Chairman, this argument is wrong. Let's not conflate the need to work with governments and militaries that have questionable human rights records with what the Leahy Law is intended to prevent. No matter what lens you view it through, it is never in America's interest to arm or train or partner with individuals or units that are credibly believed to have committed torture, rape, or other such heinous crimes.

The problem isn't the Leahy Laws: the problem is security units that perpetrate and tolerate abuse. Human rights vetting is the tripwire that enables us to avoid arming them, training them, and—ultimately—undermining our strategic objectives. To blame human rights vetting is to blame the messenger of bad—and essential—news. The United States needs to know when security forces, because of their human rights records, do not have the trust of their own population. In the case of Nigeria, the abuses of some in the security forces have helped fuel the growth of Boko Haram.

In addition, as far as I understand from the State Department and well-placed Members of Congress, the Leahy Laws have never prevented the United States from engaging in an essential operation. There has always been a more reliable, rights-respecting alternative.

I also understand your credible concern, Mr. Chairman, that the Leahy Laws may end up wrongfully disqualify eligible soldiers—good people who share our goals and seek our support. Such individuals should not be covered under Leahy, and in fact, it is not uncommon for a new unit to be created with the sole purpose of excluding abusers. Not only should we cooperate with soldiers who share our goals, we should also be working with them to demand accountability for those accused of crimes.

I suspect that the belief in some quarters that human rights vetting is a hindrance rather than a help in the country's battle against terrorism and other security threats grows out of a failure to recognize its value. In the face of danger, the big picture gets lost, and human rights vetting comes to seem like do-goodism that can be disregarded in the

⁵ Peter DeShazo, Johanna Medelson Forman, Phillip McLean, *Countering Threats to Security and Stability in a Failing State: Lessons from Colombia* (Washington, D.C.: The CSI Press, 2009), p. 42, available at http://csis.org/files/publication/090930_DeShazo_CounteringThreats_Web.pdf

interest of national security. But we should reject the temptation to cut moral and legal corners. The Leahy Laws derive from the bipartisan commitment to our country's ideals. We need to remember that those ideals are a vital national security asset, and that when we ally ourselves with those who undermine human rights, we endanger ourselves.

We have several recommendations for improving implementation of the human rights vetting process.

Recommendations

- **Unify the implementation and remediation guidelines**

Full implementation of the Leahy Laws are impeded in part because there are two different provisions governing the Departments of State and Defense. The guidance to implement the Leahy Laws should be unified, and the process of remediation should be closely coordinated between the two departments.

- **Consider expanding the Leahy Laws to apply to intelligence agencies**

As Americans know from our own history, abuse by intelligence agencies and officers is also possible, particularly given the lack of effective oversight of secret agencies in many societies. To strengthen the impact of Leahy Laws, Congress should consider expanding their reach to cover intelligence agencies.

- **Increase the numbers of vetters to expedite approvals**

The State Department's Bureau of Democracy, Human Rights and Labor vets approximately 200,000 units and individuals per year. It has nine personnel in Washington and five globally dedicated to the task, supported by a point of contact in every embassy. In addition to investigating each name put forward for training, vetters also must verify the identity of the individual proposed for sanctions to avoid mixing up two people with the same name. The Treasury Department has an office of approximately 75 people assigned to this task. As Congress considers its FY15 appropriations, it should fund the Leahy vetting office at the level of \$5 million contained in the Senate Foreign Operations and State Appropriations bill.

- **Expand the use of local activists in the vetting process**

Human rights defenders, NGOs, and local activists in partner countries may have the most reliable information available for the accurate implementation of the law. But according to some embassy officials, they often lack an understanding about what kind of reporting and presentation the United States government deems specific enough to trigger a prohibition. The State Department should direct embassies to invest in better educating human rights defenders about the Leahy Law, the vetting process, and what role they can play to help it work the way it is supposed to work. Importantly, an investment in building defenders' capacity in this area would

allow them to more effectively use the Leahy Law in their advocacy with their own governments as well.

- **Invest in Remediation Efforts**

Leahy vetting is a flag about the culture of accountability in a partner country. If a request for cooperation is denied, it is because credible evidence of a gross human rights violation has not been adequately investigated and prosecuted. One obstacle in remediating these cases is the lack of capacity to investigate, try, and discipline members of the military. Where the United States has an interest in partnering with countries that have challenges with accountability, it should be able to offer assistance to build this capacity. It is worth the investment, and indeed should be construed as the cost of doing business in lethal aid. In some cases, potential partners have been offered training through a human rights module from the Defense Institute for International Legal Studies (DILS). Courses such as these are generally inadequate to remediate the commission of the severe crimes Leahy vets. A stronger remediation effort would start with a human rights assessment conducted by the Bureau of Democracy, Human Rights, and Labor, and proceed to the design of a strategy focused on developing institutions that are central to accountability in the military and civilian sectors. The Administration should consider expanding programs in the Defense Department (such as the Defense Institute Reform Initiative, Ministry of Defense Advisors Program, and the Warsaw Initiative Fund), its supporting institutions (including the Center for Civil-Military Relations at the Naval Postgraduate School and the Army JAG school), and through US AID that train law enforcement and internal inspection units to properly respond to allegations of torture and abuse.

- **Exercise the “duty to inform”**

The Leahy Law includes a requirement to inform the host government of a denial of assistance because of a credible report of a violation. The State Department often chooses not to raise the denial with the host government for fear that it could complicate a bilateral relationship. In most cases, this is a missed opportunity to exert leadership on human rights. Without political attention, it is less likely that perpetrators will be held accountable or significant human rights training meant to assist in remediation will occur. Furthermore, a failure to inform obfuscates what the United States stands for and what it is -- and is not -- associated with. The United States should publicly embrace the Leahy Law, and the State Department should consistently inform host governments of its decisions on military training and justice and accountability.

- **The Leahy Law is critical to the success of any counter-terrorism partnership funding**

The President’s request for the Overseas Contingency Operations includes \$5 billion for a Counter-Terrorism Partnership Fund meant to provide resources to “build on existing tools and authorities to respond to a range of terrorist threats and crisis

response scenarios.” The request includes \$4 billion to support capacity-building efforts to partner nations, among other purposes. Unfortunately, the request proposes that the Secretary of Defense use these funds “notwithstanding any limitation in a provision of law that would otherwise restrict the amount or recipients of such support or assistance.” This appears to be designed to bypass the human rights vetting required by the Leahy Law in precisely the quarters it needs to be strengthened and made workable. Human Rights First urges Congress to strip this clause from any legislation funding counter-terrorism partnerships.

Thank you.